

CASE STUDY**GHANA:
UPSTREAM LINKAGES****THE IMPORTANCE OF DEFINING
LOCAL PROCUREMENT****OVERVIEW****LEVEL OF OPERATION:**

National, industry

GOVERNMENT ROLE:

Regulator, program facilitator

FOR MORE INFORMATION:See [Minerals Commission, Minerals and Mining \(General\) Regulations](#)**KEY COMMODITIES:**Gold, crude petroleum¹**TOTAL NATURAL RESOURCE RENTS
(AS % OF GDP) (2015):**17.1 per cent²**NATIONAL EXTRACTIVES COMPANY:**

Ghana National Petroleum Corporation (GNPC)

UNDP HUMAN DEVELOPMENT INDEX VALUE (2016):0.579 (Global Rank 139)³

Ghana has put in place a combination of demand- and supply-side policy options. They include preferential procurement of local goods and services when bids are within 2 per cent of each other on price, submission of a procurement plan that covers a five-year period, and specific enforcement mechanisms, such as annual reports regarding compliance and financial penalties that will be applied if the local procurement plan or a semi-annual report on the implementation of the procurement plan is not provided (Minerals and Mining (General) Regulations LI 2173 [hereinafter, "Regulations"], Articles 2(1), (3), (4), (6), (9), and (13)). Additionally, a list is maintained of which goods are to be procured in Ghana; failure to buy these goods locally will result in penalties and a payment of the full customs duty for the imported goods Regulations, Art. 2(10) and (11)).

¹ Central Intelligence Agency (CIA). (2017). *The world factbook*. Washington, DC: CIA. Retrieved from: <https://www.cia.gov/library/publications/the-world-factbook/fields/2111.html>

² World Bank Group. (2017). *Total natural resource rents (% of GDP)*. Washington, DC. Retrieved from <https://data.worldbank.org/indicator/NY.GDP.TOTL.RT.ZS>

³ United Nations Development Programme. (2016). *Human Development Reports: Ghana*. Geneva, Switzerland. Retrieved from <http://hdr.undp.org/en/countries/profiles/GHA>



SUMMARY OF POLICY OPTIONS IN GHANA

DEMAND-SIDE POLICY OPTIONS

- Targeted lists of types of goods that should be locally sourced
- Requirement to provide a local procurement plan
- Provision that local goods and services will be given preferential treatment or purchased to the extent feasible

SUPPLY-SIDE POLICY OPTIONS

- Supplier development programs

DEFINING “LOCAL” PROCUREMENT

Local procurement is not specifically defined in the regulations. Preference “to the maximum extent possible and consistent with safety, efficient, and economy” (Regulations, Art. 2.1) must be given to the following:

- Materials and products made in Ghana. However, it is not clear how much local value added is necessary for a good to qualify as “made in Ghana.”
- Service agencies located in Ghana and owned by citizens, companies (or partnerships registered under Ghanaian law) and corporations. As noted by the Organisation for Economic Co-operation and Development (OECD), it is sufficient for firms to be registered, and it is not required to have local ownership of capital, local employment or local equity.⁴ See below for specific definitions of important Ghanaian terms, including “citizen.”

Note that the “to the extent possible” caveat limits the mandatory nature of the obligation with respect to goods; it could, for example, be argued that purchasing a more expensive local good was inconsistent with economy.

Relating to the procurement list and the specifications for preferential treatment to local suppliers that have bids within a certain percentage, “bids with the highest level of Ghanaian participation in terms of ownership and management by Ghanaians and employment of Ghanaians must be selected, where bids are within 2% of each other on price” (Regulations, Art. 2.13).

KEY DEFINITIONS

Citizens means:

“(a) an individual who is a citizen of Ghana by virtue of a law for the time being in force in Ghana;

(b) a partnership or association which is composed exclusively of individuals who are citizens of Ghana;

(c) a body corporate which is incorporated under the Companies Code, 1963 (Act 179), and

(i) which is certified by the Minister to be controlled by the Republic,

(ii) whose membership is composed exclusively of persons who are citizens;

(iii) whose directors are exclusively citizens,

(d) a public corporation that is established by or under an enactment” (Act, Art. 111).

Commission means “the Minerals Commission established under section 1 of the Minerals Commission Act 1993 (Act 450)” (Act, Art. 111).

Localization means “a training program designed towards the eventual replacement of expatriate personnel by Ghanaian personnel” (Act, Art. 50).

