

**The effect of the oil & gas sector's Final Investment Decision (FID) on the development of local content in the provision of services to the sector in Uganda.**

**Name: Elewa Apamaku**

**REG. NUMBER: M21M23/020**

**A DISSERTATION SUBMITTED TO THE FACULTY OF LAW IN PARTIAL FULFULMENT OF THE REQUIREMENT FOR THE AWARD OF MASTER OF LAWS IN OIL AND GAS LAW AT THE INSTITUTE OF PETROLEUM STUDIES KAMPALA IN AFFLIATION TO UCU.**

**DECEMBER 2022**

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**DECEMBER 2022**

## DECLARATION

I, **Elewa Apamaku**, hereby declare that this proposal is my work and it has not been submitted before to any other institution of higher learning for fulfillment of any academic award.

Signed.....

Date.....

**APPROVAL**

This is to certify that, this proposal entitled “**The effect of the oil & gas sector’s Final Investment Decision (FID) on the development of local content in the provision of services to the sector in Uganda**” has been done under my supervision and now it is ready for submission.

**Signature**.....

**Isaac Christopher Lubogo**

**Date**.....

## DEDICATION

I would like to take this opportunity to thank the Almighty God for blessing me with this opportunity to gain knowledge in this field. I do not take this for granted. I in turn would like to thank my parents, the late Joseph Apamaku and Mrs. Florida Apamaku for the love and support they so steadfastly and selflessly gave without expecting in return. I thank my family for the words of encouragement and support that they shared to get this over the finish line. I am grateful to my classmates who shared their knowledge, perspective, and time in helping me appreciate the various facets of this very involving course. Lastly, I wish to thank my supervisor, Mr. Isaac Lubogo, a truly resourceful gem of the legal profession who does not get the due credit and recognition that he deserves and whose dedication and guidance brought this project to fruition.

May the Lord God Bless all of you abundantly.

**Elewa Apamaku**  
**LLM, Oil & Gas**  
**December 2022**

## ABSTRACT

This research paper sought to highlight the importance of the recently proclaimed Final Investment Decision (FID) in Uganda's oil and gas sector and the potentially (positive?) ripple effect it would have on the provision of ring-fenced goods and services in the sector. FID normally signifies a point of financial close whereby the International Oil Companies (IOCs) demonstrate a significant monetary commitment to the development and production of the natural resource by investing vast amounts of money and technology in extracting and monetizing-in this case, the hydrocarbons.

I sought to elucidate how this decision and the subsequent investment of the substantial capital and operational expenditure will go a long way in developing indigenous Ugandans in the provision of be-spoke services in the industry, giving them the necessary skill set to compete on a global scale, but also showing the economic benefits of this exposure and the trickle-down effect it would have on society. The livelihoods of Ugandans will be immensely improved by this decision.

The Paper also examined whether the decision to carve out certain services for the local populace will not turn out to be a double-edged sword, considering that there would be no benchmark upon which the quality and depth of service would be based, seeing as the IOCs upon whom these services are being 'thrust' will not have much of a choice but to accept them.

Finally I explored the long-term effect that this provision of services by local service providers would have on the improvement of Ugandans as a competitive global workforce, with the exportation of skilled labour and the domino effect it would have on the standard of living and improvement in per capita income of the common man.

## LIST OF ACRONYMS

ACODE	Action for Development
ASCM	Agreement on Subsidies and Countervailing Measures
BIS	Bank for International Settlements
CFR	Charter of Fiscal Responsibility
CNOOC	China National Offshore Oil Corporation
EACOP	East African Crude Oil Pipeline
ECDPM	European Center for Development Policy Management
EITI	Extractive Industries Transparency Initiative
EPC	Engineering, Procurement, and Construction
FID	Final Investment Decision
GFI	Global Financial Integrity
GPA	Agreement on Government Procurement
IEC	Industry Enhancement Centre
IFC	International Finance Corporation
IMF	International Monetary Fund
IOC	International Oil Companies
LNG	Liquefied Natural Gas
MSME	Micro, Small, And Medium Enterprise
NDC	Nationally Determined Contributions
NGO	Non-Governmental Organization
NRGI	National Resource Governance Institute
NSD	National Supplies Database
NOGTR	National Oil and Gas Talent Register
PAU	Petroleum Authority
PSA	Production Sharing Agreements
TRIMS	Trade Related Investment Measures
UNIDO	United Nations Industrial Development Organization
UNOC	Uganda National Oil Company
WTO	World Trade Organization

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## CHAPTER ONE: PROPOSAL.

### 1.0 General Introduction.

Since the discovery of commercially viable deposits of oil and gas in 2006, Uganda has had a long and rocky road to reach a Final Investment Decision (FID)<sup>1</sup> on the exploitation of commercially viable oil deposits, with a myriad of challenges hampering the exploitation and development such as disagreements over the application of the oil proceeds, delays in negotiations of key Agreements, tax disputes with International Oil Companies (IOCs), and overly optimistic targets for the realization of production, with 'First Oil' initially anticipated in 2009.

M/s TotalEnergies, China National Offshore Oil Corporation (CNOOC), and Uganda National Oil Company (UNOC), the project's joint venture partners, announced on Tuesday, February 1, 2022, that a final investment decision (FID) for Uganda's Lake Albert development project had been arrived at, signaling a significant milestone in the development of the country's oil and gas extractive industry.

The project includes the development of two upstream blocks as well as the construction of the East African Crude Oil Pipeline (EACOP), which will transport the majority of the extracted hydrocarbons through Tanzania before being exported worldwide. The agreement entails a US\$10 Billion (United States Dollars Ten Billion) investment by the Joint Venturers in the development of crude oil production in East Africa, with first oil now expected to be extracted circa 2025.

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<sup>1</sup> FID is the point in the capital project planning process when the decision to make major financial commitments is taken. At the FID point, major equipment orders are placed, and contracts are signed for Engineering, Procurement and Construction-  
<https://www.mckinseyenergyinsights.com/resources/refinery-reference-desk/fid/#:~:text=Also%20known%20as%3A%20Final%20investment,contracts%20are%20signed%20for%20EPC.>

With the FID currently in place, the Government of Uganda (GoU) faces several pressing concerns that must be addressed if oil resources are to sustainably benefit present and future generations of Ugandans.

While FID has been announced, funding for the development of the EACOP has yet to be secured, with an estimated cost of approximately US\$5 Billion (United States Dollars Five Billion) due to increased costs because of production and transportation disruptions caused by the COVID-19 pandemic, as well as an estimated US\$.4 Billion (United States Dollars Five Billion) needed for the Oil Refinery<sup>2</sup> and refined products pipeline.<sup>3</sup>

As a result, the Lake Albert project's and pipeline's joint venture partners have resorted to financial institutions for help. However, due to the risks associated with the energy transition, as well as environmental and social concerns, most institutions, including the International Finance Corporation (IFC) of the World Bank Group, are hesitant to invest in the project. Instead, the GoU may be compelled to rely on non-concessional loans to fund its half of the joint venture, which might be costly in the long run and have an impact on the project's returns.

Uganda's agreed upon 15 percent upstream equity in the project is proposed to be funded by its share derived from production, but nevertheless, the GoU would need to acquire additional funding to finance its 15% stake in the EACOP, as well as the anticipated 40% refinery equity position. Fortunately, the GoU having already evaluated the size of the Refinery holding it would take on, has further made

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<sup>2</sup> Petroleum Authority of Uganda website; <https://www.pau.go.ug/the-uganda-refinery-project/>

<sup>3</sup> Natural Resource Governance Institute Newsletter dated 2 March 2022

<https://resourcegovernance.org/blog/ugandas-oil-seven-recommendations-after-the-final-investment-decision#:~:text=On%20Tuesday%201%20February%202022,in%20the%20country's%20oil%20sector.>

provisions for the alternative source of financing in the allocating some of the shares to East African Community (EAC) Member states, plus other institutional investors.

At the same time, TotalEnergies E&P and GoU's Ministry of Energy and Mineral Development signed a Memorandum of Understanding (MoU) for the development of large-scale renewable energy projects, confirming the realities of the energy transition and potentially affecting future oil prices. Lower profits generated by the risks connected with the energy transition may preclude the GoU from investing significant resources in the oil sector, thus hindering them from generating a viable return in the long run. As a result, some of the investments will most certainly be suspended. If the resources are borrowed, GoU would then most likely have trouble in meeting loan obligation repayments, which could lead to default.

Under the EACOP Act, the GoU had to offer extensive exemptions to multinational IOCs and major project contractors in order to attain the FID. M/s Tullow Oil's stake in Uganda's oil and gas sector was disposed of with the assent of the GoU and yet these concessions may have a negative impact on the optimal design of the revenue projections that the project financial modelling derived, as well as an effect on quantity of revenue generated by oil and gas activities for the GoU.

Furthermore, the GoU granted UNOC legal and beneficial ownership of the resources from crude oil operations in order for the firm to pay the government's oil-related financial commitments. While this is not inherently difficult, a National Resource Governance Institute (NRGI) study on national oil corporations (NOCs) highlighted the significance of proper accountability measures to guarantee that the NOC-controlled resources are appropriately managed.

With the current fluctuation in global oil and gas prices, these capital expenditure projects appear quite viable in the projection of their financial returns, considering that at the establishment of the FID a break-even price of roughly US\$49 (United States Dollars Forty-Nine) was determined<sup>4</sup>.

However, because prices are predicted to reduce over the project's lifetime, the risks associated with the energy transition may have an impact on how much money the project eventually generates. The Climate Policy Initiative estimates that if the world complies with the Paris Agreement of 2015<sup>5</sup>, the Lake Albert project will only generate 81 percent of its oil and gas deposits, leading in decreased earnings and a premature halt to production.

Royalties from oil and gas operations are also expected to be paid to Uganda. Based on US\$.60 (United States Dollars Sixty) per barrel crude oil prices, NRGI forecasts that royalties of 12.5% will total to roughly US\$.10.5 Billion (United States Dollars Ten Billion, Five Hundred Million), with selected oil-producing local governments receiving about US\$.630 (United States Dollars Six Hundred Thirty Million) over the project's 25-year lifespan.

The GoU, however has to date not mentioned the local governments that will benefit from the royalties. This could have an impact on their ability to ably effect and implement a development plan.

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<sup>4</sup> <https://resourcegovernance.org/blog/ugandas-oil-seven-recommendations-after-the-final-investment-decision>

<sup>5</sup> <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>

## **1.1 Problem Statement**

With the signing of the FID, the broad implication is that Uganda has taken yet another step towards realizing the fruits of the oil resource. This means that the economy will be boosted, the country's infrastructure will begin to take greater shape as well.

However, from the first pioneer Production Sharing Agreement upon the discovery of oil, the actual terms negotiated amongst the joint venturers, is shrouded in mystery. This is because apparently due to a policy of non-disclosure and as such, the citizenry is not fully apprised on the terms agreed.

It therefore begs the question if it can be ably established that the local content will be to a greater extent catered for in the subsequent dealings. This is because the specific terms of the FID is not available to the public for scrutiny and therefore it cannot be established from the assurances of the relevant people that the full extent of the local content input will be considered.

## **1.2 Purposes of the study.**

The purpose of this study is to establish the content of the final investment decision as far as can be ascertained. This study will also investigate whether the local communities and companies have been considered for the investment decision. This study will draw conclusions that could help harness the opportunity as economically beneficial to the country.

### **1.3 Objectives of the study.**

The study shall be guided by the following objectives;

- a) To establish the contents and effect of the provisions of the FID.
- b) To compare FIDs in other countries with the decision passed in Uganda.
- c) To propose recommendations for ensuring sustainable utilisation of local content to effectively utilize the oil resource.

