# LOCAL CONTENT IN OIL AND GAS SECTOR

## An Assessment of Uganda's Legal and Policy Regimes

Peter Magelah Gwayaka

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**Cover Photo:**

An aerial view of an oil exploration facility in Buliisa district, Uganda.

# Table of Contents

# List of Acronyms

| | |
|---|---|
| **ACODE** | Action Coalition for Development and Environment |
| **AfDB** | African Development Bank |
| **BTVET** | Business, Technical and Vocational Education and Training |
| **CNOOC** | China National Offshore Oil Company |
| **CSR** | Corporate Social Responsibility |
| **GoU** | Government of Uganda |
| **JV** | Joint Ventures |
| **MoEMD** | Ministry of Energy and Mineral Development |
| **MoES** | Ministry of Education and Sports |
| **NOGP** | National Oil and Gas Policy |
| **NVTI** | Nakawa Vocational Training Institute |
| **OECD** | Organisation for Economic Co-operation and Development Organisation for Economic Co-operation and Development |
| **PAU** | Petroleum Authority of Uganda |
| **SCC** | Sector Skills Council |
| **TVET** | Technical, Vocational Education and Training |
| **UPC** | Uganda Polytechnic Institute |
| **UPIK** | Uganda Petroleum Institute, Kigumba |
| **UTC** | Uganda Technical Institute |
| **WB** | World Bank |

# Acknowledgements

The year 2014 marks 8 years since Uganda announced the existence of commercially viable petroleum deposits. Since this announcement in 2006 a lot of efforts have gone in the making of laws and policies that will govern the sector and see to it that the country maximises the benefits of exploiting its oil and gas reserves. One major concern for government, the citizens and all the actors has been how Ugandans will benefit from the oil and gas sector. Concerns have been raised on whether the sector can provide employment for citizens, use locally produced goods and services as well as exploit local resources to transfer technology that can kickstart other sectors of the economy. The debate has tended to be around local content and how much local content will be utilised by the sector.

On the other hand the debate has been on whether there is enough local capacity to deal with the employment, technology and service needs for the oil and gas industry. Questions have also been raised on standards of locally provided goods and services and whether they can meet the demands of the industry. On overall there is an agreement that the oil and gas industry should involve Ugandans and should in as much as possible employ Ugandans and Ugandan goods and services. What seems to be a disparity is whether Uganda has capacity to provide the goods, services and skills necessary for the sector.

This policy brief assesses the legal and policy approaches so far adopted in ensuring the participation of Ugandans in the oil and gas sector. The brief assesses the standards set in the Oil and Gas Policy, 2008, the Petroleum (Exploration, Development and Production) Act, 2013 and Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, 2013 which are the major instruments governing the petroleum sector in Uganda. The brief also looks at standards and approaches adopted by other countries in Africa and major commercial institutions. The brief highlights the major gaps in the laws and policies and makes key recommendations to address the gaps.

I would like to thank the staff of ACODE in particular Onesmus Mugyenyi, Dr. Author Beinomugisha and Dr. Winstons Muhwezi for their comments and guidance on the earlier drafts of this paper. Special thanks to the editor for the valuable changes and additions to this paper.

# 1. Introduction

Many countries engaged in oil and gas production or mining are introducing requirements for participation commonly referred to as 'local content'. This is increasingly so in the developing world mainly in Africa, Asia and Latin America. Local content requirements are mainly in form of policy and regulatory measures that focus at increasing use of the locally available labour, technology and other resources in the oil and gas sector. The focus is on transfer of technology by companies engaged in the extractive resource sector to the native people of a particular nation with a hope of assuring them income, employment and ultimately sustainable development. The development of local content has basically been a result of recognition that after years of oil and gas or mineral exploitation in many developing countries, little seems to be transferred to the citizens of these resource-rich countries in form of technology and employment[1]. Many citizens of resource-rich countries especially in the developing world tend to be mere spectators. This trend continues to exist in spite of the fact that many mining and petroleum companies in the developing world are given incentives such as tax holidays with a hope that they will be able to exploit the resource, provide employment for the natives and develop infrastructure which would enable the economy to develop.

