

Legal and Institutional Framework for Protection of Local Suppliers in the Oil and Gas Industry: Evidence from Tanzania

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ABSTRACT

This article explores the Tanzanian institutional and legal framework for local content implementation in the Oil and Gas Industry. A comparative analysis is drawn from other natural resources endowed countries such as Ghana, Nigeria, Angola Malaysia, and Norway have been selected to be comparators because they are all endowed with oil and gas and started extraction long before Tanzania. Many countries that are richly endowed with oil, gas, ores, and other minerals are currently introducing requirements for (local) participation commonly referred to as 'local content. Tanzania is no exception. The development of local content has been a result of the fact that a relatively very small share of the proceeds from the natural resources sector is transferred to the citizens in the form of technology, economic, and employment benefits.

Key Words: *Local content, oil and gas, sustainable development, natural resources, legal and institutional framework.*

1. INTRODUCTION

Many countries that are richly endowed with oil, gas, ores and minerals are currently introducing requirements for (local) participation commonly referred to as 'local content'.¹ This is increasingly so in the developing world mainly in Africa, Asia, and Latin America. Local content requirements are mainly in the form of policy and

¹For instance, in Tanzania, the Local Content Policy, 2014 provides that, in order to ensure increased economic benefits to Tanzanians, all operators in the oil and gas sector, shall as far as practicable use goods and services produced, or provided in Tanzania by Tanzanian owned businesses for their operations in preference to foreign goods and services provided in Tanzania by foreign registered businesses in Tanzania or foreign businesses not registered in Tanzania. See item 3.2 on issue: *Creating business opportunities to local firms on p.20* accessed from <https://mem.go.tz/local-content-policy-of-tanzania-for-oil-and-gas-industry-2014/> on 5/8/2019.

regulatory measures that focus on increasing the use of locally available labor, technology, and other resources in the respective sector.² The development of local content has been a result of the fact that relatively very small share of the proceeds from the natural resources sector is transferred to the citizens in the form of technology, economic, and employment benefits.³

The origins of local content policy can be traced to the paradox of plenty or the resource curse theory.⁴ The paradox states that countries totally depended on natural resources such as oil and gas tend to be less developed and perform worse compared to those that are relatively less endowed with natural resources. The theory purports that being abundantly endowed with oil and gas, works more as a curse than a blessing.⁵ The theory further argues that the only way a country can avoid the resource curse is through careful management of their natural resources.⁶

In response to the resource curse theory, many developing countries have devised and adopted policies and strategies intended to help them diversify the benefits from these resources and extend the benefits to other sectors; thereby, creating an economic linkage between one sector and another. The benefits are expected to extend to employment creation and promoting growth of other sectors. Local Content Policy (LCP) is one of the tools that can be adopted to achieve that economic linkage and development. However, there are many international treaties, which consider countries' local content policies as obstacles to international trade and investment. This article aims at assessing the extent to which the Tanzanian legal and institutional framework for the oil and gas industry complies with the international obligations to which Tanzania is party to while at the same time addressing its interests by ensuring that investments in the industry benefits the domestic economy. In addition, the article evaluates the possible contributions of well framed local content policies on sustainable development in the oil and gas industry in Tanzania.

The Origin of the Local Content Policy as a tool for Sustainable Development

²Magela P Gwayaka, Local Content in Oil and Gas Sector: An assessment of Uganda's Policy and Legal Regime, Kampala, (2014) ACODE Policy Briefing Paper Series, No.28, 2014 at p.1.

³ *Ibid.*

⁴ Rabiun Ado, Local Content Policy and the WTO Rules of Trade Related Investment Measures (TRIMS): The Pros and Cons; International Journal of Business and Management Studies, (2013) pp137-146 at p143.

⁵ *ibid* p.138.

⁶ Frederick Van De Ploeg, Natural Resources: Curse or Blessings? Journal of Economic Literature (2010) American Economics Association 49(2):366 – 420.

The local content policy in the oil and gas industry originated from the North Sea as early as 1970s and was more in the form of import restrictions as well as creation of national oil companies.⁷ The policy was more focused on transferring technology, employment creation in the domestic economy, creation of backward and forward linkages, and raising ownership and control of monopoly in the oil and gas sector.⁸ Now, resource-rich countries adopt local content policy because they are convinced it can help them overcome the resource-curse and ensure benefits for the local communities.

1.1 Meaning of Local Content

According to Amoako-Tuffour, Aubynn and Atta-Quayson (2015), local content is a value-laden concept with a host of definitions. To put it simply, means securing direct and indirect opportunities for employment and procurement of local goods and services, while at the same time fostering development of local skills, technology transfer, and use of local manpower and manufacturing industries.⁹ The World Bank defines local content broadly in terms of employment and procurement of inputs, as well as on the basis of domestic ownership of the firm, i.e., domestic preference qualification.¹⁰

In Tanzania, local content is defined in the Local Content Policy (LCP) for Oil and Gas of 2014 as the added value brought to the country in activities of the oil and gas industry in the United Republic of Tanzania through the participation and development of Tanzanians and local businesses through national labor, technology, goods, services, capital, and research capability.¹¹ The same definition is provided in the recently formulated Mining (Local Contents) Regulations, 2018.¹² These definitions provide enough clarification as to the scope of local content policy. Following hereunder is a discussion on the subject from the Tanzanian legal framework perspectives and international instruments.

⁷ *Ibid* 367.

⁸ *Ibid* p 367.

⁹ Amoako-Tuffour et al, *Local Content and Value Addition in Ghana's Mineral, Oil, and Gas Sectors: Is Ghana Getting It Right?* (2015) Available at www.acetforafrica.org accessed on 14/01/2019 p. 6.

