

**AN ASSESSMENT OF THE LEGAL AND POLICY REGIMES ON LOCAL CONTENT  
IN UGANDA’S OIL AND GAS INDUSTRY**

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INSTITUTE OF PETROLEUM STUDIES KAMPALA WITH TO UCU.**

**MARCH, 2020**

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I, Waiswa PAINENTO, hereby declare that this dissertation is my work and it has not been submitted before to any other institution of higher learning for fulfilment of any academic award

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Signature.....

**DR. ANTHONY C.K. KAKOOZA**

**UNIVERSITY SUPERVISOR**

Date .....

## **DEDICATION**

This dissertation is dedicated to my parents Mr. Sephatia Kalinaki who recently made 86 years of age and Mrs. Florence Kalinaki for their endless prayers and encouragement.

A special dedication goes to my amazing wife Kemigisa Mable who has always stood as my strongest pillar in this journey.

And my silent inspirations my son Epaenetus Kalinaki and the one who never made it to witness this outcome.

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This accomplishment would not have been possible without you.

## LIST OF ACRONYMS

ACODE	Advocates Coalition for Development and Environment
AfDB	African Development Bank
BTVET	Business, Technical and Vocational Education and Training
BUBU	Buy Uganda Build Uganda
CNOOC	China National Offshore Oil Company
CSR	Corporate Social Responsibility
DPR	Department of Petroleum Resources
EAC	East African Community
ECT	Energy Charter Treaty
EEA	European Economic Area
EITI	Extractive Industries Transparency Initiative
FDI	Foreign Direct Investment
FID	Final Investment Decision
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
HSE	Health, Safety and Environment
IGG	Inspector General of Government
IOCs	International Oil Companies
IOFP	Indigenous Oil Firms' Participation
IPSK	Institute of Petroleum Studies Kampala
JV	Joint Ventures
JVP	Joint Venture Partner
LCPs	Local Content Policies
LCR	Local Content Regulations
MDAs	Ministries, Departments and Agencies
MEMD	Ministry of Energy and Mineral Development
MEMD	Ministry of Energy and Mineral Development
MIA	Ministry of Internal Affairs
MoES	Ministry of Education and Sports
MoFPED	Ministry of Finance, Planning and Economic Development
MoGLSD	Ministry of Gender, Labour and Social Development
MoTIC	Ministry of Trade, Industry and Cooperatives
MPSA	Model Production Sharing Agreement
NDPII	National Development Plan Two

NEITI	Nigerian Extractive Industries Transparency Initiative
NNPC	Nigerian National Petroleum Corporation
NOCs	National Oil Companies
NOGP	National Oil and Gas Policy
NOGTR	National Oil and Gas Talent Register
NORAD	Norwegian Agency for Development Cooperation
NPC	National Pipeline Company Limited
NSD	National Supplier Database
NVTI	Nakawa Vocational Training Institute
OECD	Organization for Economic Co-operation and Development
OML	OIL Mining License
OPEC	Organization of the Petroleum Exporting Countries
OPL	Oil Prospecting License
PAU	Petroleum Authority of Uganda
PDPs	Productive Development Policies
PEDP	Petroleum Exploration, Development and Production
PEPD	Petroleum Exploration and Production Department
PMU	Project Management Unit
PPDA	Public Procurement and Disposal of Public Assets Authority
PPE	Personal Protective Equipment
PPMS	Procurement Performance and Measurement System
PSA	Production Sharing Agreement
PTDF	Petroleum Technical and Development Fund
PTI	Petroleum Training Institute
R&D	Research and Development
SDFI	Direct Financial Interest
SME	Small and Medium Scale Enterprises
TRIMs	Trade-Related Investment Measures
TVET	Technical, Vocational Education and Training
UCU	Uganda Christian University
UNOC	Uganda National Oil Company
UPIK	Uganda Petroleum Institute Kigumba
URHC	Uganda Refinery Holding Company Limited
UTAMU	Uganda Technology and Management University
UTC	Uganda Technical College
WTO	World Trade Organization

## **ABSTRACT**

Many countries engaged in oil and gas production are introducing requirements for participation commonly referred to as 'local content'. The purpose of the study was to assess the legal and policy regimes on local content in Uganda highlighting gaps in the existing legal and policy regimes and recommending areas of reform with specific objectives to provide an in-depth assessment of the efficacy of oil and gas local-content legislation in Uganda; to compare and highlight lessons learnt in the implementation of the local content policy in Uganda, Nigeria and Norway; and to provide recommendations on local content policy best practices for the Government of Uganda in oil and gas industry. The study is premised on the conceptual framework that independent variables of legal and policy regimes should deliver dependent variable of local content in Uganda's oil and gas industry and analyzed the theoretical framework of local content policy (LCP) indigenous firms' participation and infrastructure contingent theories. The study found that government is employing Product Sharing Agreements (PSA) with contractors to involve local content where Articles 17 and 18 of the Model PSA provide for local content for purchases in Uganda and employment of Ugandans respectively. The Petroleum (Exploration, Development and Production) (National Content) Regulations 2016 have tried to fill the gaps presented by the Petroleum Acts 2013 and PSA. The study concludes that Uganda has so far done well to have the Local Content Policies in place before commercial oil has been delivered to the market. The study concludes that Local content in the oil and gas sector in Uganda broadly focuses on involving citizens in the sector. This is through training and building capacity for citizens, technology transfer, employment and service provision. The research recommends that Parliament should pass a law to provide for local content specifically to provide 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 besides creating an institution to manage local content. The study further recommends capacity building for training institutions which are targeting providing labour for the oil and gas market as well as increase in inclusion in decision-making and participation of citizens.



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### **International**

Principle 10 of the Rio Declaration on Environment and Development, 2012.

The African Charter on Human and Peoples Rights, 1986.

Stockholm Declaration, 1072.

United Nations Environment Programme, 1997.

Kyoto Protocol of the United Nations Framework Convention on Climate Change, 2002.

General Agreement on Trade in Services (“GATS”),

### **Regional**

The Treaty of the East African Community (EAC), 1999.

The EAC Protocol on Wildlife Conservation and Law Enforcement, 1999.

The EAC Protocol on Environment and natural Resources Management, 2006.

The Environmental Assessment Guidelines for Shared Ecosystems in East Africa, 1994.

The IGAD (Intergovernmental Authority on Development) Agreement, 2007.

## **TABLE OF REGULATIONS**

### **National (Uganda)**

National Environment (Management of Ozone Depleting Substances and Products) Regulations, 2001.

National Environment (Noise Standards and Control) Regulations, 2003.

The Petroleum (Exploration and Production) (Conduct of Exploration Operations) Regulations S.I No. 150-1.

The Petroleum (Exploration, Development and Production) (National Content) Regulations, 2016.

### **Foreign**

The 1997 Petroleum Regulation of Norway

Model Petroleum Production Licenses in 1974, 1979, 1981, 1988, and 1991.

(“1974/1979/1981/1988/1991 License”).

## **TABLE OF POLICIES**

### **National (Uganda)**

Model Product Sharing Agreement (PSA) 2016.  
Oil and Gas Revenue Management Policy, 2012.  
The National Oil and Gas Policy, 2008.

### **Foreign**

Standard Petroleum Exploration & Production Agreement- Norway  
Frame Agreement for Offshore Petroleum Technology Research & Development Activities-  
Norway  
Model Training Agreement Concerning Petroleum Activities- Norway

## **TABLE OF STATUTES**

### **National (Uganda)**

Petroleum (Exploration, Development and Production) Act, 2013.  
Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, 2013.  
Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, 2013.  
Petroleum Supply Act 2003.  
The Constitution of the Republic of Uganda, 1995.  
The Petroleum (Exploration, Development & Production) Act 2013.  
The Local Content Act 2020

### **Foreign**

Royal Decree of December 8, 1972 (“1972 Royal Decree”) of Norway.  
The 1985 Petroleum Act of Norway.  
The 1996 Petroleum Act of Norway.  
Nigeria passed the Oil and Gas Industry Content Act in 2010  
Nigeria Minerals Oils Act 1914  
Nigerian Oil and Gas Industry Content Development Act 2010

## CHAPTER ONE

### GENERAL INTRODUCTION

#### 1.1 Introduction

Many countries engaged in oil and gas production are introducing requirements for participation commonly referred to as ‘local content’. This is increasingly so in the developing world mainly in Africa, Asia and Latin America. Local content requirements are mainly in form of policy and regulatory measures that focus at increasing use of the locally available labour, technology and other resources in the oil and gas sector. The focus is on transfer of technology by companies engaged in the extractive resource sector to the native people of a particular nation with a hope of assuring them income, employment and ultimately sustainable development.<sup>1</sup>

Uganda is no exception to the observation that many citizens of resource-rich countries especially in the developing world are mere spectators. After the announcement of commercially viable quantities of petroleum in the country, there was excitement about the developments the new resource would bring. Ugandans have been excited at the potential for development, improvement of household incomes and general living standards once petroleum revenues start flowing. However, it is not always as rosy as it looks. Uganda will need stringent macro and micro economic policies to enable the economy sustain the negative impacts that petroleum might have on the economy.<sup>2</sup>

This chapter brings forth the background of the study upon which the problem statement is extracted. This is followed subsequently by the research objectives and the research questions. The scope of the study is the explained followed by the significance and justification of the study. The chapter concludes with theoretical framework upon which it is based.

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<sup>111</sup> Peter Matthews and Matthew Lynch (2011) Local content strategy: A guidance document for the oil and gas industry. IPIECA. London.

<sup>2</sup> Muhwezi, et.al, (2009). Crafting an Oil Revenue-Sharing Mechanism for Uganda: A Comparative Analysis. ACODE Policy Research Series, No. 30, 2009. Kampala.



## 1.2 Background of the Study

There are a number of definitional issues that need to be recognized when discussing LCPs. In broad terms, LCPs are government interventions that look to increase, in the long term, the share of employment or of sales to a sector that are locally supplied at each stage of the value chain.<sup>3</sup> They are part of a broader category of policy interventions called productive development policies (PDPs). PDPs (or industrial policies) can be broadly defined as initiatives that aim to strengthen the productive structure of a particular national economy.<sup>4</sup> This broad definition includes any measure, policy, or program aimed at improving the growth and competitiveness of large sectors of the economy (manufacturing, agriculture), specific sectors (textiles, automobile industry, software production, and so on), or key activities (research and development, exports, fixed capital formation, human capital formation).<sup>5</sup> The final objective is to “raise growth and improve the competitiveness of the overall economy while maintaining a rising trend in living standards.”<sup>6</sup>

After World War II, countries tried to diversify their productive sector through various policies. The reasons behind this trend were diverse. In Latin America, for example, many were concerned that the region had specialized in natural resources. Prebisch<sup>7</sup> argued that resource-based Latin American countries should diversify their economies, lest they develop at a slow pace due to the decrease in relative commodity prices over time.<sup>8</sup> In the case of Asian countries, the argument was slightly different: the idea was that they had the comparative advantage to develop labor-intensive sectors that also had a relatively high level of education.<sup>9</sup>

This period witnessed a raise in protectionism and the use of a very complex system of policies, including LCPs, aimed at fostering the development of the productive sector. For example, the licensing of technology by foreign firms to local suppliers was critical to the development of Asian

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<sup>3</sup> Kinyondo, A., & Villanger, E. (2017). Local content requirements in the petroleum sector in Tanzania: A thorny road from inception to implementation? *The Extractive Industries and Society*, 4(2), 371-384.

<sup>4</sup> Cornick, Jorge, Eduardo Fernández-Arias, and Ernesto Stein. "The Challenge of Public Capabilities for Successful Productive Development Policies: Hopeless Task or Pragmatic Program?" (2016).

<sup>5</sup> Acheampong, Theophilus, Marcia Ashong, and Victoria Crystal Svanikier. "An assessment of local-content policies in oil and gas producing countries." *The Journal of World Energy Law & Business* 9, no. 4 (2016): p. 282-302.

<sup>6</sup> Bartelme, Dominick, Arnaud Costinot, Dave Donaldson, and Andres Rodriguez-Clare. *Economies of Scale and Industrial Policy: A View from Trade*. Working paper, 2018.

<sup>7</sup> Prebisch, Raul. "Towards a new trade policy for development." *ECLAC Thinking, Selected Texts (1948-1998)*. Santiago: ECLAC, 2016. p. 211-238 (2016).

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

countries' productive sectors.<sup>10</sup> *República Bolivariana de Venezuela* passed a hydrocarbons law that forced oil companies to refine oil in *República Bolivariana de Venezuela*.<sup>11</sup> Brazil President Vargas<sup>12</sup> proclaimed that Petrobras, the national oil company, should use only Brazilian capital, workers, and know-how. Developed economies were not immune to LCPs.<sup>13</sup> For example, Nordas, et al<sup>14</sup> argue that:

*even if Norway did not have specific requirements as to the share of local content ... the oil companies never doubted that the Norwegian government and politicians appreciate the choice of local firms to supply the oil and gas activities with goods and services, and were pretty sure that this would be honored in negotiations for future licenses. Thus, during the late 1970s and early 1980s local firms probably were chosen even if they were not the most cost effective.*<sup>15</sup>

Existing literature suggests that differences in policy instruments and objectives could help to explain differences in countries' performances. In general terms, it seems that countries that: (1) focused on exports and productivity; (2) had a stable macroeconomic environment; (3) were more concerned about activities than sectors; and (4) clearly, explicitly, and publicly disclosed the government objectives, were more likely to develop sizeable and complex productive sectors.<sup>16</sup> Countries that lacked these characteristics tended to develop noncompetitive productive sectors that (over time) generated sizeable economic costs.

In the 1980s governments that had made use of PDPs started to reverse their course. The shift was reinforced by a push for more trade liberalization, with the Uruguay Round and the creation of the World Trade Organization (WTO), and by the need to implement market reforms in developing countries that were facing a debt crisis.<sup>17</sup> New priorities included securing property rights, ensuring fiscal discipline and sectoral neutral taxation, strengthening expenditure policies, liberalizing the financial sector, introducing unified and competitive exchange rates, opening to foreign trade and investment, privatizing, and deregulating.<sup>18</sup> This set of policies became known

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<sup>10</sup> Tordo, Silvana, Michael Warner, Osmel Manzano, and Yahya Anouti. *Local content policies in the oil and gas sector*. The World Bank, 2013.

<sup>11</sup> Sinnott, Emily, Bidjan Nashat, and Augusto De la Torre. *Natural resources in Latin America and the Caribbean: beyond booms and busts?* The World Bank, 2010.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Nordås, Hildegunn Kyvik, Eirik Vatne, and Per Heum. "The upstream petroleum industry and local industrial development: a comparative study." (2003).

<sup>15</sup> Ibid.

<sup>16</sup> Ibid Supra Note 7.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

as the Washington Consensus. This approach did not deny the existence of market failures and externalities. But the risks associated with “government failures” in attempting to correct for market failures were considered so high that it was better to abstain from intervention. As a result, many countries started to undo their PDPs.<sup>19</sup>

As time passed, disappointing results in many developing countries and the Asian financial crisis of the late 1990s contributed to a crisis of faith in the Washington Consensus, which triggered a renewed interest in targeted policy interventions. Indeed, Asian economies are often looked to as models: they have derived great benefits from increasing integration with the international economy, and without surrendering national autonomy in economic and cultural spheres, by pursuing decidedly non-neutral policies with respect to the promotion of specific industrial activities.

China’s PDPs are regarded as a successful case of economic diversification. As argued in Rodrik (2006), the Chinese government’s targeted policy interventions have helped nurture domestic capabilities in consumer electronics and other technologically advanced sectors that would most likely not have developed in their absence.<sup>20</sup> To this end, foreign investors were required to form joint ventures with local companies, to transfer technology, and to source their inputs locally. New evidence on the effect of the promotion of foreign direct investment (FDI) suggests that, when combined with policies aimed to foster the transfer of technology, FDI is likely to drive faster and more sustainable productivity gains for local producers.<sup>21</sup>

Following the discovery of oil and the enactment of the 1993 Petroleum Exploration and Production Act, many Ugandans are predicating their future on the anticipated benefits from oil.<sup>22</sup> Consistent with this expectation, the goal of the 2008 oil policy is to use the country’s oil and gas resources towards poverty eradication and creating lasting value to society. The ultimate objective of the oil and gas policy is to develop the local content which is the transmission mechanism of the benefits from oil activities to the local economy.<sup>23</sup> Local content includes among others the

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<sup>19</sup> Ibid.

<sup>20</sup> Negroita, Marian, and Fred Block. "Networks and public policies in the global south: The Chilean case and the future of the developmental network state." *Studies in Comparative International Development* 47, no. 1 (2012): p. 1-22.

<sup>21</sup> Harrison, Ann, and Andrés Rodríguez-Clare. "Trade, foreign investment, and industrial policy for developing countries." In *Handbook of development economics*, vol. 5, p. 4039-4214. Elsevier, 2010.

<sup>22</sup> Nseera, Edirisa. *Understanding the Prospective Local Content in the Petroleum Sector and the Potential Impact of High Energy Prices on Production Sectors and Household Welfare in Uganda*. African Development Bank, 2016.

<sup>23</sup> Ibid

development and transfer of expertise to local companies, which allow optimum national participation in oil and gas transactions and activities. The most important channel through which the economy benefits is through forward and backward linkages.<sup>24</sup> It is noteworthy that the country is not yet at a production stage, it is envisioned that production will commence in 2020.

### **1.3 Problem Statement**

Uganda has been pushing in recent years to capture economic rents as well as increasing local participation in the value chain of equipment and services that support the petroleum sector. However, compared to other productive sectors, building inter-sectoral linkages in the petroleum industry is especially challenging due largely in part to the unique disposition of the petroleum industry in terms of capital outlay, technological complexities and high skill-level output.

For host governments, the tendency to increase value adding directly translates into replacing domestically manufactured products and services for imported products and services or generating local jobs by replacing domestic labour for foreign labour.<sup>25</sup> For international oil companies (IOCs) operating in these places, they obtain production licenses in Joint Ventures (JV) with government. For example, the government of Uganda has 15% interest in the licenses through its subsidiary the Uganda National Oil Company (UNOC) as specified in the Production Sharing Agreement (PSA) signed with the International Oil Companies (IOCs) which are Tullow Uganda Operations Pty Limited and Total E&P Uganda B.V.<sup>26</sup>

In an effort to balance the trade-off where the host nation is also seeking global partners to produce financial diversity, local content policies (LCPs) are the main vehicle used to achieve the objective. LCPs have acquired collective significance within the broader range of petroleum and gas policies over the previous two centuries. Since the implementation of the Norwegian local content structure in the early 1970s,<sup>27</sup> there has been an observable paradigm shift from the philanthropic or ad-hoc model of corporate social responsibility (CSR)<sup>28</sup> to a value-based economic model, with

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<sup>24</sup> Aladeitan, Lanre, Robert Alex Wabunoha, and Chidinma Therese Odaghara. "Harnessing oil as natural resource wealth: a focus on the legal frameworks of Nigeria and Uganda." In *Law/ Environment/ Africa*, p. 267-292. Nomos Verlagsgesellschaft mbH & Co. KG, 2019.

<sup>25</sup> Tordo and others, *Local-content Policies in the Oil and Gas Sector* (The World Bank 2013).

<sup>26</sup> Uganda issues eight oil production licences to Tullow and Total. *Uganda Business News*, 30<sup>th</sup> August 2016.

<sup>27</sup> KH Norda's and others, 'The Upstream Petroleum Industry and Local Industrial Development: A Comparative Study', SNF Report No08/03 (Institute for Research in Economics and Business Administration 2003).

<sup>28</sup> R Auty, 'The Oil Curse: Causes, Consequences and Policy Implications' in RE Looney (ed), *Handbook of Oil Politics* (Routledge 2012) p. 337-48.

governments wishing more participation in high-skilled operations attained through the cumulative commitments imposed on foreign. The evolution from the former guideline-oriented strategy to a policy / legal strategy has been constant, but in latest years it has gained traction. With the exception of a couple of nations, objectives for local jobs, the use of local facilities and workers, sanctions for non-compliance and benchmark surveillance are now described or established.<sup>29</sup>

Two main variables drive the changing patterns: on the one side, the growing scarcity of petroleum and gas resources and rising project expenses (and ongoing price volatility), and on the other, the evolving significance of NOCs. This knowledge has led host governments to develop legislation aimed at capturing much of that capital production, thereby establishing an inextricably dependent system between them and their contractors. Simply put, local-content regulations are intended to secure for host nations, a piece of that global spend pie; thus, the higher the percentage derived by the host nation, the more successful the local content regulations are perceived to be.

However, these results are not often guaranteed by the presence of LCPs alone. In many times, heavy dependence on LCPs has helped to increase the cost of the project by disrupting the delivery of products.<sup>30</sup> There may be concerns about whether the objectives themselves would lead to local procurement rates that exceed local suppliers' ability to satisfy global requirements.<sup>31</sup> Targets on the use of local capabilities and services have led dramatic spikes in skill shortages (because in-country abilities are unable to satisfy business requirements), and unrealistic local content goals have resulted in enhanced local supply chain expenses.

## **1.4 Research Objectives**

### **1.4.1 General Objective**

To assess the legal and policy regimes on local content in Uganda highlighting gaps in the existing legal and policy regimes and recommending areas of reform.

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<sup>29</sup> MZ Ngoasong, 'How International Oil and Gas Companies Respond to Local Content Policies in Petroleum Producing Developing Countries: A Narrative Enquiry' (2014) 73 Energy Policy p. 471–79.

<sup>30</sup> Take for instance Brazil's local-content rules which have recently been faulted with ramping up costs, compounding in manpower shortage and contributing to cost inflation.

<sup>31</sup> M Warner, Local-content in Procurement: Creating Local Jobs and Competitive Domestic Industries in Supply Chains (Greenleaf Publishing Ltd 2011) p. 24.

## **1.4.2 Specific Objectives**

1. To provide an in-depth assessment of the efficacy of oil and gas local-content legislation in Uganda.
2. To compare and highlight lessons learnt in the implementation of the local content policy in Uganda, Nigeria and Norway.
3. To provide recommendations on local content policy best practices for the Government of Uganda in oil and gas industry

## **1.5 Research Questions**

1. What is the efficacy of oil and gas local-content legislation in Uganda?
2. How does Uganda's implementation of the local content policy compare to Nigeria and Norway, and what lessons can be learnt?
3. What are the recommendations on local content policy best practices for the Government of Uganda in oil and gas industry?

## **1.6 Scope of the Study**

### **1.6.1 Content Scope**

This study was limited to legal, policy and institutional reviews of local content in the oil and gas industry in Uganda. It basically reviewed the existing laws and policies as well as institutions to support local content and local content development in Uganda. The study also borrows on experience from other countries in relation to how those countries have treated local content issues in their laws.

### **1.6.2 Time Scope**

The study looked at the effects of the local content policy dating back to the last 12 years of oil and gas activities; given it is during this period that we see the Government of Uganda commence to accept bids, license oil companies to operate in Uganda.

### **1.6.3 Geographical Scope**

This research was mainly based on a national scale seeing as to how the local content legislations in question only affect Uganda, its citizens and those investors looking to take part in its Oil and

gas Sector. Particularly, the study was centered around Kampala, with the main participants being the Legal bodies, legislators and Oil and Gas companies; of which many have headquarters in the Capital.

#### **1.6.4 Significance of the Study**

Government of Uganda: Local content in the oil and gas sector in Uganda broadly focuses on involving citizens in the sector. This is through training and building capacity for citizens, technology transfer, employment and service provision. Given the fact that Uganda's oil and gas sector is still growing, there is need for exerting more deliberate efforts to ensure that citizens competitively take part in the sector through exploitation of the existing opportunities. One of the ways has been through government providing for Ugandans to take part in the sector is through local content.

International Oil Companies (IOCs): The Local Content laws and Policies (LCP) enable IOCs to implement straight forward plans for employment of the local population and technology sharing. In addition, it is an element of Corporate Social Responsibility (CSR).

#### **1.6.5 Justification of the Study**

Government and private players in Uganda need to build capacity and capital to be able to effectively play a role in the industry. The present legal protection for Ugandan companies may not be enough to deliver results in the oil and gas industry. The alternative is there is need to have particular services and goods ring-fenced to be supplied only by Ugandan business entities and those which cannot be supplied, can be left for foreign companies' subject to periodic reviews. This will ensure smooth transition from foreign owned businesses to fully Ugandan controlled businesses after the transfer of technological and capital.

### **1.7 Theoretical and Conceptual Frameworks for Local Content in Oil and Gas**

The study is premised on the conceptual framework that independent variables of legal and policy regimes should deliver dependent variable of local content in Uganda's oil and gas industry. However, this ideal relationship is always affected by other policies like the Public-Private Partnership Framework policy 2010 where expatriates dominate some jobs. The Policy provides a framework that enables public and private sectors to work together to improve public service

delivery by drawing on the capabilities of the private sector in providing public infrastructure and related services. Public-Private Partnerships are an innovative approach to addressing the problems of service delivery to the poor by involving local content.

The study analyses the theoretical framework of local content policy (LCP) indigenous firms' participation and infrastructure contingent theories. First, based on existing studies, the researcher linked LC policy effects to indigenous firms' participation, backward linkages, and job creation to capture policy-entrepreneurial outcomes in a model. Second, the researcher demonstrated the direction of the relationships between these variables. Based on the infrastructure contingent theory. The researcher also included infrastructure, as a contingent factor, in the model. The study analysed the local policy indigenous firms' participation theory and Infrastructure Contingent Factor Theory as hereunder discussed.

### **1.8. The LC Policy Indigenous Firms' Participation Theory**

The researcher postulates that entrepreneurial activities may be influenced by external factors. Such external influence is often seen in the form of government intervention in an economic sector, such as encouraging local entrepreneurship. This has been identified in previous studies<sup>32</sup>, where it was argued that there is a direct link between government intervention policies and entrepreneurship development. This is also referred to as the "opportunity theory".<sup>33</sup>

According to Ihua<sup>34</sup> and Obuaya,<sup>35</sup> government entrepreneurial policy is a set of deliberate actions towards building domestic capacity relevant to quality service and product delivery that are needed in an industry. The researcher also considered that entrepreneurship is a function of government policy, which in many instances is an antecedent for increasing employment.<sup>36</sup> In the context of LC policy, the expected outcomes of indigenous oil firms' participation (IOFP) are improved backward linkages in terms of high procurement of locally produced input materials and increased

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<sup>32</sup> Sternberg, Rolf, and Sander Wennekers. "Determinants and effects of new business creation using global entrepreneurship monitor data." *Small business economics* 24, no. 3 (2005): p. 193-203.

<sup>33</sup> Adedeji, Abdulkabir Niran, Shaufique Fahmi Sidique, Azmawani Abd Rahman, and Siong Hook Law. "The role of local content policy in local value creation in Nigeria's oil industry: A structural equation modeling (SEM) approach." *Resources Policy* 49 (2016): p. 61-73.

<sup>34</sup> Bellema Ihua, Ugwushi, Olatunde Abiodun Olabowale, Kamdi Nnanna Eloji, and Chris Ajayi. "Entrepreneurial implications of Nigeria's oil industry local content policy: Perceptions from the Niger Delta region." *Journal of Enterprising Communities: People and Places in the Global Economy* 5, no. 3 (2011): p. 223-241

<sup>35</sup> Obuaya, T. "Local content implementation in Nigeria: a road map." In *Nigerian oil and gas conference, Abuja, Nigeria*, p. 18-20. 2005.