Uganda is not exception to the observation that many citizens of resource-rich countries especially in the developing world are mere spectators. After the announcement of commercially viable quantities of petroleum in the country, there was excitement about the developments the new resource would bring. Ugandans have been excited at the potential for development, improvement of household incomes and general living standards once petroleum revenues start flowing. However, it is not always as rosy as it looks. Uganda will need stringent macro and micro economic policies to enable the economy sustain the negative impacts that petroleum might have on the economy[2]. The need to fight the mismanagement of the oil resource that has been characteristic of most oil

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

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

producing countries in the developing world is of paramount importance. It is necessary to have in place measures to avoid the “Dutch disease”[3] and the resource curse such as conflicts[4].

Many scholars have argued that the ‘Dutch disease’ and resource conflicts are basically a result of poor management of resources in the country. The failure to exploit resources sustainably and enable citizens take part in decision making and employment greatly contributes to conflicts emanating from natural resource endowments. Economic challenges such as the Dutch disease are a result of failing to link natural resource exploitation with other sectors of the economy like agriculture, tourism and industrial development The lack of involvement of citizens in the exploitation and use of the natural resources sector greatly hinders the trickledown effect of a resource like oil consequently resulting in negative effects to the economy.

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

## 1.1 Study Objectives

a. To review the legal and policy regimes on local content in Uganda, highlight gaps in the existing legal and policy regimes and recommend areas of reform

b. To highlight lessons learnt in local content regulation from countries dealing with extractives in Africa and elsewhere so as to be able to recommend for approaches that can be adopted to improve Uganda’s local content and citizen participation policies in the oil and gas sector.

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

4 Collier, P. 2010. The Political Economy of Natural Resources. Social Research, 77(4):1105-1132.

c. To recommend key actions and reforms Uganda needs to take up to have an effective local content policy, legal and institutional regime.

### 1.2 Study scope

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

# 2. Local Content Vs Citizen Participation in Uganda

Citizen participation in oil and gas sector has become a slogan of sorts across many countries in Africa. Different countries have made laws and policies to provide for local content where citizens can be employed, provide services or get a direct benefit from the sector. However what many countries have not done is to increase citizen participation. There is often confusion when it comes to discussion of citizen participation as a concept and issues of local content. Whereas citizens can participate through local content, this is rather one of the forms of participation and it is not conclusive. It would therefore be wrong to conclude that there is citizen participation just because you have local content law and policies. Basically, citizen participation involves processes that provide for individuals in a community an opportunity to influence public decisions that affect them[5]. The definition can further be extended to include the process in which ordinary people take part – whether on a voluntary or obligatory basis and whether acting alone or as part of a group – with the goal of influencing a decision involving significant choices that will affect their community[6]. Citizen participation involves a wide range of

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

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

activities and systems that ensure views of an individual citizen are included in decision making processes.

The term "*citizen participation*" involves two important items namely; the '*citizens*' and '*participation*'. Used in strict sense "*citizen participation*" would mean only citizens of a country take part in decision-making. However this is not always the case since there are other persons not necessarily citizens of a country that are entitled to take part in decision making. Different scholars tend to suggest that citizen participation should look at benefits accruing to those most in need and moving away from the legal definitions of citizenship[7] For example, "*citizen participation*" has been described by Cunningham J. to focus on (a) members of the community who have no formal source of power except their majority numbers (the ordinary person in society), (b) exercise of power by those at a lower level of the community (power relations between the led and the leaders) and making decisions involving a significant number of community members[8] . Some scholars have argued that this should focus on getting local ownership of projects and other forms of interventions through increased participation by residents (as opposed to citizens)[9] . In simple terms, citizen participation involves power relations between members of a community and their leaders and the ability of that community irrespective of where it is located to take part in decisions and activities that affect them.

