

Kenya Extractives Policy Dialogues

Paper No. 2

Developing a Sustainable In-Country Value Addition Strategy: Real-Time Policy Options for Kenya's Petroleum Sector

The Extractives Policy Working Group

28-29 May 2018



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This Paper is a knowledge product of the Extractives Policy Working Group (EPWG) hosted by the Extractives Baraza. The paper was validated by the Technical Validation Committee on Local Content in Kenya’s Petroleum Sector in a meeting held at the Strathmore University on 26th April 2018. The paper lays the basis for discussion during the 1st series of the Kenya Policy Dialogues held on 4th – 5th April 2018.

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FOREWORD

The success of Kenya's petroleum sector rests on a robust policy and legal framework which incorporates consultative submissions from all key stakeholders in the sector. It is on this basis that the Extractives Policy Working Group (EPWG) was established in February 2018. The EPWG is chaired by the Kenya Institute of Public Policy, Research and Analysis (KIPPRA) and co-hosted by the Extractives Baraza, Strathmore University and Kenya Civil Society Platform on Oil and Gas (KCSPOG). The main objective of the EPWG is to shape and influence policy in the extractives sector through an organized and recognized organ that consolidates diverse stakeholder views as well as incentivize consensus and clarity on key policy issues in the sector that need to be addressed and strengthened to ultimately achieve good governance.

Local Content is second in three topical policy issues identified by the EPWG for deeper interrogation and understanding in light of the current advancements in the petroleum sector. The topic is addressed through this Technical Paper and the two-day Local Content Scenarios Building and Dialogue Forum held on 28th and 29th May 2018. The goal of the forum was to explore different Local Content scenarios critical to robust enhancement of in-country value addition in Kenya.

The paper was initially drafted and validated by a Technical Validation Committee on 26th April 2018 to form the basis of the scenarios building and dialogue sessions led by Mr. Anthony Paul, a world-renowned expert on Local Content development from Trinidad and Tobago. The pre-validated paper sought to invoke thoughts and analysis and inspire impactful dialogue among stakeholders taking into account the proposed Local Content laws and the priorities and objectives advanced by the government vis-à-vis those of companies and local communities. The issues arising from the Local Content forum form part of this paper.

The Technical Validation Committee, chaired by the National Oil Corporation of Kenya, comprised the following organizations: Ministry of Petroleum and Mining; Ministry of Industry, Trade and Cooperatives; Parliament – Senate Committee on Energy; Technical and Vocational Education and Training Authority (TVETA); Morendat Institute of Oil and Gas; Kenya Oil and Gas Association (KOGA); Association of Oil and Gas Contractors; ESAL Africa; GIZ (E4D/SOGA); Optisafe; and Community Action for Nature Conservation (CANCO). These organizations are representative of the government, civil society organisations (CSOs) and private sector, necessary to drive consensus on Local Content agenda.

It is our hope that this paper will serve as an important tool for local content development in Kenya's petroleum sector.

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ACRONYMS

APP	African Partner Pool
ASCM	Agreement on Subsidies and Countervailing Measures
CBET	Competence Based Education and Training
CSR	Corporate Social Responsibility
EPWG	Extractives Policy Working Group
ESAL	Energy Solutions Africa Limited
EU	European Union
FID	Final Investment Decision
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariff and Trade
IIA	Invest in Africa
LAPSSET	Lamu Port, South Sudan-Ethiopia Transport
LCR	Local Content Requirements
LIWA	Linking Industry With Academia
LVTC	Lodwar Vocational Training Centre
MIOG	Morendat Institute of Oil and Gas
NCIP	Northern Corridor Integrated Projects
NITA	National Industrial Training Institute
NOCK	National Oil Corporation of Kenya
NSE	Nairobi Securities Exchange
PBO	Petroleum Business Opportunities
PSC	Production Sharing Contract
SEIC	Strathmore Extractive Industry Centre
SMEs	Small and Medium-Sized Enterprises
SOGA	Skills for Oil and Gas in Africa
TRIMS	Agreement on Trade-Related Investment Measures
TVET	Technical and Vocational Education and Training
US	United States
WEF	World Economic Forum
WTO	World Trade Organisation

