

April 30, 2020

Local Content in Uganda's Oil and Gas Legal Framework: Developing Local Skills and Using Local Manpower?

Introduction

Uganda has been described by the oil industry press as Africa's 'hottest exploitation frontier'. Accordingly, Uganda's Albertine Graben is estimated to hold more than 6 billion barrels of oil, placing Uganda among the foremost African oil producers. The discovery and eventual exploitation of this oil resource is one of those once-in-a-generation events that can transform the country not only on a macro level but also in the individual lives of Ugandan citizens.¹

Notwithstanding the above, commercial oil production has not taken place in Uganda and it is anticipated that joint venture partners Total E&P, CNOOC and Tullow Oil will commence production in 2020-2021. There is no doubt that oil has the potential to double Uganda's revenue base within the next 6-10 years.² However, many of the developing countries that become reliant on oil (or other extractive resources) tend to immediately start to see a deepening range of political, economic and social challenges that are mostly tied to lack of skills and involvement on the part of the nationals, resulting in foreigners taking over the economy. The lack of involvement of citizens in the exploitation of the natural resources sector tends to hinder the trickle-down effect of a resource such as oil, resulting in negative knock-on effects on the economy.³ There is therefore need to assume control of the exploitation, exploration and production activities of the oil and gas sector as soon as commercial exploitation commences.

This article analyses the extent to which Uganda's current legal framework promotes citizen participation in the oil and gas sector as the country transitions into an oil-producing

country. It also highlights the major gaps in the laws and policies and makes some recommendations to address them.

A Contextual analysis of Local Content?

Most oil and gas producing countries all over the world have created various mechanisms to capture as much revenue as possible and create the conditions required to expand the benefits to other economic sectors. These mechanisms are commonly referred to as '*local content*'.

The term local content is defined by the Natural Resource Chapter to mean the value that an extraction project brings to the local, regional or national economy beyond the resources revenue and, in that regard, the potential of such extraction projects to generate benefits for local communities through employment and demand for goods and services. Additionally, the World Bank's Oil and Gas and Mining Unit defines local content as '*the share of employment—or of sales to the sector—locally supplied at each stage of the supply chain*'.

The most accurate way to briefly describe the whole concept of local content is through the phrase 'national participation'. Allowing the nationals to be a part of the process, however, little their contribution is has far reaching benefits which in long run have a big magnitude.

Local content strategies vary from country to country but are mainly in the form of policy and regulatory interventions⁴ that focus on increasing the use of locally available labour, technology, and other resources in the oil and gas sector. A push towards local content therefore must strive to ensure that a company is hiring local labour and procuring local goods

¹ Bitature, P., 'Why local content is not a done deal yet', *The New Vision*, May 2, 2017.

² World Bank, Country Assistance Strategy for the period FY 2011-2015 (2010).

³ Gwayaka, P.M., *Local Content in the Oil and Gas Sector: An Assessment of Uganda's Legal and Policy Regimes* (2014).

⁴ Natural Resource Governance Institute, 2015.

and services from the host country. Cross-country comparisons of local content outcomes in seven Latin American oil and gas producing countries suggest that a higher level of specificity in legal provisions may be associated with better local content outcomes.⁵

Local Content in Uganda's Policy and Legal Framework

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 reserves⁶. 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 the following policies, legislation and regulations:

Policies

- *National Oil and Gas Policy*, 2008.
- *Oil and Gas Revenue Management Policy*, 2012.

Legislation

- *Petroleum (Exploitation, Development and Production) Act*, No. 3/2013.
- *Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act*, No. 4/2013.

Regulations

- *Petroleum (Exploitation, Development and Production) (National Content) Regulations*, SI No. 44/2016.
- *Petroleum (Refining, Conversion, Transmission and Midstream Storage) (National Content) Regulations*, SI No. 34/2016.

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.

At this point, we review and address the policy and legal framework as to how it makes the case for local content. 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, among others, 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 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 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.

⁵ Ritwika, S., 'Enhancing local content in Uganda's oil and gas industry', *WIDER Working paper* 2018/10.

⁶ Gwayaka, *Local Content in the Oil and Gas* (note 2 above).

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.

Additionally, the above discussed laws are backed by the *Petroleum (Exploitation, Development and Production) (National Content) Regulations, 2016* and The *Petroleum (Refining, Conversion, Transmission and Midstream Storage) (National Content) Regulations, 2016*; which both emphasize that all licensees, contractors or any other entity involved in petroleum activities shall incorporate and implement national content as an important element of their petroleum activities.

The *Petroleum (Exploration, Development and Production) (National Content) Regulations, 2016* 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. The *Petroleum (Refining, Conversion, Transmission and Midstream Storage) (National Content) Regulations, 2016* contain details on the bidding process and the employment and training of Ugandans.

Generally, the Uganda oil and petroleum laws specifically require contractors or sub-contractors 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 epitomised 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 skills and knowledge that will allow them to favourably compete on the international market.

Specifically, for the oil and gas sector, the government has tried to support the private sector as discussed above. First, by putting in place all the above discussed requirements to involve Ugandan nationals in the extraction of oil and gas as much as possible. However, there comes a question, is it enough, if yes, is it sustainable?

Is this protectionism sustainable?

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.

What more can be done?

The following are practical recommendations on how the available policies to develop and improve local content can be practically implemented:

- (a) The government should 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 licence has been granted. The government should follow-up by actually inspecting and investigating the training programmes to ensure that the plan does not only stay on paper.
- (b) Following on the recommendation in (a) above, the government should create an institution solely dedicated to monitoring local content in the oil and gas sector. The function of such an institution would be to

oversee the compliance with all the policies and regulations on local content including the power to punish all those in violation of the requirements. There should be a clear outline on what actions are offensive and what punishments or sanctions shall follow once an institution or licensee fails to follow the set laws. The punishment may include, among others, cancellation of the licence.

- (c) Smaller projects such as waste management should be ring-fenced and exclusively controlled by Ugandan local businessmen. This will enable us to 'cut our coat according to our cloth' by utilizing the already existing businesses and fit them into the oil and gas sector. It goes without saying that this will automatically provide employment opportunities for Ugandans in areas where they already possess the skill.
- (d) Some of the provisions that seek to develop local content, although well-intended, have been criticized for being ambiguous. For example, the licensees are required to give preference to goods and services provided by Ugandan citizens and companies. The issue here has been in relation to the definition of a Ugandan company which leaves a gap for exploitation and might not benefit the indigenous Ugandan companies. In such circumstances, Indian dominated companies might end up benefiting from this industry to the disadvantage of indigenous Ugandan companies. To that end, the provisions should clearly state what amounts to a Ugandan company for purposes of local content.
- (e) The government has already taken the initiative to establish a Uganda Petroleum Institute which is mandated to train technicians in oil and gas operations and

maintenance. This is a great step for the country in the training and development of specialised skills for the sector. The government should however invest more in such institutes as the means to increase on the number of Ugandans with enough knowledge and skill to actively compete in the market.

There is also need for the government to explore and look into the quality of skills that are marketable in more developed oil producing countries. This will help the trainees to gain skills and knowledge that will enable them to effectively compete on the international market.

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 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.

Rebecca Muheki

Associate, Corporate & Commercial Department Law
ALP Advocates.

Disclaimer: *No information contained in this article should be construed as legal advice from ALP East Africa or ALP Advocates or the individual author, nor is it intended to be a substitute for legal counsel on any subject matter.*

ALP Advocates, Lotis Towers, 5th floor, Plot 16 Mackinnon Rd, P.O. Box 28611 Kampala.
Tel: +256 414 671 997. E-mail: info@alp-ea.com

