

**FOSTERING NATIONAL PARTICIPATION: EXPLORING THE LEGAL FRAMEWORK FOR
NATIONAL CONTENT PROVISIONS IN UGANDA'S OIL AND GAS SECTOR**

LEWIS KIRAIRE

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**UGANDA CHRISTIAN
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DECLARATION:

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



30/04/2024

Signature.....

Date.....

APPROVAL:

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

A handwritten signature in blue ink, consisting of a series of vertical loops followed by a large, stylized 'L' shape.

30/04/2024

Signature

Date

DR. ISAAC CHRISTOPHER LUBOGO

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LIST OF ACRONYMS:

CNOOC China National Offshore Oil Company

CSR Corporate Social Responsibility

GoU Government of Uganda

MoES Ministry of Education and Sports

NOGP National Oil and Gas Policy

PAU Petroleum Authority of Uganda

SCC Sector Skills Council

AUGOS Association of Uganda Oil and Gas Service Providers

CAO Chief Administrative Officer

GDP Gross Domestic Product

IDI International Development Initiative

IOC International Oil Company

JV Joint Venture

MDG Millennium Development Goal

MEMD Ministry of Energy and Mineral Development

MLHUD Ministry of Lands, Housing and Urban Development

MoFPED Ministry of Finance, Planning and Economic Development

MoGLSD Ministry of Gender, Labour and Social Development

MoIA Ministry of Internal Affairs

MoTIC Ministry of Trade, Industry and Cooperatives

NOC National Oil Company

PEPD Petroleum Exploration and Production Department

POB Persons on Board

PPDA Public Procurement and Disposal of Public Assets Authority

PSA Production Sharing Agreement

TEP Total E&P Uganda

TUOP Tullow Uganda Operations Pty Ltd

UIA Uganda Investment Authority

UNBS Uganda National Bureau of Standards

UPIK Uganda Petroleum Institute, Kigumba

URA Uganda Revenue Authority

TABLE OF STATUTES:

1. The Constitution of the Republic of Uganda, 1995
2. The Petroleum (Exploration, Development & Production) Act 2013
3. Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, 2013
4. The Petroleum (Exploration and Production) (Conduct of Exploration Operations) Regulations S.I No. 150-1
5. The Petroleum (Exploration, Development and Production) (National Content) Regulations, 2016. 6. The National Oil and Gas Policy, 2008
6. Oil and Gas Revenue Management Policy, 2012
7. Model Product Sharing Agreement (PSA) 1999, Uganda

ABSTRACT:

The oil and gas sector has emerged as a significant economic driver in Uganda, with the discovery of substantial hydrocarbon reserves. To ensure equitable distribution of benefits, national content provisions have become crucial. This study explores the legal framework governing national content provisions in Uganda's oil and gas sector. It analyzes existing regulations and policies, emphasizing the pivotal role of a well-structured legal framework in achieving sustainable development. By examining historical context, international best practices, and case studies, this research provides insights into maximizing the benefits of Uganda's oil and gas resources while promoting inclusivity and sustainability.

In the context of a Master of Laws program in Oil and Gas, this study delves deeply into the legal framework surrounding national content provisions within Uganda's burgeoning oil and gas sector. With substantial hydrocarbon reserves, Uganda stands poised for significant economic growth. However, equitable distribution of benefits and local participation are paramount concerns.

This research critically examines the intricate legal landscape governing national content provisions in Uganda. It offers a comprehensive analysis of existing regulations, policies, and statutes designed to foster domestic participation and ensure that the nation's hydrocarbon resources benefit its citizens. The study underscores the essential role of a well-structured legal framework in achieving sustainable development and economic empowerment within the sector.

Through an exploration of historical context, international best practices, and case studies from other oil-producing nations, this research provides invaluable insights for Uganda's path towards promoting national participation in its oil and gas industry. By addressing challenges, identifying opportunities, and suggesting potential areas for legal reform, this study contributes significantly to the discourse surrounding Uganda's quest for inclusive and sustainable development in its oil and gas sector.

CHAPTER ONE:

1.0 Introduction:

The oil and gas sector in Uganda has emerged as a critical driver of economic growth and development in recent years. With the discovery of substantial hydrocarbon reserves, the nation stands on the threshold of transforming its energy landscape and reaping the economic benefits that come with it. However, as Uganda embarks on this transformative journey, it is imperative to ensure that the benefits of the oil and gas industry are equitably distributed among its citizens. This is where the concept of "national content" comes into play.

National content provisions are an integral part of the oil and gas industry, aimed at fostering domestic participation and ensuring that the nation's resources are harnessed for the greater good of its people. In Uganda, as in many other oil-producing nations, the legal framework surrounding national content provisions holds a pivotal role in determining the success of such initiatives.

This exploration into Uganda's oil and gas sector will delve into the intricate legal framework that underpins national content provisions. It will analyze the existing regulations, policies, and statutes designed to promote local participation in the industry, emphasizing the importance of a well-structured legal framework in achieving sustainable development and economic empowerment.

This study aims to provide a comprehensive overview of the legal landscape governing national content provisions in Uganda's oil and gas sector, shedding light on the challenges and opportunities it presents. By understanding the legal intricacies and potential areas of improvement, this research will contribute to the ongoing discourse on how to maximize the benefits of Uganda's oil and gas resources while ensuring inclusivity and sustainability.

In the pages that follow, we will examine the historical context of Uganda's oil and gas sector, the international best practices in national content provisions, and the specific legal instruments that shape the landscape. We will also explore case studies and lessons learned from other oil-producing nations, offering valuable insights for Uganda's journey toward fostering national participation in its burgeoning oil and gas sector.

1.1 Background of the study:

The failure to exploit resources sustainably and involve citizens in decision-making and employment contributes to conflicts arising from natural resource endowments. This lack of citizen involvement also hinders the trickle-down effect of resources like oil, negatively impacting the economy. Emphasizing local content ensures that non-tax benefits stay in-country, promoting local ownership and capital in the long term. The National Oil and Gas Policy (NOGP) in Uganda aims to promote national participation in oil and gas activities and support the development of national expertise. However, there are challenges in implementing these objectives, including ambiguity in legislation regarding the definition of "Ugandan" companies and limitations in ensuring equitable treatment and opportunities for Ugandan employees in the oil sector. Despite these challenges, there is potential for significant local participation in the oil and gas sector, with numerous Ugandan-owned companies registered to provide oil-related services. Strengthening legislation and practice to promote local content can lead to valuable benefits for Uganda's growth and development.

Many countries engaged in oil and gas production are introducing state participation requirements into negotiations, known as 'local content', aiming to increase the use of locally available labor, technology transfer, and employment of nationals in the sector. This focus on technology transfer aims to assure income, employment, and sustainable development for host state citizens, addressing the historical trend of limited benefits reaching local populations. Uganda, following the discovery of commercially viable oil deposits, has seen excitement about the potential for development and improvement in living standards. The government has established legal and policy frameworks to address national content concerns, recognizing that successful local content initiatives require cooperation among various stakeholders, including government, companies, civil society, and donors.

Host states advocate for local content in the oil and gas sector to increase domestic value addition, create local employment opportunities, introduce advanced technology, and provide training and skills development for nationals. Uganda's Build Uganda Buy Uganda (BUBU) policy supports local manufacturing and employment, while technology brought by international oil companies (IOCs) upgrades existing capabilities. Training and skilling programs aim to prepare Ugandan nationals for managerial positions and other roles in the sector. Overall, promoting local content in the oil and gas sector aligns with Uganda's economic development goals and can contribute to inclusive growth and sustainable development.

1.1.1 Theoretical perspective:

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

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

1. Manipulation and 2 Therapy: Both are non-participative. The aim is to sensitize the participants. The proposed plan is based on the inclusiveness of participants which is aimed to achieve public support through public relations. Cure or educate the participants.
2. Informing: Is the most important first step to legitimate participation. But the most experienced challenge is that information flow is one-way. No channel for feedback.
3. Consultation: it is also a legitimate step attitude surveys, neighborhood meetings and public enquiries. But Arnstein still feels this is just a window dressing ritual.
4. Placation: For example, co-option of hand-picked 'worthies' onto committees. It allows citizens to advise or plan ad infinitum but retains for power holders the right to judge the legitimacy or feasibility of the advice.
5. Partnership: Power is in fact redistributed through negotiation between citizens and power holders. Planning and decision-making responsibilities are shared e.g. through joint committees.
6. Delegation: Citizens holding a clear majority of seats on committees with delegated powers to make decisions. The Public now has the power to ensure accountability of the programme to them.
7. Citizen Control: Have-nots handle the entire job of planning, policy-making, and managing a program e.g. neighborhood corporation with no intermediaries between it and the source of funds.

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

1.1.2 Conceptual Perspective:

The study will look at two variables. That is to say;

1. The **independent variable (National Content Legal Framework)**, and
2. The **dependent variable (Participation of Nationals)**. According to NCPPS¹, National Content is defined as the value added or created in the Ugandan economy through the employment of Ugandan workers and the use of goods produced or available in Uganda and services provided by Ugandan citizens and enterprises. The Local content in the oil and gas sector in Uganda broadly focuses on involving citizens in the sector. This is through training and building capacity for citizens, technology transfer, employment, and service provision. One of the approaches proposed under Uganda's petroleum policies and laws is the procurement of goods and services from Ugandan suppliers.

Participation on the other hand involves taking part in processes that lead to the decision or taking part in arriving at the decision itself.² The study defines participation as involving power relations between members of a community and their leaders and the ability of that community irrespective of where it is located to take part in decisions and activities that affect them.

1.1.3 Problem statement:

The inadequate exploration of the legal framework for national content provisions in Uganda's Oil and Gas Sector has hindered the effective fostering of national participation, necessitating an empirical examination of the regulatory landscape, stakeholder perspectives, and implementation challenges.

1.2 Purpose of the study:

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

1.3 Significance of Study:

¹ National Content Policy (2017) for the Petroleum Subsector in Uganda.

² OECD (Organisation for Economic Co-operation and Development). 2001. Citizens as Partners: OECD Handbook on Information, Consultation and Public Participation in Policy-Making. Paris: OECD. Tina Nabatchi (2012) A Manager's Guide to Evaluating Citizen Participation. Fostering Transparency and Democracy Series 2012. Available at <http://unpan1.un.org/intradoc/groups/public/documents/UN-DPADM/UNPAN048340.pdf> accessed on 20th Nov, 2020

1. The research will be used by policymakers to come up with policies that best serve the purpose of national content in the oil and gas sector in Uganda.
2. The researcher believes the study will be of great relevance to members of parliament by identifying the loopholes in the laws governing petroleum exploration and preferential national participation.
3. Also, the study will contribute to a review of the laws regulating the local content and the protection of the health and environment and suggest possible recommendations.
4. The study will be an additional contribution to the existing pool of knowledge for the purposes of further research in the related field of study.

1.4 Aims and Objectives:

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

1.5 Research questions:

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

1.6 Scope of the research:

The study aims at examining the role of the legal framework on the participation of nationals in the oil and gas sector in Uganda in consideration of local content which advocates citizens' involvement. The Upstream and Midstream laws also require companies to submit to the Petroleum Authority a detailed program for the recruitment and training of Ugandans annually 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 license.

It took a time frame of 3 months and the researcher will be submitting every completed chapter to the supervisor for guidance and comments.

1.7 Theoretical Review:

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

1.8 Limitations:

1. Balancing time between work and conducting research will be quite challenging because of the conflicting interests in doing work which requires me to be in the field most of the time and also carrying out this research which is time-consuming.
2. Some information is not left for public dominion implying that it's difficult to get some relevant information that would be helpful in conducting this research. Furthermore, some information especially textbooks and journal articles cannot be freely accessed implying that they have to be purchased and some textbooks require time to be shipped into the country.
3. Times have changed especially with the outbreak of the covid-19 pandemic whereby it's now challenging to access public libraries where the researcher can find information.
4. Some respondents may not be cooperative in a way that they may refuse to disclose information that is relevant to this research due to the confidentiality that they owe to the IOCs.

1.9 Synopsis:

The study will be composed of the following chapters which Chapter one will entail the introduction of the research topic, objectives, research questions, and theoretical framework.

Chapter two will entail the analysis of the existing literature in relation to national content in the oil and gas sector in Uganda,

Chapter three will entail the research methodology which shall include research design, Population Target, Sample size, Sampling Techniques, Data Collection Instrument, questionnaire, Interview Guide, Data quality control, and Data Analysis.

Chapter four will analyze a comparative analysis of major international regulations

Chapter Five will analyze the legal/regulatory and policy framework available to enhance local content in the oil and gas sector

Chapter Six will address the Challenges of implementing the existing legal frame on local content in the oil and gas sector in Uganda and related literature.

Lastly, Chapter Seven will entail conclusions and recommendations.

CHAPTER TWO

LITERATURE REVIEW:

2.0 Introduction:

Oil seepages along Lake Albert have been well-known by the local communities for generations. The colonial masters who were the British made the first exploration in the late 1800s, where some exploration began near Kibiro the fishing village in the early 1900s but this couldn't continue because of World War I. In 1925, E.J. Wayland who was director of the Geological Survey for Uganda protectorate mapped out indications of oil in the country to help re-spark exploration interest. In 1938 a South-African-based European investment company drilled the first exploration well at ButiabaWaki-I, though it was left underway due to the sparkle of World war. Following Uganda's independence in 1962 which was associated with political unrest and civil war, this forced many investors to flee from the country and the huge operation costs for exploring oil well.³

Uganda signed its first Production Sharing Agreement (PSA) in 1991 with Petrofina but two years later Petrofina withdrew without completing its work⁴.

In 2006, commercially viable oil deposits were discovered in the Albertine Graben which made Uganda a 'hotcake' with everyone wanting a piece to own. The framers of the Constitution thought it wise and vested power to own natural and mineral resources in the government on behalf of the citizens. The rationale was to ensure that all Ugandans benefit from the exploration of minerals and natural resources⁵.

It should be noted, that there is no primary law that specifically addresses national content in the oil and gas in Uganda but there is a bill before parliament that is pending assent. However, there are various laws, regulations, policies, and PSA that stipulate national content in the oil and gas sector in Uganda.

Khwaja (2004) uses primary data on Health Projects in Northern Pakistan to provide empirical support to illustrate the effects of community participation on project performance. His findings do provide evidence supporting the theoretical claim, that greater community participation in non-technical decisions is associated with higher project outcomes. This is in conformity with the oil and gas sector in Uganda where technical decisions are not done by the public but it's only a few individuals that participate in technical decision-making, leaving out the

³Page 4 of the Oil in Uganda: Hard bargaining and complex politics in East Africa.

⁴ Page 5 bid

⁵History of oil Discovery in Uganda politics Essay. Retrieved from <https://www.ukessays.com/essay/politics/history-of-oil-discovery-in-uganda-politics-essay.php?vref=I>

nationals in information darkness. It should be remembered that the information itself is not left out for public dominion.

Katz and Sara (1997) analyze the performance of water systems in a variety of countries. They find that the performance of water systems was markedly better in communities where households were able to make informed choices about the type of system and the level of service they required, and where decision-making was genuinely democratic and inclusive. In contrast, projects which were established without national participation were not accountable to the community which indicated that they lacked technical support from the community. Under the P (EDP) Act⁶, the IOCs are mandated to give priority to the entrepreneurs or local communities to supply goods and services which include food, equipment, accommodation, and transportation facilities among others. However, the Act does not stipulate for the procedure on how nationals can participate. In reality, the Petroleum Authority of Uganda requires local entrepreneurs or companies to register with the national register supplier database.

