

**THE EFFECTIVENESS OF THE LEGAL FRAMEWORK ON THE
PARTICIPATION OF NATIONALS IN THE OIL AND GAS SECTOR IN UGANDA.**

“The legal framework regarding national content provisions”

**BY
YALEDI ELIZABETH
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**A DISSERTATION SUBMITTED TO THE FACULTY OF LAW IN PARTIAL
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DECLARATION

I, Yaledi Elizabeth declare that this Research thesis with the exception of quotations and references contained in published works, which have all been identified and acknowledged, is entirely my own original work and it has never been submitted/ presented to any higher Institution, either in part or whole for any academic award elsewhere.

Signature.....

Date.....

YALEDI ELIZABETH

APPROVAL

This is to satisfy that this research thesis is done under my supervision and it is now ready for submission to the Faculty of Law with my approval.

Signature

Date

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ABBREVIATIONS

PAU	Petroleum Authority of Uganda
IOCs	International Oil Companies
BUBU	Build Uganda Buy Uganda
PSA	Production Sharing Agreement
P (EDP)	Petroleum (Exploration, Development and Production) Act
P (RCTMS) (NC) REG	Petroleum (Refining, Conversion, Transmission and Midstream Storage) (National Content) Regulation.
REG	Regulation
NOGP	National Oil and Gas Policy
UKCS	United Kingdom Continental Shelf
UK	United Kingdom
SEC	Section
PG	Page

LIST OF LAWS

- i. The P(EDP)Act 2013
- ii. The Constitution of the Republic of Uganda 1995 as amended
- iii. The National Content policy for the Petroleum Subsector in Uganda, February 2017
- iv. The National Oil and Gas Policy, 2008
- v. Employment Policy, 2011
- vi. The P(RCTMS)(NC)Regulations 2016
- vii. The National Trade Policy, 2007
- viii. Companies Act, 2012.
- ix. Partnership Act, 2010
- x. The Public Private Partnership Act, 2015
- xi. Employment Act, 2006
- xii. The Citizenship and Immigration Control Act, 1999

ABSTRACT

Uganda has been described by the oil industry press as Africa's 'hottest exploitation frontier'. Accordingly, Uganda's Albertine Graben is estimated to hold more than 6 billion barrels of oil, placing Uganda among the foremost African oil producers. The discovery and eventual exploitation of this oil resource is one of those once-in-a generation events that can transform the country not only on a macro level but also in the individual lives of Ugandan citizens. Notwithstanding the above, commercial oil production has not taken place in Uganda and it is anticipated that joint venture partners Total E&P and CNOOC will commence production in 2022. There is no doubt that the oil resource has the potential to widen Uganda's revenue base within the next 6-10 years. However, many of the developing countries that become reliant on oil (or other extractive resources) tend to immediately start to see a deepening range of political, economic and social challenges that are mostly tied to lack of skills and involvement on the part of the nationals, resulting in foreigners taking over the industry. The limited participation of citizens in the natural resource extraction leads to trickle-down consequences of a natural resource such as oil, leading to undesirable knock-on consequences on the economy. There is need to take effective control of the exploitation, exploration and production activities of the oil and gas sector as soon as commercial exploitation commences. This study analyses the extent to which Uganda's current legal framework promotes national involvement in the petroleum sector as the country transitions into oil-production. It also shows the main loopholes in the existing legislations and provides measures to overcome them.

CHAPTER ONE

GENERAL INTRODUCTION

Introduction

The study examines the existing legal framework on the participation of nationals in the oil and gas sector in Uganda. Therefore, this chapter presents the background of the study, statement of the problem, purpose of the study, scope, methodology, significance of the study; literature review and chapterization are addressed intensively.

1.0. Background of the study

Historical perspective

The failure to exploit resources sustainably and to ensure that citizens take part in decision making and employment greatly contributes to conflicts emanating from natural resource endowments¹. Furthermore, the limited involvement of citizens in the exploitation and use of the natural resources greatly leads to the trickle-down effect of a resource like oil, resulting in negative effects to the economy². Thus, placing an emphasis on local content ensures that both direct and indirect opportunities for employment and procurement to nationals are secured in the backyard of the host countries, which in the long run promotes skills of the nationals and widens the tax base of the host country, where local ownerships and capital are guaranteed in the long term³.

Objective 7 of the NOGP aims at ensuring optimum national participation in oil and gas activities through strategies such as promoting state participation in production-sharing agreements; promoting use of the country's materials, goods and services in the oil and gas sector, and promoting the employment of Ugandans in the sector, among others. In the same spirit, Objective 8 of the NOGP seeks to support the development and maintenance of national

¹ Mushemeza, E. D., Okiira J. (2017). *Oil and Gas Local Content Development Strategy: The Keys to Success*. ACODE Policy Briefing Paper Series No. 38, 2017, Kampala.

² Gwayaka, P.M., *Local Content in the Oil and Gas Sector: An Assessment of Uganda's Legal and Policy Regimes* (2014).

³ Osei PD, Nwasike JN (2010), *The Contract System of Employment for Senior Government Officials, Experiences from Africa*, London : Commonwealth Secretariat, 2010.

expertise through strategies such as the provision of goods and services to the sector by national enterprises, entrepreneurs and broadening the national education curricula to prepare the necessary workforce for engagement with the sector.

These objectives are reflected in both the upstream and midstream laws such that, while applying for a license, the application must contain a statement on how the applicant intends to employ and train Ugandan citizens. However, there is no strategy listed in the Acts to ensure that licensees follow up this training. Section 125 of the Upstream Act provides that licensees and their contractors shall give preference to goods produced or available in Uganda and to services rendered by Ugandan citizens and companies. Although well-intentioned, this section has been criticized for its ambiguity. The law does not define what a ‘Ugandan’ company is, thereby leaving a gap for exploitation. Strict interpretation of the word ‘company’ versus ‘business entity’ limits the application of the section only to companies. This leaves out other well-recognized commercial entities such as partnerships and cooperative societies, among others.⁴

The Midstream Act attempts to correct the ambiguity by providing that the licensee and its contractors shall give priority to citizens and registered entities owned by Ugandans in the provision of goods and services. Unlike the Upstream Act, the Midstream Act therefore considers other business entities in addition to companies. However, both Acts lack provisions to ensure that Ugandans employed by the oil companies receive the same treatment, pay and opportunities at the workplace as their foreign counterparts⁵. The legislation is also silent on other forms of inclusion and equity including gender, ethnic and social status.

An estimated 996 Ugandan-owned companies prospected in 2018 to provide oil-related services by registering with the Petroleum Authority’s national supplier database for the oil and gas sector, a register of service providers in the oil and gas sector⁶. It is also estimated that the sector will create 150,000 jobs at peak oil production, and 30,000 at the start of production, which is expected to occur in 2022 based on revised forecasts⁷. Most Ugandan entities are expected to participate extensively in the sectors reserved to promote local content: logistics,

⁴ *Ibid*

⁵ *Ibid*

⁶ Musisi, F. (2018, 31 August), ‘Firms Scramble to Cash in on Oil Cash’, *Daily Monitor*. Retrieved from: <https://www.monitor.co.ug/News/National/Firms-scramble-cash-in-oil-cash/688334-4736932-lmcjanz/index.html>.

⁷ URN (2018, 20 December), ‘Uganda’s First Oil Production Now Pushed to 2022’, *The Observer*. Retrieved from: <https://observer.ug/news/headlines/59510-uganda-s-first-oil-productionnow-pushed-to-2022>.

clearing and forwarding, supply chain management, catering, light air transportation, security and camp management. If legislation is strengthened and practice is made to accord with the rules contained in that legislation therefore, the benefits accruing from the resulting effective promotion of local content will be valuable for meaningful growth and development.

Most states involved in petroleum activities are establishing state involvement requirement into their negotiations commonly known as “local content”. As an increasing norm in emerging economies in “Africa, Asia and Latin America”, the requirement is in an arrangement of legislative procedures aimed at enhancing the utilization of national labour force, technical know-how, and employment of nationals in petroleum sector.

The emphasis on technical knowledge transfer by enterprises involved in petroleum production industry to the natives of a host state with hopes of guaranteeing them revenue, work and ultimate growth of national participation has fundamentally remained as an outcome of acknowledgment after several years of petroleum extraction in most evolving nations, there is minimum transferal of technology and employment to the nationals in host states. Many state natives tend to be spectators of the oil and gas activities implying that citizens are left out during the oil and gas activities. This trend is common despite of the incentives given to the IOCs by the host states with expectations that during resource exploitation the IOCs will employ the natives/locals and develop infrastructure which would enable the economy to develop⁸.

Uganda discovered commercially viable oil deposits in 2006 around the Albertine graben; this attracted so many International Oil Companies (IOCs) in Uganda to acquire interests in the sector through bidding for the oil blocks. The discovery attracted a lot of excitement from both the government and the nationals. As it’s perceived that oil is one of the minerals in the world that brings wealth in the host state if well managed and every country that discovers an oil mineral is regarded as blessed. A country that discovers oil guards it jealously since it’s the most precious source of wealth⁹.

Uganda is not an exception. After the discovery of commercially viable oil deposits in the Albertine graben in 2006, there was a lot of excitement about the developments the resource

⁸ Page 2 of the local content in oil and gas sector, *An assessment of Uganda’s legal and policy regimes*, Peter Magelah Gwayaka, *ACODE Policy Briefing series*, No.28, 2104.

⁹ Page 3 Local content in oil and gas sector, *An assessment of Uganda’s legal and policy regimes*. Peter Magelah Gwayaka. *ACODE Policy Briefing Series*, No.28, 2014.

would bring which included improvement of household income and general standards of living once petroleum revenue starts flowing. Although the government has put in place the legal and policy frameworks to address the concern of national content. Uganda needs stringent economic policies to enable the economy sustain the positive impact that petroleum might bring on the economy.

“Real successful local content is driven by the cooperation and aligned intent of the numerous players involved who are government, nationals and subnational, the company and project proponent, civil society groups and donors including international financial institutions”¹⁰. Whose interest vary but they have to interrelate with each other for a common goal.

There are various reasons as to why host states are increasing advocating for local content in the oil and gas sector which include; the desire to increase domestic value-addition by replacing locally manufactured goods for imported goods as for Uganda there is a policy called Build Uganda Buy Uganda (BUBU) this provides market for the locally manufactured goods and also gives a leeway for improvement of standards on the locally manufactured goods. To create more local employment by replacing domestic labor for foreign labor which bridges the gap of wide unemployment amongst the Ugandan citizens and it also earns government revenue which is taxed on goods plus the individuals who are employed in the oil and gas sector through Pay as you earn and also in form of income tax. Technology advanced which is brought by the IOCs which help to upgrade the existing technology. Training and skilling of nationals who are employed in the oil and gas sector with the aim of taking up managerial and other positions which require skills and experience in the sector among others.

Theoretical perspective

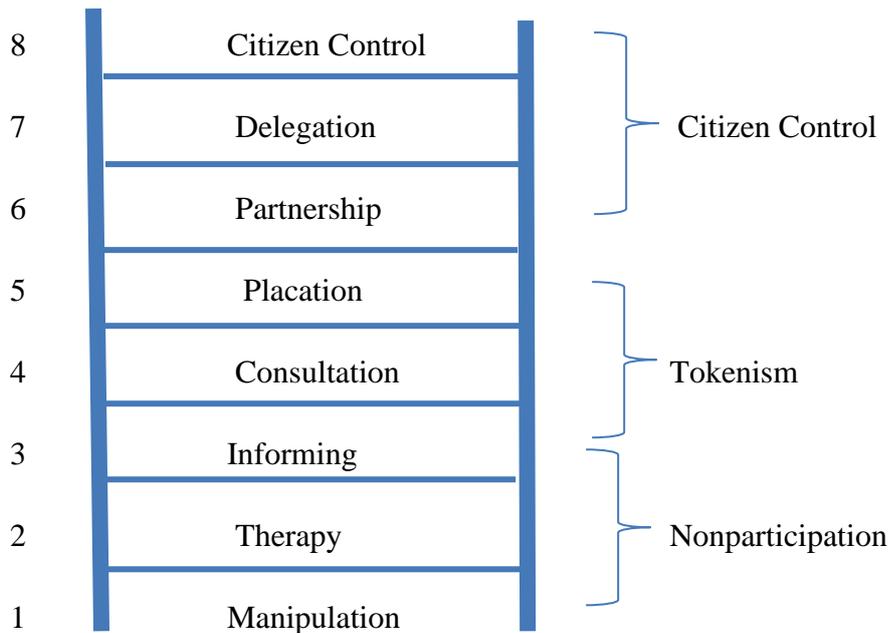
The study adopted Arnstein theory (1969)¹¹ on “ladder of citizen participation”. The theory emphasized that “participation without redistribution of power is an empty and frustrating process for the powerless in determining the end project”. The concept was first explicated in

¹⁰ Page 1 of Local content in the oil, gas and mining sectors: Enhancing the benefits at the subnational level. Policy framework prepared for revenue watch institute, October 2012, Ana Maria Esteves, Bruce Coune, Ana Moreno

¹¹ Arnstein, S. R. (1969). A Ladder of Citizen Participation. *Journal of the American Planning Association*, 35 (4), 216 -224.

the seminal theoretical work on the subject of community participation. Arnstein's theory is important in the sense that it made clear recognition of the different levels of participation, from manipulation or therapy of citizens, through to consultation and to what we might now view as genuine participation, i.e. the levels of partnership and citizen.

The ladder of citizen participation has the following rungs ranging from high to low as illustrated in the diagram below.:



Source: Arnstein's Ladder (1969)¹² Degrees of Citizen Participation

1. **Manipulation and 2 Therapy:** Both are non-participative. The aim is to sensitize the participants. The proposed plan is based on inclusiveness of participants which is aimed to achieve public support through public relations. cure or educate the participants.
2. **Informing:** Is the most important first step to legitimate participation. But the most experienced challenge is that information flow is one-way. No channel for feedback.
3. **Consultation:** it is also a legitimate step attitude surveys, neighbourhood meetings and public enquiries. But Arnstein still feels this is just a window dressing ritual.
4. **Placation:** For example, co-option of hand-picked 'worthies' onto committees. It allows citizens to advise or plan ad infinitum but retains for power holders the right to judge the legitimacy or feasibility of the advice.

