IS GHANA READY FOR MORE LOCAL CONTENT?
LESSONS FROM EIGHT COMPARATOR COUNTRIES IN FIVE ECONOMIC SECTORS

RESEARCH REPORT
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Acknowledgement

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Disclaimer

The contents of this research report do not in any way reflect the views of the BUSAC Fund and its three development partners.
Executive Summary

This study explores the successes and challenges of comparator countries including Botswana, Zambia, Brazil, Nigeria, India, Zimbabwe, South Africa and Ghana in the institution of local content policies for five main sectors of their economies namely Oil and Gas, Mining, Coastal and Inland Water Shipping, Construction and Renewable Energy. The aim is to extricate key thematic issues that hamper the achievement of local content objectives and to tease out lessons for Ghana.

Local content is an intricate concept which can be best appreciated in context. This is demonstrated by the fact that it is defined variously in different countries. However, the crux of local content is to allow countries the opportunity to build capacity in economic sectors where they would otherwise have limited opportunity. Therefore, local content policies generally require foreign investors to purchase domestic goods and services, employ and train citizens, transfer technology and know-how and to contribute to research and development.

In Ghana, several initiatives have been taken over the years to build essential capacity through local content requirements. However, in recent times, there has been a greater impulse to apply local content to several sectors of the economy through the use of distinct local content policies as pertains in the oil and gas industry. Draft local content policies have emerged for the downstream petroleum sector, construction as well as coastal and inland water shipping. Several other local content policies are being considered for power, agriculture, pharmaceuticals and cosmetics sectors.

This study adopts qualitative analysis of primary and secondary data from five sectors in eight countries and synthesizes the data to identify thematic issues across the sectors in these countries. The key findings of this study are outlined as follows:

Of the eight countries studied, the local content policies of six of them were greatly inclined towards achieving local participation or ownership rather than on other elements of local content. For countries such as Zambia and Zimbabwe that focus chiefly on attaining local ownership in the mining sectors of their economy, the results appear counterproductive such that insignificant levels of local participation have been realized thus far. In the downstream petroleum sector of South Africa, focus on ownership undermined compliance with other core elements of the local content legislation. After 13 years of implementing local content provisions, coastal and inland water shipping in Nigeria is still dominated by foreign vessels despite efforts to restrict ownership of vessels to citizens. For countries like Botswana that adopted a more strategic focus on increasing content levels for value addition, significant progress has been made towards achieving local content objectives in their diamond industry.

It is established that, a key factor that undermines increased ownership or participation levels is the lack of adequate in-country capacity in terms of financial, technical and infrastructure resources. In Nigeria, the lack of capacity in terms of available local fleet, available local seafarers, available ship building and repair yards among others stalled the implementation and progress of Nigeria’s cabotage policy as well as the attainment of some of its local content
targets in the oil and gas industry. A similar trend is observed for India where cabotage restrictions had to be relaxed to allow foreign players back into Indian waters.

A necessary exercise to undertake in order to facilitate the setting of realistic local content targets is capacity auditing. While Brazil, Nigeria and Ghana failed to undertake capacity audits prior to the formulation of local content policies for their oil and gas and mining industries’, Botswana is reported to have undertaken a sophisticated analysis of the local capacity in the infrastructure sector before setting out its local content policy. It is not incongruent that the attainment of some local content targets for Brazil, Nigeria and Ghana has been stalled while Botswana has made steady progress in attaining increased local content levels.

In assessing the costs of local content, it is established that governments and ultimately citizens are likely to bear a greater cost of implementing local content policies in the long term. In Brazil, the high costs of local content to investors via the need to purchase domestic goods and services and the heavy penalties for non-compliance were partly transferred to the supply chain and ultimately borne by citizens. It is also confirmed that, the government of Ghana bears some of the costs of local content through forfeited petroleum revenues. Given these costs, it is necessary to ensure that the benefits from local content overtime far outweigh the costs in order to justify their application.

The best way to ensure a positive cost-benefit analysis over time is to appropriately track and measure the implementation of local content policies to ascertain efficacy and improvements overtime. Unfortunately, across all the countries and sectors studied, it was identified that tracking and measurability was not adequately comprehensive. For Ghana, this makes it difficult to justify the need for new local content policies since their true impact overtime has not been established.

Given the cost of local content to investors and the uncertainty it creates, the arbitrary application of local content policies sends wrong signals to investors which may eventually affect their decision to invest within a country. For Zimbabwe, some foreign companies were forced to stop operations for fear of being targeted for indigenisation. This is because the indigenisation policy was to apply to every public company and any other business. This meant that any sector at any time could be targeted for indigenisation. Also different ministers for indigenisation had different interpretations of the indigenisation Act (Indigenization and Economic Empowerment Act 2007).

The lack of coherence in policy implementation and harmonisation among various regulatory institutions responsible for local content in a country contributes to inconsistency, unpredictability and reduced transparency which undermines implementation and affects investor confidence. This was the case in Zimbabwe which had different licensing bodies in the mining sector. In Ghana, it was noted that there was misalignment and lack of cohesiveness among key stakeholders concerning local content policy and this undermined implementation. In Zambia, local content policies were found to be offset by other government policies rendering local suppliers unable to compete and posing increasing costs to investors.
In light of the above, the impulse to institute local content policies for multiple sectors of Ghana’s economy needs to be checked in order to avoid hasty implementation of half-baked policies whose consequences may be dire for the economy in the long term. It is recommended that policy makers take cognizance of the need to ascertain the existence of adequate capacity that can converge with local participation requirements before such requirements are set. It is also important to take note of the need for a critical cost benefit analysis of existing and draft policies to ensure balanced costs to both government and investors. Also worth noting is the need for comprehensive metrics and a specialized model that will measure and track year on year results of local content policies to ascertain their efficacy and justify the need for local content policies or otherwise. Again, there is the need for a long term development strategy that will streamline the application of local content in order to mitigate uncertainties for foreign investors.
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Glossary

**Local Content:** Locally sourced factors of production (excluding imports)

**Indigenisation:** A national policy or legislation which deliberately involves citizens of a particular country in the economic activities of the country so as to ensure equitable ownership of the nation’s resources.

**Protectionism:** Intended or unintended economic policy of restraining trade between countries through methods such as tariffs (taxes) on imported goods, or restrictive import quotas and regulations designed to discourage imports.¹

**Local Participation:** Local content requirements that specify equity ownership for citizens.

**Import Substitution:** A national policy or legislation which requires the substitution of imports for locally manufactured goods using trade and non-trade barriers.

**Local Content Requirement:** Provisions within local content laws or policies that apply to foreign investors.

**Local Content Policy:** Local content requirement set within a policy document but not necessarily legislated.

**Local Content Legislation:** Local content requirements set in a legal document or legislative instrument.

**Distinct Local Content Policy:** A set of regulations or policy in a single comprehensive document dedicated to local content within a particular sector of the economy.

**Domestic Content:** Used interchangeably with local content especially in the Nigerian context.

**Domestic Content Requirement:** Used interchangeably with local content requirements.

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# List of Abbreviations

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<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>AGI</td>
<td>Association of Ghana Industries</td>
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<tr>
<td>ANP</td>
<td>Agencia Nacional de Petroleo Gas Natural e Biocombustiveis (National Agency of Petroleum, Natural Gas and Biofuels)</td>
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<tr>
<td>CEE</td>
<td>Citizens Economic Empowerment</td>
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<tr>
<td>CSOS/T</td>
<td>Community Share Ownership Scheme or Trust</td>
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<td>EDD</td>
<td>Economic Diversification Drive</td>
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<tr>
<td>ESOS/T</td>
<td>Employee Share Ownership Scheme or Trust</td>
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<tr>
<td>FDI</td>
<td>Foreign Direct Investment</td>
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<tr>
<td>FPSO</td>
<td>Floating, Production, Storage and Offloading</td>
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<td>GDP</td>
<td>Gross Domestic Product</td>
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<td>GIPC</td>
<td>Ghana Investment Promotion Center</td>
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<td>ICTSD</td>
<td>International Centre for Trade and Sustainable Development</td>
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<tr>
<td>IEE</td>
<td>Indigenisation and Economic Empowerment</td>
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<tr>
<td>IOC</td>
<td>International Oil Company</td>
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<tr>
<td>IPPTA</td>
<td>Indian Private Ports and Terminal Association</td>
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<td>JQS</td>
<td>Joint Qualification System</td>
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<td>LADOL</td>
<td>Lagos Deep Offshore Logistics</td>
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<td>NCC</td>
<td>Nigerian Content Compliance Certificate</td>
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<td>NCDMB</td>
<td>Nigeria Content Development and Monitoring Board</td>
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<tr>
<td>NIEEF</td>
<td>National Indigenisation and Economic Empowerment Fund</td>
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<tr>
<td>MW</td>
<td>Mega Watt</td>
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<tr>
<td>WTO</td>
<td>World Trade Organisation</td>
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<tr>
<td>SGN</td>
<td>Sankofa-GyeNyame</td>
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<td>LCR</td>
<td>Local Content Requirements</td>
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<tr>
<td>MNRE</td>
<td>Ministry of New and Renewable Energy</td>
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<tr>
<td>TEN</td>
<td>Tweneboa-Enyera-Ntommie</td>
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<tr>
<td>Kwh</td>
<td>Kilowatt hour</td>
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<tr>
<td>DOE</td>
<td>Department of Energy</td>
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<tr>
<td>LCL</td>
<td>Local Content Laws</td>
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<tr>
<td>HDSAs</td>
<td>Historically Disadvantaged South Africans</td>
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<tr>
<td>GW</td>
<td>Giga Watt</td>
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<tr>
<td>SDF</td>
<td>Ship Development Fund</td>
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<tr>
<td>LFC</td>
<td>Liquid Fuels Charter</td>
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<tr>
<td>PV</td>
<td>Photovoltaic</td>
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<td>CVFF</td>
<td>Cabotage Vessel Financing Fund</td>
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<td>LCP</td>
<td>Local Content Policies</td>
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<tr>
<td>R&amp;D</td>
<td>Research and Development</td>
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<tr>
<td>bopd</td>
<td>Barrels of oil per day</td>
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<tr>
<td>OCTP</td>
<td>Offshore Cape Three Point</td>
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<tr>
<td>PSP</td>
<td>Petroleum Service Provider</td>
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<tr>
<td>Acronym</td>
<td>Full Name</td>
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<tr>
<td>NIMASA</td>
<td>Nigerian Maritime Administration and Safety Agency</td>
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<td>NMA</td>
<td>National Maritime Authority</td>
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<tr>
<td>NOGICD</td>
<td>Nigerian Oil &amp; Gas Industry Content Development</td>
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<tr>
<td>NPA</td>
<td>National Petroleum Authority</td>
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<tr>
<td>OEMS</td>
<td>Original Equipment Manufacturers</td>
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<tr>
<td>PC</td>
<td>Petroleum Commission</td>
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<tr>
<td>PROMINP</td>
<td>Programa de Mobilizacao de Industria Nacional de Petroles e Gas Natural (National Oil and Natural Gas Industry Mobilization Program)</td>
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<tr>
<td>UNCTAD</td>
<td>United Nations Conference for Trade and Development</td>
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<td>ZMLCI</td>
<td>Zambia Mining Local Content Initiative</td>
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1.0 Introduction

The general thrust of local content efforts in countries the world over is usually to allow sovereign nations the opportunity to develop capabilities and build capacity in sectors where they would otherwise have limited opportunity. According to the United Nations Conference on Trade and Development (UNCTAD), through local content requirements, foreign investors and companies are made to commit to a minimum threshold of goods and services that must be procured locally especially for strategic sectors such as oil and gas, automotive among others. In some cases, such local content requirements become protectionist strategies to ensure the growth of emerging local industries. Basically, local content requirements among other things, seek to strengthen infant industries, increase revenue, improve the balance of trade and reduce unemployment.

Ghana has undertaken several initiatives to build necessary capacity by instituting local content requirements. Notable amongst them is the Local Content and Local Participation in Petroleum Activities Regulation, LI 2204, which was passed in 2013. Among other things, the regulations seek to “advance the stake of the people of the nation in the Oil and Gas industry in a sustainable manner”. As at final quarter 2016, the Petroleum Commission reported some gains; for instance, over the period 2015 to 2017 the Sankofa-Gye-Nyame (SGN) project contributed 320 contracts worth $1.8 billion awarded to indigenous Ghanaians and about 56% of the workers on the SGN Floating Production Storage and Offloading (FPSO) vessel were Ghanaians.

This recorded success has given further impetus to the local content argument in Ghana and the country has since seen efforts to replicate local content policies in other sectors notably in the downstream petroleum sector, the construction sector and cabotage. Several countries have instituted some of these local content policies and have had varied experiences. Nigeria and South Africa instituted cabotage laws and in both countries, coastal shipping has not experienced substantial gain since the inception of these laws. India instituted cabotage laws, but due to a short supply of specialised vessels, the country decided to loosen its cabotage laws in 2015. Nigeria is in the process of instituting local content policies in its

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4 ibid@1
5 Ministry of Energy, 2011
6 Minister of Energy, Dr. Amin Adam said this in a presentation he delivered at a meeting between the Ministry of Energy and Civil Society Organisations
construction sector that is to ensure indigenous construction attains some advantage over foreign competition\textsuperscript{10}.

### 1.1 Problem Statement and Rationale for the Study

The implementation of local content policy, particularly in the upstream petroleum sector of Ghana has not been without issue. Armah and Senoo (2015) in assessing the implementation of local content policies in Ghana's oil and gas industry note that despite the general acknowledgement that the local content policy addresses key local content issues, there was doubt that the ambitious targets set by the policy will be achieved within the timeframes specified. The study also noted that the focus of the local content policy was skewed towards achieving content levels (a measurable percentage) rather than ensuring the quality of the content created in terms of the capabilities and skills developed by the local industry. It was further noted that local companies in the sector are not strategically positioned to take up the opportunities created by the policy due to lack of financial and technical knowhow to undertake complex projects\textsuperscript{11}.

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{construction-site.jpg}
\caption{Ghana is implementing a local content policy in the oil and gas industry: Photo credit: https://starrfmonline.com/2017/09/12/paperless-port-revenue-shoots-from-ghc130m-to-ghc230m/}
\end{figure}

This is corroborated by reports from stakeholders in the local industry who lament, that due to the lack of financial and technical capability, they are unable to compete with multinationals, creating room for fronting. Also, high cost of interest on loans and financing


by local banks as well as high operational costs pose a hindrance which prevents them from fully taking advantage of the local content provisions\textsuperscript{12}.

From the institutional point of view, it is noted that monitoring and evaluation strategies are not clearly or entirely in place therefore undermining measurability and sustainability of the policy in terms of achieving targets. Furthermore, there is inadequate communication and coordination among key stakeholders and custodians of the local content policy (within and outside the oil and gas sector) including clearly defined roles, responsibility and a common understanding of the local content requirements and how the various roles of the stakeholders converge in implementation\textsuperscript{13}.

In view of the foregoing, it is necessary to examine the motivation to implement local content policies in other sectors of the Ghanaian economy. This study will discuss the experience of comparator countries in the application of local content policies in sectors of their economy with the view to draw out thematic issues and key lessons.

\textsuperscript{12} M. C. Vasnani (2015), Challenges of the Local Content Law; Presentation delivered at the Ghana Oil & Gas Summit

\textsuperscript{13} ibid
2.0 Literature Review

2.1 Background to Local Content Development

The concept of local content was pioneered in 1981 by Grossmen\textsuperscript{14} whose work analysed how content protection and preference affect resource allocation, relating it to market structure and the domestic goods industry. According to Grossmen, governments, concerned with the survival of firms in the intermediate sector, impose local content requirements to increase domestic output in that sector.

Local content is noted to be predominant in the upstream oil and gas industry. Historically, local content requirements were related primarily to government procurement and labour quotas for the Oil and Gas (O&G) industries. The aim of governments in instituting such policies for the Oil and Gas sector is usually to boost the competitiveness of a country’s O&G sector via the introduction of Local Content Policies (LCPs). For countries like Norway, local content forms a key part of their industrial policy, which dates back to the 1960’s\textsuperscript{15}

Policymakers design various policies to guard their countries’ interests, and this is considered the natural approach to promoting domestic industry in a bid to promote economic growth and address the issues of poverty\textsuperscript{16}. The desire to increase domestic value-added by substituting imported goods for domestically produced goods and to create more local employment by substituting imported or foreign labour for domestic labour are among the most frequently cited objectives of local content policies. Governments consider that there must be economic benefits to be captured via policies that increase the local content with respect to value-added and employment\textsuperscript{17}. However, the degree to which instituting local content policies achieve value addition and employment goals for countries remains contested. There are also some very strong arguments against the use of Local Content Policies (LCPs) to drive sustainable economic growth and development\textsuperscript{18}.

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\textsuperscript{15} Azhgaliiyeva, D. and Kalyuzhnova, Y. (2016) The evaluation of local content implementation in Kazakhstan. VestnikUniversitetatKainar, 2016 (N3). pp. 5159.ISSN 22261052 Available at \texttt{http://centaur.reading.ac.uk/67517/} Accessed 25\textsuperscript{th} March 2018


\textsuperscript{17} ibid

\textsuperscript{18} ibid
2.2 Definition of Local Content

Local content is an intricate concept and has different meanings for different countries and sectors. Even though most definitions for local content are linked to the oil and gas/extractives sector because of the popularity of the phenomenon in that sector, the idea of increasing benefits from an economic sector to an indigenous people and building their capacity through participation is not new. Thus, local content requirements traverse sectors such as manufacturing, trade, and industry.

Ramdoo (2016) in discussing an overview of local content policies in mineral rich countries and Kuntze and Moerenhout (2013) in assessing local content requirements in the renewable energy industry both consider local content policies as constituting a set of policy instruments instituted by national governments to ensure that a certain share of factors of production (such as labour, supplies, technology and knowledge) required at each stage of the value chain is sourced from the domestic economy.

The extent to which local content policies achieve value addition and employment remains contested. Photo credit: http://www.ghanaitimes.com.gh/government-must-support-local-textile-industries/

The Organization for Economic Co-operation and Development (OECD) in a study of the economic impact of local content on trade defines local content requirements as policies that are imposed by governments that mandate foreign firms/Multinational companies (MNCs) to

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22 Kuntze, J.-C. and Moerenhout, T. (2013): Local content requirements and the renewable energy industry – a good match? ICTSD
use domestically manufactured goods or domestically supplied services in order to operate in the focal economy. According to the OECD, the aim is to achieve a variety of policy objectives including increasing employment levels and attaining some industrial or technological development.\textsuperscript{23} Hanna et al (2018) in studying the economic impact of local content requirements note that developed as well as developing countries use local content requirements to promote the use of local inputs and also facilitate the growth of domestic industries. The study notes that Argentina, Brazil, China, India, Indonesia, and Russia are very frequent users of local content requirements.\textsuperscript{24}

Warner (2011) in discussing the creation of jobs and competitive domestic industries through local content in procurement, defined local content as “a composite value contributed to the national economy from the purchase of bought-in goods and services, and includes wages and benefits, materials, equipment and plant, sub-contracts and taxes. It also includes first-order, direct economic impacts on the national employees of contractors and suppliers, second-order, indirect impacts on their suppliers and subcontractors, and third-order, induced impacts arising as the income earned by nationals and resident workers are spent in the wider domestic economy”. This further extends the understanding of local content beyond the proportion of contract value accruing to domestic suppliers.

