

**ASSESSING THE ROLE OF THE PETROLEUM AUTHORITY OF UGANDA IN  
MONITORING, EVALUATION AND IMPLEMENTATION OF LOCAL CONTENT IN  
UGANDA'S PETROLEUM SECTOR**

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AFFLIATION TO UCU.**

**JULY, 2020**

### **Declaration**

I hereby declare that this research study has never been presented for any academic award in any Institution or University. All sources used in this research study have been rightfully acknowledged.

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**Approval**

I acknowledge that this proposal titled: “Assessing the Role of the Petroleum Authority of Uganda in Monitoring, Evaluation and Implementation of Local Content in Uganda’s Petroleum Sector,” has been under my supervision and is ready for submission.

.....

**Dr. Brian Kalenge**

.....

**Date**

## **Dedication**

I wish to dedicate this work to my beautiful wife for her unending support, love and constant prayers; to my brothers who have always given me support morally, financially and spiritually through their prayers. I would like to thank them for all the unconditional and unquestionable love, care and support they have always given me.

To my Supervisor, Dr. Brian Kalenge for his guidance and supervision that has helped me accomplish this long arduous journey.

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## **List of Acronyms**

1. ACSM-Agreement on subsidies and countervailing measures
2. CNOOC-China National offshore oil corporation
3. FDI-Foreign Direct Investment
4. IOC-International Oil Company
5. GATS-General Agreement on Trade in services
6. GATT-General Agreement on Tariffs & Trade
7. LC- Local Content
8. LCF-Local Content Framework
9. LCP-Local Content Policy
10. NSD-National Supplier Database
11. TRIMS-Trade Related Investment Measures
12. WTO-World Trade Organisation
13. UNOC-Uganda National Oil Company

## **Abstract**

Local content in the petroleum sector has been a marked feature of the 21<sup>st</sup> century with many developing countries such as Uganda embracing it. The drive for local content has been mainly been as a result of Ugandans' need to benefit from the oil and gas industry. This research therefore focused on local content in relation to the role of Petroleum authority of Uganda (PAU) that is implementing, monitoring local content within the Petroleum sector. Specific objectives included: identifying the laws in place that give the PAU its mandate and assessing their effectiveness, highlighting the gaps in these laws and regulations, and making recommendations on what can be improved. The study revealed that a strong institutional framework is necessary if Uganda is to achieve the benefits of its extractive industry. The study also showed that Uganda is a signatory to a number of international trade agreements that are in direct conflict with its local content laws, regulations and policies. This has created problems where it comes to strict implementation. Although the oil industry in Uganda is still in its nascent state, a lot of progress has been made in building a legal and institutional framework in preparation for the 'first Oil'. Although faced with many challenges, Uganda has tried to maneuver through the murky waters of this very delicate and sensitive industry, to ensure that its citizens shall benefit from the same, and at the same time ensuring as a country, Uganda shall not be plagued by the proverbial resource curse. The research showed the various challenges that are still plaguing Uganda. The researcher found that the high cost for licenses are still affecting local oil companies. These high prices make it hard for the Ugandan companies to take part in. Additionally, the researcher found that there are stringent restrictions and measures that make it difficult for Ugandan companies to enter into joint ventures with international companies. Volatility of commodity prices, long term economic booms and bursts, and the unpredictability of resource revenue and some of the other challenges that were discovered. Lastly, there are some social concerns in employment in the oil sector like nepotism, tribal favoritism and corruption. To remedy these challenges, there is need to strengthen legislation to increase local employment and skill development; promote sustainable domestic production linkages through policy interventions; establish enterprise development and vocational training centers; increased access to finance by Local Small and Medium Scale Enterprises and partnership among stakeholders for local content development.

## CHAPTER ONE

### GENERAL INTRODUCTION

#### 1.1 Introduction

As Uganda continues with the race to become an oil producer, local content development will go a long way in contributing towards achievement of the sustainable development goals by promoting fair, inclusive and sustainable economic growth and industrialization and will foster innovation.

The Petroleum Authority of Uganda (PAU), among other things, monitors and regulates the implementation and compliance with the national content requirements set out in the law in line with international best practice for the petroleum industry.<sup>1</sup> PAU has developed the National Suppliers' Database (NSD) as one of the tools for regulating the procurement of goods and services in the petroleum sub-sector. The NSD is a web-based platform for registering entities and persons with the capacity to supply the oil and gas sector. The NSD also serves to inform and quantify what goods and services are available in the Country, in addition to ring fencing certain services.

The Authority completed the design of the NSD in 2016 and invited, through the media and different fora, potential suppliers to apply for qualification. Registration of the potential suppliers for Uganda's oil and gas sector started in December 2016 and the NSD was published during July 2017 with 511 qualified and registered; the database will be updated bi-annually.<sup>2</sup>

This chapter will therefore look at the background supporting this study and clearly spell out the problem statement that the research seeks to answer. Objectives and questions of the research will be formulated, and a study scope is shown after that. The chapter will also look at the literature review from various authors on subject, identify the research design and methodology, ethical considerations and limitation of the study.

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<sup>1</sup> Ali, S. (2018). *Uganda to get national talent register for oil jobs*. [Online] [www.newvision.co.ug](http://www.newvision.co.ug). Available at: [https://www.newvision.co.ug/new\\_vision/news/1470723/uganda-national-talent-register-oil-jobs](https://www.newvision.co.ug/new_vision/news/1470723/uganda-national-talent-register-oil-jobs) [Accessed 1 Sep. 2018].

<sup>2</sup> Ibid

## 1.2 Background of the Study

### 1.2.1 Historical Background

A number of countries have recently discovered and are developing oil and gas reserves. Policy makers in such countries are anxious to obtain the greatest benefits for their economies from the extraction of these exhaustible resources by designing appropriate policies to achieve desired goals. One important theme of such policies is local content created by the sector i.e. the extent to which the output of the extractive industry sector generates further benefits to the economy beyond the direct contribution of its value-added, as through links to other sectors. Increasing local content is becoming a policy priority in many resource-rich developing countries, among both mature and recent entrants to the industry<sup>3</sup>

There is general consensus that lack of specialized skills is a major obstacle to Africa's realization of its resource potentials. One instrument currently being adopted by most oil and gas resource-rich countries (both in and outside Africa) to deal with the skills problem and to enhance linkages between the oil and gas sector and other sectors of the economy is the formulation of local content policies (LCPs).<sup>4</sup> Typically, LCPs require companies to give preferential treatment to nationals of the country in which they operate in matters of employment procurement of goods and services, and skills development. It is believed that this would result in technology transfer and facilitate the ability of the country to take charge of its own development. But LCPs come with certain tradeoffs: Their potential incompatibility with international trade agreements threatens their sustenance; they can create unrealistic expectations capable of discouraging investment; and they are easily prone to corruption.<sup>5</sup>

The oil and gas industry is new to Uganda. The country therefore took the conscious decision to take every careful step one at a time. And therefore, it has looked like Uganda has been slow in decision making with regard to award of production licenses. Whereas discovery of commercially viable oil was made in 2006, production licenses were only granted to CNOOC for

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<sup>3</sup> Balouga, J. 2012. Nigerian Local Content: Challenges and Prospects. International Association for Energy Economics, Ohio.

<sup>4</sup> Tordo, S., B. S. Tracy, and N. Arfaa. 2011. "National Oil Companies and Value Creation." World Bank Working Paper No. 218, Washington, DC. <http://go.worldbank.org/UOQSWUQ6P0>.

<sup>5</sup> de Oliveira, R. (2015). Local Content Requirements in the Oil and Gas Industry in Developing Countries: The Return of ISI. *SSRN Electronic Journal*.

the kingfisher discovery that in 2013, and Total E&P and Tullow Uganda Operations Pty Ltd were granted in 2016 for Ngiri, Jobi-Rii, Gunya and Mputa Nzizi-Waraga, Kasemene-Wahrindi, Kigogole, Ngara, Nsoga and Ngege fields respectively (Tilenga Project). Therefore the development of local content has been slow or almost nonexistent.<sup>6</sup>

The task to therefore develop local content has been placed on the Petroleum Authority through the various regulations formulated and the systems put in place. However, for a bearable success rate, the PAU ought to monitor and evaluate any of the processes and systems they implement.

### **1.2.2 Theoretical Background**

The analysis of local content centers on the concept of sector links. The study of industrial structure specifies three types of links: backward links relate to the demand of one industry for the outputs of other industries (to be used as its inputs); forward links relate to the output of one industry as supplied to other industries (as input for their output); and financial links relate to the taxes paid by the industry to the government (which can then be spent on other goods and services or saved).<sup>7</sup> Hence an increase in the output of a given industry affects other industries by, for example, (1) increasing demand for their products; or (2) increasing its output, which then is available to them as input; or (3) increasing government revenue, which can in turn be used to support economic development objectives. Employment links are also important, in the form of both direct and indirect links. Direct employment refers to the numbers actually employed within the oil and gas sector; indirect employment refers to those jobs created by sales and supplies to the oil and gas sector, or by sales of the oil and gas sector to other sectors.<sup>8</sup> Another form of employment links could be induced employment that arises due to the increase of economic activity around the oil and gas industry.

The measurement of backward and forward links was formalized by Rasmussen<sup>9</sup> and Chenery and Watanabe<sup>10</sup>, based on the use of input-output tables. An important distinction is made

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<sup>6</sup> Larissa (2018). *Uganda's Local Content Story So Far* [online] Glccouncil.org. Available at: <http://www.glccouncil.org/ugandas-local-content-story-so-far/> [Accessed 1 Sep. 2018].

<sup>7</sup> Hanushek, E. A., and L. Woessmann. 2007. "Education Quality and Economic Growth." Working Paper No. 4122, World Bank Policy Research, Washington, DC

<sup>8</sup> Ibid

<sup>9</sup> Bro-Rasmussen, F. R. E. D. E., Killmann, S. Á., & Thaysen, J. H. (1956). The composition of pancreatic juice as compared to sweat, parotid saliva and tears. *Acta physiologica Scandinavica*, 37(2-3), 97-113.

between direct and indirect links.<sup>11</sup> These scholars concentrate on the immediate inputs into a sector (the direct backward links), while Rasmussen focuses on inputs into the sector, the inputs into these inputs, and so on (or, in other words, the indirect links). LCPs are most often concerned with the direct links (those sectors supplying the oil and gas sector) and more rarely with how supply sectors affect yet other sectors.<sup>12</sup>

Measuring local content levels across countries is by no means a trivial effort. As has been pointed out earlier in this chapter, the definition of local content has many dimensions and is likely to vary between economies. This in turn implies that it is difficult to compare the extent of local content across economies.<sup>13</sup> A limited amount of indirect evidence is available from the analysis of links from input-output tables. Although such analysis is not directly aimed at calculating local content, whether direct or indirect, it is closely linked to possible measures of local content.

### **1.2.3 Conceptual Background**

The oil and gas sector purchases inputs (both labor and the outputs of other sectors), which are either supplied domestically or imported. Imported inputs constitute a leakage, while domestic purchases provide further benefits to the economy. For example, local employees will spend much of their wages on domestically produced goods, and thus create more jobs. Similarly, purchasing goods from a local supply company will require that this company buy inputs in order to produce its outputs, and again some of these indirect inputs will be domestically produced.<sup>14</sup>

Local content is the share of employment—or of sales to the sector—locally supplied at each stage of this chain. Oil and gas extraction itself also supplies other sectors, such as refineries.

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<sup>10</sup> Chenery, H. B., & Watanabe, T. (1958). International comparisons of the structure of production. *Econometrica: Journal of the Econometric Society*, 487-521.

<sup>11</sup> Coe, D. T., E. Helpman, and A. W. Hoffmaister. 2008. “International R&D Spillovers and Institutions.” IMF Working Paper No. WP/08/104, International Monetary Fund, Washington, DC

<sup>12</sup> Ibid

<sup>13</sup> World Bank Group. 2015. Leveraging Oil and Gas Industry for the Development of a Competitive Private Sector in Uganda. World Bank, Washington D.C

<sup>14</sup> IPIECA (International Petroleum Industry Environmental and Conservation Association). 2011. “Local Content Strategy: A Guidance Document for the Oil and Gas Industry.” Prepared by the International Petroleum Industry Environmental and Conservation Association.

[http://www.ipieca.org/sites/default/files/publications/Local\\_Content.pdf](http://www.ipieca.org/sites/default/files/publications/Local_Content.pdf)

Where these are domestically situated, then their supply from domestic oil and gas production helps maintain local employment and local purchases by these sectors from other nonoil sectors.<sup>15</sup>

Several African countries have adopted local content frameworks (LCFs) as a mechanism to transform short-term benefits of natural resource extraction into long-term development. Local content refers to the extent to which the output of the extractive industry sector generates further benefits in the economy beyond the direct.<sup>16</sup>

It is important that local content requirements are structured in a way that allows maximization of local opportunities. Through local content requirements, governments seek to ensure that investment projects generate employment and business opportunities for the national economy. They may also be a way to promote local business capacity.<sup>17</sup> Through local content, the investor looks to getting a stronger social license to operate in the host country. The middle ground for the government and investor would be to incorporate some trade-offs in the contracts of Product Sharing Agreements for the limitations introduced through local content.

Local content is best understood by looking beyond the extraction itself but policies and laws which govern the entire oil and gas value chain. The oil and gas sector purchases inputs (both labor and the outputs of other sectors), which are either supplied domestically or imported. Imported inputs constitute a leakage, while domestic purchases provide further benefits to the economy<sup>18</sup>.

### **1.3 Problem Statement**

The Upstream<sup>19</sup> and Midstream<sup>20</sup> Acts require prospective licensees to provide a plan for training and employing Ugandans in the sector. The Acts require the companies to submit to the

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<sup>15</sup> Ibid

<sup>16</sup> Authority, P. S. (2004). Risk management. *Risk Management*, 3, 12.

<sup>17</sup> IPIECA (International Petroleum Industry Environmental and Conservation Association). 2011. "Local Content Strategy: A Guidance Document for the Oil and Gas Industry." Prepared by the International Petroleum Industry Environmental and Conservation Association.  
[http://www.ipieca.org/sites/default/files/publications/Local\\_Content.pdf](http://www.ipieca.org/sites/default/files/publications/Local_Content.pdf)

<sup>18</sup> Mushemeza, E. D., & Okiira, J. (2016). *Local Content Frameworks in the African Oil and Gas Sector: Lessons from Angola and Chad*. ACODE.