<sup>36</sup> Ibid Supra Note 2.



job creation for the local workforce. This is a systemic way of promoting economic development through increased domestic entrepreneurial activities.<sup>37</sup> It is also assumed that there are positive relationships among the variables through which job creation is affected.

### **1.9. Infrastructure Contingent Factor Theory**

In addition, infrastructure contingent factor theory is viewed as a factor conditional for investments and an important element that influences business activities in an economy.<sup>38</sup> Morris<sup>39</sup> noted that infrastructure facilities, such as power supply, water, transportation, communication, and internet services, often facilitate entrepreneurship and are the contextual drivers of backward linkages development.<sup>40</sup> Government policy is more likely to be successful in ensuring active participation of local firms in businesses when it is complemented with adequate infrastructure.<sup>41</sup> As a complementary factor, infrastructure is assumed to be positively and directly associated with firms' participation and backward linkages through which more job opportunities could be created.

### **1.10. Limitations of the study**

There is an influx on the study materials that are readily available right from the laws to the scholarly journals and articles which infringes on the ability to produce consistent results but this was overcome by the researcher limiting on the scope of materials to use in the study.

There was a delay in data collection because the application of the doctrinal method found that some materials were found to be outdated and some search engines returned thousands of links with a considerable number outdated or irrelevant to the objectives of the study.

During the course of the research many of the scholarly materials and journals that were relevant to the study required subscription before they could be accessed which indirectly reduced on the quality of the research by limiting the sample size. However the researcher subscribed and bought some of the materials that was used in the study.

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<sup>37</sup> Bakare, A. S. "Local content policy in oil sector and the capacity utilization in Nigerian manufacturing industry." *Business and Management Review* 1, no. 6 (2011): p. 82-92.

<sup>38</sup> Ibid Supra Note 2.

<sup>39</sup> Morris, Mike, Raphael Kaplinsky, and David Kaplan. "'One thing leads to another'—Commodities, linkages and industrial development." *Resources Policy* 37, no. 4 (2012): p. 408-416.

<sup>40</sup> Morris, Mike, Raphael Kaplinsky, and David Kaplan. "'One thing leads to another'—Commodities, linkages and industrial development." *Resources Policy* 37, no. 4 (2012): p. 408-416.

<sup>41</sup> Ibid.

## **CHAPTER TWO**

### **LITERATURE REVIEW**

#### **2.1 Introduction**

This chapter is particularly concerned with the review of the literature related to Local Content Policies in Oil and Gas Producing Countries. The literature is reviewed generally, but guided by the research objectives and goes out to show what scholarly material exists that covers the objectives and also shows how the study will fill in the gaps left by such scholarly material. This is reviewed with due consideration to Local Content Policies in Oil and Gas Producing Countries in Uganda, Nigeria and Norway. The research objectives are: to provide an in-depth assessment of the efficacy of oil and gas local-content legislation in Uganda; to compare and highlight lessons learnt in the implementation of the local content policy in Uganda, Nigeria and Norway; and to provide recommendations on local content policy best practices for the Government of Uganda in oil and gas industry.

#### **2.2 An in-depth assessment of the efficacy of oil and gas local-content legislation in Uganda**

It is well-known that many resource-rich developing countries, particularly in Africa, have not benefited satisfactorily from the exploitation of their natural resources. Though they receive significant fiscal benefits from the export of natural resources, the development linkages to other economic sectors remain marginal in terms of domestic value added and employment creation. For this reason, the countries are placing increasing emphasis on the need to derive more benefits from their natural resources.

Local content policies have been adopted by African countries as a development strategy aimed at increasing the benefits from the oil and gas and mining sector. In this context, we define local content as the extent to which the output of the extractive industry generates further benefits to the economy beyond the direct contribution to the Gross Domestic Product (GDP) and government

revenues, through its linkage to other domestic production sectors. Therefore, the objective of local content policy is to transform the short-term benefits of natural resource extraction into long-term local economic development outcomes through capacity strengthening, institutional building and strategic policy tools to promote domestic economic linkages, job creation and the participation of local Small and Medium Scale Enterprises (SMEs) in the value chain via the supply of goods and services to the sector.

Countries that adopt local content as a development strategy for their extractive sectors usually start by developing local content frameworks that encompass policies, laws and institutions to manage and monitor the outcomes of the policies. While a well-developed local content framework is a valuable starting point, there are other factors that can shape their successful implementation. Mapping these factors is challenging since each country exists under particular conditions and these factors might function differently depending on the context.

### **2.2.1 Local Content Legal and Policy framework in Uganda**

The year 2019 marked 13 years since Uganda announced the existence of commercially viable petroleum deposits. Since this announcement in 2006 a lot of efforts have gone in the making of laws and policies that will govern the sector and see to it that the country maximises the benefits of exploiting its oil and gas reserves.<sup>42</sup> One major concern for government, the citizens and all the actors has been how Ugandans will benefit from the oil and gas sector. Concerns have been raised on whether the sector can provide employment for citizens, use locally produced goods and services as well as exploit local resources to transfer technology that can kick start other sectors of the economy.<sup>43</sup> The debate has tended to be around local content and how much local content will be utilised by the sector.

On the other hand, the debate has been on whether there is enough local capacity to deal with the employment, technology and service needs for the oil and gas industry. Questions have also been raised on standards of locally provided goods and services and whether they can meet the demands

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<sup>42</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 ISBN 978 9970 34 031 6.

<sup>43</sup> Ibid.

of the industry. On overall there is an agreement that the oil and gas industry should involve Ugandans and should in as much as possible employ Ugandans and Ugandan goods and services.<sup>44</sup> What seems to be a disparity is whether Uganda has capacity to provide the goods, services and skills necessary for the sector?

Many countries engaged in oil and gas production or mining are introducing requirements for participation commonly referred to as ‘local content’. This is increasingly so in the developing world mainly in Africa, Asia and Latin America. Local content requirements are mainly in form of policy and regulatory measures that focus at increasing use of the locally available labour, technology and other resources in the oil and gas sector. The focus is on transfer of technology by companies engaged in the extractive resource sector to the native people of a particular nation with a hope of assuring them income, employment and ultimately sustainable development. The development of local content has basically been a result of recognition that after years of oil and gas or mineral exploitation in many developing countries, little seems to be transferred to the citizens of these resource-rich countries in form of technology and employment.<sup>45</sup> Many citizens of resource-rich countries especially in the developing world tend to be mere spectators. This trend continues to exist in spite of the fact that many mining and petroleum companies in the developing world are given incentives such as tax holidays with a hope that they will be able to exploit the resource, provide employment for the natives and develop infrastructure which would enable the economy to develop.

Uganda is not exception to the observation that many citizens of resource-rich countries especially in the developing world are mere spectators. After the announcement of commercially viable quantities of petroleum in the country, there was excitement about the developments the new resource would bring. Ugandans have been excited at the potential for development, improvement of household incomes and general living standards once petroleum revenues start flowing. However, it is not always as rosy as it looks. Uganda will need stringent macro and micro economic policies to enable the economy sustain the negative impacts that petroleum might have on the

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<sup>44</sup> Ibid.

<sup>45</sup>Peter Matthews and Matthew Lynch (2011) Local content strategy: A guidance document for the oil and gas industry. IPIECA. London.

economy.<sup>46</sup> The need to fight the mismanagement of the oil resource that has been characteristic of most oil producing countries in the developing world is of paramount importance. It is necessary to have in place measures to avoid the “Dutch disease”<sup>47</sup> and the resource curse such as conflicts<sup>48</sup>. Many scholars have argued that the “Dutch disease” and resource conflicts are basically a result of poor management of resources in the country. The failure to exploit resources sustainably and enable citizens take part in decision making and employment greatly contributes to conflicts emanating from natural resource endowments. Economic challenges such as the Dutch disease are a result of failing to link natural resource exploitation with other sectors of the economy like agriculture, tourism and industrial development. The lack of involvement of citizens in the exploitation and use of the natural resources sector greatly hinders the trickledown effect of a resource like oil consequently resulting in negative effects to the economy.

Uganda government has in place the National Oil and Gas Policy (NOGP). Secondly, the country has in place the upstream and midstream laws to govern and regulate the oil and gas sectors but the downstream bill is still being considered by parliament. It is important for these laws and policies to provide for citizen participation and safeguard citizens roles in the oil and gas sector.

### **2.2.2 Local Content versus Citizen Participation in Uganda**

Citizen participation in oil and gas sector has become a slogan of sorts across many countries in Africa. Different countries have made laws and policies to provide for local content where citizens can be employed, provide services or get a direct benefit from the sector. However, what many countries have not done is to increase citizen participation. There is often confusion when it comes to discussion of citizen participation as a concept and issues of local content. Whereas citizens can participate through local content, this is rather one of the forms of participation and it is not conclusive. It would therefore be wrong to conclude that there is citizen participation just because you have local content law and policies. Basically, citizen participation involves processes that

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<sup>46</sup>Muhwezi, et.al, (2009). Crafting an Oil Revenue-Sharing Mechanism for Uganda: A Comparative Analysis. ACODE Policy Research Series, No. 30, 2009. Kampala.

<sup>47</sup> The “Dutch Disease” is a term used to describe an economic situation faced by many resource rich developing countries. The term is used to describe a situation where production and export of natural resources such as Oil and Gas or Minerals results into economic situation other exports from the country become less desirable which results in slowing down other sectors of the economy and over dependency on the particular resource. This in the end exposes the economy to negative forces of the sector (e.g. oil price fluctuation, “dying” of other sectors like agriculture and industry) and later affects economic development.

<sup>48</sup> Collier, P. (2010): The Political Economy of Natural Resources. *Social Research*, 77(4):1105-1132.

provide for individuals in a community an opportunity to influence public decisions that affect them.<sup>49</sup> The definition can further be extended to include the process in which ordinary people take part – whether on a voluntary or obligatory basis and whether acting alone or as part of a group – with the goal of influencing a decision involving significant choices that will affect their community.<sup>50</sup> Citizen participation involves a wide range of activities and systems that ensure views of an individual citizen are included in decision making processes.

The term “*citizen participation*” involves two important items namely; the ‘*citizens*’ and ‘*participation*’. Used in strict sense “*citizen participation*” would mean only citizens of a country take part in decision-making. However, this is not always the case since there are other persons not necessarily citizens of a country that are entitled to take part in decision making. Different scholars tend to suggest that citizen participation should look at benefits accruing to those most in need and moving away from the legal definitions of citizenship.<sup>51</sup> For example, “*citizen participation*” has been described by Cunningham<sup>52</sup> to focus on (a) members of the community who have no formal source of power except their majority numbers (the ordinary person in society), (b) exercise of power by those at a lower level of the community (power relations between the led and the leaders) and making decisions involving a significant number of community members.<sup>53</sup> Some scholars have argued that this should focus on getting local ownership of projects and other forms of interventions through increased participation by residents (as opposed to citizens).<sup>54</sup> In simple terms, citizen participation involves power relations between members of a community and their leaders and the ability of that community irrespective of where it is located to take part in decisions and activities that affect them.

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<sup>49</sup> Cogan, A, Sharpe, S, & Hertzberg, J. (1986): Citizen participation. In So, F. S, Hand, I, & Madowell, B. D. (Eds.), *The Practice of State and Regional Planning. Municipal Management Series*. Chicago: American Planning Association.

<sup>50</sup> André, P. et al. (2006): *Participation publique: principes internationaux pour une meilleure pratique*, Publication spéciale, Série no. 4, Fargo (ND): International Association for Impact Assessment. Available at [http://www.dictionnaire.enap.ca/dictionnaire/docs/definitions/definitions\\_anglais/citizen\\_participation.pdf](http://www.dictionnaire.enap.ca/dictionnaire/docs/definitions/definitions_anglais/citizen_participation.pdf)

<sup>51</sup> Thomas Webler (1995): “Right” Discourse in Citizen Participation: An Evaluative Yardstick. *Technology, Risk, and Society* Volume 10, 1995, p. 35-86. Also See Cogan A (ibid) and Cunningham J. V

<sup>52</sup> Cunningham, J. V. (1972): “Citizen Participation in Public Affairs,” *Public Administration Review*, vol. 32, Special Issue: Curriculum Essays on Citizens, Politics, and Administration in Urban Neighbourhoods, p. 589-602.

<sup>53</sup> Ibid

<sup>54</sup> André, P. et al. Ibid also see Rowe, G. and L. J. Frewer (2005): “A Typology of Public Engagement Mechanisms,” *Science, Technology, & Human Values*, vol. 30, no. 2, p. 251-290.

Participation on the other hand involves taking part in processes that lead to the decision or taking part in arriving at the decision itself.<sup>55</sup> This does not mean the individual's views have been taken up but rather the individual's views were considered in the process of arriving at a decision. Such a kind of participation can be direct for instance, taking part in an election or being part of a meeting that arrived at a decision or indirect through a representative. This can range from national or regional representation such as parliament to representation at a lower level such as village council or family.<sup>56</sup>

From the above definitions, it is important to appreciate that citizen participation is a much broader concept that may include various democratic processes for a country. In Uganda's case, these may include a wide range of systems from electoral democracy, governance such as central or local government to group formation, role of voluntary associations and how different players in society are contributing to the oil and gas sector.

It is important to note that there is a tendency to mix 'local content' and 'citizen participation' in Uganda. A lot of communication tends to claim that there is promotion of citizen participation through local content, which is not the case. Many times, local content limits itself to employment of citizens, transfer of technology and service provision leaving out the most important aspect of citizen participation which is 'participation in decision making'. From the many policy and legal documents in Uganda, there is actually local content as opposed to citizen participation. This paper focuses on local content in Uganda's oil and gas sector as opposed to citizen participation.

### **2.2.3 Oil and Gas Local Content in Uganda**

Local content in the oil and gas sector in Uganda broadly focuses on involving citizens in the sector. This is through training and building capacity for citizens, technology transfer, employment and service provision. Given the fact that Uganda's oil and gas sector is still growing, there is need for exerting more deliberate efforts to ensure that citizens competitively take part in the sector

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<sup>55</sup>OECD (Organisation for Economic Co-operation and Development). 2001: Citizens as Partners: OECD Handbook on Information, Consultation and Public Participation in Policy-Making. Paris: OECD. Tina Nabatchi (2012): A Manager's Guide to Evaluating Citizen Participation. Fostering Transparency and Democracy Series 2012. Available at <http://unpan1.un.org/intradoc/groups/public/documents/UN-DPADM/UNPAN048340.pdf> accessed on 14th July 2019.

<sup>56</sup>Tina Nabatchi (2012): A Manager's Guide to Evaluating Citizen Participation. Fostering Transparency and Democracy Series 2012. Available at <http://unpan1.un.org/intradoc/groups/public/documents/UN-DPADM/UNPAN048340.pdf> accessed on 14th July 2019

through exploitation of the existing opportunities. One of the ways has been through government providing for Ugandans to take part in the sector is through local content. Government is in the process of making policies and laws that will ensure citizens take part in the oil and gas sector. This policy briefing paper tackles the present but is also futuristic and analyses the different policy and legal provisions and how they will contribute to delineation of local content in the oil and gas sector as well as identifying gaps that need to be addressed.

#### **2.2.4 Training and Capacity Building for Citizens**

Participation of citizens in the oil and gas sector will require capacity building and training of citizens to work in the sector. Training needs to focus on building capacity for direct employment in the sector and for services auxiliary to the sector. There is also need to build capacity for other sectors to avoid reliance on the oil and gas sector.

The NOGP recognises the need for national participation through employment, training and skills development and service provision in the sector. Under objective 7 of the NOGP; government seeks to ensure optimum national participation in oil and gas activities. Similarly, objective 8 of the NOGP seeks to support strategies for development and maintenance of national expertise in the oil and gas sector. Some of the strategies government intends to use to achieve the above objectives include: Promotion of state participation in Production Sharing Agreements with a view of providing better opportunities for the state to understand the basis for decisions in exploration, development and production, together with acquiring the skills necessary for commercial management of the sector; Promotion of public private partnerships whose benefits outweigh their cost, and whose costs and benefits are mutually and fairly shared by the partners.; Encourage civil society to participate in the building of a productive, vibrant and transparent oil and gas sector; Promotion of employment of Ugandans in the oil and gas sector; Promotion of transfer of skills and technology to the country; Identifying training skills required for the sector and planning for their development through both formal and industrial training; Utilizing oil and gas activities in the country to support provision of the necessary training; Provide appropriate training to Government personnel in the relevant fields as one of the ways to facilitate professional dialogue with oil companies; and Broaden the national education curricula to prepare the necessary workforce for the growing oil and gas sector in the country.



Whereas the foregoing programs and strategies for training Ugandans are good for capacity building, there is need to reform Uganda's education sector to meet the demands for the industry. For example, there are no systems to determine what kind of capacity is needed for the sector and whether the training programs submitted by oil companies will meet these capacity needs at present. There is no link between the Petroleum Authority which is the main regulatory agency and the Ministry of Education and Sports and The National Curriculum Development Centre to develop training content that will enable Ugandans take part in the sector. At present there is no proper system or institution charged with vetting the kind of training Ugandans need in relation to oil and gas. Most of the training is based on individual institutional choice of training programs. There are also no mechanisms for directing company scholarships to building skills that relate to the industry.

### **2.2.5 Uganda's Capacity Needs for the Oil and Gas Sector**

Government has not done Training Needs Assessment or other forms of capacity needs assessment for the oil and gas sector and the only existing data is the study conducted by the joint partners<sup>57</sup> involved in the oil and gas sector. This means Uganda will have to rely on data provided by industrial players. The challenge with this data is it was gathered and analysed in the lenses of an industrial player seeking to maximise profits and this may not necessarily reflect the needs of the country.

The industrial survey data<sup>58</sup> reveals that the Oil and Gas sector will employ 13,000 people in the construction phase (within 3 to 5 years), this will drop to 3,000 people in the operational phase (20- 30 years). Out of this manpower required 15% will be engineers and managers, 60% will be technicians and crafts-persons and 25% will be unskilled workers.<sup>59</sup> The industrial survey recommends that focus in education should be put on civil construction, electrical and mechanical fields.

The industrial survey<sup>60</sup> indicates that existing capacity gaps in the sector such as limited qualified civil crafts-persons, drivers, mechanical technicians among others. The survey expresses fear that

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<sup>57</sup> These include Tullow Oil, CNOOC and Total Ltd who have active licenses in Uganda today.

<sup>58</sup> See CNOOC, Total and Tullow (2014) Planning for the future and promoting national content: A survey to foster opportunities for Ugandans in the Oil and Gas sector.

<sup>59</sup> Ibid.

<sup>60</sup> Ibid

some areas such as welders and electrical technicians could be “dried out” depriving them of other sectors. On the other hand, a total of 100,000 indirect jobs will be created by the sector. These will be involved in a wide range of activities that have direct or indirect support to the sector ranging from agriculture, textiles, road construction, and information technology among others.

From the findings of the industrial survey,<sup>61</sup> the following stand out as key issues needing action for local content; the need to develop capacity in the technical and engineering areas; the need for certification for those trained to get international recognition; and the need to focus on other sectors that support the industry. From the industry survey it is clear that technical training for Ugandans will be an important aspect of capacity building for persons to take part in the oil and gas sector.

### **2.2.6 BTVET Training for Oil and Gas in Uganda**

The Business Technical, Vocational Education and Training (BTVET) policy and Strategic Plan 2011-2020 provides for skilling Uganda with a special focus on the oil and gas sector. The Strategic Plan is drawn from the draft BTVET Policy that sets out to develop demand-responsive, employable skills and competencies relevant to the labour market needs for Uganda. BTVET training in Uganda is supposed to be achieved through creation of centres of excellence within the petroleum sector targeted at the apparent skills gaps. Because of the gaps in the BTVET policy and strategic plan, Cabinet is considering a proposed Skilling Uganda Technical, Vocational Education and Training (TVET) Reform Policy. The reform policy seeks to provide and enable technical institutes and polytechnic colleges provide tailored vocational training based on industrial needs and the needs of specific sectors. At present this is not possible since all training institutes have to follow a curriculum approved by Ministry of Education and Sports (MoES) and the Curriculum Development Centre. There have been attempts to reform BTVET training in Uganda to focus on oil and gas. Government has introduced courses at university and tertiary level<sup>62</sup> with former Cooperative Institute getting transformed into Petroleum Institute.<sup>63</sup> On top of these, there are several private institutions offering courses in petroleum ranging from law, finance, and economics, among others.

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<sup>61</sup> Ibid

<sup>62</sup> Makerere University, the biggest government University introduced courses in Petroleum Geosciences while Makerere Business School introduced business courses targeting oil and gas sector.

<sup>63</sup> Kigumba was transformed from a cooperative college to a petroleum institute by the Universities and Tertiary Institutions (Establishment of Uganda Petroleum Institute, Kigumba) statutory instrument, 2011, SI No. 31 of 2011.

The Uganda Petroleum Institute, Kigumba (UPIK) was created as a response to the various capacity need for the oil and gas sector. UPIK is expected to train Ugandans in the different skills to be able to provide labour for the oil and gas sector. According to UPIK's strategic plan 2014-19, a Sector Skills Council consisting of sector players for the oil and gas sector will be created, the SCC will be mandated in assisting UPIK in reviewing different courses and curricula to modify and fit them to the sector needs and demands.<sup>64</sup>

Presently there is debate on the location of UPIK, whereas UPIK is presently located within the Ministry of Education and Sports (MoES), the feeling is that the institute together with other related institutes should be located in the ministry responsible for petroleum and be under the direct control of the Petroleum Authority of Uganda (PAU) to be able to provide sector driven courses and skills and provide oversight and feedback on the quality of products from the training institutes.<sup>65</sup>

On the other hand, the capacity needs for the oil and gas training institutions needs to be reviewed. At present government has not reviewed the capacity of technical institutions which will provide training for oil and gas sector jobs. Whereas instructors at UPIK and Nakawa Vocational Training Institute (NVTI) have had some basic training for the oil and gas sector, the same cannot be said of other technical colleges. This will greatly undermine the nature of skills imparted by these institutions. At present UPIK is able to graduate about 200 students in a year, this is a small number compared to the 10,000 or more qualified personnel that will be needed for the construction phases. There are plans to have other technical institutes incorporated in the oil and gas sector, however efforts seem to be focused on only Uganda Technical College (UTC) Kicwamba and NVTI, however these need to be brought on board before the construction phase begins.

It should be noted that by design UPIK focuses on providing skills for direct employment in the oil and gas sector and may not necessarily focus on other support sectors. However, there is need

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<sup>64</sup>UPIK (2014) Institute Development Plan, 2014-2019.

<sup>65</sup> Ibid.

to link BTVET training with direct and indirect services to the oil and gas sector. For example, BTVET training needs to focus on other sectors like textiles industry, road construction, mining and agriculture among others. This will ensure the support sectors provide goods and services that are competitive for the oil and gas sector.

### **2.2.7 Local Content and Procurement from Ugandan Suppliers**

One of the approaches proposed under Uganda's petroleum policies and laws is procurement of goods and services from Ugandan suppliers. The Ugandan suppliers mean Ugandan citizens (or residents) as well as business entities. What actually amounts to a Ugandan local supplier is still conceptually problematic. The upstream and downstream laws provide different definitions, but also broadly the question of how local should the local entity be remains to be answered. For Uganda's case, the following questions need to be answered: What should constitute "local" business entity or a local supplier?; What parameters should be used to determine a local company/business entity?; What should be the relationship between the local supplier and other international businesses operating in the country?; and What level of control should citizens have over the foreign suppliers/businesses operating in the country (for example is employing citizens or having citizens as shareholders enough to qualify someone)? There is an attempt to answer the above questions in Uganda's petroleum policy and the laws. However, several gaps exist.

### **2.8.8 Parameters that should be used to determine a Local Company/Business Entity in Uganda**

The debate in Uganda for service providers in the petroleum sector and local content has focused on local companies and the question of how 'local' a local company should be. Many commentators on petroleum producing areas would love to see priority given to companies operated or owned by persons hailing from areas where the petroleum resources are found while others believe petroleum being a resource for the nation, any citizen should take part. The upstream law provides for affirmative action in training, employment and transfer of technology for Ugandan citizens in favour of host communities. However, there is no affirmative action when it

comes to provision of services.<sup>66</sup> The reasons for not providing affirmative action for host communities when it comes to service provision is mainly because there may be no local businesses capable to compete favourably in the oil and gas sector and yet these could be available at the national level. The fact that petroleum is a national resource means that all Ugandans should be given a chance to benefit from the resource.

### **2.2.9 The Relationship between the Local Supplier and Other International Businesses Operating in Uganda**

The question of the relationship between local suppliers and international businesses arises from the capacity and expertise of local companies to work in the industry. Generally, whereas the NOGP recognises the role of national companies and businesses and the need to develop their capacity to take part in the sector, there are great gaps when it comes to implementing the policy. The Upstream and Midstream laws provisions create major challenges on how Ugandans can take part. Uganda's laws make it mandatory for foreign companies to enter into joint ventures with Ugandan businesses to be able to provide goods and services for the sector. Joint Ventures (JVs) in the world have proven to be some of the best ways through which international companies can expand their sphere of influence through working with local companies. JVs are also important when it comes to technology transfer and skills development for countries that may not have the technology. However, the businesses in countries where JVs are to be developed need to have a certain level of knowledge, skill and capital to be able to run the JVs. Uganda's businesses are starting to get involved in the oil and gas sector and this may hinder their ability to effectively exploit the JVs. When it comes to products or services that cannot be easily procured on the Ugandan market or supplied by Ugandan businesses

Whereas the requirement to have Ugandan businesses owning 48% of share capital is good for the country, the challenge will be in the capital and other technical requirements to enter into such JVs. Some aspects of the oil and gas sector require extensive capital and many Ugandan businesses

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<sup>66</sup> S. 126(s) of upstream Act provides the programme submitted by licensee shall provide for the training and recruitment of Ugandans in all phases of petroleum activities and shall take into account gender, equity, persons with disabilities and host communities.

may not be able to provide such capital. Besides, there is a requirement for technology which may not be easily provided by Ugandan companies. This normally results into challenges in operating the JV. Research has found that partners contributing less to the JVs are less committed to the success of the project since their role is limited<sup>67</sup>. This might create several “lazy” Ugandan businesses entering the industry through JVs and legal protection. The other aspect is the fact that ownership of stake in a JV company should be comparable to what the other party is contributing. The question here will be whether Ugandan companies are able to provide 48% capital or skill or technology to the specific JV companies they enter into.

Government and private players in Uganda need to build capacity and capital to be able to effectively play a role in the industry. The present legal protection for Ugandan companies may not be enough to deliver results in the oil and gas industry. The alternative is there is need to have particular services and goods ring-fenced to be supplied only by Ugandan business entities and those which cannot be supplied, can be left for foreign companies’ subject to periodic reviews. This will ensure smooth transition from foreign owned businesses to fully Ugandan controlled businesses after the transfer of technological and capital.

#### **2.2.10 Determination of Local Content, Experiences from the Other Institutions in Uganda**

A 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.

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

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<sup>67</sup>Beamish P. (1988) multinational joint ventures in developing countries. London Routledge.

by financial institutions including the World Bank in determining the local participation in oil, gas or mining sectors. Below is a summary of how different institutions and countries have handled the issue of local content.

