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**EXAMINING THE CHALLENGES AND OPPORTUNITIES IN ENFORCING THE LOCAL  
CONTENT POLICY IN THE OIL AND GAS INDUSTRY IN UGANDA**

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## **Abstract**

Despite its nascent history, the Exploration and Production (E&P) sector in Uganda has experienced tremendous speculation, ambitious prospecting and significant farm downs. For the most part, this trend has been dominated by foreign players who even when they have exited the market have been succeeded by other foreign oil companies. Given the capital-intensive nature of the upstream industry, it is not surprising that not many local professionals and service providers have broken into the E&P market. It is safe to assume that most companies and individuals had prepared for the labour support functions expected to tap in when production starts. With production deadlines being adjusted consistently, Ugandans have for the most part failed to share in much of the ongoing oil and gas bonanza with foreign investors. Conversely, foreign E& P specialists continue to make a killing in that part of the business if the infamous farm downs amongst Tullow Oil, Total E&P and CNOOC are anything to go by. Recently, Uganda passed a local content policy. It is hoped that the policy will harness local talent and strengthen a local pool of Oil and gas service provision. Affirmative obligations demanded by the policy show a clear objective to get some locals into the oil business regardless of the progression from prospection to production. If followed, foreign investors in the oil and gas industry must follow a clear plan to transition leadership and service provision to locals over a structured period regardless of the success of their investment. This is likely to cause challenges for investors in relation to return on investment and retaining the most skilled talent required for leadership in the E& P sector. This paper seeks to identify and colour the possible benefits to Ugandans when this policy succeeds and the infrastructural and other challenges that the implementation of this policy poses to investors in the sector and the investment climate. The paper will highlight possible areas where the regulator and investors can strike a middle position for mutual benefit

## **Background of oil sector in Uganda**

It has been reported that the inhabitants of present day Bunyoro were the first people to see signs of oil in the area and they called it “Mawuka”. Between 1890 and 1891, Captain Frederick Lugard of the Imperial British East African Company (IBEAC Co.) travelled to Western Uganda to inspect reported surface seeps. The company declared ownership of the resources and consequently licensed the British East African Syndicate to prospect for oil. In 1925, E.J Wayland, Director of the Geological Survey of Uganda, reconfirmed evidence of hydrocarbons, including oil and gas seeps, in the Albertine Graben. In 1957, the colonial government passed the Petroleum Act. Between 1980 and 1984, Uganda

used funds loaned by the World Bank to undertake aerial magnetic surveys in the Albertine Graben. The surveys identified major sub-basins deep enough for oil. In late 1984, a meeting was held in London to attract oil exploration companies, but it drew little response because the aeromagnetic surveys were supported by only “scanty data . . . [on] . . . the geology and geophysics and seismology of Uganda.” In 1985, a Petroleum (Exploration and Production) Act was passed into law and a Petroleum Unit established within the Geological Survey and Mines Department of the Ministry responsible for Energy. In 1986, government suspended all negotiations for licensing. Between 1986 and 1990, the Petroleum Unit devoted time to recruitment, training and procurement of equipment. In 1990, Uganda and Zaire signed an Agreement of Cooperation for the Exploration of Hydrocarbons and the Exploration of Common Fields. Not much was yielded from this agreement in practice. In 1993, Petroleum Exploration and Production Regulations were passed. In 1995, the Constitution of the Republic of Uganda was enacted with detailed provisions on ownership and administration of resources, access to information and related rights. In 2006, multiple finds confirm Uganda’s commercial oil potential. Between 2003 and 2006 discussions about joint surveys with Uganda and DRC were fruitless<sup>2</sup>. In 2008 a National Oil and Gas was adopted by the Ministry of Energy. The Petroleum (Exploration, Development and Production) Act, 2013 and the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, were passed in 2013. In 2016, the Petroleum (Exploration, Development and Production) National Content Regulations were passed.

