



Use and Application of Local Content Policies to Pursue Equitable Petroleum Resource Management: Lessons from Other Producer Countries

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1 INTRODUCTION

For centuries, natural resources like minerals, salt and now petroleum (*oil and gas*) have and continue to play a vital role in the life of humans. These roles are varied and range from economic, social and political. Economically, natural resources remain significant sources of income for individuals, the Host Governments (“HG”) and States (Acheampong et al., 2016). As a consequence, natural resources enable states

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to amass wealth, build nations and relatively prosper. For individuals, these resources facilitate and enhance the living standards of the populace. Hence, socially, natural resources influence the general quality of life of individuals around and associated with the extraction of natural resources. Arguably, the exploitation of these resources facilitates the movement and migration of people to enhance social classes. In this regard, the exploitation of natural resources is modelled in a community context that directly reflects the community's culture, values, economy, exchange principles, political system, and power relations (Van Assche et al., 2017). Significantly, despite the apparent advantages of exploring and exporting these resources, they remain unfavourable by developing conditions that frequently diminish their benefits. For instance, upon extraction, these resources either appreciate or depreciate following their material qualities in a given particular community. Consequently, these resources affect how they are either distributed or traded (Hunter, 2015). Also, these resources frequently come with political imperatives that limit how they are/ought to be managed/distributed. Therefore, overlooking the political perspectives of the natural resource sectors and their management camouflages the actual decision-making and power relations processes (Holden, 2013; Vostroknutova et al., 2010). The result of these oversight privileges actors who are unknown to other actors and would likely have a different impact/outcome than they would have in more inclusive and transparent governance (Taverne, 2008; Van Assche et al., 2017).

Thus, this chapter pays attention to the management and/or distribution of natural resources related to petroleum extraction. It does so by comparing how new African frontiers implement their legal and institutional mechanisms to identify suitable way(s) of managing the newly found source of revenue. Globally, countries and economies with natural resources observe the significance and ultimately the dependency of these resources. For instance, Ghana's economy is primarily dominated by natural resources such as gold and cocoa, making up 60% of export (EISD, 2016). Significantly, the recent oil and gas discoveries led to the exploration, development and operation of the commercially viable offshore hydrocarbon production in the Jubilee, TEN and Sankofa fields (Gyimah-Boadi, 2009; van der Ploeg et al., 2012). The confirmed oil reserves total 1.1 billion barrels and 2.1 trillion cubic feet of gas reserves (Agyei et al., 2012; Ayelazuno, 2014). Long-term oil production estimates a peak of 236,300 barrels per day and 323.7 million cubic feet per day for gas production, in the absence of no new discoveries

(Ayelazuno, 2014; Fragkos et al., 2017; Kopiński et al., 2013). The oil and gas fiscal revenues and GDP contribution are estimated to grow the economy by an additional \$75 billion over 2015–2030 (Fragkos et al., 2017). Evidently, there is an outstanding potential for Ghana’s petroleum industry to boost Ghana’s economy. Therefore, to effectively assemble this wealth, the country demands institutional frameworks including but not limited to drafting effective policies and legal frameworks around natural resource management to ensure the optimum realisation of the country’s petroleum industry.

Nonetheless, despite being portrayed as a relatively democratic, well-governed and prosperous African country, Ghana has yet to show the capacity and commitment to manage natural resources in ways that support inclusive or transparent development (EISD, 2016; Kopiński et al., 2013; Van Assche et al., 2017; van der Ploeg et al., 2012). The revenues collected from oil since discoveries and ultimately to production remain linear, making it challenging to achieve structural economic change. Expenditure patterns show that vulnerable communities, particularly the more deprived northern regions and some places in the Western region, continue to be marginalised despite the latter being host communities (EISD, 2016; van der Ploeg et al., 2012).

Yet, these concerns are not only peculiar to Ghana. As observed, other frontiers such as Kenya, Uganda and Tanzania (which are key subjects to this chapter) remain culpable in (i) marginalising host communities, (ii) disregarding sound legal frameworks that enhance the equitable distribution of resources (iii) yet continue to develop prescriptive frameworks that discourage in-country investments. Hence, the argument and advocacy to promote better and focused strategies that (i) recognise the key role of communities around and associated with the extraction of natural resources (ii) formulate policies that build the capacity, as well as accountability, of public sector agencies involved in natural resource governance and (iii) building and protecting the technical capacity by initiating better professional relationships between political elites and public sector bureaucrats (EISD, 2016; Gyimah-Boadi, 2009).

2 NATURAL RESOURCE MANAGEMENT

The discovery and exploitation of offshore oil prompt a spark in discussions around the need for sound, timely and feasible laws and policies. This is explicitly in relation to the tailoring of Ghana’s policies for sound

petroleum resource management with a view of accelerating the overall national development (Asante et al., 2021). Petroleum resource management is anchored on the creation and existence of regulatory institutions, procedural guarantees and recourse to promote the sustainable management and use of petroleum as a natural resource (Gyimah-Boadi, 2009; Van Assche et al., 2017). Similarly, the quality of governance of a country is a critical determinant in the development outcomes of extractive and petroleum industries activities (Agyei et al., 2012; Murombo, 2016). Ghana has developed a corpus of legal rules that encourages and controls natural resource management. This is reflected in Ghana's constitution, statutes, international instruments and customary laws. In this regard, this chapter favours the argument that formulating sound and practical natural resource management law is key to achieving national policy goals.

Natural resource management laws operate by prescribing and creating rights, duties, powers, establishing institutions and procedures (Moalim, n.d.) and forming basic foundational rules that guide peoples' interactions with each other and natural resources (EISD, 2016; Van Assche et al., 2017). The core function of petroleum resource management laws is to ensure that petroleum is exploited equitably and sustainably in line with the universally accepted Brundtland principles of sustainable exploitation and intergenerational equity (Brundtland, 1987a). The Brundtland principles outline that all-natural resource management strategies should meet the needs of the present generation without putting at risk the opportunity of future generations to enjoy the same (Brundtland, 1987b; Keeble, 1988).

At its core, natural resource management law determines the ownership of the natural resource, the terms of the legal rights acquired by those who utilise the natural resources and facilitating the natural resource-related transactions by way of formulating rules of conduct that govern a transaction unless the parties choose otherwise (Moalim, n.d.). Petroleum resources management law comes in as a legal instrument for distributive, conservatory or prescriptive utilisation of the resource.

The distributive function comes into play by specifying the natural resources that can be owned and the terms of the legal rights acquired by those who utilise the natural resources. Significantly, the conservatory perspective remains outlined in the jurisprudential theory of permanent sovereignty over natural resources, which addresses the ownership of resources and the rights of states to exploit and dispose of the said resources following their national development policies and goals without

outside interference. The law also facilitates and governs natural resource commercial transactions by establishing rules of conduct that govern a transaction unless the parties choose otherwise. Consequently, the natural resource management law creates a governance structure for resource users to coordinate resource use and resolve disputes (Wiersema, 2008).