### **1.4 Research questions.**

The following are the research questions the study seeks to answer;

- a) What are the contents and the effect of the provisions of the FID?
- b) How have other countries inculcated the local content in their FIDs?
- c) What recommendations can be proposed to ensure sustainable utilization of local content to effectively utilize the oil and gas resource?

### **1.5 Scope of study.**

#### ***Geographical study.***

The study shall be limited to local content legal framework in Uganda. Where legal framework of the other countries is referred to it will be for comparison purposes only.

#### ***Time scope***

The study shall be limited to the period of the final investment decision and the agreements that built towards the decision.



## ***Content scope***

The study shall focus on determining whether the legal framework prevailing in the country is better suited to deliver increased participation of Ugandan companies and business entities in upstream oil and gas procurements.

### **1.6 Justification**

As Uganda goes into the development phase of the oil and gas industry, it is important to determine how ready the existing legal framework is in ensuring the participation of local companies in the upstream oil and Gas sector.

This study therefore helps to assess the ability of the Final Investment Decision and how it could possibly help to deliver this.

### **1.7 Significance**

The study helps to assess the readiness of the legal and regulatory framework existing in Uganda to ensure and promote local participation of Ugandan companies in upstream oil and gas contracts. The study shall suggest areas for reform, if deemed necessary.

### **1.8 Theoretical/Conceptual framework**

A conceptual framework is made up of one or more formal theories (in part or whole), as well as other concepts and empirical data from the literature. It's used to illustrate how these concepts are connected to one another and to the research study. In qualitative research in the social and behavioral sciences, for example, conceptual frameworks are prevalent since one theory often cannot adequately address the phenomena being investigated.

A theoretical framework is made up of a single formal theory. The theory is the essential tool for comprehending and exploring the research problem when a study is developed around a theoretical framework. Although theoretical frameworks are more typically used in quantitative studies, they can nevertheless be useful in qualitative research. As a result, because this is a legal research paper, the theoretical framework will be used.

## CHAPTER TWO: LITERATURE REVIEW.

### 2.0 Introduction.

This chapter will traverse the different scholarly material that has been made available for purposes of understanding and revealing final investment decisions in Uganda and other related jurisdictions vis a vis the concept of the local content.

**(a) Isabelle Ramdoo, Local content policies in mineral-rich Countries; European Centre for Development Policy Management; 2016**

Although there is no agreed definition of local content, the concept is generally understood to be a set of policy instruments put in place by national Governments to ensure that a certain share of factors of production (such as labor, supplies, technology, knowledge) required at each stage of the value chain is sourced from the domestic economy.<sup>6</sup>

According to Isabelle Ramdoo, defined broadly, local content is associated with

(a) *nationality or citizenship*, in the case of employment;

(b) *business registration and/or headquarters, ownership and/or control of capital*, in the case of firms. This gives rise to various scenarios where firms may be considered “local” if they are locally based but foreign-owned, locally based and locally owned or locally owned but foreign-based; and

(c) *value addition*, when a percentage of locally sourced inputs are used in the manufacturing process or when the raw material is used as an input for further

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<sup>6</sup> Jan-Christoph Kuntze Tom Moerenhout, Local Content Requirements and The Renewable Energy Industry- A Good Match, ICTSD June 2013

transformation by local industries. Value addition is sometimes used as a proxy for “locally based” and/or “locally owned”<sup>7</sup>.

The author believed that for countries to develop interlinkages between their extractives sector and the other sectors of the economy such as agriculture, industry and other, local content policies have been introduced to stimulate the utilisation of locally available factors of production to create a ripple effect in the domestic economy and expand the industrial sector.

However, as early as 1981, Grossman, a classical economist had defined local content as a percentage of domestic value-added or domestic components comprised in a specified final product. Therefore, a local content policy is interested in how much of local inputs are utilised in a certain sector or in producing a certain product.<sup>8</sup>

The purpose of local content requirements is therefore two-fold. Their economic purpose is to create business opportunities for local enterprises, create jobs, and stimulate industrial development. On the social-political front, local content policies are meant to promote intentional/deliberate preference for locally produced goods, services, and labour to facilitate buy in into the industry by the local community.

Local content policies have been said to be characterized by deliberate policies to; employ nationals in a particular industry, promote innovation technology and research, stimulate the development of local industries and value addition to locally

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<sup>7</sup> Isabelle Ramdoo, Local content policies in mineral-rich Countries; European Centre for Development Policy Management; 2016 page 2

<sup>8</sup> Grossman, Gene M. “The theory of domestic content protection and content preference.” *The Quarterly Journal of Economics* 96.4 (1981): 583–603.

produced products and implemented properly, local content policies are main drivers of development in oil producing countries.

The idea of local content originated from Norway, which capitalized on her strong institutional and legal framework to ensure that her citizens\local people benefited from the oil and gas industry and competitively took part in the oil value chain, which saw many Norwegian companies play a key role in the industry and were accorded a level playing field with the foreign companies. As a result, Norway's local content model has been used as a benchmark for countries desiring to promote local participation in their oil and gas industry and transplanted to many fledgling oil producing countries most of them being developing countries.

However, these transplants have not achieved a similar degree of success in the recipient countries and policy experts have found that for local content requirements to be success full, they need some basic pre-requisites to enable them to achieve their intended purpose and without these in place, even the best drafted local content policy shall remain on paper without any meaningful impact. These include<sup>9</sup>:

Having a proper appreciation of the long-term vision of a particular country and clear objectives as opposed to short term populist political whims<sup>10</sup>. In Norway and Brazil for example, the success of the local content policies has been attributed to the fact that these Governments understood that to be able to propel their economies forward, they needed to focus on capacity development of both individuals and firms and gradually integrate the domestic factors of production into the industry.

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<sup>9</sup> Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development. Designing Local Content Policies in Mineral Rich Countries; October 2018, IISD-2018

<sup>10</sup> ibid

In Norway, the “goods and services office” was set up to oversee the quality, price and delivery timelines of goods and services manufactured in Norway. A gradual fiscal regime was also used to assist these companies to compete favorably<sup>11</sup>.

It is necessary that a country ensures there is institutional readiness to govern the implementation of local content requirements<sup>12</sup>. Clear mandates for the relevant institutions must be established to monitor local content implementation. These should not be the same bodies regulating the entire industry to do away with an overlapping sphere of control.

Creating a business-friendly climate to enable local enterprises flourish and be able to provide competitive world-class goods and services in a timely manner is also key. As already observed, Norway’s gradual tax regime favored local companies to provide competitive goods and services to the oil and gas industry.

A country must have a clear and objective understanding of the capacity of its local industries to design an achievable policy. A deliberate effort must be put in developing the competence of domestic firms to integrate in the oil and gas value chain. Developing linkages between local and international firms is important to promote the competence of local firms.<sup>13</sup>

A country must be able to absorb the huge inflow of foreign direct investments and leverage on them to grow even the other sectors of the economy. Without this, the huge earnings will clump up the sector, shrink other non-oil related sectors and result

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<sup>11</sup> Rukonge S. Muhongo, Local Content Policies in the Energy Transition Era in Africa: A Case Study of the East African Oil and Gas Industry. In Victoria R. Nalule. ed. Energy Transitions and the Future of the African Energy Sector: Law, Policy, and Governance: Palgrave Macmillan, 2021 at 322-340

<sup>12</sup> *ibid* at 332

<sup>13</sup> *ibid*

in a Dutch Disease.<sup>14</sup> The flourishing industries in Norway and Brazil prior to the discovery of oil and gas deposits were leveraged upon to implement successful local content policies.<sup>15</sup>

Also, key to the successful involvement of local entities, is the understanding of the industry and the timely intervention helping local enterprises meet those specific needs and putting in place infrastructure and cost-effective logistics upon which local enterprises can capitalize and understanding the human resource capabilities in the country.

**(b) Gary I (2003), “Bottom of the Barrel: Africa’s Oil Boom and the Poor Catholic Relief Services”, Terry Lynn Karl, Stanford University also author of Paradox of Plenty: Oil Booms and Petro-States, Available at <http://internationalbudget.org/wp-content/uploads/Bottom-of-the-Barrel-Africas-Oil-Boom-and-the-Poor...>**

Terry Lynn Karl argues, that like oil exporters in other regions, long-time African oil producers such as Nigeria, Angola, Congo-Brazzaville, Cameroon, and Gabon, have been largely unable to convert their oil wealth into broad-based poverty reduction and have struggled to diversify their economies or prepare for a post-oil future<sup>16</sup>. To the contrary, petroleum has become a magnet for conflict and, in some cases, civil war<sup>17</sup>.

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<sup>14</sup>Ramírez-Cendrero, Juan M., and Eszter Wirth. “Is the Norwegian model exportable to combat Dutch disease?” *Resources Policy* 48 (2016): 85–96.

<sup>15</sup> Supra n13 at 320

<sup>16</sup>Gary I (2003), “Bottom of the Barrel: Africa’s Oil Boom and the Poor Catholic Relief Services”, Terry Lynn Karl, Stanford University also author of Paradox of Plenty: Oil Booms and Petro-States, Available at <http://internationalbudget.org/wp-content/uploads/Bottom-of-the-Barrel-Africas-Oil-Boom-and-the-Poor...> [Accessed July 14th 2015]

<sup>17</sup> Ibid

Even the new oil producers, such as Equatorial Guinea, appear to be repeating some of the mistakes of their more experienced neighbors<sup>18</sup>.

Kar and Cartwright-Smith (2008)<sup>19</sup> on addressing the problem of illicit flows from Africa in a report<sup>20</sup> argues and notes a quote<sup>21, 22</sup>

*‘The costs of this financial hemorrhage have been significant for African countries. In the short run, massive capital outflows and drainage of national savings have undermined growth by stifling private capital formation. In the medium to long term, delayed investments in support of capital formation and expansion have caused the tax base to remain narrow. Naturally and to the extent that capital flight may encourage external borrowing, debt service payments also increased and further compromised public investment prospects. Furthermore, capital flight has had adverse welfare and distributional consequences on the overwhelming majority of poor in numerous countries in that it heightened income inequality and jeopardized employment*

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<sup>18</sup>Ibid

<sup>19</sup> Dev Kar, formerly a Senior Economist at the International Monetary Fund (IMF), is Lead Economist at Global Financial Integrity (GFI) at the Center for International Policy, Washington DC, and Devon Cartwright-Smith is an Economist at GFI. The authors thank Raymond Baker and other staff at GFI for helpful comments. Thanks are also due to the staff of the IMF’s Statistics Department for their assistance with balance of payments data. Any errors that remain are the authors’ responsibility. The authors would welcome comments; citations should refer to a Working Paper of Global Financial Integrity, a Program of the Center for International Policy (CIP). The views expressed herein are those of the authors and do not necessarily reflect those of CIP or its board.

<sup>20</sup>Dev Kar, formerly a Senior Economist at the International Monetary Fund (IMF), is Lead Economist at Global Financial Integrity (GFI) at the Center for International Policy, Washington DC, and Devon Cartwright-Smith is an Economist at GFI. The authors thank Raymond Baker and other staff at GFI for helpful comments. Thanks are also due to the staff of the IMF’s Statistics Department for their assistance with balance of payments data. Any errors that remain are the authors’ responsibility. The authors would welcome comments; citations should refer to a Working Paper of Global Financial Integrity, a Program of the Center for International Policy (CIP). The views expressed herein are those of the authors and do not necessarily reflect those of CIP or its board.