### Labour Absorption in Oil and Gas

Most natural resources are in remote places without the comparable advantage of connectivity and infrastructure available in the more inhabited cities and countries. As such, extraction of such natural resources is always done by investment of international companies, national/local companies or jointly by both where possible. Thus, human rights trends and other labour practices demand inclusion and informed consent of the peoples in such places as a social license to operate. This obligation is to be progressively realized in the terrain of steep skills and industrial capacity gaps. By its nature, oil and gas production is capital intensive and technical skill biased. Initial upstream activity such as aero magnetic surveys, seismic studies and data interpretation require highly specialized skillsets and

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<sup>2</sup> Reuben J. Kashambuzi; A Matter of Faith: the Story of Petroleum Exploration in Uganda 1984—2008, see also, Fred Guweddeko: Uganda’s Search for Oil and Bush War Delayed Obote Drilling Oil (Series of two articles in The Monitor, Kampala, November 1 and 2, 2000)

advanced technology. Negotiating permits, securing of real estate, drilling of wells and setting up a proper storage, waste management and oil and gas supply chain are capital intensive technical ventures. It is also imperative to note that some of the activities in the upstream sector are one offs and rather than invest in them, most companies outsource these components to highly specialized international mercenaries. It would also not be a wise move for Ugandans and or Ugandan companies to specialize in products or services which only exist as a stint of the oil and gas production life cycle. The production and to an extent mid and downstream sectors provide more realistic options of absorbing local skillsets such as small medium enterprise engineering, supply chain, legal, environmental specialists, hydrocarbon retailing and human resource management.

With the rosy prospects of hydrocarbon development in Uganda, there have been high hopes on what it would mean to individual Ugandans and the economy at large. These hopes have for the most part been illusory owing firstly to the multiplicity in change of regimes since the first traces of oil and gas were seen. This has been coupled with rudimentary to no local skill capacity to extensively evaluate the commercial viability of the projected finds. Given that most of this resource is shared or proximate to the Uganda and Congo border, the economic impasse between the two countries and cross purposes regarding unitization possibilities have not been helpful. Like most oil producing countries, Uganda stands a high risk of facing the Dutch disease, the oil curse and must be affirmative in curbing such cliché vices and other subtle forms of rent seeking which cripple gains in natural resource development. 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.

The trend has been for Ugandans to position themselves in blue collar pockets of the oil and gas bonanza with limited success. In the upstream game, even for transportation of materials, most Ugandan companies have been priced out of the heavy and highly specialized equipment required to claim a stake. Relatedly, there has not been sufficient work in oil and gas supply chain to absorb relevant capital so local investors in that support sector would need to diversify their portfolio but how so with highly specialized equipment? The government has not helped the situation. It has set and extended production dates inevitably leaving many hopeful Ugandans disillusioned. Those who had the chance, have been able to secure employment in more progressive oil and gas markets. Government has also been blindsided by ingenious upstream black jack with highly lucrative farm down transactions being concluded amongst foreign companies without a clear rent capture plan on the side of government. A classic example is the Tullow Oil Capital gains debacle and the consequent legal and political scandal dubbed the “Presidential Handshake”. Cases such as these have shown that Uganda needs to do better and packaging its rent capture plans to the dot and ingrain in the relevant civil service, the extent of their civil duty and proper over and above remuneration within democratic frameworks.

Some of the market players in Uganda such as CNOOC, Total and Tullow Oil have conducted market surveys into the oil and gas skills needs. The industrial survey data reveals that the sector will employ 13,000 people in the construction phase (within 3 to 5 years), which will drop to 3,000 in the operational phase (20 to 30 years). The proportion of the manpower required will be 15% engineers and managers, 60% technicians and crafts persons and 25% unskilled workers<sup>3</sup>. This survey identifies apparent capacity gaps in the extractives sector in Uganda such as limited qualified civil crafts persons, drivers and mechanical technicians. The meagre supply of some skills such as welders and electrical technicians might be sucked into the sector depriving other sectors in the process. Besides, it is expected that a total of 100,000 indirect jobs will be created. Such support industries include textiles, agriculture, and feeder road construction and information communications technology. Outstanding issues from the industrial survey point to the need to develop capacity in the technical and engineering areas, the need to certify trained personnel for international accreditation and the need to focus on support sectors. There is need to the government of Uganda to conduct independent industrial

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<sup>3</sup> See CNOOC, Total and Tullow (2014) Planning for the Future and Promoting National Content: A survey to Foster Opportunities for Ugandans in the Oil and Gas Sector.

surveys using the lens of maximizing local content instead of relying on investor data which cannot be divorced from the need to maximize profits and establish a footprint in the industry.

