Not All Local Content Rules Are The Same

Local Content Regulation as a Differentiator for Inward Investment in Africa: The Case of Sierra Leone

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Prepared by Dr Michael Warner
Local Content Solutions Ltd

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This paper draws on a study, completed in June 2016, to compare selected African Local Content regulations. The study was commissioned and funded by the GIZ Regional Resource Governance Program, West Africa, in support of the activities of the Sierra Leone Local Content Agency, Ministry of Trade and Industry, Government of Sierra Leone, and the work was completed by Local Content Solutions Ltd under contract to GIZ.

The views in this paper are those of Dr Michael Warner, Director of Local Content Solutions Ltd alone, and no opinions, conclusions or errors contained herein are to be attributed to GIZ or to the Sierra Leone Local Content Agency or government. Dr Warner is an international consultant working on Local Content regulation with government authorities, and a former Local Content manager within the Contracts and Procurement function of an international oil and gas company, with operations in Africa. The views in this paper do not constitute a formal legal opinion.

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Summary (3 pages)

A Changed Context for Local Content

With the current downturn in the global markets for oil, gas and minerals, and slower global growth more generally, the role of Local Content regulation needs to be re-thought. For the majority of African countries, the pendulum of power has now firmly swung towards investors, and away from politicians and policy makers. This is well illustrated by the 68 major oil and gas capital projects now deferred, totaling USD$380 billion[1]. Which of these projects will come back on stream first, when and in which countries, is a matter of fierce competition between nation states, each keen to prevent a decline in their public finances and to boost employment. Similar investment challenges are faced by many African countries in other natural resource sectors (agriculture and renewables) and in infrastructure.

At the same time, an outcome of the growth of Local Content regulation across Africa over the last decade, especially provisions that preference local labour and suppliers, is that investor analysts are now more attuned to the risks that Local Content regulation can have on investment returns.

Given these two contexts, it will not be too long before African governments, with their dependency on revenues from capital projects in the natural resources and related infrastructure sectors, realize that the crafting or reform of Local Content regulation carries an opportunity to reposition Local Content as a differentiator among nations - a policy tool to not only drive economic and industrial development, but also an instrument to improve a country's relative attractiveness to inward investment. One such case is the government of Sierra Leone, and the recent passing of the Sierra Leone Local Content Agency Act.

Background

This paper draws substantially on a recent review completed by Local Content Solutions Ltd for the GIZ Resource Governance Program West Africa, in support of the Local Content Agency, Ministry of Trade and Industry, Government of Sierra Leone. The review assessed the recently-gazetted Sierra Leone Local Content Agency Act 2016, placing it into a comparative context with a selection of Local Content legislation and regulation in other Africa countries who are also pursuing economic development through policies to increase Local Content in their natural resouces industrires and related infrstructure. The legislation and regulations reviewed were:

- **Angola** Order 127/2003 and Decree 5/1995.
- **Tanzania** Petroleum Act 2015
- **Mozambique** Decree Law 2/2014
- **Nigerian** Oil and Gas Industry Content Development (NOGIC) Act, 2010
- **Ghana** Petroleum Local Content and Local Participation Regulations, L.I.2204/2013
- **Sierra Leone** Local Content Agency Act, 2016

[1] Source: Wood Mackenzie, Jan 2016: https://www.woodmac.com/media-centre/12530462

The review compared differences and similarities in the Local Content regulation, the extent to which commercial interests and inward investment were likely to be affected by the main regulatory provisions, and the anticipated impact of these provisions on Local Content performance.

Key Findings

Across the range of provisions within the Sierra Leone Local Content Agency Act, with a few manageable exceptions, the Act is aligned with the twin policy objectives of the government of Sierra Leone's Post-Ebola Recovery Strategy, namely, to compete with other African countries in attracting inward investment, whilst concurrently encouraging these investments to create economic *spill-over* impacts, especially *backward linkages*, for the Sierra Leone economy.

The Sierra Leone Act is the only set of regulations, amongst those reviewed, to set the bar for the level of local share ownership required for access to tendering preferences to exactly 50%. In all the other regulation the requirement is for *majority* ownership of suppliers by national citizens, ie greater than 50%. This difference in the Sierra Leone provisions can be argued to place the country at a regional competitive advantage for inward investment.

Further, in comparison to Angola, Nigeria and Tanzania, but similar to the Ghana regulations, the Sierra Leone Local Content Agency Act carries no provisions that specifically restrict market access to only suppliers who are locally-owned. Instead, the Act affords *first consideration* to 'local' service companies, and defines this as providers "located in" Sierra Leone and "owned by Sierra Leone citizens" at a minimum of 50% equity. The use of *first consideration* terminology implies that operators need only apply *best endeavours* to use locally-owned and located service companies, further reducing the risks for investors.

The Sierra Leone Act requires that the award of contracts to local companies shall not solely be based on the principle of lowest tender price, but that if such a company passes the technical stage of tendering, and is within 10% of a foreign company bidder on price, then the award goes to the local company. Since, under the Act, there is no hard restriction on market access for suppliers based on local ownership, and because the 10% price margin preference only applies to locally-owned suppliers who have the experience and credibility to pass the technical stage of tenders (which many may fail) and who are in direct competition with foreign suppliers (who likely have more experience), then the risk of this preference leading to significant cost escalation for investments seems limited.

Provisions in the Sierra Leone Act also afford *first consideration* to suppliers of goods "made in" Sierra Leone, in cases where the quality and timely delivery of such materials, products or goods are comparable to those available internationally. A standardised formula for defining a "Made in Sierra Leone" good is not provided in the regulation, but common practice would be to assume that at least 40% of the value of a good has been added in-country, and that this value addition forms a substantial transformation of the product or material. Since only a very limited range of goods produced in Sierra Leone would likely meet such a threshold of value addition, then in this scenario the risks of significant cost escalation to investments due to this provision again seems limited.

With regard to regulation around setting mandatory targets for supplying local goods and services, 142 separate such targets are enshrined in primary legislation within the Nigerian 2010 Act, and 77 within the Ghana regulations. In the case of the Nigeria Act these targets have in many cases been set in excess of the capability of the local market, as evident by waivers and workaround solutions from the regulator to prevent non-compliance. In contrast, the Sierra Leone Act contains just one target for each of the different sectors covered in the Act – set for levels of raw material input to locally-manufactured products, In each of these cases the targets are at levels believed to be achievable by the local market.

With regard to mandatory targets for nationals in the workforce, the provisions in the 2010 Nigerian Act contain 106 separate workforce targets, again many of which are not readily achievable. In the Ghana regulations are 42 workforce targets. In Angola a 70% blanket target for citizens in the workforce is applied to all companies. In all three of sets of regulations reviewed for these countries – Nigeria, Ghana and Angola - the above cited targets are higher than the workforce targets set in the Sierra Leone Act, which requires 50% of the workforce to be Sierra Leone citizens in managerial and intermediate positions. Note that in the case of Ghana, in addition to the 42 targets set within the regulations, there are also additional, more general, targets for different classes of job positions, and these are comparable to the above Sierra Leone target of 50%.

The review also compared provisions for Local Content in the following areas of regulation:

- **risk of cost escalation** due to restricted access to markets – the Sierra Leone Act has no such hard restrictions, unlike in Nigeria, Angola and Tanzania, where the regulation reviewed limits access to varying degrees to nationally-owned suppliers, which in turn then carries a risk of encouraging inefficient *front* companies or mandated joint ventures, leading to a mark-up in pricing.

- **Local Content in major contract tenders** – the Sierra Leone Act carries a slightly higher risk of cost escalation than the equivalent provisions in the Nigeria Act, limited to a maximum of 5% of the lowest bid price in exchange for a materially higher quality Local Content Plan (compared to 1% for the Nigeria Act).

- extent of requirements for **Local Content Sub-plans** on employment and training, staff succession plan, and education and/or R&D plan – the Sierra Leone Act is comparable to Nigeria, Ghana and Mozambique in this regard, and in all regulation reviewed such plans are arguably a positive force for clarifying expectations and commitments, rather than imposing new restrictive practices.

- **Offences and penalties** – the Sierra Leone Act is comparable to the other country regulation.

Conclusion

In broad terms, the Sierra Leone Local Content Agency Act 2016 is materially less stringent than comparable regulation in a number of other African countries where Local Content is a similar high-profile public policy. It is arguable, therefore, that the provisions on Local Content under the 2016 Act could be positioned by the Government of Sierra Leone as an incentive to investors, with an emphasis on: (i) the limited restrictions to market access for foreign suppliers, (ii) the realistic targets for hiring Sierra Leone citizens and (iii) the achievable objectives for encouraging local raw material inputs to manufactured products.