<sup>21</sup>As Governor Ndung’u (2007) of the Central Bank of Kenya noted in his keynote address at a policy seminar of Governors of African central banks:

<sup>22</sup>Global Financial Integrity (2008), Illicit Financial Flows from Africa: Hidden Resource for Development



*prospects. In the majority of countries in the sub-region, unemployment rates have remained exceedingly high in the absence of investment and industrial expansion’.*

A recent study produced by Global Financial Integrity (GFI)<sup>23</sup> estimates illicit financial flows out of all developing countries at US\$.858 Billion (United States Dollars Eight Hundred Fifty-Eight) to US\$.1.06 Trillion (United States Dollars One Trillion Six Hundred Million) a year. Among developing countries, Africa presents the most analytically related difficulty because countries with inadequate data account for nearly 37% of regional GDP. One thing is certain: while African countries have had to shoulder a heavy debt burden, several researchers<sup>24</sup> have shown that sustained illicit outflows have turned the continent into a net creditor to the rest of the world.

Seminal research<sup>25</sup> at Global Financial Integrity (GFI) on the absorption of illicit funds show that while some of the private assets held outside their countries by developing country nationals may be legitimate, the bulk of such funds are certainly not. This is because estimates of illicit capital outflow provided by economic models such as the World Bank Residual model and the Trade Misinvoicing account for the bulk of deposits reported by banks to the Bank for International Settlements (BIS) and by offshore financial centers.

**Terry Lynn Karl, who also authors *Paradox of Plenty: Oil Booms and Petro-States* argues that it is important to ensure that Africa’s oil boom improves the lives of the poor through increased investment in education, health, water, roads, agriculture,**

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<sup>23</sup> Illicit Financial Flows From Africa Hidden Resource For Development [www.gfip.org](http://www.gfip.org)

<sup>24</sup> such as Ndikumana and Boyce (2008),

<sup>25</sup> In December 2008 Global Financial Integrity released its ground-breaking analysis of Illicit Financial Flows from Developing Countries: 2002 – 2006 it estimated such flows at \$859 billion to \$1.06 trillion a year.

and other vital necessities.<sup>26</sup> But for this to occur, these revenues must be well managed.

Thus, in their report she addresses two fundamental questions:

- *How can Africa's oil boom contribute to alleviating continental poverty?*
- *What policy changes should be implemented to promote the management and allocation of oil revenues in a way that will benefit ordinary Africans?*

Presently, the bulk of Africa's oil and gas revenues are superintended over by Governments lacking in transparency, accountability, and fairness. Without improving their democratic institutions and administrative capacity, it is unlikely that African oil exporters will be able to use petrodollars to fuel poverty reduction; instead, and *ironically*, oil monies are more likely to make matters worse for the poor.

It therefore becomes very important to support the proper democratic management of this natural resource and the implementation of just development strategies that *actually* provide tangible benefits for the poor.

It now therefore becomes eminent that a key factor in ensuring transparency depends on multinational oil companies publishing what they pay and on governments revealing what they spend. Unfortunately, however that like oil exporters in other regions, long-time African oil producers such as Nigeria, Angola, Congo-Brazzaville, Cameroon, and Gabon, have been largely unable to convert their oil wealth into broad-based poverty reduction. Nor have these countries been able to diversify their economies or prepare for a post-oil future. To the contrary, petroleum has become a magnet for conflict and, in some cases, civil war. New oil producers, such as Equatorial

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<sup>26</sup> Gary I (2003), Ibid

Guinea, appear to be repeating some of the mistakes of their more experienced neighbors.

Ian Gary further argues that to improve outcomes for the poor, all actors need to change some of their practices and work together in a more concerted manner because unless the main players in the oil story make specific policy changes, Africa's oil boom is unlikely to foster any significant poverty reduction and oil riches will continue to produce corruption and mismanagement, environmental destruction, human rights violations, and conflict<sup>27</sup>. It is impertinent that improvements be made now to emphasize transparency and fairness, the construction of capable and accountable institutions, and the respect for human rights and the promotion of democratic governance in oil-producing countries.

Unfortunately, Ian Gary's report only focuses on oil and poverty alleviation and omits the assessment of the systemic regulatory weaknesses that have not been designed to curb corruption within the respective oil sectors they supervise and how they impact on governance of oil resources in those countries. His analysis only seeks to provide a regional overview, and provides only snapshots of country situations, especially those such as Nigeria, Angola, and Sudan, which have been well documented by Human Rights Watch, Global Witness, Christian Aid, the International Crisis Group, and others.<sup>28</sup>

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<sup>27</sup> Gary I (2003), Ibid

<sup>28</sup> See for example reports on oil in Angola by Global Witness (Crude Awakening, All The President's Men), on Nigeria and Angola by Human Rights Watch (The Price of Oil, No Democratic Dividend, Briefing on the Oil Diagnostic in Angola); and on Sudan by the International Crisis Group (God, Oil and Country: Changing the Logic of War in Sudan), Christian Aid (The Scorched Earth: Oil and War in Sudan) and Amnesty International (Sudan: The Human Price of Oil).

**(c) Olters, J.P. (2007). Old curses, new approaches? Fiscal benchmarks for Oil –producing countries in Sub-Saharan Africa. IMF working Paper, WP/07/1077**

Olters argues that there are some improvements in oil revenue management in Sub-Saharan Africa but falls short of pointing out to the fact that more needs to be done to ensure an adequate accounting for revenue and adoption of a rational fiscal policy stance. Because the fiscal stance in most countries has not fully reflected the IMF advice<sup>29</sup>, this research will show that corruption which Olters does not evidently advance at all, can be curbed under a sound and viable legal/regulatory framework.<sup>30</sup>

**(d) Abuka et al. (2007). Uganda’s Oil Bonanza: The Opportunities and Risks in the March to 2050, Working Paper.**

Abuka *et al* in the working paper, *Uganda’s Oil Bonanza: The Opportunities and Risks*<sup>31</sup> argues that on the local scene the forecast for exploitation presents a ripe period of economic boom for the economy and this could be a reason to maintain the status quo in both political and social standing.

The researcher will focus on mainly putting to test whether the current legal and regulatory framework is viable and sound enough to fight such corruption problems.

Abuka *et al* further argues that transparency in the management of oil and gas revenues has been shown to be an important attribute. He states that subscribing to the principles of **the Extractive Industries Transparency Initiative (EITI)** is one

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<sup>29</sup> See also (Menachem et al, 2004). for confirmation on the said advice

<sup>30</sup> Olters, J.P. (2007). Old curses, new approaches? Fiscal benchmarks for Oil –producing countries in Sub-Saharan Africa. IMF working Paper, WP/07/1077

<sup>31</sup> Abuka et al. (2007). Uganda’s Oil Bonanza: The Opportunities and Risks in the March to 2050, Working Paper.

means of ensuring success in Africa.<sup>32</sup> They further argue that revenue management remains critical because oil and gas revenues require special policies to deal with windfalls and that excessive revenue can lead to corruption. In addition, due to volatility, revenues tend to fluctuate sharply with oil prices. The solution has typically been to set up an “Oil Fund” that is separate from the regular government budget. Examples of countries in Africa that have set up such a Fund include Sao Tome & Principe, Angola, and Chad. The key issues relate to the need for strong political authority and consensus to establish the Oil Fund early in the oil development cycle. The question however that rises for the case of Uganda is who establishes this Oil Fund and to whom is it accountable; and the checks and balances to such people who manage the fund. The researcher therefore will review the current oil and gas policy and the legal and regulatory framework to find out how effective they are in providing this accountability and transparency function which in turn leads to reduced instances of corruption. Further, the EITI focuses on one facet of the value chain only: transparency in revenue collection. It does not address upstream activities, such as procurement, which constitute a significant part of the value chain in oil and gas, nor does it cover the distribution of income and public expenditure stemming from extractive industry revenues.

Commenting on the relationship between natural resource exploitation and conflicts, Bannon and Collier argue that countries with high risk-economic characteristics such

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<sup>32</sup> See the Transparency International report on corruption.

as low income, low growth and dependence on natural resources have a higher risk of conflict.<sup>33</sup>

Furthermore, natural resource rents increase the risk of civil war because they are not well managed. To avoid conflict arising from natural resources, they argue that successful development could help prevent conflict in low-income countries. Although this is quite probable, they however do not tackle corruption as a challenge arising from bad natural resources management and do not categorically point out the fact that successful development cannot occur in an environment that does not have a sound and viable legal and regulatory framework to curb any likely challenges. They further argue that an increase in economic growth is expected to lead to an increase in the level of income. To increase economic growth in low-income countries, it is recommended that good policies need to be implemented.

**(e) Van der Veen, P. (2006). Oil for development, strengthening good governance in Oil-Producing African countries: The role of the World Bank, Oil, Gas and Mining Policy Division, The World Bank**

Van Der Veen points out that in order for African countries to use oil and gas for development, it is important to strengthen governance.<sup>34</sup> His thesis is supported by Abuka *et al.* (2007) who throw more light on this issue by saying that the basic framework for oil and gas development is a robust petroleum legislation that ensures proper governance of the sector through defining the roles of the state, establishing key institutions, describing the basic licensing and contractual framework and setting

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<sup>33</sup> Bannon, I and Collier, P. (2003). Natural Resources and Conflict: What We can Do? Chapter 1. The International Bank for Reconstruction and Development/The World Bank.

<sup>34</sup> Van der Veen, P. (2006). Oil for development, strengthening good governance in Oil-Producing African countries: The role of the World Bank, Oil, Gas and Mining Policy Division, The World Bank.

the outline of a robust but intuitive fiscal regime. In addition, such a legal framework defines the relationship between the oil and gas laws with other existing laws.

While countries such as Sao Tome and Principe have established the required laws, in most African countries, such as Uganda the laws remain a work in progress.

Van Der Veen however does not emphasize the fact that the institutional frameworks also need substantial improvement in Africa to ensure successful exploitation of oil and gas resources. It should be noted that institutions are important because they define how governance is conducted.

Uganda is also a signatory to various international initiatives to combat corruption, based on the current international anti-corruption conventions. These treaties are designed to address the global character of the problem through cooperation and to help bridge gaps in domestic policy. Such conventions are also used to signal to domestic and foreign audiences the commitment by Governments to a tough anti-corruption policy, which encourages foreign investment. Moreover, States have used ratified such treaties build momentum for change across a wide range of local constituencies when such initiatives might otherwise have been blocked.<sup>35</sup>

**(f) Isaksen, J., Amundsen, I., Wiig, A., with Abreu, C. (2007). Budget, State and People. Budget Process, Civil Society and Transparency in Angola. July 2007 Bergen: CMI**

According to the Universal Declaration of Human Rights, of which Uganda is a signatory, seeking and imparting information is a human right.<sup>36</sup> This access to

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<sup>35</sup> International anti-corruption conventions: Do they work?

<sup>36</sup> Article 19 of the UDHR

information enhances transparency which in turn is considered important because it reduces the possibilities of undermining institutions through corruption and is a prerequisite for the establishment of proper regulatory institutions and other institutions that deal with resource curse problems (Isaksen et al. 2007).<sup>37</sup>

There is common agreement that *soundly governed institutions* play a key role in avoiding the problems many resource rich countries face with their development. Information also improves citizens' ability to challenge occurrence of instances of corruption, since reliable quantitative information is more difficult for politicians and other public officials to brush aside as anecdotal, partial, or simply irrelevant. The relationship between corruption and access to information was canvassed by Reinikka and Svensson (2005).

