

# An Evaluation of Ghana's Local Content Legal Framework and Policy Landscape of the Downstream Energy Sub-Sector

Nurudeen M. Aliu

Esq ISANG@LAW, Tamale

DOI: <https://doi.org/10.51244/IJRSI.2024.11110047>

Received: 23 October 2024; Accepted: 06 November 2024; Published: 13 December 2024

## ABSTRACT

This paper examined Ghana's local content legal framework and policy landscape to unearth key prospects and challenges of the downstream energy sector. It comprehensively considered both the petroleum and the electricity subsectors. It is a qualitative study based on literature review of earlier research, policy briefs, laws and regulations of the sector. The legal framework and the policy landscape is prospective with foresight on key leverage to ensure the maximization of Ghana's natural resources by Ghanaians. It has the potential of influencing local economic development, ensuring equitable wealth distribution, protecting indigenous Ghanaian businesses, and fostering socio-economic development within downstream energy subject to effective policies and political commitment. The current local content ecosystem is faced with challenges ranging from political, economic, social, technological, administrative and legal bottlenecks. The paper seeks to contribute to efficient and effective implementation of local content laws and policies by making some recommendations to guide policymakers in policy making towards the creation of enabling environment to mitigate any incident of resource curse associated we several resource endowed countries.

**Key Words:** local content, downstream energy, legal framework, and policy landscape

## BACKGROUND AND INTRODUCTION

Oil discovery in commercial quantity is generally expected to boost the economic development of the producing country. This is however subject to the enactment of appropriate laws to create an enabling business environment to not only attract foreign investment but to protect and promote endogenous businesses to maximize its benefits. A common phenomenon in some producing countries especially in the global south is characterized by influx of foreign firms as the key players in the value chain which has the propensity of hindering the participation of endogenous firms. The seeming lack of legal and institutionalized protection of national firms within the value chain may lead to the paradoxical situation of the "resource curse" or "poverty paradox"; where the resources rather lead to a phenomenon of countries with an abundance of natural resources having less economic growth, less democracy, or worse development outcomes<sup>1</sup>. To avert the situation, resource endowed countries formulate policies, enact legislations, and adopt strategies to ensure the maximization of its natural resources by endogenous companies. One such strategy is the policy and legislation on local content and local participation in all facets of the natural resource value chain.

For this paper, emphasis is on challenges and opportunities associated with implementing local content policies in Ghana's downstream energy sector. The impact of the policy on the economic development, employment, and technology transfer will be drawn.

### Concept of Local Content Downstream Energy Sector

The scope of this study covers both the petroleum and electricity downstream sector in Ghana. It reviewed the existing policy, legal and regulatory frameworks with emphasis on the preservation of opportunities to Ghanaian value chain actors in the sector.

<sup>1</sup> Smith, Benjamin; Waldner, David (2021). *Rethinking the Resource Curse*. Cambridge University Press. [doi:10.1017/9781108776837](https://doi.org/10.1017/9781108776837). ISBN 9781108776837. S2CID 233539488

## Local Contact in Downstream Petroleum Sub-Sector

Local Content is a comprehensive policy and/or legislation instituted by a country to regulate its emerging oil and gas industry by deliberately preserving some aspect of the value chain to its citizens (both natural and corporate persons) or by prioritizing certain employment opportunities to its nationals<sup>2</sup>. The petroleum downstream sector in Ghana encompasses all activities involved in the importation and refining of crude oil as well as the sale, marketing, and distribution of refined petroleum products in the country. It covers refining, storage, internal transportation, marketing, and sale of petroleum products.

The Petroleum (Local Content and Local Participation Regulations 2013, (L.I 2204) is the legal and policy on the subject matter to inter alia (a) promote the maximization of value-addition and job creation through the use of local expertise, goods and services, businesses and financing in the petroleum industry value chain and their retention in the country; (b) develop local capacities in the petroleum value chain through education, skills transfer and expertise development, transfer of technology and know-how and active research and development programs; (c) achieve the minimum local employment level and in-country spend for the provision of the goods and services in the petroleum industry value chain; (d) increase the capability and international competitiveness of domestic businesses; (e) create petroleum and related supportive industries that will sustain economic development; (f) achieve and maintain a degree of control for Ghanaians over development initiatives for local stakeholders; (g) provide for a robust and transparent monitoring and reporting system to ensure delivery of local content policy objectives; (h) provide for the submission of the local content plan and related sub-plans by contractors, subcontractors, licensees and any other allied entity involved in the petroleum industry. These include the provision of goods and services, transfer of advanced technology and skills related to petroleum activities to Ghanaians, recruitment and training program, and supervision, coordination, implementation and monitoring of local content, and governance of Ghanaian content and to oversee the implementation of the local content policies<sup>3</sup>.