¹⁰ Tordo Silvana, et al Local content in the oil and gas sector (2013) A World Bank study. Washington DC; World Bank. Available at: <http://documents.worldbank.org/curated/en/2013/01/17997330/local-content-oil-gas-sector>

¹¹ United Republic of Tanzania, Local Content Policy 2014, Definition of Terms.

¹² Mining (Local Content) Regulations, GN 3 of 2018.

2.1 International Agreements For and Against Local Content Protection

In the current globalized economy, local content policy/protection is considered protectionism and is discouraged through different treaties and agreements. The Bilateral Investment Treaties (BITs), for example, require member states to accord the same privileges to goods and services imported from other member States as those good and services produced domestically. Tanzania has signed a number of BITs.¹³ Apart from BITs, protectionism is also discouraged through the World Trade Organization (WTO) Agreements. Tanzania is a founding member of the WTO.¹⁴ The WTO agreements which are in conflict with local content principle include the General Agreement on Tariffs and Trade (GATT),¹⁵ the General Agreement on Trade in Services (GATS),¹⁶ and the Agreement on Trade Related Investment Measures (TRIMs).¹⁷ The next section presents provisions of these international instruments that are for and against local content requirement.

2.1.1 The General Agreement on Tariffs and Trade (GATT)

The National Treatment (NT) requirement in Article III of the General Agreement on Tariff and Trade (GATT) prohibits treating locally produced goods better than imports.¹⁸ The Article also prohibits protectionism policy. In this respect, the GATT establishes the general principle that domestic laws, regulations, and restrictions affecting the sale and use of products should not afford protection to domestic production.¹⁹ It also stipulates that imported products should be treated no less favorably than domestic products with respect to laws and regulations affecting their

¹³ See for example See Article 3(2) of Tanzania – Netherland BIT available at http://unctad.org/sections/dite/ia/docs/bits/tanzania_Netherlands.pdf ; See also Article 3(1) Tanzania – Sweden BIT available at http://unctad.org/sections/dite/ia/docs/bits/tanzania_Sweden.pdf and Article 3(1) Tanzania Italy BIT available at http://unctad.org/sections/dite/ia/docs/bits/tanzania_Korea.pdf accessed on 20/03/2019.

¹⁴ Tanzania has been a WTO member since 1 January 1995 and a member of GATT since 9 December 1961. See https://www.wto.org/english/thewto_e/countries_e/tanzania_e.htm accessed on 10/10/2019.

¹⁵ The General Agreement on Tariffs and Trade (GATT) is one of the Basic Agreement of the WTO Marrakesh Agreement which came into force in 1995 upon the coming into operation of the WTO, the GATT can be accessed at www.wto.org/documents.

¹⁶ WTO General Agreement on Trade in Services (GATS), can be accessed at www.wto.org/documents.

¹⁷ WTO Agreement on Trade-Related Investment Measures (TRIMs), can be accessed at www.wto.org/documents .

¹⁸ *Ibid.*

¹⁹ Art. III.1 of the GATT

sale or use.²⁰ In addition, it prohibits quantitative regulations which require specified amounts or proportions of products to be supplied from domestic sources.²¹ As it can be easily noted, the WTO prohibition on a country to impose quantitative restriction goes to the root of the purpose of local content policies, which is to ensure that certain percentage is reserved for local producers.

In recognition that most resource-rich countries use State-Owned Enterprises (SOEs) to conduct business in the oil and gas sector, the GATT regulates the way SOEs should conduct themselves. For example, Article XVII of the GATT states that SOEs should observe the principle of non-discrimination;²² implying that, in the course of purchasing or sale they should conduct themselves in accordance with the fair market principles such as quality, price, availability, marketability, transportation and the like conditions. The Agreement further requires that SOEs allow foreign enterprises to operate and participate equally and competitively in the domestic market in the purchases, sale and supply activities. It follows therefore that any WTO member state that goes contrary to the aforementioned requirement should be held to be in violation of the GATT provisions and wherefore entitling the aggrieved member state to institute a claim at WTO for compensation or retaliatory measures.²³

2.1.2 The Agreement on Trade Related Investment Measures (TRIMs)

The Agreement on Trade Related Investment Measures (TRIMS) prohibits the imposition of trade related investment measures that are inconsistent with the provisions of article III or article XI of GATT 1994.²⁴ As observed earlier, Article III of GATT 1994 provides for National Treatment principle while Article XI provides against imposition of quantitative restrictions. The Agreement on TRIMs thus prohibits any provision under Local Content Requirement (LCRs), which make it mandatory to an investor to purchase a certain percentage or quantity of intermediate inputs from the local market. TRIMS also prohibits any country's regulatory requirements that have a trade balancing effect such as restricting the amount in volume or value that a foreign investor may import or export.

2.1.3 The General Agreement on Trade in Services (GATS)

²⁰ *Ibid* Art. III.4.

²¹ *Ibid* Art. III.5.

²² *Ibid* Art. XVII.

²³ *Ibid* Art. XVII.

²⁴ Article 2(1) of the TRIMs Agreement.

Inferred from its name, the General Agreement on Trade in Services (GATS) regulates the use of services in international trade. It regulates, specifically, access of markets to foreign services providers.²⁵ Thus, any local contents regulations which imposes the requirement of the use of domestic services providers, or limit the number of foreign service providers, or restrict certain types of services to foreigners, or any requirements such as requiring joint ventures between locals and foreign investors, as a general rule, are prohibited under the GATS.²⁶

2.1.4 Justification for Local Content Protection

Despite robust stand against local content (protectionism) as discussed hereinabove, the WTO recognizes the need for developing countries to protect their local content and nurture their infant industries. That recognition is found in the number of exceptions provided in the GATT and GATS agreements.²⁷ Through the exceptions, developing countries have been able to mitigate the harshness of WTO general Rules. As a result, many countries have developed local content policies and laws as evidenced below.