Turning to the oil and gas sector, the Petroleum (Local Content and Local Participation) Regulations 2013, Legislative Instrument (LI) 2204 of Ghana separately defines local content and local participation. Though local participation or ownership is subsumed under local content in legislation and policy, it is necessary to distinguish the local content and local participation for the purposes of this study. LI 2204 defines local content as “…the quantum/percentage of locally produced materials, personnel, financing, goods and services used in the oil industry and which can be measured in monetary terms….” Local Participation, on the other hand, is defined as to “…the level of Ghanaian equity ownership in the oil and gas industry…” For Nigeria, the Nigerian Oil and Gas Industry Content Development (NOGICD) Act 2010 Act No. 2 defines local content as “…the quantum of composite value added to or created in the Nigerian economy by a systematic development of capacity and capabilities through the deliberate utilisation of Nigerian human, material resources and services in the Nigerian oil and gas industry…”. While the definition for the LI2204 focuses on domestically sourced goods and services or local procurement in oil and gas activities as well as part ownership of oil and gas resources, the NOGICD Act focuses on the development of domestic capacity in terms of value added. This demonstrates the fact that each country perception of local content depends on its overall aim for instituting local content.

Despite the differences in definition, local content policies’ targets/objectives broadly include industrial and technological development, ownership, in-country value creation or addition, local procurement, employment creation, development of capacity and the development of forward and backward linkages along value chains of economic sectors.


2.3 Local Content versus Local Participation

The concept of local content and local participation are usually interwoven within local content policies. However, they are two distinct concepts. Whereas local content is specifically focused on increasing the use of domestic resources, the focus of local participation is ownership usually through equity. On ownership, the local content policies require foreign firms to enter into joint ventures with local firms or to open equity up to local partners in order to obtain licenses or bids depending on the sector or industry.

The aim is to ensure that sectors of national interests are not entirely foreign-owned or to help the development of national tenants through the transfer of skills, know-how, or technology. In countries like Norway, ceding ownership of a company to a local partner is not prerequisite for the award of contracts to foreigners. In Brazil, even though wholly foreign owned companies are allowed to invest and operate in the country, partnership with locals is preferred. In countries like Nigeria, Angola, Ghana and Uganda, ceding ownership to local partners is usually a key prerequisite for foreign investment and forms a key part of their local content policies26.

![Image of a cargo ship](https://www.ghanacrusader.com/ghan-losing-revenue-from-tema-port-due-to-the-new-paperless-system-freight-forwarders/)

It is believed that local content policies can provide economic benefits, develop infant industries, enhance market power and make social impact. Photo credit: https://www.ghanacrusader.com/ghan-losing-revenue-from-tema-port-due-to-the-new-paperless-system-freight-forwarders/

2.4 Arguments for and against Local Content Policies

There exists a great divide among many economists and researchers concerning the efficacy of local content policies and whether they should be recommended by policymakers for developing countries. Proponents for local content requirements in industrial policies in general, often refer to the argument of economic benefits, development of infant industries, market power, social impact or externality as well as technology transfer. On the other hand, arguments against LCPs include issues such as misallocation of resources, competitiveness and impacts on trade.

26 ibid
2.4.1 Arguments for local content policies

Several arguments have been offered to justify the adoption of local content policies. These arguments range from issues of employment and economic growth to developing infant industries to creating social impact.

Following the Great Depression in 1930’s and the financial crises of 2008, many governments have used local content as a tool to create jobs and to stimulate economic growth. For instance, the United States enacted its first Buy America policy in 1933, which utilised government procurement as a transmission mechanism for local content requirements. The economic benefit argument suggests that countries with local content requirements have larger Gross Domestic Product (GDP) on average and depend less on foreign trade and investment as a share of GDP. Further, it fosters the attainment of short-term objectives such as job creation (given that firms are required to use a certain percentage of inputs from local industries) and/or long-term objectives such as growth in fast-growing sectors with increasing demand. LCPs additionally lead to an increased tax base for governments due to a larger local manufacturing industry, generating more income in times of financial need. After the subprime financial crisis, over 100 local content provisions have been implemented. The number of cases alone indicates how often policy makers use local content requirements to address economic problems.

The infant industry argument also suggests that local content policies allow infant industries to become internationally competitive through initial protection, subsidies and other forms of government support. This argument was first proffered by Alexander Hamilton. The idea is that, production capabilities increase over time and domestic producers have access to larger markets through protection from foreign competitors. Hence, domestic producers achieve economies of scale more rapidly, which enables them to reduce unit costs and as a result become more cost-efficient and competitive. As such, LCPs will enable them partner with the bigger companies and learn from them, as is evident in Norway’s model. Norway’s local content policy for the oil and gas sector focused primarily on technology transfers as a way to promote and establish the local industry. The competencies and technological

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29 Ibid


expertise developed as a consequence, has strengthened its position in the oil industry internationally\textsuperscript{34}.

There is also the technology transfer argument which complements the infant industry argument. The motivation for technology transfer is for domestic businesses to benefit from both technology and knowledge transfer. Foreign businesses are compelled or encouraged to transfer technology to domestic suppliers so that the quality of their final product (using local input) does not suffer. Learning by doing and capacity building in domestic supply are the results of technology transfer via LCPs\textsuperscript{35}.

Another argument that has been espoused for local content policy is market power. The market power argument is parallel to the infant industry argument but has its origins in the asymmetry of market power of foreign verses domestic suppliers. This argument accuses foreign contractors of utilising unfair market power against domestic suppliers. It focuses on an international firm’s ability to commit to long-term global sourcing deals or to supply in bulk to global clients which enables them to offer lower prices, at the disadvantage of the domestic counterparts. Warner (2011) argues that domestic companies need to achieve the same purchasing power as international suppliers and local content policies are thus designed to ensure that the domestic industry is not disadvantaged without creating alternate advantages for the local industry.\textsuperscript{36}

\textsuperscript{34}Ibid

\textsuperscript{35}Ibid

Finally, the social compensation is also another rational that justifies the adoption of local content policies. This argument for local content policies lies in the form of compensation for the adverse socio-economic impacts or externalities of investments on local communities (oil, gas, and mining) and vulnerable groups, as these communities often suffer a temporary or permanent loss of economic livelihoods. Compensation can be in the form of employment for people within the local community or through preferential treatment of locals in the procurement of goods and services\textsuperscript{37}.

2.4.2 Arguments against local content policies

As local content policies have become widespread, some weaknesses have been found. These weaknesses form the basis for opposition to the policy. Local content policies are uncompetitive, can create unnecessary delays and raise cost of products and services. LCPs reduce the international competitiveness of a country’s own economy and undermine domestic economic diversification by reducing input availability\textsuperscript{38}.

Another argument against LCP is that LCPs lead to misallocation of resources, especially when they do not contain ‘sunset’\textsuperscript{39} provisions. LCP leads to inefficiencies in the allocation of resources as they work against the principle of comparative advantage. Industries built up with local content policies often cannot survive in the absence of government assistance. Such industries often resist the withdrawal of government support\textsuperscript{40}.

The trade argument implies that local content policies introduce distortions in trade, as they reduce competition between domestic manufacturers and foreign competitors. The impact on trade of LCPs however depends on the percentage of local content required and the efficiency of existing firms. In an economy with inefficient firms, a high degree of required local content thwarts competition\textsuperscript{41}.

2.5 Alternatives to Local Content Policies

While local content policies have the potential to provide immediate jobs and give instant rewards to politicians who advocate for them, there are other policies with even better potential for providing more jobs and at lower cost to the economy. These policies however

\textsuperscript{37}Ibid

\textsuperscript{39}Provisions that restrict the local content policies to specific timelines. That is, the termination period for local content policies is included in the regulations.


\textsuperscript{41}Ibid.
require discipline and commitment to long-term and sustainable growth\textsuperscript{42}. Three alternative policies are discussed below:

1. Promoting a business-friendly environment: Improving the domestic environment for doing business stimulates investment and create more sustainable jobs. For instance, reducing corruption and simplifying tax administration reduces risks and attracts investment from both domestic and foreign sources\textsuperscript{43}.

2. Training: focused commitment to education and training of a nation’s workforce on basic skills such as language and math can deliver long-term benefits of employment and growth. Also, both government and private businesses can be encouraged to provide deliberate and continuous job-related training to employees. For example, in Germany, the government uses tax credits to encourage firms to hire and train new workers. Government can also commit to proper data collection to aid training efforts through evaluation and continuous improvement to training programs\textsuperscript{44}.

3. Improving Logistics: effective trade facilitation has the potential to greatly reduce trade transaction related cost burdens for businesses. For example, Austria, a landlocked country ranks 11 in trade facilitation rankings as a result of deliberate government efforts to improve the quality of infrastructure and efficient management of its borders. Significant improvement in trade facilitation can boost merchandise exports and improve growth rates in any economy\textsuperscript{45}.

The mining sector is one of the sectors in which Ghana is implementing local content policy: Photo credit: http://www.atlfmonline.com/home/24-ghana/3424-ghana-raided-365m-in-revenue-from-mining-sector-in-2016.html


\textsuperscript{43}Ibid

\textsuperscript{44}Ibid

\textsuperscript{45}Ibid
3.0 Methodology

This study is mainly qualitative in nature drawing from information collected via personal interviews with key stakeholders as well as from secondary data. This information is synthesized to distill the country contexts and experiences with local content in various sectors of their economies and to determine how the experiences of comparator countries can be brought to bear for local content in Ghana. Key thematic issues of importance for Ghana concerning the application of local content are also culled out and discussed.

Comparator countries are selected based on the commonality of the economic sectors; the existence of local content policies or requirements for those sectors and for the extractive sectors in particular, the position of the country in relation to the global industry.

The main limitation is the difficulty to extract the direct impacts of local content on key micro and macro-economic indicators emanating from the general difficulty in appropriately tracking and measuring local content outcomes over time. The sparse nature of data on local content achievements and the general paucity of comprehensive statistics across countries was also a key limitation. To mitigate this, personal interviews formed a core means of collecting data, especially in the Ghanaian case.
4.0 Local Content in Ghana

In Ghana, local content requirements have been present in many forms, for instance through provisions in the mining sector laws\(^\text{46}\) and in the trade and investment laws\(^\text{47}\). More recently however, since the application of local content policy in the oil and gas sector, there has been motivation to develop distinct local content policies for various sectors of the economy. This section employs personal interviews and secondary data to help understand the general perception and direction of local content among key stakeholders in Ghana.

4.1 What local content means in Ghana

In Ghana, local content requirements are contained in key legislative documents including the Public Procurement Authority Act 2003 (ACT 663), the Ghana Investment Promotion Centre(GIPC) Act 2013 (ACT 865), the Petroleum (Local Content and Local Participation) Regulations 2013 LI2204, the Minerals and Mining Act 2006 (ACT 703) and the Minerals and Mining (General Regulations) 2012 LI2173. While ACT 663 provides for preferential treatment for local suppliers of goods and services, ACT 865 mandates a local participation rate of 10% for foreign investments in all sectors of the economy. The Minerals and Mining Act 2006 (ACT 703) offers preferential treatment for local suppliers in the mining sector and its attending LI2173 provides for the training and employment of Ghanaians in the mining sector. ACT 703 also reserves artisanal and small-scale mining for Ghanaians.

Despite the existence of these legislations, the concept of local content is clearly defined only in the Petroleum Local Content and Participation Act (LI 2203) which specifies that local

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\(^\text{46}\) Local Content requirements have been in the Minerals and Mining Laws since 1986, PNDCL 153 as amended by Mineral and Mining Act 703 2006

content is the “quantum/percentage of locally produced materials, personnel, financing, goods and services used in the oil industry and which can be measured in monetary terms”. It further expatiates local participation, as “the level of Ghanaian equity ownership in the oil and gas industry”.

In general, local content in Ghana covers building industrial capacity through equity participation and ownership in industry, local procurement of goods and services to boost local industry through in-country spend as well as employment and training of citizens to develop human resource and technical capacity.

4.2 Targeting Sectors for the Application of Local Content

The Association of Ghana Industries (AGI) is nursing the idea of having a national local content policy and gradually mainstreaming local content provisions across sectors of the Ghanaian economy as is the case in a number of African countries48. For instance, in Zimbabwe, Zambia, South Africa and Namibia, local content regulations apply to both private entities and state institutions and also apply across all sectors of the economy49. In other countries such as Kenya and Nigeria, the regulations apply to a selected number of sectors including mining/oil and gas, aviation and financial services50.

Even though none of the countries mentioned above has explicitly documented the manner and reason for targeting certain sectors, an African guide to local content provided by Bowmans, a Pan-African law firm with expertise in the economy of Africa, reveals that, of the local content policies of representative countries surveyed, 100% of them had critical laws dealing with foreign ownership of land, 100% had implemented local content laws in both the mining as well as oil and gas industries, 40% had implemented local content provisions for the telecommunications industry and 30% had provisions for the aviation and shipping industries. Other sectors included Insurance (20%), Broadcasting (20%), Construction (10%) and Private Security (10%). This may be a telling frequency of sectors targeted for application of local content provisions in Africa.

In the Ghanaian case, the particular sectors and markets that could be targeted for mainstreaming local content according to the AGI are agriculture, cosmetics, pharmaceuticals, as well as power51. The main criterion, according to the AGI, for the selection of these sectors is the high demand for the products or services in these sectors. Further, the sectors were stated to have a high potential for growth52.

The AGI agrees that, there is the need to clearly define the exact local content structure required to achieve local content goals for the country and that would be applicable to the sectors in question. To accurately do this, it is necessary to critically assess the current status of the sectors and the expected future needs for expansion of the sectors.

50 ibid
52 ibid
4.3 Local Content Requirement and Foreign Investment

The Ghana Investment Promotion Center (GIPC), the government agency in charge of encouraging, promoting and facilitating foreign and local investments in Ghana has the mandate to register, monitor and keep records of all enterprises in Ghana. The Ghana Investment Promotion Center Act 2013 (ACCT 865) incentivises local participation by requiring a lower minimum capital requirement from foreign firms which enter joint ventures with local firms in any sector of the economy except in trade. Particularly, while the minimum capital requirement for a wholly foreign owned enterprise that wishes to invest in any enterprise in Ghana is $500,000 that for a foreign company with a local partner is $200,000. Local equity participation is a fixed 10% across all sectors. The capital requirements in ACT 865 are significantly higher than that of the predecessor GIPC Act 1994, ACT 478 where minimum capital requirement for foreign ownership was $50,000 and $10,000 for enterprises with local partners. Again, in the case of ACT 478, there was no local participation requirement.

Table 1: Summary of Local Participation Provisions before and after Act 865

<table>
<thead>
<tr>
<th>Enterprise</th>
<th>Capital Requirements</th>
<th>Local Participation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wholly foreign</td>
<td>$50,000</td>
<td>$500,000</td>
</tr>
<tr>
<td>Foreign with local participation</td>
<td>$10,000</td>
<td>$200,000</td>
</tr>
<tr>
<td>Wholly foreign, Trade</td>
<td>-</td>
<td>$1,000,000</td>
</tr>
</tbody>
</table>

Source: Culled from the Ghana Investment Promotion Center Act 2013 (Act 865) and GIPC Act 1994 (Act 478)

The Act also specifies a quota for the number of expatriates that can be employed per capital requirement as follows:

Table 2: Expatriate Quotas; GIPC Act 865

<table>
<thead>
<tr>
<th>Paid Up Capital</th>
<th>Expatriate Quota</th>
</tr>
</thead>
<tbody>
<tr>
<td>$50,000-$250,000</td>
<td>One person</td>
</tr>
<tr>
<td>$250,000-$500,000</td>
<td>Two persons</td>
</tr>
<tr>
<td>$500,000-$700,000</td>
<td>Three persons</td>
</tr>
<tr>
<td>&gt;$700,000</td>
<td>Four persons</td>
</tr>
</tbody>
</table>

Source: GIPC ACT 865

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According to the GIPC, the local participation requirements of 10% including the expatriate quotas of the GIPC Act 865 are to apply to all sectors within the Ghanaian economy including the oil, gas and mining sectors. This was however not the case in the previous ACT 478 which did not fix percentage requirements for local participation. Rather, GIPC used administrative procedures to fix the percentage. This enabled local companies to effectively participate in big ticket investments\textsuperscript{54}. For instance, for the US$77.2 million investment\textsuperscript{55} by Twyford, a ceramic manufacturing company, an administrative local participation requirement of even 1% meant that local enterprises would have to invest capital of $772,000. Local companies may find it manageable in this case, but to contribute 10% as required by the Act 865 would mean the local company would have to invest $7.72 million dollars which they may not have the capacity to handle in some cases. The fixed participation rate of 10% then potentially precludes local firms from participating in large, strategic investments that have large capital requirements and high potential for forward and backward linkages.

\includegraphics[width=0.6\textwidth]{photo.jpg}

\textit{Actual foreign investment after the passage of the Act 865 increased by 56.25%; Photo credit: http://www.modes.com/fps/fso/projects/ten.html}

4.3.1 Foreign Investor Sentiments and Impact of Local Content Requirements on Investment

The general sentiment of foreign investors concerning the local content requirement in ACT 865, according to the GIPC, is one of apprehension\textsuperscript{56}. However, it was noted that actual foreign investment after the passage of the Act increased by 56.25% from $3.2 billion to $5 billion (2013-2017)\textsuperscript{57}. It remains to be verified if investment could have increased by a greater percentage within the period (that is, without the local content requirement). It is noted however by the GIPC that, the increase in investment is not seen to have commensurately led

\textsuperscript{54}Otoo, A. (March 7\textsuperscript{th}, 2018). Personal Interview.


\textsuperscript{56}ibid

\textsuperscript{57}ibid
to appropriate linkages to the economy in terms of growth in employment, technology transfer and overall capacity building of local enterprises.

4.3.2 Investment in the Oil and Gas Sector

In the upstream oil and gas industry, the two key factors that attract investment are geological prospects and fiscal provisions. The Petroleum Commission (PC) notes that, if the geological prospect is promising and the fiscal provisions are sound, foreign investors will be attracted into the sector, despite local content requirements. The PC confirms that since the commencement of implementation of local content requirements in the upstream sector, foreign investment to the sector has not declined. Rather, most of the major service companies in the global oil and gas industry such as GE, Schlumberger, Baker Hughes, Halliburton, Technip and others have entered Ghana and further, most of them have relocated their regional head offices from other African countries to Ghana.

The Petroleum Commission however reports that, at the tendering stage of some goods and services contracts in the upstream sector, the provision for the mandatory incorporation of a joint venture with an indigenous company causes some foreign companies to pull out of the tender. This reduces the competitiveness of the tender and as such, the best price for the contract may not be obtained. This further has the impact of increasing the cost of operations. Indeed, according to data from GIPC, investments in the oil and gas services sector as measured by the value of total projects per year declined sharply after 2014 when implementation of the local content policy commenced. The decline although correlated with the implementation of the law, does not suggest a direct causation, as other macro level factors or industry specific constraints also may have contributed to the decline.

Figure 1: Yearly Total Projects Registered in the Oil & Gas Services Sector by GIPC from 2010 to 2017

![Yearly projects registered in oil & gas services sector by GIPC from 2010 to 2017](source: Author's Illustration based on data from GIPC)

Conclusion

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Local content is being pursued in Ghana and being considered for several sectors as discussed above. In the light of this, it is important that new local content policies are informed by the successes and challenges in the implementation of the existing local content policies.

Experiences from other countries can also be brought to bear on Ghana’s efforts to expand local content. The next section discusses local content application in comparator countries, elucidating the successes and challenges as well as caveats.

Major service companies in the global oil and gas industry such as GE, Schlumberger, Baker Hughes, Halliburton, Technip have all entered Ghana since the implementation of the Local Content Policy.

5.0 Sectorial Analysis

This section discusses the experiences of comparator countries including Botswana, Zambia, Zimbabwe, Nigeria, South Africa, Kenya, India and Brazil, in the mining, upstream and downstream petroleum, renewable energy, coastal and inland water shipping and construction sectors of their economies. The view is to draw lessons from the experiences of these countries.

5.1 Local Content in Mining

Local content is prominent in the mining sectors of Botswana, Zambia, Zimbabwe and Ghana; countries that are well placed among global producers of minerals and that have attracted significant foreign investment over time. This section discusses the background of the mining sectors of these countries, the legal framework adopted for local content in their mining sectors as well as the success and challenges encountered in the implementation of their local content policies.