Masanyiwa and Kinyashi (2008) established that 'community participation' in the study programs takes on different forms in different stages of the project cycle. Despite the time difference between the old and new programme, the nature and extent of participation for the most of local communities in both programs is generally limited to information given, consultation, and contribution. Local communities are generally not actively involved in decision-making, planning, monitoring, and evaluation processes. Key factors identified as facilitators in promoting stakeholders' participation are the NGO's long-term commitment to working with the poor staff with knowledge and skills on participatory approaches, continuous community sensitization and mobilization, and perceptions that interventions being implemented are addressing participants' needs. This is in conformity with the current trend in the Oil and gas sector where nationals are engaged from the national level, district level, sub-county, and village level on different things like Environmental and Social Impact Assessments among others.

According to Chifamba (2013), community participation is widely viewed as a basic operational principle of rural development, although debates about this concept are fervent. Beneficiaries of community development have been seen as consumers of service, and their role in rural development has been accorded less importance. Community participation has been limited to consultation, thereby shifting the creative capabilities and potential community members at all levels of society. Chifamba (2013) in his study, revealed that there is a relatively low degree of community influence or control over projects in which community members participate, especially given that the services are controlled by people who are not poor or recipients of services. The P (EDP) Act⁷ advocates for the employment and training of nationals by the IOCs which is intended for the nationals to participate in the oil and gas sector then being mere speculators, however, this has only benefited the lucky few.

⁶Section 125(1) of the P(EDP)Act 2013

⁷Section 126(1) of the P(EDP)Act 2013

King'ori (2014) studied the influence of community participation in the completion of Health Projects: A case of Korogocho slums, Nairobi County, Kenya. On project identification, 76 percent of the respondents agreed that participation in project identification influenced project completion. Furthermore, the strong positive correlation of 0.714 between participation in planning and project completion confirmed that an increase in the community's participation in the planning phase had a positive influence on its completeness. Chi-test results confirmed that there was a significant relationship between community participation in the planning phase and the completion of Health Projects. For any project to be successful it needs a social license to operate since the host community is the custodian of the resource it has to be engaged right from the inception for it to be accepted by the host community

CHAPTER THREE

RESEARCH METHODOLOGY:

3.1 Research Design:

The study will adopt a qualitative method that involves both formal and normative aspects of the existing legal framework on the participation of nationals in the oil and gas sector in Uganda.

The qualitative paradigm/approach will be used as means to explore the understanding and meaning that the respondents ascribe to the study problem⁸. This will provide an in-depth understanding of the respondent's experiences and perspectives as interpreted by the researcher. Therefore, the research will be able to draw statistical inferences and provide an in-depth analysis of nationals' participation in access to investment opportunities in the upstream sector of oil and gas in Uganda.

3.2 Research Methodology:

1. Literature Review:

- Utilization: The research methodology begins with a comprehensive literature review to examine existing scholarly works, reports, and documents related to national content provisions in Uganda's oil and gas sector. This review provides background information, theoretical frameworks, and empirical evidence to contextualize the study and identify key issues, challenges, and best practices.

2. Interviews:

- Utilization: Semi-structured interviews are conducted with key stakeholders, including representatives from oil and gas companies, legal and regulatory authorities, civil society organizations (CSOs), and academic institutions. These interviews allow for in-depth exploration of perspectives, experiences, and insights regarding national content provisions in Uganda's oil and gas sector. Stakeholders are asked about their understanding of national content requirements, challenges faced in implementation, and recommendations for improving national participation.

3. Document Analysis:

⁸Thanh, N.C., &Thanh, T.T.L. (2015). "The Interconnection between Interpretivist Paradigm and Qualitative Methods in Education". *American Journal of Educational Science*, 1(2), 24-27.

- Utilization: Relevant legal and policy documents, including the National Oil and Gas Policy (NOGP), the Upstream and Midstream Acts, and other regulatory frameworks, are analyzed to examine the legal and institutional framework for national content provisions in Uganda's oil and gas sector. This document analysis helps identify specific provisions, gaps, and ambiguities in the legislation related to national participation and local content requirements.

4. Data Collection:

- Utilization: Data collection involves gathering both qualitative and quantitative data from multiple sources, including interviews, documents, and reports. Qualitative data obtained from interviews provide rich insights and perspectives from stakeholders, while quantitative data from documents and reports offer factual information and statistical evidence related to national content provisions, employment opportunities, and local participation in the oil and gas sector.

5. Data Analysis:

- Utilization: Qualitative data from interviews are thematically analyzed to identify patterns, themes, and recurring issues related to national content provisions. This analysis involves coding, categorizing, and interpreting interview transcripts to extract meaningful insights and findings. Quantitative data from documents and reports are analyzed using statistical techniques to examine trends, patterns, and relationships relevant to the study objectives.

6. Comparative Analysis:

- Utilization: A comparative analysis is conducted to compare Uganda's legal framework and implementation of national content provisions with international best practices and experiences from other countries. This comparative approach helps identify lessons learned, challenges encountered, and successful strategies for promoting national participation in the oil and gas sector, providing valuable insights for policy recommendations and future research directions.

By employing these research methodologies, the study aims to provide a comprehensive understanding of the legal framework for national content provisions in Uganda's oil and gas sector, identify challenges and opportunities for promoting national participation, and generate evidence-based recommendations for policy and practice improvements.

3.3 Population Target:

The study population will comprise all nationals in the oil and gas sector that have the capacity to conduct employment and decision. In this case, the target population is guided by the Ministry of Energy and Mineral Development, 2017.⁹ It will include 95 responses from the Local Government, District Councils, Project Affected persons, NEMA, PAU, Nationals, Environment Consultants, Cultural Institutions, Health and Security Services, the Ministry of Gender, Labour and Social Development, and the National Forest Authority. The reason for the choice of such a target population is the availability of office bearers, with the possibility of verifiable records.

3.4 Sample Size:

The study will be determined by the use of **Krejcie & Morgan's** sample size¹⁰. This will involve a number of stakeholders currently participating in the upstream sector of the oil and gas sector.

Table 1: Showing the distribution of the Sample Size

Category	Population	Sample	Sampling Technique
Local Government	3	2	Random Sampling
District Councils	2	2	Purposive sampling
Project Affected Person	3	2	Purposive sampling
NEMA	1	1	Purposive sampling
Nationals	70	58	Purposive sampling
Environment Consultants	2	1	Purposive sampling
Cultural Institutions	4	2	Purposive sampling
Health and Security Services	1	1	Purposive sampling
Ministry of Gender	3	2	Random sampling
Labour and Social development	3	2	Random sampling
National Forest Authority	3	1	Purposive sampling
Total	95	74	

Source: Primary Data, 2023

⁹ PAU The National Supplier Database List 28th February, 2018 www.pau.go.ug (accessed 1st December 2023)

¹⁰ “Krejcie, R. & Morgan, D.W. Determining Sample Size for Research Activity. (1970). “*Educational and Psychological Measurement*, 30(3), 607-610”.

3.5 Sampling Techniques:

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

3.6 Data Collection Instrument:

The study will mainly adopt two data collection instruments which will include the questionnaire and interview guide.

3.6.1 Questionnaire:

The questionnaire will have the background characteristics of the respondents which will aid relevant information to the study on age, gender, educational level, and organizational tenure. It will further express relevant information to the situation in the problem.¹¹

3.6.2 Interview Guide:

The study will base on the general interview guide approach that is an instrument that contains structured question items to collect qualitative data. This interview guide will help in obtaining detailed information from the respondents however ensuring that the same general areas of information are collected from each interview. This provides more focus and a degree of freedom and adaptability to give room for learning from the respondent's experience. Subject to availability and accessibility, the researcher targets to interview 20 respondents, mainly within the Kampala/Hoima districts.¹² These will include key respondents from nationals, PAU, NEMA, Banks and Financial Institutions, Companies resident in the area, Legal Sector, Ministry of Gender, labour and social development, Ministry of Energy and Mineral Development, Cultural Institutions and National Forest Authority.

¹¹ Appendix A

¹² In view of the Covid-19 challenges –limited access to the border Districts home to the petroleum extraction activities and Cultural Institutions.

3.7 Data Quality Control:

Validity; the study will rely on official and other verifiable data readily available and relevance assessed by the supervisor on the relevance. This will manifest wording and clarity of the items in the instrument. In this case, the study seeks to gather information from the existing sources and thereafter, it will be tested using confirmatory Factor Analysis thus helping in attaining a validity of the study items¹³.

Reliability for the qualitative instrument will be achieved with the help of consultations with the supervisor, prolonged engagement and audit trails. Data will be systematically checked, focus maintained and consistent identification and correction of errors¹⁴.

3.8 Data Analysis:

Qualitative analysis will be carried out through thematic and discursive methods. By thematic analysis, clusters of text with similar meaning will be presented together¹⁵.

¹³Marsh, H.W., Morin, A.J., Parker, P.D., &Kaur, G, Exploratory structural equation modeling: An integration of the best features of exploratory and confirmatory factor analysis. (2014) *Annual Review of Clinical Psychology*, 10, 85-110.

¹⁴Morse, J.M., Barrett, M., Mayan, M., Olson, K., &Spiers, J., “Verification strategies for establishing reliability and validity in qualitative research” (2002) *International Journal of Qualitative Methods*, 1(2), 13-22

¹⁵ Madill, A., & Gough, B., Qualitative research and its place in psychological science. (2008)*Psychological methods*, 13(3), 254.doi: 10.1037/a0013220

CHAPTER FOUR

THE MAJOR INTERNATIONAL, REGIONAL AND NATIONAL LEGAL INSTRUMENTS GOVERNING LOCAL CONTENT IN THE OIL AND GAS INDUSTRY IN UGANDA

4.1 Introduction:

International law is a system of principles, rules and practices that govern relationships between states and other internationally recognized problems. International local content standards therefore encompass the corpus of international law relevant to the protection of the global local content. It was originally premised on the principle that states must not permit the use of their territory in such a way as to injure the territory of other states and today international law has since been expanded by a plethora of legally-binding and non-binding international agreements/ treaties that Uganda is signatory to.

Even though there is no effective central authority, breach of international law may result in a variety of sanctions including collective sanctions under the UN or state action under the International Court of Justice system, arbitration, economic sanctions and diplomatic protests. Therefore, the aim of this chapter is to discuss the international and regional environmental law compliance requirements (binding and non-binding) and their importance to the nascent oil industry in Uganda. It has five sections: international soft law principles; binding international and regional law compliance requirements; application of international local content standards in Uganda, and conclusion.

4.2 Sources of International law:

The sources of international law are obtainable under the Statute of the International Court of Justice. The statute defines sources of international law to include:¹⁶ International conventions whether general or particular, establishing

¹⁶ Article 38(1) of the ICJ Statute

rules expressly recognized by the member states. These include treaties, conventions, pacts, protocols and covenants, and international custom accepted as law (international customary law). These are norms and rules that countries follow as a matter of custom and they are so prevalent that they bind all states in the world. An unwritten international norm becomes part of customary law if it is consistently followed over a long period of time by a significant number of states which accepts it as a legal obligation. For example, if a particular commitment to act is repeatedly expressed at important international conferences, and if all the participating states act in accordance with it, then the commitment may become an obligation under international customary law.

Examples include; rules developed by international organizations such as FAO, UNEP, Environmental Health and Safety policy manuals and general principles of law recognized in civilized nations. These refer to general principles common to the world legal systems. These norms are available and acceptable to states to regulate their international relations. Examples include; Stockholm Declaration, 1972; Rio Declaration 1992, and judicial decisions. These include opinions of international courts and tribunals for example; the International Court of Justice, the Law of the Sea Court and other regional treaty tribunals and teachings, and writings of the most highly qualified publicists of international law. The latter includes learned writings of scientific and professional associations and eminent lawyers. The next sections analyze international local content regulations.

4.3 Application of International and Regional Local Content Laws in Uganda:

Uganda recognizes the need to participate in International Law. The Constitution provides that the president or any other person authorized by the president may make treaties, conventions, agreements or other arrangements between Uganda

and any international organizations in respect of any matter, and that parliament shall make laws to govern ratification of any treaty, conventions, agreements or other arrangements¹⁷. All treaties in Uganda are ratified according to the procedure laid down by the Ratification of Treaties Act.¹⁸ The Act provides for the following modes of ratification; ratification by cabinet; and ratification by parliament by resolution where the treaty has the effect of amending the Constitution, or where the treaty relates to armistice, neutrality or peace¹⁹. In case the treaty requires amendment, the Attorney General has to certify in writing that the implementation of the treaty in Uganda would require amendment. The Attorney General's certificate is presented to cabinet and subsequently a motion is tabled in parliament. If satisfied, parliament passes a resolution for the ratification of the treaty. Where a cabinet ratifies a treaty, it must lay it before parliament as soon as possible. Instruments of ratification of a treaty concluded by cabinet or parliament are signed, sealed and deposited by the minister responsible for foreign affairs to the ministry in charge of all treaties and conventions. Therefore, it follows from the foregoing that all international and regional environmental law instruments which are ratified and domesticated are binding on her and should be complied with in all current and future oil operations.

The above compliance requirements set good international and regional binding and soft standards not only for the local content generally but also the oil and gas industry in particular. Therefore, Uganda should as far as is practicable, aim at complying therewith. One of the major challenges of enforcing international law is its soft character. The law does not prescribe punitive reinforcements against violators. Even where such sanctions are prescribed, there may be no clear and/ or

¹⁷ Constitution of the Republic of Uganda, 1995 article 123.

¹⁸ Cap 204 Laws of Uganda 2000

¹⁹ See section 2

affordable system of pursuing remedies. In addition, international and regional tribunals require that before one can approach them he/she should have exhausted all available local remedies yet in some cases, these are inaccessible due to structural bottlenecks. However, all this can be overcome by domesticating those standards into local oil and gas legislation which should clearly highlight environmental standards, punishments for noncompliance and the procedures for pursuing remedies.

4.4 International Hard and Soft Law Principles:

Uganda has ratified a number of binding international hard law local content conventions and treaties which have significant implications for oil and gas exploration and production in Uganda. This is more so due to the fact that they have a force of law, and Uganda is obliged to abide by the local content standards enshrined there under. They include the following:

4.4.1 Agreement on Trade Related Investment Measures (TRIMs)

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 and institutional capabilities, subject to notification to the General Council.

The contracting company must purchase or use products of domestic origin. TRIMs prohibits discrimination between goods of domestic and imported origin; TRIMs limits the amount of imported products that an enterprise may purchase or use

depending on the volume or value of local products that the enterprise exports. 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).

The following types of local content requirements are covered by TRIMS2: Requiring a company to purchase or use products of domestic origin and TRIMS prohibits discrimination between goods of domestic and imported origin; 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; 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 Restricting export.

4.4.2 The General Agreement on Trade in Services (“GATS”).

The General Agreement on Trade in Services (“GATS”), covers investment measures related to services (in Article XVI), including the following which are relevant to local content such as requirements to use domestic service suppliers, limitation on the number of service suppliers, limitation on the total value of service transactions or assets and limitation on the total number of service operations or quantity of service output, limitation on the total number of natural persons permitted, restrictions on the requirements for certain types of legal entities (e.g., joint venture requirements) and Imposition of domestic equity. GATS only apply to those service sectors that the country chooses to include in its Schedule of Commitments. Uganda’s commitments relate only to tourism and

travel related sectors and GATS is therefore unlikely to affect the implementation of Uganda's local content framework.

Therefore, the World Trade Organization (WTO)'s agreements and investment treaties can present an obstacle to the realization of local content goals by prohibiting some types of local content requirements (a sub-category of "performance requirements"). WTO agreements and investment treaties in each country profiled to identify the provisions that may prevent, counsel against and/or shield local content standards. These provisions are quoted in the profile in order to show the potential barriers to implementation of local content so that they can be kept in mind when countries enter into these international investment treaties. Free Trade Agreements other than the WTO agreements, some of which may contain investment chapters, are not included in the scope of the review, but may also be relevant and should be similarly kept in mind.

