

Local Content Policies In Minerals-Exporting Countries: The Case of Ghana

Economic context

The Ghanaian economy has performed well since 2000s with an average GDP growth of 6.5% in 2000s to 7.3% in 2013 (WB, 2015). However, the economic growth has recently slowed (3.9% in 2015) due to a fall in gold price, but is expected to pick up in the next years, fostered by improved oil and gas production, increased private-sector investment, improved public infrastructure development and sustained political stability (AOE, 2014). The industry and service sectors are the main drivers of the economy representing respectively 27.7% and 51.9% of the total GDP, while agriculture, although it employs almost half of the labour force, accounts for 20.4% of the total GDP (Ghana statistics, 2016).

Nevertheless, Ghana faces significant challenges: although the economy has benefited from strong growth, it has not translated into proportionate employment growth, especially youth employment. Between 2000 and 2010, employment increased by 3.5% annually compared to an average of 6.5% in economic growth, while youth unemployment has doubled (ICMM, 2015).

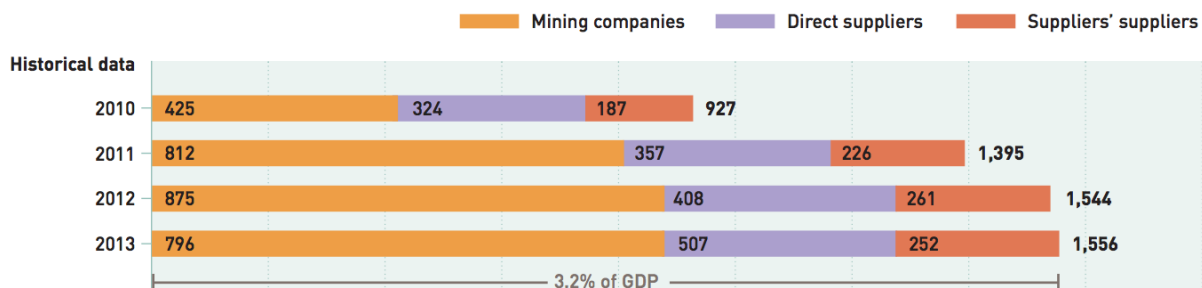
Mining in Ghana

Ghana is endowed with significant mineral wealth and has a very long mining history. Gold has been the most important mineral, representing 96% of the total mineral revenue in 2013, followed by manganese, diamonds and bauxite. Recent discoveries of significant oil resources have somewhat changed the economic landscape and future prospects.

The importance of the mining sector grew significantly following structural reforms to open up the economy in the 1980s. These reforms led to an increase in foreign investment in the mining sector, which in turn created some opportunities for mining support services such as catering, transport, and security (Akabzaa, 2009). In 2013, the mining sector accounted for 50% of FDI, 37% of total exports, 19% of government revenues, 1.7% of GDP (ICMM, 2015).

Although the mining industry accounted for only 1.7% of GDP in 2013, the latter contribution is actually bigger if the entire value chain is taken into account. As shown in Figure 1, the mining sector and its value chain, i.e. including the value added by its suppliers and suppliers' suppliers, accounted for 3.2% of GDP.

Figure 1. Direct and indirect value added by the mining sector



Source: ICMM (2015), Mining: Partnerships for Development.

In 2013 the mining sector directly employed 1.1% of the Ghanaian labour force which can be explained by the fact that the mining sector is capital intensive but also because of the weak horizontal and vertical linkages created by the sector in Ghana (ICMM, 2015).

Local content in Ghana: legal frameworks and practical applications

Since the 1980s, with economic reforms resulting from structural adjustment programmes, the Ghanaian government significantly reduced its involvement in the mining. While the aim was to rehabilitate and foster a stagnating industry, domestic resources were very limited. Policies focused on promoting an enabling business environment that would attract FDI (Akabzaa, 2009).

In 1986, Ghana strengthened its institutions supporting the mining sector and promulgated its first Minerals and Mining Law.¹ The legislation included several tax incentives and diminished the participation of the State in mining activities by restricting the State participation to 10% of mandatory equity participation in all mining investment (with the option of increasing its participation to 20%) (Akabzaa, 2009).²

In 2006, with a view to give a new impetus to the contribution of mining to the economy, a new Minerals and Mining Act (Act 703) was passed to promote a localisation policy and facilitate production linkages. In particular, section 50(3) of Act 703 of 1986 sought to increase the participation of local labour in the industry. However, the frameworks provided in the legislation were too generic and left the Ghana Minerals Commission with considerable discretion in enforcement (ACET, 2015).