Participation on the other hand involves taking part in processes that lead to the decision or taking part in arriving at the decision itself[10] . This does not mean the individual's views have been taken

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Assessment. Available at http://www.dictionnaire.enap.ca/dictionnaire/docs/definitions/definitions_anglais/citizen_participation.pdf

7 Thomas Webler (1995) "Right" Discourse in Citizen Participation: An Evaluative Yardstick. Technology, Risk, and Society Volume 10, 1995, pp 35-86. Also See Cogan A (ibid) and Cunningham J. V (ibid)

8 Cunningham, J. V. (1972). "Citizen Participation in Public Affairs," *Public Administration Review*, vol. 32, Special Issue: Curriculum Essays on Citizens, Politics, and Administration in Urban Neighbourhoods, pp. 589-602.

9 André, P. et al. Ibid also see Rowe, G. and L. J. Frewer (2005). "A Typology of Public Engagement Mechanisms," Science, Technology, & Human Values, vol. 30, no. 2, pp. 251-290.

10 OECD (Organisation for Economic Co-operation and Development). 2001. Citizens as Partners: OECD Handbook on Information, Consultation and Public Participation in Policy-Making. Paris: OECD. Tina Nabatchi (2012) A Manager's Guide to Evaluating Citizen Participation. Fostering Transparency and Democracy Series 2012. Available at http://unpan1.un.org/intradoc/groups/public/documents/UN-DPADM/UNPAN048340.pdf accessed on 14th July 2014

up but rather the individual's views were considered in the process of arriving at a decision. Such a kind of participation can be direct for instance, taking part in an election or being part of a meeting that arrived at a decision or indirect through a representative. This can range from national or regional representation such as parliament to representation at a lower level such as village council or family[11].

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

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

# 3. Oil and Gas Local Content in Uganda

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

11 Tina Nabatchi (2012) A Manager's Guide to Evaluating Citizen Participation. Fostering Transparency and Democracy Series 2012. Available at http://unpan1.un.org/intradoc/groups/public/documents/UN-DPADM/UNPAN048340.pdf accessed on 14th July 2014

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

### 3.1 Training and Capacity Building for Citizens

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

The NOGP recognises the need for national participation through employment, training and skills development and service provision in the sector. Under objective 7 of the NOGP; government seeks to ensure optimum national participation in oil and gas activities. Similarly, objective 8 of the NOGP seeks to support strategies for development and maintenance of national expertise in the oil and gas sector. Some of the strategies government intends to use to achieve the above objectives include

(a) Promotion of state participation in Production Sharing Agreements with a view of providing better opportunities for the state to understand the basis for decisions in exploration, development and production, together with acquiring the skills necessary for commercial management of the sector.

(b) Promotion of public private partnerships whose benefits outweigh their cost, and whose costs and benefits are mutually and fairly shared by the partners.

(c) Encourage civil society to participate in the building of a productive, vibrant and transparent oil and gas sector.

(d) Promotion of employment of Ugandans in the oil and gas sector and

(e) Promotion of transfer of skills and technology to the country.

(f) Identifying training skills required for the sector and planning for their development through both formal and industrial training.

(g) Utilising oil and gas activities in the country to support provision of the necessary training.

(h) Provide appropriate training to Government personnel in the relevant fields as one of the ways to facilitate professional dialogue with oil companies.

(i) Broaden the national education curricula to prepare the necessary workforce for the growing oil and gas sector in the country.

To give the above strategies the force of law, the Petroleum (Exploration and Development) Act, 2013[12] (upstream law) and the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act[13] (Midstream law) provide for training and employment of Ugandans. The two laws make it a requirement for companies to provide a plan for training and employment of Ugandans in the sector during application for licences. Generally, it is presumed that the plan to train Ugandans is one of the conditions for which a licence can be granted. However there is no clear strategy to ensure that the companies are followed-up to ensure they train Ugandans as proposed in their applications.