¹² *Ibid*

5. **Partnership:** Power is in fact redistributed through negotiation between citizens and power holders. Planning and decision-making responsibilities are shared e.g. through joint committees.
6. **Delegation:** Citizens holding a clear majority of seats on committees with delegated powers to make decisions. The Public now has the power to ensure accountability of the programme to them.
7. **Citizen Control:** Have-nots handle the entire job of planning, policy making and managing a programme e.g. neighbourhood corporation with no intermediaries between it and the source of funds.

The limitations of Arnstein's framework are obvious. These includes: the citizen participation is based on ladder analogy which suggests no logical progress from one level to another, one building to another¹³. In addition, instead of eight steps, the real world of people and programs might require as many as 150 to cover the range of actual citizen involvement levels. Another limitation of the Arnstein's theory is that the citizen power is not distributed as neatly as the division used suggest; some significant road blocks are omitted such as the racisms, paternalism and resistance of some power holders and the ignorance and disorganization of many low-income communities. Each of the limitations represents a very broad category, within which there are likely to be a wide range of experiences¹⁴. For example, at the level of 'informing', there could be significant differences in the type and quality of the information being conveyed. This theory is relevant in that it involves influencing the public and gaining support through the use of propaganda.

Conceptual Perspective

The study looks at two variables the independent variable (National Content Legal Framework) and dependent variable (Participation of Nationals). According to NCPPS¹⁵ national content is defined as the 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. The Local content in the oil and gas sector in Uganda broadly focuses on involving citizens in the sector. This is through training and building

¹³ *Ibid*

¹⁴ *Ibid*

¹⁵ *National Content Policy (2017) For The Petroleum Subsectoreum Subsector Eum Subsector Eum Subsector Eum Sub sectoreum Sub sectoreum Subsector Eum Subsector In UGANDA*

capacity for citizens, technology transfer, employment and service provision. One of the approaches proposed under Uganda's petroleum policies and laws is procurement of goods and services from Ugandan suppliers.

Participation on the other hand involves taking part in processes that lead to the decision or taking part in arriving at the decision itself.¹⁶ The study defines participation that 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.

1.1 Problem statement

The host states embarked on including nationals in the oil and gas sector with the purpose of imparting skills, transfer of technology and employment of nationals to improve on their standards of living and also increase on the revenue for government through the pay as you earn tax. The essence of having oil and gas in Uganda has created a good regional relationship between Uganda and Tanzania since the two countries are stakeholders in the Oil and Gas sector which in the long run will create more employment opportunities in the upstream stage.

The habit of disregarding nationals from participating in the oil and gas upstream sector is experienced in drilling oil projects in Uganda. This has left national out with low technology advancement, food insecurity, low economic aspects and with high exposure to environmental risks that is prone to low agriculture produce. In Uganda, there are legal and policy frameworks that clearly demonstrate the inclusiveness of nationals in the oil and gas sector as its stipulated in the law that purchase of goods which are manufactured or availed in the country and services which are provided by Ugandan citizens and companies¹⁷ so that citizens can benefit from the petroleum sector to improve on their standards of living.

In observation, the law is being left onto paper when it comes to implementation in the oil and gas sector as employing skilled labor and machinery from foreign countries is manifested. In

¹⁶ 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 20th Nov, 2020

¹⁷ Section 125 of the Petroleum (Exploration, Development and Production) Act 2013

this the law states that the program ought to provide training and recruitment of nationals in all stages of the petroleum activities and take into consideration of gender, equity, persons with disabilities and host communities¹⁸. Thus, this research was thus intended to analyze the existing legal framework on participation of nationals in the oil and gas sector in Uganda.

1.2 Purpose of the study

The study examines the role of the legal framework on the participation of nationals in the oil and gas sector in Uganda.

1.3 Significance of the study

The research would be used by policy makers to come up with policies that best serve the purpose of national content in the oil and gas sector in Uganda.

The researcher believes that the study would be of great relevance to members of parliament in identifying the loopholes in the laws governing petroleum exploration and on preferential national participation.

Also the study would contribute to a review of the laws regulating the local content and the protection of the health and environment and suggest possible recommendations.

The study would be an additional contribution to the existing pool of knowledge for the purposes of further research in the related field of study.

1.4. Justification of the study

The study aimed at examining the role of legal framework on the participation of nationals in the oil and gas sector in Uganda. This was able through the examining the legal/regulatory and policy framework, the key challenges encountered and the recommendations for effective participation of nationals in the oil and gas sector in Uganda.

However, there exists a growing literature on the enhancement of optimum national participations in oil and gas sectors of the oil producing countries across the continent and Uganda in particular. Nevertheless, the available literature seems unsuitable for developing and peasantry economies like Uganda. This study therefore justifies that with the application of the

¹⁸Section 126(2) of the Petroleum (Exploration, Development and production) Act 2013.

research knowledge to suggest policies that can bridge the gaps and identified loopholes in the laws governing petroleum exploration and on preferential national participation, the study would be of great importance to stimulate social economic development of the nationals and the country at large.

1.5 Aims and Objectives

1. To examine the extent to which the legal/regulatory and policy framework has enhanced the participation of nationals in the oil and gas sector in Uganda.
2. To assess the key challenges encountered in the implementation of local content on the participation of nationals in the oil and gas sector in Uganda.
3. To make recommendations of the various forms of participation of nationals in enhancing local content

1.6 Research questions

1. To what extent has the legal framework enhanced the participation of nationals in the oil and gas sector in Uganda?
2. What are the key challenges encountered by the local content implementation on the participation of nationals in the oil and gas sector?
3. What recommendations can be made to enhance the participation of nationals in the oil and gas sector?

1.7 Scope of the research

The study aimed at examining the role of the legal framework on participation of nationals in the oil and gas sector in Uganda in consideration of local content since it advocates for citizens' involvement. The Upstream and Midstream laws also required companies to submit to the Petroleum Authority a detailed program for recruitment and training of Ugandans annually for approval. What was not clear from the law is how the approved plans for training Ugandans was followed through and whether there were any forms of punishment for companies that failed to meet their obligations under the approved plan or the plan submitted during the application for a license.

However, the study took a time frame of 3 months and the researcher submitted every completed chapter to the supervisor for guidance and comments.

1.8 Theoretical Review

The study adopted Arnstein theory (1969) on “ladder of citizen participation”. The theory emphasized that “participation without redistribution of power is an empty and frustrating process for the powerless in determining the end project”.

Synopsis

The study is composed of five chapters, chapter one entails the introduction of the research topic; Chapter two entails the literature reviewed in references to the study objectives of; legal/regulatory and policy frame work available to enhance local content in the oil and gas sector in Uganda, the key challenges encountered by the local content implementation on the participation of nationals in the oil and gas sector, and the recommendations available to enhance the participation of nationals in the oil and gas sector; Chapter three entails research methodologies employed in the study, Chapter four Presented an in depth analysis and interpretation of study findings and finally Chapter Five entailed the conclusions, limitations and recommendations to the study.

1.10. Chapter Conclusion

The study presents the introduction to the study through detailing the study background, statement of the problem, purpose of the study, scope of the study, significance of the study, Theoretical Review and the study Synopsis.

CHAPTER TWO

LITERATURE REVIEW

2.0 Introduction

Synchronising the existing legal framework in regards to participation of nationals in the oil and gas sector in Uganda which includes the Constitution of the Republic of Uganda 1995 as amended, Petroleum (Exploration, Development and Production) Act 2013, Petroleum (Refining, Conversion, Transmission and Midstream Storage) (National Content) Regulations 2016, Model Production Sharing Agreement 2016, National Content policy for the Petroleum Subsector in Uganda, 2017.

The constitution mandates parliament to make laws to regulate the exploitation of minerals and petroleum and the sharing of royalties arising from the petroleum exploitation¹⁹. This clearly manifests the backbone of local content concept hence the available legal frameworks since parliament is mandated to draft laws.

¹⁹ Article 244(2) (d) of the Constitution of the Republic of Uganda 1995 as amended

The National oil and gas policy for Uganda appreciates the benefits that will accrue from the sector but all that will be dependent on the citizens and enterprises participation in the sector. The national content policy will therefore provide a detailed mode of operation to actualize the inclusiveness of the citizens in the industry²⁰. This is already manifested through the present laws and regulations although there is need to draft a law that specifically addresses national content.

2.1. Review of related literature on legal Framework in Regards to the Participation of nationals in the oil and gas sector.

Policies and regulatory Frameworks for Local Content in Uganda and Africa wide laying a solid foundation for the implementation of local content policies through appropriate legal and regulatory framework is imperative if the desired outcomes are to be achieved (Mukama B., 2017).

The desire by natural resource endowed countries to use the extractives sector to promote local production sectors has been around for a long time (Shephard B, 2013). The only missing link that hindered the expected impact of past measures taken to boost local production sectors has been the glaring absence of well-designed and properly implemented legal, regulatory and institutional mechanisms to support the policies (Mukama B., 2017). Just like other resources countries in Africa like Nigeria, Congo and the other, after the discovery of commercial oil in Uganda in 2006, the government of Uganda concerted its efforts towards designing the legal and institutional framework for the development of local content in the oil, gas and mining sector. However, according to Tinyefuza MG (2013), there is no dedicated monitoring and evaluation mechanisms, or institutions empowered with regulatory authority and autonomy to implement the local content policies are in place in these countries.

While, as the existing legal frame work depicts to employ locals in the sector by the oil companies, the country failed to adapt to the first logical steps (entail fast tracking the development of local skills, manufacturing and investment capacity, etc) of local content promotion while promoting creation of value in the short run, rather than local ownership as it was the case with Norway, USA and UK among others that went through a similar path and emerged successful in the sector. Though, Chifamba (2013) portrays that the immediate or short term utilization or expansion of existing capabilities as was the case in the UK and

²⁰ Page 22 of the National Content policy for the Petroleum Subsector in Uganda, February 2017

Norway cannot be emulated by developing economies like Uganda²¹. This is reflected in (IFRI/IGU, 2015) report where it was noted that, the skills required are very specific, making it difficult to find candidates in the host country who have the necessary qualifications in addition to the fact that, the need for manpower is unstable because it reaches high levels during the construction phase which lasts only 3 to 5 years and then decreases drastically at the time of development and production. Oil production is expected to lead to increase in government revenue and promotion of development through local content promotion provisions in the existing regulations and policies like (the provision of goods and services by Ugandan entrepreneurs. National Industrial Policy, 2008, and Training and employment of Ugandans etc), in Uganda (Veit, Excell & Zomer, 2011). This expectation of national benefits from oil production has sparked interests in governance of oil wealth to avoid the experiences of other countries where discovery and exploitation of oil has attracted woes rather than wealth (Kiiza, Bategeka & Ssewanyana, 2011). It is against this background that President Yoweri Museveni has affirmed that oil resource will be well managed for national development: The development of Oil resources will go hand in hand with the continued efforts to develop other sectors of the economy – that is, the diversification of the economy will continue to be among the top priorities of Government in spite of the Oil wealth. The Government recognizes the critical importance of managing Oil resources well; to avoid the mistakes many other countries have faced (cited in Veit, Excell & Zomer, 2011).

Thomas Walde's (2008) questions "If instruments of good governance and the rule of law have any significance when faced with the force of the energy and resource industries cycles?" to which he concludes that renegotiation demands are prevalent where states view the lack of a balanced internal system. Hence the need to revise frameworks to achieve a politically and legally acceptable outcome for the host states²², exemplifies the present scenario in the oil and gas sectors, with national governments reintroducing national strategies aimed at the long-term sustainability of the industry by prioritizing the social and economic benefits of petroleum extraction²³. This has been undertaken amidst the successful implementation of socio-economic goals using legal and regulatory frameworks in Norway²⁴. Thus, many governments are overhauling existing, and often outdated, petroleum laws and introducing new petroleum

²¹ Ritwika, S., 'Enhancing local content in Uganda's oil and gas industry', WIDER Working paper 2018/10.

²² Van der Veen, P. (2006). *Oil for development, strengthening good governance in Oil-Producing African countries: The role of the World Bank, Oil, Gas and Mining Policy Division, The World Bank.*

²³ Watts M and Kashi E (2006), *Curse Of The Black Gold: 50 Years of Oil in the Niger Delta, World Wildlife Fund Report*

²⁴ *Ibid*

legislation to specifically promote socio-economic objectives. The legislative and regulatory interventions have resulted, in many cases, in an introduction of performance requirements commonly known as “Local Content” (LC) requirements²⁵. These requirements are often described as investment measures²⁶, which specifically involve preferential market access to domestically manufactured goods, and are aimed at increasing local participation in an industry²⁷.

According to Watts M and Kashi E (2006), LC introduction is currently considered within the ambit of petroleum regulatory frameworks in Uganda’s oil and Gas sector to maximize petroleum revenues, create local jobs, foster industrial development, resolve community conflicts, and enhance the social and economic impacts of procurement strategies and the transfer of technology, among others.

With regard to the constitution of the Republic of Uganda 1995 on local content promotion as amended, Petroleum (Exploration, Development and Production) Act 2013, Petroleum (Refining, Conversion, Transmission and Midstream Storage) (National Content) Regulations 2016, Model Production Sharing Agreement 2016, National Content policy for the Petroleum Subsector in Uganda, 2017²⁸. The parliament is mandated to make laws to regulate the exploitation of minerals and petroleum and the sharing of royalties arising from the petroleum exploitation²⁹. This clearly manifests the backbone of local content concept hence the available legal frameworks since parliament is mandated to draft laws.

These LC objectives are considered despite market trends and economies of scale (which often give preference to global supply chain networks over locals)³⁰. Notably, the imposition of these objectives indicates that states attempt to consider many inter-related factors that are not specifically petroleum sector-related, which questions the effectiveness of petroleum regulatory mechanisms in developing LC mandates. Thus, this article contends that LC has become a more regulatory and institutional ambiguity rather than a resource industry cycle

²⁵ *Ibid*

²⁶ *Ibid*

²⁷ Wiwa, Diana (1997), "The Role of Women in the Struggle for Environmental Justice in Ogoni," Delta website, <<http://www.oneworld.org/delta/news4.html#1>>, October 1997

²⁸ Article 244(2)(d) of the Constitution of the Republic of Uganda 1995 as amended.