Following surveys in Uganda which showed that only 13% of education grants reached schools in the 1990s, the rest being captured by local government, the GoU started to publish monthly grants to districts in newspapers. This had a substantial effect on the increment in amounts that schools received, as evidenced in 2001 wherein more than 80% of grants on average reached schools. They find that the effect of access and dispensation of this information on grants received was statistically significant.<sup>38</sup>

Further, a study by Olken (2004) provides an important nuance to this result, by showing that the effect of information depends very much on the incentives to act on reports of leakage of funds.<sup>39</sup> Further, there are suggestions that information

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37 Isaksen, J., Amundsen, I., Wiig, A., with Abreu, C. (2007). Budget, State and People. Budget Process, Civil Society and Transparency in Angola. July 2007 Bergen: CMI

38 Reinikka, R. and Svensson, J. (2005) 'Fighting Corruption to Improve Schooling: Evidence from a Newspaper Campaign in Uganda', *Journal of the European Economic Association* 2 (2-3): 1-9.

39 Olken. B. A. (2004), *Monitoring corruption: Evidence from a field experiment in Indonesia*, Washington D.C.: National Bureau of Economic Research, November 2004



campaigns should focus more on service delivery using objective data and clearly identifying the responsible public officials. This can be copy-pasted into the campaign for transparency and anti-corruption in the oil sector.<sup>40</sup> Such transparency makes it more likely that corrupt officials are detected.<sup>41</sup>

**(g) Mehlum, H., Moene, K. and Torvik, R. (2006), “Institutions and the resource curse”, *The Economic Journal*, 116, 1-20**

Mehlum et al (2006) have argued that transparency and anti-corruption reform in oil rich countries should focus on those areas that matter the most for avoiding the resource curse. Such areas, according to them, are the institutions that make the private sector function efficiently, such as rule of law and bureaucratic efficiency, are the key to making entrepreneurs choose productive private sector employment over unproductive rent-seeking activities.<sup>42</sup>

Mehlum *et al*,<sup>43</sup> for example, assert that the key question is no longer ‘how’ natural resources often harm the economy but why some countries gain, while others lose. Why does resource abundance deliver positive developmental outcomes in some countries and economic failure in others? The answer arguably lies in cross-national differences in the quality of domestic laws, policies and institutions present in a particular country designed to manage the oil and gas sector and the revenues that accrue there from.

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<sup>40</sup> Khemani, S. (2006), Can information campaigns overcome political obstacles to serving the poor? Paper prepared for the EGDI Secretariat, Second draft, April 21 2006

<sup>41</sup> Bac, M. (2001), “Corruption, connections, and transparency: Does a better screen imply a better scene?”, *Public Choice*, 107, 87-96

<sup>42</sup> Mehlum, H., Moene, K. and Torvik, R. (2006), “Institutions and the resource curse”, *The Economic Journal*, 116, 1-20

<sup>43</sup> Mehlum, Halvor, Karl Moene and Ragnar Torvik, *Institutions, and the Resource-Curse*, 2006, *Economic Journal*,

Resource-rich countries that have a malfunctioning bureaucracy and poor laws and policies in the oil and gas sector tend to attain lower growth outcomes and more violent conflicts than those that have high quality (Weberian) systems of public administration and sound laws, policies and robust institutions established for the management of the oil resource.

In other words, laws, policies, and institutions put in place for the management of the oil resource matter. For example, when the domestic laws, policies and institutions are 'grabber- friendly,' the benefits of resource abundance are reaped by a few state elites in alliance with foreign oil companies.

On the other hand, the nation benefits when such legal, policy and institutional frameworks are development-enhancing. Although the researchers point out the key causes of the resource curse, they don't provide for solutions and recommendations to resource rich countries on how the resource curse can be averted. This research bridges this lacuna by providing key policy and legal recommendations on averting the resource curse.

Robinson et al (2006) argue that such a shift will enhance the ability of Governments to distribute public sector positions equitably, in a way that does not distort the allocation of resources in the economy, as is the case currently.<sup>44</sup> Most current reform initiatives have tended to focus on transparency in other areas, however.<sup>45</sup>

**(h) Julius Kiiza, Lawrence Bategeka and Sarah Sewanyana: Righting Resource Curse Wrongs in Uganda: The case of Oil Discovery and**

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<sup>44</sup> Robinson, J. A., Torvik, R. and Verdier, T. (2006), "Political foundations of the resource curse", *Journal of Development Economics*, 79, 447-468

<sup>45</sup> U4 issue 2:2007 transparency in oil rich economies [www.U4.no](http://www.U4.no)

**Management of Popular expectations, Economic Policy Research Center,**

**July 2011**

Julius Kiiza *et al*<sup>46</sup> assert that the resource curse is associated with eight distinctive problems. First is the national risk of entrenching a primary commodity economy that is dependent on God-given (or ‘natural’) advantages. Yet, globalization not only spells doom for economies that are ‘stuck in the Garden of Eden’, but it also calls for the structural transformation of the national economy into a high value-added industrial and information economy.

Second is the problem of repositioning government as the key driver of growth (to the detriment of the private sector).

Third, is the erosion of citizens’ duties and obligations such as payment of taxes (because Government was expected to use ‘windfall’ revenues to finance public services).

Fourth is the problem of political instability (such as in Nigeria, DRC, or Angola).

Fifth is the problem of revenue ‘leakages’ or corruption, which is common in resource-rich countries (such as Nigeria) that have weak institutions of governance.

Sixth is the risk of entrenching authoritarian rule or unaccountable governance.

Seventh is the risk posed by oil related activities to people’s health and, in particular, the possible negative effects of oil spills on fisheries and the environment.

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<sup>46</sup> Julius Kiiza, Lawrence Bategeka and Sarah Sewanyana: Righting Resource Curse Wrongs in Uganda: The case of Oil Discovery and Management of Popular expectations, Economic Policy Research Center, July 2011.

And eighth is the problem of exaggerated expectations. Although the authors give an insight into the phenomenon resource curse, their work is an abstract of some sorts and it only gives a skeletal approach to the subject matter.

My research gives a deep investigative approach into the subject matter, from cross sectoral, legal, policy and institutional appraisals to international best practice comparisons in order to draw the best lessons for Uganda's emerging oil and gas sector.

*Paul Collier*, the author of the best-selling 'The Bottom Billion' and sometimes Special Adviser to President Museveni, discusses and analyses the ethical, political, and economic challenges in managing natural resources, especially oil resources in African countries and their use.

Professor Collier's analysis includes specific findings from his own recent research in economics and governance in Third World Countries. His point of departure is that "natural resources especially oil constitute a massive opportunity and that it is only when they are properly harnessed that they can be transformative".

However, he also points to a complicated chain of decisions, from initial exploration (where, he says, "basic prospecting should be undertaken as a public good, and it should be financed predominantly by donors") to extraction and marketing. Any weak link in the chain of decision-making legislation, policy and institutional frameworks could have adverse consequences for the whole. Collier's work is interesting and illuminating, but sometimes hard to follow, despite the author's efforts to write for the general audience.

*My research would attempt to be clear and easy to follow and although it draws examples from around the globe, it would be restricted to the factual situations in Uganda.*

**(i) Nwapi, Chilenye. “A survey of the literature on local content policies in the oil and gas industry in East Africa.” SPP Research Paper 9/16 (2016).**

It is also necessary that in prescribing local content policies, a country should ensure that the policies as laid down do not contravene already subscribed to international and regional policies<sup>47</sup>.

An example of these is that local content requirements by their very nature go against the WTO policy of avoiding protectionist policies by nations in prescribing different requirements for locally produced countries. WTO has therefore put in place several agreements that bar member states from implementing protectionist policies.

As Nwapi notes, while local content policies appear to be a good tool to train local professionals, a country must be able to design a policy that reflects its needs and circumstances<sup>48</sup>.

However, a study by the United Nations Industrial Development Organization (UNIDO) found that this policy of WTO is limiting for developing countries and curtails them from reaching their full potential and developing. UNIDO argued that there should be different requirements by the WTO in regulating how developing

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<sup>47</sup> Ramdoo, Isabelle. “Unpacking local content requirements in the extractive sector: What implications for the global trade and investment frameworks.” International Centre for Trade and Sustainable Development (ICTSD).

<sup>48</sup> Nwapi, Chilenye. “A survey of the literature on local content policies in the oil and gas industry in East Africa.” SPP Research Paper 9/16 (2016).

countries can give preferences to locally produced goods and services as against imported ones if they are to be able to reach middle-income status and develop.<sup>49</sup>

While Uganda has been a member of the WTO since 1<sup>st</sup> January 1995, save for the GATT, it is not a party to the other agreements such as the Agreement on Trade Related Investment Measures (TRIMS), The Agreement on Subsidies and Countervailing Measures (ASCM) and the Agreement on Government Procurement (GPA) that limit the extent to which WTO members can grant preference to locally produced goods and services against foreign produced ones.

Even without this fact, according to UNIDO there are enough loopholes and legal gaps particularly for developing countries in the WTO agreements to exploit and provide for local content requirements.<sup>50</sup>

This therefore makes it possible for Uganda to provide for clear policies intended to give preference to local companies to take part in providing goods and services to the upstream oil and gas industry.

A country has, in designing its local content policies two options. Either it can adopt the **principle** or the **rule-based policy**. In the principle-based policy, there are no strictly quantified local content targets to be met by IOCs and as such no penalties for failure to meet those targets. This was the principle adopted by Norway in prescribing the 10 commandments that formed the backdrop of the industry and local content.

In Brazil however, a rule-based approach was adopted with strict regulatory requirements set and IOCs required to comply no matter the hardship these

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<sup>49</sup> The role of local content policies in manufacturing and mining in low- and middle-income countries; Inclusive and Sustainable Industrial Development Working Paper Series 19 | 2016

<sup>50</sup> *ibid*

requirements caused. A result of this was creative compliance as companies tried to avoid the penalties<sup>51</sup>.

After confirmation that there were commercially viable oil and gas deposits in Uganda, the National Oil and Gas Policy<sup>52</sup> was formulated with one of its objectives being 'to ensure optimum national participation in oil and gas activities<sup>53</sup>. This policy would provide the ideology and springboard from which all oil laws and policies would be based.

To operationalize local content in the upstream sector of the oil industry, **The Petroleum (Exploration, Development and Production) Act of 2013** under its Part III provided an entry point for local content and in particular participation of local companies in upstream contracts.

However, the law provided a restrictive definition of a local company that eliminated other business entities other than companies.

Following the enactment of this law, a study conducted by Peter Magelah Gwayaka and published by ACODE, a Non-Governmental Organization (NGO) operating in Uganda it was recommended that the need for the country to provide/outline elaborate and deliberate efforts to ensure that Ugandan citizens are able to compete to provide goods and services to the oil industry<sup>54</sup>.

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<sup>51</sup> Supra n13 at 330

<sup>52</sup> National Oil and Gas Policy for Uganda, 2008

<sup>53</sup> ibid objective 7

<sup>54</sup> Peter Magelah Gwayaka, Local Content in Oil and Gas Sector; An Assessment of Uganda's Legal and Policy Regimes; ACODE Policy Briefing Paper Series, No.28, 2014, at page 11

The study, noting the limitations in the definition of a Ugandan company and discrepancies with other laws like the Company's Act<sup>55</sup>, the Land Act<sup>56</sup> and the Investment Code Act<sup>57</sup> recommended the formulation of a clear law related to promotion of local content in the oil industry. It was also noted in the study that the condition imposed on contractors and licensees to award contracts to Ugandan companies "whenever they are competitive in terms of quality and timely availability" was set to water down the whole purpose of local content provisions since as a fact, many local companies were new in the industry and hence most likely to be low in quality of services.

The study proposed the enactment of a specific law to provide for local content requirements, the creation of an institution dedicated to monitoring local content compliance by licensees and contractors in the oil industry and to build capacity of local companies so that they can compete for the procurements.