The Upstream and Midstream laws also require companies to submit to the Petroleum Authority a detailed programme for recruitment and training of Ugandans every year for approval. What is not clear from the law is how the approved plans for training Ugandans will be followed through and whether there are any forms of punishment for companies that fail to meet their obligations under the approved plan or the plan submitted during the application for a licence.

12 Act 3 of 2013

13 Act 4 of 2013

Whereas the foregoing programs and strategies for training Ugandans are good for capacity building, there is need to reform Uganda's education sector to meet the demands for the industry. For example, there are no systems to determine what kind of capacity is needed for the sector and whether the training programs submitted by oil companies will meet these capacity needs at present. There is no link between the Petroleum Authority which is the main regulatory agency and the Ministry of Education and Sports and The National Curriculum Development Centre to develop training content that will enable Ugandans take part in the sector.

At present there is no proper system or institution charged with vetting the kind of training Ugandans need in relation to oil and gas. Most of the training is based on individual institutional choice of training programs. There are also no mechanisms for directing company scholarships to building skills that relate to the industry.

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

Government has not done Training Needs Assessment or other forms of capacity needs assessment for the oil and gas sector and the only existing data is the study conducted by the joint partners[14] involved in the oil and gas sector. This means Uganda will have to rely on data provided by industrial players. The challenge with this data is it was gathered and analysed in the lenses of an industrial player seeking to maximise profits and this may not necessarily reflect the needs of the country.

The industrial survey data 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 craftspersons and 25% will be unskilled workers[15] . The industrial survey recommends that focus in education should be put on civil constriction, electrical and mechanical fields.

14 These include Tullow Oil, CNOOC and Total Ltd who have active licenses in Uganda today

15 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

The industrial survey indicates that existing capacity gaps in the sector such as limited qualified civil craftspersons, drivers, mechanical technicians among others. The survey expresses fear that some areas such as welders and electrical technicians could be “dried out” depriving them of other sectors.

On the other hand a total of 100,000 indirect jobs will be created by the sector. These will be involved in a wide range of activities that have direct or indirect support to the sector ranging from agriculture, textiles, road construction, and information technology among others.

From the findings of the industrial survey, the following standout as key issues needing action for local content;

1. The need to develop capacity in the technical and engineering areas
2. The need for certification for those trained to get international recognition
3. The need to focus on other sectors that support the industry

From the industry survey it is clear that technical training for Ugandans will be an important aspect of capacity building for persons to take part in the oil and gas sector.

## 3.3 BTVET Training for Oil and Gas in Uganda

The BTVET policy and Strategic Plan 2011-2020 provides for skilling Uganda with a special focus on the oil and gas sector. The Strategic Plan is drawn from the draft BTVET Policy that sets out to develop demand-responsive, employable skills and competencies relevant to the labour market needs for Uganda. BTVET training in Uganda is supposed to be achieved through creation of centres of excellence within the petroleum sector targeted at the apparent skills gaps. Because of the gaps in the BTVET policy and strategic plan, Cabinet is considering a proposed Skilling Uganda Technical, Vocational Education and Training (TVET) Reform Policy. The reform policy seeks to provide and enable technical institutes and polytechnic colleges provide tailored vocational training based on industrial needs and the needs of specific sectors. At present this is not possible since all training institutes have to follow a curriculum approved by Ministry of Education and Sports (MoES) and the Curriculum Development Centre

There have been attempts to reform BTVET training in Uganda to focus on oil and gas. Government has introduced courses at university and tertiary level[16] with former Cooperative Institute getting transformed into Petroleum Institute[17]. On top of these, there are several private institutions offering courses in petroleum ranging from law, finance, and economics, among others.

The Uganda Petroleum Institute, Kigumba (UPIK) was created as a response to the various capacity need for the oil and gas sector. UPIK is expected to train Ugandans in the different skills to be able to provide labour for the oil and gas sector.

According to UPIK's strategic plan 2014-19, a Sector Skills Council (SCC) consisting of sector players for the oil and gas sector will be created, the SCC will be mandated in assisting UPIK in reviewing different courses and curricula to modify and fit them to the sector needs and demands[18].