2.2 Protection of Local Suppliers under the Domestic Policy Regime

In Tanzania, there are three policy documents that provide guidelines for protection of local suppliers. The documents are; the National Natural Gas Policy, issued in October 2013; the Local Content Policy for Oil and Gas whose first draft was issued in April 2014, and the Local Content Regulations in the Mining Sector of 2018. The two policies, Natural Gas Policy and Local Content Policy for Oil and Gas have been designed to ensure that the gas sector produces maximum benefits to the government and its citizens. While the National Oil and Gas Policy relates to oil and gas in general, the Local Content Policy is on all sectors of the economy.

2.2.1 The Natural Gas Policy, 2013

In the pursuit of developing the natural gas industry, and addressing its challenges, the government of Tanzania formulated the natural gas policy in 2013 to provide a comprehensive framework for guiding the development and growth of the industry,

²⁵ Art. XVI of the GATS.

²⁶ *Ibid.*

²⁷ See Article III (8) (a) and (b) which allow discrimination for protection of nascent industry of the developing country.

and to ensure optimal benefits for the country²⁸. This policy was finalized in 2013 and contains among other things a separate item on local content and capacity building.²⁹ The Policy sets determinants of local content, which include; employment and training of local workforce, investment in developing local supplies and services, and procuring local supplies of services³⁰.

In order to maximize these benefits, the policy acknowledges that strategic interventions of various players are required, including; the government and its agencies, local private sector, education and research institutions, as well as Community Based Organizations (CBOs). The policy requires strategies to be set to ensure opportunities for providing services to the industry are eventually made available to Tanzanian entities to commensurate to their growing capacity.³¹

The National Oil and Gas Policy states that the government shall:

- (i) Work with International Oil and Gas Companies to ensure opportunities for supplying goods and services, and for employment and investments are made available to Tanzanians;*
- (ii) Work with International Oil and Gas Companies to ensure that the capacity of Tanzanians is developed in the natural gas value chain through skills development, and transfer of technology and applied research.*³²

The National Oil and Gas Policy as stated above, lays a foundation on how the gas industry should be managed. Among its concerns is the question of local content and to a large extent it emphasizes on local suppliers of goods and services to be given first priority. The general aim of the policy is locals' empowerment and protection. It further emphasizes on the need to have government deliberate strategic interventions by making laws which ensures local suppliers in the sector are nurtured and protected, among other things.

2.2.2 The Local Content Policy, 2014

The Local Content policy was drafted specifically to deal with local content issues in all sector of economy. In as far as protection of local suppliers of goods and services

²⁸Sospeter Muhongo, in the Foreword of the National Natural Gas Policy Government of Tanzania, (2013),p. ix

²⁹ Paragraph 3.1.7 of the National Oil and Gas Policy 2013 p. 13.

³⁰ *Ibid* p.14.

³¹ *Ibid* p 15.

³² *Ibid* National Oil and Gas Policy 2013, item 3.1.7 Policy statements (i) and (ii) p.15.

in the gas sector, the Policy clearly stipulates how the government of Tanzania should work to ensure that local suppliers are protected. First and foremost, the Policy aims at ensuring local businesses engaged in the oil and gas sector are empowered so as to become competitive.³³ This is expected to be achieved by ensuring that certain threshold is reserved for local businesses. This is emphasized in a policy statement which provides that, the Government shall:

- (i) Ensure every player in the oil and gas supply chain and value chain puts emphasis on local participation;*
- (ii) Ensure that there will be specified thresholds for local participation in each stage in the value chain; and*
- (iii) Ensure local firms have full and reasonable access to procurement opportunities.³⁴*

Second, in order to ensure increased economic benefits to Tanzanians, the policy provides that all operators in the oil and gas sector, shall as far as practicable use goods and services produced by or provided in Tanzania by Tanzanian owned businesses. The Policy further provides that, after the commencement of operations, the participation of Tanzanians for the first 3-5 years of operations shall be at least ten (10%) percent by value in the provision of goods and services or as may be prescribed by the regulations.³⁵ This is cemented in a policy statement which provides that, the Government shall:

- (i) Promote provision of quality goods and services demanded by the oil and gas industry;*
- (ii) Ensure usage of local goods and services; and*
- (iii) Ensure procurement of local goods and services are given preference.³⁶*

Third, the Local Content Policy demands enhancing the value addition and job creation through use of local firms to provide goods and services.³⁷ Through a policy statement, the Local Content Policy provides that government shall ensure a compulsory local content requirement in every invitation to bid.³⁸

³³ *Ibid* Paragraph 3.1 on *Capacity Building and Transfer of Technology: Enhancing capacity of local firms to participate* p.17.

³⁴ *Ibid* Paragraph 3.1 on *Capacity Building and Transfer of Technology: Enhancing capacity of local firms to participate* p.16.

³⁵ *Ibid* Paragraph 3.2 on *Participation of Tanzanians and Tanzanian Owned Entities: Creating business opportunities to local firms* p.20.

³⁶ *Ibid* p.21.

³⁷ *Ibid* Paragraph 3.3 on *Procurement of Locally Produced Goods and Services: Creating market opportunities for local goods and services* p.21.

³⁸ *Ibid* p. 22.

