

**AN ASSESSMENT OF THE EFFICACY OF LOCAL CONTENT POLICY IN THE
OIL AND GAS INDUSTRY IN UGANDA**

BY

**NAMUGENYI ZUBEDAH
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**A DISSERTATION SUBMITTED TO THE DEPARTMENT OF LAW IN PARTIAL
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TO UCU.**

MARCH, 2022

DECLARATION

I, declare that this dissertation entitled “**An assessment of the efficacy of local content law and policy in the oil and gas industry in Uganda**” is my own original work and it has not been presented and will not be presented to any other institution for any academic award. Where other people’s work has been used, this has been duly acknowledged.

Sign

Date.....

APPROVAL

This is to certify that this dissertation by entitled, “**An assessment of efficacy of local content law and policy in the oil and gas sector in Uganda**” has been submitted for examination with our approval as Institute supervisors.

Sign

Date.....

Associate Professor George W.K.L Kasozi

(Academic supervisor)

Date

DEDICATION

This research is dedicated to two very special people to me, Hon. Justice Jotham Tumwesigye, JSC and Hon. Justice Mike J. Chibita, JSC, for their mentorship and unwavering support throughout this journey.

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LIST OF ACRONYMS

IOCs	International Oil Companies
IPIECA	International Petroleum Industry Environmental Conservation Association
LC	Local Content
LCP	Local Content Policy
MEMD	Ministry of Energy and Mineral Development
MNC	Multi-National Companies
NOGP	National Oil and Gas Policy
NOC	National Oil Company
PAU	Petroleum Authority of Uganda
PSA	Production Sharing Agreement
UNOC	Uganda National Oil Company
WTO	World Trade Organisation

ABSTRACT

The discovery of petroleum in many oil rich countries in Africa has been seen to further underdevelopment, political unrest and pollution in these countries to the disappointment of nationals of these countries who would expect heightened development from the revenues and opportunities from the exploitation of the resource. One of the major contributors to the aforesaid is the market failure that is occasioned from the capital-intensive nature of the business, high levels of technology and expertise required in the exploration, development and production of Oil and Gas that restricts the participation of nationals in sector as they are ousted by the laws of demand and supply.

In a bid to address these market failures, Governments in oil and gas rich Countries have found it necessary to introduce Local Content Policies to mandate the private sector that is dominated mostly by IOCs to as practically as possible to maximise the utilisation of domestic resources through the employment of more local people, the purchase of goods and services that are used as inputs in the sector from domestic suppliers, the encouragement of firms to localise their chains of supply, the encouragement and support of local firms that are struggling with the competitiveness of their inputs. Another area of interest is the creation of linkages (forward and backward) between the Oil and Gas Sector and other sectors such as agriculture, real estate and industry in order to achieve a broad based multi sectoral economic development.

This research paper considers the concept Local Content and development in Uganda's oil and gas industry, analyses the state of oil and gas industry today, the various policy and legal framework adopted in the realisation of Local Content in comparison to the other Jurisdictions such as Norway, Nigeria, e.t.c, the prospects and challenges this far. While the paper finds that Uganda has registered various successes in development of local content and national participation, it goes on to make recommendations that would help mitigate the challenges and better the level of national participation that would in turn contribute to the eradication of poverty and overall development of Uganda.

CHAPTER ONE

INTRODUCTION

1.1 Introduction

This chapter presents the background to the study, statement of the problem, the objectives of the study, scope, methodology, the objectives of the study, the research questions, the hypothesis, the scope of the study, the significance justification and operational definition of terms and concepts.

1.2 Background of the Study

The evaluation of Uganda's hydro carbon potential started in the early 1920's by E.J Wayland, a Government Geologist.¹ This process went on through the 1980s and 1990s when serious and consistent exploration begun. The Petroleum Act, 1957² but was not applied. It is during this time that the 1st Petroleum (Exploration and Production) Act, 1985³ came into force. This law was not comprehensive and reflected the attitude of the governments at the time that had little faith in the commercial viability of the quantities of oil found in Uganda.⁴ The same attitude was further reflected in the provisions of Article 244⁵ which paid no mind to petroleum as natural resource.⁶

This attitude changed between around the late 1990s and early 2000s when exploration activities increased. This period saw the grant of exploration licenses to Heritage Oil and Gas Limited (Heritage) for Exploration Area 3, Hardman Resources and Energy Africa which is now Tullow Oil in 2001, and the relicensing in 2004⁷.

It is therefore no wonder that in 2005, Article 244 of the 1995 Constitution was amended to provide for Petroleum as a natural resource.⁸ This gave way for the definition of the term "petroleum" as any naturally occurring hydrocarbons, whether in gaseous, liquid or solid state or any mixtures thereof.⁹ The Constitution gave the Parliament of Uganda the mandate to enact laws for the purpose of regulating the exploitation of petroleum and other activities.¹⁰

¹ E.J Wayland, Petroleum in Uganda, 1925.

² Chapter 149, Laws of Uganda

³ Petroleum (Exploration and Production) Act, Cap.150 Laws of Uganda (now repealed).

⁴ Okuku, Juma Anthony (2015) "Politics, the State and Limits of Oil led Development in Uganda"

⁵ Constitution of the Republic of Uganda, 1995.

⁶ Bainomugisha, Arthur et al (2006), "Escaping the oil Curse and making Poverty History: A review of the Oil and Gas Policy and Legal Frame work for Uganda," ACODE Policy Research Series, No. 20.

⁷ <https://www.pau.go.ug/history/>

⁸ Constitution (Amendment) Act No. 2 of 2005

⁹ Article 244(4) (a) (b) and (c) as amended.

¹⁰ Article 244(2) of the Constitution as amended.

Uganda discovered commercially viable quantities of oil in 2006¹¹. The oil resources discovered are estimated to be approximately 6.5 billion barrels of which 1.4 billion are recoverable and 170 billion cubic feet of associated gas in addition to 500 (bcf) of independent natural gas (MEMD 2017).

Pursuant to this discovery, the Government of Uganda undertook the task of developing the necessary regulatory and institutional capacity that would foster the management of the sector in a manner that would foster increased investment, skill development and the empowerment of local suppliers to partake in various opportunities created by the sector.

Indeed, in accordance with the mandate under Article 244 and the rider in Article 79¹² a number of policies, laws and regulations were enacted to regulate the exploitation of petroleum. Among these are the National Oil and Gas Policy (NOGP), 2008, the National Employment Policy for Uganda, the National Industrial Policy (NIP)¹³, the Oil and Gas Revenue Management Policy (OGRMP), 2012, the Petroleum (Exploration, Development and Production) Act, 2013 which repealed the Petroleum (Exploration and Production) Act No. 20 of 1985 which had long been in existence but barely applied, the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, 2013, the Petroleum (Exploration, Development and Production) (National Content) Regulations 2016, Petroleum (Refining, Conversion, Transmission and Midstream Storage) (National Content) Regulations. In 2017, the National Content Policy for the Petroleum Subsector in Uganda was passed with the goal of promoting the level of competitiveness of Ugandan Labour and enterprises in the oil and gas sector and associated sectors of the economy. The latest development to the general development of local content law is the passing of the National Local Content Bill, 2019 by Parliament into an Act of Parliament on 20th May, 2020. The president refused to assent to this bill citing contravention of the provisions of Article 13 of the Customs Union Protocol¹⁴ in which the EAC partner states agreed to do away with all existing non-tariff barriers and not to impose others.

To date, the production of commercial oil is yet to be actualised. However, recent announcement of the Final Investment Decision (FID) on 1st February, 2022 by Total Energies EP Uganda, CNOOC Uganda Ltd, UNOC and Tanzania Petroleum Development Corporation (TPDC) for the Tilenga, Kingfisher, EACOP projects clearly signifies

¹¹ Ritwika.S, 2018, Enhancing Local Content in Uganda, Wider Working Paper, wider.unu.edu

¹² Constitution of the Republic of Uganda as amended.

¹³ 2008

¹⁴

commitment to the development of the oil and gas sector in Uganda through the investment of \$10 billion ¹⁵. This project ranks highest on the list of single value projects in Uganda. It is expected that Uganda will produce its first oil within 36-45 months after the signing of the FID or by 2025.

The other significance of the announcement of the FID is the beginning of the Engineering, Procurement and Construction (EPC) Phase. This phase will be beneficial to Ugandans who poses the relevant skills and supplier capabilities as they will have the chance to enjoy the numerous opportunities available through regulation of local content.

The concept of local content, Ugandan local content

According to IPIECA (2011), local content refers to value added to the host nation through development of the workforce through training and employment of the local workforce, development of local supplier capacity through the procurement of supplies locally. Theoretically speaking, it is argued by Warner that local content can be achieved through two distinct strategies.¹⁶ The first being the requirement by the state for oil companies to grant preference to locals and local suppliers that have the potential to compete internationally on parameters such as quality, cost and timeliness. The second involves what he calls a “step change” in which the government pushes for the gradual change regarding the development and improvement of the capacity of local suppliers and business entities, development of local skills which he calls “local capability development”.¹⁷ He refers to the “step change” as a “push model” whereas the local capability development is referred to as the “pull model”. According to Warner¹⁸, the local capability development model is more preferable and more progressive as it involves greater undertakings on the part of the IOCs that include investment in infrastructure such as schools, hospitals and other utilities, the payment of premiums to local suppliers as well as subsidies in some cases to mitigate the challenge of the high costs involved in capacity development e.t.c.

¹⁵https://www.pau.go.ug/the-final-investment-decision-is-here-what-next-for-ugandas-oil-and-gas-sector/?utm_source=rss&utm_medium=rss&utm_campaign=the-final-investment-decision-is-here-what-next-for-ugandas-oil-and-gas-sector

¹⁶ M Warner, “Community Content: The Interface of Community Investment Programmes with Local Content Practices in the Oil and Gas Development sector” in Briefing Note 9 (London: ODI, 2007), www.odi.org.uk/business, cited in UB Ihua, C Ajayi, and KN Eloji, *ibid*.

¹⁷ *Ibid*.

¹⁸ M. Warner, *op.cit*

One of the important outcomes of a local content policy is the development of adequate technical capacity and manpower among the nationals of the host government to not only power the oil and gas industry but to also man other related sectors.¹⁹

The sector specific features of the oil and gas industry that foster the implementation of Local Content Policies include the possession of high bargaining power by host governments as the owners of the much-needed petroleum resource as compared to that of multinational corporations; a clear sequencing of work plans and engagement opportunities; and largely formal operations which entail the upkeep of regular procurement and tax records. However, host governments must warn themselves of the dangers such as unrealistic expectations, untimely policy interventions, over reliance on the command regulatory mandates without due consideration of the capability of local suppliers to meet international standards that would instead increase the costs of the projects and disruptions to delivery of goods and services.²⁰ Also delayed timing of policy interventions relative to industrial activities; and, attempting to ‘do everything at once’.²¹

Similarly, there have been on-going discussions on how Ugandans can benefit from their natural resources and maximize on the economic opportunities offered by the emergent upstream petroleum industry.²² The host community, within which the petroleum operations are being carried out, in the Albertine Region, has in recent times, called on the government to focus on the enabling legal and socio-economic conditions to create an enabling environment for local content. There will be economic opportunities for the locals in form of employment, supply of goods and services and, training when the construction of oil production facilities and export pipeline begins.

Considering the foregoing, local content in the anticipated upstream construction phase, will come in form of sub-contracts issued by engineering procurement construction contractors as well as the need for supply of construction materials which will be required in large quantities. Additionally, there will be need for suitable local skills which will require

¹⁹ DHN Alleyne, “The State Petroleum Enterprises and the Transfer of Technology in United Nations (ed), State Petroleum Enterprises in Developing Countries (Newyork: Pergamon press, 1980)

²⁰ Theophilus.A, Marcia .A, Svanikier V.C, 2016, An Assessment of Local-content policies in oil and gas producing countries: Journal of World Energy Law and Business, 282-302, doi: 10 1093/jwelb/jww019, Oxford University Press.

²¹ Steenberg, Victor, and John Sutton. "Establishing a Local Content Unit for Rwanda." *Policy Note. Technical report, International Growth Centre* (2017).

²² George Wachira, ‘Local content in oil production’ Business daily, 4th December 2018 <https://www.businessdailyafrica.com/analysis/ideas/-Local-content--in-oil-production-crucial/4259414-4881250-ydgvgl/index.html>.

enhancing through training.²³ Support services in and around Albertine Region will make the towns busy, thus driving economic prosperity in a region which was previously undeveloped. The government of Uganda, cognizance of the sovereignty over its natural resources and the need to protect its citizen's rights over these resources, introduced local content requirements in the oil and gas sector through the enacted upstream and midstream Acts of 2013. This move implies that the country has realized the need for locals to maximize on the economic opportunities that have emerged as a result of upstream petroleum operations.

This study explores the legal and institutional framework within which the government of Uganda has introduced Local Content Requirements (LCRs) in its oil and gas industry in order to generate further benefits to other sectors of the economy. The research analyses key drivers of local content within Uganda's legislative framework and examine factors that impede successful implementation of local content in upstream petroleum operations in Uganda.

The study evaluates the adequacy of the local content provisions under sections 124, 125, 126 and 127 of the Petroleum (Exploration, Development and Production) Act,²⁴ to establish whether the requirements match international best practice standards. In so doing, the study underscores the existence of local content within Nigeria's legal and institutional framework and examines the mechanisms in place to measure local content and monitor implementation in order to highlight factors that explain the achievement of positive local content outcomes in Nigeria's oil and gas industry. In particular, the research examines the legal and institutional framework that promotes local content in Nigeria in order to draw lessons for implementation of local content in Uganda's oil and gas industry.

Nigeria's legal tradition is similar to Uganda's and both countries face similar political and socio-economic challenges. Additionally, both countries are characterized by corruption, poor governance, incapacitated workforce and a weak industrial base to serve the oil and gas industry. Even though there are glaring differences between Uganda and Nigeria, the two countries have striking similarities which justifies the need for Uganda to draw lessons from Nigeria in order to develop a successful local content implementation strategy.

²³ George Wachira, 'Local content in oil production' Business daily, 4th December 2018.

²⁴ Act No. 3 of 2013

1.3 Problem Statement

The regulatory regime governing the Local Content and national participation in Uganda was benchmarked from oil producing countries such as Norway and Nigeria who possess more experience in the sector and have registered some levels of success in the area. Under the aforesaid law, the procurement from local small-to-medium businesses (SMEs) has been acknowledged as an important aspect for the promotion of Local Content. This is mainly because it has the effect of boosting additional investment and economic development on a broader spectrum. Other benefits may include increased wages and education/skills for workers and business owners and operators, diffusion of new technology and innovation to other market participants, and attractiveness of investment in social infrastructure.

That notwithstanding, Ugandan entities continue to struggle against international companies because whereas the regulatory regime seeks to prioritize preference to Ugandan entities, a lot of emphasis is also placed on quality and competitiveness of goods, works and services²⁵. This means that being a Ugandan entity alone registered on the National Suppliers Database does not guarantee entry into the oil and gas sector unless the entities meet the international standards and provide competitive goods and services.²⁶

As a result, the aim of this study is to assess the efficacy of local content law and policy in the oil and gas sector in Uganda as against the barriers to entry into the oil and gas industry that has the effect of negatively affecting the sectoral linkages that could be. The study also considers the peculiarities of the local context in comparison to countries like Norway, Brazil, Nigeria that achieved better levels of success of implementation of local content law.

1.4 Research aim and Objectives

1.4.1 General Objective

The study focuses on the growing thirst of Ugandans to participate and reap benefits from the lucrative oil and gas industry. Significant emphasis is placed on the appreciation of the law and policy governing the industry, understanding the impact of the implementation of the said legal regime thus far, the extent of sectoral linkages created to and from the industry, the challenges faced in the implementation of the law and how these challenges can be overcome.

²⁵ Patey, Luke. "A belated boom: Uganda, Kenya, South Sudan, and prospects and risks for oil in East Africa." (2017).

²⁶ Ibid

1.4.2 Specific Objectives

- i. To assess the legal and institutional framework governing local content in Uganda's oil and gas industry and their impact on achievement of national content.
- ii. To identify the challenges that Uganda faces while implementing the provisions of LCP in the oil and gas industry.
- iii. Assessing the success factors of other oil producing countries that have achieved better success in the implementation of their LCP.
- iv. To assess the monitoring and enforcement mechanisms that Uganda can enact to ensure the effective implementation of local content requirements and how the impacts thereof can be measured.

1.5 Research Questions

- i. What is the current legal and institutional framework governing local content in Uganda's oil and gas industry and its impact on the achievement of national participation in the industry?
- ii. Which challenges does the country face while implementing the provisions in the oil and gas local content regulations?
- iii. What are the best practices that Uganda can apply to improve the efficacy of LCP?
- iv. What can be done to improve national participation?

1.6 Scope of the Study

1.6.1 Geographical Scope

This study covered the entire country and their experiences with local content implementation in comparison with Nigeria. The study however focused on the Albertine region and this is where the bulk of the opportunities for local content are situated.

1.6.2 Time Scope

The study focused on a period of time since the enactment of the Upstream and Midstream Act in 2013 to date.

1.6.3 Content Scope

The study focused on industry interviews, cluster of knowledge and literature on local content requirements and local content implementations strategies.