A report by the Office of the Auditor General in 2015<sup>58</sup> found that there were contradictions between the P(EDP) Act and the respective PSAs for the International Oil Companies operating in Uganda's upstream oil and gas industry. While both gave licensees the duty to develop their own procurement procedures, the Act gave the responsibility to approve these procedures to the Minister of Energy while the PSAs gave the responsibility to the Advisory Committees. By the time of the audit, no licensee had approved procurement procedures either by the Minister or the Advisory Committees.

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<sup>55</sup> The Companies Act, 2012

<sup>56</sup> Cap 227, Laws of Uganda, 2000

<sup>57</sup> Cap 92, Laws of Uganda, 2000

<sup>58</sup> Implementation of National Content in the Oil and Gas Sector by The Ministry of Energy and Mineral Development; Office of the Auditor General, 2015



More specifically, the Audit also found that there was no clear definition of what a Ugandan company or Ugandan goods and services were. Because of this many of the companies identifies as local were in reality international companies but only registered in Uganda.

Additionally, the Audit found that there was inadequate supplier development to enhance the capacity of local companies to competitively supply goods and services to the upstream oil and gas industry.

The Auditor General recommended that a specific regulation on national content clearly defining what a local company and locally produced goods were be expedited, that efforts should be made to develop the capacity of local companies and set performance targets indicators.

This separate law recommended by both the Auditor General and Peter Magelah Gwayaka came in the form of the **Petroleum (Exploration, Development and Production (National Content) Regulations of 2016**. These require licensees, operators, contractors, sub-contractors, and any other entities involved in petroleum activities in Uganda to incorporate and implement national content as an important element of their overall petroleum activities.<sup>59</sup>

The regulation in a shift from position in the P(EDP) Act provided for a registered entity paving way for partnerships and sole proprietorships to compete for procurements in the upstream oil industry by redefining a Ugandan company as

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<sup>59</sup> Regulation 2(2)

provided in the Act and ring fenced the provision of certain goods and services by Ugandan citizens and companies.

While the regulation provided some clarity and adopted \implemented some of the recommendations as put forward by ACODE,<sup>60</sup> they still fell short of what was required to deliver successful participation of local companies in the oil industry. These were stated in the Journal of World Energy Law & Business<sup>61</sup> as having local content policies that look beyond generation of economic rents but pay more attention to development of linkages, clearly defining the tools for measuring local content benchmarks to all industry players, and developing an industrial and supplier base within the country that can benefit from the local content policies<sup>62</sup>

**(j) Elijah Dickens Mushemeza, John Okiira; Oil and Gas Local Content Development Strategy: The Keys to Success ACODE Policy Briefing Paper Series No. 38**

In 2017, Elijah Dickens Mushemeza and John Okiira in a study published by ACODE<sup>63</sup> found that countries that lacked critical institutions to monitor compliance to local content requirements and enterprise centers to skill local companies and those that do not have strategies emphasizing participation of the sub-sectors achieved little from local content policies. The team recommended that countries run enterprise skilling centers to impart basic skills in local companies and promote their competitiveness to provide goods and services to the oil industry.

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<sup>60</sup> ibid 10

<sup>61</sup> Theophilus Acheampong, Marcia Ashong, Victoria Crystal Svanikier, an assessment of local-content policies in oil and gas producing countries, *The Journal of World Energy Law & Business*, Volume 9, Issue 4, August 2016, Pages 282–302, <https://doi.org/10.1093/jwelb/jww019>

<sup>63</sup> Elijah Dickens Mushemeza, John Okiira; *Oil and Gas Local Content Development Strategy: The Keys to Success ACODE Policy Briefing Paper Series No. 38*

A study conducted by the International Institute for Sustainable Development,<sup>64</sup> an independent think tank championing sustainable solutions to 21<sup>st</sup> century problems stated that the success of any local content policy depended upon;

- whether the policy had clear objectives;
- whether the policy had strong monitoring and enforcement mechanisms;
- whether the policy ad provision for expansion to other sectors outside the oil industry; and
- whether there were created partnerships across government agencies and all industry players to ensure success of the policy<sup>65</sup>.

Without these even the best local content policy would stay on paper without any meaningful impact

An article by Berryl Claire Asiago published by the US-China Law Review<sup>66</sup> pointed out that the legal transplant of local content requirements from Norway to developing countries should not only be about the governing laws. She recommended that the transplant should equally replicate factors that influence the operation mechanics of the transplanted legal framework.

She noted such transplants must be done looking at the specifics of both the donor and the recipient country to determine whether the two face similar problems that are capable of being solved by the same legal rules. If it appears that there are different challenges in the donor and recipient country, changes must be made to the laws to ensure they can ably tackle the problems in the host country.

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<sup>64</sup> Designing Local Content Policies in Mineral-Rich Countries; The International Institute for Sustainable Development, 2018

<sup>65</sup> *ibid* Page 26.27

<sup>66</sup> Berryl Claire Asiago; Norwegian Local Content Model a Viable Solution? Us-China Law Review Vol. 14

In 2016, an article by Isabelle Ramdoo published by the European Center for Development Policy Management (ECDPM)<sup>67</sup>, she analyzed local content policies in mineral rich countries and found that while there has been an increase in the number of oil rich countries introducing local content requirements, a country's level of development in form of sectorial maturity was key in determining the rate of success. Also, another key aspect was the ability to move from mere compliance to establishing functional enforcement monitoring mechanisms and to create strong partnerships.

Isabelle argued that while the intervention of public bodies was key, the private sector's contribution could also not be overlooked. While discussing the idea of local procurement, she stated that it could be in the form of preference accorded to local companies during procurement, ring fencing of specific types of goods or services for local companies or a percentage total spending on them and the requirements for foreign companies to enter partnerships with local companies to qualify as local suppliers.<sup>68</sup>

## **Conclusion**

From the literature available and reviewed, the quality of local content service providers, spurred on by FID, will have the immense potential to stimulate a country's economic and service sector development, if well-articulated, planned for and implemented. Whilst this has greatly succeeded in Norway and as such transplanted to several other oil producing countries, the available literature shows that the success of the transplanted policy depends on several factors.

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<sup>67</sup> Isabelle Ramdoo; Local content policies in mineral-rich Countries; European Centre for Development Policy Management; 2016

<sup>68</sup> Ibid at page 11

There needs to be a deliberate drive by Government to encourage the citizenry to continue with the investment in the other 4 (Four) National Development Plan II priority sectors of Agriculture; Tourism, Minerals, Infrastructure; and Human Capital Development, oil and gas being the fifth. This will alleviate the ravages of the resource curse in the event that the majority of the service providers choose to shift to the more lucrative sector. This can be done by utilizing subsidies and other incentives to continue the sector investment.

These include the country's level of industrialization, the existing institutional framework and legal framework. And for a country such as Uganda to reap the benefits of local content policies, it must implement those factors right.

From the above analysis, even though there lacks any substantive writing on the oil industry in Uganda in particular, there are best practices proposed by various authors, in various oil producing jurisdictions, on the need for effective and robust legal, governance, policy and institutional regimes for combating corruption and regime wastage/excesses in oil revenues.

What remains is an analysis of how viable and practicable the current legal and regulatory regime in Uganda is and the necessary reforms that should be implemented to enhance transparency, accountability, and good governance of the oil sector.

This is the substance of this paper.

Further to this, despite the above obligations, Uganda still has a high incidence of corruption<sup>69</sup> and there is need for further reform of the legal and regulatory

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69 Infra note

framework to ensure that corruption is adequately addressed for the progressive exploitation of oil resources in Uganda.

Such reforms, the author posits, must carry the potent effect of promoting betrayal among corrupt parties, destabilizing corrupt arrangements, disallowing contracts to be legally enforced, and impair the operation of corrupt intermediaries,<sup>70</sup> based on the four pillars of deterrence, criminalization, international cooperation, and asset recovery.

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<sup>70</sup> Johann Graf Lambsdorff and Mathias Nell, *Corruption: Where we stand and where to go*. Published in Kreutner, M. (Editor): “The Corruption Monster: Ethik, Politik und Korruption”, Vienna, 2006.

## **CHAPTER THREE: METHODOLOGY.**

### **3.0 Methodology**

#### **3.1 Introduction**

In seeking answers to the research problem, this section shall describe the research design the study population, sample size, research instruments, data collection procedures and data analysis and limitations of the study.

#### **3.2 Geographical scope**

The study will focus on the areas and components in Uganda. The study will also include most of the other state and donor agencies that work with or under the oil final investment decision.

#### **3.3 Content Scope**

The study will focus on analyzing and examining the Final Investment Decision that has been reached and implemented by the oil and gas extraction and commercialization project and its feasibility on Uganda's local content.

#### **3.4 Time scope**

The study will cover the period of 2010 to 2022

#### **3.5 Theoretical literature review**

This study will base its findings and analysis on the principal-agency theory. The principal-agency theory according to Chiappori and Salanie as cited by Basheka the underlying principle of the principal-agency theory is that there should be a clear

understanding of the needs of the principal and ability of the agent to meet these needs competently.

Principal must closely monitor agents' performance; create reward structures that reinforce desired performance. Indeed, when procurement contract is well defined and planned, the principal and agents find it easy to meet needs of each other in an efficient way resulting into timely execution of the contract. The principal-agent theory can proudly be applied to this study with a case company or Government as a principal and contractors or service providers or suppliers as agents. The theory becomes significant to the study as it highlights the need for robust contractual and negotiation requirements and specifications as well as the objective process of monitoring the feasibility of oil and gas projects.

When contract requirements, team roles and responsibilities and Key Performance Indicators are well defined, the principal and agents will find it easy to meet needs of each other in an efficient way resulting into timely execution of the contract in predetermined performance level.<sup>71</sup>

### **3.6 Research Design**

The design that will be used for this specific study will be based on qualitative design which include interviews, structured questionnaires directed to specific groups of people especially those with reliable information that is important to the progress of this research. Data analysis through published documents and literature that is relevant to the topic in question will also be used. The researcher will use this design

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<sup>71</sup> Oluka, P & Basheka C, Determinants, and constraints to effective procurement contract management in Uganda, a practitioner's perspective 2012



because it allows the researcher to compare many different variables at the same time.<sup>72</sup>

### **3.7 Target Population**

This study will be carried out on the final investment decision and the related partners on the project implementation. The study will be carried out from specific organizations and ministries that are responsible for policy making Uganda of which these policies have an effect of the political welfare of the country and in turn affect pertinent projects like those projects that require project financing. The target population is meant to be specific to Ministry of Energy and Mineral Development of Uganda since oil and gas projects fall in this ministry, the Ministry of Finance since some of the of the approval personnel for the finance of these projects fall under this ministry, Bank of Uganda a key strategist to ensure that the money accessed for the projects will be paid back, Parliament of Uganda since this contains the legislative arm of the nation where policies are made which in turn can either positively or negatively affect the political atmosphere of the nation.

With their headquarters in Kampala as organizations that have reliable information to which the research will get a lot of guided information that will enable the researcher to ensure that the pertinent purpose of research is achieved. Lastly and most importantly, this study will encompass the local content and how the final investment decision will affect the same.

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<sup>72</sup> Sekaran U, Research Methods for Business: A skills building approach. New York John Wiley & Sons Inc, (2003)

### **3.8 Sample and its Determination**

The sample size will be based on specifications that are in line with the topic in question. The targeted population in the organizations identified as earlier will be specific to officials responsible to the pertinent issues that are crucial to the success and upbringing of the research. Sampling will be used because these samples allow a higher confidence level when seeking results.