The choices the government of Sierra Leone is currently making with regard to phasing implementation of the provisions of the 2016 Act - starting with a roll-out to major companies of mandatory reporting via an on-line platform – can be considered tactical, further differentiating Sierra Leone as a destination for inward investment. The provisions on reporting Local Content are the least burdensome instruments within the Act for businesses, and yet carry considerable potential to encourage companies, through reward and shame, to improve their Local Content performance. In summary, the core message of the 2016 Act for investors is: *'Come to Sierra Leone. We require Local Content within your activites because we urgently need to develop our industry and people, but we are phasing in our regulations on Local Content, and many are designed to differentate Sierra Leone from other African investor markets'.*

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Not All Local Content Rules Are The Same:
Local Content Regulation as a Differentiator for Inward Investment in Africa: The Case of Sierra Leone

Main Paper (22 pages)

1. Introduction: Local Content Regulation as an Investment Differentiator

Most large private and commerically-driven public companies would rather not deal with Local Content regulations. Mandated preferences for buying goods or services from locally-owned or locally-based suppliers; compulsory targets for expenditure on made-in-country products; quotas or ring-fenced job positions for national citizens in the workforce - these are viewed frequently as impositions by government, undermining the operational efficiency of a business, driving up costs, increasing risks around product or service delivery times, quality and reliability; and ultimately increasing the cost-risk of capital or reducing returns on investments.

Before making an investment, companies, and the financial institutions behind them, will look hard at the assoiated financial and regulatory risks of entering a given market, including the regulatory risks associated with Local Content laws and requirements of the host county. However, not all laws and regulation on Local Content are the same. The Local Content regulations for goods applicable in the large majority of OECD countries are governed by the core principles of international, bi-lateral and regional trade rules, which in turn are framed largely by World Trade Organisation rules under Article III of the General Agreement on Tariffs and Trade (GATTs) and under the GATT Trade Related Investment Measures (TRIMS). Under these rules, once foreign goods have paid any customs duties and entered a country, they are not supposed to be *accorded less favourable treatment* than local goods. All WTO members are meant to abide by this agreement, unless having agreed exemptions or other *carve-outs.*

This use of exemptions and *carve-outs* is where the legal aspects of Local Content regulation becomes highly complex. The now largely stalled WTO procress of agreeing measures for the Special and Differential Treatment of Developing Countries (STDs) and other allowances for Least Developing Countries, has resulted in flexbilty in implementinng WTO rules, most critically longer exemption periods, which allow Local Content preferences to continue. Such exemptions for trade in goods are in place for many developing countries, but often through indiviual, opaque, negotiated agreements (or the abence of agreements) between member states and the WTO. For services, WTO rules are inherently more flexible, in that under the General Agreement on Trade in Services (GATS) governments may elect to negotiate unrestricted market access for foreign service companies in selected sectors, but they may also elect not to do so, thus continuing to protect their own service sectors[2].

[2] With regard to the wider question of whether cases have been brought for WTO violations arising from government Local Content regulations, first is to note that there is no independent agency identifying breaches of WTO agreements. It is beholden on the WTO members to bring cases forward. To date, few cases have been brought by members regarding Local Content regulations for Sub-Saharan countries, since these markets do not generally cause competitive harm. However, cases associated with Local Content regulations have been brought against Indonesia and Brazil, and the EU has raised questions regarding Local Content regulations in Nigeria.

In summary then, it can be difficult for investors, especially those considering underdeveloped and emerging markets, to understand whether Local Content regulations that impose preferences for local goods and services are consistent or not with a country's international, regional or bi-lateral trade obligations. What is far clearer to investors is the potential risk that such protectionist regulations places on their investment returns.

With the downturn in the global oil, gas and minerals markets and slower global growth more generally is coming a re-think on Local Content regulations. Given the increasing choices that investors have of where to place their funds, and given the elevated understanding by investor analysts of Local Content regulation as a risk on investment returns, governments who are more strategic and selective in their choice of Local Content regulations, and in particular the design of preferences for local labour, suppliers, goods and services, may achieve differentiation as and destination for investment. African governments, dependent on revenues from the development of their natural resources for foreign currency and national income, may soon realize that the crafting or reform of Local Content legislation carries possibility to reposition Local Content, not only as a means to drive economic development but also as a means to differentiate themselves to investors. A case in point is the government of Sierra Leone.

2. Differentiation of Regulatory Provisions: Overview

2.1 Scope of Review

In March 2016 the Government of Sierra Leone adopted the Sierra Leone Local Content Agency Act to be administered by a Local Content Agency. The Act contains detailed provisions on local procurement and the hiring of local labour, the merits of which have been the subject of discussions among government, donors and other stakeholders. In June 2016 the Resource Governance Program for West Africa of the German development agency GIZ commissioned a review of the new Local Content Act. The aim study compared the provisions in the Act to a selection of Local Content regulations in other African countries who were similarly pursuing Local Content policies as a means to realize economic development through the *spill-over effect* of inward investment.

A framework comprising different categories of Local Content regulatory provisions was applied to compare the relevant parts of the following regulations:

- **Angola** Decree 127/2003 and Decree 5/1995.
- **Tanzania** Petroleum Act 2015
- **Mozambique** Decree Law No.2/2014
- **Nigerian** Oil and Gas Industry Content Development (NOGIC) Act, 2010
- **Ghana** Petroleum Local Content and Local Participation Regulations, L.I.2204/2013
- **Sierra Leone** Local Content Agency Act, 2016

The provisions in the Nigeria 2010 Act and Angola Decree 127/2003 are two of the most long-running and influential sets of Local Content provisions in Africa, and have influenced other regional country governments in the drafting of more recent regulation. For example, the Ghana 2013 regulations draws heavily on the Nigerian 2010 Act, and then Ghana themselves became the model for similar legislation in Kenya and Uganda. Likewise, the Mozambican Decree Law 2014 has taken many of its concepts from Angolan Order 127/03 on Local Content.

Ten categories of regulatory provision were reviewed, as follows:

- **Procurement of Local Goods and Services**
    - Definitions of Local Companies
    - Preferences for Local Suppliers and Local Goods and Services

    - Local Content in Contract Tender Evaluation
    - International/Local Joint Ventures
    - Targets for Local Suppliers, Goods and Services
- **Local Content Plans**
    - Level, Timing and Approval of Local Content Plans
    - Local Content Sub-Plans
- **Nationals in the Workforce**
    - First Consideration to Nationals in the Workforce
    - Targets for Nationals in the Workforce
- **Offences and Penalties**

Table 1 below compares the applicable scope of the different regulations reviewed. Notable is the application of the Sierra Leone Local Content Agency Act to a wide range of industrial sectors, compared to the other reguliation which is predmoninantly focused on the oil and gas sector. At the time of writing, Local Content provisions affecting other sectors than oil and gas are under consideration by the Nigeria and Tanaznia government.

Table 1 Scope of Review

Country/Law	Regulator	Scope of Application
Sierra Leone Local Content Agency Act, 2016	Sierra Leone Local Content Agency	Mining, Petroleum, Service Industries Agriculture and Agri-business, Transportation, Maritime, Aviation, Hotel and Tourism, Public works and Construction, Fisheries and Marine Resources, Manufacturing, Health and Energy Sectors
Ghana Petroleum Local Content and Local Participation Regulations, L.I.2204/2013	Petroleum Commission	Petroleum industry value chain
Nigerian Oil and Gas Industry Content Development (NOGIC) Act, 2010	Nigerian Content Development and Monitoring Board	Nigerian oil and gas industry
Mozambique Decree Law No.2/2014	Ministry of Petroleum	Rovuma Basin Project Concessionaires (gas)
Tanzania Petroleum Act 2015	Petroleum Upstream Regulatory Authority	Petroleum industry
Angola Order 127/2003 and Decree 5/1995	Oil Ministry	Oil industry

Beyond this selected regulation, the same country governments have gazetted laws, or issued other directives and ministerial orders, containing provisions pertaining to Local Content. However, for the explicit purpose of ascertaining the relative strength of the key provisions in the Sierra Leone Local Content Agency Act 2016 against similar provisions in competing countries in Africa, the selection of regulation used in the study is deemed sufficient.

2.2 Overview of Differentiation in the Regulatory Provisions

Table 2 below summarises the findings of the study, providing the reader with a means to rapidly contrast the strength of provisions in the Sierra Leone Local Content Agency Act 2016 against similar provisions in the comparative reguation. The table is colour-coded, giving the professional opinon of the author on the *relative* strength of the different categories of provision. This indicative coding is as follows:

	Comparatively **strong** regulation, with higher adverse impact on commercial interests and inward investment, but potentially higher positive impact on Local Content performance
	Comparatively **moderate** regulation, with moderate adverse impact on commercial interests and inward investment, and moderate positive impact on Local Content
	Comparatively **weak** regulation, with lower adverse impact on commercial interests and inward investment, and lower positive impact on Local Content

This is followed by Table 3, which summarsies and compares key Local Content provisions and provides a brief commentary (*in itlics*) on how the Sierra Leone Local Content Agency Act 2016 compares to other regulation with regards to: (i) key differences and similarities, (ii) whether commercial interests and inward investment are likely to be adversely affected by the provisions, and (iii) the anticipated impact of the provisions on Local Content performance in-country.