1.7 Significance of the Study

The study is expected to be relevant to the upstream, mid –stream and downstream oil and gas industry of Uganda in general as it aims to improve on local content and national participation in oil and gas sector. With the announcement of the FID in February 2022, Uganda has progressed into the Engineering, Procurement and Construction Phase (EPC) in anticipation of production of First Oil by 2025. PAU has seen contracts worth US\$ 6 billion that cover approximately 40 work packages for the EACOP, Tilenga, and Kingfisher and EACOP projects being submitted by the licensees for approval before award. Both direct and indirect opportunities for Ugandan entities are on the horizon. Ugandans should therefore be ready for when these opportunities finally dawn.

The study is also expected to be used by other future researchers as the foundation of further research. Additionally, the study will be relevant to government agencies, donors and other stakeholders that seek to improve the level of national participation of Ugandans within and outside the sector.

Contribution to Business Practice: The key contribution to business practice from this study will be information for PAU, UNOC and local entities on how best the opportunities in the oil and gas sector can be utilized through tackling the barriers that hinder local suppliers' entry into the industry.

1.8. Research Frameworks

There are two major research frameworks, namely the theoretical framework and the conceptual framework. The theoretical framework underpins a study based on existing theories and defines the general relationship between things whereas as Conceptual framework is more specific and clearly sets out the variables that will be considered in a given study. For purposes of this research, adopted the theoretical one because it was the most suited research framework.

1.8.1 Theoretical Framework

The study adopted the “linkage theory” (1958)²⁷ because it is able to address the research problem. Hirschman proposes an unbalanced growth theory, putting emphasis on specific industries that possess strong linkages with other sectors of the economy. His argument is that a country with limited resources can develop if it prioritizes strategic sectors.

²⁷ Hirschman, A O, 1958, The Strategy of Economic Development.

He applied concepts such as complementarity which underpins interdependence of industries in the process production and the external economy which underpins growth originating from a particular industry which will then have spread effects on other industry. For the effective application of this theory, it is crucial to identify “key sectors” that possess strong linkages through the backward and forward linkages²⁸.

The limitations of the linkage theory are obvious. They include: the challenge faced in the course of identification of the key sectors that possess strong linkages in the face of international trade and the global village which have encouraged countries to integrate.²⁹

The linkage theory provides a foundation for scrutinising the Ugandan, Nigerian, and Norwegian oil industries, as well as what explains the differences in the outcomes in these contexts. It also provides classifications that provide structure for a comparative analysis of development tracks imprinted by application of local content law in the oil and gas industry on the various economies in which it has been applied. Additionally, this approach places emphasis on the peculiarities of each economy ranging from technological and situational characteristics. This helps in the determination of how one economic activity feeds into another and where no connection exists how the failure is brought about.³⁰

²⁸ Hazari, B R 1970, “Empirical Identification of Key sectors in the Indian Economy.”

²⁹ Wannaphong Durongkaveroj. “Hirschman’s Linkages: Passe in the Age of Global Production Sharing?” PhD Arndt- Corden Department of Economics Crawford School of Public Policy, College of Asia and Pacific. The Australian National University, 2019.

³⁰ Hirschman, Albert O. "The sizes and types of cities." (1958).

CHAPTER TWO

LITERATURE REVIEW

2.0 Introduction

Chapter two was guided by the specific objectives aimed at conducting a chronological review of the existing literature and analysis of the legal framework by the researcher. The chapter brought forth the previous literature on the various concepts set out in the objectives of the study.

2.1. Local content

Regulation 4³¹ defines national or local content to mean the level of use of Ugandan local expertise, goods and services, Ugandan citizens, business and financing in the petroleum activities and operations and the substantial combined value added or created in the Ugandan economy through utilization of Ugandan human and material resources for provision of goods and services to the petroleum industry in Uganda. In simple terms the definition could be understood as the share of labour and goods for the local citizens in the petroleum activities.

This leads us to another important aspect which needs consideration. The definition highlights on petroleum activities and one ought to understand what amounts to a petroleum activity. Section 2³² defines what amounts to a petroleum activity it states, “Petroleum activity means planning, preparation, installation or execution of activities related to petroleum including reconnaissance, exploitation, development, production, transportation, storage, and cessation of activities or decommissioning of facilities”.

Therefore, the legal regime relating to local content in the petroleum subsector only hinges onto petroleum activities as afore defined.

In consideration of the above definition of local content, it is important to note that the aspect of local content is built on majorly three objectives in the petroleum subsector. These are;

- a) The objective to encourage state participation in the production, exploitation and development, transportation and storage process of petroleum in the country³³.
- b) Secondly, it connotes the need to promote and encourage the employment of nationals in the petroleum activities. It also connects to the desire to encourage training of nationals and the transfer of technology³⁴.

³¹ Petroleum (Exploration, Development and Production) (national content) regulations 2016

³² Petroleum (Exploration, Development and Production) Act 2013

³³ Section 124(1) *ibid*

- c) Finally and most important of all, is the objective to ensure that petroleum companies³⁵ engage and actively use locally available materials and equipment coupled with services locally available in Uganda such as hotel, catering and transportation services.

Much as the definition lays down clear and straight forward objectives, a lot of questions have hinged around many people's minds as to whether such locally available services and labour force can meet the minimum standards required by the oil companies. Answers to such questions will be provided in subsequent chapters of this report.

2.2 Framework for Local Content in the oil and gas industry in Uganda.

"Local content policy stipulates that a fraction of an import's production process take place in the domestic economy".³⁶ Another definition is that local content is a condition that "requires a given percentage of domestic value added or domestic components be embodied in a specified final product."³⁷

Local Content legislation in Uganda has its foundation in the Constitution³⁸. Parliament is mandated to make laws for the regulation of exploitation of minerals and petroleum and also provide thresholds for the sharing of royalties from therefrom³⁹. It is this mandate that led to the enactment of Petroleum (Exploration, Development, and Production) Act, 2013, the Petroleum Refining, Conversion, Transmission and Midstream) Act, 2013, Petroleum Refining, Conversion, Transmission and Midstream Storage) (National Content) Regulations, 2016. The National Content Policy, 2018 was passed two years after the enactment. It seems unclear as to why the policy was passed after the national content regulations, 2016. The most recent development in the regulation of national content was the passing of the National Local Content Bill, 2019 by the Parliament of Uganda on 20th May, 2020 which now awaits Presidential assent.

³⁴ Section 126 ibid

³⁵ Namely China National Offshore Oil Corporation (CNOOC) Uganda Ltd, Total E&P (TEP) Uganda Ltd and Tullow Uganda Operations Pty (TUOP) Ltd.

³⁶ Jegede, O. O., W. O. Siyanbola, M. O. Ilori, B. A. Oluwale, and J. A. Sonibare. "Knowledge Sharing and Innovation as it affects the Local Content in the Oil and Gas Industry in Nigeria." *African Journal of Science, Technology, Innovation and Development* 5, no. 1 (2013): 31-38.

³⁷ Grossman, Gene M. "The theory of domestic content protection and content preference." *The Quarterly Journal of Economics* 96, no. 4 (1981): 583-603.

³⁸ *Constitution of the Republic of Uganda as amended.*

³⁹ *Article 244(2)(d) of the Constitution of the Republic of Uganda as amended.*

The National Local content model for Uganda is premised on promotion of local enterprise, technology transfer, increase in employment opportunities, and improved competitiveness in the market.⁴⁰

These opportunities include foreign direct investment, job creation, skills acquisition, technological transfer and wealth creation.⁴¹

Many countries with natural resources especially oil and gas have already developed policies to favour the development of these resources. The idea is to enact and enforce policies that will persuade the participating companies to transfer technology, create job opportunities and at the same time patronize the local supply industry while they are exploiting resources of the host country.⁴²

Local content policies are usually adopted by countries that want to exploit their natural resources but don't have the relevant skills to do so, they often, invite international companies with the required expertise to develop these resources while the host country creates policies to ensure active participation and development of the local players through technology transfers.⁴³

Similarly, it is not just the use of natural resources that drive the need for local content, as long as there is something to trade for, the buyer really wants the commodity then the seller can dictate certain conditions for sale that might not necessarily be cash. Industrial participation is used to leverage economic benefits and support the development of South African industry by effectively utilising the instrument of government procurement.⁴⁴ The government and industry operators are the major stakeholders that need to agree on the requirements of the policy for its implementation.

The type of policy that any government adopts affects the way the policy is implemented in the country, therefore in initiating local content policies, the government requirements are explicitly stated and a regulatory agency is set up to enforce the policy. Industry operators

⁴⁰ Nshimye Allan Paul Mbabazi, (2021) "The Efficacy of the Local Content Provisions in Promoting Indigenous Business Participation in the Uganda Oil Sector.

⁴¹ *Obi, Chuka Obinna. "Local content development in the Nigerian oil and gas industry: Why it is not succeeding?" PhD diss., North-West University, 2008.*

⁴² Ibid

⁴³ The issue of Technology Transfer especially by Multinational Corporations is a controversial one. For the challenges experienced see, George W.K.L. Kasozi: Transnational Corporations and their role in the Transfer of Technology to Developing Countries: Consideration of some Legal Issues; [Lesotho Law Journal Vol. 5, No. 1, 1989 pp. 97-125]. (The article includes chapters in the LL.M Dissertation submitted to the University of Hull, England, U.K. 1987). This may be accessed: ><https://cloud.ucu.ac.ug/index.php/s/ohWENsqssmF3hwv><

⁴⁴ McEwan, Elaine K. *Seven steps to effective instructional leadership*. Corwin Press, 2002.

play their own part by executing the policy of the host government and will strictly adhere to all the requirements.⁴⁵

There are several arguments in favour of LCPs. They can help to correct market failures,⁴⁶ which arise “when there is a distortion that keeps the market from allocating resources efficiently and adjusting to a steady state”, with the result that “domestic industries cannot gain the necessary technology and capacity to compete on the open market without outside intervention and protection.”⁴⁷

The market fails from a domestic perspective, because the lack of domestic skills to serve the needs of the industry results in inefficient allocation of resources in the market. By requiring companies to invest in the development of particular local skills, LCPs can help to correct this market failure because such requirements help to ensure that skills are available to meet the demands of the market. Besides, there is an inherent good in a country developing its own technical skills to meet the demands of its industries. It enhances entrepreneurship and can contribute to poverty reduction.

LCPs can help domestic firms in developing countries integrate themselves into global economic networks. This is confirmed by studies which show that in the 1990s, both local “productivity-enhancing entrepreneurship” and state support to local development helped East Asian firms to achieve significant positions in global economic networks.⁴⁸ It has also been argued that LCPs can contribute to the productivity and competitiveness of domestic firms through knowledge transfers that take place from foreign firms to domestic firms.⁴⁹

Other proponents observe that most advanced economies utilized industrial policies similar to LCPs to boost their domestic economy while in the early stages of their industrial development.⁵⁰ After reviewing how countries like China, Chile and even the United States benefited from industrial policy (which later came into serious disfavour), Rodrik concludes that “developing new industries often requires a nudge from government.

⁴⁵ Ibid Supra Note 17

⁴⁶ Silvano Tordo et al, *Local Content Policies in the Oil and Gas Sector*, World Bank Study (Washington, DC: World Bank, 2013) at 120

⁴⁷ Alisa DiCaprio & Kevin P Gallagher, “The WTO and the Shrinking of Development Space: How Big is the Bite” (2006) 75 *The Journal of World Investment & Trade* 783.

⁴⁸ Gary Gereffi, “Global Production Systems and Third World Development” in Barbara Stallings (ed.), *Global Change, Regional Responses* (Cambridge: Cambridge University Press, 1995) at 142.

⁴⁹ Oliver Morrissey, “FDI in Sub-Saharan Africa: Few Linkages, Fewer Spill overs” (2012) 24:1 *European Journal of Development Research* 26–31.

⁵⁰ Lindsay Whitfield et al, *The Politics of African Industrial Policy: A Comparative Perspective* (Cambridge: Cambridge University Press, 2015)

The nudge can take the form of subsidies, loans, infrastructure, and other kinds of support. But scratch the surface of any new successful industry anywhere, and more likely than not you will find government assistance lurking beneath.”⁵¹ This view is shared by many leading economists, such as Chang, who believes that developed countries should not “kick away the ladder” with which they had used to climb to the top of economic development.⁵²

In conclusion, increasing oil and gas finds in East Africa and particularly in Uganda offer significant opportunities to fast track economic development and ensure that public welfare improvements are delivered to their citizens. One approach to doing so that is increasingly being adopted by developing countries is the LCP as a form of legal framework. LCPs enable a country to capture the benefits of foreign direct investment by imposing conditions on foreign investors to ensure value addition in the country. The challenge for Uganda, however, is how to design the policy to reflect their unique economic development needs and local conditions.

2.3 Challenges of Implementing Local Content law and policy.

A number of challenges are identified in the literature on local content but Cerbusca,⁵³ and Akpanika⁵⁴ have classified the challenges into capacity gaps, corruption, inefficiencies risks, policy implementation and monitoring.

Capacity gaps arise on the basis that local entities are not able to provide the required inputs in most low developed economies.⁵⁵ The argument is that it is quite difficult for LCDs to quickly supply specialized goods and services to the oil industry for lack of because of the technical complexity of producing them, the specific skills required and the large size of the contracts, among others’ problems.⁵⁶ The capacity challenges are also exhibited in restricted access to finance by local SMEs due to lack of significant collateral requirements, and lack the knowledge and skills to prepare attractive business plans for loan proposals.⁵⁷

⁵¹ Dani Rodrik, “The Return of Industrial Policy,” Policy Innovations (April 13, 2010), online: <http://www.policyinnovations.org/ideas/innovations/data/000165>.

⁵² Ha-Joon Chang, *Kicking Away the Ladder – Development Strategy in Historical Perspective* (London: Anthem Press, 2002).

⁵³ Cerbușca, Viorica. "Financing SME future development." *Economies Sociologies* 1 (2015): 139-142.

⁵⁴ Akpanika, Offiong I. "Technology transfer and the challenges of local content Development in the Nigerian oil industry." *Global journal of engineering research* 11, no. 2 (2012): 123-131.

⁵⁵ Kazzazi, Abolfazl, and Behrouz Nouri. "A conceptual model for local content development in petroleum industry." *Management Science Letters* 2, no. 6 (2012): 2165-2174.

⁵⁶ Ibid Supra Note 30

⁵⁷ Ibid

Corruption has been cited a one of the major challenges in exploring the opportunities offered by the local content policies as those with managerial information may not transparently sharing it's with the local stakeholders to encourage their participation.⁵⁸ (I am glad you have discussed corruption. Disregard my earlier comment) Corruption has resulted into opportunities for local participation being denied and explored by the economic elites which lead to less efficient than a perfectly competitive environment, thus giving rise to welfare losses. Cases of fictitious companies could equally lead to flawed procurement process on the basis of local content policy.⁵⁹

Inefficiencies risks are widely cited a significant threat in local content policy and arises from the position that the local content policies that grant by law a portion of the contracts to local suppliers give rise to a decrease in their incentives to invest in R&D and innovation, as the jobs are assured to them, without facing foreign competition.⁶⁰

Policy implementation and monitoring challenges, arises from the fact that although policies have been meticulously analysed and ensure a priori national welfare developments in the long run, it will be hard for any outcome to materialize if the policies are not adequately implemented and monitored.⁶¹ It has also been argued that the actual implementation process, if done correctly, can be more challenging.⁶² If no formal information flow mechanism is implemented, local businesses and individuals will not be aware of the opportunities in place, and if the rules are not clear a number of legal, coordination and financing problems can arise. On the other hand, a lax monitoring process can lead to operators hiding, withholding, or strictly not complying with the legal requirements intentionally.⁶³

Local content has had mixed successes worldwide. Notably many African nations have not maximized the exploitation of their natural resources for the benefit of local people.⁶⁴ Successful models of local content worldwide include Botswana, Norway, Chile, Malaysia,

⁵⁸ Ibid

⁵⁹ Ibid

⁶⁰ Ibid

⁶¹ Ibid Supra Note 29

⁶² Ibid

⁶³ Ibid

⁶⁴ Arthur, P.; Arthur, E. Local Content and Private Sector Participation in Ghana's Oil Industry: An Economic and Strategic Imperative. *Afr. Today* 2014, 61, 56–77.

and Indonesia,⁶⁵ whereby effective resource management, supported by strong institutions, policy design and implementation have led to economic transformation.

In contrast, those which have not been so successful include Nigeria, Chad, and Angola.⁶⁶ In these countries, this can be linked to historically weak institutions, where poor governance leads to a misuse of resource rents, non-productive investment, increased likelihood of corruption, and significant social, and economic polarities.⁶⁷ Considering country specific contexts is important in understanding why local content strategies succeed or fail.

Norway is widely considered the most successful example of a country creating lasting positive impacts from its O&G activities. Norway's robust policies, strong institutions, quality education system and industrial background have supported the country's economic transformation.⁶⁸ However, Heum argued that replicating Norway's experience is virtually impossible for new O&G producing nations. Despite this, lessons can be learned from international successes and failures.⁶⁹

In a study of local content implementation across six countries, Nordås et al.⁷⁰ found policy design and implementation to be the crucial factor. Despite the wealth of natural resource across Sub-Saharan Africa and the fact that governments have put significant efforts into attracting MNCs, many nations have not benefited from the resources due to poor execution of policies.⁷¹

Institutional quality, strength, and transparency are therefore critical to ensuring that policies are effectively managed and monitored.⁷² Weak institutions can lead to 'voracity effect', whereby governments overreact to O&G revenues, causing reduced economic growth.⁷³

⁶⁵ Mehrara, M.M.; Alhosseini, S.; Bahramirad, D. Resource Curse and Institutional Quality in Oil Countries; Paper No. 16456; MPRA: München, Germany, 2009

⁶⁶ Ibid

⁶⁷ Sachs, J.D., Stiglitz, J.E., Eds.; Columbia University Press: New York, NY, USA, 2007; pp. 177–187, ISBN 0231141963.