Fourth and last, the Local Content Policy aims at emphasizing promotion of all metal related works including in-country manufacturing, fabrication, welding and assembling.³⁹ This, together with ensuring procurement of locally manufactured products, will lead to growth of metal related works.⁴⁰

2.3 The Domestic Legal Regime on Protection of Local Suppliers

In order to implement the policy objectives stated in the two policies discussed above, the government has enacted several laws that regulate gas operations in a profitable manner and more specifically addressing local content issues. In this regard, the more relevant laws include the Constitution of the United Republic of Tanzania, 1977 (URT),⁴¹ hereby referred to as the Constitution, the Petroleum (Exploration and Production) Act,⁴² the Petroleum Act 2015,⁴³ and the Production Sharing Agreements of 2008 and 2013 (PSA).⁴⁴

2.3.1 The Constitution of the United Republic of Tanzania

This is the mother law of the land.⁴⁵ In as far as protection of local suppliers of goods and services in the gas sector is concerned, the Constitution lays a path to be adopted by law and policy makers. In the first instance, the Constitution provides that the state authority and all its agencies are obliged to direct their policies and programs towards ensuring that activities of the government are conducted in such a way as to ensure that the national wealth and heritage are harnessed, preserved and applied for the common good and also to prevent the exploitation of one person by another.⁴⁶ The constitution further provides that the use of national wealth should place emphasis on the development of the people and in particular should be geared towards the eradication of poverty, ignorance and disease.⁴⁷

³⁹ *Ibid* paragraph 3.4 on *In-country Fabrication and Manufacturing: Increasing local capacity to weld, fabricate, manufacture gadgets, equipment, service and maintenance for the oil and gas related installations* p.22.

⁴⁰ *Ibid* Paragraph 3.4 on *In-country Fabrication and Manufacturing: Increasing local capacity to weld, fabricate, manufacture gadgets, equipment, service and maintenance for the oil and gas related installations* p.22.

⁴¹ [Cap 2 R.E. 2002].

⁴² [Cap 328 R.E. 2002].

⁴³ No. 21 of 2015.

⁴⁴ Production Sharing Agreements of 2008, and 2013.

⁴⁵ The Constitution of the United Republic of Tanzania of 1977 as amended from time to time.

⁴⁶ Article 9(c).

⁴⁷ Article 9(i) of the Constitution of United Republic of Tanzania.

The Constitution adds further that the Constitution shall not render unlawful any existing law or prohibit the enactment of any law or the doing of any lawful act in accordance with such law for the purposes of the exploitation and utilization of minerals or the increase for the purposes of enhancing the public benefit.⁴⁸

Going by these provisions, it is evident that the Constitution directs that laws and policies should be made to ensure that exploitation and use of natural wealth benefits the public. This supports the idea to bring in the aspect of local content in the laws and policies because it is through LCRs that the government ensures benefits to its people. Benefits to the people include the need to protect local suppliers by enabling them to exploit benefits in the emerging oil and gas sector.

2.3.2 The Petroleum Act

The Petroleum Act was enacted in 2015.⁴⁹ It repealed and replaced the Petroleum (Exploration and Production) Act.⁵⁰ The Act, contrary to the silence of its predecessor, has express requirement to procure local goods and services with an intention to protect local suppliers. It requires investors to use local goods and services and where the goods are not locally available, the foreign procured goods must be supplied by a company which has entered into a joint venture (JV) with a local company which shall have at least 25% of the shareholding of that JV.⁵¹ The Act in addition provide a list of local services which must be locally procured by an investor. These services include insurance, financial, legal, accounts and health matters.⁵² In addition the Act under section 220 requires every company to ensure that it has prepared a detailed program for recruitment and training of Tanzanians in accordance with the approved Local Content Plan.⁵³ The training program must be exhaustive to cover training and recruitment in all phases of petroleum operation and gas activities and must be gender sensitive and inclusive of persons with disabilities.⁵⁴

⁴⁸ *Ibid* Article 30(2)b.

⁴⁹ Act No. 21 of 2015.

⁵⁰ Cap 325 RE 2002.

⁵¹ Section 219(2) of Act No. 21 of 2015.

⁵² *Ibid* Section 219(4) of Act No. 21 of 2015.

⁵³ *Ibid* see section 220(1).

⁵⁴ *Ibid* section 220(2).

As it can be noted from the discussion, this law primary objective is to protect local suppliers of goods and services in the oil and gas sector. However, this law does not set enforcement mechanism in case an investor does not honor the LCRs. The Act only provides broadly the punishment for contravention of any order given under the Act.⁵⁵

2.3.2.1 Petroleum (Local Content) Regulations, 2017

Under the Petroleum Act, the Minister is empowered to make By - Laws in order to ensure that Local Content requirements are implemented in the Petroleum Sector. In 2017, after thorough consultations with stakeholders, the Minister enacted the Petroleum (Local Content) Regulations, 2017.⁵⁶ Regulation 8 contains the gist of the Regulations. The Regulation provides as follows;

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 in accordance with 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.”*

Another relevant Regulation is regulation 15. The Regulation requires licensees, contractors and subcontractors working in the oil and gas industry to give preference to goods and services that are manufactured or locally available in Tanzania.⁵⁷ Reiterating what has been stated under section 220 of the Petroleum Act, the regulation requires that where goods are not available in the domestic market, goods should be supplied by a company which has a joint venture with a Tanzanian Company.⁵⁸

2.3.3 Production Sharing Agreement (PSA)

⁵⁵ *Ibid* section 238.

⁵⁶ Petroleum (Local Content) Regulations, 2017.

⁵⁷ *Ibid* regulation 15.