5.1.1 Local Content in Botswana’s Mining Sector

Background

The World Bank (WB) reports that within ten years of large scale diamond operations in Botswana after independence (1970-1980), the country achieved the status of one of the world’s top three diamond producers. The mining sector accounted for 45% of the country’s Gross Domestic Product (GDP) and diamonds accounted for 75% of exports. Between 2004 and 2014, the mining sector contributed 81% to mining value added\(^{59}\). Botswana managed, despite the prominent role of the mining sector, to avoid inflationary and deindustrialization effects by adopting sound macroeconomic policies and effectively managing diamond revenues\(^{60}\). Pivotal to its revenue management strategy was the channeling of diamond revenues to the promotion of national income rather than the subsidisation of other sectors such as import-substituting manufacturing\(^{61}\).

Legal Framework for Local Content in Mining

The mining sector of Botswana does not have a distinct local content policy. Local content requirements for the sector are provided for in the Mines and Minerals Act 1999\(^{62}\). These requirements supported by the Competition Act of 2009 which regulates competition in the sector as well as the Public Procurement and Asset Disposal (PPAD) Act 2001 which allows for


preferential treatment for goods and services provided by citizens. The reason for lending support to local content in the mining sector is embedded in the Economic Diversification Drive (EDD) strategy. The EDD focuses on sectoral development and business linkages as a key thematic area. The main aim is to allow for the development of priority sectors of the economy through the maximisation of local content; the promotion of technology transfer and innovation, the transfer of modern management know-how, development of the Small and Medium Enterprise sector and the attraction of Foreign Direct Investment (FDI)\textsuperscript{63}. Botswana’s long-term target is to diversify the economy away from mining, especially diamond mining. The EDD is a key strategy to facilitate this process.

**Forms of Local Content**

The Mines and Minerals Act 1999 focuses on the development of local content in Section 12. This allows for preference to be given to materials and products made in Botswana, services owned and located in Botswana, employment of citizens and training programs. In terms of ownership, Section 53 grants exclusive rights to citizens for the mining of industrial minerals. Section 6 provides for restrictions on the acquisition of mineral concessions, stating that no mineral concession shall be held by or granted to an individual who “not being a citizen of Botswana, has not been ordinarily resident in Botswana for a period of four years or such other period as may be prescribed”\textsuperscript{64}.

**Implementation: Successes and Challenges**

The government of Botswana in the case of achieving local content goals in mining has focused on downstream (value addition) activities. These activities were noted to have more leverage for local content growth. For instance, diamond cutting and polishing are more labour intensive than diamond mining as such they provide more employment opportunities\textsuperscript{64}.

There is a critical focus on creating linkages to the rest of the economy (through cutting and polishing) in order to sustain the diamond business beyond the depletion of diamonds\textsuperscript{65}. The government of Botswana in this vein formed a Joint Venture (JV) with DeBeers Group, a world-renowned diamond mining and processing company, to develop the diamond cutting and polishing industry. As part of the joint venture, a minimum target of 15% local processing of Botswana’s rough diamond production was set. The JV also included requirements to hire local employees and to train employees in the cutting and polishing factories.

As at 2011, Botswana had succeeded in establishing a cutting and polishing industry and there was a high degree of localisation in the linkages\textsuperscript{66}. Mbayi (2011) in discussing these linkages


\textsuperscript{64}The Role of Local Content Policies in Manufacturing and Mining in Low and Middle Income Countries. (2016). UNIDO Working Paper https://www.unido.org/sites/default/files/2017-01/UNIDO_Working_paper_Local_content_policies_FINAL_15803_0.pdf Accessed 30th March 2018


reports that the most significant linkages taking place were through local employment (in the 16 cutting and polishing factories); 97% of persons hired by Debswana are Batswana. Further, 46% (US$4 million) of the wage bill of cutting and polishing firms accrued to locals67.

Apart from forming a joint venture, in the spirit of facilitating technology and skills transfer and innovation (key thematic area of the EDD), the government of Botswana established a diamond hub, a diamond technology park and a diamond office to implement the government’s plan to turn the country into a diamond centre68. The diamond hub has engendered the influx of diamond cutting and polishing companies from countries such as India, Israel and the US and has provided employment opportunities for Batswana whiles boosting economic activity69.

Due to the focus on prioritising local procurement, it is reported that 80% of Debswana’s circa US$250 million annual budget is spent locally and this has served to build local capacity (in the provision of goods and services to the mines) which was almost non-existent at independence70.

Thanks to local content policy, 46% (US$4 million) of the wage bill of diamond cutting and polishing firms accrued to citizens of Botswana. Photo credit: https://www.gia.edu/gems-gemology/summer-2014-weldon-botswana-scintillating-moment

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67 Ibid
5.1.2 Local Content in Zambia’s Mining Sector

**Background**

Zambia is currently Africa’s second largest producer of copper. The mining sector, specifically copper mining, is the mainstay of the Zambian economy contributing an average of 70% of foreign exchange, 12% of GDP and about 70% of total export value. The mining sector is also a significant source of government revenue and formal employment. It employed an average of 24,943 contractors in the period 2015/6 and contributed an average of 25,399 direct jobs within the same period. The sector contributes 62% of foreign direct investment.

Zambia is currently implementing local content policy in its copper mining and processing sector. Photo credit: [https://www.daily-mail.co.zm/zambia-urged-to-invest-more-in-mines/](https://www.daily-mail.co.zm/zambia-urged-to-invest-more-in-mines/)

**Legal Framework for Local Content in Mining**

Provisions for local content are contained in the Mines and Minerals Act 2015 No. 11, the Citizens Economic Empowerment Act of 2006 which prioritises the granting of licenses to investors who promote local content. They are also contained in the Statutory Instrument No. 84 of 2008 which sets forth specific reporting requirements for investors regarding local


content and the Mineral Resources Development Policy 2013 which has the objective of creating a competitive, thriving and sustainable mining industry that benefits Zambians while concurrently rewarding investors\(^{76}\). It is interesting to note that there is no legal definition for local content in Zambia\(^{77}\).

**Forms of local content**

The Mines and Minerals Act 2015 No. 11 in Section 29 grants that artisanal mining shall only be undertaken by a citizen or a co-operative wholly composed of citizens. Further, small scale mining shall only be undertaken by a citizen owned \(^{78}\), influenced \(^{79}\) or empowered \(^{80}\) company\(^{81}\). Section 20 (1) grants that in the conduct of mining operations, preference must be given to materials and products made in Zambia as well as contractors, suppliers and service agencies located in Zambia and owned by citizens. Preference in employment shall also be given to citizens with the relevant qualifications and training programs must be conducted for the transfer of technical and managerial skills to Zambians (Section 20 (2) (a) &  (b).

The Mineral Resources Development Policy of 2013 reveals the government of Zambia’s strategy to promote Zambian ownership in the mining industry. It purports to achieve this through; enforcement of the Citizens Economic Empowerment Act, the review of legislation in order to reserve certain categories of mining rights and minerals for Zambians and also to reserve a portion of the mineral royalty for the development of businesses in mining communities.

The Citizens Economic Empowerment (CEE) Act underpins the motivations towards achieving local content in sectors of the economy including the mining sector. The main aim of the CEE is to among other things promote the economic empowerment of targeted citizens, citizen empowered companies, citizen-influenced companies and citizen owned companies as well as encourage an increase in broad-based and effective ownership and meaningful participation of targeted citizens.

Zambia is currently formulating a local content policy which is based on the previous Zambia Mining Local Content Initiative (ZMLCI) which aimed to enhance local content and the use of locally manufactured inputs in the mining industry\(^{82}\).


\(^{77}\) ibid

\(^{78}\) Citizen-owned means a company where at least fifty point one percent of its equity is owned by citizens and in which citizens and in which citizens have significant control of the management of the company- Citizen Economic Empowerment Act 2006

\(^{79}\) Citizen-influenced company means a company where five to twenty-five percent of its equity is owned by citizens and in which citizens have significant control of the management of the company-Citizen Economic Empowerment Act 2006

\(^{80}\) Citizen-empowered company means a company where twenty-five to fifty percent of its equity is owned by citizens


Implementations: Successes and Challenges

Fessehaie (2011) in exploring the factors that deepen linkages in Zambia’s upstream copper mining industries found that, despite mining companies in Zambia, (in keeping with the provisions for local procurement), having directed a significant share of their expenditures to the local value chain, the depth of local linkages has been low. Foreign investors consistently highlighted the fact that Zambian suppliers are engaged in low value-added activities and are highly uncompetitive as the key challenge in the development of the local supply chain.

Kragelund (2017) in assessing the institutional impediments to resource-led development through local content policies in Zambia’s copper sector notes that, even if local content policies are well designed, well implemented and accepted by key stakeholders, they fail to make a significant impact on development if they are offset by other policies as is the case in Zambia. This is corroborated by Fessehaie (2011) whose findings reveal that the formulation of the tax regime for the import of capital equipment for instance disadvantaged local suppliers rendering them unable to compete and as such undermining the attainment of local content goals.

Kragelund (2017) further notes that policies which were meant to empower citizen-owned businesses have proven dysfunctional. The CEE Act, intended to supersede all other commercial and industrial Acts in Zambia, was to be accompanied by sector codes designed to induce companies operating in Zambia to procure locally. However, the sector codes were not formulated and the CEE never succeeded in superseding all other commercial and industrial Acts. The Zambia Mining Local Content Initiative (ZMCLI) also yielded few tangible results.

Several other micro-level policies have been formulated for the mining sector and added to these that these policies still fail to define what local content is, implementation has been poor. Locally-owned companies have become increasingly marginalized. Kragelund (2017) noted that while LCPs are hyped as the panacea to resource led development in Zambia, the chance that they will really change anything is extremely slim.

5.1.3 Local Content in Zimbabwe’s Mining Sector

Background

Zimbabwe has a diversified natural resource base with more than 40 different minerals. The major minerals include gold, coal, diamond, platinum and chromite. There are over 800

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operating mines ranging from artisanal and small-scale mines to large scale world class mines. The mining sector contributes significantly to the Zimbabwean economy. In 2014, mining products constituted about 58% of the economy’s total exports and employed over 45,000 people. In 2015, mining activities constituted about 15% of nominal Gross Domestic Product (GDP). The sector also contributes to more than 50% of Foreign Direct Investment (FDI).

Legal Framework for Local Content in Mining

Provisions for local content in the mining sector are laid out in the Mines and Minerals Act 21 OS as well as the Indigenisation and Economic Empowerment (IEE) Act 14 of 2007 which is to provide for further indigenisation of the economy and the economic empowerment of Zimbabweans. Finally, recent amendments to the indigenisation policy can be found in the Finance Act 2018.

Forms of Local Content

In 2007, the Zimbabwean government enacted the Indigenisation and Economic Empowerment Act to guide indigenisation objectives and procedures in all productive sectors. Though the IEE Act was to guide indigenisation in all productive sectors, its emphasis was on the mining sector. The Act sought to increase participation of previously marginalised members of the Zimbabwean economy and to correct imbalances in resource ownership in Zimbabwe. The IEE Act has a key focus on local participation or ownership. The Act aimed to give indigenous Zimbabweans a controlling stake in foreign-owned companies.

Through the IEE Act, at least 51% of the shares of every public company and any other business in Zimbabwe were to be owned by indigenous Zimbabweans within 7 years. Out of the 51%, 10% was to be owned by employees through an Employee Share Ownership Scheme or Trust (ESOS/T); another 10% given to the community through a Community Share Ownership Scheme or Trust; 15% to be acquired by any indigenous Zimbabwean possessing the resources and the remaining 16% to go to a National Indigenisation and Economic Empowerment Fund (NIEEF) established by the IEE Act. The Act however provides a US$ 500,000 threshold below which a company is not required to comply with the provisions.

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87 Ibid
88 Ibid
91 Ibid
92 CSOS/Ts are seen as a way of broadening local communities’ participation in shareholding within several companies operational in their areas and to compensate them for the negative effect that mining had on the community.
in the IEE Act\textsuperscript{94}. Also, foreign investors were excluded from some sectors\textsuperscript{95} of the economy except with prior permission from the Ministry of Indigenisation. Again, the Act was to promote procurement of goods and services form indigenous businesses. About 50\% of all goods and services are to be procured from indigenous businesses\textsuperscript{96}.

The Mines and Minerals Act 21 05 provides for the training and employment of citizens as well as local procurement.

**Implementation: Successes and Challenges**

Compliance to the IEE Act has generally been slow. By 2016, only one mining company, Blanket Mine, had fully complied with the IEE Act. Even in this case, the shares were to be paid for through the forfeiture of future dividend streams\textsuperscript{97}. Some of the issues inhibiting compliance included lack of institutional capacity. The government was also unable to mobilise enough funds to pay foreign companies the compensation required for the transfer of shares to indigenous people under the IEE Act.

The existence of different licensing bodies also led to inefficiencies which affected compliance. For example, the Mining Commissioner is in charge of approving staking agents (persons who locate land for mineral prospecting), the Minister of Indigenisation is responsible for awarding exploration licenses, while the President awards special mining leases and special grants. This has created inconsistency, unpredictability and non-transparency in the licensing regime. Also, different Ministers of Indigenization had different interpretation of the IEE Act. For instance, one Minister of Indigenisation, Savior Kasukuwere, adopted a one-size-fit-all interpretation of the IEE Act in dealing with different companies in different sectors. Mr. Kasukuwere’s goal was to achieve the 51\% indigenous stake in all foreign-owned business in the economy. Another Minister of Indigenisation, Nhema, argued that the law permitted him to be flexible in targeting the sectors\textsuperscript{98}.

The IEE Act has been criticised severally for creating a hostile environment for investments. The unstable economic environment coupled with the indigenisation policy led to the closure of several companies and several projects were halted. The Affirmative Action Group argued that, companies were selling their assets in order to avoid being targeted for indigenisation. The level of inconsistency and unpredictability in the law’s application led to investor panic, which in turn led to calls to review the Act. In March, 2018, the IEE Act has been amended to remove the requirements of foreign investors to give up 51\% of their shares in all sectors except in the mining of diamond and platinum\textsuperscript{99}. The main reason behind the amendment


\textsuperscript{95}Reserved sector included; Transportation, retail and wholesale, barber and beauty shops, employment agencies, valet services, grain milling, bakeries, tobacco grading and processing, local arts and crafts and artisanal mining

\textsuperscript{96}Frameworks, Procedures and Guidelines For Implementing the Indigenisation and Economic Empowerment Act [CHAPTER 14:33], Available at: http://www.czi.co.zw/images/downloads/5.pdf Accessed 18th March 2018


\textsuperscript{99}Veritas (2018), “14 March 2018 Amendments of Zimbabwe’s Indigenisation and Economic Empowerment Act”, Available at:
was to attract foreign investment into Zimbabwe\textsuperscript{100}. Also, under the amendments permission for foreign participation in reserved sectors was to be granted under the condition that the foreign investor provides significant and sustainable employment creation, transfer skills and technology to Zimbabweans, and the creation of sustainable value chains among others. However, in April 2018, the government introduced more uncertainty by compelling mining companies to list majority of their shares on Zimbabwe’s stock exchange\textsuperscript{101}.

5.1.4 Local Content in Ghana’s Mining Sector

Background

Several minerals are mined in Ghana including bauxite, manganese and diamond however gold is the principal mineral mined. According to the World Gold Council Ghana is Africa’s second largest gold producer. Gold mining contributed an average of 5.2\% of Ghana’s Gross Domestic Product (GDP) between 2006 and 2016\textsuperscript{102} with gold exports representing a third of merchandise exports in 2015\textsuperscript{103}. Gold mining has consistently attracted foreign investors, and players in the market currently include AngloGold Ashanti, Chirano Goldmines, Newmont Ghana and Golden Star\textsuperscript{104}.

Legal Framework for Local Content in Mining

Provisions for local content in mining were present in the Minerals and Mining Law (PNDC Law 153) since 1986 and are present its 2006 amendment (Minerals and Mining Act 2006, Act 703). However, actual implementation of these local content provisions begun with the passage of the Minerals and Mining (General) Regulations 2012 L.I. 2173. The provisions of the Ghana Investment Promotion Centre (GIPC) Act 2013 concerning local content requirements are also applicable to the mining sector. There are no regulations dedicated solely to local content in mining.

Forms of local content

The main focus for local content in the mining sector, as provided by Act 703 and LI 2173, is to grow local employment in the sector, to ensure growth in local procurement and for training of Ghanaians in the mining sector\textsuperscript{105}. This is similar to the targets of the local content

\textsuperscript{100}Sengere L. (2017), “Breaking: Indigenisation Act Amended, Removing Requirement for Foreigners to Give Up 51\% ownership”, Available at: https://www.techzim.co.zw/2017/12/government-amend-indegenisation-act-removing-51-


\textsuperscript{105}Minerals and Mining (General Regulations), 2012. L.I. 2173.
policy in Botswana, Zambia and Zimbabwe, although Zambia and Zimbabwe placed greater premium on ownership in large scale mining.

Skills training and technology transfer to citizens is one of the requirements of the local content policy

Photo credit: https://www.tullowoil.com/media/case-studies/vocational-training-in-ghana

In line with this increasing employment and local procurement, Section 50 of the Act 703 requires each mining lease holder to submit a detailed programme for the recruitment and training of Ghanaian personnel. This in pursuance of a broad localisation programme whose aim is the training and employment of Ghanaians towards the eventual replacement of expatriate personnel (L.I. 2173, section 28). Section 105 of ACT 703 also specifies that preference shall be given to materials and products made in Ghana as well as service agencies located in the country and owned by citizens in the conduct of mining operations. These provisions are a prerequisite for the granting of the mineral license and thus should be reflected in the proposals presented as part of the application for mining licenses (L.I. 2173, Section 11).

In relation to ownership, Section 83 of ACT 703 reserves small scale mining for citizens. Although rights for mining of industrial minerals are given preferably to citizens, non-citizens may apply for mineral rights in respect of industrial minerals once the proposed investment in the mineral operation is $US 10million or above (Act 703, section 79). In Botswana, mining of industrial minerals is also reserved solely for citizens.

Implementation: Successes and Challenges

It has been said that despite the years of mining, particularly gold mining in Ghana and the contribution of mining to GDP, the industry has still not been sufficiently integrated into the local economy and not much attention has been given to integration and value addition\textsuperscript{106}. In Botswana, a strategic focus on value addition, particularly cutting and polishing of diamonds, as a means for boosting local employment ensured the significant growth in employment and

\textsuperscript{106} Dr. Tony Aubynn 2018, A presentation delivered at a Local Content Workshop on the 8th of February 2018
the local cutting and polishing industry over time. The strategic focus on value addition was
guided by a long-term agenda of diversification (the Economic Diversification Drive). Ghana
lacks such a long-term strategy that guides implementation of local content policies therefore
such policies risk being untargeted therefore unable to yield satisfactory results.

The Minerals Commission of Ghana is however collaborating with the Chamber of Mines to
set achievable local sourcing targets. The Commission maintains a local procurement list
which is updated annually and also monitors compliance with local procurement
requirements. The Minerals Commission reports that the total value of local sourcing
between 2014 and 2017 was less than US$4 billion but it is hoped that this figure will be
increased to US$10 billion by the end of 2018\textsuperscript{107}.

The magnitude of backward linkages for Ghana is thought to be unclear and it is the general
consensus that technological capacity of local firms is inadequate to position local firms to
compete with foreign companies for mining concessions. However, Owusu and Bloch
(2012)\textsuperscript{108}, in a study to challenge the enclave thesis in the gold mining sector of Ghana note
that gold mining is more deeply linked into the Ghanaian economy through a set of promising
backward linkages.