⁶⁸ Nordås, H.K.; Vatne, E.; Heum, P. The Upstream Petroleum Industry and Local Industrial Development: A Comparative Study; SNF: Andrézieux, France, 2003; ISBN 82-491-0263-0.

⁶⁹ Heum, P. Local Content Development: Experience from Oil and Gas Activities in Norway. Available online: <https://brage.bibsys.no/xmlui/handle/11250/166156> (accessed on 1 June 2020).

⁷⁰ Ibid Note 33

⁷¹ Ngowi, H.P. Tax incentives for foreign direct investments: Types and who should/should not qualify in Tanzania. *Tanzanet J.* **2000**, *1*, 19–28.

⁷² Collier, P.; Goderis, B. Commodity Prices, Growth, and the Natural Resource Curse: Reconciling a Conundrum. *SSRN Electron. J.* 2008.

⁷³ Oomes, N.; Kalcheva, K. Diagnosing Dutch Disease: Does Russia Have the Symptoms? IMF: Washington, DC, USA, 2007.

Furthermore there is a risk of rent-seeking behaviour, corruption, and autocratic governance.⁷⁴

Eighty percent of hydrocarbon-producing countries struggle with governance.⁷⁵ Newly producing O&G countries are most at risk of poor resource management, resulting in unstable regulations that extenuate pressure on relationships between government, industry and the domestic population.⁷⁶ As such, the strength and quality of national institutions is important.⁷⁷ Producer friendly institutions, which follow the law and promote state growth, act accountably, bureaucratically and avoid corrupt behaviour, are most likely to have effective local content mechanisms.⁷⁸

For nascent hydrocarbon-producing countries, there are challenges in legislating local content due to uncertainty about the amount of resource available, the lack of experience in O&G, and minimal governance capacity.⁷⁹ Additionally, it is important to avoid the seven pitfalls described by Marcel et al.⁸⁰

Successful implementation of local content policies is, therefore, largely linked to institutional strength, governance, and rigor of the policies. Policies should be adaptive and driven by long-term national economic development.⁸¹ It is widely agreed that MNCs must link their strategies with these policies to lead to lasting positive socio-economic impact.⁸²

However, local content policies have been criticized. Local content policies are often regarded as excellent in theory, but if local people and businesses do not have the capacity or capability to meet industry needs, this can prevent the policies from being effective.⁸³

⁷⁴ Hansen, M.W.; Buur, L.; Therkildsen, O.; Kjær, M. The political economy of local content in African extractives: Lessons from three African countries. In Proceedings of the 46. Årsmøde i Dansk Selskab for Statskundskab 2014, Vejle, Denmark, 23–24 October 2014.

⁷⁵ The 2013 Resource Governance Index. A Measure of Transparency and Accountability in the Oil, Gas and Mining Sector; Revenue Watch Institute: Beirut, Lebanon, 2013.

⁷⁶ Stevens, P.; Kooroshy, J.; Lahn, G.; Lee, B. Conflict and Coexistence in the Extractive Industries; Chatham House: London, UK, 2013

⁷⁷ Heller, T.C. African transitions and the resource curse: An alternative perspective. *Econ. Aff.* 2006, 26, 24–33.

⁷⁸ Robinson, J.A.; Torvik, R.; Verdier, T. Political foundations of the resource curse. *J. Dev. Econ.* 2006, 79, 447–468.

⁷⁹ Marcel, V.; Tissot, R.; Paul, A.; Omonbude, E. A Local Content Decision Tree for Emerging Producers; Chatham House, The Royal Institute of International Affairs: London, UK, 2016.

⁸⁰ Ibid

⁸¹ Ibid

⁸² Ngoasong, M.Z. How international oil and gas companies respond to local content policies in petroleum-producing developing countries: A narrative enquiry. *Energy Policy* 2014, 73, 471–479.

⁸³ Andrews, P.; Playfoot, J. Education and Training for the Oil and Gas Industry: Building a Technically Competent Workforce; Elsevier: Amsterdam, The Netherlands, 2015; Volume 2, ISBN 9780128009758.

Additionally, local content policies have been criticized for not complying with the World Trade Organisation's international trade regulations, which incorporate constrictions to incentivizing nationalism of skills and services.⁸⁴ Additionally, Tordo et al., describe other issues, including the potential misallocation of resources to non-competitive sectors, the potential to exacerbate market failures, and lack of coherence with broader institutional frameworks. Regulations that are too stringent can “exacerbate supply bottlenecks”, which can prevent other sectors from advancing, create inefficient economies and lead to corruption.⁸⁵

The other commonly cited challenge is the lack of local people within the labor market who have the required qualifications, training, and experience required.⁸⁶ This is exacerbated within the O&G sector due to requirements for highly skilled and highly experienced people within management positions.⁸⁷ Furthermore, the high costs of training and developing local people can be prohibitive.⁸⁸ Nor is it just an issue of technical skills and competencies, but also one of cultural norms, which might not be compatible with industry needs.⁸⁹ MNCs must consider intercultural sensitivities and the local context in order to compete globally.⁹⁰

An undersupply of top talent leads to competition for the same people amongst different companies from multiple sectors.⁹¹ The lack of available talent is due to the mismatch between the provision of skills by the public education system and the needs of industry.⁹² Poor leadership and limited investment by governments into aligning education with industry requirements have been attributed to this mismatch.⁹³

⁸⁴ Hufbauer, G.C.; Schott, J.J.; Cimino-Isaacs, C.; Vieiro, M.; Wada, E. *Local Content Requirements: A Global Problem*; PIIE: Washington, DC, USA, 2013.

⁸⁵ Tordo, S.; Warner, M.; Manzano, O.; Anouti, Y. *Local Content Policies in the Oil and Gas Sector*; The World Bank Group: Washington, DC, USA, 2013; ISBN 978-0-8213-9931-6.

⁸⁶ Briscoe, D. Expatriation into and out of emerging markets: Challenges for IHRM. *Argum. Oecon. Crac.* 2014, 11, 25–45.

⁸⁷ O'Donnell, S.W. Managing foreign subsidiaries: Agents of headquarters, or an interdependent network? *Strateg. Manag. J.* 2000, 21, 525–548.

⁸⁸ Worm, V.; Selmer, J.; de Leon, C.T. Human resource development for localization: European multinational corporations in China. In *Advances in Human Resource Management in Asia*; Banerjee, P., Li, X., Richter, F., Kidd, J.B., Eds.; Palgrave Macmillan: Basingstoke, UK, 2001.

⁸⁹ Al-Ali, J. Emiratisation: drawing UAE nationals into their surging economy. *Int. J. Sociol. Soc. Policy* 2008, 28, 365–379

⁹⁰ Harvey, M.G. Inpatriation training: The next challenge for international human resource management. *Int. J. Intercult. Relat.* 1997, 21, 393–428

⁹¹ Li, L.; Wang, X. The Strategy of Talent Localization in Multinational Corporations. *Int. J. Bus. Manag.* 2010, 5, 216–219.

⁹² Al-Dosary, A.S.; Rahman, S.M. Saudization (localization)—A critical review. *Hum. Resour. Dev. Int.* 2005, 8, 495–502

⁹³ Bhanugopan, R.; Fish, A. Replacing expatriates with local managers: An exploratory investigation into

It has been argued that companies have traditionally struggled to implement successful localization strategies.⁹⁴ This can frequently be linked to inappropriate successions planning in which employees are promoted too early and/or into unsuitable positions, or the wrong people are chosen.⁹⁵ This compounds biases within MNCs towards the employment of expatriates, leading to the exclusion of local people.⁹⁶

Inappropriate selection, training, and planning of the expatriate workforce is one of the most commonly agreed barriers to localization.⁹⁷ Potter⁹⁸ noted that the attitudes of expatriates can be an issue, which Selmer⁹⁹ described as an unwillingness to embrace localization. It is common place that expatriates believe they take on extra work on top of their existing workload to train and develop local staff, who then go on to replace them, which causes tension amongst expatriates.¹⁰⁰ However, it is not just the attitude of expatriates that act as a barrier. The attitudes of local people can impede localization; for example, an underestimation by local people of the skills and requirements needed for particular job roles.¹⁰¹

2.4 Mechanisms of Enforcement and Monitoring of Local Content law and policy.

Technology Transfer: Objective five of the local content policy of Uganda envisages promotion of Research & Development and Technology Transfer. This will be achieved through preparation and implementation of plans for the transfer of technology and knowhow to Ugandan institutions; enhance capacity of existing institutions in the country to carry out

obstacles to localization in a developing country. *Hum. Resour. Dev. Int.* 2007, 10, 365–381.

⁹⁴ Fryxell, G.E.; Butler, J.; Choi, A. Successful localization programs in China: An important element in strategy implementation. *J. World Bus.* 2004, 39, 268–282.

⁹⁵ Fayol-Song, L. Reasons behind management localization in MNCs in China. In *International Business in China: Understanding the Global Economic Crisis*; Taylor, R., Ed.; Routledge: London, UK, 2013; pp. 58–74, ISBN 9780203722725

⁹⁶ Oppong, N.Y.; Gold, J. Developing local managers in the Ghanaian mining industry: An indigenous talent model. *J. Manag. Dev.* 2016, 35, 341–359.

⁹⁷ Law, K.S.; Song, L.J.; Wong, C.S.; Chen, D. The antecedents and consequences of successful localization. *J. Int. Bus. Stud.* 2009, 40, 1359–1373.

⁹⁸ Potter, C.C. Effective Localisation of the Workforce. *J. Eur. Ind. Train.* 1989, 13, 25–30.

⁹⁹ Selmer, J. Expatriates' hesitation and the localization of Western business operations in China. *Int. J. Hum. Resour. Manag.* 2004, 15, 1094–1107.

¹⁰⁰ Oppong, N.Y. Localization of management in multinational enterprises in developing countries: A case study of policy and practice. *Int. J. Train. Dev.* 2015, 19, 223–231.

¹⁰¹ *Ibid* Supra Note 63

research and development; encourage cooperation and collaboration. Identifying and prioritizing areas for R&D and technology transfer.¹⁰²

Capacity Building: The role of capacity building in promoting procurement participation by local firms has received little empirical studies. The few studies accessed in this study such as Cosby¹⁰³ report that in South Africa and Malaysia where a skills development funds were established for extractive industries have an obligation to contribute there has been significant progress in promoting local capacity to participate in the extractive sectors of those countries.¹⁰⁴ Arthur and Emmanuel Arthur¹⁰⁵ recommend that enhance participation of local firms in O&G sector of Ghana will be enhanced through effective implementation local content policy on capacity building.¹⁰⁶

A related study by Unam et al ¹⁰⁷ in Nigeria report that Local Content Policy has made significant contributions to technological capacity building of oil servicing SMEs as all of the firms were involved in some form of linkages which have strengthened their absorptive capacity to internalize the technological and management skills that flow to them and boosted their ability in winning projects, bids and contracts. The linkage arrangements have also enhanced their capacity to easily meet industry (ISO) standards and quality.

Similarly, Brand¹⁰⁸ examines a number of local content policies on capacity building and noted that in both developed and developing economies where training schemes were conducted, the results have been positive in developing local knowledge and exercise necessary for participation in the O&G sector. This role of capacity building in boosting local capacity to participate in O&G procurement is evident in Angola where capacity building plan and budget is a prerequisite, Kazakhstan where monetary obligations for capacity building is emphasized.

However, in countries like Indonesia, Trinidad and Tobago where capacity building prerequisites are not emphasized, the results on building local capacity have been slow

¹⁰² National Local Content policy for the petroleum subsector in Uganda 2017

¹⁰³ Cosby, A. "The acceptance, effectiveness and legality of performance requirements." (2015).

¹⁰⁴ Ibid

¹⁰⁵ Arthur, Peter, and Emmanuel Arthur. "Local content and private sector participation in Ghana's oil industry: an economic and strategic imperative." *Africa Today* 61, no. 2 (2014): 57-77.

¹⁰⁶ Ibid

¹⁰⁷ Unam, James Monday, Claudius Jamike Agorzie, and Taiwo Olufemi Asaolu. "Local Content Policy and Technological Capacity Building of SMEs in the Nigerian Oil & Gas Industry." *Energy Technology and Infrastructure for Development*, 352-368 (2015).

¹⁰⁸ Vinet Brand, Martín. "Local content policies in the oil industry: a comparative analysis." (2017).

though positive.¹⁰⁹ Similarly, in Nigeria and Kazakhstan, for instance, where initiatives had positive effects, they were not able to significantly reduce the skill gap caused by foreign employment quotas.¹¹⁰

Partnerships: A review of extant literature on partnerships and procurement participation in the O&G sector reveals a significant relationship between the two variables. Partnerships arise due to the nature of high budgets and high risks in the O&G sector.¹¹¹ To this effect, Oyewole¹¹² attributes increased local SME participation to partnering, alliancing and joint ventures in the O&G sector although creating trust, unclear roles and responsibilities and alignment to common goals were significant problems faced in O&G partnerships.

Poor definition during conceptual stage of the project between parties and whether the share of the rewards will commensurate to the risk they are taking can also lead to volatility in the execution and outcomes.¹¹³ Short and long-term relationships within partnering arrangements have to be dealt with accordingly to avoid pitfalls and any untoward relationship that could be costly.¹¹⁴ In the same line, Changarawe,¹¹⁵ reports that lack of business partnerships was the key limiting factor for local firms to supply goods and services in the oil and gas sector in Tanzania.

Although the above literature is informative on the relationship and challenges in partnership/alliances attribute on technology transfer, their generalization in the Ugandan context was limited. It was necessary that a study is undertaken to examine the influence of partnerships/alliance on procurement participation by local firms in Uganda's O&G sector which is still nascent.

Research and Development-R&D: Technology transfer requires specified technologies to be transferred on non-commercial terms and/or specific levels and types of research and development (R&D) to be conducted locally, specifically in includes key considerations related to capacity development, development of partnerships, research and development

¹⁰⁹ Ibid

¹¹⁰ Ibid

¹¹¹ Ihua, Ugwushi Bellema. "Local content policy and SMEs sector promotion: The Nigerian oil industry experience." *international Journal of Business and Management* 5, no. 5 (2010): 3.

¹¹² Oyewole, Mojisola Fauziyah. "Effects of development partnership in higher education project on welfare status of rural women processors in oyo and osun states, nigeria." PhD diss., 2016.

¹¹³ Leahy, Joe. "Local supply policy tests Petrobras." *Financial Times*. <http://www.ft.com/cms/s/0/a2f51e12-60ad-11e1-84dd-00144feabdc0.html#axzz1uMRaK7z4> (2012).

¹¹⁴ Ibid Supra Note 88

¹¹⁵ Changarawe, Nuru. "Participation of local suppliers in oil and gas industry in Tanzania: A case of statoil Tanzania." PhD diss., Mzumbe University, 2014.

which according to Adedije et al, have been found to influence procurement participation in the Oil and Gas sector.¹¹⁶

Unam, et al study found that the few oil servicing firms that engage in R&D activities do not have separate R&D departments.¹¹⁷ Besides, thin industrial base, underdeveloped capital markets and inadequate power supply still remain major constraints to enhancing technological capacity building of SMEs in the petroleum industry. The study recommends partnership with foreign firms, provision of cost-friendly loans, and deregulation of the power sector.

Use of Locally Produced Goods and Local Firms' Participation: Use of locally produced goods and services refers to procurement and utilization of locally produced input materials, development of these materials, often recognized as an important linkage which reduces the capital cost that may have been incurred by the former and overextension of the firm and tends to include affirmative action on simplification of procurement procedures, emphasis on local operational base, standardization of local products through quality assurance and exclusive local tendering.¹¹⁸

Objective four of the national local content policy of Uganda envisages increased use of locally produced or available goods and services by the oil and gas industry. Strategies necessary to achieve the objective include; Licensed oil companies, their contractors and subcontractors will put in place procurement and contracting procedures and practices to benefit Ugandan enterprises. Secondly licensed oil companies, their contractors and subcontractors will establish operational bases in Uganda.

Thirdly, there is need to develop and adopt standards and quality assurance systems for locally available/produced goods and services. Lastly, licensed oil companies, their contractors and subcontractors will exclusively tender locally available goods and services to Ugandan enterprises (National Local Content policy for the petroleum subsector in Uganda 2017).

¹¹⁶ Adedije, Abdulkabir Niran, Shaufique Fahmi Sidiq, Azmawani Abd Rahman, and Siong Hook Law. "The role of local content policy in local value creation in Nigeria's oil industry: A structural equation modeling (SEM) approach." *Resources Policy* 49 (2016): 61-73.

¹¹⁷ Unam, James Monday, Claudius Jamike Agorzie, and Taiwo Olufemi Asaolu. "Local Content Policy and Technological Capacity Building of SMEs in the Nigerian Oil & Gas Industry." *Energy Technology and Infrastructure for Development*, 352-368 (2015).

¹¹⁸ Teka, Zeferino. "Linkages to manufacturing in the resource sector: the case of the Angolan oil and gas industry." *Resources Policy* 37, no. 4 (2012): 461-467.