Table 2 Summary of Comparative Strength of Regulatory Provisions on Local Content

Angola: Order 127/2003 Goods/ Services in Oil Sector. **Decree 5/95** - Labour	**Tanzania** Sheria Petroleum Act 2015	**Mozambique** Decree Law No.2/2014	**Nigerian** Oil and Gas Industry Content Development (NOGIC) Act, 2010	**Ghana** Petroleum Local Content and Local Participation Regulations, L.I.2204/2013	**Sierra Leone** Local Content Agency Act 2016
Procurement of Local Good and Servies					
Local Company Definition					
Preferences for Local Suppliers and Local Goods and Services					
Local Content in Contract Tender Evaluation					
n/a	n/a	n/a		n/a	
Joint Ventures					
Targets for Local Goods and Services					
Local Content Plans					
Level, Timing and Approval of Local Content Plans					
Local Content Sub-Plans					
n/a	n/a				
Nationals in the Workforce					
First Consideration of Nationals					
n/a					
Workforce Targets					
	n/a				
Penalties					
		n/a			

Table 3 Comparison of Regulatory Provisions on Local Content

Angola: Order 127/2003 Goods and Services in Oil Sector	**Tanzania** Sheria Petroleum Act 2015	**Mozambique** Decree Law No.2/2014	**Nigerian** Oil and Gas Industry Content Development (NOGIC) Act, 2010	**Ghana** Petroleum Local Content and Local Participation Regulations, L.I.2204/2013	**Sierra Leone Local Content Agency Act 2016**
Procurement of Local Good and Servies					
Local Company Definition					
Article 3. Angolan company means companies registered in Angola with "majority" **(>50%)** share capital owned by Angolan citizens	**Article 219(9)** – Local Company means incorporated under Companies Act, and either (a) **100%** owned by Tanzanian citizens, or (b) **JV** with Tanzanians owning min of **15%.**	**Article 10(8)** – preference to goods and services from individuals or Mozambican legal persons (ie **100%** Moz ownership)	**Article 106 –** Nigerian company means registered in Nigeria under Companies and Allied Matters Act, and **> 51%** equity share by Nigerians	**Article 49 –** Indigenous Ghanaian company means incorporated under Companies Act 1963, **min 51%** equity owned by Ghanaians, Ghanaian citizens hold min **80%** executive and senior management positions, and **100%** of non-managerial	**Article 1.** Sierra Leone company means companies registered in Sierra Leone and **min 50%** of share capital owned by Sierra Leone citizens *Min of '50%' is important, since international companies will object more strongly to >50%, due to loss of control*
Preferences for Local Suppliers and Local Goods and Services					
Article 2.1.1 –Tenders restricted to Angolan companies for certain **goods** and **services**, regardless of capabilities, capacity, or price competitiveness. **Article 6**. Angolan companies (>50% share capital) have preferential rights if not more than **10%** higher than price of non-Angolan companies. *Ring fencing plus no competition between Angolan Vendors, likely to cause cost escalation, but limited only to list of minor goods/services. 10% provisions is a high risk of cost escalation, but limited to those goods/service listed only*	**Article 219(1)** preference to **goods** which are **produced or available** in Tanzania, and **services** which are rendered by Tanzanian citizens or Local Companies. *Depending on subsequent preference (eg 10% price margin), for Goods: "available in" is likely to cause cost escalation, due to mark-up of importers, and no limit on type of goods. For Services: "rendered by Local Companies" very likely to cause cost escalation due to mark-up by 100% owned Local Companies)*	**Article 10(8)** - Preference to goods **available in** the Republic of Mozambique, if provided by "individuals or Mozambican legal persons" (ie **100% local ownership** - Article 10.3a), and if competitive on quality, deliverability and international industry standards, and price not more more than **10%** of foreign. *"Available in" and "10%" carries potential to cause large number of new start local companies, able to mark-up costs to 10% above foreign price, however most will likely fail the technical tender evaluation due to lack of experience and credibility, when evaluated against more experienced foreign suppliers*	**Article 3(2)** – For on-shore work, tenders **restricted to Nigerian-owned service** companies which demonstrate **ownership of equipment** and Nigerian personnel **Article 16 –** Nigerian indigenous company granted up to **10%** over lowest priced bid *'restricted access' provision likely to cause large number of new-start local companies, able to mark-up costs to 10% above foreign price. 'Equipment ownershjp' provision likely to act as disincentive to foreign suppliers*	**Article 12(3)** - Where the total value of the bid of a qualified indigenous Ghanaian company does not exceed the lowest bid by more than **10%,** the contrract shall be awarded to Indigeaous Ghanaian company. *Carries potential to create large number of new start local companies, able to mark-up costs 10% above foreign price. No limits on scope of application to certain goods and services*	**Article 32/40(4a)** – first consideration to *service* agencies "located in" Sierra Leone and owned by citizens. *Clause implies 'best endeavours' only. No restricted tenders for Sierra Leone* **Article 33/40(4a)** – first consideration to materials, products or **goods** "made-in/manufactured in" Sierra Leone where the quality and timely delivery are comparable to those available internationally. **Article 42(3)** – Where SL company has the capacity to execute the job, they shall not be disqualified exclusively on the basis of not being lowest price, provided bid diff. is max **10%.** *Same limited impact as Mozambique*

Table 3 Comparison of Regulatory Provisions on Local Content

Angola: Order 127/2003 Goods and Services in Oil Sector	**Tanzania** Sheria Petroleum Act 2015	**Mozambique** Decree Law No.2/2014	**Nigerian** Oil and Gas Industry Content Development (NOGIC) Act, 2010	**Ghana** Petroleum Local Content and Local Participation Regulations, L.I.2204/2013	**Sierra Leone Local Content Agency Act 2016**
Local Content in Contract Tender Evaluation					
No specific provisions	*No specific provisions*	*No specific provisions*	**Article 14 –** Local Content plays a part in award where bid prices are within **1%** at commercial stage, with highest LC scoring bidder being awarded if score is > **5%** than closest competitor. *Clause limits risk of cost escalation to 1% of lowest technically-acceptable bid. The, 5% min LC variance ensures LC must be materially better than lower bidder to win award.*	*No specific provisions*	**Article 42(1).** –. Operators and contractors shall consider Sierra Leone Local Content when evaluating any tender where the tenders are within 5% of each other at commercial stage and tender containing highest level of Local Content shall be selected, provided the Sierra Leonean content in the selected tender is at least 5% higher than closest competitor. *Clause limits risk of cost escalation to 5% of lowest technically-acceptable bid. Then, 5% min LC variance ensures LC must be materially better than lower bidder to win award. But, "any tender" is unrealistic, needs to be limited to large contracts only*
Joint Ventures					
Article 2.1.2 – Tenders restricted to **Joint Ventures** between international and Angolan companies for certain goods and service (JV required to have >50% share capital owned by Angolan citizens). *Very restrictive. Foreign companies forced to form JVs to access market, and high risk of cost*	**Article 219(2)** – [all] goods and services not available in Tanzania… shall be provided by a company which has entered into a **Joint Venture** with a Local Company (with min **25%** share of JV) *Very restrictive. Foreign companies forced to form JVs to access market, and high risk of cost escalation*	**Article 10.(3b)** – in respect of other goods and services (ie not available in Moz) that require specialized know-how (but not patented/specialise), foreign suppliers must "**associate"** themselves with Mozambican individuals or legal persons by,, any permitted legal means: "subcontract, incorporated or unincorporated JV, irrespective of the level of participation of Mozambican partner".	**Article 45 –** operators shall support technology transfer by facilitating JVs, partnering, and licensing agreements **Article 41(2) –** min 50% of equipment deployed must be owned by Nigerian subsidiaries *Appears fairly weak on JVs due to "support", but actually requirement for 50% equipment ownership is very strong and a significant disincentive to major oil field companies (work around*	**Article 4(6)/12(5) –** all non indigenous Ghanaian comapnies providing goods or services to a contractor or operators are required to: (4.6) incorporate a JV with indigenous company, and afford the indigenous company at least 10% equity; (12.5) be incorporated in and operate from Ghana (12.5) provide the goods and services in association with an indigenous Ghanaian company, where practicable.	**Article 61(2**) - Operator or contractor to "support" technology transfer by encouraging and facilitating the formation of joint ventures, alliances, partnerships and the development of licensing agreements between Sierra Leonean and foreign contractors, service or supplier companies. *No restricted tenders preferencing Sierra Leone companies.*