### Debunking the Myth of Citizen Participation

On the question of whether citizens are effectively participating in an 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 ongoing 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 ongoing presence<sup>4</sup>. 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. Consent is free to the extent that communities or peoples are informed of their right to refuse specified activities and are in fact able to do so without a sense of coercion. The end goal should be that processes through which such consent is obtained are properly documented and incorporate traditional decision making procedures while taking culturally appropriate steps to include marginalized groups<sup>5</sup>. Local content refers to efforts aimed at building the local (national) capacities to engage in the extractives sector of a country. Such efforts are aimed at development of skills, transfer of technology, training and employment of citizens in the sector. Although local content is a ubiquitous phrase in the narrative of natural resource utilization, it is often confused with citizen participation. A proper isolation of the two terms helps us to properly appreciate their scope and tailor policy strategies towards optimum inclusion. 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<sup>6</sup>. 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

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<sup>4</sup> Brian F. Yates and Celesa L. Horvath; Social License to Operate: How to Get It, and How to Keep It. Pacific Energy Summit

<sup>5</sup> Amy K. Lehr and Gare A. Smith; Implementing a Corporate Free, Prior and Informed Consent Policy: Benefits and Challenges pages 8 and 9, July 2010; Foley Hoag eBook

<sup>6</sup> Cogan A., Sharper S., & Hertzberg J. (1986). Citizen Participation. In So, F.S., Hand, I. & Madowell, B. D. (Eds), The Practice of State and Regional Planning. Municipal Management Series. Chicago: American Planning Association.



the goal of influencing a decision involving significant choices that will affect their community<sup>7</sup>. 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<sup>8</sup>. There is also a question on whether the focus should be on local ownership of projects or other forms of interventions through increased participation by residents (as opposed to citizens)<sup>9</sup>. Citizen participation involves power relations between members of a community and their leaders and the ability of that community irrespective of where it is located to take part in decisions and activities which affect them.<sup>10</sup> In Uganda, citizen participation would encompass elaborate democratic processes on resource governance and spending. This would take the form of Parliamentary approval of critical administrative decisions, referenda for even more critical decisions. The administration of resources in Uganda is still an extremely secretive affair with the Special Forces of the Uganda Peoples Defence Forces directly protecting these resources outside the scope of civilian supervision. Parliament has also not been able to effectively monitor regulatory functions such as the Uganda Revenue Authority and the Ministry of Energy and Mineral Development in ensuring transparency in negotiations, diligence in ensuring the Uganda gets the best out of these resources and that resource funds are properly spent. The ideal would be to steer the conversation towards bridging the gap between rudimentary local content requirements and the desired end of citizen participation in decision making concerning natural resource governance.

Uganda has been member of the WTO since January 1, 1995. All World Trade Organization (WTO) Members must adopt and abide by the obligations of TRIMs. This can impact a country's ability to impose certain local content requirements (referred to as "investment measures"), to the extent they affect trade in goods. Uganda, as a Least Developed Country, is only required to implement TRIMs to the extent consistent with its individual development, financial and trade needs and administrative

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<sup>7</sup> Andre, P. et al. (2006). *Participation Publique: Prnciples Internationaux Pour Une Meilleure Pratique*, Publication Speciale, Serie No. 4, Fargo (ND): International Association for Impact Assessment. Available at [https://www.dictionnaire.enap.ca/dictionnaire/docs/definitions/defenitions-anglais/citizen\\_participation.pdf](https://www.dictionnaire.enap.ca/dictionnaire/docs/definitions/defenitions-anglais/citizen_participation.pdf)

<sup>8</sup> Thomas Webler (1995) "Right" Discourse in Citizen Participation: An evaluative Yardstick. *Technology, Risk, and Society* Volume 10, 1995, pp35-86. Also, see Cunningham, J. V. (1972). "Citizen Participation in Public Affairs," *Public Administration Review*, vol. 32, Special Issue: Curriculum Essays on Citizens, Politics, and Administration in Urban Neighborhoods, pp. 589-602

<sup>9</sup> Andre, P. et al. supra; also, see Rowe, G. and L. Frewe (2005). "A typology of Public Engagement Mechanisms," *Science, Technology & Human Values*, vol. 30, no. 2, pp 251-290.