²⁹ *Ibid*

³⁰ Watts M and Kashi E (2006), *Curse Of The Black Gold: 50 Years of Oil in the Niger Delta*, World Wildlife Fund Report

concern. This hypothesis stems from the perceptions that International Oil Companies “IOCs” benefit from the terms of their contracts irrespective of the climate of high energy prices, as identified in research conducted by United Nations on Convention Trade and Development (UNCATD) (2010) that extraction companies, particularly in the energy sector, have enjoyed record profits over the years. Paradoxically, the areas where these extractions occur, especially in developing countries, remain heavily pillaged in poverty³¹. Additionally, the citizens of most oil-producing countries continue to live below the poverty line despite abundance resources, which suggests that resource revenues have yet to benefit those citizens at large³².

In addition, these LC objectives are considered despite market trends and economies of scale (which often give preference to global supply chain networks over locals)³³. Notably, the imposition of these objectives indicates that states attempt to consider many inter-related factors that are not specifically petroleum sector-related, which questions the effectiveness of petroleum regulatory mechanisms in developing LC mandates. Thus, this article contends that LC has become a more regulatory and institutional ambiguity rather than a resource industry cycle concern³⁴. This hypothesis stems from the perceptions that International Oil Companies “IOCs” benefit from the terms of their contracts irrespective of the climate of high energy prices, as identified in research conducted by United Nations on Convention Trade and Development (UNCATD) (2010) that extraction companies, particularly in the energy sector, have enjoyed record profits over the years³⁵. Paradoxically, the areas where these extractions occur, especially in developing countries, remain heavily pillaged in poverty. Additionally, the citizens of most oil-producing countries continue to live below the poverty line despite

³¹ Tinyefuza MG (2013), *Escaping the Oil Curse: The Role of Sound Legal, Policy and Institutional Frameworks in the Oil and Gas Sector in Uganda*, Available at https://www.academia.edu/9420751/escaping_the_oil_curse_the_role_of_sound_legal_policy_and_institutional_frameworks_in_the_oil_and_gas_sector_in_uganda

³² The EITI Standard, Available at https://eiti.org/files/English_EITI_STANDARD.pdf [Accessed July 5th 2015]

³³ The Telegraph, Harriet Dennys, Tullow Oil apologises to Ugandan government over bribery allegations, March 22nd 2013.

³⁴ Gillies A (2009), Reforming corruption out of Nigerian oil? Part one: Mapping corruption risks in oil sector governance, U4 Brief- Anti-Corruption Resource Centre, February 2009-No.2

³⁵ The Independent, Haggai Matsiko, Did Tullow Oil Bribe Museveni? March 22nd 2013, <http://allafrica.com/stories/201303250813.htm>

abundance resources, which suggests that resource revenues have yet to benefit those citizens at large³⁶.

2.1.1. The existing legal Framework in Regards to the Participation of nationals in the oil and gas sector in Uganda.

The National Oil and Gas Policy (NOGP) for Uganda recognize that the benefit, which the country obtains from its oil and gas resources, will depend on the extent of participation of its citizens and enterprises in the sector. The National content policy will therefore provide a detailed mode of operation to actualize the participation of Ugandans in the industry.³⁷

The National Employment Policy for Uganda guides stakeholders on creation and enhancement of quality and availability of gainful employment opportunities³⁸. The Policy recognizes the importance of education as a precursor to skills development, which serves to enhance productivity and competitiveness.

National Industrial Policy, 2008

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

Provision of goods and services by Ugandan entrepreneurs

The law stipulates for provision of goods and services by the Ugandan entrepreneurs and companies, this gives the citizen an opportunity to benefit from the oil and gas sector by providing goods and services which boosts the economy of the country and also improve on people's standards of living which employment opportunities are availed to Ugandans who can provide services and also market for the locally available or manufactured goods. The

³⁶ Gillies A (2009), Reforming corrupt ion out of Nigerian oil? Part one: Mapping corruption risks in oil sector governance, U4 Brief- Anti-Corruption Resource Centre, February 2009-No.2

³⁷ *The National Oil and Gas Policy, 2008*

³⁸ *Employment Policy, 2011*

government benefits from the taxes that these companies pay and from the people who are taxed from, which taxes are used by government to provide goods and services to the country³⁹.

On 2nd March 2017 the Prime Minister together with the Minister of Trade, Industry and Cooperatives launched the BUBU policy and strategy with the aim of promoting locally manufactured goods and with the aim of conformity with the standard and quality of goods that are locally manufactured in the country.

The very section goes ahead to state that where the goods or services are not available in Uganda, the Ugandan company has to enter into a joint venture with a foreign company with the Ugandan company having 48% capital shares, this still points that even a Ugandan company is unable to provide the goods and services it can still enter into partnership with the foreign company, this shows that the Ugandan company still has the opportunity to benefit from the oil and gas industry through the supply of goods and services⁴⁰.

The law goes ahead to stipulate that the IOC, its contractors and subcontractors to be notified of the quality, health, safety and environmental standards that are required, this implies that however much Ugandan enterprises or companies are given an opportunity to provide goods and services but they should comply with the quality which competes on the international market, health and environmental standards so that the environment is not compromised with goods or services that are not going to damage the environment⁴¹. This is in conformity with Reg.7 (1) (b)⁴².

The overall Mission of this Policy⁴³ is to develop and nurture private sector competitiveness, and to support the productive sectors of the economy to trade at both domestic and international levels, with the ultimate objective of creating wealth, employment, enhancing social welfare and transforming Uganda from a poor peasant society into a modern and prosperous society.

The policy is intended to support the production, purchase, supply, and consumption of local goods and services.⁴⁴

³⁹ Section 125(1) of the P(EDP)Act 2013.

⁴⁰ Section 125(2) of the P(EDP)Act 2013.

⁴¹ Section 125(3)(a) of the P(EDP)Act 2013.

⁴² of the P(RCTMS)(NC)Regulations 2016.

⁴³ The National Trade Policy, 2007

⁴⁴ Buy Uganda Build Uganda Policy, 2014

Training and employment of Ugandans

The IOC is mandated within 12 months after the grant of the license and on each subsequent anniversary of that grant, submits to the Petroleum Authority of Uganda for approval a detailed program for recruitment and training of Ugandans.⁴⁵ Which is in conformity with Regulation 7(1)(a)⁴⁶.

Furthermore the Model Production Sharing Agreement(MPSA) mandates the IOCs “to train and employ suitably qualified Ugandan citizens”⁴⁷ this clearly shows that even at negotiations that are reflected in the PSA the issue of training and employment is emphasized so that Ugandans are not left out as spectators but they should also be part of the oil and gas activities.

The program shall provide for the training and recruitment of Ugandans in all phases of petroleum activities and shall take into consideration gender, equity, persons with disabilities and host communities⁴⁸. This calls for training of Ugandans where most of them are totally ignorant about the oil and gas sector yet they are supposed to benefit from the sector through employing them in the different stages starting with the upstream, midstream and downstream. The law does not entertain discrimination when it comes to gender, equity, and persons with disabilities implying that every person has to be given an opportunity to be trained and recruited for as long as the person is a Ugandan.

The host communities have to be given an opportunity to be trained and recruited since they are the custodian of the resource and its where the petroleum activities take place from. This warrants the IOC(s) the social permit to operate which is very essential and failure to recruit and train the host communities may lead to the failure of the project. This rationale of prioritizing the host communities is to make their lives better than they were before the Project.

Furthermore, the training has to be continuous so that Ugandans are not left out on the opportunities that are within the sector, it should be brought to our attention that every stage of the sector requires a totally different experience to purely handle the different activities that are within the different stages of the sector.

⁴⁵ Section 126(1) of the P(EDP)Act 2013.

⁴⁶ of the P(RCTMS)(NC) Regulations 2016.

⁴⁷ 2016

⁴⁸ Section 126(2) of the P(EDP)Act 2013.

It should be noted that amongst the aims of launching the Build Uganda Buy Uganda (BUBU) policy and strategy was to advocate for use of local skilled personnel. This can only be achieved through training of Ugandans which the only way Ugandans can position themselves so that they benefit from the oil and gas sector.

The law still mandates the IOC (s) to furnish to the Petroleum Authority of Uganda a report indicating how they have executed the program of training and recruiting of Ugandans which has to be on a yearly basis⁴⁹. Who need hands on skills not the theoretical knowledge because in the future the sector will be managed by Ugandans that's why the law mandates the IOCs to train and recruit Ugandans. A fisherman by the name of James Ocham was quoted saying that "In time we are all going to benefit-there will be jobs, even for the unemployed." This clearly manifests the excitement and anxiety caused by the discovery of oil and gas across the country.⁵⁰

Training and Technology Transfer

The IOC(s) is mandated to clearly avail a defined training program for Ugandan employees of the IOC(s) which can either be conducted outside Uganda and may include scholarships and other financial support for education⁵¹. The Government of the Republic of Ugandan has established the Uganda Petroleum Institute at Kigumba, in Masindi District which imparts knowledge and skills, although more institutes have to be put in place for citizens to compete.

An IOC shall include a commitment by the licensee to maximize knowledge transfer to Ugandan and to establish in Uganda, Management and technical capabilities and any necessary facilities for technical work, including the interpretation of data⁵². This is due to the experience that the IOCs have in the oil sector and putting into consideration that Uganda is just a new entrant in the industry so the IOCs are well knowledgeable of the kind of technical skills they require.

The technology transfer shall be a shared responsibility between government and the IOC⁵³. Implying that both the government and the IOC are duty bound to ensure that technology that

⁴⁹ Section 126(5) of the P(EDP)Act 2013

⁵⁰ The Guardian "Oil find sparks new hope for Uganda's people". Tue 25 Aug 2009 17.13 EDT

⁵¹ Section 127(1) of the P(EDP)Act 2013

⁵² Section 127(2) of the P(EDP)Act 2013

⁵³ Section 127(4) of the P(EDP)Act 2013

is required in the oil and gas industry to facilitate its activities is transferred to Ugandans. Uganda lacks enough advanced technology yet the IOCs have the advanced technology that is required in the industry due to their experience in the oil and gas sector, that's why the law puts a duty of technology transfer to be a shared responsibility between the governments that can pressurize the IOCs to transfer the technology to Ugandans.

The implementation of National Content in the oil and gas sector in Uganda

The government of the Republic of Uganda has already taken an initiative to establish the Uganda petroleum institute whose aim is to impart knowledge and skill which is required in the oil and gas operations and maintenance. This is a great achievement although the government has to put up more institutions in place to increase on the number of Ugandans with enough knowledge and skills to actively compete in the market⁵⁴.

Building adaptive capacity

International experience identifies value addition within the domestic economy, as the core goal, for national content. Achieving this requires initial push by way of foreign investment, in order to gain transfer of technology technical and process, to expand national adaptive capacity.⁵⁵

Adaptive capacity is the most critical factor (first independent variable), without which, the participation rights (secondary dependent variable) would be redundant. The participation rights are also subject to prequalification, based on competency and standards (first subsidiary independent variable), coupled with eligibility (second subsidiary independent variable), determined, or prescribed by the law.

Essentially, adaptive capacity relates to existing ability to receive and utilize synergies of an emerging industry, while mitigating its adverse effects. This means availability of local goods and services commensurate with the demand, when and where needed, and of the quality and quantity required. It also includes installed manufacturing capacity, level of training and

⁵⁴ Page 4 of ALP Law Review Series Article No.3/2020, April 30,2020 Local content in Uganda's Oil and Gas Legal Framework: Developing Local Skills and Using Local Manpower.

⁵⁵ Uganda, 'Enhancing National Participation in the Oil and Gas Sector' (2011) Petroleum Authority of Uganda <https://pau.go.ug> (accessed 02 February, 2020).

experience of national human resource; ability to identify the appropriate technologies; and financial capacity for investment in the acquisition of relevant technology to transform existing capacity.⁵⁶

In this event, the distinctive nature of upstream operations and its inherent investment structure, have serious implications on local content goals. The upstream segment (exploration, development and production), is dominated by well drilling, design, construction, operation and management. Procurement of such services is driven by efficiency; ensuring least cost, timely delivery, and sustainability of the project in the long run.⁵⁷ A matter of common interest to all stakeholders, since owing to stringent health, safety and environment (HSE) requirements, the design of each project is determined by its peculiar context of national competitiveness. Technology as a tailor made element becomes the major variable factor, within the operators control by which to mitigate costs and risk by optimization of petroleum extraction and delivery to the market at competitive prices.⁵⁸

Achieving maximization of benefits from the industry in a sustainable manner requires upfront identification of challenges and design of solutions in ‘a holistic way’.⁵⁹ Apparently, the most challenging and important exercise of sovereignty lies in making the most appropriate initial investment decision. The enormity of this challenge is demonstrated in the different investment approaches taken by Uganda and Ghana consequent to discovery of oil.⁶⁰

It emerges that, constrained conditions under which investment decisions are made immediately after discovery of commercial quantities, limit requisite inclusivity of all stakeholders. In such dynamic conditions, the importance of having ‘a clear vision of how the petroleum sector should contribute to the broader economic and social development of the country,’ may be underrated, with significant consequences on subsequent policy decisions.⁶¹ The foundations on which, integrative interventions are based.

