



**Supporting Inclusive Resource Development (SIRD)
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LOCAL CONTENT: LAW AND POLICY

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... "the core principle of Local Content is to ensure that as resources are being exploited they benefit everyone equally, collectively and over the lifespan of the respective project....

▶ **ABSTRACT:**

1. WHAT IS LOCAL CONTENT?
 - Definition and Scope

2. LAW & POLICY
 - Petroleum Act
 - The Mining Act

3. APPLICATION

4. LOCAL CONTENT BILL

Local Content: Definition and Scope

- There is no universal definition of Local Content, however in the Kenyan context it is taken to mean “the added value brought to a Country’s economy from its extractive industry through the systematic development of national capacity and capabilities, investment in developing and procuring a locally available work force, services and supplies, for the sharing of accruing benefits.
- Local Content speaks to promoting local ownership; maximizing use of local goods and services; value addition; local employment; and research and development
- Most petroleum and mining laws require that foreign companies adopt some measure of preference for local goods and services. Apart from the **direct benefits** to stakeholders (such as local businesses, entrepreneurs, and communities) through **access to business opportunities, market diversification, access to capital, technology, and productivity**, there are wider benefits typically sought by such requirements:
 - (1) increased employment and skills;
 - (2) increased domestic and foreign investment;
 - (3) technology and knowledge transfer from IOCs;
 - (4) exports and foreign exchange; and
 - (5) and increased government revenues.

Local Content: Definition and Scope (Contd)

- Local content is about development of indigenous capacities and capabilities through deliberate and planned skills and technology and even ownership transfer to host citizens, in this case Kenyans.
- local content, there are at least five critical components: ownership, maximization of local procurement and preferences; value addition; local employment; and skills and technology transfer
- a) **Ownership** - Local content may involve a mandatory requirement that IOC's and or development companies to enter into joint ventures with local firms or to open equity to local partners as a pre-requisite to obtaining mining or exploration licenses.
- b) **Local Procurement** - Local content may also involve localizing the extractive industry supply chains by sourcing from local companies. This however requires the locally procured goods and services to meet acceptable standards. Procuring locally also makes business sense since it is usually cheaper to produce thus procure locally.

Local Content: Definition and Scope (Contd)

- c) **Value Addition** - primarily involves putting in place policies to ensure the extracted resources are transformed locally before being exported as this would ensure the country or local regions reaps more from the resources unlike when raw materials are transported.
- d) **Local Employment** - Employment of locals in the extractive industry value chain emerged in the discussions as a very strong component of local content. It was also noted that employment should be accompanied with necessary training, skills development and technology transfer to the locals. There should also be deliberate and well planned efforts to employ locals up to the high levels of the multinational companies. Employment procedures should be transparent and inclusive of vulnerable groups such as women, youth and people with disability.
- e) **Research and Development** - Local content may also require the multinational companies to invest in local research and development. This would ensure local companies are competitive as a result of using latest technology. Moreover, local companies are likely to benefit from such technology transfer. Involving local Kenyan universities in such research and development is one effective way of developing local capacity.

The Petroleum Act

- **Section 77** - A contractor and a sub-contractor of the contractor conducting upstream petroleum operations shall:
 - (a) Comply with local content requirements in all of the contractor's or subcontractor's operations;
 - (b) Give priority to services provided and goods manufactured in Kenya Where the goods meet the specifications of the petroleum industry as prescribed by the Kenya Bureau of Standards or in absence of a Kenyan standard any other internationally acceptable standard that the Authority shall approve; and
 - (c) ensure that priority is given for the employment or engagement of qualified and skilled Kenyans at all levels of the value chain.
- **Section 77 (2)** - For the purpose of subsection (1) the contractor shall before engaging in upstream petroleum operations prepare and submit a long term and annual local content plan which corresponds with the Work program to the Authority for approval.

The Petroleum Act (Contd)

- **Section 77 (3)** - Without limiting the generality of subsection (2), a local content plan shall address:-
 - (a) Employment and training;
 - (b) Research and development;
 - (c) technology transfer;
 - (d) industrial attachment and apprenticeship;
 - (e) legal services;
 - (f) financial services;
 - (g) insurance services.

- Other provisions of the Petroleum Act in relation to Local Content:-
- - Establishment of a Local Content Authority to oversee the IOC's adherence to requirements under the Act.
- - Establishment of a Training Fund (Section 79 (2))

- From the foregoing we can discern that there is need for elaboration on the mandatory requirements of local content under the act (use of the word address)
- Does this satisfy the 5 point characteristic under the local content scope?

The Mining Act

- **Section 46** - 46. (1) To ensure skills transfer to and capacity building for the citizens, the holder of a mineral right shall submit to the Cabinet Secretary a detailed programme for the recruitment and training of citizens of Kenya in a manner as may be prescribed by the Cabinet Secretary.

(2) The submission and approval of the programme under subsection (1) shall be a condition for the grant of mineral right.