### **2.2.11 The World Bank**

The World Bank does not have specific provisions for local content. However, it provides guidance for local procurement. Local procurement here is determined based on three major pillars;<sup>68</sup> Level of participation of citizens in the company. This is mainly across ownership, management and employment. Local companies are judged based on who owns the company its management (control of the company) and the number of citizens employed in the company; the level of value addition. This is based on amount of local input in the product. This is based on use of local materials, local technology or local human resource in the making of the product. This test focuses on the real contribution of the product to the economy in terms of use of local resources, employment and technology; and whether a product is manufactured locally, or a service is delivered locally. This focuses on the geographical location of the company. Preference is given to companies located in the country or in the region. Sometimes, this also deals with the local location of the company. Companies located within the local vicinity of the petroleum or mining establishment are given priority.

## **2.3 Comparison and highlight lessons learnt in the implementation of the local content policy in Nigeria and Norway**

### **2.3.1 Local Content legal regime in Nigeria**

Nigeria passed the Oil and Gas Industry Content Act.<sup>69</sup> The law is meant to enforce the local content policy. It aims at providing for the development of Nigeria Content in the Nigerian Oil and

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<sup>68</sup> See World Bank (January 2012) Increasing Local Procurement by the Mining Industry in West Africa. Report No. 66585-AFR.

<sup>69</sup> Oil and Gas Industry Content Act 2010.

Gas industry; for Nigerian Content Plan; for supervision, coordination, monitoring and implementation of Nigerian content and for matters incidental thereto.<sup>70</sup>

The Nigerian law creates a Nigerian Content and Monitoring Board which is tasked with monitoring compliance with local content requirements. In addition to the board, there is a Nigerian Content Consultative Forum whose role is sharing information on local content issues such as procurement information, company requirements and involvement of citizens. Nigeria is endowed with an array of mineral deposits, of which none are as important to the nation's economy as crude oil and gas.<sup>71</sup> Initially only British subjects, and later the Shell Group, were entitled to explore for petroleum, and hence participate in the oil and gas industry in Nigeria.<sup>72</sup> Following the country's independence in 1960, local involvement emerged through state participation, which fundamentally modeled the concept of LC to include state participation through a national oil company. Upon joining the Organization of the Petroleum Exporting Countries (OPEC),<sup>73</sup> state participation increased heavily, and emphasis was laid on the renegotiation of agreements to give the national oil company powers to administer this interest.<sup>74</sup> Consequently, the regulatory, fiscal and contractual systems of the Nigerian petroleum industry have undergone significant restructuring from inception to the present date.

Although the Minerals Oils Act<sup>75</sup> contains a LC provision, this was never adhered to in practice. Following her independence, Nigeria put this provision into practice (from establishing training programs to formulating legislation) to ensure that IOCs operating in the industry trained local personnel within the sector. The authorities applied the provisions of the Minerals Oils Act<sup>76</sup> to all oil mining leases (OMLs) retrospectively, which required lessees to initiate a technical training program for the employment of Nigerians as tradesmen and craftsmen. In addition, lessees were

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<sup>70</sup> Preamble/long title to the Oil and Gas Local Content Act, 2010.

<sup>71</sup> Together, oil and gas generate more than 80% of the country's total national revenue and over 90% of its foreign exchange earnings and contributes about 36.5% of its GDP. Proven oil reserves amount to 40 billion barrels, daily production is about 2.4 million barrels of crude oil and the estimated earnings of the extensive petroleum industry are around USD 36 billion per year. See Oil and Gas: Major Industry Policies, Federal Ministry of Industry, Trade and Investment, available at <http://fmiti.gov.ng/component/content/article/36-oil-a-gas/98-oil-a-gas.html>. Also, in the past five years, over 65,000 direct employment and 250,000 non-direct employment positions have been created in the oil industry alone

<sup>72</sup> For a detailed early history of oil production in Nigeria, see Schatzl Ludwig, *Petroleum in Nigeria*, 1-5 (Nigerian Institute of Social and Economic Research, Ibadan 1969).

<sup>73</sup> Nigeria joined Organization of the Petroleum Exporting Countries (OPEC) in the 1970s.

<sup>74</sup> Federal Ministry of Finance, *Report of the Fact-Finding Mission on Petroleum Taxation: Problems Affecting Petroleum Revenue and Miscellaneous Matters on the Petroleum Industry* (Federal Ministry of Finance, Lagos 1969).

<sup>75</sup> Minerals Oils Act 1914.

<sup>76</sup> *Ibid*



required to train Nigerians with professional backgrounds to take up suitable managerial and senior managerial posts.<sup>77</sup> The only downside to these LC requirements was the lack of specific goals and a mechanism to ensure that rules were complied with. This eventually led to several laws being enacted, as briefly discussed below.

### **2.3.1.2 Indigenous Policy**

The indigenization policy often referred to as “Nigerianization” means a framework that encourages active participation of indigenous companies in the oil & gas industry. This concept can be viewed as having mainly evolved from the Niger Delta region,<sup>78</sup> which then spread further to the entire country. In 1989 the government introduced the indigenization policy to retain ownership and control of the sector.<sup>79</sup> The policy involved the allocation by the regulatory authorities of oil acreages to indigenous oil companies,<sup>80</sup> based on guidance criteria which were interpreted with broad discretion. The criteria involved four basic principles: (a) the grants were made on a discretionary basis based on existing seismic data; (b) ownership of the grantee company truly resided with Nigerians as beneficial owners and not as nominees of foreign entities; (c) a grantee was deemed the operator with a Nigerian managing director; and (d) the grantee was entitled a farm-out with or without the existence of a technical agreement.<sup>81</sup> Most importantly is that the grantee could have foreign technical partners but with no more than forty percent participating interests.

The aim of the policy was to promote the participation of Nigerians in the petroleum sector. Even though some Nigerians held managerial positions in the upstream sectors because of the PTI and PTDF Acts, very little Nigerianization and transfer of technology had taken place. This policy was heavily criticized with several irregularities, as noted in the findings of the Christopher Kolade Enquiry.<sup>82</sup> The issues identified mainly concerned levels of transparency in respect of the

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<sup>77</sup> Ibid.

<sup>78</sup> For a detailed discussion, see Asume Isaac Osuoka, Oil and Gas Revenues and Development Challenges for the Niger Delta and Nigeria.

<sup>79</sup> Indigenization policy was administered from 1989 to 2000.

<sup>80</sup> The first set of grants was made in the 1970s and 1980s to Henry Stevens Company, Nigus Petroleum and Niger Delta Oil Co. Later, Dubri Oil acquired a concession by assignment from Philips Oil Company Ltd. in 1987.

<sup>81</sup> Ibid.

<sup>82</sup> See Alexander’s Gas and Oil Connections, Nigerian Government to Sue Ex-Minister Dan Etete over Disputed Oil Block (August 24, 2002), available at <http://www.gasandoil.com/news/africa/ba0e13562819681eaf76d3c307775119>.

allocation of participation rights, following which 31 oil production licenses that had been awarded to indigenous companies were revoked in February 2000.<sup>83</sup> This effectively marked the end of the indigenization policy. Although the process of its implementation was flawed, which rendered its objective obsolete, the policy did, however, prompt the growth of some indigenous oil companies that remain active in the upstream sector.<sup>84</sup>

### **2.3.1.3 Allocation of Marginal Fields to Locals**

Local participation later re-emerged in the form of the allocation of marginal fields<sup>85</sup> to indigenous companies, which forms a constituent part of the indigenization policy (discussed above) in respect to the oil sector.<sup>86</sup> The first Marginal round in Nigeria was conducted in 2001. This allocation was carried out pursuant to the Petroleum (Amendment) Decree.<sup>87</sup> Arguably this was a blow to the industry, with IOCs arguing strongly against the policy of farming out marginal fields to Nigerians. The government also intended to carry out petroleum activities with operating companies involving the farming out of un-produced, unapprised or abandoned fields on existing OMLs to independent lease holders on a periodic basis on the basis of this decree. The 2nd Marginal Field Licensing Round was conducted in 2013. The Department of Petroleum Resources (DPR) issued the Guidelines.<sup>88</sup> These guidelines set out the procedure to be followed in the bidding for 31 (thirty-one) marginal fields of which 16 onshore and 15 offshore fields are available for indigenous companies (substantially Nigerian owned) to grapple with. Each indigenous applicant could only bid a minimum of 3 marginal fields.<sup>89</sup>

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<sup>83</sup> 56 See Shuabeeb Bode, How Feasible Is Nigeria's Policy of Increasing Petroleum Production? available at <http://www.dundee.ac.uk/cepmlp/gateway/?news=27956>

Anthony A. Akinola, Nigeria: The Nation's History of Corruption, The Guardian (15 January 2015), available at: <http://allafrica.com/stories/201501151062.html>

<sup>84</sup> Zebra Energy, Conoil Upstream arm, Oando and Sahara Oil.

<sup>85</sup> According to Nigerian law, fields are classified as marginal if among other factors they have been left unattended for over a period of time after discovery but a minimum of 10 years.

<sup>86</sup> In order to understand how the concept of Marginal fields came about a brief evaluation of Nigeria's oil and gas industry growth is imperative. Divided into four categories, the first era also known as IOCs era from 1956 to 1970, in which the oil companies dictated the pace with minimal State involvement.

<sup>87</sup> Petroleum (Amendment) Decree No 23, 1996.

<sup>88</sup> Farm-out and Operation of Marginal Fields 2013.

<sup>89</sup> E. C. Ezeani & C. Nwuke, Local Content and the Marginal Fields Programme: Challenges for Indigenous Participation in the Nigerian Oil Industry, 15 Oil, Gas & Energy Law Journal (OGEL) (2017), <https://www.ogel.org/article.asp?key=367> (last visited February 15, 2017).

Even though a very laudable policy, there existed inherent limitations to its success.<sup>90</sup> The limitations included the fact that it was not formally embedded in the petroleum law: It was merely a pursuit of policy regulated by DPR hence issues relating to transparency levels were raised. Second, most acreage allocated to indigenous companies were already relinquished by IOCs, therefore exploitation involved high risk, cost and low profitability which were considered uneconomic to develop, the government equally did not provide financial support to indigenous companies to enhance the process of exploration and production.

#### **2.3.1.4 The 2006 Local Content Policy**

The lack of coordination of the legislative and contractual provisions described above led to the re-evaluation of LC development in the sector. Hence, a study was commissioned on the local supply chain in the upstream sector and in August 2003, it submitted its report, which was entitled “Enhancement of Local Content in the Upstream Oil and Gas Industry in Nigeria- A Comprehensive and Viable Policy Approach” (the “INTSOK Report”).<sup>91</sup> Simultaneously, the Nigerian authorities also prepared a National Committee Report at the same time. The difference in the results of these reports resulted in their consolidation by way of a synchronized report 61.

Some oil companies argued very strongly that the delay in developing the fields subject to their leases was not the result of the fact that those fields were marginal, but rather due to OPEC quotas, which curtailed their ability to produce let alone exploit any new areas on the enhancing of LC in the upstream sector of the oil and gas industry in Nigeria. This “Synchronized Report” formed the basis of the 2006 local content policy.<sup>92</sup> For several reasons, the 2006 LC policy, although extensive and detailed on LC issues, did not bring about increased participation in the upstream oil industry. Firstly, since policies do not equate to legal obligations nor have legal ramifications, allocation was undertaken on a discretionary basis.

This meant that the implementation process was insufficiently transparent, which in turn led to lack of an ineffective supervision and monitoring system. Secondly, the LC target of transferring

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<sup>90</sup> Ibid.

<sup>91</sup> Ibid.

<sup>92</sup> Ibid.

wealth from the oil sector to locals, thus transforming their lives, was not achieved. Thirdly, it failed to promote partnerships and investment, through the joint venture vehicles, and a big portion of technical prowess was never achieved because of excluding tertiary education systems. This led to lower levels of skilled personnel able to take managerial positions in foreign companies operating in the oil and gas sector.

### **2.3.1.6 Models of Legal Transplant**

This argument, “most laws operate in a society very different from the one in which it was originally created” could not be further from the truth in relation to development of the petroleum regimes.<sup>93</sup> Generally, petroleum laws, contracts, and standard practices (including individuals) even though operate nationally have constantly moved from one jurisdiction to another; in search of appropriate legal systems to which stakeholders identify and define the individuality of each development. In practice, internationalization of petroleum law emerged because of modeled laws and contracts from industry institutions,<sup>94</sup> which has brought about a homogenous legal framework also known as LexPetrolea.

Presently, petroleum laws in general are very similar if not identical in presentation; and mostly regulate the sovereign right to natural resources, exploration and production licences, and resource management.<sup>95</sup> This is because most petroleum regimes move from one jurisdiction to another, thus this article assumes the transplant aspect. Often transplants are undertaken either through “copy-paste”<sup>96</sup> method or those that result from “harmonization trends”.<sup>97</sup> There is an important distinction between the models of legal transplants, in the first scenario there is a blind copy-paste

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<sup>93</sup> For discussion see by Ilias Bantekas, John Paterson & Maidan Suleimanov, Oil and Gas Law in Kazakhstan: National and International Perspectives.

<sup>94</sup> Association of International Petroleum Negotiators (AIPN) or American Petroleum Institute API, [https://www.aipn.org/about\\_AIPN.aspx](https://www.aipn.org/about_AIPN.aspx); and <http://www.barrowscompany.com/> 488 US-China Law Review Vol. 14: 471.

<sup>95</sup> See Bernard Tarvene Petroleum, Industry and Governments; A Study of the Involvement of Industry and Governments in the Production and Use of Petroleum. 2nd Edition. Wolters Kluwer Law and Business; Also see Thomas Walde & Alan Page, Editorial, 11 Journal of Energy & Natural Resources Law 1, 4 (1993).

<sup>96</sup> This is the mere import of legal rules (either complete or partial) as an act that is blindly copied and pasted, whose aim is to achieve “modernisation” of the society through the adoption of trends designed elsewhere and valued as positive or good by the receptor society (as in the case where Kenya copied the Ghanaian Local Content regulation).

<sup>97</sup> This suggests a synchronization—harmonization with prevailing waves and tendencies truly motivated by a transition process and the need to catch up with other societies and associations, justified by a high chance of improving and developing its legal system for the benefit of their nationals. A list of countries in such transition would include Cuba, Vietnam, China, and even certain African countries like Angola, Ethiopia, and Mozambique (...) the development of the institutional and legal framework for a market economy (including the creation of a market-based financial system)”.

act of the legal rule hoping that it would aptly suit a modern society just for the sake of fitting in and without any prior assessment; on the other hand in the synchronization-harmonization view the motivation goes beyond a simple copy-paste act, that exceeds the interests of the origin country (the exporter) as there is an actual transition process that needs to be completed. An adaptation to the local legal culture then successively follows once the legal institutions start following the imported models.

### **2.3.1.7 Rationale for Local Content Transplant**

Developing Local Content stems out from many reasons importantly, is the need for policy makers to transplant rules as result of their success elsewhere,<sup>98</sup> with the primary intent for policy makers to find solutions to similar problems and thereby justified by a high chance of improving and developing its legal system for the benefit of their nationals.

A more related point is donor involvement in policy formulations where international institutions, consultancies and donor agencies tend to encourage other countries (usually developing countries) to consider transplant of rules that have been formulated elsewhere. This simplistic view stems from the desire to establish a “win-win” situation on the part of international development, corporate structures and diplomatic interests. While these sound quite objective goals, limited attention is given to the practicalities and realities on the ground, which promote social change within a recipient country through a foreign law.<sup>99</sup> For instance, developed countries and more so in Norway have an existent manufacturing industry, commerce and public service. It is deemed to be an established democracy with a well-developed legal system, a good welfare system that includes free education, free health care and social services. Therefore, in borrowing Norwegian rules where, suppliers identify with quality, delivery, lead-time, cost performance, backed up with a financial stability and the ability to implement continuous improvements should be evaluated against the ability of a country like Nigeria which often characterised by high population growth, low income, and poor health care and inadequate social services, and financial instability.

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<sup>98</sup> See Jesse Salah Ovadia, *The Dual Nature of Local Content in Angola’s Oil and Gas Industry: Development vs. Elite Accumulation*

<sup>99</sup> Can an Effective Legal System for Economic Growth Be Imported? Which Is the Assumption Behind a Decade’s Worth of World Bank—Generated Institutional Reforms? (Katharina Pistor, Curtis Milhaupt, *J. Law and Capitalism*). What Corporate Crises Reveal About Legal Systems and Economic Development Around the World 3.

This then brings forth certain pertinent questions, was there any criteria designed both by the donor and recipient countries to help guide or determine how this enterprise will be conducted? Are there any existing principles other than the economic advantage that will assist the foreign institution be “naturalised”?<sup>100</sup> In 2003, the Norwegian initiative to advise oil-producing nations through the Norwegian Agency for Development Cooperation (NORAD) and the Norwegian Ministry of Petroleum and Energy (NPE) agreed on memorandum of understanding with the Nigerian authorities. Both Norway through INTSOK and Nigeria government consulted and came up with a report “Enhancement of Local Content in the Upstream Oil and Gas Industry in Nigeria: A Comprehensive and Viable Policy Approach” (code named “INTSOK Report”). Concurrently, Nigerian authorities also rolled out a national report of content development leading to a “Synchronised” report due to the disparity between the two reports. In the synchronized report, several issues were discussed and considered, more so, was the gap between industrial objectives and present realities or capabilities where, the idea was to access the Nigeria supply and service industry and to propose measures to enhance private sector participation. Ultimately, the recommendation put forward were as follows:

(a) Unless both the oil companies as well as the government carry out shared responsibilities in building the capacity, none of the objectives raised on LC will be met. Hence, the government should design a local content that is compatible with major trends in the market and to have oil companies accept major responsibilities in developing LC.<sup>101</sup>

(b) Set a clear vision for LC and clearly define the term, process, measurements for developing and increasing LC. Eventually, the above consideration proved helpful in formulating the Nigerian national content Act discussed in the following Section. Overall, these rationales might work in relation to fundamental legal rules, whose background and purposes are obvious or easy to understand e.g. traffic rules, nevertheless, significance should be accorded to rules whose understanding requires a deeper study of the society e.g. LC requirements, as discussed in the following chapter.<sup>102</sup>

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<sup>100</sup> On Uses and the Misuse of Comparative law, *The Modern Law review*, <http://onlinelibrary.wiley.com/doi/10.1111/j.1468-2230.1974.tb02366.x/epdf>.

<sup>101</sup> Here the recommendation emphasized the need for the policy to not fight the frame agreements but enhance industrial capacity so that parties in such agreements choose to locate value addition enhance industrial capacity so that parties in such agreements choose to locate value addition

<sup>102</sup> Eric Gillman, *Legal Transplants in Trade and Investment Agreements: Understanding the Exportation of U.S. Law to Latin America*, 41 *GEO. J. INT'L L.* 263, 282-300 (2009).

### **2.3.1.8 Adaptability of the Rule**

It is evident from the application of Local Content, that neither did both countries share similar problems to warrant the imitation of the model nor did they both concede on what the content LC should abide or how it should be implemented to warrant a transplant of a rule. Further, this section identifies with five significant issues which ought to have been considered as adaptability test for a transplanted model, these include:

### **2.3.1.9 Institutional Design**

Institutions have long been recognized to either develop, promote or fail to capture the essence of a transplanted rule. Technically, institutions provide the checks and balances that underpin the effectiveness of rule, without checks and balances, corruption goes unrestrained. Structurally, in Norway, the division of labor between government and business was quite categorical. In working out the logistics of operation Norway, separated business from politics and the creation of NOC was not just for ideological purposes but also for practical purposes. While businesses were to operate in the realm of business principles to create international competitive frameworks, it was no doubt that such principles were to be governed by transparent political decisions.<sup>103</sup> The institutional design consisted of a three distinct government bodies which provided useful checks and balances, helped minimize conflicts of interest, and allowed the NOC, Statoil, to focus on commercial activities while, other government agencies regulate oil operators including Statoil itself<sup>104</sup>. It is coupled by continuous training of public servants, business and the political sphere. Also, information concerning reports, inspections and fines easily available at an individual's/interested groups request. Additionally, all revenue from petroleum activities are channelled into a special fund called, Government Pension Fund Global, and it is invested in stocks, bonds and property abroad.

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<sup>103</sup> Heum Per, Local Content Development—Experiences from Oil and Gas Activities in Norway, [https://brage.bibsys.no/xmlui/bitstream/handle/11250/166156/1/A02\\_08.pdf](https://brage.bibsys.no/xmlui/bitstream/handle/11250/166156/1/A02_08.pdf)

<sup>104</sup> Thurber, Hults and Helle

A four percent of the capital is spent annually to cover state expenses. Hence institutional frameworks based on transparency rules has been the core for oil operations in Norway, it is not a wonder that the country has continued to champion global transparency initiatives like EITI principles (a global initiative that seeks to promote transparency in company payments and government revenues from oil, gas and mining) among countries that have extractive resources.<sup>86</sup> In 2010, Norway became the first country in the Organization for Economic Cooperation and Development to publish its oil-revenue figures as part of the EITI.

Whereas, in Nigeria, the division of labor was predominantly peer oriented during political independence and more so at the formation of OPEC, presently, Nigeria's LC development has been to satisfy political elite. Public officials are awarded wide discretionary powers, which only goes ahead to encourage impunity and corruption. Thereby indicating symptoms of weak institutions, which economically, impedes development since funds are not necessarily invested to promote development of the country as a whole, but extends politicians' control over the private sector and blocks competition. Currently, while Nigeria legal frameworks indicate clear legal parameters for operations, political and regulatory institutions that provide checks and balances to potential malfeasance in the oil industry are weak or non-existent.

Under the evaluated Acts and the NOGICD Act, both the Minister for Petroleum Resources and the Board have been given far reaching discretionary powers, when determining whether to waive the obligations for a contractor under the Act. This has raised possible conflict of interest and situations where public officials who are also dealers in the oil and gas sector have been allowed to be involved both in bidding and in the regulatory processes involved in licensing, monitoring and enforcing compliance. Such issues may benefit only the political elite, and will prevent the wider public from benefiting from the resources. Even though Nigeria authorities recognise the need for transparency, research indicates that one of the ailments affecting the country has been transparency, corruption, capital flights and misuse of funds to run personal business. In relation to EITI, the prospects for transparency have somewhat stalled, despite the initiative not being entirely dormant, but the vitality that used to characterize NEITI has largely receded.<sup>105</sup>

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<sup>105</sup> For discussion see Nicholas Shaxson, Nigeria's Extractive Industries Transparency Initiative Just a Glorious Audit? (November 2009), [https://eiti.org/files/NEITI%20Chatham%20house\\_0.pdf](https://eiti.org/files/NEITI%20Chatham%20house_0.pdf)



### **2.3.1.10 Choice of Regulatory Model “Principle versus Rule Based”**

Commonly, legal cultures determine extensively what pattern or change occurs in countries that have their legal systems transplanted from abroad and those that develop their systems, irrespective of the legal family from which their laws come.<sup>106</sup> This is because countries that develop their own systems consider what is inherent to their systems and as thus regulate matters of interests by evaluating issues that matter. As mentioned by Legrand,<sup>107</sup> he argues that where a law is borrowed the recipient country cannot understand the underlying objective and rationale for formulating a particular rule/law. Other scholars argue that “in enacting a rule for reasons they know, as a product of the way they think, with the hopes they have, and in enacting “THE” particular rule and not others, the countries (in this case the Norwegians) are not just doing that, they are doing something characteristically Norwegian.<sup>108</sup> For instance, in 1972 Norway, drafted the “ten commandments” and subsequently embedded it to the 1972 Royal Declarations. This was drafted in high level of generality to ensure flexibility to respond to new issues while focusing on the main outcome. As such they opted for an objective—based regulation which relies on broadly stated principles by which companies conduct their operations and the basis for decision making for public authorities.<sup>109</sup> This sort of regulation seeks to implement the policy objective through objective principles as opposed to specific rules.

Meanwhile, Nigeria opted for a rule-based regulation, one that is prescriptive in nature and often do not appreciate the constraints facing the industry, thereby allowing space for creative compliance. The option for a rule-based regulation, with many laws requiring extractive companies’ law to submit stringent local content plans. These provisions rely extensively on legislative rules to regulate LC requirements. These prescriptive rules often lead to regulatory inconsistencies and rigidity and are very prone to creative compliance to adjust to new situations.<sup>110</sup> While rule-based regulation may have been necessity in the initial stages to ensure growth of the industry, like the formulation of PTI Act.<sup>111</sup> Presently, research indicates that

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<sup>106</sup> Eric Gillman, *Legal Transplants in Trade and Investment Agreements: Understanding the Exportation of U.S. Law to Latin America*, 41 *GEO. J. INT’L L.* 263, 282-300 (2009).

<sup>107</sup> Le Grand P.: *Adapting Legal Cultures*.

<sup>108</sup> *Ibid.*

<sup>109</sup> Hunter, *Legal Regulatory Framework for the Sustainable Extraction of Australian Offshore Petroleum Resources. A Critical Functional Analysis*.

<sup>110</sup> *Ibid.*

<sup>111</sup> *Petroleum Training Institutes Act 1972. Cap. 356.*

objective- based approach to legislation is preferable regulation for petroleum activities. Based on Norway’s option with broad principles and a regular performance review which prompted an optimal resource management

This emphasizes that there is more to a rule than encryption of words, often denoted to the culture of a given group of people, accompanied by a series of historical, anthropological, and ideological concepts. Pierre Legrand highlights the fallacy of a transplanted rule, which is determined by many variables but more so interpretation ability of the recipient country. He maintains that successful transplants are impossible and transplanting a legal rule per se is insufficient, as the whole process would require transplanting all over again an entire “legal culture.”<sup>112</sup> It is therefore, advisable that in attempting to transplant legal rules whose understanding requires a deeper study of the society e.g. LC requirements, considerable caution has to be applied, consideration of immediate increase in local content (for example, increasing the percentage of local employment in the petroleum sector) will lead to its longer-term increase (such as the provision of training in appropriate skills to the local labour force).

#### **2.3.1.11 Clear Regulatory Rationale and Objective**

In Norway, the authorities were interested in what the industry requirements were and knowledge on whether as a country they had the critical required skills, capacities and know-how in bringing about desired effects beyond just compliance. For instance, although LC was never defined nevertheless, the objectives were clearly stated. Three aims were central and at the top of the pyramid was to maximize value creation to include local participation from petroleum activities where such exploration was to be conducted in a prudent manner through a resource management model. Secondly, the authorities considered environmental concerns as a significant component to the extraction of petroleum activities and lastly, the need for internationalisation of Norwegian petroleum industry.

Evidently, all these three aims have been successfully implemented<sup>113</sup> and currently, Norway is at the forefront with value addition and local participation, as estimated with 250,000 jobs have been

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<sup>112</sup> 94 [http://www.banrepcultural.org/sites/default/files/colf\\_reyesgaitan\\_mariapaula\\_tesis.pdf](http://www.banrepcultural.org/sites/default/files/colf_reyesgaitan_mariapaula_tesis.pdf).

<sup>113</sup> 10 commanding achievements <http://www.npd.no/en/Publications/Norwegian-Continental-Shelf/No2-2010/10-commanding-achievements>.

created in Norway from oil and gas activities in comparison to its population ratio.<sup>114</sup> Presumably the reason as to why many other countries with oil resource would choose to emulate the model. For instance, the goal promoting Norwegian local participation, was not discussed in short-term goals. The task of ensuring locals has sufficient technical capacity was not merely a matter of employing Norwegians but was deliberately and systematically developed from a long-term industrial policy plan which can withstand the test of time. Additionally, it was not sufficient that a local firm be awarded a contract for the mere sake that it is local. In fact, foreign companies were equally considered if they passed the technical, financial and legal test.