ABSTRACT

As Kenya gears up to develop its petroleum resources in Turkana, Local Content has become an important issue, the basis being to encourage the use of local labour, goods and services at different stages of the oil and gas value chain. However, lack of specialized or technical skills and poor infrastructure pose significant challenges for Kenyans to obtain the greatest benefits from the oil and gas resources. Controversy has also been sparked around the meaning of the term “local” with different stakeholders taking different approaches – is it national, sub-national (county) or geographically placed local communities closer to the drilling sites? These diverse opinions now form the substance of different local content legislative, regulatory and policy proposals including the Local Content Bill 2018, the Petroleum (Exploration, Development and Production) Bill, 2017 and the Petroleum Exploration, Development and Production (Local Content) Regulations, 2014. There is also an emerging issue of how to strengthen linkages with other sectors such as manufacturing and even agriculture given the claim that the rise of renewable energy is likely to make oil production for energy use obsolete in the (distant) future.

Spurred by these issues, this paper seeks to contextualise Local Content, identify different scenarios that can incentivise and strengthen local participation, increased local employment, procurement of local goods and services and sustainable economic diversification, among others, in Kenya’s oil and gas value chain, as well as emerging partnerships that support Local Content realisation. The aim is to interrogate how best the country ought to leverage its petroleum resources to generate sustained and inclusive in-country value. It also highlights different Local Content policy scenarios from select resource-rich countries, namely Brazil, Ghana, Nigeria, Norway and Trinidad and Tobago. The paper is premised on the Local Content Scenarios Building and Dialogue Forum convened by the Extractives Baraza in partnership with the National Oil Corporation of Kenya (NOCK), Energy Solutions Africa Ltd (ESAL Africa), Oxfam International and the Kenya Civil Society Platform on Oil and Gas (KCSPOG) on 28th-29th May 2018.¹

¹ <http://extractives-baraza.com/eb-projects/extractives-policy-working-group>.

CHAPTER ONE

INTRODUCTION AND OVERVIEW

1.1. Introduction

The need for a structured dialogue on Local Content in Kenya has been incentivized by the discovery of oil and other commercially viable minerals, a key focus being to promote in-country value addition through four main pillars: local employment opportunities, in-country spending and procurement of local goods and services, technology and skills transfer, and local participation through equity and management. The evolving concept of Local Content has sparked conversations in the recent past, with stakeholders having different views as to what it means in the Kenyan context. One such forum is the Public Debate on the Local Content Bill 2016 hosted by Strathmore Extractives Industry Centre in 2016.² The purpose of the debate was to interrogate the provisions in the Bill to determine whether they sufficiently and efficiently promote productive linkages with the local economy. The (then) Chairperson of the Senate Energy Committee, Hon. Gideon Moi, received direct feedback from over 100 persons from a diversified audience on the relevance and effectiveness of the Bill towards embedding Local Content within Kenya's legal framework.

The following year, in July 2017, the World Bank Group, within the framework of the Petroleum Business Opportunities (PBO) project, in partnership with Strathmore Extractive Industry Centre (SEIC), and DAI Sustainable Business Group, launched the "Kenya Local Content Exchanges", a three-part roundtable series addressing private sector-led Local Content in Kenya's emerging petroleum sector.³ The forum provided a platform for Kenyan private sector stakeholders to move towards positioning themselves to participate in the petroleum value chain.