Presently there is debate on the location of UPIK, whereas UPIK is presently located within the Ministry of Education and Sports (MoES), the feeling is that the institute together with other related institutes should be located in the ministry responsible for petroleum and be under the direct control of the Petroleum Authority of Uganda (PAU) to be able to provide sector driven courses and skills and provide oversight and feedback on the quality of products from the training institutes[19].

On the other hand the capacity needs for the oil and gas training institutions needs to be reviewed. At present government has not

16 Makerere University, the biggest government University introduced courses in Petroleum Geosciences while Makerere Business School introduced business courses targeting oil and gas sector.

17 Kigumba was transformed from a cooperatives college to a petroleum institute by the Universities and Tertiary Institutions (Establishment of Uganda Petroleum Institute, Kigumba) statutory instrument, 2011, SI No. 31 of 2011

18 UPIK (2014) Institute Development Plan, 2014-2019

19 Ibid

reviewed the capacity of technical institutions which will provide training for oil and gas sector jobs. Whereas instructors at UPIK and Nakawa Vocational Training Institute (NVTI) have had some basic training for the oil and gas sector, the same cannot be said of other technical colleges. This will greatly undermine the nature of skills imparted by these institutions.

At present UPIK is able to graduate about 200 students in a year, this is a small number compared to the 10,000 or more qualified personnel that will be needed for the construction phases. There are plans to have other technical institutes incorporated in the oil and gas sector, however efforts seems to be focused on only Uganda Technical Institute (UTC) Kicwamba and NVTI, however these need to be brought on board before the construction phase begins.

It should be noted that by design UPIK focuses on providing skills for direct employment in the oil and gas sector and may not necessarily focus on other support sectors. However, there is need to link BTVET training with direct and indirect services to the oil and gas sector. For example, BTVET training needs to focus on other sectors like textiles industry, road construction, mining and agriculture among others. This will ensure the support sectors provide goods and services that are competitive for the oil and gas sector.

## 3.4 Local Content and Procurement from Ugandan Suppliers

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

a. What should constitute "local" business entity or a local supplier?

b. What parameters should be used to determine a local company/business entity?

c. What should be the relationship between the local supplier and other international businesses operating in the country?

d. What level of control should citizens have over the foreign suppliers/businesses operating in the country (for example is employing citizens or having citizens as shareholders enough to qualify someone)?

There is an attempt to answer the above questions in Uganda's petroleum policy and the laws. However, several gaps exist.

### 3.5 What Constitutes a Local Business Entity of Local Supplier?

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

> *(1)The licensee, its contractors and subcontractors shall give preference to goods which are produced or available in Uganda and services which are rendered by Ugandan citizens and companies.*
>
> *(2) Where the goods and services required by the contactor or licensee are not available in Uganda, they shall be provided by a company which has entered into a joint venture with a Ugandan company provided that the Ugandan company has a share capital of at least forty eight percent in the joint venture.*

The law does not define what a "*Ugandan*" company is, thereby leaving a gap for exploitation. The strict interpretation of the word "Company" used in the section instead of "business entity" limits the application of this section only to companies living out other recognised business entities such as partnerships, cooperative societies, and sole proprietorships among others. The Midstream

Act, attempts to address this gap, (though not conclusively) by providing that[20]

The licensee, its contractors and subcontractors shall give priority to citizens of Uganda and registered entities owned by Ugandans in the provision of goods and services.

Emphasis is placed on "registered entities" as opposed to "companies". This means other business entities are considered under the midstream law as opposed to the upstream law that restricts itself to companies. However, the use of the word "registered entities" does not solve the problem because there are situations where foreigners register business entities in a country and this does not make such entities local entities. For example S. 252 of the Companies Act[21] mandates all companies incorporated outside Uganda with businesses in Uganda to register with the Registrar of Companies as a pre-condition to operating in Uganda. Basically the companies Act on this aspect tries to separate "incorporation" from "registration". The former is a process of forming a company and while the latter is a mere administrative requirement.

