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INSTITUTE OF PETROLEUM STUDIES, KAMPALA

Assessing the efficacy of the Petroleum (Exploration, Development and Production)  
(National Content) Regulations, 2016 in delivering participation of local companies in  
Uganda's oil and gas industry

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DECEMBER 2022

**DECLARATION**

I, Margret Tushemereirwe, hereby declare that this is my original work. It has been subjected to plagiarism test and found to be below 5%.

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## **APPROVAL**

This is to certify that this dissertation has been prepared under my supervision as the University Supervisor and has been submitted for examination with my approval.

Signature: \_\_\_\_\_ Date \_\_\_\_\_

Dr. Isaac Lubogo

Supervisor

## DEDICATION

To the two people who pushed me in this direction, Uncle Mr. Muhumuza Fred and wife Molly Muhumuza, I dedicate this dissertation to you. You told me to stand out of the crowd and I am doing just that.

To my dear husband who agreed to my dreams and my mother who doubles as my cheerleader, this is for you too.

## TABLE OF CONTENTS

<a href="#">DECLARATION</a> .....	i
<a href="#">APPROVAL</a> .....	ii
<a href="#">DEDICATION</a> .....	iii
<a href="#">TABLE OF CONTENTS</a> .....	iv
<a href="#">LIST OF ACRONYMS</a> .....	vi
<a href="#">ABSTRACT</a> .....	viii
<a href="#">CHAPTER ONE: PROPOSAL</a> .....	1
<a href="#">1.1 Background of the study</a> .....	1
<a href="#">1.2 Statement of the problem</a> .....	3
<a href="#">1.3 Purpose of the study</a> .....	4
<a href="#">1.4 Objectives of the study</a> .....	4
<a href="#">1.5 Research questions</a> .....	5
<a href="#">1.6 Scope of the study</a> .....	5
<a href="#">1.7 Justification</a> .....	6
<a href="#">1.8 Significance</a> .....	6
<a href="#">1.9 Conceptual framework</a> .....	6
<a href="#">CHAPTER TWO: LITERATURE REVIEW</a> .....	8
<a href="#">2.1 Introduction</a> .....	8
<a href="#">2.2 What is Dutch disease and/or resource curse</a> .....	8
<a href="#">2.3 Local content as the solution to Dutch disease</a> .....	14
<a href="#">2.4 Definition and components of local content</a> .....	17
<a href="#">2.5 What it takes to have and execute a successful local content policy</a> .....	22
<a href="#">2.6 Conclusion</a> .....	41
<a href="#">CHAPTER THREE: METHODOLOGY</a> .....	43
<a href="#">3.1 Introduction</a> .....	43
<a href="#">3.2 Research methodology</a> .....	43
<a href="#">3.3 Area of study</a> .....	44
<a href="#">3.4 Sources of information</a> .....	47
<a href="#">3.5 Population and sampling techniques</a> .....	47
<a href="#">3.6 Procedure for data collection</a> .....	47
<a href="#">3.7 Data collection instruments</a> .....	48
<a href="#">3.8 Quality/error control</a> .....	48

3.9 <u>Data processing and analysis</u> .....	49
3.10 <u>Ethical considerations</u> .....	50
3.11 <u>Methodological constraints</u> .....	50
<u>CHAPTER 4: THE LAW RELATING TO PARTICIPATION OF LOCAL COMPANIES IN UPSTREAM PROCUREMENTS IN UGANDA</u> .....	51
4.1 <u>Introduction</u> .....	51
4.2 <u>The National Oil and Gas Policy for Uganda, 2008-The build up to National Content</u> ....	52
4.3 <u>Clear and comprehensive local content law</u> .....	57
4.4 <u>Institutional readiness</u> .....	60
4.5 <u>Building the capacity of local companies</u> .....	62
4.6 <u>Rigorous monitoring, evaluation and enforcement</u> .....	62
<u>CHAPTER FIVE: LEGAL FRAMEWORK ON LOCAL CONTENT IN OTHER JURISDICTIONS; THE CASE OF NIGERIA AND ANGOLA</u> .....	64
5.1 <u>Appreciating long term vision and clear objectives</u> .....	65
5.2 <u>Clear and comprehensive local content law</u> .....	65
5.3 <u>Institutional readiness</u> .....	68
5.4 <u>Capacity building of local companies</u> .....	69
5.5 <u>Monitoring, valuation and enforcement</u> .....	69
5.6 <u>Measuring and communicating performance</u> .....	70
<u>CHAPTER SIX: ANALYSIS OF FINDINGS</u> .....	72
6.1 <u>Introduction</u> .....	72
6.2 <u>Clear and comprehensive local content law</u> .....	73
6.3 <u>Vision and clear objectives</u> .....	81
6.4 <u>Institutional readiness</u> .....	82
6.5 <u>Building capacity of local enterprises</u> .....	84
6.6 <u>Regular monitoring, evaluation, and enforcement</u> .....	86
<u>CHAPTER SEVEN: CONCLUSIONS AND RECOMMENDATIONS</u> .....	88
7.1 <u>Introduction</u> .....	88
7.2 <u>Conclusions</u> .....	88
7.3 <u>Recommendations</u> .....	91
7.4 <u>Areas for further research</u> .....	93
<u>BIBLIOGRAPHY</u> .....	94

## LIST OF ACRONYMS

ACODE	Action Coalition for Development and Environment
NGO	Non-Governmental Organization
P(EDP) ACT	The Petroleum (Exploration, Development and Production) Act of 2013
P(EDP) (NC)	The Petroleum (Exploration, Development and Production) (National Content) Regulations
PSA	Production Sharing Agreement
WTO	World Trade Organization
UNIDO	United Nations Industrial Development Organization
TRIMS	Agreement on Trade Related Investment Measures (TRIMS),
GPA	Agreement on Government Procurement (GPA)
ASCM	Agreement on Subsidies and Countervailing Measures GATT
IISD	International Institute for Sustainable Development
IGF	Intergovernmental Forum on Mining, Metals, Minerals and Sustainable Development
ICTSD	International Centre for Trade and Sustainable Development
Mbpd	Million Barrels Per Day
IOC	International Oil Company
LCPs	Local Content Policies

UNICTAD	United Nations Conference on Trade and Development
MEMD	Ministry of Energy And Mineral Development
NDP III	The Third National Development Plan
NOGA	National Oil and Gas Policy of Uganda, 2008
LCRs	Local Content Requirements
KPIs	Key Performance Indicators
PEPD	Petroleum Exploration and Production Department
NCMB	Nigeria Content Monitoring Board
NCCF	Nigerian Content Consultative Forum
NOGICD	The Nigerian Oil and Gas Industry Content Development Act 2010



## **ABSTRACT**

This study was informed by the difficulty that continue to face Ugandan companies and firms trying to enter the upstream oil and gas industry. As the country goes into the development phase of the oil industry, many foreign companies continue to dominate the scene as licensees, contractors and sub-contractors.

The study therefore set out to analyze the legal framework meant to promote national content in the upstream sector specifically as regards to enabling local firms take part in procurements.

The objectives of the study were; to find out the law in enabling participation of local companies in upstream procurements; to do a comparative analysis of the Ugandan legal framework against similar legal frameworks in other jurisdictions in delivering participation of local companies in upstream contracts; to establish the efficacy of the Petroleum (Exploration, Development and Production) (National Content) Regulations 2016 in delivering participation of local companies in upstream contracts and to propose recommendations for review of the law to better deliver the country's local content aspirations in the oil and gas upstream industry.

Using the qualitative design, the researcher conducted a doctrinal analysis of the Petroleum (Exploration Development and Production) (National Content) Regulations, 2016 in as far as they seek to make entry for Ugandan companies. This law was compared against similar legislation in Nigeria and Angola, the two countries being leading oil and gas producers on the African continent and with national content policies and against existing literature on what a local content policy should focus on.

At the end of the study, findings indicated that while Uganda has put in place a national content law, the same is lacking in terms of monitoring and enforcement measures, enterprise development and makes way for local forms to provide common items to the industry and not the specialised services and goods required by the industry.

The recommendations made include setting clear local content quotas and KPIs for IOCs and clarify measurement and enforcement tools, build capacity of local forms through enterprise development among others.

## CHAPTER ONE: PROPOSAL.

### 1.1 Background of the study

The oil and gas industry and in particular the upstream sector is unique in many respects. One of the unique features is its highly specialised nature that limits entry of new players into the market.<sup>1</sup> For this reason, many oil-producing countries have seen other sectors of their economies shrink over time at the expense of the upstream oil and gas industry that is usually dominated by foreign companies. A result of this is what has been termed as the Dutch disease, a concept used to refer to the negative economic effects of a booming upstream industry on the economic development of the other sectors of an oil producing country.<sup>2</sup>

To counter this problem, countries have adopted laws and policies that provide special consideration for locally produced goods and services in what has been termed as local content requirements. This idea, owing to its tremendous success in Norway has been transplanted to many oil producing countries especially developing countries. In Nigeria for example, local content requirements have been implemented leading to the nationalisation of shell Nigeria and an active participation of Nigerian firms in the oil and gas value chain.

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<sup>1</sup>Michael L. Ross; The Oil Curse: How Petroleum Wealth Shapes the Development of Nations, ISBN 2013

<sup>2</sup> Naoko C. Kojo, Demystifying Dutch Disease, world bank group Macroeconomics and Fiscal Management (Global Practice Group, July 2014)

At the beginning of Uganda's oil journey, a National Oil and Gas Policy<sup>3</sup> was formulated with one of the objectives being to ensure optimum national participation in oil and gas activities.<sup>4</sup>

The strategies to achieve this objective included promoting utilisation of local materials, goods and services in the oil sector and promoting participation of local entrepreneurs. The required action was to put in place the necessary national content laws and identify opportunities for national content in the sector for the benefit of Ugandans to exploit.

This saw the enactment of The Petroleum (Exploration, Development and Production) Act of 2013, The Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, 2013 with provisions relating to national content.

In 2016 the Petroleum (Exploration, Development and Production) (National Content) Regulations were enacted to provide a detailed legal framework to promote national content in the upstream oil industry in Uganda by among other things ensuring the participation of local companies in upstream procurements.

However, even with these laws, the debate as whether the P(EDP) (NC) an efficient law in promoting the participation of local companies in the upstream oil and gas industry still goes on.

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<sup>3</sup> National Oil and Gas Policy of Uganda, 2008

<sup>4</sup> *ibid*, objective 7

## 1.2 Statement of the problem

Following the enactment of the P(EDP) Act in 2013, a study published in 2014 by ACODE and authored by Peter Megelah Gwayaka recommended the need to come up with a deliberate policy aimed at ensuring that Ugandan companies are able to supply goods and services to the oil industry. The study proposed a specific law to provide for local content requirements, a specialised institution to implement the law and capacity building.

In 2015, a report by the Office of the Auditor General (OAG)<sup>5</sup> noted that there were no clear policies regarding local content requirements in Uganda. The report found that there were contradictions between the P(EDP) Act and the respective PSAs for the IOCs operating in the Albertine region. The Auditor General recommended that a specific regulation is enacted to prescribe local content requirements and all matters attendant thereto.

In 2016, The Petroleum (Exploration, Development and Production) (National Content) Regulations were enacted to streamline local content requirements in the Ugandan upstream oil and gas industry. It is thus imperative to interrogate whether this regulation is better suited to deliver participation of local companies in upstream oil and gas contracts and eliminate the challenges identified by Peter Magelah and the Auditor General.

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<sup>5</sup>Office of the Auditor General; Implementation of National Content in the Oil and Gas Sector  
by the Ministry of Energy and Mineral Development, March 2015

### **1.3 Purpose of the study**

The study assessed the provisions of The Petroleum (Exploration, Development and Production) (National Content) Regulations 2016 to establish if they are well-crafted to promote the effective participation of Ugandan companies and business entities in providing goods and services to the upstream oil and gas sector.

It adds on the existing knowledge on local content in the Ugandan upstream oil and gas industry and inform policy makers and technical officials alike of the required areas of reform.

### **1.4 Objectives of the study**

The study was guided by the following objectives

- a) To find out the law in respect to local content and in particular enabling participation of local companies in upstream procurements.
- b) To do a comparative analysis of the Ugandan legal framework against similar legal frameworks in other jurisdictions in delivering participation of local companies in upstream contracts.
- c) To establish the efficacy of the Petroleum (Exploration, Development and Production) (National Content) Regulations 2016 in delivering participation of local companies in upstream contracts.
- d) To propose recommendations for review of the law to better deliver the country's local content aspirations in the oil and gas upstream industry.

## **1.5 Research questions**

The following are the research questions the study answered.

- a) What is the law in respect to local content and in particular enabling participation of local companies in upstream procurements.
- b) How does the Ugandan legal framework compare against similar legal frameworks in other jurisdictions in delivering participation of local companies in upstream contracts.
- c) How effective is the Petroleum (Exploration, Development and Production) (National Content) Regulations 2016 in delivering participation of local companies in upstream contracts.
- d) What are the recommendations for review of the law to better deliver the country's local content aspirations in the oil and gas upstream industry.