The remainder of this chapter is mainly structured to cover the critical role of resource management laws that outlines the acceptable standards with respect to the exploitation of resources or particular forms and methods of exploitation. Specifically, the chapter narrows down to the use and application of local content policies to pursue equitable petroleum resource management in the petroleum sector. Discussions around the lessons from new African oil exploring countries and other petroleum-producing countries are covered. Similarly, the article reviews and compares the regulatory agents and bodies responsible for implementing the policies in these selected countries.

3 LOCAL CONTENT REQUIREMENTS

There is no universal agreement on what is “**local**”, nor is there a consensus on what amounts to “**content**”. That notwithstanding, governments continuously (re)define Local Content Requirements (“LCRs”) as either a policy tool or an objective for/of realising the economic, social and political benefits for the local economy (Asiago, n.d.; Hunter, 2014). The significance of these requirements seems to go beyond the typical fiscal benefits accrued (Acheampong et al., 2016). Thus, LCRs remain associated with supply chain systems that promote or enhance the value-added brought to any economy (Asiago, 2017a, b).

In this regard, LCRs are regulatory tools imposed by governments to ensure that benefits associated with the upstream petroleum sectors extend to local people and businesses (Acheampong et al., 2016; Asiago and Wasunna, n.d.; Hunter, 2017). Thus, mandatory LC requirements oblige operators (mainly foreign) to source a specific percentage of their workforce, goods and services from the local companies. Therefore, depending on the regulatory objective, these LC requirements will either strictly or laxly determine the application parameters, the model of compliance, monitoring and the provision of either sanctions or incentives (Asiago, 2021).

Typically, governments formulate LCRs in the oil and gas sector to include policy initiatives relating to law, regulation, contracts, amongst

others that encourage national labour, goods and services, technology and capital (Acheampong et al., 2016; Asiago, 2017a, b; Hunter, 2010). In many respects, this participation amounts to the value created or added through the deliberate use of local resources. In 2003, the World Bank classified this category as backward linkages because it relies on local-based factors (Tordo et al., 2013). Other definitions attempt to be more robust and involve foreign-based factors such as transferring knowledge, technology, and capital frequently associated with forward linkages. Arguably, depending on how they are applied, the backward linkages often limit value additions because of the constant reliance of locality rather than competency or the competitive edge required in improving forward linkages. In this regard, the World Bank report of 2013 advocates for the systematic use of LCRs that move from and beyond the affirmative actions related to backward linkages to forward linkages, involving the transfer of capital, technology, and suitable legal structures (Tordo et al., 2013). Thus, suitable LCRs develop two major elements involving “**local**” and “**content**”.

3.1 *Local*

The definitions relating to “**Local**” involve two significant categories involving (i) narrow and (ii) broad.

The narrow definition involving “*local*” considers the context of the geographic area, including the population living directly in or around the extraction site also commonly known as *host communities*. Thus, to qualify under this definition, the population or the business intending to work on a petroleum project should naturally originate from the designated or impacted community. For instance, prior to introducing the Nigerian Oil and Gas Industry Content Development Act (“NOGCID”) in 2010, the initial definition of local content in Nigeria originated from the Niger Delta region, in 1989 (*Nigerian Oil and Gas Industry Content Development Act 2010*, 2010). This policy eventually developed into the famous Nigerianisation approach. Thus, initially, the desire for the State was to ensure that the people originating from the Niger Delta region would be prioritised within the affirmative action. However, due to the politics associated with such a brush, narrow policy, the government quickly changed the objective from regional to national participation (Aladeitan, 2012; Ekhatior, 2016).

Currently, this narrow definition is shelved, and, in several countries, it is frowned upon because of the constricted focus on a small community rather than a unified national policy. Today local communal content also known as “*Community Content*” is limited to social and environmental issues such as the potential loss of agricultural land, source of income, displacements, etc.—especially in marginalised communities but not extended to include the complex supply chain systems (Warner, 2011). In other places, the elements associated with Community Content qualifies as the—*Social License to Operate (SLO)*.

On the contrary, a broader definition of “local” entails complex supply chains and integrated systems involving the roles of (a) nationality or citizenship in the case of employment, (b) company registration/incorporation, headquartered in-country, ownership and/or control of the capital and (c) value addition quotas and percentage of locally sourced inputs. In this regard, the issues involved include but are not limited to the following:

- **Local person/workforce**—this requirement demands selecting an individual associated with the host country’s nationality to perform an activity. In many respects, governments deem that local personnel must be able to identify with the nation/nationality of that country. And that the quota or percentages reserved must only be fulfilled by the said locals. For instance, the Ghana Local Content legislation (LI 2204 [Petroleum (Local Content and Local Participation in Petroleum Activities) Regulations]) passed in 2013 by the Ghanaian Parliament demands the prioritisation of employment in the petroleum industry to only Ghanaians/nationals. This requirement resulted from the 2010 local content policy observing the government’s commitment to ensuring the participation of Ghanaian citizens in the ownership of oil and gas businesses. The policy and eventually, the law mandates the priority allocation of the award of oil blocks, oil field licences, oil extraction licences, and all projects to Ghanaians. Similarly, in Uganda, the Ugandan Parliament passed the National Local Content Act on 20 May 2020. It specifically requires the employment of Ugandans in the petroleum sector. Conversely, the need to employ locals may be hindered by the lack of skill set in-country especially in the early stages of the E&P lifecycle. In this regard, there exist exceptions where Host Governments may allow the employment of an expatriate. However, these exceptions

remain subject to fulfilling certain conditions such as (i) obtaining permission from the relevant authorities (ii) gradually replacing the expatriate with a local. For instance, the Ugandan LCRs observe that the expatriate will apply to MEMD for a recommendation of obtaining a work permit/special pass. However, the licensee is expected to gradually replace its expatriate staff in key senior management or technical positions with suitably qualified and experienced Ugandan citizens. As will be observed, these requirements are similar across the board in Ghana, Tanzania and Kenya.