Table 3 Comparison of Regulatory Provisions on Local Content

Angola: Order 127/2003 Goods and Services in Oil Sector	**Tanzania** Sheria Petroleum Act 2015	**Mozambique** Decree Law No.2/2014	**Nigerian** Oil and Gas Industry Content Development (NOGIC) Act, 2010	**Ghana** Petroleum Local Content and Local Participation Regulations, L.I.2204/2013	**Sierra Leone Local Content Agency Act 2016**
escalation due to 'payment for nothing'	*due to 'payment for nothing'*	*"irrespective" means clause is fairly weak, in that a foreign company can simply sub-contract 0.1% of work to a Moz-owned company.*	*via Nigerian Content Equipment Certificate)*	*Highly likely to escalate costs, because forces all foreign companies register and operate in Ghana as a JV (some ambiguity on role of indigenous party in JV vs "where practicable".*	*Regarding alliances: "…support"…"encourage", implies 'best endeavours' only* *Wide range of options for JV considered, including alliances, licensing, so comparatively flexible.*
Targets for Local Goods and Services					
Article 2.1 – 100% of all expenditure on listed 'basic' goods and services to >51% locally-owned companies (see Appendix E, includes catering, facilities maintenance, transportation) **Article 2.2 – 100%** of all expenditure on listed 'specialist' goods and services to Joint Ventures involving locally-owned companies (see Appendix E, includes geoscience, drilling, mud logging, drilling materials, engineering consultancy, operation and maintenance of production installations and pipelines, manufacture of generators)	**Article 219(2) – 100%** of all expenditure on goods and services not 'available' in Tanzania to joint ventures with locally-owned company comprising at least 15% of equity	**Article 10(8)** – **100%** of expenditure on any good **"available in"** to locally-owned company if price not more more than **10%** of foreign. **Article 10(3b) 100%** of all expenditure on 'specialist' goods and services to **alliances** between foreign and local companies, "irrespective of type and level of association" **Article 10(3c)** allows 0% local (100% foreign) participation in supply of goods and services for "principal contracts, technology, patents and supplier requirements, including without limitation in connection with the construction, operation and maintenance of the RBP [Rovuma Basin Project] infrastructure".	**Article 11(1)** – mandatory minimum targets for any Project as set out in the 'Schedules' to the Act, applicable to operators and contractors. Over **142 separate mandatory target** for Local Content in goods and service, eg 75% of $ spend on Sub-sea systems procured from Nigerian companies; 80% of tonnage on drilling modules performed in Nigeria **Article 49** – 100% of insurance through broker registered in Nigeria **Article 51** – 100% legal services by Nigerian legal practitioner *Many of the targets found to be in excess of local capacity, evoking 3 year waiver (Article 11(4), and now extended. Higher costs due to need for inward investment to meet targets for equipment ownership and tonnage, etc.*	**Article 10(1) – 77 separate mandatory minimum targets** for Local Content in goods and services, including 50% Local Content in goods and services by yr 5 [metric not given]; 50% tonnage of drilling modules and pipeline systems, 50% heat exchanges by number, 70% protective paint by litres, 90% gravel by expenditure. *Spend metric not clear. Either expenditure with locally-owned suppliers or actual value contributed, eg cost of materials by category, less value of imported components. Regardless, Local Content of 50% in expenditure on goods and services by yr 5 is very high given industrial base of Ghana*	**Article 31 –** general requirement for sectors to meet minimums in the Act, ie reference to Article 33 **Article 33** – Targets: • Manufacturing industry – min 10% domestically produced inputs • Bakery and confectionary – "up to" 10% cassava flour produced locally • Beer industry – "up to" 20% of sorghum produced locally • Sugar industry – "up to" 15% produced locally in 1st 5 yrs, then up to 30% in 2nd 5 yrs • Soap industry – "up to" 50% palm oil in 1st 5 yrs, then 70% in 2nd 5 yrs. • Flour industry – "up to" 10% wheat flour produced locally in 1st 5 yrs, then 30% in 2nd 5 yrs • Hospitality industry – "up to" 25% locally produced fabric in 1st 5 yrs, then 50% in 2nd 5 yrs. **Article 32** - where there is inadequate capacity to meet any targets in this Act, the Minister may authorise the **continued**

Table 3 Comparison of Regulatory Provisions on Local Content

Angola: Order 127/2003 Goods and Services in Oil Sector	**Tanzania** Sheria Petroleum Act 2015	**Mozambique** Decree Law No.2/2014	**Nigerian** Oil and Gas Industry Content Development (NOGIC) Act, 2010	**Ghana** Petroleum Local Content and Local Participation Regulations, L.I.2204/2013	**Sierra Leone Local Content Agency Act 2016**
		If all "principal contracts' area allowed to be tendered to 100% foreign, with no alliances, then this is particular weak provision.			**importation** of the relevant items.
Local Content Plans					
Level, Timing and Approval of Local Content Plans					
No specific provisions	*No specific provisions*	**Article 10(4)** - The relevant Local Content plan (at Development Plan stage) shall set forth the value levels and detail each category of goods and services referred to in **Article 10.3** of this Decree-Law. *Scope to set new targets carries potential risk for cost escalation*	**Article 7 –** Nigerian Content Plan submitted by operator to regulator before carrying out any project, demonstrating compliance with Act. Board issues Certificate of Authorisation. **Article 9** - Approval issued or denied within 30 days.	**Article 7 –** Local Content Plan to be submitted for approval by the Commission by all contractors, sub-contractors before engaging in a petroleum activity. Annual Plans for each year. **Article 8(8) –** max 50 days for approval or rejection of original Plan, otherwise deemed to be approved.	**Article 40(1) –** before carrying out operations or commencing with a project, operator submits a Local Content Plan that delivers on the Act, and annually demonstrates delivery. **Article 40(2)** – grants approval and issues Certificate of Authorisation. **Article 40(3)** Approval issued or denied within 30 days. **Article 41(1)** Plan includes examples of how first consideration is considered and assessed in evaluation of bids for materials, goods and products
Local Content Sub-Plans					
No specific provisions	***Article 220*** *– Recruitment and Training Plan submitted to regulator within 12 months of license agreement, in accordance with an approved Local Content Plan*	**Article 18(5) –** submission of a Workforce Plan for nationals **with targets** as part of Development Plan approval, updated annually **Article 19(1)** – submission of annual Training Plan for nationals	**Article 29** - Nigerian Content Plan (under Article 7) includes Employment and Training Plan **Article 31** - Succession Plan for Nigerians **Article 37 –** Education, Training and Research Plan	**Article 9/Article 18** - Local Content Plan includes: Employment and Training Plan; • Succession Plan; • R&D Sub-Plan, • Technology Transfer Plan, Legal Services Plan, • Financial Services Plan	**Article 57 –** Local Content Plan (under **Article 40**) includes: Employment and Training Plan, **Article 59** – annual agreement with Agency on Human Resources Development Plan

Table 3 Comparison of Regulatory Provisions on Local Content

Angola: Order 127/2003 Goods and Services in Oil Sector	**Tanzania** Sheria Petroleum Act 2015	**Mozambique** Decree Law No.2/2014	**Nigerian** Oil and Gas Industry Content Development (NOGIC) Act, 2010	**Ghana** Petroleum Local Content and Local Participation Regulations, L.I.2204/2013	**Sierra Leone Local Content Agency Act 2016**
		Article 18(5) likely to result in high quotas on national workforce	**Article 38 –** R&D Plan and annual updates		**Article 60(4)** – every six months submit to Agency a R&D Plan **Article 61** – Technology Transfer Plans (*no time period specified*) and annual reports against plan
Nationals in the Workforce					
First Consideration of Nationals					
No specific provision for first consideration	**Article 220 –** operator to provide training and recruitment of Tanzanians in all phases of petroleum operations and gas activities and take into account gender, equity, persons with disabilities, host communities and succession plan in accordance with the Employment and Labour Relation Act. **Article 221** – training may be carried out within or outside Tanzania and may include scholarships and other financial support for education.	**Article 18(1)** Concesisonaires shall grant priority to the contracting of national citizens having appropriate qualifications, at all levels of their organization, including specialists in technically complex and managerial positions, provided that the relevant person may hire foreign citizens pursuant to this labor regime. *Extent of preference lies in interpretation of "appropriate qualifications". Assumed to include both appropriate experience and academic/training qualifications, but not necessarly the 'best' candidate. Lack of clarity suggests no real preference for nationals.*	**Article 28 –** First consideration for employment and training in any project in the oil and gas industry **Article 30** – where Nigerians are not employed because of lack of training, operator shall ensure, to the satisfaction of the Board, reasonable effort to supply such training *No reference to '…having the appropriate qualifications', therefore unclear of threshold for disqualifying candidates. "Reasonable effort" is best endeavours only but "to satisfaction of the Board" implies potential for strong enforcement.*	**Article 9(1a) – (ii)** qualified Ghanaians are given first consideration with respect to employment and **(iii)** adequate provision is made for training of Ghanaians on the job ….as detailed in Local Content Plan submitted for approval by the Commission at time of application to undertake petroleum activity (**Article 7(1)**) *No reference to '…having the appropriate qualifications', therefore unclear of threshold for disqualifying candidates.*	**Article 54** – First consideration given to citizens with the required qualifications for employment and training in any project executed by any operator or contractor in the sectors covered by this Act. **Article 55** - operator or contractor hires and maintains a reasonable number of personnel who are citizens with the required skills from areas it has operations. *Extent of preference lies in interpretation of "required qualifications". Assumed to include both required experience and academic/training qualifications, but not necessarly the 'best' candidate. Lack of clarity suggests no real preference for nationals.*
					Article 55(4) - All staff that hold the same professional category and exercise similar functions, shall enjoy the same benefits