Defining backward linkages as arising out of a set of activities established to supply inputs into
the production of a commodity, the study by Bloch and Owusu make the case for backward
linkages based on the number of mining equipment and service companies that are registered in
and operate in Ghana (both local and foreign) as well as the number of Ghanaians these
companies employ. The study reports that the Minerals Commission estimated employment
of some 3,500 Ghanaians for 2008 in the support service category. It also points out a large
aggregate spend by gold producing companies on local purchases (up to 20\% of expenditures
or US$467 million).

The Chamber of Mines reports that, in 2015, the mining industry achieved about 73\% of its
planned local purchases per the local content regulations. As at 2016, producing mines
recorded an increase in expenditure from US$ 865 million to US$1.01 billion (15\% increase)
on the purchases of goods and services in country which represented 31\% of realised mineral
revenue\textsuperscript{109}.

\textsuperscript{107} ibid
http://ugspace.ug.edu.gh/bitstream/handle/123456789/6260/Linkages%20in%20Ghana%20s%20gold%20mining%20industry%20Challenging%20the%20enclave%20thesis.pdf?sequence=1&isAllowed=y Accessed 20th April 2018
\textsuperscript{109} Performance of the Mining Industry in 2016, Ghana Chamber of Mines. Available at
5.2 Local Content in Oil and Gas

The oil and gas sector is replete with dedicated local content policies\textsuperscript{110}. This is because of the enclave nature of the sector (unusually high capital to labour ratio therefore hires fewer people) which forms a barrier to entry and ordinarily precludes indigenes of oil and gas regions from the acquisition of expertise for oil and gas exploration, development and production\textsuperscript{111}. The results of imposing local content policies in the oil and gas sector have been mixed. The case of Nigeria and Brazil are discussed below and key lessons are drawn out for Ghana.

5.2.1 Local Content in Nigeria’s Oil and Gas Sector

**Background**

Nigeria is Africa’s largest producer of crude oil\textsuperscript{112} with a long history of crude oil production dating back to the 1950’s\textsuperscript{113}. Overtime, the Nigerian economy has come to depend heavily on crude oil, with the contribution of oil to GDP increasing from 9.27% in the 1970s to 37.44% by 2009\textsuperscript{114} and dipping to 27.17% by third quarter of 2017\textsuperscript{115}. The share of oil exports in total exports also grew from 6.65% in the 1960s to 97.03% in 2009\textsuperscript{116} and dipped to 83.17% in the third quarter of 2017\textsuperscript{117}. The share of oil revenue in government revenue in the same vein increased from 26.5% in the 1970s to 78.7% in 2009\textsuperscript{118} and to 77% as at 2017\textsuperscript{119}.

At the beginning of oil and gas exploration activities in Nigeria circa 1956 till 2006, the industry was dominated by major International oil companies (IOCs) and this led to a massive outflow of resources in the form of payment for training, procurement and remuneration of


\textsuperscript{111} Local Content: Strengthening the Local Economy and Workforce, (March 2015). NRGI Reader. Available at https://resourcegovernance.org/sites/default/files/documents/nrgi_primer_local_content.pdf . Accessed 17\textsuperscript{th} March 2018


\textsuperscript{113} Chidiebere E., (2008). The Contributions of the Oil Industry to Nigerian Economic Growth and Development. Available at http://196.222.5.9:8080/xmlui/bitstream/handle/123456789/3654/Ezeibe%20Chidiebere.pdf?sequence=1Accessed 17\textsuperscript{th} March 2018


\textsuperscript{115} Nigerian Gross Domestic Product Report, Quarter 3 2017, National Bureau of Statistics. Available at www.nigerianstat.gov.ng/download/678Accessed 17\textsuperscript{th} March 2018

\textsuperscript{116} ibid

\textsuperscript{117} Foreign Trade in Goods Statistics, Quarter 3 2017, National Bureau of Statistics. Available at www.nigerianstat.gov.ng/download/685Accessed 17\textsuperscript{th} March 2018

\textsuperscript{118} ibid

expatriates\textsuperscript{120}. Capital flight between 1956 and 2006 is said to have amounted to $380 billion with about 2 million estimated losses in job opportunities\textsuperscript{121}. As at the year 2000, 95% of Nigeria’s petroleum production was supplied by five IOCs namely Shell, Total, Chevron, ExxonMobil and Agip\textsuperscript{122}. Very few indigenous firms participated in and benefitted from oil and gas activities (5% of estimated annual contract values of between $10 billion and $12 billion)\textsuperscript{123}. This gloomy picture pointed to the need for a local content framework that would ensure that Nigerians were given the opportunity to participate and benefit from the oil and gas resources of Nigeria.

Legal Framework for Local Content in the Oil and Gas Sector

Local content provisions for Nigeria’s oil and gas sector are set out in the Nigerian Oil and Gas Industry Content Development Act 2010 Act No. 2 (NOGICD), an Act dedicated specifically to achieving local content goals in the upstream petroleum sector.

Forms of local content

As is typical with the upstream oil and gas sector, the main strategy of the NOGICD Act is to increase indigenous participation in oil and gas exploration and production activities as well as in the provision of goods and services (procurement). It also aims to increase the employment of Nigerians along the entire upstream petroleum value chain and to foster the domiciliation of oil and gas activities. The NOGICD Act specifies detailed targets that cover the percentage of Nigerian content in engineering, fabrication and construction, procurement of equipment and other goods, all related services, research and development, health safety and environment among others.

Implementation: Successes and Challenges

The Nigerian Content Development and Monitoring Board (NCDMB), the board in charge of implementing the NOGICD Act and monitoring compliance reports that, many successes have been chalked since the commencement of implementation of the NOGICD Act. Notably, over $500m in foreign direct investment (FDI) has been attracted into the petroleum upstream sector over the period 2010 to 2015\textsuperscript{124}.


Fabrication and construction activities have also been fully domiciled\textsuperscript{125} and it is noted that fabrication is the most developed manufacturing area in Nigeria’s petroleum industry\textsuperscript{126}. About 87\% of total oil and gas contracts were won by indigenous oil companies\textsuperscript{127}. The NCDMB further reports, based on information provided via the Nigerian Content Compliance Certificates (NCCC), that 70.87\% of the contract values awarded in the upstream sector went to Nigerians between 2010 and 2012. Also, $110.8 million was expended on training of indigenes, with employment and training man-hours of 4.84 million within the same period\textsuperscript{128}.

Through the NCDMB’s strategy\textsuperscript{129} to enhance indigenous ownership, manning and maintenance of onshore and offshore rigs as well as marine vessels, many Nigerian companies are reported to have acquired marine vessels for example the Akpevweoghene pipe lay barge and oil rigs such as Seawolf Onome\textsuperscript{130}.

\footnotesize{\textsuperscript{125} NCDMB Targets 100\% Domiciliation of FPSO Integration. (August 7\textsuperscript{th}, 2017). Available at https://www.ncdmb.gov.ng/2017/08/ncdmb-targets-100-domiciliation-of-fpso-integration/Accessed 17\textsuperscript{th} March 2018}
\footnotesize{\textsuperscript{126} Balouga, J., (2012). Nigerian Local Content: Challenges and Prospects. International Association for Energy Economics, 3rd Quarter, pp. 23-26.}
\footnotesize{\textsuperscript{127} Ibid}
\footnotesize{\textsuperscript{129} Marine Vessels Ownership Strategy (MAVOS) and the Offshore Rig Acquisition Strategy (ORAS)}
\footnotesize{\textsuperscript{130} Nigerian Content Development. Presentation at a World Bank Event. (Undated). Available at http://www.worldbank.org/content/dam/Worldbank/Event/EI%20%20Local%20Content/7E%20Nigerian%20Content%20Development%20-%20Nwapa%20Keynote%20Day2.pdfAccessed 17\textsuperscript{th} March 2018}
As at February 2018, some of Nigeria’s local content ambitions were; increasing indigenous oil production from the current 10% to 30% over the next five years. The Nigerian Content Development and Monitoring Board (NCDMB) is to pursue a strategic plan that will ensure that the Floating Production Storage and Offloading (FPSO) vessel is wholly constructed in-country within the next 10 years. Further, the “Project 100” has been proffered where 100 service companies which have inadequate capital to acquire the latest technology and skill will be identified by the federal government and guaranteed work and financial support.

The application of the Nigerian Content policy in the upstream sector of its oil and gas industry however has not been without challenges. The very targets set in the Act have been said to be unattainable. The executive secretary of the NCDMB is reported to have said that if the NCDMB was to fully implement the NOGICD Act, crude oil production might have to be shut down because some of the targets of the Act were unfeasible given inadequate capacity and technology. For instance, section 53 of the Act requires that all fabrication and welding activities should be carried out within the country. However, there are no dock yards where big vessels could be fabricated from scratch.

The issue of corruption in Nigeria has been a bane to the development of indigenous companies. It is reported that, goods and services provided are “diluted” (quality and quantity) because a portion of the contract value is split between the buyer and seller instead of being used to procure the requisite quantity and quality of goods and services. Further, the bidding process for contracts for the supply of goods and services is sometimes manipulated and both the indigenous bidding companies and the foreign contract-awarding companies are involved. This comes as no surprise given that Section 92(1) of the NOGICD Act allows the NCDMB to accept gifts of money, land or other property on terms and conditions specified by the person or organisation giving the gift. This provision potentially creates a conduit for corrupt acts and always puts the independence of the board in question. The occurrences of corruption hamper the development of the indigenous companies as only a few “well-connected” companies are able to land contracts. Also, overall competition among the indigenous companies is undermined.

It is reported that, the NCDMB is unable to effectively handle the issue of fronting. Therefore, some 70% of the contracts awarded to Nigerian companies are actually executed in other countries and this defeats the primary objective of developing indigenous capacity.

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132 ibid
136 ibid
Inadequate competency, both technical and managerial, is noted to affect the ability of indigenous companies to obtain requisite certification. Hence, the companies lose out on bids or contracts\textsuperscript{138}. Given that most indigenous companies are relatively small in size, the contracts are sometimes too large and complex. The companies themselves suggest that it would be better if these contracts are broken down into smaller packages or the indigenous companies may merge into larger companies to be able to take advantage of these contracts. However, there is a strong reluctance among the indigenous countries to collaborate and to enter strategic partnerships or merge into larger units\textsuperscript{139}.

The NOGICD established the Nigerian Content Development Fund whose aim is to fund the implementation of Nigerian content development in the oil and gas industry (Section 104 of NOGICD). It is reported that as at 2016, the Nigerian Content Fund had accrued only US$600 million and only three operators had so far benefitted from the fund including Lagos Deep Offshore Logistics (LADOL), Starz and Vandrezzer. This was noted to be woefully inadequate and one reason for this was inability of companies to repay for the loans given via the fund\textsuperscript{140}.

5.2.2 Local Content in Brazil’s Oil and Gas Sector

Background

Brazil holds the $15^{th}$ largest world proven reserves of oil at 12.67 billion barrels and was ranked $12^{th}$ in world crude oil production in 2015\textsuperscript{141}. Current production stands at 2.5 million bopd and average total exports amounted to US$2.75 billion between 2014 and 2017\textsuperscript{142}. In 2006/7, discoveries were made of massive reserves of Pre-salt oil and it was reported that pre-salt oil would double oil reserves to 31 billion barrels and position Brazil as a net exporter of oil and oil products\textsuperscript{143}. The contribution of Brazil’s oil and gas sector to GDP increased from 3% in 2000 to 13% in 2014\textsuperscript{144}.

Legislation of local content policies in the oil and gas sector of Brazil commenced in 2003 with the establishment of the National Agency of Petroleum, Natural Gas and Biofuels (Agencia Nacional de Petroleo Gas Natural e Biocombustiveis (ANP)), the Brazilian petroleum regulator and the agency responsible for monitoring of local content. The National Oil and Natural Gas


\textsuperscript{139} ibid


\textsuperscript{142} ibid

\textsuperscript{143} Magalhaes A. S., Domingues E. P., (2014), Blessing or Curse: Impacts of the Brazilian Pre-Salt Oil Exploration. Available at https://ac.els-cdn.com/S1517758014000356/1-s2.0-S1517758014000356-main.pdf?_tid=e3e6a68b-9caf-4974-96c2-458c80ecf88f&acdnat=1523977170_e50809759527196b550a663495481900. Accessed 17th April 2018

Industry Mobilization Program-PROMINP 145 was also established to maximise the implementation of local content.

Brazil’s oil and gas sector contributed 13% of GDP in 2014

Legal Framework for Local Content in the Oil and Gas Sector

Local content requirements are an integral part of oil and gas contracts in Brazil. The National Petroleum Law of 1997 specifies that competitive bidding for petroleum contracts must include minimum thresholds for local content and this was a critical consideration for the award of bids. The Law No. 9.478 of 1997 established the National Energy Policy Council which is responsible for local content and the Law No. 12.351 of 2010 contains specific requirements for contracts in Pre-Salt and Strategic Area Investments. In 2016, a decree (Decree No. 8.637) eased some of the local content requirements and expanded the list of activities qualifying for the calculation of local content percentages. Benchmarks for local content requirements including exemptions and penalties for non-compliance are contained in the Model Concession Contract for Exploration and Production of Oil and Gas 2015 (Model Contract) 146. Local content certificates, established by the ANP Resolutions No. 37/2007, 38/2007 and No. 19/2013, are the source of proof that the specified local content targets have been met.

Forms of Local Content

The local content framework for Brazil contains no requirements for employment and training but focuses on local procurement and technology transfer. Holders of concession rights are required to make sure a particular percentage of goods and services are locally sourced in the

145 Programa de Mobilizacao da Industria Nacional de Petroleos e Gas Natural
http://www.prominp.com.br/promin/en_us/content/about-the-program.htm Accessed 17th March 2018

146 Local Content; Brazil-Petroleum. (2017) Columbia Center on Sustainable Development. Available at
performance of their contracts. Article 20.1.2 of the Model Concession Contract 2015 requires that the concessionaire give preference to goods and services provided by Brazilian suppliers given that these goods and services are competitive with non-Brazilian supplies in terms of price, time, delivery and quality. In lieu of technology transfer, the Model Contract (Article 24) requires that concession holders spend 1% of gross revenue on research and development and direct investment in technological innovation for suppliers is considered as an activity which qualifies for the calculation of local content percentages (as per the 2016 decree).

Implementation: Successes and Challenges

Local content policy in the oil and gas sector was long identified by the Brazilian government as a tool to stimulate industrial growth and subsequently economic growth. Therefore, since 1999, bidders’ local content offer has been included as one of the three bid factors that determine a winning bid.

There are recorded successes of the implementation of local content in Brazil’s upstream oil and gas sector along all segments of the supply chain. Notably, the local content policy supported industrial growth because it allowed the entrance of several new domestic players into the industry. It also aided the capacity development of domestic companies in the capital goods industry and in manufacturing and fabrication. The number of employees in the naval industry is reported to have increased from less than 3000 in 2003 to over 70,000 by 2013 due to increased demand from local content commitments. Global Original Equipment Manufacturers (OEMs) within the country substantially increased their investments and established Research and Development Centres in Brazil. Over the period 2003 to 2010, domestic industrial sector participation in the oil and gas sector of Brazil had increased from 57% to 75% representing an additional value of US$21.5 billion worth of domestic goods and services. Additionally, over 875,000 jobs were created during the period.

The main bane of the local content structure pursued by Brazil was its impact on investments due the high cost of compliance and the attached heavy penalties for non-compliance. Critically, the local content policy lacked an implementation plan and was executed without consideration of the existing in-country capacity. Further, the policy was imposed without realistic targets and lacked the requisite metrics or indicators that could correctly measure outcomes or results.

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148 ibid@130
149 ibid@130
150 ibid@130
151 Alusio de Lima-Campos (2013). Local Content Requirements in the Oil and Gas Sector. Available at www.worldbank.org/content/.../EI%20%20Local%20Content/Local%20Content%20R, Accessed 17th April 2018
153 ibid
154 ibid
155 ibid
156 ibid
Over the period 1999 to 2015, the government consistently sought to improve the local content system by incorporating new criteria at each bidding round. Between the 7th bidding round in 1999 and the 13th round in 2015, the government adopted a local content table which contained as many as 90 items with excessive levels of local content commitment for each item. Compliance proved cumbersome given the bureaucratic, demanding and complex nature of the policy. This cumbersome nature of compliance caused international operators to default leading to the excessive application of penalties. Penalties meted out were usually transferred to the supply chain making them counterproductive.

It is also noted that the tenet of the local content policy was undermined in that, some of the requirements granted a certain level of protectionism for some domestically produced goods and services. This led to international operators having to pay higher prices for the domestic goods and services and to delays in delivery. Overall, investment decisions in the upstream oil and gas sector of Brazil were stalled.

A review of the local content requirements was initiated in 2016 through a decree (Decree No. 8.637) that eased some of the local content requirements. The 90-item local content table has been reduced to two broad items covering exploration and development and local content will no longer serve as a bid factor but will still be included in contracts.

5.2.3 Local Content in Ghana’s Oil and Gas Sector

Background

Oil in commercial quantities was discovered in Ghana in 2007 and production commenced from the first wells at the Jubilee oil field in 2010. Over the period 2010-2016, Ghana has produced an average of 88,494 barrels of oil per day (bopd) and a total of 194.2 million barrels from its three main fields including the Jubilee, Tweneboa-Enyera-Ntommie (TEN) and Sankofa-Gye-Nyame (SGN) fields. Average contribution of oil and gas to GDP (2010 to 2016) is approximately 5.2% and revenues that have accrued from the sector over the same period amount to about US$3.45 billion.

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158 ibid
159 ibid
163 ibid
165 Productions and Liftings; Analysis of the Production and Lifting Of Crude Oil From 2010-2016. Public Interest and Accountability Committee (PIAC). Available at http://www.piacghana.org/portal/29/31/productions-and-liftings. Accessed 14th April 2018
The greatest desire for Ghana upon discovery of oil was to ensure that maximum benefits were derived from the resource. To achieve this end, major policies were formulated including the local content and local participation policy. The main objectives of this policy (which later metamorphosed into regulations) remain to maximize patronage of Ghanaian goods and services in the upstream oil and gas activities, to maximize in-country spending by oil and gas companies, to maximize employment and training of Ghanaians in the upstream oil and gas industry, to facilitate technology and skills transfer to Ghanaians and to enhance competitiveness of Ghanaian firms.

**Legal Framework for Local Content in the Oil and Gas Sector**

The provisions for attaining local content in the upstream oil and gas industry of Ghana are set out in the Petroleum (Local Content and Local Participation) Regulations 2013, LI 2204. The GIPC Act 2013 which contains local content requirements for foreign investors is also applicable to the oil and gas sector.

**Forms of Local Content**

The main focal areas for the LI 2204 are local participation, local procurement including in-country spending, the employment of Ghanaians within the industry, the transfer of skills, expertise development, transfer of technology and know-how as well as active research and development. This is similar to the requirements of Nigeria’s NOGICD Act. However, while the LI 2204 specifies local content levels that should be achieved and provides the time frame within which these levels should be attained, the NOGICD Act provides specific content levels but without distinct timeframes for achievement.

**Implementation: Successes and Challenges**

After about four years, the greatest success attained from the implementation of the LI2204 as revealed by the Petroleum Commission is in the area of the number of Ghanaians employed in the sector as well as the value of services or the value of contracts that have been awarded to indigenous Ghanaian companies. At the commencement of implementation of the LI2204,

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less than 100 Ghanaian firms were registered and operating in the country. As at 2017, there were over 300 indigenous Ghanaian companies (per the Registrar General’s records) registered and providing goods and services to the industry\(^\text{167}\).


Further, the Petroleum Commission reports that the Sankofa-Gye-Nyame (SGN) project contributed 320 contracts worth $1.8 billion awarded to indigenous Ghanaians and about 56% of the workers on the SGN Floating Production Storage and Offloading (FPSO) vessel were Ghanaians\(^\text{168}\). For the Eni Offshore Cape Three Points (OCTP), total contracts awarded till date amounts to US$6.2 billion and out of this, the value of the contracts awarded to locals amounts to $US1.75 billion which is 28.23% of the total value of contracts awarded\(^\text{169}\).