⁵⁸ *Ibid* Regulation 15(3).

Production Sharing Agreements (PSA) are agreements signed between an investor and Tanzania Petroleum Development Corporation (TPDC) on behalf of the government.⁵⁹ The provisions in the PSA are taken from the Model Production Sharing Agreement (MPSA) which is formulated by the government to help in the negotiations and entering into contract with a prospective investor. The history of MPSA shows that the first was signed in 1969 and was later revised in 1995. The revised version underwent further revisions in 2004, 2008 and 2013. Despite presence of the 2013 MPSA, most contracts in place were entered into under the 2008 MPSA. In as far as protection of local suppliers is concerned, the MPSA provides that the Contractor shall;

- (a) give preference to the purchase of Tanzanian goods, services and materials provided such goods and materials are of an acceptable quality and are available on a timely basis in the quantity required at competitive prices and terms;*
- (b) make maximum use of Tanzanian service companies, where services of comparable standards with those obtained elsewhere are available from such contractors at competitive prices and on competitive terms;*
- (c) Contractor shall maximize to the satisfaction of Minister the level of usage of local goods and services, businesses, financing and the employment of nationals of the United Republic of Tanzania.*
- (d) Contractor shall ensure that sub-contracts are scoped, as far as it is economically feasible and practical to match the capability (time, finance and manpower) of Local Enterprises and shall manage the risk to allow their participation.*
- (e) Contractor shall provide to TPDC together with the annual work programme and budgets required under Articles 5 and 6 a list of all projects to be undertaken as well as all goods and services that are required for the conduct of Petroleum Operations. TPDC and Contractor shall agree on a list of those projects and goods and services which shall be published in at least two local newspapers and on the TPDC's website.*
- (f) Contractor shall give equal treatment to Local Enterprises by ensuring access to all tender invitations and by including high weighting on local value added in the tender evaluation criteria.⁶⁰*

⁵⁹ See Article 1 of the Tanzania Model Production Sharing Agreement, 2013.

⁶⁰ Art.18 of MPSA 2008 which has been refined in Article 20 of MPSA 2013 which mentions specifically the authorities responsible for certification of quality and standard as the Tanzania Bureau of Standards (TBS), Tanzania Food and Drugs Authority (TFDA). Again, the 2013 MPSA adds some important definitions that, "Tanzanian goods", means goods manufactured, obtained or produced in the

This is a clear provision which expressly gives protection to local suppliers of goods and services in the gas sector. It sets the target where an investor has to arrive at in the course of their operations with regard to procurement of local goods and services. Interestingly, it even sets a follow up mechanism through TPDC by requiring an investor to submit a list of goods and services that are required for a particular project.

2.4 Institutional Framework for Protection of Local Suppliers

2.4.1 The Minister

The respective Minister responsible for petroleum and gas upstream operations, midstream and downstream activities has direct duty to ensure that local content policy is observed by investors.⁶¹ The Minister is charged with the duty, among others, to promote local participation in the sector.⁶² The minister discharges this duty by enacting regulations and ensuring that policies and laws are effectively implemented. At his level, as the head of the ministry, he has political influence and where there is political will the enforcement of the policy become easier.

2.4.2 Tanzania Petroleum Development Corporation (TPDC)

Under the Petroleum Act, Tanzania Petroleum Development Corporation (TPDC) is designated to be the National Oil Company and charged with the duty to undertake Tanzania's commercial aspects of petroleum and gas in the upstream, midstream and downstream operations and participating interests of the Government in the petroleum and natural gas agreements.⁶³ The TPDC has exclusive rights over natural gas midstream and downstream value chain to undertake among other things promotion of local content including participation of Tanzanians in the natural gas value chain.⁶⁴ The Model Production Sharing Agreement (MPSA) requires the contractor to supply TPDC with a list of projects and all the required goods and services.⁶⁵ Then TPDC

United Republic of Tanzania; "Tanzania Services" means services provided by Tanzanians or Tanzanian companies; and "Tanzanian Materials" means materials obtained, produced or manufactured in the United Republic of Tanzania; "Tanzanian Companies" means companies incorporated in the United Republic of Tanzania and whose shares are wholly or at least 51% owned by in Tanzanian nationals.

⁶¹ Section 3 of Act No. 21 of 2015.

⁶² *Ibid* Section 5(1)d.

⁶³ *Ibid* Section 8.

⁶⁴ *Ibid* Section 9 (2)l.

⁶⁵ Article 20 of MPSA 2013.

has to cooperate with the contractor to identify potential local suppliers and ensure they get preference during the bidding process.

2.4.3 Petroleum Upstream Regulatory Authority (PURA)

Petroleum Upstream Regulatory Authority (PURA) is established as a body corporate which shall regulate and monitor the petroleum and gas upstream sub sector for Mainland Tanzania.⁶⁶ In addition to the responsibilities conferred to it, PURA has the functions of promoting local content including supporting national enterprises and Tanzanians to participate in the petroleum upstream industry.⁶⁷ The Act adds that the license holder has to report to PURA within sixty days after the end of each calendar year of the achievements it has made in utilising Tanzanian goods and services. By virtue of this provision PURA is made to be the overseer to ensure that local suppliers are protected. It is submitted here that this role signifies an overlap of roles between PURA and TPDC as the later is also mandated to play the same role.