- **Incorporation of local company** including **local registration**—typically, LCRs demand the standard company incorporation/registration with the relevant state companies registration Acts/Authorities, i.e. in Ghana, Uganda, Tanzania and Kenya, including Nigeria and Angola. Thus, the law specifies the need to register the said company with the Companies Registration offices. However, beyond the statutory obligation to incorporate a company, these entities must extend equity participation rights to locals. For instance, in Ghana, the LI mandates that every petroleum agreement or licence between Ghana and a foreign company must have at least 5% equity participation of indigenous Ghanaian companies. This LC requirement is similarly reflected in Nigeria, Angola, Ghana and Mozambique. On several other occasions, these laws may also require the registration of companies' headquarters in the host country. There are specific laws that demand all three requirements relating to company set incorporation to be fulfilled—the Angolan 271/20 regulation demands that the company be locally registered, 100% owned by Angolans, and headquartered in Angolan. Similarly, the Nigeria NOGICD Act requires local registration, 51% owned by Nigerians and headquarters in Nigeria. Furthermore, there are situations where the law might select either equity participation or joint venture depending on suitability. This is the case in Tanzania, where law describes a local company as either (i) 100% owned by Tanzanians or (ii) a JV with Tanzanian(s) citizens holding at least 25%. In this regard, the law distinguishes between the roles of companies from that of individuals. Thus, it is observed that more equity participation is involved/required where a local company is concerned.
- **Local goods and services**—typically, E&P companies must purchase local goods that are either manufactured or produced locally to

attain this requirement. Often the provision of the law demands, i.e. “Made in XX” or “Buy XX” programmes introduced by many national governments. For instance, the NOGICD 2010 Act references that all fabrication and welding must be undertaken in-country even though Nigeria manufacturing only constitutes 4% of overall revenue. However, reports indicate that there has been success in improving fabrication and welding. Similarly, in Angola, there exist the 3-tier system (i) rule of exclusivity (activities less capital and technology, (ii) semi compliance—(JV for medium capital & technology) (iii) Competition system (offshore—the pre-salt area with capital) in which services must be in-country including, legal, financial, consultancy, etc.

3.2 *Content*

The definitions relating to “Content” vary and often depend on the objective of the policy tool. Importantly, governments have never fully defined what ought to be included as part of the content relating to LCRs. That notwithstanding, the conclusion is that either some of the following or all issues are included in determining the scope pertaining to LCRs have but are not limited to the following:

- **Increasing the participation of domestic industries**—these policies remain imposed by governments. They often require firms to use domestically manufactured goods or domestically supplied services to operate in an economy. The idea of increasing domestic participation is usually made and undertaken at the expense of foreign participants and is often applied without consideration of the capacity of local companies. For instance, the Ghana LCRs have requirements to submit LCRs plans to employ locals and procure goods and services. Furthermore, these entities should transfer advanced technology and skills related to petroleum activities. In this regard, oil companies must prepare and submit sound recruitment and training programmes to the Ghana National Petroleum Corporation (GNPC) or the Petroleum Commission.
- **Development of the local workforce**—like the desire to increase domestic industries participation, local workforce policies remain imposed by governments and often require firms to employ nationals

of a given country to operate in an economy. Indeed, in the absence of such policies, the licensees should often equip the locals by training or capacity building. For instance, the Tanzania petroleum law mandates the contractors to submit to PURA a programme for recruitment and training of Tanzanians within 12 months after the licence grant and every year report on the programme's implementation. Ideally, these policies are designed to reduce unemployment pressure whilst simultaneously stimulating growth after the global financial crisis and the pandemic to manage the adverse effects of globalisation. The idea is usually targeted towards reducing the role of foreigners but often applied without consideration of the capacity of locals.

- Thus, the eventual desire to **transfer technology or conduct research and development** is often shelved. Because the transfer of knowledge and know-how, including research, can only be effectively achieved if/when locals and foreigners work together to achieve the objectives outlined by the rules simultaneously. For instance, foreigners can add value through capital/financing, capacity building and implementing corporate governance structures that add value in seeking international investments etc. Whereas the locals can effectively manage the resources, secure petroleum interest and oversee the equitable distribution of these natural resources.

Thus, despite many governments mandates to achieve these requirement(s), unless these complementary elements, that is, local and content issues are intertwined to facilitate and promote local participation, one may argue that the **value addition becomes a proxy purely for “locally based” or “locally owned” issued that add no desired value to the economy!**

4 ROLE OF LOCAL CONTENT REQUIREMENTS IN FACILITATING EFFECTIVE RESOURCE MANAGEMENT—COMPARATIVE ANALYSIS

Governments pursue local content requirements—as an *objective or a tool*—to achieve sound resource management. Arguably, LCRs as a tool concern the means of achieving a set predetermined national goal(s).

Whereas local content as an objective, is the end itself, focusing on accomplishing virtues related to value addition by the locals in the host country. Hence, there is a need to have tailor-made laws and policies specific to each country that reflect the country's underlying fundamental principles either objective or tool. Notably, most developing African countries are notorious for transplanting LCRs from Norway despite the differences in context, political and economic status. A good example is Nigeria, which has had up to 12 local content laws whose success in implementing and yielding sustainable results is debatable.

In this context, the work will review the LCRs in Uganda, Tanzania and Kenya to draw out lessons comparable to Ghana's. The work focused on the select three countries because of the underlying similarities in the discovery of hydrocarbons; unlike Angola and Nigeria that have been carrying out production for over five decades, the select countries, Ghana included, made their discoveries about a decade ago. Thus, exploration and production are in the inception stages. Likewise, it is noteworthy that these countries have put in place local content laws and policies that are yet to be used and put to the test, considering that exploration and production are still at the onset. Hence, it is imperative to study the different local content laws and policies, establish why local content is essential to these countries, and whether local content is used as an end goal objective in and of itself or an end to a more significant purpose.

4.1 Uganda Local Content Requirements

Uganda first announced the discovery of commercial oil and gas reserves in the Albertine rift basin in 2006. A discovery that sparked excitement and raised the hope for social and economic growth amongst the locals and the National government (Gwayaka, 2014). Albeit the excitement, concerns of how the government and citizens of Uganda would benefit from the commercial oil and gas reserves once production kicks off cropped up. Questions as to whether the International Oil Companies ("IOCs") engaged would employ the local citizens, use locally produced goods and services, how the transfer of skill and technology will be harnessed, and whether Uganda had the local capacity to be engaged during production? These concerns highlighted the underlying need for Uganda to develop a legal and policy framework that addresses resource management concerns, the local content issues and gives practical and tailor-made solutions to the Ugandan people to benefit from the oil

and gas sector (Ogwang and Vanclay, 2019). For instance, during the exploration phase, the national government of Uganda commissioned a National Content Study in the Oil and Gas Sector in Uganda that revealed that as of 2011, the share of national content stood at 15%. The study also highlighted the need for the national government to employ practical and sustainable measures to ensure national content is achieved across the oil and gas sector.

Since discovering oil and gas, Uganda has legislated various laws and policies that address value addition through national content in the petroleum sector. The work will study and discuss the diverse national content laws in-depth to explore how the concept and tenets of local content have been formulated and implemented if at all they have been implemented.

4.1.1 *Legal Framework*

(1) *National Oil and Gas Policy for Uganda 2008*

The Ugandan National Oil and Gas Policy (NOGP) offers guidelines for petroleum resource management. The Policy framework emphasises the need for the development of sustainable resource management that promotes intergenerational equity. The common underlying goal of the policy is to promote *local content as a tool for resource management* in Uganda. This is seen throughout the policy objectives. For instance, objectives 7 and 8 of the Policy outlines the need to ensure maximum national participation in oil and gas development and production, which is to be achieved through the use of local goods and services, employment of Ugandan locals and promotion of transfer of skill and technology to the country. Promotion of national participation makes up for local content, which is defined by the Policy to include the value brought to the host nation, region and host communities because of activities in the oil and gas industry and outlines the parameters used to measure the value-added (Schwarte, 2008). From the above definition, one can infer that the essential components of local content in Uganda include value addition and procurement, use of local goods and services and transfer of technology and skills to the locals.

