

Newsletter



LOCAL CONTENT IN THE REPUBLIC OF BENIN



The soils and subsoils of African countries are overflowing with a variety of natural resources, the extraction, processing and sale of which should contribute to the continent's economic and industrial development, as well as creating jobs and opportunities for current and future generations. The challenge is to put in place an appropriate mechanism to enable local populations to benefit from the ecosystem created around extractive activities.

This concern is even more topical given that in recent years, both at regional and national level, there has been a desire to put in place an effective policy aimed at involving the local economic and industrial fabric. This "local content" policy generally takes the form of the adoption of binding regulations.

At the regional level, the *Vision Minière Africaine de l'Union Africaine* (the « **VMA** ») adopted in February 2009, the ECOWAS Model Law on Mining and Mineral Resources Development adopted in June 2019 (the "**ECOWAS Model Law**") and Regulation No. 02/2023/CM/UEMOA of 16 June 2023 on the Community Mining Code (the "**UEMOA Mining Code**") recommend the implementation of effective local content development strategies and policies in African countries.

At national level, the sectoral laws of States, particularly in the oil and mining sectors, define the notion of local content and include provisions aimed at establishing this concept and making it binding.

For instance, Mali's 2023 Mining Code¹ defines local content as *"all provisions and measures that require mining companies to give priority to nationals, local communities, national companies and locally produced materials in carrying out their activities"*.

In Senegal, it is defined in the mining sector as *"all the mechanisms that enable the development of the local industrial and commercial fabric, as well as national skills, from the entire mining industry value chain"*².

All these definitions have a common objective, namely the use of local human resources, their training, the transfer of skills and the use of local companies at all stages of the value creation chain.

Regarding the authorities' desire to industrialise the Republic of Benin and the measures being taken to develop the extractive industry, it would seem appropriate to analyse the place given to local content in Benin's legislative arsenal.

¹ Law no. 2023-040 of 29 August 2023 on the mining code in the Republic of Mali.

² Law no. 2016-32 of 8 November 2016 on the Mining Code of Senegal.

1. The legal framework of the concept of local content in the Republic of Benin

Unlike other West African countries, Benin has no specific legislation on local content. However, the concept is enshrined, explicitly and/or implicitly, in various sectoral texts, notably:

- (i) law No. 2006-17 of 17 October 2006 on the mining code and mining taxation in the Republic of Benin (the "**Mining Code**");
- (ii) law No. 2020-05 of 1^{er} April 2020 on the Electricity Code in the Republic of Benin (the "**Electricity Code**");
- (iii) law No. 2019-06 of 15 November 2019 on the Benin Petroleum Code (the "**Petroleum Code**");
- (iv) law No. 2020-02 of 20 March 2020 on the Investment Code of the Republic of Benin (the "**Investment Code**"); and
- (v) law No. 2022-38 of 03 January 2023 establishing the regime of special economic zones in the Republic of Benin (the "**SEZ Law**").

In addition, as part of the Beninese government's perspectives for the period 2021-2026, legislation on local content in the hydrocarbons sector is to be drafted and adopted.



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At the 4th ECOWAS Mining and Petroleum Forum (ECOMOF 2024), held in Cotonou from 22 to 24 February 2024, the need to develop local content policies for the geo-extractive sector was strongly emphasised.

At the end of the session devoted specifically to "Local content policies and the creation of added value in the geo-extractive sector", several recommendations were made to the various stakeholders, including:

- the introduction **by governments** of technical and financial support for local businesses and a reduction of the guarantees required by financial institutions;
- the setting up **by governments** of a fund to support the development of local content with the support of mining and hydrocarbon companies;
- the introduction **by companies** of training plans meeting international standards for the benefit of SMEs providing services to mining companies;
- the establishment **by companies** of strategies aimed at improving dialogue with partners; and
- the implementation of concrete actions **by local companies** to ensure their competitiveness in the supply of goods and services.