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					such as salary and emoluments as well as working conditions under the principle of equal rights. *Risk of labour costs above local market rates, if enforced*
Workforce Targets					
Decree 5/1995 – Angolan legislation National and foreign companies can only employ non resident foreigner workers even if not paid if at least **70%** of the work force is formed by Angolan nationals and company employs **more than 5 workers** *Unclear if 70% applies to each legal registered entity in Angola, if more than one entity comprise a single subsidairy, eg oil field services companies.*	*No specific provisions on targets for nationals in the workforce*	**Article 18(2)** - The workforce plan relating to any Rovuma Basin Undertaking shall not provide the contracting of foreign citizens for positions of lesser technical complexity and those that do not require any technical qualifications, ie **100% nationals in non-technical qualification positions**. **Article 18(5)** – targets (max quotas) agreed with authorities in Workforcre Plan approved at time of Development Plan **Article 20(4)** - hiring of foreign citizens beyond the targets in Workforce Plan to be made submission of an application to the Minister.	**Article 11(1) –** Over **106 separate mandatory minimum targets** for nationals in the workforce, eg **90%** of manhours on FEED engineering by Nigerians on shore; **85%** of manhours of production drilling services **Article 32 –** min **95%** nationals in **Management** positions **Article 35** – min **100%** nationals in **junior** and **intermediate** positions **Article 34** – Labour Clause, applicable to projects or contracts > USD$100m, **regulator stipulates min % nationals** in different positions *The specific targets combined with Article 35 (100% junior and intermediate), means that much of the high targets for specific work (eg 90% for FEED) will need to be met by professional positions, and not off-loaded on local job grades*	**Article 10(1) –** Over **42 separate mandatory minimum targets** for nationals in the workforce (for 1st 5 yrs), eg **50%** of manhours for FEED engineering by Ghanianas; **60%** of manhours of production drilling services. Article 10(4) allows Minster to vary the minimums First Schedule (by yr 5): Managerial – **50%** Technical core – **50%** Other staff – **90%** FEED onshore – **50%** Production drilling services – **60%** Ghana targets slightly lower than Nigeria, and waiver option not limited to 3 yrs. **Article 19** – min 100% Ghanaians in junior level or rniddle level position (Incl foreman, supervisor)	**Article 55(2)** For operators and contractors, **100%** Sierra Leone in Unskilled positions Given definition of Unskilled used in Reporting platform –*"casual labour with no skills required and not yet trained other than in initial workplace induction and EHS"* – this target should be wholly achieveable **Article 56(1)** – operators and contractors achieve min **50%** Sierra Leone citizens in **Management** positions in 1st 5yrs, and **60%** thereafter **Article 56(2)** – operators and contractors achieve min **50%** Sierra Leone citizens in **Intermediate** positions in 1st 5yrs, and **80%** thereafter **Article 56(6)** - operators and contractors achieve **100%** Sierra Leone citizens in Junior and Intermediate "cardres"

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					Article 56(5) – Labour Clause applicable to projects or contracts > USD% 50m, regular stimulates min % nationals in different positions *Ability to trade-off positions within Intermediary to reach 50% means may companies already have reached these targets. Article 56(6) contradicts Article 56(2). Current on-line reporting platform ignores Article 56(6).*
Penalties					
No penalty provisions under Order 127/2003 on goods. **Under Decree 5/1995 – Angolan legislation:** employment of foreigner workers without observing law triggers fines, as follows: - 10% of gross salary fund per infringement - 50% of remuneration for each employee whose contract is not properly and timely filed - 30% of remuneration for each employee whose contract when terminated or suspended is not communicated to the	**Article 238** - A person who without reasonable excuse contravenes any directive issued under this Act commits an offence and shall be liable on conviction (a) in the case of an individual, to a fine of not less than one hundred million shillings (USD$50,000) or to **imprisonment** for a term of not less than ten (10) years or both; or (b) in the case of a body corporate, to a fine of not less than five hundred million shillings (USD$250,000). *Very low levels of fines, and no treat of imprisonment for corporate failings, but threat to individuals of not less than 10 yrs*	*No penalty provisions identified*	**Article 68 – Penalties –** A operator, contractor or sub-Contractor who carries out any project contrary to the provision of this Act, commits an offence and is liable upon conviction to a fine of five per cent (5%) of the project sum for each project in which the offence is committed or cancellation of the project *Relatively high level of fines, eg 5% of $16b is $800m (for the current TOTAL Egina project). No threat of imprisonment. Provisions afford the regulator the power to halt a project if Local Content minimums not met.*	**Article 46(1) –** person making knowingly false statements between 100,000 and 250,000 penalty unit, or prison of between 2 and 5 years. **Article 46(3)** person connives with Ghanaian citizen or indigenous company to achieve Local Content requirements between 100,000 and 250,000 penalty units, or **imprisonment** of between 1 and 2 years. **Article 46(4) –** person how fails to support and facilitate technology transfer, ensure reporting, **comply with minimum Local Content levels** in procurement and employment is liable for fine of 100,000 to 200,000 penalty units + 5% of penalty each day of continuing contravention, or	**Article 69(1) –** An operator or contractor who carries out any project contrary to this Act commits an offence and is liable upon conviction to a fine of five percent (5%) of the project sum for each project in which the offence is committed. **Article 69(2)** - An operator or contractor who continues to carry out any project contrary to this Act, after being fined under subsection (1) shall have investment incentives associated with the project to the value of ten percent (10%) of the project sum withdrawn or shall result in the cancellation of the project. *Article 60 is modelled on Nigerian Act.*

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respective employment center - In case of recidivism the fines will be equal to the triple of the above amounts. *Very low levels of fines, and no threat of imprisonment for individual or corporate failings*				**withhold approvals** and permits until contravention is remedied (see details of Article). *Provisions afford the Commission the power to halt a project if Local Content minimums not met. No details on definition of "unit".*	**Article 70 -** Any person who fails to comply with this Act commits an offence and shall be liable on conviction to a fine not below ten million Leones (USD$2,500) or to imprisonment for a term not exceeding five (5) years or to both the fine and imprisonment. **Article 71 - For** offences committed as corporate body, every director (or partner) of that body shall be deemed to have committed the offence. **Article 73** – A person knowingly misrepresenting Local Content status is liable to a fine of ten million Leones (USD$2,500) or imprisonment for not less than five (5) years, or both. *Very low levels of fines, but threat to individuals if directors or partners of a corporate body of 5 years.*

3. Differentiation of Local Content Provisions: Analysis

3.1 Procurement - Local Company Definitions

In cases were legal provisions offer a preference for local companies over foreign companies (eg restricted tender lists for locally-owned suppliers in Angola and Nigeria, or 10% price advantage for local suppliers over foreign suppliers in Angola, Mozambique, Nigeria and Sierra Leone) the exact proportion of foreign equity allowed in an eligible 'local company' will be a key factor in the decisions of investors when setting up facilities in-country. Specifically, regulatory provisions that require greater than 50% equity in a company to be owned by national citizens introduces risk of the foreign equity partner losing control over a subsidiary's strategic direction.

Of the five sets of regulation reviewed, only the provisions in the Sierra Leone Local Content Agency Act allow for a foreign partner to have the same level of control as the local company partners – the stipulation under Article 1 of the Act being for a minimum 50% of a local Sierra Leone company to be owned by national citizens. Provisions on minimum levels of national equity in all the other country regulation reviewed contain a bias towards national citizens over foreign partners, with Angola requiring >50% local ownership, Ghana a minimum of 51%, Nigeria >51%, Tanzania 100%[3] and Mozambique 100%.

Under the Sierra Leone Act then, affording a preference to 'local companies' whilst concurrently allowing levels of equity for foreign partners in these companies to be on a par with national citizens, can be argued to place the country at a competitive advantage for inward investment. For clarity, enabling foreign shareholders to own 50% equity provides a safeguard to investors that they will not lose executive control when establishing a local subsidiary.

It can also be argued, of course, that this parity of control may result in the Sierra Leone partners finding themselves distanced from strategic decision-making. In turn this may lead to decisions being taken that could be detrimental to future investment and growth of the local company and its long-term contribution to job creation in Sierra Leone.