⁵⁶Tordo, Warner and Manzano et.al, (2013); Hansen, Buur, and Kjaer et al.(2016)

⁵⁷ Svetlana Lisitsa, Anastasia Leveina and Aleksander Lepekhin, ‘Supply-Chain management in the oil industry’ (2019) www.adsabs.harvard.edu (accessed 08 February,2020)

⁵⁸ Martin Ewan, ‘Law and Technology in the Oilfield’ in *OIL AND GAS LAW: Current Practice and Emerging Trends* (2011), 2nd Ed, Editors Greg Gordon, John Paterson and Emre Usenmez, DUNDEE UNIVERSITY PRESS 2011

⁵⁹ Huurdeman and Rhozhkova, Eds. (2019)

⁶⁰ Sam Hickey, Abdul-Gafaru Abdulai, Angelo Izama and Giles Mohan, ‘The politics of governing oil effectively: A comparative study of two new oil-rich states in Africa’, (2015) ESID Working Paper No. 54, Manchester: The University of Manchester

⁶¹ *Ibid*

Initially, as it were for the UKCS in the 1960s, not much is known (quantity, quality, cost of production) to inform well-considered investment decisions on the part of the government.⁶² As such, investment and planning decisions must correspond to the evolving nature of the industry, dependent on the flow of new information in due course. In many developing economies, decisions regarding exploitation of the resource are made by the executive arm of government, in tentative conditions of asymmetry of information. The law in that event attempts to give effect to contractual terms of a commercial nature, embedded in shifting sands of a political nature.⁶³ This may negate opportunity for the design of clear and transparent mechanisms for balancing ‘the commercial imperatives of the companies [hired] to extract the petroleum and the aims of the state in the development of the petroleum resources’.⁶⁴

There is a paucity of literature relating to the investment decision qua owner of the resource. The discourse is dominated by considerations and analysis of the factors influencing the IOC’s investment decision; the Host State is viewed primarily in the context of a host, interested in attracting ‘the investment’, in competition with other countries.⁶⁵ Thus, Host States are not viewed as ‘investors’ in their own right, but merely as revenue collectors, primarily being concerned with the government’s take from the extracted resource.⁶⁶ A view prompted by the extractive models adopted by the UKCS, in which the government initially participated directly in the extraction. An approach abandoned in the 1980 liberalization reforms, settling for a full licensing and taxation regime. In that case, the government does not feature as an investor, in a strict commercial sense.

Apparently, in such a context, local content is likely to be perceived as an end itself, a legitimate ‘demand’, without due regard to its historical context.⁶⁷

⁶² Greg Gordon, John Paterson and Emre Usenmez, *Oil And Gas Law On The United Kingdom Continental Shelf: Current Practice and Emerging Trends*, in *OIL AND GAS LAW: Current Practice and Emerging Trends* (2011), 2nd Ed, Editors Greg Gordon, John Paterson and Emre Usenmez, DUNDEE UNIVERSITY PRESS 2011.

⁶³ Kristen Bindemann, ‘Production-Sharing Agreements: An Economic Analysis’ (1999) *Oxford Institute for Energy Studies WPM* 25

⁶⁴ Tina Hunter, ‘The role of The Regulatory Framework in Encouraging the Sustainable Extraction of Petroleum Resources in Australia and Norway. (2014) *The Extractive Industry and Society* 1 (1):48-58 march 2014

⁶⁵ Daniel Yergin, *The Prize, The Epic Quest for Oil, Money & Power* (1991) SIMON & SCHUSTER NEW YORK LONDON; Carole Nahkhle, *Petroleum Taxation. Sharing the oil wealth: a study of petroleum taxation yesterday, today and tomorrow* (2008) ROUTLEDGE New York.

⁶⁶ Luke Patey, ‘Oil in Uganda: Hard bargaining and complex politics in East Africa’ (2015) *OIES Paper: WPM* 60, Oxford, UK: Oxford Institute for Energy Studies

⁶⁷ *International Alert, Oil and Gas Laws in Uganda: A Legislators Guide, Oil Discussion Paper No. 1, May 2011; Sebastiano Rwengabo, (2017)*

2.2. To assess the key challenges encountered in the implementation of local content on the participation of nationals in the oil and gas sector 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 are basically to provide capital, skills and knowledge as well as technology.

According to Babafemi (2018) he stated that laying a foundation for the implementation of local content policies through appreciates legal and regulatory framework is imperative if the desired outcomes were to be achieved. The desire by natural resource endowed countries to use the extractives sector to promote local production sectors has been around for a long time, but the only missing link is the absence of well-designed and properly implemented legal, regulatory and institutional mechanisms to support the policies. In the selected Economic community of central African states included Angola, Chad, Gabon, Congo and Equatorial Guinea. That it's only in recent times that concerted efforts have been made to design the legal and institutional framework for the development of local content in the oil, gas and mining sector. But there is no dedicated monitoring and evaluation mechanisms or institutions empowered with regulatory authority and autonomy to implement the policies that are in place⁶⁸. However, the study was conducted in in central Africa states of Angola, Chad, Gabon, Congo and Equatorial Guinea, and thus, its findings may not be applicable in the Ugandan Context. Though, at one time, the researcher agrees with the scholar on the assertion that there is no well-developed legal framework to achieve the desired outcomes. Seemingly, Uganda has no specific law on local content but the provisions of local content are instead stipulated in different laws, regulations and policies and even in the scattered provisions on local content in the different framework they are silent when it comes to monitoring the implementation of local content and also silent on punishment for failure to comply with the local content

⁶⁸ Pg.2 of *Overview of local content Regulatory frameworks in selected ECCAS countries* by Dr. Babafemi Oyewole, May 2018

requirements. This shows that there is a gap of prescribing a punishment for failure to comply with the local content requirement and there is also a gap of absence of a monitoring institution to implement the requirement of local content in the oil and gas activities.

Mohamed A et al (2012) stated that in developing countries, technology transfer (TT) is a solution for the improvement of industrial and economic sector. He furthermore, states that for the success of any transfer depends on the proper technology from the right provider as well as the absorptive capacity of the technology. Most oil producing countries are committed to developing their petroleum industries to become competitive, compatible and reliable. This often involves setting up the TT infrastructure considered necessary for the petroleum industry. In disagreement however, the findings are not necessary applicable to all developing countries as some have succeeded in setting up standard IT infrastructures to enable the petroleum sector thrive. On the other hand, nonetheless, the scholar's emphasis is that most of the developing countries lack managerial and technical expertise to manage such large projects⁶⁹. Contrary to the researchers view, Mohamed A et al (2012)'s study did not stretch out on the fact that some developing countries like Uganda are new in the sector and thus, they lack enough expertise to tackle the sector issues systematically. Regardless, the researcher agrees with the scholars assertion that most of the developing countries of Uganda's nature do lack managerial and technical expertise to manage such large projects this is because you cannot manage what you do not have experience on. Therefore, for developing countries to manage large project there's need for technical expertise to well manage large projects which calls for hands on skills within the oil and gas sector.

According to Abraham J. et al (2018) stated that local content participation cannot be achieved fully because it requires a strong development-oriented state with a long term vision of structural information, a highly committed political leadership and effective transformative institutions. Though, in the Ugandan context, the political leadership of this country seems wanting and lackingly committed to effective transformation characterized with high levels of public fund mismanagement, corruption, embezzlement and nepotism. In agreement with Abraham J. et al (2018), the researcher asserts that because Uganda has political leaders who are not patriotic but they are after satisfying themselves that's why corruption is at a high

⁶⁹ By A.S. Mohamed, B.T.Hang Tuah Bin Baharudin. *Modeling the Technology Transfer process in the Petroleum industry: Evidence from Libya* Volume 55, Issues 3-4, February 2012, Pages 451-470.

rampage. Nevertheless, little has been done to overcome the problem, and the current political leadership shows no interest to end it.

For example, three officials were accused of various high level revenue manipulation and embezzlement offences in collusion with oil companies, Kuteesa kahamba Sam was alleged to have received payment of 30,000,000pounds from Tullow Oil PLC through transfers to his company, East Africa Development Limited. Obaloker Hillary Onek was accused of receiving transfer from a Tullow account to his foreign account in Dubai, Onek and John Patrick Amama Mbabazi were also accused of selling production right from Eni SpA to Heritage Oil⁷⁰. Worse enough, no efforts were made to bring the culprits to judgment, but instead awarded with big administrative positions in government institutions.

According to (IFRI/IGU, 2015) it dedicated that the skills required are very specific, making it difficult to find candidates in the host country who have the necessary qualifications. In addition, the need for manpower is unstable because it reaches high levels during the construction phase which lasts only 3 to 5 years and then decreases drastically at the time of development and production⁷¹. The researcher entirely agrees with the above assertion because Uganda's education sector has not collaborated with PAU and the national curriculum development center to develop training content for the nationals making it difficult to find nationals who have the specific skills required by the IOCs and also when it comes on the issue of decreasing the manpower its true because as the sector keeps on advancing to another phase the labor force required tends to reduce to few skilled, semi-skilled and unskilled labor force of skills required are very specific and difficult to find in the host country. This shows that there's a gap when it comes to training nationals so that they can be skilled so as to compete favorably in the industry.

Chifamba (2013) in his study, revealed that there is relatively low degree of community influence or control over projects in which community members participate, especially given that the services are controlled by people who are not poor or recipients of services. According to Magelah (2014) local content involves framing laws and policies to provide for employment,

⁷⁰ Page 84 of of *Oil Wealth and Development in Uganda and Beyond*, Published by Leuven University Press.

⁷¹ Pg 8 of *local content strategies in the oil and gas sector: How to maximize benefits to host communities*. For the IFRI/CIEP project for TF3 IGU

services that must be rendered by citizens or get a direct benefit from the oil and gas sector. However, what's left out is how to increase citizen participation. While as, citizens can participate through local content, this is rather one of the forms of participation and it's not conclusive because citizen participation involves the processes that provide for individuals in the community an opportunity to influence public decisions that affect them which can be done through ordinary people taking part either alone or as a group with the goal of influencing a decision involving significant choices that will affect their community⁷². The researcher disagrees with the scholar on the assertion that increased citizen participation is left out, this is because stakeholders engagement meetings are conducted at the district Sub County and village levels which affords citizens an opportunity to express their concerns regarding the oil project affecting their communit(ies). The author left out the issue of effective sensitization of the locals in the oil and gas sector which makes it so difficult for the locals to influence public decision

The office of the prime minister is mandated to coordinate the implementation of all policies of government which includes supporting the implementation of the national content policy across government, and also participate in monitoring and evaluation of policy implementation activities⁷³.

According to (IFRI/IGU, 2015) its stated that although the expenditure of O &G companies are significant, the goods and services required for the O& G projects are again very specialized and involve highly sophisticated technologies that may not be easily offered by local suppliers entering this activity. In order to ensure that the inputs meet the quality standards and are delivered on time and can be purchased at a reasonable price, it seems a less risky approach to rely on a global and long-established supply chain because of these specificities the O& G industry can be enclave –oriented and tends to carry out its activities with only expatriates and using only imported inputs. The Uganda National Bureau of Standards has greatly failed to play its mandate of establishing standards that meet the requirements of the sector yet the IOCs require goods that meet their standards⁷⁴. This defeats the spirit of the BUBU policy if the

⁷² Pg.3 of local content in oil and gas sector, *An assessment of Uganda's legal and policy regimes* by Magelah Peter Gwayaka. ACODE policy briefing paper series no.28, 2014.

⁷³ Page 40 of the national Content Policy for the Petroleum Subsector in Uganda, February 2017.

⁷⁴ Page 42 of the national Content Policy for the Petroleum Subsector in Uganda, February 2017.

country still has a lot of counterfeit goods on the market, how shall the citizens participate in the sector if they have failed to comply with the standard requirements of the IOCs.

Magelah (2018) establishes that lack of established systems through which central and local government official can disseminate and share information relating to oil development and activities. In all districts visited, district officials said they had never attended a training or an information sharing event organized by the petroleum department of the ministry of energy and minerals development, the only time district officials interacted with MEMD officials was through workshops organized by NGOs or when the central government officials conducted activities in the district to seek information from district officials. A similar situation was recorded in Hoima, Nebbi and Buliisa, where majority of the oil exploration activities did not involve local government. The researcher disagrees with the scholar on the issue of non-involvement of local government officials because that was in 2018 and now we are 2021 where IOCs and their contractors are mandated to make courtesy visits at all administrative levels of the district and involve some technical officials like the natural resources and community development officers, although the rest of the district, sub county and village officials are only left to participate in the stakeholders engagement meetings where they are informed about the oil and gas activities.

Masanyiwa and Kinyashi (2008) established that ‘community participation’ in the study programs takes on different forms in different stages of the project cycle. Despite the time difference between the old and new program, the nature and extent of participation for the Most of local communities in both programs is generally limited to information giving, consultation and contribution. Local communities are generally not actively involved in decision making, planning, monitoring and evaluation processes. Key factors identified as facilitatory in promoting stakeholders’ participation are the NGO’s long term commitment in working with the poor, staff with knowledge and skills on participatory approaches, continuous community sensitization and mobilization, and perceptions that interventions being implemented are addressing participants’ needs. The researcher agrees with the scholar’s assertion that local communities are not actively involved in decision making but are only limited to consultations. This is in conformity with the current trend in the Oil and gas sector where nationals are engaged from the national level, district level, sub-county and village level on different things like on the Environmental and social impact Assessment among others. Hence, there is need to

involve more community members in decision making which brings out the spirit of local content since it involves inclusiveness.

King'ori (2014) studied the influence of community participation in completion of Health Projects: a case of Korogocho slums, Nairobi County, Kenya. On project identification, 76 per cent of the respondents agreed that participation in project identification influenced project completion. Furthermore, the strong positive correlation of 0.714 between participation in planning and project completion confirmed that an increase in the community's participation in the planning phase had a positive influence in its completeness. The researcher agrees with the above scholars on community participation since it's the community members who are affected by the project and they know what best suits their communit(ies). However, in Uganda the position is different because technical decisions are done by few technocrats and influenced by IOCs who are financially positioned living out nationals in information darkness and becoming mere spectators.

Chilenye N (2016) stated that LCPs come with certain tradeoffs, which are potential incompatibility with international trade agreements which threatens the sustenance of Local content. The researcher agrees with the scholar's assertion because Uganda is a member of the EAC, COMESA and WTO

In conclusion, if the expectations of the people are not met Uganda might become a breeding ground for evil sentiments that could encourage political unrests through conflicts and rebellion due to emotions from the citizens⁷⁵.