2. Implementation of local content in the Republic of Benin

The various aspects of local content reflect the obligation placed on foreign companies operating in Benin to use local products or services in carrying out their activities. This involves, on the one hand, contributing to the know-how of local staff and, on the other, granting preferential rights to national companies.

a. Contributing to the expertise of local staff

Contributing to the know-how of local staff is one of the major aspects of local content under Beninese law. This results into priority use of local labour, training, skills development, and technology transfer.

To this end, the Beninese legislator has made the employment of local labour an obligation and has regulated its working conditions. For example, in the Petroleum Code, the legislator gives priority to staff of Beninese nationality when recruiting.

It indicates that all holders of an operating licence, as well as their subcontractors, must give priority to employing staff of Beninese nationality and comply with minimum quotas for employees of Beninese nationality by job category. In addition, from the start of petroleum operations or transport and storage operations, a training programme must be set up for Beninese staff with all qualifications, in accordance with the conditions set out in the Petroleum Code.

Chapter V of the Petroleum Code, entitled "*Local content and corporate social responsibility*", sets out the conditions for acquiring Beninese nationality for any company operating in the sector. It states that a company is deemed to be Beninese when it has "*a workforce of Beninese nationality whose wage costs represent at least 50% of total wage costs*". This condition is, however, one of the alternative conditions that should be added to that of the registered office.

The Mining Code, for its part, addresses the issue of the contribution of local personnel to know-how. It stipulates that the beneficiary of a mining title and the companies working on its behalf must employ Beninese staff as a priority for their operations on the territory of the Republic of Benin.

In addition, the beneficiary of a mining title and the companies working on its behalf must, before being able to employ foreign personnel to carry out their activities:

- draw up an annual training and promotion programme for Beninese staff to enable them to move into specialised jobs and management positions; and
- conduct their activities in such a way as to encourage technology transfer for the benefit of Beninese companies and employees as often as possible.

Similarly, to be approved in a special economic zone, an investor with a project that meets the zone's objectives must undertake to create at least 80% of direct jobs for nationals, in accordance with the SEZ Act.

It should be remembered that the various rules relating to local content not only contribute to the development of the capacity and skills of the local workforce, but also constitute privileges for national companies.

b. Preferential rights granted to national companies

Strict application of the local content concept would enable national companies to benefit from preferential subcontracting terms. This rule is one of the conditions imposed by the legislator on companies operating in the mining sector in Benin and on their subcontractors.

As part of its activities, the beneficiary of a mining title or the companies working on its behalf are obliged to give preference to Beninese companies for construction, supply and service provision contracts on equivalent terms in terms of quality, quantity, price, payment terms and after-sales services.

In addition, in the oil sector, all applications for operating licences must be accompanied by a support plan for Beninese companies. This plan must provide for improvements each year, and a report must be submitted to the Minister of Hydrocarbons to this effect, in accordance with the provisions of the Petroleum Code.

By adopting these preferential measures, Benin's legislator is forcing the main players in these key business sectors to play an active part in raising socio-economic indicators.

3. The need to reinforce the binding nature of local content

It is clear from the various laws examined that the Beninese legislator confers a binding scope on local content rules that investors must comply with.

These rules are often set out as prerequisites for certain incentives and even approvals. This is evidenced by the provisions of the Investment Code and the SEZ Law, which make the granting of various approvals conditional on compliance with certain local content obligations.

This strategy reflects the country's leaders determination to carry out projects designed to contribute to Benin's social and economic development.

Operators carrying out activities in Benin are thus obliged to adopt all measures enabling them to (i) give priority to the recruitment of local labour, (ii) promote the training of this labour, (iii) ensure the effectiveness of technology transfer and (iv) source locally.

However, it is essential to emphasise the need to continue the process already underway by putting in place measures to penalise non-compliance with local content rules, as well as measures and bodies to monitor the implementation of these preferential rules.

The adoption of specific legislation on local content providing for the measures identified above would contribute to the effective implementation of local content and undoubtedly to Benin's economic development.




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