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EFFECTS OF THE EMPLOYMENT OF FOREIGNERS ON JOB OPPORTUNITIES FOR MOZAMBICAN CITIZENS

**IMPACT OF THE CURRENT QUOTA SYSTEM AND IMPLICATIONS OF
PROPOSED CHANGES TO THE REGULATIONS ON HIRING FOREIGNERS.**

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Author: Caroline Ennis

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ABBREVIATIONS

DIRE	<i>Documento de Identificação e Residência</i> (Identification and Residence Permit)
EMAN II	<i>Estratégia para a Melhoria do Ambiente de Negócios</i> (Strategy for Improving the Business Environment)
ENDE	<i>Estratégia Nacional de Desenvolvimento</i> (National Development Strategy)
INE	<i>Instituto Nacional de Estatística</i> (National Statistics Institute)
MINTRAB	<i>Ministério do Trabalho</i> (Labour Ministry)
MIREME	<i>Ministério de Recursos Minerais</i> (Mineral Resources Ministry)
UNCTAD	United Nations Conference on Trade and Development
USAID	United States Agency for International Development.

EXECUTIVE SUMMARY

- This study aims to provide input into an informed debate on the hiring of foreigners in Mozambique. In particular, the impact of hiring foreigners on job opportunities for Mozambican nationals.
- This study follows on from a previous study carried out in 2004, and comes at a particularly important time given recent proposals by the government to alter the requirements for firms hiring foreign workers, by effectively eliminating the current quota system and applying the current 'out of quota' system to all foreigners.
- A firm level study was carried out via written questionnaires and detailed interviews. In-depth case studies of Mozambican workers with experience of working with foreigners were carried out, as well as interviews with the embassies of countries with investments in the country.
- While there seems to be a popular perception that foreigners are taking jobs that could be done by Mozambicans, this study found that in general, foreigners hired through the quota system bring skills and experience that positively impacts on Mozambican workers, and that often the ability to bring in foreign expertise leads to firm expansion and therefore job creation for nationals. It seems therefore that the more negative perception of foreigners 'stealing' jobs may be coming from experience of foreigners operating outside the quota system, effectively working illegally.
- We find that the vast majority of respondents agree with the principle that the state should ensure that Mozambican jobs are protected where the skills are available locally, and that firms bringing in foreigners should be able to demonstrate a clear need for a foreign worker, and a clear policy for investment in training of nationals.
- Many firms and workers interviewed were not opposed to the current quota system as defined in law, and a majority (68%) were not at their quota limits. However, many pointed out that constraints in the implementation of the system, including bureaucracy, inflexibility, delays and costs impacted negatively on their business.
- From the firm study it is clear that quotas are more restrictive for certain sectors, certain sizes of firms, and at certain stages of development. Very large firms are often not close to using their quota, and for specific major investments are able to negotiate directly with the Ministry of Labour. Certain very technical enterprises struggle to find the skills locally to remain within

quota. There is also a trend for firms to start operations fairly dependent on foreigners, but to reduce this dependence over time.

- The 'out of quota' system for firms requiring foreign workers once their quota had been reached was hardly ever used by respondents, as it was reported to be bureaucratic, inflexible and arbitrary, and therefore firms used other strategies to hire foreigners if needed.
- Experience of firms who did follow the out of quota route was that the Ministry of Labour officials did not have the depth of understanding of their business to really evaluate if there was a business case for a foreigner. Thus the current automatic allocation of quota places the decision about a foreigner's usefulness to the business in the hands of the employer who is qualified to make this assessment. This is of particular concern as the proposed alterations to the regulations would effectively abolish the quota system and apply the 'out of quota' system to all foreign hiring, thus placing decisions about the skills and qualifications of each employee and the company's need to hire them in the hands of the Ministry of Labour.
- There is a clear supply-side problem with the labour market, with a severe lack of skills that is not limited to specific technical fields. Most firms expressed a clear desire to hire national staff and many had specific training/mentoring schemes in place. However, many stressed that they simply could not find enough Mozambicans with the required skills, especially outside of Maputo.
- Given the extra costs of hiring foreigners, many firms stated that if nationals with similar skill levels were available, legislation would not be needed to encourage firms to hire them, as this would make good commercial sense.
- Both firms and workers suggested that a focus of government should be on adequately implementing existing rules, ensuring workers' rights are protected, and investing in long term skills development of the Mozambican workforce, rather than a narrow focus on restricting foreigners.
- The response to the proposed alterations to the regulations on hiring foreigners was overwhelmingly negative. These run the risk of having a perverse effect on jobs for Mozambicans, by potentially limiting investment, reducing firm growth and contributing to negative perceptions about the business environment in Mozambique. Some of the proposals are unworkable (e.g. the role allocated to foreign embassies) and others would be impossible to implement without very significant increases in capacity of government institutions.
- The government's own long term national development strategy and business environment reforms aim to encourage FDI and technology transfer. It is difficult to see how this can be

reconciled with increasing restrictions on the use of foreigners given the severe skills shortage in the country.

- We therefore recommend that before making any alterations that could have potentially negative effects on job creation and the business environment, there needs to be an informed debate about the government's objectives in respect of employment and investment as a whole, and how best to achieve these. It is also necessary to separate immigration issues from labour issues, and to assess whether it is the regulations themselves that need to change, or their implementation. .
- In order for any discussion of this potentially sensitive topic to be based on evidence, rather than perceptions or populist rhetoric, we suggest an in-depth analysis of the real skills levels existent in the market, combined with an in-depth analysis of the requirements of firms at different stages of development, and the actual situation in respect of employment of both foreign and national staff. This could lead to specific guidelines for applying the 'out of quota system' so as to remove the complexity and arbitrariness of this process. If properly implemented, and based on clear criteria, there is no reason why the current system cannot deliver adequate protection for Mozambican workers' job opportunities without damaging the growth prospects of firms.

CHAPTER ONE: INTRODUCTION

This study was carried out in July 2013, partly as a follow-up to a previous report by USAID¹ and partly in light of proposed revisions to the existing labour legislation regarding the hiring of foreigners (See Annex A).

There is an increasing rhetoric about an influx of foreigners into Mozambique, with high profile cases of foreigners being returned to their countries of origin either on arrival due to lack of adequate visas or documentation, or by having work permits revoked due to alleged abuses of Mozambican staff, regularly making the headlines.

While there is a natural desire on the part of the Mozambican authorities to ensure that any influx of foreigners does not damage Mozambican workers' opportunities, it is important to seek ways to do this that do not damage the need for promoting both foreign and national direct investment and creating a business-friendly environment.

It is necessary to distinguish between immigration issues – people coming to the country without fulfilling the requirements for entry – and labour issues – people working without correct permission. It is also important to distinguish between situations caused by lack of correct implementation of existing rules (for example, people working illegally on tourist visas) and any inadequacies in the rules themselves. It is hoped that the issues raised in the report will contribute to an informed national debate on the best way to handle a perceived influx of foreigners into Mozambique, and how to position the country so as to take advantage of the forthcoming extractive industry boom to develop broad based, inclusive growth that provides real increases in living standards through the creation of quality, high productivity jobs for Mozambicans.

This short study does not aim to be nationally representative, although respondents come from a number of provinces and sectors, and from both foreign and nationally owned firms, all firms surveyed being Mozambican registered and tax payers. We do, however, hope to identify some of the key issues that should factor in the debate, and to move beyond rhetoric to understanding what is really driving hiring practices and what has been the impact of the current system on job opportunities for nationals. We will also attempt to assess what could be some possible implications of proposed alterations to the regulations governing hiring of foreign labour.

¹ USAID (2004) – Effects of the Employment of Foreigners on the Job Opportunities for Mozambican Citizens.

CHAPTER TWO: CONTEXT

A previous study on this subject, in 2004 claimed that “Many Mozambicans profess to believe that the employment of foreign workers in Mozambique directly causes Mozambican workers to lose their jobs.” The same study concluded, however, that “far from ‘stealing’ employment opportunities from their Mozambican colleagues, foreign workers in fact provide a basis for increased levels of employment of national workers. In addition, the skills levels of the foreign workers recruited tend to lead to improved training and opportunities for their national colleagues, as well as increased productivity in the companies that employ them. These have a direct positive impact both on the workers and on the national economy as a whole”².

“Many Mozambicans profess to believe that the employment of foreign workers in Mozambique directly causes Mozambican workers to lose their jobs.”

- USAID Study 2004

There is limited data available on the numbers of foreign workers in the country. The 2009 Enterprise survey carried out by the National Institute for Statistics found that 1.1% of the workforce were foreigners, with the largest proportions being employed in education (4%), Extractive Industries (2.9%) and the rather broad category of real estate, consulting, technical and scientific activities (1.7%) . While some of the sector classifications changed between 2007 and 2009, overall the 2007 survey identified 4% of the workforce as being foreign. This decrease may reflect the application of the quota system which came into force in 2008. However what is clear is that in terms of numbers, foreigners are far from dominant in any sector.

“far from ‘stealing’ employment opportunities from their Mozambican colleagues, foreign workers in fact provide a basis for increased levels of employment of national workers.”

- USAID Study 2004

² USAID (2004) – Effects of the Employment of Foreigners on the Job Opportunities for Mozambican Citizens.

TABLE 1: PROPORTION OF FOREIGN STAFF BY SECTOR OF ACTIVITY

	2009			2007
	Total Staff	Foreign Staff	Foreign (%)	Foreign (%)
TOTAL	293,470	3,335	1.1%	4%
Agriculture, Animal Production, Hunting, Forestry, Fishing	34,560	198	0.6%	n.a
Extractive Industry	2,799	82	2.9%	1%
Manufacturing	75,047	823	1.1%	3%
Production and Distribution of Electricity and Water	6,737	48	0.7%	1%
Construction	24,926	219	0.9%	2%
Commerce and Vehicle Repair	63,865	938	1.5%	7%
Transport and Warehousing	17,078	217	1.3%	1%
Accommodation, Restaurants and Similar	30,548	438	1.4%	3%
Information and Communication Activities	6,385	31	0.5%	n.a
Real Estate, Consulting, Scientific, Technical Activities	5,959	102	1.7%	1%
Administrative and Support Services Activities	15,771	45	0.3%	n.a
Education	4,343	174	4.0%	6%
Health and Social Welfare Activities	1,141	10	0.9%	1%
Artistic, Entertainment, Sport and Recreation Activities	357	5	1.4%	n.a
Other Services	3,945	4	0.1%	1%

Source: INE (*Inquerito Annual as Empresas, 2009 published in 2012, and 2007 published in 2010*)

It would also seem that despite a perception of a large increase in foreigners in the country, Mozambique remains a net ‘exporter’ of labour, with net migration in 2012 at -2.13 per 1000, i.e. a net outflow of people from Mozambique³. This is to be expected, given the traditional provision of labour to mines in South Africa.

However, there is undoubtedly an increasing interest of foreigners in coming to Mozambique. According to press reports, in the first nine months of 2012, the Mozambican government received more than 11,800 applications from foreign nationals for work permits, in particular from citizens of South Africa, China and Portugal⁴. However, an influx of foreigners is not necessarily a positive or negative phenomenon *per se*, and before legislating in response, government needs to better understand the profile of immigrants and their potential impact on the development of the country.

³ CIA Factbook 2012

⁴ www.dw.de/from-portugal-to-mozambique/a-16647809

Ideally, government's role should be to ensure that any influx of foreigners is handled in a way that is beneficial to the multiple developmental goals of the country. The recent United Nations Conference on Trade and Development (UNCTAD) Investment Policy Review⁵ stated that currently “Mozambique does not seem to have reached the appropriate balance between the legitimate objective to ensure that Mozambicans are given priority in accessing jobs at all levels and the need to enable investors to access the skills required for their operation and expansion”.

There also seems to be a tension between Government objectives for national development and its objectives for protecting Mozambican labour. The recently disseminated and yet-to-be approved National Development Strategy (ENDE in

Portuguese) established industrialization as the main long term goal for the Mozambican economy, with an aim of utilizing the benefits from a forthcoming natural resource boom to promote inclusive growth across the country. The specific objective established in the document is “to improve living conditions for the population through structural transformation of the economy, expansion and diversification of the productive base” (Draft National Development Strategy –ENDE – July 2012).

The ENDE is a high level, strategic document designed to guide medium term planning for the years 2015 – 2035.

It sets out the government's vision for where it sees the Mozambican economy going and is still at the consultation stage. As such, it is naturally fairly light on specifics.

However, what is clear is that the ENDE sees the private sector as the engine for growth of the country and for improving the living conditions of Mozambicans. Implicitly, this is through increased tax receipts (enabling government to increase its revenues and finance for example a national development bank), technology transfer (for example through the creation of special economic zones and industrial parks), absorption by industry of surplus labour coming from agriculture, and ‘developing a business culture’.

While the analysis and specific policies to turn this vision into reality will need to be thought through by government (and, we would hope, discussed in full with the private sector, civil society, academics and other countries that have faced similar challenges) one thing is very clear. For technology transfer to happen, for a ‘business culture’ to be developed, and for increased employment for Mozambicans in the private sector, a ‘business friendly’ environment needs to be fostered. This is particularly so as the extractive industry by itself does not create a lot of local employment and technology transfer, by its nature, and as such, in order to really industrialize and provide good quality jobs for Mozambicans, small

“Mozambique does not seem to have reached the appropriate balance between the legitimate objective to ensure that Mozambicans are given priority in accessing jobs at all levels and the need to enable investors to access the skills required for their operation and expansion”.

UNCTAD 2012

⁵ UNCTAD Investment Policy Review, 2012

and medium businesses must also be encouraged and supported to invest and grow. In order to respond to an increased demand for a skilled and educated workforce, investment by the government in skills and education is a priority.

It is not just in the ENDE however that the government articulates elements of its vision for business. The Strategy for Improving the Business Environment (EMAN II) was recently presented for public consultation, and aims to implement a ‘second generation of reforms’ in the business environment in order to ‘make the country attractive to business and sustainable investment’⁶. It defines two strategic objectives – simplifying procedures and improving competitiveness.

However, the government seems particularly conflicted around one aspect of business reform – the entry into the labour market of foreigners, and of foreign-owned small and medium sized enterprises. EMAN II establishes as a ‘threat’ to Mozambique “the establishment in the country of small and mediums sized enterprises with support from their countries of origin, reducing the capacity of national companies to compete internally and externally”.

EMAN II establishes as a threat to Mozambique “the establishment in the country of small and mediums sized enterprises with support from their countries of origin”.

- EMAN II

Recent reforms proposed by the Ministry of Labour to significantly increase the requirements for foreigners coming to work in the country seem to reflect nervousness around the ability of the national workforce to compete with an influx of foreigners. MINTRAB claims that “The current flexible quota system has allowed the large-scale entry of foreigners without professional qualifications to justify their employment, which leads to the need to adopt measures allowing for greater control.” (see annex A). No evidence has been presented publicly to support this statement, and it raises a number of questions:

- Has there really been a “massive influx” of foreigners?
- Do they really not have qualifications that justify their employment?
- Is it the quota system that is to ‘blame’?
- And would measures adopted through labour legislation have any impact, if as seems to be the government’s conclusion, many foreigners may be avoiding the quota system and working illegally?

⁶ Presentation made at public consultations, available here:
<http://www.cta.org.mz/lib/CTA%20galeria/Annonces/EMAN%20II.pdf>

In this study we attempt to provide some clues to the answers to these questions, and to assess the impact that the current quota system has had on employment opportunities for nationals. We also consider the potential impact that the proposed changes to the regulations governing employment of foreigners might have, as well as considering the impact on job opportunities for national staff.