## **1.6 Scope of the study**

### **Geographical scope**

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

### **Time scope**

The study was limited to the period from the enactment of the Petroleum (Exploration, Development and Production) Act being 2013 and February 2022

### **Content scope**

The study focused 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

### **1.7 Justification**

As Uganda goes into the development phase of the oil and gas industry, it was 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 assessed the ability of the legal framework and in particular the Petroleum (Exploration, Development and Production) (National Content) Regulations, 2016 to deliver this.

### **1.8 Significance**

The study helped 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 has suggested areas for reform the researcher feels would help increase the efficiency of the law in issue.

### **1.9 Conceptual framework**

The study is based on the concept that oil production especially in developing countries, the level of economic development and the national content policies have a relationship.



**Figure 1**

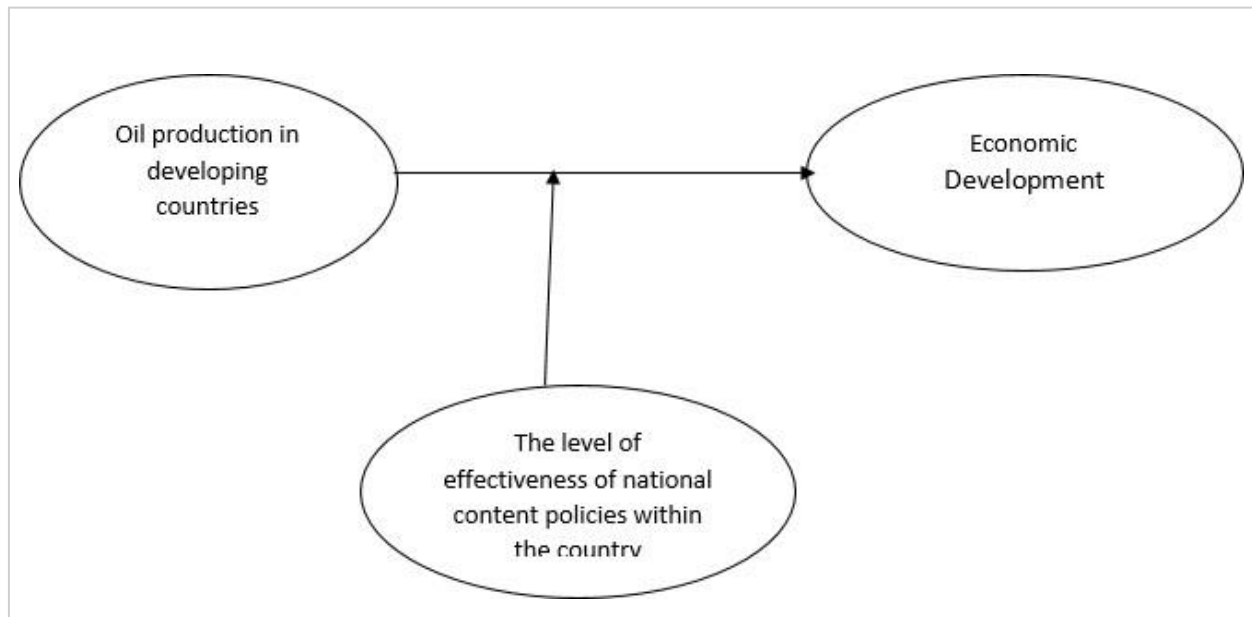


Figure 1 above shows that oil production in developing countries will result in increased levels of economic development. However, there is an intervening factor, being the effectiveness of the national content policies within the country. When these are weak, even with increased earnings from the oil and gas industry, the level of economic development will be slower or even not happen at all and vice versa.

As Uganda gears up into the development phase, the country is hopeful that earnings from the industry will catapult the country's development across sectors and improve livelihoods. However, to achieve this, particular focus must be put on the national content policies as these have a bearing on the attainment of the increased levels of development.

## CHAPTER TWO: LITERATURE REVIEW

### 2.1 Introduction.

This Chapter entails the numerous literature that has been identified by the author to shed light on the given topic. In this chapter, I go to length in exposing the literature concerning local content requirements and what it takes to successfully implement such policies.

The literature review shall be categorized in parts as follows;

- A. What is Dutch disease and resource curse.
- B. Local content as the solution to Dutch disease.
- C. Definition and components of local content.
- D. What it takes to have and execute a successful local content policy.

### 2.2 What is Dutch disease and/or resource curse

Dutch disease refers to a situation in which an extra wealth from an export boom such as discovery of a major natural resource in a country leads to a real appreciation of the money currency and a contraction of other tradable activities in an economy.<sup>6</sup>

The phrase was first used to refer to problems that emerged in Netherlands in the early 1960s and 1970s following the discovery of huge gas deposits in the Netherlands. The resulting exploitation led to a sudden increase in gas exports and a resulting currency

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<sup>6</sup>Naoko C. Kojo, *Demystifying Dutch Disease*, World Bank Group, *Macroeconomics and Fiscal Management* (Global Practice Group, July 2014)

appreciation, which in effect resulted in the contraction of the Dutch manufacturing industry. The result, even with the increased gas exports and revenue therefrom was increase in unemployment levels and a lower growth rate.<sup>7</sup> This is based on the assumption that an economy produced two type of goods; the booming and non-booming tradables on one hand and the non-tradable goods on the other hand. The booming and the non-booming tradables are traded at exogenously given world prices while the price for the non-tradable goods is determined internally by the domestic forces of demand and supply. An export boom in the booming tradables which are usually a natural resource creates a contraction of the non-booming tradable sector first by labour shift front the non-booming tradable and non-tradable sectors to the booming tradable sector which reduces the output of the other two sectors. The boom increases the spending potential of the population due to increased revenue and earnings which is not matched with production since as discussed, labour has already moved into the booming sector and inflation sets in.

Since the phrase was first used in Netherlands, it has been used to refer to the economic hardships and slow development that are experienced by many oil-producing countries.

Martines described an oil curse on the other hand means a phenomenon that the abundance of natural resources usually creates negative impact on the economic growth and development of a country. Those plentiful resources have adverse impacts

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<sup>7</sup>Jhean Steffan Martines de Camargo Paulo Gala, *The resource curse reloaded: revisiting the Dutch disease with economic complexity analysis*, (Sao Paulo School, of Economics, 2017)

on the development through large fluctuations of commodity prices, shrinking other sectors among others.

These oil revenues, when not properly utilised by a state have a tendency to destabilise the economic set up of a country by increasing inflation and unemployment hence what is referred to as Dutch disease as one of the effects.

In fact, while Dutch disease and oil curse have been at times used to refer to the same thing, Dutch disease is just one of the symptoms of an oil curse.

**Mark C. Thurber, David R. Hults & Patrick R. P. Heller, Exporting the “Norwegian Model”: The Effect of Administrative Design on Oil Sector Performance, 39 ENERGY POLICY 5366**

According to Thurber<sup>8</sup>, while oil is one of the most expensive resources that countries export, it does not usually result in the level of development similar to the earning countries obtain from the resource especially for developing countries. In fact, most developing countries that are big producers of oil and gas have been found to be greatly characterized by low levels of economic development, political instability, and unprecedented unemployment levels among others. This is what is known as an ‘oil

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<sup>8</sup> Mark C. Thurber, David R. Hults & Patrick R. P. Heller, Exporting the “Norwegian Model”: The Effect of Administrative Design on Oil Sector Performance, 39 ENERGY POLICY 5366

(2011), <http://www.sciencedirect.com/science/article/pii/S0301421511004125> (last accessed 7th February 2022).

curse' a phenomenon that the abundance of natural resources usually creates negative impact on the economic growth and development of a country

While an oil curse has three dimensions, the economic element of it is referred to as Dutch disease referring to a situation in which an extra wealth from an export boom such as discovery of a major natural resource in a country leads to a real appreciation of the money currency and a contraction of other tradable activities in an economy<sup>9</sup>.

It has been established that when countries begin getting huge earnings from oil, they increase disposable income and cause a shift in the other sectors which results into a lack of affordable goods and services on the market forcing these to be imported, this huge import bill complicates lives further and slows down economic development.

Oil producing countries are therefore always making efforts to avoid the occurrence of a Dutch Disease in their economies. Promoting local content by increasing the participation of local companies in the oil and gas industry is one of the ways of achieving this aim.

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<sup>9</sup> Naoko C. Kojo, *Demystifying Dutch Disease*, world bank group *Macroeconomics and Fiscal Management* (Global Practice Group, July 2014)

**Michael L. Ross, *The oil curse: How Petroleum wealth shapes the Development of Nations*, 2012, Princeton University Press**

According to Ross<sup>10</sup>, the term 'oil curse' is coined from the wider term 'resource curse'. It refers to the tendency of oil- rich (resource-rich) countries to have weaker economic performance than countries without oil (resource-poor) countries. He refers to this as the 'paradox of plenty,' embedded, in the age-old maxim: 'Necessity is the Mother of Innovation'. While *resource- poor* countries are forced to innovate and attain economic viability, their resource-rich counterparts are happy with the huge earnings from their natural resources and this ignore the other sectors of the economy such as agriculture, manufacturing and remain poor. In simple terms, the oil 'curse' is a situation whereby abundance of tradable natural oil reserves paradoxically leads to economic stagnation, the death of other traditional and non-traditional exports such as agricultural and manufactured products, and conflicts over the allocation of the oil resources

**Sentsho, J. (2006). *Abundant Resource Endowment: A Basis for Successful Economic Diversification*. BIDPA Policy Brief No.2**

Sentsho J. in this brief<sup>11</sup> argues that there are essentially two broad views that emerge in regard to exploitation of natural resources. The first view sees resource wealth as a

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<sup>10</sup> Michael L. Ross, *The oil curse: How Petroleum wealth shapes the Development of Nations*, 2012, Princeton University Press

<sup>11</sup> Sentsho, J. (2006). *Abundant Resource Endowment: A Basis for Successful Economic Diversification*. BIDPA Policy Brief No.2

precious endowment in the control of government and its people to use for the long-term development of their country, emphasizing that the proceeds of resource earnings be used for investment rather than consumption. Accordingly, careful project planning and implementation is necessary in order to achieve clearly defined development targets. The opponents view resource wealth as precious but quickly passing wealth that needs to be spent quickly before disaster strikes and hence developing-quick diversity quick and citizen empower-quick syndrome. This manifests itself in ill-conceived and poorly implemented development projects, inherently leading to the many white elephant structures, especially in years of elections when the voice of interest groups is precious.

**Arthur Bainomugisha, Hope Kivengyere, Benson Tumasirwe, Escaping the Oil Curse and Making Poverty History: A Review of the Oil and Gas Policy and Legal Framework for Uganda, 2006, ACODE, Kampala, Policy Research Series No. 20**

Arthur Bainomugisha *et al*, assert that over time, common features have emerged of the “oil curse” which include *inter alia*: increased chances of conflict in a country; the tendency for the real exchange rate to become overly appreciated; exposing the country to volatility, especially in commodity prices, with the attendant adverse impact on growth; environmental costs: Oil operations damage the environment and have adverse effects on the livelihoods of the communities around the production areas; the cash economy created by oil undermines those trying to work for longer-term and more sustainable development initiatives. People become disinterested in anything that does

not deliver instant cash, with agriculture and industry as the prime casualties. The growth of oil cash culture thus undermines real and sustainable development.<sup>12</sup>

The usual explanation for this is the “Dutch Disease”, named for the hardships that befell the Netherlands after it found North Sea gas. When a country strikes hydrocarbons, a sudden inflow of dollar-denominated revenues often leads to a sharp appreciation in the domestic currency. That tends to make non-oil sectors like agriculture and manufacturing less competitive on world markets, thus leaving oil to dominate the economy.

### **2.3 Local content as the solution to Dutch disease**

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

According to Ramdoo,<sup>13</sup> resource Rich countries are constantly faced with the challenges of resource curse and the enclave nature of these industries that is usually dominated by foreign firms and constantly shutting out local forms. Countries have been on the search for durable solutions to ‘dis-enclave’ their mineral sectors and by

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<sup>12</sup>Arthur Bainomugisha, Hope Kivengyere, Benson Tusasirwe, Escaping the Oil Curse and Making Poverty History: A Review of the Oil and Gas Policy and Legal Framework for Uganda, 2006, ACODE, Kampala, Policy Research Series No. 20, p.5.

<sup>13</sup>Isabelle Ramdoo, Local content policies in mineral-rich Countries; European Centre for Development Policy Management; 2016



developing and deepening economic linkages between the extractives sector and the rest of the economy.

For most countries, the solution has been in introducing local content policies (LCPs) with a view to stimulate the use of local factors of production, such as labour, capital, supplies of goods and services, to create value in the domestic economy and hence expand the industrial sector.