On the other hand using the place of incorporation as a determinant of a Ugandan company without proper restrictions would also leave out citizens by allowing foreigners to register/ incorporate companies in Uganda which would qualify as Ugandan companies. It is also not clear how the law will treat a company registered outside Uganda by Ugandan citizens.

### 3.6 What Parameters Should be Used to Determine a Local Company/Business Entity?

The debate in Uganda for service providers in the petroleum sector and local content has focused on local companies and the question of how 'local' a local company should be. Many commentators on petroleum producing areas would love to see priority given to companies operated or owned by persons hailing from areas where

20 S. 53(1) Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act

21 Act No. 1 of 2012

the petroleum resources are found while others believe petroleum being a resource for the nation, any citizen should take part.

The upstream law provides for affirmative action in training, employment and transfer of technology for Ugandan citizens in favour of host communities. However, there is no affirmative action when it comes to provision of services[22].

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

## 3.7 Treatment of "Ugandan Company" by Other Laws in Uganda

Uganda's Companies Act[23] does not define a Ugandan company, it only provides for a definition of a company which provides that a company means an entity formed and registered under this law. Under S. 251 it describes a foreign company as a company incorporated outside Uganda which runs business in Uganda. Focus here is on place of incorporating, this may not cater for all scenarios that may need to be addressed under local content, for example a company incorporated by Ugandans outside Uganda will be considered a foreign company and a company incorporated in Uganda by non-Ugandans will be considered a Ugandan company.

The Uganda Investment Code Act[24] on the other hand defines a foreign investor as:

(a) a person who is not a citizen of Uganda;

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

23 Act No. 1 of 2012

24 Uganda Investment Code Act, Cap 92 Laws of Uganda

(b) a company, which more than 50 percent of the shares are held by a person who is not a citizen of Uganda;

(c) a partnership in which the majority of partners are not citizens of Uganda[25].

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

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

A non-citizen means:

(a) a person who is not a citizen of Uganda as defined by the Constitution and the Uganda Citizenship Act;

(b) in the case of a corporate body, a corporate body in which the controlling interest lies with noncitizens;

(c) in the case of bodies where shares are not applicable, where the body's decision making lies with noncitizens;

(d) a company in which the shares are held in trust for noncitizens;

(e) a company incorporated in Uganda whose articles of association do not contain a provision restricting transfer or issue of shares to noncitizens[26].

The Land Act describes "controlling interest" in a company to include:

(a) in the case of companies with shares, the majority shares are held by persons who are not citizens; and

(b) in the case of companies without shares, a company in which decisions are arrived at by the majority who are not citizens.

25 S. 9 Uganda Investment Code Act

26 S. 40 of the Land Act, Cap 224 Laws of Uganda

From the above it is clear that when it comes to land matters, the law looks at interests and benefits in determining a Ugandan or foreign company. Unlike the other laws, the Land Act has a more strict definition of a foreign company in as far as it limits a Ugandan company to only that entity whose majority decisions are made by Ugandans or where the company specifically limits its ownership to Ugandans in the Articles and Memorandum of Association.

Looking at the above laws on can say that the different laws in Uganda have provided for different definitions of Ugandan or foreign companies based on the objects that such laws intends to achieve. For example the intention of the Investment Code is to provide for favourable conditions for foreign investors investing in Uganda, such interests maybe very different from the interests set a law providing for local content where the interest would be ensuring more Ugandans participate in the sector despite the fact that the investment and capital might be by a foreign company.

### 3.8 What Should be the Relationship Between the Local Supplier and Other International Businesses Operating in the Country?

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

When it comes to products or services that cannot be easily procured on the Ugandan market or supplied by Ugandan businesses, the two laws provide for joint ventures as a mode of operation between the Ugandan businesses and the foreign suppliers. However, the drafting in the two laws makes it easy to abuse the provisions and to leave out Ugandan companies. For example S. 53(3) of the midstream law provides that

The licensee, and the contractors and subcontractors of the licensees shall give priority to the purchase of local products and services from Ugandans wherever they are competitive in terms of quality and timely availability.