The Policy is an essential driver for obtaining and releasing national local content as it sets out the action plans and strategies to achieve

local content. The policy highlights the guidelines and guiding principles to achieve local content. It outlines the following national content pillars, translating to the action plan for maximum national participation in Uganda's petroleum sector. The five pillars embody the tenets of local content, and they include:

- *Formulation of the necessary regulatory framework for state participation and implementation of national content*—This Policy sets grounds for the establishment of the Petroleum (Exploration, Development and Production) Act of 2013 and has also informed the provisions of the Production Sharing Agreements (Art 11, 20 & 21). It activates Part VIII and Sections 124, 125, 126 & 127 of the Petroleum (Exploration, Development and Production) Act 2013. It also sets the basis for the provisions in the Production Sharing Agreements (under Art 11, 20 & 21) reflective of the national local content.
- *Establish the opportunities for national content in oil and gas activities and work around its implementation*—this pillar forms the basis for implementing local employment and workforce opportunities as well as the opportunity to study and specialise in the required skills in oil and gas exploration that is capital intensive and requires highly skilled personnel.
- *Training of government personnel to monitor oil and gas exploration, development and production*—This pillar sets the foundation for the requirement of the International Oil Companies to participate in the sponsorship and training of the locals in order to take up top managerial positions across the production value chain.
- *Review and improvement of the education curricula in the country with a view of producing a well-skilled workforce required for oil and gas activities in the country*—This pillar aims at creating a skilled local workforce in the production chain and, in the long run, create and strengthen capacity amongst the host citizens, and especially the youth.
- *Bolster the development of skills and competitive competencies required by the entrepreneurs to participate in delivering goods and services for the oil and gas sector.*
- *Condition for licensed oil companies and their subcontractors to provide training to Ugandans*—This pillar focuses on building extended-lasting capacities for Ugandans.

These pillars embody local content's tenets to include value addition to the host country through the employment of local workforce, supply and use of local goods and services provided by local or jointly owned companies, and capacity building and skills acquisition through training.

(2) *The Petroleum Exploration Development Program (EDP) Act, 2013*

The Petroleum Exploration Development Program (EDP) Act, 2013 [*The Petroleum Act (EDP) Act 2013*] is the governing law for Uganda's local content. It prescribes the National Content requirements relating to State participation, utilisation of Ugandan goods and services and formulation training and employment. The laws prescribed under this Act reflect the provisions under the National Oil and Gas Policy for Uganda, which mandates the National government to ensure maximum national participation across the value chains in the sector.

The following are the ways Uganda, through the Act, is implementing the 5 Pillars of National Content formulated in the Policy.

- (a) *Workforce Development*—Section 126(1) of the PEPD Act 2013 demands that the licensee, within twelve months after the grant of a licence, submit to the Authority for approval a detailed programme for recruitment and training of Ugandans in all phases of petroleum activities and shall consider gender, equity, persons with disabilities and host communities. This is to ensure that the International Oil companies, whilst carrying out production, are deliberate about the training of the locals. Long-term compliance ensures sustainability in the value created and passed down to the locals through training and recruitment.
- (b) *Utilisation of Ugandan goods and services and Supplier Development*—Section 125(1) the Act outlines that the licensee, its contractors and subcontractors shall give preference to goods produced or available in Uganda and services which Ugandan citizens and companies render. Furthermore, goods and services not available in Uganda can be provided by a joint venture company consisting of a Ugandan company and provided that the Ugandan company has a share capital of at least forty-eight per cent in the joint venture. The PEPD and the Oil company have cited difficulty in implementing this pillar because Ugandan companies have

yet to develop the capacity to supply high-value goods and services on the terms currently required by the oil companies. This impediment could be attributed to the lack of financial muscle by the local companies to procure high-value goods. For instance, the government of Uganda conducted a baseline survey and reviewed procurement reports of the oil companies for the period 2010–2013 and came to the finding that oil companies spent a total of USD 1,171.8 million on the purchase of goods and services. Only USD 329.9 million was paid to Ugandan service providers, representing 28% of the total money spent by all the companies under review. The big question is, what can the government do to bolster the financial potential of the local companies?

When it comes to supplier development, this should be jointly and collaboratively undertaken by the key players, including the government, oil companies, financial institutions and other key players in the sector. This is to enhance the capacity of the Local firms to participate and benefit from the promotion of National Content. The three IOC's companies operating in Uganda conducted a joint industrial baseline survey (IBS) in 2013 to gauge the capacity of the local industries, and their findings were that some industries would be able to absorb the demands of the project whilst the majority would need to enhance their capacity in terms of production volumes and standards. The report further noted that for the business community to respond effectively to the demands of the oil and gas development project, they would require more visibility and information about business opportunities and investment in technology and capacity. Through the ministry and in collaboration with key stakeholders, the government has engaged some private sectors to disseminate the opportunities in the sector and what it takes to win contracts. Our work recommends the Government to create incentives and a favourable financial environment for the local companies to successfully operate in the capital-intensive sector. This could include incentives such as low-interest rates on loans and favourable tax reliefs to the local companies.

- (c) *Training by the Oil Companies*—A licensee is mandated under Section 127(1) of the PEPD to clearly define a training programme for the Ugandan employees that occupy administrative and executive management positions and those that cut across all the phases

of petroleum activities. This provision ensures inclusion as it indiscriminately focuses on gender, equity, persons with disabilities and host communities. The training may be carried out in or outside Uganda and may include scholarships and financial support for education. The oil companies are expected to facilitate scholarships to locals for training both abroad and locally. Such training ought not to be basic or too generic. Still, it should identify training needs and gaps in technological skills and the necessary skills relating to the petroleum industry. After training, there needs to be a system of absorption that ensures those trained get employed and retained in the petroleum industry. This ensures value addition to the locals who in turn transfer it there through their work. This gap has been addressed by the Ministry of Petroleum which cited that although TUOP and CNOOC provide scholarships, they did not guarantee employment of the beneficiaries upon completion. To resolve this, the Oil companies should offer opportunities to recruit and employ the trained locals by offering internships and placement within the oil companies to enable them to gain hands-on experience. The government, through the Ministry, may also need to develop a strategy that supports local universities to enable them to provide world-class training in disciplines related to oil and gas. This would lower the costs of study and make the courses accessible to more Ugandans.

- (d) *Higher Education and Training Institutions*—The National Oil and Gas Policy (NOGP) 2008 requires the government to review and expand the country's education curricula to produce the workforce needed for national oil and gas activities. Since the industry requires a specific skill set for each stage of the activity, it is necessary to have skilled people ready when they are needed. This bolsters capacity building amongst the locals, and in turn, they can add value to petroleum production.