In Nigeria LC is defined to include value creation or addition in the Nigerian economy, development of capacity in other words putting emphasis on utilization of Nigerian human, material resources and services. Nonetheless, the lack of clarity in terminologies used e.g. local company, promote ambiguous interpretation and currently allow for briefcase companies to continuously be awarded contracts for the sake of political affiliation with little intrinsic worth of their technical or financial expertise.

Also, even though, Nigerian nationals account for about 80% of regular employment in the oil sector, where locals also make up most contract and subcontract workers. However, Nigerian authorities continue to determine the value additions concerns from political perspectives associated with ethnic and communal affiliations, which are exacerbated by non-transparency, non-accountable authority, and a weak legal framework that provide dynamics for elite accumulation through the application of the employability principle (three-year rule).<sup>115</sup> In addition, Nigeria continues to have a narrow industrial base, despite the increase on new technologies in the petroleum sectors, despite locals making up most contract and subcontract workers, the numbers are decreasing due to increased outsourcing.<sup>116</sup> For instance, research indicates that in Nigeria the economy heavily depends on oil, while manufacturing accounts for less than 5% of national production. These ailments, impact heavily on the ability of investors to

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<sup>114</sup> 10 commanding achievements <http://www.npd.no/en/Publications/Norwegian-Continental-Shelf/No2-2010/10-commanding-achievements/>. 2017 Norwegian Local Content Model 495

<sup>115</sup> Section of the NOGICD Act 2010.

<sup>116</sup> See Sola Fajana, Industrial Relations in the Oil Industry in Nigeria, working papers are preliminary documents circulated to stimulate discussion and obtain comments, [http://www.ilo.org/wcmsp5/groups/public/---dialogue/---sector/documents/publication/wcms\\_161189.pdf](http://www.ilo.org/wcmsp5/groups/public/---dialogue/---sector/documents/publication/wcms_161189.pdf)

rely on local products. Even though Nigeria is in the process of amending this provision, the succession plans are still very prescriptive and do not encourage long term participation of locals and foreign players.

#### **2.3.1.12 Political Will**

Finally, Norway has had a long experience of managing natural resources, using foreign capital and technical competence to develop natural resources from the mineral industry dating back 1500-1600s. This translated to even stronger institutional frameworks for the petroleum activities due to the ailments often associated with the sector. Thus, Norway benefited from being an industrial economy way before oil and gas was discovered.<sup>117</sup>

Additionally, well-developed shipping building industry ameliorated the discourse on offshore exploration of oil and gas. Also, in relation to the Norwegian petroleum industry, it has no doubt that petroleum operations have transcended boundaries to take part in other commercial activities outside the national jurisdiction, in fact in relation to offshore exploration Statoil is highly endorsed. Also, ministers who do not have the strong support of Stortinget, must resign.

Meanwhile, Nigeria political will, as observed above has been used to promote several political objectives from policy-making to determining the roles of political elites. They tend to be at the forefront of most revisions and thus failed to successfully achieve the objectives of LC. Nigeria, does not have a long tradition of dealing with foreign investments this impacts heavily on choice of policies. In addition, oil is central to operations in Nigeria, which makes it a significant asset for political assertions.

### **2.3.2 Local Content Policy in Norway**

Since the eighties, several natural resource countries have become wealthier, at least more democratic and more peaceful. Yet, this is true for some countries without petroleum.<sup>118</sup> Many

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<sup>117</sup> Heum, Per. "Local Content Development: Experiences from oil and gas activities in Norway." (2008).

<sup>118</sup> Michael L. Ross (1999): The Political Economy of the Resource Curse, 51 World politics 297 (1999),

petroleum-rich countries underperform in matters relating to social and economic progress. Therefore, more prone to conflict and prompts more authoritarian resource nationalism debates. In fact, majority of petroleum rich countries have failed to reach their full potential consequently, leading to less economically stable environments.<sup>119</sup> Arguably, too often petroleum devises a strange effect on a country's political and economic health. Nevertheless, few countries like Norway have positively utilized institutional and legal frameworks, to benefit Norwegian society.<sup>120</sup> Thus, Norway's accomplishment can be attributed to several inter-related factors, an institutional design reinforced under common political will, alongside sustained regulatory frameworks designed to facilitate the development of local competitive goods and services commonly known as Local Content requirements.<sup>121</sup> The legal provision indicated clearly stated objectives and rationales for fostering local participation.<sup>122</sup> Thus, Norway became a diversified economy where both international and local players had equal footing.

Arguably, Norway has changed the discourse of LC in the petroleum sector,<sup>123</sup> prompting many governments (predominantly from developing countries) to imitate (or at least try to) the "Norwegian LC Model" that has translated this potential industry into a "silver bullet" capable of enhancing job creation, cross-sector growth, and capacity building. In Mark Thurber words "Norwegian approach has inspired admiration and imitation as the canonical model of good bureaucratic design for a hydrocarbons sector."<sup>124</sup> Consequently, leading policy-makers have tried to export the Norwegian LC to their respective jurisdictions.<sup>125</sup> For instance, among many others the current Angolan, Ghanaian, Nigerian, and East Timor LCs developed mainly because

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<https://www.cambridge.org/core/journals/world-politics/article/political-economy-of-the-resource-curse/EBEA5E178E7534C4BA38EE23D25322E0> (last visited June 10, 2017).

<sup>119</sup> Mark C. Thurber, David R. Hults & Patrick R. P. Heller (2011): Exporting the "Norwegian Model": The Effect of Administrative Design on Oil Sector Performance, 39 Energy policy 5366 (2011),

<http://www.sciencedirect.com/science/article/pii/S0301421511004125> (last visited June 10, 2017)

<sup>120</sup> Tina Hunter, The Role of Regulatory Frameworks and State Regulation in Optimizing the Extraction of Petroleum Resources: A Study of Australia and Norway, 1 the extractive industries and society 48 (2014),

<http://www.sciencedirect.com/science/article/pii/S2214790X14000148> (last visited February 27, 2017).

<sup>121</sup> Local Content requirements (LC) of 1972.

<sup>122</sup> Tina Hunter, (2010): Legal Regulatory Framework for The Sustainable Extraction of Australian Offshore Petroleum Resources. A Critical Functional Analysis (The University of Bergen 2010), <https://bora.uib.no/handle/1956/4505>.

<sup>123</sup> Theophilus Acheampong, Marcia Ashong & Victoria Crystal Svanikier (2016): An Assessment of Local-Content Policies in Oil and Gas Producing Countries, 9 The journal of world energy law & business 282 (2016),

<sup>124</sup> Thurber, Hults and Heller (n 2).

<sup>125</sup> Jesse Salah Ovadia, (2014): Local Content and Natural Resource Governance: The Cases of Angola and Nigeria, 1(2) The extractive industries and society 137 (2014),

[http://eprint.ncl.ac.uk/file\\_store/production/205976/93ECC058-DE0D-4AA8-93BA-01412A533FFA.pdf](http://eprint.ncl.ac.uk/file_store/production/205976/93ECC058-DE0D-4AA8-93BA-01412A533FFA.pdf) (last visited October 19, 2016).

of the Norwegian influence. This has been undertaken through the oil for development programme in Norway which aids developing countries in their effort to manage petroleum resources in a sustainable manner.<sup>126</sup>

Therefore, in theory the exporting of legal concepts from Norway to other countries can be interpreted to disclose the effect of legal transplants. While, legal transplants research is far-reaching and, on the rise, there is no attempt here to support or disagree with the existing transplant theories including transferase<sup>127</sup> and culturalist<sup>128</sup> theories. This research paper is primarily to promote the analysis on “legal regulation and administration” in the petroleum industry. Thus, this research analyses the vulnerabilities of transplanting micro-governance rules; which develop effects (often but not necessarily negative) on implementation processes and the regulation procedures. Importantly, this research highlights the position of LC rules which it argues that they are more organic in nature with a deep rooting of both political and economic motivation.<sup>129</sup> Hence their importation of requirements from Norway into Nigeria or Uganda is unlikely to reproduce the successful Norwegian model. This is for the simple fact that Norwegian model is no one single model, in the sense that there is no one answer as to how institutions, politics and business relations should be organised to guarantee any industrial success.

Therefore, the principal question underlined in this article, relates to whether legal and regulatory LC rules from Norway could ever be transplanted to other jurisdictions. Importantly, this research demonstrates that the process of a legal transplant is not only about the laws but also factors that influence the operation mechanics of the transplanted rule. Thus, this research identifies the jurisdictions Norway. Overall this discussion is conducted under sub-sections; The research provides details on Norway’s brief legal frameworks on LC development; and the implication of the rule since its adoption. Another sub-section will discuss the models of legal transplants in

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<sup>126</sup> Oil for Development Programme, <https://www.norad.no/en/front/thematic-areas/oil-for-development/oil-for-development-programme>.

<sup>127</sup> A. Watson, Legal Transplants and European Private Law, 5; La Porta, Rafael, The Economic Consequences of Legal Origins, 12; Also see IFC/ World Bank, Doing Business in 2004: Understanding Regulation (2004) xvi.

<sup>128</sup> Pierre Legrand, The Impossibility of Legal Transplants, 2; Gunther Teubner, Legal Irritants: Good Faith in British Law or How Unifying Law Ends Up in New Differences, 11-32; Daniel Berkowitz, Katharina Pistor & Jean-Francois Richard, The Transplant Effect, The American journal of comparative law. The underlying belief among these opponents is that rules are not “self-explanatory” as they rely on more complex and subjective “cultural” particular meaning.

<sup>129</sup> Jan-Christoph Kuntze & Tom Moerenhout (2012): Local Content Requirements and the Renewable Energy Industry-A Good Match? (Social Science Research Network 2012), SSRN Scholarly Paper ID 2188607, <https://papers.ssrn.com/abstract=2188607> (last visited February 16, 2017). 474 Us-China Law Review Vol. 14: 471.

general and particularly to transplants of LC rules from Norway, with the view of providing detailed concepts on differences between rule-based regulations vis-a-vis the principle-based regulation. Another sub-section evaluates the adaptability of the rule and considers the potential dangers of transplanting detailed rules, by evaluating institutions, regulatory model, political will, objectives and rationale which have profound implication on the success or failure of a borrowed LC rule.

### **2.3.2.1 LC Legal and Regulatory Development in Norway**

LC is a policy tool used by governments to generate economic benefits for the local economy that go beyond fiscal benefits.<sup>130</sup> The aim of LC involves a host country requiring an investor to purchase certain percentages of labour, goods and services locally.<sup>131</sup> These percentages may either be fixed or subject to increase, and as a requirement LC may be imposed as a condition of obtaining a petroleum licence or subject to continuous operation within the petroleum industries.<sup>132</sup> Often, LC is formulated either as a provision within a hydrocarbon agreement (e.g. a production-sharing agreement (PSA) or license) or legislative instrument (e.g. a regulation, decree).<sup>133</sup> Whilst, the intended usage is universal and relates to increasing national content in countries often with huge economic rents, nevertheless, LC relates to value addition through activities in the petroleum sector which directly links two interrelated issues, first it stimulates the development of indigenous companies and second it encourages foreign investment and participation. The petroleum industry has become the largest economic activity in Norway.<sup>134</sup> This is because of deliberate attempt to make the industry work best for the society. During the early stages of oil exploration, the Norwegian authorities had two simple objectives: (a) Develop local capacity to regulate and manage petroleum resources and in turn evade the resource curse often associated with the industry<sup>135</sup> and (b) delaminate boundaries with neighbors, as majority of the deposits lie

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<sup>130</sup> Silvana Tordo et al., (2013): Local Content Policies in the Oil and Gas Sector (World Bank Publications 2013).

<sup>131</sup> Claudine Sigam & Leonardo Garcia (2012): Extractive Industries: Optimizing Value Retention in Host Countries, [http://unctad.xiii.org/en/SessionDocument/suc2012d1\\_en.pdf](http://unctad.xiii.org/en/SessionDocument/suc2012d1_en.pdf) (last visited October 17, 2016).

<sup>132</sup> Suzy H. Nikièma (2016): Performance Requirements in Investment Treaties IISD Best Practices Series Best Practices Performance Requirements Investment Treaties En, <http://www.iisd.org/sites/default/files/publications/best-practices-performance-requirements-investment-treaties-en.pdf> (last visited October 17, 2016).

<sup>133</sup> Acheampong, Ashong and Svanikier.

<sup>134</sup> Heum, Per. "Local Content Development: Experiences from oil and gas activities in Norway." (2008).

<sup>135</sup> Hunter, Legal Regulatory Framework for the Sustainable Extraction of Australian Offshore Petroleum Resources. A Critical Functional Analysis

on the Norwegian continental shelf—a process that eventually took over forty-five years.<sup>136</sup> Norway is said to be the only country that has this far delaminated its entire boundaries with the neighbors.

Notwithstanding, Norway did not have an explicit law pertaining to LC development in the petroleum sector. Nevertheless, Norwegian authorities never shied away from local integration through implied and express rules, mostly embedded in general principles based on procurement frameworks.<sup>137</sup> In fact, Norwegian authorities had always been quite keen on having locals participate in various sectors including the hydro power sector from early 1900s.<sup>138</sup> Here, foreign investors needed to comply with various corporate structures and governance rules which detailed several provisions including the use of Norwegian goods and services. This practice provided Norwegian authorities with an edge and immense knowledge on how best to promote local participation in sectors where foreign investment is predominant. Hence, after the discovery of oil, the proposition to facilitate value addition through local participation did not materialize as a surprise.

In the early 60's, Norway proclaimed sovereignty over the Norwegian continental shelf for exploration and exploitation of subsea natural resources.<sup>139</sup> This was undertaken through a law which operated as the principle statute governing petroleum operations until a more comprehensive legislation was passed in 1985. Key provisions of this law included the right to natural resources, exploration and production licenses, and these still exist in current legal statutes despite various amendments introduced to cope with the ever changing sector.<sup>140</sup> This Act was more of an enabling law where, the main provisions relating to petroleum regime and petroleum activities was regulated under “royal declarations.”<sup>141</sup> After the introduction of 1985 Petroleum Act, the 1963

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<sup>136</sup> Tina Hunter (2015): Regulation of the Upstream Petroleum Sector: A Comparative Study of Licensing and Concession Systems (Edward Elgar Publishing 2015).

<sup>137</sup> Thurber, Hults and Heller

<sup>138</sup> Hunter, Legal Regulatory Framework for the Sustainable Extraction of Australian Offshore Petroleum Resources. A Critical Functional Analysis

<sup>139</sup> Act of 21 June 1963 No. 12 relating to scientific research and exploration for and exploitation of subsea natural resources other than petroleum resources, <http://www.npd.no/en/Regulations/Acts/Scientific-research-act/>  
<http://www.npd.no/en/news/News/2015/Fifty-years-since-it-all-started/>.

<sup>140</sup> Section 2 where the King may grant Norwegian or foreign persons, including trusts, companies and other associations a permit to explore or exploit the natural resources. The King may grant Norwegian or foreign persons, including trusts, companies and other associations a permit to explore or exploit the natural resources.

<sup>141</sup> Royal Decree of 9 April 1965 relating to Exploration for and Exploitation of Petroleum Deposits in the Sea-Bed and its Subsoil on the Norwegian Continental Shelf,



Act was only limited to scientific research and exploration for exploitation of sub-sea natural resources other than petroleum resources.<sup>142</sup>

### 2.3.2.2 Initial LC Developments

The introduction of the royal decree<sup>143</sup> garnered the growth and development of the industry. The Royal Decree<sup>144</sup> governed the exploration for and exploitation of petroleum deposits in the seabed and its subsoil on the Norwegian continental shelf.<sup>145</sup> In relation to LC developments, although not explicitly mentioned it was administered under Article 4 of the declaration which guaranteed an exploration license to any entity Norwegian or foreign person, institution or association. In the early 70's the authorities were keen to introduce a comprehensive Norwegian oil policy; hence the parliament endorsed "the Ten Oil Commandments", submitted by the Standing Committee on industry in a Storting (Norwegian parliament) White Paper dated 14 June 1971.<sup>146</sup> These "oil commandments" supported the development of LC which later ensured that oil resources benefited the entire Norwegian society. These commandments were later firmly embedded within the royal declaration.<sup>147</sup>

The Royal Decree<sup>148</sup> was introduced after the government was convinced to gamble with public funds, the Storting (Norwegian Parliament) established a tripartite model comprising central management, administrative and commercial functions. These included a policy making arm through a Ministry of Petroleum and Energy, a technical control and resource management arm through the Norwegian Petroleum Directorate and, a commercial participation arm because of incorporation of Statoil.<sup>149</sup> This resource management model framed by the committee ensured

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[http://www.un.org/depts/los/legislationandtreaties/pdf/nor\\_1965\\_Decree.pdf](http://www.un.org/depts/los/legislationandtreaties/pdf/nor_1965_Decree.pdf).

<sup>142</sup> Bernard Taverne (2008): *Petroleum, Industry and Governments: A Study of the Involvement of Industry and Governments in the Production and Use of Petroleum* (Kluwer Law International 2008).

<sup>143</sup> Royal decree of 1965 and 1972 respectively.

<sup>144</sup> Royal Decree of 1965.

<sup>145</sup> It is here that the first licensing round was announced for 278 blocks in the North Sea, south of the 62nd parallel and the introduction to international participation. Also, the second and third round was conducted under this provision.

<sup>146</sup> Tina Hunter (2014): *Law and Policy Frameworks for Local Content in the Development of Petroleum Resources: Norwegian and Australian Perspectives on Cross-Sectoral Linkages and Economic Diversification*, 27 *Mineral Economics* 115 (2014),

<http://link.springer.com/article/10.1007/s13563-014-0051-y> (last visited October 28, 2016)

<sup>147</sup> Royal declaration from 8 December 1972 which repealed Royal declarations from 9 April 1965.

<sup>148</sup> Royal Decree 8 December 1972.

<sup>149</sup> Heum, Per. "Local Content Development: Experiences from oil and gas activities in Norway." (2008)

that the natural resources benefited the whole community.<sup>150</sup> This decree witnessed the deliberate inclusion of nationals in the sector. LC developments were administered under Section 53 of the resolution, which required investors to prioritize and utilize Norwegian goods whenever they were competitive in price and quality. In support of the provision a special office, “the goods and service office”<sup>151</sup> was established within the Ministry to ensure the condition was adhered to during the process of allocating licenses and operations of oil and gas activities.

For instance, at the time of bidding, foreign companies could present Norwegian authorities with lists of their operators and the Ministry in consultation with “the goods and service office” could also add to the list of operators a local company that measured in price and quality per the demands of the IOC.<sup>152</sup> It was later noted that despite the technical and financial ability of a local company, Norwegian authorities recommended local companies, like Statoil and private companies (Hydro and Saga) to take up more important tasks within the industry.<sup>153</sup> This preferential treatment for Norwegian suppliers of goods resulted in Norwegian companies contracting and supplying 50-70% of goods and services during this period.<sup>154</sup>

Also, while concessions were awarded to foreign oil companies with exclusive rights for exploration, the local companies were tasked to be operators in production licenses. This brought about joint participation of foreign and local companies and prompted international participation of local companies.<sup>155</sup> This promoted the position of local firms at a great advantage nevertheless, Norway never diverted its attention from international competition. Exacerbated by their geographic proximity and the existing maritime tradition local firms stimulated offshore oil production and eventually translated to improved international standards. Additionally, formation of Joint ventures (JV) through “State Participation Agreement” commonly known as Joint Participation Agreement was heavily encouraged and JV became<sup>156</sup> a vital component in the development of LC. For instance, the development approval for the Statfjord field was granted by

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<sup>150</sup> Thurber, Hults and Heller

<sup>151</sup> Hunter, Regulation of the Upstream Petroleum Sector

<sup>152</sup> Heum, Per. "Local Content Development: Experiences from oil and gas activities in Norway." (2008)

<sup>153</sup> Steinar Holden, Avoiding the Resource Curse, The Case Norway Department of Economics (University Of Oslo, June 2011), <http://Folk.Uio.No/Sholden/Wp/Oil-Ghana-Norway.Pdf>

<sup>154</sup> For discussion see, Dr. Tina Hunter, The Energy Charter Treaty as a Means of Developing National Industry and Commerce in the Exploitation of Petroleum Resources: An Analysis of the Application of Articles 5, 10 and 22 of the Energy Charter Treaty.

<sup>155</sup> [http://www.npd.no/Global/Engelsk/3-Publications/Facts/Facts2013/FACTS\\_2013.pdf](http://www.npd.no/Global/Engelsk/3-Publications/Facts/Facts2013/FACTS_2013.pdf)

<sup>156</sup> JV became a vital component in the development of LC from 1974.

Storting (Norwegian Parliament).<sup>157</sup> These led to incorporation of JV agreements among the companies both local and foreign to promote research and development cooperation through Norwegian institutions of higher learning.<sup>158</sup> As a result, huge transfer of technology and technology know how was developed. Additionally, contractual agreements such as Frame and Training agreements would later assist in developing competence and know how among Norwegian contractors to develop new technology to the mutual benefit of all parties.

Finally, the separation of financial management and commercial functions of Statoil,<sup>159</sup> through the creation of the state's direct financial interest (SDFI) ensured that the State received a large share of the value created by the petroleum activities; 40 promoted transparency levels and later enhanced among other things LC development and the functions each regulatory body. Considerably, the incorporation of the European Economic Area (EEA) and Energy Charter Treaty (ECT) in 1994, by the Norwegian authorities brought about significant changes to the petroleum sector because they often serve to restrict a member state's capacity to develop national industry. Norway was bound provisionally by the rules of the treaties that creates mutual trade benefits for all parties. These provisions prevent a member state from requiring investors to purchase from local suppliers. Overall, preferential treatment was constrained to the objective criteria nonetheless; research indicates that Norway allowed government procurement to assist in the development of national industry by promoting international standards among local companies, good or service which measured in price and quality.

## **2.4 Conclusion**

Local content policies have been adopted by African countries as a development strategy aimed at increasing the benefits from the oil and gas and mining sector. Uganda has adopted local content as a development strategy for the extractive sectors and has started by developing local content frameworks that encompass policies, laws and institutions to manage and monitor the outcomes of

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<sup>157</sup> Statfjord field was granted by Storting (Norwegian Parliament) in June in 1976.

<sup>158</sup> Ibid.

<sup>159</sup> Separation of financial management and commercial functions of Statoil was in 1984,

the policies. Local content in the oil and gas sector in Uganda broadly focuses on involving citizens in the sector. This is through training and building capacity for citizens, technology transfer, employment and service provision. Given the fact that Uganda's oil and gas sector is still growing, there is need for exerting more deliberate efforts to ensure that citizens competitively take part in the sector through exploitation of the existing opportunities. One of the approaches proposed under Uganda's petroleum policies and laws to promote local content in the oil and gas sector is the procurement of goods and services from Ugandan suppliers. The Local Content laws and Policies in oil and gas industry in Uganda which is still being developed has been reviewed with those of Nigeria which is fairly developed and that of Norway which is developed. In all cases local Content policy is here to stay irrespective of the stage of its development.

In Nigeria Local Content is defined to include value creation or addition in the Nigerian economy, development of capacity in other words putting emphasis on utilization of Nigerian human, material resources and services. Nigeria passed the Oil and Gas Industry Content Act.<sup>160</sup> The law is meant to enforce the local content policy. It aims at providing for the development of Nigerian Content in the Nigerian Oil and Gas industry; for Nigerian Content Plan; for supervision, coordination, monitoring and implementation of Nigerian content and for matters incidental thereto.<sup>161</sup>

The petroleum industry has become the largest economic activity in Norway. This is because of deliberate attempt to make the industry work best for the society. Nevertheless, Norwegian authorities never shied away from local integration through implied and express rules, mostly embedded in general principles based on procurement frameworks. In fact, Norwegian authorities had always been quite keen on having locals participate in various sectors including the hydro power sector from early 1900s.

The Royal Decree<sup>162</sup> was introduced after the government was convinced to gamble with public funds, the Storting (Norwegian Parliament) established a tripartite model comprising central management, administrative and commercial functions. These included a policy making arm

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<sup>160</sup> Oil and Gas Industry Content Act 2010.

<sup>161</sup> Preamble/long title to the Oil and Gas Local Content Act, 2010.

<sup>162</sup> Royal Decree 8 December 1972.

through a Ministry of Petroleum and Energy, a technical control and resource management arm through the Norwegian Petroleum Directorate and, a commercial participation arm because of incorporation of Statoil.<sup>163</sup> This resource management model framed by the committee ensured that the natural resources benefited the whole community.<sup>164</sup> For instance, at the time of bidding, foreign companies could present Norwegian authorities with lists of their operators and the Ministry in consultation with “the goods and service office” could also add to the list of operators a local company that measured in price and quality per the demands of the IOC.<sup>165</sup> It was later noted that despite the technical and financial ability of a local company, Norwegian authorities recommended local companies, like Statoil and private companies (Hydro and Saga) to take up more important tasks within the industry.<sup>166</sup> This preferential treatment for Norwegian suppliers of goods resulted in Norwegian companies contracting and supplying 50-70% of goods and services during this period.<sup>167</sup>

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<sup>163</sup> Heum, Per. "Local Content Development: Experiences from oil and gas activities in Norway." (2008)

<sup>164</sup> Thurber, Hults and Heller

<sup>165</sup> Heum, Per. "Local Content Development: Experiences from oil and gas activities in Norway." (2008)

<sup>166</sup> Steinar Holden, Avoiding the Resource Curse, The Case Norway Department of Economics (University Of Oslo, June 2011), [Http://Folk.Uio.No/Sholden/Wp/Oil-Ghana-Norway.Pdf](http://Folk.Uio.No/Sholden/Wp/Oil-Ghana-Norway.Pdf)

<sup>167</sup> For discussion see, Dr. Tina Hunter, The Energy Charter Treaty as a Means of Developing National Industry and Commerce in the Exploitation of Petroleum Resources: An Analysis of the Application of Articles 5, 10 and 22 of the Energy Charter Treaty.

## **CHAPTER THREE**

### **RESEARCH METHODOLOGY**

#### **3.1 Introduction**

The study was conducted through a qualitative doctrinal legal research methodology which provided a systematic exposition of the rules governing the legal category. A doctrinal legal research was a suitable research design because this study was based on legal concepts and principles of law, statutes, cases and rules concerning environmental aspects in the oil and gas industry in Uganda and henceforth allowed the researcher to adequately address and discuss the legal concepts relating to the legal and policy regimes on local content in Uganda's oil and gas industry as analysed in the subsequent chapters.

#### **3.2 Research Design**

This research design enables the legal researcher to take one or a series of legal propositions as a starting point and focus of the research objective and designs the research methodology and structure around / for them.<sup>168</sup> This legal research took place in a law library to locate authoritative decisions, applicable legislation and any secondary discussion. The researcher read and analysed the materials, formulated the conclusion and wrote the study results<sup>169</sup> in relation to the legal and policy regimes in Uganda with comparisons to established Oil producers of Norway and Nigeria.

#### **3.3 Doctrinal Method**

The researcher has used a doctrinal based qualitative-comparative study of how Nigeria and Norway oil and gas industries operate. Norway is a mature oil and gas industry nation from the developed world while Nigeria is a mature oil and gas industry nation from the developing world in Africa, so Uganda can learn how to operate her oil and gas industry from these two nations who have great experiences in the oil and gas industry.

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<sup>168</sup> Terry Hutchinson, Nigel Duncan, "Defining and Describing what we do: Doctrinal Legal Research" Vol.17 No 1. 2012.

<sup>169</sup> Ibid.