Under the doctrine, governments are not only prohibited from conveying trust resources into private hands or allowing their destruction, they have an affirmative, ongoing duty to safeguard the long-term preservation of those resources for the benefit of the general public⁷⁶. This makes the doctrine "a fundamental limitation on governmental power,⁷⁷ and the beneficiaries "are present and future generations of citizens. The essence of the doctrine requires trust management for public benefit rather than for private exploitation or political advantage.⁷⁸

⁷⁵ *History of oil Discovery in Uganda politics Essay. Retrieved from <https://www.ukessays.com/essay/politics/history-of-Oil-discovery-in-uganda-politics-essay.php?vref=1>*

⁷⁶ Richard M. Frank, *The Public Trust Doctrine: Assessing Its Recent Past & Charting Its Future*, 45 U.C. DAVIS L. REV. 665, 667 (2012)

⁷⁷ *Ibid*

⁷⁸ *Ibid*

2.3. Recommendations to enhance the participation of nationals in the oil and gas sector

Parliament should pass a law to provide for nationals to participate in oil and gas sector through local content. Specifically the new law should 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 others⁷⁹.

There is need of creating a dedicated institution to manage the local content aspect not only in oil and gas but also in other sectors⁸⁰. 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.

In the oil and gas sector citizens should be uplifted through capacity building that ought to be built for training which are targeting providing labor for the oil and gas market.

There is need to 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.

In the local content strategies, they should have potentials to be more successful if they are backed by sector-specific legal frameworks guaranteeing their measurement, implementation and monitoring of citizen participation. More specific policy and legal frameworks of local content tend to result in better development outcomes.

In consideration still of the citizen participation in the oil and gas sector for long and short term benefits for the citizens in local content policies. The achievement of short-term positive outcomes might be easier to attain through certain mechanisms such as the establishment of

⁷⁹ *Local Content in Oil and Gas: Legal and Policy Issues in Uganda*

⁸⁰ *Ibid*

workforce and procurement quotas and scholarships requirements. However, building linkages through local content policies is a measure that can bring about longer-term benefits to the country's economy.

In Uganda the law clearly defines and encourages citizen participation for example the intention of the Investment Code is to provide for favourable conditions for foreign investors investing in Uganda, such interests maybe 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. This therefore calls for companies in the oil and gas sector to implement and practice the engagement of the citizens to participate in oil and gas activities.

CHAPTER THREE

RESEARCH METHODOLOGY

3.0. Introduction

This chapter presents the research methods employed in the due research process. It is consisted of; research design, area of the study, population size, sample size, sampling technique, Data Collection Instrument, questionnaire, interview guide, Data Analysis Plan, Quality Control, data analysis, ethical considerations and conclude with Anticipated Methodological Limitations with their respective strategies.

3.1. Legal context and research setting

3.1.1. Research Design

The study adopted a qualitative research approach that involved both formal and normative aspects of the existing legal framework on participation of nationals in the oil and gas sector in Uganda.

The qualitative paradigm/approach was used as means to explore the understanding and meaning which the respondents ascribe to the study problem⁸¹. This provided an in-depth understanding of the respondent's experiences and perspectives as interpreted by the researcher. Therefore, the researcher was able to draw statistical inferences and provide in-depth analysis on nationals' participation in access to investment opportunities in the upstream sector of oil and gas in Uganda.

3.1.2. Area of the study

The study was conducted in Buliisa district which is located in North Western Uganda in the sub region of Bunyoro. The district is primarily rural and most of its people are pastoralists, fisher people or subsistence agriculturalists. The researcher picked interest in the area due to the fact that, Buliisa district is one of the Albertine Graben areas that sit on Rich Deposits of oil and gas in the western rift valley, and thus a home to over 60 oil wells scattered all over the district like in Uriibo, Ngwendo extra.

⁸¹Thanh, N.C., &Thanh, T.T.L. (2015). "The Interconnection between Interpretivist Paradigm and Qualitative Methods in Education". *American Journal of Educational Science*, 1(2), 24-27.

3.1.3 Population Size

The study population comprised of all nationals in the oil and gas sector that had the capacity to conduct employment and decision. For this case the target population was guided by the Ministry of Energy and Mineral Development, 2017.⁸² It included various selected respondents deemed necessary to the study as per the table 1 in 3.2 below.

3.2 Sample Size

The study will be determined by the use of Krejcie & Morgan sample size⁸³. This involved a number of stakeholders currently participating in the upstream sector of oil and gas sector.

Table 1: Showing the distribution of the Sample Size

Category	Population	Sample	Sampling Technique
Local Chairpersons	04	02	Radom Sampling
L.C 5	01	01	Purposive sampling
Project Affected Persons	05	03	Purposive sampling
Youth Councillor	01	01	Purposive sampling
PAU Logistics Officer	01	01	Purposive sampling
Natural Resources Officer	01	01	Purposive sampling
CDO	01	01	
Ministry of Gender Labour and Social development	04	02	Random sampling
UNBS	04	02	Random sampling
Civil Society Organizations	03	01	Purposive sampling
Cultural Institution (Youth Minister & Minister of Development)	02	01	
Total	27	24	

Source: Primary Data, 2020 and Sample Size determined by Krejcie & Morgan, (1970)

⁸² PAU The National Supplier Database List 28th February, 2018 www.pau.go.ug (accessed 31 August 2020)

⁸³ "Krejcie, R. & Morgan, D.W. Determining Sample Size for Research Activity. (1970). "Educational and Psychological Measurement, 30(3), 607-610".

3.4 Sampling Techniques

The study targeted respondents based on random and purposive sampling techniques. Random sampling helped to widen the scope of the participants' selection field. Purposive sampling was adopted in order to correlate with the regulated nature of the frame work under review. It helped to acquire relevant information on national challenges in the process of making to the active participants. This helped to interrogate the research questions on access to investment opportunities in the supply chain of the upstream segment of the sector.

3.5 Data Collection Instrument

The study mainly adopted two data collection instrument which included: the questionnaire and interview guide.

3.5.1. Document review Guide.

Document review is a way of collecting data by reviewing existing documents. The documents may be internal to a program or organization (such as records of what components of an asthma management program were implemented in schools) or may be external (such as records of emergency room visits by students served by an asthma management program). Documents may be hard copy or electronic and may include reports, program logs, performance ratings, funding proposals, meeting minutes, newsletters, and marketing materials. This enabled the researcher to understand the history, philosophy, and operation of the study phenomena which was being evaluated and the O & G sector in which it phenomena existed⁸⁴.

3.5.2 Interview Guide

The study was based on the general interview guide approach that is an instrument that contains structured question items to collect qualitative data. This interview guide helped in obtaining detailed information from the respondents however ensuring that the same general areas of information were collected from each interview. This provided more focus and a degree of freedom and adaptability to give room for learning from the respondent's experience. Subject to availability and accessibility, the researcher targeted to interview 20 respondents, mainly within the Kampala/Hoima districts.⁸⁵ These included key respondents from the Local Government representatives, Host community leaders and project affected persons (PAPS),

⁸⁴ Appendix A

⁸⁵ *In view of the Covid-19 challenges –limited access to the border Districts home to the petroleum extraction activities and Cultural Institutions.*

PAU, UNOC, Cultural leaders, Ministry of Gender, Labour and Social development and Civil Society Organizations in the area.

3.4. Data Analysis Plan

3.4.1. Quality Control

Validity; the study relied on official and other verifiable data readily available and relevance assessed by the supervisor on the relevance. This manifested wording and clarity of the items in the instrument. In this case the study seeks to gather information from the existing sources and thereafter, it was tested using confirmatory Factor Analysis thus helping in attaining a validity of the study items⁸⁶.

Reliability for the qualitative instrument was achieved with the help of consultations with the supervisor, prolonged engagement and audit trails. Data was systematically checked; focus maintained and consistent identification and correction of errors⁸⁷.

3.4.2 Data Analysis

Qualitative analysis was carried out through thematic and discursive methods. By thematic analysis, clusters of text with similar meaning were presented together⁸⁸.

3.5. Ethics Consideration

The researcher took the responsibility to ensure that the respondents were told about the value of the study being investigated. This enabled respondents to positively appreciate their contribution as participants in the study (Chorley, 2015).

The researcher observed the research norms and above all, she maintained absolute honesty and objectivity in the application of the data collection methods to arrive at the desired results (Maiangua, 2012).

The researcher did not seek to offer anything in order to solicit for information or data. Responses were in the interest of the respondents themselves. The researcher therefore ensured

⁸⁶Marsh, H.W., Morin, A.J., Parker, P.D., &Kaur, G, *Exploratory structural equation modelling: An integration of the best features of exploratory and confirmatory factor analysis.* (2014) *Annual Review of Clinical Psychology*, 10, 85-110.

⁸⁷Morse, J.M., Barrett, M., Mayan, M., Olson, K., &Spiers, J.. "Verification strategies for establishing reliability and validity in qualitative research" (2002) *International Journal of Qualitative Methods*, 1(2), 13-22

⁸⁸ Madill, A., & Gough, B..*Qualitative research and its place in psychological science.* (2008)*Psychological methods*, 13(3), 254.*doi: 10.1037/a0013220*

them that, transparency and honest values were put at the forefront to easily conduct the research.

3.6. Anticipated Methodological Limitations with their respective strategies

Time Constraints. The researcher wanted to get views from as many project affected persons (PAPS) as possible but felt time constraints did not enable her to get the views from such a number. To overcome this, simple random sampling was done to select the few who participated in the study and yet this instead narrowed the chances of generalizations on the role of legal framework on the participation of nationals in the oil and gas sector in Uganda.

Language barrier. The researcher was aware that most residents of Buliisa district (Affected persons) in the rural setting were illiterate. The researcher anticipated that there would be difficulty in communication since most of the respondents did not understand or speak English. Therefore, the research mitigated this challenge through hiring a researcher assistant for interpretation.

Another limitation was funds. To cover Buliisa district oil well villages required quite huge sums of money for transport and other logistics, which was not easy to get. To overcome this, the researcher had to borrow funds from friends and relatives for that purpose.

As well, some people were suspicious and hence not willing to give in the necessary information needed by the researcher. To this, the researcher endeavored to explain to the respondents the purpose and confidentiality of the research.

The outbreak of the covid-19 pandemic whereby it was challenging to access public libraries and also interview people who had the relevant information. To overcome this, the researcher undertook to follow the standards Operations Procedures to access public libraries and people so as to get relevant information.

3.7. Conclusion

This chapter contains the legal context and research methodologies to guide the research in the attainment and collection of the required data, its presentation and analysis. However, Chapter Four presents the study results and analysis of the study findings.

CHAPTER FOUR

PRESENTATION, ANALYSIS AND INTERPRETATION OF STUDY FINDINGS

4.0. Introduction

This chapter presents the response rate, demographic factors of the respondents (bio data), and interview analysis based on the existing legal/regulatory and policy framework, challenges encountered in the implementation of local content and possible recommendations to enhance participation of locals.

4.1 Response Rate

Table 4.1. Below presents the response rate.

Table 4.1: Response Rate

	Frequency	Frequency	Percentage
Valid	Respondent	21	86.0
	Not responded	03	14.0
	Total	24	100.0

Source: Survey data computed by the researcher, (2020)

Results in Table 4.1 above, of the 24 research tools distributed, only 21 were properly filled and returned, thus representing a response rate of 86%, 25.4% of the tools were invalid.

This response rate was found to be satisfactory since according to Mugenda (2003), a response rate of 50% is adequate for analysis and reporting; a rate of 60% is good and a response rate of 70% and over is excellent.

4.2. Demographic Characteristics of the Respondents

The findings on sex, age, marital status, age bracket, designation / sector of the respondent, educational level, length of work in O & G sector as indicated below;

4.2.1. Sex of Respondents

Table 4.2 below presents the Sex of the respondents.

Table 4.2: Gender/Sex of the Respondents

Gender	Frequency	Percentage	Cumulative
Male	14	59.5	59.5
Female	10	40.5	100
Total	24	100	

Source: Survey data computed by the researcher, (2020)

Results in Table 4.5 above show that 59.5 percent were males while 40.5 percent were females respectively.

4.2.2. The Marital Status of the Respondents

Table 4.3 below presents the marital status of the respondents.

Table 4.3: Marital Status of the Respondents

Marital status	Frequency	Percentage	Cumulative
Married	09	36.8	36.8
Single	05	21.3	58.1
Widow	3.5	14.7	72.8

Widower	2.8	11.9	84.7
Separated	2.1	8.9	93.6
Divorced	1.5	6.4	100
Total	24	100	

Source: Survey data computed by the researcher, (2020)

Results in Table 4.3 above indicates that 36.8 percent were married, 21.3 percent were single, 14.7 percent were widows, 11.9 percent of the respondents were widowers and 8.9 percent had separated from their partners while the minority 6.4 percent had divorced from their partners.

4.2.3. The Age of the Respondents

Table 4.7 below presents the age of the respondents.

Table 4.3: The Age of the Respondents

Age	Frequency	Percentage	Cumulative
28- 37	191	33.5	33.5
38- 47	142	24.9	58.4
18- 27	95	16.7	75.1
48-57	80	14.1	89.2
58+	62	10.8	100
Total	570	100	

Source: Survey data computed by the researcher, (2020)

Results in Table 4.7 above show that 33.5 percent of the participants belonged in the age group of 28 – 37 years, 24.9 percent, belonged in the age group of 38 – 47 years, 16.7 percent belonged in the age group of 18 – 27 years and 14.1% of the participants belonged in the age group of 48 – 57 years while the remaining 10.8 percent belonged to the age group of 58 and above years.

4.2.4. Designation of the respondents

Table 4.8 below presents the designation of respondents involved in the study.

Table 4.4: designation of respondents

Category	Frequency	Percentage	Cumulative
Local community leaders	07	29.1	29.1
CSO leader	03	12.5	41.6
Cultural leader	02	8.3	49.9
Ministry of Gender	03	12.5	62.4
Technocrat / technical persons	04	16.6	79
UNOC	02	8.3	87.3
Local Residents (PAPS)	03	12.5	100
Total	24	100	

Source: Survey data computed by the researcher, (2020)

Results in Table 4.4 above show that 29.1 percent were Local community leaders, Local community leaders were 12.5 percent, 8.3% represented cultural leaders, 12.5% were from ministry of Gender, 16.6% were technocrats, 02(8.3%) were UNOC and 12.5% were Local Residents (PAPS) from Buliisa district.