<sup>10</sup> P. M Gwayaka, *Local Content in Oil and Gas Sector; An assessment of Uganda's legal and Policy Regimes*. ACODE Policy Briefing Paper Series, No. 28, 2014 p4

and institutional capabilities, subject to notification to the General Council. The following types of local content requirements are covered by TRIMS2:

1. Requiring a company to purchase or use products of domestic origin – TRIMs prohibits discrimination between goods of domestic and imported origin;
2. Limiting the number of imported products that an enterprise may purchase or use depending on the volume or value of local products that the enterprise exports;
3. Restricting foreign exchange necessary to import (e.g., restricting the importation by an enterprise of products used in local production by restricting its access to foreign exchange); and
4. Restricting exports

### Strides in the Local Content Regime

It is important that local content requirements are structured in a way that allows maximization of local opportunities. Through local content requirements, governments seek to ensure that investment projects generate employment and business opportunities for the national economy. They may also be a way to promote local business capacity. Through local content, the investor looks to getting a stronger social license to operate in the host country. The middle ground for the government and investor would be to incorporate some trade-offs in the contracts of Product Sharing Agreements for the limitations introduced through local content<sup>11</sup>. Local content is best understood by looking beyond the extraction itself but policies and laws which govern the entire oil and gas value chain. The oil and gas sector purchases inputs (both labour and the outputs of other sectors), which are either supplied domestically or imported. Imported inputs constitute a leakage, while domestic purchases provide further benefits to the economy<sup>12</sup>. The need for policies to bolster local content is easy to fathom. In a country like Uganda, it takes time to develop the necessary skillset required for labour consumption in technical aspects of oil and gas extraction. Given the large financial injection by foreign companies into oil and gas production, it is logical that part of the packaging is that the companies' technical people are deployed in the interim to disburse and assimilate extractive projects and assure proper utilization of resources. Despite the large element of rent resulting in large financial flows to the

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

<sup>12</sup> Silvano Tordo, Micheal Warner, Osmel E. Manzano, and Yahya Anouti, Local Content in the Oil and Gas Sector; World Bank Study 78994

government, this may not automatically result into creation of higher levels of value-added and employment in the economy. However, in undertaking local content measures, governments should properly analyze the skills gap in the economy, opportunity cost and net benefit of enforcing local content; prevailing legal obligations and challenges under international treaties and timelines for enforcing such policies<sup>13</sup>.

Articles 17 and 18 of the Model PSA provide for local content for purchases in Uganda and employment of Ugandans respectively. In the Model PSA, preference must be given to Ugandan goods and services unless they “are offered on terms which are not equal to or better than imported goods and services with regard to quality, price and availability at the time and in the quantities required<sup>14</sup>” Under the Model Product Sharing Agreement (PSA) 1999, a licensee is required to train and employ “suitably qualified” Ugandan citizens for positions including administrative and executive management positions. The licensee must also require its sub-contractors to do so<sup>15</sup>. The licensee must progressively replace its expatriate staff with “suitably qualified and experienced” Ugandan citizens. The licensee must convince the Advisory Committee established under the PSA for the project that no “suitably qualified or experienced” Ugandan citizens are available for key senior management or technical positions before it can hire expatriate staff.<sup>16</sup> Under the Model PSA, the licensee must provide an annual programme for training and for phasing in Ugandan citizens to the Advisory Committee for approval. The Licensee must also submit to the Government an annual programme for training government personnel on skilled and technical jobs in petroleum operations, and deposit with the Government fixed monetary amounts for training of personnel selected by the Government.<sup>17</sup>

The Petroleum (Exploration, Development and Production) Act, 2013 dealing with upstream activities came into force in April 2013, and was followed by the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, 2013 which deals with midstream activities came into force in July 2013. These laws provide for local content. Section 125 of the Petroleum (Exploration, Development and Production) Act, 2013 (the “Upstream Act”) in provides for: 1) preference to goods which are produced or available in Uganda and services which are rendered by Ugandan citizens and

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<sup>13</sup> Ibid page 14

<sup>14</sup> (Model PSA Art. 17.1).

<sup>15</sup> Model PSA Art. 18.1, 18.2 and 18.3

<sup>16</sup> Ibid

<sup>17</sup> (Model PSA, Art. 18.1, 18.2 and 18.3).

companies. 2) Where the goods and services required are not available in Uganda, they must be provided by a joint venture company in which a Ugandan company has a share capital of at least 48%. 3) Licensee to submit to the Petroleum Authority an annual report on use of Ugandan goods and services. *Section 126* provides for the Licensee to submit to the Petroleum Authority for approval a detailed annual program for recruitment and training of Ugandans. *Section 127* provides that the: 1) Licensee must include clearly defined training program for its Ugandan employees, including scholarships and other financial support for education. 2) Licensee must include a commitment to maximize knowledge transfer to Ugandans. 3) Regulations to prescribe the requirements for technology transfer of knowledge and skills.