4.5 The Bilateral investment treaties concerning local content.

Investment treaties are international agreements between two or more countries which establish the terms and conditions of foreign investment within each country and provide rights directly to the investors of each country which is party to the treaty. As at 1st June 2013, Uganda had entered into 15 bilateral investment treaties (BITs) but only 7 were in force. The treaties can contain restrictions on local content requirements. Investment treaties can contain the following types of provisions, each of which affects a country's ability to impose local content requirements:

Non-discrimination provisions ("national treatment" and "most favored nation" obligations): These are relevant in the context of local content when the host

countries require some foreign investors to source from certain goods and service providers but don't impose similar requirements on other investors and host countries give an advantage to some domestic or foreign goods and services providers, but not to a foreign provider whose state has a relevant treaty with the host country. This is relevant only where the foreign provider of goods or services has or, intends to have, a presence in the host country.

Restrictions on capital transfers and pre-establishment protections: These prevent a state from imposing conditions on foreign investors that are not imposed on domestic investors, such as requirements to transfer technology to local firms, to establish the firm through a joint venture, or to re-invest a certain amount of capital in the host country; Incorporation of the TRIMs agreement; and explicit prohibition of performance requirements that go beyond what is restricted by the TRIMs Agreement. Either contracting Party shall extend fair or equitable treatment in accordance with the principles of International Law to investments made by nationals and companies of the other Contracting Party on its territory or in its maritime area, and shall ensure that the exercise of the right thus recognized shall not be hindered by law or in practice. In particular, though not exclusively, shall be considered as *de jure* or *de facto* impediments to fair and equitable treatment any restriction to free movement (sic), purchase and sale of goods and services, as well as any other measures that have a similar effect”.

It recognizes that for national content ambitions in the petroleum industry to become a success, capacity building and industrial diversity are prerequisites. Thus, it is crucial for Uganda to pursue long term political commitment for capacity building to reap the benefits of national participation”. It is important however, to emphasize that successful national content development cannot be

achieved by regulation and legislation alone. An extensive framework often tends to lead to rules that are too ambitiously and strictly enforced, which easily leads to consumption of wealth, inferior industry development, violation of international obligations and corruption. National content should be achieved through capacity building and real contributions to capacity building by creating a credible atmosphere for industrial collaboration as well as for the transfer of competence and technology which are the only route to creating lasting value to society.

4.2 NATIONAL LEGAL FRAMEWORK:

Uganda has introduced a national and institutional framework to ensure that the oil and gas industry complies with local content as will be discussed below. The legal regime governing the oil and gas industry in Uganda is constituted by locally tailored policy and legislative compliance requirements. The major policy and legislative local content law compliance requirements were developed after 1995 with the formulation of policies. This saw the development of the major National Oil and Gas Policy and Petroleum (Exploitation, Development and Production) Act, No. 3/2013 as Uganda's framework legislation. It is under these that subsequent sectorial policy and legislation have developed. Legislation covered in this chapter includes; the 1995 Constitution of the Republic of Uganda, major oil and gas law and other relevant laws. Compliance with these policy and legislative aspirations and standards will enable Uganda develop local content sound and sustainable oil and gas sector. This chapter is organized into three sections. The first section discusses the compliance standards under the national legal framework, the second discusses the National Policy Framework for oil and gas, and the third section analyses the institutional framework responsible for ensuring compliance with environmental health and safety standards in the oil and gas industry in Uganda.

4.3 Compliance Local content standards under the National Legal Framework for Oil and Gas.

4.3.1 The Constitution of the Republic of Uganda (1995) (as amended)

The 1995 Constitution of the Republic of Uganda has elaborate provisions regarding environmental management. In the National Objectives and Directive Principles of State Policy, the Constitution requires the Government of Uganda to take measures to protect important natural resources, including land, water, wetlands, minerals, oil, fauna and flora on behalf of the people of Uganda.²⁰ The government is also required to promote and implement energy policies that will ensure that people's basic needs and those of environmental preservation are met. It is further required to promote the rational use of natural resources so as to safeguard and protect the bio-diversity of Uganda. The Constitution also requires government to promote a good water management system at all levels;²¹ promote sustainable development and public awareness of the need to manage land, air, water resources in a balanced and sustainable manner for the present and future generations and to prevent or minimize damage and destruction to land, air and water resources resulting from pollution or other causes.²²

The NOGP recognizes the need for national participation through employment, training and skills development and service provision in the sector. Under Objective VII of the NOGP; government seeks to ensure optimum national participation in oil and gas activities. Similarly, Objective VIII 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**

²⁰ Principle XIII

²¹ Principle XXI

²² Principle XXVII

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.

In the substantive provisions, the Constitution has a specific provision for the right to a clean and healthy environment. Under Article 39²³, every Ugandan has a right to a clean and healthy environment. This provision is reiterated under Section 3 of the National Environment Act Cap 153; and Section 5(2) of the National Forestry and Tree Planting Act No. 8 of 2003 which all provide for the right to clean and healthy environment. The breach of the right entitles any person or responsible body to bring an action in furtherance of the right. The Constitution further imposes on the State and the citizens the duty to create and protect a clean and healthy environment²⁴ which is echoed in the Occupational Health and Safety Act

²³ The 1995 Constitution of the Republic of Uganda.

²⁴ Article 17 (I) (J)

of 2006. The above provisions imply that a person whose right to clean and healthy environment is violated due to oil exploration and production may take the company responsible or government to court to seek redress²⁵.

The emphasis of local content can be viewed as hinged on Article 244 of the 1995 Constitution of the Republic of Uganda which places the control of all minerals and petroleum in the hands of the government on behalf of the people of Uganda. And this is closely related to the *trust doctrine* which obliges the government to account to its people as principals or owners, ensuring that they participate in their affairs either by themselves or through elected representatives. In a nutshell, the people of Uganda are the biggest and most important shareholders in the country's oil exploitation. Importantly, Article 244(2) (d) of the 1995 Constitution mandates Parliament to make laws to regulate the exploitation of minerals and petroleum and the sharing of royalties arising from the petroleum exploitation—in essence, this is the backbone of the local content concept.

The constitution vests the ownership of all minerals and petroleum in the government which is to hold the same on trust for the people of Uganda. This introduces the *public trust doctrine* in the management of oil and gas resources²⁶ and this was courtesy of the Constitutional (Amendment) Act of 2005. This Amendment Act has significant implications for oil and gas management and control, and sharing of royalties from oil and gas. Part XIII and specifically section 43 amends article 244 of the Constitution by replacement. Accordingly, the entire

²⁵ In the case of *Environmental Action Network v. British American Tobacco*, the applicant brought an application under article 50(2) of the 1995 Constitution and rule 3 of the Fundamental Rights and Freedoms (Enforcement Procedure) Rules, for a court order compelling the respondent, a manufacturer of “dangerous products” (cigarettes), to fully and adequately warn consumers of the health risks associated with its products. Although the order was ultimately denied, the court did confirm the *locus standi* of the applicant, that article 50(2) enabled individuals to bring public interest matters to court on behalf of those who were not in a position to do so.

²⁶ Article 244

property in and the control of all minerals and petroleum in, on or under any land or waters in Uganda are vested in the Government on behalf of the Republic of Uganda. This is however subject to Article 26 of the Constitution which emphasizes the need to fairly and adequately compensate surface land owners before the Government can take over the petroleum rich lands. Parliament is mandated to make laws regulating the exploitation of minerals and petroleum; the sharing of royalties arising from mineral and petroleum exploitation; the conditions for payment of indemnities arising out of the exploitation of minerals and petroleum and conditions regarding the restoration of derelict lands. Some of the laws hereinafter have therefore been enacted under this amendment.

Under Article 41 of the 1995 Constitution, every citizen of Uganda has the right of access to information in the possession of the State, except where the release of such information is likely to prejudice security or interfere with the right of another person. It is on this basis that the Access to Information Act, 2005 was enacted. The Act was also designed to promote an efficient, effective, transparent and accountable government and to empower the public to effectively scrutinize and participate in government decisions that affect them. Even with such information being accessed, there remains a challenge in ensuring that Ugandans the majority of whom are illiterate or have only Basic English are able to be included in its dissemination and debate. Furthermore, the processes of accessing information are tedious and can be expensive. Finally, the culture of government secrecy over state affairs remains deeply entrenched, to the extent that even the courts of law are reluctant to compel the government to do so. In *Charles Mwanguhya Mpagi & Angelo Izama vs. The Attorney General*²⁷ in which two journalists sought copies of agreements made between the government of Uganda

²⁷ Miscellaneous Cause No. 751 of 2009

and various companies involved in the prospecting and exploitation of oil. However, the court held that the two journalists did not show how they would use the information for the benefit of the public. According to the Court, Government business is not in its entirety, supposed to be in the public domain.

The Ugandan Constitution offers a great deal in providing for local content promotion especially through fronting the interests of the Ugandans in the process of mineral and petroleum exploitation and development. However, when analyzed, the constitution in its effort to promote citizen participation alongside competing foreign interests of oil companies, two concerns are always exhaustively hard to handle and solve. First and foremost, the constitution raises the issue of the land question. Much as local participation is encouraged, questions of compulsory acquisition of land by Government for purposes of expanding petroleum production has in the end destroyed what would amount to host communities as more hectares of land are being taken up by government. It is always a caution to government as to whether the host communities who are being relocated to other places would benefit from the local content benefits that accrue to them as host communities. Secondly, is the issue of whether there are express Articles in the constitution which strongly and directly encourage local content participation

4.3.2 Petroleum (Exploration, Production and Development) Act 2013 (PEPD)

The Petroleum (Exploration, Production and Development) Act came into force in 2013 and it is the primary law responsible for the management and regulation of Oil and Gas activities in Uganda. The major purpose of this Act is to operationalize the National Oil and Gas Policy and to achieve this, many strategic approaches are identified: establishing an effective legal framework and institutional structures to

ensure that the exploration, development and production of petroleum resources is carried out in a sustainable manner that guarantees optimum benefits for all Ugandans, both the present and future generations and creating a conducive environment for the efficient management of petroleum resources.

The Act enjoins players to conduct petroleum activities in a manner to enable high level of safety and maintain the level in accordance with technology developments, best industry practices, and other laws.²⁸This legislation was enacted by parliament in accordance with Article 79 (1)²⁹ to give effect to Article 244(2)³⁰ and specifically regulate petroleum activities like exploration, development and production whilst establishing a National Oil Company (NOC) and the Petroleum Authority of Uganda (PAU). As a kick start off point, the Act lays down its purpose³¹. This purpose goes to the root of supporting state and citizens' active participation in the petroleum industry in Uganda through providing locally produced goods, services and labour. It should be noted that this purpose is one of the mechanisms adopted for the operationalization of NOGP because it connotes to the desire by the Ugandan government to ensure citizen participation in order to achieve the objective of poverty eradication

Another important aspect rendered by the Act towards National content is the definition it lays down as to what amounts to petroleum. The Act defines petroleum to mean any naturally occurring hydro carbons whether in gaseous, liquid or solid state or any naturally occurring mixture of one or more carbons

²⁸ Section 140

²⁹ Of the Constitution

³⁰ *ibid*

³¹ Section 1 (f) Petroleum (Exploration, Development and Production) Act 2013

whether in gaseous, liquid or solid state and any other substance that may be extracted but does not include coal or shale.³²

Therefore, in ascertaining the level of compliance to local content legislations, this research was restricted to only sectors and companies that deal in petroleum activities or provide a subsidiary to the petroleum sector taking into consideration of what amounts to petroleum as defined above. The Petroleum (Exploration, Development and Production) Act 2013 has about five major contributions it plays towards the promotion of local content in the petroleum sector which include; Promotion of state participation³³; supports provision of goods and services by Ugandan entrepreneurs³⁴; training and employment of Ugandans³⁵; formation of the Petroleum Authority of Uganda and formation of the National Oil Company.

Section 124(1)³⁶ expressly provides that “Government may participate in petroleum activities under this Act through a specified participating interest of a license or contract granted under this Act and the joint venture established by a joint operating agreement in accordance with the license and this Act.” This provides for and calls upon the state to participate in the process of petroleum exploration, development and production, and government has tried to achieve it through its NOC³⁷ and its implications shall be analyzed later on in this research.

Section 125 (1) ³⁸provides vividly that “the licensee, its contractors and subcontractors shall give preference to goods and services which are produced or available in Uganda and rendered by Ugandan citizens and companies.” This

³² Section 2 ibid

³³ Section 124(1) ibid

³⁴ Section 125(1) ibid

³⁵ Section 126 ibid

³⁶ ibid

³⁷ NOC is established under section 42 ibid

³⁸ ibid

provision of the legislation encourages consumption of locally available goods and services, and it is right to state that it is just in line with the Buy Uganda Build Uganda Policy 2014 as seen earlier on in this report. However, section 125 (2) goes ahead to break the seal. It provides that where such goods and services as required by the contractor or licensee are not available in Uganda, they shall be provided by a company which has entered into a joint venture by a Ugandan company provided that the Ugandan company has a share capital of at least 48% in the joint venture. Even though aspects of local content are diluted by this provision, it suffices to note that some petroleum activities are so complicated that Ugandan companies may not meet the minimum requirements and that is why a foreign company can jointly work together with a Ugandan company to provide such services.

This has about two advantages, firstly the provision encourages transfer of knowledge and technology from the foreign company to the joint venture Ugandan company, and secondly the Ugandan company in joint venture business is able to actively engage in petroleum activities. Besides the above advantages of this provision, it has a number of challenges that will be considered later on concerning its applicability especially as to what amounts to a Ugandan company.

Section 126(1) of the Petroleum (Exploration, Development and Production) Act provides that the licensee after the grant of license shall submit to the Authority a detailed program for recruitment and training of Ugandans. It therefore compels the licensee to ensure that there is a plan to; recruit and employ Ugandans,³⁹ and train those recruited Ugandans in all phases of petroleum activities.⁴⁰ This program is supposed to take into account gender, equity, persons with disabilities and host

³⁹ Section 126 (1) Petroleum (Exploration, Development and Production) Act

⁴⁰ Section 126 (2) *ibid*

communities which all score the same goal of promoting local content in the petroleum sector. To cement the point further, Section 74(1)⁴¹ places a number of restrictions on licensees to be satisfied before such licensees are granted petroleum licenses. It provides that a petroleum production license shall not be granted to a licensee unless he or she satisfies among other things the following requirements; the applicant is able and willing to comply with the conditions on which a license is given⁴²; the applicant has proposals for the employment and training of citizens of Uganda⁴³; that the applicant's proposals for the procurement of goods and services available in Uganda are satisfactory.⁴⁴

Among the major contributions that the Petroleum (Exploration, Development and Production) Act plays towards the development of local content is the establishment of PAU and spelling out its functions. Section 9(1)⁴⁵ expressly provides, "there shall be the Petroleum Authority of Uganda". This authority is meant to be a body corporate with perpetual succession and an official seal with power to acquire property and sue or be sued in its own name.⁴⁶ PAU plays a great contribution towards the implementation of local content legislation because it is not only mandated to monitor and regulate petroleum activities or even ascertain the cost of oil and gas but also ensures that licensees uphold laws, regulations, rules and contract terms alongside ensuring the establishment of a central data base where all companies involved in the provision of services to the petroleum sector are registered.⁴⁷

⁴¹ *ibid*

⁴² Section 74(1)(d) *ibid*

⁴³ Section 74(1)(e) *ibid*

⁴⁴ Section 74(1)(f)

⁴⁵ *ibid*

⁴⁶ Section 9(2) *ibid*

⁴⁷ Section 10 *ibid*

In summary, the functions of the authority towards local content development are laid down as follows; to monitor and regulate petroleum activities⁴⁸; to review and approve budgets submitted by licensees; to participate in the measurement of petroleum for estimation and assessment of royalty of profit oil or gas due to the state; to ascertain the cost of oil or gas due to licensees; to ensure that licensees uphold laws, regulations, rules and contract terms; to ensure the establishment of a central data base of persons involved in petroleum activities. The aforementioned functions of the authority are important to this research because firstly, a detailed analysis of them gives birth to the relevance of the aspect of local participation in the petroleum sector. For example, taking into consideration the first and fifth function of monitoring and ensuring that licensees uphold the laws and rules in the petroleum industry, it is the researcher's finding that the Authority monitors how local content provisions are being upheld and implemented by licensees. This is normally done through the annual reports received by the Authority from the licensees.⁴⁹

The Authority also plays a major contribution towards local content development in ensuring that there is a balance of interest between Government and the other oil companies. Whereas the Government needs the citizens to actively participate in petroleum activities, the oil companies also want to maximize efficiency by employing highly skilled persons who may not be available in Uganda and hence PAU comes on board to ensure a balance of the conflicting interests. It is therefore the researcher's conclusive finding that as PAU performs its mandated roles, it in one way or the other plays a big contribution towards the development of local content in the petroleum industry as held above.