4.2.5. Level of expertise in the O & G sector of the Respondents

Table 4.5: Level of expertise in the O & G sector of the Respondents

Number of years	Frequency	Percentage	Cumulative
0 < 3 year	8	34.0	34.0
3 - 7 years	6	23.2	83.7
8 – 10	6	26.5	100
11+ years	4	16.3	60.5
Total	24	100	

Source: Survey data computed by the researcher, (2020)

Results in Table 4.5 above indicate that 34 percent of the respondents possess a very low knowledge and expertise in the O & G sector with only less than 3 years of expertise, 23.2% with only between 3- 7 years' expertise, 26.5% with 8-10 years and finally, 11 above years were only 16.3% of the total respondents.

4.2.6. Showing the Educational Level of the Respondents

Table 4.5: The Educational Level of the Respondents

Education levels	Frequency	Percentage	Cumulative
Diploma	05	21.6	21.6
Bachelors	04	18.2	39.8
Certificate	04	16.1	55.9
Post graduate Courses	04	14.6	70.5
Secondary certificates	03	11.6	82.1
Primary	02	9.7	91.8
Never studied	02	8.2	100
Total	24	100	

Source: Survey data computed by the researcher, (2020)

Results in Table 4.5 above show that 21.6 percent of the respondents were diploma holders, 18.2 percent were degree holders, 16.1 percent had done certificates in various courses, 14.6 percent had done post graduate courses in various fields, 11.6 percent had Secondary certificates, and 9.7 percent had stopped in primary level of education while the minority 8.2 percent had never studied.

4.3. Descriptive analysis as per the specific objectives of the study

In this section, the researcher presents the major findings in relation to the study objectives as here under;

4.3.1. The legal/regulatory and policy framework has enhanced the participation of nationals in the oil and gas sector in Uganda.

Below is a presentation of the study findings extracted from the interviews conducted about the legal/regulatory and policy framework enhancement of the participation of nationals in the oil and gas sector of Uganda;

The respondents cited that,

“...There exist legal regulations in Uganda like The National Oil and Gas Policy (NOGP) which recognizes the economic benefit to the country through enhancing local citizen participations in terms of employment, supply of local raw materials, and local technologies....”.(Interview Part I).

From the above assertion, the respondents express their frustration in the remark that, ...achieving maximization of benefits from the industry in a sustainable manner requires upfront identification of challenges ranging from making the most appropriate initial investment decisions which at times limit the requisite inclusivity of all stakeholders and design of solutions in ‘a holistic way’ as per the differing investment approaches taken by Uganda consequent to discovery of oil as with the case with Chifamba (2013) study findings. This was also evidenced by another respondent who rose that, the first logical step for such countries would entail fast tracking the development of local skills, manufacturing and investment capacity, while promoting creation of value in the short run, rather than local ownership. And thus, immediate or short term utilization or expansion of existing capabilities as was the case in the UK and Norway cannot be emulated by developing economies like Uganda⁸⁹. This is reflected in (IFRI/IGU, 2015) report where it was noted that, the skills required are very specific, making it difficult to find candidates in the host country who have the necessary qualifications in addition to the fact that, the need for manpower is unstable because it reaches

⁸⁹ Ritwika, S., ‘Enhancing local content in Uganda’s oil and gas industry’, WIDER Working paper 2018/10.

high levels during the construction phase which lasts only 3 to 5 years and then decreases drastically at the time of development and production.

“..... Regardless of some technical loop holes in the existing laws, the government through the Parliament of Uganda enacted the National Industrial Policy, 2008 which stipulates for local provision of goods and services by the local entrepreneurs and companies to boost the local economy as well as providing employment to Ugandan nationals to improve their standards of living”

“.....Of course, the goods and services provided must comply with the international market standards, health and environmental standards to avoid environmental damages.....”.(Interview I).

In contrast however, the document review asserts that, a new entrant like Uganda faces multiple challenges; not only for the emerging petroleum industry, but adaptive weaknesses inherent with the immaturity of the entire economy; and for such entrants, low levels of skills and industrialization within the economy, explain why most of the goods, services, technical and managerial workforce within the Petroleum sub-sector are offered by foreign firms and expatriates. And this is in agreement with Abraham J. et al (2018) who stated that local content participation cannot be achieved fully because it requires a strong development-oriented state with a long term vision of structural information, a highly committed political leadership and effective transformative institutions⁹⁰.

“ the available law also do support manpower growth and development for a more productive labour force given the fact that the existing local experts and our technological capabilities are still below the standard which at times make it a bit harder to enforce the law at the moment”.(Interview II).

The interviewee (respondent) added that,

⁹⁰ Petroleum Authority of Uganda, ‘Enhancing National participation in the Oil and gas Sector’, (2011) <https://pau.go.ug> (accessed 02 February, 2020)

Below is a presentation of the study findings extracted from the interviews conducted about the legal/regulatory and policy framework enhancement of the participation of nationals in the oil and gas sector of Uganda;

The local content policies are adopted by developing and developed countries which have become petro-states. Most of them have found oil and gas and do not have the regulatory framework by which the international oil companies can be regulated (Esteves, Coyne and Moreno, 2013).

“.....In the developed world, natural resource countries like Norway, Brazil, the US etc., are more developed and cannot be confronted by issues of expert human resources, the institutional requirements and important government departments and agencies to facilitate the creation of the regulatory framework due to the parallel developments in others sectors which is not the case in the developing countries like Uganda.....”.

However, in seeking to establish such regulatory framework, some of these states often discover that they do not have the expert human resources, the institutional requirements and important government departments and agencies to facilitate the creation of the regulatory framework (Esteves, Coyne and Moreno, 2013).

“.....Once the relevant legislation becomes part of the laws of the state, and then the government can design programmes to ensure that there is capacity building, the involvement of local industries in terms of supplying critical areas of the oil industry and, most of all, ensuring the efficient access to technology and management techniques. It can also involve important human resource development in various aspects of the oil and gas industry and the improvement and development of local businesses.....”

Most petroleum-producing countries have enacted local legislation and content to regulate international Oil and Gas companies (Ngoasong, 2014). Local content is an important policy of an emerging petro-state because it facilitates integration of important aspects of the local economy with the emerging oil and gas sector in the context of the national economy. The framework for local content can be established by legislation (Oyewole, 2018).

Most petroleum-producing countries in developed world have enacted strong local legislation and content to regulate international Oil and Gas companies for the sake of LC promotion. In the developed world, Local content has been successfully implemented with over 70% of nationals who are actively in the Oil sector in Brazil, 85% in Norway and the sector contributes over 17% of Norway's gross domestic product (GDP) and about 6% to the labour market with 170 200 out of 2.8 million jobs in 2017 (Norwegian Petroleum Directorate, 2018b; Statistics Norway, 2018b). Though, the developing world (resource countries) like Uganda should therefore learn from developed countries like Norway, Brazil and the US if they are to attain good participation rates of nationals in the oil and gas sector. However, in observation in Uganda, the law is being left onto paper when it comes to implementation in the oil and gas sector as employing skilled labor and machinery for LDCs from foreign countries is manifested.

To address this resource curse, African countries including Uganda are implementing Local Content Policies (LCPs) to maximize benefits and build linkages in the economy through four main pillars: employment creation, procurement of goods and services, knowledge transfer and skills development. Despite the increasing adoption of this policy, Veloso (2006) argued that little empirical evidence available on the policy's impact on economies is mixed. Proponents of LCPs argue that the policy correct market failure and creates value addition as for the case of Norway where the O&G sector contributes to over 17% of Norway's gross domestic product (GDP) and about 6% to the labour market (Statistics Norway, 2018), and protect infant industries and with time local companies can partner multinationals (Manzano O, Anouti Y., 2013). Thus, this policy has the potential to help DCs like Uganda to generate sustained and inclusive growth through economic diversification and employment opportunities (Ado R., 2013).

Several academic writers and international organizations such as the World Bank have added to the growing body of literature of Local Content as various countries in the developed and developing world discover oil and gas have become petro-states (Tordo et al., 2013). A central consideration of these writings is the definition of local content as determined by the oil and gas industry in general and these states particular. Local content is mostly focused on ensuring local employment, local sourcing, technology transfer and training of the local workforce (Acheampong et al., 2016). It means that the country's concerned must be fit for the purpose of implementing the policy of local content by having the required legislative skills and to be capable of absorbing and managing the forces relieved by its technological relationship with

the multinational companies. Most developing countries do not possess these skills and therefore have no choice but to obtain them from available sources (Ihua, 2010).

And according to the study findings of Boyefio and Ochai (2014), it can be pointed that noted the oil industry in Uganda is highly dominated by foreign companies even for the products and services that could be supplied or made by the local firms. The researchers noted that even though the IOCs have professed their support for the LCP, they have been reluctant to break-off the existing supplier relationships with their global suppliers. There is a view that there is a deliberate attempt by the IOCs to deliberately bypass the local companies as evidenced by the contracting of products and services from Ivory Coast rather than from the local Ghanaian businesses (Ackah and Mohammed, 2018).

Norway's developed educational facilities at the time of oil discoveries in maritime activities, energy-intensive process industries, metals and materials and geology were an important part of the nation's knowledge base. In addition, Large processing facilities used for metal production in Norway's established mining sector helped local firms with a good international reputation to dominate these sectors. The combination of these industrial strengths and the use of local firms and services in the oil and gas production chain expanded Norway's knowledge and skills base which further ensured local expertise in the oil and gas sector. Norway therefore developed a highly skilled and competitive oil and gas sector resulting from local content policies. In 2012 this sector employed 125,000 people. The Norwegian service and supply industry generates some USD64 billion annually, making it the second largest industry after oil and gas (Acheampong et al., 2016, p. 300).

“.....The local content legislation and regulations has allowed the Ugandan government to bring the people of that country and its local companies into all aspects of the petroleum industry value chain.....”

According to Henstridge et al., (2012), it is now an established fact that Norway's ability to obtain maximum benefits from oil and gas has been important to its economic and social development. The energy sector generates a third of the nation's wealth. An efficient and productive energy sector placed Norway in an advantageous position to benefit from the high price of oil between 2000 and 2014 and this in turn allowed the country to engage in high levels of public spending and policies of low taxation (Boyefio and Ochai, 2014). In contrast to

Norway, Uganda, after discovery of commercially viable oil deposits in the Albertine Graben region in 2006, created the legislative and regulatory framework to manage its oil and gas industry. Oil and gas development is guided by five basic laws the Petroleum and exploration (Exploration, Development and Production) Act 2013, Petroleum (Refining, Conversion, Transmission and Midstream Storage) (National Content) Regulations 2016, Model Production Sharing Agreement 2016, National Content policy for the Petroleum Subsector in Uganda, 2017).

“..... the existing National Industrial Policy 2008, is a real representation of the local content participation theory as the policy is open to all investors and prospective investors in the O & G sector through encouraging the utilization of the existing local technologies and consultants to enhance national content development and nature a productive labour force in the near future for collective industrial development in the country”. (Interview II).

“As an IOC, we often maintain regular and consistent contact with our trainees, local entrepreneurs and the local residents in our database and through our corporate social responsibility programmes like providing clean water, and better infrastructures like hospitals, aimed at improving social services in our area of operation and our community reputation.

“.....We periodically meet with clients (local suppliers) in our business network face to face, at times we make phone calls, send emails or use, Facebook and Watsup for communication... particularly for updates on the ongoing activities and services” (Interview III)

In disagreement, the document review portrayed that, in an emerging industry like for the case of O & G in Uganda⁹¹, State organs including the legislature; operate in a situation of asymmetry of information due to lack of clear references with in the economy. Not only does this limit negotiating capacity, but also ability to design appropriate development, management

⁹¹ Geipel and Hetherington

and regulatory frameworks which inevitably impact the effectiveness of the regulatory law⁹². And hence, had to transform and meet. This picture is reinforced through Hodgen and Wylie's (2005) research findings that, The desire by natural resource endowed countries to use the extractives sector to promote local production sectors has been around for a long time, but the only missing link is the absence of well-designed and properly implemented legal, regulatory and institutional mechanisms to support the policies. This view is supported by Magelah's (2014) research who argues that local content involves framing laws and policies to provide for employment, services that must be rendered by citizens or get a direct benefit from the oil and gas sector. However, what's left out is how to increase citizen participation, how citizens can effectively participate and toward extent.

A sub-theme to emerge through the individual interviews was that ...much as the law emphasizes that host communities have to be trained and recruited in the sector, little is done because some people have regarded the oil resource as their personal property, quoting Mr. Museveni in November, 2016, who often referred to oil as his direct possession reinforcing suspicions of problematic personalization of the national resource in reference to Vivian Salama, (2016) article titled; "Museveni's Oil"⁹³. This comment expresses the challenge to local content participation in the names of corruption, embezzlement; personalization of natural resources extra which totally defeats the spirit of local content of the leader of the nation personalizes the oil resource implying that national content becomes a myth than a reality. The constitution places the control of all natural resources in the hands of government on behalf of the citizens.

Further, it was stated that, the government of the Republic of Uganda has already taken an initiative to establish the Uganda petroleum institute whose aim is to impart knowledge and skills which is required in the oil and gas operations and maintenance to enable the local to *actively compete in the market*.

"The existing regulatory laws have a clear vision of where the sector is going, it also decides on what it wants short, medium and longer term and in every sphere of the O & G sector growth in the country. And Ugandans have already been enrolled as experts with the required skills in the O & G sector through the IOC recruitment and

⁹² National Content Policy (2017) For The Petroleum Subsectoreum Subsector Eum Subsector Eum Subsector Eum Sub sectoreum Sub sectoreum Subsector Eum Subsector In UGANDA

⁹³ Derringer, Erickson, and Lamprecht, *et.al* (2018) (n 8); Geipel and Hetherington

training programmes approved by the PAU and the Petroleum Institute of Uganda regardless of them being relevant only in the upper stream and leaving downstream an attended to.....” (Interview IV).