But pathways to economic diversification have not been monolithic. Experiences across resource-rich countries globally suggest that countries have embraced different routes at different moments of their development trajectories. The choices before a country are influenced by internal systemic and political realities as well as exogenous contextual situations, such as the cyclical behaviour of commodity prices, demand and supply and technological changes. Countries have valid motivations to design and implement LCPs. These are linked to economic and socio-political considerations, the balance of which is a delicate act. They consist of economic reasons such as the need to create jobs and stimulate local industrial development as well as socio-political interests to respond to calls to address policy failures.

She believed that for countries to develop interlinkages between their extractives sector and the other sectors of the economy such as agriculture, industry and others, local content policies have been introduced to stimulate the utilization of locally

available factors of production to create a ripple effect in the domestic economy and expand the industrial sector<sup>14</sup>.

**Local Content Requirements and the Renewable Energy Industry - A Good Match?**  
**Jan-Christoph Kuntze and Tom Moerenhout, International Centre for Trade and Sustainable Development (ICTSD), May 2013**

Kuntze and Moerenhout after looking at several local content policies across many countries found that proponents of using these LCRs often refer to two main reasons. The first is the need to foster economic benefits such as net employment gains and to create a domestic industry. The found that developing countries used them as an argument to protect infant industries from the highly specialised foreign firms and allow them entry into the enclaved mineral sector<sup>15</sup>.

These policies are aimed at fostering infant industries by protecting them from foreign competition until they can realize their latent comparative advantage.

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<sup>14</sup> Isabelle Ramdoo, Local content policies in mineral-rich Countries; European Centre for Development Policy Management; 2016

<sup>15</sup> Jan-Christoph Kuntze and Tom Moerenhout; Local Content Requirements and the Renewable Energy Industry - A Good Match? International Centre for Trade and Sustainable Development (ICTSD), May 2013

## 2.4 Definition and components of local content

It is important that in defining what local content means, we first understand what the word local in this case means.

International institute for sustainable development, Local Content Policies in the Mining Sector: Scaling up local procurement, IISD 2019

According to the IISD<sup>16</sup>, while the word “Local” can be defined in a variety of ways, there seems to be some growing consensus on what is looked at to define the word “local”. three distinct criteria that should be considered when defining “local,” These include, geographical location, the level of value addition and ownership. However, practice across states varies.

In terms of geographical location, while some states have defined a local company as one located in the vicinity of the mine, others have defined it to mean a business located in the host country. In some others, provided a company is registered in that country, regardless of its location, it has been considered a local company.

The value addition criterion is used to refer to the process by which the monetary worth of a good or service increases as it goes through different stages of manufacturing. Goods and services are considered “local” if a certain (usually prescribed by law), proportion of value addition is performed within the country. According to the IISD, this

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<sup>16</sup> International institute for sustainable development, Local Content Policies in the Mining Sector: Scaling up local procurement, IISD 2019

criterion is meant to promote inter-linkages leading to growth of the domestic manufacturing industry and support the growth of local suppliers to those firms.

The ownership criterion on the other hand focuses on the participation of nationals or citizens in the supply of goods and services. It may look at the Capital or equity participation and a certain minimum percentage shareholding is required for a company to qualify as a local company, the level of staffing of nationals and the level of control vested in local employees. It may also include a requirement on foreign companies to enter into joint ventures or partnerships with local firms and an obligation to offer certain percentage of the shares on the stock exchange for nationals to acquire stake in that company.

While these parameters vary, the choice of parameter picked by a host country depends on the policy goals and a definition and criteria will be crafted to achieve that goal.

According to IISD, if the main objective is job creation and the promotion of domestic industries, then defining “local” using value addition and in-country manufacturing criteria is important, while a definition that is based on ownership of capital or management control is appropriate if the goal is to increase the level of participation of citizens in the mining value chain.

**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>17</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 transformation by local industries. Value addition is sometimes used as a proxy for “locally based” and/or “locally owned.

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>18</sup>

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<sup>17</sup> Isabelle Ramdoo, Local content policies in mineral-rich Countries; European Centre for Development Policy Management; 2016 page 2

<sup>18</sup> Grossman, Gene M. “The theory of domestic content protection and content preference.” *The Quarterly Journal of Economics* 96.4 (1981): 583–603.

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

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 requirements caused. A result of this was creative compliance as companies tried to avoid the penalties<sup>19</sup>.

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

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<sup>19</sup> Supra n13 at 330

saw many Norwegian companies take part in the industry, and were on the same level 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 oil producing countries most of them being developing countries.

**Berryl Claire Asiago; Norwegian Local Content Model A Viable Solution? Us-China Law Review Vol. 14**

An article by Berryl Claire Asiago published by the US-China Law Review<sup>20</sup> pointed out that the legal transplant of local content requirements from Norway to developing countries should not only be about the 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.

The word local content and national content are usually used interchangeably though other times local is used to refer to the smaller community in which the mineral is

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<sup>20</sup> Berryl Claire Asiago; Norwegian Local Content Model A Viable Solution? Us-China Law Review Vol. 14

located and national to mean at the country level. For purposes of this paper however, the word ‘local content’ shall be used interchangeably with ‘national content’ to refer to the participation of a country as a whole as opposed to the local community around the mining fields.

## **2.5 What it takes to have and execute a successful local content policy**

While local content policies have, following their huge success in Norway been transplanted to many resource rich countries, they have not achieved a comparable degree of success in the recipient countries.

According to Ramdoo<sup>21</sup>, resource-rich countries have embraced different routes at different moments of their development trajectories. These have been dependent on a country’s economic and political realities as well as exogenous contextual situations, such as the cyclical behaviour of commodity prices, demand and supply and technological changes.

That while countries have valid motivations to design and implement LCPs linked to economic and socio-political considerations, these must be carefully balanced.

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

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<sup>21</sup> Ibid note 11



Policy experts have found that for local content requirements to be successful, they need some basic pre-requisites to enable them achieve their intended purpose and without these in place, even the best drafted local content policy shall remain on paper without any meaningful impact.

According to IISD, these include<sup>22</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. In Norway and Brazil for example, the success of the local content policies has been attributed to the fact that the governments understood that to be able to propel their economies, they needed to focus on capacity development of both individuals and firms and gradually integrate the domestic factors of production into the industry. 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.

It is necessary that a country ensures there is institutional readiness to govern the implementation of local content requirements<sup>23</sup>. Clear institutions must be set up to monitor local content implementation. These should not be the same regulating the entire industry.

Creating a business-friendly climate to enable local enterprises flourish and be able to provide competitive goods and services in a timely manner is also key. Like we have

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<sup>22</sup> Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development. Designing Local Content Policies in Mineral Rich Countries; October 2018, IISD-2018

<sup>23</sup> *ibid* at 332

already said, 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 honest understanding the capacity of 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>24</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 sectors and result in a Dutch disease.<sup>25</sup> The flourishing industries in Norway and Brazil prior to the discovery of oil and gas deposits were leveraged on to implement successful local content policies.<sup>26</sup>

Also, key is understanding the needs of the industry and help local enterprises meet those specific needs and putting in place infrastructure and cost effective logistics upon which local enterprises shall capitalize and understanding the human resource capabilities in the country.

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<sup>24</sup> *ibid*

<sup>25</sup> Ramírez-Cendrero, Juan M., and Eszter Wirth. "Is the Norwegian model exportable to combat Dutch disease?" *Resources Policy* 48 (2016): 85–96.

<sup>26</sup> *Supra* n13 at 320

## **IISD, Local Content Policies in the Mining Sector: Scaling up local procurement, 2019**

In this book<sup>27</sup>, the IGF advised on several factors that must be considered before designing a local content requirements to promote local procurement;

The need to conduct an analysis of the capacity of local supplier and determine if they have the capability to supply the reserved procurements. Once gaps are identified, efforts must be made to offer interventions to scale improve.

Ensuring that local companies are afforded a conducive business climate in terms of infrastructure, access to finance, legal framework among others. Without these, even if reservation schemes were made, they would not yield the intended results.

Efforts must be made to build the capacity of local suppliers through enterprise training, skills development, access to innovation centers, technical support to improve the competitiveness of their products in terms of quality.

The need for rigorous monitoring and evaluation of whether the policy is meeting its set goals. This involves setting clear and measurable targets right from policy formulation and continuously engaging with all stakeholders so that areas that cause bottlenecks on either side are attended to.

Establishing clear enforcement mechanisms to ensure that progress is tracked and any non-compliances are identified for remedial action. Penalties have been adopted in some countries as an enforcement tool.

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<sup>27</sup> International Institute for Sustainable Development; Local Content Policies In The Mining Sector: Scaling up local procurement, IISD 2019

The IGF advised that it is important that there is a single reporting line for mining companies and then interested agencies can find the data they need. This is meant to lessen the impact of strict regulation on mining companies but provide the data that all government agencies need.

Good governance practice and legal systems are also necessary to weed out corruption tendencies to prevent corruption. Functioning court systems, clear and specific requirements for anti-corruption policies for investing mining companies, and strong whistle-blower protections to avoid and punish such practices were cited as key .

**Damilola S. Olawuyi, Local content and procurement requirements in oil and gas contracts: Regional trends in the Middle East and North Africa, *Oxford Institute for Energy Studies, November 2017***

Olawuyi<sup>28</sup>, while studying the trends of local content policies in the Middle East region came up with a set of four considerations that a country should focus on if it is to deliver a successful local content policy as set out below;

Establish clear and comprehensive local content laws.

This, according to Olawuyi is the starting point of every local content policy. It is these clear laws that will provide guidance to the IOCs of what is required of them and as

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<sup>28</sup> Damilola S. Olawuyi, Local content and procurement requirements in oil and gas contracts: Regional trends in the Middle East and North Africa, *Oxford Institute for Energy Studies, November 2017*

such devise means of complying. These laws should define crucial terms to the policy to ensure there is clarity across the industry and identify the skills, competencies, technologies and economic activities that a country wants to leverage on as part of local content implementation. Such clear definitions will reduce ambiguities with respect to the scope and content of LCRs.

A clear local content law should also help in addressing possible overlaps and limitations in other domestic laws that could hinder the successful implementation of LCRs. For instance if there is an existing law that defines a word “local” in a way that would defeat the intention of the local content policy, this should be streamlined in this specific law. This in a way harmonises local content requirements with other laws and eases implementation.

He emphasised that it’s these laws that would set up a dedicated institution to monitor the implementation of the policy and work as a focal point to undertake inter-agency coordination on matters of local content.

#### Establish a collaborative focal institution on local content

Olawuyi emphasises that while the focal institution created by the law could be either a supervisory committee for each petroleum contract or a dedicated institution, he is in favour of the latter coordinate the design, approval and implementation of local content plans across the life cycle of a project. This institution could even oversee the implementation of local content across several industries as a one-stop shop that will streamline the approval processes for local content implementation, and provide methodologies and tools for operators to report and monitor their compliance with LCRs

to minimise disputes. This institution should be empowered to carry out this mandate without direction or control of any other body to reduce duplication and minimise delays.

#### Adopt collaborative contract terms on LCRs

A successful local content policy requires that that collaborative and flexible approach rather than one that stipulates an unrealistic and rigid approach.

Right from contract negotiation, both the government and IOCs must discuss the local content requirements and any necessary trade-offs agreed upon. A policy that is alive to the capacities within the country but seeks to benefit from the policy while minimising the inconveniences to the IOCs is set to achieve more than a strict unrealistic one.

#### Measure and communicate performance

It is necessary that clear reporting obligations and key performance indicators (KPIs) are communicated to all stakeholders in the local content policy from the beginning. This goes a long way in ensuring that IOCs plan well in advance to implement the policy and report as required periodically. While timely and effective communication can reduce the likelihood of disputes by allowing both parties to explore if, and how, a company is achieving LCRs, clear KPIs provide a basis for renegotiating or amending LCRs when established targets may be difficult to achieve or are found to be too low. It is therefore imperative for both parties to agree upon, and incorporate, KPIs and

reporting requirements with respect to LCRs during contract negotiations, rather than just stipulating that LCRs must be achieved.

**Designing Local Content Policies in Mineral-Rich Countries; The International Institute for Sustainable Development, 2018**

A study conducted by the International Institute for Sustainable Development,<sup>29</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 on; whether the policy had clear objectives; whether the policy had strong monitoring and enforcement mechanisms; whether the policy had 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>30</sup>. Without these even the best local content policy would stay on paper without any meaningful impact

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

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<sup>29</sup> Designing Local Content Policies in Mineral-Rich Countries; The International Institute for Sustainable Development, 2018

<sup>30</sup> *ibid* Page 26.27

In 2016, Isabelle Ramdoo in this article published by the European Center for Development Policy Management (ECDPM)<sup>31</sup>. analyzed local content policies in mineral rich countries.

She 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 key 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 provided 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 into partnerships with local companies to qualify as local suppliers<sup>32</sup>

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<sup>31</sup> Isabelle Ramdoo; Local content policies in mineral-rich Countries; European Centre for Development Policy Management; 2016

<sup>32</sup> Ibid at page 11



**Langer, Arnim (Ed.); Ukiwo, Ukoha (Ed.); Mbabazi, Pamela (Ed.) (2020): Oil wealth and development in Uganda and beyond: Prospects, opportunities and challenges, ISBN 978-94-6166-310-8, Leuven University Press**

In this book<sup>33</sup>, the authors go to length to state that while oil has delivered sustainable growth in some oil producing countries like Norway, Australia, Canada among others, it cannot be said that the presence of oil is a conclusive basis for a country to attain economic development.