Procurement Procedures: A review of existing body of literature lends support for the role of affirmative action on procurement procedures in promoting local firm's procurement participation in the O&G sector. Mushemeza, et al contend that countries with specific local content frameworks that prioritized affirmative action on procurement procedures are more likely to achieve positive outcomes in terms of employment creation, skills development and the participation of their national industry along the oil and gas value chain.¹¹⁹

Their findings are collaborated with country specific case study such as **Sigam et al** Brazil study which reported that localization of procurement regulations and their implementation under the Petrobras, commitments resulted into improvement of local firms' participation from 25% to 80%.¹²⁰

Similarly, Nigerian study by Oyewole reveals that effective design, implementation and monitoring of procurement procedures resulted into increased value added, enhanced entrepreneurial development, improvements in local investment in the sector and overall participation of local SMEs in the O&G sector.¹²¹ Adedeji et al., also affirms that affirmative action on procurement procedures resulted in significant local SMEs participation in procurement for works, services and supplies leading to significant local value added.¹²²

Operation Base: A key emphasis of the local content policy is the need to for Licensed NOC, their contractors and subcontractors will establish operational bases in the explorations country and studies report of mixed findings on its effect on procurement participation. In their study Adedeji et al conceptualized backward integration to include the level of cooperation between local oil service firms and their local affiliate suppliers through local input development, information exchange, technical upgrading, negotiation of payment and delivery, and labor training.¹²³

A Ghana study by Ablo reports that in terms of goods and services provision, the policy mandates that all operators in the oil and gas industry shall as far as practicably have a local base and use goods/services produced by or provided in Ghana for their operations. It was the

¹¹⁹ Mushemeza, E.D., Okiira, J., Morales, M., & Herrera, J.J. (2017). Local Content in Latin American and African Oil and Gas Sector: A Comparative Analysis of Selected Countries. *Global Journal of Human Social Science* , 17(3), 44-59

¹²⁰ Sigam, Claudine, and Leonardo Garcia. *Extractive industries: Optimizing value retention in host countries*. New York and Geneva: UNCTAD, 2012.

¹²¹ Ibid Supra Note 88

¹²² Adedeji, Abdulkabir Niran, Shaufique Fahmi Sidiq, Azmawani Abd Rahman, and Siong Hook Law. "The role of local content policy in local value creation in Nigeria's oil industry: A structural equation modeling (SEM) approach." *Resources Policy* 49 (2016): 61-73.

¹²³ Ibid

hope of the government that after the commencement of operations, the participation of Ghanaians in value-added would be at least 10% initially, with a 10% increase annually in the provision of goods and services with the policy of having a local base in Ghana.¹²⁴

Standardization: To deliver cost savings on projects, operators across the oil and gas industry are looking at standardization as a way of simplifying the processes from design and construction through to installation and start-up, in order to create safer, more predictable and reliable facilities that start-up on time and stay up.¹²⁵ To this effect, one of the strategies in to increase the use of locally produced or available goods and services by the oil and gas industry in Uganda is to develop and adopt standards and quality assurance systems for locally available/produced goods and services.¹²⁶

On the influence of standardization on procurement participation, since procurement process in the oil and gas industry is a capital-intensive industry and about 90-95% of project costs are paid to contractors and suppliers, to ensure project success, it is critical that procurement strategies should incorporate and integrate with the standardization in local supplies. Some form of standardization programme and specification reviews must also be included.¹²⁷

A strategic outsourcing, such as in supply chain management, must be in place. Finally, a management and incentive programme for all key contractors and suppliers must exist in order to secure the commitment of contractors and suppliers to the overall success of the project by supplying standardized goods and services.¹²⁸

The literature on promotion of standardization in the O&G sector as highlighted above could not be generalized in the Ugandan context given its unique local content policy and the nascent nature of the O&G sector. This study strives to provide empirical evidence on standardization strategy and its contribution to SME participation in the O&G sector of Uganda.

Exclusive Local Tendering: The role of exclusive or preferential local tendering in promoting local firm participation in the extractive sector has been emphasized in most local content

¹²⁴ Ablo, Austin Dziwornu. "From local content to local participation? Exploring entrepreneurship in Ghana's oil and gas industry." (2016).

¹²⁵ Mohamed, A. S., S. M. Sapuan, MMH Megat Ahmad, Abdel Magid S. Hamouda, and BT Hang Tuah Bin Baharudin. "Modeling the technology transfer process in the petroleum industry: Evidence from Libya." *Mathematical and Computer Modelling* 55, no. 3-4 (2012): 451-470.

¹²⁶ National Local Content Policy, 2017

¹²⁷ Ibid Supra Note 101

¹²⁸ Ibid

policies. To begin with, local content is viewed from an angle of ‘community content’; stating that ‘Ultimately, community content is about realizing a competitive advantage for an oil and gas development company in the eyes of both the local population and the country’s guardians of economic policy.’¹²⁹ He observed two distinct policy strategies for achieving higher local content vis-à-vis: firstly, where the state requires oil companies to give greater preference to those nationals and national suppliers who can compete internationally on cost, quality and timeliness notably what can be termed local content participation.

For instance, the Trinidad and Tobago case, where oil production operators shall give preference to national subcontractors where such are competitive with foreign bidders in skills, availability and price and meet technical and financial requirements; and the case in Nigeria where the proposed LC bill requires about 95 percent managerial and supervisory positions, 100 percent risk insurance and legal services to be handled by indigenous professionals.¹³⁰

In Latin America, virtually all of the surveyed regimes mandate preference for local goods, services, consumables, works or enterprises. In all of the jurisdictions examined, the IOC has an obligation to give due and proper consideration to preferring locally sourced services and goods when their price, quality, time of delivery and other terms are comparable to internationally available ones.¹³¹

Promotion of Business Competitiveness: Objective three of the national local content policy envisages development the competitiveness of Ugandan enterprises as suppliers and joint venture partners. Key actions to this effect include promotion of business registration & licensing, promotion of Compliance, Business Development and promotion of financial access.¹³²

Promotion of Registration and Licensing: One of the actions in the national local content policy of Uganda is to encourage Uganda businesses to formalize through registration and

¹²⁹ Ihua, Ugwushi Bellema. "Local content policy and SMEs sector promotion: The Nigerian oil industry experience." *international Journal of Business and Management* 5, no. 5 (2010): 3.

¹³⁰ Ibid

¹³¹ Tordo, Silvana, Michael Warner, Osmel Manzano, and Yahya Anouti. *Local content policies in the oil and gas sector*. The World Bank, 2013.

¹³² National Local Content policy for the petroleum subsector in Uganda 2017

licensing of enterprises.¹³³ A number of studies on this action for promotion of business competitiveness reveal mixed experiences.

SMEs which strived to comply with the national laws and tax regime and specifically procurement guidelines and manufacturing standard reported growth in business deals in the O&G sector.¹³⁴ Giroud et al contends that effective procurement participation by local SMEs the O&G sector can only be requires not only promotion of business registration but also supervision and monitoring by the national authority charged with promotion of local content.¹³⁵

According to Byaruhanga et al, the informal nature of local firm's initiatives affects the governance of firms. Their findings further revealed that a big number of the firms in Uganda (85%) had no accounts with formal auditing company's s due to poor records management and limited willingness to reveal economic results. This limits compliance to the requirements to supply of good and services for oil and gas sector. Formal requirements are often strict when working with the oil and gas sector implying that staff competence be documented.¹³⁶

Byaruhanga et al found out that two of three firms they surveyed did not have one full time employee with formal training in health, security and environment. Three of four did not have any professional engineers in their staff, and only a few had some certification of their business of relevance for the oil and gas sector.¹³⁷

Although the literature was insightful on the affirmative action on promotion of business registration and licensing and procurement participation, its generalization in the Ugandan context was limited. This study strives to provide empirical evidence on if efforts to register and license SMEs has resulted into significant procurement participation in the embryonic O& G sector of Uganda.

¹³³ Ibid

¹³⁴ Ibid Supra Note 105

¹³⁵ Giroud, Axèle, Björn Jindra, and Philipp Marek. "Heterogeneous FDI in transition economies—A novel approach to assess the developmental impact of backward linkages." *World Development* 40, no. 11 (2012): 2206-2220.

¹³⁶ Mwakali, J., and J. Byaruhanga. "Human Resources and Oil in Uganda: An Analysis of Uganda's Human Resource Development for the Oil Sector." (2018).

¹³⁷ Ibid

Promotion of Compliance: A related action in the national local content policy of Uganda is to encourage Ugandan enterprises to comply with their statutory obligations.¹³⁸ A number of studies on this action for promotion of business competitiveness reveal mixed experiences. SMEs which strived to comply with the national laws and tax regime and specifically procurement guidelines and manufacturing standard reported growth in business deals in the O&G sector.¹³⁹

A few interrelated segments of the oil and gas value chain stimulates goods and services for local SMEs than the general contractors. The findings further reveal that local SMEs can compete favourably in the oil and gas sector procurement process if only comply in national laws and business best practices.¹⁴⁰

Giroud et al contends that effective procurement participation by local SMEs the O&G sector is enhanced through effective monitoring of compliance by the concerned government agencies in Venezuela.¹⁴¹ Action on promote compliance of SMEs to national laws resulted in significant local SMEs participation in procurement and significant local value added.

Although the literature was insightful on the affirmative action on promotion of compliance among SMEs and procurement participation, its generalization in the Ugandan context was limited. This study strives to provide empirical evidence on if the efforts to promote compliance of SMEs have resulted into significant procurement participation in the embryonic O & G sector of Uganda.

Business Development: Business development according to the Uganda local content policy aims at facilitating business development programs for Ugandan enterprises in the oil and gas industry. This will be achieved through development of business development programs in procurement, business counselling, management and technical assistance to build the capacities of Ugandan enterprises in the oil and gas.¹⁴²

An empirical case study by Asiago reports that affirmative action by Petroleum Development Oman's focusing on Local Community Contractors program aimed to share the benefits of its operations with the local community by engaging the community contractors

¹³⁸ National Local Content policy for the petroleum subsector in Uganda 2017

¹³⁹ Ibid Note Supra 105

¹⁴⁰ Nagudi, Regina. "Local content strategies and procurement participation by local firms in the oil and gas industry of Uganda." PhD diss., Kyambogo University, 2019.

¹⁴¹ Ibid Supra Note 111

¹⁴² National Local Content policy for the petroleum subsector in Uganda 2017

through contract work foster SME competitiveness and participation in the O&G sector.¹⁴³ This was achieved through appointing a business consultant to guide them in developing their business plans and management systems that meet industry standards; sending experienced staff members to each of the companies to help them better understand oil and gas operations; allocating industrial plots and workshops; and purchasing all the necessary equipment to execute the assigned work.

Efforts to promote business development through joint ventures and supplier development efforts were in in position to win a good deal of procurement tenders in the O & G sector. The policy to promote business development in Ghana resulted into a10% local SMEs participation in the O & G sector.¹⁴⁴

The literature findings on promotion SMEs business development and procurement participation could not be generalized in the Ugandan context. This study strives to provide empirical evidence on if the business development effort has resulted into significant procurement participation in the embryonic O & G sector of Uganda.

Financial Access: The national local content policy of Uganda targets improved access to financing by Ugandan enterprises to supply goods and services to the oil and gas industry.¹⁴⁵ It has always been urged that access to financial services in a key success factor in promoting local SMEs competitiveness in the O&G sector a SMEs were less likely to access financial credit compared in IOC. The financial challenges are also exhibited in restricted access to finance by local SMEs due to lack of significant collateral requirements, and lack the knowledge and skills to prepare attractive business plans for loan proposals.

It has also been noted that financial access is a key factor on entrepreneurship or business formation and business growth through participation in business opportunities in the O&G sector. The case studies of Ghana entrepreneurial activities show how embedded resources and practices of actors shape local SMEs participation in the oil and gas industry.

Although the literature was informative on the affirmative action on promotion of financial access among SMEs and procurement participation, its generalization in the Ugandan context was limited given the unique Ugandan financial services sector policies. This study strives to

¹⁴³ Asiago, Berryl Claire. "Rules of engagement: A review of regulatory instruments designed to promote and secure local content requirements in the Oil and Gas Sector." *Resources* 6, no. 3 (2017): 46.

¹⁴⁴ Ibid

¹⁴⁵ National Local Content policy for the petroleum subsector in Uganda 2017

provide empirical evidence on if the efforts to promote financial access among SMEs have resulted into significant procurement participation in the embryonic O & G sector of Uganda.

2.5 Linkage Theory

Hirschman argues that by focusing on investment in crucial industries, governments can generate supply blockages for inputs in those industries. These supply blockages would in turn generate profitable opportunities in upstream industries leading to an increase in private investment (“backward linkages”). Likewise, local production of innovative products would generate profitable opportunities in downstream industries leading to an increase in private investment in downstream industries (“forward linkages”).¹⁴⁶

The linkage theory has been adopted in the analysis of growth patterns in developing countries with crucial products as their crucial engine of growth. From then on, the linkage theory spread and allowed for a more detailed analysis of various developing economies.

The oil and gas industry in Uganda can play an instrumental role in enhancing backward and forward linkages through provision of employment opportunities, provision of market for raw materials such as construction materials e.t.c.¹⁴⁷

2.6 Research Gap

Many earlier studies largely employed either a quantitative or mixed approach to address the research problem. On the contrary, the present study will adopt purely qualitative research thereby filling the methodological gap left by earlier studies.

The review of existing body of research reveals an inconclusive position on the influence of local content policies on procurement participation by local firms in O&G sector of developing countries. Like any other developing country, provocations in Uganda’s local content development have focused on whether there is sufficient technological local capacity to deal with the employment, goods and service needs for the oil and gas industry. On the other hand, standards of locally produced goods and services to meet the requirements of the Oil and gas sector remain questionable. To fill the knowledge void, this study will examine the effect of local content policies and the strategies set forth in these Policies specifically; business competitiveness, promotion of locally produced goods/services and technology

¹⁴⁶ Carsten A. Holz (2010) The unbalanced growth hypothesis and the role of the state: The case of China's state-owned enterprises

¹⁴⁷ Carsten A. Holz (2010) The unbalanced growth hypothesis and the role of the state: The case of China's state-owned enterprises

transfer on local firm's participation in procurement of goods and services in the O&G sector of Uganda.

Theoretically, despite the fact that previous studies used either the need for a big push (Rosenstein-Rodan, 1943, 1984), growth with an unlimited supply of labour (Lewis, 1954), stages of economic growth (Rostow, 1956), to address a similar research problem, the present study employs an unbalanced growth theory (Nurske, 1953, and Hirschman, 1958) thereby filling the theoretical gap left by earlier studies.

Contextually, unlike previous studies on local content implementation strategies that have been carried out in other jurisdictions like China, Norway among others, this present study seeks to assess local content implementation strategies in Uganda.

CHAPTER THREE

RESEARCH METHODOLOGY

3.0 Introduction

The aim of this research was to assess the efficacy of the LCP in the oil and gas industry in Uganda, placing emphasis on the understanding of the regulatory regime, its impact on the attainment and development of local content, challenges faced in the implementation thereof, a comparison of how LCP has been implemented in Nigeria and identification of areas that can be improved to attain better results.

To achieve this goal, a qualitative approach was employed. A discussion of the various legal instruments that form the legal regime in Uganda and Nigeria was done. the challenges that are faced in the implementation of local content law and policy in Uganda that are also common in Nigeria, the contextual differences that have influenced the level of success and failure in both Uganda and Nigeria, measures that can be employed to improve the success level of Uganda's Implementation of the local content laws and policy. It presents the study design, legal context of the study, data collection strategies, documentary review checklist, documentary review, data analysis plan, ethics consideration and anticipated methodological constraints/limitations (mention mitigation strategies).

3.1 Research Design

Research design is essentially a plan for determining the methods and procedures for collecting and analysing the required information. A good research design should answer the research Question as “unambiguously as possible.”¹⁴⁸

The research question for this study was LCP in the oil and gas industry has faired what more can be done to improve local content participation in the industry in a manner that would foster both forward and backward linkages.

The research employed the qualitative research design. Data was also collected from key stakeholders in the oil and gas industry in Uganda using semi structured interviews. The stakeholders interviewed included the National Oil Company, registered companies from the National Suppliers Database, the regulatory bodies such PAU, Local and international Oil companies, NGOs.

¹⁴⁸ NYU (n.d), ‘What is research design’ <http://www.nyu.edu/classes/bkg/methods/005847chl.pdf> accessed on 12th September 2019 pg. 9

Qualitative research provided an extensive understanding of people's perspective opinions, experiences and histories within a specific context which aligns with the objectives of the study. Secondly, the adoption of the above method allowed the researcher to delve deeper into the phenomenon under consideration which quantitative does not offer.

Given the time constraints and the difficulty of finding the right people to participate, participants of the study were selected using purposive sampling. A semi-structured interview method due to its ability to allow spur-of-the-moment topics and themes.

3.1.2 Legal framework

Legal framework, Uganda

- (i) The 1995 Constitution of Uganda (as Amended)
- (ii) The National Oil and Gas Policy, 2008
- (iii) The Petroleum (exploration, Development and Production) Act 2013
- (iv) The Petroleum (Refining, Conversion Transmission and Midstream storage) Act, 2013
- (v) The Petroleum (Refining, conversion, Transmission, and Midstream storage) (National Content) Regulations, 2016
- (vi) The National Content Policy for the Petroleum Subsector in Uganda, 2017.

Legal Framework, Nigeria

The Nigerian Oil and Gas Industry Content Development Act, 2010.

3.3 Data Collection Strategy/methods

Data was obtained from primary sources through interviews with key players and user departments. Secondary sources which included journals, articles, magazines and documents from the Ministry of Energy and Mineral Development for the case of Uganda. It is from these sources that the required information about the legal and institutional framework governing local content in Uganda and Nigeria's petroleum operations, the challenges that Uganda and Nigeria faces while implementing the provisions in the oil and gas local content regulations and the monitoring and enforcement mechanisms was obtained.