<sup>19</sup> Petroleum Exploration Development and Production Act, 2013

<sup>20</sup> Petroleum Refinery Conversion and Transmission Act, 2013



Petroleum Authority of Uganda (PAU) for approval, a detailed program for the recruitment and training of Ugandans every year. The National Content Regulations adds timelines within which licenses should provide a recruitment and training plan for Ugandan citizens. The requirements require details of activity training requirements and attempt to streamline quotas for inclusion of Ugandans at different levels of the licensee's work.<sup>21</sup>

The implementation of such measures is likely to be problematic if in the least it is feasible. It mandates licensees to train staff without factoring in the continuity of the day to day running of the business. Secondly, this training requirement suggests that licensees may be forced to recruit personnel without the relevant skills, train and deploy them on the job.<sup>22</sup> This risks the most technical parts of the sector prone to being turned into human resource laboratories in the quest to keep up with national content timelines. If the staff fails to achieve the minimum skillsets required even after the training, would the government compensate the licensee for such investment? Also, considering that employment is a contractual arrangement, what guarantee would the licensee have in retaining skills that it has imparted on a staff through such training?

## **1.4 Research Objectives**

### **1.4.1 General Objective**

To assess the role of the Petroleum Authority of Uganda in monitoring, evaluation and implementation of local content in Uganda's petroleum sector.

### **1.4.2 Specific Objectives**

1. To examine the laws and regulation on local content in Uganda with regards to the Petroleum Authority.
2. To assess the challenges of Local Content laws and regulations and their implementation by the Petroleum Authority

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<sup>21</sup> Cepa.or.ug. (2018). *Examining the Challenges and Opportunities in Enforcing the Local Content Policy in The Oil and Gas Industry in Uganda – Centre for Policy Analysis*. [online] Available at: <http://cepa.or.ug/analysis/examining-the-challenges-and-opportunities-in-enforcing-the-local-content-policy-in-the-oil-and-gas-industry-in-uganda/> [Accessed 1 Sep. 2018].

<sup>22</sup> Ibid

3. To provide recommendations for the possible shortcomings in the effectiveness and effective implementation of local content laws by PAU.

## **1.5 Research Questions**

1. What laws or regulations empower the Petroleum Authority of Uganda to monitor, evaluate and implement local content in the Oil and Gas Sector?
2. How effective are the local content laws and regulations and how effectively are they being implemented by the PAU?
3. Which recommendations can be made to improve the local content laws/regulations and their implementation by the PAU?

## **1.6 Scope of the Study**

### **1.6.1 Geographical Scope**

This study focused mainly on Uganda and its legal system. In addition, the study made comparative research with different countries on the local content spectrum. The study comparatively looked at Ghana, Nigeria and Norway. These three nations gave a wide range of results that provided a well based comparative review.

### **1.6.2 Content Scope.**

This research focused on literature that deals with the different roles of government oil and gas bodies like the Petroleum Authority. It then drilled down on the works that elaborate the role of said bodies to promote, implement, regulate, monitor and evaluates the local content.

### **1.6.3 Time Scope**

This study looked at the last 12 years as this is when the oil and gas resource was commercialized, with the first official licenses handed out in 2008. This was when the concept of local content got attention from the Ugandan Public.

## **1.7 Significance of the Study**

To the Petroleum Authority of Uganda (PAU), this research will be a huge knowledge bank for the Petroleum Authority as it discusses and critically looks at the role of PAU in implementing,

regulating, monitoring and evaluating local content as perhaps not indicated in the laws and regulations of the country.

This study elaborated for the International Oil Companies (IOCs), how the various essential policies that most IOCs are ignoring in due course, like failure to follow some national policies like BUBU.

This research was most definitely the basis and peep into a whole new avenue of research areas in Local Content like quantifying the variables of local content in Uganda.

## **1.8 Justification of the Study**

It is one thing to formulate local content policies, regulations and even the acclaimed National Suppliers' Database, and not to be misunderstood, these are all ground breaking movement on the side of PAU, but the essence of total transformation call for the follow up on most creations and the Petroleum Authority is no exception. There is an overwhelming need to evaluate and monitor the progress of local content in Uganda by the PAU as the flagship body for local content in Uganda.

Simply expressed, local content without proper monitoring, evaluation and implementation stands to just be another footnote in the Ugandan Oil and Gas conversation. This would prove to be disastrous given the country is in a battle to defy the oil curse odds that have taken many African nations.

## **1.9 Literature Review**

### **1.9.1 Local Content Laws and Regulations**

Several authors acknowledge the role of sound institutional framework in oil and gas sector performance. Thurber, for example, in his works to examine the Norwegian Model of petroleum sector management, state that separation of functions in a sound regulatory framework has been instrumental for the oil and gas sector's performance in Norway<sup>23</sup>. Furthermore, according to Hunter, this also sheds light on the role of regulatory framework in optimizing the petroleum

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<sup>23</sup> Thurber, M. C., Hults, D. R. & Heller, P. R. P. 2011. Exporting the "Norwegian Model": The effect of administrative design on oil sector performance. *Energy Policy*, 39, 5366-5378.

resources by comparing Australia and Norway. Hunter's study concludes that Norway's objective-based policies give a better result for petroleum sector performance than Australia's rule-based policies. As a result, the Ugandan oil and gas legislation was loosely based on that of Norway hence the creation of decentralized bodies to regulate the oil and gas sector<sup>24</sup>. These include the Uganda National Oil Company and Petroleum Authority of Uganda.

A good way to characterize oil sector performance thus the ability of the PAU, is taking note of the trend in production in producing countries. According to Toft & Duero, it has been found that political institutional frameworks do affect the investment environment in the upstream sector, which thereby affects production portfolio<sup>25</sup>. In the works of Barma, this is further attested that institutional quality and governance make up the quality of economic and natural resource management policies adopted and implemented to derive economic value from the natural resource<sup>26</sup>. Based on this, the independence of the Petroleum Authority from the political will of the current government is called in play. It is a major variable the Authority's ability to implement, monitor and evaluate the local content strategy in the country.

When studying institutional framework for oil and gas sector performance, an important aspect to consider are the oil and gas regulatory bodies like PAU as they not only control roughly 90% of the world's petroleum reserves but also form an interface to manage the political and economic interests of the state in petroleum sector<sup>27</sup>. According to Thurber's 2010 extensive study on how patronage affects the performance efficacy of the Nigerian oil regulatory bodies, it concluded that it has far reaching impacts on the sectors' performance. Thurber & Istad in that same year also studied the Norwegian regulatory bodies for example Statoil to illustrate how it has been instrumental in managing the State's interest in petroleum sector management. Both these studies brought out the immense importance of the quality of the work these regulatory

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<sup>24</sup> Hunter, T. 2014. The role of regulatory frameworks and state regulation in optimizing the extraction of petroleum resources: A study of Australia and Norway. *The Extractive Industries and Society*, 1, 48-58.

<sup>25</sup> Toft, P. & Duero, A. 2011. Reliable in the long run? Petroleum policy and long-term oil supplier reliability. *Energy Policy*, 39, 6583-6594

<sup>26</sup> Barma, N. H., Kaiser, K., Le, T. M. & Vinuela, L. 2012. Rents to Riches? The Political Economy of Natural Resource-led Development. World Bank.

<sup>27</sup> Boscheck, R. 2007. The governance of oil supply: an institutional perspective on NOC control and the questions it poses. *International Journal of Energy Sector Management*, 1, 366-389

authorities do in oil and gas. Their functions cannot be taken lightly as they control a major variable for both the economic and political state of a nation, employment.

The available literature does indicate that the design of the institutional frameworks indeed affects petroleum sector performance. Existing literature in this aspect can be summarized as the ones that acknowledge and assess the impact of institutional design and governance in the petroleum sector performance and the ones that illustrate the design of institutions and the regulatory framework. Furthermore, it is also important to capture the value created which is focus of the fourth category.

According to Acheampong, Ashong, and Svanikier, technically, before committing funds to any project, including developing LC requirements, investors consider whether the laws and contracts of a given country contemplate their rights and responsibilities, or whether the rules are likely to be defined clearly, respected, or even enforced effectively. Thus, the choice of regime determines the manner of operations<sup>28</sup>. Currently, petroleum-producing countries choose between a regime in which most issues relating to petroleum operations are fixed in a substantive statute, often referred to as petroleum law or a regime, which leaves a wider range of issues to be agreed in a granting instrument (contractual agreement).

Often, in the extreme form of one option, if an LC provision is detailed then it is not negotiable other than the bidding parameter of either work or cash programs. At the other extreme end, there is no petroleum law, and upstream operations are based on entirely negotiated contracts. Nonetheless, the jurisdictions evaluated have incorporated both schemes, where statutory (laws) and contracts have been utilized. Hence, the need to evaluate both segments<sup>29</sup>.

Statutory clauses, whether substantive or procedural, create a mandatory rule to develop LC. Thus, they need to be distinguished from non-mandatory clauses (often negotiable). A rule is determined as mandatory if laid down by specific legislation. Their mandatory nature may either be expressly stated or inferred by way of interpretation. In definition, the concept that a rule is mandatory implies that the rule is not subject to contradiction even by way of an agreement in

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<sup>28</sup> Acheampong, T.; Ashong, M.; Svanikier, V.C. An assessment of local-content policies in oil and gas producing countries. *J. World Energy Law Bus.* 2016, 9, 282–302.

<sup>29</sup> Ovadia, J.S. The dual nature of local content in Angola's oil and gas industry: Development vs. elite accumulation. *J. Contemp. Afr. Stud.* 2012, 30, 395–417

that it is a legal rule that is in all cases binding and cannot be departed from despite having an agreement between the parties concerned<sup>30</sup>.

Mandatory LC requirements are often linked to the conditions for the entry and continued operation of the investment<sup>31</sup>. The investor must agree to them at the time of making its investment and/or during the period in which an investor continues to operate<sup>32</sup>. Non-mandatory LC, on the other hand, are often linked to access to certain advantages, such as tax exemptions or subsidies by the host country<sup>33</sup>. Thus, in theory, the investor could decide not to comply with them. Nevertheless, the distinction between these two categories is not always clear, since some incentives do not give the investor the possibility of refusing to comply with the LC because of the attractiveness of incentives offered<sup>34</sup>. This is the gap that the researcher ought to bring out in this research and clarify on what works best for both the country and the investor.

## **1.9.2 Implementation of Local Content Regulations**

According to one news report, recent discoveries of oil and gas in East Africa has made the region the “new promised land”, comparable to the 19th century gold rush in South Africa, where South African gold rose from zero to 23 per cent of global supply within just a decade.<sup>35</sup> The discoveries have been mostly in Tanzania, Mozambique, Uganda, Madagascar and Kenya, where significant progress towards commercial development has been made.<sup>36</sup> Although Kenya’s progress is more modest, with signals that bigger finds are on the way, Kenya is expanding investments in its oil and gas resources<sup>37</sup> and already plays a pivotal role in the region

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<sup>30</sup> Wälde, T.W. Renegotiating acquired rights in the oil and gas industries: Industry and political cycles meet the rule of law. *J. World Energy Law Bus.* 2008, 1, 55–97

<sup>31</sup> Ramdoo, I. *Unpacking Local Content Requirements in the Extractive Sector: What Implications for the Global Trade and Investment Frameworks?* E15 Initiative: Geveva, Switzerland, 2015.

<sup>32</sup> Nikièma, S.H. *Performance Requirements in Investment Treaties Best Practices Series*; International Institute for Sustainable Development (IISD):Winnipeg, MB, Canada, 2014

<sup>33</sup> *Ibid*

<sup>34</sup> Acheampong, T.; Ashong, M.; Svanikier, V.C. An assessment of local-content policies in oil and gas producing countries. *J. World Energy Law Bus.* 2016, 9, 282–302.

<sup>35</sup> Zeddy Sambu, Oil and gas discoveries make East Africa a rich hunting ground for global explorers, *Business Daily*, 31 December 2012, online: <http://www.businessdailyafrica.com/Oil-and-gas-discoveries-in-East-Africa/-/539552/1654946/-/vwmvcs/-/index.html>.

<sup>36</sup> U.S. Energy Information Administration, “Emerging East Africa Energy”, 23 May 2013, 1, [http://www.eia.gov/countries/analysisbriefs/East\\_Africa/eeae.pdf](http://www.eia.gov/countries/analysisbriefs/East_Africa/eeae.pdf)

<sup>37</sup> *Ibid*

as a transit route for oil products coming into and going out of the region.<sup>38</sup> Another news report has it that “[oil and gas] companies are waiting for [East African] policymakers to determine priorities and incentives before they can settle on investment plans.”<sup>39</sup>

While the oil and gas discoveries put East African countries on the precipice of economic prosperity capable of bringing broad public welfare improvements to their citizens, there is cause for concern. The regions where the discoveries have been made in the respective countries fall mostly within the arid and semi-arid parts of the countries.<sup>40</sup> This means that oil extraction in these countries is very likely to generate severe environmental problems for the surrounding local communities. In addition, a vast majority of the identified oil fields are located in troubled regions and on territories under dispute within and between the countries.<sup>41</sup> Even in relatively peaceful Tanzania there are unsettled disputes between the Tanzanian mainland and Zanzibar “over hypothetical royalties” for the yet to be discovered oil within the islands.<sup>42</sup> In Kenya, most parts of the oil region have faced historical marginalization by successive governments.<sup>43</sup>

The struggle over scarce land and water resources in Kenya is spreading into oil, as local communities are already contesting the location of oil wells.<sup>44</sup> In Madagascar, a country marked by protracted political instability, leading to suspension of international aid programs, local communities are poverty-stricken, unstable and highly marginalized.<sup>45</sup> In Uganda, it has been reported that since the oil discovery several wealthy Ugandans have been “scrambling to buy land” around the exploration area<sup>46</sup> and that exploration activities have already caused distortions

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<sup>38</sup> U.S. Energy Information Administration, “Emerging East Africa Energy”, 23 May 2013, 1, [http://www.eia.gov/countries/analysisbriefs/East\\_Africa/eeae.pdf](http://www.eia.gov/countries/analysisbriefs/East_Africa/eeae.pdf)

<sup>39</sup> *The Africa Report*, “Oil and Gas: East Africa’s Race to Get Ready”, 1 October 2012, <http://www.theafricareport.com/North-Africa/oil-and-gas-east-africas-race-to-get-ready.html>.

<sup>40</sup> Chrispine Odour et al, “The Political Economy of the Extractive Sector” in Miriam W Oiro Omolo & Germano Mwabu, eds, *A Primer to the Emerging Extractive Sector in Kenya: Resource Bliss, Dilemma or Curse* (Nairobi: Institute Of Economic Affairs, 2014) at 181

<sup>41</sup> DM Anderson & AJ Browne, “The Politics of Oil in East Africa” (2011) 5:2 *Journal of East African Studies* 395.