⁴⁸ *ibid*

⁴⁹ Section 126 *ibid*

Section 42(1)⁵⁰ establishes the National Oil Company which is owned by the state. It states that “there shall be incorporated, under the Companies Act 2012 a National Oil Company which shall be wholly owned by the state to manage Uganda’s commercial aspects of petroleum activities and the participating interests of the state in the petroleum agreement.”⁵¹ In analysis, the major role that NOC plays is to manage Uganda’s commercial aspects and the participating interest of the state in accordance with section 124⁵². According to the researcher’s findings, the major reason why NOC was incorporated was to prepare Ugandans to engage in the lucrative petroleum sector since the company would employ Ugandans but also for the state to actively participate in petroleum activities through it.

NOC has the following functions and roles it plays towards local content development in the petroleum sector; It handles the state’s commercial interests in the petroleum sector arising out of the joint production agreements between Government and the Licensees; It also manages state participation in petroleum activities. In other words, the company participates on behalf of the state in the petroleum activities. It should be noted here that the above functions all correlate to the fact that NOC was incorporated to ensure that the state as the initiator of local content through various policies analyzed earlier on actively participates in petroleum production, exploitation and development, and this in the long run will help to achieve the objective of ensuring state participation in the petroleum activities.

⁵⁰ *ibid*

⁵¹Section 42(1) *ibid*

⁵² *ibid*

The government of Uganda introduced local content requirement in the oil and gas sector operations in Uganda. The Petroleum (Exploration, Development and Production) Act and the Petroleum (Refining, Gas processing and conversion, Transportation and Storage) Act to purposely provide for the local content in respect to; the local content personal requirement, the technology transfer requirements and the local content requirement for equipment. To this end, every licensee under Section 71⁵³ is required to submit to the Petroleum Authority of Uganda for approval, a detailed programme for recruitment and training of Ugandans within 12 months from the date of issuance of the license to them and on each subsequent anniversary of the grant. The licensee is also required to make a report of the execution of the above programme to the Authority. It should also be noted that Section 126(4)⁵⁴ of the Petroleum (Exploration Development and Production) Act 2013 provides that where a recruitment and training programme is proposed to be awarded as required above, it cannot be varied without the permission of the Petroleum Authority. Section 71(3) (k)⁵⁵ of the Petroleum Exploration Development and Production) Act 2013 further provides that a petroleum production license shall not be granted unless the applicant's proposals for employment and training of citizens of Uganda are satisfactory.

It should be noted that 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 this capacity needs at present. There is no link between the Petroleum Authority which is the main

⁵³ Petroleum (Exploration Development and Production) Act 2013

⁵⁴ Ibid.

⁵⁵ Ibid.

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.

Lastly, Section 56 (3) (f) of The Petroleum (Exploration, Development and Production) Act provides that “an applicant for a petroleum exploration licence is expected to support his application with a statement on how it intends to train and employ Ugandans.” There is however no specific provision in the same law ensuring that, once trained, the same transnational oil companies should absorb the trained Ugandans. Training and employment of Ugandans is further provided for under Sections 126 and 127, which reinforces Section 56 (3) (f) by demanding that the licensee submits to the Petroleum Authority of Uganda a detailed program for recruitment and training of Ugandans and transfer of knowledge to Ugandans. The lacuna in this law is that there are no training and employment targets set within these provisions and nor does the law provide any form of sanctions for noncompliance.

4.3.3 Petroleum, (Refining, Conversion and midstream Storage) Act Transmission and midstream storage) Act 2013

PRCTMS Act (2013) guides the current institutional and regulatory framework for the governance of Uganda’s oil and gas sector: the Directorate of Petroleum under the Ministry of Energy and Mineral Development (MEMD) is responsible for policy formulation and the licensing of petroleum activities. The Petroleum (Exploration, Production and Development) Act, 2013 (the so-called upstream law) and Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, 2013 (the so-called midstream law) under Sections 54 and 55 specifically provide for training and employment of Ugandans. The two petroleum laws make it a

requirement for companies to provide a plan for the training and employment of Ugandans in the sector during application for licenses. This is government's mechanism to avoid a complete exclusion of Ugandans from the entire extraction project on grounds that they do not possess the required skills and knowledge. More so, even after a license has been granted, the upstream and midstream laws also require companies to submit to the Petroleum Authority a detailed programme for the recruitment and training of Ugandans every year for approval. This essentially is to foster a continuous training programme for Ugandan nationals who are employed in this sector.

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. 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.

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

In the exercise of the powers granted to the Minister of Energy and Mineral Development⁵⁶, the Petroleum (Exploration, Development and Production) (National Content) Regulations 2016 were promulgated in 2016 to give effect to the provisions of local content in the Act. The regulations were made to apply to national content in petroleum activities and every licensee, operator, contractor or any other entity involved in the petroleum activities is supposed to incorporate and implement national content as an important element of their petroleum activities.⁵⁷

The regulations 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,

⁵⁶ Under section 183 of the Petroleum (Exploration, Development and Production) Act

⁵⁷ Regulation 2 Petroleum (Exploration, Development and Production) (National Content) Regulations 2016

research and development of Uganda, procurement of goods and services produced in Uganda, and the support to local education institutions among others.

The regulations are so important to the aspect of local content in the petroleum sector because of their purpose which they intend to fulfill. Among the purposes of the regulations are; to promote the training and employment of Ugandans coupled with the transfer of technology⁵⁸; to require the sourcing and use of goods and services from Ugandan companies, citizens and registered entities⁵⁹; to ensure enterprise development through provision of support to Ugandan citizens and Ugandan companies.⁶⁰ In fulfillment of the above purposes, the regulations encourage employment of Ugandans, preference to Ugandan goods and services provided by Ugandan local suppliers, the transfer of knowledge and technology.

One peculiar aspect that the regulations bring on board in local content development is the introduction of the national supplier data base⁶¹. This is a data base where all local suppliers to the petroleum sector are registered and a local company can only supply goods or services to the licensees if they are registered on the national supplier data base. Regulation 11(2)⁶²prohibits unregistered companies from supplying. Much as it is good for tax compliance provisions, the requirement for registration in the national supplier data base hinders small scale enterprises from benefiting from the local content legislation and a recommendation to this provision will be considered in the forthcoming chapters of this research.

⁵⁸ Regulation 3 *ibid*

⁵⁹ *ibid*

⁶⁰ *Ibid*

⁶¹ Regulation 11 *ibid*

⁶² *ibid*

Another but final important aspect introduced by the Petroleum (Exploration, Development and Production) (National Content) Regulations 2016 is the labour clause in all contracts which exceed US \$ 1,000,000.⁶³ Expressly, the regulation states that “all contracts whose total budget exceeds US \$ 1,000,000 and are to be executed in Uganda shall contain a labour clause mandating the use of a minimum percentage of Ugandan labour in specific categories as may be stipulated by the authority”. This is important towards achieving the objective of encouraging local content through employment of citizens in the process of petroleum exploitation, development and production.

The regulations specifically provides for national content monitoring, the plan for giving preference for goods and services available in Uganda, and the principles of bidding to be taken into consideration. Additionally, these Regulations in their schedule give a list of goods and services to be provided by Ugandans and Ugandan companies and entities. Regulation 8 of the Petroleum (Exploration, Development and Production) (National Content Regulations 2016) demands that multinational oil companies, their contractors and sub-contractors notify local goods and services providers of upcoming contracts as early as possible. There is no specific timeframe within which such information should be made available. This leaves the local firms at the mercy of multinational oil companies, which could elect to provide such information in a time frame that is too late for the local suppliers to participate. There are no national content targets, nor standardized procurement procedures for local business entities and no efforts by government at both the central and local government levels to develop the capacity of local suppliers for the oil and gas sector.

⁶³ Regulation 15 ibid

4.4 POLICY FRAMEWORK

A policy is a plan of action adopted by an entity such as a Government to reach a long term goal⁶⁴. Policies are typically published in a book or any other form that is widely accessible and they are based on principles designed to guide all major decisions and activities that take place within a given society or sector. In Uganda, policies must be approved and adopted by cabinet. In the same vein, the policy frame work under national content in the petroleum sector refers to an action or set of action plan adopted by the cabinet to ensure or reach a long term goal which is majorly poverty eradication and the promotion of the competitiveness of Ugandan labour and enterprises in the oil and gas industry and other associated sectors of the economy⁶⁵. The contributions of the above policies towards the development of national content in the petroleum sector are analyzed below.

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

The goal of this policy is to use the country's oil and gas resources to contribute to early achievement of poverty eradication and create lasting value to society.⁶⁶ The policy recognizes the need to protect the environment and health during oil exploration. NOGP is the key policy document guiding the development of the country's oil and gas sector under which the petroleum sector falls. The policy was developed to comprehensively address the issues of exploration, development, production, transportation, utilization and commercialization of the country's petroleum resources⁶⁷. This was because even though the discovery of petroleum in the country had created excellent opportunities for the accelerated development of the economy, key issues such as anxiety and high expectations by

⁶⁴ National Oil and Gas Policy (2014) Popular Version

⁶⁵ *ibid*

⁶⁶ The Republic of Uganda, National Oil and Gas Policy for Uganda (2008).

⁶⁷ Ministry of Energy and Mineral Development: progressive implementation of the National Oil and Gas Policy for Uganda.

the population about the need to ensure local participation in the oil and gas sector necessitated the need for a national oil and Gas policy to address such concerns.

Challenging as it may look; the main goal of the NOGP is, to use the country's oil and gas resources to contribute to early achievement of poverty eradication and create lasting value addition to society⁶⁸. It should be noted here that NOGP lays down ten objectives for development and utilization of the country's oil and gas resources and describes the strategies and key actions which need to be taken to maximize the opportunities and address the challenges in the sector. Important to this discussion is objective 7⁶⁹ which provides for the need to ensure national participation in oil and gas activities. Vividly, it states "... to ensure optimum national participation in oil and gas activities." Logically, the policy means that local content can be enhanced through state participation and promotion of the use of indigenous goods and services in the oil and gas sector activities. NOGP also provides for the fact that such an objective can also be achieved through employment of Ugandans in the oil and gas sector and transfer of skills and technology to the country⁷⁰.

It is expressly elaborated by NOGP that national content connotes to the development and maintenance of national expertise which involves the need to identify the training skills required for the sector and plan for their development through both formal and industrial training. In order to archive this objective, the policy provides and compels Government to review and expand the education curricula in the country for it to produce the work force required for oil and gas

⁶⁸ National Oil and Gas Policy for Uganda 2017 Pau.go.ug(uploads)NationalOilandGaspolicyforuganda.pdf at page 2

⁶⁹ National Oil and Gas Policy (2014) Popular Version

⁷⁰ ibid

activities nationally hand in hand with licensed oil companies and their sub-contractors. This report in its subsequent chapter analyses Government's commitment towards reviewing the education curriculum as an action plan laid down by NOGP.

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

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

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

This policy was adopted by cabinet with a major goal of promoting the competitiveness of Ugandan labour and enterprises in the oil and gas industry and other associated sectors of the economy.⁷¹ The policy derives its mandate from the NOGP. Specifically, objective 7 of NOGP provides for the need for government to ensure local content promotion in the oil and gas sector. Some of the important

⁷¹ The National Content Policy for the Petroleum Subsector in Uganda

aspects that the policy tackles are highlighted here below; It offers an elaborated definition to the aspect of local content which connotes to the one earlier on provided by regulation 4⁷² that **national content** means the share of labour, services and goods for the petroleum sector being provided from within the country and constitutes the added value to Uganda from those activities.

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

4.4.3 Buy Uganda Build Uganda policy (BUBU), 2014

Generally, the Uganda oil and petroleum laws specifically require contractors or subcontractors to give preference to goods and services produced or available in Uganda, services rendered by Ugandan citizens or companies. In the absence of such goods or services, a joint venture company in the oil and gas sector with a minimum of 48% shares for local entrepreneurs can be used to provide the goods and services. This is epitomized in the **Build Uganda Buy Uganda Policy of 2014** which is hinged on the need to give preference to goods and services which are produced or available in Uganda and services rendered by Ugandan citizens and companies. Its major goal is to empower the private sector as an engine for growth; this can be done first of all by empowering Ugandans to engage in production of goods and services, creating an environment where Ugandan goods and services are given priority and most importantly empowering Ugandans with

⁷² Petroleum (Exploration, Development and Production) (national content) regulations

skills and knowledge that will allow them to favorably compete on the international market.

This policy was developed in 2014 in order to support the production, purchase, supply and consumption of local goods and services. Under its objective of “promoting the consumption of locally produced goods and services”⁷³, the policy lays down a set of mechanisms to be employed to promote consumption of local goods and services and these include: Increasing consumption of locally produced products and services through public procurements and encouraging the private sector to consume locally originating products; Increasing the participation of locally established firms in the domestic trade for the country to attain the middle income status.

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

4.4.4 The National Energy Policy for Uganda (2023)

The National Energy Policy for Uganda 2023 replaces the previous energy policy, which was adopted in **2002**. It provides a detailed list of challenges and policy priorities in most energy sub-sectors, including electricity, renewable energy, energy efficiency, rural electrification, clean cooking and nuclear power. The major sub-sector not covered is petroleum, which it notes is addressed by the 2008 National Oil and Gas Policy, which at that time was “currently under review” (MEMD, 2023). The overall objective of the new National Energy Policy is to: “ensure [a] sustainable, adequate, affordable, competitive, secure and reliable

⁷³ Buy Uganda Build Uganda policy 2014

supply of energy at the least cost geared to meet national and country needs while protecting and conserving the environment” (MEMD, 2023). The new National Energy Policy points out that a number of important contextual changes have occurred since the previous Energy Policy was adopted in 2002. These include moving from a situation of severe electricity capacity shortage to one of capacity surplus, as well as a shift from primarily private sector-led growth to increased use of public-private partnerships (PPPs) and public financing, aimed at increasing affordability. It also notes that the new Energy Policy is aligned with the key policies and international frameworks developed since 2022, including Vision 2040, the NDP III, and the 2030 Agenda and the Sustainable Development Goals (MEMD, 2023a). The National Energy Policy identifies the following overall challenges facing the sector: □ “low levels of access to affordable and modern energy services” □ “constrained economic development due to inadequate energy sector investments” □ “high system power losses, poor quality of service, and unreliable power supply” □ “environmental degradation due to unsustainable utilization of biomass energy resources” □ “inefficient utilization of energy” □ “inadequate technical capacity in private and public institutions” □ “insufficient public awareness”, leading to “low uptake of modern energy services”. The National Energy Policy notes the following key focus areas: “increasing power generation, expanding the electricity transmission and distribution grid networks, increasing energy efficiency, promoting the use of alternative energy sources, and strengthening the policy, legal and institutional framework” (MEMD, 2023).