.....in addition, some local entrepreneurs have already aligned their companies in the sector to provide the necessary expertise where necessary as the law stipulates.....”. (Interviewee IV).

Contrary, the document review indicated that, International experience identifies value addition within the domestic economy, as the core goal for national content which requires an initial push by way of foreign investment to enhance the transfer of technology, technical and process to expand national adaptive capacity. This is due to the fact that, adaptive capacity is the most critical factor without which, the participation rights would be redundant as they are subject to prequalification, based on competency and standards coupled with eligibility, determined and or prescribed by the law. This was emphasized by Mohamed A., *et al* (2012) stated that in developing countries, technology transfer (TT) is a solution for the improvement of industrial and economic sector. He furthermore, states that for the success of any transfer depends on the proper technology from the right provider as well as the absorptive capacity of the technology. Most oil producing countries are committed to developing their petroleum industries to become competitive, compatible and reliable.

4.3.2. The key challenges encountered in the implementation of local content on the participation of nationals in the oil and gas sector in Uganda.

Below is a presentation of the study findings extracted from the interviews and documentary review guide conducted about the key challenges encountered in the implementation of local content on the participation of nationals in the oil and gas sector in Uganda, and are as presented here under.

The respondents cited that,

“.....Uganda being one of the most corrupt countries in the world, there exists little or no hope of benefit from the petroleum sector as most believe it is very hard for corrupt officials in the system to enforce the law of local content participation. Similarly, another respondent noted that ...the biggest challenge here is corruption which cannot be under looked since

it starts from the grassroots at the village level to the executive which can alone take the country backward and the concept of national content becomes wastage of paper....”

Their frustration was evident in the article published by The Independent Newspaper, October, 2018 that, Uganda’s Prime Minister, Amama Mbabazi and two other ministers were on Oct.10 have allegedly benefited from bribes from oil companies, parliament heard yesterday at a critical debate about the country’s nascent oil sector. this can further be supported by a jam parked parliament that had been recalled from recess heard that Mbabazi, Sam Kuteesa, the minister for foreign affairs and Hillary Onek, the minister for internal affairs allegedly benefited from billions of bribes from oil company, Tullow Oil Plc⁹⁴.

The allegations were made by MP Gerald Karuhanga who tabled a document Brief on Uganda’s Oil deals in which alleged details of dates and transactions through which the bribes were paid.

And Hon. G.Karuhanga said he was in parliament to act like a whistle blower. He was presenting a motion prayer number 4 of a motion by Rwemiyaga MP Theodore Sekikubo that seeks to set up a commission of inquiry to investigate the officials that have been given kickbacks from the oil players. And he is reported telling parliament that;

“.....Kutesa through his company East African Development Company Kenya received €17m (over Shs.70bn) through his bank called EFK in Zurich. The money was leaving a Tullow account 40037242019 in a bank in Malta...through a recipient bank in UAE Dubai.

“Well, showing bank statements, Karuhanga said that Onek on June 21, received € 500,000 from Tullow on account 4003724191 from the same back to Dubai, another € 500,000 on his account 0034450627007 in a Dubai bank on July 6, another €500,000 same bank on July 17, 2010, Onek received €1.5m on the same account same day and another €3m on the same account on August 10, 2010”.

⁹⁴ Page 84 of Oil Wealth and Development in Uganda and Beyond, Published by Leuven University Press.

On the source of information, Hon. Karuhanga said that an officer of the American Embassy wrote that Tullow VP for Africa identified the security minister then Mbabazi, and Energy Minister Onek benefited from Tullow. Karuhanga adds that various embassies wrote to Museveni calling for investigation of ministers like Mbabazi and Onek. Judge Billy Kainamura, Deputy Secretary to the Treasury Keith Muhakanizi is also on the list of alleged beneficiaries.

This view was supported by the documentary reviews that,

According to projections by the organization, the outlook for good governance of oil revenues is concerning “in a country with Uganda’s recent history of deteriorating governance standards, high-level corruption and nepotism,” and “the succession of scandals surrounding the misappropriation of public and donor funds over the last ten years”.⁹⁵In addition, according to 2012 World Bank World Wide Governance indicators, Uganda loses \$286 million annually from corruption.⁹ Instances of bribery, embezzlement and graft persist from the most local levels of government up to the highest executive offices. For instance, in 2012 the Office of the Prime Minister was alleged to have stolen 12.7 million dollars in donor funds intended to go to recovery programs in war-torn Northern Uganda.

It was also reported that unfortunately, this type of scandal has been continuously repeated in the country’s recent history, leading some to believe that a general level of impunity has set in among government officials as well as an associated sense of hopelessness among citizens.

All of the respondents expressed their expectations referring to the popular “resource curse” theory that, the discovery of natural resources in developing countries can often lead to more harm than benefit and can cause widespread instability in a country as evidenced by Bategeka and Maweje (2013)’s study findings in DR Congo.

It was also noted that, despite the country’s history of corruption, government has not put in place adequate safeguards to prevent malfeasance in Uganda’s burgeoning oil sector⁹⁶. Discounting international best practice guidance promoting enhanced transparency and accountability in the extractive industries, the government has continued to operate in secrecy,

⁹⁵ Gwayaka, P.M., *Local Content in the Oil and Gas Sector: An Assessment of Uganda’s Legal and Policy Regimes (2014)*.

⁹⁶ Page 84 of *Oil Wealth and Development in Uganda and Beyond*, Published by Leuven University Press.

keeping critical information about oil sector developments hidden from the general public. This opacity presents a serious risk that oil and mining revenues may be wasted or corruptly diverted instead of spent on much needed public services⁹⁷.

“.....There are concerns of the oil industry on the type of political governance existing in Uganda being dysfunctional contemporary politics. The Respondent (a policy analyst) added that, there is fear that the oil industry will only worsen the already dysfunctional nature of contemporary Ugandan politics and political culture, which is already described as factional, venomous and acrimonious...”

He added that *....most of the contracts and employment opportunities are only availed to political cadres, friends and relatives.....* This assertion is evidenced by Gyimah-Boadi and Prempeh, (2012)’s study findings who asserted that, *.....within the limits established by the constitution of Uganda, the party in power controls the Presidency and Parliament as well as makes appointments to key Ministries, departments and even agencies that are supposed to be independent by law. This is in agreement with Piggot-Irvine and Cardno (2005) who observed that, in Uganda, the President appoints the executive directors and board of PAU⁹⁸ a regulatory board, CID, IGG, ACU among other institutions that has authority to investigate crimes involving financial loss to the state. Comparable institutions, the Auditor General and Human Rights Commission that have the constitutional and statutory mandate to investigate corruption, abuse of office and human-rights violation, has been rendered ineffective because of inadequate resources.*

“.....Well, there is no any dedicated monitoring and evaluation mechanisms or institutions empowered with regulatory authority and autonomy to implement the policies that are in place, in addition to the absence of a clear law on local content but with just stipulated provisions in different laws and policies....”

Their frustration was evident in the remarks that, *“....there are even no punishments stipulated by the existing laws for failure to comply with the local content*

⁹⁷ Kolstad I, Wiig A, and Williams A (2008), *Tackling Corruption in Oil Rich Countries: The Role of Transparency*, U4 Brief-Anti-Corruption Resource Center, February 2008-No.3

⁹⁸ Section 125 of the Petroleum (Exploration, Development and Production) Act 2013

requirement and absence of a monitoring institution to implement the requirement of local content in the oil and gas activities in Uganda.....”

This comment expresses the challenge that, issues of conflict of interest and self-dealing are routine amongst public officeholders. Finally, there are concerns about the non-compliance to key recommendations coming from bodies that are mandated to regulate the Oil industry.

On interviews conducted with the UNOC CEO about the existing challengers, she had this to say.

“The biggest challenge that we are faced with as a company (UNOC) is financing which in most cases limits control of interest making it hard to initiate the local content strategy. For example; ⁹⁹working with projects across the entire petroleum value chain, we have investments in the upstream, investments in the refinery, the East African Crude Oil Pipeline, storage terminals, and all of these require substantial amounts of money. When we add up the numbers, we sit on a portfolio of about 845 million USD capital requirements in addition to the operational budget. Without that financing, you will enter into contracts where you have very minimal participation and minimal controlling interest, and then your returns will be severely impacted on. So far, the returns have been above 15% internal rate of return and there is a business imperative for us to really participate in each of those projects”.

“.....the unclear commercial metrics at the moment is also a serious challenge to day. UNOC is placed uniquely in that we understand the private sector but we are also able to look at the government side of things. We bring the local private sector discussion to the government side and we also take the government side of perception tied to the National Development Goals to the private sectors. It is definitely still a challenge because no investors will invest in a country when the commercial metrics do not make sense”.

*“.....The other challenge is the human resource and the ability for us to be able to participate in these projects yet O & G is a nascent industry.
¹⁰⁰We have never developed a refinery in Uganda before or put up a 1,500 km*

⁹⁹ Geipel and Hetherington

¹⁰⁰ Geipel and Hetherington

pipeline to the coast before. If you do not come with the requisite skills, then you will not be able to pull off those projects. That challenge can be addressed through the strategic partnerships that we are working with and we can back hope on someone who comes with the requisite financing and technical capability to help us develop into operatorship mode in the long term.....”

*“On the issue of national content, this is very critical for us because it is enshrined in our mandate to develop skills for the oil and gas sector, as per UNOC six pillars in our National Content Strategy including; talent retention and management, supplier selection and supplier development. And UNOC is also concerned with how to partner with institutions to develop the skill for artisans, getting them the requisite certifications, and partnering with vocational training institutions to empower the young workforce to participate in the oil and gas sector”.*¹⁰¹

However, from the documentary review, it was noted that, Citizen Participation in oil and gas sector has become a slogan of sorts across many countries in Africa. This picture is reinforced through Hodgen and Wylie’s (2005) research findings that the 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, Bennett’s (1994) noted that, 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. And Benghida, (2017) study findings concluded that, whereas citizens can participate through local content, this is rather one of the forms of participation and it is not conclusive. And it would therefore be wrong to conclude that there is citizen participation just because you have local content law and policies¹⁰².

¹⁰¹ 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 20th Nov, 2020

¹⁰² Yinka O Omurogbe, *Alternative Regulation and Governance Reform in Resource- Rich Developing Countries of Africa* (2006) In BARRY BARTON, LILA K BARRERA-HERNANDEZ, ALSRTAIR R LUCAS, AND ANITA, *Regulating Energy and Natural Resources*, (2006) OXFORD University Press.

Accordingly, Usman SO (2011) study findings portrayed that, 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 while the findings of Bryk and Schneider (2002) showed 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.

It was also stated that, many citizens of resource-rich countries especially in the developing world tend to be mere spectators. And with Ross, M. (2003)'s study findings, 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 economy.¹⁰³The 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” and the resource curse such as conflicts.

¹⁰³ Lisa E Sachs, PerrineToledano, Jacky Mandelbaum, With James Otto, ‘ Impacts of Fiscal Reforms on Country Attractiveness; learning from the facts’ (2013) www.scsi.columbia.edu (accessed 07 January, 2020)

4.3.3. The Possible recommendation to enhance participation of national in the oil and gas sector

On the recommendations to enhance participation of national in the oil and gas sector, the study participants had this to say as per the interviews and documentary review conducted as presented here under.

The respondents cited that,

“.....the Parliament of Uganda should work to put a specific law in place to provide for local content through providing a conclusive definition of Ugandan business entities. While, the law should also provide for an independent Authority to monitor compliance with national local content plans as well as monitor the development of national capacity among others”.

This view was supported by almost 90% of the documentary reviews that 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. This is in agreement with Al- Kasim et al (2008) study findings who made a number of policy recommendations for the regulation of civic responsibility and governing local content in the oil and gas industry in the context of oil rich countries through forming legally independent institutions to regulate, monitor and enforce the local content¹⁰⁴.

“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.....”

¹⁰⁴Supra, Al-Kasim F, Søreide T, Williams A (2008)

“.....well the Government of Uganda should highly focus on developing capacity of institutions to provide support services ranging from business entities, agriculture, tourism...., a deliberate attempt to improve the performance of Ugandan businesses to enhance their attractiveness to regional markets and beyond in the near future”¹⁰⁵.

This is supported by the document reviews that Oil companies have increasingly moved away from vertical integration towards outsourcing, and this creates an enormous opportunity for producing regions to take advantage of local content, particularly because operators may prefer to get inputs closer to their operations in order to reduce costs and inventories While (Morris and Fessehaie, 2014) study findings portrays that There is evidence of extractive companies in general becoming increasingly motivated by the mutual gains offered by the adoption of local content policies (Esteves and Barchaly, 2011). In the past, companies included local content within their corporate social responsibility agenda, but more and more governments of producing countries are demanding compliance with local content requirements (Tordo et al., 2013). In Brazil, 70 per cent of goods and services used by oil companies came from local sources in the year 2000 (UNCTAD, 2007, 141).

It was also stated that, the government should put in place a strict and sustainable strategy to ensure that the licensees actually follow through on the training of the Ugandan citizens that they employ. It is a requirement that any licensee must provide a plan on how they intend to train and employ Ugandans, but very little is done to follow-up once the licence has been granted. The government should follow-up by actually inspecting and investigating the training programmes to ensure that the plan does not only stay on paper¹⁰⁶.

From the documents reviewed, it can be asserted that, Uganda is not exception to the observation that many citizens of resource-rich countries especially in the developing world are mere spectators. ¹⁰⁷After the announcement of commercially viable quantities of petroleum in the country, there was excitement about the developments the new resource would bring.

¹⁰⁵ Uganda, ‘Enhancing National Participation in the Oil and Gas Sector’ (2011) Petroleum Authority of Uganda <https://pau.go.ug> (accessed 02 February, 2020).