The main piece of legislation that aims to deepen local involvement in mining came in 2012 with the passage of the Minerals and Mining (General) Regulations LI 2173 which marked the beginning of local content policies in the mining sector, a major change from previous approaches. Regulation LI 2173 clarifies the interpretation of Mining Act 703 of 2006, by focusing on three areas:

1. Employment and promotion of a local workforce as well as training requirements;
2. Procurement of locally produced goods and services; and
3. Additional licensing and reporting requirements.

A monitoring and enforcement mechanism has also been put in place to track progress.

Overview of the mining legislation in Ghana

The principal laws that regulate the mining industry are the Minerals and Mining Act 2006 (Act 703) and the following regulations:

- Minerals and Mining (Compensation and Resettlements) Regulations 2012 (LI2175);
- Minerals and Mining (Support Services) Regulations 2012 (LI2174);
- Minerals and Mining (General) Regulations 2012 (LI2173);
- Minerals and Mining Regulations (Health, Safety and Technical) 2012 (LI 2182);
- Minerals and Mining (Explosives) Regulations 2012 (LI2177); and
- Minerals and Mining (Licensing) Regulations 2012 (LI 2176).
- Minerals and Mining Regulations (Health, Safety and Technical) 2012 (LI 2182) establishes environmental, safety, machinery and related guidelines for mining operations.

The principal institution regulating the mining sector is the Minerals Commission, which was established in 1993 under the Minerals Commission Act 1993 (Act 450). Its objectives are to regulate and manage the utilization of the mineral resources of Ghana and to coordinate and implement policies relating to mining.

*Mining legislation is applied equally to Ghanaians and foreign investors, except for provisions relating to small-scale mining of minerals, which is exclusively reserved for Ghanaians.

Source: Adapted from Kimathi & Partners, Corporate Attorneys (2015).

¹ The Geological Survey Department or the Mines department was strengthened and created the Minerals Commission. The first Minerals and Mining Law was the Provisional National Defence Council Law (PNDCL) 153.

² Key fiscal incentives included generous capital and investment allowances and defined a mineral royalty tax rate based on a sliding rate of 3% to 12% of gross value of mine production, depending on the operating margin of the firm.

Employment and training requirements

Regulation LI 2173 of 2012 sets out employment requirements at various stages of the life cycle of mining projects. These include:

1. At the exploration level, application for licensing and mineral rights must include a proposal for training and employment of local staff.³ Details on the proposals must be updated every 5 years.
2. During the production stage, firms must hire a minimum proportion of local workforce in various employment categories. Firms must work with the Mineral Commission to identify positions to be filled by nationals.

As summarised in Table 1, with a view to promote local knowledge and minimise expatriates' presence in the mining sector over time, the Regulation imposes some numerical targets for specific categories of staff:

- Unskilled labour and clerical positions are reserved for Ghanaians.
- Expatriate staff should not exceed 10% of the total of senior staff within the first three years, and 6% after three years. This should be accompanied by a comprehensive five-year plan to replace expatriates with Ghanaians, including training programmes, is to be submitted to the Minerals Commission for review and approval

Table 1. Local employment quotas in the mining sector in Ghana

| Regulations | Requirements |
|---|---|
| For reconnaissance and prospecting license holders | No unskilled labour or clerical staff may be foreign; 10% of skilled labour may be expatriate for the first two years after which there must be no expatriate staff; 5% of technical and supervisory staff may be expatriate in the first four years after which there must be no expatriate staff and for the life of the project up to two management staff may be expatriate. |
| For mining leases | Not more than 10% of foreign labour for the first three years from the start of the Regulations or mining operations, whichever is later, and; Not more than 6% after that, unless this means that the firm can hire less than three expatriate staff, in which case it may hire three expatriates and if it results in a fraction, the firm is permitted the next whole number. |
| Quota for immigration for expatriate employment | The Commission will not approve unless it is satisfied that no Ghanaian has the "requisite qualification and experience" to occupy the position. |
| Cases where additional expatriate employment can be approved by the Minerals Commission | (a) specialised technology is used; (b) training of Ghanaians being carried out requires a longer period than the transition period; (c) a special project including a new mine development, expansion or rehabilitation is to be undertaken, provided that the duration of the project does not exceed three years; or (d) Ghanaians are employed to work as expatriates in the firm's operations in other countries. |

Source: from the author, based on CCSI presentation (2014).

Procurement of Locally Produced Goods and Services

The 2012 regulation specifies that firms must accord preferential procurement from Ghanaian suppliers to the "maximum extent possible and consistent with safety, efficiency and economy". This requirement applies to all types of firms involved in mining, namely:

1. Holders of mineral rights, who must give preference to materials and products made in Ghana;

³ Firms must provide "details of ongoing and planned recruitment and training of Ghanaians to replace expatriates" as well as the percentages of expatriate staff to total number of senior staff. This is a condition for the grant of a mining lease and is applicable to all mining companies **whether already operating or not**.