(3) *Production Sharing Agreements (PSAs)*

The PSA has dogmatic provisions that allude to local content and thus remain contractually binding to the oil companies. In Uganda, Article 21.1 of the Production Sharing Agreements (PSAs) prescribes that the

licensee commits to employing suitably qualified Ugandan citizens in its petroleum operations. The licensee is also required to ensure its subsidiaries do the same. Where a national applicant possesses the requisite qualifications, passed the interview, but lacks experience, they may be recruited to work under the supervision and mentorship of the hired expatriate (as an understudy) to replace the expatriate as per the approved Nationalisation plan eventually. Where there is no suitable candidate for the job, the oil company informs MEMD and justifies the need to hire an expatriate. Once the expatriate is identified, the oil company applies to MEMD to recommend the expatriate's work permit/special pass. However, the licensee is expected to gradually replace its expatriate staff in key senior management or technical positions with suitably qualified and experienced Ugandan citizens. All this is done with the view to developing a reliable and sustainable skilled local workforce.

Furthermore, Article 20.1 of the PSA prescribes that the licensee, its contractors and subcontractors shall give preference to goods produced or available in Uganda and services rendered by Ugandan citizens and companies. The provisions under the PSA reflect the local content provisions in the Policy and the Act, which ensures compliance with the local content tenet provisions that achieve sustainable and intergenerational local content in the long run.

4.1.2 *Institutional Framework*

There are several bodies set up to implement local content policies; these include but are not limited to the following.

- (1) *The Petroleum Authority of Uganda*—mandates, targets and ensures that licensees comply with this Act and regulations made under the Act.
- (2) *National Oil Company (NOC)*—manages Uganda's commercial aspects of petroleum activities and state participation, including attainment of local content.
- (3) *Petroleum Exploration and Production Department (PEPD)*—monitors oil companies' compliance with existing laws, regulations and agreements, including compliance with national content requirements.
- (4) *Advisory Committee—under the PSA*—is responsible for reviewing and approving the oil companies' annual work programmes and budgets, including planned activities relating to procurements,

training and employment. It comprises of four members: two appointed by the government and two (2) representing the oil company. The Oil Company holds the role of secretary of the committee.

- (5) *Public Procurement and Disposal Authority (PPDA)*—carries out procurement audits to ensure that International Oil Companies (IOCs) comply with the procurement requirements agreed upon in the contracts and those stipulated in the law.
- (6) *Universities and other educational institutions*—Universities and vocational training institutions in Uganda are required to develop and offer relevant university programmes/courses to equip Ugandans with relevant skills to participate in the oil and gas sector.

4.1.3 *Lessons Learnt/Borrowed*

The Policy and Petroleum Act have extensively provided for local content provisions. What stands out is the emphasis on developing and building capacity amongst the locals through training, scholarships and creating systems that ensure the trained locals get employed in the relevant fields within the petroleum sector. Proper capacity building ensures that local content as an objective is sustainably achieved and maintained throughout generations.

Another lesson to pick out is capacity building within the local companies that provide goods and services. This may be done by the government providing financial incentives to the companies and presenting opportunities that will build the financial muscles of the local companies to afford and match the high quality and capital-intensive goods and equipment required in production.

Emerging industry and media reports call for the revision of the national content provisions in the Petroleum Act and Production Sharing Agreements (PSAs), citing inadequacies and contradictions relating to procurements of local goods and ownership of local firms.

Finally, there is a need for political goodwill to promote local content in the petroleum sector. The Auditor-General conducted an audit and submitted a report on the Uganda Petroleum sector in 2015. The report cited that the National Government has been actively involved in promoting national content. However, the Ministry of Energy and Mineral Development (MEMD) has not been effectively playing its part, which has derailed the optimum realisation of the national content objectives of the Oil and Gas Policy (NOGP), 2008.

4.2 *Tanzania Local Content Requirements*

Tanzania is richly endowed with natural resources. The most recent discovery is 50 trillion cubic feet of Natural gas discovery in the Southern coast offshore in Lindi and Mtwara (Fjeldstad et al., 2019; Kolstad and Kinyondo, 2017; Stølan et al., 2017). In 2010, BG/Ophir discovered natural gas equivalent to 1.8 trillion standard cubic feet (Tcf) in Block 4. Two years later, in March 2012, Equinor, previously Statoil, and Exxon-Mobil discovered 6 Tcf of offshore natural gas in Block 2 (Fjeldstad et al., 2019).

Previously, domestic production of small-scale natural gas took place in Songo Songo island and Mnazi Bay which primarily generated domestic electricity (Fjeldstad et al., 2019). Notwithstanding that, whilst no commercially viable oil has been discovered in Tanzania, the natural gas tcf equates to 10 billion barrels of oil (Fjeldstad et al., 2019). Reports from the IMF estimate the natural gas will contribute between 3–6 billion USD in annual government revenues once production kicks off (IMF, 2014). The government's Natural Gas Policy of 2013 estimates the gas revenue will significantly increase and contribute to the growth and socio-economic transformation that will catapult the country to a middle-income country by 2025. Plans are underway to build an onshore liquefied natural gas (LNG) processing plant in Lindi, from where liquefied gas would be exported (Fjeldstad et al., 2019).

The discovery of commercial natural gas has created the need for the Tanzanian government to develop local content laws and policies that will ensure the citizens benefit from the natural gas once production starts. A sustainable and tailor-made legal framework for the Tanzanian context is necessary to regulate natural gas production and promote sustainable local content, economic growth, structural transformation and social progress in Tanzania.

The paper will review the various local content policies, laws and institutional bodies and their performance towards realising local content in the natural gas sector in Tanzania. The following Local Content Policies exist in the Petroleum Sector:

4.2.1 *Legal Framework*

- (1) *The National Energy Policy in 2015*

In 2013, the Natural Gas Policy and the Local Content Policy were formulated to provide guidance for the development of the industry and to deepen the participation of Tanzanian citizens and enterprises. These policies were later merged into the National Energy Policy in 2015, whose main objective is to offer guidelines for sustainable development that enhance optimal benefits to Tanzania's citizens.

The National Energy policy recognises the importance of local communities in the development of the petroleum subsector. It sets an objective to optimise the benefits of the petroleum industry for social and economic development.

The policy also sets action statements to attain its prescribed goals that include:

- (i) Ensure available opportunities in the petroleum industry are utilised by communities.
- (ii) Strengthen coordination of local content issues and petroleum industry.
- (iii) Ensure oil and gas players support Tanzanian communities in their economic activities to participate in the petroleum value chain effectively.

(2) *Petroleum Act, 2015*

This is the primary legislation governing the petroleum sector in Tanzania. The Petroleum Act was passed in 2015, repealing the PEPA and the Petroleum Act of 2008. The Act regulates upstream, midstream and downstream operations of the oil and gas sector. Part VIII of the Act addresses local content and National government participation.