¹⁰⁶ Lisa E Sachs, PerrineToledano, Jacky Mandelbaum, With James Otto, ‘ Impacts of Fiscal Reforms on Country Attractiveness; learning from the facts’ (2013) www.scsi.columbia.edu (accessed 07 January, 2020)

¹⁰⁷*History of oil Discovery in Uganda politics Essay. Retrieved from <https://www.ukessays.com/essay/politics/history-of-oil-discovery-in-uganda-politics-essay.php?vref=1>*

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. This is evident in Estevez et al., (2013) study findings that, Uganda will need stringent macro and micro economic policies to enable the economy sustain the negative impacts that petroleum might have on the economy. 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” and the resource curse such as conflicts.

In order to maximize their effectiveness, local content policies should be aligned with local development plans and policies (Tordo et al., 2013). They should be carefully designed to encourage and require that exploration and production companies favor local firms for goods and service procurement (Ovadia, 2016).¹⁰⁸In so doing, attention should be placed in avoiding manipulation of local content requirements by local elites looking to accumulate wealth, provoking local discontent in the process (Ovadia, 2015). In Turkana county, violent demonstrations forced Tullow Oil to interrupt operations in 2013. The demonstrations were to protest Tullow’s sub-contracting trucking services from outside the county (Daily Nation, 2013). Local residents believed the demonstrations to have been incited by Turkana politicians with interests in the trucking industry.

4.4. Conclusion

In Uganda,¹⁰⁹the development of the legal and regulatory frameworks is a necessity but not a sufficient condition enough to promote an effective and sustainable local content development in the country in addition to the unclear local content provisions stipulated in others laws, regulations and policies. Thus, there is the need to put in place institutional structures to follow up on implementation of local content regulations citing referring examples from other performing oil producing countries in Africa and beyond which seem applicable in the Ugandan case. In Africa for instance, Nigeria has made serious efforts to ensure that oil and gas companies are creating the needed domestic production linkages that will ensure that the extractive industry make significant contributions to economic growth and acceleration of development in the countries. And this research paper also scrutinically lays a very important

¹⁰⁸ Claudine Sigam and Leonardo Garcia, ‘Extractive Industries: Optimizing Value Retention in Host Countries’ (2012) UNCTAD <https://unctad.org> (visited 17 April, 2020)

¹⁰⁹ Luke Patey, ‘Oil in Uganda: Hard bargaining and complex politics in East Africa’ OIES Paper: WPM 60, Oxford, UK: Oxford Institute for Energy Studies.

issue of the need for an effective local content regulatory policy drive to go beyond increasing local participation in the target industries.

Additionally, Uganda needs sound stringent macro and micro economic policies to enable the economy sustain the negative impacts that petroleum might have on the economy in the disguise of an “economic curse”. Therefore, 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. Thus, it is necessary to have in place measures to avoid the “Dutch disease” and the resource curse such as conflicts¹¹⁰.

¹¹⁰Luke Patey, ‘Oil in Uganda: Hard bargaining and complex politics in East Africa’ OIES Paper: WPM 60, Oxford, UK: Oxford Institute for Energy Studies.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.0 Introduction

The study examined the recommendation and conclusion for the study that concerns the Role of Legal Framework on the Participation of Nationals in the Oil and Gas Sector in Uganda.

5.1 Discussion of conclusions

The Ugandan government, as a case study, underscores the importance of involving nationals in this promising O & G sector. It is however important to note that local content legislation can present major risks if not well crafted to balance the domestic political and economic concerns. The legislation must consider the availability of the required skills among their nationals and then put in place laws that will not scare away investors. The government of Uganda must strike a balance between protecting the interests of nationals and ensuring policy and legal requirements favorable enough to attract the investors who possess the skill and resources needed. In the circumstances, the reality is that involvement of nationals in the extraction and production of oil and gas is a gradual process. Ugandans do not possess the necessary skills and knowledge and the government cannot provide the same overnight. It's therefore important to start the participation process from small scale service providers and then gradually equip Ugandans with the necessary skills and knowledge.

As well, the study findings show that the Uganda's oil and gas laws fall short of protecting the local nationals from foreign competition and fraud in the procurement processes enshrined in the country's constitutional framework.

The findings also show that Uganda's current policy and legal regime fails the compliance test, with regard to the UN Guiding Principles on Business and Human Rights. A number of human rights issues are raised, ranging from lack of transparency and accountability in the sector, non-disclosure of information, land conflict and compensation rights violations, labour discrimination between international expatriates and local human resources employed in the

international oil companies, and local business opportunities through the provision of goods and services by local small business enterprises as key to the realisation of the desired collective local participation the emerging sector. However, it should be noted that local participation in the sector does not directly correlate to Local content enhancement. Therefore, deliberate measures need to be taken to ensure that the existing regulatory frame work realises local content development as per its expectations.

5.2 Limitations of the Study

The balancing of time between works and conducting research was quite challenging because of the conflicting interests in doing work which required the researcher to be in the field most of the time since the work was tiresome and time consuming.

Some information was not left for public dominion which posed difficulties for the researcher to get some relevant information which was helpful in conducting this research. Furthermore, some information especially text books and journal articles were not freely accessed implying that the researcher had to purchase which also required extra time to be shipped into the country.

Difficult in movements and information flows at a time of the pandemic with lock downs and curfew. Times have changed especially with the outbreak of the covid-19 pandemic whereby it's now challenging to access public libraries where the researcher can find information.

Some respondents were not cooperative enough that they at times refused to disclose some vital information which was relevant to the study due to the confidentiality that they owed to the IOCs.

5.3 Recommendations for Future Research

The following are the practical study recommendations on how the available policies to develop and improve local content can be practically implemented:

The government should put in place a strict and sustainable strategy to ensure that the licensees actually follow through on the training of the Ugandan citizens that they employ. It is a requirement that any licensee must provide a plan on how they intend to train and employ

Ugandans, but very little is done to follow-up once the licence has been granted. The government should follow-up by actually inspecting and investigating the training programmes to ensure that the plan does not only stay on paper.

That's, the government should create an institution solely dedicated to monitoring local content in the oil and gas sector. The function of such an institution would be to oversee the compliance with all the policies and regulations on local content including the power to punish all those in violation of the requirements.

There should be a clear outline on what actions are offensive and what punishments or sanctions shall follow once an institution or licensee fails to follow the set laws. The punishment may include, among others, cancellation of the licence.

Smaller projects such as waste management should be ring-fenced and exclusively controlled by Ugandan local businessmen. This will enable us to 'cut our coat according to our cloth' by utilizing the already existing businesses and fit them into the oil and gas sector. It goes without saying that this will automatically provide employment opportunities for Ugandans in areas where they already possess the skill and enhance local participation of Ugandan nationals.

Some of the provisions that seek to develop local content, although well intended, have been criticized for being ambiguous. For example, the licensees are required to give preference to goods and services provided by Ugandan citizens and companies. The issue here has been in relation to the definition of a Ugandan company which leaves a gap for exploitation and might not benefit the indigenous Ugandan companies. In such circumstances, Indian dominated companies might end up benefiting from this industry to the disadvantage of indigenous Ugandan companies. To that end, the provisions should clearly state what amounts to a Ugandan company for purposes of local content.

The government has already taken the initiative to establish a Uganda Petroleum Institute which is mandated to train technicians in oil and gas operations and maintenance. This is a great step for the country in the training and development of specialized skills for the sector. The government should however invest more in such institutes as the means to increase on the number of Ugandans with enough knowledge and skill to actively compete in the market. There is also need for the government to explore and look into the quality of skills that are marketable

in more developed oil producing countries. This will help the trainees to gain skills and knowledge that will enable them to effectively compete on the international market.

5.1.1 Realizing Transparency

Transparency is important to address corruption in Oil rich countries by providing information about access to revenues that are generated by natural resources.¹¹¹ Transparency may be realized through several public reform initiatives from collection of revenues to awarding of contracts and public sector promotions.¹¹² Transparency in this sense requires states to make as much information about oil transactions as available as possible all the way from the making bids for the grant of licenses to the bidding process and clearly highlighting the criteria for award of contracts and licenses in addition to grounds for the setting of signature bonuses.

The Extractive Industries Transparency Initiative (EITI) to date also remains the most reliable monitoring forum for transparency in the management of natural resources by governments. The EITI has several requirements for a state to fulfil for its application for membership to be accepted and they quoted here below.¹¹³

“1. The EITI requires effective oversight by the multi-stakeholder group.

The EITI requires effective multi-stakeholder oversight, including a functioning multi-stakeholder group that involves the government, companies, and the full, independent, active and effective participation of civil society. The key elements of this requirement include: (1.1) government commitment; (1.2) government oversight; (1.3) the establishment of a multi-stakeholder group; and (1.4) an agreed work plan with clear objectives for EITI implementation, and a timetable that is aligned with the deadlines established by the EITI Board (1.6-1.8).

The EITI requires EITI Reports that are comprehensible, actively promoted, publicly accessible, and contribute to public debate.

¹¹¹Kolstad I, Wiig A, and Williams A (2008), *Tackling Corruption in Oil Rich Countries: The Role of Transparency*, U4 Brief-Anti-Corruption Resource Center, February 2008-No.3

¹¹²Ibid

¹¹³The EITI Standard, Available at https://eiti.org/files/English_EITI_STANDARD.pdf [Accessed July 5th 2015]

Regular disclosure of natural resource revenue streams and payments from extractive companies is of little practical use without public awareness, understanding of what the figures mean, and public debate about how resource revenues can be used effectively. Requirement 6 ensures that stakeholders are engaged in dialogue about natural resource revenue management.

It should be noted that the EITI is a voluntary initiative however its standard is reputable and members are required to submit annual EITI reports prepared by an independent person on the progress of the state's implementation of the principles and the standards of the EITI¹¹⁴. The EITI has been criticized however for monitoring transparency and accountability at the transactional level of oil revenues and barely has any provisions relating to the expenditure of oil resources¹¹⁵. Also the EITI has very limited coercive capacity beyond its mere reputation and the only measure the EITI is capable of effecting against violating members is to delist them from the membership or otherwise suspend them which make them a barking dog that doesn't really bite much.

It is upon this basis that Kolstad I, Wiig A, and Williams A (2008) state that transparency alone is not enough and propose the use of education, government accountability and availing of incentives for information use¹¹⁶. They argue, rightly so, that education is important for a population to process information on corruption and should be supported by information on the conduct or performance of public officials backed by an ability to punish abuses of office. They also argue that people need to be able to benefit from using and acting upon information which has been shared by indicating a correlation between the levels of transparency and the social economic detriment that people suffer due to the highlighted absence of transparency. These mechanisms enable any transparency mechanisms that may be put in place by fostering participation of the public to monitor the implementation of the transparency measures and how they impact on the deployment of oil and gas resources towards improving social economic welfare.

¹¹⁴*Ibid*, Also see *EITI Requirements*, Available at <https://eiti.org/eiti/requirements> [Accessed July 15th 2015] and *EITI Contextual Narrative Requirements (MSG Discussion Document) (2013)*, Available at http://www.doi.gov/eiti/FACA/upload/Contextual_Narrative_Matrix_FINAL_for_MSG_Meeting-_04-28-14.pdf [Accessed July 16th 2015]

¹¹⁵Kolstad I, Wiig A, and Williams A (2008), *Supra*

¹¹⁶*Ibid*

5.1.2 The Role of Development Partners

While it important to take cognizance of the principle of state sovereignty upon which integrity of states is protected in all inter-state relations, the role of international development partners in combatting corruption within state governments who individuals appropriate natural resource revenues to the detriment of the public interest cannot be understated. Angola has for a long time had been at logger heads with the International Monetary Fund (IMF) but due to the unpredictable volatility of the oil prices on the oil market, Angola has consistently found itself running back to the IMF for development support in times of need¹¹⁷.

Through a Stand-By Arrangement between the government of Angola and the IMF signed in 2009, the IMF has been able to realize significant accountability and transparency measures in relation to Angola's oil and gas industry including full disclosure of the government's oil revenue, a public audit of Sonangol and audited accounts of expenditures of oil revenues as a prerequisite to lending¹¹⁸. Disbursements are therefore made basing on Angola's compliance with the terms of the standby agreement as far as realizing transparency and accountability is concerned. It should however be noted that while initiative itself has yielded some results like publishing of the government's oil revenue on the Ministry of Finance website, most of the conditions in the arrangement have been largely unfulfilled by the government of Angola. Monitoring mechanisms are therefore essential.

Similar arrangements can therefore be implemented by Uganda's development partners with an interest in promoting accountability and transparency in natural resource governance as condition upon which lending to the country may be made.

Al- Kasim et al (2008) have also made a number of policy recommendations for the regulation of civic responsibility and governing local content in the oil and gas industry in the context of oil rich countries¹¹⁹. Highlighting the role of development partners, they note that the intention behind oil-related aid is to improve governance of the oil industry in developing countries yet in many cases donor countries find themselves in conflicts of interest since increased regulation may not foster the interests of their firms. They propose that the development communities

¹¹⁷*Human Rights Watch (2010)*

¹¹⁸*Ibid*

¹¹⁹*Supra, Al-Kasim F, Søreide T, Williams A (2008)*

should pursue a consistent foreign policy buttressed by development of domestic institutions, conditions on local content, and moderate rates of oil development which are critically important to reduce corruption risks and ensure welfare-enhancing production. Yet they also emphasize that in all development initiatives, donor countries need to clearly highlight their commercial interests and how they may relate to the country's oil production sector.

They also recommend that the development community should seek to create a workable oil industry with workable solutions. This may be done through offering training on governance issues relating to each step of the oil production chain which can open a space for dialogue on rather more challenging issues relating to the governance of oil regulation relating to corruption in the industry. They also recommend that the government should streamline its legislation and clarify tendering processes including procedures relating to prequalification, tenders and selection criteria which have a significant risk of corruption, setting up appeal mechanisms or allowing for international endorsement of prequalification measures by an independent body, and development of a good balance between discretionary decision making and improvement in information laws.

They further recommend the building of accountable institutions through three key ways including by reducing the opportunities for public officials to misuse their positions or condone violations of rules by monitoring each step of the decision-making process; requiring status reports from those in positions in power and requiring them to defend their choices and setting up appeal mechanisms without fear of sanctions by for example taking the government to court for apparently unfair awards made.

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