The National Content Regulations<sup>18</sup> define national content to mean the level of Ugandan local expertise, goods, services, companies, Ugandan citizens, registered entities and financing in petroleum activities and substantial value added or created in Ugandan economy through the utilization of Ugandan human and material resources for the provision of goods and services to the petroleum industry in Uganda. Part 2 of The Petroleum (Exploration, Development and Production) National content Regulations 2016 provides for monitoring and implementation of national content. Furthermore, Regulation 6 empowers the Minister to consider national content when evaluating a license application. Regulation 6 requires the licensee within twelve months after the grant of the license to submit to the authority a national content programme for approval. Among the requirements of the national content programme is the proposal for the training and employment of Ugandans, transfer of technology, knowledge and skills to Ugandan companies, research and development of Uganda, procurement of goods and services produced in Uganda, and the support to local education institutions among others.

### Opportunities and challenges in Local Content Law

Some arguments have been advanced for the promotion of local content in oil and gas activities. These are categorized in three broad categories: increasing value-added, market failures/externalities and social objectives. For example, where countries have small industrial sectors, there is a hope for boosting the economy through policies which increase local content through value added. This is achieved through diversification to avoid the resource curse through addressing the volatility of commodity prices, market imperfections to avoid inefficient specialization in non-tradable goods<sup>19</sup>.

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<sup>18</sup> Regulation 4 of the Petroleum (Exploration, Development and Production) National Content Regulations 2016

<sup>19</sup> Silvano et al. supra page 26

The Petroleum (Exploration, Development and Production) (National Content) Regulations 2016 have tried to fill the gaps presented by the two Acts and PSAs. It has tried to provide for better definitions of what a Ugandan company and registered entity are, the meaning of technology transfer and active participation of local companies. The Regulations have elaborated measures for national content monitoring, plans for preference procurement; a national supplier database; unbundling of transactions to address capacity gaps, bid criteria to include national content; training of Ugandans and succession plans. One of the key components of the Regulations is the mandatory national content performance reporting. The progress made so far is such that, international investors and non-citizens have been eliminated from competing with locals in certain sectors. Regulations 10(1) and (2) and the Schedule to The Petroleum (Exploration, Development and Production) (National Content) Regulations, 2016 ring-fences the goods and services to be provided by Ugandan companies, citizens and registered entities. Include are transport, security, human resource management, fuel supply; foods and beverages among others.

#### Employment and Skills Development

Oil and gas producing countries use a variety of policies to improve the quantity and quality of local employment. This is usually through policies designed to increase the absolute and or relative number of nationals employed in the sector. It may also be through policies that promote the development of higher technical and managerial skills for national employees<sup>20</sup>.

It cannot be overemphasized that Ugandans will benefit from local content if the capacity of Ugandans to contribute to the skills' pool of the petroleum sector if it is improved and harnessed. The training must expand beyond straight jacket extractives training to support industries which will be required at varied stages of oil and gas production. Objective 7 of the National Oil and gas Policy presents the need to ensure optimum national participation in oil and gas activities. Objective 8 relays the need to support strategies for development and maintenance of national expertise in the oil and gas sector. Some of these strategies are: 1) promoting state participation in Production Sharing Agreements with a view of providing better opportunities for the state to understand the basis for decisions in exploration, developments and production, together with acquiring the skills necessary for commercial management of the sector. 2) Promoting public private partnerships whose benefits outweigh their cost, and whose costs and benefits are mutually and fairly shared by the partners. 3) Encourage civil