Effectively, we are interested in assessing whether the reality reflects the government's analysis and whether the government's proposals are the most appropriate for achieving its own aims as set out in national strategies such as the ENDE and EMAN II.

CHAPTER THREE: METHODOLOGY

This study was carried out through a literature review, a written questionnaire of 23 firms across a range of sectors, follow up in-depth interviews with firms, embassy and consular staff of countries with major investments Mozambique, and four in-depth case studies of Mozambican workers who had experience of working alongside foreigners in different industries.

The spread of participating firms as regards to sector is as follows:

- Business Services (6)
- Agriculture & Forestry (4)
- Transport, Logistics & Automotive (3)
- Construction (3)
- Manufacturing (2)
- Mining (1)
- Tourism (1)
- Health (1)
- Retail (1)
- Other (1)

Participating firms included small (3), medium (7) and large (13) as defined by the labour law, and were spread geographically across the country. Both nationally owned and foreign owned firms were interviewed and interviewees were a mix of foreign and Mozambican nationals.

Naturally, given the relatively small number of firms interviewed, compared to the universe of firms in the country, there is a limit to any statistical analysis that can be drawn. However, the insights that resulted could be used to design a more in-depth, statistically representative survey should this be considered useful.

All those who completed the questionnaire or who were interviewed did so based on a commitment by the consultant to their anonymity and this has been respected.

CHAPTER FOUR: FIRM QUESTIONNAIRE AND INTERVIEWS

In this section some of the key results from the firm-level questionnaire and in-depth interviews are presented. The questionnaire used can be found in Annex C.

4.1 EVOLUTION OF JOBS AND GROWTH OVER TIME

Of the companies in the sample that were operating in 2004, all have increased jobs for nationals in the intervening period, with an average increase of 218% over the period. However, all also increased for the number of foreigners employed, with an average increase of 93%. In general terms, the proportion of foreigners in the workforce of the companies interviewed, including those who initiated operations after 2004, has fallen slightly. In absolute terms, almost all firms have created many more jobs for Mozambicans than for foreigners although while some firms have promoted Mozambicans to positions of management/supervision, many continue to have a higher proportion of foreigners in senior management roles. This concentration of foreigners in managerial roles is shown by one case from the automobile industry with a breakdown of staff within management, showing that the Director Level is 33% national, Branch Managers are 67% national and Department Managers are 86% national.

Of the companies in the sample that were operating in 2004, all have increased jobs for nationals in the intervening period.

This concentration of foreigners in management roles is not surprising given that management skills was the constraint most often mentioned in terms of ability to fill positions nationally. However, despite these constraints, there is evidence of ‘upward mobility’ of national staff through the ranks, as of the firms that responded 95% reported that in the last year national staff were promoted within the firm. Those that gave information about the types of promotion mentioned promotion ‘to middle management’ and to positions of supervising other staff.

Looking forward, only 23% of firms said they planned to hire more foreigners, while 50% that stated they planned to hire more nationals. 36% said they had definite plans to reduce the number of foreigners, whereas only one firm had plans to reduce nationals, due to an overall restructuring of the company. Almost all firms were positive about their growth prospects in the near future.

4.2 WHY FIRMS HIRE FOREIGNERS

A number of reasons were given by companies as to why they have hired foreigners over nationals:

SKILLS UNAVAILABLE IN THE MARKET

This was the main reason given in almost all cases with almost all companies stating they would hire national staff if skills were the same, or even slightly below, the level that could be found outside Mozambique. One employer in a fairly specialized area stated that “if the skills I could find locally were even close to what our requirements are then we would take national staff and work with them And train people up as I’m not going to bring people in from Europe or elsewhere if I can find people locally. But I simply can’t”.

Management Skills.

Lack of managerial skills was mentioned repeatedly as a binding constraint on hiring more national staff in more senior positions. This does not cover simply general manager positions, but technical positions that also require management (for example, being in charge of a workshop or a team of technical staff).

As part of this, a general commercial understanding and an ability to assess ‘impact on the bottom line’ was felt by some respondents to be difficult to find, and also more difficult to teach than technical or language skills. There was a sense that a ‘business culture’ is still nascent in Mozambique, and that given a limited exposure to international management practices, these skills will take time to be developed nationally, especially as many managerial skills are based on experience rather than theoretical teaching.

Some interviewees highlighted lack of management skills as a brake on promotion of nationals who have good technical skills, but are unable as yet to make the transition to managing others.

Specific Technical or Scientific Skills that currently are inexistent/in short supply in Mozambique

This includes a wide range of specialist areas from scientists, dive instructors, quantity surveyors, Health and Safety Officers, conservation agriculture, sales, and financial management. These were either considered to be non-existent in the market, or candidates were unwilling to accept work outside of Maputo or for wages small and medium sized firms could offer, or to be of a significantly lower standard than those that could be found in the regional labour market. One example of the latter is financial managers, with more than one interviewee highlighting that the

“if the skills I could find locally were even close to what our requirements are then we would take national staff and work with them”

skills of accountants in the Mozambican labour market were much lower than those from neighbouring countries.

However, and more worryingly, one respondent from the construction industry also mentioned that they preferred to use foreign semi-skilled labour (e.g. plumbers, electricians, fencers) as the quality was better than that of nationals. Examples cited included simple service quality issues such as cleaning up after a job, avoiding damage to the structure when working, and punctuality.

Language Skills

Many firms are dealing with international clients and therefore require senior staff to be able to operate in English. This was cited by some as providing a ‘ceiling’ on growth of national staff who have moved up through the firm, but find it difficult to move into positions where they would take on dealing with key clients or suppliers.

FOREIGNERS ARE EASIER TO RETRENCH

This was a surprising finding but a number of employers stated that they preferred hiring foreigners as they could, in some circumstances, be cheaper and easier to fire, particularly for ‘general underperformance’. It was felt that despite the revisions to the labour law in 2008, letting Mozambican staff go for simply not fulfilling the expectations of the role was costly and time consuming.

TRUST AND SECURITY

A broader issue related to trust was made by someone who both works within a firm that employs foreigners, but also provides business advice to companies in the national market. She highlighted that companies entering the market for the first time naturally wish, in the first instance, to bring in a management team that is known and trusted to them, from their country of origin. However, in her experience over time, these firms develop networks in Mozambique and gradually reduce their dependence on staff from ‘home’.

One employer stated that having had a series of bad experiences with national financial managers who were dishonest, a decision was taken by the company to hire a foreigner for this role. While he recognised that this could happen with other nationalities, he suggested that the company felt more comfortable hiring someone from outside of Mozambique.

WORK ETHIC AND RELIABILITY

This is a naturally sensitive topic, but the government itself, in the draft National Development Strategy identifies a need for a ‘change of mentality’ and to develop a ‘business culture’, and some of the respondents reflected this, with a number stating that for key positions they choose foreigners because they have a “stronger work ethic” and are “more reliable”. One comment from a foreign owner of a firm employing only Mozambican staff is that “Mozambicans need to up their game to compete against foreigners”.

4.3 WHAT POSITIONS FIRMS HIRE FOREIGNERS FOR

Given the cost and limitations on hiring foreigners, it is natural that firms tend to use them in critical roles. Two main areas in which many firms relied on foreigners were in management (including financial management) and in highly specialized technical roles. This seems consistent with the skills constraints identified in the preceding section.

4.4. EXISTENCE OF MENTORING /SKILLS TRANSFER PROGRAMMES WITHIN COMPANIES

Given the above mentioned lack of skills, a number of companies have a formal process of up-skilling, while a number of others lack a specific policy but focus on this during on-the-job training. Just under 50% stated that they have a specific policy of mentoring/training in place, and a similar proportion stated that skills transfer happens on the job.

One company stated that it was in the process of developing in-house training to formalize the skills of national staff that have the practical experience but no formal certifications, and another stated that they have a mentoring system, while some mentioned that they have schemes whereby national staff with management potential are taken on as assistants to shadow current managers with an explicit objective of growing into the role over a number of years.

A number of companies highlighted cases where nationals had benefitted from training to move up through the company, with one senior manager stating that in 3 years the company can train a good technical level staff and that while managerial positions take longer, this too is possible.

It was recognised by many respondents that business has a duty to ensure up-skilling of national workers – but also many reflected that this does not need to be imposed, as there is a clear economic rationale for investing in local staff over the medium term.

4.4 IMPACT OF THE CURRENT QUOTA SYSTEM ON HIRING PRACTICES

There is mixed evidence from the data of scaling back of foreign jobs, with the figures from INE suggesting that over time this has happened, but a more complex view provided in the small study carried out as part of this report. A detailed analysis is outside the scope of this report – but would be a valuable exercise to underpin labour policy. It is likely that different dynamics are at work in different sectors – and at different stages of a firm’s development.

From our study there is, however, evidence of a generalized increase in opportunities, the majority (if, not yet, the most senior) of which are going to Mozambicans. Thus there seems to have been large scale job creation, mainly benefitting Mozambican nationals. However, the proportion of foreigners in the total number of jobs seems to have remained fairly constant. Of the companies who provided information for

the whole period under analysis, there is only one example of a significant decrease in the proportion of foreigners, from an extremely high 85% in 2004, to 57% in 2009 and currently 41%. If we exclude this rather special case from the analysis the proportion of foreigners remained a fairly steady 4-5% throughout the period, while the absolute number of jobs increased significantly.

The same picture is obtained from looking at firms who only provided data for 2009 and 2012, with the majority increasing jobs for *both* nationals and foreigners fairly proportionally over the period. This is validated by the interviews, with respondents stating that as nationals have grown within the firm this

68% of companies who responded had not reached their limit for foreign workers.... only 30% said they would/maybe would hire more foreigners if they were able.

allows the firm to expand to other service lines, which may require foreign expertise initially, thereby expanding the overall number of jobs, but keeping the proportion of foreign involvement fairly static.

Interestingly, 68% of companies who responded had not reached their limit for foreign workers. This is supported by data from the qualitative part of the questionnaire, and interviews, where a majority of respondents said they would not hire more foreigners if they had quota. Of the total who responded, only 30% said they would/maybe would hire more foreigners if they were able, whereas the remainder said they would not, or probably would not, often due to cost reasons. This would suggest that for the majority of firms, the quota system itself, in terms of sheer numbers allowed, is not currently a constraint, and other factors dictate hiring decisions.

However, there are two considerations related to this – firstly, a number of companies stated that during a start-up phase, more foreigners are needed, to establish the company and train up Mozambican staff and that foreigners can be phased out over a number of years. Thus, the quota system could be more limiting in the early years of a company's establishment.

Secondly, a number of interviewees highlighted that this is particularly sectoral, as different industries and business models have different requirements for technical expertise, and different levels of national labour supply, and therefore a more nuanced approach based on real availability of Mozambican staff in each sector, and real requirements of firms, would be helpful.

Finally, the size of a firm impacts on how restrictive the quota system is, with small and medium sized companies finding it more difficult to work within than large firms.

4.5 IMPLEMENTATION OF THE QUOTA SYSTEM

Many of the respondents, foreign and national, agreed with the *principle* of the state controlling the hiring of foreigners and ensuring that this does not impact negatively on job opportunities for Mozambicans, and no one disagreed with the fact that where skills are the same, priority should be given to Mozambican candidates. Many, although by no means all, thought the levels of quotas established were reasonable. However, almost all complained about the bureaucratic, time consuming and expensive approach to its implementation, allied with the process of obtaining residency documents for staff. A representative attitude is that expressed by this respondent:

“The legislation seems very good because it essentially protects national workers, but what could be improved is the quantity of administrative procedures and bureaucracy to conclude the process of legalization of an expatriate and the average time it takes from beginning to end, which is exaggeratedly long”.

There were also some more specific comments that show how the system can be inflexible in the face of differing company dynamics and needs, and can hamper innovation. For example, one company has a highly cyclical workforce, depending on its current operations – scaling up for major contracts, and scaling back down between contracts. The quota system makes it difficult to scale up for major contracts, as quotas are based on how many national employees the company had in the previous calendar year. So they may have reduced contracted staff to 30 or so in one year and need to ramp to engage 100 nationals with 5 to 6 foreigners. But as the quota is based on the previous year’s 30 nationals and not the ‘new’ 100 they struggle to hire the foreigners needed to win the big contracts. Another firm stated that they would like to bring in foreign students who are studying courses relevant to their business, so that the students could gain practical experience while the national staff could benefit from learning the most recent techniques and approaches being taught in the subject. However the costs and bureaucracy required to obtain a work permit make this unviable.

“Despite all the claims that inspections are educational... Inspectors enter factories with the sole purpose of seeking errors to levy fines. Their attitude is always threatening”.

Responses were mixed on the role of labour inspections, with a number stating that they had had no problems (38% of those that had received inspections) and the remainder making a negative assessment. Of those that had negative experiences, the main complaint was the attitude of officials, who it was widely perceived were more interested in issuing fines than in helping firms to comply with complicated labour regulations. This backs up the recent UNCTAD report that states “the attitude of the Labour Inspectorate in enforcing the law has been more on ‘controlling and punishing’ than on ensuring that key provisions of the law are respected in their spirit”⁷.

One respondent with experience of inspections in both Manica province and Tete province stated that “They were not interested in helping our company learn to do things correctly, but to try to find mistakes to fine us for” while another reported that “Despite all the claims that

⁷ UNCTAD (2012) Investment Policy review

inspections are educational and not punitive, inspectors enter factories with the sole purpose of seeking errors to levy fines. Their attitude is always threatening and done in a manner to intimidate”.

It seems that some larger firms who have developed a relationship with the Ministry of Labour or provincial labour authorities over time have benefitted from this, and are able to operate fairly well with few problems, with one stating that they employ people ‘who know how things work’ so when fines are applied which the company considered unfair they contested these and won, while another stated that they struggled at first but the department came to know them and so doesn’t “harass them” anymore. However, the fact that these companies have managed to develop a relationship over time with the authorities constitutes in itself a major barrier to entry for other firms who do not have such a relationship.

4.6 IMPLEMENTATION OF THE ‘OUT OF QUOTA’ SYSTEM

There is an option under the current system for firms who have reached their legal quota of foreigners to apply to the Ministry of Labour for authorization to employ additional foreigners. This is a fairly complex procedure, requiring a great deal of documentation and for the company to prove that no Mozambican exists in the labour market who could do the job. UNCTAD states that “The application procedure required for each position is complex and lengthy, and its outcome very uncertain. The opinion of the company’s trade union on the relevance of the application must be sought and academic qualifications obtained abroad must be validated and certified by the Ministry of Education, which is complicated. These procedures and requirements have proved frustrating for most investors seeking to recruit expatriates beyond the quota limits”⁸.

It is therefore perhaps not surprising that only 2 firms in our sample have attempted to hire foreigners out of quota. Reasons given included the time involved, the complexity and uncertainty of the process, and a belief that officials at the Ministry of Labour are not able to fully understand the realities of each business to make an objective decision about whether the foreigner is truly needed.

One respondent who had been both successful with some “out of quota” applications, and had another rejected, confirmed that the time involved, allied with the cost and uncertainty of success are all factors to be taken into consideration, and that a ‘normal’ approval under the “out of quota” system takes 4-6 months, while one case has so far taken a year and is still not resolved. This interviewee also felt that the officials in the Ministry of Labour were more focussed on simple assessments of whether there were any Mozambicans with the academic qualifications in the labour market, and were not willing to take into account experience, languages and other ‘softer’ but nonetheless critical qualities. As one respondent pointed

Just because there may exist Mozambican nationals with the same qualifications in the country, there is no guarantee that they would be willing to work for a particular firm.