The following are the ways Tanzania, through the Act, is implementing the Local content Tenets:

- a. *Workforce Development*—Section 220 of the Act mandates the licensee to submit to the Petroleum Upstream Regulatory Authority (PURA) a detailed programme for recruitment and training of Ugandans in all phases of petroleum activities and shall consider gender equity, persons with disabilities and host communities. It is noteworthy that this provision is similar to Uganda's PEPD Act, and this goes ahead to show the prevailing legal transplant of laws

amongst African developing countries. This provision ensures work-force development amongst the Tanzania citizens. It also provides the IOCs, whilst carrying out production, are deliberate about training the locals for long-term value creation and acquisition of skills through work experience.

- b. *Local Goods and Supplier Development*—The Act under Section 219 mandates licence-holders, contractors and subcontractors to give preference to the goods produced or available in Tanzania and services provided by (i) Tanzanian citizens or (ii) local companies. In cases where the goods and services are not available in Tanzania, the law permits a local company to enter into a joint venture with a foreign company (i.e. local company owning at least 25% shares of the Joint Venture or as otherwise provided in the regulation) to procure the goods and services. In this regard, the law describes a local company as either (i) 100% owned by Tanzanians or (ii) a JV with Tanzanian(s) citizens holding at least 25%. In the review of the Act, it appears that where individuals are concerned, i.e. citizens, then the participating right is lower and valued at 15%. Thus, the disparity between the 25% and the 15% mentioned above concerns the participating rights of the entity, i.e. the share of an individual from an incorporated entity. Leaseholders/Contractors are also mandated to submit to PURA a procurement plan for at least five years indicating the use of local services in insurance, financial, legal, accounts and health matters. This rolls out a long-term plan for the development and achievement of local content on a five-year basis
- c. *Training*—Section 220 of the Act provides for the training and employment requirements of Tanzanians. The contractors are mandated to submit to PURA a programme for recruitment and training of Tanzanians 12 months after the grant of licence and an annual report on the programme's implementation. The training shall collaboratively be spearheaded by the national government and the international oil companies who commit to maximise knowledge transfer to Tanzanians and establish management and technical capabilities and any necessary facilities for technical work, including interpretation of data.

(3) *The Petroleum (Local Content) Regulations of 2017*

The regulations set out the grounding principles upon which the Local content will be realised. It outlines the following: A person conducting petroleum activity shall ensure that: (a) a qualified Tanzanian citizen is given priority in employment and training in any matter relating to the petroleum activity; (b) preference is given to goods and services provided, manufactured or locally available in Tanzania following the provisions of the Act and these Regulations; and (c) a Tanzanian citizen is given priority in any matter relating to the technology transfer, research, development and innovation in any petroleum-related activities. **Regulation 15 (1)** of the Regulation mandates licensees, contractors and subcontractors working in the oil and gas industry to give preference to goods and services manufactured or locally available in Tanzania. **Regulation 15 (3)** indicates that goods, works and services required but not available in Tanzania, will be provided by a non-local company that has entered into a joint venture agreement with a local company (*one registered in Tanzania and with a Tanzanian holding between 15 to 100% of shares*) This local company must own at least twenty-five per cent (25%) of the Joint Venture stake. Furthermore, **Regulation 15 (4)** provides that a non-local company intending to provide goods, work and services to a licensee, contractor and subcontractor may enter into other business arrangements guaranteeing local participation of at least ten per cent (10%) shares, interest or equity of the contract value for the provision of the works, goods and services. **Regulation 30 (1)** of the Local Content Regulations requires a licensee, contractor and subcontractor to establish and implement a bidding process to acquire goods, works and services that will give preference to a local company. A non-local company that contains the highest level of local content shall be selected during the evaluation of bids. This acts as an incentive to IOCs to incorporate the local content policies. A non-local company must provide goods, works and services to a licensee, contractor and subcontractor, upon forming a joint venture with a local company that shall own shares of at least twenty-five per cent (25%) in the joint venture.

(4) *The Tanzania Extractive Industries (Transparency and Accountability) Act, 2015*

Tanzania Extractive Industries (Transparency and Accountability) Act, 2015 creates the Extractive Industries Transparency and Accountability

Committee (EITA), an independent government entity set up as an oversight body for extractive industries. The EITA committee is mandated to promote citizen participation in the extractives and ensure the benefits from the sector are utilised to benefit Tanzania citizens. The citizen participation extends to local content that seeks to bring value addition from the locals.

(5) *The Natural Wealth and Resources (Permanent Sovereignty) Act 2017*

The Act was established under the Constitutional principles of the country's permanent sovereignty over its natural resources as set out in Articles 8 and 9(f) of the Constitution. The Permanent Sovereignty Act reflects the United Republic of Tanzania has permanent sovereignty over all natural wealth and resources and entrusts the President on behalf of the people the control over those resources for the benefit of the people.

(6) *The Natural Wealth and Resources (Review and Re-Negotiation of Unconscionable Terms) Act 2017*

(The Review and Re-Negotiation of Unconscionable Terms) Act 2017 Act mandates that the use of natural wealth and resources be conducted to benefit Tanzanian citizens and protect the interests of Tanzania. This Act also requires, where necessary, all arrangements or agreements on natural wealth and natural resources to be tabled before the National Assembly for review to ensure that any unacceptable terms therein are corrected or deleted.

4.2.2 *Institutional Frameworks*

Several bodies/agencies have been set up to implement Local Content Policies in Tanzania. Specifically, the Act established oversight and regulatory institutions to achieve local content in Tanzania. These institutions include:

- (1) *Petroleum Upstream Regulatory Authority (PURA)*—Petroleum Upstream Regulatory Authority (PURA) was established under Section 11 of the Petroleum Act. It oversees and regulates the petroleum sector in Tanzania, and it is empowered to; grant, renew

- and revoke licences and ensure transparency in the petroleum industry. It is also mandated to promote local content through supporting Tanzanians to participate in the upstream ventures.
- (2) *The Energy and Water Utilities Regulatory Authority (EWURA)*—Section 29 creates and empowers the Energy and Water Utilities Regulatory Authority (EWURA) to regulate midstream and downstream natural gas and petroleum activities. EWURA is mandated to issue, renew, suspend, and cancel construction approvals and operational licences. Additionally, Section 30 of the Act outlines that EWURA shall promote access to local goods and services and encourage local participation.
 - (3) *National Oil Company*—Formed under The Petroleum Act, under Sections 8 and 44, makes TPDC the National Oil Company (NOC) of Tanzania. The NOC has the commercial agency of the Government in the petroleum value chain and is mandated to maintain at least 51% and 25% of shares in this NOC and participate in interest in petroleum projects. Under Sections 44 and 55 of the Petroleum Act, TPDC has exclusive rights over upstream operations and is the sole licence holder who assigns such rights to contractors through the PSAs (Sections 44, 55). The TPDC assumed roles across the upstream, midstream and downstream segments of the industry value chain. The National Oil Company also collects and retains non-tax revenues such as surface rentals, signature bonuses and training fees, which accrue as benefits to the local people. Under Section 9(2) of the Act, the NOC is also mandated to develop the necessary expertise in the sector. This feeds into the development of the local workforce and transfer of technical skills required in the sector.
 - (4) *National Economic Empowerment Council (NEEC)*—The NEEC was set up in October 2015 during a Tanzania National Business Council (TNBC) meeting. The then President, Jakaya Kikwete, created the council as an agency to coordinate the government's local content policy. NEEC was established under the Prime Minister's Office and was mandated to set up a Local Content Department to lead local content issues. It liaises with each ministry and parastatal to coordinate local content promotion.