From the TEN and Jubilee fields, total value of services procured from locals increased by almost 200% from US$169 million in the third quarter of 2015 to US$489 million in the third quarter of 2016\(^\text{170}\). In terms of localisation or employment, the PC records significant improvement. The share of indigenous employees in the sector is currently 75-78%, mainly in junior and middle level and managerial roles\(^\text{171}\).

Implementation of the LI2204 has not been without constraints. For the upstream petroleum sector of Ghana, the Petroleum Commission indicates that, in the formulation of the LI2204 currently being implemented, there was a study on in-country capacity based on consultations with key stakeholders. However, an in-depth capacity audit was not carried

\(^{167}\text{ibid}\)

\(^{168}\)Presentation by Theophilus N Ahwireng; Ag. Chief Executive Officer, Petroleum Commission on “Investment in Exploration and Development and Maximizing Indigenous Participation in the Upstream Sector” at Energy Summit Accra, 13th–14th June, 2017

\(^{169}\)ibid

\(^{170}\)ibid

out. The Petroleum Commission admits that, because of the lack of a thorough capacity audit, most of the targets within the LI2204 were highly ambitious and unrealistic. In light of this, some of the targets remain unattainable within the timeframes specified because capital intensity and technological demands. This trend also runs through for Nigeria and Brazil where due to lack of capacity audits, targets set for local content were unattainable and led to non-compliance.

The LI2204 mandates a 5% local participation in exploration and production activities and 10% local participation for the provision of goods and services. It has been noted that of the over 300 indigenous companies registered, less than 5% possess the financial muscle or have built the requisite capacity to effectively contribute the 5% capital requirement and other technology requirements for exploration and production (E&P). Exploration and Production is very risky; the probability of success in prospecting for oil is 10% and exploration and development costs for deepwater resources can range between $100-150 million. Five per cent (5%) of this amount is quite huge, keeping in mind that the company can end up with a dry well (no oil found). For the Exxon Mobil E&P for example, for the initial exploration period, the local partner may be required to bear $20 million cash call. Very few companies were noted to be able to handle this cash call.

For the supply of goods and services, better progress has been achieved with the 10% local participation. However, it is noted that, only a few of these local companies are successful and have been able to sustain their businesses by progressively building capacity. For example, Seaweld and Amaja Oilfield Services companies were noted to have been successful in fabrication for the Floating Production Storage and Offloading (FPSO) vessels. Conship,

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173 Ibid
175 Ibid
Bypit and Macro Logistics Shipping were noted to have been successful in the supply of logistics for the sector\textsuperscript{176}. This is comparable to the case in Nigeria where fabrication and construction activities have also been fully domiciled with about 87\% of such contracts won by indigenous oil companies.

The key hindrance to the active participation of the other companies in tenders and contracts (and then by so doing building capacity) is their inability to obtain the requisite internationally recognized (ISO/TS 29001) certifications just like in Nigeria where the lack of requisite certification causes indigenous oil and gas companies to lose out on bids for contracts. It is expensive to build the capacity required to obtain these certifications and the certifications themselves are expensive. This also directly affects employment within the sector; although employment of indigenes has increased, most indigenes are employed at the junior level and in managerial roles. Expertise are lacked in the core technical functions (for example petroleum engineers, Geoscientists, reservoir engineers etc.) leading to fewer Ghanaians being employed in technical roles. This is because the key criteria for employing technical persons is the level of experience and after training technical persons, it usually takes 7 to 9 years to gain an appreciable level of experience and then obtain certification.

On the issue of building the capacity of indigenous companies to effectively participate in the supply of goods and services, it is noted that the indigenous companies themselves do not invest in improving their capacity. They become content with merely earning dividends rather than reinvesting those dividends to acquire further expertise or technological equipment. It is noted that sometimes this may be a conspiracy (fronting) between the indigenous and foreign companies where the indigenous company does not play a part in actual implementation of the contract but only benefits from dividends. This undermines the objectives of the LI2204 and becomes costly to the state. Nigeria also faces the challenge of fronting and it is reported that the NCDMB is unable to effectively deal with the issue of fronting.

\begin{figure}[h]
\includegraphics[width=\textwidth]{image1.png}
\caption{With the supply of goods and services to Ghana’s oil and gas sector, better progress has been achieved with the 10\% local participation target.}
\end{figure}


\textsuperscript{176}ibid
5.3 Local Content in Downstream Petroleum

This section discusses the legal framework and experiences for local content in the downstream petroleum of South African and Ghana. The discussions will be followed by a summary of the draft local content policy for Ghana’s downstream petroleum and highlights key lessons from South African’s experience.

5.3.1 Local Content in South Africa’s Downstream Petroleum Sector (Liquid Fuels)

**Background**

Between 1940 and 1960, the petroleum downstream industry in South Africa was identified as a catalyst for investment and development. During this period, the regulatory environment was mostly favourable to private oil companies. For instance, price was regulated to guarantee return on investment and imports of refined petroleum products were also regulated to protect local refineries. Thus, private oil companies in South Africa enjoyed high profit margins.

From 1960 to 1994, the profit margins in the downstream petroleum industry began to dwindle as a result of increasing competition. In response to this, the State considered concluding a convention generally referred to as the Ratplan with the oil companies and the Motor Industries Federation. Provisions in the Ratplan sought to develop a white dominated downstream petroleum sector by creating capital for white people and addressing white unemployment in urban areas. Though the Ratplan was never ratified, it served as an effective regulatory guide to the industry and the state.

Following South Africa’s first democratic elections in 1994, the post-independence objective of the new State included promoting greater participation of all races in the economy. As part of this objective, the liquid fuels sector was to be transformed to be more competitive with little barriers to entry and to also benefit Historically Disadvantaged South Africans (HDSAs).

**Legal Framework for Local Content in the Downstream Petroleum Sector**

Local content provisions for the downstream petroleum sector can be found in several legislative documents. The key documents that highlights the local content provision however are the Liquid Fuels Charter (LFC), 2000, and the Broad-Based Black Economic Empowerment Act (B-BBEE), 2007.

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178 Ibid

179 Service Station Rationalisation Plan


181 Ibid
Forms of Local Content

In 2000, LFC was concluded between the democratic State and the then 7 major oil companies with the purpose of providing a framework for progressing the empowerment of HDSAs in the industry with reference to the EWP. The signatories of the LFC sought to achieve within 10 years (that is between 2000 and 2010), not less than 25% ownership or control by HDSAs of the aggregate value of equity in the South African oil industry. Specific actions to be undertaken was related to building a supportive culture, promoting employment equity, procurement, building capacity, access and ownership of joint facilities and financing among other things. Table 3 provides a summary of some goals set out in the LFC.

Table 3: Summary of Goals Set Out by the Liquid Fuels Charter

<table>
<thead>
<tr>
<th>Element</th>
<th>Goal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ownership</td>
<td>25% ownership and control by HDSAs of the aggregate value of equity in the South African oil industry.</td>
</tr>
<tr>
<td>Management Control</td>
<td>Control of the entity through majority shareholding, effective controlling shareholding, or majority of board of directors or shareholders agreement.</td>
</tr>
<tr>
<td>Supportive Culture</td>
<td>Appointment of managers (who understand the spirit of these policies) to create a supportive culture and enable an environment for business success.</td>
</tr>
<tr>
<td>Capacity Building</td>
<td>Organise industry and government to work together to address the skills gap facing HDSAs. To include training of HDSA employees on core, priority and scarce skills.</td>
</tr>
<tr>
<td>Employment Equity</td>
<td>Setting and publishing of equity stretch targets and achievements</td>
</tr>
<tr>
<td>Private Sector Procurement</td>
<td>Adopt supportive procurement policies that facilitates and leverage the growth of HDSA companies</td>
</tr>
<tr>
<td>Access and ownership of joint facilities</td>
<td>Fair ownership opportunities for HDSA companies, non-discriminatory access to uncommitted capacity for the movement and storage of crude oil and petroleum products</td>
</tr>
<tr>
<td>Refining Capacity</td>
<td>Oil refiners and synthetic fuel manufacturers to seriously consider selling shares to HDSAs, making refinery capacity available to HDSA companies, including HDSAs companies as joint venture partners in expansion projects.</td>
</tr>
<tr>
<td>Retailing</td>
<td>Creating fair opportunities for entry to the retail network and commercial sectors by HDSAs.</td>
</tr>
<tr>
<td>Wholesalers</td>
<td>Creating fair opportunities for entry into wholesale sectors by HDSAs.</td>
</tr>
</tbody>
</table>

Source: Liquid Fuels Charter (2000)\(^{182}\)

Implementation: Successes and Challenges

In 2010, the Department of Energy (DOE) commissioned an audit to test the level of compliance of each element of the LFC and B-BBEE. The audit was published in 2011 and was known as the Moloto Report\(^{183}\).

Overall compliance level of the LFC and B-BBEE between 2000 and 2010 were 62% and 70% respectively. The top two performing elements of local content in terms of LFC were management control and ownership respectively. The worst performing elements were


employment equity, skills development, and enterprise development. Interestingly, the worst performing element under LFC (enterprise development) was the second best performing element under B-BBEE. Otherwise, the results for the B-BBEE are similar to the results of LFC.

With regards to the individual elements of local content, overall average compliance was 3.5 out of 7 companies. The top two performing elements under LFC, management control and ownership had overall compliance of 88.6% and 86.7% respectively. The bottom three had less than 50% compliance: employment equity (38.2%); skills development (34.5%) and enterprise development (34.4%).

The most successful element was managerial control which achieved 88.6% compliance. Managerial control was also the most successful element under B-BBEE. Despite the high level of compliance, HDSAs mostly occupied positions in human resource, strategy and procurement and not in strategic positions such as finance and planning. Managerial control was followed by Ownership with a compliance level of 86.7%. At the end of the ten years, HDSAs had 18.9% economic and voting rights as against a target of 25%. It was however noted that with the exception of Total South Africa, none of the HDSAs shareholders had fully fulfilled ownership obligations. Also, most of the HDSAs shareholders were passive serial investors with little interest in the downstream sector. Preferential procurement was the third highest performing element under LFC with a compliance level of 68.6%. Generally, transformation within the liquid fuels industry was slow, evident in the few HDSA entrants who still struggle to increase their market share in the industry. Also, compliance was low as most elements achieved a compliance level below 40%. For instance, skills development which is a very important element in achieving sustainable development achieved a compliance level below 40%.

Several challenges were identified for the limited compliance especially with the Liquid Fuels Charter (LFC). Some of the challenges are discussed below. There was uncertainty and reduced clarity in implementation as oil companies were obliged to comply with the B-BBEE Codes as well as the requirements of LFC. For instance, none of the oil companies complied with the provisions for the refining element as this element was not part of the B-BBEE codes. Following the Moloto report, the DOE recognized the need to align the LFC and the B-BBEE Codes in 2015. There was also a major challenge with access to affordable financing options for retailers and wholesalers. Further, the impact of HDSA’s directors were limited as effective legal and financial control of the companies were in the hands of the multinationals, albeit the oil companies were largely successful in the management control element. A significant percentage of the HDSAs directors were non-executives, further curtailting their potential influence. (HDSA executive directors were only 14% of all the directors). The biggest loss of opportunity for the 10-year implementation period was technical skills transfer. Most companies did not have formalized and effective mentorship programs for proper skills transfer, although 55% of total skills spent was on HDSA training.

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185 Ibid
5.3.2 Local Content in Ghana’s Downstream Petroleum Sector

**Background**

The petroleum downstream sector plays a significant role in the Ghanaian economy as it fulfils the majority of transportation needs in Ghana and underpins the survival of other essential businesses in the country. Between 2014 and 2017, the petroleum downstream sector contributed over GHS 46 billion to Ghana’s GDP. This was an average of about 10% of GDP annually.\(^{186}\)

**Legal Framework for Local Content in the Petroleum Downstream Sector**

Activities in the petroleum downstream industry in Ghana are regulated by the National Petroleum Authority (NPA) Act of 2005 (NPA Act 691). The Act also establishes the National Petroleum Authority (NPA) which is mandated to monitor and oversee the activities of the petroleum downstream in accordance with the NPA Act 691.\(^{187}\)

Between 2014 and 2017, the petroleum downstream sector contributed over GHS 46 billion to Ghana’s GDP. Photo credit: https://accountingsoftware.com.ng/accounting-software-for-petrol-station-nigeria-kenya-ghana/

**Forms of Local Content**

With regards to local content in the sector, a draft bill is the making. The bill requires among other things a minimum of 90% local content within 10 years of the commencement of activities of a Petroleum Service Provider (PSP) and a minimum of 51% equity participation.\(^{188}\) Further, a 100% equity participation of Ghanaians for the provision of goods and services in the downstream industry is targeted.\(^{189}\) The policy is to help achieve participation in the big-ticket investments such as those in Gas processing, regasification and refinery where local companies may otherwise not engage. Additionally, the policy is to achieve 98% local

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\(^{188}\) Draft Policy, Local Content and Participation for the Petroleum Downstream Industry

\(^{189}\) Ibid
employment in all aspects of petroleum downstream activities\textsuperscript{190} within 5 years from commencement of operations of a PSP.

\textbf{Implementation: Successes and Challenges}

The story of the development of local content in the downstream sector is quite unique. From 2005 till date, the sector evolved from a place of no local participation to over 70% local ownership without a distinct local content policy. Two main factors accounted for this. First, foreign investors that entered the sector found it cheaper to employ and train locals to undertake certain aspects of the business. This enabled locals to take over many of the operation and marketing roles. Again, the deregulation regime, set in motion with the promulgation of the National Petroleum Authority Act 2005, Act 691 opened up the downstream petroleum market for competition among the service providers\textsuperscript{191}.

Coupled with the regime, the National Petroleum Authority (NPA) mandated local participation as a criterion for granting licenses to foreign players and the foreign companies complied. Gradually, foreign participation has whittled down to 30-35% of the total market share. As at 2005 when the NPA Act was passed there were about 20 local companies in the downstream petroleum sector. Currently there are over 100 local oil marketing companies (OMCs) in operation as well as about 50 local operators for Liquefied Petroleum Gas (LPG). Importation of petroleum products is also solely undertaken by local Bulk Distribution Companies (BDCs)\textsuperscript{192}.

Deregulation and the increase in participation of local actors hasn’t been without issues. Notably, the downstream petroleum sector has become over fragmented as many companies have entered the market. Market share for firms can be as low as 0.05% and margins remain slim as costs of funds eat into their margins. This has created a situation where some local companies voluntarily give themselves up for acquisition by some foreign firms\textsuperscript{193}.

With these issues, and despite the fact that the deregulation process coupled with the capacity building of locals by the foreign companies has worked well to improve local participation within the downstream sector, the Ministry of Energy found it necessary to entrenched local content provisions in a local content policy for the sector. This, according to the ministry is to allow consolidation of the provisions that already exist and to guarantee the consistence and sustenance of local participation within the sector.

A futuristic impact analysis was not conducted prior to the formulation of the policy to determine its true impacts on the sector in particular and the economy as a whole. However, the general concerns are whether local companies over time would be able to operate at optimal efficiency and remain competitive. There are also concerns as to whether fragmented local players will be able to merge in order to enjoy economies of scale. Further, foreign stakeholders/associations have expressed a general discontent with the draft policy.

\textsuperscript{190}Petroleum Downstream activities include petroleum licenses and permits for importation, exportation, re-exportation, shipment, transportation, processing, refining, storage, distribution, marketing and sale in Ghana

\textsuperscript{191}Jacob Amuah (March 8\textsuperscript{th}, 2018). Personal Interview

\textsuperscript{192}ibid

\textsuperscript{193}ibid
Summary Discussions

It is interesting to note that while local content provisions for South Africa’s downstream was motivated by the need to correct racial imbalances in South Africa, local content for Ghana’s downstream is motivated by the need to entrench in law the local content for the sector. Already about 70% of the downstream sector is controlled by Ghanaians, even without distinct local content laws. As Ghana emphasizes local participation in the draft local content downstream bill, it must be careful not to put too much focus on local participation or ownership as it can lose focus on other important elements of local content. Gleaning from South Africa’s experience, too much focus on the ownership element of local content led to very low compliance in the other elements of local content including skills and enterprise development (where compliance was below 40%).


*About 70% of the downstream petroleum sector is controlled by Ghanaians, even without distinct local content laws*
5.4 Local Content in Construction

Local content in construction is mostly found in the procurement regulations of most countries. Countries such as Ghana and Nigeria have however attempted to draft separate legislations for local content in the construction industry. This section explores the experiences of Nigeria and Kenya in this regard. This will be followed by a summary of the draft local content bill for construction that is to be presented to the Ghanaian parliament for passage into law. The section ends by highlighting key lessons from Kenya and Nigeria.

5.4.1 Local Content in Kenya’s Construction Sector

Background

The construction industry in Kenya has been experiencing a boom especially as Kenya works towards Vision 2030. Vision 2030 aims to develop the country’s infrastructure by providing decent housing and creation of resort cities for tourism purposes among others. The real estate sector is also expanding as it responds to the growing middle class. The Kenyan construction sector contributes about 7% to GDP and was valued at USD 3.53 billion in 2015. Data from Kenya National Bureau of Statistics indicates that the construction industry grew by 13.9% in 2015 and by 9.2% in 2016. Employment by the sector also shot up from about 148,000 jobs in 2015 to about 163,000 jobs in 2016. With about 30% of road networks in Kenya requiring rehabilitation and the construction of standard gauge railways among others, the construction sector is expected to grow at an average annual rate of 6.8% up to 2020.

Legal Framework for Local Content in Construction

Like Nigeria, Kenya does not have a distinct local content law for their construction sector. However, existing legal framework for local content in Kenya’s construction sector can largely

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197 Ibid.

be found in the Public Procurement and Disposal Act (No. 3 of 2005)\(^{199}\) and the National Authority Construction Act, (No. 14 of 2011)\(^{200}\). Though both Acts do not explicitly make reference to the “local content” term, the Acts make preferential provisions for local construction firms. Unlike Nigeria, the local content provisions made for the construction sector in the Public Procurement and Disposal Act are quite clear. The Public Procurement and Disposal Act of 2005 was revised in 2010\(^{201}\) to expand on the preferential provisions and give clear margins of preference. Also, under the National Authority Construction Act, (No. 14 of 2011), the National Construction Authority Regulations (2014)\(^{202}\) is provided for different categories of registration within the construction sector in Kenya.