⁸ UNCTAD (2012) Investment Policy Review

out, just because there may exist Mozambican nationals with the same qualifications in the country, there is no guarantee that they would be willing to work for a particular firm – especially when the firm may be in a different province, be a start-up, or be able to pay less than some other firms (e.g. big mining firms).

One reason why some firms in our study had not reached quota limits, or were able to continue operations despite being at quota, is the strategy used by some foreigners of setting up consulting firms and ‘consulting’ to companies that require their services and skills. Thus, a number of foreign staff were effectively self employed, and ‘consulted’ to their employer. This is permitted in law but points to a need by firms and employees to devise strategies in order to fulfil their commercial needs while remaining within the law. However it should be noted that foreigners consulting in this way are subject to the costs related to company establishment and operation, and pay tax and may themselves employ some national staff.

A practice that was not used by any of the respondents, but was mentioned in interviews as a strategy believed to be used by certain other firms, is for firms who do not need their full quota to hire foreigners within their quota and contract them out as consultants to other firms who are at quota.

These strategies suggest that firms do not believe the current system of applications for work permits ‘out of quota’ works, and instead prefer to adopt other strategies. This is of particular concern as the proposed alterations to the regulations governing employment of foreigners effectively eliminate the quota system and apply the ‘out of quota’ rules to all foreign hires.

4.5 PROPOSED REVISIONS TO DECREE 55/2008 AND 63/2011

Given the recent proposals by MINTRAB to revise the decrees regulating the hiring of foreigners, both in general (Decree 55/2008) and for the extractive industry sector (Decree 63/2011) (See Annex A) respondents were also asked their opinions about the practicality and potential impact of the proposed changes.

PRACTICALITY OF THE PROPOSALS

Respondents highlighted that as employers it is their role, and they have a keen economic incentive, to check qualifications, references and experience, and this is done routinely in hiring any member of staff. Many also doubted the State’s ability to issue equivalences for all certificates given the delays in getting the equivalences currently required under the “out of quota” system (the new proposals would see a massive increase in the number of equivalence certificates requested, and currently it reportedly takes at least 2-4 months to process one such certificate). They also highlighted that Trade Unions delay greatly in issuing statements as required for current out-of-quota hiring, and it seems impractical that they would be able to increase capacity to do this for all foreigners applying for a work permit.

POTENTIAL IMPACT OF THE PROPOSALS

In general, the response was overwhelmingly negative, with a consistent response that this would not address the issue of an influx of poorly skilled migrants (the stated aim of the proposals in the introductory paragraph), but would instead ‘punish’ firms that abide by the law, and simply increase obstacles to doing business. Many respondents felt that this would have the perverse effect of decreasing

opportunities for nationals, given that it would negatively impact on firm growth and in some cases potentially lead to firms exiting the country or downsizing (both of these options were mentioned as likely by the owner of a medium sized firm that employs 70 national staff and has been growing rapidly).

Of the possible negative consequences highlighted, the following were cited: reducing foreign direct investment, closing of business, hampering the growth of firms and thereby job creation, increasing costs to firms, ‘forcing’ firms to employ people illegally while waiting for paperwork, increasing corruption, reducing training for nationals as some firms bring people in to do that, ‘unfair competition’ from firms willing to break the law/pay bribes.

This may seem an exaggeratedly negative response, however, it should be noted that despite 30% of firms surveyed being at the limit of their quota, few of these had opted for following the ‘out of quota’ system – which is effectively the system proposed for all foreigners should the alterations to the legislation be approved. Reasons given for this included bureaucracy, time, and the fact that decisions are not transparent as “there is no guarantee that after all that you will get authorisation”. So for many firms, this system was not considered viable, even when the having reached the employment limit within the quota system was having negative effects on their business.

4.6 UNFAIR COMPETITION

While this was not specifically part of the questionnaire, many firms spontaneously mentioned the issue of unfair competition, highlighting the fact that while they complied with the law, and therefore faced constraints on foreign hiring, many other firms did not seem to follow the rules. Specific examples indicated by respondents included both Chinese firms who “seem to have a free pass as far as hiring all Chinese labourers for unskilled work is concerned” and Portuguese firms “who set up a business and then bring over their whole family to work in it doing jobs that Mozambicans could easily do”.

While very often the press, and indeed firms and workers themselves conflate immigration issues with labour issues, it is important to distinguish between these, in order to identify where any weaknesses lie and therefore design an adequate intervention. While a major problem is lack of data on this phenomenon, from the introductory section of the proposed alterations to decree 55/2008, it would seem that the government is concerned about an influx of *unskilled* labour coming in often on tourist visas and working illegally. This is a different phenomenon (and prohibited under existing rules) from firms legally hiring foreigners under the quota system. The proposed changes therefore run the risk of damaging the prospects of firms complying with the law, instead of those who simply bypass the law by hiring or working illegally.

This was felt by respondents to constitute unfair competition, and therefore making the rules even more complex for hiring foreigners was felt to create an even less level playing field for those companies keen to comply with the law.

4.7 OVERALL IMPACT OF THE HIRING OF FOREIGNERS ON JOB OPPORTUNITIES OF MOZAMBICANS

Perhaps not surprisingly, all of those companies interviewed considered that in general, an appropriate use of foreign staff is beneficial to job opportunities for national workers. However, many recognised a need for the role of government in ensuring that companies are investing in skills and training, and treat national staff according to the law.

Some of the beneficial impacts of the hiring of foreign workers on the job opportunities of nationals identified by respondents included:

TRANSFER OF SKILLS AND ‘KNOW HOW’ TO NATIONAL STAFF ENABLING THEM TO GROW PROFESSIONALLY

This was the most cited benefit, with 65 % of respondents suggesting this as a key benefit to Mozambican workers. One respondent stated that “The employment of foreigners who have specialized skills is beneficial as they pass on the skills to the locals through employee development” and another stated that employment of foreigners has a beneficial impact on job prospects of Mozambicans because “National staff can learn/absorb different ways and methods of working and organization, which then forms a basis for their own development and career progression”.

FILLING SKILLS GAPS THAT ARE DIFFICULT TO FILL IN MOZAMBIQUE AND THEREBY ENABLING FIRM GROWTH AND INCREASED JOBS FOR NATIONALS

Almost all respondents claimed that they faced skills gaps in some areas of the business and that without bringing in foreigners this would be/is a constraint on firm growth. Therefore bringing in a limited number of foreigners permits growth of the firm, and consequently increased jobs for nationals. Many simply could not find the skills required locally.

SERVICE LEVELS, PRODUCTIVITY, PROFITABILITY AND GROWTH

A number of companies identified particularly managerial skills as lacking in the national market, and that this had a constraint on quality of service, productivity, growth and/or profitability. Some stated that they hired foreigners in order to open new branches and expand – or that the quota system put significant brakes on their ability to expand. Others stated that having managerial staff who are used to the service levels expected by international clients had a positive impact on service quality.

For example: “the growth of the firm is limited by a lack of management skills ... it’s very difficult to find management skills – we have two sites to set up new branches – which would employ about 30 nationals – but due to limited management capacity – this will have to be on hold” and “To grow the business we need to expand the departments to a point where they will need specific managers for each department [rather than being overseen by the – foreign – company owners directly]. These people simply cannot be found locally. If they could, it would be a lot cheaper and easier to hire locally”.

One firm identified simple day-to-day working alongside a foreign employee as having been beneficial to productivity through introducing simple tools: “prior to the [foreign] Human Resources manager arriving

no one used Outlook for reminders and tracking requirements (e.g. of documentation for DIREs etc) and this led to missing deadlines and problems. Now even other departments use it and it's a very simple tool that has increased productivity and efficiency".

EXPERIENCE EXCHANGE AND LEARNING FROM DIFFERENT APPROACHES AND CULTURES

One company stated that the learning is not all one-way, and that expatriates can also learn a great deal from day to day interactions with nationals: "It's beneficial to have a diverse work force as people learn each other's cultures and experiences for the benefit of the company".

CHAPTER FIVE: MOZAMBICAN WORKER INTERVIEWS

While the original scope of this paper was to reflect principally the views of the business community, it was felt necessary to validate the messages coming from business and to also consider the opinions of Mozambican nationals themselves who had worked alongside, or for, foreign workers. Four in-depth case studies were developed, looking at the experiences of nationals across four different industries (agriculture, management consulting, construction and business services).

In general, those interviewed were positive about the role of foreign workers on their own job prospects, with all highlighting that they had personally benefitted from training and learning. One also stated that foreign investors “create jobs we wouldn’t have otherwise”, and the findings from the firm level study were broadly validated.

However, some of the interviewees demonstrated a certain ambivalence in the sense that they felt that while they themselves might have benefitted, they were not sure this was necessary always the case, and pointed to foreigners coming into the country without following the law, treating Mozambican staff disrespectfully or not believing in the skills of Mozambicans. One interviewee was clear that the impact of foreign workers depends in part on the willingness of the foreign workers themselves to transfer skills, stating that “My personal experience with foreign workers was very positive, I learnt a lot from them, but I’m also aware that some do not transfer knowledge to locals as they would like to keep their posts. This should be understood on an individual basis”.

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While generally believing that the state should play a role in controlling foreign labour, they generally agreed that at this stage of development, many of the necessary skills do not exist in the labour market, and that the government should invest in up-skilling Mozambicans, rather than imposing increasing restrictions on foreign labour. One stated that “We are working in a global world; we must prepare our citizens to compete in the international market, not just the local market. The quality of most of the Universities, Institutes, Training Centres, schools is questionable; this leads to an influx of expatriates.

The Government must invest in high quality education, so that companies do not need to hire expatriates”.

Below we present two of the case studies in detail.

5.1 – CASE STUDY ONE, SR JOÃO, SITE MANAGER, CONSTRUCTION FIRM

Sr João was born in 1964, and studied to 7th grade in Mozambique, then left with his family for Zimbabwe where he enrolled in a carpentry course. He worked for a number of years in Zimbabwe, before returning to Mozambique in 2003. He started working for his current employer (a medium sized construction firm) in 2005, as a carpenter, and has now risen to be a structural supervisor, supervising a team of up to 40 staff (a mixture of permanent members of his team and casual staff he hires himself) on major construction operations. His most recent construction was a 10,000 square metre structure in a different province from the HQ of the company. Although the owner of the company flies down regularly to check on progress and solve any problems, Sr Joao runs the site.

Sr João says he has benefitted greatly from on the job training, and in general for working alongside the foreign owner of the firm, and that this has enabled him to rise through the company. He has learned new techniques, developed a good understanding of different materials, the physics of structures, and also skills for managing and supervising a team.

Sr João has increased his salary from 4,000 Meticaís in 2005 to around 25,000 Meticaís today. He has been able to construct a house, buy a car, put all his school-age children through school, build a house for his mother and give her money each month, as well as helping out his four brothers financially.

According to his employers, Sr João is a “rare find” and they are constantly on the lookout for other talented individuals who can become site supervisors. They state that if they could find a number of similar candidates to Sr João, they would like to promote him further to supervisor a number of sites at the same time. A number of individuals in his current team have been given this opportunity, but despite coaching have been unable to come up to the necessary standard.

Sr João believes that allowing foreign workers in the country is positive, as “ Mozambicans need jobs and skills” and that “ Mozambique does not yet have the people who are really qualified and also have practical experience” stating that “ Mozambicans who do have qualifications do not want to come and work in the field, preferring to work in an office”. He believes that the government “should give courses and help Mozambicans to have the skills, including opportunities for practical experience, rather than saying we don’t need foreigners” although “foreigners should have all the required documentation and act according to the law”.

Sr João also believes that Mozambican nationals need to “learn to work hard” and says that he himself learned this from his time in Zimbabwe, as “Zimbabweans work very hard, and quickly”. He claims that his work experience in Zimbabwe is a great help in his current position as “ I really learnt what it is to work hard, learned to work fast and I learned also that thing of always wanting to learn more and do things better.”.

** Not real name.*

5.2 – CASE STUDY TWO – MANAGEMENT CONSULTANT AND INTERNATIONAL NGO WORKER

Sr Macamo* is a highly qualified and ambitious 29 year old Mozambican man working in Maputo. He holds an undergraduate degree from a Mozambican university and a Masters from a foreign university. He recently left a job with a Mozambican-owned consulting firm to work for a major international NGO.

Sr Macamo believes that his career prospects and job opportunities have been impacted positively by foreign workers, although highlighting that the benefits go both ways. He believes that “it helped me to boost my career as a young professional. Knowledge has been transferred in both directions, I learnt some technical tools with them and they learnt with me as well... having an opportunity to match with the right people gave me a different perspective regarding time and problem management”. He states that “I had an expatriate manager who was concerned to transfer knowledge (and learn with us). She tried to improve our skills through specific short time online trainings and on the job training. Actually, when there is an expatriate as a manager, who is technically strong, the nationals’ high performance will be rewarded”.

However, Sr Macamo also expressed concern that firms may underestimate the capabilities of Mozambicans, and companies “always believe that a foreign professional will perform better”. However, he suggests that “nationals should invest more in their careers and increase a bit their self-esteem and self-confidence”.

As for the role of government, Sr Macamo believes that “the entry of foreign workers should be controlled but not limited” and expresses concern about the movement of unskilled labour to Mozambique. Sr Macamo believes that the focus of government should be to "provide a pool of skilled labour to benefit from the upcoming extractive industry boom and not to compete with expatriates.... [as] there are some specific fields for which we will continue need to hire expatriates since there are no nationals with required skills”.

** Not real name.*

CHAPTER SIX: THE VIEWS OF FOREIGN EMBASSIES

Formal and informal contacts were carried out with foreign embassies with two main objectives. Firstly, to gain a general understanding of the views of the official representatives of the governments of some of the major investors in the country. And more specifically, to assess whether the role allocated to consulates and embassies under the proposed MINTRAB reforms is practical.

BUSINESS ENVIRONMENT

Those interviewed expressed concern with Mozambique's generally poor record on business environment reforms, and a need to simplify regulation. The constraints and bureaucracy of the existing system imposed opportunity costs on the country's wider development, as in some cases it had prevented expatriates being hired to help upskill the local labour market.

One head of a diplomatic mission suggested that while infrastructure is widely seen as currently a major constraint on the growth of the extractive industry, labour 'could become a very big problem' for this sector. Another embassy official from a country with major investments in Mozambique stated that for big companies, in critical sectors, they have access directly to the minister and can resolve issues even with the president as the country needs large scale investment – but that for small and medium sized investors, which often provide greater linkages to the local economy, this option is not available.

A major complaint was a lack of a coherent approach by government, with instead each ministry defining its own objectives and policies. MIREME was generally seen as a fairly pragmatic ministry, approachable and willing to discuss options, while the same was not felt to be the case for MINTRAB.

One assessment that echoed the message coming from the firm study is the need for a phased approach, with government working with industry to define what the skills gap actually is in different sectors, and developing a plan to create a supply of Mozambican workers over time to respond to these gaps. Another suggestion for supply side was to support the creation of a database of skilled Mozambican labourers (e.g. qualified electricians) that companies could be given when entering the country.

IMPLEMENTATION OF THE PROPOSED ALTERATIONS TO DECREE 55/2008 AND DECREE 63/2011

MINTRAB proposals to revise the regulations governing the employment of foreigners (annex A) suggest that one of the documents to be provided for the justification of hiring a foreigner be "Documents demonstrating professional experience, notarized by the embassy or consulate of the country of origin". All interviewees confirmed that they had not so far been consulted by government on the proposals, despite these allocating clear responsibilities to foreign missions.