### **3.9 Sampling Techniques**

Since it is difficult to carry out research from the entire population, it is important to sample. Sampling is the process of selecting a suitable sample, or a representative part of a population for the purpose of determining parameters or characteristics of the whole population.<sup>73</sup> Purposeful sampling as a sampling technique will be applied and used in conducting this research. It endeavors to categorize information that is relevant for in depth study. It further involves identifying and selecting individuals that are knowledgeable about or experienced with the choice of topic in question. Convenience sampling will also be applied in the study. This particular sampling procedure involves identifying and selecting respondents depending on their availability for study. Convenience sampling is articulate approach to obtain a reasonable sample.

### **3.10 Data Collection Methods**

In order to conduct the research in a qualitative manner, the data will be obtained from key informant interviews with key and specific individuals from different

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<sup>73</sup> Amin M, Social Science research concepts, methodology and analysis, Makerere University Kampala (2005)

organizations that have been highlighted, document reviews will be also used as part of the study. In survey research, where a researcher will select a sample of respondents from a population and administer a standardized questionnaire to them. The questionnaires or survey can be a written document that is completed by the person being surveyed, an online questionnaire, or a face-to-face interview.

### **3.11 Sources of Data**

The researcher will collect data from both primary and secondary resources

**Primary data:** this will be obtained using structured questionnaires method which will necessitate the administration the survey.

**Secondary data:** this will be collected through review of various publications and reports that relate to the success of the study in question. This will be both local and international publications sources.

### **3.12 Data Collection Methods and Instruments**

#### ***Questionnaire Survey***

Scholars such as Kothari, (2004) have recommended structured guidelines for use of questionnaires as a tool for data collection. This method shall be used as one of the means of acquiring data from the sample population.

#### ***Interview Method***

Structured questions shall constitute the interview guide while interviewing the intended respondents. Interviews are of importance for data collection because they allow the research to be controlled as to the construction and gathering of the data and is flexibility enough to allow issues that emerge during the dialogue and discussion to be probed and further analyzed.

### ***Documentary Analysis***

Relevant secondary data from publications, textbooks, journals, scholarly articles, and reports on both local and international perspectives will be used to back up and amplify the primary information gathered in the processes of finding reasonable solutions for the research problem in question. The use of documents will help the researcher to get comparative analysis from other instrumental writers in the field of study.

### **3.13 Ethical Considerations**

The goal of ethics in this research will be to ensure that no one is harmed or suffers adverse consequences from the research activities. The researchers aim will be to protect the rights of the respondents by: Ensuring that none of the respondents is named during the research or subsequent thesis, ensuring that the respondents are selected to participate without bias thus giving the respondents confidence. The researcher will also endeavor to inform the respondents about the reasons and purpose of the research by obtaining an introductory letter from the academic registrar of Institute of Petroleum Studies Kampala.

More so the researcher will ably inform the respondents that consent was sought from management of the company before the commencement of research initiative.

### **3.14 Data Analysis Plan**

The study will use qualitative data analysis. This will involve and include brief descriptions, explanations, or instructions and can also be presented in prose tables. This kind of descriptive information, however, will be presented in an essay like-prose

or even lists. Data analysis is the process of bringing order, structure and meaning to the mass of collected data. The purpose of analyzing data is to obtain usable and useful information. The analysis may describe and summarize the data, identify relationships between variables, compare variables, identify the difference between variables and forecast outcomes.

### **3.15 Qualitative data analysis**

This will provide some form of processes and procedures whereby there is move from the qualitative data that have been collected into some form of explanation, understanding or interpretation of the people and situations being investigated. Qualitative data analysis is usually based on an interpretative philosophy. This is to examine the meaningful and symbolic content of qualitative data. For example, analysis of interview data, the researcher will be attempting to identify any or all of; someone's interpretation of the world, why they have that point of view, how they came to that view and what they have been doing. This process of Qualitative data analysis usually involves two things: writing and identification of themes.

## CHAPTER FOUR: CONTENTS AND EFFECT OF THE PROVISIONS OF THE FINAL INVESTMENT DECISION.

### 4.0 Introduction.

Many Ugandans have been filled with pride and anticipation since the discovery of commercial oil and gas resources in the country in 2006. Even more so with the projects' start in April 2021 and the announcement of the Tilenga, Kingfisher, and EACOP Final Investment Decisions (FIDs). This follows the Government's efforts to secure long-term value for the country and a reasonable return on investment for our oil company partners.

*"FID is a key step in Uganda's route to First Oil since it represents the oil firms' commitment to support the development of Uganda's oil and gas project, including TotalEnergies EP Uganda, CNOOC Uganda Limited, and the Uganda National Oil Company. This also indicates that, despite the hurdles posed by volatile crude oil prices and the ongoing COVID-19 pandemic, Uganda's oil and gas sector remains profitable. As a result, FID unlocks Uganda's single most valuable project, which will bring in close to US\$.15 Billion (United States Dollars Fifteen Billion) in investment over the next three years,"* said Irene Batebe, Permanent Secretary Ministry of Energy and Mineral Development.

### 4.1 Journey to the Final Investment Decision.

Since the 1980s, the Government's efforts have mostly concentrated on building the institutional and regulatory capabilities needed to sustainably manage the oil and gas sector while encouraging investment. *"While this may have appeared to cause delays to some, it was a "necessary evil" with benefits. Uganda has progressive laws and regulations that other countries, some of which are already producing oil, are emulating. Uganda has indeed evolved a unique model of oil and gas sector management, based on lessons learned from both successful and unsuccessful countries,"* she added.

The GoU has also guaranteed that Ugandans' and investors' interests are linked. This alignment took several years to complete, but the IOCs finally announced the FID.

The preliminary work to prepare these projects for launch and construction has progressed. The Kingfisher and Tilenga Development Projects, as well as the EACOP, completed their environmental and social impact assessments and front-end engineering design studies. All the necessary acreage has been identified and surveyed for these projects. Compensation and relocation for Project Affected Persons (PAPs) are still underway. Uganda's oil and gas project is now fully operational, both technically and commercially.

#### **4.2 The status quo.**

According to the project's technical schedule, First Oil will be obtained 36 to 45 months following the FID. As FID opens the detailed Engineering, Procurement, and Construction (EPC) phase for the projects, where the majority of prospects lie, these months will be marked by intense activity. This is crucial for Ugandans and Ugandan businesses who have and are developing the necessary capacity to capitalize on these opportunities.

Uganda has made considerable progress in terms of promoting indigenous content. The country's key goal for national content in the oil and gas sector is to create and retain value in the country while maintaining competitiveness, efficiency, and effectiveness.

*"In 2020, the percentage of procurements spent on Ugandan firms increased to 92 percent, up from 74 percent in 2019 and 59.6 percent in 2018. While this occurred during a period of relatively low activity, it does demonstrate the capability of Ugandan businesses. The country attained 28 percent national content during the peak of exploration (2008-2017)." Mr. Ernest Rubondo, Executive Director of Uganda's Petroleum Authority (PAU), stated.*

The IOCs will now move into the EPC phase of these projects after finalising the requisite commercial agreements. Local investors can now participate in the prospects because the contracts have been unbundled. Bid notices for goods and services are now being advertised, and contract awarding is expected to begin soon.

The EPC contracting processes for the projects are already underway, and the oil firms are dividing the specific projects into distinct work packages.

A diverse group of contractors and subcontractors will be required. Pre-drilling and related civil works (including site preparation and some building), as well as related suppliers, will get the first priorities. Over 3,000,000 tonnes of local construction resources, including as murram, sand, aggregates, and cement, will be required. The National Content Regulations include sixteen categories of goods and services that are ringfenced for Ugandans.

Another is logistics/transportation, which requires over 300 trucks per day during peak periods to deliver construction equipment and materials. Ugandans can form joint ventures with non-Ugandan organizations to participate in highly technical and specialized projects, hence promoting technology transfer.

It's also crucial to note that contractual processes entail different levels and/or work packages, each of which may offer subcontracting prospects for up to three tiers in some cases.

*"Since the start of the projects, the licensees have filed contracts worth US\$.6 Billion (United States Dollars Six Billion) for over 40 work packages and contracts for the Tilenga, Kingfisher, and EACOP projects to the **Petroleum Authority of Uganda (PAU)** for clearance before award." The National Supplies Database (NSD) is managed by the Authority, which is a registry of businesses prepared to give goods and services to petroleum-related activities." Rubondo continued.*

By law, oil corporations must only work with entities that are registered on the NSD. As a result, the NSD increases national content by promoting Ugandan businesses and providing possibilities for collaborative ventures to boost capabilities. The National Oil and Gas Talent Register (NOGTR), on the other hand, gives those with oil and gas-related abilities visibility.

The capability that the Government and its partners are developing must be maintained beyond the peak season; the NSD and NOGTR will continue to promote talented persons and companies. But, especially after the peak period, businesses that



actively participate must develop and implement plans that will allow them to grow and expand their business into other industries.

Government continues to support Ugandans by collaborating with several organizations dedicated to building Ugandans' and Ugandan entities' capability. The African Development Bank and the Ugandan Government recently inked a US\$.500,000 (United States Dollars Five Hundred Thousand) grant deal for micro, small, and medium enterprise funding (MSMEs). The project, which is being carried out by the PAU in collaboration with the Stanbic Business Incubator and other partners, aims to assist local Uganda MSMEs in developing their capacity along the EACOP route by allowing them to access new market opportunities and establishing links with larger, national, regional, and international companies. Along the pipeline, the initiative seeks to foster inclusive private sector growth and the creation of 500 employment.

To facilitate the delivery of essential technicians in the sector, the Government created a Petroleum Institute in Kigumba. There are other government vocational training schools that offer training programmes related to the oil and gas industry, however they are currently underutilized. Among them are Buhimba Vocational Training Institute (VTI) and Kiryandongo Vocational Training Institute (VTI).

*"It is only right to thank everyone who has contributed to Uganda's nascent oil industry finally taking off after such a long and arduous road." Ugandans should use this opportunity to focus on continuing to enhance their individual and collective capacities to benefit from the development of Uganda's oil and gas resources." Mr. Rubondo stated.*

#### **4.3 Contents of the FID.**

Total Energies, China National Offshore Oil Corporation (CNOOC), and Uganda National Oil Company (UNOC), the project's joint venture partners, announced on Tuesday, February 1, 2022, that a Final Investment Decision (FID) for Uganda's Lake Albert development project had been reached, marking a significant step forward in the country's oil sector. The project includes the development of two upstream blocks as well as the construction of the East African Crude Oil Pipeline (EACOP), which will

transport the majority of the oil via Tanzania before being exported worldwide. The agreement calls for a US\$.10 Billion (United States Dollars Ten Billion) investment in the development of crude oil production in East Africa, with first oil expected in 2025.

With the FID currently in place, Uganda's Government faces several pressing concerns that must be addressed if oil resources are to benefit present and future generations of Ugandans.

#### **4.4 Getting the oil project financed**

While FID has been announced, funding for the development of EACOP has yet to be secured, with an estimated cost of US\$.5 Billion (United States Dollars Five Billion) due to increased costs because of production and transportation disruptions caused by the COVID-19 pandemic, as well as an estimated US\$.4 Billion (United States Dollars Four Billion) needed for the refinery and refined products pipeline.

As a result, the Lake Albert project and pipeline joint venture partners have turned to financial institutions for assistance. However, due to the dangers connected with the energy transition, as well as environmental and social issues, most institutions, including the International Finance Corporation (IFC), are hesitant to invest in the project. Instead, the Ugandan Government may have to rely on non-concessional loans to fund its half of the joint venture, which might be costly in the long run and have an impact on the project's returns.

As stated earlier, Uganda's 15% upstream equity will be funded by the production share, but the Ugandan Government will need to acquire funds for the 15 percent EACOP shares as well as the anticipated 40 percent refinery stock. Fortunately, Uganda's Government has already evaluated the size of the refinery holding it will take, as well as alternatives for allocating some of the shares to East African Community (EAC) partners and other institutional investors.