![Photo credit: https://constructionreviewonline.com/2016/01/construction-industry-in-kenya-posts-impressive-growth-despite-high-interest-rates/](image)

**Forms of Local Content**

Local content for the construction sector in Kenya comes in the form of preferential procurement given based on local participation. According to the Public Procurement and Disposal Act (No. 3 of 2005), exclusive preference is to be given to citizen contractors (construction companies wholly owned by Kenyans) for projects below some threshold and is 100% funded by the Kenyan government or a Kenyan body. The threshold for exclusive

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preference as amended in 2013 is one billion Shillings for procurement in respect of road works and works related to electricity conduction and 500 million Shillings in respect to other works.\(^\text{203}\)

Foreign contractors (construction firms not registered in Kenya or a firm registered in Kenya but with more than 51% of its shares held by a non-Kenyan) may apply to benefit from preference schemes when it enters into a joint venture or subcontracting agreement with a local contractor (a construction firm registered in Kenya). The margin of preference to be applied depends on the percentage of local shareholding in a company. When the local shareholding is less than 20%, 6% of the evaluated price of tender shall be applied; an 8% margin of preference when local shareholding is below 51%; and a 10% margin of preference when local shareholding is above 50%.\(^\text{204}\)

The National Construction Authority Regulations of 2011 provides for different categories of registration; from NCA-1 to NCA-8.\(^\text{205}\) While registration of contractors under NCA-1 category is open to both local and foreign contractors, any registration that fall between NCA-2 to NCA-8 are restricted to local contractors only. Thus, this provision has the effect of restricting the type of work that a foreign contractor may undertake. Also, a foreign contractor can apply to be registered under category NCA-1 under some conditions.\(^\text{206}\) The foreign contractor shall subcontract or enter into a joint venture with a local person or firm for not less than 30% of the value of the contract work for which temporary registration is sought. Further, the foreign contractor shall transfer technical skills not available locally to a local person or firm as may be determined by the National Construction Authority (NCA). Under such joint venture, all employees are to be competitively selected from the local labour market unless otherwise approved by the NCA.\(^\text{207}\)

**Implementation: Successes and Challenges**

A major challenge to achieving local content in Kenya’s construction sector is the limited financial capacity of local construction firms, especially in the face of competition. As a result, even with the preferential procurement treatment given to local construction companies, foreign firms (particularly Chinese construction firms) dominate the industry, both in public and private works.\(^\text{208}\) While foreign firms can easily access funding at 3 – 4% interest rate,

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\(^\text{204}\) The Public Procurement and Disposal Act Chapter 412C (2010)

\(^\text{205}\) National Construction Authority Regulations (2014)


\(^\text{207}\) Ibid

their Kenyan counterparts access funds at 17 - 18% interest rates\textsuperscript{209}. Chinese firms represent stiff competition for local construction firms as the former is able to offer lower prices for projects. In 2013, some Kenyan road contractors and engineers headed to court to seek a complete barring of foreign firms from participating in government tenders. As part of their argument, the 500 million Shilling threshold for exclusive preference is limiting as they believed local contractors had the capacity to take up projects above that threshold\textsuperscript{210}.

5.4.2 Local Content in Nigeria’s Construction Sector

Background

The construction industry in Nigeria as in other African countries such as Ghana is extremely diverse. One extreme comprises formally organised firms with focus on large public and private funded construction projects mostly in the oil and gas and hotel industries. The other extreme is made up of a large informal and unregulated sector which focuses on small private projects, many of which are residential projects. While the formal and organised part is dominated mostly by foreign companies and a few Nigerian firms, the informal part is dominated largely by artisans or gangs of labourers and a few small local enterprises\textsuperscript{211}.

\textsuperscript{209}Ibid

\textsuperscript{210}Ibid

construction sector contributes about 16% of GDP and employs about 25% of the total workforce in Nigeria\textsuperscript{212}.

**Legal Framework for Local Content in Construction**

Nigeria does not have a distinct local content policy for the construction sector. However, section 34 of Nigeria’s Public Procurement Act, 2007(Act No. 14) makes preferential provisions for domestic contractors. Nigeria is also in the process of drafting a separate local content policy for the construction sector. This process started in 2012. In 2012, a draft bill for local content in the construction sector passed a second reading in Nigeria’s parliament\textsuperscript{213}, but the bill did not go any further. Reasons for the delay in passing the bill however remain unclear. In May 2017, the committee on local content in the Nigerian House of Representatives promised to pass a bill that extends the current Nigerian Content Act to other key sectors including construction, power and telecommunication\textsuperscript{214}. The Nigerian Content Act in its current state focuses on the oil and gas sector. These plans have been reiterated in 2018 as members of the House committee on local content are collaborating with stakeholders in the construction, power and telecommunications sector to finalise the bill\textsuperscript{215}.

**Forms of Local Content**

The provisions for local content in Nigeria’s Public Procurement Act (2007) are not explicitly stated. Rather, they are broad and indicative. For instance, the Act states in section 34 (1) that, “a procuring entity may grant a margin of preference in the evaluation of tenders, when comparing tenders from domestic bidder with those from foreign bidders”. The key word, ‘may’ in the statement above clearly indicates the limited commitment to local content in the procurement processes.

The draft local content policy seeks to achieve about 60% local content in the construction industry\textsuperscript{216}.

**Implementation: Successes and Challenges**

Local content in Nigeria’s construction sector is still at the formulation stage. As such there isn’t much to report on in terms of successes and challenges in the implementation. It is also unknown whether the new local content provision for the sector will be based on the draft


from the first attempt in 2012. Whatever be the case, it is worth noting that the 2012 draft on local content for the Nigerian construction sector received some criticism. A review by “Engineers against poverty” indicates that the bill did not fully reflect the characteristics of the Nigerian construction industry as the bill was heavily based on the Nigerian Oil and Gas Industry Content Act (2010). They also criticise the bill for not having clear objectives and practical definitions for terms such as what constitutes a ‘Nigerian firm’. Further, they identified potential conflict of interest issues with the appointment of the Minister for Public Works and Housing as Chair of the Nigerian Content Construction Industry Monitoring Board (NCCIMB) Council.

5.4.3 Local Content in Ghana’s Construction Sector

Background

The construction sector in Ghana contributes significantly to the Economy. In 2014, the sector contributed about USD 3.8 billion to Ghana’s GDP. This constituted about 12.7% of GDP. Growth in the construction sector has however been slow in recent years. Major challenges facing the sector are capacity related. There is a limited number of quality local materials, insufficient qualified Ghanaian labour force and high interest rates which makes funding difficult to acquire. There are also regulatory challenges related to obtaining construction permits.
Legal Framework for Local Content in Construction

Like Kenya and Nigeria, Ghana does not have a distinct local content law for the construction sector. The Public Procurement Authority Act, 2003 (Act 663) however makes reference to some preferential treatment to be given to domestic contractors. This notwithstanding, local content provisions in the Act are not clearly or explicitly stated as in the case of Nigeria. For instance, Article 60 section 1 of Act 663 states that “a procurement entity may grant margin of preference for the benefit of tenders for works by domestic contractors”. The Act does not state the exact margin to be offered and the conditions for offering such preference.

In October 2017, the government announced a new local content policy for procurement of works, goods and services. According to the new policy, government is to award 70% of public procurement contracts and projects funded by the tax payer to local contractors in Ghana. Following the announcement, the Association of Ghana Industries (AGI) is leading the draft of a local content bill for the construction sector in Ghana. The bill is to provide the legal framework for achieving the government’s intention of awarding 70% of public procurement contracts to local contractors in the construction sector.

Forms of Local Content

The draft local content bill for the construction sector aims to achieve local participation, local value addition, technology transfer, employment and capacity development. The draft establishes a 10% margin of preference for domestic contractors and reserves certain positions for Ghanaians. The deputy chief executive officer and the head of finance are to be Ghanaians in all joint venture arrangements between a Ghanaian resident and a foreign investor. The draft also reserves the employment of unskilled and middle level skilled personnel for Ghanaians.

With regards to ownership, at least 70% share of the value of a construction project must be held by local firms regardless of the source of funding. However, for projects that have its funding generated in Ghana, 100% share of the value of construction should be held by local firms. For any project, 15% share of the value must be delivered within the first year, 35% to be delivered by the 3rd year and 70% to be delivered by the 6th year. The bill also makes provision for the transfer of technology and also for preferences to be given to goods and services produced in Ghana. Requirements for these two provisions are not explicitly stated.

Summary Discussions

The only local content provision in Ghana’s Public Procurement Authority Act for the construction is the margin of preference condition. Even then, the provisions are just broad statements as the Act is not clear on the exact margins to be given and the conditions for which they should be provided. This could make implementation of the provision difficult. Also, the government’s new policy for achieving 70% local participation in procurement of contracts and projects has not been legislated. This lack of clarity and commitment could be

219Public Procurement Authority Act, 2003 (Act 663)
a reason for the push for a separate local content legislation for the sector. This notwithstanding, while local content provision for the local participation in the sector has been clearly stated, provisions for technology transfer in the draft local content for the construction sector are not explicitly stated.

Though two out of the nine objectives of the draft make reference to fostering technology transfer, the initiatives for achieving this is not explicit in the draft. The draft makes reference to the provision of fiscal and non-fiscal incentives to promote technology transfer. It is unclear what will account for fiscal and non-fiscal incentive and as such it’s equally unclear whether such incentive will be adequate. Thus, technology transfer which is critical for long-term growth and development of the domestic construction industry does not receive as much importance in the draft.

Also, some of the main problems facing the construction sector in Ghana as stated in the draft relates to capacity. They include poor quality of local goods, materials, services and defective works. It also includes the lack of access to affordable short and long-term finances and construction resources. From Kenya’s experience, lack of capacity in terms of finance rendered local construction firms uncompetitive even with the preferential treatment. The success of the draft local content policy for Ghana’s construction sector may be limited in light of the serious capacity issues.

5.5 Local Content in Coastal and Inland Water Trade (Cabotage)

Cabotage is defined as coastal trade between ports within the same country and the exclusive right of a country to reserve coastal trade for vessels with its national flag and owned by its citizens. Given the importance of the maritime industry, both developing and developed countries have provisions that restrict foreign dominance of the industry. A country’s cabotage policy can be strict such as in the United States of America and in the European Union or liberal as in the case of India, Nigeria and Malaysia.

Strict cabotage policies have provisions that restrict ship building, ship ownership and ship manning to indigenous businesses with no provisions for exemption. On the other hand, cabotage policies are made liberal through a waiver system. This section studies the legal framework and experiences of Nigeria and India in the area of local content in coastal shipping. Apart from the fact that both India and Nigeria have a liberal cabotage policy, Ghana’s draft cabotage policy is similar to that of Nigeria and Nigeria is also the first country in Sub-Saharan Africa to protect trade in its maritime jurisdiction. This will be followed by a summary of the cabotage bill that is to be presented to the Ghanaian parliament for passage into law. The section ends by asking critical questions that needs to be discussed and addressed before Ghana passes the Domestic Shipping (Cabotage) bill.

5.5.1 Cabotage in Nigeria

Background

Nigeria’s coastline is about 870 kilometres with about 3000 kilometres of inland waterways. With an estimated 600 trillion feet reserve of gas and an estimated 40 billion barrels of crude oil, the oil and gas sector dominate Nigeria’s short sea trade by about 95%. In 2016, the size of the Nigeria maritime industry was estimated to be about USD 153 billion, representing 30% of GDP at the time. The industry also contributes significantly to the Nigerian economy.

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224 Ibid

For example, between 2009 and June 2015, the government generated about USD 1.99 billion in revenue from the 3% levy on freight\textsuperscript{226}.

To develop the local shipping industry and to enhance indigenous vessel acquisition and ship building, the Nigerian government has at different points in time instituted policies and projects to achieve their objective. Such policies included the acquisition of 24 vessels to boost the local fleet in the 1970s and the establishment of the Ship Acquisition and Ship Building Fund under the National Shipping Policy Act 1987 Cap. 44 LFN 1990. All these initiatives however failed to achieve their objectives\textsuperscript{227}.

\begin{center}
\includegraphics[width=\textwidth]{ship.jpg}
\end{center}

\textit{From 2009 to 2015 the Nigerian government generated about USD 1.99 billion in revenue from the 3\% levy on freight; Photo Credit: https://guardian.ng/business-services/13-years-on-cabotage-law-fails-to-promote-local-shipping-operators/}

\section*{Legal Framework for Local Content in Coastal Trade}

Legal framework for local content in Nigeria’s coastal and inland water trade can be found in the Coastal and Inland Shipping (Cabotage) Act (2003) (also known as the Cabotage Act) and was the first Sub-Saharan African country to regulate trade in its coastal and inland waters\textsuperscript{228}.

\section*{Forms of Local Content}

The objective of the Cabotage Act was to restrict commercial transportation of goods and services within Nigeria’s maritime jurisdiction to vessels flying the Nigerian flag and owned by Nigerian citizens\textsuperscript{229}. Interestingly, the draft Cabotage Act for Ghana follows closely that of Nigeria. According to the Nigerian Cabotage Act, only a vessel that is wholly and beneficially owned and manned by Nigerian citizens, and wholly built and registered in Nigeria shall


\textsuperscript{229}Coastal and Inland Shipping Cabotage Act, 2003, Nigeria.
engage in the domestic coastal carriage or cargo and passengers within the Coastal Territorial Inland Waters, Island or any point within the waters of the Exclusive Economic Zone of Nigeria.

Nigeria also provides exemptions to foreign vessels in situations where there is no local capacity to fulfill the demand of businesses. Implementation of the Nigerian Coastal and Inland Shipping (Cabotage) Act commenced in May 2004. The designated implementation body of the Cabotage Act is the National Maritime Authority (NMA) now Nigerian Maritime Administration and Safety Agency (NIMASA).

**Implementation: Successes and Challenges**

After 13 years of implementation, the Nigerian parliament responded to calls by key stakeholders to review and amend the Coastal and Inland Shipping (Cabotage) Act, 2003. Reasons for the call included the fact that there was still a significant number of foreign owned, foreign manned, and foreign built vessels operating in Nigeria’s Maritime Jurisdiction. In 2010, 368 vessels were registered to trade within Nigeria’s Maritime Jurisdiction. Contrary to the 100% Nigerian ownership target, only 43% were wholly owned by Nigerians, 27% were wholly owned by foreigners and 30% were Joint Ventures.

To effectively assess level of success of each element of the Act, accurate data from the implementing agency, NIMASA, is required. However, as at 2010, NIMASA had no database to effectively measure the level of compliance and progress made. This notwithstanding, there is some evidence indicating that the Cabotage Act did not achieve its objective. For instance, in 2010, out of about 600 vessels working as oil rig and platform support vessels in the upstream sector, less than 50 were owned by Nigerians. Also, there are reports that indicate that Nigeria has been losing up to about $4 billion annually to foreign ship-owners due to the limited local capacity. Further, between 2001 and 2005, the share of water transport to GDP remained unchanged at 0.01% of Gross Domestic Product (GDP). Various accounts of stakeholders also show stakeholder disappointment with the implementation of the Cabotage Act. Further, several Director-Generals of NIMASA were sacked for their inability to implement the Cabotage Act, 2003. The Cabotage Vessel Financing Fund (CVFF) which as at 2010 had a funding base of $250 million has also not been disbursed.

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234 ibid

235 ibid

236 ibid

237 Bello-Olowookere, Ganiyu Babatunde, (2011) "The effects of cabotage regime on indigenous shipping in Nigeria", World Maritime University Dissertations
it is observed that the Nigerian Cabotage Act was weakly implemented which affected its success.

Several challenges have been identified for the weakly implemented Cabotage Act. These challenges are also the reason for which an amendment of the Cabotage Act, 2003 was called. Domestic companies had limited capacity in terms of technology and vessels to carry products such as petroleum and ancillary services. The nature of the Act which promoted 100% Nigerian ownership and crew did not provide much room for technology transfer. Other challenges included inadequate number of Nigerian owned vessels and shipbuilding or repair facilities, and lack of cooperation among the various implementing agencies. In 2010, NIMASA discovered that less than 10% of the 400 vessels owned by Indigenous Shipowners Association of Nigeria (ISAN) members were functional. Also, in 2010, only 4 out of the 14 ship repair yards in Nigeria were functional. As a result, about 80% of vessels operating in Nigeria use overseas maintenance for both minor and major repairs.

Further, the Cabotage Vessel Financing Fund (CVFF) which was established by the Cabotage Act “to promote the development of indigenous ship acquisition capacity by providing financial assistance to Nigerian operators in the domestic coastal shipping” was not disbursed as a result of bureaucracy and stringent conditions attached to the fund by officials. As at 2015, the fund had accumulated over $250 million, though NIMASA had a target of $500 million funding base.

In response to these challenges, the Nigerian legislature proposed the Coastal and Inland Shipping (Cabotage Act) (Amendment) Bill, which significantly amends the existing law. Provisions considered for amendment include preconditions for waiver to promote accountability, a more elaborate definition for vessels, and provision for maritime security in the registration of foreign vessels. The bill however does not address the challenges concerning the administration of the CVFF. Currently, there is little transparency in the application of the fund. Though due diligence of an application is conducted by the primary lending institutions, actual disbursement of the fund is left to the discretion of the minister.

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238 Bello-Olowokere, Ganiyu Babatunde, (2011) "The effects of cabotage regime on indigenous shipping in Nigeria", World Maritime University Dissertations
239 Bello-Olowokere, Ganiyu Babatunde, (2011) "The effects of cabotage regime on indigenous shipping in Nigeria", World Maritime University Dissertations
240 ibid
241 ibid
242 Coastal and Inland Shipping (Cabotage) Act, 2003; Nigeria.
244 HB529 Coastal and Inland Shipping (Cabotage Act) (Amendment) Bill 2016
5.5.2 Cabotage in India

**Background**

The shipping industry in India contributes significantly to the economy. The industry plays an important role India’s transport sectors. About 95 percent by volume and 70 percent by value of India's international trade is undertaken through the maritime route. In terms of shipping fleet India ranked 20th in the world and is one of the largest among the developing countries. Though Indian Shipping tonnage had stagnated between 6 and 7 million Gross Tonnage (GT) till June, 2004, it increased to 8.42 million GT by December, 2006. The Shipping Corporation of India, a Public-Sector Undertaking under the Department of Shipping, controls a major share of Indian tonnage with a share is 33%. Average age of the Indian vessel is 17.9 years.

As at 2015, there were about 12 major and 187 non-major ports in India. The Ministry of Commerce and Industry reported that, between 2000 and 2015, the Indian port sector received about USD 1.6 billion in FDI.

![The shipping industry plays an important role in India’s transport sector;](https://www.joc.com/regulation-policy/stakeholders-split-impact-indias-relaxed-cabotage-rule_20180604.html)

**Legal Framework for Local Content in Coastal Trade**

With a coastal line of about 7517 kilometres, India has been protecting trade in its maritime jurisdiction for over fifty years. India’s cabotage policy is contained in section 406 and 407 of the Merchant Shipping Act, 1958.

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246 Working Group Report on Shipping and Inland Water Transport for The Eleventh Five Year Plan
248 The Merchant Shipping Act (1958), Available at: [http://www.mmdchennai.in/PDF%20Files/THE%20MERCHANT%20SHIPPING%20ACT.pdf](http://www.mmdchennai.in/PDF%20Files/THE%20MERCHANT%20SHIPPING%20ACT.pdf)
Forms of Local Content

Akin to Nigeria, India’s Cabotage policy is a liberal one with the objective of developing the local shipping industry and enhancing coastal trade in India. According to the Merchant Shipping Act, 1958, only Indian flag vessels\(^{250}\) can trade within Indian maritime jurisdiction. However, in situations where Indian flag ships were not available, foreign flag vessels can be permitted to carry cargo between Indian ports. This policy notwithstanding, the Indian National Ship Owners’ Association (INSA) considers the absence of a strict cabotage policy the main reason for low investments in coastal shipping and vehemently opposes any argument that seeks to relax the cabotage law\(^{251}\).

The Merchant Shipping Act (MSA) of 1958 also establishes a Ship Development Fund (SDF) to support the acquisition of ships. Unlike the Cabotage Vessel Financing Fund as in the case of Nigeria which is funded primary by a 2% surcharge on contracts\(^{252}\), the main source of fund for the SDF is the government of India. It also establishes a committee, charged with the responsibility of administering and accounting for the fund.

Implementation: Successes and Challenges

Contrary to expectations, the cabotage policy under the Merchant Shipping Act, 1958 did not boost coastal trade in the desired levels as coastal shipping in India was only about 7% of cargo traffic against as at 2010\(^{253}\). Economic reforms in India which led to higher economic growth also triggered a higher demand for transport of goods within India. Between 2001 and 2010 coastal vessels increased from 244 to 682 while tonnage increased from 0.6 megatons to 1 megaton. This increased demand was met mostly by road and rail transport. Road and rail transport accounted for 50%-555% and 30-35% of transport needs respectively. Water on the other hand accounted for about 7%\(^{254}\). Given that ship has a higher cargo carrying capacity and is more cost effective, there was pressure on the shipping ministry to relax cabotage rules to enable foreign ships to trade within Indian coastal waters.