Clearly there would be serious problems with applying this. Interviewees highlighted that an embassy or consulate cannot possibly know whether a prospective candidate's stated professional experience is accurate or not, even if they had the manpower or mandate to investigate this. Many candidates may have experience gained outside the country whose passport they hold, but even in the case of someone coming

Interviewees highlighted that an embassy or consulate cannot possibly know whether a prospective candidate's stated professional experience is accurate or not, even if they had the manpower or mandate to investigate this.

directly from the country of passport nationality, there is no possibility that an embassy can check that their CV is accurate. It is important to note that there is a difference between country of origin and passport nationality. Many countries have a large number of passport holders who have never actually lived in the country of their passport.

Also, as one Head of Mission pointed out, in most countries the government does not insist that workers are registered, such that there would be no official records of employment against which to check a CV, while data protection rules would restrict what could be checked through, for example, the tax system.

Another potential constraint identified by interviewees is that many nationalities do not have consular representation in Mozambique.

However, beyond the practicalities, representatives of a number of embassies confirmed that they simply do not have a mandate to notarize documents of the nature defined in the proposed changes. One consular official stated that they can only confirm that an individual presented a document to them, not the validity of the document itself. Further, they cannot endorse any documents that are not to be used in their home country. Commonwealth countries (which includes Mozambique) have an agreement that they recognise notarization of any public notary from within the

commonwealth, with the practical implication that embassies from commonwealth countries here in Mozambique do not have a mandate to notarize documents and citizens must get Mozambican notaries to perform this task (although this would not be acceptable under the proposed labour revisions). Other, non-commonwealth embassies also highlighted that they would not have a mandate to carry out this task.

CHAPTER SEVEN: ANALYSIS AND CONCLUSIONS

Taking the results as a whole, **it is clear that overall the impact of foreign workers and investors on the number of jobs for nationals is positive**, through enabling the setting up and/or expansion of firms faster than would be possible if they were to rely on a purely national workforce, given the current severe skills shortages in the national market.

There is also clear evidence of promotion of national staff within firms, and from the case studies we saw that there are cases of individuals growing and benefitting from training and coaching by foreigners, which implies that **there are also positive benefits in terms of quality of jobs available**.

There was general agreement among firms, workers and embassies that **there is a role for government to play in ensuring that regulations provide the right incentives for creating and improving job opportunities for Mozambicans, and for protecting labour rights**. However, balancing the twin objectives of protecting Mozambican labour while attracting Foreign Direct Investment, and avoiding constraining firm growth and dynamism in a context of a major skills gap does not yet seem to have been thought through in a coherent way.

There is a possibility that current labour regulations, and in particular the proposed changes, have a perverse effect on job opportunities for Mozambicans, through limiting firm expansion, encouraging firms to keep much of their production outside of Mozambique, and contributing to a perception that doing business in Mozambique is simply too complex and bureaucratic for any but the big players.

It is clear that companies are not averse to hiring national staff at any level, if the qualifications, skills and attitudes are similar to those found elsewhere. **The economic imperative of firms operating to make profit also suggests that most firms will hire nationals if skills can be found**. Simply put, foreigners are expensive and as such not worth hiring if the same level of skills can be found locally, or created through training.

A number of firms have explicit policies to phase out foreigners as locals are trained up. Mozambican workers themselves expressed a need and desire for the state to be more active in enabling Mozambicans to rise to the challenge of up-skilling so as to fulfil companies' requirements. This implies **a need for a supply-side approach** of investing in vocational training and education.

It is also clear that the **quota system, as defined, works well for some businesses but is a clear constraint on growth (and national job creation) for others**. This would imply the need for a more detailed analysis at a more sectoral level of real availability of skills and requirements for use of foreign labour. It is also clear that the quota system is more constraining at certain times of a company's investment cycle than at others – so that a more detailed analysis of timing of requirements for employing expatriates might also be valuable.

Whether or not firms find the quota system restrictive depends on their sector of operation and stage of development - however it is clear that the *implementation* of the system, including the process of

applying for permits, labour inspections and requests for out-of-quota hiring is confusing, bureaucratic, time consuming and extremely costly for firms. Therefore **how the system is implemented presents as much (if not more) of a barrier to entry and to expansion as the system itself.**

The reactions to proposed alterations to increase the requirements even further for hiring of foreign labour was overwhelmingly negative, from business, workers and embassies, both in terms of principle and practicality. Firms do not see it as the State's role to check qualifications and work experience, as firms themselves have a strong commercial interest, and greater capacity, to verify the qualifications and skills of proposed employees. Embassies cannot comply with the roles proposed for them under the proposals and have not been consulted by the government. Nor do trade unions have the knowledge or capacity to fulfil the responsibilities defined for them.

Finally, **labour regulations are only potentially restrictive for those companies that comply with the rules.** The government needs to be clear what problem they are actually trying to address, and whether either the current system or the proposed one actually address it. If the problem is entry into the country of foreign nationals who do not contribute to the national economy, then this should be dealt with by immigration controls. It seems that a large proportion of those entering the country without appropriate skills are simply doing so outside of the quota system. Study respondents clearly highlighted illegal practices and examples of where other firms were operating 'below the radar'. It would therefore seem that restrictions on foreign labour employment as currently implemented (and even more so as proposed for future) are not only negatively impacting 'compliant' firm expansion and profitability (and therefore job creation and state revenue through taxes) but also not addressing the real issue of firms that don't comply at all and hiring unskilled foreign labour completely outside of the system. Therefore it would seem that neither the current quota system, nor the proposed changes, would respond to the 'problem' identified by the Ministry of Labour of the influx of unskilled foreign workers and the possible 'stealing' of Mozambicans' jobs.

CHAPTER EIGHT: RECOMMENDATIONS

Given the above analysis, we would make the following recommendations.

Specifically with regard to any alterations in the current regulations:

- Firstly, make no changes to the current regulations until more information is available on whether these are genuinely the cause of the identified problem of a “large-scale influx of foreigners without professional qualifications to justify their employment”.
- Secondly, implement the current system more effectively – reduce complexity and bureaucracy and in particular make the ‘out of quota’ system more transparent and responsive to companies’ needs. At the same time, enforce the existing regulations with regard to foreigners working on tourist visas.
- Thirdly, create an evidence base to underpin any required changes in future. This might include:
 - o A detailed analysis of the labour market including specific skills gaps, and requirements at sector level.
 - o Deeper understanding of where the quota system is particularly damaging – for example at start up, or for small/medium sized firms, or where it is allowing unskilled labour to replace Mozambicans.
 - o More data on foreigners working *outside* the system.
- Finally, once information has been collected, use this to inform a more strategic approach to the ‘out of quota’ authorization, including for example specific guidelines to underpin decision making regarding out of quota hires. These could include for example specific criteria such as stage of development of the firm, sector or size, thereby supporting Ministry of Labour officials to make decisions in a transparent and more objective and predictable way.
- It is our belief that should this be done, the existing legal framework would be sufficient to both protect Mozambican workers from undue competition in areas where skills are available locally and incentivize investment in up-skilling of nationals by foreigners, without unduly restricting the genuine requirements for skilled labour not currently available locally.

Other recommendations include:

- Greater focus on investment in vocational training by government to address the supply side constraints. The clear message coming from firms is that they want to hire Mozambicans if they

have the skills – government can play a role in ensuring that over time more and more Mozambicans do indeed have those skills.

- Government needs to work cross-ministerially to ensure that the objectives stated in, for example, national development plans and business environment reforms are coherent with labour regulations. In addition, Government should articulate what its objectives for labour market regulation are and distinguish between labour issues and immigration issues, while ensuring that the two sets of regulations work together coherently.
- Training and capacity building of MINTRAB staff in order for them to have a genuine understanding of the businesses in which companies operate, so that enforcement of the ‘out of quota’ system can be a better mechanism for balancing firm needs and protection of Mozambican workers.

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ANNEX A – PROPOSED CHANGES TO DECREE 55/2008

DECRETO N.º 55/2008
de 30 de Dezembro

A experiência que resulta da aplicação das normas do Regulamento Relativo aos Mecanismos e Procedimentos para a Contratação de Cidadãos de Nacionalidade Estrangeira, aprovado pelo Decreto n.º 55/2008, de 30 Dezembro, demonstra a necessidade de introduzir alterações que se adequam ao contexto sócio-político e económico actual, com o objectivo de disciplinar o emprego de estrangeiros. O actual regime flexível de quotas tem permitido a entrada massiva de estrangeiros sem qualificações profissionais que justifiquem a sua contratação, o que urge adoptar medidas de maior controlo.

Nestes termos, usando da faculdade conferida pela alínea f) e h) do artigo 204 da Constituição da República e do artigo 269 da Lei n.º 23/2007, de 01 de Agosto, o Conselho de Ministros Decreta:

~~No quadro das alterações introduzidas pela Lei No 23/2007 de 1 de Agosto, Lei de Trabalho, torna-se necessário definir novos mecanismos e procedimentos para a contratação de cidadãos de nacionalidade estrangeira para responder às novas exigências do desenvolvimento económico e social do país.~~

~~Nestes termos e ao abrigo do disposto no artigo 269, conjugado com o n.º 3 do artigo 33, ambos da Lei n.º 23/2007, de 1 de Agosto, o Conselho de Ministros decreta:~~

Artigo 1
Alterações

Decree n° 55/2008
Of 30th of December

The experience resulting from the application of the Regulation for the Mechanisms and Procedures for Contracting Foreign Citizens approved under Decree No 55/2008 of 30 December, shows that it is necessary to introduce changes which make said regulation adequate to the socio-political and economic reality with a view to disciplining the employment of foreigners. The current flexible quota system has allowed the large-scale entry of foreigners without professional qualifications to justify their employment, which leads to the need to adopt measures allowing for greater control.

Therefore, using the powers conferred by line (f) and (h) of article 204 of the Constitution of the Republic and article 269 of Law 23/2007 of 01 August, the Council of Ministers decrees:

~~As a result of the changes introduced by Law 23/2007, of 01 August, the Labor Law, and to better respond to the new demands of the country's economic and social development, it has become necessary to define new mechanisms and procedures for contracting foreign citizens.~~

~~Based on Article 269, together with Paragraph 3 of Article 33, both of Law 23 /2007 of 01 August, the Council of Ministers decrees:~~

Article 1

São introduzidas alterações aos artigos 4, 6 e 12 do Regulamento Relativo aos Mecanismos e Procedimentos para a Contratação de Cidadãos de Nacionalidade Estrangeira, aprovado pelo Decreto n.º 55/2008, de 30 de Dezembro, as quais são parte integrantes do presente Decreto.

Aprovado pelo Conselho de Ministros, aos de Maio de 2013

~~Artigo 1~~

~~É aprovado o Regulamento Relativo aos Mecanismos e Procedimentos para Contratação de Cidadãos de Nacionalidade Estrangeira, o qual é parte integrante do presente Decreto.~~

~~Artigo 2~~

~~São revogados o Decreto n.º 57/2003, de 24 de Dezembro, o Decreto n.º 26/99, de 24 de Maio e toda a legislação que contrarie o presente diploma.~~

~~Aprovado pelo Conselho de Ministros, aos 02 de Dezembro de 2008~~

~~Publique-se.~~

~~A Primeira Ministra, Luísa Dias Diogo~~

Regulamento Relativo aos Mecanismos e Procedimentos para Contratação de Cidadãos de Nacionalidade Estrangeira

CAPÍTULO I

Artigo 1
(Objecto)

O presente Regulamento estabelece os mecanismos e procedimentos de contratação de cidadãos estrangeiros em território nacional.

Artigo 2
(Ambito de aplicação)

1. A contratação de estrangeiros por entidades empregadoras nacionais e estrangeiras fica

Alterations

Alterations are hereby made to Articles 4, 6 and 12 of the the Regulation for the Mechanisms and Procedures for Contracting Foreign Citizens approved under Decree No 55/2008 of 30 December, and which comprise an integral part of this decree

Approved by the Council of Ministers, May 2013

~~Article 1~~

~~The regulation for the mechanisms and procedures for contracting of foreign citizens in Mozambique, which is part of the present decree, is approved.~~

~~Article 2~~

~~Decree 57/2003, of 24 December, Decree 26/99, of 24 May and all legislation which contradicts the present regime, are hereby revoked.~~

~~Approved by the Council of Ministers, on 2nd December 2008.~~

~~Let it be published.~~

~~The Prime Minister, Luísa Dias Diogo~~

Regulation for the Mechanisms and Procedures for Contracting Foreign Citizens

CHAPTER I

Object and scope of application

Article 1
(Object)

The present regulation establishes the mechanisms and procedures for contracting foreign citizens in the national territory.

Article 2
(Scope of application)

sujeita à autorização do Ministro que superintende a área de trabalho ou da entidade a quem este delegar, excepto nos casos previstos no artigo 5 do presente Regulamento.

2. O disposto no número anterior é extensivo as embaixadas em relação aos trabalhadores contratados fora do âmbito das Relações Diplomáticas e Consulares e ainda aos administradores, directores, gerentes, mandatários e entidades representantes de empresas estrangeiras em relação aos trabalhadores ou delegados das suas representações.
3. As agencias privadas de emprego só podem contratar cidadãos estrangeiros obedecendo ao regime de quotas ou de autorização de trabalho.
4. A contratação de gerentes, mandatários e representantes das entidades empregadoras aplica-se o regime de quotas e, subsidiariamente, o regime de autorização de trabalho

CAPÍTULO II CONDIÇÕES GERAIS PARA A CONTRATAÇÃO DE CIDADÃOS ESTRANGEIROS

Artigo 3 (Condições gerais)

1. As entidades empregadoras devem empreender os melhores esforços na criação de condições para a integração de trabalhadores moçambicanos nos postos de trabalho de maior complexidade técnica e em lugares de gestão e administração da empresa.
2. As disposições do presente Regulamento não

1. The contracting of foreigners by national and foreign employers is subject to authorization by the Minister who oversees the area of labor, or the entity to which the Minister delegates, except in cases foreseen in Article 5.

2. The provisions of the preceding paragraph are applicable to Embassies in the case of workers contracted outside the scope of Diplomatic and Consular Relations as well as to administrators, directors, managers, proxies, and to representative offices of foreign companies in relation to workers or delegates of such representations.

3. Private employment agencies may only contract foreign citizens in accordance with the quota or work authorization regimes.

4. The contracting of managers, proxies and representatives is subject to the quota regime and subsequently to the work authorization regime.

CHAPTER II

General conditions for the contracting of foreigners

Article 3 (General conditions)

1. Employers must do the most they can to create conditions for the integration of Mozambican workers in positions of greater technical complexity and in management and administrative positions in companies.

prejudicam as normas gerais relativas a concessão de autorização de entrada e permanência de cidadãos estrangeiras.

CAPÍTULO III CONTRATAÇÃO NO ÂMBITO DE REGIME DE QUOTAS

Artigo 4 (Condições para comunicação de admissão)

1. O empregador pode ter ao seu serviço cidadãos estrangeiros, no âmbito da quota, devendo para o efeito, legalizar a sua contratação para obtenção do visto do trabalho e posterior entrada no país.