<sup>42</sup> *Ibid*

<sup>43</sup> Odour et al (2014), *supra* note 6 at 181.

<sup>44</sup> Luke Patey, “Kenya: An African Oil Upstart in Transition”, Oxford Institute for Energy Studies Paper: WPM 53, October 2014, p. 23, online: <http://www.oxfordenergy.org/wpcms/wp-content/uploads/2014/10/WPM-53.pdf>.

<sup>45</sup> Association IRESA, Madagascar: The New Eldorado for Mining and Oil Companies, Friends of the Earth France & Friends of the Earth Europe, November 2012, 3, online: <http://www.amisdelaterre.org/IMG/pdf/madagascareldoradooilmining-foefrance.pdf>.

<sup>46</sup> “Uganda Announces Oil Discovery”, IOL News, 9 October 2006, online: <http://www.iol.co.za/news/africa/uganda-announces-oil-discovery-1.296822#.VXSgtM9VhBc>.

in the customary land tenure system in the oil region, conflict, displacement and substantial migration into the region.<sup>47</sup> These have led some opposition politicians in Uganda to warn that the oil discovery could become “a curse” rather than a blessing “if it leads to more conflict in the country.”<sup>48</sup> *The Economist* has therefore cautioned against the risk of “Dutch Disease” in East Africa.<sup>49</sup>

The challenge for East Africa is how to maximize the potential benefits from the resources to avoid the under-developmental path that was the trajectory of most other oil producing countries in Africa, such as Angola, Nigeria and Sudan. There is general consensus that lack of specialized expertise is a major obstacle to Africa’s realization of its resource potential. According to the World Bank, “significant skills shortages exist both in terms of numbers and quality,” especially within the fields of science, technology, engineering and mathematics.<sup>50</sup> The Bank notes that evidence from eight African countries (Angola, Botswana, Gabon, Ghana, Nigeria, South Africa, Tanzania, and Zambia) as well as evidence from six economic sectors in Africa (copper, diamonds, gold, oil and gas, mining services and timber) indicates that “skills, and the institutions that affect firm- and sector-level capabilities, constitute the most important determinant of economic benefits.”<sup>51</sup>

One of the instruments currently being adopted by most oil and gas resource-rich countries both in and outside Africa to deal with the skills problem and to enhance linkages between the oil and gas sector and the other sectors of the economy is the formulation of local content policies (LCPs). Defined as the requirement that “a given percentage of domestic value added or domestic components be embodied in a specified final product”,<sup>52</sup> LCPs are undertaken to enable

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<sup>47</sup> Uganda Land Alliance, “Land Grabbing and Its Effects on the Communities in the Oil-rich Albertine Region of Uganda: The Case of Hoima, Buliisa and Amuru”, September 2011, 24–26, online: <http://landgovernance.org/system/files/ULA%20Land%20Grabbing%20Study%202nd%20October%202011.pdf>.

<sup>48</sup> See “Uganda Announces Oil Discovery” (2006), *supra* note 12.

<sup>49</sup> *The Economist*, “Making the Most of a Good Situation”, 7 February 2013, <http://www.economist.com/blogs/baobab/2013/02/gas-discoveries-east-africa>.

<sup>50</sup> World Bank, “Human Capital for the Oil, Gas and Minerals Industries”, Science, Technology, and Skills for Africa’s Development, March 2014, 1, online: [http://www-wds.worldbank.org/external/default/WDSPContentServer/WDSP/IB/2014/03/05/000442464\\_20140305151740/Rendered/PDF/857140BRI0WB0H00Box382147B00PUBLIC0.pdf](http://www-wds.worldbank.org/external/default/WDSPContentServer/WDSP/IB/2014/03/05/000442464_20140305151740/Rendered/PDF/857140BRI0WB0H00Box382147B00PUBLIC0.pdf).

<sup>51</sup> *Ibid* *Supra* Note 2

<sup>52</sup> Gene M Grossman, “The Theory of Domestic Content Protection and Content Preference” (1981) 96:4 *Quarterly Journal of Economics* 583.



countries to maximize the gains of foreign direct investment (FDI) through the promotion of local participation in FDI and the use of local raw materials by investors.<sup>53</sup> It is believed that this would result in technology transfer and facilitate the ability of the country to take charge of its own development.

A number of African countries, most notably Angola, Nigeria and Ghana, have adopted the LCP. In East Africa, Tanzania is probably the only country that has LCP legislation already in place, which is contained in its *Petroleum Act, 2015*, signed into law on August 4, 2015. Kenya's ongoing review of its petroleum legislation includes regulations to promote local content (the Petroleum Exploration, Development and Production (Local Content) Regulations, 2014). It is expected that other emerging East African oil and gas countries will follow suit in the foreseeable future and that they will look to other oil and gas-rich countries where the LCP is already in place for possible lessons. They may do so without delay, given that Ghana's delay in adopting its own LCP for three years after its oil discovery caused it to lose significant opportunities during the development phase of its Jubilee project.<sup>54</sup>

### **1.9.3 Effectiveness of Local Content Laws and their Implementation**

The effectiveness of Government bodies like the Petroleum Authority of Uganda to efficiently manage the countries local content needs is loosely supported by four theories. After the review of various theories (growth, stakeholder and legitimacy theories), the accountability (monitoring, evaluation and implementation) local content was underpinned by institutional theory to critically evaluate the effectiveness of the Petroleum Authority and the transparency practices associated with its implementation of Local Content procedures.

#### **Growth Theory**

Various theories exist which would have been used to underpin this research. For instance, Growth theory developed in the 1960s by economic theorists Solow, Stigitz and Uzawa<sup>55</sup>. There

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<sup>53</sup> Silvano Tordo *et al*, *Local Content Policies in the Oil and Gas Sector*, World Bank Study (Washington, DC: World Bank, 2013) at 120.

<sup>54</sup> Silvano Tordo *et al*, *Local Content Policies in the Oil and Gas Sector*, World Bank Study (Washington, DC: World Bank, 2013) at 120.

<sup>55</sup> De Vita, G., Lagoke, O. And Adesola, S., 2015. Nigerian Oil and Gas Industry Local Content Development: A stakeholder analysis. *Public Policy and Administration*, vol. 31 no. 1 51-79

are three main factors that determine growth: (i) the growth of individual skills, (ii) the progress of science and productive knowledge, and (iii) incentives. Local content laws can be classified within the first two categories (the growth of individual skills and the progress of science and productive knowledge). For instance, literature abounds on capacity building and skills development<sup>56</sup>; and progress of science and productive knowledge<sup>57</sup>.

Authors on growth theory argued that the growth and productivity in recent times compared to pre-industrial era indicates that growth was developed and sustained from within the country, and not as a consequence of external results<sup>58</sup>. However, in developing countries such as Nigeria, the constraint on growth comes from the lack of capacity to absorb opportunities and to put existing ideas into practice, hence, creating a skills gap. Furthermore, technology can be transferred across different countries, although these technologies will be manned by external manpower as a result of the above-mentioned skills gap. Sustaining the growth rate of any economy is dependent on the technology advances in the form of new skills, capacity building, and infrastructural development<sup>59</sup>. Therefore the researcher ought to discover the skills capacity of the citizens in Uganda and determine if they are being skilled to take up these upcoming opportunities.

This aligns with Solow's neo classical model of endogenous growth which argues that growth of per capita is as a result of capital accumulation and technological advancement. It can be argued that growth theory supports competitiveness in any industry which can stimulate competitive advantage that can lead to opportunities in developing skills in a specific area<sup>60</sup>.

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<sup>56</sup> Tordo, S., Warner, M., Manzano, O. And Anouti, Y., 2013. Local content policies in the oil and gas sector. World Bank Publications.

<sup>57</sup> Jegede, O.O., Siyanbola, W.O., Ilori, M.O., Oluwale, B.A. And Sonibare, J.A., 2013. Knowledge Sharing and Innovation as it affects the Local Content in the Oil and Gas Industry in Nigeria. African Journal of Science, Technology, Innovation and Development, 5(1), pp.31-38.

<sup>58</sup> MARTIN, R., and SUNLEY, P., 2008. Slow Convergence? The New Endogenous Growth Theory and Regional Development. Economic Geography (74)3: 201-226.

<sup>59</sup> Ibid *Supra* Note 38

<sup>60</sup> Solow, R., 1956. A Contribution to the Theory of Economic Growth. Quarterly Journal of Economics 70: 65 – 94.

## The Stakeholder Theory

Freeman defined stakeholder as “any group or individual without whose support, an organisation ceases to exist”<sup>61</sup>. Stakeholders in organisations comprises of customers, creditors, employees, and government bodies. These groups play a fundamental role in ensuring the existence of an organisation. Hence, stakeholders are groups or individuals whose actions can either affect or is affected by the organisation’s objectives or achievement<sup>62</sup>. Donaldson and Preston provided a perspective to stakeholder theory by dividing it into three different approaches namely: descriptive, instrumental and normative<sup>63</sup>. The descriptive approach describes what the corporation is<sup>64</sup>. It defines how organisations manage or interact with stakeholders. However, descriptive approach is rarely utilized because it has no purpose beyond the description of the relationship between a particular phenomenon and its stakeholders<sup>65</sup>.

The instrumental approach establishes a framework for examining the relationship/connections between the practice of stakeholder management and the achievement of various corporate performance targets. The instrumental approach is more pragmatic because the approach is aimed at understanding the ways policy makers in organizations identify and manage stakeholders’ behaviors<sup>66</sup>. Natural resource management literature has used the stakeholder instrumental approach to overcome barriers to the adoption of novel technologies, adapt technologies to relevant user groups or transfer technologies to different groups<sup>67</sup>. Hence it can be argued that stakeholders’ analysis is instrumental in enabling information to be sought from a wide range of sources, providing a broad knowledge base to develop natural resource management initiative.

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<sup>61</sup> Freeman, R.E., 1984. *Strategic Management: A Stakeholder Approach*. New York, NY, USA: Basic Books

<sup>62</sup> Ibid

<sup>63</sup> Donaldson, T., And Preston, L E., 1995. The Stakeholder Theory of the Corporation: Concepts, Evidence, and Implications. *The Academy of Management Review* (20)1: 65-91.

<sup>64</sup> ibid

<sup>65</sup> Reed, M.S., Graves, A., Dandy, N., Posthumus, H., Hubacek, K., Morris, J., Prell, C., Quinn, C.H., And. Stringer, L.C., 2009. Who’s In And Why? A Typology of Stakeholder Analysis Methods for Natural Resource Management. *Journal of Environmental Management* 90: 1933–194

<sup>66</sup> Ibid

<sup>67</sup> Johnson, N., Lilja, N., Ashby, J.A., and GARCIA, J.A., 2004. Practice of participatory research and gender analysis in natural resource management. *Natural Resources Forum* 28, 189–200

The normative approach describes how organisations ought to treat their stakeholders. It attempts to offer guidance and interpret the functions of corporations/organisations on the basis of some philosophical principles or underlying morals<sup>68</sup>. According to Lagoke, the normative approach is grounded in business ethics and corporate social responsibility. It places emphasis on the legitimization of stakeholders' empowerment and involvement in a decision-making process, where stakeholders are employed to legitimize the decisions that are made through the involvement key figures<sup>69</sup>.

### **Legitimacy Theory**

Legitimacy as defined by Lindblom "is a condition or status when an entity's value system is congruent with the value system of the larger social system of which the entity is a part"<sup>70</sup>. Suchman states that "legitimacy is a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially construct system or norms, value, beliefs, and definitions"<sup>71</sup>. The above definitions have several distinctions between them which Suchman describes as legitimacy dynamics<sup>72</sup>. What might be considered as legitimate at a time might be seen as illegitimate in the future as a result of changing community attitudes<sup>73</sup>.

In addition, legitimacy is also "place dependent", as what might be considered as good business practice in one country might be unacceptable in another. As a result of the dynamic nature of legitimacy, it can be studied from both a strategic and institutional perspective<sup>74</sup>. The strategic view adopts a managerial perspective and underscores the way in which organisations manipulate and deploy symbolic gestures to gather societal support or an effort to obtain legitimacy status from a relevant audience<sup>75</sup>. While the institutional perspective provides insight

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<sup>68</sup> *ibid*

<sup>69</sup> *Ibid* Supra note 38

<sup>70</sup> Fernando, S., & Lawrence, S. (2014). A theoretical framework for CSR practices: integrating legitimacy theory, stakeholder theory and institutional theory. *Journal of Theoretical Accounting Research*, 10(1), 149-178.

<sup>71</sup> Suchman, M.C., 1995. Managing legitimacy: Strategic and institutional approaches. *Academy of management review*, 20(3), pp.571-610.

<sup>72</sup> Mobus, J., 2005. Mandatory environmental disclosures in a legitimacy theory context. *Accounting, Auditing & Accountability Journal*, 18(4), pp.492-517

<sup>73</sup> Hoque, Z., 2006. *Methodological issues in accounting research: theories, methods and issues*. Spiramus Press Ltd

<sup>74</sup> *Ibid* supra note 55

<sup>75</sup> *Ibid*

on norms and audiences; it perceives legitimacy as a set of constitutive beliefs held by a relevant audience<sup>76</sup>.

In summary, legitimacy theory argues that organisations use disclosure to shape stakeholder impression of the role and responsibility of the organisation and the degree to which the organisation is satisfying those responsibilities<sup>77</sup>.

## **Institutional Theory**

Research and theories on institutionalization have created valuable insights into the processes that define and explain institutionalization in organizational environments and their influence on organizational conformity to the environment<sup>78</sup>. Previous scholars of institutional theory, for instance, Selznick and Berger & Luckmann place specific emphasis on the lack of concern for institutional myths, rules and beliefs, as a shared social reality, and on the processes by which organisations tend to become instilled with value and social meaning<sup>7980</sup>.

To construct a relational framework for this research, it is necessary to establish a relationship between institutional theory and organizational accountability. Powell and DiMaggio defined the organizational field as being a set of organisations that in the collective, constitute an area of organizational life, resources, key suppliers, regulatory agencies, product customers and other organisations that produce similar products or services<sup>81</sup>. The purpose of this definition is to signify the organizational field as a site for common purpose and an arena of strategy and conflict<sup>82</sup>.