The foregoing provision mandates the oil company to procure from Ugandans only if they are competitive in terms of quality and timely supply. As earlier noted, the capacity of many Ugandan businesses needs to be developed since they have not been involved in the sector. This means that, Ugandan businesses are unlikely to compete better than the foreign companies nor can they have the services readily available. This is likely to leave out many Ugandan businesses in the sector.

The two laws provide for joint venture agreements for Ugandans to take part in the sector. However, the nature of joint ventures is not clear. For example, the Upstream Act provides that:

Where the goods and services required by the contactor or licensee are not available in Uganda, they shall be provided by a company which has entered into a joint venture with a Ugandan company provided that the Ugandan company has a share capital of at least forty eight percent in the joint venture[27].

Whereas as the Upstream Act mandates Ugandan and foreign businesses supplying goods and services in the oil and gas industry

27 S. 125(2) Petroleum (Exploration, Development and Production) Act

to have a mandatory joint venture company in which Ugandan companies own a 48% stake, the midstream law is silent on this. It provides

Where the goods and services are not available in Uganda, they shall, where possible, be provided by a company which has entered into a joint venture with a Ugandan company[28].

From the above, it is not clear what amount of stake Ugandan businesses should own in the new joint venture to supply goods or services for the midstream sector in oil and gas. Whereas the requirement to have Ugandan businesses owning 48% of share capital is good for the country, the challenge will be in the capital and other technical requirements to enter into such JVs. Some aspects of the oil and gas sector require extensive capital and many Ugandan businesses may not be able to provide such capital. Besides, there is a requirement for technology which may not be easily provided by Ugandan companies. This normally results into challenges in operating the JV. Research has found that partners contributing less to the JVs are less committed to the success of the project since their role is limited[29]. This might create several "lazy" Ugandan businesses entering the industry through JVs and legal protection. The other aspect is the fact that ownership of stake in a JV company should be comparable to what the other party is contributing. The question here will be whether Ugandan companies are able to provide 48% capital or skill or technology to the specific JV companies they enter into.

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

28 S. 53(4) Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act

29 Beamish P. (1988) multinational joint ventures in developing countries. London Routledge

# 4. Determination of Local Content, Experiences from the Other Institutions and Countries

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

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

## World Bank

The World Bank does not have specific provisions for local content. However, it provides guidance for local procurement. Local procurement here is determined based on three major pillars[30]

i. Level of participation of citizens in the company. This is mainly across ownership, management and employment. Local companies are judged based on who owns the company,

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

its management (control of the company) and the number of citizens employed in the company

ii. The level of value addition. This is based on amount of local input in the product. This is based on use of local materials, local technology or local human resource in the making of the product. This test focuses on the real contribution of the product to the economy in terms of use of local resources, employment and technology.

iii. Whether a product is manufactured locally, or a service is delivered locally. This focuses on the geographical location of the company. Preference is given to companies located in the country or in the region. Sometimes, this also deals with the local location of the company. Companies located within the local vicinity of the petroleum or mining establishment are given priority.

## African Development Bank

The African Development Bank (AfDB) adopts nearly a same standard as the World Bank. It focuses on ownership of the company and the controlling mind of such a company. Focus is put on shareholders, management of the company and employment of citizens[31].

Generally, the World Bank and AfDB standards have greatly shaped the nature of local content laws and policies as seen in many countries. Below are some of the recent laws and policies from selected countries.

## Nigeria

Nigeria passed the Oil and Gas Industry Content Act in 2010. The law is meant to enforce the local content policy. It aims at providing for the development of Nigeria Content in the Nigerian Oil and Gas industry; for Nigerian Content Plan; for supervision,

31 African Development Bank (undated) Rules of procedure for procurement of goods and works available at http://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-related-Procurement/Rules%20of%20procedure%20for%20procurement%20Goods%20and%20Works.pdf accessed on 10/04/14

coordination, monitoring and implementation of Nigerian content and for matters incidental thereto[32].