Indeed, the authors noted that many African oil-producing countries have experienced slow growth rates following the discovery of oil.

The authors noted that while attempts have been made to develop sound institutional and regulatory framework for the oil industry, there was need for checks and balances.

To avoid the occurrence of Dutch disease, the authors discussed the issue of national content in the oil industry as provided for in the P(EDP) Act at the time. However, they note that provisions of the Act had several ambiguities such as the definition of a local company that was not covering partnerships and other forms of business entities recognized under the Company's Act<sup>34</sup>. They proposed that additional assistance should be given to local companies in form of enterprise development and other incentives like tax holidays to assist them compete in the industry. Due to the enclaved nature of

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<sup>33</sup>Langer, Arnim (Ed.); Ukiwo, Ukoha (Ed.); Mbabazi, Pamela (Ed.) (2020): Oil wealth and development in Uganda and beyond: Prospects, opportunities and challenges, ISBN 978-94-6166-310-8, Leuven University Press

<sup>34</sup>No. 1 of 2012

the industry and the highly specialized skill that may not be developed in the short run, there is need to develop associated industries such as petrochemical industries to provide entry for local companies<sup>35</sup> and other backward linkages.

**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**

In this chapter<sup>36</sup>, Muhongo noted that the oil and gas industry is enclaved and the multinational investors come with intact linkages that do not serve the potential growth and development in key areas of the economy such as the agricultural, manufacturing and services sector. It therefore becomes hard for domestic suppliers to integrate with the industry and develop their capabilities and local content policies seek to dis-enclave this industry and allow the entry of local players

These local content policies come in various forms such as creation of employment, capacity-building mechanisms for individuals and firms, value addition within the country and training of locals.

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<sup>35</sup> Ibid note 30 at page 137

<sup>36</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

These policies can be stringent or lenient depending on the intention of the policy makers within the host country as gathered from its unique socio economic and political climate.

Muhongo noted that developing countries are finding it difficult to benefit from local content policies due to the challenges of lack of a skilled labour force, administrative challenges among others. He notes that in the era of energy transition, these countries are set against a bigger task of designing policies that ensure they can get the best out of the industry.

However, not all countries with local content policies have derived the most out them and therefore countries developing these must look at their particular circumstances to inform the kind of policy put in place. According to Muhongo, these were key;

It is important that a country understands its geology and geography in designing its local content policy. If the resources are offshore and would require very specialised skills, this should be taken into consideration from the early stages of the industry and if need be these skills developed well in advance.

The structure of the economy should also guide on the local content policy to be developed. Diversified economies do better with local content policies than those that rely mainly on the extractive industries (petro-economies). With a diversified economy, it is possible to have a strict local content policy, as these can be able to provide the desired goods and services. He referred to Norway and Brazil that capitalised on their successful shipping and fishing industry to facilitate the interaction between the oil

industry and other sectors. In a country where the other sectors are not developed, it will not be possible to absorb the huge oil cash inflows and will result in dutch disease.

The level of readiness of the labour market in the country should also determine the kind of local content requirements and the level of targets to set. In the extractive industry, a competitive workforce is key in providing welders, fabricators and electricians with sophisticated skills. If these are non-existent, a realistic target should be set for the IOCs.

The international agreements that a country has ratified also has a bearing on the kind of local content policies that can be set. Several WTO agreements are against protectionist policies by individual states and while some exceptions are provided, a local content policy should seek to stay within the exceptions allowed for that particular country to avoid possibility of sanctions.

Lastly, he noted that the volatility of oil and gas prices should be taken into account in designing local content policies. Policies must be flexible to adjust to price fluctuations so that both the interests of the host state and the OICs are met without causing unnecessary hardship to any of them.

This finding of Muhongo is similar to Nwapi's that 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 particular needs and circumstances<sup>37</sup>.

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<sup>37</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).

**Ramdoe 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).**

Ramdoe in this book<sup>38</sup> analyses the effect of local content policies on world trade. She notes that 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>39</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 by prescribing different requirements for locally produced countries. WTO has therefore put in place several agreements that bar member states from implementing protectionist policies.

However, a study published by the United Nations Industrial Development Organization (UNIDO)<sup>40</sup> 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 countries can give

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<sup>38</sup> Ramdoe, 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>39</sup> Ramdoe, 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>40</sup> Miriam Weiss, The role of local content policies in manufacturing and mining in low- and middle-income countries; UNIDO Inclusive and Sustainable Industrial Development Working Paper Series 19 | 2016

preferences to locally produced goods and services as against imported ones if they are to be able to reach middle-income status and develop.

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>41</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.

### **Columbia University, 2012. Oil: Uganda's Opportunity for Prosperity**

The paper published in 2012 noted the great challenges that lay ahead of Uganda as a country as it sought to extract full value from its oil endowment. To avoid the resource curse that has befallen many resource rich countries a lot of preparations were required at all levels. The paper made a total of 56 policy recommendations to establish the

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<sup>41</sup> ibid

necessary legal, governance, environmental and social foundations for a strong oil sector before full-scale production.

The major concerns highlighted by the paper include the need to upgrade petroleum-related laws, establish stronger institutions that are better-equipped to monitor the oil industry and enforce regulations, ensure the disciplined management of oil revenues, implement safeguards against the environmental impact on and around the Albertine Graben and ensure fairness surrounding land rights and compensation for affected communities.

**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**

Following the enactment of the P(EDP) Act, a study by Peter Magelah Gwayaka and published by ACODE, an NGO operating in Uganda recommended 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>42</sup>.

The study, noting the limitations in the definition of a Ugandan company and discrepancies with other laws like The Company's Act<sup>43</sup>, The Land Act<sup>44</sup> and The

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<sup>42</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

<sup>43</sup> The Companies Act, 2012

<sup>44</sup> Cap 227, Laws of Uganda, 2000

Investment Code Act<sup>45</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 licenses 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 licenses and contractors in the oil industry and to build capacity of local companies so that they can compete for the procurements.

### **Office of the Auditor General, Implementation of National Content in the Oil and Gas Sector by the Ministry of Energy and Mineral Development, 2015**

A report by the Office of the Auditor General in 2015<sup>46</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

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<sup>45</sup> Cap 92, Laws of Uganda, 2000

<sup>46</sup> Office of the Auditor General, Implementation of National Content in the Oil and Gas Sector by The Ministry of Energy and Mineral Development, 2015



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.

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 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, subcontractors 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>47</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 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>48</sup> they still fell short of wat 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>49</sup> as being; having local content policies that look beyond generation of economic rents but pay more attention to development of linkages, defining clearly 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>50</sup>

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<sup>47</sup> Regulation 2(2)

<sup>48</sup> *ibid* 10

<sup>49</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>

**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>51</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.

## **2.6 Conclusion**

From the literature available and reviewed, local content requirements have the potential to spur a country's economic development, if well-articulated and implemented. While these have greatly succeeded in Norway and as such have been transplanted to several other oil producing countries, the available literature shows that the success of the transplanted policy depends on many factors. These include the country's level of industrialization, the existing institutional framework and legal framework. For Uganda to reap the benefits of local content policies, it must transfer

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<sup>51</sup> Elijah Dickens Mushemeza, John Okiira; Oil And Gas Local Content Development Strategy: The Keys to Success ACODE Policy Briefing Paper Series No. 38

the local content policies mutatis mutandis while alive to the specific socio-economic and governance structure of the country.

While the beginning point is having a clear policy and laws and regulations to implement these, the issue of enterprise development cannot be left unattended to. To leave the local companies to find their own way of penetrating the oil industry is to water down the policy outright.

This paper shall therefore analyze the policy, legal and operational mechanisms to ensure the participation of local companies to determine their sufficiency to deliver as planned.

## CHAPTER THREE: METHODOLOGY

### **3.1 Introduction**

This chapter presents the methodology used in undertaking the study. It sets out the research design and approach, study population, sample size, sampling techniques, data sources, as well as data processing techniques.

### **3.2 Research methodology**

The study sought to understand whether the existing legal and regulatory national content framework in Uganda is well suited to promote participation of Ugandan companies in upstream oil and gas procurements. This raised the need to do a deeper analysis of the law in Uganda, similar laws in other jurisdictions and the existing literature on what it takes to have a successful national content policy. A qualitative method of research was adopted therefore adopted to be able to bring out the details.

The rationale for employing the qualitative method was to ensure that an assessment was made to determine whether national content policies as transplanted from Norway where it has been very successful to Uganda is set to reach a comparable degree of success. The doctrinal and comparative methodologies were used to collect the data and analyze the same to come up with findings.

#### Doctrinal legal research

The doctrinal legal research method was adopted to enable the researcher focus on the text of the law under study rather than the practice. This method was possible because the law under study is clearly written or codified in the P(EDP) (NC) regulations making it easy for the researcher to dissect.

Using this method, the law meant to enable participation of Ugandan companies in upstream procurements was analyzed and comments made on its efficacy. Strengths and weaknesses were pointed out and areas of amendment or improvement recommended.

Comparative design.

As discussed in chapter two, issues of national content are not new and many resource rich countries have enacted policies and laws providing for local content in their oil and gas industry. Even in Africa, several oil-producing countries have legislation on national content in their oil industries.

The comparative design was therefore used by the researcher to be able to compare the text of the similar laws in selected countries to find out how these jurisdictions have handled similar issues.

### **3.3 Area of study**

The area of study for this research comprised The Petroleum (Exploration, Development and Production) (National Content) Regulations 2016 and similar legal framework in other jurisdictions in Africa.

The jurisdictions were selected as case studies of the application and success or otherwise the failure of national content requirements in those countries. Countries in Africa have been preferred by the researcher because of the almost similar circumstances to Uganda other than those from the developed world. The following jurisdictions were used.

Nigeria

Nigeria is one of the leading producers of oil and gas on the African continent with the country producing an average of 1.27mbpd in 2021 and re-gained its position as Africa's top oil producer against Algeria<sup>52</sup>. The country's oil exports by 2012 were at 94.6 billion and by 2015, accounted for about 74.4 percent of the country's exports<sup>53</sup>. With proven capacity to produce 2.5mbpd, Nigeria is ranked the sixth top oil producing country in the world<sup>54</sup>.

However, for a long time, Nigeria produced a lot of oil and earned a lot of revenue from it but not much benefit accrued to the Nigerian nationals. This led to the enactment of the Nigerian Oil and Gas Industry Content Development Act in 2010 to provide for special entry of local companies and individuals in the oil and gas industry. While this has been success in Norway, Nigeria has for long struggled to achieve its intended benefits and thus become an area of interest.

### Angola

Angola, is endowed with 7.231mb of proven crude oil reserves and 301 billion cu. m of proven natural gas reserves. The country first produced oil from her Benfica oilfield in

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<sup>52</sup> According to the Organization of the Petroleum Exporting Countries (OPEC) Oil Market Report for December 2021

<sup>53</sup> Miriam Weiss; The role of local content policies in manufacturing and mining in low- and middle-income countries, UNIDO, Inclusive and Sustainable Industrial Development Working Paper Series WP 19 | 2016 at page 10

<sup>54</sup> <https://www.nnpcgroup.com/NNPC-Business/Upstream-Ventures/Pages/Oil-Production.aspx>, last accessed on 21<sup>st</sup> March

2022

the Cuanza Basin in 1955 and is ranked by OPEC<sup>55</sup>, to which it is a member as the second largest oil producer in Africa<sup>56</sup>.

The oil sector has therefore been the major driver of Angola's economic growth and accounts for 50% of the total GDP and 89% of the country's total exports. Indeed as of 2021, oil exports dominated the country's exports with crude oil constituting 83%, refined oil 1.1% and gas at 10.8%<sup>57</sup>.

With so much capacity, Angola did not derive many benefits in the early years of the oil and gas industry partly due to limited employment opportunities, capacity limitations and very low national industry participation. These challenges became the driving force behind the implementation of Angolanisation policy developed on the back of the Petroleum Decree - Law 20/80 promulgated in 2002. The decree prescribed national development quotas in different areas. To encourage the participation of local industries in the oil and gas industry, the Sonangol Industrial Investments (SIIND), a subsidiary of the National Oil Company was created to coordinate the establishment of factories in the Viana Special Economic Zone to produce goods for the oil and gas industry. Currently, the Presidential Decree 271/20 is the overriding law on National

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<sup>55</sup> OPEC is a permanent intergovernmental organization of 13 oil-exporting developing nations that coordinates and unifies the petroleum policies of its Member Countries.

<sup>56</sup> [https://www.opec.org/opec\\_web/en/about\\_us/147.htm](https://www.opec.org/opec_web/en/about_us/147.htm) last accessed on 18th June 2022

<sup>57</sup> <https://www.statista.com/statistics/1138944/distribution-of-exports-in-angola-q1-2020-by-sectors/> last accessed on 19<sup>th</sup>



content in the Angola Oil and gas industry. As a major oil producer and an implementer of the Angolanisation policy, Angola becomes of interest to this study.