3.2 Procurement - Preferences for Local Suppliers and Local Goods and Services

With regard to preferences for local companies and local goods and services, the Nigeria 2010 Act contains the strongest provisions of those laws and regulations reviewed. Effectively, the relevant provisions restrict access to the local market unless the tenderer is a company with >51% local ownership company. This provisions risk creating (and indeed arguably has already created) a layer of majority locally-owned *front* or *shell* companies in the petroleum industry in Nigeria, required to facilitate foreign suppliers access to the local market. These *shell* companies act as *middle-men*, taking a margin for their service as the legitimate contract holder. The Angolan regulation 127/03 take a similar stance, restricting market access to locally-owned companies. However, under these Angolan regulations, the afforded preference is limited to a specified, narrow, range of goods and

[3] The Tanzanian Petroleum Act, 2015 also carries a provision defining a Local Company as one that is a joint venture with a minimum of 15% equity owned by Tanzanian Citizens (ie a maximum of 85% equity held by foreigners). There is currently some confusion over this provision (Article 219.9) when set against Article 219.2, with the latter requiring that, where goods are not available in Tanzania, a foreign company must enter into a Joint Venture with a 'Local Company', where this local company has a minimum of 25% national equity in the JV. Taken together, the clauses seem to imply that a foreign company can set up a 'Local Company' (and thus enjoy a 10% price preference) based on the foreign entity owning 85% of the company, and then build around this Local Company a Joint Venture (so as to be eligible to import and sell goods not currently available in country), where the foreign company has 75% of this JV, <u>and</u> 85% of the 25% of the Local Company that forms the local partner in the same JV.

services, focused on low-tech services and locally-produced goods, and which take only a relatively small portion of overall project or operational expenditure, probably no more than 1% to 2%.

In Tanzania, the 2015 Petroleum Act contains two preferential provisions applicable to operators and contractors. The first is that preference must be given to goods "produced in" or "available in" Tanzania. The second, that services must be "rendered by Tanzanian citizens or Local Companies" (the latter being defined as either 100% owned by Tanzanian citizens, or a Joint Venture where the local company within the joint venture must own at least 15% of the equity).

As the Tanzanian authorities formulate forthcoming Local Content regulation, depending on what subsequent clarity is provided by the term "shall give preference to" - be that a 10% price preference to local company, restricted market access or expenditure targets - the preference above relating to 'goods' will arguably be easier for a foreign supplier to meet, than the preference on services. To comply with the term "available in" foreign companies would need only to set up their own subsidiary, and then simply import the demanded goods for re-sale. With regards to the economic consequences of this provision, costs would likely rise to compensate for these new investments and associated risks (and also because of the potential loss of tariff relief for the operator, who may now have to procure from the locally-based foreign subsidiaries, rather than importing directly and thus benefiting from associated tariff relief).

Regarding the second Tanzanian preference mentioned above on 'services', because of the current widow of opportunity for foreign companies to set up local companies and yet retain 85% of the equity, this may result in the unintended restricting of opportunities for genuinely locally-owned (>50% equity) service companies. The same may also push up costs, due to the foreign-dominated local company pricing in the need to pay salaries and return dividends to the 15% local ownership in the company that may, or may not, be making a productive contribution to the business.

For Mozambique, it is possible that the yet to be fully defined local preferences for goods and services will subsequently be set as the 10% margin of price preference for 100% locally-owned companies over foreign suppliers. If so, then this risks triggering a plethora of new start-up, locally-owned, companies, re-selling imported products and charging a mark-up to within 10% above foreign prices, with no restriction on the goods that can be supplied (unlike Angola). If, however, the 10% price margin only applies to local suppliers who both pass the technical stage of tenders and are in direct competition with foreign suppliers (see below under the Sierra Leone regulations), then the risk of this preference being applied to any great extent seems limited, since these new start local companies will most likely fail to meet the required years of experience and financial credibly needed to pass the technical stage of a tender.

In comparison to Angola, Nigeria and Tanzania, but similar to the Ghana regulations, the Sierra Leone Local Content Agency Act carries no provisions that specifically restrict market access to only suppliers who are locally-owned companies. Instead the Act affords *first consideration* to local service companies, and defines these as providers "located in" Sierra Leone and "owned by Sierra Leone citizens" (at a minimum of 50% equity). The *first consideration* terminology implies that operators need only apply *best endeavours* to use local service companies.

The Sierra Leone Act further requires that the award of contracts to Sierra Leone companies (50% or more local equity), shall not solely be based on the principle of lowest tender price, but that if such a company passes the technical stage of tendering and is then within 10% of a foreign company bidder on price, then the award goes to the local company. Since, under the Act, there is no restriction on market access for suppliers to be local-owned, and because the 10% price margin only applies to local suppliers who both have the experience and credibility to pass the technical stage of tenders (which again many will likely fail) and are in direct competition with foreign suppliers with far more experience, then the risk of this preference being applied to any great extent seems limited.

Provisions in the Sierra Leone Act (Articles 33.1 and 40.4a) also afford *first consideration* to goods “made in” or “manufactured in” Sierra Leone”, where the quality and timely delivery of such materials, products or goods are comparable to those available internationally. A precise definition of “Made in Sierra Leone” is not provided in the regulation, but common practice would be to assume that at least 40% of the value of good has been added in-country, and that this value addition forms a substantial transformation or the product or material. Since only a limited range of goods produced in Sierra Leone would likely will meet such a threshold of value addition, the risks of significant cost escalation due to this provision seem particularly limited.

3.3 Procurement - Local Content in Contract Tender Evaluation

The Nigerian 2010 Act requires that when operators are contracting out work, the process of tender evaluation considers Local Content as a factor in the award criteria, but that this rule applies only when technically-acceptable bidders propose prices that are within 1% of the lowest priced bidder. The Sierra Leone Act contains this same basic provision, but the trigger for consideration of Local Content as a factor in award is 5% of the price variance with the lowest technically-acceptable bidder. In both cases, but especially in Nigeria, the likelihood of this percentage threshold being triggered will be limited to contracts or purchase orders that involve services or products that are standardised, and thus carry potential to attract very similar pricing. More complex services and products, or equipment were the specifictaion leaves room for different technologies, will likely result in more varied bid prices, and so the percentage thresholds for considering Local Content in contract award will likley not be triggered.

Both sets of the provision described above for Nigeria and Sierra Leone include a second and identical condition: that even if the bid price variances are close enough to trigger consideration of Local Content in the award decision, such consideration of Local Content is only relevant if the variance in the evaluated scores for Local Content between the higher priced bidder and lower priced, is greater than five percent (> 5%). The likelihood of this second threshold being triggered depends on how Local Content is being scored in the tender evaluation, for example, whether weightings are applied to Local Content activities that may inherently lead to a variance of more than 5% (for example a high weighting on nationals in senior management positions).

The commercial impact of these provision on leveraing Local Content in contract tenders, means that that only in a very few contract tenders, where prices are close and Local Content part of the scoring of bids, it is likely that such provision might cause a price escalation, and even then such escalation will be limited to a maximum of 1% of the lowest bidder for Nigeria and 5% for Sierra Leone. Note that for reasons of efficient procurement, clarity is needed for both the Nigerian and Sierra Leone Acts to limit their scope of appliation to contract tenders over a certain size of value, ie major contacts only.

3.4 Procurement - International/Local Joint Ventures

Local Content laws and regulations that mandate or encourage local companies to form alliances with foreign companies are intended to support the transfer of technology and skills to local industry. In this regard, the provisions in the Sierra Leone Act are the least rigorous of the legislation reviewed in the study. The Act carries no restrictions on market access to such alliances, asking only that operators apply best endeavours to “encourage’ and “facilitate” the formation of “joint ventures, alliances, partnerships and the development of licensing agreements”.

In contrast, Angolan Order 127/03 explicitly restricts market access for a range of specified technical services and goods to companies that are formed as international/local joint ventures. For the listed services and goods under the Order, foreign companies are thus compelled to form joint ventures in order to access the local market, with consequent risks for cost escalation arising from the need to return an investment on the costs and risk management measures arising in setting up operations in Angola, and from the possible payment of salaries and/or the share of work scopes, profits and dividends with the Angolan joint venture partners, who may or may not be adding value to the business.

The Tanzania Petroleum Act appears to be mandate even stricter provisions on joint ventures than in Angola, with Article 219.2 requiring that all goods and services not available in Tanzania be provided by a foreign company which has entered into a joint venture with a "Local Company" (see earlier definitions). As well as this provision apparently applying to *all* goods and services not currently available in Tanzania, the joint venture is obliged to include a minimum 25% share of equity to taken by a Local Company (which is in contrast to the Angola provisions that do not stipulate the minimum proportion of local ownership in the joint venture). Although provision 219.2 has potential to encourage international companies to set up JVs in Tanzania, foreign companies will likely show reluctance to share such a large proportion of equity in one of their subsidiaries, especially if the products or equipment being supplied are of a proprietary nature. Furthermore, it is also possible that prices will escalate above international norms, for the same reasons explained in the paragraph above with regards to Angola.

The recent Mozambique Decree Law obliges foreign suppliers to associate themselves with Mozambican individuals or legal persons by "*any permitted legal means*", be that subcontract or incorporated or unincorporated joint venture, and to do so "*irrespective of the level of participation of [the] Mozambican partner*". Introducing the term *"irrespective"* significantly weakens this provision, since a foreign company could simply sub-contract say 0.1% of the value of its contracted work scope to a Mozambican-owned sub-contractor or supplier, and this would then theoretically satisfy the terms of the provision.