4.4.5 National Public Sector Procurement Policy.

The National Public Sector Procurement Policy promotes socially responsible public sector procurement. It provides for Government to promote equal engagement opportunities and ethical trading initiatives that support marginalized groups for

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

4.5 THE REGULATORY INSTITUTIONS

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") provides for: 1) preference to goods which are produced or available in Uganda and services which are rendered by Ugandan citizens and companies. 2) Where the goods and services required are not available in Uganda, they must be provided by a joint venture company in which a Ugandan company has a share capital of at least 48%. 3) Licensee to

submit to the Petroleum Authority an annual report on use of Ugandan goods and services. Section 126 provides for the Licensee to submit to the Petroleum Authority for approval a detailed annual program for recruitment and training of Ugandans. Section 127 provides that the: 1) Licensee must include clearly defined training program for its Ugandan employees, including scholarships and other financial support for education. 2) Licensee must include a commitment to maximize knowledge transfer to Ugandans. 3) Regulations to prescribe the requirements for technology transfer of knowledge and skills.

To capture recent trends in the industry on local content, the government of Uganda has embarked on the development of the new legal framework law to regulate the development of the Ugandan oil sector in the context of the Oil and Gas Policy, laws and international standards. The Petroleum (Exploration, Development and Production) Act of 2013 introduces new aspects in the governance of oil and gas in Uganda in an attempt to set governance conditions related to Oil and Gas exploration and production. In my opinion, these are to be considered as international best practice. The Act vests petroleum rights in the government of Uganda. Thus, the entire property in, and control of, petroleum in its natural condition in, on or under any land or waters in Uganda is vested in the government on behalf of the citizens of the Republic of Uganda. Any person who intends to carry out petroleum exploration must therefore apply for a license from the responsible minister.

The significance of the institutional framework is in the clear separation of roles of the different actors. This separation starts at a constitutional level among the different arms of Government namely; the executive, the legislature and the judiciary. The policy therefore seeks to create a clear distinction between the

roles of the different arms of Government, regulatory institutions, oil companies and other stakeholders. These roles are defined below;

4.5.1 The Roles of Government

Cabinet authorizes the drafting and approves submission of the required legislation to Parliament; approves petroleum administration and consents to PSAs, and issues licenses. Parliament enacts petroleum legislation including legislation on petroleum revenues and monitors performance in the petroleum sector through annual policy statements and budget approval processes. The Ministry Responsible for Oil and Gas with a Directorate of Petroleum gives policy guidance and monitors the work of the oil and gas agencies placed under it, namely; Petroleum Authority of Uganda and Uganda National Oil Company. The policy recommends the setting up of the three separate institutions with the following roles: - The Directorate of Petroleum in the Ministry responsible for policy making, monitoring and evaluation and will coordinate the development of the sector, undertake licensing and national and capacity building. The Petroleum Authority of Uganda will handle regulatory aspects including monitoring of operations of oil companies; National Oil Company as a separate commercial entity will be responsible for aspects of state participation in the licenses and other related business aspects.

The government of Uganda introduced local content requirement in the oil and gas sector operations in Uganda. The Petroleum (Exploration, Development and Production) Act and the Petroleum (Refining, Gas processing and conversion, Transportation and Storage) Act to purposely provide for the local content in respect to; the local content personal requirement, the technology transfer requirements and the local content requirement for equipment. Specifically, for the oil and gas sector, the government has tried to support the private sector as

discussed above. The government's objectives for the local content policy are quite noble but they remain unrealized. Protectionism may be justifiable, but it must be tempered to benefit all stake holders in a sustainable way. Having put in place the regulatory laws, the government must work hard towards ensuring that they are operationalized. There is a notable lack of implementation of the existing laws and regulations especially because there has been no practical and sustainable strategy which results into regulations staying on paper.

4.5.2 Ministry of Energy and Mineral Development

The Ministry of Energy and Mineral Development (MEMD) is responsible for the Energy and Minerals sector in Uganda. This is the Ministry responsible for management, regulation and development of the Oil and Gas industry in Uganda.⁷⁴ One of the main functions of the Ministry is to issue petroleum licenses to Oil and Gas companies to enable them carry out Oil and Gas exploration and production in Uganda.

These licenses are issued subject to fulfillment of the mandatory requirements as indicated in the Petroleum (Exploration, Development and Production) Act of 2013 for example; the Oil and Gas Company applying for the license ought to have carried out a complete Environmental Impact Assessment (EIA). This plan must be presented in accordance with other requirements in the Act to ensure that there is a plan to deal with the inevitable local content that result from oil and gas exploration and production. For example, the then Minister of Energy and Mineral Development, Hon Eng. Irene Muloni on August 30th, 2016 granted eight petroleum production licenses to Total E&P Uganda B.V (3 licenses) and Tullow Operations

⁷⁴<http://www.energyandminerals.go.ug/> accessed on June 2, 2023

Uganda Pty (5 licenses) following conclusion of the evaluation of the applications for Production Licenses submitted by the two companies respectively.

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

4.5.3 The Roles of Oil Companies.

Efficiently explore, develop and produce the country's oil and gas resources; and being good corporate citizens by among others, abiding by the policies and laws existing in the country as well as managing emergencies that may arise out of the oil and gas activities. They play a role in advocating, mobilizing and holding dialogue with communities; contributing to holding the different players accountable with regard to oil and gas issues; participating in getting the voices of the poor into designing, monitoring and implementation of programmes in the oil and gas sector. Oil companies may also be contracted in the delivery of various services, especially in the communities where oil and gas activities will be undertaken.

4.6 AUTHORITIES AND AGENCIES

4.6.1 Petroleum Authority of Uganda.

PAU and spelling out its functions. Section 9(1)⁷⁵ of the Petroleum (Exploration, Development and Production) Act 2013 expressly provides, “there shall be the Petroleum Authority of Uganda”. This authority is meant to be a body corporate with perpetual succession and an official seal with power to acquire property and sue or be sued in its own name.⁷⁶ PAU plays a great contribution towards the implementation of local content legislation because it is not only mandated to monitor and regulate petroleum activities or even ascertain the cost of oil and gas, but also to ensure that licensees uphold laws, regulations, rules and contract terms alongside ensuring the establishment of a central data base where all companies involved in the provision of services to the petroleum sector are registered.⁷⁷

In summary, the functions of the authority towards local content development are laid down as follows; to monitor and regulate petroleum activities⁷⁸; to review and approve budgets submitted by licensees; to participate in the measurement of petroleum for estimation and assessment of royalty of profit oil or gas due to the state; to ascertain the cost of oil or gas due to licensees; to ensure that licensees uphold laws, regulations, rules and contract terms; to ensure the establishment of a central data base of persons involved in petroleum activities. The aforementioned functions of the authority are important to this research because firstly, a detailed analysis of them gives birth to the relevance of the aspect of local participation in the petroleum sector. For example, taking into consideration the first and fifth function of monitoring and ensuring that licensees uphold the laws and rules in the petroleum industry, it is the researcher’s finding that the Authority monitors how local content provisions are being upheld and implemented

⁷⁵ ibid

⁷⁶ Section 9(2) ibid

⁷⁷ Section 10 ibid

⁷⁸ ibid

by licensees. This is normally done through the annual reports received by the Authority from the licensees.⁷⁹

The Authority also plays a major contribution towards local content development in ensuring that there is a balance of interest between Government and the other oil companies. Whereas the Government needs the citizens to actively participate in petroleum activities, the oil companies also want to maximize efficiency by employing highly skilled persons who may not be available in Uganda and hence PAU comes on board to ensure a balance of the conflicting interests. It is therefore the researcher's conclusive finding that as PAU performs its mandated roles, it in one way or the other plays a big contribution towards the development of local content in the petroleum industry as held above.

4.6.2 Uganda National Oil Company.

Section 42(1)⁸⁰ establishes the National Oil Company which is owned by the state. It states "there shall be incorporated, under the Companies Act 2012 a National Oil Company which shall be wholly owned by the state to manage Uganda's commercial aspects of petroleum activities and the participating interests of the state in the petroleum agreement."⁸¹ In analysis, the major role that NOC plays is to manage Uganda's commercial aspects and the participating interest of the state in accordance with section 124.⁸² According to the researcher's findings, the major reason why NOC was incorporated was to prepare Ugandans to engage in the lucrative petroleum sector since the company would employ Ugandans but also for the state to actively participate in petroleum activities through it.

⁷⁹ Section 126 ibid

⁸⁰ ibid

⁸¹Section 42(1) ibid

⁸² ibid

NOC has the following functions and roles it plays towards local content development in the petroleum sector; it handles the state's commercial interests in the petroleum sector arising out of the joint production agreements between Government and the Licensees; it also manages state participation in petroleum activities. In other words, the company participates on behalf of the state in the petroleum activities. It should be noted here that the above functions all correlate to the fact that NOC was incorporated to ensure that the state as the initiator of local content through various policies analyzed earlier on actively participates in petroleum exploration, development and production, and this in the long run will help to achieve the objective of ensuring state participation in the petroleum activities.

4.6.3 Judiciary

The Judiciary is the organ/ body responsible for administration of justice. It is indicated in the Constitution of the Republic of Uganda that judicial power is derived from the people and shall be exercised by the courts established under in the name of the people and in conformity with the law and with the values, norms and aspirations of the people.⁸³Henceforth, the judiciary is responsible for bringing to justice those who are guilty of breaching the environmental health and safety regulations and laws as above discussed. This is aimed at deterring people and oil and gas companies from violating these laws and regulations especially during the oil and gas exploration and production activities.

4.6.4 NGOs

Non-governmental organizations such as Advocates Coalition for Development and Environment (ACODE) and TEAN have contributed massively to local content standards. ACODE for example, is an independent public policy research and

⁸³ Article 126 (1) The 1995 Constitution of the Republic of Uganda

advocacy think tank based in Uganda but working in Eastern and Southern Africa. One of the core pillars of ACODE is to transfer evidence based research findings and alternative policy options from research papers and books into civic spaces that generate public debate to promote pro-poor policy making and effective policy implementation.

ACODE for example introduces citizen participation in oil and gas sector which 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 laws and policies. Basically, citizen participation involves processes that provide for individuals in a community an opportunity to influence public decisions that affect them. 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.

4.7 Conclusion

The Ugandan government, as a case study, underscores the importance of involving nationals in this promising sector. It is however important to note that local content legislation can present major risks if not well crafted to balance the

domestic, political and economic concerns. The legislation must consider the availability of the required skills among their nationals and then put in place laws that will not scare away investors. The government of Uganda must strike a balance between protecting the interests of nationals and ensuring policy and legal requirements favorable enough to attract the investors who possess the skills and resources needed. In the circumstances, the reality is that involvement of nationals in the extraction and production of oil and gas is a gradual process. Ugandans do not possess the necessary skills and knowledge and the government cannot provide the same overnight. As discussed in the recommendations above, it is important to start the participation process from small scale service providers and then gradually equip Ugandans with the necessary skills and knowledge.

It should be noted that there are several laws and regulations that emanate from there from which are all geared towards local content especially in areas around the Oil and Gas exploration and Production. On 20th May 2020, the Parliament of the Republic of Uganda passed the National Local Content Bill, 2019, (National Local Content Act or Act) into law and it now awaits the President's assent. The Act seeks to address and remedy the shortcomings and defects with all existing policy, legislation and guidelines touching on the subject of local content in Uganda and they include; the Public Procurement and Disposal of Public Assets Act, 2003, (PPDA), the Petroleum (Exploration, Development and Production) Act, 2013, the Petroleum (Exploration, Development and Production) (National Content) Regulations, 2016, the Guidelines on Reservation Schemes to Promote Local Content, 2018 and the 'Buy Uganda Build Uganda' (BUBU) Policy. The overall objective of the National Local Content Act therefore is to impose local content

obligations on all persons using public resources or carrying on an activity under a license in Uganda.

CHAPTER FIVE

THE CHALLENGES FACED BY REGULATORY AND INSTITUTIONAL REGIMES CONCERNING LOCAL CONTENT IN THE PETROLEUM INDUSTRY

5.1 Introduction

The researcher contends that national content is the added value brought to host communities or nation through the activities of the oil and gas sector. The foregoing chapter has critically examined and analyzed the policy and legal framework which builds flesh on the aspect of local content in the petroleum sector. In fact the chapter entirely discusses and concludes that local content in Uganda's petroleum sector is defined by two major aspects namely; preference to procurement and consumption of locally available Ugandan goods and services⁸⁴ and preference to Ugandans in employment.⁸⁵ This chapter examines the contributions so far done by Government and other stakeholders in an effort to ensure compliance to the local content legislations whilst identifying the challenges or likely challenges that are hindering or are likely to hinder compliance to local content legislations.

5.2 CHALLENGES FACED BY REGULATORY AND INSTITUTIONAL REGIMES

There is a challenge of 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 Section 125 that: 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. And that where the goods and services required

⁸⁴ Section 124 (1) Petroleum (Exploration Development and Production) Act

⁸⁵ Section 125 (1) *ibid*

by the contractor or licensee are not available in Uganda, they shall be provided by a company which has entered into a joint venture with a Ugandan company provided that the Ugandan company has a share capital of at least forty eight percent in the joint venture. 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 leaving out other recognised business entities such as partnerships, cooperative societies, and sole proprietorships among others. 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.

However, the emphasis is placed on “registered entities” as opposed to “companies”. This means that 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 Section 252 of the Companies Act mandates all companies incorporated outside Uganda with businesses in Uganda to register with the Registrar of Companies as a precondition 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 and a challenge how the law will treat a company registered outside Uganda by Ugandan citizens.

Section 125 clearly provides that a licensee, its contractors and sub-contractors shall give preference to goods and services which are produced and available in Uganda and services which are rendered by Ugandans. This means that the sector is supposed to consume local goods and services which are clearly in line with the “Buy Uganda Build Uganda Policy 2014”. However, according to the Auditor General’s Report,⁸⁶ having reviewed reports on procurement submitted by the oil companies, only USD 329.9 million was paid for purchase of goods and services from Ugandans out of a total of USD 1,171.8 million spent by companies on purchases from 2010 to 2015. Just as it is rightly stated by Magelah P.G,⁸⁷ “what actually amounts to a Ugandan local supplier is still conceptually problematic.” To this point the researcher respectfully agrees since it is not certain as to what amounts to a local supplier. The researcher wonders as to whether this should be a citizen of Uganda only and if so which type of citizen. This is because the Constitution recognizes a number of citizenship including that one by registration. It suffices to note therefore that even a foreigner can register to become a Ugandan and benefits from the local content legislation. However, if the debate is taken to that direction, then the purpose of the local content legislation will be hard to achieve.