## Local Content in Downstream Electricity Sub-Sector

In the downstream electricity sector, the Energy Commission (Local Content and Local Participation) (Electricity Supply Industry (ESI)) Regulations, 2017, (L.I. 2354) inter alia seeks to reserve a minimum of 51% and 60% equity participation in wholesale supply and in the distribution of electricity to Ghanaians businesses respectively. Additionally, opportunities for Ghanaian participation in the manufacturing of electrical cables, solar cells, conductors, and accessories<sup>4</sup> is encouraged. To ensure compliance, the Local Content and Local Participation Committee is mandated to ensure the implementation of these Regulations in collaboration with various stakeholders in the Electricity supply industry<sup>5</sup>. The Local Content and Local Participation Secretariat of the Energy Commission, headed by the coordinator, shall coordinate all activities towards the full implementation of the provisions of the Regulations.

## RESEARCH METHODOLOGY

The study adopted a qualitative research approach by reviewing the existing laws, regulations, and policies around the subject matter. A deductive analysis of the legal framework around local content with specific reference to Ghana's downstream energy sector.

## Opportunities in Implementing Local Content Policies in Ghana's Downstream Energy Sector

The local content policies and legislation in Ghana has the potential to stimulate economic development, alleviate poverty, promote prosperity, and ensure sustainable economic and social outcomes in Ghana's downstream energy<sup>6</sup>. Key among the opportunities associated with local content policy and legislation include:

---

<sup>2</sup> Charles Godfred Ackah and Asaah S. Mohammed, *Local Content Law and Practice: The Case of Ghana In: Mining for Change: Natural Resources and Industry in Africa*. Edited by: John Page and Finn Tarp, Oxford University Press (2020). United Nations University World Institute for Development Economics Research (UNU-WIDER). DOI: 10.1093/oso/9780198851172.003.0007

<sup>3</sup> Regulation 1 of L.I 2204

<sup>4</sup> Regulation 1 of L.I 2354

<sup>5</sup> Energy Commission (2020), Local Content and Local Participation Guidelines, Accra Ghana

<sup>6</sup> Ibid (Ackah & Asaah)

## Provision of Employment Opportunities for Ghanaians

The energy sector is one of the sectors with potentials for the creation of employment opportunities for people both directly and indirectly. Hitherto the formulation of the local content policy, employment opportunities in the sector are not benefiting the nationals or people within the host communities in which the oil production is occurring<sup>7</sup>. The common trend in the sector is that senior management positions are mostly offered to expatriates or foreign workers limiting the opportunity for nationals. Hence, the local content policy seeks to remedy the situation by preserving certain roles such as operators in the oil and gas industry are preserved for Ghanaians having the requisite expertise or qualifications in the various levels of the operations<sup>8</sup>. It has been argued that the downstream energy sector along has created direct employment opportunities to about 2 million Ghanaians and for each job within the value chain, between one and four indirect jobs are created<sup>9</sup>. Ultimately, this will ensure the maximization of benefits of the oil and gas wealth generation on a comprehensive local content platform by maximizing the use of local expertise, goods and services, job creation for people, businesses, and financing in all aspects of the oil and gas industry value chain and retention of the benefit within Ghana.

To ensure compliance, each operator is mandated to submit to the relevant regulatory agency for approval a detailed Annual Recruitment and Training Programme for the recruitment and training of citizens of Ghana in all job classifications and in all aspects of petroleum activities to be carried out. Operators are expected to detail their recruitment plans to achieve at least 50% of management positions for Ghanaians at the commencement of operations, gradually increase that to 80% within five years. At the technical level, a commencement target of 30% is the benchmark with an increase to 80% within five years and in the other staff categories (lower level, casual and non-skilled) the policy mandates the recruitment of 100% Ghanaians<sup>10</sup>.