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

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

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 focus 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

i. 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 the 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

32 Preamble/long title to the Oil and Gas Local Content Act, 2010

local content issues such as procurement information, company requirements and involvement of citizens.

## Ghana

Ghana made its local content policy in 2010. This was followed by the Petroleum Commission Act, 2011[33] which gives the Minister responsible for energy powers to make regulations for local content and citizen participation in the oil and gas sector. The policy provides for mandatory local content in oil and gas. The petroleum law defines local content as:

> *The use of Ghanaian human and material resources, services and businesses for the systematic development of national capacity and capabilities for the enhancement of the Ghanaian economy*[34]

A more refined definition of local content is given in the regulations which define local content as:

> *The quantum or percentage of locally produced materials, personnel, financing, goods and services rendered in the petroleum industry value chain and which can be measured in monetary terms.*

From the above it can be said that Ghanaian law provides for broad areas for local content. According to the local content regulations, at least 5% stake in the oil and gas sector must be reserved for Ghanaian companies. An indigenous Ghanaian company is defined as:

> *A company incorporated under the Companies Act, 1963 (Act 179)*
>
> *(a) that has at least fifty-one percent of its equity owned by a citizen of Ghana; and*
>
> *(b) that has Ghanaian citizens holding at least eighty percent of executive and senior management positions and one hundred percent of non- managerial and other positions;*

33 Act 821

34 S. 28 Petroleum Commission Act of Ghana

From the above, it is clear that a local company has a strict definition and includes such companies where citizens are the driving engine of the company as well as are the main beneficiary from the company. The regulations also create a Local Content Committee whose role is to monitor compliance with the legal and policy requirements for local content.

## Liberia

Liberia passed its new petroleum law which provides for the governance of the oil and gas sector in 2012. The law sets conditions for involvement of local companies, training and employment of citizens. The purchase of goods and services from Liberian citizens is conditioned on their competitiveness. Citizen companies and service providers must be able to effectively compete.

The difference between Liberia and other countries such as Ghana and Nigeria is that the citizens abilities to take part in the oil and gas sector are considered. For example S. 2.5.8 of the Petroleum Law of Liberia provides;

> *The holder of petroleum contract, as well as his subcontractors, shall give preference to Liberian companies for construction, supply, and service contracts, provided they offer equal quality, price, quantity, time and performance and payment conditions.*

Provisions like the ones above are good for the smooth running of the industry and easily attract investment for being flexible, however they may work against the interest of citizens since in many African countries the local companies and citizens have not developed much capacity to competitively compete with European, American or Asian companies in the extractives sector. In the end many citizens may be left out as being incompetent.

## Trinidad and Tobago

The Trinidad and Tobago local content framework focuses on increasing citizen participation through capacity building, employment and service provision. The policy focuses on local participation of citizens or local companies. Local companies are defined and determined according to ownership, management and financing (must be owned and managed by majority citizens). The framework also seeks to maximize use of local resources in the extractives sector. The framework creates institutions for managing and overseeing compliance with the sector.

A look at the different countries and institutions above reveals that though there are different approaches to local content in oil and gas and extractive industry generally, most countries have tended to protect their citizens and citizen businesses to take part in the oil and gas sector through training, employment and provision of goods and services. Whereas this is a good approach, the local capacity of local businesses should be considered in taking different approaches. This is necessary to ensure smooth running of the industry while balancing the need for citizens to take part.

# 5. Policy recommendations for Uganda

### 4.1 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.

### 4.2 Create Institution to Manage Local Content

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

Mainstream other sectors in the oil and gas and extractive business

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.

## 4.3 Build Capacity for Industry Players

Capacity should be built for training institutions which are targeting providing labour for the oil and gas market. This should be expanded beyond UPIK to include other institutions. Focus should also be put on developing capacity of institutions that will provide support services; this includes a wide range of areas such as business, agriculture, tourism, e.t.c. 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.

## 4.4 Increase Inclusion in Decision Making

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

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