Localization program “includes a procurement plan and means proposals or particulars with respect to the employment or recruitment of expatriates, employment and training of Ghanaians towards the eventual replacement

⁴ Organisation for Economic Co-operation and Development (OECD). (2017). Local content policies in minerals-exporting countries: Case studies, p. 63. Retrieved from [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=TAD/TC/WP\(2016\)3/PART2/FINAL&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=TAD/TC/WP(2016)3/PART2/FINAL&docLanguage=En)



of expatriate personnel by Ghanaian personnel and preference for local products, as the context permits” (Regs, Art. 28).

Key terms defined in Ghana’s policies relating to local procurement

Reprinted from: *Columbia Center on Sustainable Investment (CCSI)*, (n.d.).⁵

DEMAND-SIDE POLICY OPTIONS

PREFERENTIAL PROCUREMENT AND TARGETED LISTS OF TYPES OF GOODS THAT SHOULD BE LOCALLY SOURCED

The Minerals and Mining Act (Act 703) was originally written in 1986 and updated in 2006. Additions included a focus on creating a localization policy and the facilitation of production linkages.⁶ In 2012, the Minerals and Mining (General) Regulations LI 2173 (Regulations) were passed. These regulations marked the beginning of a new and thorough approach to local content. They address the generic language of the 2006 Mining Act 703, which had previously been open to interpretation. It now clarifies local procurement requirements, as well as licensing, reporting, and monitoring and enforcement processes.⁷

Companies are required to procure the maximum possible amount of local goods and services, with important caveats. Specifically, “[a] mine Support

Service provider, a holder of a mineral right or a licence to export or deal in minerals shall procure goods and services with Ghanaian content to the maximum extent possible and consistent with safety, efficiency and economy.”⁸ Regulations also state that when bid prices are within 2 per cent of other offers, the company must choose the bid with the highest amount of Ghanaian ownership, management and employment.⁹

Additionally, companies must adhere to the Ghana Minerals Commission’s¹⁰ local procurement list, which details targeted goods and services that must be sourced within the country. Failure to purchase listed products leads to the payment of full customs import duty of the product and a penalty.¹¹ The list was produced following a sector-wide analysis of national supplier capacity and is reviewed annually by the Commission.¹² The initial list of eight locally procured products was released in 2014 and was increased to 15 products in 2015;

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this now accounts for 54–60 per cent of all items purchased by mining companies. An updated list, which is anticipated to include 29 products, was set to be released in December of 2017,¹³ though at the time of writing has not yet been released.

Problems arise when defining what exactly is considered to be a Ghanaian product or

⁵ CCSI. (n.d.). Local content – Mining, p. 5. Retrieved from <http://ccsi.columbia.edu/files/2014/03/Local-Content-Ghana-mining-CCSI-June-2014.pdf>

⁶ OECD (2017), Id. note 4.

⁷ Ibid.

⁸ Ghana: Minerals Commission. (2012). Minerals and Mining (General) Regulations, 2012 (L.I. 2173): Article 2(1). Page 4. Retrieved from <https://www.ecolex.org/details/legislation/minerals-and-mining-general-regulations-2012-li-2173-lex-faac168926/>

⁹ Ibid, p. 5.

¹⁰ The Agency was established in 1993 under the Minerals Commission Act (Act 450).

¹¹ Ibid.

¹² OECD (2017), Id. note 4

¹³ Ibid.



service, as no definition for “origin” is provided in regulation, leaving it open to interpretation. If a local firm imports and re-sells a product, is it “local”? What if the local firm does some minimal finishing to the product, adding value?

The way in which services have been defined also leaves room for sub-optimal adoptions of the requirements, as services are considered to be nationally sourced as long as service providers

financial assistance.¹⁷ The procurement plan is to be revised annually to accommodate the updated local procurement lists.¹⁸

The Minerals Commission receives and reviews all local procurement plans. In 2012, there was a new addition to the country’s enforcement mechanism, which increased the severity of the penalty incurred by a company that did not produce and deliver a local procurement plan; each month,

a penalty of USD 10,000 is incurred, and after six months the fine increases to USD 10,000 per day.¹⁹ Additionally, if goods are imported despite local procurement requirements, the company at fault must pay customs duty charges, as well as a penalty charge.²⁰

When bids are within 2 per cent of the price, the one considered more Ghanaian must be chosen.

are registered under Ghanaian law.¹⁴ This results in outcomes that are not in line with the government’s goals to leverage the mining sector in supporting broader industrialization as, in many cases, foreign firms are simply registering in the country and are considered Ghanaian firms.¹⁵ Furthermore, when bids are within 2 per cent of the price, the one considered more Ghanaian must be chosen. This has led to a bidding competition based more on price than based on the quality of the service.¹⁶