The first process links accountability discourse to regulatory institutions where organisations in a field are pressured to seek legitimacy through socially and culturally sanctioned administrative

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<sup>76</sup> Ibid

<sup>77</sup> Magness, V., 2006. Strategic posture, financial performance and environmental disclosure: an empirical test of legitimacy theory. *Accounting, Auditing & Accountability Journal*, 19(4), pp.540-563

<sup>78</sup> OLIVER, C., 1991. Strategic Responses to Institutional Processes. *Academy of management review*, 16(1), pp. 145-179

<sup>79</sup> Selznick, P., 1949. *Tva and the Grass Roots*. Berkeley, CA: University of California Press

<sup>80</sup> Berger, P. K, And Luckmann. T., 1967. *The Social Construction of Reality*. New York: Doubleday

<sup>81</sup> Fields, Collective Rationality In Organizational, Dimaggio, P. And Powell, W., 1983. The Iron Cage Revisited: Institutional isomorphism and collective rationality in organizational fields. *American Sociological Review*, 48(2), pp. 147-160

<sup>82</sup> Scott, W.R., 2005. Institutional Theory: Contributing to a theoretical research program. *Great minds in management: The process of theory development*, , pp. 460-484

routines intended to render accountability. The second process refers to the more tacit, private organizational dialogue in which, when relating the actions of organizational members to themselves, the motives and rules that justify such actions are also embedded<sup>83</sup>. Therefore, the concept of accountability, which is to give an account of action, links to the notions of folk norms of accountability and the tradition of ethnomethodology<sup>84</sup>. Furthermore, neo-institutional theory suggests that a rationalized form of accountability, accounting requirements for instance, in institutionalized fields are imposed upon organisations by external constituencies such as interest groups, public opinion, the State and professional associations<sup>85</sup>. Hence, compliance with the demand of accountability, as well as voluntary accountability by an organisation is assumed to be rewarded in the form of increased social lawfulness and the avoidance of the charge of irrational behaviours in the eyes of society.

#### **1.9.4 Arguments against local Content Regulations**

One of the most frequently cited argument against the use of Local content regulations is their potential incompatibility with international trade measures applicable to members of the World Trade Organization (WTO). Particular mention is made of the agreement on Trade-Related Investment Measures, the General Agreement on Tariff and Trade, and the Agreement on Subsidies and Countervailing Measures (ASCM), all of which endorse the “national treatment” principle, which obliges member countries to treat one another as they would their own nationals. However, there are some limited exceptions for least developed and developing countries for example Uganda, in the application of this rule. With regard to the ASCM, for example, domestic subsidies violate WTO rules only when they adversely affect the domestic commerce of another WTO member state.<sup>86</sup>

Few domestic subsidies meet this threshold, based in part, on the difficulty, for the complaining party, of showing evidence of “adverse effects” as well as on the fact that the definition of

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<sup>83</sup> Ezzamel, M., Robson, K., Stapleton, P. And Mclean, C., 2007. Discourse and institutional change: ‘giving accounts’ and accountability. *Management Accounting Research*, 18(2), pp.150-171

<sup>84</sup> Ibid

<sup>85</sup> Ibid

<sup>86</sup> Cimino, Hufbauer & Schott (2014), *supra* note 23, p. 3.

subsidy under the rules is narrow.<sup>87</sup> This has led some scholars to suggest that countries should instead of using traditional Local content regulations programs, make use of subsidies to support their domestic firms “on a time-limited basis.”<sup>88</sup>

Rodrik has argued that even though Local content regulations breach international trade and investment principles, they are an essential part of the “policy space” that developing countries ought to be allowed to pursue their economic development goals.<sup>89</sup> This view is echoed by another commentator who notes that “fair trade” in the sense of a “level playing field” does not necessarily mean applying the same set of trade rules and conditions to every nation, but also means recognizing that some countries are so disadvantaged that they need “reasonable accommodation” under the international trade system.<sup>90</sup>

An analogy to this is the adoption of differential income tax rates according to levels of individual income in most developed countries, which is not necessarily regarded as “unfair” because it is justified by the principle of “reasonable accommodation” for the poor rather than condemned as “unjustifiable discrimination” against the rich.<sup>91</sup> Fortunately for developing countries, however, the WTO rules impeding the application Local content regulations are rarely enforced.<sup>92</sup>

In addition, Local content regulations are said to be a poor instrument for addressing the inadequate contribution of the extractive sector to local economic development, for it creates distortions, inefficiency and corruption.<sup>93</sup> As one commentator has noted, however, these arguments are generalizations. Inefficiency, for instance, may be as a result of “technological strangeness” thus “the ability of the rest of the economy to develop service capacity through backward linkages and the speed at which such capacity can be created.”<sup>94</sup> Moreover, these

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<sup>87</sup> Chilenye Nwapi, “Defining the ‘Local’ in Local Content Requirements in the Oil and Gas and Mining Sectors in Developing Countries” (2015) 8:1 Law & Development Review 194–195.

<sup>88</sup> Ibid

<sup>89</sup> Dani Rodrik, *One Economics, Many Recipes: Globalization, Institutions and Economic Growth* (Princeton, NJ: Princeton University Press, 2007).

<sup>90</sup> YS Lee, *Reclaiming Development in the World Trade System*, 2nd ed (forthcoming) (Cambridge: Cambridge University Press, 2016) at 462–463.

<sup>91</sup> Ibid

<sup>92</sup> Cimino, Hufbauer & Schott (2014), *supra* note 23, p. 1.

<sup>93</sup> Lec (2011), *supra* note 24 at 9

<sup>94</sup> Ibid

problems can be dealt with through a well-designed local content framework that takes into account the socio-political and economic climate in which it is to be applied. Corruption, for instance, can be addressed through the integration of transparency measures into the policy and the avoidance of setting corruption-inducing unrealistic targets for companies.

Other arguments abound. For instance, it is believed that imposing quantitative conditions on companies regarding the hiring of locals when the existing local labour lacks the skills to carry out the desired task would not only discourage investment,<sup>95</sup> but also could put undue pressure on companies. As one industry perspective puts it,

the issue is probably not just one of numbers of Nigerian employees or even of the proportion of Nigerians in senior technical or managerial positions. The real fuel for the controversies around the employment of Nigerians is most likely the fact that as more Nigerians are employed and progress to senior positions, they inevitably seek more opportunities for advancement and therefore the pressure to provide even more opportunities for Nigerians continues to increase. The push for the employment of more Nigerians thus feeds on itself.<sup>96</sup>

The problem of unrealistic expectations can, however, be addressed by a clear definition of what constitutes local content, and, even more importantly, by a country's recognition and acknowledgment of its skills level and a compartmentalized and incremental approach to local content target setting, rather than stipulating stringent targets that are more likely to create corruption instead of helping to grow the economy. That is to say, occupations with high local skills availability can be assigned higher targets than occupations with lower local skills availability. And as more local skills are trained, the level of local content required can be increased gradually and correspondingly. This would however require a comprehensive, occupation by occupation skills survey of the country and the relevant sectors to determine where local skills are available and where they are scarce. It may be assumed that where needed skills are locally available it would be unnecessary to adopt Local Content Regulations because firms would find it in their interest to recruit locally as a cost-saving measure. Experience has

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<sup>95</sup> J Emeka Nwaokoro, "Signed, Sealed but Will it Deliver? Nigeria's Local Content Bill and Cross-Sectoral Growth" (2011) 4:1 Journal of World Energy Law and Business 56.

<sup>96</sup> Ike Oguine, "Nigerian Content in the Nigerian Petroleum Industry: Legal and Policy Issues" (2011) 29 J Energy & Nat Resources L 409



shown, however, that this is not necessarily the case, especially with Chinese companies, which prefer to bring in their own staff and insist on being allowed to do so in their investment negotiations in Africa.

There is a strong case for emerging East African oil and gas producing countries to adopt the Local Content Regulations. The nascent nature of the oil and gas industry in the region means that these countries would not have the technical and even managerial expertise to meet the demands of the industry. Mozambique, for instance, is characterized by lack of economic diversification, weak institutional capacity, high financing costs, a poorly qualified workforce and deficient infrastructure development.<sup>97</sup> Domestic skills shortage in Mozambique is described as “crippling”, occasioned by “poor quality education, insufficient access to education and inadequate linkages between existing curricula and market demands.”<sup>98</sup> A recent World Bank study notes that as the oil and gas industry is very new in Uganda, skills required by the industry are “quite low” in that country.<sup>99</sup> This, arguably, is also the case in Madagascar and, even if to a lesser degree, in Kenya and Tanzania due to their relatively more developed economies.

## **1.10 Methodology**

### **1.10.1 Research Design**

This study mainly utilized the doctrinal legal research design. Doctrinal methodology refers to a way of conducting research which is usually thought of as “typical legal research”. A doctrinal approach to research focuses on case-law, statutes and other legal sources. It differs from other methodologies in that it looks at the law within itself; a pure doctrinal approach makes no attempt to look at the effect of the law or how it is applied, but instead examines law as a written body of principles which can be discerned and analyzed using only legal sources.

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<sup>97</sup> African Development Bank Group, “Republic of Mozambique: Country Strategy Paper 2011–2015”, August 2011, pp. iv and 9, online: <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/Mozambique%20-%202011-15%20CSP.pdf>.

<sup>98</sup> Aditi Lalbahadur, “A Regional Approach to National Development Priorities in Mozambique?” 8 April 2013, <http://www.thetradebeat.com/opinion-analysis/a-regional-approach-to-national-development-priorities-in-mozambique>.

<sup>99</sup> World Bank, “Leveraging Oil and Gas Industry for the Development of a Competitive Private Sector in Uganda”, Report No: ACS12528, 25 May 2015, 8, online: [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2015/04/20/000442464\\_20150420122912/Rendered/PDF/ACS125280REVIS0itive0Private0Sector.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2015/04/20/000442464_20150420122912/Rendered/PDF/ACS125280REVIS0itive0Private0Sector.pdf).

Field interviews were also carried out but this was done but only as a way to bring out the challenges faced by the PAU. Doctrinal research was established as the traditional genre of research in the legal field. Also known as theory-testing or knowledge- building research in legal academia, it deals with studying existing laws, related cases and authoritative materials analytically on some specific matter. With its jurisprudential base on positivism, doctrinal legal research is ‘research in law’ rather than ‘research about law.’<sup>100</sup> The study aimed at assessing the role of the Petroleum Authority of Uganda in monitoring, evaluation and implementation of local content in Uganda’s petroleum sector.

This was a fairly exhaustive method which enabled the researcher to study deeply and thoroughly different aspect of a single situation in this case Petroleum Authority of Uganda; it was considered by the researcher to be the appropriate design in dealing with the qualitative data as this study was based much more on qualitative data than quantitative data; it was flexible in terms of data collection methods; and it was cheap in terms of time and cost.

### **1.10.2 Area of Research**

The research was conducted in Entebbe where the headquarters of the Petroleum Authority of Uganda are located. In some cases, the research was taken to the neighboring areas of Kampala and Jinja as this is where some of the oil and gas companies were located.

### **1.10.3 Target population and Sampling Size**

The cardinal target population for this study was 15 people which consisted of the top management of the Petroleum Authority of Uganda and Oil and Gas companies. The researcher believed that these officials hold vital knowledge that aided the research purpose.

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<sup>100</sup> Ryan, M., Saunders, C., Rainsford, E., & Thompson, E. (2014). Improving research methods teaching and learning in politics and international relations: a ‘reality show’ approach. *Politics*, 34(1), 85-97.

#### 1.10.4 Sample Size and Procedure

The sample size was 5 people as shown in the table below. The purpose is to identify the category of respondents who were knowledgeable on the research topic. The choice of the sample size purposive was identified by referral and holding initial preparatory meetings. The sample consisted of 5 respondents selected from a population of 15. The samples are indicated in the table below:

<b>No.</b>	<b>Category of Respondents</b>	<b>Sampling technique</b>	<b>Population</b>	<b>Sample</b>
1	PAU officials	Purposive sampling	5	2
2	Local Oil and Gas Companies	Random Stratified Sampling	10	3
	<b>Total</b>		<b>15</b>	<b>5</b>

### **1.10.5 Data Collection Tools**

Both primary and secondary sources of information were used. The primary sources included in-depth interviews. Secondary data source included documentary review.

#### **Documentary Review**

Secondary sources of information included documentary review of current records, loose minutes, study reports, drafts of documents, and other publications were examined for this purpose.

#### **Key Informant Interviews**

Interview guides were developed and pilot tested to ascertain their validity and reliability. The interview guides were pre-tested in order to eliminate questions that are vague, ambiguous and leading. These were administered to a selected sample and corrections made where necessary. The key informants were given unstructured interviews. This category included some oil and gas business owners and top management of Petroleum Authority of Uganda.

### **1.10.6 Ethical Considerations**

The researcher got permission and recommendation from the University authorities to undertake the study and consent<sup>101</sup> of the management of the Petroleum Authority of Uganda. The informants/respondents signed and informed consent was ascertained and they were promised confidentiality<sup>102</sup> about the information they provided, which had to be protected at all times and not be left lying around in notebooks or unprotected computer files. A summarized report of the study was sent to them with directions on how to obtain further information on the detailed report.

### **1.10.7 Limitations of the Study**

Being that the area of study was a recognised public institution, the researcher's request took longer to be approved by the human resource manager as well as the Executive Director because a lot of scrutiny and revision had to be carried out to ensure that the researcher was actually a

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<sup>101</sup> A Guide to Using Qualitative Research Methodology, 2002 Michael Quinn Patton and Michael Cochran page 5

<sup>102</sup> ibid page 5

student and not an undercover “spy” from another company that was seeking to “steal” the company’s information.

## **1.9 Chapter Synopsis**

**Chapter One:** This chapter introduces the study, presents an overview of the study background and history, problem statement, research objectives. From these, research questions are formulated, and the significance and justification of the study are provided as well. This chapter also introduces the critiques previous literary works by re-known scholars and academicians. In so doing, the researcher highlights the gaps in knowledge that he seeks to address. This Chapter also looks at the research methodology, bringing out the research design, study population, research instruments, data sources, ways of analyzing data and research ethical considerations.

**Chapter Two:** This chapter presented an overview and analysis of various international and national laws and regulation and how they transcend the idea of local content.

**Chapter Three:** This chapter illustrates the effectiveness of the local content legislations in regards to how they have been implemented by Petroleum Authority of Uganda

**Chapter Four:** This chapter served to show the challenges that have been encountered by the petroleum authority in implementing local content laws.

**Chapter Five:** In this chapter, the study summarized the study, discussed, drew conclusions and made recommendations accordingly.