#### **4.5 Taking into account investments in renewable energy**

At the same time, TotalEnergies E&P and Uganda's Ministry of Energy and Mineral Construction signed a Memorandum of Understanding (MoU) for the development of large-scale renewable energy projects, confirming the realities of the energy transition

and potentially affecting future oil prices. Lower profits generated by the risks connected with the energy transition may preclude the Government from investing significant resources in the oil sector from generating a viable return in the long run. As a result, some of the investments will most certainly become stranded. If the resources are borrowed, Uganda will find it difficult to repay the loans, which could lead to default.

#### **4.6 Ensuring long-term benefits from the oil sector**

Under the EACOP Act, the GoU had to offer extensive exemptions to multinational oil firms and major project contractors in order to attain the FID (2021). Tullow Oil's interest in Uganda's oil sector was also sold with the help of the government. These compromises will have an impact on the optimal design of the revenue management framework, as well as the quantity of revenue generated by oil activities for the government.

Furthermore, the Government granted UNOC legal and beneficial ownership of the resources from crude oil operations in order for the firm to pay the government's oil-related financial commitments. While not inherently difficult, an NRGi study on national oil corporations (NOCs) highlighted the necessity of accountability measures in ensuring that NOC-controlled resources are handled successfully.

While oil prices are fluctuating, the project is now extremely likely to go forward with the FID and a break-even price of roughly \$49. However, because prices are predicted to reduce over the project's lifetime, the risks associated with the energy transition may have an impact on how much money the project generates. The Climate Policy Initiative estimates that if the world fulfils the Paris Agreement, the Lake Albert project will only generate 81 percent of its reserves, leading in decreased earnings and an early end to production.

Royalties from oil operations will also be paid to Uganda. Based on US\$60 per barrel crude oil prices, NRGi forecasts that royalties of 12.5 percent will total roughly US\$10.5 Billion (United States Dollars Ten Billion Five Hundred Million), with selected oil-producing local governments receiving about US\$.630 Million (United States Dollars Six Hundred Thirty Million) over the project's 25-year lifespan.

The administration has not yet designated which local governments will receive royalties. This may hinder their ability to finalize development programmes and reap the benefits of oil earnings.

#### **4.7 Effect of the FID.**

On February 1<sup>st</sup>, 2022, Total Energies, CNOOC, and the Ugandan Government signed a Final Investment Decision (FID), establishing Uganda as a potential member of Africa's oil exporting league. The agreement will see up to US\$.10 Billion invested in developing Uganda's oil resources and the construction of a 1,444-kilometer pipeline connecting Uganda and Tanzania's Tanga ports. After a long period of inaction marked by tax and investment disputes between the government and oil firms, this FID sparked tremendous interest among Government officials and many elements of the public. Environmental groups have reacted negatively to the project, including a campaign to prevent South African commercial banks from investing because of its influence on Uganda's low-carbon future.

The justification for commercial exploitation of mineral discoveries, like all mineral discoveries, is rationalized through the lens of revenues and royalties to be collected and earned, which provide an avenue for the Government to lift citizens out of poverty through interventions in healthcare, infrastructure, and job creation, among other things.

According to the president, earnings from the oil and gas sector would fund Uganda's next phase of growth in order to achieve Vision 2040. Vision 2040 is focused on bolstering the economy's fundamentals in order to capitalize on the numerous opportunities presented by oil and gas. While this has been true to some extent for the Western world, given how coal and oil have driven their economies, it has largely been the opposite for Africa; limited economic development has been accompanied by massive environmental destruction, pollution, and community displacement, with little improvement in their socio-economic positions.

Uganda is no different, as are other poor countries. Weak state institutions have hindered the GoU's ability to lead effectively, and address issues like as poverty. Unemployment continues to climb, while people's living circumstances deteriorate

due to rampant corruption. Nonetheless, the country continues to place great faith in its "treasures" of fossil fuels as a solution to most socio-economic problems. This is, without a doubt, a failed endeavour.

Uganda's oil and gas development will dramatically increase carbon emissions, undermining current worldwide campaigns aimed at hastening the transition to a low-carbon future. Uganda has signed the Paris Climate Agreement, which aims to keep global warming below 1.5 degrees Celsius by 2030. Uganda is pursuing fossil fuels, which contribute significantly to greenhouse gas emissions, at a time when member nations are moving to low-carbon development paths in order to meet the set objectives and recommendations.

Uganda submitted its Nationally Determined Contributions (NDCs) to COP26 held in Glasgow, Scotland in November 2021, highlighting the country's efforts to reduce its carbon footprint and renew its commitment to climate action, particularly after enacting its climate change act. Months later, we receive a FID that also affirms the government's commitment to the development of oil and gas as a source of economic growth. This demonstrates our leaders' dishonesty, how the COP has devolved into a meet-and-greet for politicians with no environmental concerns, and, most crucially, it calls into question Uganda's willingness to commit to climate action.

Furthermore, the country is already suffering from the loss of forest cover because of human activities such as charcoal burning for energy. According to recent data, the number of hectares has decreased from 4.9 million in 1990 to 1.8 million in 2015. As a result, the number of animal species that rely on these natural environments has declined over time. As a result, hydrocarbon exploration activities such as gas flaring, oil well drilling, and pipeline construction for crude oil transportation will exacerbate environmental destruction and encroachment on wildlife and biodiversity in Murchison Falls National Park, Bugoma Forest Reserve, Taala Forest Reserve, and surrounding areas. According to data, the pipeline is on the verge of destroying about 2,000 square kilometers of wildlife habitat. Worse, because the Nile has tributaries that flow near the pipeline path, locals are concerned about the possibility of oil spills, which would result in pollution and the loss of livelihoods.

Furthermore, Uganda's oil may become a stranded asset in the future, resulting in significant government losses. Stranded assets are fossil fuel sources that are at risk of losing value as the world moves toward low-carbon development. The long-term viability of fossil fuel-based economies is dubious at a time when the globe is moving away from filthy energy sources owing to climate change. More importantly, more than half of the world's oil and gas reserves must remain in the ground if global warming is to be limited to 1.5 degrees Celsius, as mandated by the Paris Agreement, 2015. As the call for net-zero emissions grows, this would mean that fossil fuels like oil will become unprofitable and useless.

Furthermore, local communities are concerned since many of them have not received adequate compensation for their land and other assets. As the pipeline building progresses, over 12,000 households are on the verge of being relocated from their ancestral lands. The pipeline will also result in the massive loss of farmlands, which are a source of income and food for most people living in these communities. As a result, locals face an uncertain future with livelihood disruption and increased food insecurity if no substantial compensation is provided in a timely manner.

As a result, expanding Uganda's oil and gas sector will endanger the environment, livelihoods, and ecosystems, all of which are important components of the economy. Oil cannot be the answer to the country's existing socioeconomic problems. Instead, low-carbon development pathways must be adopted, which not only provide long-term employment possibilities for the expanding young population, but also directly address the alarming climate crisis.

## **CHAPTER FIVE: FINAL INVESTMENT DECISIONS IN OTHER COUNTRIES**

### **5.0 Introduction.**

Final Investment Decisions (FIDs) scheduled globally across the oil and gas value chain in 2022 continue to demonstrate natural gas's growing importance. Countries and businesses are continuing to take steps to cut carbon emissions, with the goal of being carbon neutral within the next few decades. The rising importance of gas is reflected in investment plans for projects from the wellhead to processing, trading, and distribution, thanks to the expansion of LNG. 100 production projects are expected to achieve FIDs in the upstream sector globally by 2022.

### **5.1 Major upstream projects targeting FIDs in 2022**

Due to the development of significant projects such as Tilenga in Uganda and Owowo West in Nigeria, Africa has the biggest quantities of remaining reserves from greenfield projects targeting FIDs in 2022. Due to the COVID-19 pandemic, the Tilenga project was delayed, but obtained approval to proceed subsequently after the opening of the economy in January 2022.

Due to the signing of the Petroleum Industry Act, Nigeria, the Owowo West project has been delayed as well (PIA). The long-awaited signing of the act is intended to strengthen Nigeria's oil and gas sector while also improving the country's investment climate.

TotalEnergies and CNOOC are exploring for oil and gas in the Lake Albert region, as well as constructing a cross-country pipeline (EACOP) to transport generated crude through Tanzania. Uganda's desire to become a crude oil exporter is aided by the development of Lake Albert resources.

Another huge greenfield project in Russia, Yamburgskoye (Oil Rims), is projected to attain FID in 2022. The United Arab Emirates (UAE) is aiming for FID for the Hail & Ghasha project, the world's largest offshore gas development. The project is critical to the UAE's ability to meet the country's expanding gas demand.

It should be noted that Africa has the most greenfield upstream production projects planned for FIDs in 2022, with the most remaining reserves.

Others such as Hail & Ghasha, Wisting, Trion, Western Libya Gas Project (Structure A & E) Development, Ca Voi Xanh, Tilenga, Pikka Unit (Nanushuk), Dorado, Bonga North, are some of the biggest upstream projects pursuing FIDs in 2022.

## **5.2 The major midstream projects targeting FIDs in 2022**

LNG and natural gas pipelines remain the primary target segments for FID approval in the midstream industry. Gastrade SA has received final approval for the US\$274 Million Alexandroupolis Floating Regasification project in Greece. The project would begin operations in 2023, ensuring energy security and supply diversification for Greece and other south-eastern European nations such as Bulgaria.

On the trunk/transmission pipelines front, Africa will be the only region in the world to see FIDs approved for two crude oil pipeline projects: East African Crude Oil (EACOP) and Lokichar-Lamu. EACOP has already received FID, with Total and CNOOC having signed a project agreement.

This project's FID was originally scheduled for 2021, but it was postponed due to continued resistance from a variety of sources. Because of its possible impact on the environment and delicate habitats, particularly wildlife, this is the case. The EastMed project is the most important natural gas pipeline project projected to attain FID. The 1,900-kilometer undersea pipeline would transmit gas from Cyprus and Israel's Leviathan field in the Eastern Mediterranean to Greece.

Freeport II (Train 4), Brownsville Phase II, Delfin Floating, Port Arthur, Plaquemines Phase 1, Driftwood Phase I, Sonora Phase I, Corpus Christi Stage 3, Cameron II Phase II, and Tortue 2 are some of the main midstream projects pursuing FIDs in 2022.

## **5.3 The major refining and pet-chem projects targeting FIDs in 2022**

Tuban II in Indonesia and Lobito in Angola are two large new refinery projects that are projected to attain FID in 2022. Tuban II, \$6.4 billion cracking-types integrated refinery, is set to begin operations in 2027. The refinery, which has a capacity of 300



million barrels per day, will supply Euro V fuels to the Nusa Tenggara and Eastern Java regions.

In the petrochemicals sector, large projects in China, India, and the United States are likely to acquire FIDs. Zhejiang Petrochemical, one of China's largest refiners and petrochemical producers, is seeking FIDs for ten petrochemical plants in Zhejiang with a total capacity of 5.55 million tonnes per annum to produce propylene and other petrochemicals like adipic acid and caprolactam. It also intends to cut carbon emissions by implementing new technologies such as direct conversion of crude oil into olefins, as opposed to the traditional approach of requiring refinery feedstock.

Lobito, Tuban II, Kibaale Phase I, Kibaale Phase II, Darwin, Sinochem Quanzhou Petrochemical Quanzhou Ethylene Plant 2, Shell Basra Polyethylene Plant, Novatek Yamal Ammonia Plant, Chevron Phillips Chemical Qatar Petroleum Jv Orange Polyethylene Plant 1, and S-Oil Corporation Ulsan Ethylene Plant 2 are some of the major refining and petrochemical projects targeting FIDs in 2022.