### **3.4 Sources of information**

Information for the study was obtained from legislations both in Uganda and in the countries used as case studies these legislations were largely available over the internet. Where the full text of the law was not found, commentaries about it found over the internet were used<sup>58</sup>.

Writings of researches that are published and credible were accessed over the internet to provide some analysis of the problem under study. These comprised the secondary data sources.

### **3.5 Population and sampling techniques.**

As earlier stated, the population for this study included jurisdictions which have implemented local content requirements.

To get to the sample, purposive sampling was done using the researchers' own judgment to determine which jurisdiction to form part of the sample based on their relation to the problem under study.

### **3.6 Procedure for data collection**

This study utilized both primary and secondary data.

In this case, primary data comprised of the full and original text of the laws comprising of the population. These were downloaded from the internet and analyzed and

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<sup>58</sup> Babafemi Oyewole; Overview of local content regulatory frameworks in selected ECCAS countries, UNICTAD May 2018

commentaries made. Secondary data comprised of writings of researchers and commentaries available over the internet.

In terms of the procedure for data collection, the law as is in Uganda was studied using desk research to point out aspects that are in line with the literature reviewed and comments shall be made and findings recorded. The findings from the different laws were then compared against one another and deductions made on their standing in as far as the literature reviewed in chapter two is concerned and other policy documents such as the third national development plan III 2020/21-2024/25. From this analysis, conclusions were drawn. Finally, recommendations as arising from the conclusions were made to inform policy makers on possible areas of review.

### **3.7 Data collection instruments**

The research having followed the doctrinal method, there were no instruments used in collecting the data. The researcher only used the laws and literature under review to collect the data relevant to the study and to draw conclusions out of it.

### **3.8 Quality/error control**

#### *Reliability testing*

A *good* research tool is one that is able to establish qualities of reliability and validity and produce correct information concerning a particular topic.

The tools used in the study shall be tested using the test-retest reliability method.

Here, the questionnaire/interview guide shall be given to the same group of respondents at a later point in time and then responses at the two time points shall be compared. The researcher shall ensure to leave more time between the first test and the retest should be increased so that respondents do not reproduce their previous answers that they can still remember.

### *Validity testing*

To establish validity of the tools, they shall be shared with individuals who understand the problem under study to get their opinion on whether they answer the research questions effectively. Their comments shall then be captured in the tools and reviews made as necessary.

### **3.9 Data processing and analysis**

The findings made from the review of the laws were closely examined and compared to identify common and divergent positions.

After the review of legal frameworks in the jurisdictions used as case studies, and looking at the legal framework in Uganda meant to promote participation of local companies in oil and gas projects, the researcher proceeded to determine whether the Ugandan legal framework is suited /provides enough safeguards to deliver its intended objective.

These were then compared against the reviewed literature and other policy documents to assess the standing of the different laws reviewed as against the literature. From these, conclusions were drawn and recommendations made.

### **3.10 Ethical considerations**

The researcher adhered to standard ethics in conducting this study. These included;

1. Any work of an author cited in the study was duly acknowledged. The OSCOLA referencing style was used.

### **3.11 Methodological constraints**

The researcher encountered challenges getting the laws from other jurisdictions. The full text of Angola Presidential Decree 271/20 could not be obtained and the researcher proceeded on the basis of commentaries found over the internet.

## CHAPTER 4: THE LAW RELATING TO PARTICIPATION OF LOCAL COMPANIES IN UPSTREAM PROCUREMENTS IN UGANDA.

### 4.1 Introduction

However as discussed in chapter 2 issues of local content in the extractive industry are not new. Local content is particularly very important in this industry because of its unique characteristics and while many resource rich countries have enacted local content policies, the level of success has not been the same across the board.

A lot of debate and studies have therefore been conducted on what it takes to have and implement a successful local content policy in the extractives industry.

Several broad factors have been recommended as important in determining the level of success of a LCP and these include; appreciating long term vision and having clear objectives; institutional readiness; creating a business friendly climate, understanding the capacity of local firms; enacting clear and comprehensive laws; level of development of other sectors; the strength of the private sector; the ability to measure and communicate performance; the level of monitoring and evaluation; quality of governance; and clarity enforcement mechanisms.

This chapter shall therefore examine whether and how the P(EDP)(NC) Regulations, as the which contain a comprehensive legal framework on national content in the Ugandan upstream oil and gas industry takes into consideration these factors to deliver meaningful participation of local firms/companies in the upstream procurements.

## 4.2 The National Oil and Gas Policy for Uganda, 2008-The build up to National Content

After confirmation that there were commercially viable oil and gas deposits in Uganda, the National Oil and Gas Policy<sup>59</sup> was formulated with one of its objectives being ‘to ensure optimum national participation in oil and gas activities<sup>60</sup>. This policy would provide the ideology and spring board 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.

In 2016, Uganda enacted the Petroleum (Exploration, Development and Production) (National Content) Regulations. These were aimed at, among other things; promoting training and employment of Ugandans; transfer of knowledge and technology; and the provision of goods and services by Uganda companies, citizens and registered entities; requiring every license, contractor and sub-contractor to give priority to the sourcing of goods and services from Ugandan companies, citizens and registered entities where these are competitive in terms of quality and timely availability.

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<sup>59</sup> National Oil and Gas Policy for Uganda, 2008

<sup>60</sup> *ibid* objective 7

These regulations are specific to petroleum activities and apply to all licensees, operators, contractors, sub-contractors and any entities involved in petroleum activities<sup>61</sup>.

After these regulations were enacted, the country, under the MEMD formulated the National Content Policy for the Petroleum Subsector in Uganda with a goal of promoting the competitiveness of Ugandan labour and enterprises in the oil and gas industry and associated sectors of the economy.<sup>62</sup>

### **Appreciate long term vision and have clear objectives**

The IISD<sup>63</sup> has advised that for a country to implement a successful local content policy, there must be formulated from the onset of the industry a country's vision in the long term and the LCP just comes in to help in achieving that known and clear vision. This should be a cross cutting vision as opposed to populist desires of the politicians holding office at a particular time.

Soon after the discovery of commercially viable oil deposits in the Albertine region, Uganda formulated the National Oil and Gas Policy of 2008. One of the objectives of the policy is to ensure optimum national participation in oil and gas activities<sup>64</sup> with

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<sup>61</sup> Regulation 2(2)

<sup>62</sup> National Content Policy for the Petroleum Subsector in Uganda, Ministry of Energy and Mineral Development, 2017

<sup>63</sup> International Institute for Sustainable Development; Local Content Policies In The Mining Sector: Scaling up local procurement, IISD 2019

<sup>64</sup> objective 5.3.7 of the National Oil and Gas Policy of Uganda, 2008

one of the strategies being by promoting the participation of local enterprises in providing goods and services. The policy clearly stipulated that putting in place the requisite, regulatory framework for the implementation of national content was a required action.

To this extent, one can say that Uganda clearly formulated her long-term vision in terms of local content.

Related to having a long-term vision is the need to have clear and measurable objectives that the policy is intended to achieve.

Uganda has in fulfilment of the action in objective 7 of the NOGA policy requiring putting in place the regulatory framework enacted the P(EDP) Act of 2013 whose purpose is to operationalise the NOGA policy by among others supporting the development of national content in the industry<sup>65</sup>.

This Act requires licensees, contractors and sub-contractors to give preference to goods and services rendered by Ugandan companies and where such goods are not available in the country to give preference to companies that have entered a joint venture with Ugandan companies. To operationalise this provision, the P (EDP) (National Content) Regulations were enacted in 2016 to achieve, the following objectives;

- a) *to promote the training and employment of Ugandans, transfer of knowledge and technology and the provision of goods and services by Ugandan companies, Ugandan citizens and registered entities, in petroleum activities;*

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<sup>65</sup> Section 1 (f) of the P(EDP) Act



- a. *to require every licensee, contractor and subcontractor to give priority to the sourcing of goods and services from Ugandan companies, Ugandan citizens and registered entities, where the goods and service are competitive in terms of quality and timely availability;*
- b. *to require the provision of goods and services not available in Uganda to be provided by a company that has entered into a joint venture with a Ugandan company;*
- c. *to regulate the provision of goods and services by any other companies wholly owned by non-Ugandans, in exceptional cases where no capacity exists in Uganda, and with the approval of the Authority;*
- d. *to ensure enterprise development through provision of support to Ugandan citizens and Ugandan companies; and*
- e. *to promote cooperation between licensees, contractors, subcontractors and Ugandan universities, research institutions and technical institutions.*

The country has also made local content a very important goal in the country's development plan<sup>66</sup>. Under NDP III, Chapter 7 on sustainable development of sustainable resources recognises that sustainable exploitation of the country's petroleum resources in a timely manner remained a major development challenge due to among other things, Limited private-led investment in the oil and gas industry and unpreparedness

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<sup>66</sup>Third National Development Plan (NDPIII) 2020/21 – 2024/25

to tap the local content potential. One of the policy goals is therefore to increase contracts awarded to Ugandan firms in the oil and gas value chain.

The Plan sets out several specific objectives to be pursued over the NDP III period in order to maximize the country's returns from the oil and gas resources. Some of the objectives under program 7 were; *to enhance local capacity to participate in oil and gas operations; and to promote private investment in oil and gas industry*<sup>67</sup>.

*NDP III went ahead to specify interventions required to achieve these objectives and attached responsible institutions. These interventions included; establishing an oil and gas Incubation Fund to promote Local Entrepreneurs and SMEs , Fast-Tracking Skilling and International Accreditation of Ugandans for employment and service provision in the development/phase of the oil and gas sector; implementing the strategy on value addition and marketing of goods and services that will be demanded by the oil and gas sector; providing SMEs technical (training) and financial support to enhance their participation in tendering and of delivery of contracts; establishing inter and intra-sectoral linkages to ensure readiness to meet the needs in the oil and gas industry; establishing a framework for adoption and transfer of knowledge and technology within the oil and gas sector; and implementing the Agricultural Development Strategy for the Albertine Region*<sup>68</sup>. It was believed that with these, local enterprises would be able to develop their capacity to take part in oil and gas procurements.

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<sup>67</sup> NDP III 7.3 at page 91

<sup>68</sup> NDP III page 91

### 4.3 Clear and comprehensive local content law

The petroleum (exploration, development and production) Regulations, 2016 contain the comprehensive law relating to national content in the Ugandan upstream petroleum industry. The Regulation defines terms to give them a special meaning and address possible overlaps with other laws.

National Content is defined to give it a special meaning within the Regulation and the Petroleum industry as;

*(a) the level of use of Ugandan local expertise, goods and services, Ugandan companies, Ugandan citizens, registered entities, businesses and financing in petroleum activities; and*

*(b) the substantial combined value added or created in the Ugandan economy through the utilisation of Ugandan human and material resources for the provision of goods and services to the petroleum industry in Uganda<sup>69</sup>;*

To better deliver on its purpose, a local content policy needs to clearly define what a local company is. This should be comprehensive enough not to leave any local businessperson out but strict enough to shut out foreign companies that may want to take advantage of the policy.

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<sup>69</sup> Regulation 4

while the P(EDP) Act had not defined a ‘Ugandan company’ and this would have implied that it was one in the Companies Act<sup>70</sup> the Petroleum (Exploration, Development and Production) Regulations widened the scope of application of the regulation to beyond “companies” in the strict sense to include other “registered entities”. These have been defined<sup>71</sup> to mean businesses owned by Ugandan citizens and registered under the Business Names Registrations Act<sup>72</sup> or the Partnership Act of 2010.

While the scope of national content requirements has been extended to other forms of business entities-a move alive to the circumstances of the country where most businesses are sole proprietorships and partnerships than companies, such registered entities must be fully owned by Ugandan citizens. This is ideal in ensuring that foreigners do not register partnerships or sole proprietorships in Uganda to benefit from the local content provisions.

The Regulation further defines a ‘Ugandan company’ as one incorporated under the Companies Act of 2012 but goes ahead to add conditions which that company must meet to qualify as a Ugandan company for purposes of local content in the upstream petroleum industry. These include; must provide value addition in Uganda, use available local raw materials, employ at least 70% Ugandans and is approved by PAU after fulfilling the conditions in Regulation 9(4).

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<sup>70</sup> Act No. 1 of 2012

<sup>71</sup> Regulation 4

<sup>72</sup> Cap 109 laws of Uganda, 2000

The Regulation creates three regimes of contracts. Under the exclusive/reserved category, the regulations under the schedule which provides a list of goods and services reserved to be provided exclusively by Ugandan citizens, companies and registered entities as a way of providing entry of Ugandan companies and registered entities into upstream procurements.