## CHAPTER TWO

### INTERNATIONAL AND NATIONAL CONTENT REGULATIONS

#### 2.1 Introduction

This chapter presented an overview and analysis of various laws highlighting the international laws and policies affecting implementation of LCs and funneling down to the national laws and policies and how they transcend the idea of local content. The chapter also used the funnel analysis method categorically showing different legal frameworks in order of their impact on the employment of the Uganda citizens.

#### 2.2 International legal framework for National Content Development

##### 2.2.1 Agreement on Trade-Related Investment Measures (TRIMs)

After the late 1980s, a significant increase in foreign direct investment, especially in developing countries, took place throughout the world. Some countries receiving the foreign investment, however, imposed numerous restrictions to protect and foster domestic industries and to prevent the outflow of foreign exchange reserves.

The Agreement on Trade-Related Investment Measures (TRIMs)<sup>103</sup> recognizes that certain investment measures can restrict and distort trade. It states that WTO members may not apply any measure that discriminates against foreign products or that leads to quantitative restrictions, both of which violate basic WTO principles. A list of prohibited TRIMs, such as local content requirements, is part of the Agreement. The TRIMs Committee monitors the operation and implementation of the Agreement and allows members the opportunity to consult on any relevant matters.<sup>104</sup>

Uganda has been member of the WTO since January 1, 1995.<sup>105</sup> And like all World Trade Organization (WTO) Members, Uganda must adopt and abide by the obligations of TRIMs. This

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<sup>103</sup> The TRIMs Agreement clarifies existing rules contained in Articles III (National Treatment Obligation (NTO)) and XI (Prohibition on Quantitative Restrictions) of the General Agreement on Tariffs and Trade (GATT), 1994.

<sup>104</sup> Shah, Mumtaz Hussain. "The Significance of WTO's Trade Related Investment Measures (TRIMs) Agreement For Inward FDI in Sub-Saharan Africa." (2017): 17-29.

<sup>105</sup> Tuhairwe, Herman, and Maureen Kemigabo. "To what extent does Uganda's Copyright and Neighbouring Rights Act 2006 incorporate the TRIPS Agreement's standards?." *Journal of Intellectual Property Law & Practice* (2019).

can impact a country's ability to impose certain local content requirements (referred to as "investment measures"), to the extent they affect trade in goods. Uganda, as a Least Developed Country, is only required to implement TRIMs to the extent consistent with its individual development, financial and trade needs and administrative and institutional capabilities, subject to notification to the General Council.<sup>106</sup>

The researcher found that TRIMS covers local content requirements like requiring a company to purchase or use products of domestic origin, where TRIMs prohibits discrimination between goods of domestic and imported origin; limiting the amount of imported products that an enterprise may purchase or use depending on the volume or value of local products that the enterprise exports; and restricting foreign exchange necessary to import (for example restricting the importation by an enterprise of products used in local production by restricting its access to foreign exchange).<sup>107</sup>

### **2.2.2 General Agreement on Trade in Services (GATS)**

The General Agreement on Trade in Services (GATS) is a treaty of the World Trade Organization (WTO) that entered into force in January 1995 as a result of the Uruguay Round negotiations.<sup>108</sup> The treaty was created to extend the multilateral trading system to service sector, in the same way the General Agreement on Tariffs and Trade (GATT) provides such a system for merchandise trade. All members of the WTO are parties to the GATS. The basic WTO principle of most favoured nation (MFN) applies to GATS as well. However, upon accession, members may introduce temporary exemptions to this rule.

The researcher found that obligations contained in the GATS may be categorized into two broad groups: General obligations, which apply directly and automatically to all Members and services sectors, as well as commitments concerning market access and national treatment in specifically designated sectors. Such commitments are laid down in individual country schedules whose

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<sup>106</sup> Tuhairwe, Herman, and Maureen Kemigabo. "To what extent does Uganda's Copyright and Neighbouring Rights Act 2006 incorporate the TRIPS Agreement's standards?." *Journal of Intellectual Property Law & Practice* (2019).

<sup>107</sup> It is important to be aware of the types of measures prohibited under the TRIMs Agreement, in order to avoid the potential for dispute settlement under the WTO - a state can bring an action against another state for an alleged violation of the TRIMs Agreement (i.e. "state-to-state action")

<sup>108</sup> Sinclair, Scott. "The WTO and its GATS." In *The Handbook of Globalisation, Third Edition*. Edward Elgar Publishing, 2019.

scope may vary widely between Members. The relevant terms and concepts are similar, but not necessarily identical to those used in the GATT; for example, national treatment is a general obligation in goods trade and not negotiable as under the GATS.

It was also discovered that the General Agreement on Trade in Services (“GATS”), covers investment measures related to services (in Article XVI), including the following which are relevant to local content: requirements to use domestic service suppliers; limits on the number of service suppliers; limits on the total value of service transactions or assets; limits on the total number of service operations or quantity of service output; limits on the total number of natural persons permitted; and restrictions on or requirements for certain types of legal entities (for example joint venture requirements).<sup>109</sup>

### **2.2.3 Bilateral Investment Agreements (BITs)**

As at 1 June 2013, Uganda had entered into 15 bilateral investment treaties (BITs) but only 7 were in force.<sup>110</sup> Investment treaties are international agreements between two or more countries which establish the terms and conditions of foreign investment within each country and provide rights directly to the investors of each country which is party to the treaty. The treaties can contain restrictions on local content requirements.<sup>111</sup>

This study discovered that most of the investment treaties contain the following types of provisions, each of which affects a country’s ability to impose local content requirements; non-discrimination provisions (“national treatment” and “most-favoured nation” obligations), which are relevant in the context of local content when either host countries require some foreign investors to source from certain goods and service providers but don't impose similar requirements on other investors or when host countries give an advantage to some domestic or foreign goods and services providers, but not to a foreign provider whose state has a relevant treaty with the host country.

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<sup>109</sup> Delimatsis, Panos. "GATS Basics-Revisiting Some Basic Notions and Concepts of the General Agreement on Trade in Services." *Tilburg Law School Research Paper* 01 (2018).

<sup>110</sup> According to UNCTAD’s country specific list of bilateral investment treaties

<sup>111</sup> It is important to be aware of the BITs a country has signed and the types of requirements prohibited under it, in order to avoid the potential for arbitration against the country - the majority of investment treaties allow investors to bring arbitration claims directly against the country in which they have invested (“investor-state arbitration”).



In addition, it was discovered that BITs contain restrictions on capital transfers “pre establishment” protections, which prevent a state from imposing conditions on foreign investors that are not imposed on domestic investors, such as requirements to transfer technology to local firms, to establish the firm through a joint venture, or to reinvest a certain amount of capital in the host country.

Aside from the inclusion of National Treatment Obligations and Most Favoured Nation clauses, which are present in most BITs, performance requirements are more specifically prohibited in the Uganda and France BIT.

Article 3 (Fair and Equitable Treatment) of this particular BIT stipulated that either the contracting party shall extend fair and equitable treatment in accordance with the principles of International Law to investments made by nationals and companies of the other Contracting Party on its territory or in its maritime area, and shall ensure that the exercise of the right thus recognized shall not be hindered by law or in practice. In particular though not exclusively, shall be considered as de jure or de facto impediments to fair and equitable treatment any restriction to free movement (sic), purchase and sale of goods and services, as well as any other measures that have a similar effect”.<sup>112</sup>

## **2.3 National Legal Framework for National Content Development**

### **2.3.1 Policy Framework**

The researcher found that the government of Uganda has formulated various policies which have had far reaching implications for National Content development in the country. A review of these policies reveals the need for a revised role for the government bodies like the petroleum Authority of Uganda.

#### **The National Energy Policy of Uganda (2002)**

The researcher found that the main objective for the energy policy was to meet the energy needs of Uganda’s population for social and economic development in an environmentally sustainable

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<sup>112</sup> De Brabandere, Eric. "States' Reassertion of Control Over International Investment Law-(Re) Defining 'Fair and Equitable Treatment' and 'Indirect Expropriation'." *States' Reassertion of Control over International Investment Agreements and International Investment Treaty Dispute Settlement* (Cambridge: Cambridge University Press, 2016) (2016).

manner. Scouring through this policy however revealed to the researcher that it is silent on the issue of local content.<sup>113</sup> This is particularly alarming as the Energy policy (2002) was the founding policy for all legislative instruments in the energy sector.

Whilst this policy sought to meet the growing demand for electricity at national and regional level and increase area coverage, it completely ignored the use of Uganda labour and the goods and services offered by the Uganda community.<sup>114</sup> This caused long lasting agreement predicaments for example the Umeme Contract issues.

### **The National Oil and Gas Policy (2008)**

Before the coming in place of the NOGP, the Energy Policy of 2002 was the policy guiding the entire petroleum value chain. The NOGP provides for the administration, regulation and management of the upstream petroleum and presents a basis for regulating and investing in the midstream petroleum sub-sector. The NOGP recommends an update of the above legal framework. The National Oil and Gas Policy for Uganda was approved by Cabinet on 31st January, 2008 to guide the development of the country's emerging oil and gas sector following the discovery of commercial petroleum resources in 2006. The Policy addresses the entire spectrum of exploration, development, production and utilisation of the country's oil and gas resources.<sup>115</sup>

The researcher found out that policy recognized the need for putting in place an institutional framework to manage and regulate this new sector of development. This involved formulation of new legislation and creation of new institutions as well as strengthening the existing ones and significant training and capacity development.

The policy further advocates for investment promotion where the government will promote and support the development of suitable transport and storage solutions which give good value to the

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<sup>113</sup> Zakkour, Paul, Gregory Cook, Vincent Kato, Godfrey Bahati, Innocent Kihika, Alan Baguma, and Doreen Namyalo Kyazze. "Formulating a Geothermal Energy Policy, Legal and Regulatory Framework for Uganda." (2016).

<sup>114</sup> Ibid

<sup>115</sup> Byaruhanga, Julius, and Arnim Langer. "On the right track? An analysis of the implementation of oil and gas sector local content policies in Uganda." *The Extractive Industries and Society* (2019).

country's oil and gas resources.<sup>116</sup> These may include, but not limited to, pipelines, upgraded road and railway networks, processing plants and facilities. These and other critical infrastructure are required for production to take place. Therefore, Government will develop strategies to facilitate investment in both oil exploration and putting in place vital infrastructure to facilitate production.

More importantly however, the policy paved the way for creation of national content regulations and government parastatals. The policy aimed at ensuring optimum national participation in oil and gas activities. This was to be achieved through state participation and promoting the use of indigenous materials, goods and services in oil and gas sector activities, employment of Ugandans in the oil and gas sector and transfer of skills and technology to the country. On the whole, stake holder participation in the sector will be key in ensuring national participation.<sup>117</sup> The proposed institutional and legal framework will also provide a framework for state participation in licences and implementation of national content through identification of opportunities for participation of nationals in the sector.

National Participation also requires support to the development and maintenance of national expertise. There is need to identify the training skills required for the sector and plan for their development through both formal and industrial training.<sup>118</sup> Government will review and expand the education curricula in the country with a view of producing the workforce required for oil and gas activities nationally. Licensed oil companies and their subcontractors will be required to contribute to training of Ugandans.

### **The National Industrial Policy (2008)**

The National Industrial Policy (NIP) emphasizes the need to develop domestic resource-based industries and promotion of competitive industries that use local raw materials. The policy encourages existing industries and new investors to utilize the services of local technologies and consultants as a means of developing national technological capabilities. It also supports the growth and development of a skilled and productive labour force to ensure that a body of

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<sup>116</sup> Doro, Elijah, and Ushewedu Kufakurinani. "Resource curse or governance deficit? The role of parliament in Uganda's oil and Zimbabwe's diamonds." *Journal of Southern African Studies* 44, no. 1 (2018): 43-57.

<sup>117</sup> Ibid

<sup>118</sup> Ibid

experienced entrepreneurs and trained managers are particularly focused on industrial development.<sup>119</sup>

The researcher however found that this policy remains largely unimplemented and the economy's structure essentially unchanged. Results from interviews reveal that the five lead challenges of policy implementation in Uganda are: corruption, poor management at both top and bottom levels, non-coherence in policy implementation, inadequate funding and political interference, in that order. A number of studies<sup>120</sup> also identified several institutional issues affecting policy implementation in Uganda.

### **The National Employment Policy (2011)**

The National Employment Policy for Uganda guides stakeholders on creation and enhancement of quality and availability of gainful employment opportunities. The Policy recognizes the importance of education as a precursor to skills development, which serves to enhance productivity and competitiveness.<sup>121</sup>

This policy proposed an integrated framework for a macroeconomic environment that provides linkages of employment creation to labour absorbing economic sectors.<sup>122</sup> The policy was based on: sound basic education followed by skills training for more productive employment, promoting agriculture and enhancing its linkage with other sectors; pursuing more innovative strategies for employment creation and job intensive investments, particularly, within the National Core Projects of the National Development Plan.

Increasing productivity in both the largest and the very smallest enterprises in Uganda; mainstreaming vulnerable groups; strengthening labour administration, social dialogue, improving working conditions and the workplace environment as well as establishing a more appropriate institutional framework for coordination and sustainable employment are also key action areas.

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<sup>119</sup> Bagabo, Paul, Onesmus Mugenyi, Siragi Magara, and Paul Twebaze. "Contract Transparency in Uganda's Petroleum and Mining Sectors." (2019).

<sup>120</sup> OPM, 2008; Marti and Ssenkubuge, 2009; Republic of Uganda, 2013

<sup>121</sup> Adams Rajab Makmot Kibwanga, Analyzing the changes introduced by Uganda's 2016 Model Petroleum Sharing Agreement (PSA) in the country's oil and gas contractual regime, 2014

<sup>122</sup> Ibid

## **Buy Uganda Build Uganda (2014)**

The researcher found that the Buy Uganda Build Uganda ('BUBU') is a policy geared towards promoting use of locally manufactured goods and use of local skills/personnel. The success of the BUBU concept will however require us as Ugandans to position ourselves in order to play our respective roles in building the Ugandan economy and reaping from it.<sup>123</sup>

It was also discovered that the petroleum sector seemed to have embraced this BUBU concept ahead of other economic sectors in Uganda. In 2013, the Government of Uganda introduced two new laws to govern exploration, production, storage and transmission of petroleum products. The two laws were the Petroleum (Exploration, Development and Production) Act, 2013 and the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, 2013. These laws replaced laws that existed at the time which did not appropriately address some of the issues that are pertinent to the sector.