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<sup>20</sup> Ibid page 47

society to participate in the building of a productive, vibrant and transparent oil and gas sector. 4) Promoting the employment of Ugandans in the oil and gas sector. 5) Promotion of the transfer of skills and technology to the country. 6) Identifying training skills required for the sector and planning for their development through both formal and industrial training. 7) Utilizing oil and gas activities in the country to support provision of the necessary training. 8) Providing appropriate training to government personnel in the relevant fields as one of the ways to facilitate professional dialogue with oil companies. 9) Broaden the national education curricula to prepare the necessary workforce for the growing oil and gas sector in the country. The Upstream and Midstream Acts require prospective licensees to provide a plan for training and employing Ugandans in the sector. The Acts require the companies to submit to the Petroleum Authority of Uganda (PAU) for approval, a detailed program for the recruitment and training of Ugandans every year. The National Content Regulations adds timelines within which licenses should provide a recruitment and training plan for Ugandan citizens. The requirements require details of activity training requirements and attempt to streamline quotas for inclusion of Ugandans at different levels of the licensees work<sup>21</sup>. The implementation of such measures is likely to be problematic if in the least it is feasible. It mandates licensees to train staff without factoring in the continuity of the day to day running of the business. Secondly, this training requirement suggests that licensees may be forced to recruit personnel without the relevant skills, train and deploy them on the job. This risks the most technical parts of the sector prone to being turned into human resource laboratories in the quest to keep up with national content timelines. If the staff fails to achieve the minimum skillsets required even after the training, would the government compensate the licensee for such investment? Also, considering that employment is a contractual arrangement, what guarantee would the licensee have in retaining skills that it has imparted on a staff through such training?

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

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<sup>21</sup> National Content Regulations 2016 Reg. 17

Development Center tailored for oil and gas studies outside the focus of the Ministry of Education and Sports. The positive in training has been the transformation of the Cooperative Institute into the Uganda Petroleum Institute, Kigumba (UPIK).<sup>22</sup> Though this institute is run by the Ministry of Education and Sports, it is moot whether the Petroleum Authority is not better placed to regulate training and skills development for the sector<sup>23</sup>. Besides the capacity of UPIK is still below the threshold for feeding relevant skillsets into the sector. Another dilemma, is that if the training reforms anticipated focus entirely on the oil and gas sector, there will be a skills gap in support sectors which are equally important and or worst case scenario, over reliance by the economy on the oil and gas sector.

### 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? Section 251 of the Companies Act<sup>24</sup> says 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. The National Content Regulations defines a Ugandan company to mean a company incorporated under the Companies Act and which provides value addition to Uganda, uses available raw materials; employs at least seventy percent Ugandans and is approved by the Authority under regulation 9<sup>25</sup>. How does this aspect reconcile the incorporation matter into the assumption that the companies in question ought to be owned by Ugandans? Another question to ask is whether the controlling interest of such company adequately represent Ugandans? The Land Act Cap. 227 defines a non-citizen corporate body as one where the controlling interest (majority shares) is held by non-citizens, or where shares are held in trust for non-citizens, and whose articles do not restrict the transfer of shares to non-citizens. The focus for this Act is the controlling interest. The Public Procurement and Disposal of Public Assets Act, 2003 in bid to avoid ambiguity on local business

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<sup>22</sup> Universities and Tertiary Institutions (Establishment of Uganda Petroleum Institute, Kigumba) SI 31 of 2011

<sup>23</sup> See UPIK (2014) Institute Development Plan, 2014-2019

<sup>24</sup> Act No. 1 of 2012

<sup>25</sup> National Content Regulations Reg. 4.

entities provides for services and goods provided by a “national provider” who is defined as an entity registered in Uganda and wholly owned and controlled by Ugandans. Section 9 of the Investment Code Act<sup>26</sup> defines a foreign investor as one who is not a citizen of Uganda, a company which more than 50 % of the shares are held by a person who is not a citizen of Uganda and a partnership in which majority of the partners are not citizens of Uganda. The Midstream Act instead refers to registered entities<sup>27</sup>. Though this provision provides better accommodation than the Upstream Act, it presents challenges of its own. For example, Section 252 of the Companies Act<sup>28</sup> requires companies incorporated outside Uganda to register before carrying out business in Uganda. Regulation 4 of the National Content Regulations defines a registered entity as a business owned by Ugandan citizens registered under the Business Names Registration Act or the Partnership Act 2010. This does not help the situation where a company is incorporated elsewhere but owned by Ugandans. The Regulations do not address the issue of controlling interest in the shareholding of the company. It is unlikely that the seventy percent employment requirement sufficiently would automatically reflect the controlling interest of the company. Also, the requirements of value addition to “Uganda” and use of available raw materials are ambiguous in context if not impractical to enforce. Generally, without proper harmonization of the investment regime, it appears that the definition of what a Ugandan company is will vary from one sector to another. The requirement in Regulation 8(b) of the National Content Regulations for a detailed plan on preference for Ugandan companies, Ugandan citizens and registered entities is superfluous. It presumes that the National Supplier Database is an impeccable source of relevant service provider information or that the International Oil Company is in position to access information on available service providers outside a formal selection process.