Under the priority category, licensees and their contractors and sub-contractors are required to give priority to goods and services produced within Uganda and those rendered by Ugandan citizens and local companies<sup>73</sup>. In giving priority, licensees and their contractors and sub-contractors are required to establish a tender information office, hold regular workshops on procurement, and provide more flexible payment terms to Ugandan companies to help them in purchase of materials. During bid evaluation, national content is required to be allocated at least 10% of the total score and where bids proceed to financial comparison but they are close to one another by 5%, the bid with the highest national content percentage shall be selected as the best<sup>74</sup> even if it is not the lowest in price.

Where goods are not available in the country and there is no available local company capable of providing, the licensees may, with approval of PAU procure the goods or services from any other supplier within a time specified. Where there is a Ugandan citizen or Company providing the goods but is lacking in terms of quality, technical or financial capacity, the licensee may put in place a plan to enable the available suppliers

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<sup>73</sup> Regulation 9(1)

<sup>74</sup> Regulation 13

develop their capacity. This is to ensure that Ugandan enterprises and citizens are given priority and only opened up to competitive bidding as the last option.

To be able to develop their capacities, Ugandan companies are allowed to enter joint ventures with foreign companies and still be able, upon approval of PAU to benefit from local content requirements<sup>75</sup>. This would enable them benefit from technology and skill transfer over time. This is in acknowledgement that the industry is new without such measures, most contracts would end up under the ambit of Regulation 9(6) where licensees are allowed to procure competitively.

#### **4.4 Institutional readiness**

The P(EDP) Act, 2013 establishes the Petroleum Authority of Uganda (PAU), a body corporate<sup>76</sup> as the regulator of petroleum activities in the upstream oil and gas industry<sup>77</sup>. PAU is given a wide range of functions covering almost all aspects of the industry<sup>78</sup>. One of the functions that is relevant for this study is ‘to ensure compliance by the licensees with the act and all regulations made thereunder’<sup>79</sup>.

In the Petroleum (Exploration, Development And Production) (National Content) Regulations, the word ‘authority’ is defined to mean the Petroleum Authority of Uganda

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<sup>75</sup> Regulation 9(2) (3) and (4)

<sup>76</sup> Section 9

<sup>77</sup> Section 10

<sup>78</sup> Section 10

<sup>79</sup> Regulation 10(5)

established by the P(EDP) Act<sup>80</sup> and thus making PAU the institution mandated to oversee the implementation of national content in the upstream industry.

However, the national content regulation further defines an ‘authorised officer’ to mean an officer or the person acting under the authority of the minister or the Authority under the Act and the Regulations.

These authorised officers are mainly given powers to access facilities and records of licensees, contractors and subcontractors to assess their compliance to national content requirements. This in away creates a pararel Authority being the minister who is defined in the P (EDP) Act to mean the “minister responsible for petroleum activities’

However it is important to note that while Uganda currently has no designated minister or ministry of petroleum activities, the national content policy for the petroleum subsector in Uganda designates the minister responsible for Energy and mineral development as the minister in charge for petroleum activities for the time being<sup>81</sup>. A directorate of petroleum is however created under the ministry of energy and mineral development (MEMD). The Petroleum Exploration and Production Department (PEPD) is a department under the Directorate of Petroleum with functions including “*to monitor and regulate licenses undertaking petroleum exploration and production in the*

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<sup>80</sup> Regulation 4

<sup>81</sup> Paragraph 4.1.1 of the National Content Policy for the Petroleum Subsector in Uganda

*country; building national capacities in petroleum exploration, and development and leading the implementation of the national oil and gas policy for Uganda of 2008<sup>82</sup>”.*

#### **4.5 Building the capacity of local companies.**

One of the objectives of the P (EDP) (National Content) Regulations is to ensure enterprise development of Ugandan companies . Through this, local companies may be given support to develop their capacity and quality in the sector. It is however not clear how the authority intends to execute this objective as it does not appear again in the regulations.

#### **4.6 Rigorous monitoring, evaluation and enforcement**

The Petroleum (Exploration, Development and Production) (National Content) Regulations enjoin PAU to monitor national content implementation in the upstream oil and gas industry<sup>83</sup>.

As part of monitoring, the Authority is, among others things mandated to appraise national content programs submitted by licensees, their contractors and sub-contractors, assist Ugandan companies, citizens and registered entities to develop their capabilities, monitor and evaluate performance of the policy, develop guidelines and auditing procedures, among others. The regulation is coached in very wide terms to

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<sup>82</sup> <https://www.petroleum.go.ug/index.php/who-we-are/who-weare/directorate-mandate> last accessed on 16th June 2022

<sup>83</sup> Regulation 5



allow the Authority do whatever is necessary to not only monitor and evaluate implementation of national content but also make the necessary reforms.

As an enforcement mechanism, licensees are required by the Regulation to submit their national content programs to the Authority within a year after the grant of the licence<sup>84</sup> for review and the Authority may “*propose*” amendments to the same<sup>85</sup>. The subsequent provisions do not provide for any action the Authority should take in case the subsequent submission still not be acceptable to them.

However, the regulation provides that any non-compliance to the requirements amounts to an offence and the licensee, contractor or subcontractor is liable on conviction to a fine not exceeding five thousand currency points and an additional fine of five hundred currency points for each day the offence continues. Repeated failure to comply may lead the Minister to suspend the license or withhold approvals or consents<sup>86</sup>.

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<sup>84</sup> Regulation 71)

<sup>85</sup> RegAulation 7(2)

<sup>86</sup> Regulation 32

## CHAPTER FIVE: LEGAL FRAMEWORK ON LOCAL CONTENT IN OTHER JURISDICTIONS; THE CASE OF NIGERIA AND ANGOLA

One of the objectives of this study is to compare the Ugandan legal framework on national content in enabling participation of local companies against similar legislations in other countries. For purposes of the study, the legislations in Nigeria and Angola relating to enabling participation of local companies in the oil and gas industry shall be used to do a comparison.

In Nigeria, the Nigerian Oil and Gas Industry Content Development Act, 2020 (NOGICD) is the principal law relating to national content in the Nigerian oil and gas industry. The Act expressly provides that its provisions override anything to the contrary contained in the Petroleum Act or any other law. It enjoins all regulating authorities, operators, contractors, subcontractors, alliance parties and entities involved in any project, operation, activity or transaction in the Nigeria oil and gas industry to consider local content as an important element of their project development and management element of their project development and management philosophy in project execution<sup>87</sup>.

In Angola, Presidential Decree 271/20 “Legal Framework on Local Content in the Petroleum Industry” was enacted to provide and clarify on local content in the Angolan petroleum industry. The decree specifically provides that in case it conflicts with any other legislation, decree 271/20 shall take precedence. The full text of this law could

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<sup>87</sup> Section 2 NOGICD

not be found and so this research based on writings of other researchers available over the internet.

### **5.1 Appreciating long term vision and clear objectives**

The Nigerian oil and gas industry content development act does not explicitly state its objectives. It however provides in its long title that it is to provide for the development of Nigerian content in the Nigerian oil and gas industry, Nigerian content plan, supervision, coordination, monitoring and implementation of Nigerian content and related matters.

In Angola however, the decree provides the objectives of the local content regime in the oil sector to among others include; *protection of Angolan jobs and of Angolan commercial companies in the petroleum sector, promotion of national entrepreneurship and focus on the national business community*<sup>88</sup>. One of the principles of the decree is the integration of the Angolan business communities in the petroleum sector.<sup>89</sup>

### **5.2 Clear and comprehensive local content law**

In Nigeria the NOGICD provides a comprehensive legal regime on local content in the industry. The Act defines *Nigerian content* to mean;

*“the quantum of composite value added to or created in the Nigerian economy by a systematic development of capacity and capability through the deliberate*

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<sup>88</sup> Article 4 Decree 271/20

<sup>89</sup> Article 5

*utilisation of Nigerian human, material resources and services in the Nigerian oil and gas industry.*

A Nigerian company is;

*“a company formed and registered in Nigeria in accordance with the provisions of the Companies and Allied Matters Act with not less than 51% equity shares by Nigerians<sup>90</sup>.*

These Nigerian companies are given exclusive consideration where they demonstrate ownership of equipment, Nigerian personnel and capacity to execute such work on land and swamp operating areas for contracts and services contained in the schedule<sup>91</sup>.

The schedule to the Act sets out the services and goods ring-fenced and reserved for Nigerian companies and the level of national content expressed in terms of percentage. For example FEED and detailed engineering for onshore facilities require Nigerian content of 90% while in deep offshore areas requires Nigerian content of 80%<sup>92</sup>.

Some services are ring-fenced 100% to Nigerian companies such as field development plans, 2D and 3D seismic data interpretation services among others. These quotes are subject to review every two years<sup>93</sup>.

On the other hand, Angolan decree 271/20 defines local content as;

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<sup>90</sup> Section 106, Interpretation

<sup>91</sup> Section 2, NOGICD

<sup>92</sup> Schedule to the NOGICD

<sup>93</sup> Section 102, NOGICD

*“all activity in the oil sector that includes the participation of entrepreneurs and national citizens, Angolan commercial companies and commercial companies under Angolan law, the use of goods and services produced in Angola and the integration and development of the Angolan workforce<sup>94</sup>.*

The decree defines two kinds of companies.

Angolan commercial companies to mean sole proprietorship or joint ownership companies that are legally constituted with their headquarters on national territory in which the totality of the share capital is held by Angolan citizens or companies, and

Commercial companies under Angolan law to mean companies constituted and established in accordance with Angolan law<sup>95</sup>.

While the decree gives preference to procurements to Angolan companies, it creates three regimes. The first is goods that are exclusively reserved for Angolan companies and second those where Angolan companies enjoy preference. For goods and services to be included in these two categories there is need for approval of the industry regulator and are published by the National Concessionaire, Goods and services that do not fall in the first two categories are presumed to fall in the third category and are obtained competitively.

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<sup>94</sup> Article 3, Decree 271/20

<sup>95</sup> Article 3, Decree 271/20

### 5.3 Institutional readiness

In Nigeria, the NOGICD establishes the Nigerian Content Development and Monitoring Board (NCMB) as the institution mandated to make procedures to guide, monitor coordinate and implement Nigerian content in the oil and gas industry<sup>96</sup>.

All decisions and reporting are done to the board which is mandated to set up the “Nigerian Content Consultative Forum” (NCCF) composed of representatives from key industry stakeholders to provide a platform for information sharing and collaboration<sup>97</sup> but power to monitor implementation of the Act are reserved for the NCMB<sup>98</sup>. The structure, functions, tenure and all attendant matters including funding are clearly spelt out in the Act, which promotes independence of the board in execution of its mandate<sup>99</sup>.

In Angola, Decree 271/20 does not explicitly state who the implementer is; this therefore implies that the Ministry of Petroleum which is the regulator of the oil industry shall oversee national content implementation

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<sup>96</sup> Section 69, NOGICD

<sup>97</sup> Section 57, NOGICD

<sup>98</sup> Section 59, NOGICD

<sup>99</sup> Part II of the NOGICD

#### **5.4 Capacity building of local companies**

The NOGICD gives the minister of Petroleum Resources power to make regulations setting out targets to ensure full utilisation and steady growth of indigenous companies engaged in several activities in the oil and gas industry<sup>100</sup>.

Additionally, the NCMB is mandated to among other things assist local contractors and Nigerian content in the Nigerian oil and gas industry.

#### **5.5 Monitoring, valuation and enforcement**

In Nigeria, the NCMB is mandated to monitor, appraise and evaluate the implementation of Nigerian content in the oil and gas industry<sup>101</sup>. This is done under the directorate of monitoring and evaluation created under the Act<sup>102</sup>.

Under this function, the board is mandated to receive national content plans for its review, review the schedule to the Act and do any of the functions and actions required under the Act. The minimum Nigerian content levels set out in the schedule provide parameters within which monitoring and evaluation is done.

As part of monitoring, operators are required to submit the Nigerian content plan to the board for all projects right from the bidding process. The board may in reviewing the plan conduct public reviews and if satisfied that it meets the requirements of the Act issues a Certificate of Authorisation<sup>103</sup>.

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<sup>100</sup> Section 41(1) NOGICD

<sup>101</sup> Section 70, NOGICD

<sup>102</sup> Section 88(c), NOGICD

<sup>103</sup> Sections 8-10, NOGICD

These plans are required at several stages including at pre-qualification of bidders, before publication of the bidding list, and before contract award. Operators are also required to submit quarterly procurement reports within thirty (30) days at the end of each quarter showing all contracts awarded, sub-contracts and purchase orders in excess of USD 1,000,000 or as the board may determine. The quarterly report is required to list all the procurements done in the quarter, their values, contractors, estimation of Nigerian content among others<sup>104</sup>. Any contravention of provisions of the Act constitutes an offence subject upon conviction to a fine of 5% of the sum of the project in which the offense is committed or cancellation of the project.

In Angola, operators are required to submit to the Ministry of Petroleum for approval annual plans for the implementation of national content. Any breach of the provisions of the decree constitutes an offense punishable with fines between USD 50,000-USD 300,000 paid in the local currency the kwanza<sup>105</sup> and possible additional penalties including prohibition of the exercise for a period of one to two years, suspension and prohibition on entering new contracts.