#### **5.4 The key considerations for reaching a Final Investment Decision.**

FID is one of the most important steps in the delivery of energy projects, and its significance has grown in the energy industry over the last few years. This crucial stage of any project relies on corporate finance decision makers providing the green light – or not – for initiatives to move forward and be successfully implemented. It's also a crucial time for investors to assess the chances of any ventures they choose to support succeeding.

It is evidence of a thriving business that industry analysts predicted the number of FIDs to triple in 2019, with total oil and gas volumes – excluding shale and tight oil and gas prospects – equivalent to 46 billion barrels of oil. It begs the question of why and where such growth is taking place.

A substantial share of FIDs come from offshore deep-water, offshore shelf, and onshore markets, according to Rystad Energy, whose study anticipates the trebling of FIDs in 2019. Much of this is due to projects in Africa, Australia, the Middle East, and

Russia, all of which face the possibility of diminished liquefied natural gas (LNG) supply by the mid-2020s.

Project delays are another element that has contributed to the rise. The drop of oil prices five years ago caused many operators to suspend their plans and rethink their costs and planning. These delays are beginning to show fruit, with delayed projects accounting for a quarter of all FIDs in 2019.

This growth is good news for energy projects, as contracts worth billions of pounds are anticipated to be given. However, getting them approved is a hurdle in and of itself, which leads to an examination of energy FIDs.

At the most basic of levels, FIDs are a risks and returns assessment in the context of a capital investment decision.

## **5.5 Financing and Investment Structure**

FID is usually given when vendor permissions have been signed and financial arrangements and optimal finance requirements have been validated in accordance with the project profile. Development costs, construction, and engineering needs at each stage of the project timetable, as well as evidence of market acceptability and the project's subsequent profitability, must all be documented. Investment analysis and project involvement require defining these infrastructure assets and capital expenditure. Cash flow clarity and dividend policy are also important factors in determining commercial viability. After all, big project prices have risen considerably in the last decade, with oil and gas industry projects overrunning by 59%, while productivity has fallen.

## **5.6 Synergy with Company Strategy and Competencies**

Accepting FID will necessitate the demonstration of capabilities to ensure that the project design is feasible and will meet the project's objectives. Therefore, some teams concentrate on improvement projects where there is enough data to assess goals and make reliable estimations. The odds of obtaining FID will be improved by improving visibility of responsibilities, supply chain frameworks, project governance, and

assurance methods. Essentially, how operating strategy aligns with corporate strategy should be acknowledged.

## **5.7 Specific Considerations for Oil and Gas Projects**

### **5.7.1 Liquefied Natural Gas (“LNG”) Prices and Capacity**

There is a lot of optimism about LNG's commoditization, but there are also concerns about the price and difficulties of such large-scale projects. However, success is starting to emerge. Mozambique is one such region where developments in this market are taking shape. ExxonMobil is likely to give its approval to the country's Area 1 and Area 4 projects before the end of the year, with the Area 1 project being the largest in Africa to date, valued at \$15.6 billion. As a result, further projects at the FID stage are expected to follow.

Having a pipeline of projects is critical for people in the oil and gas industries to continue to succeed. With the hurdles that new projects confront – growing costs, volatile oil prices, and so on – the pre-FID and FID stages provide the opportunity to make any risk exposure and expected investment returns visible.

## CHAPTER SIX: FINDINGS, CONCLUSIONS AND RECOMMENDATIONS.

### 6.0 Introduction.

This chapter will cover the findings that have been established from this thesis. It will also provide conclusions on this topic and thereby make recommendations that can be acted upon by the relevant authorities to ensure sustainable use of the oil and gas sector.

### 6.1 Significance of the FID.

The FID signifies the oil companies' financial commitment to developing Uganda's oil and gas resources through the implementation of the Tilenga Project in Buliisa and Nwoya districts; the Kingfisher Project in Hoima and Kikuube districts; and the EACOP, which will span the ten (10) districts of Hoima, Kikube, Kakumiro, Kyankwanzi, Gomba, Mubende, Lwengo, Sembabule, Kyotera

Furthermore, FID is a key step on Uganda's road to First Oil since it shows that the country's oil and gas business is viable, despite hurdles such as volatile crude oil prices and the ongoing COVID-19 outbreak. As a result, FID unlocks Uganda's single most valuable project, which will bring in over US\$.15 billion in investment over the next five years.

The FID has created an ecosystem of opportunity for Ugandan businesses and individuals across all industries. **The Petroleum (Exploration, Development and Production) Regulations 2016** and **the Petroleum (Exploration, Development and Production) (National Content) Regulations 2016** have formally launched contracting and procurement in the industry. This creates enormous opportunity for Ugandan businesses and residents to supply a wide range of goods and services, including building materials, catering, agricultural produce, professional services, office supplies, and lodging.

The National Content Regulations, which reserve specific contracts for goods and services to be provided only by Ugandan citizens and companies ("ring fenced services"), bolstered this claim. Transportation, security, food and beverage, catering, human resource management, and civil works are only a few examples. The

Regulations also compel contractors and licensees to prioritize Ugandan goods and services in all procurement situations.

## **6.2 Mode of Application**

A Ugandan company is defined as one that is incorporated in Uganda and that:

- adds value to Uganda;
- uses locally accessible raw materials;
- employs at least 70% Ugandans; and if a joint venture between a Ugandan and non-Ugandan company is permitted by the Ugandan Petroleum Authority (PAU).

However, for companies and natural persons to participate actively through local content, the companies and persons must be registered on the National Supplier Database (NSD).

The applications are made online using the website of the Petroleum Authority of Uganda, <https://www.pau.go.ug>. Upon submission of the application and requisite documents, the applications are verified and on successful verification, a company or natural person is listed on the National Supplier Database.

Ugandan nationals can also register on the National Oil and Gas Talent Register (NOGTR), which encourages all people with talent to register to promote employment of Ugandan citizens in the oil and gas sector. Employers can also register to source personnel using the NOGTR system. This increases visibility for qualified engineers, technicians, professionals, and other skilled and basic skilled personnel across oil and gas projects, making recruitment and contracting easier. The applications can be submitted online at <https://nogtr.pau.go.ug>.

In a nutshell, FID has been completed, and Uganda is now in the Development phase, which will be followed by the Production phase. In terms of Ugandan businesses and individuals, this is the time to capitalize on the industry by investing in the supply of goods and services to oil firms, as well as creating jobs through local content. As a result, Ugandan enterprises and individuals are encouraged to legalize their operations and apply for listings on the NSD and the NOGTR to benefit from the oil

and gas sector's development and production stages. The Government will gain from **cost oil**<sup>74</sup>, royalties<sup>75</sup>, and corporate tax on oil production, which will be remitted to the government coffers in the proportions laid out under the Production Sharing Agreements and tax laws, particularly during the production stage.

### **6.3 Conclusions.**

Existing empirical research suggests that supply links to the external sector (whether direct or indirect) are a key driver of company productivity gains. As a result, this study focuses on LCPs to exploit the expected demand draw from oil and gas exporters to develop supplier capabilities in a variety of 'connected' products and service industries.

However, a description of Uganda's oil industry's substantial (and fairly 'specific') local content criteria reveals that the government has relied mostly on legal and regulatory mechanisms to drive productive ties to national industry. Instead, market-enabling policies that assist domestic firms in overcoming the significant barriers to admission into these global value chains are more likely to result in a workable and long-lasting supplier integration pattern.

The value of a collaborative approach to local content (rather than a "command and control" approach) is already being shown on huge infrastructure development projects in Uganda, where local enterprises are losing out due to their failure to fulfill requirements, despite legislative mandates to source locally. Indeed, the central argument of this article is that the combination of limited supplier capacities and inadequate capability development measures necessitates immediate regulatory intervention.

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<sup>74</sup> **Cost Oil** means the quantum of Available Crude Oil allocated to the Contractor for recovery of Operating Costs after the allocation of Royalty Oil to the State  
<https://www.lawinsider.com/dictionary/cost-oil>;

<sup>75</sup> **Royalty Oil** means the total volume of crude petroleum oil and other hydrocarbons and associated substances from the Leases, including such substances as crude oil, condensate, natural gas liquids, or return oil from crude oil topping plants, that may be blended with crude oil before the Point of Delivery and tendered as a common stream to the State as Royalty Oil that the State may take in-kind, regardless of whether the State takes the Royalty Oil in-kind- <https://www.lawinsider.com/dictionary/royalty-oil>

Uganda's Government has a variety of policy choices for pursuing a collaborative approach to local content management. This could include the creation of a separate Local Content Unit to promote buyer–supplier relationships through information, matchmaking, and networking (Steenbergen and Sutton 2017). According to an assessment of Uganda's existing institutional framework for promoting local content in the oil and gas sector, it may be necessary to separate duties for this role between the sector regulator and the line Ministry of Energy and Mineral Development.

Instead, this chapter advocates for a long-term approach in which institutions are built to support buyer–supplier relationships in the oil and gas sector, which may then be expanded horizontally to other industries. This stems from the belief that sub-sector-level LCPs are inextricably related to national industrial growth and job creation goals.

The findings emphasize the importance of capability-building technologies or strategies to help aspiring local providers. However, further research is needed into the design of relevant supplier development initiatives, including their scope (targeted or broad-based), finance modalities, and effectiveness in a short time frame.

The current study proposes a method for determining program scope, which includes;

1. prioritizing high-potential productive and 'connected' sectors; and
2. examining the within-sector distribution of firm capabilities (as compared to industry standards) to determine whether a program should only target high-capability firms or the sector as a whole.

#### **6.4 Recommendations.**

NRGI presents the following seven policy proposals in order to translate the government's objectives into concrete earnings and long-term advantages from oil production for the country and its people:

1. To guarantee that UNOC is operated in a transparent and efficient way, strengthen the transparency and reporting measures under the Public Finance Management Act (2015).

2. Develop a longer-term strategy for managing oil income, in addition to the fiscal guidelines outlined in the Charter of Fiscal Responsibility (CFR), especially in view of the long-term shift away from fossil fuels.
3. Review tax exemptions and incentives that may affect Government revenue from oil and gas taxation on a regular basis.
4. Support the private sector's ability to engage in the oil and gas sector in order to improve backward linkages.
5. Publish a list of local governments that will get royalties and encourage the completion of development strategies to ensure that local governments receive royalties from oil production.
6. Review the stake equity level and investigate less risky refinery support, such as government guarantees.
7. Manage public and political expectations, as meaningful oil money may take longer than expected to come into government coffers and before local community advantages may be realised.
8. Create a government department/unit called the Local Content Unit to oversee the process (build training programs, create an "Approved Vendor" qualification scheme, collaborate with multinationals on tender process design, and so on).
9. Implement a training program for both businesses and individuals to improve their competencies to the level required to service global corporations.
10. Timing and sequencing - training must occur before the oil and gas development timetable necessitates the appropriate goods and services; otherwise, most opportunities will be missed.
11. As a priority, the government and IOCs should establish the Industry Enhancement Centre (IEC) to provide business and technical training to local enterprises.
12. Scaling up current business development training programs for domestic suppliers (in the interim, prior to the foundation of the IEC). This might incorporate, for example, the E4D/SOGA bid management and HSE compliance programs, which have shown to be effective on a modest scale.



13. Design of policy interventions aimed at easing supply-side limitations experienced by key supply industries (e.g., access to funding, standard certification).
14. Updated information on supplier capabilities has been added to the National Suppliers Database (e.g., firm performance, markets served, transaction history). This could aid in the direction of potential buyers while also increasing the visibility of domestic suppliers.

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