4.2.3 *Lessons Learnt/Borrowed*

Tanzania's institutional bodies are characterised by overlaps and duplicity of duties within the Agencies. For instance, both PURA and EWURA are mandated to grant, renew and revoke licences. This presents duplicity of roles by both bodies and raises concerns such as can PURA revoke a licence and EWURA renews the same? Which body has the ultimate power over the other? Similarly, PURA and National Economic Empowerment Council (NEEC) are mandated to take the lead on local content issues. Each of the regulatory agencies has the power to regulate the oil and gas industry to promote LC. However, how they share authority over local content policy is not clear. The overlap and duplication of duties have impeded these various agencies' work to achieve local content objectives effectively. The overlapping institutional mandates ought to be replaced by clarity in the roles of these regulatory authorities.

4.3 *Kenya Local Content Requirements*

Kenya has recently experienced a boom in the extractives sector. This is attributed to discovering of the first commercially viable oil and gas in the Lokichar basin, Turkana. This discovery prompted the launching of the flagship project in Turkana, the Early Pilot Scheme (EOPS), which seeks to establish the commercial viability of Oil against the international oil markets. The oil and gas discovery is expected to improve the country's economic status and promote local goods and services to bring value creation and addition to the sector.

Unlike the two countries discussed in this work, it is imperative to note that Kenya does not yet have a specific law governing local content; instead, it has a Local Content Bill 2018 that is yet to assent into law. Despite the lack of a concrete local content governing law, the Constitution of Kenya 2010, the National Energy and Petroleum Policy (2015/18), the Energy Act 2019, Petroleum Act 2019, Local Content Regulations, Model PSC 2014 all have local content provisions. The work will use the outlined laws to analyse the local content tenets present and their implementation and the institutional bodies that implement the local content provisions in Kenya's extractive sector.

4.3.1 *Legal Frameworks*

(1) *The National Energy and Petroleum policy 2018*

Section 9.8 of the Policy recognises that all energy and petroleum resources found in Kenya belong to all citizens of the country and need to be exploited, developed and managed to benefit all Kenyans, a reflection of the provisions of Article 69 of the 2010 Constitution of Kenya. The policy cites insufficient legislative requirements for collaboration between foreign investors in the energy and petroleum sector and the local investors and the absence of a legislative framework that prioritises the utilisation of locally available goods and services. In response to the gap, it proposes and endorses purpose founded legislation to capture and retain value created from energy and petroleum resources to stimulate employment, entrepreneurship, value addition, diversification, transfer of technology and knowledge across the value chain and economy. Additionally, the policy outlines the need to have legislation that caters for technology and knowledge transfer and the development of local skills and know-how in oil and gas exploitation. On this basis, the Energy Act, Petroleum Act, the Local Content Bill and several other regulations were introduced to tackle issues related to developing local skills, technology transfer and collaboration with foreign entities.

(2) *Energy Act 2019*

The Energy Act 2019 was established to regulate midstream and downstream petroleum and coal activities in Kenya. The Act repealed the Energy Act (the repealed Energy Act 2006), the Geothermal Resources Act and the Kenya Nuclear Electricity Board Order No. 131 of 2012.

The Act mandates contractors to prepare and submit annual, long-term LC plans to correspond with the work programme offered to the Authority for approval. The Act similarly outlines local content tenets: (i) first consideration to services provided within the county and goods manufactured in the country. Provided these goods meet the relevant specifications as prescribed by the Kenya Bureau of Standards or in the absence of a Kenyan standard any other internationally acceptable standards. (ii) the first consideration for qualified and skilled Kenyans concerning employment at all levels of the value chain. (iii) the first consideration of the training of Kenyans on the job. The plans

need to detail sub-plans on the fourteen subcategories outlined under Section 206(4) of the Act.

(3) *Petroleum Act of 2019*

The Petroleum Act repealed the Petroleum (Exploration and Production) Act (CAP 308) and legislates the upstream petroleum sectors. The Act, under Section 9, makes it compulsory for the IOCs to comply with the LC requirements. The Act promotes workforce development and promotion of local goods by prescribing preferential treatment to local services and goods produced in the country. The Act stipulates the requirement to employ or engage qualified and skilled Kenyans at all levels of the value chain. The Act requires that IOCs, before commencing any petroleum operations, must first comply with LC requirements which remain monitored through the submission of LC plans to the Authority. The contractors are also mandated to submit annual LC plans corresponding with the work programmes as approved by the Authority. Section 51 of the Act mandates the EPRA to supervise, coordinate and manage the development of LC requirements. The law sets out penalties for non-compliance with the provisions of the Act. Non-compliance attracts substantial penalties, including fines and jail terms for those liable. As a result, contractors are required to evaluate their existing contractual and procurement arrangements to ensure compliance with the LC requirements.

(4) *Local Content Bill, 2018*

The Bill, once passed, seeks to regulate LC development in the extractives sector. The Bill establishes a framework that facilitates local ownership, control and financing of activities connected with the exploitation of gas, oil and other mineral resources. Once passed, the Bill aims at increasing the local value captured along the value chain in the exploration of gas, oil and other petroleum resources and for connected purposes. Thus, it will have the potential to cumulate and safeguard the role of local participants in the sector. The Bill seeks to create the Local Content Development Committee (the Committee) subject to the authority of the Cabinet Secretary and whose primary functions shall include overseeing, coordinating and managing the development of LC requirements in the country.

The Committee under the Bill will appraise, evaluate and approve all local content plans and reports submitted before it. The mandate has a striking similarity with that bestowed to EPRA under the Energy Act and the Petroleum Act of 2019 under Section 51 (1) where the authority is tasked with supervising, coordinating, and managing the development of LC requirements in the sector.

Similarly, Section 10 of the Energy Act 2019 mandates EPRA to enforce all-LC requirements in the midstream petroleum sectors. Specifically, Section 206 (4) of the Energy Act requires contractors to prepare and submit annual, and long-term LC plans corresponding to the work programme offered to the EPRA for approval. Additionally, Section 207(1) and (2) of the Energy Act mandates the Authority to monitor and enforce LC requirements in all energy undertakings and works. This is noteworthy considering that the Energy Act is also applicable in regulating midstream and downstream petroleum and coal activities per the preamble of the Act.