2. Service agencies located in the country and owned by citizens; and
3. Firms or partnerships registered under the Ghanaian Company Code or Partnership Act.

Local content is not expressly defined in the regulation. All that is mentioned is that firms are required to give preference to:

- Materials and products *made in* Ghana. The rules of origin for qualification are however not clearly articulated;
- Service agencies *located* in Ghana and owned by: citizens, firms or partnerships registered under Ghanaian law. Here the key element is that it is sufficient for firms to be registered. Ownership of capital or local equity is not a requirement; and
- Corporations, "to the maximum extent possible and consistent with safety, efficiency and economy".

When assessing procurement bids for goods or services, tenders 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 (CCSI, 2014).

Definition of "local" in Ghana

While regulations do not expressly define the term "local content", nonetheless, various terms in the legislations point to an interpretation of what "local" and "content" mean in Ghana.

"Citizens" are defined as:

- a) Individuals who are citizens of Ghana;
- b) Partnerships or associations composed exclusively of individuals who are citizens of Ghana;
- c) Bodies incorporated under the Companies Code, 1963 (Act 179), certified by the Minister to be controlled by the Republic, or whose memberships are composed exclusively of citizens; and whose directors are exclusively citizens;
- d) Public corporations established by or under an enactment (Act, Art. 111).

"Localisation" is defined as "*a training programme designed towards the eventual replacement of expatriate personnel by Ghanaian personnel*" (Act, Art. 50). A "localisation programme" includes a procurement plan and means proposals with respect to the employment or recruitment of expatriates, employment and training of Ghanaians towards the eventual replacement of expatriate personnel by Ghanaian personnel and preference for local products, as the context permits (Regs, Art. 28).

Source: CCSI, 2014.

In 2014, the Minerals Commission conducted an in depth analysis of the overall supplier capacity of the mining sector and assessed local capabilities (including for SMEs) to respond better to the needs of the mining industry (World Bank, 2015). This process led to the establishment of an initial local procurement list of twenty-nine products⁴, which had significant local procurement potential. However, following extensive consultations with private sector stakeholders and after assessing the capacities of local firms and the availability of materials to meet the demand of the mining firms, it was agreed that a first list, containing eight products⁵ of "Ghanaian content", would be published in 2014. The list was subsequently increased to 19 products in the second edition of the procurement list issued in 2015. These products are evaluated to account for 54-60% of all items purchased by mining firms. A third list, this time comprising of the twenty-nine products is expected to be published in December 2017.

⁴ These are: activated carbon; Heavy duty electric cables; Ammonium sulphate; Metal or PVC core trays; Bolts and nuts; Mill liners; Bullion boxes; Motor re-winding and re-furbishing; Calico bags; OTR tyre-re-treading; Cement products/grout; Overalls and work clothes; Fencing, wire and mesh products; Plastic sample bags; Chemicals (caustic soda); Quick lime and hydrated lime; Conveyor rollers/idlers, pulleys; Rock-bolts and split-sets; Cupels and crucibles; Steel products (plate, angles, brackets, sprockets); Explosive supply-emulsion; Ventilation ducting; General and speciality lubricants; Wood products; Grinding media; Yelomine pipe; HDPE and PVC pipes.

⁵ Lime, grinding media, HDPE and PVC pipes, cement and cement products, tyre-retreading, general and special lubricants, explosives and caustic soda.

Reporting requirements

Firms have an obligation to provide a five-year procurement plan, specifying to the extent possible, how firms intend to use local products. The procurement and localisation plans must be approved by the Minerals Commission and must be revised every year. In addition, firms must report their levels of compliance on an annual basis.

Enforcement mechanisms

To address previous challenges with enforcement, the 2012 regulation foresees severe penalties for non-compliance. These can be summarised as follows:

- For non-compliance to an approved localization programme (i.e. the replacement of foreign staff by local staff), the firm must pay one year's salary of the expatriate concerned for each month, or part of each month, that latter would have worked in excess to what was foreseen in the plan. The penalty is expected to be used for the training of Ghanaians for participation in the mining sector;
- Firms that fail to provide a procurement plan within the prescribed timeframe incur a penalty of USD 10 000 per month for the first six months of delay, and after that, USD 10 000 per day that the delay is not respected;
- Firms that fail to submit the report regarding the implementation of the procurement plan incur a penalty of USD 10 000 per month for the first two months of delay, following which an additional USD 10 000 must be paid for each additional day of delay;
- Firms that fail to procure locally as required under the local procurement list must pay the full customs duty on imports of goods as well as a penalty to be determined in local procurement list.