2.4.4 Energy and Water Utilities Regulatory Authority (EWURA)

Energy and Water Utilities Regulatory Authority (EWURA) is a body corporate established under the Energy and Water Utilities Regulatory Authority Act.⁶⁸ In as far as petroleum and gas affairs, EWURA is charged with the general function of exercising regulatory powers in respect to midstream and downstream petroleum and natural gas activities.⁶⁹ It has also, among other specific functions, the duty to promote the use of local goods and services produced and provided in Tanzania, as well as ensuring maximum participation of Tanzanians in every part of the petroleum value chain.⁷⁰ Again, this is the same role performed by TPDC and PURA. This overlapping makes it difficult to ascertain as to which body specifically deals with local content. Worse enough, these bodies do not have specific rules or departments which are mandated to oversee implementation of local content.

2.4.5 The Commissioner for Petroleum Affairs

⁶⁶ Section 11 of Act No. 21 of 2015.

⁶⁷ *Ibid* Section 12 (2)e.

⁶⁸ Section 4 of Act No. 11 of 2001.

⁶⁹ Section 29(1) of Act No. 21 of 2015.

⁷⁰ *Ibid* Section 30(2)(k) vi and vii.

The law provides that the Commissioner shall be the advisor of the Minister on policy, plans and regulations as well as the day to day administrative matters in the oil and gas subsector.⁷¹ The law ends there. It does not state as to the role and functions of the Commissioner and whether there are any functions related to local content and specifically procurement of local goods and services. And since there are no regulations to that effect so far, it is not certain as to whether the role and function of the Commissioner will include overseeing implementation of local content.

2.4.5 The Oil and Gas Advisory Bureau

This body is established under the Office of the President. The Act provides that the Bureau shall advise the Cabinet on strategic matters relating to oil and gas economy.⁷² The law does not state who shall be the members and their qualifications nor their duties. Again, it is not possible to state with certainty that they will be charged with the duty to oversee local content issues, as such the area remains uncertain as to who actually is specifically mandated to oversee implementation of the local content issues specifically procurement of local goods and services.

2.4.5 The Tanzania Extractive Industries (Transparency and Accountability) Committee

The Tanzania Extractive Industries Act establishes the Extractive Industries Committee to be an oversight body for promoting and enhancing transparency and accountability in the extractive industry,⁷³ which includes the gas sector.⁷⁴ In performing its functions the committee, among other things, is mandated to receive annual reports containing information on local content from extractive industry companies⁷⁵ and report on the same to the Minister.⁷⁶ As it can be seen, the function of the Committee is to receive annual reports for transparency and accountability purposes. Since there are no specific targets that have to be met by an extractive industry company, it is not certain as to what extent can the Committee hold the company accountable and through which procedure. This, leaves local content issues implementation largely in dilemma.

⁷¹ Section 6 of Act No. 21 of 2015.

⁷² See section 7 of the Petroleum Act, 2015.

⁷³ s. 4 of the Tanzania Extractive Industries (Transparency and Accountability) Act, No. 23 of 2015.

⁷⁴ See section 4 of the Act.

⁷⁵ s. 15 of Act No. 23 of 2015.

⁷⁶ *ibid* s. 10(3).

2.5 Protection of Local Suppliers: Experience from Other Countries

This part presents experience drawn from Norway, Malaysia, Nigeria, Ghana and Angola. The countries presented here for reference have been purposely selected because of three major factors. First, their success in the gas sector especially in the area of protecting local suppliers. The second reason is that they have been pioneers in enacting legislations to regulate the gas sector specifically on local content and protection of local suppliers. The third compelling reason is that of economic position. Norway is a developed country and it therefore represents developed countries whose development has been largely contributed by the gas sector. Malaysia, on the other hand, is one of the very fast growing countries economically and a middle income country hence poses a good example for the developing countries. The three other African countries, that is Nigeria, Ghana and Angola are oil and gas producers and are also developing countries just like Tanzania, as such sharing alike conditions.

2.5.1 Norway

The Norwegian oil and gas industry is considered as one of the most successful stories in management of natural resources. When foreign operators started entering the Norwegian industry in the late 1970s, they were strongly encouraged to form research and development (R&D) partnerships and joint development programs with Norwegian companies and institutions, thus engaging in local content growth.⁷⁷ The country, at the beginning, enacted laws which set targets that every foreign investor were required to meet. Foreign companies had to purchase goods and services from local suppliers as long as these were competitive in terms of price, quality and time of delivery. The measure, though stayed temporarily, led to creation of Statoil, the Norwegian government Oil Company which is one of the leading world-class global suppliers and operators in the oil industry.⁷⁸ Thus petroleum multinationals were placed in the role of technical assistants to both Statoil and smaller Norwegian firms, and joint teams were used to fast track the Norwegian companies into fully-fledged operators.⁷⁹

⁷⁷ Ishmael Setsoafia Amegah, Regulation of the Petroleum Industry; A Tale from the North Sea-Norway; Ghana Oil Watch, Friday, 10 February 2012 accessed on 29th January 2016 at <http://ghanaoilwatch.org/index.php/ghana-oil-and-gas-news/282-regulation-of-the-petroleum-industry-a-tale-from-the-north-sea-norway-by-ishmael-setsoafia-amegah> p.19.

⁷⁸ Isabelle Ramdoo, *Unpacking Local Content Requirements in the Extractive Sector: What Implications for the Global Trade and Investment Frameworks?* (2015) International Centre for Trade and Sustainable Development (ICTSD) Switzerland, available at <http://www.e15initiative.org/>

⁷⁹ UNCTAD, (2014) Local Content Requirements and the Green Economy pp.8-9.

Joint Operating Agreement (JOA) was formulated by the government. The JOA required Norwegian companies to be included in all requests to bid and required that Norwegian service should be used if competitive. Moreover, Statoil held fifty one percent (51%) in each bidding scrutinizing committee and actively used its voting power to influence the appointment of Norwegian suppliers.