## Boosting Local Economic Development

With the restriction of procurement to local goods and services by the local content act, Ghanaian businesses can take advantage of the numerous opportunities in the industry to provide goods and services at competitive price, quality, and timely availability. This in effect translate to an improvement in the local economy. With the policy aiming at achieving at least 51% equity participation in whole sale supply and distribution in the electricity supply industry (ESI) in Ghana and 60% local content and develop capacity in the manufacturing industry for electrical cables, solar cells, conductors, and accessories, will have a trickle-down effect on the national economy. In the case of other services such as catering, artisanal among others, it offers an opportunity for local economic development. Similarly, in the petroleum sub-sector, the local content policy aims at achieving a minimum of 90% local content and local participation in all aspects of the oil and gas industry value chain.

## Training and Capacity Building Opportunities

The policy enjoins all operators to provide training opportunities to Ghanaians in all aspects of the downstream value chain through scholarships, industrial training, and other financial support for education. The government support local training and technical institutions to develop the requisite capacity consistent with international standards to train Ghanaians to the levels required by the industry in drilling, catering, and housekeeping, and other support services. Special attention will be given to ensure the indigenization of oil and gas technologies. The policy also makes provisions to ensure equal opportunities for men and women in the oil and gas industry<sup>11</sup>. The government is under an obligation to ensure that Ghanaian citizens participate in the ownership of businesses in the energy sector. The government must empower Ghanaians through series of training and capacity building opportunities. Artisans such as electricians and welder ought to be empowered to meet the quality standards and remain competitive in the industry.

<sup>7</sup> Azapagic, A. (2004). 'Developing a Framework for Sustainable Development Indicators for the Mining and Minerals Industry'. *Journal of Cleaner Production*, 12(6): 639–62

<sup>8</sup> Ibid

<sup>9</sup> World Bank (2004). *The Extractive Industries Review*. Washington, DC: World Bank.

<sup>10</sup> Section 5.4 of the 2010 Local Content and Local Participation policy framework

<sup>11</sup> Ibid (Ackah and Mohammed)

The regulatory agencies also provide several capacity-building opportunities for indigenous companies to expedite the development of skills and know-how through the formation of joint ventures. It encourages partnerships and the pooling of resources among indigenous companies to deliver goods and services to the appropriate standards. With the commission's database of endogenous companies in the downstream sub-sector, targeting of actors for enhance capacity building and linkage to upcoming opportunities is easier<sup>12</sup>.

### **Opportunity for Ghanaian Participation in the Sector**

The local content policy and legislation enjoins that every Petroleum Agreement or petroleum licence between Ghana and any foreign entity shall retain at least 5% equity participation to endigenous companies<sup>13</sup>. This seeks to inter alia enhance the capability and international competitiveness of domestic businesses and to create petroleum and related support industries to sustain Ghana's economic development. The policy mandates the actors within the petroleum value chain to submit plans for compliance with local content requirements regarding the provision of goods and services. This creates a situation where no foreign company can exclusively engage in the sector without the involvement of a Ghanaian.

The requirement for foreign companies in the petroleum sector to transfer advanced technology and skills related to the petroleum activities and their recruitment and training programmes to the regulatory agencies (National Petroleum Authority, Ghana National Petroleum Corporation, or the Petroleum Commission) further enhances government's target of ensuring local participation in all aspects of the petroleum value chain<sup>14</sup>.

### **Opportunity for Advocacy and Civil Society Engagement**

The role of Civil Society Organizations (CSOs) and the media in promoting sustainable development and good governance is crucial. They play vital roles in supporting good governance in the new energy sector in Ghana. With the enactment of enabling legislation such as the local content regulations, it offers an opportunity for CSOs act as pressure groups to hold both government and private actors in the sector accountable. They demand for full compliance with the local content law and policy. Some of the main CSOs in the energy sector include the Africa Centre for Energy Policy (ACEP), the institute for energy security (IES), the Natural Resource Governance Institute, and the Civil Society Platform on Oil and Gas.

### **Challenges in Implementing Local Content Policies in Ghana's Downstream Energy Sector**

Despite these opportunities, the implementation of the local content policies is faced with some challenges. Key among these especially in the downstream energy sector in Ghana include:

#### **Limited Capacity of Local business to Leverage on Local Content Policy**

Local business who are the primary targets of the local content lack the requisite capacity in electricity and the oil and gas industry to provide services inline with the international standards in the industry<sup>15</sup>. Ghanaian companies in the downstream energy sector are poorly structured and with limited capacity to effectively conduct business in the sector<sup>16</sup>. Key challenge among the actors within the value chain is the difficulty it takes to identify suitable Ghanaian suppliers because of limited information or records on them and also the limited capacity which denies them opportunities to benefit from the supply chain of the sector. The lack of skilled personnel to provide services that meet the required standards among local businesses is further worsens

---

<sup>12</sup> Ministry of Energy (2009). 'Local Content and Local Participation in Petroleum Activities'. Policy Framework for Ghana. Accra: Ministry of Energy.