3.3.2 Documentary review

Documents from the Ministry of Energy and Mineral Development from Uganda in line with Oil and gas sector were reviewed; legal documents were also review to obtain information needed for the study.

3.4. Documentary review checklist

The qualitative research data collection method for documents review was employed. The document review check-list helped the researcher in remembering the most relevant documents with information pertinent to this research, for example the strategic plan, reports, and minutes of meetings. A document review checklist was useful in clarifying and cross-checking data found in documents. For example, in relation to the Background and significance of the study, literatures review, research problem, references and Methodology. The checklist contained information as to whether the problem researchable, ethical, manageable and achievable? Whether the literature review justified the problem being studied? Whether the research would have the effect of advancing the understanding of the topic? And whether the proposal was easily understandable and coherent?

3.5 Data Analysis Plan

Data analysis was done from the responses from the key participants in the research project. A qualitative analysis of literature from legal instruments and scholarly articles. The researcher applied the thematic analysis to identify patterns and themes in the interview data. The researcher also used desktop research to come up with other literature regarding the study that involved an understanding of the existing legal framework for both Uganda and Nigeria, that is the 1995 Constitution, the Petroleum (Exploration, Development and Production) Act, Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act 2013, The Petroleum (Exploration, Development and Production) (National Content) Regulations 2016, the Petroleum (refining, conversion, Transmission and Midstream storage) (National Content) Regulations, the National Content Policy for the Petroleum Subsector in Uganda, the Local Content bill, 2019 the Nigerian Oil and Gas Industry Content Development Act, 2010 in order to examine the legal framework of local content in the petroleum sector.

3.6 Ethics consideration

Ethical standards prevent against the fabrication or falsifying of data and therefore, promote the pursuit of knowledge and truth which is the primary goal of research. Ethical behaviour is

also critical for collaborative work because it encourages an environment of trust, accountability, and mutual respect among researchers. The handling of these ethical issues greatly impacts the integrity of the research results. Honesty, objectivity, respect for intellectual property, social responsibility, confidentiality, non-discrimination and many others Appreciation was ensured.

3.7 Methodological constraints/limitations

The research project had a time limit tied to it because it had to be conducted not later than March 2022, given the scope. The research also had cost implications, internet costs; it needed engagement with experts which called for consultation costs, stationary costs among other relevant costs.

CHAPTER FOUR

COMPARATIVE ANALYSIS OF LOCAL CONTENT POLICIES PERFORMANCE IN NORWAY, NIGERIA.

4.0 Introduction

As already noted in Chapter 2, resources such as petroleum belong to the countries where they are found and should therefore be developed and utilised in a way that is of benefit to the whole nation. It is therefore no wonder that governments of resource-rich nations together with their citizens strive to realise as many economic gains as are practically possible from the exploitation of the resource. This explains the adoption of local content policies whose main objective that prioritise state participation, training, technology transfer, employment and the utilisation of local goods and services from the sector. Norway's local content strategy has been hailed as an among the best examples of good practice in this field. In Africa, Nigeria has been at the oil game longer than other African Countries and has more experience in the implementation of local content policy. From the foregoing, this chapter will analyse local content in Norway on the international level and Nigeria in Africa to especially looking at the local content implementation in the oil and gas industry in order to appreciate and benchmark how they manoeuvred. The aim is to benchmark and draw some lessons that would in turn aid the betterment of Uganda's local content outcome. This chapter seeks to identify best practices and also answer the question as to what lessons can Uganda as an oil producing country learn from both Norway and Nigeria on its journey of implementing the local content regulatory regime.

The study analysed the peculiar factors that made Norway one of the leading countries in the realisation of national Content, Nigeria's regulatory regime alongside other peculiar factors such as institutional and infrastructural framework that have influenced the enforcement of the local Content law.

The local content outcomes in this chapter are construed along the whole oil and gas industry value chain with bias in national participation.

4.1 Norway

4.1.1 Introduction

Petroleum activities in Norway started in the 1960's with its first off shore field coming into stream in 1971 and the industry rapidly rose in importance in the Norwegian economy¹⁴⁹. The contribution of the sector was measured in terms of state revenues, exports and value created to the economy as whole. The contribution of the petroleum sector was also seen in terms of infrastructural and industrial development.¹⁵⁰ The industry has continued to date. It is considered one of the most efficient and regulatory systems world over.

4.1.2 Review of legal and institutional framework in Norway.

The regulatory regime in Norway for the oil and gas sector is contained in the Petroleum Act¹⁵¹ and the national petroleum regulations¹⁵². This law governs the licensing of activities in the sector.

Norway put in place 3 separate state-controlled institutions that manage the exploitation of Oil and gas. The first is their NOC Statoil the entity that manages the commercial interests of the Country through extensive oil operations both at home and abroad, the Ministry of Petroleum and Energy the entity that is charged with making policy, and the third is the Norwegian Petroleum Directorate (NPD) the entity that handles the regulatory and technical advisory of the sector. NPD also collects fees and also collects and manages data of activities in the country's continental shelf.¹⁵³ This model that emphasizes separation of roles grew to be known as the "Norwegian Model". It is said to have the benefit of transparency since the politics is separated from the business.

Norway did not necessarily put in place specific local content legislation. Local content at the time was more of a "gentleman's agreement". The long-term policy goals for Norway were; local involvement, national control and state participation, proper resource management, building and fostering a Norwegian Oil Community, and technology and competence of local firms and skills.¹⁵⁴ These were all targeted towards the absolute control of the oil and gas

¹⁴⁹ Ministry of Petroleum and Energy – Norway (2014), Fact Sheet: The Norwegian Petroleum Sector, Government of Norway.

¹⁵⁰ Acheampong.T, Ashong. M, Svanikier V.C. (2016) An assessment of Local Content Policies in Oil and Gas Producing Countries, Journal of World Energy Law and Business, 9,282-302. Oxford University Press.

¹⁵¹ Act No. 72 of 29 November 1996.

¹⁵² Regulation No. 653 of 27 June 1997.

¹⁵³ Thurber, M. and Istad, B.T., (2010). Norway's Evolving Champion: Statoil and the Politics of State Enterprise. Program on Energy and Sustainable Development Working Paper, 92

¹⁵⁴ Oslen.W.H Norway – Local Content Lessons Learned, Norwegian Energy Partners: Henley Business School.

sector in the long run.¹⁵⁵ Rather than measure the LCP success using domestic employment as a threshold, Norway used value-added as a threshold. The quantum of goods and services provided by local suppliers to the industry at home and abroad and industrial value addition were used.¹⁵⁶

What was enforced was the preference given to Norwegian firms by the government where the said firms could compete in thresholds such as prices, delivery and quality.¹⁵⁷ Technology transfer and capacity building of Norwegian firms was realised through specific requirements that were imposed on foreign companies that were contracted to list Norwegian companies such as Statoil, Saga Petroleum and Norsk Hydro that were in fact companies as operators.¹⁵⁸ Foreign companies were also required to set up subsidiaries that were fully operational in Norway and the recruitment of Norwegians in these companies was encouraged.¹⁵⁹ The Norwegian government also played an important role in the supplier capacity development through the sponsorship of Supplier development programmes that made the local services companies more competitive. This led to the growth of local firms and the development of sectoral linkages to a level of international participation.¹⁶⁰ Firms were required to conduct to 50% of the research for the technology needed to develop assets at the Norwegian institutions.¹⁶¹

4.1.3 Drivers for Norway's Local Content Outcomes.

As already noted, Norway to date stands out as one of the leading success stories in the implementation of Local Content Policy. The factors that positively influenced the outcomes of the LCP in Norway include:

- (i) High level of industrialisation at the time of first oil.

¹⁵⁵ Wolf, C. and Pollitt, M.G., (2009). *The Welfare Implications of Oil Privatisation: A Cost-Benefit Analysis of Norway's Statoil*. Faculty of Economics, University of Cambridge.

¹⁵⁶ Heum, P. (2008) *Local Content Development - Experiences from Oil and Gas Activities in Norway*, SNF Working paper 2/2008.

¹⁵⁷ KH Nordas and others, (2003) "The Upstream Petroleum Industry and Local Industrial Development: A Comparative Study" SNF Report No.08/03 (Institute for Research in Economics and Business Administration 2003)73

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¹⁵⁹ MZ Ngoasong, 'How International Oil and Gas Companies Respond to Local Content Policies in Petroleum Producing Developing Countries: A Narrative Enquiry' (2014) 73 *Energy Policy* 471-79.

¹⁶⁰ UNCTAD, (2013) 'Domestic Requirements and Support Measures in Green Sectors: Economic and Environmental Effectiveness and Implications for Trade'

¹⁶¹ Obiri K. A, Bjeirmi.B (2019) *A Comparative Analysis of Local Content Policies in the North Sea and the Gulf of Guinea Regions*. Journal of Scientific Research & Reports.

Norway was highly industrialised even before the discovery of oil and the level of operation was on international standards at the time of first oil. It was already operating at a competitive level in the global shipping industry. The shipping industry was vital for off shore operations especially. Also, its expertise in engineering played an important role in the increase in national participation.

(ii) The hosting of internationally competitive industries

The fact that Norway hosted internationally competitive industries that were further enhanced by the requirement of foreign companies to set up full operation subsidiaries in Norway played a crucial role in the positive outcomes of the Norwegian Local Content Policy. This enhanced to transfer of knowledge to the existing industries and explains the quick adaptation to local content.

(iii) Norway had a favourable geography.

(iv) Technical Competence of local suppliers.

At the time of discovery of oil, Norway had a high skilled population that were competitive even by international standards.

(v) Low priced hydropower and deep fjords for construction of concrete substructures

The availability of low cost hydroelectric power and reliable power played an important role in the development of the sector and the overall increase in national participation.

(vi) The existing mining sector.

The presence of large processing facilities that were being utilised by the mining sector lent help to the development of the oil and gas sector local content development. Large processing facilities that produced metals for instance provided the oil sector with raw materials especially during the construction phases.¹⁶²

(vii) Intolerance to corruption

Norway's civil servants and business class do not have a liking for corruption. This has helped ensure transparency in the petroleum sector. Joseph Stiglitz stated as follows: "By most accounts Norway's Statoil company is both efficient and incorruptible"¹⁶³.

¹⁶² Norwegian Petroleum, "The Service and Supply Industry" (2015) <http://www.norskpetroleum.no/en/development-s-and-operations/service-and-supply-industry/>.

¹⁶³ 2007 @ 30

4.1.4 The effect of local content laws on development of linkages.

The effect of the Norwegian economy (other sectors) and the oil and gas sector has been significant. The increase of oil prices saw an increase in many economic activities across the board. Many firms from the various sectors increased deliverables to the oil and gas industry both at home and internally which created spill over effects in the economy.¹⁶⁴ Domestic firms in Norway that supply non petroleum specific such as ICT services, transportation services hospitality services such as hotel and restaurant services, other services linked to production of oil and gas accounted for 2% of GDP in 2012. The oil and gas industry has also increased the development of sectors such as the agricultural sector that has increased a diversified contribution to GDP. The shipping industry benefited from supplying to oil and gas industry.

4.2 NIGERIA

4.2.1 Introduction

Nigeria ranks on top of the list of Africa's oil producing countries also has a place in the top ten oil and gas rich countries in the world.¹⁶⁵ It was the first sub-Saharan country to export crude oil.¹⁶⁶ The quantity of proven oil reserves is estimated at approximately 37.2 billion barrels whereas the proven natural gas reserve is estimated at approximately 180 trillion cubic feet (Tcf)¹⁶⁷. The Nigerian economy predominantly rests on oil and gas and 40% of its GDP, 75% of the total government revenue, accounts for 95% of the country's foreign exchange earnings.¹⁶⁸ The oil and gas sector has realised steady progress.

The main law regulating the exploitation of petroleum is contained in the Petroleum Act¹⁶⁹ and the law vests ownership and control of the petroleum resource in the state. The oil and gas industry in Nigeria is predominantly manned by the private sector¹⁷⁰

¹⁶⁴ Brander AS, Brekke H, Naug BE. (2013), "The Effect of a Fall in Oil Prices on the Turnover of Norwegian Enterprises, Norges Bank"

¹⁶⁵ Otiotio D, An Overview of the Oil and Gas Industry in Nigeria

¹⁶⁶ CEE Bankwatch, 'The Reality behind EU 'Energy Security': The case of Nigeria (2011) p.14

¹⁶⁷ US, Energy Information Administration (U.S. EIA), "Nigeria Country Analysis Brief", October 16 2012.

¹⁶⁸ IMF Country Report No.12/194, '2011 Article IV Consultation Report on Nigeria' July 2012.

¹⁶⁹ 1969

¹⁷⁰ Nwokonko CH, 'Enhancing local content in the upstream oil and gas industry in Nigeria: An appraisal of current policy Vol.2 Issue 1 *Oil, Gas & Energy Intelligence (OGEL)* (2004).

4.2.2 Regulatory and institutional Regime in Nigeria

4.2.2.1 Nigerian National Petroleum Corporation (NNPC)

Legislation of Local Content in Nigeria was 1st legislated upon in 1971 with the establishment of NOC. The main goal for this development was the promotion of indigenisation in the oil and gas industry of Nigeria.¹⁷¹ NOC was later merged with the Ministry of Petroleum which resulted in the establishment of Nigerian National Petroleum Corporation (NNPC) in 1977. The role of NNPC was the nationalisation of assets, generation of technology transfer in the industry, heightening of state control and the increment of economic rents derived from foreign companies that participate in oil and gas activities.¹⁷² LCP was done through the acquisition of some interests in IOCs.¹⁷³

Although, Nigeria is noted among the countries that made legislation regarding local content through the Petroleum Act of 1969, the law had limited implementation.¹⁷⁴

Through the National Petroleum Investment Management Services (NAPIMS) the NNPC implemented local content by ensuring that there was a level of local content criteria followed in every contract. Local suppliers were also allowed the opportunity to take part in the bidding processes of the oil and gas industry.¹⁷⁵

The year 2000 saw the adoption of the Nigerian Content Policy that was aimed at increasing the quantity of composite value added to or created in the economy of Nigeria which would be achieved through capacity development, utilisation of local goods and services.¹⁷⁶

The National Content Division (NCD) was later created by NNPC to be enforcement and monitoring unit for Nigerian Content Policy. It was also charged with the role of training local suppliers through the formation of Public Private Partnerships (PPPs).¹⁷⁷ The NCD focused on industries that formed the core activities such as: engineering, refining,

¹⁷¹ Oyewole B (2015) 'Best practice for Local content development strategy: The Nigerian experience' UNCTAD

¹⁷² Nwokeji, U. (2009) 'the Nigerian national petroleum corporation and the development of the Nigerian oil and gas industry: History strategies and current directions.' The James Baker III Institute for Public Policy, Rice University, Houston, Texas.

¹⁷³ Balouga J, (2012) 'Nigeria Local Content: Challenges and Prospects'. International Association for Energy Economics.

¹⁷⁴ Cap. 10 of the Laws of Nigeria.

¹⁷⁵ Mushemeza ED, Okira J, (2015) 'Local content frameworks in the African oil and gas sector: Lessons from Angola and Chad' Evidence and Lessons from Latin America Programme (ELLA), Kampala.

¹⁷⁶ Azoro C.J.S. National Participation in Nigerian Oil and Gas Industry: Prospects and Challenges. Petroleum Technology Development Journal.

¹⁷⁷ *ibid*

fabrication, banking and insurance, well drilling etc. and it produced monthly and quarterly reports that indicated the level of performance. Under this regime, Nigeria's Enterprise Development Centre (NEDC) was established.¹⁷⁸ The NNPC in a bid to improve LCP performance, made it a requirement for all IOCs to establish a NCD in their companies. This was met with a lot of resistance from the IOCs.¹⁷⁹

The NNPC paved way for the enactment of the Nigerian Oil and Gas Content Development Act (NOGCDA) 2010 and the establishment of the National Content Development Monitoring Board (NCDMB) that followed in the place of NCD.

4.2.2.2 The Nigerian Oil and Gas Industry Content Development Act, 2010 (NOGICD)

The Act made compliance with its provisions especially regarding the promotion of national content a threshold for the award of licences, permits and any other interest in oil and gas industry.¹⁸⁰ Preference is given to local or indigenous companies that participated in the bidding for awards, permits and oil blocks in the industry to wit a Nigerian LOC is defined to mean *a company 'formed and registered in Nigeria in accordance with the provisions of the companies and Allied Matters Act, with not less than 51 per cent equity shares by Nigerians'*.¹⁸¹ The Nigerian Content Monitoring and Development Board (NCDMB) was established. The roles and responsibilities of NCDMB include administration, coordination, monitoring, supervision, appraisal and management of LCP implementation. It is also charged with the role of developing local firm capabilities, putting in place guidelines for the implementation of LCP, and the administration of Joint Qualification System (JQS)¹⁸².

The Act also saw the establishment of the Nigerian Content Development Fund which would be funded by the contribution of a mandatory 1% from every contract that would be awarded in the upstream industry. The goal of the fund is to assist build the capacity of indigenous firms to participate in the industry.

The law also made it a requirement for every operator to submit as part of the preconditions for bidding on tenders, licences and permits.¹⁸³ The foreign workforce management

¹⁷⁸ NNPC Coordination Procedure for Nigerian Content Implementation Document No. 1 of 12th June, 2006.