~~O empregador pode ter ao seu serviço cidadãos estrangeiros bastando comunicar ao Ministro que superintende a área de trabalho ou as entidades a quem este delegar, no prazo de quinze dias após a admissão, de acordo com o regime de quotas.~~

2. A comunicação de admissão, cujo modelo consta em anexo deve indicar o grau de realização de quota
3. No cálculo do número de cidadãos estrangeiros a admitir no âmbito da quota não são permitidos arredondamentos
4. As pequenas empresas podem ter ao seu serviço um cidadão estrangeiro mesmo que o número total de trabalhadores nacionais seja inferior a dez.

Artigo 5 (Regime de quotas)

1. O empregador consoante o tipo de classificação de empresa, pode ter ao seu serviço cidadãos estrangeiros, de acordo com as seguintes quotas:
 - a) cinco por cento da totalidade dos

2. The provisions of the present Regulation are without prejudice to the existing rules granting foreigners authorization to enter and remain in Mozambique.

CHAPTER III Contracting under the quota system

Article 4 (Conditions for communicating admission)

1. The employer may have foreign citizens working under the quota system and must for this purpose legalise their contracting in order to obtain a work visa before entry into the country.

~~Under the quota regime the employer may employ foreigners subject to communication to the Minister of Labor, or entities delegated by the Minister, within fifteen days of having admitted the foreign employee.~~

2. The communication of admission, a model of which is annexed to the regulation, must indicate the degree of realization of the quota.
3. In the calculation of the number of foreigners to be admitted under the quota the rounding up of numbers is not permitted.
4. Small companies may employ one foreign citizen, even if the total number of national workers is less than ten

Article 5 (Quota regime)

1. Based on the classification of the company, the employer may employ foreign citizens, in accordance with the following quotas:

- trabalhadores, nas grandes empresas;
- b) oito por cento da totalidade dos trabalhadores, nas médias empresas;
 - c) dez por cento da totalidade dos trabalhadores, nas pequenas empresas.
2. Para efeitos do disposto no número anterior, considera-se:
 - a) *grande empresa*: a que emprega mais de cem trabalhadores;
 - b) *média empresa*: a que emprega mais de dez até ao máximo de cem trabalhadores;
 - c) *pequena empresa*: a que emprega até dez trabalhadores.
 3. O número de trabalhadores a considerar corresponde à média dos existentes no ano civil antecedente.
 4. No primeiro ano de actividade, o número de trabalhadores a ter em conta é o do dia do início da actividade.

Artigo 6
(Formalidades)

A comunicação deve dar entrada na entidade que superintende a área de trabalho na Província onde o cidadão estrangeiro se encontra a prestar a sua actividade, instruída com a junção dos seguintes documentos:

- a) dois exemplares da carta cujo modelo consta em anexo, comunicando a admissão do cidadão estrangeiro e o grau de realização da quota;
- b) Três exemplares do contrato de trabalho;
- c) Certidão de quitação passada pelo INSS;
- d) Certidão de quitação passada pela entidade que superintende a área das finanças;
- e) Relação nominal de trabalhadores relativa ao ano civil anterior, na primeira comunicação que fizer;

- a) Five percent of the total workforce, for large companies;
- b) Eight percent of the total workforce, for medium companies;
- c) Ten percent of the total workforce, for small companies.

2. For the purposes of the preceding paragraph the following apply:
 - a) *Large company*: employing more than one hundred workers;
 - b) *Medium company*: more than ten and up to a maximum of one hundred workers;
 - c) *Small company*: employing up to ten workers.
3. The number of workers to be considered corresponds to the average number of workers employed during the previous calendar year.
4. In the first year of activity, the number of workers to be considered is the number on the day of start-up of activity.

Article 6
(Formalities)

The communication must be submitted to the entity which oversees labor in the province in which the foreign citizen is employed, together with the following documents:

- a. two copies of the communication letter, the model of which is attached hereto, communicating the admission of the foreign citizen and the degree of fulfillment of the quota;
- b. three copies of the employment contract;
- c. quittance certificate issued by the National Institute of Social Security (*Instituto Nacional de Segurança Social*);

- | | |
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| <p>f) <u>Cópia autenticada do passaporte para efeitos de identificação,</u> ou DIRE;</p> <p>g) <u>Talão de depósito comprovativo do pagamento da taxa no valor correspondente a três salários mínimos vigentes no sector de actividade em que a empresa se insere.</u></p> <p>h) <u>Certificado de habilitações literárias ou técnico-profissionais do cidadão estrangeiro a contratar;</u></p> <p>i) <u>Documento comprovativo da sua experiência profissional, autenticado na Embaixada ou Consulado do País de origem;</u></p> <p>j) <u>Para certificados de habilitações literárias obtidos no exterior, exige-se o certificado de equivalência emitido pela entidade que superintende a área da educação;</u></p> <p>k) <u>Os documentos escritos em língua estrangeira deverão ser traduzidos para a língua oficial por um tradutor ajuramentado na República de Moçambique.</u></p> <p>1. <u>Aos proprietários e sócios de estabelecimentos não é exigível a apresentação do Certificado de habilitações literárias ou técnico-profissionais e documento comprovativo da sua experiência profissional;</u></p> <p>2. <u>Para efeito do disposto no número anterior, exige-se a apresentação de Licença ou alvará de autorização de actividade económica que realiza ou estatutos da sociedade.</u></p> <p>3. <u>Aos mandatários e representantes dos projectos de investimento aprovados pelo Governo, não é exigível a apresentação do Certificado de habilitações literárias ou</u></p> | <p>d. <u>quittance certificate issued by the entity responsible for finance;</u></p> <p>e. <u>named list of workers (<i>relação nominal</i>) for the previous calendar year, in the first communication made;</u></p> <p>f. <u>certified copy of the passport for the purposes of identification or Residence Identification Document for Foreign Citizens (<i>Documento de Identificação de Residência do Estrangeiro</i> or <i>DIRE</i>);</u></p> <p>g. <u>Deposit slip proving payment of a fee corresponding to three times the minimum wage in force for the company's area of activity.</u></p> <p>h. <u>Certificates demonstrating the technical professional qualifications of the foreign citizen to be contracted</u></p> <p>i. <u>Documents demonstrating professional experience, notarized by the embassy or consulate of the country of origin</u></p> <p>j. <u>For certificates obtained outside the country an equivalence certificate must be issued by the ministry responsible for the area of education</u></p> <p>k. <u>Documents written in a foreign language must be translated into the official language by a translator certified within the Republic of Mozambique</u></p> <p>l. <u>Company owners and shareholders are not required to present technical or professional certificates or documents demonstrating professional experience</u></p> <p>m. <u>For the purposes of the preceding clause an operating license which authorizes economic activity or the company articles of association are required</u></p> <p>n. <u>Proxy holders or representatives of investment projects approved by the government are not required to present technical or professional qualifications but must present a copy of their proxy / power of attorney conferred by the relevant body</u></p> |
|--|--|

técnico-profissionais, mas devem apresentar respectivo mandato conferido por órgãos estatutariamente competentes.

Artigo 7
(Resposta)

A conformidade da comunicação deve ser verificada no momento em que esta é apresentada, emitindo-se, de imediato, o respectivo atestado, a ser entregue ao portador de comunicação.

CAPÍTULO IV
CONTRATAÇÃO EM PROJECTOS DE
INVESTIMENTO APROVADOS PELO
GOVERNO

Artigo 8
(Condições de contratação)

1. Em projectos de investimento aprovados pelo Governo, nos quais se preveja a contratação de cidadãos estrangeiros em percentagem superior ou inferior a prevista no regime de quotas, não é exigível a autorização de trabalho, bastando a comunicação dentro dos quinze dias subsequentes a data de entrada do cidadão estrangeiro no país
2. O disposto no numero anterior não prejudica o regime especial aplicável as zonas francas industriais.

Artigo 9
(Formalidades)

A comunicação de contratação de cidadãos estrangeiros no âmbito de projectos de investimento aprovados pelo Governo faz-se nos termos do artigo 6 do presente Regulamento.

Artigo 10

Article 7
(Reply)

The communication referred to in this chapter shall be verified at the time it is presented, and a document confirming its receipt shall be drawn up immediately in the presence of the bearer thereof and tendered thereto.

CHAPTER IV
Contracting under the quotas provided in
investment projects

Article 8
(Conditions)

1. In investment projects approved by the Government which provide for the employment of foreigners in greater or lesser number than the quota regime, a work authorization is not required, and is replaced by the requirement to communicate the employment of a foreigner within 15 days of their entry into the country.
2. The previous provision is without prejudice to special regimes in force in industrial free zones (*zonas francas*)

Article 9
(Formalities)

The communication that foreign citizens have been contracted, under the scope of investment projects approved by the Government, shall be made in accordance with the terms of Article 6 of the present Regulation.

Article 10

(Onus de prova)	(Burden of proof)
<p>O empregador deverá juntar à carta de comunicação a cópia do projecto de investimento aprovado pelo Governo que mencione o número autorizado de estrangeiros a contratar.</p>	<p>The employer shall submit, along with the communication, a copy of the investment project approved by the Government that cites the number of foreigners it is authorized to employ.</p>
<p style="text-align: center;">Artigo 11 (Resposta)</p> <p>A conformidade da comunicação será verificada nos termos do artigo 7 do presente Regulamento</p>	<p style="text-align: center;">Article 11 (Reply)</p> <p style="text-align: center;">The communication shall be verified in accordance with Article 7 of this regulation.</p>
<p style="text-align: center;">CAPÍTULO V Trabalho de curta duração</p>	<p style="text-align: center;">CHAPTER V Short term work</p>
<p style="text-align: center;">Artigo 12 (Regime e formalidades)</p>	<p style="text-align: center;">Article 12 (Formalities and regime)</p>
<ol style="list-style-type: none"> 1. Considera-se trabalho de curta duração o que não excede trinta dias, seguidos ou interpolados, quando prestado por cidadãos estrangeiros ainda que estejam vinculados por contrato com a empresa sede ou suas representações num outro país 2. O trabalho de curta duração nos termos do numero anterior não carece de autorização de trabalho. 3. O empregador ou quem o represente, deve remeter previamente a entidade que superintende a área de trabalho na província onde o cidadão estrangeiro vai prestar a sua atividade, uma comunicação em duplicado contendo informações sobre a identidade do trabalhador, sua formação, razão da sua contratação, atividades que vai realizar e indicação precisa das datas do inicio e termo da sua atividade. 4. A conformidade da comunicação do trabalho de curta duração é feita nos termos previstos 	<ol style="list-style-type: none"> 1. Short-term work is considered to be work for periods not longer than 30 consecutive or interspersed days, in the same year, by foreign citizens including those already under contract to the parent company or its subsidiaries in other countries. 2. Short-term work is exempt from work authorization. 3. The employer or its representative must submit, in advance, to the entity responsible for labor in the province where the foreign citizen is to work, a communication in duplicate including the identity and qualifications of the employee, the reason for contracting the employee, the activities they will perform, and the precise start and end dates for their activities. 4. This communication is verified in accordance with Article 7 of the present

<p>no artigo 7 do presente Regulamento.</p> <p>5. O trabalho de curta duração não se integra no regime de quotas e está isento de pagamento de taxas</p> <p>6. <u>O trabalho de curta duração se destina à realização de tarefas de complexidade técnica, de carácter urgente, pontual ou de força maior, desde que não hajam nacionais que possuam tais qualificações.</u></p> <p>7. <u>O trabalho referido no número anterior, não se integra no regime de quotas e está sujeito ao pagamento de taxas, nos termos da alínea g) do Artigo 6 do Decreto n.º 55/2008, de 30 de Dezembro.</u></p> <p>8. <u>Em caso de prorrogação, a taxa devida será agravada para o dobro.</u></p> <p>9. <u>Para o trabalho de curta duração não é obrigatório o visto de trabalho.</u></p>	<p>Regulation.</p> <p>5. Short term work does not fall within the quota system and is exempt from payment of fees.</p> <p>6. Short term work is designed for the undertaking of technically complex work, which is urgent, where there is no national with the relevant qualifications</p> <p>7. The work referred to in the previous clause does not fall within the quota system but is subject to the payment of a fee under the terms of clause g) of Article 6 of Decree 55/2008</p> <p>8. In case of extension the fee is doubled</p> <p>9. For short term work a work visa is not required</p>
<p style="text-align: center;">Artigo 13 Prorrogação</p> <p>1. Quando se verificar motivos devidamente justificados pela entidade empregadora, o período de trabalho de curta duração poderá ser prorrogado, mas em caso algum a sua duração poderá exceder noventa dias por ano.</p> <p>2. A autorização ou não de prorrogação é apreciado pela entidade que superintende a área de trabalho a nível provincial.</p>	<p style="text-align: center;">Article 13 (Extension)</p> <p>1. When duly justified by the employer the short term work period may be extended but never for longer than 90 days in one year.</p> <p>2. Authorization, or not, of extension is decided by the entity responsible for labor at provincial level.</p>
<p style="text-align: center;">CAPITULO VI Contratação mediante autorização de trabalho</p> <p style="text-align: center;">Secção I Requisitos e formalidades de autorização de</p>	<p style="text-align: center;">CHAPTER VI Contracting through work authorization</p> <p style="text-align: center;">SECTION I Requirements and formalities for work</p>

trabalho	authorization
<p style="text-align: center;">Artigo 14 (Condições para autorização de trabalho)</p> <p>5. A contratação de cidadãos estrangeiros faz-se mediante requerimento dirigido ao Ministro do Trabalho que superintende a área do trabalho</p> <p>6. A admissão do trabalhador estrangeiro que deve ter as qualificações académicas ou profissionais necessárias, só pode efectuar-se quando não haja nacionais que possuam tais qualificações ou quando seu numero não seja suficiente.</p> <p>7. A autorização de trabalho de cidadãos estrangeiros fica ainda condicionada a comprovação de que foram respeitadas as disposições do presente Regulamento.</p>	<p style="text-align: center;">Article 14 (Conditions for work authorization)</p> <p>1. The contracting of foreign citizens is done by means of an application addressed to the Minister responsible for labor.</p> <p>2. The employment of a foreign worker, who shall have the required academic or professional qualifications, may only take place provided there are no national citizens with those qualifications, or that they are insufficient in number.</p> <p>3. The authorization to employ foreigners is also conditional on proof that the provisions of this regulation have been respected.</p>
<p style="text-align: center;">Artigo 15 (Formulação do pedido e prazo para despacho)</p> <p>8. O requerimento referido no No. 1 do artigo anterior deve dar entrada na entidade que superintende a área do trabalho na província onde o cidadão estrangeiro vai prestar a sua actividade.</p> <p>9. O expediente deve, nos termos da lei, ser despachado no prazo máximo de quinze dias uteis, contados a partir da sua recepção pela entidade competente</p>	<p style="text-align: center;">Article 15 (Formulation of application and time periods)</p> <p>1. The application referred to in Paragraph 1 of the preceding article is submitted to the entity responsible for labor matters in the province in which the foreigner is to be employed.</p> <p>2. The written reply shall be given within a maximum period of 15 days, counting from the date on which the application is received.</p>
<p style="text-align: center;">Artigo 16 (Conteúdo do requerimento)</p> <p>1. O requerimento para autorização de trabalho de cidadãos estrangeiros cujo modelo consta em anexo, deve conter:</p> <p>a) a denominação, sede e ramo de actividade da entidade requerente;</p>	<p style="text-align: center;">Article 16 (Application contents)</p> <p>1. The application for the authorization for a foreign citizen to work, the model of which is attached hereto, must contain:</p>

- b) a identificação do cidadão estrangeiro cuja contratação se requer, a sua categoria, tarefas ou funções a exercer e a duração do contrato.
 - c) A fundamentação do pedido.
2. Ao requerimento devem juntar-se:
- a) três exemplares do contrato de trabalho;
 - b) certificado de habilitações literárias ou técnico-profissionais do cidadão estrangeiro a contratar e documento comprovativo da sua experiência profissional;
 - c) certidão de quitação passada pelo INSS;
 - d) Certidão de quitação passada pela entidade que superintende a área das finanças
 - e) parecer do delegado sindical, comité sindical ou sindicato do ramo.
 - f) talão de depósito comprovativo do pagamento de uma taxa correspondente a dez salários mínimos em vigor no sector de actividade onde a empresa se insere;
3. O parecer do delegado sindical, comité sindical ou sindicato do ramo deve referir-se, à pertinência ou não do pedido de contratação do cidadão estrangeiro.
4. Para certificados de habilitações literárias obtidos no exterior, exige-se imprescindivelmente o certificado de equivalência emitido pela entidade que superintende a área da educação.