The concept of national content (also commonly referred to as local content) was introduced in the new laws to give guidance on the level of contribution to national development that is expected from international players who are either contracting directly with government (licensees) or their contractors and subcontractors.<sup>124</sup>

Uganda's perspective of national content is hinged on the need to give preference to goods which are produced or available in Uganda and services which are rendered by Ugandan citizens and companies. Therefore, a requirement to this effect was included in the new legislation.<sup>125</sup> Further, a mechanism for monitoring achievement of this requirement has been prescribed by requiring licensees, contractors and subcontractors to provide a report of their achievement in utilizing Ugandan goods and services to the petroleum authority within sixty days after the end of each calendar year.

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<sup>123</sup> Akello, Juliet, and Uganda Debt Network. "ODA and private sector resources to achieve the SDGs: The Ugandan case." *The Changing Faces of Development Aid and Cooperation: Encouraging Global Justice or Buttressing Inequalities?* (2018): 45.

<sup>124</sup> Spray, John. "Export transitions, productivity, and the supply chain." (2017).

<sup>125</sup> Ibid

### **2.3.2 Legislative Framework**

#### **The Petroleum (Exploration, Development and Production) Act, 2013**

The researcher found that this law gives effect to the Constitution and regulates petroleum exploration, development and production. It repealed the Petroleum (Exploration and Production) Act, Cap 150.

The Upstream Act regulates the licensing and participation of commercial entities in petroleum activities and to provide for an open, transparent and competitive process of licensing. Section 5 of the Act prohibits petroleum activities in Uganda without an authorization license, permit or approval. Anybody who contravenes the provision commits an offence and is liable on conviction to a fine not exceeding 100,000 currency points or imprisonment for a maximum of 10 years or both.<sup>126</sup> For a body corporate, the fine is a maximum of 1,000,000 currency points.<sup>127</sup> Section 6 gives power to the government to enter into agreements relating to petroleum activities with any person with respect to granting or renewing a license. Section 8 of the Act empowers the Minister to grant and revoke licenses, issue petroleum regulations and to negotiate and endorse petroleum agreements, among other functions.

In addition, the Minister is also tasked to develop a model production sharing agreement or any other model agreement which must be approved by Parliament. Once approved, this model is supposed to guide future agreements. The Act does not provide any penalties for failure to disclose model production sharing agreements to Parliament. This has created the situation where the government has consistently refused to make these agreements publicly available, thereby violating the constitutional right of access to information and thus rendering this provision a nullity. Moreover, an attempt to seek disclosure of the contents of these agreements was rejected by a Magistrate's court ostensibly because the applicants failed to show that the public benefit in their disclosure outweighed the harm to the third parties, thus the Government and the oil companies.

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<sup>126</sup> A currency point is equivalent to UGX.20,000. As at the time of writing, US\$1 is equivalent to UGX.3,670

<sup>127</sup> Sections 5(2)(a) and (b)

Section 69 of the Act gives exclusive rights to the holder of a Petroleum Exploration license who has made the discovery of petroleum in his or her exploration area to apply for the grant of a production license. Any other person may apply notwithstanding that he or she does not hold the petroleum exploration license in respect of the exploration area.<sup>128</sup>

Application for a license may be made to the Minister in the manner prescribed by the regulations and must under section 71 be accompanied by a report on the petroleum reservoir and a field development plan.<sup>129</sup> Such plan should contain information related to: proposals for the development and production of the reservoir; estimated production profiles; cost estimates; safety measures to be adopted in the course of the production of petroleum; the applicants' proposals for employment and training of Ugandan citizens and the applicant's proposals with respect to the procurement of goods and services from Uganda.

The research further found that the petroleum production license shall be granted on the basis of technical competence, capacity, experience and financial strength; the applicants' understanding of the petroleum reservoir as well as other conditions as determined by the Minister.<sup>130</sup> Under section 75, the Minister may grant a production license after consultation with the Authority and approval by Cabinet in such manner as the Minister may determine. A petroleum production license may continue in force for a period not exceeding 20 years and can be renewed for another period on conditions determined by the Minister.<sup>131</sup>

Once granted, such a license confers on the licensee exclusive rights to carry on petroleum activities and to sell or otherwise dispose of the licensee's share of petroleum recovered in accordance with the field development plan. Under section 87, a license cannot be transferred without the written consent of the Minister in consultation with the Authority and may be cancelled or suspended under section 90 where a licensee is in default because of violations of Ugandan law.<sup>132</sup> In such a case, the Minister may in consultation with the Authority and with approval of Cabinet by notice in writing served on the licensee, proceed to do so.

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<sup>128</sup> Section 69(4)

<sup>129</sup> Section 71 PEDP Act

<sup>130</sup> Section (73)

<sup>131</sup> Sections 77 and 80

<sup>132</sup> Section 90

Most importantly, the researcher found that the objectives of the national oil and gas policy, especially those on national content, are reflected in this law such that while applying for a license, the application must contain a statement on how the applicant intends to employ and train Ugandan citizens.<sup>133</sup> There is, however, no strategy listed in the Acts to ensure that licensees follow up on this training.

Section 125 of the Upstream Act provides that licensees and their contractors shall give preference to goods produced or available in Uganda and for services rendered by Ugandan citizens and companies.<sup>134</sup> Although well-intentioned, this section has been criticized for its ambiguity. The law does not define what a “Ugandan” company is, thereby leaving a gap for exploitation. Strict interpretation of the word “company” versus “business entity” limits the application of the section only to companies. This leaves out other well-recognized commercial entities such as partnerships and cooperative societies, among others.<sup>135</sup>

### **The Petroleum (Refining, Conversion, Transmission and Midstream) Act, 2013**

This Midstream law established a legal framework to ensure Uganda’s midstream petroleum operations are carried out in a sustainable manner that guarantees optimum benefits for Ugandans, enables the development of petroleum refining, gas conversion, transmission pipelines and midstream storage facilities, addresses the decommissioning of facilities, and eases investment in midstream operations, among other related issues.

The Midstream Act which provides for midstream operations including the planning, preparation, installation and execution of operations related to refining, conversion, transmission and storage of petroleum products has similar provisions related to licensing contained in the Upstream Act.<sup>136</sup> Anyone who operates without a license is liable on conviction to a fine not exceeding 100,000 currency points or imprisonment of up to 10 years, and for a company, a fine

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<sup>133</sup> Sections 56(3)(f) of the Upstream Act and 10(6)(s) of the Midstream Act

<sup>134</sup> Section 125 PEDP Act

<sup>135</sup> Gwayaka, Peter Magelah, “Local content in Oil and Gas Sector: An Assessment of Uganda’s Legal and Policy Regimes,” ACODE Policy Briefing Paper Series, No.28: Kampala, (2014).

<sup>136</sup> Section 2 of the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, 2013



of up to 200,000 currency points.<sup>137</sup> All conditions and procedures related to the application, grant duration and cancellation of licenses are similar to those in the Upstream Act.

The Midstream Act acknowledges that the National Oil Company shall be deemed to be established for its purposes. However, Section 7(3) makes it clear that it is up to the Minister with the approval of Parliament to decide that the National Oil Company shall participate in midstream operations. Whereas provision for the National Oil Company in the various policies and laws is commendable, the provisions are not as comprehensive as should be expected and need to be improved in detail. This background will later allow us to turn to the most recent development in the area of oil legislation, viz., the Public Finance Management Act of 2015.

The Midstream Act attempts to correct the ambiguity in local content guidelines set by the Upstream act by providing that the licensee and its contractors shall give priority to citizens and registered entities owned by Ugandans in the provision of goods and services. Unlike the Upstream Act, the Midstream Act therefore considers other business entities in addition to companies. However, both Acts lack provisions to ensure that Ugandans employed by the oil companies receive the same treatment, pay and opportunities at the work place with their foreign counterparts.<sup>138</sup> The legislation is also silent on other forms of inclusion and equity including gender, ethnic and social status.

### **The Public Private Partnership Act, 2015**

The Act applies to all public private partnerships and in particular to the design, construction, maintenance and operation of infrastructure services including oil and gas pipelines, gas storage, refinery, conveyance and distribution facilities. Under its principles, the Act provides for promotion of participation of Ugandans as private parties in the Public Private Partnerships. It also provides for the stimulation of growth and development through harnessing private sector innovation and efficiency.

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<sup>137</sup> Section 9(1) and (2).

<sup>138</sup> Omara, Timothy, Raymond Kalukusu, Eddie Adupa, Tom Owori, David Mawanda Kizza, and Jimmy Obonge. "Potential of Sorghum bicolor L.(Moench) and the Effect of Enhancements in Remediation of Petroleum-Vitiated Soils of an Automobile Repair Workshop in Urbanite Kampala." (2019).

### **2.3.3 Regulation and Contract Framework**

#### **The National Content Regulations, 2016**

The parliament of Uganda passed this regulation in 2016 to place priority on the employment of Ugandan citizens, procurement of Ugandan goods and services in all undertakings where public funds are used or where the undertaking is a licensable activity. The researcher found that this law will compel all foreign companies to use Ugandans and locally sourced products for employment and use first.

The researcher also found that the regulations are meant 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; 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 and; 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.

More to that, National Content regulations serve 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; to ensure enterprise development through provision of support to Ugandan citizens and Ugandan companies; and to promote cooperation between licensees, contractors, subcontractors and Ugandan universities, research institutions and technical institutions.

#### **The Model Production Sharing Agreement, 2016**

Production Sharing Agreement is defined to mean a contractual arrangement between the International Oil Company (IOC) and a state party that authorizes the IOC to undertake petroleum operations within a certain area in accordance with the rules of the agreement.<sup>139</sup> The Uganda's model 2016 PSA is an improvement of the previous two PSAs. It is called a model

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<sup>139</sup> Benard Taverne, 'Production Sharing Agreement in Principle and Practice', in M.R David (ed.), *Upstream Oil and Gas Agreements* (Sweet and Maxwell, 1996) p.44

PSA because it provides a general framework contract for any IOC that intends to enter the oil sector.

The model has been put to its first work when Uganda granted the Australian oil and gas exploration firm Armour Energy Limited a license for petroleum exploration, development and production over the Kanywataba Contract Area found in Ntoroko, western Uganda. A PSA was signed in line with section 58 of the Petroleum (Exploration, Development and Production) Act 2013.<sup>140</sup>

The Model Production Sharing Agreement (MPSA) has specific provisions for promotion of National Content including: State participation in petroleum activities, preference of Ugandan citizens and enterprises during procurement of goods and services, training and employment of Ugandan citizens during all phases of the petroleum activities.

## **2.4 Conclusion**

The research found Local content in Uganda is regulated by national and international legislation. Uganda has an international obligation to respect Trade-Related Investment Measures (TRIMS), the General Agreement on Trade in Services (GATS) and the BIT Agreement Guidelines. International Trade-related investment initiatives have been implemented. On 1 January 1995, Uganda became a member of the WTO. And Uganda must accept and respect TRIM obligations like all members of the World Trade Organization (WTO). This can change a nation to the degree it undermines trade in goods in the implementation of these local standards of quality (so-called investment measures).

Global Trade in Services Agreement (GATS) includes services (in Article XVI), including local content spending initiatives: requirements for use by domestic service providers; limitation on number of service providers; limits on total value of contracts and/or property transactions; constraints on the total number of services or service amounts; and Most codes, rules, regulations and contracts govern local content nationwide.

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<sup>140</sup> Baz Waiswa, 'Here are PSA Conditions Under Which Armour Energy Will Operate In Uganda' (Oil and Gas, 14 September 2017) <[www.earthfinds.co.ug/index.php/oil-and-gas/item/1092-here-arethe-psa-conditionsunder-which-armour-energy-will-operate](http://www.earthfinds.co.ug/index.php/oil-and-gas/item/1092-here-arethe-psa-conditionsunder-which-armour-energy-will-operate)> accessed 21/07/2018

The national oil and gas policy, national industrial policy, national employment policies and Uganda buy policies politically control the local content. Petroleum (Exploration, Development and Manufacturing) Act, 2013; Public Private Partnership Act 2015; and the Petroleum (Refining, Recovery, Distribution and Midstream) Act, 2013. This supports the engagement of Uganda in public-private partnerships as private parties. It is also encouraged through innovation and production in the private sector through growth and development.

## CHAPTER THREE

### EFFECTIVENESS OF LOCAL CONTENT LAWS AND REGULATIONS

#### 3.1 Introduction

This chapter illustrates the effectiveness of the local content legislations in regards to how they have been implemented by Petroleum Authority of Uganda. The chapter is categorised into four sections showing effectiveness of the laws when it comes to application for rights (exploration and production), training and employment, procurement of goods and services and monitoring and evaluation of local content regulations.

#### 3.2 Preparation of National Content Plans

There is more ample evidence on tightening of approval and regulatory processes to require extractive companies to produce local content plans that include enterprises and workforce participation in oil, gas and mining areas and that are aligned with regional economic development plans. These plans often include a subnational dimension because they require oil, gas and mining companies to specify impacts and benefits for local communities. Our Ugandan laws require IOCs to draw a social development management plans that describes “the programs, projects and activities that would be undertaken by the mining operator to promote the general welfare of the inhabitants of the Albertine [districts] where the mining area is located as well as neighbouring areas.

Section 7 of the NC licensees are required, within twelve months after the grant of a licence, to submit the Authority for approval, a national content programme stating proposals for the employment and training of Ugandans; the required quality, health, safety and environment standards for goods and services to be procured; the transfer of technology, knowledge and skills to Ugandan companies, Ugandan citizens and registered entities; and the procurement of goods and services obtainable in Uganda.<sup>141</sup>

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<sup>141</sup> Section 7 PEDP NC

In the very section, the Authority is mandated to review the national content programme referred to under some of the sub regulation above and may propose amendments to the programme.<sup>142</sup> Where the Authority is not satisfied with the national content programme submitted under sub regulations, the Authority is within its powers required to return the national content programme to the licensee with comments for improvement and the licensee has to make the necessary amendments to the programme and resubmit the programme to the Authority for approval within twenty one days from the date of receipt of the comments.

The research found that this regulation has been properly upheld by the petroleum Authority as the initial three IOCs, Tallow, CNOOC and Total E&P all submitted their plans for national content. These reports were reviewed and passed prior to issuing them exploration and development licences. These regulations have not been followed to the letter however, and this has been mainly due to the delay in the oil productions. Some accusations can also be thrown the way of the Authority for not putting in place measures to ensure the national content plans are properly implemented.

In Norway, companies doing business in the field of and/or in relation to natural resources must put into practice environmental and social responsibility (ESR) plans, and that ESR “constitutes an obligation of the Company which shall be budgeted for and calculated as a cost of the Company performance of which shall be with due attention to decency and fairness.” Furthermore, Article 66 of the Norwegian Local Content Act stipulates that annual reports must contain at least a report on ESR implementation.