Interesting to note here, the Goods and Services Office was created by law to help protect and develop Norwegian local suppliers. This office helped Norwegian companies to be chosen if competitive. The regulations required detailed legal provisions in relation to R&D. In fact, companies were required to conduct at least fifty percent (50%) of the research for technology needed to develop prospects in Norway at local institutions. subsequent awarding of license or extension of it was based on prior practice of the company on local content implementation.⁸⁰ Today, the domestic supply chain provides between fifty to sixty percent (50-60%) of capital inputs, eighty percent (80%) of operational and maintenance inputs, and exports forty six percent (46%) of its sales.⁸¹ There is a lot to learn from Norway experience especially on investment in Research and development for local people benefits.

2.5.2 Malaysia

Malaysia has developed a strong national petroleum company that drives local content development. Malaysia's state oil company, Petronas has historically focused on an international expansion strategy to compensate for the relatively small domestic petroleum market. The company has been able to successfully pursue joint ventures with large petroleum multinationals and has pursued an aggressive human resources strategy, offering numerous training programs and establishing its own university to train management and technical staff. Petronas requires firms under production-sharing contracts to secure equipment, facilities, goods, materials and services locally unless a waiver is granted by Petronas.⁸² There is a lot to learn from this experience especially on the aspect of having a strong academic institution dedicated for imparting skills to locals and conduct research on the extractive industry.

2.5.3 Nigeria

Following years of having local content requirements dispersed throughout various legal instruments, in 2010 Nigeria approved its Nigeria Oil and Gas Industry Content

⁸⁰ *Ibid* UNCTAD (2014).

⁸¹ World Bank. (2012). *Increasing Local Procurement by the Mining Industry in West Africa: Road Test Version* (2012) Washington, Version, p.7.

⁸² *Op cit* UNCTAD (2014).

Development Act.⁸³ The Act is intended to stimulate the development of Nigerian firm participation in the oil and gas industry and improve the coordination, monitoring and implementation of Nigerian content support.⁸⁴ The Act establishes the Nigerian Content Monitoring Board (NCMB) to monitor the achievement of local content in the oil and gas industry. Governing council of the board constituted primarily of government and government agencies.⁸⁵

To ensure local suppliers are protected, the Act stipulates that an operator must submit Nigerian Content performance report which would be assessed and verified by the Board. Nigerian content plan must be submitted by the company as part of the requirement for bidding and before carrying out any project. The Act stipulates minimum Nigerian content in projects in the oil and gas industry and requires “first priority” to be given to Nigerian goods and services.⁸⁶ Bidding process for acquiring goods and services must give “full and fair” opportunity to Nigerian indigenous contractors and companies.⁸⁷ The Act further requires R&D plan to be submitted and establishes the Nigerian Content Development Fund funded by the sum of one percent (1%) of every contract awarded to an operator, contractor or sub-contractor to facilitate R&D.⁸⁸ All insurable risks must be insured with Nigerian insurance companies. Legal services as well must be procured from local lawyers.⁸⁹

Since the Act came into force, there has been a significant increase in the involvement of Nigerian oil services firms in the construction of facilities in the oil and gas industry. The Nigerian National Petroleum Corporation (NNPC) has achieved over forty percent (40%) in the area of encouraging local participation in the oil and gas industry. Again, the participation of Nigerian companies in the oil and gas business especially the upstream segment has substantially increased from a meager ten

⁸³ Nigeria Oil and Gas Industry Content Development Act, Act No. 2 of 2010.

⁸⁴ Zefaniah Kaplan, Policy Options for Strengthening Local Content in Mozambique (2013) USAID/Mozambique available <http://www.acismoz.com/wp-content/uploads/2017/06/Speaker%2001%20-%20Presentation%20Local%20Content%20-%20Zac%20Kaplan.pdf> accessed on 20/3/2019.

⁸⁵ Adeoye Adefulu, Nigerian/Local Content Policy (2009) SCRIBD, available at <https://www.scribd.com/doc/21132887/Nigerian-Local-Content-Policy> accessed on 20/3/2019.

⁸⁶s.12 of the Nigerian Oil and Gas Industry Content Development Act, 2010, Act No. 2 of 2010.

⁸⁷ *ibid* s.15.

⁸⁸ *ibid* s. 104.

⁸⁹A list of the goods is provided in the Schedule to Act No.2 of 2010 of Nigerian laws.

percent (10%) before the enactment of the law to more than thirty percent (30%) even in the deep offshore.⁹⁰

2.5.4 Ghana

Ghana has a well-established history of gold mining but oil production only came on line as recently as 2010. Ghana acted early to develop a policy framework to encourage local content in the oil and gas industry and to take a long-term vision on how to use this new growing sector to stimulate local private sector development. Ghana began by developing a Local Content and Local Participation in Petroleum Activities Policy Framework in 2010. In the following year, the Petroleum Commission Act 2011 was enacted.⁹¹ The Act requires an Annual Local Content Plan and an Annual Recruitment and Training Program. The Act creates the National Local Content Committee to oversee the implementation of the Policy Framework.⁹²

The Local Content Committee (LCC) was established in July 2014. The LCC which has the role to oversee implementation of local content in Ghana, has since developed templates for information gathering and monitoring of financial and insurance services, goods and services procurement, training and capacity, technical and skills transfer, and reporting. Routinely, the LCC approves procurement plans for suppliers on a quarterly basis. Compliance to date, however, is mixed, in part because of the capacity of the Petroleum Commission to develop the instruments for information gathering.⁹³

