

Behind The Deal - Vera De Brito de Gyarfas - King & Spalding

King & Spalding's Vera De Brito de Gyarfas speaks with Sam Duke about Anadarko's Mozambique LNG project and broader trends in the African gas market

How did the firm get involved on this project?

Anadarko opened the tender for firms to represent them on the Mozambique LNG project in 2010, after it found huge gas reserves in Mozambique. King & Spalding prepared a pitch highlighting its extensive global LNG expertise and won the tender for legal services.

We've been working from the onset of the project, which is really fascinating as this is a greenfield project in east Africa, and in Mozambique itself there was just one prior gas project, a pipeline to South Africa. It's a project that can take Mozambique from a country that lives off of donations to one of the largest gas exporters in the world.

What is the scope of the firm's role on this project?

It's an amazing project, and King & Spalding was hired to provide legal services across the entire value chain. We have teams working on government negotiations in-country, commercial negotiations with other oil companies, all the engineering, procurement and construction contracts and the sales contracts for marketing of LNG.

King & Spalding also worked on the unitisation of the Prosperidade/Mamba reservoir, which straddles Area 1 and Area 4 of the Rovuma Basin, offshore Mozambique. Eni, the operator of Area 4, also found gas in a block adjacent to Area 1 resulting in the largest gas unitisation and unit operating agreement in the world, I believe.

At the beginning of the project, we advised Anadarko with respect to the proper structuring of the project, given the large natural gas reserves discovered, so that the initial two-train project may be expanded over time to effectively monetize all the gas.

Philip Weems, a King & Spalding partner who retired in December, was really the "brains" behind the initial structuring of the LNG Mozambique project to ensure that the government agreements and the commercial agreements may be expandable and financeable. LNG projects are very different from oil projects because LNG needs to be sold under long-term LNG sales and purchase agreements before a final investment decision (FID) is made, as the proceeds from the LNG sales are used as security for the financing. So it's a very complex, but fascinating structure.

This is a once-in-a-lifetime project, and I'm very thankful it's to be involved with it, these types of opportunities usually only occur once in a career.

Had you and the firm worked with Anadarko before?

It's a very small world and King & Spalding represented Anadarko in other projects before and continues to do so in other LNG projects, environmental matters, international E&P and international arbitration matters.

"When the country is struggling and survives on donations, it's very difficult to explain that the Government will not have access to the profits until at least five years in the future"

Before joining King & Spalding in 2011, I was a partner with the Travieso, Evans, Arria, Rengel & Paz law firm in Venezuela, and I had represented Anadarko in their operations in Venezuela.

What stage is the project at now?

The main milestone of the project was achieved in December 2014, when the Mozambique government enacted a special decree law that would permit the implementation of this project. This law contains the legal framework for the implementation of the Rovuma Basin Project. There were certain laws in the Mozambique legislation that were very restrictive, so it was necessary to address certain specific legal issues that would permit the implementation of a major LNG greenfield export project in east Africa, including certain special financing terms that will be required by lenders for the project financing. From then on, Anadarko has continued to negotiate certain other key agreements to allow for the project financing and implementation of the project.

Currently, Anadarko is negotiating a number of LNG sales and purchase agreements. It is expected that a FID will be made sometime in 2018, but that will depend on the execution of binding LNG sale and purchase agreements.

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As part of the project, a resettlement plan relating to certain villages at the site is being enacted. What stage is that at?

That's a parallel procedure because of where the LNG trains will be located onshore there are villages, and these villages will need to be relocated to another location within the area that has been allocated to the Rovuma Basin Project for development of the onshore facilities. The resettlement plan has been approved by the government, but construction has not yet started.

Did the firm have any involvement on the resettlement negotiations?

Anadarko handled the resettlement themselves. We handled the drafting of the EPC contract with the EPC contractor, which is going to build the houses and facilities in the resettlement village.

The project has been ongoing since 2011. Was that timeframe expected?

Greenfield export LNG projects take a long time to develop. For example, the Angola LNG project took ten years. LNG export projects are extremely complex and governments do not always have the knowledge of what they entail or adequate legislative framework to support such large investments. First, it is necessary to explain the value chain of an LNG project to the government and the relevant ministries and agencies that are stakeholders in the project.

In Mozambique, workshops were held to explain how LNG projects were implemented in other parts of the world and in Africa. The Mozambique government also worked with the World Bank, the IMF and advisors and visited LNG projects in Qatar and Trinidad & Tobago to understand how the governments had addressed and participated in such projects. A lot of explaining of what is required and what the LNG project entails is necessary because, generally, the government officials think that the project is similar to an oil project when it's actually very different.

Special technical and financial consultants went in country to give workshops and other concessionaires, like Mitsui, also gave workshops to certain government officials, so they understood what all is required to be successful.

We analysed other LNG export projects and made comparisons to explain how LNG projects in other countries were implemented.

This was especially relevant with respect to the special decree law, where we evidenced that in other countries decree laws were issued as the legal basis for LNG projects because the existing legislation just doesn't contemplate LNG, including in Angola, Egypt and Peru.

What are the biggest challenges you've faced on the project?