Additionally, in 2011, about 70% of Indian containerized cargo was transshipped through neighbouring ports like Colombo, Dubai, Salalah and Singapore. Dependence on foreign transshipment ports made India’s import or export expensive and less competitive on the international markets. This led to the decision to build India’s first International Container Transshipment Terminal (ICTT) at Vallarpadum, Cochin to attract Indian containers transshipped through foreign hub ports to India. However, cabotage restrictions adversely affected the growth of ICTT especially as it competed with other shipping lines like Colombo shipping lines which had a relaxed cabotage policy. This also necessitated the relaxation of the existing cabotage restrictions in India\(^{255}\).

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\(^{250}\) By definition, coastal vessel means a vessel of Indian registry with exclusive Indian crew, engaged in carriage by sea of cargo or passengers, from one Indian port to another port or place in India, and/or any other vessel having specified period of license for engagement in coastal trade issued by the Director General of Shipping, Government of India.

\(^{251}\) Pillai A. and Paul J. Dr. (2011), “Effects of Cabotage Policy on Coastal Shipping”

\(^{252}\) The 2% surcharge can be found in the Coastal and Inland Shipping (Cabotage) Act, 2003 for Nigeria and the Draft Domestic Shipping (Cabotage) Bill for Ghana.


\(^{254}\) ibid

\(^{255}\) ibid
In 2011, the Parliamentary Standing Committee on Transport, Tourism and Culture in India, released a report which stated that, "... in view of the critical implication of this regulation in the successful implementation of the ICTT project and in the larger interest of economic self-reliance of the Indian export-import (EXIM) trade, it is imperative that the Cabotage Law is relaxed to enable transshipment containers through foreign flag vessels from ICTT, Cochin"\textsuperscript{256}. In September 2012, the Indian cabinet relaxed the cabotage law to allow foreign-owned and foreign-registered container ships to trade between Indian ports subject to two conditions: the relaxation applied only to transshipment containers going through Vallarpadam and secondly, the relaxation of the law was for a limited period of 3 years following which it which it was to be reviewed\textsuperscript{257}. After the 3-year period had elapsed, the government reviewed the cabotage policy. In 2016 the Indian Cabotage policy was further relaxed to include other ports in India\textsuperscript{258}.

Following the relaxation in the cabotage law, several Indian ports including the Mundra port and Pipavav port in Gujarat, and the container terminal at Vizag port in Andhra Pradesh sought similar exemptions from the cabotage law, though the shipping ministry at the time was reluctant to extend the relaxation to other ports. The increased interest in cabotage relaxation was despite the fact that foreign ship-owners responded weakly to the policy change\textsuperscript{259}. Regardless of the cabotage relaxation, transshipment remained low and this led to further review of the cabotage policy in 2016\textsuperscript{260}.

The recent relaxation in the cabotage policy in 2016 expands cabotage relaxation to other ports in India albeit it has been criticized for imposing additional conditions that were considered stringent. The conditions include the fact that only ports which transship at least 50% of their container traffic are eligible for the exemptions. The policy also requires transshipment ports to transship 50% of containers handled in the first year or face a revocation of the exemption\textsuperscript{261}. The Indian Private Ports and Terminal Association (IPPTA) believe these conditions pose several challenges that may impede the shipping ministry’s objective for relaxing the cabotage policy; to reduce the dependence on neighbouring ports for transshipment. These challenges had real impact as no Indian ports (same ports that had previously advocated for an expansion of the relaxation to other ports) had applied to seek relaxation a year after the policy had been announced. \textsuperscript{262} Some of the challenges are noted below.

Some stakeholders believe that the 50% requirement is counter intuitive as it requires port terminals to build transshipment volumes before being given cabotage relaxation, especially

\textsuperscript{256}ibid


\textsuperscript{258}ibid

\textsuperscript{259}Manoj P. (2013), “India Plays Around with Cabotage Rule”, LiveMint, Available at: http://www.livemint.com/Politics/7ChFaNiZVhXLWjwYRczQuO/India-plays-around-with-cabotage-rule.html


given the fact that cabotage relaxation is aimed at enhancing transshipment. IPPTA also believes that it will be near impossible to achieve the 50% requirement in the first year as foreign shipping lines cannot be expected to immediately respond to the relaxation. This is because shipping lines take a long-term view of between 3-5 years in finalising route plans. The one-year limit made it difficult for shipping lines to consider Indian ports as their exemptions could be lost after a year. According to the IPPTA, other factors such as container volumes available, depth restrictions, regulatory issues, and facilities at Indian transshipment hubs compare to neighbouring hubs must be considered in setting time limits for achieving the 50% requirement.

The shipping ministry in India has been generally reluctant to address these challenges as it struggles to find the right balance between protecting the local fleet and boosting coastal trade in India.

5.5.3 Cabotage in Ghana

Background

Ghana has a 550 Km coastline and two major ports which facilitate global trade. Over 80% of Ghana’s international trade by volume is carried by sea, making the seaport a very important aspect of Ghana’s revenue mobilisation efforts. As a result, the government remains committed to improving efficiency and to making the maritime and shipping industry

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263 Ibid
264 Ibid
265 Ibid
266 Manoj P. (2016b), “Shipping ministry says it won’t review rules on new cabotage law”, LiveMint, Available at: www.livemint.com/Politics/7AgP8KjiWK8XgZrLJGdkI/O/Shipping-ministry-says-it-wont-review-rules-on-new-cabotage.html
competitive\textsuperscript{268}. In 2017, total cargo throughput was about 21.4 million metric tonnes, a 15.9\% growth from that of 2016. Transhipment trade also increased by 25.4\% in 2017\textsuperscript{269}.

**Legal Framework for Local Content in Coastal Trade**

There is no distinct local content law for Ghana’s coastal and inland water trade. However, Cabotage is another area where Ghana seeks to apply local content provisions in order to increase local participation. To this effect, a bill on Domestic Shipping (Cabotage) has been drafted. The structure and content of the bill is quite similar to Nigeria’s Cabotage Act.

**Forms of Local Content**

The main thrust of the cabotage draft bill is to “restrict the use of foreign vessels in local trade in order to promote the development of indigenous tonnage and to establish a Cabotage Vessel Financing Fund”.\textsuperscript{270} According to the bill, a vessel shall not engage in the carriage of cargo and passengers within Ghana’s maritime jurisdiction unless that vessel is wholly owned by a Ghanaian citizen, wholly built and registered in Ghana, and wholly manned by Ghanaian officers and crew. Rather, foreign vessels are permitted to work within Ghana’s maritime jurisdiction during emergency situations or for research purposes. The draft cabotage bill however has exemption clauses that permit foreign owned, manned vessels and vessels not built in Ghana to operate within Ghana’s maritime Jurisdiction. Exemptions are provided for situations where the Director-General of the regulatory authority is satisfied that there is no local capacity to fulfill the demands of businesses.

Akin to Nigeria’s Cabotage Act, a Cabotage Vessel Financing Fund (CVFF) is to be established under the bill to promote the ship acquisition capacity of Ghanaian citizens or wholly owned Ghanaian companies through financial assistance and enhancing access to funding by financial institutions. The main source of funding for the CVFF will be a 2\% surcharge on gross earnings on contract sum or cost of service performed by any vessel engaged in local trade.

**Summary Discussions**

Gleaning from the Nigerian and Indian experience, stakeholders in Ghana are entreated to critically consider the following questions. Do we mean to create a seemingly new cabotage sector wholly run by Ghanaians with little knowledge or experience to effectively deliver? Are there enough professional ship builders and ship building and repairs companies wholly owned by Ghanaians? Was a capacity audit the basis for the target in the bill? What is the extent of the capacity gap in Ghana’s shipping industry if the objectives of the Domestic Cabotage Bill are to be achieved? Are there clear plans to bridge the capacity gap? Are the targets set in the bill clear? What are timelines for achieving these targets? Are they realistic? What measures will be put in place to check abuse of the waiver provisions? Who are the implementing agencies of the draft bill? What level of coordination or cooperation must exist among them?

It is noted that, some provisions in the draft policy are not consistent. For instance, the type of vessels to be registered under the policy is not clearly articulated. In one breath, the


\textsuperscript{270}Draft Domestic Shipping (Cabotage) Bill, 2017.
registration requirement is that “a vessel be wholly owned by Ghanaian citizen or by a company wholly owned by Ghanaian citizens”. This can be found in section 12. 1(a). In the same section, the registration requirement is that “a vessel is owned by a company registered in Ghana, and the percentage of shares in the company owned by Ghanaian citizens is not less than 60%” (section 12.1(b)). In addition to the exemption clauses, it can be concluded that vessels to be registered under this policy are wholly owned Ghanaian vessels, wholly owned foreign vessels (through the exemption provisions) and vessels owned by joint venture (where 60% of the equity is controlled by Ghanaians). Given that this conclusion sums the actual intentions of the policy makers, then no clear local content target has been set for each of these provisions. This will make enforcement, monitoring and accountability difficult.

The Takoradi port also plays an important role in Ghana’s marine transport sector; Photo credit: https://www.ghanacrusader.com/takoradi-port-expansion-underway/
5.6 Local Content in Solar Energy

This section discusses local content policy in the solar energy in India. It highlights the importance of critically considering international trade agreements in drafting local content policies.

5.6.1 Local Content in India’s Solar Energy Sector

Background

Energy security is a significant challenge to the Indian economy. In 2009, about 40% of the Indian population did not have access to electricity. Per capita consumption was also lowest in the world at 639 kWh. To meet demand and to promote economic development, India needed to bring on board new generation, by using fossil fuels, coal or other environmentally sustainable options. With about 75% and 30% of the Indian economy’s oil and coal consumption dependent on imports, utilising fossil fuel and coal potentially have serious implications for the economy given the volatile nature of fuel prices\(^{271}\).

Solar irradiation in India is very strong and as such makes solar energy a promising source of energy generation. India has average solar radiation intensity of 200 MW/km\(^2\) and, with 250–300 days of sunshine per year. Using solar energy not only helps India meet the energy demand, it also reduces imports and mitigate the effect of fuel price volatility on the economy\(^{272}\). Renewable energy in India began to receive policy support in the 1970s, following the oil crises. In 1981, a department on Additional Sources of Energy was created which has evolved into the current Ministry of New and Renewable Energy (MNRE). Policy support takes the form of fiscal and non-fiscal incentives and is at both the central and state government level. Between 2003 and 2009, India’s renewable energy generation capacity grew from 2.5 GW to about 15 GW. This was about 10% of total electricity generation, though most of this was in hydropower and wind with solar contribution negligible\(^{273}\). Solar contributed approximately 6% to the total renewable energy mix\(^{274}\). The quest to make renewable energy politically acceptable has led to many countries tying them in with job creation, economic development and other social economic goals\(^{275}\).

Legal Framework

To increase growth in solar generation, the Government of India (GoI) launched the Jawaharlal Nehru National Solar Mission (NSM) in 2009, also known as the National Solar Mission (NSM). The main objective of the NSM was to foster the 20GW of solar installations


\(^{272}\) Ibid

\(^{273}\) Ibid


and position India as a global leader in solar manufacturing by 2022. NSM is to be linked with the National Renewable Energy Act, which is currently at still a draft\(^{276}\).

At the time the NSM was introduced, solar PV manufacturing had already taken off. India had over 15 players, 20 players and 50 players in cell manufacturing, modules manufacturing and solar PV assembly respectively with a joint manufacturing capacity of 700 MW. The NSM was expected to foster a 6-fold increase in manufacturing capabilities underpinned by the objective to generate jobs, achieve grid parity and to become a significant player in the export of power.

![Using solar energy helps India to meet her huge energy demands;](http://greenubuntu.com/indias-ambitious-solar-energy-target-of-175-gw-by-2022-is-difficult/)

### Implementation: Successes and Challenges

The Solar PV component of Phase one of the NSM ended in 2013. To learn lessons from phase one, NSM commissioned a review. The audit found that rather than supporting the local crystalline silicon manufacturing industry, LCRs resulted in a bias towards foreign thin film PV manufacturers, whose products were exempt from the LCR. Where any projects using crystalline silicon technology had to source cells and modules locally, about 59% of installed systems used the thin film technology against 41% of firms using the crystalline silicon technology. This development was interesting as globally, there was a general preference for crystalline silicon technology (86%) over thin film (14%). The bias towards foreign thin film technology coupled with reducing exports of locally manufactured crystalline silicon technology had a significant impact on the industry and on the economy. While some companies stopped manufacturing completely, others defaulted on their bank loans. Also, almost 50% of the workforce was laid off as a result.

Research and Development (R&D) in the Indian manufacturing industry also suffered greatly. R&D investment was non-existent as tie-ups with foreign firms, which was previously the

basis for R&D, diminished as a result of protectionism. The reduction in R&D has led to a reduction in the competitiveness of the Indian solar PV industry overtime.

In economic terms, the purposes for instituting local content requirements seem to have been defeated with the reduction in competitiveness, loss of jobs and the shut done of the manufacturing wings of some companies. Nonetheless, the Indian government through local content requirements appears to have given a strong political signal of its commitment to supporting and protecting the manufacturing sector. Overall however, the effectiveness of LCRs in the Indian National Solar Mission was limited, at least in the first phase of the project.

After the first phase of the project though, India began to face some challenges with WTO regulations that India was signatory to. The first WTO compliant was lodged against India’s NSM by the United States of America in February 2013, just 3 years after its adaption277. A second one was lodged, also by the USA, a year after278. The dispute named 'India – Certain Measures Relating to Solar Cells and Solar Modules', claimed that the Domestic Content Requirements (DCR) in India’s solar contracts were in breach of international trade agreements. In October 2016, the Dispute Settlement Body (DSB) of the WTO ruled in favour of the USA279. India was required to shut down the local content solar policy on 14th December, 2017280.

Following the shutdown, PV manufacturers in India argue that the end to DCR is crippling the domestic solar industry as they were unable to compete with cheaper imports from China281 - Chinese modules are about 10% - 20% cheaper than Indian modules282. In 2016, Indian manufactures produced 1.33 GW of modules, which was about 75% below total capacity. As a result, some of the biggest module producers including Jupiter Solar, Indosolar Ltd and Moser Baer India Ltd, face a possible shut down283.

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278 ibid
280 ibid
281 ibid
283 ibid
6.0 Emerging Issues-Discussion

The survey of local content in the mining, oil and gas, cabotage, construction sectors of the comparator countries and for solar energy outlined above brings to light issues that generate critical questions and reveal caveats that must be given consideration in light of the move to apply local content to various sectors of the economy in Ghana. These are discussed below.

6.1 The Impetus for ownership and likely impacts on long term growth

The analysis on local content policies across different sectors and countries indicates an inclination towards local participation in terms of ownership and employment, than on other elements of local content such as technological transfer and skills development among others. For countries that pursued strict indigenisation and forced local participation and ownership, the results in the long term were rather counterproductive.

Many local content policies seem inclined towards local participation in terms of ownership and employment, rather than technology transfer; Photo credit: https://www.businesslive.co.za/bd/business-and-economy/2016-10-23-south-african-steel-production-falls-27-in-september/

Zambia and Zimbabwe after years of implementing indigenisation policies have seen very little progress in attaining local content or participation levels. In Zimbabwe, only one company, Blanket Mine complies with the 51% local ownership condition. The government’s involvement through indigenisation led to the closure of several companies. The Affirmative Action Group in Zimbabwe accused many companies of purposely shutting down operations for fear of being targeted for indigenisation. In the South African downstream sector, focus on the ownership element of local content led to very low compliance for the other elements of local content including skills development (where compliance was below 40%). Even though the ownership and management control element of local content were the best performers in terms of compliance (about 80% compliance), most Black shareholders were

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284 Ibid
rather passive serial investors than active entrepreneurs\textsuperscript{285}. Also, Nigeria’s coastal shipping industry is still dominated by foreign vessels after 13 years of implementing local content laws which focused primarily on indigenous control and ownership of the vessels and shipbuilding yards.

Botswana on the other hand critically strategized around value addition in the downstream sector of the mining industry. This led to the creation of more employment opportunities, significant linkages developed throughout the economy, and a vibrant mining downstream sector emerged. For example, after 12 years of implementing the local content provisions in the Mines and Minerals Act (1999), 97\% of persons hired by Debswana (Botswana’s biggest diamond cutting and polishing firm) were Batswana\textsuperscript{286}.

Given the foregoing, the impetus towards ownership should be critically assessed to determine whether ownership inures to sustainable development of industry, especially in light of Ghana’s growing appetite for local content provisions in other sectors of the economy. The draft local content bills for Ghana’s petroleum downstream, construction sector and coastal and inland water shipping focus primarily on local ownership. For instance, even though Ghana’s petroleum downstream sector has achieved about 70\% local participation without local content laws, the new draft policy for local content in the sector focuses on achieving a minimum of 51\% equity participation\textsuperscript{287}. Yet, the 70\% market share controlled by locals in the downstream sector is highly fragmented which affects their profit margins and their ability to derive any significant economies of scale.

Policy makers should bear in mind that, the underlying objective of most local content policies or indigenisation policies across the world is to develop a vibrant domestic private sector to significantly contribute to the long-term economic development of the country. As seen clearly from the discussions above, greater focus on local ownership does not achieve this.

6.2 Can there be Local Participation without Adequate Capacity?

The draft local content policies for Ghana’s downstream oil and gas, cabotage and construction sectors have a strong inclination towards increasing local participation and ownership. A critical prerequisite for local participation however is the existence of in-country capacity in terms of financial resources, skills, technology and infrastructure among others for local firms to effectively and actively participate. The absence of these make ownership targets highly unattainable as revealed through the sectoral analysis outlined in part one of this study.

Nigeria pursued a cabotage policy which sought to restrict commercial transportation of goods and services, within Nigeria’s maritime jurisdiction, to Nigerian owned vessels wholly built and registered in Nigeria and manned by Nigerians. However, Nigeria lacked the critical in-country capacity in terms of available local fleet, available local sea farers, available ship

\textsuperscript{285}DOE (2011), “Petroleum and Liquid Fuels Charter; Final Audit Report", Moloto Solutions, Available at: \url{http://www.energy.gov.za/files/media/Pub/PetroleumAndLiquidFuelsCharter_AuditReport.pdf} Accessed 11\textsuperscript{th} April 2018

\textsuperscript{286}Mbayi, L. (2011). Linkages in Botswana’s diamond cutting and polishing industry. MMCP Discussion Paper No. 6., pp. 1-69. Available at \url{http://www.prism.uct.ac.za/Papers/MMCP%20Paper%206_0.pdf} Accessed 11\textsuperscript{th} April 2018

\textsuperscript{287}Draft Policy, Local Content and Participation for the Petroleum Downstream Industry
building and repair yards among others. Therefore, after about 13 years of implementation of the cabotage policy, the country was unable to attain significant local participation. Due to this, in 2010, out of 600 vessels working as oil rig and platform support vessels in the upstream sector, less than 50 were owned by Nigerians. It is also reported that up to about US$ 4 billion per year is lost to foreign ship owners.\textsuperscript{288} From Kenya’s experience in the construction industry, lack of capacity in terms of finance rendered local construction firms uncompetitive even with the preferential treatment.\textsuperscript{289} A similar trend is observed in India where because of the limited local capacity to transship a bulk of India’s containerized cargo, the cabotage restrictions had to be relaxed after over 40 years of implementation to allow foreign players back into Indian waters\textsuperscript{290}.

In the oil and gas sector, country experiences have been similar. Given the lack of in-country capacity, local participation or ownership targets remained unattainable. In Nigeria for instance, the monitoring board for local content admitted that inadequate in-country capacity limited the attainment of local participation goals as in the case of fabrication of large oil vessels.\textsuperscript{291} In Ghana, the Petroleum Commission admitted that some of the local participation targets for localisation (local procurement and employment) and for exploration and production had to be reviewed and amended because the in-country technical and financial capacity did not exist and it was going to take years to build that capacity to allow for local participation.\textsuperscript{292}.