The research has analysed different literature, reports, and journal articles by re-known authors on the subject. Lawyers, judges and jurists have widely been using doctrinal research as a systematic means of legal reasoning since nineteenth century.<sup>170</sup> Doctrinal research is therefore established as the traditional genre of research in legal field. Also known as, theory-testing or knowledge building research in the legal academia,<sup>171</sup> it deals with studying existing laws, related cases and authoritative materials analytically on some specific matter. This being a legal research which touches on the legal and policy regimes on local content in Uganda, the researcher thought it wise to use the doctrinal method.

The term ‘doctrinal research’ needs clarification. The word ‘doctrine’ is derived from the Latin noun ‘doctrina’ which means instruction, knowledge or learning. The doctrine in question includes legal concepts and principles of all types such as cases, statutes, and policies. ‘Doctrine’ has been defined as ‘[a] synthesis of various rules, principles, norms, interpretive guidelines and values. It explains, makes coherent or justifies a segment of the law as part of a larger system of law. Doctrines can be more or less abstract, binding or non-binding’.<sup>172</sup> Historically, law was passed on from lawyer to lawyer as a set of doctrines, in much the same way with the clergy. Legal training developed in the middle ages within a religious rhetorical tradition, with the monasteries existing as centres of learning.<sup>173</sup> The term ‘doctrinal’ is also closely linked with the doctrine of precedent.

Legal rules take on the quality of being doctrinal because they are not just casual or convenient norms, but because they are meant to be rules which apply consistently and which evolve organically and slowly. It follows that doctrinal research is research into the law and legal concepts. This method of research was the dominant influence in 19th and 20th century views of law and legal scholarship and it tends to dominate legal research design.<sup>174</sup>

Legal academics may argue that a statement of doctrinal methodology would be out of place in a doctrinal thesis, and that, in any case, this aspect would have been examined during the earlier

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<sup>170</sup> Chynoweth P. ‘Legal Research’ in Andrew Knight and Les Ruddock (eds), *Advanced Research Methods in the Built Environment* (Wiley-Blackwell, 2008) 37.

<sup>171</sup> Kelly J. M. *A Short History of Western Legal Theory* (Clarendon Press, 1992) 89.

<sup>172</sup> Trischa Mann (ed), *Australian Law Dictionary* (Oxford University Press, 2010) 197.

<sup>173</sup> Kelly J. M. *A Short History of Western Legal Theory* (Clarendon Press, 1992) 89.

<sup>174</sup> Desmond Manderson and Richard Mohr, ‘From Oxymoron to Intersection: An Epidemiology of Legal Research’ (2002) 6(1) *Law Text Culture* 159, 161. For a breakdown of empirical and doctrinal PhDs in Australia see Desmond Manderson, ‘Law: The Search for Community’ in Simon Marginson (ed), *Investing in Social Capital* (University of Queensland Press, 2002) 152.

phases of the doctrinal research process. Chynoweth,<sup>175</sup> asserts that ‘no purpose would be served by including a methodology section within a doctrinal research publication’, because the process is one of ‘analysis rather than data collection’. It would be argued that while this may be true for published research in journals, the situation in relation to research grant applications and doctrinal legal research thesis is different. Chynoweth argues that legal academics need to seek to educate their interdisciplinary colleagues on the nature of the methodology they use and that, in order to do this, one should ‘reflect upon their own previously unquestioned assumptions about the practices in their own discipline, and ... articulate these for the benefit of others within the field’.<sup>176</sup>

The nature of a qualitative doctrinal legal research methodology henceforth enabled the researcher to analyse the literature reviewed as stated in the previous chapter. The need to appreciate and articulate the legal aspects of this research such as laws, statutes, case law as indicated in the literature review doesn’t require the researcher to undertake data collection as this is knowledge that can be acquired through desk and library research methods. Henceforth being of legal nature, the researcher chose this as the best method to analyse the literature involved.

### **3.4 Conclusion**

This examination highlights the need for an increased analysis and description by researchers of the doctrinal methodology they are using. The conclusion from this chapter is that the doctrinal research methodology is a discrete method. It is more than simply scholarship or an elaborate literature review of primary materials. However, it is not sufficiently delineated for the current research environment. This chapter has not attempted to fully explain the method, or even to provide a model for researchers to follow in setting out their methodologies. It has proposed the groundwork for the development of such an explanation, in drawing attention to the distinctive characteristics of doctrinal legal research and the characteristics it shares with other research methods. It has argued the need for a thorough examination of the current legal research record and context.

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<sup>175</sup>Chynoweth P. ‘Legal Research’ in Andrew Knight and Les Ruddock (eds), *Advanced Research Methods in the Built Environment* (Wiley-Blackwell, 2008) 37.

<sup>176</sup> Ibid



In the past, the under-description of the doctrinal method has not been problematic because the research has been directed 'inwards' to the legal community. The targeted audience has been within the legal paradigm and culture and therefore cognisant of legal norms. However, in a modern interdisciplinary framework, where the research is being directed, read and more importantly 'judged' by those outside a narrow legally trained discipline, articulation of method is vital for quality, and quality depends on methodological clarity.

## CHAPTER FOUR

### RESEARCH FINDINGS

#### 4.1 Introduction

This research chapter four has given the research findings along the objectives that were set. The legal and policy approaches so far adopted in ensuring the participation of Ugandans in the oil and gas sector are analysed. The chapter has assessed the standards set in the Oil and Gas Policy,<sup>177</sup> the Petroleum (Exploration, Development and Production) Act,<sup>178</sup> and Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act,<sup>179</sup> which are the major instruments governing the petroleum sector in Uganda. In the analysis the research has followed the research questions of the efficacy of oil and gas local content legislation in Uganda; Uganda's implementation of the local content policy compared to that of Nigeria and Norway; and provides Recommendations on local content policy best practices for the Government of Uganda in oil and gas industry. The chapter also looked at standards and approaches adopted by other countries of Nigeria and Norway and major commercial institutions.

#### 4.2 Research Question One: The efficacy of oil and gas local-content legislation in Uganda

This section gives the findings of the research question namely: What is the efficacy of oil and gas local-content legislation in Uganda? 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. Through local content, the investor looks to getting a stronger social license to operate

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<sup>177</sup> Oil and Gas Policy 2008.

<sup>178</sup> Petroleum (Exploration, Development and Production) Act 2013.

<sup>179</sup> Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act 2013.

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 (PSA) for the limitations introduced through local content.<sup>180</sup> 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 labour 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>181</sup>

The need for policies to bolster local content is easy to fathom. In a country like Uganda, it takes time to develop the necessary skillset required for labour consumption in technical aspects of oil and gas extraction. Given the large financial injection by foreign companies into oil and gas production, it is logical that part of the packaging is that the companies' technical people are deployed in the interim to disburse and assimilate extractive projects and assure proper utilization of resources. Despite the large element of rent resulting in large financial flows to the government, this may not automatically result into creation of higher levels of value-added and employment in the economy. However, in undertaking local content measures, governments should properly analyze the skills gap in the economy, opportunity cost and net benefit of enforcing local content; prevailing legal obligations and challenges under international treaties and timelines for enforcing such policies.<sup>182</sup>

Articles 17 and 18 of the Model PSA provide for local content for purchases in Uganda and employment of Ugandans respectively. In the Model PSA, preference must be given to Ugandan goods and services unless they “are offered on terms which are not equal to or better than imported goods and services with regard to quality, price and availability at the time and in the quantities required.”<sup>183</sup> Under the Model Product Sharing Agreement,<sup>184</sup> a licensee is required to train and employ “suitably qualified” Ugandan citizens for positions including administrative and executive

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<sup>180</sup> 11 Cotula L. (2010) *Investment Contracts and Sustainable Development: How to Make Contracts for fairer and more Sustainable Natural Resource Investments*. Natural Resource Issues No. 20. IIED, London.

<sup>181</sup> Silvano Tordo, Micheal Warner, Osmel E. Manzano, and Yahya Anouti, *Local Content in the Oil and Gas Sector*; World Bank Study 78994.

<sup>182</sup> *Ibid.*

<sup>183</sup> Model PSA Art. 17.1.

<sup>184</sup> Product Sharing Agreement (PSA) 1999.

management positions. The licensee must also require its sub-contractors to do so.<sup>185</sup> The licensee must progressively replace its expatriate staff with “suitably qualified and experienced” Ugandan citizens. The licensee must convince the Advisory Committee established under the PSA for the project that no “suitably qualified or experienced” Ugandan citizens are available for key senior management or technical positions before it can hire expatriate staff.<sup>186</sup> Under the Model PSA, the licensee must provide an annual programme for training and for phasing in Ugandan citizens to the Advisory Committee for approval. The Licensee must also submit to the Government an annual programme for training government personnel on skilled and technical jobs in petroleum operations, and deposit with the Government fixed monetary amounts for training of personnel selected by the Government.<sup>187</sup>

The Petroleum (Exploration, Development and Production) Act,<sup>188</sup> dealing with upstream activities came into force in April 2013, and was followed by the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act,<sup>189</sup> which deals with midstream activities came into force in July 2013. These laws provide for local content. Section 125 of the Petroleum (Exploration, Development and Production) Act,<sup>190</sup> (the “Upstream Act”) it provides for: 1) preference to goods which are produced or available in Uganda and services which are rendered by Ugandan citizens and companies. 2) Where the goods and services required are not available in Uganda, they must be provided by a joint venture company in which a Ugandan company has a share capital of at least 48%. 3) Licensee to submit to the Petroleum Authority an annual report on use of Ugandan goods and services. *Section 126* provides for the Licensee to submit to the Petroleum Authority for approval a detailed annual program for recruitment and training of Ugandans. *Section 127* provides that the: 1) Licensee must include clearly defined training program for its Ugandan employees, including scholarships and other financial support for education. 2) Licensee must include a commitment to maximize knowledge transfer to Ugandans. 3) Regulations to prescribe the requirements for technology transfer of knowledge and skills.

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<sup>185</sup> Model PSA Art. 18.1, 18.2 and 18.3.

<sup>186</sup> Ibid.

<sup>187</sup> Model PSA, Art. 18.1, 18.2 and 18.3.

<sup>188</sup> Petroleum (Exploration, Development and Production) Act 2013.

<sup>189</sup> Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act 2013.

<sup>190</sup> Petroleum (Exploration, Development and Production) Act 2013.

The National Content Regulations<sup>191</sup> define national content to mean the level of Ugandan local expertise, goods, services, companies, Ugandan citizens, registered entities and financing in petroleum activities and substantial value added or created in Ugandan economy through the utilization of Ugandan human and material resources for the provision of goods and services to the petroleum industry in Uganda. Part 2 of The Petroleum (Exploration, Development and Production) National Content Regulations<sup>192</sup> provides for monitoring and implementation of national content. Furthermore, Regulation 6 empowers the Minister to consider national content when evaluating a license application. Regulation 6 requires the licensee within twelve months after the grant of the license to submit to the authority a national content programme for approval. Among the requirements of the national content programme is the proposal for the training and employment of Ugandans, transfer of technology, knowledge and skills to Ugandan companies, research and development of Uganda, procurement of goods and services produced in Uganda, and the support to local education institutions among others.

Uganda's Companies Act<sup>193</sup> does not define a Ugandan company, it only provides for a definition of a company which provides that a company means an entity formed and registered under this law. Under S. 251 it describes a foreign company as a company incorporated outside Uganda which runs business in Uganda. Focus here is on place of incorporating, this may not cater for all scenarios that may need to be addressed under local content, for example a company incorporated by Ugandans outside Uganda will be considered a foreign company and a company incorporated in Uganda by non-Ugandans will be considered a Ugandan company. The Uganda Investment Code Act<sup>194</sup> on the other hand defines a foreign investor as:

*a person who is not a citizen of Uganda; a company, which more than 50 percent of the shares are held by a person who is not a citizen of Uganda; a partnership in which the majority of partners are not citizens of Uganda.*<sup>195</sup>

The Investment Code Act goes ahead to provide that the definition of a foreign company shall not include a company is registered under the Companies Act in which government is a majority shareholder directly or indirectly or a corporate body established in Uganda by law, a cooperative

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<sup>191</sup> Regulation 4 of the Petroleum (Exploration, Development and Production) National Content Regulations 2016.

<sup>192</sup> Petroleum (Exploration, Development and Production) National Content Regulations 2016.

<sup>193</sup> Act No. 1 of 2012.

<sup>194</sup> Uganda Investment Code Act, Cap 92.

<sup>195</sup> S. 9 Uganda Investment Code Act.

society and an international development agency. From the definition of this Act, a foreign company is determined by the citizenship of its majority shareholders. Similar definitions are given by the Land Act in determining a non-citizen for purposes of owning land in Uganda. It provides that a non-citizen means:

*a person who is not a citizen of Uganda as defined by the Constitution and the Uganda Citizenship Act; in the case of a corporate body, a corporate body in which the controlling interest lies with noncitizens; in the case of bodies where shares are not applicable, where the body's decision making lies with noncitizens; a company in which the shares are held in trust for noncitizens; and a company incorporated in Uganda whose articles of association do not contain a provision restricting transfer or issue of shares to noncitizens.*<sup>196</sup>

The Land Act describes “controlling interest” in a company to include: in the case of companies with shares, the majority shares are held by persons who are not citizens; and in the case of companies without shares, a company in which decisions are arrived at by the majority who are not citizens.

From the above it is clear that when it comes to land matters, the law looks at interests and benefits in determining a Ugandan or foreign company. Unlike the other laws, the Land Act has a stricter definition of a foreign company in as far as it limits a Ugandan company to only that entity whose majority decisions are made by Ugandans or where the company specifically limits its ownership to Ugandans in the Articles and Memorandum of Association. Looking at the above laws one can say that the different laws in Uganda have provided for different definitions of Ugandan or foreign companies based on the objects that such laws intend to achieve. For example, the intention of the Investment Code is to provide for favourable conditions for foreign investors investing in Uganda, such interests may be very different from the interests set a law providing for local content where the interest would be ensuring more Ugandans participate in the sector despite the fact that the investment and capital might be by a foreign company.

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<sup>196</sup> S. 40 of the Land Act, Cap 224.

#### 4.2.1 What constitutes a Local Business entity of Local Supplier in Uganda?

When it comes to who a local supplier is in Uganda, the upstream and midstream laws provide more confusion than answers! For example, the Petroleum (Exploration, Development and Production) Act<sup>197</sup> provides under S. 125 that:

*(1) The licensee, its contractors and subcontractors shall give preference to goods which are produced or available in Uganda and services which are rendered by Ugandan citizens and companies.<sup>198</sup> (2) 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.<sup>199</sup>*

The law does not define what a “Ugandan” company is, thereby leaving a gap for exploitation. The strict interpretation of the word “Company” used in the section instead of “business entity” limits the application of this section only to companies living out other recognised business entities such as partnerships, cooperative societies, and sole proprietorships among others. The Midstream Act, attempts to address this gap, (though not conclusively) by providing that.<sup>200</sup> The licensee, its contractors and subcontractors shall give priority to citizens of Uganda and registered entities owned by Ugandans in the provision of goods and services.

Emphasis is placed on “registered entities” as opposed to “companies”. This means other business entities are considered under the midstream law as opposed to the upstream law that restricts itself

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<sup>197</sup> Petroleum (Exploration, Development and Production) Act 2013.

<sup>198</sup> Ibid.

<sup>199</sup> Ibid.

<sup>200</sup> Section 53(1) Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act 2013.

to companies. However, the use of the word “registered entities” does not solve the problem because there are situations where foreigners register business entities in a country and this does not make such entities local entities. For example, S. 252 of the Companies Act<sup>201</sup> 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. Basically, the companies Act on this aspect tries to separate “incorporation” from “registration”. The former is a process of forming a company and while the latter is 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 will treat a company registered outside Uganda by Ugandan citizens.

#### **4.2.2 Opportunities and challenges in Local Content Law**

Some arguments have been advanced for the promotion of local content in oil and gas activities. These are categorized in three broad categories: increasing value-added, market failures/externalities and social objectives. For example, where countries have small industrial sectors, there is a hope for boosting the economy through policies which increase local content through value added. This is achieved through diversification to avoid the resource curse through addressing the volatility of commodity prices, market imperfections to avoid inefficient specialization in non-tradable goods.<sup>202</sup>

The Petroleum (Exploration, Development and Production) (National Content) Regulations<sup>203</sup> have tried to fill the gaps presented by the two Acts and PSAs. It has tried to provide for better definitions of what a Ugandan company and registered entity are, the meaning of technology transfers and active participation of local companies. The Regulations have elaborated measures for national content monitoring, plans for preference procurement; a national supplier database; unbundling of transactions to address capacity gaps, bid criteria to include national content; training of Ugandans and succession plans. One of the key components of the Regulations is the mandatory national content performance reporting. The progress made so far is such that,

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<sup>201</sup> Act No. 1 of 2012.

<sup>202</sup> Ibid.

<sup>203</sup> Petroleum (Exploration, Development and Production) (National Content) Regulations 2016.



international investors and non-citizens have been eliminated from competing with locals in certain sectors. Regulations 10 (1) and (2) and the Schedule to The Petroleum (Exploration, Development and Production) (National Content) Regulations,<sup>204</sup> ring-fences the goods and services to be provided by Ugandan companies, citizens and registered entities. Included are transport, security, human resource management, fuel supply; foods and beverages among others.

### **4.2.3 Employment and Skills Development**

Oil and gas producing countries use a variety of laws and policies to improve the quantity and quality of local employment. This is usually through laws and policies designed to increase the absolute and or relative number of nationals employed in the sector. It may also be through laws and policies that promote the development of higher technical and managerial skills for national employees.<sup>205</sup>

It cannot be overemphasized that Ugandans will benefit from local content if the capacity of Ugandans to contribute to the skills' pool of the petroleum sector is improved and harnessed. The training required for skills improvement must expand beyond straight jacket extractives training to support industries which will be required at varied stages of oil and gas production. Objective 7 of the National Oil and gas Policy presents the need to ensure optimum national participation in oil and gas activities while objective 8 relays the need to support strategies for development and maintenance of national expertise in the oil and gas sector.

Some of these strategies are: 1) promoting state participation in Production Sharing Agreements with a view of providing better opportunities for the state to understand the basis for decisions in exploration, developments and production, together with acquiring the skills necessary for commercial management of the sector. 2) Promoting public private partnerships whose benefits outweigh their cost, and whose costs and benefits are mutually and fairly shared by the partners. 3) Encouraging civil society to participate in the building of a productive, vibrant and transparent

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<sup>204</sup> Ibid.

<sup>205</sup> Ibid.

oil and gas sector. 4) Promoting the employment of Ugandans in the oil and gas sector. 5) Promotion of the transfer of skills and technology to the country. 6) Identifying training skills required for the sector and planning for their development through both formal and industrial training. 7) Utilizing oil and gas activities in the country to support provision of the necessary training. 8) Providing appropriate training to government personnel in the relevant fields as one of the ways to facilitate professional dialogue with oil companies. 9) Broaden the national education curricula to prepare the necessary workforce for the growing oil and gas sector in the country. The Upstream and Midstream 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 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 licensees' work.<sup>206</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. 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?

The Business Technical Vocational and Education Training (BTVET) Policy and Strategic Plan 2011 to 2020 provides Uganda with the skills focusing on the petroleum sector. The plan is based on the draft BTVET Policy which intends to provide demand-responsive, employable skills and competencies relevant for the sector. The idea is to create centers of excellence within the sector to mitigate skills gaps. For both formal and vocational training needs, the necessary reforms have been stone walled by the overlapping regulatory functions of the Ministry of Education and Sports

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<sup>206</sup> National Content Regulations 2016 Reg. 17

and the Petroleum Authority. This also feeds into the dilemma to develop material by the National Curriculum Development Center tailored for oil and gas studies outside the focus of the Ministry of Education and Sports. The positive in training has been the transformation of the Cooperative Institute into the Uganda Petroleum Institute, Kigumba (UPIK).<sup>207</sup> Though this institute is run by the Ministry of Education and Sports, it should be managed by the Petroleum Authority who is better placed to regulate training and skills development for the sector.<sup>208</sup> Besides the capacity of UPIK is still below the threshold for feeding relevant skillsets into the sector. Another dilemma, is that if the training reforms anticipated focus entirely on the oil and gas sector, there will be a skills gap in support sectors which are equally important and or worst-case scenario, over reliance by the economy on the oil and gas sector

#### **4.2.4 Opportunities and challenges in Local Content Law**

Some arguments have been advanced for the promotion of local content in oil and gas activities. These are categorized in three broad categories: increasing value-added, market failures/externalities and social objectives. For example, where countries have small industrial sectors, there is a hope for boosting the economy through policies which increase local content through value added. This is achieved through diversification to avoid the resource curse through addressing the volatility of commodity prices, market imperfections to avoid inefficient specialization in non-tradable goods.<sup>209</sup>

The Petroleum (Exploration, Development and Production) (National Content) Regulations<sup>210</sup> have tried to fill the gaps presented by the two Acts and PSAs. It has tried to provide for better definitions of what a Ugandan company is and registered entities are the meaning of technology transfer and active participation of local companies. The Regulations have elaborated measures for national content monitoring, plans for preference procurement; a national supplier database; unbundling of transactions to address capacity gaps, bid criteria to include national content; training of Ugandans and succession plans. One of the key components of the Regulations is the mandatory national content performance reporting. The progress made so far is such that,

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<sup>207</sup> Universities and Tertiary Institutions (Establishment of Uganda Petroleum Institute, Kigumba) SI 31 of 2011.

<sup>208</sup> See UPIK (2014) Institute Development Plan, 2014-2019.

<sup>209</sup> Silvano et al. *supra*.

<sup>210</sup> Petroleum (Exploration, Development and Production) (National Content) Regulations 2016.

international investors and non-citizens have been eliminated from competing with locals in certain sectors. Regulations 10 (1) and (2) and the Schedule to The Petroleum (Exploration, Development and Production) (National Content) Regulations,<sup>211</sup> ring-fences the goods and services to be provided by Ugandan companies, citizens and registered entities. Include are transport, security, human resource management, fuel supply; foods and beverages among others.

### **4.3 Research Question Two: Uganda’s implementation of the local content policy compared to that of Nigeria and Norway**

This section gives the findings of the research question: How does Uganda’s implementation of the local content policy compare to Nigeria and Norway, and what lessons can be learnt? The Government has through a number of development policies and strategies highlighted the need for Local Content (enhancing the country’s competitiveness through support of locally manufactured products, knowledge transfer and human capital development).<sup>212</sup> These include but not limited to;

#### **4.3.1 National Development Plan II<sup>213</sup>**

The key objectives of the NDP II include; Increasing sustainable production, productivity and value addition in key growth opportunities; Increasing the stock and quality of strategic infrastructure to accelerate the country’s competitiveness; Enhancing human capital development; and Strengthening mechanisms for quality, effective and efficient service delivery

Objectives (1) and (3) can best be achieved through promotion of Local Content and as such some of the strategies outlined by the NDP II include; industrialization and export oriented growth through value addition, agro-processing, mineral beneficiation, selected heavy and light

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<sup>211</sup> Ibid.

<sup>212</sup> Government of Uganda (2016): Local Content Strategy- Ministry of Works and Transport- September 2016.

<sup>213</sup> National Development Plan II (NDP II) 2015/16-2019/2020.

manufacturing and an employment creation strategy through fast tracking skills development and harnessing the demographic dividend.

#### **4.3.2 Buy Uganda Build Uganda (BUBU) Policy<sup>214</sup>**

The Government of Uganda through the Ministry of Trade, Industry and Cooperatives launched the “Buy Uganda Build Uganda” Policy to give guidance to policy makers to ensure that promotion of the consumption of locally produced goods is integrated into their policies and procedures. The Buy Uganda Build Uganda Policy also intends to foster local economic development through increasing input of local labor, goods and services.<sup>215</sup>

The policy vision is “To develop a vibrant dynamic and competitive private sector that transforms local products through the value chain to meet the required standards.” And the mission is “To support the production, purchase, supply, and consumption of local goods and services.” The policy aims at promoting consumption of local goods and services, promoting the use and conformity to standards to guarantee quality goods and services and providing capacity building programs to local suppliers of goods and services. The policy also outlines several strategies that can be used to achieve the above objectives and shows a range of products including beverages, cereals etc. currently being imported that can be provided in Uganda.

#### **4.3.3 National Trade Policy<sup>216</sup>**

The National Trade Policy encourages the use of locally developed materials in production with a view of stimulating growth in local production sectors. The policy also encourages the consumption of locally produced goods and services and providing affirmative action to local suppliers under Government procurement, while ensuring conformity with existing national laws.

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<sup>214</sup> Buy Uganda Build Uganda (BUBU) Policy September 2014.

<sup>215</sup> Ibid.

<sup>216</sup> National Trade Policy 2007.

#### **4.3.4 National Industrial Policy<sup>217</sup>**

One of the policy objectives of the National Industrial Policy is to exploit and develop natural domestic resource- based industries such as petroleum, cement and fertilizer industries and promote competitive industries that use local raw materials. The policy encourages the use of local raw materials in value adding industrial processes to enhance market opportunities for supply sectors through use of cluster development initiatives and encouraging existing industries and new investors to utilize the services of local technology institutions and consultants as a means of developing national local technological capabilities.

#### **4.3.5 National Petroleum Local Content Policy<sup>218</sup>**

In 2014 the Government of Uganda developed petroleum national content regulations.<sup>219</sup> The purpose of these regulations is to promote the training and employment of Ugandans, transfer of knowledge and technology and the provision of goods and services by Ugandan companies in petroleum activities and to promote cooperation between international companies and Ugandan Universities research institutions and technical institutions. The policy also requires licensed companies to source goods and services exclusively from Ugandan companies where the goods and services meet the desired quality, the provision of goods and services not available in Uganda by international companies that have entered into joint ventures with Ugandan companies and in exceptional cases, with the approval of the Authority, wholly foreign owned companies.

#### **4.3.6 National Public Sector Procurement Policy<sup>220</sup>**

The National Public Sector Procurement Policy promotes socially responsible public sector procurement.<sup>221</sup> It provides for Government to promote equal engagement opportunities and

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<sup>217</sup> National Industrial Policy 2008.

<sup>218</sup> National Petroleum Local Content Policy 2017.

<sup>219</sup> Petroleum National Content Regulations 2014.

<sup>220</sup> National Public Sector Procurement Policy (NPSPP) 2018.

<sup>221</sup> Ibid.

ethical trading initiatives that support marginalized groups for purposes of socio-economic development through achieving the following objectives:<sup>222</sup>

To Ensure that public contracts are awarded to providers who maintain acceptable standards of business probity and ethics; Institute deliberate efforts to involve the disadvantaged groups [especially women and the youths], SMEs and Local Providers in Public Sector Procurement; Develop simplified and accessible procedures to promote participation of SME's and local providers without compromising value for money; Promote incorporation of both international and regional standards, especially those related to supporting social inclusion, decent work and promoting employment opportunities; Ensure that there is effective access of information and credit facilities to local providers and SME's; and Support local providers, women, youths and SME's to build sufficient capacity to enable them participate in the procurement process. The policy also provides for using public procurement as an economic development tool through promoting progressive procurement policies which are receptive to, and considerate of the local economy

#### **4.3.7 Education, Employment and Human Capital Development**

In the Financial Year 2012/13, the working population in Uganda (aged 14-64) was 13.9 million people.<sup>223</sup> Over 70% of these were engaged in the Agricultural Sector and the education level of these is still low with three quarters of these having primary school as their highest level of education. About 43% of all working persons are involved in subsistence agriculture and over 50% of the working persons are self-employed. There have been considerable efforts by the Government of Uganda into the Education Sector in Uganda, 13.4% of the overall National Budget of FY 2013/14 was allocated to the Education Sector.