¹⁷⁹ Ovadia, J.S., 2012. The Dual nature of Local Content in Angola's Oil and Gas Industry: Development vs. Elite Accumulation. *Journal of Contemporary African Studies*, 30(3), pp. 395-417

¹⁸⁰ Section 3(3)

¹⁸¹ Section

¹⁸² ADO, R., (2016). Accounting, accountability and governance in upstream petroleum contracts: the case of local content sustainability in the Nigerian oil and gas sector. [online]. PhD thesis. Robert Gordon University. Available from: <https://openair.rgu.ac.uk/handle/10059/1586>

¹⁸³

positions ceiling of 5% and minimum level of local content in projects such as fabrication, research and development, engineering, procurement services, shipping and logistics. The threshold for minimum Nigerian Content in projects shall be measured through the number of man hours worked during the lifespan of the project, the tonnage or volume of goods utilised, the percentage of goods procured locally, level of certification.¹⁸⁴ The requirement that MNC working through a Nigerian subsidiary to show that a minimum of 50% of equipment deployed for execution of work is owned by Nigerian subsidiaries.¹⁸⁵ This provision is to ensure that the equipment (high-end) utilised in the course of doing work in the sector is not repatriated back to the country of origin of the foreigners after the cessation of the project which would negatively affect the level of technology transfer and value addition.

The Act also imposes a sanction of a fine of 5% of the value of the project and cancellation of the project in case of breach on the provisions of the Act.¹⁸⁶

The requirement for operators to submit a Content Performance Report of its annual activities in compliance with the requirements of the Act.¹⁸⁷

From the foregoing, it is evident that Nigeria incorporated many aspects of the Norwegian Model in its LCP in a bid to promote national content. The country has made some steps on its journey to improvement of LCP, however, a lot has to be done.

4.3 The drivers for Nigeria's LCP outcomes.

The main goal of LCP is to maximise benefits from the petroleum resource through employment of locals, utilisation of local goods and services development of linkages to other sectors of the economy, industrial growth e.t.c. The level of success of LCP depends on the contexts within which the policies are implemented. The key drivers to Nigerian LCP are the following:

The implementation of the NOGICD Act has led to an improvement in the implementation and performance of LCP.¹⁸⁸

- (i) Enhanced capabilities of local suppliers.

¹⁸⁴ Atsegbua, AL., (2012) "The Nigerian Oil and Gas Industry Content Development Act 2010: An Examination of its regulatory Framework" OPEC Energy Review, 487.

¹⁸⁵ Section 41(2)

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¹⁸⁸ Alike, E (2015) Challenges of Enforcing the Nigerian Content Act

Nigeria has registered an increase in the execution of certain categories of contracts and projects. Local Oil Companies such as Mobil Producing Nigeria Unlimited (MPNU) have managed to improve their capabilities to operate oil fields. For instance, MPNU which operates the JV with NNPC the Nigerian NOC managed to build three wellheads locally that was done the development of twenty (20) new oil fields.¹⁸⁹ The JV also used a local company in the execution of the facilities located at Snake Island Integrated Free Zone in Lagos which were the largest contracts for fabrication ever carried out in country by local Nigerian companies which had been an impossibility before the enactment of the NOGICD Act.

Use of locally made pipes by IOCs such as Exxon Mobil for the transportation of crude oil has led to more industrial development as many companies have set up pipe mills in Nigeria.

(ii) Level of infrastructure

The industrial base is a contributing factor to the success of LCP. Nigeria still has a weak industrial base, still suffers from the lack of reliable power and water which are necessary to support the growing industries that service the oil and gas sector.¹⁹⁰

(iii) Inadequate training facilities

Training is an expensive venture that requires a lot of commitment on the part of the government and IOCs who provide the financial muscle for the process. The lack of adequate training has been attributed to the poor government funding which has negatively affected the research and development. The inadequate training has affected the quality of the workforce produced that is required to compete with their foreign counter parts which has led to the hiring of more expatriates that would be necessary if Nigerians had received the necessary training.¹⁹¹

¹⁸⁹ Ibid.

¹⁹⁰ Bakare, S., 2011. Local content policy in oil sector and the capacity utilisation in Nigerian manufacturing industry. *Business and Management Review* Vol.1(6) pp. 82-92.

¹⁹¹ ERHUN, M., 2015. The Role of the Nigerian Oil and Gas Content Act in the Promotion of Sustainable Economic Development. *IISTE*. [online]. 5(16). Available from: <http://www.iiste.org/Journals/index.php/DCS/article/viewFile/25023/25626>. [Accessed on 3 March 2016]

(iv) Lack of institutional capacity to monitor and measure compliance with LCP.

The LCP enforcement measurement and monitoring requires alertness by the implementation entity which NCDMB does not poses. These enforcement gaps create room for corruption as the officials of NCDMB tend to abuse the policy for their own benefit.¹⁹²

(v) Reluctance of IOCs to partner with Nigeria companies.

Although one of the important aspects of the LCP in Nigeria is to encourage joint ventures and partnerships between IOCs and local firms, there has been a reluctancy of IOCs to partner with local entities. The reason for this is that IOCs believe that indigenou companies do not poses the capacity to operate in the capital intensity, high risk and highly skilled petroleum sector.¹⁹³ Where the IOCs have purported to partnered with local firms, the local companies act as a mere front for the foreign companies to meet the guidelines of LCP which defeats the purpose of LCP. ¹⁹⁴

(vi) Capital flight

The other characteristic of the LCP realisation in Nigeria is that even where local firms manage to secure to contracts to provide goods and services to the petroleum sector, most of the profits accrued from the business are sent to another foreign country from which the equipment or the goods were procured. A study revealed that from the contracts that are awarded to Nigerian Companies, approximately 70% of the contracts are executed overseas. This in itself negatively affects the outcomes of the policy. ¹⁹⁵

(vii) Corruption.

The oil and gas sector in Nigeria still suffers from the vice of corruption which has had a negative effect on the outcomes of LCP. For instance, it was reported that there is collusion between some government officials and foreign companies to allow foreign firms operate in Nigeria under the names of local businesses owned by the officials in exchange for a fee.¹⁹⁶

¹⁹² Adedeji, A.N., Sidique, S.F. and Rahman, A.A., 2015. Assessment of Mediating Effect of Indigenous Oil Firms' Participation on the Relationship between Local Content Policy and Job Creation. Kuala Lumpur International Business, Economics and Law Conference Hotel Putra, April 18 – 19,. Kuala Lumpur, Malaysia:

¹⁹³ Aniche, E.T., 2014. A Critical Appraisal of Enforcement of Nigerian Oil and Gas Industry Content Development (NOGICD) Act, 2010. *Journal of Law, Policy and Globalization (JLPG)*, 31, pp. 82-94

¹⁹⁴ *ibid*

¹⁹⁵ BALOUGA, J., 2012. Nigerian Local Content: Challenges and Prospects. *International Association for Energy Economics*. [online]. Available from: www.iaee.org/en/publications/newsletterdl.aspx?id=176.

¹⁹⁶

Still, under corruption, Nigeria being a member of the Extractive Industries Transparency Initiative (EITI) has played an important role in the promotion of accountability, and budget and monitoring oversight. In 2005, for instance, EITI unearthed about \$560 million that were in back taxes and royalties that were due to the government of Nigeria as had not been paid by oil companies. Through the requirement of oil companies to publish what they pay and government to publish what they receive, corruption rates can be reduced to insignificant levels.¹⁹⁷

4.2.3 Effect of content laws on the development of linkages.

The achievement of overall economic growth can only be attained through the creation and development of linkages with other sectors.

There are backward linkages created in the construction industry, fabrications and information Communication Technologies sector.¹⁹⁸ There was an increase in the purchase of goods and services from local suppliers measured at approximately 55% by first tier firms which are predominantly IOCs¹⁹⁹. The local suppliers were local second tier supplier firms though making decisions in procurement were based outside the country.

In conclusion, though Nigeria has made steps in the right direction with the enactment of the NOGICD Act the biggest success threshold of the Nigerian LCP has been employment and it has mostly been the unskilled labor rather than the highly skilled professionals. This means that a lot more can be done.

4.2.4 Lessons learnt from Nigeria.

The key lessons that Uganda can learn from Nigeria LCP experience include:

- (i) The incorporation of the LCP that incorporates the national development agenda which would promote creation of linkages.
- (ii) Clear measurement and monitoring thresholds should be put in place
- (iii) The need for the critical assessment of demands of the petroleum sector and local capacity to supply goods in order identify key sectors to develop linkages with the petroleum industry.

¹⁹⁷<http://eiti.org/files/EITI%20Impact%20in%20>

¹⁹⁸ Adewunyi, A., Oyejide A. (2012), 'Determinants of Backward Linkages of Petroleum Industry in the Nigerian Economy' Resources Policy 452.

¹⁹⁹ Ibid

- (iv) Need to develop competence in areas that are predominantly held by expatriates can have the effect of ensuring that most contracts that are being performed outside the host countries switch to nationals of the host country.

4.3 The regulatory regime that governs local content in Uganda’s Petroleum industry.

The Constitution of Uganda

The 1995 Constitution under Article 40 provides for economic rights as follows:

40. Economic Rights

“(1) Parliament shall enact laws-

(a) to provide for the right of persons to work under satisfactory, safe and healthy conditions;

(b) to ensure equal pay for equal work without discrimination

(c)

This provision has to be read alongside the provisions of Article 244(2) (a) which empowers parliament to make laws regulating the exploitation of minerals and petroleum.

These two articles read together can be said to form the bedrock on which the regulatory regime governing local content sits.

In a bid to the policies adopted by the Ugandan Government to promote local content in the petroleum sector include;

- The National Oil and Gas Policy for Uganda (NOGP) 2008
- The National Content Policy for the Petroleum subsector in Uganda 2017
- The Buy Uganda Build Uganda Policy (BUBU) 2014

Analysis of the aforementioned policies and how their application impacts the petroleum sector are as discussed below.

The National Oil and Gas policy for Uganda (NOGP) 2008

The goal of the NOGP is to ensure that sustainable utilisation of Uganda’s oil and gas resources in a manner that would enable the country achieve early poverty eradication. The policy lays down ten objectives for development and utilization of the oil and gas resource create lasting value addition to society.²⁰⁰ Objective 7 of the NOGP makes the optimum participation of Ugandan nationals in the oil and gas industry of paramount importance. It seeks to achieve this through direct and indirect participation. The strategies set forth for the achievement of this goal are; through the participation of the state in the production of oil, the

²⁰⁰ National Oil and Gas Policy, (2014)

use of local materials, goods, and services, technology transfer and the promotion of employment of nationals in the sector. The NOGP further provides under objective 8 for the development of skills and expertise through identification of the required skills for the sector and the acquisition of formal and industrial training.

In order to archive this objective, the policy provides and compels Government to review and expand the education curricula in the country for it to produce the work force required for oil and gas activities nationally hand in hand with licensed oil companies and their sub-contractors. This report in its subsequent chapter analyses Government's commitment towards reviewing the education curriculum as an action plan laid down by NOGP.

One more contribution that NOGP plays towards the development of national content is the need for government to establish the Petroleum Authority of Uganda (PAU) and the National Oil Company (NOC). The policy puts in place strategies aimed at achieving optimum national participation among which include, putting in place an institution to undertake state participation in oil and gas activities. This strategy explains the reason for the incorporation of the National Oil Company and the formation of Petroleum Authority of Uganda.

In summary therefore, the NOGP recognizes that the benefit which the country will obtain from its oil and gas resources will depend on the extent of participation of its citizens and enterprises in the sector. To support this, the national content policy in the petroleum subsector was adopted by cabinet which provides a detailed mode of operation of Ugandans in the industry.

The National Content Policy for the Petroleum Subsector in Uganda, 2017

This policy was adopted by cabinet with a major goal of promoting the competitiveness of Ugandan labour and enterprises in the oil and gas industry and other associated sectors of the economy. The policy derives its mandate from the NOGP. Specifically, objective 7 of NOGP provides for the need for government to ensure local content promotion in the oil and gas sector.

Some of the important aspects that the policy tackles are highlighted here below.

- It offers an elaborated definition to the aspect of local content which connotes to the one earlier on provided by regulation 4²⁰¹ that national content means the share of labour,

²⁰¹ The National Content Policy for the Petroleum Subsector in Uganda

services and goods for the petroleum sector being provided from within the country and constitutes the added value to Uganda from those activities.

- Secondly, the policy lays down a strong regulatory, institutional and administrative framework for national content development in Uganda. In implication, the policy holds that government ministries, departments and agencies relevant to the country's petroleum industry should be interconnected and aligned towards enterprise development.

Buy Uganda Build Uganda policy (BUBU) 2014

This policy was developed in 2014 in order to support the production, purchase, supply and consumption of local goods and services. Under its objective of “promoting the consumption of locally produced goods and services²⁰²”, the policy lays down a set of mechanisms to be employed to promote consumption of local goods and services and these include:

- Increasing consumption of locally produced products and services through public procurements and encouraging the private sector to consume locally originating products
- Increasing the participation of locally established firms in the domestic trade for the country to attain the middle-income status.

In summary, according to the BUBU policy, services such as furniture, food, beverage, electronics etc. should be bought from Uganda as first priority and this connotes to the same aspect of local content where priority to Ugandan goods and services is given in the petroleum activities.

Comparatively, Nigeria passed the Oil and Gas Industry Content Act in 2010. The law is meant to enforce the local content policy. It aims at providing for the development of Nigerian Content in the Nigerian Oil and Gas industry; for Nigerian Content Plan; for supervision, coordination, monitoring and implementation of Nigerian content and for matters incidental thereto. Important to note from the Nigerian law is that it provides a definition of local content and local company. This is important in helping determining what a local company should be and also determining what kind of participation (content) such a company should be involved in. focus is put on using Nigerian human resources, products or raw materials. Local content is defined as:

²⁰² Petroleum (Exploration, Development and Production) (national content) regulations

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

Focus is also put on value addition for products used in the industry. The Nigerian law defines a local company as;

“A company formed and registered in Nigeria in accordance with the provisions of Companies and Allied Matters Act with not less than 51% equity shares by Nigerians”

Unlike Uganda’s law which focuses on registration of companies which creates confusion as discussed earlier, the Nigerian law addresses this by setting conditions for formation and registration of a company in Nigeria. The three conditions for a company to qualify as a Nigerian company are

The company must be formed in Nigeria

ii. The company must be registered in Nigeria and Nigerian law

iii. Majority shareholders of such a company must be Nigerians

The Nigerian law creates a Nigerian Content and Monitoring Board which is tasked with monitoring compliance with local content requirements. In addition to the board, there is a Nigerian Content Consultative Forum whose role is sharing information on local content issues such as procurement information, company requirements and involvement of citizens²⁰³

Land question

Local content provisions also put much emphasis on the benefits to host communities and it is of paramount importance that the “land question” comes on board to help in determining who a host community is especially when government compulsorily takes over one’s land.²⁰⁴ One wonders whether such a community still remains a host community or by virtue that government has acquired their land they cease being host communities. It is therefore important to examine the question of land ownership especially in areas where oil has been discovered and the implications that follow after government acquisition of the same.

²⁰³ Andre, P .et al (2006) Participation publique: principes internationaux pour une meilleure pratique, Publication special, Serie No. 4 Fargo (ND): International Association for Impact

²⁰⁴ In accordance to Article 26(2) of Constitution and the Land Acquisition Act.

To start with, as a general rule land belongs to the people of Uganda. This has an exception where government can acquire land for public purpose. Article 237(2)(a) expressly provides that "...the government or local government may ...acquire land in the public interest..." therefore, much as land belongs to the people of Uganda Government can acquire land upon payment of adequate compensation in accordance with Article 26 (2). It expressly provides that

"No person shall be compulsorily deprived of property or any interest in or right over property of any description except where...."

The Article than highlights the grounds upon which Government can acquire land. These are;

- a) That the taking or possession is necessary for public use
- b) Compulsory acquisition is made under a law which provides for prompt payment of a fair and adequate compensation
- c) Finally, that a right of access to a court of law by any aggrieved party is available.

To cement the above constitutional provisions, Article 244(1) provides for that subject to Article 26 considered here above, the entire property and control of all minerals and petroleum in, on or under any land or waters in Uganda are vested in the Government on behalf of the Republic of Uganda.

Basing on the above provision, it is crystal clear that petroleum is held by Government on trust for the people of Uganda and there is no point of argument here provided adequate compensation has been paid.

However, the researcher's point of concern is the implication that follows Government's acquisition of land in areas where oil has been discovered in order to get space for its exploitation. This raises about two implications that may make the applicability of local content legislation to the host communities hard to achieve.

Firstly, the acquisition causes the host communities to shift to other places. It should be noted here that local content legislations give priority to host communities which consist of communities where oil has been discovered. Section 126(3) defines host communities to mean inhabitants of a district where petroleum activities take place. However, for Government to be able to acquire their land to extract petroleum, such communities have to be relocated to other places and they are likely to miss out on the benefit granted to them by

the local content legal frame work as host communities as they as they are relocated to other districts which do not have any petroleum activity for example one being relocated from Hoima District where petroleum activities take place to Nakasongola where there is hardly any petroleum activity.

This is so because as they move far away from the oil basin, they are likely to lose out on being referred to as host communities a fact which does not arise out of their own making but out of Government's acquisition of land for petroleum activities.

Secondly, the Constitution and Petroleum (Exploration, Development and Production) Act are silent about what happens to such occupants once they have been compensated. One wonders whether these still fall under the category of host communities or not. These are some of the gaps in the legal frame work which need to be addressed as the researcher will recommend in the last chapter of this report.

The Petroleum (Exploration, Development and Production) Act 2013.