The Nigerian 2010 Act provisions are similar in the first instance to Sierra Leone, asking operators to apply best endeavours to "*support*" technology transfer by "*facilitating*" joint venture, partnering, and licensing agreements. However, Article 41(2) of the Nigeria Act requires a minimum 50% of equipment to be owned by Nigerian subsidiaries. This latter provision is a potential disincentive to international oil field companies who may have proprietary equipment. In practice, the Nigerian regulator has introduced a work-around solution to this disincentive, issuing Nigerian Content Equipment Certificates (NCECs) to importers of oil field equipment. These agreements between the regulator and supplier are aimed at gradually, over time, domiciling equipment installation and assembly in Nigeria, and thus delaying the need for local equipment ownership as stipulated in the Act.

The provision in the Ghana 2013 regulations require that foreign suppliers be incorporated in and operate from Ghana, and provide goods and services "in association" with an indigenous Ghanaian company "where practicable". Even though equity-based joint ventures are not mandated in the Ghana regulations, the requirement for all foreign companies to operate and be incorporated in Ghana may likewise drive foreign companies to sett up in Ghana, but at the risk of higher costs as the investments in these new facilitites are recuperated.

3.5 Procurement - Targets for Local Goods, Services and Suppliers

Provisions for targets for goods and services within the Sierra Leone Local Content Agency Act are significantly less stringent than in all other legislation reviewed in the study. Most notably, the Sierra Leone Act contains just one single metric for each of the different sectors covered in the Act. In each case the metric relates to the local supply of raw material inputs into a product, *not* to total expenditure on a product itself. Furthermore, these limited number of targets are set at levels believed to be readily achievable (as per the collective views voiced at two multi-sector workshops held in Freetown in May 2016, hosted by the Local Content Agency, with participants that included the company function heads for finance and procurement). The targets in the Sierra Leone Act are as follows:

Article 33 – Sector Targets:

- Manufacturing industry – “minimum 10%” domestically produced inputs
- Bakery and confectionary – “up to” 10% cassava flour produced locally
- Beer industry – “up to” 20% of sorghum produced locally
- Sugar industry – “up to” 15% produced locally in 1st 5 yrs, then up to 30% in 2nd 5 yrs
- Soap industry – “up to” 50% palm oil in 1st 5 yrs, then 70% in 2nd 5 yrs.
- Flour industry – “up to” 10% wheat flour produced locally in 1st 5 yrs, then 30% in 2nd 5 yrs
- Hospitality industry – “up to” 25% locally produced fabric in 1st 5 yrs, then 50% in 2nd 5 yrs.

Of these targets, only that for the manufacturing sector is perhaps questionable with regard to the level at which it is set in relation to the capability of the local market. However, the metric is stated as “10% *domestically produced inputs*” and not ‘10% domestic origin in the sale of manufactured goods’. The former metric can be met relatively easily, if interpreted as meaning that 10% of the volume of inputs to the manufacturing process for a product needs to have a domestic origin value of 40% of the purchase price of the inputs. Further clarity from the Sierra Leone Agency on what was intended by the term “domestically produced inputs” and also on the specific manufacturing processes potentially affected in the country, would determine the full commercial impact of this provision.

In stark contrast, the provisions in the Nigeria 2010 Act contain 142 separate mandatory minimum targets for Local Content, within a listing of different sub-categories of goods and services, and measured by a variety of metrics: tonnage, volume, units, expenditure. In the Ghanaian 2013 regulations are 77 such specified targets. Comparing Nigeria to Ghana, the Nigerian provisions offer no graduation of higher targets over time; whereas for Ghana targets are set for year 0, year 5 and year 10.

In both sets of provisions for Nigeria and Ghana, many of the sub-category targets are at levels that might be considered too high for the local market to satisfy on a competitive basis. High targets carry the risk that suppliers will either (i) import the volumes needed to meet the targets, and add another layer of overhead and profit margin as a matter of course, or (ii) increase prices in order to assume either (a) a return on investments for new facilities developed to meet the targets, for example, new fabrication capabilities, new equipment assembly and manufacturing plant, or (b) a return on the costs of establishing JVs and/or a shared equity local companies so as to comply with the provisions on restricted market access (as discussed above).

Examples of potentially-excessive targets that risk higher related costs include, for Nigeria, the 75% target for sub-sea systems to be procured from Nigerian companies by spend, and the 80% target for drilling modules to be performed in Nigeria by tonnage; and for Ghana, the 50% target for drilling modules and pipeline systems by tonnage, the 50% target for heat exchanges by number of units, the 70% local supply of protective paint by litres, and the 90% local supply of gravel by expenditure.

In contrast to Nigeria and Ghana, specific sub-category based targets are not mandated in the Angolan, Tanzania or Mozambican legislation reviewed in this study. However, the use of restricted market provisions in means that, in effect, targets of 100% apply as follows:

- **Angola**
  - **100%** of all expenditure on listed 'basic' goods and services, to be spent with >51% locally-owned companies (see Appendix E, includes catering, facilities maintenance, transportation)
  - **100%** of all expenditure on listed 'specialist' goods and services, to be spent with Joint Ventures involving Local Companies as equity partners (see Appendix E, includes geoscience, drilling, mud logging, drilling materials, engineering consultancy, operation and maintenance of production installations and pipelines, manufacture of generators)
- **Tanzania:**
  - **100%** of all expenditure on goods and services not available in Tanzania, to be spent with joint ventures involving Local Companies
- **Mozambique**
  - **100%** of expenditure on any good available in, to be spent with locally-owned companies if local price is not more more than 10% of foreign
  - **100%** of all expenditure on specialist goods and services to be spent with alliances between foreign and local companies, irrespective of type and level of association

On the question of mandated targets for goods and services, the Sierra Leone Local Content Agency Act places the country at a considerable competitive advantage, assuming investors are in part looking for destinations that do not escalate project and operational costs above international market norms. Conversely, a key challenge for the Sierra Leone government will be whether the targets that have been set are sufficiently high to act as an incentive to investors to develop local industrial capacity.

A key strength of the Sierra Leone Act is that, although specifying only a small number of relatively non-ambitious targets, the regulation contains the right for the Ministry to establish new and specific targets at some future time, for example, when all parties have far better line of sight of what makes for a realistic *stretch* target for local procurement, such as at the stage of approving a new project or project expansion

3.6 Local Content Plans - Level, Timing and Approval

There are provisions in each of the Nigerian, Ghanaian, Tanzanian and Sierra Leonean regulation for a Local Content Plan to be submitted to authorities at the time of key project approvals. For the oil and gas sector regulation, this is at the stage of Development Plan approval and Operations Plan approval. There are no such provisions in the regulations reviewed for Mozambique and Angola.

In each of the above four cases where provisions exit, the authorities have the right to approve or reject the submitted Local Content Plan, on the basis of whether the Plan is in compliance with the provisions of the regulation. With regards to the impact of these requirements, reviewing Local Content Plans and issuing certificates of authorisation provides opportunity for operators and authorities to agree together expectations on Local Content performance across entire phases of a project. It also provides scope for the parties to agree which costs associated with Local Content activities are to be eligible for recover against tax, or as part of cost recovery in the petroleum sector, if applicable.

Counter to these benefits, companies may be concerned that progress in their projects could be held up due to an effective right-of-veto afforded to the authorities over approval of Local Content Plans (or at least the right of requiring repeat revisions). There is some validity to this concern, with anecdotal evidence emerging in Nigeria that the approval of Local Content Plans has delayed the progress of some major contracts (under the 2010 Act the authorities have the right to require Local Content Plans before the final award of major contracts). This concern has arisen despite the provision under Article 9 of the Nigerian 2010 Act that states that approval or denial must be decided by the authorities within thirty (30) days of review. The exact same time limit on approval or denial is found in Article 40(3) of the Sierra Leone Local Content Agency Act. In both of these Acts, there is, however, a lack of clarity on what should transpires if a Local Content Plan is denied authorisation. In comparison, the Ghanaian regulations - Article 8(8) - provides exactly this clarity, not only limiting failure to authorise or deny to 50 days but more critically stating that a Local Content Plan is “automatically deemed approved” after this period.

5.7 Local Content Plans - Sub-Plans

Three of the laws reviewed in the study – for Nigeria, Ghana and Sierra Leone – contain provisions mandating that operators submit to the authorities various sub-plans on Local Content programmes. Most of these sub-plans form part of the required Local Content Plans discussed above, and are required to be approved before companies commence with projects or operations. Commonly the provisions require an: employment and training plan, staff succession plan, and education and/or R&D plan. Each of these sub-plans covers matters inherent to government public policy on Local Content.