In a detailed analysis of the above challenges, the researcher is alive to the fact that the following questions should be clearly answered by the legal regime if the

⁸⁶ Auditor General, Implementation of National Content in the Oil and Gas Sector: Value for Money Audit Report 2015

⁸⁷ Magelah P.G, “Local Content in Oil and Gas Sector: An Assessment of Uganda’s Legal and Policy Regimes” ACODE Page 11

country is to benefit from the local content legislation. Magelah P.G⁸⁸ notes that in attempting to resolve this issue as to what qualifies a company to be a Ugandan company for purposes of local content benefits, the local content legislation creates more confusion than answers. It is true that Section 125⁸⁹ labors to provide that the licensee and its contractors or subcontractors shall give preference to goods and services which are available in Uganda and services rendered by Ugandan citizens and companies. However, the law does not clearly define what a Ugandan company is for purposes of local content. In fact, even the Companies Act 2012 does not define what a Ugandan company is. Section 2⁹⁰ simply states that a company is an entity formed and registered under the Act or any other law in force. Magelah P.G⁹¹ notes that using a place of incorporation as a determinant factor as to what amounts to a Ugandan company without proper restrictions would leave out citizens by allowing foreigners to incorporate companies in Uganda qualifying them as Ugandan companies ready to benefit from the local content legal regime.

There is a challenge of the criteria to be used to determine which company qualifies to be a local company. Regulation 4⁹² lays down the criteria for determining whether a particular company qualifies to be called a local company for purposes of local content legislation. Vividly it states; “Ugandan company” for purposes of Section 125 of the Act and these Regulations means a company incorporated under the Companies Act, 2012 and which provides value addition to Uganda; uses available local raw materials; Employs at least 70% Ugandans; and is

⁸⁸ Magelah P.G, “local Content in Oil and Gas Sector: An Assessment of Uganda’s Legal and Policy Regimes” ACODE Page 12

⁸⁹ ibid

⁹⁰ Companies Act 2012

⁹¹Magelah P.G, “local Content in Oil and Gas Sector: An Assessment of Uganda’s Legal and Policy Regimes” ACODE Page 13

⁹² Petroleum (Exploration, Development and Production) (National Content) Regulations 2016

approved by the Authority under regulation 9(4). It therefore means that in determining what a Ugandan company is, it should be that company that satisfies the above requirements. However, it is the researcher's finding that the above criteria cannot be a strong basis upon which to determine what a Ugandan company is. This is simply because a company may satisfy all the above requirements like many actually do and yet have persons behind it who are the ultimate direct beneficiaries from that company being foreigners. It is against this background that the researcher finds that the challenge rendered by the legal regime of what amount to a local or Ugandan company and the criteria laid down to determine such a company is inappropriate for the realization of the intentions of promoting local content.

There is a challenge whether companies have the capacity to supply the demanded quality and quantity of goods and services to the sector: There is nothing to hide about the poor standards of goods and services produced and supplied in Uganda at large and this has directly affected the rate of compliance to local content legislations. The Auditor General for example notes in his Report⁹³ that the catering service provider for TEP (MSL Logistics) indicated that the local produce did not meet their quality standard in 2015 so they could not consume it. According to the National Content Study in the Oil and Gas sector in Uganda, there is need to improve the quality of goods and services for the local suppliers to benefit from the exceptional treatment given to them by the legal regime. It is the researcher's finding that much as the local content legal regime is of much relevance to the domestic suppliers, there is a challenge that they have failed to

⁹³ Auditor General, Implementation of National Content in the Oil and Gas Sector: Value for Money Audit Report 2015 page 22

catch up with the quality and standard of the goods and services required by the sector.

There are also challenges in preference in employment: The NOGP⁹⁴ recognizes the need for local content promotion through employment of nationals in the petroleum sector with the aim of eradicating poverty. Section 126⁹⁵ provides that the licensee or its contractors and subcontractors shall submit to the authority a detailed program for the training and employment of Ugandans. This provision has one major implication to the fact that the licensee is under an obligation to ensure that preference is given to Ugandans in employment for his or her contract to be renewed the following year. It should be noted that the legislation is good in as far it promotes employment for the locals coupled with skills development which in the long run help to eradicate poverty which is one of the objectives of the National Oil and Gas Policy 2008. However, on the other side of the coin, this provision has a negative implication and a challenge to the legal regime in Uganda of promoting discrimination in employment which is discussed here below.

There is a challenge of discrimination in employment: As noted above, Section 126⁹⁶ gives preference to Ugandans in employment and compels the licensee to always submit a report indicating how such licensee is complying with this provision. However the researcher finds such special treatment being given to Ugandans over other migrant employees amounting to discrimination. Section 6 of the Employment Act 2006 discourages discrimination in employment and makes it unlawful. Vividly, it states “...in the interpretation and application of this Act, it shall be the duty of all parties, including the minister, a labour officer and the

⁹⁴ Objective 7 of the National Oil and Gas Policy 2008

⁹⁵ *ibid*

⁹⁶ *ibid*

industrial court to promote and guarantee equality of opportunity for persons who as migrant workers or as members of their families are lawfully within the territory of Uganda.⁹⁷

Section 6(3)⁹⁸ goes on to define what discrimination in employment means. That discrimination in employment includes any distinction, exclusion or preference made on the basis of race, colour, religion, political opinion, national extraction or social origin. It is the researcher's finding that giving preference to Ugandan nationals in employment over other lawful migrants amounts to discrimination in employment which is in contradiction with section 6 of the Employment Act. The researcher here wonders why the very parliament which enacted a law promoting equal opportunities in employment to all persons regardless of whether they are nationals or lawful migrants in 2006⁹⁹ could again enact another law¹⁰⁰ promoting discrimination in employment by giving preference to Ugandan nationals in employment in 2013. It cannot be overemphasized that Ugandans will benefit from local content if the capacity of Ugandans to contribute to the skills' pool of the petroleum sector is improved and harnessed.

The training challenges 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: promoting state participation in Production Sharing Agreements with a view of providing better opportunities for

⁹⁷ Section 6(2) Employment Act 2006

⁹⁸ *ibid*

⁹⁹ *ibid*

¹⁰⁰ Petroleum (Exploration, Development and Production) Act

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. Promoting public private partnerships whose benefits outweigh their cost, and whose costs and benefits are mutually and fairly shared by the partners. Encourage civil society to participate in the building of a productive, vibrant and transparent oil and gas sector. 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.¹⁰¹ 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 skill-sets required even after the training, would the government compensate the licensee for such investment? Also, considering that employment is

¹⁰¹ National Content Regulations 2016 Reg. 17

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 (BTJET) Policy and Strategic Plan 2011 to 2020 provide Uganda with the skills, focusing on the petroleum sector. The plan is based on the draft BTJET 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 stonewalled 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 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). 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. Besides, the capacity of UPIK is still below the threshold for feeding relevant skill-sets into the sector and the challenge 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.

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. 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.¹⁰²

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. Since 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 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 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 poses a challenge for accounting and evidence of prior work to fulfill bid process requirements without support of the parent company. The challenge is that 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

¹⁰² Silvano Tordo, Micheal Warner, Osmel E. Manzano, and Yahya Anouti, Local Content in the Oil and Gas Sector; World Bank Study 78994

limited role.¹⁰³ Though Regulation 9 of the National Content Regulations 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.

5.3 Conclusion

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

¹⁰³ Beamish P. (1998) *Multinational Joint Ventures in Developing Countries*. London Routledge.

CHAPTER SIX

THE COMPARATIVE ANALYSIS OF LOCAL CONTENT WITH OTHER JURISDICTIONS IN THE OIL AND GAS INDUSTRY

6.1 Introduction:

Chapter five looked at major challenges like 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 that 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 a comparative analysis with different countries which have handled the issue of local content.

6.2 A Comparative analysis of the Regulatory Frame Work of Nigeria and 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, and employment, and service provision. Under Objective 7 of

the National Oil and Gas Policy (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.

The government of Uganda introduced local content requirement in the oil and gas sector operations in Uganda. The Petroleum (Exploration Development and Production) Act and the Petroleum (Refining, Gas processing and conversion, Transportation and Storage) Act to purposely provide for the local content in respect to; the local content personal requirement, the technology transfer requirements and the local content requirement for equipment. To this end, every licensee under Section 71¹⁰⁴ is required to submit to the Petroleum Authority of Uganda for approval, a detailed programme for recruitment and training of Ugandans within twelve months from the date of issuance of the license to them and on each subsequent anniversary of the grant. The licensee is also required to make a report of the execution of the above programme to the Authority. It should also be noted that Section 126(4)¹⁰⁵ of the Petroleum (Exploration, Development and Production) Act 2013 provides that where a recruitment and training programme is proposed to be awarded as required above, it cannot be varied without the permission of the Petroleum Authority. Section 71(4) (e) ¹⁰⁶ of the Petroleum Exploration, Development and Production) Act 2013 further provides that a petroleum production license shall not be granted unless the applicant's proposals for employment and training of citizens of Uganda are satisfactory.

¹⁰⁴ Petroleum (Exploration Development and Production) Act 2013

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

It should be noted that 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 this 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.

On the other hand, our counter parts in Nigeria also do have a local content policy. Nigeria passed the Oil and Gas Industry Content Act in 2010. The law is meant to enforce the local content policy. It aims at providing for the development of Nigeria Content in the Nigerian Oil and Gas industry; for Nigerian Content Plan; for supervision, coordination, monitoring and implementation of Nigerian content and for matters incidental thereto.¹⁰⁷ 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 utilization of Nigerian human, material resources and services in the Nigerian oil and gas industry." Focus is also put on value addition for products used in the industry.

¹⁰⁷Preamble/long title to the Oil and Gas Local Content Act, 2010

The Oil and Gas Industry (OGI) in Nigeria plays a crucial role to the sustenance of the nation and fuels her economic and development activities. It is therefore owing to the above that Nigeria has found it crucial for a local content policy to be over emphasized. The speaker of Nigeria's House of Representatives has been quoted as saying: ***“it is important to note that while the oil and gas industry clearly dominates the Nigerian economy, a successful local content policy must be a part of a comprehensive industrial and economic growth strategy for Nigeria as a whole... it should include both a plan for domestic capacity building and infrastructure development to broaden the national industrial base...”***¹⁰⁸

As regards employment, Sections 28-35 of the Local Content Act provide that; operators must give Nigerians first consideration for employment and training in respect of all executed projects (*emphasis is mine*) and may be required by the Board to maintain a reasonable proportion of employees from areas of significant operations. The Act also requires that for each of its operations, an operator or project promoter may retain a maximum of five percent (5%) of management positions as may be approved by the Nigeria Content Monitoring Board (NCBM) as expatriate positions to take care of the interests of investors. This is not the case in Uganda where top management is basically foreign and even expatriates are still observed in the junior and intermediate cadres as its counterpart Nigeria. It is also mandatory and priority is given to Nigerians short of it, a licence is not issued.

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

¹⁰⁸Nigerian Content Policy in the Oil and Gas Industry: Implications for Small to Medium-Sized Oil-Service Companies, Ugwushi Bellema Ihua, Chris Ajayi, Kamdi Nnanna Eloji (2008)

not less than 51% equity shares by Nigerians.”¹⁰⁹ Unlike Uganda’s law which focuses on registration of companies which creates confusion as discussed earlier. The Nigerian law addresses this by setting conditions for formation and registration of a company in Nigeria. The three conditions for a company to qualify as a Nigerian company are; the company must be formed in Nigeria; the company must be registered in Nigeria and; majority shareholders of such a company must be Nigerians. The Nigerian law creates the Nigerian Content and Monitoring Board¹¹⁰ which is tasked with the responsibility to make a procedure that will guide, monitor compliance by operators, coordinate and implement the local content requirements. In addition to the board, there is a Nigerian Content Consultative Forum whose role is sharing information on local content issues such as; procurement information, company requirements and involvement of citizens.

Further, the Local Content Act of Nigeria prescribes minimum thresholds for Nigerian participation in activities within the industry through the utilization of Nigerian human and material resources and services in the upstream sector of the industry. It is also made mandatory for operators in the industry to provide a viable succession plan whereby Nigerians will understudy each incumbent expatriate position for a maximum period of four (4) years, at the end of which the positions shall become “*Nigerianised*”.¹¹¹ The Local Content Act mandates that operators and companies operating in Nigeria shall only employ Nigerians in their junior and intermediate cadre or any other corresponding grades designated by the operator or company. All projects or contracts with a budget of more than \$100 million are required to contain a “Labour Clause” mandating a minimum percentage of Nigerian labour in specific cadres. In Uganda, the option is left to

¹⁰⁹ Section 10 of the Local Content Act.

¹¹⁰ Section 4 of the Local Content Act.

¹¹¹ *ibid.*

the investor to decide who should be recruited and in most cases, since Ugandans are not skilled enough, priority is given to expatriates which is not the case in Nigeria where if a Nigerian is denied a job due to lack of expertise, the operator is obliged to acquaint him with the necessary skill and knowledge within Nigeria.¹¹²

Section 126 of the Ugandan law provides that a licensee shall, within twelve months after the grant of a license, and on each subsequent anniversary of that grant, submit to the Authority for approval, a detailed programme for recruitment and training of Ugandans. This programme provides for the training and recruitment of Ugandans in all phases of petroleum activities and takes into account gender, equity, persons with disabilities and host communities. This section further states that the programme shall include a commitment to maximize the knowledge and skills transfer to Uganda and to boost the capacity of Ugandans in the management of petroleum operations, technical capabilities and any necessary facilities for technical work, including the interpretation of data. The technology transfer and training program should be designed prior to the application for the license. The technology transfer required is a shared responsibility between the Government and the licensee. The Regulations which will prescribe the requirements and parameters for the technology transfer of knowledge and skill to Ugandan employees working in the midstream petroleum value-chain are yet to be formulated. Similarly, the Local Content Act of Nigeria in Sections 43-46¹¹³ provides the same as above. However in Nigerian situation, an operator may be mandated to set up a factory or a production unit for purposes of technological transfer.

¹¹² Ibid.

¹¹³ Local Content Act 2010

Section 74 (1) (f) & 125¹¹⁴of the Petroleum (Exploration, Development and Production) Act and Section 54¹¹⁵of the Petroleum (Refining, Gas Processing and Conversion, Transportation and Storage) Act provide that companies licensed under the Act, their contractors and sub-contractors shall give priority to competent citizens of Uganda and registered entities owned by Ugandans in the provision of goods and services. Petroleum production license shall not be granted unless the applicant's proposals with respect to the procurement of goods and services available in Uganda are satisfactory. All licensees under the two laws shall within sixty days after the end of each calendar year furnish the Petroleum Authority with reports of their achievements and those of their contractors and sub-contractors, in utilizing Ugandan goods and services during that calendar year. Further, under Section 125 (2)¹¹⁶, it is espoused that where the goods and services required by the contractor or licensee are not available in Uganda, they shall be provided by a company which has entered into a joint venture with a Ugandan company provided that the Ugandan company has a share capital of at least forty eight percent in the joint venture. It should be noted that much as the Act juxtaposes that within 60 days after the end of each calendar year, the licensee is obliged to provide the Authority with a report of its achievements and its contractors and sub-contractors' achievements in utilizing Ugandan goods and services during that calendar year. It is still not compellable enough to the operator to strictly oblige himself to the Act's provisions. The problem with this provision is that it only directs the operator to give priority to a local service provider. Our counterparts in Nigeria oblige the operator to strictly seek goods and services from the local company incorporated under Nigeria's Companies Act, and

¹¹⁴ PEDP Act

¹¹⁵Petroleum (Refining, Gas Processing and Conversion, Transportation and Storage) Act

¹¹⁶ PEDP Act 2013

under Section 63 of the Local Content Act, non-compliance is punishable by a 5% penalty of the project sum for each project in which the offence is committed or cancellation of the project. The case in Uganda is pretty different!