This legislation was enacted by parliament in accordance with Article 79 (1) to give effect to Article 244(2) and specifically regulate petroleum activities like exploitation, development and production whilst establishing a National Oil Company (NOC) and the Petroleum Authority of Uganda (PAU). As a kick start off point, the Act lays down its purpose. It states that its purpose is to establish effective legal and institutional structures to ensure that the exploration, Development and Production of petroleum resources of Uganda is carried out in a sustainable manner that would guarantee optimum benefits for all Ugandans including the present and future generations , the creation of an environment conducive enough to facilitate the management of petroleum in Uganda through evaluation of discoveries, storage of petroleum before transportation to the delivery point, transport of the petroleum e.t.c , establishment of institutions to manage the resources , prioritising public safety and protection of health and environment . It also places the promotion of state participation and development of national content in the petroleum industry of Uganda.

This is to be achieved through citizens' active participation, employment and the provision of goods and services in the sector. It should be noted that this purpose is one of the mechanisms adopted for the operationalization of NOGP because it connotes to the desire by the Ugandan government to ensure citizen participation in order to achieve the objective of poverty eradication

Part VIII specifically provides for state participation and national content. This part contains four provisions that regulate national content.

The Petroleum (Exploration, Development and Production) Act 2013 has about five major contributions it plays towards the promotion of local content in the petroleum sector which include;

- a) Promotion of state participation
- b) Supports provision of goods and services by Ugandan entrepreneurs
- c) Training and employment of Ugandans.
- d) Training and technology transfer.

These shall be considered one after another below.

- a) Promotion of state participation

Section 124(1) expressly provides that “Government may participate in petroleum activities under this Act through a specified participating interest of a license or contract granted under this Act and the joint venture established by a joint operating agreement in accordance with the license and this Act”

This provides for and calls upon the state to participate in in the process of petroleum exploration, development and production and government has tried to achieve it through its NOC and its implications shall be analyzed later on in this report.

- b) Provision of goods and services by Ugandans

Section 125 (1) provides vividly that “the licensee, its contractors and subcontractors shall give preference to goods and services which are produced or available in Uganda and rendered by Ugandan citizens and companies”

This provision of the legislation encourages consumption of locally available goods and services and it is right to state that it is just in line with the Buy Uganda Build Uganda Policy 2014 as seen earlier on in this report.

However, section 125 (2) goes ahead to break the seal. It provides that where such goods and services as required by the contractor or licensee are not available in Uganda, they shall be provided by a company which has entered into a joint venture by a Ugandan company provided that the Ugandan company has a share capital of at least 48% in the joint venture.

Even though aspects of local content are diluted by this provision, it suffices to note that some petroleum activities are so complicated that Ugandan companies may not meet the minimum requirements and that is why a foreign company can jointly work together with a Ugandan company to provide such services.

This has about two advantages, firstly the provision encourages transfer of knowledge and technology from the foreign company to the joint venture Ugandan company and secondly the Ugandan company in joint venture business is able to actively engage in petroleum activities.

Besides the above advantages of this provision, it has a number of challenges that will be considered later on concerning its applicability especially as to what amounts to a Ugandan company.

Regulation 4 labors to define what amounts to a Ugandan company as,

“Ugandan company” for purposes of section 125 of the Act and these Regulations means a company incorporated under the

Companies Act, 2012 and which—

- (a) Provides value addition to Uganda;
- (b) uses available local raw materials;
- (c) Employs at least 70% Ugandans; and
- (d) Is approved by the Authority under regulation 9(4).

However, this definition leaves a lot wanting as to whether it actually looks at a Ugandan company being owned by Ugandans or mere incorporation under the Companies Act makes such a company a Ugandan company notwithstanding the nationality of the brains behind it. The definition simply considers incorporation and hence the local citizens may benefit little out of it since a foreigner can as well incorporate a company in Uganda.

Much as the provision has a number of implementation challenges, its contribution towards the development of national content in the petroleum sector cannot be ignored.

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

In the exercise of the powers granted to the Minister of Energy and Mineral Development, the Petroleum (Exploration, Development and Production) (National Content) Regulations 2016 were promulgated in 2016 to give effect to the provisions of local content in the Act.

The regulations were made to apply to national content in petroleum activities and every licensee, operator, contractor or any other entity involved in the petroleum activities is supposed to incorporate and implement national content as an important element of their petroleum activities

The regulations are so important to the aspect of local content in the petroleum sector because of their purpose which they intend to fulfil. Among the purposes of the regulations are,

- To promote the training and employment of Ugandans coupled with the transfer of technology.
- To require the sourcing and use of goods and services from Ugandan companies, citizens and registered entities
- To ensure enterprise development through provision of support to Ugandan citizens and Ugandan companies

In fulfilment of the above purposes, the regulations encourage employment of Ugandans, preference to Ugandan goods and services provided by Ugandan local suppliers, the transfer of knowledge and technology.

One peculiar aspect that the regulations bring on board in local content development is the introduction of the national supplier data base. This is a data base where all local suppliers to the petroleum sector are registered and a local company can only supply goods or services to the licensees if they are registered on the national supplier data base. Regulation 11(2) prohibits unregistered companies from supplying. Much as it is good for tax compliance provisions, the requirement for registration in the national supplier data base hinders small scale enterprises from benefiting from the local content legislation and a recommendation to this provision will be considered in the forthcoming chapters of this report.

Another but final important aspect introduced by the Petroleum (Exploration, Development and Production) (National Content) Regulations 2016 is the labour clause in all contracts which exceed US \$ 1,000, 000. Expressly the regulation states that “all contracts whose total budget exceeds US \$ 1,000,000 and are to be executed in Uganda shall contain a labour

clause mandating the use of a minimum percentage of Ugandan labour in specific categories as may be stipulated by the authority” this is important towards achieving the objective of encouraging local content through employment of citizens in the process of petroleum exploitation, development and production.

In conclusions to this chapter, it is important to note that Uganda has one of the best policies and legal frameworks for local content in the petroleum sector aimed at increasing state participation, employment of citizens and use of locally available goods and services. However, it is not clear as to whether such provisions are fulfilling the objective they were meant to achieve. The researcher will therefore examine the implication of these provisions and their practical benefit to Ugandans whilst highlighting on the challenges so far faced in the forthcoming chapter of this report.

Despite the move to train Ugandans in oil and gas related activities since 1986, there has been minimal absorption of such skillsets into the structures of foreign companies. This is partly because most of the prospection work has taken place outside the scope of a strong local content regime. It has also taken us a while to realize the imperative nature of a powerful national oil company operating independent of the relevant ministry and finance structures to properly harness local skills, effectively regulate stakeholders and ring-fence or otherwise properly utilize oil and gas revenues. Uganda still bemoans the lack of sufficient local fiscal and structural capital to invest or favourably compete against foreign investors. On this backdrop, there is minimal chance for skilled Ugandans to properly participate in the highly capital intensive and technical upstream activities which have headlined the Ugandan oil and gas story so far. Considering that there has been money to be made, there is no justification as to why none of that has trickled down to the Ugandan people in a meaningful way. There should have been a way for the regulators to capture substantial rent per capita for every shilling that has been exchanged in the oil and gas industry so far.

Debunking the Myth of Citizen Participation; on the question of whether citizens are effectively participating in oil and gas project, several terms come up and though similar should not be mistaken to be one and the same. These are: citizen participation, social license to operate, consent and local content. In the extractive industry, there is an on-going debate on what a social license to operate is, how to get it and how to keep it. The term “social license” or “social license to operate” refers to a local community’s acceptance or approval of a project or a company’s on-going presence. Consent is one of the ways in which an industry

player approaches the rights of affected communities. Such consent is best understood as a formalized, documented and verifiable social license to operate.

Local content as distinguished from citizen participation limits itself to the employment of citizens, transfer of technology and services provision. Local content is just one of the forms of citizen participation. Citizen participation involves processes that provide for individuals in a community an opportunity to influence public decisions which affect them. The context can be extended to include the process in which ordinary people take part- whether on a voluntary or obligatory basis and whether acting alone or as part of a group with the goal of influencing a decision involving significant choices that will affect their community. There has been extensive debate on whether citizen participation requires that only citizens of a community should be entitled to making decisions and whether citizenship should be extended beyond the scope of its legal definition.

Local Business Entities: A key component of Uganda’s local content drive is the procurement of goods and services from Ugandan suppliers. The Petroleum Acts do not define what a Ugandan business entails. The Upstream Act talks of a Ugandan company. What if the service providers are sole proprietorships, partnerships, cooperative societies or otherwise organized? ²⁰⁵Says that foreign companies are companies incorporated outside Uganda which run business in Uganda. Does that by default imply that a company incorporated in Uganda is a Ugandan company or merely a company incorporated in Uganda? Section 183(3) (x) of the Upstream Act provides that the Minister may make regulations for the approval of ‘competent entities owned by Ugandans’ for the provision of goods and services.

Comparatively, Nigeria passed the Oil and Gas Industry Content Development Act in 2010. This law aims at providing for the development of Nigeria Content in the Nigerian Oil and Gas industry; for Nigerian Content Plan; for supervision, coordination, monitoring and implementation of Nigerian content and related matters²⁰⁶. It defines a “Nigerian company” as one formed and registered in Nigeria in accordance with their Act and within fifty one percent equity shares held by Nigerians. It sets up the Nigerian Content Development and

²⁰⁵ Cap 92 Laws of Uganda 27 Section 53(1) Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act. 28 Act No. 1 of 2012 29 Silvano page 50

²⁰⁶ Chapter 308 33 Nigeria Oil and Gas Industry Content Development Act 2010 34 Preamble/ long title to the Oil and Gas Local Content Act, 2010

Monitoring Board and the Nigerian Content Consultative Forum. Priority is given to Nigerian independent operators, goods and services and to Nigerians in employment and training. One percent of all contracts upstream are to be paid to the Nigerian Content Development Fund. Also, it is automatic for bids with Nigerian content to win if they are within the ten percent price range. In the absence of local capacity, the relevant ministry may authorize importation of the required goods for not more than three years. The composition of management positions by expatriates is capped at five percent for a period of four years within which a Nigerian should take over. Some services are ring-fenced for Nigerians. These include legal, professional (where practical) and insurance. The law requires periodic reporting to the Minister. Operators in the sector are all required to maintain bank account(s) in Nigeria in which they must retain a minimum of ten percent of their total revenue resulting from Nigerian operations. This regime applies across the range of operations in the oil and gas sector.

4.2.3 The monitoring and enforcement mechanisms that Uganda can enact to ensure the effective implementation of local content requirements and how the impacts thereof can be measured

Technology Transfer: Objective five of the local content policy of Uganda envisages promotion of Research & Development and Technology Transfer. This will be achieved through preparation and implementation of plans for the transfer of technology and knowhow to Ugandan institutions; enhance capacity of existing institutions in the country to carry out research and development; encourage cooperation and collaboration. Identifying and prioritizing areas for R&D and technology transfer.²⁰⁷ Comparatively, in Nigeria the oil and gas buying companies encourage and facilitate partnerships and alliances between local companies and foreign companies in order to leverage their technical competences to grow. In some cases, the oil and gas company play active role in midwifing the business relationships such as where the buying company procures OEM proprietary items and require the manufacturer to provide field services representatives that are Nigerians. In other cases, the oil and gas company takes more passive posture by including in tenders and contracts mandatory minimum Nigerian content requirements, which compel local companies that are deficient in technical capacity to collaborate with foreign or multinational counterparts that have the requisite technical capacity but are deficient in minimum local content. The policy

²⁰⁷ National Local Content policy for the petroleum subsector in Uganda 2017

of contracting only with Nigerian registered companies for goods and services sourced abroad contributes to technical skills transfer to local companies.

Procurement Procedures: A review of existing body of literature lends support for the role of affirmative action on procurement procedures in promoting local firm's procurement participation in the O&G sector. Mushemeza, et al contend that countries with specific local content frameworks that prioritized affirmative action on procurement procedures are more likely to achieve positive outcomes in terms of employment creation, skills development and the participation of their national industry along the oil and gas value chain.²⁰⁸ In Nigeria, the findings are collaborated with some of the prescriptions of the NOGICDA are in tandem with supply chain management good standards of practice such as encouraging of fair competition in tendering processes, developing local supplier base to ensure security of supply, and engaging in research and development to improve the value chain. The minimum targets set in the Schedule to the NOGICDA, which are in many respects well above the current capacities and capabilities of the local suppliers, can be viewed as both constraints and opportunities for the oil and gas companies. These are wake-up call for the oil and gas companies to proactively engage in the development of local capacity and capability by deliberately shaping demands to maximize use of in-country resources, proactively investing in the development of local suppliers to make them fit to meet future demands, training Nigerian personnel to perform at the right levels while reducing operating cost, and sponsoring research and development activities to continuously improve the value chain. In complying with the Nigerian content law, multinational oil and gas companies in the Niger Delta are exposed to higher costs and longer schedules, but this can become a strategic investment that would pay back in future projects.

Financial Access: The national local content policy of Uganda targets improved access to financing by Ugandan enterprises to supply goods and services to the oil and gas industry.²⁰⁹ It has always been urged that access to financial services in a key success factor in promoting local SMEs competitiveness in the O&G sector a SMEs were less likely to access financial credit compared in IOC. The financial challenges is also exhibited in restricted access to finance by local SMEs due to lack of significant collateral requirements, and lack the knowledge and skills to prepare attractive business plans for loan proposals. It has also been

²⁰⁸ Mushemeza, E.D., Okiira, J., Morales, M., & Herrera, J.J. (2017). Local Content in Latin American and African Oil and Gas Sector: A Comparative Analysis of Selected Countries. *Global Journal of Human Social Science* , 17(3), 44-59

²⁰⁹ National Local Content policy for the petroleum subsector in Uganda 2017

noted that financial access is a key factor on entrepreneurship or business formation and business growth through participation in business opportunities in the O&G sector.

In Nigeria, Lack of adequate financial capacity is a key limitation for many indigenous companies that wish to participate in the Nigeria oil and gas industry. Due to difficult and stringent lending terms, many small and medium scale enterprises are hardly able to obtain loan financing from commercial banks in Nigeria. To address this problem, some of the multinational oil and gas buying companies have implemented measures to assist the indigenous companies with financing of contracts and purchase orders. These include facilitating access to bank loans, quick invoice payment, and direct support with funding by way of upfront payments.

Relatedly, the Nigerian content law further established the Nigerian Content Development Fund (NCDF) with the objective of providing financial support for the development of technical capacity and capability of Nigerian indigenous companies and development of local content development support infrastructure. The NCDF, which the NCDMB administers, is funded from mandatory 1% tax on all contracts awarded in the Nigeria oil and gas industry.

Collaboration among Oil and Gas Companies to Develop Local Content: The oil and gas companies in Nigeria collaborate for the purpose of ensuring long term health of the oil and gas industry under an umbrella association named the Oil Producers Trade Section (OPTS), a sub-group of the Lagos Chamber of Commerce and Industry (LCCI). Membership is voluntary and currently comprises 30 members, which include the multinational oil and gas companies and the indigenous oil and gas operators. Collaborations among the oil and gas companies under the OPTS as part of local content development strategy. In Uganda, the government has not done Training Needs Assessment or other forms of capacity needs assessment for the oil and gas sector and the only existing data is the study conducted by the joint partners involved in the oil and gas sector. This means Uganda will have to rely on data provided by industrial players. The challenge with this data is it was gathered and analyzed in the lenses of an industrial player seeking to maximize profits and this may not necessarily reflect the needs of the country. The industrial survey data reveals that the Oil and Gas sector will employ 13,000 people in the construction phase (within 3 to 5 years), this will drop to 3,000 people in the operational phase (20- 30 years). Out of this manpower required 15% will be engineers and managers, 60% will be technicians and crafts persons and 25% will be

unskilled workers¹⁵. The industrial survey recommends that focus in education should be put on civil construction, electrical and mechanical fields.

CHAPTER FIVE

RESULTS AND KEY FINDINGS.

5.0 Introduction

The study having considered the regulatory regime in both Uganda and Nigeria, the researcher made some findings regarding the implementation of LCP in both countries. The findings were divided into thematic topic to enable a systematic analysis thereof.

5.1 Recap of the research objectives

This study considered the following research objectives; to assess the regulatory and institutional regime governing LC in Uganda's oil and gas industry, to identify the successes and the challenges affecting the enforcement of the laws and policies of Local Content in Uganda, to compare the successes and failures of Uganda to other jurisdictions such as Norway and Nigeria in all matters local content in the oil and gas industry and finally determining the lessons that can be learnt from the different jurisdictions to better the outcomes in the implementation of Uganda's local content law.

Uganda boasts of very progressive LCP reason being that the prevailing laws having benchmarked from countries like Norway that have had tremendous success in the implementation of LCP. That notwithstanding, the peculiarities and contexts of the various countries cannot be overlooked while pushing for better outcomes in the implementation of LCP. Laws are not implemented in a vacuum. LCP goals cannot be achieved if the local goods and service providers or local contractors have not reached international standards of Health, Safety and Environment. This among other continuing challenges like corruption, weak governance e.t.c continue to weigh down the implementation of LCP which if not corrected could lead Uganda into suffering the resource curse.

The chapter discusses the key research findings, the successes achieved thus far as well as the challenges that stand in the way of the success implementation of LCP in the Oil and gas industry in Uganda.

5.2 Key Findings

5.2.1 Appreciation and knowledge of the local content policy in the Oil and Gas sector in Uganda.

For the success implementation of LCP, it is important that the nationals or locals understand fully where the oil and gas industry was since exploration, where it is today and where it is going. It is also of paramount importance that the locals understand fully what local content is, what is required of nationals in order to benefit from this lucrative industry.