### Ugandan Goods and Services

One of the possible benefits of petroleum exploitation is in the development of domestic suppliers of goods and services. This is even more plausible than achieving a sizeable headcount in direct employment in the sector. Enhancing this aspect of local content has to at a basic level address issues of competitiveness in contract awards between local and foreign vendors<sup>29</sup>.

In the Upstream Act, Section 125(1) provides that goods may be produced or made available in Uganda, by anyone, not necessarily Ugandan citizens or companies and that services must be rendered

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<sup>26</sup> Cap 92 Laws of Uganda

<sup>27</sup> Section 53(1) Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act.

<sup>28</sup> Act No. 1 of 2012

<sup>29</sup> Silvano page 50



by Ugandan citizens and companies. There is ambiguity on whether the alternatives provided by this section achieve the same result. Section 125(2) provides for the supply of goods and services, which are not available in Uganda. This means that suppliers of goods and services available in Uganda are not subject to the joint venture requirement and may be supplied by wholly foreign entity subject to the preference in subsection (1). We ask then, when can goods and services be said to be unavailable in Uganda? Some of the required services such as finance, legal and food supply are considerably available in the country. It is also worth noting that the section only provides for Ugandan ownership in suppliers to licensees and not as licensees themselves. It is also not clear why Section 125 (3) only focusses on Ugandan entities and does not provide for local tendering. Section 125 (5) does not help us understand what Ugandan goods are. The provision does not directly address suppliers of these goods. Section 53 (3) of the Midstream Act requires the licensee, the contractor and subcontractor of the licensee to give priority to the purchase of local products and services wherever they are competitive in terms of quality and timely availability. This provision is problematic given that it will take a while for Ugandan companies to realistically compete favorably in the petroleum sector. Regulation 8 of the National Content Regulations (supra) requires a licensee to show a plan for giving preference to Ugandan good where the goods meet the quality and timeline for delivery. It is also difficult to assess how this preference should be implemented, determinants of pricing, quality and timelines of delivery. For such reports to be meaningful, the licensee would need to be informed about industry and production dynamics in the country even outside the scope of its expertise and investment interest.

### Joint Ventures

There is a debate on whether policies involving the setting of targets for local sourcing are inherently protectionist. This depends on whether the target is set in relation to the capability, capacity and competitiveness of the local supply industry<sup>30</sup>. One of the measures set in Uganda, is the introduction of joint venture requirements as an affirmative step to ensure a level of local participation despite capacity gaps.

Given the capacity challenges of Ugandan companies to favorably compete in petroleum procurement, the local content regime tasks foreign companies to enter joint ventures with a local company for the supply of goods. Section 125 (2) of the Upstream Act also requires that the Ugandan

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<sup>30</sup> Ibid 53

company possesses at least 48% stake in the joint venture. Section 53 (4) of the Midstream Act is silent on the percentage requirement. All this is notwithstanding the National Oil and Gas Policy's emphasis on the need to for national businesses to develop their capacity to take part in the sector. Considering the incorporation requirements for the joint venture to take place, there posits a challenge for accounting and evidence of prior work to fulfil bid process requirements without support of the parent company. This incorporation process does not sufficiently cover regulated services such as legal work which is seldom in form of a corporate entity. Also, this mandatory requirement does not capture the skills and capital gaps typical of local companies. There is no guarantee on how committed Ugandan companies will be to the success of the project if they have a limited role<sup>31</sup>. Though Regulation 9 of the National Content Regulations (supra) provides for active participation of the Ugandan joint venture partner, it does not address the incorporation challenges, or the pragmatism of demonstrating prior experience and technology succession ability in a nascent sector.

### Local Content in the Region

#### Kenya

In Kenya, the key legislation is the Petroleum (Exploration and Production) Act<sup>32</sup>. The Act provides for preference to employ and train Kenyans in petroleum operations and to give preference to use of products, equipment and services locally available. The Model PSC indicates the context to be where prices, quantities, quality and timelines of delivery are comparable with non-Kenyan nationals/suppliers. The Production Sharing Contract can only be signed by companies incorporated or registered in Kenya.

#### Nigeria

Nigeria passed the Oil and Gas Industry Content Development Act in 2010<sup>33</sup>. 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 matters<sup>34</sup>. 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 Monitoring Board and the Nigerian Content Consultative Forum. Priority is given to Nigerian independent operators, goods and services and to Nigerians in

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<sup>31</sup> Beamish P. (1998) *Multinational Joint Ventures in Developing Countries*. London Routledge.