Artigo 17

(Trabalho de assistência especializada)

1. A contratação de cidadãos estrangeiros

- a) the name, headquarters and type of activity of the applicant [employer];
- b) the identity of the foreign citizen for whom the authorization is being requested, their category, duties, position to be held or functions to be undertaken;
- c) grounds for the application.

2. Together with the application the following must be presented:

- a. three copies of the work contract;
- b. certificate of academic or technical / professional qualification of the foreign citizen to be employed and document proving professional experience;
- c. quittance certificate issued by the National Institute of Social Security (*Instituto Nacional de Segurança Social*);
- d. quittance certificate issued by the entity responsible for finance;
- e. opinion of the union delegate, union committee or sectoral union;
- f. deposit slip proving payment of a fee corresponding to ten times the minimum wage in force in the company's sector of activity.

3. The opinion of the union delegate, union committee or sectoral union shall refer to the relevance, or not, of the application.

4. For academic qualification certificates acquired abroad, a certificate of equivalence must be issued by the Ministry of Education.

Article 17

(Specialized work)

para trabalho em organizações não governamentais, trabalho de investigação científica, docência, e em outras áreas de assistência técnica especializada será decidida por despacho do Ministro que superintende a área do trabalho, ouvida a entidade que superintende o sector em causa.

2. Para efeitos do disposto no numero anterior, o processo deve ser instruído nos termos do artigo 16 do presente Regulamento e conter igualmente o parecer da entidade que superintende o sector em causa

Secção II
Contrato de Trabalho

Artigo 18
(Conteúdo do contrato)

1. O contrato de trabalho, datado e assinado por ambas as partes, deve conter as seguintes cláusulas:
 - a) identificação das partes;
 - b) tarefas ou actividades acordadas;
 - c) local de trabalho;
 - d) duração do contrato;
 - e) remuneração e forma de pagamento;
 - f) data de início e do termo da prestação.
2. Qualquer alteração das condições de trabalho deve ser comunicada à entidade que superintende a área de trabalho na província onde o cidadão estrangeiro se encontra a prestar a sua actividade, assinando-se a necessária apostila.

Artigo 19
(Duração do contrato)

1. O contrato de trabalho é celebrado por um período máximo de dois anos renovável mediante a apresentação de um novo

1. The contracting of foreign citizens for work in non-governmental organizations, scientific research, teaching, and other areas of specialized technical assistance will be determined by order of the Minister responsible for labor, after hearing the entity responsible for the relevant sector.

2. For the purposes of the preceding paragraph, the application process shall be organized in accordance with Article 16 of this Regulation, to which the opinion of the entity responsible for the area in question shall also be added.

SECTION II
Work contract

Article 18
(Contract contents)

1. The work contract, dated and signed by both parties, must contain the following clauses:
 - a) identification of both parties;
 - b) duties or activities agreed;
 - c) work place;
 - d) contract duration;
 - e) remuneration and form of payment;
 - f) start and end date of the contract.
- 2) Any amendment to or alteration of the contract must be communicated to the provincial labor authority in the province in which the foreign citizen is employed, and an addendum signed.

Article 19
(Contract duration)

1. The work contract may be signed for a maximum period of two years, renewable based on the submission of a

<p>pedido.</p> <p>2. Independentemente do numero de renovações o contrato de trabalho dos cidadãos estrangeiros não se converte em contrato por tempo indeterminado.</p> <p style="text-align: center;">Artigo 20 (Cessação do contrato)</p> <p>No caso de cessação do contrato de trabalho, por qualquer motivo, o empregador deve comunicar o facto à entidade que superintende a área de trabalho e aos Serviços de Migração, da província onde o cidadão esteve a exercer a sua atividade, por documento escrito, no prazo não superior a quinze dias, a contar da data da cessação.</p> <p style="text-align: center;">CAPÍTULO VII Fiscalização e sanções</p> <p style="text-align: center;">Artigo 21 (Fiscalização)</p> <p>Compete à Inspeção Geral do Trabalho fiscalizar o cumprimento do presente Decreto.</p> <p style="text-align: center;">Artigo 22 (Sanções)</p> <p>1. A inobservância do disposto nas normas legais sobre o regime de contratação de mão-de-obra estrangeira em Moçambique é punida com a suspensão e multa de cinco a dez salários mensais auferidos pelo trabalhador estrangeiro em relação ao qual se verifique a infracção.</p> <p>2. No calculo de multa, quando a entidade</p>	<p>new application.</p> <p>2. Regardless of the number of renewals the contract of a foreign employee may never become an indeterminate period contract.</p> <p style="text-align: center;">Article 20 (Termination of contract)</p> <p>In case of termination of the work contract, for whatever reason, the employer must inform the labor and immigration authorities in the province where the citizen foreign was employed, in writing, not more than fifteen days from the date of contract termination.</p> <p style="text-align: center;">CHAPTER VII Inspection and penalties</p> <p style="text-align: center;">Article 21 (Inspection)</p> <p>The General Inspectorate of Labor is responsible for overseeing compliance with the present Regulation.</p> <p style="text-align: center;">Article 22 (Penalties)</p> <p>1. The non-observance of the legal rules relating to the regime for contracting foreign labor in Mozambique is punishable by suspension and a fine of between five and ten times the monthly salary of the foreign worker in relation to whom the violation occurred.</p> <p>2. In calculating the fine if the employer</p>
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<p>empregadora não faculte o salario auferido pelo cidadão estrangeiro ilegal, a Inspecao Geral do Trabalho recorrerá ao salario mais elevado praticado pela empresa.</p> <p>3. A falta da comunicação referida no artigo 20 do presente Regulamento é punida com uma multa correspondente a cinco salários mínimos em vigor no sector de actividade em que a empresa se insere.</p> <p>4. A prática sucessiva de idêntica contravenção, no período de um ano a contar da data de notificação do auto de notícia correspondente à última contravenção, constitui uma transgressão agravada, sendo as multas aplicáveis elevadas para o dobro nos seus mínimo e máximo.</p> <p>5. Em caso de violação dos princípios plasmados na Constituição da República e das demais leis e normas vigentes no país, o exercício do direito ao trabalho por parte do estrangeiro em causa pode ser interdito por despacho do Ministro que superintende a área de trabalho..</p> <p style="text-align: center;">Artigo 23 (Destino das receitas)</p> <p>As receitas resultantes do pagamento das taxas previstas no presente Regulamento revertem em 60% para o tesouro público e em 40% para as despesas de tramitação processual na área respectiva</p>	<p>refuses to divulge the salary of the illegal foreigner, the Labor Inspectorate shall use the highest salary paid by the employer for the purpose.</p> <p>3. The failure to communicate referred to in Article 20 of the present Regulation is punishable by a fine of five times the minimum wage in force in the company's sector of activity.</p> <p>4. The repeated practice of the same violation, within one year of the date of notification of the most recent violation, is considered an aggravated offense and the fines applicable are increased to double their normal minimum and maximum.</p> <p>5. In case of violation of the principles of the Constitution of the Republic and the other laws and rules in force in the country, the foreign citizen's right to work may be revoked by order of the Minister of Labor.</p> <p style="text-align: center;">Article 23 (Emoluments)</p> <p>The revenue resulting from the payment of fees foreseen in the present regulation shall be divided as follows: 60% to the State Budget and 40% for expenses relating to documentary procedures in the relevant area.</p>
<p style="text-align: center;">Decreto nº /2013 De de</p> <p>A experiência que resulta da aplicação das normas da Contratação de Cidadãos de Nacionalidade Estrangeira no Sector de Petróleos e Minas, aprovado pelo Decreto n. ° 63/2011, de 7</p>	<p>Employment of foreigners in the petroleum and mining sectors – no English version available</p>

Dezembro, demonstra a necessidade de introduzir alterações pontuais que se adequam ao contexto político e sócio-económico actual, com o objectivo de disciplinar o emprego de estrangeiros. O actual regime flexível de quotas tem permitido a entrada massiva de estrangeiros sem qualificações profissionais que justifiquem a sua contratação, o que urge adoptar medidas de maior controlo. Nestes termos, usando da faculdade conferida pela alínea f) e h) do artigo 204 da Constituição da República e do artigo 269 da Lei n.º 23/2007, de 01 de Agosto, o Conselho de Ministros Decreta:

Artigo 1

Alterações

São introduzidas alterações aos artigos 6, 10 e 12 do Regulamento da Contratação de Cidadãos de Nacionalidade Estrangeira no Sector de Petróleos e Minas, aprovado pelo Decreto n.º 63/2011, de 7 de Dezembro, as quais são parte integrante do presente Decreto.

Artigo 2

É revogado o n.º 2 do artigo 8 do Regulamento da contratação de Cidadãos de Nacionalidade Estrangeira no Sector de Petróleos e Minas, aprovado pelo Decreto n.º 63/2011, de 7 de Dezembro.

Aprovado pelo Conselho de Ministros, aos de
de 2013.

Publique-se.

O Primeiro Ministro, Alberto Clementino António
Vaquina.

Regulamento da Contratação de Cidadãos
de Nacionalidade Estrangeira no Sector de
Petróleos e Minas

CAPÍTULO I

Objecto e âmbito

Artigo 1

(Objecto)

(.....)

Artigo 2

(Âmbito de aplicação)

1. (.....)

2. (.....)

CAPÍTULO II

**Condições gerais para a contratação de cidadãos de
nacionalidade estrangeira para o sector de**

Petróleos e Minas

Artigo 3

(Condições gerais)

1. (.....)

2. (.....)

3. (.....)

4. (.....)

5. (.....)

6. (.....)

7. (.....)

8. (.....)

Alterações

CAPÍTULO III

Contratação no âmbito do regime de quotas

Artigo 4

(Condições para comunicação de admissão)

1. (.....)

2. (.....)

3. (.....)

4. (.....)

Artigo 5

(Regime de quotas)

1. (.....)

2. (.....)

3. (.....)

4. (.....)

ARTIGO 6

(Formalidades)

1. (.....)

a) (.....)

b) (.....)

-
- c) (.....)
 - d) (.....)
 - e) (.....)
 - f) Certificado de habilitações literárias ou técnico-profissionais do cidadão estrangeiro a contratar;
 - g) Documento comprovativo da sua experiência profissional, autenticado na Embaixada ou Consulado do País de origem;
2. (.....)
 3. Para certificados de habilitações literárias obtidos no exterior, exige-se o certificado de equivalência emitido pela entidade que superintende a área da educação;
 4. Os documentos escritos em língua estrangeira deverão ser traduzidos para a língua oficial por um tradutor ajuramentado na República de Moçambique.
 5. Aos proprietários e sócios de estabelecimentos não é exigível a apresentação do Certificado de habilitações literárias ou técnico-profissionais e documento comprovativo da sua experiência profissional;
 4. Para efeito do disposto no número anterior, exige-se a apresentação de Licença ou alvará de autorização de actividade económica que realiza ou estatutos da sociedade.
 5. Aos mandatários e representantes dos projectos de investimento aprovados pelo Governo, não é exigível a apresentação do Certificado de habilitações literárias ou técnico-profissionais, mas devem

apresentar respectivo mandato conferido por órgãos estatutariamente competentes.

Artigo 7
(Resposta)

(.....)

CAPITULO IV

Regime de contratação em projectos de investimento aprovados pelo Governo

Artigo 8
(condições de contratação)

1. (.....)
2. (.....)
3. (.....)

Artigo 9
(Dever de comunicação)

(.....)

Artigo 10
(Formalidades)

- 1 (....)
- a) (.....)
- b) (.....)
- c) (.....)
- d) (.....)
- e) (.....)
- f) (.....)
- g) Certificado de habilitações literárias ou técnico-profissionais do cidadão estrangeiro a contratar e documento comprovativo da sua experiência profissional;
- h) Para certificados de habilitações literárias obtidos no exterior, exige-se o certificado de equivalência emitido pela entidade que superintende a área da educação;
- i) Documento comprovativo da sua experiência profissional, autenticado na Embaixada ou Consulado do País de origem;

2 (.....)

3 (.....)

4 Aos mandatários e representantes dos titulares dos projectos de investimento aprovados pelo Governo, não é exigível a apresentação do Certificado de habilitações literárias ou técnico-profissionais e documento comprovativo da sua experiência profissional, mas devem provar que têm o competente mandato conferido por órgãos estatutariamente competentes.

Artigo 11
(Resposta)

(.....)

CAPITULO V

Regime de trabalho de curta duração

Artigo 1

(Regime e formalidades)

1. Considera-se trabalho de curta duração o que não excede cento e oitenta dias, seguidos ou interpolados, no mesmo ano civil, quando prestado por cidadãos de nacionalidade estrangeira, desde que seja para as actividades de pesquisa.
2. (.....)
3. (.....)
4. (.....)

CAPÍTULO VI

Regime de contratação mediante a
autorização de trabalho

Artigo 13

(Condições para autorização de trabalho)

1. (.....)
2. (.....)
3. (.....)

Artigo 14

(Formulação do pedido e prazo para despacho)

1. (.....)
2. (.....)

Artigo 15
(Conteúdo do requerimento)

1. (.....)
2. (.....)
3. (.....)
4. (.....)
5. (.....)

Artigo 16
(Conteúdo do contrato de trabalho)

1. (.....)
2. (.....)

Artigo 17
(Duração do contrato de trabalho)

1. (.....)
2. (.....)

Artigo 18
(Sessão do contrato de trabalho)

(....)

Artigo 19
(Taxas)

1. (.....)
2. (.....)

CAPÍTULO VII
Fiscalização e sanções

Artigo 20
(Fiscalização)

(.....)

Artigo 21
(Sansões)

1. (.....)

-
2. (.....)
 3. (.....)
 4. (.....)
 5. (.....)

Artigo 22
(Destino das receitas)

(.....)

ANNEX B – 2004 USAID STUDY “EFFECTS OF THE EMPLOYMENT OF FOREIGNERS ON THE JOB OPPORTUNITIES FOR MOZAMBICAN CITIZENS

United States Agency for International Development

Effects of the Employment of Foreigners in Mozambique on Job Opportunities for Mozambican Citizens

Draft 1
Maputo, January 2004

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0 INTRODUCTION

This study is commissioned by USAID under Grant No. 656-G-00-03-00094-00. It is designed to determine whether the employment of foreigners by companies in Mozambique results in the creation of more jobs for Mozambicans than would otherwise be created or whether, conversely, such employment in fact reduces the number of jobs for Mozambican citizens.