The Research findings revealed diverse levels of appreciation of the Ugandan Local Content Regulatory Regime. Some participants were of the view that for one to participate and benefit in the industry one ought to have qualifications related to the oil and gas sector. This in itself showed that for many Ugandans, local content was limited to employment opportunities only which is not the case. The lack of information about the sector was a big problem which limits the number of participants in the sector.

5.2.2 Unrealistic and unachievable targets.

Laws cannot be enforced in a vacuum. This research revealed that the regulatory regime mostly places the blame on IOCs for their failure to comply with the various requirement of national content such as prioritising goods and services that are manufactured or provided by local firms and yet the quality of the services and goods offered have not been developed enough to meet the internationally required standards in terms of time, price, quality. The drivers of successful local content strategy have to be available to ensure success of the law. Uganda still faces challenges such as unreliable power, load shedding, poor transport that make it very difficult for local firms to competitively participate in the oil and gas industry as compared to their international counterparts.

5.2.3 Lack of capacity for enforcement

According to the respondents, one of the biggest challenges faced by PAU is the lack of the authority's power to crack the whip on non-compliant IOCs.

Advocates' in Kampala complained that IOCs lodge training plans with the PAU that they fail to comply with. And when PAU officials' attempts to crack the whip, they receive calls advising them against going against investors.

Others informed the reporter that a number of IOCs had breached the terms of the PSA regarding National Content by failing to submit National Content Reports to the MEMD and that others had simply delayed to do so but nothing was being done to correct the breaches.

5.2.4 Training

Training was a subject that was highly encouraged by most participants. The challenge that cut across regarding training of Ugandans regarded the financial muscle to fund the trainings and well as the willingness of the Oil companies to train the Ugandans employed in their companies.

Small efforts were being made by the IOCs towards the training of Ugandan Staff. There were reports that although a budget had been set aside for training of staff, the budgets were not being utilised. There were also complaints about the reluctance of oil companies to address the identified gaps for Ugandan employees. The oil and gas industry is highly capital intensive, high risk and highly technical. It therefore becomes very difficult for the IOCs to be expected even if by law to hire unskilled personnel for jobs that require expertise and rather than concentrate on the day to day running of the affairs of the companies turn their projects into a training ground for local employees who have no knowledge of the projects. Any mishaps committed by these highly un skilled locals could have the effect of burning the projects to the ground which IOCs cannot risk.

There is also a risk of IOCs heavily investing in the training of locals in compliance with section 126²¹⁰ for instance, who may fail to attain the required skill set after all.

UNOC that had put up programmes for the training of the most needed human resource for this phase which includes technicians and welders. Its main focus is the training and certification of welders. UNOC's plan is to provide enough welders and technicians to service the oil and gas industry and the same skills possessed by the spill overs will be transferrable to other sectors such as agriculture for irrigation, and other departments of the MEMD such as hydroelectric power sector. By 2020, over 700 Technicians have been trained, trainers and instructors had also undergone training and over 50 scholarships have been offered to professionals to undertake post graduate programs with support from organisations such World Bank, Enable/BTC, and GIZ SOGA.²¹¹

²¹⁰ PEDP Act.

²¹¹ Presentation by Bintu Peter Kenneth (2020) Local Content in the Oil and gas Sector in Uganda, PAU

On the other hand, government officials complained about the lack of a consolidated plan for training government officials and also that some of the delays were occasioned by the failure by MEMD to submit names of trainees.

It was reported by one of the respondents that \$ 4.1m had been deposited in the Central Bank and set aside towards training of government officials but that money was never utilised and that at the end of last financial year it was transferred to the Consolidated fund and Non-Tax Revenue (NTR)

5.2.5 State participation

The researcher was informed that about UNOC's commitment to ensure the realisation of the state's participating interest of licences, contracts granted under the act and through engaging in joint ventures.²¹² So far, this participation is evident from the way UNOC is participating in the three big projects. The participation is even more forthcoming now that the announcement of the FID was made.

An official from UNOC who was quite optimistic at the State of affairs of UNOC informed the researcher that the Government of Uganda was fully committed to financially supporting all the project that UNOC was taking part in. he stated that of the \$309m, the government had already provided \$ 135m for participation of this financial year's activities towards the cash calls and that the payment of the rest would be spread out as will be required within the next 3 years.

The researcher was further informed that the Ministry of Finance had been ordered to avail UNOC with \$500m from the medium-term expenditure to fund the refinery project whereas no funds were required so far to fund the upstream project since UNOC was being carried until production of oil starts.

The official also informed the researcher that there was an increase in the level of state participation that the company was allowed under the new PSAS.

Whereas the State was allowed to participate to as much as 15%²¹³ of the whole project under the 2001 and 2004 PSA, the new PSAs that were signed with Oranto and AMA allow the state to participate in upto 20% which accounts for an increment of 5%”.

²¹² Section 124 PEDP Act.
²¹³

5.2.6 Commercial participation of UNOC

An official from UNOC voiced his pride in the fact that the company had applied for licencing for an oil field solely. This is indicative of the potential of UNOC and its commitment to evolution towards capacity building so that in future, it will be able to partake in ventures with atleast 40% to 60 % partnership. This is a purely commercial participation that has nothing to do with the limitations expressed under section 124 of the PEDP Act for state participation.

5.2.7 Employment

One of the tools of Uganda's local content regime is employment or recruitment of nationals²¹⁴. In fact, the law clearly makes it a requirement for the licensee to submit to PAU for approval a detailed programme that shows how recruitment and training of Ugandans will be done within twelve months at the beginning of the project and thereafter on the anniversary of grant of license. It is important to note that direct employment contributes a very small fraction of the local content realisation.

This is because the industry has a low absorption rate for Ugandans seeking employment therein. Even the few Ugandans that are employed in the sector mostly get blue collar jobs. For instance, for the period between 2017 and 2020 the petroleum sector only employed approximately 1000 people. That is a representation of both the persons directly employed and indirectly employed by the sector. Only 217 of those were directly employed in the sector. The total number of nationals employed by TEPU, CUL, TUOP combined was 162 which accounts for 74% of the total number of employees in Uganda between 2017-2020. When this is measured in comparison to the contributions of other tools of local content such as the provision of goods and services, employment fades in comparison.

5.2.8 Inadequate Qualified Personnel to Take Part in the Oil and Gas Value Chain

As discussed in previous chapters, local content is concerned with the utilisation of local labour in the oil and gas industry. One of the key drivers of local content is the desire by the government to create employment opportunities for its citizens. However, the industry requires highly skilled workers like petroleum engineers, geologists, welders, among others skilled personnel. The challenge that Uganda is facing, is that, there is a shortage of

²¹⁴ Section 126 PEDP Act.

professionals to serve in the capacity of highly skilled personnel required in upstream petroleum operations.

This inadequacy leads IOCs to bring in expatriate workers to fill in the gap. In order to capitalize on employment opportunities available in upstream petroleum operations, the government needs to put in place mechanisms to train or sponsor local people to train and acquire technical skills in areas such as petroleum engineering, welding, geology among other technical fields required in the oil and gas value industry chain.

5.2.9 Corruption

The enforcement of LCP in the petroleum industry requires transparency and incorruptible personnel to ensure strict compliance of the local content requirements that have. Corruption is occasioned by the lack of capacity by PAU to monitor and measure compliance with the alertness required. This in itself has led to the abuse of the system by some officials that develop very close ties with the private sector and consequently distort the award of licences and permits, allow foreign companies to use what they purport to call local companies that belong to the officials in order to meet the bidding threshold and in turn pay a proportion of the proceeds of the contract to the official. This defeats the whole purpose of LCP.

Many firms or SMEs are required to pay bribes in to have their bids considered. Those that refuse to pay bribes have their bids ignored by procurement officials even when the quality for the award of the contract.

In a bid to foster transparent and accountable management of Uganda's oil and gas resources as well as other natural resources wealth, Uganda joined the Extractive Industries Transparency Initiative (EITI) in August 2020²¹⁵. This was an aspiration that was made first in the National Oil and Gas Policy, 2008 and later in the Oil and Gas Revenue Management Policy, 2012. This initiative requires oil companies to publish what they pay and for the Government to publish what they receive from companies operating within their jurisdiction. These publications are subjected to independent audits and the results are then made available to the public which empowers stakeholders such as oil companies, civil society and the public at large to hold the players accountable. It also helps thwart opportunities for corruption and misappropriation of funds.²¹⁶

5.2.10 Effects of the continuous extension of production dates.

²¹⁵ Eiti.org/article/Uganda.joins.eiti

²¹⁶ Extractive Industries Transparency Initiative: A necessity for Uganda., Infosheet No. 12 of 2011, ACODE.

Many Ugandans who were initially excited to either get direct employment, supply goods and services, benefit from technology transfer, e.t.c in the oil and gas industry became disillusioned by the numerous extension of the production dates for first oil. After the announcement of the FID, the tentative expected time within which the flow of oil would be expected is between 24 to 36 months or 2025

In conclusion, whereas the Uganda has made several steps towards achieving increment in national content, there is still a lot to be done. Rather than measure the success of LCP on the mostly on the level of employment but rather on the level of service and supplier base that the other sectors of the economy feed into the petroleum sector through backward linkages and the number of sectors that the petroleum sector feeds into.

CHAPTER SIX

RECOMMENDATIONS AND CONCLUSIONS:

6.0 Introduction

This chapter contains the various recommendations and conclusions made based on analysis of various text and legislations concerned with an assessment of local content implementation local content policy in Uganda and Nigeria.

6.1 Recommendations

For government and the major stakeholders like the oil companies to ensure effective compliance to the local content legislation, the researcher recommends the following policies to be adopted.

Need to amend the law to address the existing gaps: As noted earlier, the Petroleum (Exploration, Development and Production) Act does not clearly define what a Ugandan company is. Even the definition rendered by the regulations²¹⁷ does not conclusively define a Ugandan company because they only consider the place of incorporation and not whether the persons behind the corporate veil who are the ultimate beneficiaries from these companies are actually Ugandans. Parliament should therefore amend the legislation in order to address this gap for it to target not only companies which are locally incorporated but also the brains behind them should also be Ugandans. This in the long run will help achieve the objective of eradicating poverty²¹⁸.

Development and empowerment of suppliers and service providers. The Norwegian success story was based on the development of the technical competence of the local and the capabilities of local firms that enabled them service the local market and the other countries abroad. It was also based on value addition. This enabled the country secure absolute control of the petroleum sector and the maximisation of benefits from the sector. This can be achieved by growing the industrial base of Uganda. The failure to grow the home industrial base leads to capital flight because even when the local firms manage to secure contracts to service the petroleum sector, most of the proceeds from the contract will be exported abroad to the companies that manufacture the goods and equipment that are used in the performance of the contract.

²¹⁷ Petroleum (Exploration, Development and Production) (National Content) Regulations 2016.

²¹⁸ NOGP 2018

So far most of the local suppliers lack the capability to provide goods and services that are competitive by the international standards. They end up being rejected by the IOCs the first-tier companies which instead resort to goods and services from foreign companies.

The development and empowerment of these local suppliers will help address this challenge. The researcher recommends Ministry of Energy and Mineral Development which is the line Ministry to work closely together with the Ministry of Finance, Planning and Economic Development to provide soft loans to the potential local suppliers in order to boost their production to supply goods and services that meet the standards required by the oil companies. This in the long run will improve the rate of compliance to the local content legislations.

Training of Ugandans:

The role of PAU, UNOC, MEMD regarding training and arming Ugandans with the necessary skills should not be overemphasized. NOGP makes the need for local content training an important aspect of the regime. A step in the right direction was taken through the establishment of Uganda Petroleum Institute Kigumba (UPIK)²¹⁹ to enhance capacity building in the oil and gas sector. UPIK trains Ugandans in different fields to empower them offer labour required in the sector.

However, there are about two challenges that need to be addressed to improve the performance of the institute, namely its location in the ministry of Education and its capacity to produce the required number of labourers.

Location of UPIK: the debate on the location of the institute has created a lot of confusion because much as it is a specialized institute for the petroleum sector, the institute is located under the ministry of education and sports which has its own challenges ranging from its poor funding to the inappropriate courses and curricula offered which may not be of relevance to the petroleum sector

The researcher therefore recommends that the institute be moved to the Ministry of Energy and Mineral Development which is the entity best suited to properly fund it, monitor it and supervise it with the help UNOC in order to produce the desired employees for the petroleum sector.

²¹⁹ UPIK Strategic Plan 2014-2019

Can UPIK as a sole institute produce the required number: It is crystal clear that having only one specialized institute to train and equip Ugandans in petroleum activities is not easy to achieve because on average the institute can only produce 500 employees per a year. Therefore, in order to achieve the objective of training and equipping Ugandans, other specialized institutes ought to be set up by government perhaps at regional levels to train Ugandans in the petroleum activities.

Transparency and accountability

There is need for the Government to promote good governance, transparency and accountability in the manner in which the affairs of the oil and gas industry are managed. These must form the threshold for the award of petroleum licensees, permits, and tenders to carry out petroleum activities. The Government also has the obligation to ensure compliance with atleast the minimum local content thresholds by licensees.

Make a Law on Local Content: Parliament should pass a law to provide for 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 others.

Create Institution to Manage Local Content:

The creation of an independent entity to champion the local content within and without the oil and gas industry would help create and develop more linkages which would in turn be beneficial to the overall development of the economy. The entity would be mandated under law to oversee and monitor compliance with the local content regulatory regime in Uganda with powers to punish entities for the violations and failure to comply with the law. At present, there are disjointed efforts for the oil and gas sector.

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

Build Capacity for Industry Players: Capacity should be built for training institutions which are targeting providing labor for the oil and gas market. This should be expanded beyond UPIK to include other institutions. Focus should also be put on developing capacity of institutions that will provide support services; this includes a wide range of areas such as business, agriculture, tourism, among others. Deliberate efforts should be dedicated to improving the performance of Ugandan businesses which in the long term should focus on making these businesses attractive to regional markets within the East African Community and beyond.

The regulatory organs of the National Content institutions should be empowered to enforce the National Content law even against IOCs who breach the statutory duties such as failure comply with the National Content Plan, without interference from the government.

There should be an increment in the dissemination of information by UNOC, PAU and MEMD about the various opportunities that exist in the sector and how best Ugandans can access the available opportunities. This should be done through National Content Supplier Focused Conferences, social media presence, Television shows, Radio shows, e.t.c.

The Ministry of Finance and Economic Development should avail adequate operation funds to UNOC and PAU in order to facilitate to day to date operations of these entities that are central to the realization of the National Content Goal.

Ugandan Companies which possess limited capacity to bid on their own should form joint ventures with other companies doing the same business which will boast their capacity and capability to partake in bidding rounds so that they can benefit from the oil and gas industry.

There is need to understand where the industry has been, where it is and where it is going input to appreciate the various opportunities for the various business entities and this would enable more plugging into the sector for the players.

Increase Inclusion in Decision Making: The formalization of the standing participation forums which would in turn ensure more formalized consultations at various levels. This would result in enhanced community participations and involvement and acceptability of Corporate Social Responsibility (CSR).

There is need for Ugandans to understand that employment only constitutes a fraction of local content policy in Uganda and that various opportunities exist in the sector that is not necessarily direct employment. The nationals need to know that for one to benefit from the sector, they do not necessarily have to be a professional. They should be advised to stay in their various fields like agriculture, banking e.t.c but look for ways in which they can utilise opportunities that have come with the petroleum sector. For instance, supply of food stuff to the 1000-man camp, there is demand for health services due to the influx of labour in the project areas, housing services are required for both residential and office space. Nationals should be informed about the various initiatives by PAU, MAAIF, and JVs which support communities to respond to opportunities in agriculture.

6.2 Conclusions

In conclusion therefore, the researcher finds that Government has made positive efforts towards promoting national content in the petroleum sector through enacting legislations and regulations such as the Petroleum (Exploration, Development and Production) Act and Petroleum (Exploration, Development and Production) (National Content) Regulations 2016. However, the overall management of the aspect of national content by the ministry of Energy and Mineral Development has not been adequate and as a result there have been challenges in realizing the national content objective to eradicate poverty through the employment of nationals in the petroleum sector.

It is also the researcher's conclusive finding that local content legislations target giving preference to the local Ugandans and the Ugandan companies in employment and award of contracts to supply goods and services to the licensees and their contractors and subcontractors in the petroleum sector. However, it ought to be noted that the legal regime is silent about what a Ugandan company is or even what it should be. Even when the regime tries to define a foreign company, this definition simply creates more confusion than answers. This being the basis upon which the aspect of local content is founded, it is crystal clear that the rate of compliance to the local content legislation is likely to be negatively affected unless a strict interpretation of a "Ugandan company" is clearly drawn.

This study provides empirical evidence of the influence of LC policy on local value creation in the oil and gas industry in Nigeria, with particular reference to indigenous oil firms' participation, backward linkages and job creation. Study findings prove that there are benefits associated with the adoption and implementation of LC policy on all of these factors. The

results confirm that LC policy has a positive and significant impact on increasing local value creation, vis-à-vis, increased local firms' participation and backward linkages development. It was also found that local firms' participation and backward linkages have positive and significant direct effects on job creation. Our results indicate that the interaction between LC policy and infrastructure is positive but marginal. The impact of infrastructure on local entrepreneurs' participation is found to be positive and statistically significant, but its effect on backward linkages is not significant.

Similarly, results found that LC policy has a positive significant indirect effect on job creation through indigenous oil firms' participation and backward linkages. However, the results show that local value addition created as a consequence of LC policy is less than average. This suggests that the targets for content development in the Nigerian oil and gas industry have not been met. It can also be argued that the policy outcome in Nigeria may not be as substantial as for other oil-exporting countries such as Norway and Venezuela.

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