Peter Magelah Gwayaka in his paper¹¹⁷ argued that Uganda's governing Act puts emphasis on “registered entities” as opposed to “companies.” The use of the word “registered entities” in both the Petroleum (Exploration Development and Production) Act and the Petroleum(Refining, Gas processing and Conversion, Transportation and Storage) Act do not wholly promote local content because there are situations where foreigners register business entities in a country and this does not make such entities local entities. For example, Section 252 of the Companies Act 2012 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 being a process of forming a company while the latter 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 treats a company registered outside Uganda by Ugandan citizens.¹¹⁸

The Nigerian Oil and Gas Industry have developed focusing on increasing indigenous participation in the industry. This is reflected through the Nigerian government initiative of increasing Local Content and ensuring that indigenous companies have

¹¹⁷Magelah, P., G., (2014). Local Content in Oil and Gas Sector: An Assessment of Uganda’s Legal and Policy Regimes. ACODE Policy Briefing Paper Series, No.28, 2014. Kampala.

¹¹⁸ Ibid.

a greater part in developing oil and gas assets. To consolidate the objective of increasing Indigenous participation, the Government introduced the Nigerian Oil and Gas Industry Content Development Act 2010 (the “*Local Content Act*”). The Local Content Act requires project promoters and operators to consider Nigerian content when evaluating any bid. It further provides that where bids are within 1% of each other at commercial stage, the bid containing the highest level of Nigerian content shall be selected provided the Nigerian content is at least five percent (5%) higher than its closest competitors. This thus ensures participation, income, employment and ultimately sustainable development to the people of Nigeria. The Nigeria Content Monitoring Board was established under the Local Content Act to represent as the industry watchdog for the implementation of Local Content; to ensure compliance every operator bidding for any licence or permits, and before carrying out any project in Nigeria, it shall submit a Nigeria Content Plan demonstrating compliance with the Nigerian Content requirement.¹¹⁹

To this end, the Local Content Act under section 3(1)¹²⁰ offers Nigerian operating companies a great opportunity for growth and expansion. Such a company is to be given first consideration in the award of oil blocks, oil field licenses, oil lifting licenses, and in all project awards in the Nigerian oil and gas industry. These provisions ensure a steady growth in Nigerian participation in the industry as well as increased local capacity and industry knowledge and expertise. This is not the case with Uganda's Local Content which provides no such privileges to a Ugandan company to bid favorably. Sections 49 to 53 of the Local Content Act mandate operators to utilize local insurance, financial and legal services in their project implementation. Operators must also submit a bi-annual report to the Board

¹¹⁹Nigerian Content Policy in the Oil and Gas Industry: Implications for Small to Medium-Sized Oil-Service Companies, Ugwushi Bellema Ihua, Chris Ajayi, Kamdi Nnanna Eloji (2008)

¹²⁰ Local Content Act 2010

detailing the nature of the services so utilized, the budget as well as actual and projected expenditure. Where legal services are required to engage in any operation, business or transaction in the Nigerian Oil and Gas industry, operators are obligated to only retain the services of a Nigerian legal practitioner or a firm(s) Nigerian legal practitioners with its office located within Nigeria.

On the other hand, Ugandan oil and gas operators usually hire experienced lawyers from abroad to handle their arbitration cases or may involve one or two Ugandan advocates. This is implemented through the provision of a Legal Service Plan (LSP) to the board every six (6) months which shall extensively provide a report on the legal services utilized in the last 6 months by expenditure, a forecast of legal services required during the next 6 months and the projected expenditure for the services. In addition, a list is to be provided highlighting the external solicitors utilized for legal services in the past six (6) months, the nature of work done and the expenditure made by the operator. On the other hand, to engage in any form of business, operations or contract in the Nigerian Oil and Gas industry, all interested parties must insure all insurable risks related to its oil and gas business with an insurance company, through an insurance broker registered in Nigeria. An operator, contractor or subcontractor who carries out any project contrary to any of the provisions as highlighted under the Act, will be committing an offence under section 68 and upon conviction will be liable to a fine of five percent (5%) of the project sum for each project in which the offence is committed or cancellation of the project. It therefore allows compliance by the operators at all cost to avoid penalties.

6.3 A Comparative analysis of the Regulatory Frame Work of Ghana and Uganda:

Ghana made its local content policy in 2010. This was followed by the Petroleum Commission Act, 2011 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.*¹²¹

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.* 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.* 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.

¹²¹ Section 28 Petroleum Commission Act of Ghana

6.4 A Comparative analysis of the Regulatory Frame Work of Angola and Uganda:

In the concept of “*Angolanization*”, companies are required to have a workforce consisting of at least seventy percent nationals.¹²² 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.

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.¹²³ 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

¹²² Angola, Decrees 5/95, 17/09

¹²³ *ibid*

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.¹²⁴ 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.

6.5 A Comparative analysis of the Regulatory Frame Work of Liberia and Uganda:

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 citizen's abilities to take part in the oil and gas sector are considered. For example Section 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.

¹²⁴ ibid

6.6 A Comparative analysis of the Regulatory Frame Work of Uganda and 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.

6.7 Conclusion:

A look at the different countries and institutions above reveals that although 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.

CHAPTER SEVEN

SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS

7.1 SUMMARY OF FINDINGS:

This study was premised on the following research questions;

The central research question is; “Is the legal and policy aspects in compliance with local content in oil and gas sector?” The specific research questions are:

1. What are the major international, regional and national legal instruments governing local content in the oil and gas industry in Uganda?
2. What are the challenges faced by regulatory and institutional regimes concerning local content in the petroleum industry?
3. What is the comparative analysis of local content with other jurisdictions in the oil and gas industry?
4. What are the recommendations and mechanisms that can be put in place to strengthen the legal and policy aspects in compliance with local content in oil and gas sector?

The findings were as follows:

Uganda commenced commercial oil and gas production in 2020. This follows the discovery of oil deposits worth about 3.5 billion barrels. In the course of this research, it was found that the oil industry of Uganda has reached the midstream stage. The researcher finds that Government has made positive efforts towards promoting national content in the petroleum sector through enacting legislations and regulations such as; the Petroleum (Exploration, Development and Production)

Act 2013, and Petroleum (Exploration, Development and Production) (National Content) Regulations 2016. However, the overall management of the aspect of national content by the ministry of Energy and Mineral Development has not been adequate and as a result there have been challenges in realizing the national content objectives to eradicate poverty through the employment of nationals in the petroleum sector.

It is also the researcher's conclusive finding that local content legislations target giving preference to the local Ugandans and the Ugandan companies in employment and award of contracts to supply goods and services to the licensees and their contractors and subcontractors in the petroleum sector. However, it ought to be noted that the legal regime is silent about what a Ugandan company is or even what it should be. Even when the regime tries to define a foreign company¹²⁵, this definition simply creates more confusion than answers. This being the basis upon which the aspect of local content is founded, it is crystal clear that the rate of compliance to the local content legislation is likely to be negatively affected unless a strict interpretation of a "Ugandan company" is clearly drawn.

The researcher finds that a major challenge with the joint venture 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. There

¹²⁵ Section 251 of the Companies Act 2012

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.¹²⁶

It is also the researcher's conclusive finding that one of the measures set in Uganda to avoid the challenges, is the introduction of joint venture requirements as an affirmative step to ensure a level of local participation despite capacity gaps. Since the capacity challenges 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 Act¹²⁷ also requires that the Ugandan company possesses at least 48% stake in the joint venture. Section 53 (4) of the Midstream Act¹²⁸ is silent on the percentage requirement. All this is notwithstanding the National Oil and Gas Policy's emphasis on the need 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 fulfill bid process requirements without support of the parent company.

The researcher found that the Petroleum (Exploration, Development and Production) (National Content) Regulations 2016 have tried to fill the challenges presented by the two Acts and PSAs. It has tried to provide for better definitions of what a Ugandan company and registered entities are, the meaning of technology transfer, and active participation of local companies. The Regulations have elaborated measures for national content monitoring, plans for preference

¹²⁶ Silvano Tordo, Micheal Warner, Osmel E. Manzano, and Yahya Anouti, Local Content in the Oil and Gas Sector; World Bank Study 78994

¹²⁷ The Petroleum (Exploration, Development and Production) Act, 2013.

¹²⁸ The Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, 2013.

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 Schedule¹²⁹ ring-fences the goods and services to be provided by Ugandan companies, citizens, and registered entities including the transport, security, human resource management, fuel supply; foods and beverages among others.

The researcher finds that a look at the different countries and institutions in chapter six 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.

7.2 RECOMMENDATIONS:

7.2.1 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.

¹²⁹ The Petroleum (Exploration, Development and Production) (National Content) Regulations, 2016.

Need to amend the law to address the existing gaps: As noted earlier, the Petroleum (Exploration, Development and Production) Act does not clearly define what a Ugandan company is. Even the definition rendered by the regulations¹³⁰ does not conclusively define a Ugandan company because they only consider the place of incorporation and not whether the persons behind the corporate veil who are the ultimate beneficiaries from these companies are actually Ugandans. Parliament should therefore amend the legislation in order to address this gap for it to target not only companies which are locally incorporated but also the brains behind them should also be Ugandans. This in the long run will help achieve the objective of eradicating poverty¹³¹.

7.2.2 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 with powers to audit compliance with local content policies and laws in Uganda, mainstream other sectors in the oil and gas, and extractive businesses. 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

¹³⁰ Petroleum (Exploration, Development and Production) (National Content) Regulations 2016.

¹³¹ NOGP 2018

sectors and line them to provide goods and services or to benefit from the oil and gas sector.

7.2.3 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 Uganda Petroleum Institute- Kigumba 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.

7.2.4 Increase Inclusion in Decision Making:

In order to increase inclusion and participation of citizens, there is need to formalize the existing participation forums and ensure there are formalized 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.

7.2.5 Development and empowerment of potential suppliers:

Local content legislation in the petroleum sector is founded on the basis of giving preference to local suppliers. However, these local suppliers are poorly equipped and others have ended up producing substandard goods which are always not consumed by the oil companies. The development and empowerment of these local suppliers will help address this challenge. The researcher recommends Ministry of Energy and Mineral Development which is the line Ministry to work

closely together with the Ministry of Finance, Planning and Economic Development to provide soft loans to the potential local suppliers in order to boost their production to supply goods and services that meet the standards required by the oil companies. This in the long run will improve the rate of compliance to the local content legislations.

7.2.6 Training of Ugandans:

The government should play a leading role in training and equipping Ugandans with skills that are required of them by the oil companies. NOGP recognizes the need for local content through training and skills development of Ugandans, and Uganda on the positive side established the **Uganda Petroleum Institute Kigumba (UPIK)**¹³² to promote capacity building in the petroleum sector. UPIK trains Ugandans in different fields to enable them provide labour needed in the petroleum sector. However, there are about two challenges that need to be addressed to improve the performance of the institute, namely; its location in the ministry of Education and its capacity to produce the required number of laborers.

Location of UPIK; the debate on the location of the institute has created a lot of confusion because much as it is a specialized institute for the petroleum sector, the institute is located under the ministry of education and sports which has its own challenges ranging from its poor funding to the inappropriate courses and curricula offered which may not be of relevance to the petroleum sector. The researcher therefore recommends that the institute to be shifted to the ministry of Energy and Mineral Development for it to be properly funded, monitored and supervised by the Petroleum Authority of Uganda to produce the desired employees for the petroleum sector. It is crystal clear that having only one

¹³² UPIK Strategic Plan 2014-2019

specialized institute to train and equip Ugandans in petroleum activities is not easy to achieve because on average the institute can only produce 500 employees per year. Therefore, in order to achieve the objective of training and equipping Ugandans, other specialized institutions ought to be set up by government perhaps at regional levels to train Ugandans in the petroleum activities.

7.2.7 Good governance that promotes transparency and accountability:

Finally, the Government has to promote good governance principles that focus on the promotion of transparency and accountability. This should be exercised during the award of the petroleum licenses to carry out petroleum activities. The Government should ensure that the persons who are awarded these licenses meet the minimum local content requirements for it to be sure that such a licensee will comply with the local content legislation.

7.3 Conclusions:

The study concludes that since Uganda announced the existence of commercially viable petroleum deposits, a lot of effort has gone in making laws and policies to ensure that the country maximizes the benefits of exploiting its oil and gas reserves. One of the ways through which this can be done is through encouraging local content, mainly through requirements and targets written in national laws and individual contracts. The achievement of positive local content is a direct result of the type of frameworks in place. In the wake of the need to put in place adequate local content regulatory frameworks in relation to the oil and gas sector, Uganda currently has policies, legislation and regulations.

It was concluded that the emphasis of local content can be viewed as hinged on Article 244¹³³ which places the control of all minerals and petroleum in the hands

¹³³ The 1995 Constitution of the Republic of Uganda.

of the government on behalf of the people of Uganda. And this is closely related to the *trust doctrine* which obliges the government to account to its people as principals or owners, ensuring that they participate in their affairs either by themselves or through elected representatives. In a nutshell, the people of Uganda are the biggest and most important shareholders in the country's oil exploitation. Importantly, Article 244(2) (d)¹³⁴ mandates Parliament to make laws to regulate the exploitation of minerals and petroleum and the sharing of royalties arising from the petroleum exploitation—in essence, this is the backbone of the local content concept.

At this point, the study concludes that the policy and legal framework as to how it makes the case for local content is in compliance. Objective 7 of the National Oil and Gas Policy, 2008 aims at ensuring optimum national participation in oil and gas activities through strategies such as; promoting State participation in production sharing agreements (PSAs), promoting the use of the country's materials, goods and services in the oil and gas sector and promoting the employment of Ugandans in the sector. Objective 8 of the Policy seeks to support development and maintenance of national expertise through strategies such as; the provision of goods and services to the sector by national enterprises and entrepreneurs, and the broadening of the national education curricular to prepare a necessary workforce for engagement with the sector. Additionally, while applying for a license, an applicant must avail a statement on how they intend to employ and train Ugandan citizens. The Petroleum (Exploration and Development) Act, 2013 (the so-called upstream law) and Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, 2013 (the so called midstream law) specifically provide for training and employment of Ugandans. The two petroleum laws make it

¹³⁴ Supra

a requirement for companies to provide a plan for the training and employment of Ugandans in the sector during application for licenses. This is government's mechanism to avoid a complete exclusion of Ugandans from the entire extraction project on grounds that they do not possess the required skills and knowledge.

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

APPENDIX OF SELECTED PERSONALITIES:

During the research process on "**Fostering National Participation: Exploring the Legal Framework for National Content Provisions in Uganda's Oil and Gas Sector,**" interviews were conducted with key stakeholders representing various industries relevant to the topic. The selected industries interviewed are:

1. Oil and Gas Companies: Representatives from oil and gas companies operating in Uganda were interviewed to gain insights into their experiences with national content provisions, including challenges faced, best practices, and recommendations for enhancing national participation in the sector. These interviews provided valuable perspectives from industry players directly involved in oil and gas exploration, production, and related activities.

2. Legal and Regulatory Authorities: Interviews were conducted with representatives from legal and regulatory authorities responsible for developing and implementing the legal framework for national content provisions in Uganda's oil and gas sector. These interviews focused on understanding the existing legal framework, its effectiveness in promoting national participation, and opportunities for legal reforms or enhancements to strengthen national content requirements.

3. Civil Society Organizations (CSOs): Representatives from civil society organizations engaged in advocacy, research, and monitoring of Uganda's oil and gas sector were interviewed to gather perspectives on national content provisions from a civil society standpoint. These interviews provided insights into CSO perspectives on the impact of national content requirements on local communities, environmental sustainability, and social development.

4. Academic and Research Institutions: Interviews were conducted with experts and researchers from academic and research institutions with expertise in oil and gas law, policy, and governance. These interviews aimed to explore scholarly perspectives on national content provisions, including their legal basis, socio-economic implications, and alignment with international best practices.

These interviews contributed to a comprehensive understanding of the legal framework for national content provisions in Uganda's oil and gas sector, as well as the perspectives of key stakeholders on opportunities, challenges, and recommendations for fostering national participation. The insights gathered from these interviews informed the analysis and findings presented in the research report.