(3) The Cabinet Secretary shall make regulations to provide for the replacement of expatriates, the number of years such expatriates shall serve and provide for collaboration and linkage with universities and research institutions to train citizens.

(4) The Cabinet Secretary shall issue policy guidelines making further provision to give effect to this section.

The Mining Act

- **Section 47** - (1) The holder of a mineral right shall give preference in employment to members of the community and citizens of Kenya.

(2) In the case of a large scale operation, the holder of a mineral right shall -

- a) conduct training programmes for the benefit of employees;
- b) undertake capacity building for the employees;
- c) only engage non-citizen technical experts in accordance with such local standards for registration as may be prescribed in the relevant law;
- d) work towards replacing technical non-citizen employees with Kenyans, within such reasonable period as may be prescribed by the Cabinet Secretary;
- e) provide a linkage with the universities for purposes of research and environmental management;
- f) where applicable and necessary facilitate and carry out social responsible investment for the local communities; and
- g) implement a community development agreement as may be prescribed in Regulations.

The Mining Act

- **Section 49** - (1) The Cabinet Secretary shall prescribe the limits Local equity of capital expenditure for the purpose of this section.
 - (2) A holder of a mining licence whose planned capital expenditure exceeds the prescribed amount shall list at least twenty percent of its equity on a local stock exchange within three years after commencement of production.
- **Section 50** - The holder of a mineral right shall, in the conduct of prospecting, mining, processing, refining and operations, transport or any other dealings in minerals give preference to the maximum extent possible -
 - A) to materials and products made in Kenya;
 - B) to services offered by members of the community and Kenyan citizens; and
 - C) to companies or businesses owned by Kenyan citizens.

Critical Component Test

COMPONENT	PETROLEUM ACT	MINING ACT
OWNERSHIP	*	Yes
LOCAL PROCUREMENT	Yes	Yes
VALUE ADDITION	*	Section 50?
LOCAL EMPLOYMENT	Yes	Yes
RESEARCH & DEVELOPMENT	Yes	Yes

- **APPLICATION - need for mutual understanding among different players in the sector**

All stakeholders should understand one another and more so their individual roles with regard to achieving local content in Kenya. Indeed, everyone has a role in realizing local content. For instance, host communities should appreciate that the multinational companies are putting in their resources and expertise in developing the resources, and are driven by profits. There is need to balance expectations from oil & gas and mining companies with the need to attract the best investors for the local industry. Companies on their part should understand that they are investing on finite resources, and impacting communities in many ways, thus the need to develop local content.

- **APPLICATION – Local Content plans should be context-specific**

Different areas, communities, counties, and countries have different needs with regard to procurement, employment, skills etc. In developing local content plans therefore, it is important to avoid a one size fits all, and instead develop area-specific plans. It is also important when developing such plans to consult and ensure that all the local people's needs have been integrated to ensure inclusivity. It would also help to align local content plans with national and County development plans. All counties in Kenya have 5-year County Integrated Development Plans (CIDP's) that inform the respective counties on development issues. They contain specific goals and objectives, a coasted implementation plan, provisions for monitoring and evaluation. Each county will do well to consider the CIDPs and how it can help realize local content. Efforts should also be made to align local content plans to national development objectives such as Vision 2030.

LOCAL CONTENT BILL

Object of the Bill

The stated object of the Bill is to provide for a framework to facilitate the local ownership, control and financing of activities connected with the exploitation of gas, oil and other mineral resources; and to provide framework to increase the local value capture along the value chain in the exploration of gas, oil and other mineral resources.

Content plans

The Bill requires all operators to submit local content plans to the Local Content Committee when bidding for any license, permit or interest. [S.20]. The local content plan must contain provisions ensuring that first consideration is given to goods produced and services delivered locally and give priority to qualified local persons with respect to employment by the operator. [S.20(4)]. Further, operators are required to give preference to local companies (not defined) in award of contracts and [grant of license]? (subject to conditions specified in the Act). [S.40].

LOCAL CONTENT BILL (Contd)

Monitoring and enforcement

Operators are required to submit an annual local content performance report measuring their performance in terms of Kenyan Content within 45 days of the start of the year after commencement of activities.

- The Local content bill was introduced to harmonize (try) the local content policy and requirements in natural resource development in Kenya. There are however certain issues that have arisen and need to be addressed.
- A) The Bill has noble intentions but needs better drafting
- B) Need for a national policy on local content
- C) Institutional arrangement for local content implementation and monitoring
- D) Penalties and levies

LOCAL CONTENT BILL (Contd)

Issues that have arisen and need to be addressed (from prev. slide):

- E) Local Content vs international obligations
- F) Common Qualification System
- G) Periodic listing of contracts

... "There is a strong need to take local content conversations to grassroots in order to reach the local population who are the most affected, or are the potential biggest beneficiaries of local content policies...."

Helpful Link: <http://extractives-baraza.com/assets/content/PDF/Publications:%20CSO%20Engagement/ESF-III-Report.pdf>