The study is divided into six sections and their annexes:

1. Context and Objectives
2. Methodology
3. Analysis of Data Collected
 - 3.1 Privatized Companies
 - 3.2 New investments
 - 3.3 SMEs versus Large Companies
 - 3.4 Types of Employment
4. Issues resulting from the study and proposals for improvements of the system
 - 4.1 Current Legislation – Issues and Constraints
 - 4.2 Proposals Made
5. Towards an objective basis for regulatory reform
6. Conclusions
7. Appendices
 - i) 1. Questionnaire used in the study
 - ii) 2. List of companies interviewed
 - iii) 3. Current requirements to apply for documents mentioned in this report

1 CONTEXT AND OBJECTIVES

Many Mozambicans profess to believe that the employment of foreign workers in Mozambique directly causes Mozambican workers to lose their jobs. This perception contributes to widespread if politely muted resistance to non-Mozambicans working in Mozambique, and to legislation that is both conceived and applied so as to make it difficult for non-Mozambicans to do so.⁹

“Many Mozambicans profess to believe that the employment of foreign workers in Mozambique directly causes Mozambican workers to lose their jobs.”

As we discuss below, in the four years which have passed since the publication of Decree 25/99 of 24th May (below, “[Decree 25/99](#)”), the experience gained in applying this instrument on a daily basis has shown that it still falls short in a number of respects, in the understanding of employers. In practice, Decree 25/99 has proven to be a serious hindrance to the attraction of labor-intensive, job creating investment and to the creation of the volume of jobs anticipated in the government’s PARPA poverty reduction plan.

(On 11 December 2003, the Council of Ministers passed a resolution substantially amending the rules governing the employment of foreigners and repealing Decree 25/99. Based on drafts of the resolution, it appears that applicants will have to submit fewer documents, but that the discretion to grant or withhold authorization, based on the Ministry’s perception of a candidate’s qualification and the availability of a Mozambican qualified for the post, who will always have priority, will remain in the Ministry. The new decree has yet to be issued in its definitive form.)

The present study has been commissioned to provide an objective overview of the current situation in companies in a variety of sectors throughout the country. The study shows that far from “stealing”

⁹ See, for example, Decree 25/99 of 24th May governing authorization for the employment of foreigners, Decree 26/99 of 24th May (governing work visas for foreigners) and Law 8-98 of 20 July (Labor Law).

employment opportunities from their Mozambican colleagues, foreign workers in fact provide a basis for increased levels of employment of national workers. In addition, the skills levels of the foreign workers recruited tend to lead to improved training and opportunities for their national colleagues, as well as increased productivity in the companies that employ them. These have a direct positive impact both on the workers and on the national economy as a whole.

By providing objective data on the effects of the employment of foreigners on job opportunities for Mozambicans, the report may buttress regulatory reform to liberalize and standardize rules and practices governing the employment of foreigners in Mozambique, thereby increasing investment, creating more jobs and reducing absolute poverty.

2 METHODOLOGY

The methodology used was a series of structured interviews with a number of companies from different sectors as well as a number of informal discussions with national companies who do not currently employ foreign workers. The structure of the interviews was driven by the questionnaire found at Appendix 1. In all, representatives of 24 companies were interviewed. The number of companies from each sector is set forth in brackets below.

- Agriculture and Agro-processing (7)
- Textiles (1)
- Food and Beverage (5)
- Tourism (2)
- Mining and Mineral Resources (2)
- Service Provision, Retail & Trade (7)

All those interviewed on a formal and an informal basis requested anonymity and this request is respected in the study.

On the basis of the interviews undertaken the statistics received were analyzed in light of the objectives of the study, and on the basis of this a series of issues are raised and recommendations made.

It is important to recognize that while the majority of companies formally interviewed for this report are those considered “foreign” in terms of the source of investment and shareholding, informal discussions with a number of companies with majority national shareholding have highlighted similar issues. In a number of cases companies with national shareholdings (in particular SMEs) expressed the view that were it easier to employ foreigners they would do so, in order to provide training and capacity building to their national employees in respect of new equipment and professional skills.

3 ANALYSIS OF DATA COLLECTED

Official statistics indicate that the active population¹⁰ in the country numbered 9.575.532 in 2003. On the other hand, statistics from the *Direcção Nacional de Planificação e Estatísticas do Trabalho*¹¹ indicate that the number of work posts in the country occupied by foreigners in the first quarter of 2003 was around 4,000.¹² Note should be taken that this figure is likely to be higher than commonly prevailing encompassing as it does the construction phase of the Sasol pipeline, MOZAL phase II, and the Joaquim Chissano Conference Centre in Maputo.

“Official statistics indicate that the active population in the country numbered 9.575.532. On the other hand, statistics from Direcção Nacional de Planificação e Estatísticas do Trabalho indicate that the number of work posts in the country occupied by foreigners in the first quarter of 2003 is around 4,000”

Official overall employment statistics illustrate

¹⁰ Aged between 15 and 59 (in INE, “*Projeções anuais da população total 1997-2010*”).

¹¹ In “*Boletim de Estatísticas do Trabalho – III Trimestre de 2003*” of DNPET

¹² Figures for the first three trimesters specify the number of work permissions and authorizations issued as being 1,578. However, this does not account for those previously issued. Since these documents are valid for two years we estimate a figure approximately double this. The assumption is therefore made that the average number of foreigners legally employed at any one time is between 3,000 and 3,500.

a strong growth in employment from the third trimester of 2002, with this tailing off and reducing slightly in the third trimester of 2003. Once again this slight tailing off can be attributed to the end of several major construction projects. This same tailing off is clearly reflected in numbers of foreigners employed on work permissions during the same period.

The 24 companies interviewed employ a total of 21,456 national and 449 foreign staff. The number of foreign employees employed per company questioned ranges between zero and 160. Of the companies interviewed 50% are previously nationalized companies, all of which were privatized within the last ten years. The remaining 50% are companies started by private investors, in each of which at least US\$200,000 has been invested over the last ten years. Five of the companies interviewed are SMEs.¹³

The table below sets forth our findings in respect of the companies interviewed. It bears note that, at the companies surveyed, there are currently 47.78 Mozambican employees for every one foreign employee. Furthermore, the ratio of net national jobs created (independent of productivity) to foreigners employed on a stable basis at the companies surveyed was 40.28:1.¹⁴

DESCRIPTION	PRIVATIZED	NON-PRIVATIZED
N.º Companies	12	12
SME	0	5
N.º national employees before privatization	3,366	n/a
N.º national employees during rehabilitation/set up phase	9,293	5,207
N.º national employees current	15,831	5,625
Percentage increase in No. nationals employed from	370.3%	n.a

¹³ Defined here as companies employing fewer than 100 employees.

¹⁴ “Ratio of net jobs created” is the ratio of current national employees less pre-privatization national employees to current foreign employees. The measure is so constructed because, reportedly, the privatized firms had no foreign employees before privatization, and the non-privatized firms are, by definition, new investments.

DESCRIPTION	PRIVATIZED	NON-PRIVATIZED
privatization to current		
Percentage increase in No. nationals employed since rehabilitation/set up phase	70.4%	8%
N.º foreign employees before privatization	0	n/a
N.º foreign employees during rehabilitation/set up phase	394	202
N.º foreign employees current	262	187
Percentage increase No. foreigners employed since rehabilitation/set up	(33.5%)	(7.5%)

3.1 PRIVATIZED COMPANIES

Of the privatized companies interviewed only 4 were functioning in any form prior to privatization, though production was very low in all cases, one company estimating that they now produce in three days what the company pre-privatization was producing in one year.

Prior to privatization the companies had workers numbering between 20 and 500. None of those employed by the companies prior to privatization were foreign. All of those employed prior to privatization were “inherited” by the new companies, that is, companies were obliged to retain all employees as a condition of privatization.

Immediately following privatization, during the rehabilitation phase of these companies, as may be expected a number of foreigners were employed. These foreigners were artisans and management staff required to enable the company to begin effective functioning again. In all cases the companies interviewed had what they termed a “project” phase.

During this phase elevated numbers of foreign workers worked on specific aspects of the rehabilitation work, or in intensive training roles. In all cases respondents specified that had skilled national staff been available they would have been used. Companies stated that, while in some cases, for example that of welders, nationals existed in this skill area, the level of training or experience which they had was not sufficient to meet the immediate requirements of the company. Such nationals were therefore, in many cases, employed to work alongside foreign artisans for training purposes. Companies were therefore employing in excess of the number of people required to complete a job as an investment in the future capacity of their national staff.

“When levels of productivity are examined it is seen that these increase over the course of around five years following rehabilitation, to in some cases 5,000 times that of what it was prior to privatization”

In the majority of cases, during the rehabilitation phase the number of nationals employed increased as much as 175%. Following rehabilitation however, one notices a major shift in terms of employment trends. As production comes on line companies are seen to reduce their numbers of foreign workers and increase levels of national staff to current norms. The levels of foreigners employed are maintained at between 2% and 5% of the number of national employees.

When levels of productivity are examined it is seen that these increase over the course of around five years following rehabilitation, to in some cases 5,000 times that of what it was prior to privatization. While many companies complain of low productivity in comparison to similar operations in other countries, the increase in both productivity and the number of jobs created when compared to the situation in the companies prior to privatization is marked.

In terms of future plans, those interviewed who are planning for major expansion operations anticipate going through a similar cycle to that seen during the project phase, with elevated numbers of foreign workers employed during the expansion phase, major recruitment of local staff, and the eventual settling of the situation in which foreign workers are not more than 5% of the company's total workforce.

3.2 NEW INVESTMENTS

While new investments differ from privatizations in that the figures prior to their existence are all zeroed, one can consider in terms of the need to employ foreign workers, that the set-up phase of a new investment is similar to rehabilitation period of a privatized company.

The statistics bear this out with the number of foreigners employed initially either decreasing, or remaining fixed during the first two to five years of operation of the new investment, while the number of nationals employed increases by an average of 8%. This clearly depends on the expansion plans of the company in question, but 75% of those interviewed had doubled or trebled productivity within the first two to five years of operation.

As in the case of privatized companies, new investors would tend to employ more foreign workers during their expansion phases, settling in the 2% to 5% range.

3.3 SMES VERSUS LARGE COMPANIES

The statistics generated from the research undertaken for this project highlight the fact that differences exist in percentage terms between the number of foreigners employed by SMEs (companies with fewer than 100 employees) and larger companies. We note that many SMEs are either owned wholly or controlled by Mozambican citizens, and that others have a significant portion of their capital in Mozambican hands.

“While in larger companies once the company has reached its plateau percentage ratios tend to be between 2% and 5% foreigner to national, in the case of SMEs this percentage is considerably higher, in many cases almost double”

While in larger companies once the company has reached its plateau percentage ratios tend to be between 2% and 5% foreigner to national, in the case of SMEs this percentage is considerably higher, in many cases almost double.

This would therefore suggest that any reform proposed takes into account the greater need for smaller companies for foreign skilled workers.

3.4 TYPES OF EMPLOYMENT

Foreign employees may be managers and artisans. It is considered company and draw a salary as being purposes of obtaining

In general, as the statistics or set-up phase of a anywhere from 10 to 50% these employees are that are unfortunately not market. They are employed that the company comes

Part of their role is also to national colleagues who the end of the more than 33% of the workforce to comprise foreign artisans. In companies where artisans remain it is to fulfill training and management positions or to oversee the maintenance of highly complex machinery.

The majority of foreigners who remain in companies following the rehabilitation or set-up phase are those in senior management positions. All of the companies questioned stated that they either had, or were in the process of streamlining their situation in regard of the employment of foreigners, and envisaged that a percentage of between 2 and 5% for large companies and 5 and 10% for SMEs would remain. Companies stated categorically that being able to retain a small but fixed team of foreign senior managers was a pre-requisite for the company's continued operation.

Much concern has been voiced in terms of the effect of the employment of foreigners on the job market. However many of those interviewed felt it should be indicated that a comparison should be made in terms

“Part of their role is also to train national counterparts, or to fill in for national colleagues who have gone abroad on training courses. At the end of the rehabilitation or set-up period it is rare for more than 33% of the workforce to comprise foreign artisans”

divided into two basic categories, the case that the existing legislation shareholders who work in the company foreign employees, at least for the permission to work.

above illustrate, during the rehabilitation company the workforce may comprise foreign employees. Generally however artisans, able to provide levels of skills yet found within Mozambique's labor for a specific period in order to ensure “on-line.”

train national counterparts, or to fill in for have gone abroad on training courses. At rehabilitation or set-up period it is rare for

not only of the number of jobs created by the existence of foreigners in the national job market, but also the quality of those jobs.

Examples of major investments in training, health care and over-all social security of workers were given. Companies also stressed that the employment of foreigners, except in a small number of key management positions, was not the objective or the desire of the company. As a matter of preference companies are keen to employ skilled and qualified national workers, and also to provide training and incentives. However at this point in time, given the low skills level of the majority of the Mozambican workforce, the employment of foreigners at key developmental stages is essential.

4 ISSUES RESULTING FROM THE STUDY AND PROPOSALS FOR IMPROVEMENTS OF THE SYSTEM

Companies interviewed were invited to comment on difficulties they had faced in terms of employment of foreigners, and also to propose changes to the existing system that would facilitate the situation for both existing and future investors.

4.1 CURRENT LEGISLATION – ISSUES AND CONSTRAINTS

Companies had faced a number of issues in the process of employing foreigners. Firstly all those interviewed cited the cost of employing foreigners in terms of salaries and benefits, as well as the difficulties foreign employees may have in settling into their positions in a new country and culture, with all the related inherent instabilities resulting, as being major negative factors. They were clear in their assertion of the view that the decision to employ a foreigner was only taken after careful consideration by the company of the costs versus the benefits, as well as after attempting to source similar skills and resources in the national labor market.

This being said, once the company had taken the decision to employ a foreigner to fill an identified position major bureaucratic hurdles were placed in its way, adding to the cost in both time and financial terms of employing the foreigner. It was felt that no comprehension existed in terms of the reasoning behind the

taking of such decisions, and that a general attitude of xenophobia was apparent in both labor and immigration ministries.

Major differences in the interpretation of existing legislation were also cited, these differences being both between provinces and within the same province but between different employees undertaking the same processes.

Many of those interviewed felt that, in particular during the critical set-up or rehabilitation phase, companies should have more freedom in terms of employment. It was felt that too much management time is currently expended on resolving work authorization or DIRE issues, on traveling back and forwards to borders to get visas stamped, etc. This time could be more valuably invested in getting the companies into a position where they are productive and are creating employment opportunities and training staff.

“It was felt that too much management time is currently expended on resolving work authorization or DIRE issues, on traveling back and forwards to borders to get visas stamped”

Those companies who wished to have foreigners as directors or as managing directors, positions which under the law would be eligible for a work permission rather than a work authorization,¹⁵ were required to overcome the same, or in some cases more extreme administrative barriers. This issue is of critical importance to new investors, in particular to SMEs, where the foreign director or manager is in many cases the only foreigner employed by the company.

All those interviewed also pointed out the issue that while a foreigner may be granted a work permission or authorization by the Ministry of Labor, this provides no guarantee that he will be given a residence permit (DIRE), and that the employee cannot legally begin working until this document is issued.¹⁶ As a result the time required according to the law, from contracting to the starting work of a foreign employee, assuming a process with no problems, takes a minimum of sixty days. In reality such processes can take up to six months.

¹⁵ Decree 25/99 of 24th May Chapter I Article 6

¹⁶ Law 5/93 of 28th December Chapter III Article 20.

The delays and problems caused in the issuing of work and residency documents in Mozambique is widely known in the region, with even tourists experiencing the delays and bureaucracy of the Immigration department. This has an impact on investment, as potential investors tend to be wary of situations in which they do not feel that they are in control of their investment, for example in situations in which either they or their team cannot be legally employed.