#### **5.6 Measuring and communicating performance.**

The NOGICD provides minimum Nigerian content levels required in any project executed in the Nigerian oil and gas industry. These levels are clearly set out in the schedule to the Act and while some require 100% Nigerian content, others require as low as 30%.

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<sup>104</sup> Section 24

<sup>105</sup> Article 25, Decree 271/20



In terms of communicating performance, the NCCF is tasked to provide a platform on which information in the Nigerian oil and gas industry shall be shared. The NCMB however, is also mandated to organise conferences and symposia for the further attainment of achieving the goal of Nigerian content in the industry<sup>106</sup>

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<sup>106</sup> Section 70(n)

## CHAPTER SIX: ANALYSIS OF FINDINGS

### 6.1 Introduction

In chapter four, we looked at the law relating to local content in Uganda and in particular enabling the participation of Ugandan companies in the upstream oil and gas procurements. In Chapter five, we looked at similar laws in Nigeria and Angola, these being oil and gas producers on the Continent and having implemented national content in their oil and gas industry. This chapter shall compare the three legal frameworks in Uganda, Nigeria and Angola against the literature reviewed in chapter two to find whether the Uganda Petroleum (Exploration, Development and Production) (National Content) Regulations, 2016 are on the right trajectory to achieve the objectives of the national content policy in the petroleum subsector.

As discussed above, Uganda, soon after the discovery of commercially viable oil deposits in the Albertine region formulated the National Oil and Gas Policy in 2008 to guide the industry from infancy up to closure. Among the many things the policy sought to achieve was to provide an entry of local companies into the oil industry.

Since then, the P(EDP) Act, 2013 and the Petroleum (Exploration, Development and Production) (National Content) Regulations, 2016 were enacted to provide for national content in the upstream oil and gas industry. To operationalise these, the National Content Policy for the Petroleum Subsector in Uganda was formulated by the MEMD in

2017 to guide the country's efforts in promoting national content in the industry further. Below, is the analysis of findings.

## **6.2 Clear and comprehensive local content law**

It has been said that the starting point for every local content policy is to put in place a clear and comprehensive law<sup>107</sup>. This law should define terms for clarity and address possible overlaps with existing laws so that it is left capable of to only one interpretation.

Chapter 7 of NDP III noted that to achieve sustainable exploitation of the petroleum resources petroleum resources, one of the objectives the plan would focus on was “to strengthen policy, legal and regulatory frameworks as well as institutional capacity of oil and gas industry<sup>108</sup>.”

From the findings presented in chapters 4 and 5, it can be said that Uganda just like Nigeria and Angola have put in place clear laws regarding national content in their respective jurisdictions and stakeholders in the industry know where to look.

However, the question that remains is whether these pieces of legislations are comprehensive enough to effectively deliver on their intended objectives. Several issues that clearly stand out are discussed below;

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<sup>107</sup> Ibid note 26

<sup>108</sup> Page 91, NDP III

The Ugandan Regulation just like the NOGICD and the Angola Decree no. 271/20 define national content as stated below;

In Uganda, National Content is defined to mean;

*(a) the level of use of Ugandan local expertise, goods and services, Ugandan companies, Ugandan citizens, registered entities, businesses and financing in petroleum activities; and*

*(b) the substantial combined value added or created in the Ugandan economy through the utilisation of Ugandan human and material resources for the provision of goods and services to the petroleum industry in Uganda<sup>109</sup>;*

In Nigeria, it is defined as;

*“the quantum of composite value added to or created in the Nigerian economy by a systematic development of capacity and capability through the deliberate utilisation of Nigerian human, material resources and services in the Nigerian oil and gas industry<sup>110</sup>.*

In Angola, National content is defined as;

*“all activity in the oil sector that includes the participation of entrepreneurs and national citizens, Angolan commercial companies and commercial*

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<sup>109</sup> Regulation 4

<sup>110</sup> Section 106, NOGICD

*companies under Angolan law, the use of goods and services produced in Angola and the integration and development of the Angolan workforce*<sup>111</sup>

It can be therefore be said that Uganda compares well with other countries in her definition of local content in as far if focuses on the level of use of Ugandan goods, services or labour in the petroleum industry.

To better deliver on its purpose, a local content policy needs to clearly define what a local company is. This should be comprehensive enough not to leave any local businessperson out but strict enough to shut out foreign companies that may want to take advantage of the policy. In 2015, the Auditor Generals' report on the implementation of national content in the oil and gas sector by the MEMD observed that many of the companies that had been awarded contracts and recorded as local companies were indeed foreign companies<sup>112</sup>.

In Nigeria a Nigerian company is defined in section 106 of the Act to mean;

*“a company formed and registered in Nigeria in accordance with the provisions of the companies and allied matters act with not less than 51% equity shares by Nigeria”*

In Angola, while Decree 48/06 provided that for a company to be categorised as an Angola company it had to have its headquarters in Angola and with at least 51% of its

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<sup>111</sup> Article 3, Decree 271/20

<sup>112</sup> See page 18 of the report

shares held by Angolan citizens, Decree 271/20 further tightened the definition of an Angolan company.

According to the decree, an Angolan commercial company is one, which is-

“a sole proprietorship or joint ownership company legally constituted with headquarters in national territory. This company must also have all of its shares capital held by Angolan citizens or companies.

Another category of companies is created in Angola being a Commercial company under Angolan law to mean a company constituted and established in accordance with Angolan law<sup>113</sup>.

For Uganda’s case, while the P(EDP) Act had not defined a Ugandan company and this would have implied that it was one in the Companies Act<sup>114</sup> the Petroleum (Exploration, Development and Production) Regulations widened the scope of application of the regulation to beyond “companies in the real sense” to include other business entities but at the same time restricted it by adding certain conditions.

The Regulation just like in Angola and Nigeria widened the application of national content in the upstream industry to include what it called ‘*registered entities*’ being businesses owned by Ugandan citizens and registered under the Business Names Registrations Act<sup>115</sup> or the Partnership Act of 2010.

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<sup>113</sup> Article 3, Decree 271/20

<sup>114</sup> Act No. 1 of 2012

<sup>115</sup> Cap 109 laws of Uganda, 2000

While the scope of national content requirements has been extended to other forms of business entities, which is a move alive to the circumstances of the country where most businesses are sole proprietorships and partnerships than companies. To ensure that only Ugandans benefit from this widened scope, the regulation requires that such registered entities must be fully owned by Ugandan citizens. This is ideal in ensuring that foreigners do not register partnerships or sole proprietorships in Uganda to benefit from the local context provisions.

The regulation further defines a 'Ugandan company' as one incorporated under the Companies Act of 2012 but goes ahead to add conditions which that company must meet to qualify as a Ugandan company for purposes of local content in the upstream petroleum industry. These include; must provide value addition in Uganda, use available local raw materials, employ at least 70% Ugandans and is approved by PAU after fulfilling the conditions in Regulation 9(4).

The reading of this provision makes one wonder the intention for the use of the word "and" therein because in effect, if a company incorporated under the Companies Act and owned 100% by Ugandan's citizens doesn't fulfil the cumulative conditions as stated, It will not qualify as a 'Ugandan Company' for purposes of national content in the upstream oil and gas industry.

This provision while it seems to have helped to define terms and address possible overlaps with the companies Act by offering a tailor made definition as recommended by writers, it in the end made the provision too strict that even Ugandan companies shall not be able to qualify as Ugandan companies for purposes of the regulation. This

is more so for those that may wish to engage in businesses whose inputs have to be outsourced from outside the country or those whose expertise is non-existent in the country.

All the three jurisdictions have sought to provide an entry of their local companies in oil and gas procurements by creating three categories of contracts, the reserved, preferential and competitive ones.

Under the exclusive /reserved category all the laws list goods and services that are reserved for local companies. In Nigeria, the schedule to the NOGICD requires Nigerian content of 100% on some sectors like geophysical and hydrographic services, life insurance, pension, catering, cleaning and laundry among others. This in effect means that they are reserved for local companies.

In Angola the National Concessionaire, which is the national petroleum agency is mandated to establish a list of goods to be included in the exclusive category and after obtaining approval of the Ministry of Petroleum publish, and update the same annually

In Uganda, the regulations have a schedule, which provides a list of goods and services reserved to be provided exclusively by Ugandan citizens, companies and registered entities. These exclusive categories of goods and services, which are mainly non-specialised and readily available, are a good way to ensure that local companies have a point of entry into the upstream procurements.

The shortfall with the schedule to the Ugandan regulation is that unlike the Nigerian schedule that requires 100% Nigerian content on some not so complicated but specific



services to the industry such as geophysical and hydrographic site surveys, 2D and 3D seismic surveys among others, the Ugandan one ring fences common user services that are not specific to the oil and gas industry. In Nigeria, Nigerian companies which prove they own equipment, personnel and capacity to do exploration and production on swampy and land areas, these are granted exclusive consideration<sup>116</sup>. It is such policies that have seen indigenous Nigerian companies such as Aquinas oilfield services Ltd, Chibeco oil and Gas Nigeria Ltd and Amazon energy enter oil exploration.

This in effect means there is no entry point created for Ugandan companies into the industry. A company providing cleaning services to a licensee, his contractors or sub-contractors is not gaining any experience to enter the industry.

All the legislation in Uganda, Nigeria and Angola give priority to goods and services produced within their country and those rendered by their citizens and local companies<sup>117</sup>. In giving priority, licensees and their contractors and sub-contractors are required to establish a tender information offices, hold regular workshops on procurement, and provide more flexible payment terms to Ugandan companies to help them in purchase of materials.

To this extent, all the countries have devised means of assisting their local companies to enter the industry. However, the Ugandan law imposes a condition that for Ugandan goods and those supplied by Ugandan companies and citizens to benefit from the

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<sup>116</sup> Section 3(2) NOGICD

<sup>117</sup> Section 12, NOGICD and Regulation 9(1) of the P(EDP) (National Content) Regulations

priority, they must be competitive in terms of quality and timelines for delivery<sup>118</sup>. This condition is likely to defeat the objective of the law in light of the fact that this industry is new and Uganda and if Ugandan companies and registered entities are to fulfil the requirements of using available raw materials and employing 70% Ugandans, they may not be able to be competitive in terms of quality and timely availability.

While one can argue that quality should indeed not be comprised in this very risky industry, it is expected that the institution tasked with implementation of national content should take deliberate steps to assist these companies to improve the quality of their products through enterprise development activities. This could be in collaboration with the entities like Uganda National Bureau of standards and the licensees. The regulations however, mandate the Minister responsible for petroleum to issue guidelines for enterprise development but no such guidelines have been made since their promulgation.

Goods and services that are neither in the exclusive or priority category in the case of Angola or which are onto readily available in the country for the case of Nigeria and Uganda shall be procured competitively where both local and foreign companies shall participate.

However, Uganda and Nigeria have also sought to give advantage to local companies by allowing them to enter joint ventures with foreign companies and enjoy priority over purely international companies where the goods are not available in Uganda. These

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<sup>118</sup> Regulation 8(a)

must fulfil the requirements provided in regulation 9(4) by demonstrating technical and financial competence to deliver in a timely manner, experience in similar procurements and capacity to transfer knowledge and technology to Ugandan citizens. It is also a condition that the Ugandan company must be actively involved in the joint venture. These provisions are to ensure that even where capacity is not readily available local companies can obtain knowledge and technology from, the foreign companies and build national capacity overtime.

However one would think that these conditions would rather be placed on the foreign company entering the joint venture other than the Ugandan company since in the first place its lack of these that makes it join the joint venture

### **6.3 Vision and clear objectives**

According to the Africa natural resource centre-a capacity building arm of the African Development Bank seeking to build the capacity of governments in natural resources management, a local content policy should reflect a country's development goals less of which it would lack direction<sup>119</sup>. The Uganda Petroleum (Exploration, Development and Production) (National Content) Regulations just like Angola Decree 271/20 have outlined clear objectives that local content provisions are intended to achieve and these include objectives focused on enabling local procurements. While decree 271/20 has as one of the objectives as promotion of national entrepreneurship and focusing on

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<sup>119</sup> An ANRC step-by-step guide for local content policy formulation and implementation, ANRC. July 2016

the national business community<sup>120</sup> in Uganda, one of the objectives is to “require the provision of goods and services not available in Uganda to be provided by a company that has entered a joint venture with a Ugandan company, to require licensees, contractors and sub-contractors to give priority to Ugandan goods where they are competitive in terms of quality and timely availability and provide for enterprise development.

These are reflected in the NOGA and in NDP III, which defines the country’s broad direction by setting key objectives and targets whose achievement is considered vital for the country to achieve sustainable socioeconomic transformation.

#### **6.4 Institutional readiness**

According to Langer et-al<sup>121</sup> for a local content policy to be successful the legal framework containing the policy must set up a clear institution to monitor implementation of the policy. It is important that this institution is different from the industry regulator and is independent from any direction and control.