BIBLIOGRAPHY:

- Acemoglu, D., & Zilibotti, F. (2020). Localized and biased technologies: At the origin of economic development. *Journal of Political Economy*.
- Asiimwe, C., Otim, D., & Muhereza, F. (2018). Local content in Uganda's oil and gas sector: Challenges and opportunities. *African Journal of Governance and Development*.
- Karuhanga, E. (2017). Local content requirements in Uganda's oil and gas sector: Prospects and challenges. *Journal of Oil and Gas Law*.
- Mugerwa, W. (2019). The impact of local content policies on the oil and gas sector in Uganda. *African Journal of Economic and Sustainable Development*.
- Ntungire, N., & Nyote, S. (2018). Enhancing the effectiveness of local content policies in Uganda's oil and gas sector: Lessons from other jurisdictions. *African Journal of Business and Economic Research*.
- Okot, O., & Ajal, M. (2021). Assessing the impact of local content policies in Uganda's oil and gas industry: A case study of selected projects. *Energy Policy*, 151, 112122.
- Omeke, M. O. (2019). Local content policy implementation in the Ugandan oil and gas sector: Challenges and lessons. *Journal of Development and Administrative Studies*.
- Ongaro, R. E., & Okot, O. R. (2020). The impact of local content policy on the Ugandan oil and gas industry: A comparative analysis. *International Journal of Energy Economics and Policy*.
- Ssekimpi, J., & Beazley, M. (2017). Local content in the petroleum sector in Uganda: Challenges and opportunities. *Extractive Industries and Society*.

Magelah, P.G: Local Content in Oil and Gas Sector: An Assessment of Uganda's Legal and Policy Regimes. ACODE Policy Briefing Papers Series no 28/2014.

Elizabeth Wall Remi Palon, Sharing Mining Benefits in Developing Countries; Extractive Industries for Development Series June 2011 (World Bank).

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

Amy K. Lehr & Gare A. Smith, Implementing a Corporate Free, Prior and Informed Consent Policy: Benefits & Challenges.

Lorenzo Cotula (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

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

Amy K. Lehr and Gare A. Smith, Implementing a Corporate Free, Prior and Informed Consent Policy: Benefits and Challenges July 2010; Foley Hoag eBook

Emmy Olaki "More Oil is Found; Hoima Yields 500 million Barrels" New Vision October 12th 2006

Isaac Christopher Lubogo, the Law of Oil And Gas in Uganda, First Edition 2021, Jescho Publishing House <https://www.lubogo.org>

Jackson A.Mwakali, Jackson N.M Byaruhanga;" Local Content in the Oil and Gas Industry: Implications for Uganda"
<https://news.mak.ac.ug/documents/makfiles/aet2011/mwakali>.

The Ministry of Energy and Mineral Development (2010) Strengthening the Management of the Oil and Gas Sector in Uganda. A Development Programme in cooperation with Norway.

E. Kasimbazi, “Environmental Regulation of Oil and Gas Exploration and Production in Uganda” in Journal of Energy and Natural Resources Law Vol. 30 No.2 of 2010

The Civil Society Coalition on Oil in Uganda (2010) Uganda’s Oil Agreements Place Profit before People

E. Kaweesi, “Uganda’s Security amidst Oil Exploration, Development and Production” in Makerere Law Journal (2013)

E. Kasimbazi (2009) Legal and Environmental Dimensions of Oil and Gas Exploration in Uganda.

Kasiita, “History of Oil Discovery in Uganda”, New Vision Friday 23rd Jan, 2009

J. Kathman & Megan Shannon “Oil Extraction and the Potential for Domestic Instability in Uganda” African Studies Quarterly, Vol. 12.Issue 3 (Summer 2011)

B. Shepherd (2013) Oil in Uganda: International Lessons for Success.

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)

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)

The Ministry of Energy and Energy Development Report

Monday J, Oil and Gas Exploration and Environmental Protection in Uganda: An Appraisal of the Policy and Legal Framework. Makerere University, Kampala, Uganda

E. Kaweesi, “Uganda’s Security amidst Oil Exploration, Development and Production” in Makerere Law Journal (2013) at 10

The 1995 Constitution of the Republic of Uganda

The Petroleum (Exploration, Development and Production) Act 2013

The National Oil and Gas Policy (2014) Popular Version

The National Oil and Gas Policy

The National Content Policy for the Petroleum Subsector in Uganda

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

The Buy Uganda Build Uganda policy 2014

APPENDIX I: LIST OF SOURCE TOOLS USED

- Oil and gas laws
- International conventions and instruments
- Library
- Resolutions
- Different general comments related to local content
- Recommendations,
- Guidelines and action plans.
- Domestic policies and legislations
- The internet
- Public and Government publications

APPENDIX II: WORK PLAN (TIME SCHEDULE)

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec
Research proposal												
Research writing (Dissertation)												
Submission												

APPENDIX III: BUDGET

S/N	Item	Total Cost Shs. (UGX)
1	Travel costs	100,000
2	Questionnaires' and interview schedules	200,000
3	Secretarial Services	100,000
5	Internet	80,000
6	Printing and typing	100,000
7	Other Expenses (Specify)	100,000
Total		680,000

APPENDIX IV: QUESTIONNAIRE

QUESTIONNAIRE

ADMINISTERED BY: KIRAIRE LEWIS

Section 1:

Background Information:

Name:

Gender: Male: Female:

Occupation:

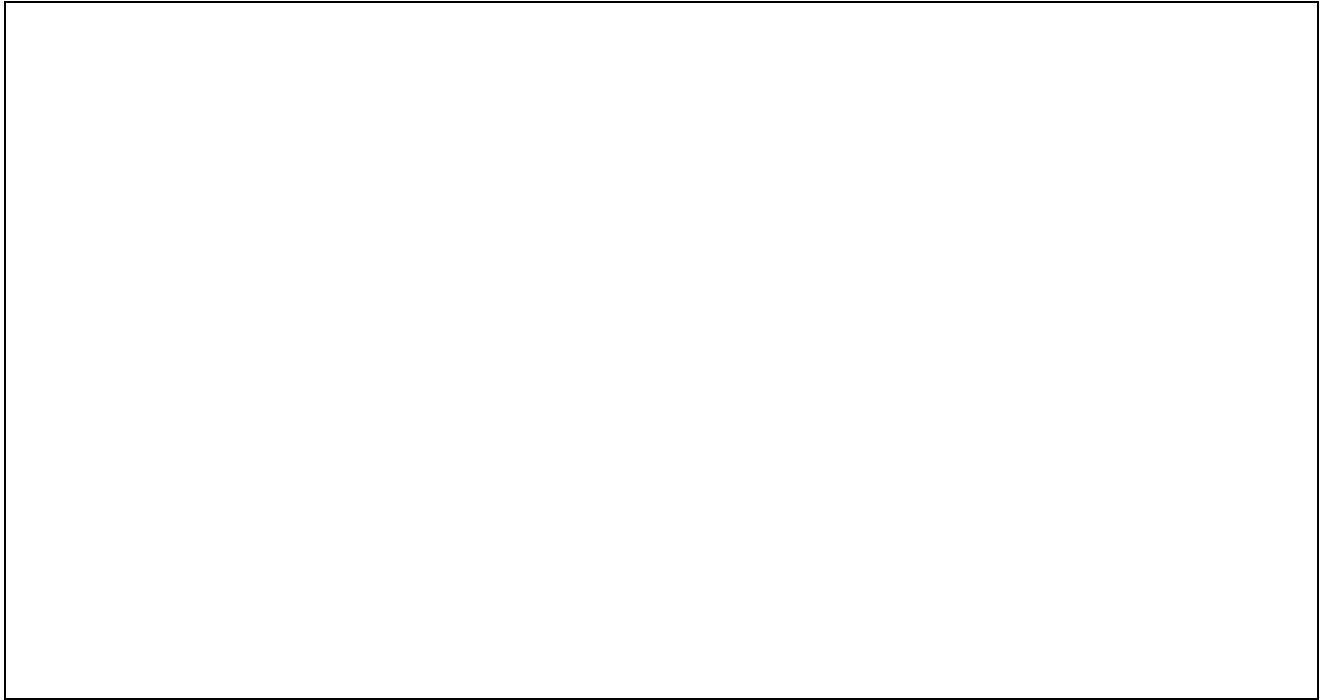
Level of Education:

1. Introduction:

This questionnaire is aimed at enabling the researcher to uniformly gather field data from sample participants. The particular research (dissertation) is undertaken as part of the requirements for the award of a Master of laws in oil and gas degree. The information shared through answering questions is confidential and purely for academic purposes only.

- How do you know about local content in the oil industry?
- What do you consider to be the significance of local content?
- What are some of the policies considered to counter act situations of local content?
- Are you following proper local content rules and regulations in oil and production expropriation and production?
- How does the Ministry of Energy and Mineral Development enable the oil companies in Uganda in standardization of local content in Uganda?

2. Any other comments:



.....

Signature (Interviewee) Date

Thank you for your time!

APPENDICES:

Appendix 1: Interview Guide

PETROLEUM INSTITUTE:

[Your Name]

LL.M Student, Uganda Christian University-Mukono

Institute of Petroleum Studies Kampala

[Date]

Dear Sir/Madam,

Re: Study on the Legal Framework for National Content Provisions in Uganda's Oil and Gas Sector

I am [Your Name], an LLM student at Uganda Christian University-Mukono, currently enrolled in the Institute of Petroleum Studies Kampala. I am conducting a research study focused on exploring the legal framework for national content provisions in Uganda's Oil and Gas sector to foster national participation. Your valuable insights and expertise are crucial to the success of this academic inquiry.

Please rest assured that all the information collected during this interview will be used exclusively for academic purposes and treated with the utmost confidentiality. Your cooperation is greatly appreciated.

Section A: General Information

1. What is your highest level of education?

[Response]

2. Which company do you currently work for in Uganda's Oil and Gas sector?

[Response]

3. What is your profession within the industry?

[Response]

4. Please specify your current job title:

[Response]

5. Have you received any formal training related to national content provisions in the Oil and Gas sector? If yes, kindly provide details.

[Response]

6. How long have you been employed in your current position within Uganda's Oil and Gas sector?

[Response]

Section B: Industry Insights

7. As someone actively involved in Uganda's Oil and Gas sector, are you aware of any initiatives or challenges related to national content provisions and fostering national participation? If so, please provide additional information.

[Response]

8. In your opinion, what factors contribute to the success or limitations of national content provisions in promoting national participation in the sector?

[Response]

9. Has your organization implemented any strategies or initiatives to enhance national content and participation within the Oil and Gas sector? If yes, please describe them.

[Response]

10. What legal frameworks or regulations has your organization adopted to support national content provisions in the sector?

[Response]

11. To what extent do you believe these national content laws and regulations have effectively contributed to fostering national participation in Uganda's Oil and Gas sector?

[Response]

12. What additional strategies has your company employed to promote national participation and enhance the legal framework for national content provisions?

[Response]

13. In your perspective, how successful have these strategies been in fostering national participation and strengthening the legal framework for national content provisions in Uganda's Oil and Gas sector?

[Response]

14. As an organization, what challenges have you encountered in implementing these strategies and complying with the legal framework for national content provisions?

- a) Legal framework
- b) Policy framework
- c) Other national content strategies

[Response]

15. How has your organization addressed or mitigated these challenges in the pursuit of fostering national participation and improving the legal framework for national content provisions in Uganda's Oil and Gas sector?

[Response]

16. What recommendations do you have to further enhance national participation and strengthen the legal framework for national content provisions in Uganda's Oil and Gas sector?

[Response]

Thank you sincerely for your cooperation in providing valuable insights for this study. Your contributions are instrumental in advancing our understanding of this important industry and its impact on national participation.

RESPONSES TO THE INITIAL PROPOSAL DEFENCE:

1. Including respondents such as **NEMA** (National Environment Management Authority), **PAU** (Petroleum Authority of Uganda), and other relevant stakeholders in the proposal is crucial because they play significant roles in the oil and gas

sector in Uganda. **NEMA** is responsible for environmental regulations, **PAU** oversees petroleum activities, and other respondents may include government bodies, industry players, and local communities, whose perspectives and cooperation are essential to understand the legal framework's impact on national content provisions.

2. Refined Problem Statement: "The inadequate exploration of the legal framework for national content provisions in Uganda's Oil and Gas Sector has hindered the effective fostering of national participation, necessitating an empirical examination of the regulatory landscape, stakeholder perspectives, and implementation challenges."

3. National content and local content are related but distinct concepts. National content refers to the inclusion and promotion of domestic participation, businesses, and workforce in a country's industries, such as the oil and gas sector. It emphasizes the involvement of nationals, regardless of their geographic location within the country. Local content, on the other hand, specifically focuses on the involvement of individuals, businesses, and resources within a defined geographical locality, often within the immediate vicinity of the industry's operations, without a broader national scope.

END



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SCHOOL OF RESEARCH & POSTGRADUATE STUDIES

DISSERTATION CORRECTION COMPLIANCE REPORT BY THE CANDIDATE (POST VIVA FORM)

Date:30th APRIL 2024.....

Name of Candidate:KIRAIRE LEWIS..... Reg. No: S22M23/011.....

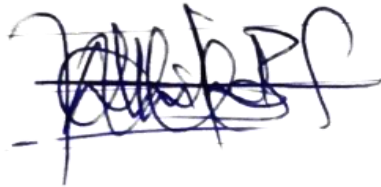
Title of Dissertation FOSTERING NATIONAL PARTICIPATION: EXPLORING THE LEGAL FRAMEWORK FOR NATIONAL CONTENT PROVISIONS IN UGANDA'S OIL AND GAS SECTOR.....

SN	COMMENTS BY EXTERNAL EXAMINER	ACTION TAKEN	INDICATOR
1	Indicate the Local Industries interviewed.	Corrected.	Page 102 & 103
2	Revisit your framework; write about both Theoretical and Conceptual framework.	Corrected.	Pages 11, 12 & 13
3	Change the writing styles in your work E.g. Include details of Acts in footnotes.	Corrected.	Pages 25- 95
4			

5			
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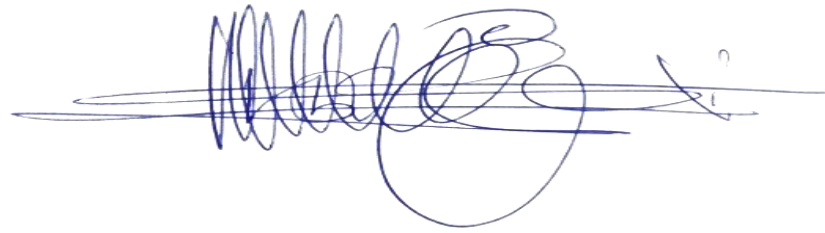
SN	COMMENTS BY INTERNAL EXAMINER	ACTION TAKEN	INDICATOR
1	Include the Conceptual and Theoretical framework.	Corrected.	Pages 11, 12 & 13
2	Include the questionnaire and interview guide in your research.	Corrected.	Page 111 & 113 (Appendices)
3			
4			
5			

SN	COMMENTS BY VIVA VOCE PANNEL	ACTION TAKEN	INDICATOR
1	Add the name of the supervisor.	Corrected.	Page 2.
2	The Introductory chapter should be concise to around 500 words	Corrected.	Pages 10
3	Chapter 3 on methodology could be improved on. Illustrate how each method was used in the research.	Corrected.	Pages 20 & 21
4	The need to limit the Discussion to laws that are related to the subject matter.	Corrected.	Chapter 4
5			



KIRAIRE LEWIS.....

Candidate's Name

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

DR. ISAAC CHRISTOPHER LUBOGO

Supervisor's Name

.....

Signature