Provisions for the formulation, submission, approval and execution of such sub-plans are a valuable tool for the authorities, since they provide evidence of what initiatives operators intend to put in place to deliver on their commitments to mandatory or project-specific Local Content targets. The sub-plans perform the task of assuring quality in Local Content delivery, as well as assisting companies to frame and manage expectations of government for what practical activities the companies will engage in to meet their commitments. For clarity, by detailing precise activities for hiring, training, staff succession and support for education and R&D, and assigning to them costs and delivery schedules, and for these activities to then be approved by the authorities, increases the likelihood that a company will be able to recover this expense as an operational cost. The same details also provide a point of reference in case targets are not able to be met, ie ‘*we delivered on the agreed program of activities but unfortunately the results were not as we hoped’*.

3.8 Workforce - First Consideration of Nationals in the Workforce

Provisions relating to the principle of *first consideration* for national citizens under the Sierra Leone Act 2016 and Mozambique Decree 5/95 apply only where applicants have the “*appropriate*“ or “*required*“ qualifications. The extent of this type of local labour preference lies in the interpretation of these very specific terms. For the purpose of this study, it is assumed that the terms mean that candidates must meet the job award criteria for both experience and academic/training qualification, but need not necessarily be the *best* of the group of final applicants. If this interpretation is correct, then this means that, for example, the third highest scoring candidate for a job, if a national citizen, should be hired even if two foreign candidates score hirer in the job interiew and evaluation.

Under the Nigerian 2010 Act and Ghanaian 2013 regulations, there are no provisions obliging *first consideration* to nationals. There is however an explicit recognition that the authorities must be satisfied as to the levels of hiring of national citizens, which presumbly exerts pressure on companies to preference nationals over expatriates where suitably experienced and qualified.

3.9 Workforce - Targets for Nationals

The Sierra Leone Local Content Agency Act sets targets for nationals in different positions at levels significantly below all other countries reviewed in this study (with the exception of Ghana under certain of its general workforce provisions). Notwithstanding the conflict between Articles 56(2) vs 56(6) of the Sierra Leone Act (see below for details), and assuming Article 56(2) dominates, then for all positions other than unskilled, the minimum target for national citizens in Sierra Leone companies across all sectors covered by the Act is 50% by the end of five years. This 50% mandatory target applies to managerial and intermediate positions, which in the Sierra Leone on-line platform for Local Content reporting comprise: senior management, professionals, supervisors, and skilled and semi-skilled workers. For unskilled positions, the Act carries a specific provision for operators and contractors to fill 100% of posts with nationals. Unskilled labour is defined in the on-line reporting platform as "*casual labour with no skills required and not yet trained other than in initial workplace induction and EHS".*

The wokforce targets in Sierra Leone are therefore considerably lower than the 70% target in the Angolan oil industry whic is aplicable across all companies in this sector, and also lower than the large majority of both the 106 separate workforce targets mandated in Schedules (appendices) to the Nigerian 2010 Act and the 42 workforce targets in the Ghanaian 2013 regulations. Illustrative targets in the Nigeria and Ghana legilsation include: 90% manhours for FEED engineering by Nigerians on shore, and 85% manhours of production drilling services; and for Ghana 50% for FEED engineering and 60% for production drilling services.

More comparable are the Sierra Leone workforce targets with the general provision in the Ghana regulations for managerial positions to comprise a minimum of 50% national citizens, 50% for technical positions, and 90% for all other staff (the latter surprisingly allowing expat labour in some unskilled positions).

Confusing the comparison is that in each of the Nigeria, Ghana and Sierra Leone regulations there are additional provisions that seem to run counter to these stated targets, specifically for the Sierra Leone Act the requirement for a minimum of 100% nationals to fill positions labled as "junior or "intermediate/middle level".

3.10 Offences and Penalties

Provisions on offences and penalties for non-compliance across the different regulations reviewed are highly variable, but all can be considered as *strong* since within this variance are specific provisions for either high levels of fines or the threat of imprisonment, or both.

With regard to the level of fines for specific individual offences, in the Tanzania, Angola and Sierra Leone regulations the relevant provisions seem unlikely to cause significant concern for companies. For example, under the Tanzania Petroleum Act the fine for non-compliance is a minimum of $USD50,000 for an individual who offends, and under the Sierra Leone Act USD$2,500 for the same. However, with regard to imprisonment, in all three countries, and also under the Ghana regulation 2013, individuals liable for non-compliance assume the risk of imprisonment for periods ranging from one (1) to two (2) years for Ghana, not less than five (5) years for Sierra Leone and not less than ten (10) years for Tanzania.

The Nigeria 2010 Act contains relatively severe penalties, this time because of the liability of corporate bodies for fines of up to five percent (5%) of project costs, which in the case of the current Egina Project for example would amount to approximately USD$800m. The Sierra Leone Act carries the same threat of fines at five percent (5%) of project costs for offences by a corporate body, rising to 10% for continued violations following initial contravention and fine.

The brievity of the Mozambique Decree Law means that this directive carries no specific provisions on offences and penalties for non-compliance. The Angolan Order 127/2003 for local goods and servies, and also carries no penalty provisions; but the Angolan Decree 5/1995 for labour carries fines of up to 50% of remuneration for each employee whose contract is not properly and timely filed with the authorities.

Whether the strength of the penality clauses in the Nigerian, Mozambican, Tanzanian, Ghanaian or Sierra Leone Local Content legislation would have a deciding impact on inward investment seems doubtful. This is so for two reasons. First, in most cases the penalty provisions offer considerable room for discretion on the part of the authorities. Second, other provisions within these same laws and regulation - such as restricted market access or risks of cost escalation - would likely challenge prospective operators and contractrors far more than some hypotehtical risk of fines or imprisonment.

What these offence and penalty provisions do however is send a clear message, drawing the attention of operators and contractors to the seriousness of the authorities in wishing to see investors align with the intent, if not the letter, of the country's policies on Local Content. The alternative, namely to have not included such stringent penalities and to only include limited fines, would have been to send a signal to investors and encumbent companies that Local Content is a take-it-or-leave-it policy option, something that can simply be costed into a project as a managable risk and then forgotten. In support of this conclusion, it is notable that in Brazil in 2014, fourteen oil and gas companies elected to face fines for failing to deliver on minimum legal targets for Local Content (committed to in their concession agreements) rather than bear the additional costs associated with meeting the targets. This is because to have met the targets would have have been to oblige international suppliers to establish facilitites in Brazil, with the cost of these investments simply coming back to the operator in the form of higher procurement costs.

What the threat of fines and imprisonment does in the provisions of the regulations reviewed, is cause operators and contractors to pause for thought before knowingly failing to comply with the other Local Content provisions in regulation. The high level of turnout of companies, and at senior levels, at the recent Local Content workshops on reporting held by the Sierra Leone Local Content Agency in Freetown in June 2016, is arguably evidence of this influence. The invitation letter stressed that reporting Local Content is now mandatory under the 2016 Act, but that the government is wiling and able to assist companies to comply. Tweleve months earlier, a similar set of workshops on the same topic, but butressed only by a policy paper on Local Content, failed to attract companies, nor the seniority of staff.

3.11 Regulation Implementation

It is important to note that the *real-life* impact of provisions within Local Content regulation depends not only on the terms of the articles and clauses themselves, but also on the choices a government then makes with regards to the chronology of implementation; the use of supplementary regulation, directives and guidance to provide interpretation; training offered to companies; choices around enforcement; and the application of waivers and work-arounds in cases where the provisions are too ambitious or conflict with other public policy objectives.

Since 2014, with the world economy having moved into a more depressed state, all of the governments behind the regulation in this study are currently reviewing what emphasis to place on which Local Content provisions. In this regard, the Sierra Leone Local Content Agency is starting with a focus on the provisions for Local Content reporting in the 2016 Act, which in themselves are a low-cost compliance requirement for companies and yet holds good potential to impact the local economy in support of public policy.

4. Conclusions

In broad terms, the Sierra Leone Local Content Agency Act 2016 is materially less stringent than comparable regulation in a number of other African countries where Local Content is a similar high-profile public policy. It is arguable, therefore, that the provisions on Local Content under the 2016 Act could be positioned by the Government of Sierra Leone as an incentive to investors, with an emphasis on: (i) the limited restrictions to market access for foreign suppliers, (ii) the realistic targets for hiring Sierra Leone citizens and (iii) the achievable objectives for encouraging local raw material inputs to manufactured products. The choices the government is currently making with regard phasing implementation of the policy instruments within the Act, starting with mandatory reporting, further differentiates Sierra Leone as a destination attractive to inward investment.

The message then of the 2016 Act to investors is: *'Come to Sierra Leone. We require Local Content within your activites, because we urgently need to develop our industry and people, but we are phasing in our regulations on Local Content, and many are designed to differentate Sierra Leone from other African investor markets'.*

Dr Michael Warner
Director
Local Content Solutions Ltd
Office: +44(0)1491 572638
Cell: +44 07703 288121
Email: mwarner@localcontentsolutions.com
Website: www.localcontentsolutions.com
35 Queen Street, Henley on Thames, England, RG9 1AP