Moreover, the law requires all operators to procure goods and services produced by Ghanaian companies. The law demands the local goods to be given priority even in situations where the locally produced goods prices are higher up to 10% to that produced outside the country. In addition, the law requires foreign companies to have a joint venture with locals of at least 10% local ownership in their first year of operation and an increase to another 10% in the subsequent years.⁹⁴

⁹⁰John Anyanwu, Local Content in the Hydrocarbon Sector: Lessons of Experience, (2013) AFDB available at

[https://www.google.com/search?q=Anyanwu+J.C.%2C+\(2013\).+Local+Content+in+the+Hydrocarbon+Sector%3A+Lessons+of+Experience%2C&rlz=1C1CHBF_enTZ869TZ869&oq](https://www.google.com/search?q=Anyanwu+J.C.%2C+(2013).+Local+Content+in+the+Hydrocarbon+Sector%3A+Lessons+of+Experience%2C&rlz=1C1CHBF_enTZ869TZ869&oq) accessed on 13/08/2019.

⁹¹Ghana Petroleum Commission Act 2011, available at

<https://www.google.com/search?q=Ghana+Petroleum+Commission+Act%2C+2011&ie=utf-8&oe=utf-8>.

⁹² Zefaniah Kaplan *op.cit* pp.19-20.

⁹³Amoako-Tuffour et al *op.cit* p. 15.

⁹⁴*Ibid.*

2.5.5 Angola

In Angola the dominant secondary legislation for local content in procurement in the petroleum sector is the Ministerial Order No. 127/03 on the Contracting of Services and Goods from Angolan Companies by Petroleum Industry Companies.⁹⁵ The regulation reserves certain categories of procurement expenditure to Angolan companies, including logistics, catering, pressure tests for storage tanks and pipelines. The regulation also identifies spending categories that fall under a “semi competitive regime,” where bidding by foreign suppliers to enter into joint ventures with Angolan companies. Moreover, the regulation establishes a “competitive regime,” which places all other categories of expenditure into international competitive tender, yet provides for Angolan State companies and/or private companies the right of first refusal, provided that the value of the relevant bid is no more than ten percent (10%) higher than those of other companies.⁹⁶

⁹⁵ Angola Ministerial Order No. 127/03 on the Contracting of Services and Goods from Angolan Companies by Petroleum Industry Companies available at <http://www.globaledegeconsulting.com/wpcontent/uploads/2011/11/ANGOLA-DECREE-127-03.pdf>.

⁹⁶ Tordo Silvana et al. *op.cit* p.39.

BIBLIOGRAPHY

- Ado, Rabi; *Local Content Policy and the WTO Rules of Trade Related Investment Measures (TRIMS): The Pros and Cons*; International Journal of Business and Management Studies, 2013.
- Amegah, Ishmael; *Regulation of the Petroleum Industry; A Tale from the North Sea-Norway*; Ghana Oil Watch, Friday, 10 February 2012 at <http://ghanaoilwatch.org/index.php/ghana-oil-and-gas-news/282-regulation-of-the-petroleum-industry-a-tale-from-the-north-sea-norway-by-ishmael-setsoafia-amegah>, 2012 accessed on 29th January 2019.
- Amoako-Tuffour, et al; *Local Content and Value Addition in Ghana's Mineral, Oil, and Gas Sectors: Is Ghana Getting It Right?*, 2015, Available at <https://commdev.org/acet-2015-local-content-and-value-addition-in-ghana> accessed on 14/01/2019.
- Anyanwu, John; *Local Content in the Hydrocarbon Sector: Lessons of Experience*, AFDB, 2013 available at

It is the author's final remark that the Norway approach seems to be very solid and more result - oriented approach to be adopted if Tanzania is to realize the benefit of being endowed with oil and gas. TPDC should collaborate with local companies and nurture them to ensure that they, in the long run, will be able to competitively run the sector. In addition, the government should prioritize funding research on oil and gas with the aim of ensuring that in a long run the country have the required technology and human resources.

[https://www.google.com/search?q=Anyanwu+J.C.%2C+\(2013\).+Local+Content+in+the+Hydrocarbon+Sector%3A+Lessons+of+Experience%2C&rlz=1C1CHBF_enTZ869TZ869&oq](https://www.google.com/search?q=Anyanwu+J.C.%2C+(2013).+Local+Content+in+the+Hydrocarbon+Sector%3A+Lessons+of+Experience%2C&rlz=1C1CHBF_enTZ869TZ869&oq) accessed on 13/08/2019.

Gwayaka, Magela; *Local Content in Oil and Gas Sector: An assessment of Uganda's Policy and Legal Regime*, ACODE Policy Briefing Paper Series, No.28, Kampala, 2014.

Zefaniah Kaplan; *Policy Options for Strengthening Local Content in Mozambique*, USAID/Mozambique 2013, available <http://www.acismoz.com/wp-content/uploads/2017/06/Speaker%2001%20-%20Presentation%20Local%20Content%20-%20Zac%20Kaplan.pdf> accessed on 20/3/2019.

Ramdoo, Isabelle; *Unpacking Local Content Requirements in the Extractive Sector: What Implications for the Global Trade and Investment Frameworks?*(2015) International Centre for Trade and Sustainable Development (ICTSD) Switzerland, available at <http://www.e15initiative.org/>

Van De Ploeg, Frederick; *Natural Resources: Curse or Blessings?* Journal of Economic Literature, American Economic Association, USA, 2010.

Silvana, Tordo et al; (2013), *Local Content Policies in the Oil and Gas Sector*. World Bank Study. Washington, DC: World Bank. doi:10.1596/978-0-8213-9931-6, 2013.