There have been considerable achievements such as expanded access to secondary school education with over 1.3 million students being enrolled into Secondary school education per year and introduction of the Students Loan scheme to support students for higher learning and increase

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<sup>222</sup> Ibid.

<sup>223</sup> Ibid.

in the number of higher learning institutions. However, there is still a large gap between the education and workforce dynamics in Uganda partly because there have not really been conscious human capital development programs or efforts in Uganda. This is supported by the World Economic Forum's<sup>224</sup> which ranked Uganda at position 102 out of 124 countries.

#### **4.3.8 The Current Situation in Uganda on Local Content Policy**

Analysis of the current situation is meant to assist in understanding the demand side requirements the supply-side capabilities, and any barriers that limit local participation. This knowledge is meant to enable the Project Management Unit (PMU) to define what is realistic and achievable.<sup>225</sup> In line with setting stage to position Uganda to benefit from massive investments during the oil and gas development phase, Cabinet has approved the Local Content Policy for oil and gas industry in Uganda. Uganda is estimated to have 6.5 billion barrels of oil deposits with an estimated 1.4 to 1.7 billion barrels recoverable.

Government along with other stakeholders including the Joint Venture Partners (JVP) – TOTAL, E&P, CNOOC and Tullow Oil; are racing to have the first commercial oil extracted by 2020. Despite these pre-production investments, some experts have said there is still a lot of work required to the local economy to leverage opportunities within the oil and gas sector. About \$15 billion is expected to be invested in the course of developing the oil refinery, pipe line and upstream activities.<sup>226</sup>

It is against this background that Cabinet has now approved the local content policy to build capacity of Uganda's human resource in the oil and gas industry. The policy was approved during a Cabinet meeting held at State House Entebbe. The policy will promote employment of Ugandans in the oil and gas industry. The consortium of companies was required to train Ugandans in short, medium- and long-term skills.<sup>227</sup> By 2021, there will be no company, foreign or local that should make any excuse why they still bring a truck driver, an oil attendant or metre reader at the oil refinery.

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<sup>224</sup> The Human Capital Report, 2015.

<sup>225</sup> Ibid.

<sup>226</sup> Ofwono Opondo (2018): Cabinet Approves Local Content Policy for Oil and Gas, Government Spokesperson, June 26<sup>th</sup> 2018.

<sup>227</sup> Ibid.



In May 2020, Parliament passed the Local Content Act which places priority on employment of Ugandans, procurement of Ugandan companies and use of local goods in all undertakings where public funds are used or where the undertaking is a licensable activity. The law compels foreign oil companies to consider Ugandans and locally sourced products for employment and use first except in circumstances where the locals are not competent. The law also grants priority of sub-contacting a portion of the contract to a suitably qualified Ugandan company, individual or resident company. It further stipulates specific percentage of or obligation to a sub-contract a Ugandan company or individual.

Ofwono<sup>228</sup> asserts that the new policy will enhance the competitiveness of Ugandan enterprises as suppliers and JVP. It is also aimed at increasing the use of domestically produced or available goods and services by the oil and gas industry. Both government and the private sector are undertaking different initiatives that will see Ugandans acquire skills that meet the acceptable standards to participate in oil and gas activities. For example, in the year 2017 Stanbic Bank launched an incubator to help train SMEs in Managerial and Financial literacy, to enable them access bank loans and boost their competitiveness in winning contracts within the oil and gas sector. Ugandan firms looking to supply goods and services are required to register with the National Supplier Database (NSD).

#### **4.3.9 Trade**

The country has continued to experience a large trade deficit over the years. Over a period of 5 years (2009 to 2013) Uganda's value of imports have continued to double the value of exports. The overall trade deficit has continued to widen as a result of importation of high value manufactured goods compared to low value exports of agricultural primary products. The biggest composition of Uganda's imports includes petroleum and petroleum products. The Manufacturing output in Uganda has been growing at an average rate of 5% annually for the last 5 years with the highest composition of the manufacturing output in food processing. Opportunities exist in virtually all areas ranging from; Food processing & beverages, leather, paper, textiles & garments, fertilizers, pharmaceuticals, oil exploration & extraction, fabrication, ceramics, etc.

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<sup>228</sup> Ibid

#### **4.3.10 Public Procurement**

While there may be widespread agreement with a policy of supporting the participation of local producers in the supply of infrastructure assets, questions are raised as to whether procurement is the best way to do it. The view is often expressed that assistance to local industries should be on the supply side and that procurement policies should be ‘neutral’ in terms of promoting development. However, current demand-side policies are not neutral and as a consequence the playing field is not level. Local content in Public Procurement is essential to developing a sustainable Public Procurement System in Uganda.

The Government of Uganda spends a significant amount of money in its expenditure through Public Procurement. However, the Public Procurement and Disposal of Public Assets Authority (PPDA) Procurement Performance and Measurement System (PPMS) report of the Financial Year 2014/15 shows that over 30% of the value of all Public Procurement contracts are awarded to Foreign Providers which means that much of the funding through Government Procurements does not benefit the local providers in Uganda. Public Procurement can be a very good avenue of promoting Local Content in Uganda with trillions of shillings being spent through public procurement each year. The PPDA Amendment Act<sup>229</sup> has created provisions for Preference for domestically manufactured goods and Ugandan contractors and consultants to promote their development by giving them a competitive edge. Also, to promote particular specified geographic areas, specified public procurement contracts or parts of a contract can be reserved.

The achievement of proper local content laws and policies in developing countries like Uganda are always vulnerable to various forms of corruption which mostly manifest their ugly faces in the secret negotiation processes where government officials involved may take advantage of their positions to enrich themselves at the expense of the good of the country.

The oil industry has already been faced with corruption scandals where MPs accused Tullow Oil of bribing government officials to secure the entry of Total and CNOOC in the Uganda oil industry as well as a public outcry over a presidential handshake where 42 public officers were rewarded for winning an arbitration case<sup>230</sup>

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<sup>229</sup> PPDA Amendment Act 2014.

<sup>230</sup> Oil in Uganda, Hard bargaining and complex politics in East Africa

#### **4.4 Research Question Three: Recommendations on local content legal and policy best practices for the Government of Uganda in oil and gas industry**

This section gives the findings on the recommendations on local content policy best practices for the Government of Uganda in oil and gas industry? There is need for more transparency and inclusion in decision making in the oil and gas sector. Uganda needs to formalize and strengthen the available fora for state participation. Oil and gas information, contracts, timelines and compliance by investors should be made more readily available for citizen scrutiny and accountability. Human resource regulators such as the Ministry of Gender, Labour and Social Development, National Social Security Fund, Ministry of Trade among others should harmonize expectations for oil and gas companies in line with local content requirements.

Uganda law and policy makers should be guided by best practices in the region and other investment entities on how to structure the procurement regime. The World Bank procurement checklists are a viable example to glean from. From one of its reports,<sup>231</sup> three pillars are considered to determine a local company: a) the level of participation of citizens in the company cutting across ownership, management and employment, b) the level of value addition based on the amount of local input in the product, c) whether the product is manufactured locally, or a service is delivered locally and this focuses on the geographical location of the company. Similarly, the African Development bank emphasizes the ownership of the company and the controlling mind of the prospective company; the shareholders, management and citizenship.<sup>232</sup>

Uganda should build capacity for training institutions to churn out competent skills relevant for the oil and gas sector and other support industries. This should include revision of curricular to include basic oil and gas components to inform career development and talent channeling. Regulation of oil and gas training should also be carefully deliberated to ensure that the Ministry of Education and Sports, the National Curriculum Development Center and the Petroleum

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<sup>231</sup> World Bank (2012): Increasing Local Procurement by the Mining Industry in West Africa. Report No. 66585-AFR

<sup>232</sup> Africa Development Bank (2017): Rules of Procedure for procurement of Goods and Works. available at <https://www.afdb.org/fileadmin/uploads/afdb/Documents/Procurement/Project-related->

Authority Uganda share mutual purposes and support each other to strengthen the material and pedagogy in the sector.

Ugandans who invest in oil and gas activities should be supported by government and assisted in building capacity to compete in the sector. There should be more emphasis on adding value to locally available raw materials to meet the quality and consumption form preferred by the sector. This can be better achieved by revising policies on importation of locally available materials or their products to incentivize investment in such materials, Tax holidays, asset financing packages, real estate assistance and other support should be giving to local investors who intend to build capacity for oil and gas participation. It is not enough for the regulators to demand Ugandan companies to demonstrate capacity, experience and technology succession in an industry where innovations have not been tried and tested and approaches are predominantly driven by market forces and invariably volatile.

## **4.5 Legal Institutional Framework**

### **4.5.1 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.

In my opinion this Act serves to promote technology transfer in an industry to is highly capital intensive and novel to a country like Uganda which lacks competent service providers and the necessary infrastructures and as well as reduce costs that the government would spend on infrastructural development through cost sharing.

#### **4.5.2 The Public Procurement and Disposal of Assets Act, 2013**

The Act provides for preference of domestically manufactured goods and Ugandan contractors and consultants, in order to promote their development, by giving them a competitive advantage when competing for public procurement contracts, to foreign manufactured goods, foreign contractors or foreign consultants. In addition, in order to promote particular sectors within specified geographic areas, specified public procurement contracts or parts of a contract shall be subject to reservation schemes.

It is my humble view that through establishment of minimum requirements for local supplies and services in various public procurement projects that include those of the oil and gas sector, this Act provides an avenue for the participation of the local individuals and companies in the sector which would otherwise be a reserve of the foreigners.

#### **4.5.3 The Petroleum Acts, 2013**

The Petroleum (Exploration, Development and Production) Act,<sup>233</sup> and the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act,<sup>234</sup> provide for: state participation in petroleum activities; licensees, contractors and subcontractors to give preference to goods and services which are produced or available in Uganda and rendered by Ugandan citizens and companies; where the goods and services are not available in Uganda, their supply shall be provided by a company that has entered into a joint venture with a Ugandan company; the licensees, contractors and subcontractors notify the Ugandan enterprises of upcoming contracts and the quality, health, safety and environment requirements for the goods and services required for petroleum activities; and the training and employment of Ugandan citizens and the transfer of technology in the petroleum subsector.

In my opinion these laws are proof that Uganda is taking the right steps towards achieving the local content regulatory regime objectives as observed through provisions related to ring fencing

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<sup>233</sup> Petroleum (Exploration, Development and Production) Act 2013.

<sup>234</sup> Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act 2013.

of certain services like transport, security, beverages among others. This has on the other prepared Uganda to escape the Dutch disease by encouraging diversification in the oil and gas sector.

#### **4.5.4 The Citizenship and Immigration Control Act, 1999**

The Act provides for the regulation and control of aliens in Uganda. It requires non-Ugandans to obtain entry permits before they can enter, remain or engage in any employment or business in Uganda. This law in my view indirectly promotes local content by restricting the number of foreign nationals who can engage in employment or business in Uganda.

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

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.

Although the 2016 Model PSA requires the international oil companies to submit a training program to government for approval, I am of the view that there is still need to establish a training and an education fund that is properly managed for greater benefit of the local public.

## CHAPTER FIVE

### DISCUSSIONS OF FINDINGS

#### 5.1 Introduction

Chapter Five will discuss the results of the analysis and the implications of those results in light of related research. The discussions were based on the findings of the study guided by the study objectives. The Specific Objectives were; to provide an in-depth assessment of the efficacy of oil and gas local-content legislation in Uganda; to compare and highlight lessons learnt in the implementation of the local content policy in Uganda, Nigeria and Norway; and to provide recommendations on local content policy best practices for the Government of Uganda in oil and gas industry

#### 5.2 Findings from Uganda

The year 2019 marked 13 years since Uganda announced the existence of commercially viable petroleum deposits. Since this announcement in 2006 a lot of efforts have gone in the making of laws and policies that will govern the sector and see to it that the country maximises the benefits of exploiting its oil and gas reserves.<sup>235</sup> One major concern for government, the citizens and all the actors has been how Ugandans will benefit from the oil and gas sector. Concerns have been raised on whether the sector can provide employment for citizens, use locally produced goods and services as well as exploit local resources to transfer technology that can kick start other sectors of the economy.<sup>236</sup> The debate has tended to be around local content and how much local content will be utilised by the sector.

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<sup>235</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 ISBN 978 9970 34 031 6.

<sup>236</sup> Ibid.

Government has not done Training Needs Assessment or other forms of capacity needs assessment for the oil and gas sector and the only existing data is the study conducted by the joint partners<sup>237</sup> involved in the oil and gas sector. This means Uganda will have to rely on data provided by industrial players. The challenge with this data is it was gathered and analysed in the lenses of an industrial player seeking to maximise profits and this may not necessarily reflect the needs of the country.

One of the approaches proposed under Uganda's petroleum policies and laws is procurement of goods and services from Ugandan suppliers. The Ugandan suppliers mean Ugandan citizens (or residents) as well as business entities. What actually amounts to a Ugandan local supplier is still conceptually problematic. The upstream and downstream laws provide different definitions, but also broadly the question of how local should the local entity be remains to be answered. For Uganda's case, the following questions need to be answered: What should constitute "local" business entity or a local supplier? ; What parameters should be used to determine a local company/business entity? ; What should be the relationship between the local supplier and other international businesses operating in the country? ; and What level of control should citizens have over the foreign suppliers/businesses operating in the country (for example is employing citizens or having citizens as shareholders enough to qualify someone)? There is an attempt to answer the above questions in Uganda's petroleum policy and the laws. However, several gaps exist.

Uganda's Companies Act<sup>238</sup> does not define a Ugandan company, it only provides for a definition of a company which provides that a company means an entity formed and registered under this law. Under S. 251 it describes a foreign company as a company incorporated outside Uganda which runs business in Uganda. Focus here is on place of incorporating, this may not cater for all scenarios that may need to be addressed under local content, for example a company incorporated by Ugandans outside Uganda will be considered a foreign company and a company incorporated

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<sup>237</sup> These include Tullow Oil, CNOOC and Total Ltd who have active licenses in Uganda today.

<sup>238</sup> Act No. 1 of 2012.



in Uganda by non-Ugandans will be considered a Ugandan company. The Uganda Investment Code Act<sup>239</sup> on the other hand defines a foreign investor as:

*a person who is not a citizen of Uganda; a company, which more than 50 percent of the shares are held by a person who is not a citizen of Uganda; a partnership in which the majority of partners are not citizens of Uganda.*<sup>240</sup>

A 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.

### **5.3 Findings from Nigeria**

Nigeria is endowed with an array of mineral deposits, of which none are as important to the nation's economy as crude oil and gas.<sup>241</sup> Initially only British subjects, and later the Shell Group, were entitled to explore for petroleum, and hence participate in the oil and gas industry in Nigeria<sup>242</sup>. Following the country's independence in 1960, local involvement emerged through state participation, which fundamentally modeled the concept of LC to include state participation through a national oil company. Upon joining the Organization of the Petroleum Exporting Countries (OPEC) in the 1970s, state participation increased heavily, and emphasis was laid on the renegotiation of agreements to give the national oil company powers to administer this interest<sup>243</sup>. Consequently, the regulatory, fiscal and contractual systems of the Nigerian petroleum industry have undergone significant restructuring from inception to the present date.

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<sup>239</sup> Uganda Investment Code Act, Cap 92.

<sup>240</sup> S. 9 Uganda Investment Code Act

<sup>241</sup> Together, oil and gas generate more than 80% of the country's total national revenue and over 90% of its foreign exchange earnings and contributes about 36.5% of its GDP.

<sup>242</sup> For a detailed early history of oil production in Nigeria, see Schatzl Ludwig, Petroleum in Nigeria, 1-5 (Nigerian Institute of Social and Economic Research, Ibadan 1969).

<sup>243</sup> Federal Ministry of Finance, Report of the Fact-Finding Mission on Petroleum Taxation: Problems Affecting Petroleum Revenue and Miscellaneous Matters on the Petroleum Industry (Federal Ministry of Finance, Lagos 1969).

Although the Minerals Oils Act 1914 contains a LC provision, this was never adhered to in practice. Following her independence, Nigeria put this provision into practice (from establishing training programs to formulating legislation) to ensure that IOCs operating in the industry trained local personnel within the sector. The authorities applied the provisions of the Minerals Oils Act 1914 to all oil mining leases (OMLs) retrospectively, which required lessees to initiate a technical training program for the employment of Nigerians as tradesmen and craftsmen. In addition, lessees were required to train Nigerians with professional backgrounds to take up suitable managerial and senior managerial posts.<sup>244</sup> The only downside to these LC requirements was the lack of specific goals and a mechanism to ensure that rules were complied with. This eventually led to several laws being enacted.

#### **5.4 Findings from Norway**

Resource-rich countries are increasingly inserting requirements for local content (“local content provisions”) into their legal framework, through legislation, regulations, contracts, and bidding practices. If successful, a policy to increase local content can lead to job creation, boost the domestic private sector, facilitate technology transfer and build a competitive local workforce. However, local content goals are often unfulfilled and the opportunities are not captured. For example, local content provisions typically require investors to meet targets measured as a percentage of investment, hours worked, equipment supplied, or jobs created. If targets are too high, they may either scare away investment or remain unmet as investors accept the fines or find loopholes. If they are too low, the country will not maximize potential linkages. This shows the importance of the framing of local content provisions. Targets, and other local content objectives, need to be carefully quantified, adapted to the local context and collaborative. Because local content provisions can be key to translating resource investments into sustainable benefits for the local population, this project examines the detail of the existing legal frameworks for local content in a number of countries.

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<sup>244</sup> Ibid.

Norway has been a success in local content utilization.<sup>245</sup> From the 1970's to the mid 1990's, the Norwegian government used the grant of licenses, along with additional agreements targeting training of Norwegian nationals and technology transfer arrangements to ensure local content. Norway became a member state of European Economic Area (EEA) in 1994, which required it to update its petroleum law and local content requirements, and repeal some of its non-compliant local content provisions. The Norwegians follow the following legislation in Local Content policy activities: Royal Decree of December 8, 1972 ("1972 Royal Decree"); The 1985 Petroleum Act; The 1996 Petroleum Act; and the 1997 Petroleum Regulation. Representative historical licenses include Model Petroleum Production Licenses in 1974, 1979, 1981, 1988, and 1991. ("1974/1979/1981/1988/1991 License"). Selected agreements include Standard Petroleum Exploration & Production Agreement, Frame Agreement for Offshore Petroleum Technology Research & Development Activities, and Model Training Agreement Concerning Petroleum Activities.

## **5.5 The overview of the local Content activities<sup>246</sup>**

A local content plan was required to be submitted to the Ministry of Petroleum and Energy for approval before the grant of license.

Licensees were obligated to provide local training and engage a certain number of Norwegian personnel in their petroleum activities.

- Licensees had to enter into a training agreement after they had been granted a license.
- Technical assistance agreements were entered into between Norwegian operators and experienced oil companies. Licensees had to use Norwegian suppliers to procure goods and services for their petroleum activities. Operators were required to enter into research and development agreements with the Norwegian Ministry of Petroleum and Energy.
- At least 50% of research and development activities undertaken in connection with any petroleum activities under a Petroleum License had to be performed in Norway.

The Ministry of Petroleum and Energy has authority to monitor and supervise compliance with laws.

- Enforcement mechanisms and penalties for non-compliance are not local content specific.

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<sup>245</sup> Columbia Centre on Sustainable Investment (CCSI): Local Content- Norway Petroleum.

<sup>246</sup> Ibid

The Norwegian State administers the petroleum reserves for the benefit of Norwegian society as a whole.

- The Ministry of Petroleum and Energy is authorized to implement local content policies and laws through regulations and licenses.
- The Research Council of Norway manages the research and development agreements and ties the oil and gas industry to the research institutes in Norway.

The 1979 License required licensees to submit a plan as soon as the license was granted that detailed how activities onshore would be organized in the exploration phase, with alternative priorities as to where they should be located and estimates of the expected employment impact and indications as to which occupational group would be employed (Section 15). Section 23 of the 1985 Petroleum Act subsequently required the submission of a plan to the Ministry of Petroleum and Energy for approval for the development and operation of petroleum deposits, which contained some local content requirements:

*If a licensee decides to commence development of a petroleum deposit, he shall submit to the Ministry for approval a detailed plan for development and operation of the deposit, including the placing of installations for production of petroleum. The plan shall contain an account of the cooperation which has been implemented with the Norwegian supply industry to accommodate the opportunities of the Norwegian industry to supply goods and services to the development, operation and maintenance of the project in question, and information on the plans for further cooperation. Substantial contractual obligation must not be undertaken or construction work started before the Ministry has approved the plan. If the development is planned in two or more steps (phases), the plan shall, to the extent possible, cover the total development. The Ministry may limit the approval to apply to the individual steps (phases).<sup>247</sup>*

The 1974 and 1979 Licenses required licensees to provide training to Norwegians and to engage a certain number of Norwegian Government staff in their activities:

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<sup>247</sup> Columbia Centre on Sustainable Investment (CCSI): Local Content- Norway Petroleum

- Art VII of the 1981 Model Technical Assistance Agreement, which had to be entered into by licensees, aimed to ensure that, experienced oil companies would provide technical assistance to Norwegian operators in carrying out their obligations under the Petroleum Production License:
- “The licensees, their contractors and subcontractors, shall during their work on the continental shelf assist in qualifying Norwegian personnel on relevant levels by engaging a suitable number of trainees. Further provisions relating to the engagement of personnel shall be agreed upon between the licensees, their contractors, subcontractors and The County Labor Division” (Sec.11 of 1974 License).
- “Norwegian personnel shall be employed to the greatest extent possible in the activities” (Sec.7 of 1979 License).
- “The licensees shall undertake training of personnel from the Ministry, the [Norwegian Petroleum Directorate] NPD or other Norwegian authorities in accordance with further agreement” (Sec. 21 Training of 1979 License, similar in Sec.17 of 1974 License).
- “According to need, the licensees may be required to ensure that Norwegian personnel, who teach petroleum associated subjects in Norwegian schools, may have access as trainees to the licensees’ facilities and installations on the Norwegian continental shelf and on shore in Norway” (Sec. 21 Training of 1979 License).

## **5.6 Training and Development of Personnel**

Company will provide training and development of a sufficient number of [operator] employees to facilitate [operator]’s ability to fulfill its task as operator irrespective of finds being made or not in the license area. Company will offer such intensive training programs; schools, seminars and on-the-job exposure at may be required including development of supervisory and managerial personnel for top positions in the Operator’s offshore and onshore organizations. An initial plan for the on –the – job training part for the first 2 years is enclosed as Exhibit V. The plan may be exchanged by Statoil during the two-year period. Company will provide such additional training and development as is reasonably requested by the [operator]. Details for specific programs will be developed by Company and when approved by [operator], will be implemented by Company. The number of op personnel, duration of training and development, their location and description of different job levels which the personnel should experience will be considered in development

of specific programs. Special emphasis should be placed on opportunities to gain experience and maximum exposure. At fixed intervals or otherwise as often as needed, [operator] and Company shall discuss the progress of the training development programs and make necessary adjustments.”

The 1985 Petroleum Act requires licensees to provide training to all persons engaged in petroleum activities to the extent necessary to ensure that they perform their assigned work in a prudent matter. It also provides that additional rules may be issued to require licensees to train civil servants (Section 49).

- The 1988 and 1991 Licenses required licensees (usually Statoil and a foreign oil company) to enter training agreements in the form of the applicable model training agreement in relation to the training of Norwegian personnel (Section 5 of the 1988 and 1991 Licenses).
- Art. 2 of the 1988 and 1991 Model Training Agreements Concerning Petroleum Activities required the foreign company to allow Statoil’s staff (and the staff of other listed domestic companies) to participate in its in-house trainings:

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

A separate WTO agreement, 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
- Restrictions on or requirements for certain types of legal entities (e.g., joint venture requirements)
- Imposition of domestic equity

## 5.8 To ascertain the efficacy of oil and gas local-content legislation in Uganda

The Constitution of Uganda (1995) vests ownership of oil and gas resources in the Government on behalf of the Republic of Uganda. The Sustainable exploitation and utilisation of the Petroleum resources is at the core of Government's mandate for the sector and the Government's strategies and actions for the petroleum sector are aimed at using the resources to create lasting value to both current and future generations. The Petroleum Authority (PAU) of Uganda defines local Content (or National Content) as:

*Value added or created in the Ugandan economy through the employment of Ugandan workers and the use of goods produced or available in Uganda and services provided by Ugandan citizens and enterprises.*<sup>248</sup>

The PAU gives the six Pillars of National Content<sup>249</sup> as: National Oil Company; Use of locally produced goods and services; Enterprise development; Employment; Capacity building; and Transfer of knowledge and technology. The PAU has the ultimate goal achieve in-country Value creation and retention whilst ensuring competitiveness, efficiency and effectiveness.

The PAU is a statutory body established under Section 9 of the Petroleum (Exploration, Development and Production) Act,<sup>250</sup> and in line with the National Oil and Gas Policy for Uganda which was approved in 2008. Its mandate is to monitor and regulate the exploration, development and production, together with the refining, gas conversion, transportation and storage of petroleum in Uganda. The Local Content legislation on oil and gas in Uganda is included the followings laws and policies: The Constitution of the Republic of Uganda, 1995; The Petroleum (Exploration, Development & Production) Act 2013; Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, 2013; The Petroleum (Exploration and Production) (Conduct of Exploration Operations) Regulations S.I No. 150-1; The Petroleum (Exploration, Development and Production) (National Content) Regulations, 2016; The National Oil and Gas Policy, 2008; Oil and Gas Revenue Management Policy, 2012; ; Model Product Sharing Agreement (PSA) 2016.

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<sup>248</sup> Petroleum Authority of Uganda (PAU): Implementation of the National Content Policy: Progress and Challenges Presentation at the National Budget Conference and Economic Growth Forum FY 2019/20 on 31<sup>st</sup> September 2018.

<sup>249</sup> Ibid.

<sup>250</sup> Petroleum (Exploration, Development and Production) Act 2013.

The Statutes relevant to oil and gas local content include the followings: National Environment (Management of Ozone Depleting Substances and Products) Regulations, 2001; National Environment (Noise Standards and Control) Regulations, 2003; Petroleum (Exploration, Development and Production) Act, 2013; Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, 2013; Petroleum Supply Act 2003.

## **5.9 To ascertain Uganda's implementation of the local content policy compared to that of Nigeria and Norway**

### **5.9.1 The Nigerian Experience**

The local content policy is however the quantum of composite value added to or created in the Nigerian economy by a systematic development of capacity and capabilities through the deliberate utilization of Nigerian human, material resources and services in the Nigerian oil and gas industry.

The Local Content policy is a vital instrument aimed at facilitating and indigenizing the oil and gas industry, through the creation of national economic values through institutional measure.<sup>251</sup> Hence, this article examined the usefulness of the local content policy in promoting the participation of Nigerians and indigenization in Nigeria. This article revealed that the essence of the local content policy is to ensure the use of local manpower and resources to increase indigenization and foster sustainable development not only in the Oil and Gas sector but in Nigeria as a whole. The article recommended the need for monitoring scheme to regulate and monitor how local employees are paid, and their minimum salary. This can be effectively done by the implementation and supervision of the Board. This article established that the crux of the concept of local content is the quantum of composite value added to or created in the Nigerian economy by a systematic development of capacity and capabilities through the deliberate utilization of Nigerian human, material resources and services in the Nigerian oil and gas industry.