According to Olawuyi, <sup>122</sup> this institution could even oversee national content in other sectors and act as a one stop centre of reference for national content.

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<sup>120</sup> Article 4

<sup>121</sup> Langer, Arnim (Ed.); Ukiwo, Ukoha (Ed.); Mbabazi, Pamela (Ed.) (2020): Oil wealth and development in Uganda and beyond: Prospects, opportunities and challenges, ISBN 978-94-6166-310-8, Leuven University Press

<sup>122</sup> Damilola S. Olawuyi, Local content and procurement requirements in oil and gas contracts: Regional trends in the Middle East and North Africa, *Oxford Institute for Energy Studies, November 2017*

While in Angola the monitoring of national content is shared between the ministry of petroleum and the national concessionaire, in Nigeria the situation is different. The NCMB is set up under the NOGICD<sup>123</sup> with clear functions under the law including powers to monitor, supervise, administer, coordinate, audit Nigerian content in the petroleum industry. The Act clearly spells out the structure of the board and the different directorates under which it shall execute its mandate.

Uganda takes an approach almost similar to Angola and places the duty to monitor implementation of national content into PAU, which is the industry regulator. Additionally, the independence of the PAU is questionable because of the P(EDP)Act, it is subject to the direction given by the minister under Section 13 of the Act. This sets out to defeat the objective of chapter 7 of NDP III which sets out to strengthen governance and transparency in the oil and gas Sector.

It is also important to note that the Minister in the P (EDP) Act is the Minister responsible for petroleum activities who is currently not specifically designated. It can only be assumed that this is the Minister of Energy and Mineral Development.

Related to institutional readiness is the need to ensure that efforts are made to weed out corrupt tendencies from national content implementation. The IGF<sup>124</sup> has advised that good governance practices are a pre-requisite to executing a successful national content policy. With most African countries still riddled with corruption, reaping the

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<sup>123</sup> Part II

<sup>124</sup> Ibid note 27

benefits of the existing LCPs remains a dream<sup>125</sup>. While Nigeria has for its over 50 years of oil production not been able to attain a level of development commensurate with her level of production majorly due to corruption challenges, a study by Kiiza et. al revealed that many while many Ugandans had hope that oil would bring in a lot of money into the economy, they believed that this money would be lost to corruption<sup>126</sup>.

### **6.5 Building capacity of local enterprises**

The extractive industry is characterized by its enclaved nature, dominated by big multinational companies<sup>127</sup>. For this reason, countries that discover minerals and most especially oil experience an influx of many international companies both as licensees, contractors and sub-contractors. This is exasperated by the highly specialized nature of the industry that is most times not available in the host country at the beginning of the industry. For this reason, enterprise development has been said to be a requirement for every country seeks to implement a national content policy in her extractives industry.

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<sup>125</sup> According to transparency international, Africa and especially Sub-Saharan Africa is still scoring highly in corruption index with an average score of 33%

<sup>126</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.

<sup>127</sup> Dr. Victoria Nalule, Mining and the Law in Africa; Exploring the social and environmental impacts, Palgrave Macmillan, 2019

While provisions relating to enterprise development were not seen in decree 271/20, it was found that Angola Petroleum Decree - Law 20/80 promulgated in 2002 introduced the Angolanisation policy which prescribed national development quotas to encourage the participation of local industries in the oil and gas industry. The Sonangol Industrial Investments (SIIND), a subsidiary of the National Oil Company was created to coordinate the establishment of factories in the Viana Special Economic Zone to produce goods for the oil and gas industry. This saw several indigenous companies enter the oil and gas value chain.

In Nigeria, the NOGICD clearly emphasizes the need to build capacity of local companies. This has been done by mandating the NCMB to assist local contractors and Nigerian companies to develop their capabilities. The minister also has power to make regulations to achieve this goal.

In Uganda however, the regulation apart from having enterprise development as one of its objectives does not state how this is to be done.

To this extent, therefore the P(EDP) (National Content) Regulations fall short of this requirement and as such risk failing to achieve its purpose. Oil production being a new venture in Uganda, local companies run a big risk of not being competitive in terms of quality and timely delivery, unless they are assisted to improve their quality and other factors that would enable them deliver timely. It is for this reason that NDP III requires the establishment of an oil and gas Incubation Fund to promote local entrepreneurs, the fast-tracking of skilling (e.g., apprenticeship), training and international

Accreditation of Ugandans, and provision of technical (training) and financial support for SMEs to enhance their participation in tendering and of delivery of contracts.

## **6.6 Regular monitoring, evaluation, and enforcement**

Policies are not static or cast in stone. They are subject to bear the brunt of changed circumstances, familiarity, complacency and bottlenecks that may make them subject of review. This therefore raises the need for monitoring their performance to inform further efforts or possible change. In both the Nigeria and Ugandan legal frameworks, licensees and their contractors are required to submit to the respective national content regulators their annual national content plans. These plans are required to contain information on how the licensee, contractor or sub-contractor intends to give preference to local firms, how he/she plans to build their capacity in case a certain good or service required is not available within the country among others.

However, the NOGICD goes step further to designate directorates comprising the NCMB. One of these is the directorate of monitoring and evaluation<sup>128</sup>. Also in reviewing licensee's annual Nigerian content plan, the board may conduct public hearings where scrutiny is made of plan to inform the board's decision. Pre-qualification and contract awards are also to be shared with the board before publication. The Nigerian legal framework therefore is at a better footing than Uganda in terms of monitoring and

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<sup>128</sup> Section 88,(c) NOGICD



evaluation and without these being strengthened; the Ugandan national content policy will remain on paper without any meaningful impact.

In terms of enforcement, the P(EDP) (National Content) Regulations require that licensees, contractors and sub-contractors undertake certain actions as a way of promoting national content. Non-compliance is an offense and an offender is liable upon conviction to payment of a fine and continued noncompliance may lead to the minister to suspend the license or withhold any approvals or consents.

However, while the law provides for some mechanisms to ensure that licensees comply these are weak compared to Nigeria. A case in point is that while licensees are duty bound to submit their annual national content plans for the NCBM for review which may if satisfied issue a Certificate of Authorization, the Ugandan regulations provide that PAU upon reviewing the plan submitted “may propose” amendments. The regulation does not specify any resulting penalty in case the proposed amendments are not incorporated or the approval that may be withheld. The Angola decree 271/20 provides more strict penalties for compliance ranging from fines to prohibition of the exercise for up to 2 years, suspension and prohibition on entering new contractors.

Implementing national content requirements is costly. It is such fines that push licensees to comply with the requirements of the law and if they are weak, licensees will choose to pay the fines and do as they please.

## **CHAPTER SEVEN: CONCLUSIONS AND RECOMMENDATIONS**

### **7.1 Introduction**

The previous Chapters discussed the law relating to enabling participation of local content companies in upstream procurements in Uganda and compared it to similar legislation in Nigeria, Angola and to existing literature. This Chapter will draw conclusions on how the Petroleum (Exploration, Development and Production) (National Content) Regulations, 2016 stands in terms of enabling the participation of Ugandan companies in upstream procurements.

The Chapter shall also make recommendations that if implemented would increase the efficiency of the regulations in ensuring that Ugandan companies can take part in upstream procurements

### **7.2 Conclusions**

The study established that Uganda as a country has put in place a law to promote the participation of Ugandan companies in the upstream oil and gas procurements. This law is contained in the P(EDP) act, 2013 and the P(EDP) (National Content) Regulations, 2016 set out the detail of the national content policy in Uganda's upstream industry.

Compared to similar legislation in Nigeria and Angola, the Uganda regulation fares comparably well in as far as, it defines terms for clarity. The regulation defines what a Ugandan company is for purposes of the regulation to clear possible overlaps with the Companies Act and closed the loopholes that the report of the Auditor General of 2015 had pointed out in the P(EDP) Act.

It is commendable that the regulation acknowledges that most of the business entities in Uganda are registered under the Business Names Registration Act and the Partnerships Act and brings those within the ambit of the policy. The regulation also clearly states what its objectives are and as such, implementers, regulators and all stakeholders can tell in which direction their efforts should be focused. It is indeed these that are captured in NDP III to guide the country in the period 2020/21 - 2024/25.

However, in trying to define a Ugandan Company the regulation added conditions that have the impact of making companies incorporated in Uganda and where Ugandan citizens hold 100% of the shares fail to qualify to benefit from its provisions. These include requirements that a company must provide value addition in Uganda and use available local raw material, employ at least 70% Ugandans and others. It is worse that these additional requirements are in addition and not in the alternative. With the reality that this industry is new and the country may not have built the necessary capacity in terms of inputs and human resource these requirements may defeat the objective of the policy.

Additionally, PAU has the mandate to approve joint ventures. While this may be a good way to provide for entry of Ugandan companies into upstream procurements, the provision seemingly puts conditions a Ugandan desiring to enter a joint venture with a foreign company must fulfill before it benefits from the preferential treatment under the policy. It would not be logical to require a Ugandan company entering a joint venture because it lacks the requisite experience or financial strength to prove that it has these. One would think that these would be imposed on the foreign company entering into a joint venture with a Ugandan company.

The regulation has also just like Nigeria Angola adopted three categories of schemes. First the schedule to the regulation ring-fences certain contracts for Ugandan companies. However, the shortfall with this is that the type of goods and services ring-fenced are general in nature and not specific to the industry which will not go a long way in preparing for entry of these companies into the industry, unlike Nigeria which ring-fenced some, industry specific services like geophysical and hydrographic site survey, 2D and 3D seismic data interpretation services. Field development plans, electric ceased holes, slick lines and well head safety panels among others.

Without specific parts of the upstream-peculiar goods and services ring faced, especially the not so complicated ones, local companies will not be able to make entry into the industry.

In terms of preference, the regulation requires licensees, contractors and sub-contractors to give priority to Ugandan companies and citizens where they are competitive in terms of quality and timely availability. While it is appreciated that the regulation gives Ugandan companies some priority, the condition that they must be competitive in terms of quality and timelines has the potential to water down efforts by local companies and registered entities if there is not much focus put on enterprise development to help companies improve the quality of goods and services and be able to deliver in a timely manner.

It has also been found that while PAU is mandated as the institution to implement the regulation, there is a power mix between officers of PAU and from the ministry

responsible for petroleum and may result into regulatory fatigue where licenses have to deal with several regulators on similar issues.

The choice of PAU the industry regulator as the agency tasked with monitoring the implementation of national content is also likely to result into conflict of interest where the imposition of penalties such as suspension due to non-compliance with national content requirements will ultimately result in the non-realization of the goals of the other departments of the Authority.

The impartiality and independence of PAU is also questionable in light of the fact that it is subject to direction of the Minister of Petroleum. While the proposed local content bill 2019 had proposed a department to be designated within the Ministry of Finance to implement local content requirements, a separate and independent institution similar to the Nigerian NCMB would be better placed for the role.

The level of corruption in the country is set to water down the benefits of the national content requirements and as such focus should, in addition to the law, be put on governance related issues.

### **7.3 Recommendations**

To ensure that Ugandan companies are not left out of the preferential treatment provided in the policy, it is recommended that the conditions contained in the definition of a Ugandan Company be made in the alternative and not cumulative.

The definition of a Ugandan company as is in the regulations leaves room for foreigners to come and incorporate companies in Uganda under the Companies Act and as such

qualify as Ugandan companies and benefit from the national content requirements provided they meet the conditions imposed in the definition. It is recommended that the definition prescribes a minimum shareholding required to be held by Ugandans for a company to qualify as a Ugandan company

The requirements placed on a Ugandan company desiring to enter into a joint venture in Regulation 9 should also be shifted and put on the foreign company instead. This would help sieve out inexperienced foreign companies that wish to make entry into the Ugandan market by using joint ventures.

To open up entry Ugandan companies into upstream industry there should be an amendment of the schedule to be the regulations to add on the list services and goods that are specific to the upstream oil industry, which Ugandans companies can do the same way Nigeria has done.

There should be more focus put on enterprise development to help indigenous companies build their capacity in the upstream industry and the goods and services required therein. This is very vital in light of the requirement that goods and services produced and provided by Ugandan companies must be competitive in terms of quality and timely availability to be given preference over those provided by non-Ugandan companies within the meaning of the regulation.

There should be designated separate and independent institution to monitor the implementation of local content. While the Local Content Bill, 2019 had proposed a department within the ministry of finance, this is still not the best option. An independent institution or board like in the case of Nigeria should be designated in the

bill to oversee local content in all sectors of the economy since the petroleum industry is not in the isolation and depends on others for inputs and market. This independent institution should act as a one stop shop for all local content requirements and can liaise with other MDAS to better deliver on its mandate and provide them with information they may need on local content. Focus should be put on weeding out corrupt tendencies within government institutions and all stakeholders in national content implementation.

#### **7.4 Areas for further research**

While Nigeria, a nascent oil producer in Africa seems to have a very good local content law in form of the NOGICD, it has severally been said to have failed to translate her oil revenues into economic development. Further research into how the law has been implemented and the bottlenecks faces would be beneficial to provide lessons to technocrats in Uganda.

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