In extreme cases such as that of Zimbabwe that pursued indigenisation, the effect was counterproductive where little to no participation was achieved at all because of the lack of in-country capacity in terms of financial resources. The indigenisation policy aimed to give 51% controlling interest to indigenous Zimbabweans in all productive sectors. After 9 years of implementation, only one mining company had complied. Even so, the shares for the local company was to be paid for through the forfeiture of future dividend streams and this does not amount to the controlling interest that Zimbabwe sought to achieve.\textsuperscript{293}

Clearly, it cannot be presumed in the formulation of local content policies for Ghana that local participation can be achieved without adequate in-country capacity; a case in point is the draft cabotage policy which will require wholly built Ghanaian ships when there are no ship building yards. The quest for increased local participation in the midst of limited capacity can yield two main outcomes – an industry with a high foreign presence even though local content

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\textsuperscript{291} Egin Recorded over 50% Nigerian Content. (February 9\textsuperscript{th}, 2018), NCDMB Website. Available at https://www.ncdmb.gov.ng/2018/02/egina-recorded-over-50-nigerian-content/ Accessed 11\textsuperscript{th} April 2018

\textsuperscript{292} Boateng, K. Y. (2018, March 9\textsuperscript{th}). Personal Interview

\end{footnotesize}
legislation indicates otherwise (as is the case for cabotage in Nigeria) or an industry dominated by local players that remains uncompetitive (as is the case for cabotage in India and in oil and gas for Ghana). To attain true participation or ownership, there is the need to ensure adequate evaluation of existing local capacity to handle or manage the requirements of local participation for the industry in question.

6.3 Capacity Audits and Attainable Local Content Targets

The experiences of the comparator countries studied, especially Brazil, Nigeria and Ghana in the oil and gas sector, reveal the lack of a thorough capacity audit undertaken prior to the setting of local content targets. The attendant consequence is targets set are unrealistic and have been unattainable and this has undermined the achievement of some of the local content objectives. In Brazil, the unrealistic targets led to the agitation of foreign investors who were saddled with high costs (due to uncompetitive domestic suppliers) and heavy penalties for the resultant non-compliance.

It is interesting to note that, despite the observed consequences of lack of capacity audits prior to the setting of local content targets, a defined and comprehensive capacity audit framework for broad based policies such as local content does not exist in the literature and is not explicitly defined at the public-sector level. What exists in the literature however, is a model of capacity audit at the company/firm organizational level where capacity audits are defined as a formal and systematic assessment of the ability of an organization to achieve stated objectives and to execute its mandate. Capacity audits are considered to represent the starting point in the process of capacity development planning because these audits provide information on already existing capacity and that which is required. Therefore, they

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allow for the attainment of a set of objectives and measurable targets. Before undertaking capacity development of any form, it is needful to answer the questions of why it is needed, whose capacity needs to be developed, how the capacity will be developed, what capacity already exists, and how the capacity will be used once developed. It is a necessary step to be carried out before any capacity development initiative (such as is mandated in local content policies) and it is not only a one-off audit but an ongoing process.\textsuperscript{296}

Applying this to broad based local content policy formulation could only mean a need for a comprehensive capacity audit framework (including metrics and a specialized model) that empirically answers the questions of why local content is needed, whose capacity needs to be developed (firms, educational institutions, monitoring institutions etc.), how the capacity will be developed (whether by training, research and development etc.), what capacity already exists, and how the capacity will be used once developed for the sector in question. Complete empirical answers to these questions will inform the strategies and targets of local content.

It is noted that the Common Qualification System specified in the LI2204, which is to help collect information on existing local capacity, facilitates on-going in-country capacity studies. However, it is an “after-the-fact” instrument. That is, information is being gathered after the existing capacity after the arbitrary targets have already been couched in law and dire consequences reaped from their unattainable nature. In the drafting of new local content bills then, the critical question to address is whether capacity audits have informed targets.

6.4 Who pays more for Local Content?

A topical issue that has not received much attention (or empirical analysis) in the local content discourse is the cost of implementing local content; who bears the economic and other associated costs? How do those costs affect attainment of local content objectives? How do those costs affect macroeconomic indicators and the economy as a whole?

In the case of the oil and gas sector of Brazil, the high local content targets for local procurement, coupled with limited in-country capacity led to high costs for investors or foreign operators who were mandated to purchase goods and services at uncompetitive (higher) prices from domestic suppliers. Also, given the unrealistic nature of the targets, compliance with local procurement could not be fully achieved and this warranted heavy penalties. Filho (2017) in analyzing the lessons learned from the implementation of Brazil’s oil and gas local content policy reports that, investors partly transferred these costs to the supply chain rendering the fines counterproductive. Ultimately then, the indication is that citizens paid for these high costs.

In the case of the oil and gas sector in Ghana, the Petroleum Commission confirmed that certain costs reported by the international operators and approved by the Commission are deductible from petroleum revenues and this may include local content costs. This is corroborated by Kinyodo and Kolstad (2017), who in studying the alternatives to local content requirements in resource-rich countries observe that local content requirements increase

\textsuperscript{296}ibid
international operator costs and hence reduces taxes (petroleum revenues) that can be obtained. Once local content costs are tax deductible, the implication is that the government is paying for local content with petroleum revenues. If petroleum revenues are expended this way, yet the objectives of local content and participation are not fully achieved over time, then petroleum revenues are virtually being wasted increasing the socio-economic cost to the government and to the country.

![Local content requirements have cost implications for international investors; Photo credit: https://events.vennomax.com/blog/tag/kenya/](image)

The argument advanced to justify the cost of local content is that achieving local content is absolutely necessary, even if the costs far outstrip the benefits in the short term. In the long term, it will begin to pay off when the benefits of skills and capacity development are being reaped. This assumes a robust policy design and implementation process to which capacity audits can establish apriori. In its absence as has been observed in this study, it is challenging to establish how these long term benefits will actually accrue over time. Central to this will be the need to align the implementation of local content policies to a long-term strategy or development plan, and monitoring (including tracking and measurement) results to ensure they are consistent with predetermined long term objectives. Given the fact that there is opportunity costs associated with imposing local content requirements, there is the need to ask; if the resources had been expended in alternatives uses, would it achieve for the country the same or exceeding benefits?

In the impetus to apply local content to other sectors of the economy, it will be useful to view these within a critical cost-benefit analytical framework to ensure that the benefits outweigh the costs (including opportunity costs) in the long term and therefore adequately justifying the costs of local content policies.

### 6.5 Tracking and Measurability of Local Content

Local content comes at a cost to government and the economy (opportunity costs) and imposes uncertainties for investors thus posing the risk of losing investments in the long term.

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Given this, local content policies must be treated with utmost meticulousness to ensure the benefits that accrue over time outweigh these costs. It is therefore necessary to track and measure the attainment of local content targets over time to ensure the efficacy of the policies.

Across the focal countries and sectors of this report, tracking and measurement of local content is seen as a non-deliberate, non-comprehensive activity. For the upstream oil and gas sector in Ghana, local content is measured in monetary terms (contracts awarded) and using percentages (employment, share of local content in procurement etc.) from the time of award of contract to an operator of a field according to the timeline specified in the LI2204. Data from the responsible monitoring body, apart from being sparse, fails to reflect year on year growth in local content levels, skills improvement over time, capacity development over time among others.

For the Nigerian upstream oil and gas sector, local content is measured in percentages however there is no applied timeline specified in the NOGICD Act for the attainment of those targets. For the upstream oil and gas sector of Brazil, local content requirements are simply imposed without any metrics for measurements or baseline indicators, meanwhile heavy penalties were slapped for non-compliance. The metrics evolved after the 7th bidding round to indicate weighted percentage targets for each item and sub-item listed in the local content table. There is no certainty that subsequent bid rounds will have the same metrics.

The main issue with the lack of adequately comprehensive metrics that enable appropriate tracking is that, it is difficult to justify the efficacy of local content and the development of new local content policies for other sectors of Ghana’s economy, if local content levels cannot be appropriately measured and tracked in order to document improvements based on set milestones. Local content policies should be adequately backed by comprehensive metrics that will ensure progressive and transparent tracking to safeguard attainment of outcomes.

### 6.6 Local Content and FDI; What Signals are being sent to investors?

The relationship between local content and Foreign Direct Investments (FDI) is a rather unexplored area with few existing empirical studies. From the discussions carried out in the sectorial discussions in this study, we establish that local content policies have the tendency to send negative signals to investors that may eventually inform their decision to carry out business within the country.

Local content policies introduce uncertainty into the investment environment and affects future investment decisions, especially when investors are unable to tell the direction of local content policy in a country. In extreme cases such as the case of Zimbabwe, it is reported that

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298 Petroleum (Local Content and Local Participation) Regulations 2013, L.I. 2204
299 Nigerian Oil and Gas Industry Content Development (NOGICD) Act 2010 Act No. 2
300 Filho N. N. (2017). Brazil’s Oil and Gas Local Content Policy: Lessons Learned. Institute of the Americas Report. Available at [https://www.iamericas.org/documents/energy/reports/Brazil_Oil_Gas_Local_Policy.pdf](https://www.iamericas.org/documents/energy/reports/Brazil_Oil_Gas_Local_Policy.pdf); Accessed 17th April 2018
301 Tender Protocol 2015 (Bid Round No. 13), Section 6.4
302 Filho N. N. (2017). Brazil’s Oil and Gas Local Content Policy: Lessons Learned. Institute of the Americas Report. Available at [https://www.iamericas.org/documents/energy/reports/Brazil_Oil_Gas_Local_Policy.pdf](https://www.iamericas.org/documents/energy/reports/Brazil_Oil_Gas_Local_Policy.pdf); Accessed 17th April 2018
some foreign companies stopped operations for fear of being targeted for indigenisation. This investor flight partly explains the government’s move to amend the Indigenisation and Economic Empowerment (IEE) Act in 2018, under President Emmerson Mnangagwa, in order to introduce clarity into the sectors that are being targeted for indigenisation. The amendment removes the requirement for foreign investors to give up 51% of their shares in all sectors and restricts the 51% ownership requirement to the mining of diamond and platinum\textsuperscript{303}. The main reason behind this amendment was to attract foreign investment into Zimbabwe\textsuperscript{304}.

Currently in Ghana, foreign investors are uncertain of the future or direction of local content policies and legislation\textsuperscript{305}. Even though legally, distinct local content legislation and policies pertain only to the extractive sector (in the mining industry and in oil and gas), it is unclear which sectors are likely to be targeted for distinct local content in the future. This is in light of the fact that bills have already been drafted for the construction sector, coastal and inland water shipping and even downstream petroleum where a considerable level of local content has already been achieved without a distinct local content legislation. The uncertainty generated does not only affect future investment decisions of current foreign investors in Ghana; it also can also affect potential new investors especially as the uncertainty introduces new risk to an investment.

6.7 The need for Coherence and Harmonisation of the Local Content Agenda

The analysis of local content policies in different countries and sectors indicates a general lack of coherence in policy implementation and harmonisation among regulatory institutions. The lack of coherence and harmony contributed to inconsistency, unpredictability, and reduced transparency for some of the countries studied. This affected investor confidence and, in some cases, created gaps in the system.

In Zimbabwe for example, the existence of different licensing bodies created inefficiencies which affected compliance. For example, the Mining Commissioner was in charge of approving staking agents (persons who locate land for mineral prospecting), the Minister of Indigenisation was responsible for awarding exploration licenses, while the President awarded special mining leases and special grants. The different licensing bodies led to duplication of licenses in some instances, made the system unpredictable and generally brought about confusion. Also, different Ministers of Indigenisation had different interpretation of the IEE Act\textsuperscript{306}. While some adopted a strict 51% share transfer of all foreign businesses to indigenous Zimbabweans, others took on a more flexible stance in targeting


\textsuperscript{305}Increasing Trends in Local Content Requirements Affecting Drive for Foreign Direct Investment (6th February 2018), Position paper by European Business Organization (EBO) & American Chamber of Commerce (AMCHAM)
In Zambia, local content policies were found to be offset by other government policies rendering local suppliers unable to compete and posing increasing costs to investors.

In Ghana, an issue of concern made apparent during data collection interviews is the misalignment and lack of cohesiveness among the key stakeholders that carry local content mandates. For instance, in the area of localisation (increasing employment of indigenes), the Petroleum Commission (PC) has an arrangement with the Ghana Immigration Service concerning the processing of work permits for expatriates entering the petroleum sector. In this arrangement, the PC only approves a work permit for an expatriate on condition that there is no competent Ghanaian to take up the role the expat is to play. The reason for this is that, the PC considers itself to be in a better position to know the human resource capacity available within the upstream oil and gas industry and the availability of adequately qualified Ghanaians to take up roles in the sector.

The GIPC Act 865 however has specified expatriate quotas according to a range of capital requirements (Table 2). Therefore, the expats who normally would be rejected by the PC go to GIPC and if the capital requirement of the company hiring the expat is within a specified range (specified in Table 2), GIPC clears the expat for a work permit without consulting the PC. This lack of communication undermines the local content efforts.

Further, the AGI intends to promote presumably separate local content regulations/legislations for certain sectors of the economy even though the GIPC Act 865 has already mandated a local participation of 10% for all enterprises across all sectors. The GIPC reports that they are unaware of the draft local content policies for cabotage, construction and downstream petroleum as well as the AGI’s intentions to promote local content to several other sectors.

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309 Ottoo, A. (March 7th, 2018). Personal Interview
There is the need to improve alignment and ensure coherence amongst these bodies in order to approach local content implementation with a harmonized front. This will also secure investor confidence.

6.8 Local Content Policies and International Trade Agreements

The consequences of breaching international trade agreements as a result of local content policies are dire. It has the potential to set a country far back on its efforts to build local industries. India, even though experiencing significant success for local content in the solar energy industry, had the unfortunate experience of losing a trade dispute bordering on the violation of a trade agreement with the United States. As a result, India had to shut down its local content policy on solar energy in 2017, after seven years of its adoption\(^{310}\). This greatly affected the domestic solar industry in India as most of them were no longer able to compete with cheaper imports from China\(^{311}\) - Chinese modules are about 10% - 20% cheaper than Indian modules\(^{312}\). In 2016, Indian manufactures produced 1.33 GW of modules, which was about 75% below total capacity. As a result, some of the biggest module producers including Jupiter Solar, Indosolar Ltd and Moser Baer India Ltd, faced possible shut down\(^{313}\).

Though Ghana has not faced these trade challenges yet, has Ghana in the formulation of its local content policies, both old and new, considered the effect on international trade agreements? Ghana has been a member of the World Trade Organisation since 1995, and as such is subject to the Trade Related Investment Measures (TRIM), which has provisions to restrict local content\(^{314}\). For instance, under TRIM, there are measures that prohibit discrimination between goods and services of domestic and foreign origin. Also, as at June 2013, Ghana had entered 26 Bilateral Investment Treaties (BITs) which can contain restrictions on local content requirement\(^{315}\).


\(^{311}\)ibid


\(^{313}\)ibid


\(^{315}\)ibid
7.0 Conclusions

The local content space is broadening with more and more countries applying or expanding local content requirements for several sectors of their economy. Ghana has experienced some success in the implementation of the Petroleum (Local Content and Participation) Regulations 2013, LI2204. This success has given further incentive to legislate local content requirements for other sectors of the economy, specifically in the downstream petroleum sector, for coastal and inland water trade and for construction. This study has discussed the experiences of eight countries in the application of local content policies in different sectors of their economy. The study has also discussed relevant issues emerging from the comparative studies to glean lessons for Ghana.

An analysis of country experiences reveals that, while some countries have achieved significant success with their local content regulations, others have not been so successful. For instance, Botswana with focus on value addition in the downstream sector of the mining industry has developed significant linkages throughout the economy and created a vibrant mining downstream sector that employs a lot of Botswana. On the other hand, local content regulations in Zambia’s mining industry, in Zimbabwe’s mining Industry and for cabotage in Nigeria, focused primarily on local participation or ownership but had serious challenges with indigenous capacity which affected their level of success. For example, after 9 years of implementing Zimbabwe’s Indigenisation and Economic Empowerment (IEE) Act (2007), only one mining company had complied with the 51% local equity requirement. Even in this case, the 51% was to be acquired through the forfeiture of future dividends. As a result, the Zimbabwean parliament has amended the IEE Act, restricting the Act to just the mining of two minerals (diamond and platinum). In an extreme case, India had to shut down its local content policy on solar energy in 2017, after seven years of its adoption because the policy conflicted with provisions in World Trade Organisations’s trade regulations.

Several key issues emerged from the comparative analysis. The study finds that for the 5 sectors discussed across 8 countries, too much focus on ownership can significantly affect the development of long-term growth parameters such as skills and enterprise development, technology transfer, and the development of linkages in the economy. Also, local participation is difficult to achieve without adequate indigenous capacity in terms of finance and skills among others. Further, the implementation of local content can send negative signals to foreign investors which can deter future investments. Additionally, a lack of coherence and harmonisation in local content policies and their implementation leads to unpredictability, reduces transparency, undermines local content enforcement and generally affects investor confidence. Issues of measurability also hamper the ability to trace actual impacts of such policies on the broader economy.
8.0 Recommendations

In light of the above discussions, the impulse to institute local content policies for multiple sectors of Ghana’s economy needs to be checked in order to avoid hasty implementation of half-baked policies whose consequences may be dire for the economy in the long term. It is recommended that, the following should be carefully considered in the formulation and approval of local content policies:

1. It will be useful for the government and other public-sector agencies to develop comprehensive metrics and frameworks to appropriately track year on year achievement of local content targets or improvements in local content levels. The framework must include key indicators, milestones and outcomes as well as emerging risks and how they will be mitigated. This will facilitate the attainment of local content outcomes. Without a framework for appropriate tracking and measurement, it will be difficult to justify the need for other local content policies.

2. In line with tracking and measuring local content improvements, it is needful for the government to bolster monitoring of both local entrepreneurs and foreign investors in light of local content partnership. This will ensure compliance and facilitate the attainment of desired outcomes. In light of this, it will be necessary for public sector agencies that carry local content mandates to work in harmony according to an aligned local content agenda. The government should consider taking steps to bring all the agencies together to facilitate on-going discourse and engender harmony in their roles. It should also work towards eliminating duplicated, overlapping and conflicting roles.

3. A key measure that will be helpful for setting attainable targets is capacity auditing. The government may consider investing into the design of a capacity audit system for sectors of the economy. This framework will be applied to ascertain existing capacity and how best realistic local content targets can be set and leveraged to achieve desired local content objectives. Such a system is also necessary to determine whether there is existing capacity that can handle the requirements of local participation.

4. Another important point to consider, especially before extending local content policies to other sectors of the economy is the much-needed cost benefit analyses (or broadly, an assessment of current and future economic impacts) of local content. This will help determine whether the benefits of local content in Ghana outweigh the costs (including opportunity costs) and whether it is worthwhile to pursue a local content policy rather than some other suitable alternative policy.
5. It is important that local content application is guided by a long-term development strategy. This strategy will identify sectors of the economy that have critical gaps in terms of local capacity and will specify the approach (local content or otherwise) to filling these gaps. The existence of such a strategy will inform investors prior to entry, the sectors of the economy which are likely to be targeted for local content policy application and by so doing reduce risk and uncertainty for investors. It will be useful for government and other public-sector agencies to consolidate efforts towards the development of a long-term plan that will guide the application of local content.

6. In cases where local capacity is inadequate to facilitate local participation and ownership, it will be helpful to focus local content efforts on attaining higher levels of employment and training which will facilitate skills development and technology transfer especially in value addition activities. This will lead to more sustainable growth and development of the industries in question.

7. To reduce the risk of abrogation, local content regulations must be carefully drafted to fully consider all international regulations including those of the WTO and other bilateral investment agreements.

Enhancing domestic infrastructure to facilitate trade will aid local content policies to achieve results; Photo credit: http://citifmonline.com/2018/03/20/us-military-base-to-be-sited-near-ghanas-kotoka-airport/
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