REQUIREMENT TO PROVIDE A LOCAL PROCUREMENT PLAN

A company’s five-year procurement plan must be submitted to the Minerals Commission for approval and must include targets that adhere to the most current list of products that must be procured locally. It must also outline the support given and efforts taken to increase suppliers’ access to technical and

SUPPLY-SIDE POLICY OPTIONS

SUPPLIER DEVELOPMENT PROGRAMS

In November 2017, a National Supplier Development Program endorsed by the government of Ghana was announced; it was led by the Africa Minerals Development Centre, Africa Centre for Economic Transformation and the German Federal Institute for Geosciences and Natural Resources. Additionally, in the same month, the Ghanaian Chamber of Mines launched a local procurement portal; it was intended to increase the awareness of local businesses and connect them to the various opportunities within the mining industry.²¹ This is part of a wider effort made by these actors to advance Ghana’s Country Mining Vision, which is to increase the linkages between the mining sector, and local suppliers and manufacturers.²² While this effort represents an important step forward, it needs to be combined

¹⁴ Ibid.

¹⁵ BGR & Kaiser EDP. (2017). *Local procurement in West Africa: Executive summary and support recommendations of BGR Research*, p. 6. Retrieved from https://www.bmz.de/rue/includes/downloads/BGR_2017_Local_procurement_in_West_Africa_Executive_Summary.pdf

¹⁶ OECD. (2017). Id. note 4.

¹⁷ Ghana: Minerals Commission. (2012). Id. note 8, p. 4.

¹⁸ Ibid. note 8, p. 5.

¹⁹ Ibid. note 8, p. 4.

²⁰ Ibid. note 8, p. 5.

²¹ Ajarfor, A.S. (2017). *Chamber of Mines unveils local content portal: Modern Ghana*. Retrieved from <https://www.modernghana.com/news/817948/chamber-of-mines-unveils-local-content-portal.html>

²² Ghana News Agency. (2017). *Ghana to launch NSPD programme*. Retrieved from <http://www.ghananewsagency.org/economics/ghana-to-launch-nspd-programme-124379>



with infrastructure investments, including a reliable supply of energy that will support the development of energy-intensive industries, such as machine tools, spare parts and major equipment repairs.²³

KEY LESSONS

- While Ghana has developed a fairly sophisticated set of local procurement policy provisions, including a requirement for a local procurement plan and targeted list of products, the definition of what constitutes a “Ghanaian” product requires further clarification. Detailing this definition might thus assist the government’s efforts in building up local capacity and avoid the risk of procurement dollars flowing to foreign importers of goods and services.
- While the local procurement plan focuses on the efforts of individual mining companies to build supplier capacity, the newly announced supplier development program responds to the need highlighted by numerous studies for Ghana to provide comprehensive supports and investments to build local supplier capacity in parallel to demand-side policy options.²⁴ It remains to be seen whether this program can address the full set of needs of suppliers, from technical capacity to financing, and additionally, address the gaps in local manufacturing capacity.
- Starting with a list of 29 products and scaling back the phasing in of this list over a number of years shows that the government is responsive and willing to adapt its approach based on feedback from industry. This approach suggests a level of trust between companies and the government, which allows the Ghanaian government to continue to increase and move its local procurement targets forward. In contrast, recent revisions to increase requirements to targets in other jurisdictions have been met with severe opposition.

²³ African Center for Economic Transformation (ACET). (2015). *Local content and value addition in Ghana’s mineral, oil, and gas sectors: Is Ghana Getting it Right?* Retrieved from <http://includeplatform.net/wp-content/uploads/2015/03/GTF-Local-Content-MOG-in-Ghana-SR-formatted-compressed.pdf>

²⁴ ICMM and Ghana Chamber of Mines (2015). *Mining in Ghana – What future can we expect?* p. 32. Retrieved from https://www.icmm.com/website/publications/pdfs/mining-partnerships-for-development/mining-in-ghana_what-future-can-we-expect; OECD (2017). *Local Content Policies in Minerals-Exporting Countries*, pp. 9–10. Ramdoo, E. (2017). *Local content policies in minerals-exporting countries Part 1*. Retrieved from https://www.researchgate.net/profile/Isabelle_Ramdoo/publication/317370800_Local_Content_Policies_in_Minerals-Exporting_Countries_Part_1/links/593700a5a6fdcca658724ac2/Local-Content-Policies-in-Minerals-Exporting-Countries-Part-1.pdf; World Bank & Kaiser EDP (2015). *A practical guide to increasing local procurement in West Africa*, p. 20. Retrieved from <http://documents.worldbank.org/curated/en/266701468119062079/A-practical-guide-to-increasing-mining-local-procurement-in-West-Africa>.



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