Table 2. Summary of LCPs applicable in Ghana

| Type of Requirements | Details of requirements | Applicability in Ghana | Relevant legal frameworks |
|--|---|--|---|
| Numerical requirements | Compulsory requirement to employ % of local labour | For a comprehensive overview, see Table 1 | Minerals and Mining (General) Regulations LI 2173 |
| | Specific categories of procurement reserved for local suppliers | A list of 8 products have been identified (Lime, grinding media, HDPE and PVC pipes, cement and cement products, tyre-retreading, general and special lubricants, explosives and caustic soda) | Minerals Commission |
| | Permits or licensing requirements | Conditional on plan for training and employment of staff | Minerals and Mining (General) Regulations LI 2173 |
| | Ownership requirement: % equity participation | N/A except in small-scale mining which is reserved for nationals | Minerals and Mining Act |
| | Quota for immigration for expatriate employment | Firms must apply for an immigration quota for expatriates, with the ability to adjust the quota in certain circumstances | Regs, Art. 1 |
| Monetary requirements | Preferential price premium for local suppliers | Procurement bids for goods or services with highest level of Ghanaian participation to be given preference, where bids are within 2% of each other on price | Regulations, Art. 2(13) |
| Capabilities and knowledge development | Requirement for the training of local labour or certification of local suppliers | Firms must submit training place in view of replacement of expatriate staff | Mining Act, Art. 11 |
| | | Firms must state <i>how</i> they intend to train Ghanaians to replace expatriates within a specified timeframe "if available" | Regulations, Art. 1(2) |
| Reporting and justification | Mining firms to report and justify hiring foreign labour or sourcing inputs from abroad | Firms with an approved localization programme must submit an annual report to the Commission showing the level of compliance with the program. Firms must submit reports semi-annually on the implementation of the procurement plan (CCSI, 2014). | Minerals and Mining (General) Regulations LI 2173 |

Source: Adapted from Ramdoo (2015).

Suppliers development: strategic partnerships and private sector initiatives

Besides the existing collaboration between the private and public sectors in shaping the mining industry regulatory framework, firms are also engaged in partnerships, which for some aim at

building capacities and enlarging the scope of opportunities and activities of Ghanaian suppliers in the value chains.

Gold Field is for example working with Tema Steel Limited, a Ghanaian firm that manufactures steel milling balls, to improve its production capacities and standards to make it a reliable supplier - for both Gold Fields and other mining firms (Gold Fields, 2015). This in turn allows Tema Steel Limited to enlarge its market scope from Ghana to Western Africa, and make it more resilient in case of steel market price variations. In this case, this partnership allows Tema to (i) deepen linkages with a lead firm in the gold mining sector - and hence get a better access to knowledge and technology; (ii) improve production standards, which lead both to business development, and higher value products manufacturing; (iii) create further linkages with local SMEs within the mining sector, and contribute to their business and technological development.

In this example, and contrary to the majority of partnerships, Gold Fields went beyond providing financial support, to include know-how and technological knowledge transfer to its supplier. This contributes significantly to deepening and strengthening linkages between the mining firms and local suppliers in a sustainable way.

Main properties

Ghana's mining sector accounts for a small share of its GDP which is doubled if direct activity is combined with indirect production and activity by the sector's suppliers: the multiplier associated with the mining value chain in Ghana is therefore 1:2.

In 2012, new mining regulations instituted employment and procurement targets. Employment targets are strict: all unskilled labour must be Ghanaian and at least 90% of senior management (increased to 94% after three years). However, these rigid requirements include some flexibility, for example if sophisticated machinery is used that needs more specialized skills than can be found locally, or if the training programme to bring Ghanaian skill levels up to speed takes longer than the allotted time, or if Ghanaians are employed in an international firm's operations elsewhere. In any of these cases, the employment quota is relaxed.

Procurement mechanisms, on the other hand, can be qualified as best effort. Preferential procurement from Ghanaian suppliers is a requirement to the "maximum extent possible and consistent with safety, efficiency and economy". Tenders 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. This implies, however, that supplier firms are competing on price rather than quality or reliability of the services provided.

In 2014, in order to prioritize sectors for local procurement, the Minerals Commission conducted an in depth analysis of the overall supplier capacity and produced a list of eight products, accounting for 54-60% of mining firms' purchases of goods, that were deemed promising for procurement from local suppliers. Strengthening suppliers' ability to respond to procurement in these areas through suppliers development programmes, and increased access to finance and technical assistance could increase the positive spillovers from Ghana's mining sector.

There are strong mechanisms in place for monitoring and enforcement of local content provisions in Ghana. Firms provide a five-year local procurement plan that is approved by the Minerals Commission. In addition, firms must report their levels of compliance on an annual basis. The regulation foresees severe penalties for non-compliance with employment targets, and even for non-compliance with reporting requirements. Such strong penalties, if implemented, will reduce firms' incentives to ignore regulation or reporting of their local procurement initiatives.



More Information

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