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<sup>251</sup> International Journal of Research and Innovation in Social Science (IJRISS) |Volume II, Issue IV, April 2018|ISSN 2454-6186.



The evolution of the local content policy in many countries of the world is considered a response to the call for patronage and engagement of local entrepreneurs and a possible resultant development of entrepreneurs in a particular country.<sup>252</sup> The Nigerian governments also deemed it necessary to design and sign into law the Nigerian Content Act which provides for the development of Nigerian content in the Nigerian oil and gas industry in the year 2010. Here we briefly discuss determinants of compliance with the provision of the Nigerian Oil and Gas Industry Content Development Bill by entrepreneurs who own and manage marine vessel service companies in Nigeria. Secondary data collected from the Nigerian Content Regulatory body was used in this study. Using multinomial logit and probity regression econometric technique, owning a Nigerian built and flagged vessel was not a significant determinant of compliance but rather having and operating different categories of vessels proved to be the significant determinant of compliance to the Nigerian content act by vessel owners. It was therefore recommended that the government should give grants to vessel owners to enable them acquire all the categories of vessels and hence comply with the policy to the benefit of the nation.

Innovations, resulting from technology and science, have been a major force driving the oil and gas industry in most oil rich developed countries. As more “complex geologic structures” are encountered, development of improved technology in response to the challenges has made increase in oil and gas output sustainable in these developed countries. Sadly, oil rich developing countries are yet to independently meet the level of technological advancement required for optimal performance of their oil and gas industry. Companies are increasingly required by law to ensure that host communities’ benefit from their operations in all ramifications. The local content policy (LCP) appears to be a potent tool to train local professionals. The question however is how to design the policy to reflect the particular needs and circumstances of each country.<sup>253</sup> Local content policy is a deliberate effort by government to develop local talent and indigenous business through the instrumentality of the law.

It is now widely accepted that the countries that managed to catch up with the old industrialized, high-income countries are the ones whose governments proactively promoted structural change.

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<sup>252</sup> Ibid.

<sup>253</sup> Nwapi, C. (2016): A Survey of the Literature on Local Content Policies in the Oil and Gas Industry in East Africa. The School of Public Policy Research Paper No. 9/16.

But industrial policies also frequently fail. Altenburg<sup>254</sup> in a study confirmed that many industrial policies have failed, but also that in some cases, industrial policies have indeed accelerated structural transformation- even in political regimes with fairly strong authoritarian and cliental traits. Therefore, it will not be out of place to state that local content is one of such policies or attempt to “accelerate structural transformation” in the oil and gas industry.

The Local Content policy is a vital instrument aimed at facilitating and indigenizing the oil and gas industry, through the creation of national economic values through institutional measure.<sup>255</sup> Here we examined the usefulness of the local content policy in promoting the participation of Nigerians and indigenization in Nigeria. This research also reveal that the essence of the local content policy is to ensure the use of local manpower and resources to increase indigenization and foster sustainable development not only in the Oil and Gas sector but in Nigeria as a whole. Here we recommend the need for monitoring scheme to regulate and monitor how local employees are paid, and their minimum salary. This can be effectively done by the implementation and supervision of the NOC. It should be noted that the crux of the concept of local content is the quantum of composite value added to or created in the Nigerian economy by a systematic development of capacity and capabilities through the deliberate utilization of Nigerian human, material resources and services in the Nigerian oil and gas industry.<sup>256</sup>

Prior to the enactment of the Nigerian Content Development Act, the policy of local content had little or no ground in the Nigerian oil and gas sector. It may not be out of place to state that it is contrary to good business practice for a foreign company carrying on business in Nigeria, using purely foreigners in every department of the company without consideration for Nigerians. The Nigerian upstream sector which is largely dominated by international oil companies (IOCs) such as Shell, Exxon, Chevron, Total, Statoil etc. usually employ very few Nigerians based on clauses in contractual agreements in which they may eventually not fulfill.

Notably there are salient provisions in certain statutes regulating the Nigerian oil and gas sector that provides for the participation of more Nigerians in oil and gas operations. Be that as it may, these laws won’t be effective without appropriate enforcement. Most of the laws are obsolete and

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<sup>254</sup> Altenburg, T (2011): Can Industrial Policy Work under Neo-patrimonial Rule? UNU-WIDER Working Paper No. 2011/41.

<sup>255</sup> Bello, A.T. (2016): Local Content in the Nigerian Oil and Gas Sector: A Classical Model for Indigenization.

<sup>256</sup> Ibid

the call for reforms remains the order of the day. However, the State has been pursuing the entrenchment of local content in oil and gas operations but yielded no encouraging results until the passage into law the Nigerian Oil and Gas Industry Content Development Act.<sup>257</sup>

Local content has being described as the categorization of companies, identification of areas of local competency, preferential treatment for indigenously owned companies, institutional measures and the creation of national economic framework for conditions for value addition.<sup>258</sup> Here we discuss the usefulness of the local content policy in promoting the participation of Nigerians and indigenization in Nigeria.

### **5.9.1.1 The Regional Context**

If local firms can jointly become part of a regional cluster in Uganda's case the East African Community (EAC) or a growth pole, or can be located closely together in industrial parks, this can offer opportunities for building technological capacities and shape regional economic governance enabling local firms to participate in global value chains.<sup>259</sup> Regional local content therefore is the possibility of resource developers and subnational government entities to jointly develop strategies and plans that ensure foreign companies contribute to regional development by sourcing from businesses and recruiting their workforce from within the region in which an oil and gas project is located. This further provides increased learning opportunities and supports enterprises to diversify into related sectors within the "Cluster". Clusters can be defined as a geographically proximate group of interconnected firms and associated institutions in related industries.<sup>260</sup> Clusters are an alternative way of organizing the value chain. In addition, the geographic proximity can generate economies of scale and positive externalities such as lower costs of intermediate

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<sup>257</sup> Nigerian Oil and Gas Industry Content Development Act in 2010.

<sup>258</sup> Chigozie H. N., 'Enhancing Local Content in the Upstream Oil and Gas Industry in Nigeria: An Appraisal of Current Policy', *Oil, Gas and Energy Law Intelligence (OGEL)*, 2004, Vol. 2, Issue No. 1.

<sup>259</sup> Fessehaie, J. (2011): Leveraging the Services Sector for Inclusive Value Chains in Developing Countries. Issue paper published by International Centre for Trade and Sustainable Development (ICTSD), Geneva. Online: <http://www.greengrowthknowledge.org>.

<sup>260</sup> Porter, M. (1998): The microeconomic foundations of economic development [parts I and II]. In The global competitiveness report 1998 (pp. 38-63). Geneva: World Economic Forum.

inputs or services, better access to skilled personnel, or greater attractiveness to clients.<sup>261</sup> For instance, with the discovery of oil in Ghana and other countries in the sub-Saharan African region, Uganda could learn from the Nigeria experience and encourage the development of well-functioning industrial clusters within the region which would in turn forge innovation.

### 5.9.1.2 National Content

On production and consumption, it is stated that:

*in society man is not merely productive owing to the circumstance that he directly brings forth products or creates powers of production, but he also becomes productive by creating inducements to production and to consumption, or to the formation of productive powers. Manufacturing production yields either productive instruments or the means of satisfying the necessities of life and the means of display. Manufacturing industry, therefore, furthers production by the community by means of inducements. In any case products must be created before they can be consumed, and thus production must necessarily generally precede consumption. In popular and national practice, however, consumption frequently precedes production.*<sup>262</sup>

As mentioned earlier that the antidote to “resource curse” is resource-led development and it therefore holds that the overall competitiveness of an economy hinges on Economic Diversification. Hence the need to focus not only on exploiting the comparative cost advantages of resource endowments but to formulate policies and support the development of production technologies that would benefit other economic sectors over time.<sup>263</sup>

But then, macroeconomic policies are a necessary, but not a sufficient condition to drive economic diversification because from the public sector perspective, any type of local content measure is a form of industrial policy. From the perspective of resource developers, building linkages between the extractive and other economic sectors is not a business priority, in particular if the commercial onus lies with developing and exporting resources fast. However, there is a business case if efforts

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<sup>261</sup> Webber, C.M. and Labaste, P. (2010): Building Competitiveness in Africa's Agriculture: A Guide to Value Chain Concepts and Application., The World Bank, Washington, DC.

<sup>262</sup> Esteves, A.M., Barclay, M. (2011): New Approaches to Evaluating the Performance of Corporate–Community Partnerships: A Case Study from the Minerals Sector. *Journal of Business Ethics*, 103(2), p. 189–202.

<sup>263</sup> Kunanayagam, R. and Dietsche, E. (2014): Managing social risks in the extractive resources sector: how the sustainability agenda has evolved and the challenges ahead. *Ethical Corporation*, September 2014.

made to build linkages with the economy of the host country improve the business environment (e.g. reducing non-technical risks such as the cost of conflicts) and if it positively impacts the cost of doing business over time. In fact, several forums, including the OECD's Policy Dialogue on Natural-Resource-Based Development (2014), the Harvard Business School (2011) and others have put forth the notion of creating shared value. This concept advocates that resource developers look inward, leveraging their core business towards addressing social issues and gaining a competitive advantage from it. National content therefore is the use of regulation, legislation and contractual obligations by government to promote transformational opportunities associated with the hydrocarbon sector through various types of linkages i.e. collaborative efforts between the private and public sector. In fact, it is ultimately not either / or, of state versus market, but how both work together.

### **5.9.1.3 Community Content**

Efforts to develop local community capacity, comprising education and skills development, SME development and social investments to build an enabling local environment and healthy workforce, tend to be designed with a number of features in mind. They are aimed at minimizing community dependency by creating transferable skills and diversifying the local economy; strengthening corporate relationships with local communities and government; and creating a positive corporate image in the local communities.<sup>264</sup>

Community Content focuses more narrowly on a project's zone of influence, its directly affected communities or its host communities, where the geographical boundaries tend to be defined in permitting processes. The parameters that are typically drawn upon to identify project's local community area include: a certain kilometer radius distance; with some commercial capability; within a reasonable daily commute; where employees live; and immediate host communities (villages or settlements). These boundaries are negotiated with the permitting authority and are the basis for company obligations on impact assessments, mitigations and livelihood enhancements through social investments. At this level, local content often involves low skilled employment and

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<sup>264</sup> Esteves, A.M., Barclay, M. (2011). New Approaches to Evaluating the Performance of Corporate-Community Partnerships: A Case Study from the Minerals Sector. *Journal of Business Ethics*, 103(2), p. 189-202.

purchasing of goods and services (i.e. camp maintenance and house-keeping, drivers, security etc.). Esteves and Vanclay<sup>265</sup> described different reasons for community content: meeting community expectations to participate in the economic opportunities offered by the project by which they are impacted; creating jobs and stimulating economic activity in local communities; Developing skills and access to broader opportunities for local communities; creating sustainability of economic benefits beyond the life of the oil and gas project.

### **5.9.2 The Norwegian Experience**

A cycle of booming oil and gas exploration and production activity ended in 2015. During the decade 2005–2015, pressure on local content intensified in most oil-rich countries. The time has come to examine the economic impact of both regulations and initiatives taken by private international and national oil companies to develop local economies. Local content is a pervasive component of the oil and gas landscape. Local content regulations (LCRs) have escalated in the last 10 to 15 years among oil-rich developing economies to an extent that it has become a critical topic for the oil and gas sector. Yet, local content is neither new nor exclusive to developing economies.

Norway enforced the development of local suppliers in the early 1970s. With the Norwegian Petroleum Code, Norway insisted on localizing a large part of international operators' R&D in the country early on.<sup>266</sup> And recently, Scotland's prime minister inaugurated Total UK's new E&P facilities in Aberdeen, stating:

*While we realize these are challenging times for the industry and workforce, this investment and expansion from Total is a signal that the company is committed to a long-term future in Scotland.*<sup>267</sup>

The commitment of oil and gas companies to the development of local economies is a global reality. Since the mid-2000s, local content regulation – as opposed to contractual incentives – has

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<sup>265</sup> Esteves, A.M. and Vanclay, F. (2012): Social development needs analysis as a tool for SIA to guide corporate-community investment: Applications in the mineral industry. *Environmental Impact Assessment Review*, 29(2), p.137-145

<sup>266</sup>See 4th licensing round, 1978–79, requirement of at least 50 percent of R&D necessary to develop a field had to take place in Norwegian institutions

<sup>267</sup> Ibid.

become the preferred lever in most oil-rich countries, and the intensity of legal constraints has reached a higher level. The complexity and the bureaucracy generated by local content laws have led to mixed results.

Some LCRs are extremely detailed. The Nigerian Content Development Bill (2003) reinforced targets of O&G activity localization with specific national content indicators. For example, the NC indicator for man hours in the FEED stage of a large capital project should reach 90 percent. For the tonnage, umbilical should reach an NC indicator of 60 percent. In the Nigerian Local Content Act (2010), nationalization targets reach 90 percent for management positions, and 100 percent for junior and intermediate positions. In Brazil, regulation is so sophisticated that it requires a dedicated public administration unit to monitor its enforcement due to all the red tape involved. Such stringent policies have delivered mixed results. In some cases, implementation has been successful and local content policies have allowed financing education programs and infrastructure, with local suppliers benefiting from national preference. However, in cases in which local content targets have been impossible to reach due to inadequate local business ecosystems or educational systems, such regulations have generated severe unintended consequences

In Nigeria, local content raised inflation costs sharply. As an illustration, an analysis undertaken by an oilfield service company on the cost of subsea wells pointed out 60 percent inflation due to local content regulation.<sup>268</sup> Another illustration is the time to tendering, which has doubled on average in countries such as Angola and Nigeria because of lengthy local content procedures. Quota policies without adequate pre-existing networks of suppliers often lead to the syndrome of the middleman, in which local importers purchase goods and services from foreign suppliers and resell them locally at higher prices. In such situations, local content regulation becomes a hidden generator of inflation for the benefit of only a few importers.

Beyond the difficulty in aligning with quotas, companies also struggle to obtain and report local content data from their own suppliers. Indeed, under most regulations, operators are accountable for reporting accurate data based on information provided by their tier-one suppliers. Not to mention the variety of interpretation that the definition of “local company” can have. In some

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<sup>268</sup> One Subsea: 58 percent inflation between 2003 and 2013. Increase due to more activities in the country (project management, engineering and fabrication of Xmas tree flow bases & Xmas tree frames, final assembly and testing of the completed Xmas tree); Fabrication costs ranged from four to 10 times the cost of the same fabrication constructed in Europe or the US.

countries, a company is local if the equity owned by domestic stakeholders exceeds 51 percent of the capital (Kenya, Nigeria). In other countries, “local” companies are simply those incorporated in the country (Brazil). Often, the definition is missing or so vague that uncertainty prevails. It is worthwhile to note that the most stringent and complex regulations have been passed in countries with limited economic ecosystems, by governments facing huge poverty challenges, among populations with little experience of large capital projects or understanding of the oil and gas value chain. When facing western oil giants, their first reaction is often defensive and politically driven by systematic mistrust in oil operators’ intent. What results is a lack of cooperation from day one in trying to reach balanced local content policies between stakeholders – government and international oil companies (IOCs) – that do not trust each other.

This initial bias against oil and gas companies is due to the historical reputation of Oil and Gas companies plundering natural resources without leaving anything positive and lasting behind, an image largely amplified and tarnished by populist local press. The defensive reaction of lawmakers is sometimes the result of ideological rhetoric against former colonial powers. Finally, the influence of the Norwegian “oil diplomacy” in a number of oil-rich developing economies is not neutral. A number of local content policies have been prepared by Norwegian advisors (most of whom are university professors or former public servants, not executives from Statoil) with a somewhat naïve belief that the same policy approaches which worked in Norway could also work in Sub Saharan Africa, where nothing is similar except the presence of oil.

In contrast, some countries have developed more flexible regulations based on high-level targets and incentive mechanisms. Azerbaijan is a good illustration of this approach, with local content rules stipulated mostly in PSAs, as opposed to general laws. For example, for the Shah Deniz project, contractors had to provide mandatory training for nationals; however, training expenditures in excess of \$200,000 in any year were recoverable. Other examples are the UK and Norway, where encouragement to support local industry was within a sensible margin (a 10 percent higher maximum on average than that of the foreign service provider), which made it possible to contain inflation.

Detailed heavy local content regulations do not bring expected outcomes without a proper ecosystem composed of minimum education infrastructure and local suppliers. Otherwise such



regulations will most likely feed inflation, weaken local manufacturing industries, exacerbate wealth gaps and social tensions, and worsen endemic corruption. This does not mean such regulations should not exist, as they often represent the only lever for governments to enforce requirements for oil and gas companies to contribute to development in the countries and communities where they operate. However, they should be conceived in a more open spirit than the politically driven objective of “making the IOCs pay for our soil”. The reality is that oil and gas companies alone are not the essential pillar of local development. Through an analysis of successful initiatives, we will seek to capture the conditions for local content regulations to be impactful and not counterproductive.

Oil and gas companies generate a small amount of jobs compared to their suppliers. An illustration of this situation is the Norwegian oil and gas labor force: in 2015, 28,000 people were employed by oil and gas companies, while more than 117,000 were in the oil-field services and manufacturing industries.<sup>269</sup> In the construction phases of large projects, EPCs and their suppliers generate more than 95 percent of the jobs required. In the production phase, Oil and Gas operators do not represent more than one-third of the jobs needed to run operations. Given this reality, imposing recruitment quotas on IOCs is necessary, but will not create more than a few thousand local jobs at best. In addition to these unfavorable comparisons, the lead times to develop capable engineers in oil and are up to 10 years, far longer than for developing competent technicians and engineers in other sectors.

Beyond the capacity of operators and oilfield suppliers to create jobs locally, the overall sector is not as labor-intensive as others can be. Research reveals that when one job is created in the oil and gas industry (seismic studies, drilling, well services, etc.), two to four jobs are generated in indirect activities (mechanical engineering, freight services, cement manufacturing, electrical engineering, civil engineering, construction material, etc.) and six to eight jobs are created in the induced industries (medical, hotel, IT & communication, education, banking, insurance, etc.).<sup>270</sup> In light of these ratios, which represent tremendous opportunities to establish lasting local activity, the objective of any local content policy or private initiative should be to ensure that these ratios have

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<sup>269</sup> Centre for Applied Research at the Norwegian School of Economics, see <http://www.norskpetroleum.no/en/economy/employment/#overall-employment>.

<sup>270</sup> Analysis by Schlumberger on job creation in “stand-alone” oil and gas cities (Stavanger – Norway, Aberdeen – UK, Macaé – Brazil, Trinidad & Tobago) over the last decades, by industrial sector.

materialized in the local economy. This is what Norway and the UK did in the 1970s by creating regional clusters (Stavanger, Aberdeen) and putting the emphasis on oilfield services and manufacturing. In two decades, Norway was able to create world-scale suppliers largely oriented towards exports. Even better, initial Norwegian local content regulation incentivized IOCs to place R&D centers in Norwegian clusters. A few years later, strong partnerships were established between Statoil and local suppliers, and suppliers started to develop technologies through private or semi-public collaboration. The degree of integration between state funding, universities, and Statoil and its suppliers within dedicated clusters has been an instrumental factor of success for the country.

Another example, which is more applicable to developing economies, is Trinidad and Tobago, where an industry of topside manufacturing was developed in the late 1990s. Thanks to an initial push from the government of Trinidad and Tobago, together with BP and other private investors, the topside of the Cannonball project was fabricated locally instead of being only assembled. The beauty of this industrial initiative was that after Cannonball, topsides for nine major offshore Oil and Gas capital projects were fabricated by the local company TOFCO for both local and export markets. In the Kingdom of Saudi Arabia, the petrochemical complex of Jubail followed the same approach.

#### **5.9.2.1 From corporate social responsibility to supply Procurement**

O&G companies have changed their approaches to local content. Until recently, majors and independents considered regulations a burden to projects and operations, a hidden tax to be good citizens and have the right to operate. IOCs used to corner their local development initiatives into “corporate social responsibility” (CSR) departments, for intense public relations and production of impeccable brochures on the company’s commitment to creating a better world. Local content initiatives in such environments had limited impact and were at best superficial and at worst counterproductive, since they were placing communities under dependence of the company (social infrastructures, direct financial support).

These times are changing. Many IOCs are taking local content in a more professional way, and often integrate it within contract and procurement or dedicated “local industrial strategy” entities earlier in the development phase. This approach also reflects a shift from financing social

infrastructures or paying the communities in the premises of field operations, as they did for decades, to a more contractual approach whereby companies only pay for services delivered. In other terms, they incentivize lasting capabilities rather than paying for short-term social peace that inevitably deteriorates over time. By doing so, companies also open the door to cost recovery of local content investments. Indeed, CSR activities are systematically excluded from recoverable expenses in most PSAs. If a larger project of local suppliers is being developed as part of the development phase of a capital project, cost recovery becomes possible and the scale of LC initiatives changes.

### **5.9.2.2 Addressing the local content regulation paradox**

A paradox of LCRs is that they mostly target (and blame) Oil and Gas companies,<sup>271</sup> while these companies cannot meet the high expectations of governments and local suppliers on their own for three reasons.

First, Oil and Gas companies are too large and rigid to make steps towards small and medium-sized local suppliers. Oil majors and large independents are full of cumbersome internal rules and global processes targeting systematic compliance with financial and legal criteria. Contracts issued by IOCs include terms and conditions accumulated over decades of projects, specifying drastic conditions that only international suppliers can meet and from which local suppliers are de facto excluded. For example, a typical request is that the value of a contract should not exceed 20 percent of the total asset value of a supplier. Or, proper financial accounts over the previous five years must be made available at all times by the supplier. In the same vein, large capital projects and operations require equipment with complex specifications that are difficult to produce in developing economies. For example, Oil and Gas operators only accept trucks with drastic safety protections, and well cement for drilling must have specific quality – it is the same for cranes and personal protective equipment (PPE). In many cases, especially when environment and people's safety are at stake, Oil and Gas companies must respect international norms and cannot accept any

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<sup>271</sup> Olivier Soupa and Georgios Mexis (2018): Local content after a booming oil & gas cycle: *Ambitions and limits of local content development* (May, 2018).

tradeoffs. However, in other cases, such as financial requirements, absence of flexibility is the result of internal policies and therefore could be more flexible.

Second, awareness of technical specifications and financial requirements is not shared early enough for local companies to invest and be ready for the early construction phase. A lot of materials and equipment could be produced locally with good preparation. Too many times local construction equipment suppliers have invested in equipment that was refused by Oil and Gas operators or their EPCs because specifications had not been known in advance. These cases led to bankruptcies, and generated scandals in local press and public frustrations. In the end, IOCs incurred much higher costs than they would have invested in anticipated communication of future needs, planning, and technical and safety specifications of equipment. With transparent planning of construction and operation phases shared well in advance, preparation for Oil and Gas projects and services could be anticipated and localized in the countries of operation. It looks so obvious and simple. Why don't Oil and Gas companies systematically proceed in such an anticipated and open way? - Because they seldom enter into business with small local suppliers. Large O&G companies talk to large suppliers.

The third reason is that the players most exposed to local suppliers in the development phase of large capital projects are engineering, procurement and construction contractors (EPCs) much more than IOCs. Large international EPCs rely as much as they can on local suppliers and services, in particular during construction phases. Liaising with small to medium-sized local companies is part of their *savoir-faire*. Every time they enter a new country, EPCs study in depth the local network of suppliers, and gain perfect knowledge of what can be leveraged locally at the best cost, what will need to be imported, and sometimes which activities could be groomed locally.

A strong limiting factor of success for local content development is late publicizing of large tenders<sup>272</sup>. O&G operators wait for the final investment decision (FID) from the government to launch the construction phases of capital projects. They cannot commit to multi-billion-dollar investments without government approval. Once the FID is confirmed, Oil and Gas operators issue large tenders to international EPCs, which usually have around six to 12 months to answer before

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<sup>272</sup> Olivier Soupa and Georgios Mexis (2018): Local content after a booming oil & gas cycle: *Ambitions and limits of local content development* (May, 2018).

earth works start. In other words, the information related to goods, equipment, and services in terms of quantity and quality (specs) usually arrive too late for local suppliers to acquire the required capabilities. Local value-added activities are therefore made difficult for local suppliers to deliver on time. Before the FID, operators are uncertain and do not communicate; after the FID it is too late for local suppliers.

To address such a vicious cycle, the industry needs to rethink its approach to large projects and contract management. Long-term alliances between operators and EPCs could allow on-boarding of EPCs earlier in capital-projects preparation, way before the FID, in order to give enough time for preparing the development of local industries. Local suppliers need to be supported before they can respond to tenders issued by IOCs. Such collaboration could happen in dedicated business centers that IOCs, EPCs, lawyers, accountants, academia, professional societies and energy and labor ministries could build together. In such centers of exchange, IOCs would share construction and operation planning months or even years in advance, explain the technical and health and safety environment (HSE) specifications imposed by the industry, describe contractual terms, etc. Local content regulations could enforce the establishment of such business centers instead of imposing abrupt quotas on people or contracts, generating inflation and missing the great potential of indirect and induced job creation. Finally, national oil companies (NOCs)<sup>273</sup> are instrumental Oil and Gas players that can bypass this challenge of too-short, post-FID lead times of large tenders.

## **5.10 Recommendations on local content law and policy best practices for the Government of Uganda in oil and gas industry**

The following recommendations on local content policy best practices for the government of Uganda in oil and gas industry are given and commended:

### **5.10.1 Universities and Vocational Institutions**

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<sup>273</sup> Olivier Soupa and Georgios Mexis (2018): Local content after a booming oil & gas cycle: *Ambitions and limits of local content development* (May, 2018).

The National Oil and Gas Policy (NOGP),<sup>274</sup> requires government to review and expand the education curricula in the country with a view of producing the workforce required for national oil and gas activities. Since the industry requires specific skills set for each stage of the activity, that is: exploration, development and production, it is necessary to have skilled people (workforce) ready when they are needed.

Furthermore, government, together with development partners, had come up with courses at university and vocational level to produce skilled personnel for the oil and gas sector. At Makerere University, a Bachelor of Science degree in Petroleum Geosciences and Production<sup>275</sup> was established and by March 2015, 62 students had graduated in two batches.<sup>276</sup> The University is also developing a four-year course in Petroleum Engineering in consultation with a university from Texas, USA, which at the time of the audit was awaiting approval by Senate.

At Uganda Petroleum Institute, Kigumba (UPIK),<sup>277</sup> a government sponsored diploma in Petroleum Studies was started and February 2015, a total of 86 had graduated with diplomas in these studies. These graduates were trained as artisans, technicians, welders, metal fabricators. Prior to their graduation, these students undertook a six months practical training at oil sites in Trinidad and Tobago. Other (private) tertiary institutions have started both short- & long-term courses aimed at skilling students to work in the oil and gas sector, and these include: Uganda Christian University (UCU) Mukono, The Institute of Petroleum Studies-Kamapala (IPSK) Nkumba University, and Uganda Technology and Management University (UTAMU) and Victoria University. In spite of all the above achievements, concerns remain about the timeliness, relevance and sufficiency of the workforce produced so far.

### **5.10.2 Reporting, Monitoring, Evaluation and Follow-Up and Coordination**

According to the National Oil and Gas Policy for Uganda,<sup>278</sup> the Commissioner of Petroleum Exploration and Production Department (PEPD) together with the PEPD technical staff, are

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<sup>274</sup> National Oil and Gas Policy (NOGP) 2008.