I think the biggest challenge is very common in developing countries, and it reflects the inherent struggle between the government wanting to increase its revenue quickly and the companies' requiring that the legal and contractual framework contains stabilization provisions to ensure its feasibility in the long-term. This is a long-term project for which, because it's going to be project financed, the government is only going to see significant profit a long time down the line. When the country is struggling and survives on donations, it's very difficult to explain that the Government will not have access to the profits until at least five years in the future, especially with elected officials that have a shorter term and want things done and economic expectations met. But these projects take a long time to develop and construct and government cooperation will be required at every step along the way.

LNG is very different from crude because in oil projects, you start selling the crude right away, and the government will receive royalties and its share of production almost immediately.

What happened in Mozambique is that a lot of expectation was built-up because the Anadarko LNG project is the foundational project. Once you have the LNG trains in place and you are exporting LNG, there will be other gas projects, like petrochemicals, fertilizer and others that can be developed, but their feasibility depends on the launching of this foundational project.

Had you worked in Mozambique before?

No, I had not worked in Mozambique before. It's a special place. I'm a Portuguese citizen, so I speak the language and write it, and Mozambique still has a lot of Portugal in it.

How does doing business in Mozambique differ from other African countries you've experienced?

I guess the main difference is that unlike in other countries, like in Angola, because there is no oil production, there's no strong national oil company that will participate in the projects. In Mozambique, ENH is the national oil company and it will greatly benefit from its participation in the LNG project through training, so that eventually it will someday be able to operate the project.

Mozambique is a very democratic country. It is very different from a country like Angola or Nigeria, where you have a very strong executive or president that can get things done if there is political will. In Mozambique, the different commissions of Parliament and the different ministers all had to be involved in the review and approval of the special decree law, so there was a lot of analysis and discussion and convincing of individuals that were not just the president.

You are based in the US. On a project like this, how often would you be required to advise 'on the ground'?

There was a lot going on in the country during the negotiations of the decree law. 2014 and 2015 were the heaviest years, work-wise, and I was in Mozambique around eight times a year.

We, as a firm, worked on different portions of the project from different offices, so for example, the government negotiations, commercial negotiations and the construction work were led out of Houston because Anadarko is in Houston. The marketing was led out of our Singapore office due to its strategic location with respect to LNG buyers, and the unitisation negotiations were led from our London office.

How important is a law firm's specific LNG expertise when it comes to projects like this?

LNG expertise is key because LNG projects are very different from traditional oil and gas work. Our firm has actively participated in export LNG projects all around the world and our attorneys bring a greater added value to the table due to their knowledge of different types of contractual structures, issues and strategies.

Did you have much or any interaction with local Mozambique firms on this project?

At the beginning of the project, we worked very closely with Sam Levy of Sal & Caldeira. He's a unique character – a US lawyer trained in Mozambique law who participated in the peace negotiations that ended the civil war in Mozambique in 1992. He has extensive knowledge of the country and the players, and he was a key aspect of our work there. We worked with Sal & Caldeira on land and tax issues. We also worked and continue to work with the Miranda law firm in Lisbon, specifically Diogo Xavier da Cunha, who has been instrumental in key aspects of Mozambique law.

Mozambique's legislation is based on Portuguese law, so there's a lot of involvement from Portuguese firms.

On the project financing, Latham & Watkins has led that work with support from VdA Vieira de Almeida, another Portuguese law firm.

What are the broad trends that you can point to in the LNG and oil and gas areas?

Because of the decrease in prices of LNG and excess supply of LNG as a result of the U.S. shale gas revolution and export projects, other LNG export projects around the world have slowed down.

The LNG market has changed since 2013. You are no longer able to sell LNG at \$12 to \$16 – the number is much lower because there's a glut of excess gas from the US. I think that until the China and India LNG demand increases significantly that glut is going to continue.

What about trends in Latin America?

It's an amazing time for Latin America. Since the early 2000s there was a leftist turn in Latin America, with Chávez, Lula, the Kirchners, Correa, Morales etc., which were very nationalistic governments that opposed foreign investment. Now all those systems have collapsed, and there's a new trend. The pendulum is going to the right and to pro-investment, and there are very favourable changes in Argentina, Brazil and Peru. So there's a trend of pro-investment legislation, and all these countries really require foreign investment. Argentina is the success story today but I expect that such trend will extend to other countries.

In Mexico, the investment reform has gone really well. Mexico amended its constitution and all the oil and gas legislation. The last offshore deep-water bid round was a success – all the oil majors participated, and blocks were awarded way beyond the expectations of the Mexican government. The opportunities are not only in upstream, but also in natural gas and downstream. They are opening the fuels market to private investment, so Mexico from an oil and gas point of view, is the number one on the list.

What about the firm's own practice. Are there any plans for expansion or shifts of focus?

King & Spalding has 10 international offices in countries like Singapore, France and the UK. We opened our most recent new office in Tokyo in 2015, and that has really expanded our practice with Japanese and Korean investors in the U.S. and Latin America. As a result, there is a natural expansion into Latin America because those countries are showing a lot of interest there.



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About the author

Vera De Brito de Gyarfas is a partner in the global transactions practice group at King & Spalding. Her practice is focused on energy projects in Africa and Latin America representing companies in upstream exploration and production projects, LNG and other gas projects, under joint ventures, profit sharing agreements, operating services agreements, EPC contracts, oilfield service contracts, as well as in M&A.

Her expertise in LNG involves the negotiation and drafting of host government and other investment agreements, analysis of existing regulation and Government negotiations, LNG sales and purchase agreements, gas supply agreements and terminal usage agreements, among others.