On the other hand, the Nigerian local content regulations stipulate that contents of a social and labor plan must include, among others, the employment equity statistics and the mine’s plan to achieve the requirement that 10 percent of the employees must be women, and 40 percent of management must be Nigerians within five years from the granting of the right or the conversion of the old order right.

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<sup>142</sup> Ibid

### **3.3 Enhancing Supplier-Buyer linkage**

One of the cardinal principles of the national content regulations is connecting IOCs (buyers) and local Ugandan companies (suppliers) in order to ensure that Ugandans are maximumly gaining from the proceeds of the Government. To do this, the petroleum authority was tasked with building a system or database where all supplier would register for ease of access. The system also ensured that the suppliers were strictly Ugandan companies or those companies that were in joint ventures with native companies.

Section 11 of the upstream and midstream national content regulations demands of the PAU to develop a national supplier database for petroleum activities.<sup>143</sup> The section goes on to stipulate that a company cannot not provide goods, works or services for petroleum activities unless it is in the national supplier database. In the genesis of this database, the Authority, in consultation with the licensees, developed criteria that was to be used for qualification of Ugandan companies, Ugandan citizens and registered entities to the national supplier database.<sup>144</sup>

As required by the law, PAU has published the list of Ugandan companies, Ugandan citizens and registered entities that are qualified to provide goods, works and services for petroleum activities in the national supplier database by 31st December of each year.<sup>145</sup> This has been successful and has enabled IOCs contract Ugandan companies.

In order to ensure validity and authenticity, the verification process is expected to take not less than two months from the day of submission of an application through the PAU website and it involves verification of the information submitted with other government agencies including URSB, URA and NSSF for Ugandan companies and consultation with foreign missions in the country for foreign companies.

### **3.4 Technology Transfer and Training**

Basically, this is the movement or flow of technical knowledge, data, designs, prototypes, materials, inventions, software, and/or trade secrets from one organisation to another

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<sup>143</sup> Section 11 NC Regulations

<sup>144</sup> Section 12 NC Regulations

<sup>145</sup> Ibid

organisation or from one purpose to another purpose. The technology transfer process is guided by the policies and values of each respective organisation. Section 23 of the national content regulations requires a every licensee to submit to the Authority for approval an annual plan, satisfactory to the Authority, setting out details and initiatives aimed at promoting the effective transfer of technology, technical know-how and skills relating to petroleum activities from the licensee to the Government of Uganda, Ugandan companies, Ugandan citizens and registered entities.<sup>146</sup>

Similarly, section 126 of the PEDP provides that a licensee shall, within twelve months after the grant of a licence, and on each subsequent anniversary of that grant, submit to the Authority for approval, a detailed programme for recruitment and training of Ugandans.<sup>147</sup>

This programme provides for the training and recruitment of Ugandans in all phases of petroleum activities and takes into account gender, equity, persons with disabilities and host communities. This section further states that the programme shall include a commitment to maximise the knowledge and skills transfer to Uganda and to boost the capacity of Ugandans in the management of petroleum operations, technical capabilities and necessary facilities for technical capabilities and any necessary facilities for technical work, including the interpretation of data.

The research found that technology transfer and training program are designed prior to the application for the license. The technology transfer required is a shared responsibility between the Government and the licensee. The Regulations, which will prescribe the requirements and parameters for the technology transfer of knowledge and skill to Ugandan employees working in the midstream petroleum value-chain, are yet to be formulated.

In Nigeria, the involvement of stakeholders like entrepreneurs and financial institutions in technology transfer for commercialisation is very low. This could be responsible for low commercialisation of research outputs from these institutes. It could even be responsible for the failure of those that were commercialised. Research indicated the existence of technology transfer policy for their organisations and most of these have technology transfer offices. The

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<sup>146</sup> Section 23 PEDP NC Reg

<sup>147</sup> Section 126 PEDP



technology transfer strategies employed include licensing agreements, cooperative R&D agreement/contract research, joint ventures, self/exploitation, spin-out/spin-off, training workshops, technical assistance and consultancy services. The most frequently used technology transfer strategy by all the companies is training workshops and this strategy is rated very effective.

In Norway, culture and biodiversity are closely related, noting that religion, language and traditional knowledge are important in the context of biodiversity conservation and sustainable use. It can be stressed that there is need to recognize the importance of traditional conservation technologies, and that these technologies may not survive the pressures of globalization. Regarding the transfer of genetically modified organisms (GMOs).

Norway focuses on four requirements, including: strong domestic scientific capacity to assess risks and benefits; a better understanding of biotech complexities; policies that encourage advanced research, supported by a strong regulatory framework; and public debate. Cultural challenges to technology transfer are addressed through: developing new technologies that are culturally appropriate; encouraging societies to develop their capacity to assess which technologies are most relevant to them; understanding local cultures and promoting local communities' participation; and ensuring that indigenous peoples have control over how their traditional knowledge is transferred to modern societies.

### **3.5 Joint Venture Provisions**

The Uganda oil and gas laws specify that where goods and services required by the licensee or contractor or subcontractor are not available in Uganda, the goods and services, have to be provided by a company which has entered into a joint venture with a Ugandan Company. More to that the Ugandan company must have 48 per cent participating interest and must be approved by the PAU, based on technical and financial competence, experience, active participation.

It was discovered that locally owned service providers in Uganda's oil and gas sector are opting for joint ventures with international companies in preparation for the production phase, which is capital intensive. Sources in the industry informed the researcher that production will demand more specialised skills, huge capital investment, complex technology and high standards.

*“We are looking at joint ventures because they are sources of equity, technology transfer and skills development,” one of the informants portrayed.*

Service providers have recently experienced a downturn in business as exploration activities wind down due to a combination of the recent drop in international prices for crude and the apparent lack of progress towards licences for production.

*“Currently, we are reviewing production licence applications with the oil companies, and the reduction in oil activities will only be for a short time. Service providers need to prepare for the development phase, which will take up to 70 per cent of their services,”* one of the respondents informed the researcher.

Oil companies rely on services provided by other businesses, like drilling companies that own the rigs, handling services, local transportation, logistics, cleaning, legal, security and catering services and others. These services are required only when there are ongoing activities. A good example is Traidlinks, a non-governmental organisation, which is now helping farmers in the Albertine Graben to supply food to oil camps. Other service providers are diversifying their products in order to compete for tenders in mega projects like hydropower dam construction and road projects.

The research found that the Petroleum Authority has not properly put the legislative precautions in place. There have been numerous reports of exploration and development companies importing some goods regardless of partnering with any Ugandan company. CNOOC has on many occasions been accused for importing simple building materials like cement from china while insisting that it of higher quality than that of Uganda.

Another major challenge with the joint venture suggested under Uganda’s petroleum laws is the requirement for the businesses entering into joint venture to have same or similar capacities with the foreign companies. The capacities needed here will basically be the need to provide capital, skills and knowledge as well as technology. The fact that most of the skills and technology will be provided by foreign companies makes it easy to have joint venture companies where Ugandan companies are merely fronted for the sake of winning the tender and the actual work and control of business is done by foreign companies with experience.

In a Nigerian petroleum JV, two or more oil companies enter into an agreement for a joint development of a jointly held OPL or OML. Each partner in the JV contributes to the operating costs and shares the benefits or losses of the operations in accordance with its proportionate equity interest in the venture. The Nigerian law seeks to establish a new legal and regulatory framework, institutions and regulatory authorities for the Nigerian petroleum industry, to establish guidelines for the operation of upstream and downstream sectors, and for purposes connected with the same.

### **3.6 Preferential Treatment for Uganda Goods and Services**

Section 74 (1) (f) & 125 (10) of the Petroleum (EDP) Act and Section 54 (11) of the Petroleum (Refining, Gas Processing and Conversion, Transportation and Storage) Act provide that companies licensed under the Act, their contractors and sub-contractors shall give priority to competent citizens of Uganda and registered entities owned by Ugandans in the provision of goods and services. Petroleum production license shall not be granted unless the applicant's proposals with respect to the procurement of goods and services available in Uganda are satisfactory.<sup>148149</sup>

All licensees under the two laws are required, within sixty days after the end of each calendar year, to furnish the Petroleum Authority with reports of their achievements and those of their contractors and sub-contractors, in utilizing Ugandan goods and services during that calendar year. Further under section. 125 (2)<sup>150</sup> it is espoused that where the goods and services required by the contractor or licensee are not available in Uganda, they shall be provided by a company which has entered into a joint venture with a Ugandan company provided that the Ugandan company has a share capital of at least forty eight percent in the joint venture.

It should be noted that much as the Act juxtaposes that within 60 days after the end of each calendar year, the licensee is obligated to provide the Authority with a report of its achievements and its contractors and sub contractors' achievements in utilizing Uganda goods and services during that calendar year, it is not compellable enough to the operator to strictly oblige himself

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<sup>148</sup> Section 74 (1) (f) & 125 (10) PEDP

<sup>149</sup> Section 54 (11)

<sup>150</sup> Section 12, PEDP

to the Act's provisions. The problem with this, the researcher found, is that it only directs the operator to give priority to the local service providers.

In Ghana, the regulation requires holders of mineral rights to hire a minimum proportion of local staff in various employment categories (subject to some exemptions, e.g., small companies, regional offices, etc.), with the MC working with mining companies to identify staff positions that can be filled by Ghanaians, local candidates who can be trained to replace foreign staff, a training program, and timing for local staff to replace foreign staff.

Peter Magelah Gwayaka in his paper<sup>151</sup> argued that Uganda's governing Act puts emphasis on “registered entities” as opposed to “companies.” The use of the word “registered entities” in both the PEDP Act and the Petroleum (Refining, Gas processing and conversion, Transportation and Storage) Act do not wholly promote local content because there are situations where foreigners register business entities in a country and this does not make such entities local entities. For example, Section 252 of the Companies Act 2012 mandates all companies incorporated outside Uganda with businesses in Uganda to register with the Registrar of Companies as a pre-condition to operating in Uganda.<sup>152</sup> Basically, the companies Act on this aspect tries to separate “incorporation” from “registration”.

The former being a process of forming a company while the latter a mere administrative requirement! On the other hand, using the place of incorporation as a determinant of a Ugandan company without proper restrictions would also leave out citizens by allowing foreigners to register/ incorporate companies in Uganda which would qualify as Ugandan companies. It is also not clear how the law treats a company registered outside Uganda by Ugandan citizens<sup>153</sup>

### **3.7 Presence of monitoring mechanisms**

Monitoring processes related to the implementation of national content regulations are well established. Licensees are required to submit quarterly and annual reports detailing their performance in this regard. These reports are evaluated by the PAU in relation to national

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<sup>151</sup> Magelah, P., G., (2014). Local Content in Oil and Gas Sector: An Assessment of Uganda's Legal and Policy Regimes. ACODE Policy Briefing Paper Series, No.28, 2014. Kampala.

<sup>152</sup> Section 252, Companies Act 2012

<sup>153</sup> Ibid.

content programmes prepared and submitted by licensees within 12 months after the granting of a license. As a result, even though there are no established ‘annual targets’ related to the participation of national industry, performance can be evaluated against company-specific plans that are ratified by the PAU.<sup>154</sup>

However, neither the company-specific plans for the use of national content, nor the reports of their achievements in this respect are made available to the public. The public release of documents detailing planned and achieved procurement of locally produced goods and services by IOCs (and their subcontractors) could enhance transparency, while providing an information resource for aspiring suppliers.

### **3.8 Methodology employed by Petroleum Authority of Uganda to Monitor, Evaluate and Regulate Local Content in Uganda.**

#### **3.8.1 Making a law on Local Content**

Parliament passed a law to provide for local content. The new law specifically provides for a better definition of Ugandan business entities, an independent authority to monitor compliance with national local content plans as well as monitor the development of national capacity among others.

#### **3.8.2 Create Institution to Manage Local Content**

Many countries have managed the local content aspect by creating a dedicated institution to manage the local content aspect not only in oil and gas but also in other sectors. Such an institution should have powers to oversee and monitor compliance with the policy and legal requirements for local content in Uganda including powers to punish businesses that violate the local content requirements. Parliament should by law create this institution which with powers to audit compliance with local content policies and laws in Uganda Mainstream other sectors in the oil and gas and extractive business.

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<sup>154</sup> However, there are annual targets laid out by the regulations related to the direct employment and training of Ugandan citizens. For instance, at least 30 per cent of management staff should consist of Ugandans at the start of petroleum activities. This should increase to at least 70 per cent within five years after the start of activities (part II, section 17 PEDP NC Reg.).

At present, there are disjointed efforts for the oil and gas sector. There is need to coordinate the work and activities leading to local participation in the oil and gas sector including coordinating sectors such as education, agriculture, fishing, tourism, manufacturing, transport, insurance, and other service providers. Government should come up and mainstream the other sectors and line them to provide goods and services or to benefit from the oil and gas sector.

### **3.8.3 Build Capacity for Industry Players**

Capacity has been built for training institutions which are targeting providing labor for the oil and gas market. This should be expanded beyond UPIK to include other institutions. Focus should also be put on developing capacity of institutions that will provide support services; this includes a wide range of areas such as business, agriculture, tourism, etc. Deliberate efforts should be dedicated to improving the performance of Ugandan businesses which in the long term should focus on making these businesses attractive to regional markets within the East African Community and beyond. The Private sector has tried to deliberately push for capacity building of Ugandan businesses for instance through the Stanbic bank business incubators. However, the drive should be by the Government.

### **3.8.4 Increase Inclusion in Decision Making**

In order to increase inclusion and participation of citizens, there is need to formalize the existing participation forums and ensure there are formalized processes of consultations at different levels. This will also enhance feedback at the community level and community involvement in decisions such as Corporate Social Responsibility (CSR), local participation and local content as well as other company or government interventions.

## **3.9 Conclusion**

It is important to note that the trend across Africa and several other developing countries has been developing specified policies, laws and institutions for managing local content issues for oil and gas or mining sector. Having such arrangements is aimed at ensuring the local content requirements are properly implemented in the extractives sector. A similar trend has been adopted by financial institutions including the World Bank in determining the local participation in oil, gas or mining sectors.