<sup>13</sup> Ministry of Energy (2009). 'Local Content and Local Participation in Petroleum Activities'. Policy Framework for Ghana. Accra: Ministry of Energy.

<sup>14</sup> Tullow (2012). Annual Corporate Social Responsibility Report. Accra: Tullow Ghana.

<sup>15</sup> Asafu-Adjaye, J. (2010). 'Oil Production and Ghana's Economy: What Can We Expect?' Ghana Policy Journal, 4 (Special Issue on Ghana's Petroleum Industry: The Prospects and Potential Impediments towards Good Governance Standard): 35-49.

<sup>16</sup> Africa Centre for Energy Policy (2017). 'The Implementation of Ghana's Local Content Regulations in the Upstream Sector: Achievements, Challenges, and Way Forward'. Accra: Africa Centre for Energy Policy.

especially as the small and medium enterprises (SME) are not prioritizing investment in skills training of their staff and do not adequately invest in the training of its employees<sup>17</sup>.

Additionally, these businesses have limited financial capacity to deliver on large contracts and unfortunately, most financial institutions in Ghana do not creditworthiness of these businesses and where the businesses meet the requirement for loans, the interest rate on such loans makes it practically impossible for these SMEs to thrive. Certain services required a certified businesses with international standards bodies such as the International Organization for Standardization (ISO), environment, health, and safety (EHS), insurance requirements, and business ethics, including anti-bribery policies as a prerequisite for doing business<sup>18</sup>. Most local SMEs are not certified and do not have the other policies to be eligible for contract.

With these challenges, the country's ambitious objectives of achieving 51% and 60% in the supply and distribution of electricity sub-sector respectively and the 90% local participation in the petroleum sub-sector will not be achieved.

### **Allege Discrimination Against Indigenous Companies**

Allege acts of discrimination has often been inferred due to the dominance of international suppliers in the supply chain of the energy sector in Ghana. This fuels the impression of limited capacity of local SMEs. This justification cannot be said to be a valid ground for the deliberate underutilization of local SMEs. The sector dominated by foreign manufacturers or suppliers of goods and services that could ordinarily be made or supplied by local SMEs or firms<sup>19</sup>. This is despite the requirement of the local content policy to support for local participation, the reality is that preference is given to foreign suppliers for several reasons and are reluctant to break such supplier relationships. Ghanaian owned businesses are faced with the challenges of having to meet all the pre-requisite standards and thereafter, it is difficult to identify the entry point(s) to the value chain.

This challenge creates the perception that local SMEs are deliberately refused to be engaged and are discriminated upon in pretence for lack of requisite capacity to meet their standards; instead.

### **Limited Capacity of Regulatory Institutions/Agencies**

Despite the tremendous efforts by the regulators (National Petroleum Authority, Petroleum Commission, Energy Commission, etc) to ensure effective implementation of the local content legislation and policies, the capacity of the regulators have been a challenge. To ensure strict compliance the regulators are required to establish detailed guideline, milestone, and indicators as well as timelines for measuring and monitoring the level of compliance. The technical competence of the regulators is unfortunately limited especially as local content and local participation is a relatively new area for these regulators<sup>20</sup>.

### **Perceived Political Interference in the Operations of Regulators**

A common character of Ghana's public sector is the high influence of partisan politics through the appointment of management and some technical staff to the regulatory agencies by the political party in power and their tenure fixed to the tenure of the political party in power<sup>21</sup>. This even worsened by the power vested in the president to appoint and dismiss the persons in several managements (Managing Directors and deputy (ies)) and other technical staff of the regulatory bodies whose appointment is at the discretion of the president or the Minister of Energy. This vest the political elite with considerable influence to interfere with the work of the regulators. The frequent changes of top management and some technical staff with changes in government also affects institutional memory and learning and some of the actors within the value chain may take advantage of

---

<sup>17</sup> Ibid (Ackah & Mohammed)

<sup>18</sup> Ibid (Ackah & Mohammed)

<sup>19</sup> Boyefio, G., and Ochai, P. (2014). 'Another Look at Ghana's Petroleum (Local Content and Local Participation) Regulation: The Underlying Prospects and Intrigues'. *Orient Energy*, 3(4): 4–12.