(5) *Model PSA*

The model PSA reflects local content requirements that bind the parties to fulfil their contractual obligations. The Articles 20 and 22 of the Model PSA require that all contractors comply with all the Kenyan local content policies, laws and regulations as amended from time to time. These include the employment and training of Kenyans, preferential procurement of Kenyan Goods and Services and the transfer of technology. The contractors are mandated to submit annually to the Cabinet Secretary and Authority (i) local content plans, (ii) a tentative schedule of the contemplated services and supply contracts and (iii) develop a Technology Transfer Programme. Notably, the Model PSA will require updating to synchronise with the present Petroleum Act. For instance, the training fund under the Petroleum Act 2019 is safeguarded under Section 52 and not 88(2) as mentioned in the PSA.

4.3.2 *Institutional Frameworks*

The following bodies remain tasked with implementing the ascertained Local Content Policies in Kenya.

- (1) *Energy and Petroleum Regulatory Authority (EPRA)*—The Energy and Petroleum Regulatory Authority (EPRA) is an independent authority tasked with monitoring and enforcing all energy and petroleum activities, precisely all-LC undertakings and works under Section 10 of the Energy Act 2019. The Authority has the power to issue, renew, modify, suspend or revoke licences and permits for all undertakings and activities in the energy sector, including those concerning LC requirements
- (2) *National Oil Corporation of Kenya (NOCK)*—The National Oil Corporation of Kenya is the State Corporation involved in the upstream, midstream and downstream marketing of petroleum products. NOCK is the Government’s policy instrument in matters related to oil and gas, which includes the promotion and realisation of local content.
- (3) *Local Content Development Committee*—Although not yet established, once passed, the Local Content Bill will create the Local Content Development Committee (the Committee), which will remain under the authority of the Cabinet Secretary. Its primary functions shall include overseeing, coordinating and managing the development of LC requirements in the country.

4.3.3 *Lessons Learnt/Borrowed*

Once implemented, the Local Content Bill will create the Local Content Development Committee, whose core functions and mandate will overlap with EPRA. For instance, EPRA and the Committee have been granted unlimited powers to implement and, where necessary, adopt new laws in respect to their jurisdiction. EPRA under the Energy Act and Petroleum Act 2019 may adopt policies and measures aimed at progressively enhancing the capabilities of local enterprises to compete effectively on quality, price, quantity and reliability in the supply of goods and services required in the extractive industry. In the same breath, the Committee under the Local Content Bill 2019 under Section 9 has been granted the same responsibilities. The Local Content Bill gives the Committee the power to set minimum requirements for local content in local content plans. This mandate has also been extended to EPRA under the Energy Act and Petroleum Act 2019. Thus, rather than advance the national objectives related to local participation and promote certainty for and amongst contractors as envisioned, the authorities (EPRA and LCDC) will potentially be grappling with clarifying their respective mandates by

determining who has the ultimate faculty to enforce LC requirements. This may result in contractors encountering challenges in deciding which LC requirements have been achieved and may find difficulty prioritising the order of compliance.

For this reason, before passing this Bill, the Kenyan Parliament must consider harmonising the regulatory framework for systematic implementation of LC requirements. Perhaps, these potential regulatory duplications would be mitigated by formulating one petroleum regulation to monitor all relevant petroleum operations, including the development of LC requirements. Alternatively, the Committee under the LC regulations could be subject to the mandate of the EPRA within the Energy and Petroleum Law. Unlike the present situation where the Committee remains under the authority of the Ministry who has limited control over the EPRA. Thus, unless revised, the Ministry (LCDC) and the EPRA may encounter regulatory duplications considering the independence granted to the EPRA in the law.

5 CONCLUSION

Upon reviewing the legal and institutional frameworks on local content and studying how these policies are implemented in these select countries, it becomes apparent that common elements favouring the initial hypothesis that these governments policies are similar. For instance, each of these countries considers the role of local content policies both as a tool and objective.

As a tool, governments deem local content as a means of implementing resource management objectives. This is assumed by attempting to equitably (re)define local content rights, duties, powers, and thereby establishing institutions and procedures that guide peoples' interactions with each other and with the natural resources. This element is notably observed where local content definition(s) contend(s) with the need to distribute/allocate the resources between and amongst the citizenry, including host communities within and around the areas of natural resource extraction.

As an objective, these select policies pursue core principles that concern local content tenets which typically, include value addition, procurement of local goods and services, system(s) of joint qualification, training, and employment that leads to the transfer and retention of skills, technology and capital by the locals of the host country.

As observed, LCRs foster noticeable returns, nonetheless, and despite these intentional yet ambitious policies, they remain unfavourable by developing conditions that frequently diminish their benefits. As observed, it is apparent that the implementation of these policies establishes periodic duplicity and overlap, particularly regarding the roles of the institutions set up to implement local content. These adverse effects certainly make implementing LCRs tedious and present the possibility of shelving their advantages. Consequently, this hinders the objective of local content as a tool in implementing resource management or as an objective in obtaining value additions principles.

Perhaps, the transparency in defining, establishing the agency and implementing the rules regarding LCRs will enable the legislators (including implementors) and stakeholders to successfully implement local content as either a tool or objective (depending on the policy in question).

More importantly, the select countries (governments) could facilitate suitable yet effective means of achieving local content. For instance, responsible ministries/agencies could develop pre-qualified lists indicating both favourable/appropriate local and local companies for the identified projects and the oil and gas sectors. This element could be borrowed from Nigeria's joint qualification system or the enlisting of the Norwegian pre-qualified techniques practised in the 1980s. However, it is observed that amongst the select countries, none of them has an equivalent of a joint-prequalification system that presents an opportunity for the countries to tap into a qualified pool of knowledge to realise local content objectives whilst simultaneously promoting local localities companies.

Significantly, government(s) must create a favourable environment for the local and foreign companies to effectively collaborate, considering the sector's capital-intensive nature. Arguably, shelving these opportunities renders the role of the private sector in implementing local content mute! Because (i) the incentives that would otherwise prompt a private company to develop local content intentionally are non-existent, and (ii) little or no collaboration efforts from either the authorities or the locals/local companies. In this regard, we recommend that some of these collaborative measures that could promote local/foreign collaboration include but are not limited to financial incentives, such as tax reliefs, low-interest rates (for local companies) involved in the provision of goods and services. And where possible, collaboration agreements between the key private sector

players and the ministry of petroleum, i.e. the Norwegian Framing and Training Agreement in the 1980s.

Despite the opportunities identified, local content is not sufficient in achieving all-inclusive resource management objectives, but it can be complementary to other tools. Therefore, governments may consider developing unified/standard units that perform sound natural resource management whilst successfully making local content long term and sustainable.

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