Key issues raised were therefore:

- Time required in order to comply with all the aspects of the work permission or authorization application process
- Costs associated with the application process
- Lack of standardized implementation of existing legislation
- Conflicts in interpretation between existing foreign labor legislation and immigration legislation
- Impact of these issues on decisions to invest or expand

4.2 PROPOSALS MADE

Companies interviewed expressed themselves in favor of a general liberalization of the labor market, including that pertaining to the employment of foreigners. It was felt that lessons could valuably be drawn from experiences in neighboring countries, in particular current reforms underway in South Africa.

In general the tendency was towards a system based on minimum assured percentages of companies' workforces that could be flexible enough to take into consideration the needs of companies during periods of expansion, construction and plateau periods, as well as during

The companies interviewed all training their national labor presence of foreign employees requisite for this. However in a

“In general the tendency was towards a system based on minimum assured percentages of companies’ workforces that could be foreign but also one which is flexible enough to take into consideration the needs of companies”

foreign but also one which is consideration the needs of expansion, construction and plateau periods.

indicated themselves keen on force, but indicated that the is in many cases a pre-number of instances cited,

companies had invested a great deal in training national staff who had then left the company soon after necessitating further investments in training.

Changes in the legislation governing the employment of foreigners could therefore usefully be backed up by reform to the existing labor law allowing for the enforceable implementation of some form of bonding system¹⁷ enabling companies to retain employees in whom they have invested.

The linking of the legislation governing the employment of foreigners to that governing the issuance of residence permits for these employees was also proposed. This would reduce the need for the current two tier system, whereby companies are required to go through two, almost identical, processes taking at least sixty days in order for their foreign employees to begin work. (See Appendix 3 for lists of current requirements for documents mentioned in this report.)

The importance of being able to employ a key senior manager, or small senior management team, as a prerequisite for investment was also emphasized. This is of particular issue for SMEs, where the company director is also generally the major investor. Should this person not be permitted to work in the country for as long as the company is in existence then she or he is unlikely to continue to invest. Similarly for larger companies the need to safeguard and protect a major investment by employing a small but “tried and tested” management team should be recognized in any legislative reform.

“The importance of being able to employ a key senior manager, or small senior management team, as a prerequisite for investment was also emphasized”

5 TOWARDS AN OBJECTIVE BASE FOR REGULATORY REFORM

¹⁷ For example the strengthening of, or possibility to enforce Law 8/98 of 20th July Chapter V Section IV Articles 174 and 175.

Taking into consideration the issues outlined above and the suggestions made by those interviewed a number of factors can be identified which would provide a fundamental basis for reform of the existing legislation. These are as follows:

i) Flexibility of the system

Any system designed should be sufficiently flexible to comprehend the differing needs of companies at the various stages of their economic development. The system should therefore contemplate the need for a major number of skilled foreign employees, in the form of both artisans and managers during the set-up or rehabilitation phase of the company.

For example, companies should be invested with sufficient trust by the legislation to permit them to project the numbers of foreign employees required and to submit a development plan. Policing of the legislation would be based in this instance on the policing of maximums, and not of each individual process. This approach is clearly measurable and precludes the abuse of discretion.

Following on from the project phase companies should be permitted certain key senior management posts to be filled with foreigners where necessary.¹⁸

Over and above this, companies would either be permitted to request further foreign employees based on a percentage or quota system, or on a “skills list” basis. It should be noted that companies preferred the quota system option, which would give them more flexibility.

Once again policing would be about controlling the maximum.

The system should also be sufficiently flexible to comprehend that at future stages of their development, for example during major expansion operations companies would again need to be considered for project status and to be allowed to bring in larger numbers of foreign employees for established and agreed periods to assist with these developments.

¹⁸ As currently permitted under Decree 75/99 of 12 October, Article 2, paragraph 3.

ii) Clarity of Implementation

Any new legislation drafted should be as clear as possible. The introduction of the law should be backed by a comprehensive tripartite training program educating Government, unions and the private sector on the underlying reasons and values as well as the administration of the law.

The inclusion of clearly identifiable lists of documents to be submitted, costs and time periods is essential to ensure standardized implementation of the legislation.

Over and above this a clear complaints procedure should be established and policed.

Training should also be extended to other departments, in particular immigration, that come into contact with the legislation, in order to ensure a smooth crossover between departments, and that documents issued by one department are recognized by the other.

iii) Related Legislation

In order for the proposed reforms of this legislation to be optimized it is recommended that a review of

“The requirement that those with a work permission, or authorization submit what amounts to the same process that has already been submitted to the Labor Department, and have to leave the country in order to purchase a “Residence Visa” in order for their application to be considered extends the time period for employing foreign workers, and elevates the cost considerably”

certain key aspects of other related legislation be carried out at the same time. In particular this review should focus on key aspects of the existing national labor law relating to the bonding of trained workers, and on the current immigration legislation. Reform of the immigration legislation¹⁹ should be considered a priority, since many of the delays experienced by companies are caused by the immigration authorities.

The requirement that those with a work permission, or authorization submit what amounts to the same process

¹⁹ Law 5/93 of 28th December

that has already been submitted to the Labor Department, and have to leave the country in order to purchase a “Residence Visa” in order for their application to be considered extends the time period for employing foreign workers, and elevates the cost considerably (see Appendix 3 for further details). This issue is particularly problematic in the case of SMEs, where company directors are not officially permitted to be in the country to oversee the operating of their companies until their residence document is issued. The current complexity of the system forces almost every foreigner employed to be in a situation of illegality at some point during the application process.

iv) Contents

Based on the interviews and analysis presented above it is proposed that any reform to the existing legislation comprehend the following:

- a) Provision of automatic rights to work permits for a defined number or percentage of key management figures and/or shareholders.
- b) Provision of automatic rights for artisans and/or other required foreigners under a quota system. The recommended figure for the quota is between 10 and 12%.
- c) Automatic rights lead to policing of the maximum levels of the system rather than scrutiny of each individual application
- d) Onus placed on companies to report when a foreign employee leaves their employ
- e) Priority given to changes in related legislation, in particular that of immigration to ensure simplification of the overall system
- f) Simplification of all bureaucratic procedures related to requests, including requests over and above the quota system.

6 CONCLUSIONS


The statistics presented above illustrate that in actuality the number of foreigners legally employed in Mozambique is small, around 0.02% of the active population. In the companies surveyed, foreigners comprise between 2 and 10% of the employees of a company, with the higher percentages being found

in SMEs with foreign share capital. While during the rehabilitation or establishment of a company higher numbers of foreigners, in particular skilled artisans may be found working, these numbers quickly level off as companies are established and factories come on line. As this happens significant increases in the number of nationals employed are seen (increases vary between 8 and 70.4%).

“The statistics presented above illustrate that in actuality the number of foreigners legally employed in Mozambique is small, around 0.02% of the active population”

However, despite the relatively low numbers of foreigners actually employed in Mozambique and the indication of the importance of their role during the establishment or renovation of companies, the bureaucratic requirements for their employment are prohibitive.

In conclusion therefore, it may be seen from the interviews and analysis undertaken that there is an urgent need for reform of existing legislation. Of the companies interviewed, those that were purchased during privatization have exhibited a substantial increase not only in the number of workers employed but also in the quality of employment provided. The new investors interviewed present a similar picture.

While foreigners are employed in both types of company, these foreigners have been employed either to assist in the set-up or rehabilitation of the company in question, or as members of a core team who oversee its day to day running. The employment of these foreigners has therefore both directly and indirectly resulted in the creation of employment for national workers.  SAL

Maputo, January 2004

7 APPENDICES

APPENDIX 1 - USAID EMPLOYMENT OF FOREIGN WORKERS SURVEY - FIELD QUESTIONNAIRE

Company Name/Sector

Interviewee

Position

Date

1. Prior to privatization how many foreigners did the company employ?
2. Prior to privatization how many nationals did the company employ?
3. Prior to privatization what was the company's level of production, and volume of exports or of import substitution?
4. Following privatization how many foreigners did the company employ?
5. Following privatization how many nationals did the company employ?
6. Following privatization what was the company's level of production, and volume of exports or of import substitution?
7. What is the current situation of the company in terms of the number of foreigners employed?
8. What is the current situation of the company in terms of the number of nationals employed?
9. What is the current situation of the company in terms of the level of production, and volume of exports or of import substitution?
10. What is the medium to short term plan of the company in terms of employment of foreigners?
11. What is the medium to short term plan of the company in terms of employment of nationals?
12. What is the medium to short term plan of the company in terms of growth of productivity?
13. What problems has the company encountered in terms of the employment of foreigners?

14. What is the company's opinion on existing legislation governing the employment of foreigners, and what essential changes would the company recommend?

APPENDIX 2 - CURRENT REQUIREMENTS TO APPLY FOR DOCUMENTS MENTIONED IN THIS REPORT

Note: All notarized documents mentioned below must be notarized in Mozambique, or at a Mozambican embassy

1 Work Permissions

In the case of Company mandate holders (i.e. shareholders, and managing directors. One of this type of document is permitted per company)

Document	Relevant Information
Letter x 3	Addressed to Minister of Labor
	Name of company
	HQ of company
	Area of activity of company
	Identity of foreign worker including passport, place of residence etc.
	Category and job of foreign worker
	Salary
	Justification of request
	Notarized signature plus power of attorney stating that signatory has right to sign on behalf of company
Power of attorney	3 Notarized copies
Alvará and escritura and boletim	3 Notarized copies of legal documents of company

Notarized copy of passport	3 copies
Police clearance/criminal record check	From country of origin or of passport nationality (translated by official translator). 3 notarized copies of complete official translation
Education certificates	3 Notarized copies along with certificates of training and proof of experience
Curriculum Vitae	3 copies
Payment	Double national minimum monthly wage.

2. Work Authorizations

This document is designed for all other foreigners employed.

Document	Relevant Information
Letter x 3	Addressed to Minister of Labor
	Name of company
	HQ of company
	Area of activity of company
	Identity of foreign worker including passport, place of residence etc.
	Category and job of foreign worker
	Salary
	Justification of request
	Notarized signature (plus copy of power of attorney giving signatory right to sign letter)
Contract (3 copies)	Identity of signing parties
	Obligations of both parties

Document	Relevant Information
	Date of commencement
	Date of termination
	Professional qualifications of employee
	Category and position of worker
	Salary
	Payment method
	Place of work
	Holidays
	Responsibility for travel home to country of employee
Letter addressed to employment centre/ Provincial directorate of work	Request letter, stamped and signed in to department plus copy of reply if one exists 3 notarized copies
Copy of advertisement in recognized national newspaper	Original or authenticated copy (x 3)
Training plan	3 Copies
Letter from union representative	3 Copies with notarized signature
Notarized copy of passport	3 Copies
Police clearance/criminal record check	From country of origin, or country of nationality (translated by official translator) 3 copies of complete official translation
Education certificates	3 Notarized copies along with certificates of training and proof of experience
Curriculum Vitae	3 Copies (in Portuguese)
Letter of responsibility from employing entity	3 Copies with notarized signatures plus power of attorney giving signatory right to sign

Document	Relevant Information
Payment	7, 10 or 15% of contractual salary (7% first application, 10% second application and 15% third application) Payable only on receipt of work authorization certificate

3. Work Visa

Following issuance of either a work permission or work authorization each foreign employee then has to apply for a Work or Residence Visa. The same documents are required for each, and while the law permits the issuance of these visas in Mozambique at Provincial Immigration Departments, in reality this is not permitted.

- 2 notarized copies of work permission or authorization
- 2 copies of letter of employment from the institution of work (this must also be supplied in the case of the company mandate holder). The signatures on the letter must be notarized
- 2 notarized copies of the power of attorney giving the signatory as above the right to sign this letter of employment
- 2 notarized and officially translated copies of a Police Clearance certificate valid for at least 3 months
- Passport plus 2 notarized copies of passport
- 2 passport photographs
- 2 copies of work contract
- Visa application form
- Stamps
- Payment

4. DIRE or Residency Document

Following issuance of the Work or Residence Visa, which is only valid for thirty days, the foreign employee must travel immediately to Mozambique and submit the following documents in application for a residence permit or DIRE:

In the case of a company mandate holder (shareholder or managing director):

- 2 notarized copies of work permission
- 2 copies of letter of employment from the institution of work (this must also be supplied in the case of the company mandate holder. The signatures on the letter must be notarized)
- 2 notarized copies of the power of attorney giving the signatory as above the right to sign this letter of employment
- 2 notarized and officially translated copies of a Police Clearance certificate valid for at least 3 months
- 2 notarized copies of passport
- 3 passport photographs
- Residence or Work Visa
- Stamps
- Form purchased at Immigration Department
- Proof of company VAT payment (which is often problematic as in the case of new investments the company is not yet functioning as the Director has no right to reside!)
- Payment

5. In the case of all other foreign employees:

- 2 notarized copies of work authorization
- 2 copies of letter of employment from the institution of work. The signatures on the letter must be notarized
- 2 notarized copies of the power of attorney giving the signatory as above the right to sign this letter of employment
- 2 notarized and officially translated copies of a Police Clearance certificate valid for at least 3 months
- 2 copies of work contract
- 2 notarized copies of passport
- 3 passport photographs
- Residence or Work Visa
- Stamps
- Form purchased at Immigration Department

ANNEX C – FIRM QUESTIONNAIRE

SPEED/ACIS Employment of Foreign Workers Survey

Company Questionnaire

June 2013

This questionnaire and subsequent interview will be treated confidentially and no data or opinion provided will be shared or attributed to the individual or company concerned without specific written authorization from the relevant company.

For queries please contact Caroline Ennis (caroline@lahluva.com).

Please also send completed forms to this address.

Company Name:

Sector:

Name of Respondent:

Contact Details of Respondent:

Position:

Date:

Please fill in as much of the information for the following table as possible:

	2004	2009	2012
Total Staff			
Foreign Staff			
National Staff			
Turnover (USD)			
Exports (USD)			
Operating Profits (USD)			

Please respond to the following questions:

15. What is the medium to short term plan of the company in terms of employment of foreigners?
16. What is the medium to short term plan of the company in terms of employment of nationals?
17. What are the medium to short term prospects of the company in terms of growth of productivity?
18. What problems has the company encountered in terms of the employment of foreigners within the quota system?
19. Have you employed foreigners outside of the quota, and if so, what problems did the company encounter?
20. If there were no restrictions (i.e. the quota system did not exist), would you have more foreigners employed in the company?

21. Have you received inspections from the National Inspectorate of Labour and if so, what was your experience?
 22. For what specific areas does the company hire foreigners? Why do you choose to hire foreigners instead of nationals?
 23. Does the company have a specific policy of mentoring/training nationals to eventually replace foreign employers? If so, could you please briefly describe it?
 24. How many nationals were promoted in the last year?
 25. Do you believe, based on your company's experience, that the employment of foreigners is a) beneficial to the job prospects of nationals or b) detrimental to the prospects of nationals? In what ways?
 26. What is the company's opinion on existing legislation governing the employment of foreigners, and what essential changes would the company recommend?
 27. There are currently proposals to change the system to require that foreigners employed under quota also have to present educational qualifications approved by the Ministry of Education and/or proof of professional experience certified by their embassy or consulate. For further information, please see attached proposed revisions. What is your opinion of the proposed changes and how will it affect your hiring decisions in the future – both national and foreign?
-

Please note here any further comments you would like to share on this topic.