This chapter focused on local content requirements as a means to leverage the anticipated demand pull from oil and gas exporters to foster supplier capabilities in a wide range of ‘connected’ goods and service sectors. The summary of extensive (and fairly ‘specific’) local content requirements in Uganda’s oil industry, however, suggests that the government has thus far leaned principally on legal and regulatory instruments to force productive linkages to national industry. Instead, market-enabling policies that support domestic firms to overcome the sizeable barriers to entry into these global value chains are more likely to yield an implementable and durable pattern of supplier integration. The importance of a collaborative approach to local content (as opposed to a ‘command and control’ approach) is already becoming apparent on large infrastructure development projects in Uganda, where local firms are losing out due to their inability to meet standards, in spite of legal directives to source locally.

## CHAPTER FOUR

### SHORTCOMINGS FOR THE EFFECTIVE IMPLEMENTATION OF LC LAWS BY PETROLEUM AUTHORITY OF UGANDA

#### 4.1 Introduction

This chapter served to show the challenges that have been encountered by the petroleum authority in implementing local content laws. Once explained, recommendations will be aired on how to solve the highlighted challenges.

#### 4.2 Shortcomings in the Effective Implementation of Local Content Laws

The first challenge for Ugandan companies is that the licences are too costly as compared to Kenya and Tanzania in the East African Community. Despite pleas for preferential treatment from local business communities of Uganda, it appears that the status quo-of international oil companies dominating the region's oil and gas sector-will remain, at least for now. Not many locally-grown companies can afford to participate, even in the preliminaries, of such a bidding process. In Uganda, a company will need at least US\$ 750,000 to purchase the mandatory Bid Round Data Package (BRDP) for the offshore blocks that contains the requisite information for one to place an informed bid. Other more sophisticated data packages are going for as much as US\$ 3.375 million.<sup>155</sup>

It is impossible to place a bid without these data packages, which give scientific data enabling bidders to assess the chances of a block containing oil or gas. There are strict confidentiality rules attached to the purchase of this information, ruling out the possibility of different local companies sharing the information. In Tanzania, a company will need at least US\$ 750,000 to purchase the mandatory Bid Round Data Package (BRDP) for the offshore blocks that contains the requisite information for one to place an informed bid. Other more sophisticated data packages are going for as much as US\$ 3.375 million.

It is impossible to place a bid without these data packages, which give scientific data enabling bidders to assess the chances of a block containing oil or gas. There are strict confidentiality

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<sup>155</sup> Busharizi, Paul, 'Fact About Oil and Local Content,' New Vision, October 3, 2016.



rules attached to the purchase of this information, ruling out the possibility of different local companies sharing the information. In Kenya, any oil company intending to acquire an oil exploration licence will have to present audited accounts showing a minimum cash balance of at least one hundred million dollars. Successful bidders must also pay a signature bonus fee of one million dollars, and spend at least half a million dollars on “Community Development Projects” in the country every year.

The second challenge is that of stringent measures to take part in joint venture as required by the local content laws. The major issue with the joint venture suggested under Uganda’s petroleum laws is the requirement for the businesses entering into joint venture to have same or similar capacities with the foreign companies. The capacities needed here will basically be the need to provide capital, skills and knowledge as well as technology. The fact that most of the skills and technology will be provided by foreign companies makes it easy to have joint venture companies where Ugandan companies are merely fronted for the sake of winning the tender and the actual work and control of business is done by foreign companies with experience.

Other specific challenges affecting the success of local content policy and associated laws are volatility in commodity prices, long-term economic booms and busts, and unpredictability and uncertainty of resource revenues. Social costs or risks identified by the researcher in conducting social impact assessments for oil, gas and mining projects include community dissatisfaction resulting from seeing only basic works being given to local people. Demand for local goods as a result of local content policies can result in inflationary effect over certain basic goods that make them unaffordable for the local population.

Community perceptions that particular groups have been favoured in the allocation of employment or business opportunities can hurt social cohesion and lead to disputes within groups. The development of an educated, skilled labor market can affect a sense of community because these workers may move to other locations for employment. Unethical behaviours can also lead to community discontent. Some examples include the following: local content interventions being closely aligned with public officials’ or investors’ other local businesses; targets resulting in selection of contractors unable to meet prequalification without falsifying capabilities; extorting fees to be part of a tender list; authorization of single/sole sourcing

without appropriate governance arrangements; bid-rigging between contractors to increase prices; or bribing officials to provide certification.

In addition, Small and Medium-sized Enterprises (SMEs) whose sole or major client is an extractive company are vulnerable to that client's business cycles, and there may be little in the way of opportunities for diversification. This issue is compounded when the extractive project is in a remote location and is the only game in town, so to speak; underlying demand is set by a single source. Oil, gas and mining business cycles typically go from boom to bust over several years, and some cycles can last for decades. The competition for resources, such as water, electricity and land, can also reduce opportunities for local content. The resulting impacts on employment, income and investments in local businesses can have devastating effects on communities heavily dependent on the industry. Those in remote, inaccessible areas could be especially hurt.

#### **4.3 Conclusion**

This chapter showed the various challenges that are still plaguing Uganda. The researcher found that the high cost for licences are still affecting local oil companies. These high prices make it hard for the Ugandan companies to take part in. Additionally, the researcher found that there are stringent restrictions and measures that make it difficult for Ugandan companies to enter into joint ventures with international companies. Volatility of commodity prices, long term economic booms and bursts, and the unpredictability of resource revenue and some of the other challenges that were discovered. Lastly, the researcher found that there are some social concerns when it came to employment in the oil and gas sector for example nepotism, tribal favouritism and corruption.

To remedy the above challenges the researcher recommended that there is need to strengthen legislation to increase local employment and skill development; promote sustainable domestic production linkages through policy interventions; establish enterprise development and vocational training centres; increased access to finance by Local Small and Medium Scale Enterprises and partnership among stakeholders for local content development.

## **CHAPTER FIVE**

### **SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATION**

#### **5.1 Introduction**

In this chapter, the researcher summarized the study, discussed, drew conclusions and made recommendations accordingly. The conclusions and recommendations were made from the findings that were analysed, interpreted and presented in the previous chapter. The main objective of the study was assessing the role of the Petroleum Authority of Uganda in monitoring, evaluation and implementation of local content in Uganda's petroleum sector.

#### **5.2 Summary of Findings**

Local content in Uganda is governed by both the national and international laws. Internationally, Uganda has to conform to Trade-Related Investment Measures (TRIMS), General Agreement on Trade in Services (GATS) and individual BIT agreement guidelines. Uganda has been member of the WTO since January 1, 1995. And like all World Trade Organization (WTO) Members, Uganda must adopt and abide by the obligations of TRIMs. This can impact a country's ability to impose certain local content requirements (referred to as "investment measures"), to the extent they affect trade in goods. General Agreement on Trade in Services ("GATS"), covers investment measures related to services (in Article XVI), including the following which are relevant to local content: requirements to use domestic service suppliers; limits on the number of service suppliers; limits on the total value of service transactions or assets; limits on the total number of service operations or quantity of service output; limits on the total number of natural persons permitted; and restrictions on or requirements for certain types of legal entities (for example joint venture requirements).

Nationally, local content is governed by a number of policies, legislations, regulations and contracts. Policy-wise, local content is governed by the national Oil and Gas Policy, the National Industrial Policy, the National Employment Policy and the Buy Uganda Build Uganda policy. Legislatively, local content administration is placed mainly in the hands of the Petroleum Authority by the Petroleum (Exploration, Development and Production) Act, 2013; the Petroleum (Refining, Conversion, Transmission and Midstream) Act, 2013; and the Public

Private Partnership Act, 2015. This provides for promotion of participation of Ugandans as private parties in the Public Private Partnerships. It also provides for the stimulation of growth and development through harnessing private sector innovation and efficiency.

On the issue of effectiveness, the Authority is mandated to review the national content programme referred to under some of the sub regulation above and may propose amendments to the programme. The research found that this regulation has been properly upheld by the petroleum Authority as the initial three IOCs, Tallow, CNOOC and Total E&P all submitted their plans for national content. These reports were reviewed and passed prior to issuing them exploration and development licences. These regulations have not been followed to the letter however, and this has been mainly due to the delay in the oil productions. Some accusations can also be thrown the way of the Authority for not putting in place measures to ensure the national content plans are properly implemented.

In order to ensure validity and authenticity, the researcher found that the verification process is expected to take not less than two months from the day of submission of an application through the PAU website and it involves verification of the information submitted with other government agencies including URSB, URA and NSSF for Ugandan companies and consultation with foreign missions in the country for foreign companies.

On the issue of technology transfer, every licensee is required to submit to the Authority for approval an annual plan, satisfactory to the Authority, setting out details and initiatives aimed at promoting the effective transfer of technology, technical know-how and skills relating to petroleum activities from the licensee to the Government of Uganda, Ugandan companies, Ugandan citizens and registered entities. The research found that technology transfer and training program are designed prior to the application for the license. The technology transfer required is a shared responsibility between the Government and the licensee. The Regulations which will prescribe the requirements and parameters for the technology transfer of knowledge and skill to Ugandan employees working in the midstream petroleum value-chain are yet to be formulated.

Furthermore, it was discovered that locally owned service providers in Uganda's oil and gas sector are opting for joint ventures with international companies in preparation for the production phase, which is capital intensive. Sources in the industry informed the researcher that

production will demand more specialised skills, huge capital investment, complex technology and high standards. The research found that the Petroleum Authority has not properly put the legislative precautions in place. There have been numerous reports of exploration and development companies importing some goods regardless of partnering with any Ugandan company. CNOOC has on many occasions been accused for importing simple building materials like cement from china while insisting that it of higher quality than that of Uganda.

Uganda should pick a leaf from its neighbours like Kenya and Tanzania when it comes to implementation of local content regulations. In Kenya, the key legislation is the Petroleum (Exploration and Production) Act. The Act provides for preference to employ and train Kenyans in petroleum operations and to give preference to use of products, equipment and services locally available. The Model PSC indicates the context to be where prices, quantities, quality and timelines of delivery are comparable with non-Kenyan nationals/suppliers. The Production Sharing Contract can only be signed by companies incorporated or registered in Kenya.

### **5.3 Recommendations**

#### **5.3.1 Parliament**

Inadequate local capacity has been a major constraint to the impact of policies aimed at increasing access to opportunities through employment and the supply of goods, services. There is the need for complementary specific regulations and policies for the transfer of know-how and skills related to oil, gas and mining operations by the international companies to local enterprises and workers where the skills are available. A related strategy should be to encourage and incentivize local companies to form joint ventures with foreign companies to ensure a more direct way of knowledge and technology transfer to local enterprises. The strategy should include details such as metrics to measure the performance of the international companies in delivering know how and skills so that compliance by the foreign companies can be monitored.

#### **5.4.2 Government**

It was quite clear that the adoption of local content development strategy was the result of the desire outlined in their National Development Plans to increase domestic production linkages through the exploitation of oil, gas and mining resources. The Government recognized that

developing backward and forward linkages will enhance employment, skills development and national industry participation of local enterprises in the sector. However, a common regulatory policy adopted by Uganda is predominantly reflected in domestic ownership rather than creating domestic linkages with other sectors, thereby limiting local value added.

To promote sustainable domestic production linkages, Uganda must put in place effective monitoring mechanisms to ensure that incentives provided are used for creating local enterprises that contribute to local value addition in the country. In this regard, building a conducive business environment will enhance the confidence of local and international investors and boost their participation in the sector. This could lead to expanding linkages between the sector and the broader economy.

### **5.4.3 Private Sector**

Uganda has created enterprise development and vocational training centres with the support of the foreign oil and gas companies like CNOOC. In most cases, these centres focus their programmes and activities on short-term capacity building to meet the immediate needs of the oil, gas and mining companies without a well-developed strategy for a long-term sustainable vocational training for skills development and the creation of employment opportunities in the industry. Enterprise development and vocational training centres should be spread across the country rather than being concentrated mostly in the capital cities to give opportunities to talents that are outside their locations and thereby increase the participation by the population in oil, gas and mining activities.

For the local content policy and regulations to achieve their intended impact on the local economy there is need for partnership between the government, industry and civil society organisations, particularly in, skills development and local supplier development programmes. Such partnership will create opportunities for small and medium enterprises to access skills development programmes, technical mentoring and support for the development of business management skills. It will also enhance access to finance as well as institutional strengthening that will create an enabling environment for local SME development.

The role of government can be to provide institutional infrastructures and incentives required by the industry to promote employment and skill development programmes. The civil society organisations can mobilise industry support for these programmes through advocacy while the industry will use its technical knowledge and expertise to implement the programmes. This partnership can also help to strengthen regulatory compliance through human capacity building and a constructive oversight of companies' local content plans and achievements.

#### **5.4.4 NGO/CSO**

There is the need to complement the capacity building of local small and medium enterprises with access to finance that will enable them to expand their activities and better compete with foreign firms operating in the oil, gas and mining industries in the various countries. Even though Uganda has put in place some measures to enable SMEs access finance from financial institutions, the local banks are still reluctant in granting the needed working capital to local enterprises. Therefore, there is need for a deliberate policy by the government to provide loan guarantee and insurance schemes to SMEs so that banks will be encouraged to lend to SMEs operating in the oil, gas and mining industry.

#### **5.5 Suggestions for Further Research**

During the research process, the researcher found out that local content is not only for the petroleum Authority to regulate, despite having the vast majority of responsibilities. Further research should be undertaken on how other government petroleum bodies like the national Oil and Gas Company, the Ministry of Energy and mineral Development and the Bank of Uganda have utilized the Uganda population for employment and provision of oil and gas services and goods.

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## Annex 1: Introduction Letter



Institute of Petroleum  
Studies - Kampala

2<sup>nd</sup> February, 2020

The Executive Director,  
Petroleum Authority of Uganda,  
Plot 34 – 36 Lugard Avenue  
P.O.BOX 833  
Entebbe, Uganda

Dear Sir,

**RE: INTRODUCTION FOR MR. EDWARD RWABUSHENYI TO CONDUCT RESEARCH IN YOUR ORGANISATION**

Greetings in the precious name of our Lord.

I wish to introduce to you the above-named person, who is a master's student pursuing Master of Laws Oil and Gas, of Uganda Christian University in affiliation with the Institute of Petroleum Studies Kampala (IPSK).

His proposal has been approved by our vetting committee and is in the process of collecting data. Mr. Rwabushenyi would wish to conduct research in your organization.

The title of his research is **"Assessing the Role of the Petroleum Authority of Uganda in Monitoring, Evaluation and Implementation of Local Content in Uganda's Petroleum Sector"**

By copy of this letter, all respondents are notified that this study is for academic purposes and as an Institution, we request you to cooperate in facilitating this very interesting research project.

Sincerely,

James Mugerwa  
DEAN OF STUDIES



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