<sup>275</sup> Makerere University Bachelor of Science degree in Petroleum Geosciences and Production<sup>275</sup> was established in 2010.

<sup>276</sup> The first batch (30 students) in January, 2014, the second in January 2015 (32 students).

<sup>277</sup> Uganda Petroleum Institute, Kigumba (UPIK) a government sponsored diploma in Petroleum Studies was started in 2009.

<sup>278</sup> Section 2.3.1.

mandated to monitor the compliance of the oil companies with existing laws, regulations and agreements. Specifically, PEPD is required to ensure that the oil companies comply with the provisions of the Production Sharing Agreement (PSA), and the Petroleum (EDP) Act.<sup>279</sup> The oil companies are required to provide PEPD with a report of their achievements and their contractors and subcontractors' achievements in utilizing Ugandan goods and services during that calendar year.<sup>280</sup> They are also required to report on the execution of their approved programmes on training and employment of Ugandans, annually. The reports should detail performance in training and recruitment of Ugandans in all phases of petroleum activities, taking into account gender, equity, persons with disabilities and host communities.<sup>281</sup>

The reports on the utilization of Ugandan goods and services should be provided within 60 days of the end of the calendar year<sup>282</sup> (by end of February), while the training and employment reports should be submitted within 30 days of the end of the calendar year<sup>283</sup> (by end of January). It was noted that PEPD monitors the compliance of oil companies with National content provisions through collection and review of the annual procurement, training and employment reports; stationing monitoring officers in the field; and periodic field inspections/monitoring visits conducted by officers from the National Content Unit.

### **5.10.3 Ministry of Energy and Mineral Development (MEMD)**

- MEMD, in collaboration with relevant stakeholders, should address gaps in existing legislation, policies, procedures and expedite the finalisation and approval of the draft Upstream Local Content regulations so as to enforce the provisions/targets on the utilisation of Ugandan goods and services, employment and training of Ugandans by oil companies and their sub-contractors.
- MEMD should work with Ministry of Finance, Planning and Economic Development (MoFPED), Ministry of Trade, Industry and Cooperatives (MoTIC) and other stakeholders

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<sup>279</sup> Petroleum (EDP) Act 2013.

<sup>280</sup> Section 125(5) of the Petroleum (EDP) Act, 2013.

<sup>281</sup> Section 126(5) of the Petroleum (EDP) Act, 2013.

<sup>282</sup> PSA Article 20.3.

<sup>283</sup> PSA Article 21.1.

to identify, develop and support potential local suppliers of the sector, including those within the host communities.

- MEMD should spearhead the coordination between educational institutions, Ministry of Education and Sports (MoES), Ministry of Gender, Labour and Social Development (MoGLSD) and oil companies to ensure timely, relevant and sufficient training of Ugandans for the sector, taking into account gender and host-community considerations.
- MEMD should ensure that there are uniform succession periods for all companies, and timely replacement of expatriates with qualified nationals as per the succession plans.
- MEMD and the Ministry of Internal Affairs (MIA) should jointly ensure that the employment of expatriates is adequately justified, and that their qualifications are verified and possession of valid work permits enforced.
- MEMD should spearhead the development of an overall training policy and plan that captures the training needs for other government ministries, departments and agencies (MDAs).
- MEMD should ensure that it compiles details of proposed trainees in time and liaises with MoFPED to create a special training fund so that funds set aside by the companies for training of government officials are absorbed.
- MEMD should ensure that the licensees submit uniform, timely, factual and comprehensive data on the implementation of national content provisions by themselves and their sub-contractors for easier and effective monitoring by government.

## **5.11 Conclusion**

In conclusion, local content is here to stay.

A common view in today's "lower for longer" oil-price environment is that local content is a thing of the past, which is a luxury concept that has no place in the low-margin and low-tax-revenue settings we operate in today. In reality, local content continues to challenge operators and governments alike. Governments have to envision long-term views for their industrial development. In most cases, efforts are focused on how to maximize the oil rent from large Oil



and Gas projects. Instead, the right question is where should the government invest oil revenues to develop other lasting and more job-intensive industries?

Furthermore, oil and gas companies, such as IOCs and NOCs, should share the planning of their projects and operations far enough in advance to allow local investors to prepare the ground. A shift in mind-set is required for IOCs, as oil giants have seldom shown capacity to introduce flexibility in their procurement policies. National oil companies represent the best lever to develop local industries, provided that they do not bear alone the burden of conceiving the industrial development vision that their government should articulate.

Olivier<sup>284</sup> has developed unique capabilities in assessing the socio-economic impact of large industrial capital projects and operations in upstream and downstream oil and gas, in Sub-Saharan Africa and the Middle-East, South-America, and Europe. This approach has allowed large industrial players to prepare the ground for local content development initiatives, not only to respect regulations, but more importantly, to anchor and distribute project benefits in countries of operations in order to ensure long-lasting presence of IOCs and increased local capabilities at competitive costs for NOCs.

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<sup>284</sup> Olivier Soupa and Georgios Mexis (2018): Local content after a booming oil & gas cycle: *Ambitions and limits of local content development* (May, 2018).

## **CHAPTER SIX**

### **CONCLUSIONS AND RECOMMENDATIONS**

#### **6.1 Introduction**

The primary objective of this research was to assess the legal and policy regimes on Local Content in the Oil and Gas in Uganda in comparison with a developing country of Nigeria and a developed country of Norway. This research has attempted to contribute to the development of a Local Content Policy in a developing country of Uganda.

To carry out this research, the researcher started by identifying local content laws and policy practices that are presented in the literature review. Then, the researcher formulated the theoretical framework for Local Content laws and policies in Oil and Gas and the LC Policy Indigenous Firms Participation Theory and Infrastructure Contingent Factor Theory that guided the research.

#### **6.2 Conclusions**

The research has found that Uganda has so far done well to have the Local Content Laws and Policies in place before commercial oil has been delivered to the market. However, a number of recommendations of Local Content best practices for the government of Uganda have been listed in section 5.5 of this research as well as general recommendations in section 6.3.

The research found that Local content in the oil and gas sector in Uganda broadly focuses on involving citizens in the sector. This is through training and building capacity for citizens, technology transfer, employment and service provision. Given the fact that Uganda's oil and gas sector is still growing, there is need for exerting more deliberate efforts to ensure that citizens competitively take part in the sector through exploitation of the existing opportunities. One of the ways has been through government providing for Ugandans to take part in the sector is through local content. Government is in the process of making more laws and policies that will ensure citizens take part in the oil and gas sector. This research tackles the present but is also futuristic and analyses the different policy and legal provisions and how they will contribute to delineation of local content in the oil and gas sector as well as identifying gaps that need to be addressed.

Government has not done Training Needs Assessment or other forms of capacity needs assessment for the oil and gas sector and the only existing data is the study conducted by the joint partners<sup>285</sup> involved in the oil and gas sector. This means Uganda will have to rely on data provided by industrial players. The challenge with this data is it was gathered and analysed in the lenses of an industrial player seeking to maximise profits and this may not necessarily reflect the needs of the country.

The BTVET policy and Strategic Plan 2011-2020 provides for skilling Uganda with a special focus on the oil and gas sector. The Strategic Plan is drawn from the draft BTVET Policy that sets out to develop demand-responsive, employable skills and competencies relevant to the labour market needs for Uganda. BTVET training in Uganda is supposed to be achieved through creation of centres of excellence within the petroleum sector targeted at the apparent skills gaps.

One of the approaches proposed under Uganda's petroleum policies and laws is procurement of goods and services from Ugandan suppliers. The Ugandan suppliers mean Ugandan citizens (or residents) as well as business entities. What actually amounts to a Ugandan local supplier is still conceptually problematic. The upstream and downstream laws provide different definitions, but also broadly the question of how local should the local entity be remains to be answered

The law does not define what a "*Ugandan*" company is, thereby leaving a gap for exploitation. The strict interpretation of the word "Company" used in the section instead of "business entity" limits the application of this section only to companies living out other recognised business entities such as partnerships, cooperative societies, and sole proprietorships among others. The Midstream Act, attempts to address this gap, (though not conclusively) by providing that.<sup>286</sup> The licensee, its contractors and subcontractors shall give priority to citizens of Uganda and registered entities owned by Ugandans in the provision of goods and services.

Uganda's Companies Act<sup>287</sup> does not define a Ugandan company, it only provides for a definition of a company which provides that a company means an entity formed and registered under this

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<sup>285</sup> These include Tullow Oil, CNOOC and Total Ltd who have active licenses in Uganda today.

<sup>286</sup> Section 53(1) Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act.

<sup>287</sup> Act No. 1 of 2012.

law. Under S. 251 it describes a foreign company as a company incorporated outside Uganda which runs business in Uganda. Focus here is on place of incorporating, this may not cater for all scenarios that may need to be addressed under local content, for example a company incorporated by Ugandans outside Uganda will be considered a foreign company and a company incorporated in Uganda by non-Ugandans will be considered a Ugandan company. The Uganda Investment Code Act<sup>288</sup> on the other hand defines a foreign investor as:

*a person who is not a citizen of Uganda; a company, which more than 50 percent of the shares are held by a person who is not a citizen of Uganda; a partnership in which the majority of partners are not citizens of Uganda.*<sup>289</sup>

Nigeria passed the Oil and Gas Industry Content Act in 2010. The law is meant to enforce the local content policy. It aims at providing for the development of Nigeria Content in the Nigerian Oil and Gas industry; for Nigerian Content Plan; for supervision, coordination, monitoring and implementation of Nigerian content and for matters incidental thereto.<sup>290</sup>

Important to note from the Nigerian law is that it provides a definition of local content and local company. This is important in helping determining what a local company should be and also determining what kind of participation (content) such a company should be involved in. focus is put on using Nigerian human resources, products or raw materials. Local content is defined as:

*the quantum of composite value added to or created in the Nigerian economy by a systematic development of capacity and capabilities through deliberate utilisation of Nigerian human, material resources and services the Nigerian oil and gas industry.*<sup>291</sup>

Nigeria is endowed with an array of mineral deposits, of which none are as important to the nation's economy as crude oil and gas.<sup>292</sup> Initially only British subjects, and later the Shell Group, were entitled to explore for petroleum, and hence participate in the oil and gas industry in

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<sup>288</sup> Uganda Investment Code Act, Cap 92 Laws of Uganda.

<sup>289</sup> S. 9 Uganda Investment Code Act.

<sup>290</sup> Preamble/long title to the Oil and Gas Local Content Act, 2010.

<sup>291</sup> Ibid.

<sup>292</sup> Together, oil and gas generate more than 80% of the country's total national revenue and over 90% of its foreign exchange earnings and contributes about 36.5% of its GDP. Proven oil reserves amount to 40 billion barrels, daily production is about 2.4 million barrels of crude oil and the estimated earnings of the extensive petroleum industry are around USD 36 billion per year. See Oil and Gas: Major Industry Policies, Federal Ministry of Industry, Trade and Investment, available at <http://fmti.gov.ng/component/content/article/36-oil-a-gas/98-oil-a-gas.html>. Also in the past five years, over 65,000 direct employment and 250,000 non-direct employment positions have been created in the oil industry alone.

Nigeria.<sup>293</sup> Following the country's independence in 1960, local involvement emerged through state participation, which fundamentally modeled the concept of LC to include state participation through a national oil company. Upon joining the Organization of the Petroleum Exporting Countries (OPEC) in the 1970s, state participation increased heavily, and emphasis was laid on the renegotiation of agreements to give the national oil company powers to administer this interest<sup>294</sup>. Consequently, the regulatory, fiscal and contractual systems of the Nigerian petroleum industry have undergone significant restructuring from inception to the present date.

The indigenization policy often referred to as "Nigerianization" means a framework that encourages active participation of indigenous companies in the oil & gas industry. This concept can be viewed as having mainly evolved from the Niger Delta region,<sup>295</sup> which then spread further to the entire country. In 1989 the government introduced the indigenization policy to retain ownership and control of the sector, and this was administered from 1989 to 2000. The policy involved the allocation by the regulatory authorities of oil acreages to indigenous oil companies,<sup>296</sup> based on guidance criteria which were interpreted with broad discretion.

Local participation later re-emerged in the form of the allocation of marginal fields<sup>297</sup> to indigenous companies, which forms a constituent part of the indigenization policy (discussed above) in respect to the oil sector.<sup>298</sup> The first Marginal round in Nigeria was conducted in 2001.

The petroleum industry has become the largest economic activity in Norway.<sup>299</sup> This is because of deliberate attempt to make the industry work best for the society. During the early stages of oil exploration, the Norwegian authorities had two simple objectives: (a) Develop local capacity to

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<sup>293</sup> For a detailed early history of oil production in Nigeria, see Schatzl Ludwig, *Petroleum in Nigeria*, 1-5 (Nigerian Institute of Social and Economic Research, Ibadan 1969).

<sup>294</sup> Federal Ministry of Finance, *Report of the Fact-Finding Mission on Petroleum Taxation: Problems Affecting Petroleum Revenue and Miscellaneous Matters on the Petroleum Industry* (Federal Ministry of Finance, Lagos 1969).

<sup>295</sup> For a detailed discussion, see Asume Isaac Osuoka, *Oil and Gas Revenues and Development Challenges for the Niger Delta and Nigeria*

<sup>296</sup> The first set of grants was made in the 1970s and 1980s to Henry Stevens Company, Nigus Petroleum and Niger Delta Oil Co. Later, Dubri Oil acquired a concession by assignment from Philips Oil Company Ltd. in 1987.

<sup>297</sup> According to Nigerian law, fields are classified as marginal if among other factors they have been left unattended for over a period of time after discovery but a minimum of 10 years.

<sup>298</sup> In order to understand how the concept of Marginal fields came about a brief evaluation of Nigeria's oil and gas industry growth is imperative. Divided into four categories, the first era also known as IOCs era from 1956 to 1970, in which the oil companies dictated the pace with minimal State involvement.

<sup>299</sup> Heum, Per. "Local Content Development: Experiences from oil and gas activities in Norway." (2008).

regulate and manage petroleum resources and in turn evade the resource curse often associated with the industry<sup>300</sup> and (b) delaminate boundaries with neighbors, as majority of the deposits lie on the Norwegian continental shelf—a process that eventually took over forty-five years<sup>301</sup>. Norway is said to be the only country that has this far delaminated its entire boundaries with the neighbors.

Notwithstanding, Norway did not have an explicit law pertaining to LC development in the petroleum sector. Nevertheless, Norwegian authorities never shied away from local integration through implied and express rules, mostly embedded in general principles based on procurement frameworks.<sup>302</sup> In fact, Norwegian authorities had always been quite keen on having locals participate in various sectors including the hydro power sector from early 1900s.<sup>303</sup> Here, foreign investors needed to comply with various corporate structures and governance rules which detailed several provisions including the use of Norwegian goods and services. This practice provided Norwegian authorities with an edge and immense knowledge on how best to promote local participation in sectors where foreign investment is predominant. Hence, after the discovery of oil, the proposition to facilitate value addition through local participation did not materialize as a surprise.

In the early 60's, Norway proclaimed sovereignty over the Norwegian continental shelf for exploration and exploitation of subsea natural resources.<sup>304</sup> This was undertaken through a law which operated as the principle statute governing petroleum operations until a more comprehensive legislation was passed in 1985. Key provisions of this law included the right to natural resources, exploration and production licenses, and these still exist in current legal statutes despite various amendments introduced to cope with the ever changing sector.<sup>305</sup> This Act was more of an

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<sup>300</sup> Hunter, Legal Regulatory Framework for the Sustainable Extraction of Australian Offshore Petroleum Resources. A Critical Functional Analysis.

<sup>301</sup> Tina Hunter (2015): Regulation of the Upstream Petroleum Sector: A Comparative Study of Licensing and Concession Systems (Edward Elgar Publishing 2015).

<sup>302</sup> Thurber, Hults and Heller.

<sup>303</sup> Hunter, Legal Regulatory Framework for the Sustainable Extraction of Australian Offshore Petroleum Resources. A Critical Functional Analysis.

<sup>304</sup> Act of 21 June 1963 No. 12 relating to scientific research and exploration for and exploitation of subsea natural resources other than petroleum resources, <http://www.npd.no/en/Regulations/Acts/Scientific-research-act/> and <http://www.npd.no/en/news/News/2015/Fifty-years-since-it-all-started>.

<sup>305</sup> Section 2 where the King may grant Norwegian or foreign persons, including trusts, companies and other associations a permit to explore or exploit the natural resources. The King may grant Norwegian or foreign persons, including trusts, companies and other associations a permit to explore or exploit the natural resources.

enabling law where, the main provisions relating to petroleum regime and petroleum activities was regulated under “royal declarations”.<sup>306</sup> After the introduction of 1985 Petroleum Act, the 1963 Act was then limited to scientific research and exploration of sub-sea natural resources other than petroleum resources.<sup>307</sup>

## **6.3 Recommendations**

### **6.3.1 Make a Law on Local Content for the oil and gas industry**

Parliament should pass a law to provide for local content in the oil and gas sector. Specifically, the new law should provide for a better definition of Ugandan business entities, an independent authority or agency to monitor compliance with national local content plans as well as monitor the development of national capacity among others. It should be noted that at the time of completion of this research the parliament of Uganda in 2020 passed the local content bill into law but this Act is not specific to the oil and gas industry.

The Local Content Act 2020 addresses some issues like what a Ugandan company is a local content entities are as it covers areas like mining, Tourism, investment, public private partnerships among others. The Act in my view does not fully address the gaps in oil and gas industry.

### **6.3.2 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 laws and policies in Uganda

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<sup>306</sup> Royal Decree of 9 April 1965 relating to Exploration for and Exploitation of Petroleum Deposits in the Sea-Bed and its Subsoil on the Norwegian Continental Shelf, [http://www.un.org/depts/los/legislationandtreaties/pdf/nor\\_1965\\_Decree.pdf](http://www.un.org/depts/los/legislationandtreaties/pdf/nor_1965_Decree.pdf).

<sup>307</sup> Bernard Taverne (2008): Petroleum, Industry and Governments: A Study of the Involvement of Industry and Governments in the Production and Use of Petroleum (Kluwer Law International 2008).

### **6.3.3 Policy Recommendations for Uganda**

Mainstream other sectors in the oil and gas and extractive business. 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.

### **6.3.4 Build Capacity for Industry Players**

Capacity should be built for training institutions which are targeting providing labour 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.

### **6.3.5 Increase Inclusion in Decision Making**

In order to increase inclusion and participation of citizens, there is need to formalise the existing participation forums and ensure there are formalised processes of consultations at different levels. This should 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.



## Bibliography

- Cornick, Jorge, Eduardo Fernández-Arias, and Ernesto Stein (2016): "The Challenge of Public Capabilities for Successful Productive Development Policies: Hopeless Task or Pragmatic Program?" (2016).
- Couchman and Dawson (2008): *Ethical issues in Qualitative Nursing research*, 2009.
- Harrison, Ann, and Andrés Rodríguez-Clare (2010): "Trade, foreign investment, and industrial policy for developing countries." In *Handbook of development economics*, vol. 5, pp. 4039-4214. Elsevier, 2010.
- Heum, Per, Robert Kasande, Ole Fredrik Ekern, and Alex Nyombi (2011): "Policy and regulatory framework to enhance local content: yardsticks and best practice." (2011).
- Heum, Per. "Local Content Development: Experiences from oil and gas activities in Norway." (2008).
- Ngoasong MZ (2014): 'How International Oil and Gas Companies Respond to Local Content Policies in Petroleum Producing Developing Countries: A Narrative Enquiry' (2014) 73 *Energy Policy* 471–79.
- Nordås, Hildegunn Kyvik, Eirik Vatne, and Per Heum (2003): "The upstream petroleum industry and local industrial development: a comparative study." (2003).
- Nseera, Edirisa. (2016): *Understanding the Prospective Local Content in the Petroleum Sector and the Potential Impact of High Energy Prices on Production Sectors and Household Welfare in Uganda*. African Development Bank, 2016.
- Obuaya, T. (2005): "Local content implementation in Nigeria: a road map." In *Nigerian oil and gas conference, Abuja, Nigeria*, pp. 18-20. 2005.
- Oliveira, R. (2007): *Business Success, Angola-Style: Postcolonial Politics and the Rise and Rise of Sonangol*. Cambridge University Press, Oxford.
- Peter Matthews and Matthew Lynch (2011): *Local content strategy: A guidance document for the oil and gas industry*. IPIECA. London
- Prebisch, Raul (2016): "Towards a new trade policy for development." *ECLAC Thinking, Selected Texts (1948-1998)*. Santiago: ECLAC, 2016. p. 211-238 (2016)
- R. Auty (2012): 'The Oil Curse: Causes, Consequences and Policy Implications' in RE Looney (ed), *Handbook of Oil Politics* (Routledge 2012)

Sinnott, Emily, Bidjan Nashat, and Augusto De la Torre (2012): *Natural resources in Latin America and the Caribbean: beyond booms and busts?* The World Bank, 2010

Tordo, Silvana, Michael Warner, Osmel Manzano, and Yahya Anouti (2024): *Local content policies in the oil and gas sector*. The World Bank, 2013

Warner M, (2011): *Local-content in Procurement: Creating Local Jobs and Competitive Domestic Industries in Supply Chains* (Greenleaf Publishing Ltd 2011) 24.

UPIK (2014): *Institute Development Plan, 2014-2019*

### **Articles and Journals**

Acheampong, Theophilus, Marcia Ashong, and Victoria Crystal Svanikier. "An assessment of local-content policies in oil and gas producing countries." *The Journal of World Energy Law & Business* 9, no. 4 (2016): 282-302.

Adedeji, Abdulkabir Niran, Shaufique Fahmi Sidique, Azmawani Abd Rahman, and Siong Hook Law. "The role of local content policy in local value creation in Nigeria's oil industry: A structural equation modeling (SEM) approach." *Resources Policy* 49 (2016): 61-73.

Ado, Rabi. "Local content policy and the WTO rules of trade-related investment measures (TRIMS): the pros and cons." *International Journal of Business and Management Studies* 2, no. 1 (2013): 137-146.

Aladeitan, Lanre, Robert Alex Wabunoha, and Chidinma Therese Odaghara. "Harnessing oil as natural resource wealth: a focus on the legal frameworks of Nigeria and Uganda." In *Law/Environment/Africa*, pp. 267-292. Nomos Verlagsgesellschaft mbH & Co. KG, 2019

André, P. et al. (2006). *Participation publique: principes internationaux pour une meilleure pratique*, Publication spéciale, Série no. 4, Fargo (ND): International Association for Impact Assessment.

Bakare, A. S. "Local content policy in oil sector and the capacity utilization in Nigerian manufacturing industry." *Business and Management Review* 1, no. 6 (2011): 82-92.

Bartelme, Dominick, Arnaud Costinot, Dave Donaldson, and Andres Rodriguez Clare. *Economies of Scale and Industrial Policy: A View from Trade*. Working paper, 2018

- Beamish P. (1988): *Multinational joint ventures in developing countries*. London Routledge
- Bellema Ihua, Ugwushi, Olatunde Abiodun Olabowale, Kamdi Nnanna Eloji, and Chris Ajayi. "Entrepreneurial implications of Nigeria's oil industry local content policy: Perceptions from the Niger Delta region." *Journal of Enterprising Communities: People and Places in the Global Economy* 5, no. 3 (2011): 223-241.
- CNOOC, Total and Tullow (2014): *Planning for the future and promoting national content: A survey to foster opportunities for Ugandans in the Oil and Gas sector*
- Cogan, A., Sharpe, S., & Hertzberg, J. (1986): *Citizen participation*. In So, F. S., Hand, I., & Madowell, B. D. (Eds.), *The Practice of State and Regional Planning*. Municipal Management Series. Chicago: American Planning Association.
- Collier, P. (2010): The Political Economy of Natural Resources. *Social Research*, 77(4):1105-1132.
- Cunningham, J. V. (1972): "Citizen Participation in Public Affairs," *Public Administration Review*, vol. 32, Special Issue: Curriculum Essays on Citizens, Politics, and Administration in Urban Neighbourhoods, pp. 589-602.
- Easo, J., and A. Wallace (2014): "Understanding Local Content Policies in Africa's Petroleum Sector." *Notes from the Field-An English Law Perspective on the Oil & Gas Market* (2014)
- GoU (2011): *The Universities and Tertiary Institutions (Establishment of Uganda Petroleum Institute, Kigumba) statutory instrument, 2011, SI No. 31 of 2011*
- International Alert, *Oil and Gas in Uganda, A legislators Guide* oil Discussion paper No 11, May 2011
- Kazzazi, Abolfazl, and Behrouz Nouri. "A conceptual model for local content development in petroleum industry." *Management Science Letters* 2, no. 6 (2012): 2165-2174.
- Kinyondo, A., & Villanger, E. (2017): Local content requirements in the petroleum sector in Tanzania: A thorny road from inception to implementation? *The Extractive Industries and Society*, 4(2), 371-384
- Morris, Mike, Raphael Kaplinsky, and David Kaplan (2012): "'One thing leads to another'—Commodities, linkages and industrial development." *Resources Policy* 37, no. 4 (2012): 408-416.

Muhwezi, et.al, (2009): Crafting an Oil Revenue-Sharing Mechanism for Uganda: A Comparative Analysis. ACODE Policy Research Series, No. 30, 2009. Kampala.

Muhwezi, et.al, (2009): Crafting an Oil Revenue-Sharing Mechanism for Uganda: A Comparative Analysis. ACODE Policy Research Series, No. 30, 2009. Kampala.

Mushemeza, Elijah Dickens, and John Okiira (2016): *Local Content Frameworks in the African Oil and Gas Sector: Lessons from Angola and Chad*. ACODE, 2016

Negoita, Marian, and Fred Block (2012): "Networks and public policies in the global south: the Chilean case and the future of the developmental network state." *Studies in Comparative International Development* 47, no. 1 (2012): 1-22.

OECD (2001): *Citizens as Partners: OECD Handbook on Information, Consultation and Public Participation in Policy-Making*. Paris: OECD.

Peter Matthews and Matthew Lynch (2011): Local content strategy: A guidance document for the oil and gas industry. IPIECA. London

Rowe, G. and L. J. Frewer (2005): "A Typology of Public Engagement Mechanisms," *Science, Technology, & Human Values*, vol. 30, no. 2, pp. 251-290.

Solangi, K. H., M. R. Islam, R. Saidur, N. A. Rahim, and H. Fayaz (2011): "A review on global solar energy policy." *Renewable and sustainable energy reviews* 15, no. 4 (2011): 2149-2163.

Sternberg, Rolf, and Sander Wenekers (2005): "Determinants and effects of new business creation using global entrepreneurship monitor data." *Small business economics* 24, no. 3 (2005): 193-203.

Thomas Webler (1995): "Right" Discourse in Citizen Participation: An Evaluative Yardstick. Technology, Risk, and Society Volume 10, 1995, pp 35-86.

World Bank (January 2012): Increasing Local Procurement by the Mining Industry in West Africa. Report No. 66585-AFR

### **Internet Sources**

African Development Bank (undated) Rules of procedure for procurement of goods and works available at <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-related-Procurement/Rules%20of%20procedure%20for%20procurement%20Goods%20and%20Works.pdf> accessed on 10/04/19

Tina Nabatchi (2012): A Manager's Guide to Evaluating Citizen Participation. *Fostering Transparency and Democracy Series* 2012. Available at <http://unpan1.un.org/intradoc/groups/public/documents/UN-DPADM/ UNPAN048340.pdf> accessed on 14th July 2019