<sup>32</sup> Chapter 308

<sup>33</sup> Nigeria Oil and Gas Industry Content Development Act 2010

<sup>34</sup> Preamble/ long title to the Oil and Gas Local Content Act, 2010

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 ringfenced 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.

### Ghana

The Ghana local content policy of 2010 and the Petroleum Commission Act, 2011 have an objective to achieve ninety percent Ghanaian participation by the year 2020. The Oil and Gas Business Development and Local Content Fund are set up to support development of local capacity, education, training and research. Priority is given to local independent operators in the award of oil blocks, oil field licenses and other relevant projects. Preference is given to bids with the highest Ghanaian content and non-Ghanaian owned entities must have a five percent citizen interest in exploration and production<sup>35</sup>.

### Angola<sup>36</sup>

In the concept of Angolanization, companies are required to have a workforce consisting of at least seventy percent nationals. Oil companies are required to have majority holding by Angolans. Oil companies are required to submit a plan to the Ministry of Petroleum annually detailing how they plan to achieve Angolonization targets. Annually, the Minister publishes consumer goods of national production to be used in the support services to oil activities. Angolan companies are preferred in competitive tenders for goods and services provided their bid(s) is not ten percent more than the foreign bids. Goods which do not require substantive investment and expertise are reserved for Angolan companies. Those which require considerable investment injection and technology may be provided by Angolan companies or by joint ventures of Angolan or foreign companies.

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<sup>35</sup> See Ghana Local Content and Participation Regulation LI 2204 2013

<sup>36</sup> See Angola, Decrees 5/95, 17/09

From an ideological point, not everyone supports policy interventions in productive sectors. Scholars have pinpointed challenges relating to misallocation of resources and or inefficiencies, misalignment between instruments and policy objectives, international regulation and institutional frameworks. That notwithstanding, Local Content Policies and part of the broader category of policies aimed at strengthening the productive structure of an economy<sup>37</sup>. It is also worrying especially in the upstream Exploration and Production sector, most countries set ambitious targets for local content coupled with margins of domestic preference as primary mechanisms for developing national industrial capabilities. There is need to bridge the gap between monitoring local content levels and properly regulating local content development. The goal should be to develop competitive, capable and sustainable local skills and supply industries not just increasing the share of local content in total expenditure where such is not competitive or sustainable<sup>38</sup>. It is also imperative that the metrics for measuring local content compliance are revised constantly and tailored to long term macroeconomic objectives of the country.

### Recommendations

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

Uganda policy and law makers should be guided by best practices in the region and other investment entities on how to structure the procurement regime. The World Bank procurement checklists are a viable example to glean from. From one of its reports<sup>39</sup>, three pillars are considered to determine a local company: a) the level of participation of citizens in the company cutting across ownership, management and employment, b) the level of value addition based on the amount of local input in the product, c) whether the product is manufactured locally, or a service is delivered locally and this focuses on the geographical location of the company. Similarly, the African Development bank

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<sup>37</sup> Supra page 34

<sup>38</sup> Supra page 58

<sup>39</sup> World Bank, Increasing Local Procurement by the Mining Industry in West Africa. Report No. 66585-AFR (2012)

emphasizes the ownership of the company and the controlling mind of the prospective company; the shareholders, management and citizenship<sup>40</sup>.

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

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

Policy and law makers should consider creating a database for Ugandan goods and services. Although Regulation 11 of the National Content Regulations (supra) provides for a national supplier database for companies, citizens and registered entities, it does not afford the same protection to “goods and services”. In a limping intellectual property and quality standards regime dominated by counterfeit and substandard goods, the expectations for using Ugandan good should extend to the minimum value addition required and clear tracking of origin of materials or process of manufacture. Also, the provisions on “goods not available in Uganda” should be more clear about the stage of production and expected consumption alternatives for such goods.

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<sup>40</sup> Africa Development Bank Rules of Procedure for procurement of Goods and Works. available at <https://www.afdb.org/fileadmin/uploads/afdb/Documents/Procurement/Project-related-Procurement/Rules%20and%20Procedures%20for%20Procurement%20of%20Goods%20and%20Works%20%28May%202008%20Edition%20Revised%20July%202012%29.pdf> (accessed on 28<sup>th</sup> July 2017)

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