<sup>20</sup> Ibid (Ackah & Mohammed)

<sup>21</sup> Ibid (Ackah and Mohammed)

the inconsistency in monitoring result from leadership change to misreport report progress on the implementation of local content policy.

## CONCLUSION

While Ghana's local content policy and legislation on the energy sector have the potential to stimulate broad-based economic development, contribute towards alleviate poverty and ensure sustainable economic and social development, its implementation so far has mixed results. Both the Petroleum (Local Content and Local Participation in Petroleum Activities) Regulations (LI 2204) and the Energy Commission (Local Content and Local Participation) (Electricity Supply Industry (ESI)) Regulations, 2017, (L.I. 2354) as well as the Local Content and Local Participation (Electricity Supply Industry) Guidelines and ancillary policies can be said to have some impact on the employment of Ghanaians and the creation of enabling business environment for local businesses to enter participation in the energy sector. However, the successes chalked falls short of the target set by these policies.

For effective implementation of local content laws and policies in Ghana, the following recommendations are worth considering:

- a. The regulators should intensify its monitoring function and promote specialized skills development and transfer of technology to Ghanaians.
- b. Government should amend the local content regulations to bridge the salaries and wages gap between expatriates and Ghanaian employees in the sector.
- c. The cost of lending money to businesses in the sector should be revised to make it favourable for local SMEs in the sector to obtain the huge financial requirements to be competitive in the industry.
- d. Some of the targeted policy should be revised to be more realistic. For instance, the LI's minimum targets for the employment of Ghanaians and participation of local companies are 90% and 50% respectively are overly ambitious and unrealistic.
- e. Local businesses should also strive for strategic partnerships with foreign firms to remain competitive. Where a foreign and local companies partner, it allows for both competitiveness and technology transfer to the local company.

## BIBLIOGRAPHY

1. Africa Centre for Energy Policy (2017). 'The Implementation of Ghana's Local Content Regulations in the Upstream Sector: Achievements, Challenges, and Way Forward'. Accra: Africa Centre for Energy Policy.
2. Asafu-Adjaye, J. (2010). 'Oil Production and Ghana's Economy: What Can We Expect?' Ghana Policy Journal, 4 (Special Issue on Ghana's Petroleum Industry: The Prospects and Potential Impediments towards Good Governance Standard): 35–49.
3. Azapagic, A. (2004). 'Developing a Framework for Sustainable Development Indicators for the Mining and Minerals Industry'. Journal of Cleaner Production, 12(6): 639–62
4. Boyefio, G., and Ochai, P. (2014). 'Another Look at Ghana's Petroleum (Local Content and Local Participation) Regulation: The Underlying Prospects and Intrigues'. Orient Energy, 3(4): 4–12.
5. Charles Godfred Ackah and Asaah S. Mohammed, Local Content Law and Practice: The Case of Ghana In: Mining for Change: Natural Resources and Industry in Africa. Edited by: John Page and Finn Tarp, Oxford University Press (2020). United Nations University World Institute for Development Economics Research (UNU-WIDER). DOI: 10.1093/oso/9780198851172.003.0007
6. Energy Commission (2020), Local Content and Local Participation Guidelines, Accra Ghana
7. Ministry of Energy (2009). 'Local Content and Local Participation in Petroleum Activities'. Policy Framework for Ghana. Accra: Ministry of Energy.
8. Smith, Benjamin; Waldner, David (2021). [Rethinking the Resource Curse](#). Cambridge University

Press. [doi:10.1017/9781108776837](https://doi.org/10.1017/9781108776837). ISBN 9781108776837. S2CID 233539488

9. Tullow (2012). Annual Corporate Social Responsibility Report. Accra: Tullow Ghana.
10. World Bank (2004). The Extractive Industries Review. Washington, DC: World Bank.

### Statute

1. Energy Commission (Local Content and Local Participation) (Electricity Supply Industry (ESI)) Regulations, 2017, (L.I. 2354)
2. Petroleum (Local Content and Local Participation in Petroleum Activities) Regulations (LI 2204) Local Content and Local Participation policy framework