These conversations present a good case for all industry stakeholders to come together and chart an effective in-country value addition option for Kenya's oil and gas sector. This is a complex issue that requires robust engagement and collaboration involving cross-sectoral, national, regional, local, and cross border considerations. Supporting local employment and a competitive and sustainable local industry goes well beyond the remit of the corporate social responsibility agenda, requiring industry-wide collaboration and multi-stakeholder involvement. The intersection between national and local dimensions of development based on petroleum discoveries places the Extractives Baraza, based at Strathmore University, in a unique position to use its convening power and expertise to generate common understanding of the potential benefits of Local Content policies as well as generate and share knowledge on policy design and implementation.

1.2. Scope

This technical paper is limited to discussions about the evolving concept of local content in Kenya's petroleum sector. It also highlights different local content policy scenarios based on discussions during the Local Content Scenarios Building and Dialogue forum held on 28th-29th May 2018 as well as best practices from Brazil, Ghana, Nigeria, Norway, Oman and Trinidad and Tobago.

² Strathmore Extractives Industry Centre, *Report on the Public Debate on the Local Content Bill, 2016*, September, 2016 < <http://extractives-baraza.com/assets/content/PDF/Publications:%20Government/Report-on-Local-Content-Public-Debate.-Strathmore-University.pdf> > on 9 May 2018.

³ <http://extractives-baraza.com/events/kenya-local-content-exchange-meeting>.

In this paper, the term “Local Content” means the added value brought to the Kenyan economy from extractive industry through systematic development of national capacity and capabilities and investment in developing and procuring locally available work force, services and supplies, for the sharing of accruing benefits.

“In-Country Value Addition” includes beneficiation (downstream value addition through measures taken in the form of specific percentages of petroleum products that must be transformed locally to promote forward economic linkages; and knowledge and technology transfer from foreign to local participants and from the petroleum sector to other sectors to promote lateral economic linkages.

The paper is structured into five chapters as follows:

- ✓ **Chapter One** introduces the concept of Local Content, its different forms, the current status of the petroleum sector in Kenya and why Local Content policy matters for Kenya
- ✓ **Chapter Two** delves into the current and proposed legal and policy framework in relation to local content in Kenya, why local content may be a challenge to implement in Kenya, and the compatibility of local content requirements with international law.
- ✓ **Chapter Three** discusses various industry-led partnerships that seek to foster local content development in Kenya, including the role of academia.
- ✓ **Chapter Four** outlines priority issues deliberated by stakeholders during the Local Content Scenarios Building and Dialogue Forum, followed by a brief conclusion on the way forward.

Attached to this paper are a summary of country case studies as well as the Programme for the Local Scenarios Building and Dialogue Forum held on 28th-29th May 2018.⁴

1.3. Current Status of Petroleum Sector in Kenya and Possible Opportunities

Kenya, having undertaken oil exploration and appraisal, is now preparing for field development and oil extraction. For instance, according to Tullow Oil’s 2017 annual report, a total of 21 appraisal wells have been drilled in the South Lokichar Basin.⁵ This has confirmed material oil resources to support substantial oil production and an export pipeline to the Kenyan coast pending a Final Investment Decision (FID), which is planned for 2019. Tullow Oil has also conducted extended well tests, water injection tests, well interference tests and water-flood trials, all of which have proved invaluable for planning the development of the oil fields. Other players actively involved in the upstream sector include NOCK, Shell, Africa Oil, and Lion Petroleum among others.

A Joint Development Agreement was signed in March 2017, setting out a structure for the Government of Kenya and the Kenya Joint Venture Partners (Tullow Oil, Africa Oil and Maersk Oil) to progress the development of an oil export pipeline. On 3rd June 2018, the President flagged off the first consignment of crude oil destined for export from Turkana (Ngamia 8) as part of the Early Oil Pilot Scheme.⁶ However, this has faced opposition from

⁴ <http://extractives-baraza.com/eb-projects/extractives-policy-working-group>.

⁵ Tullow Oil plc 2017 Annual Report and Accounts 28.

⁶ ‘President Kenyatta flags off Kenya’s first crude oil exports’ Business Daily, 3 June 2018

<<https://www.businessdailyafrica.com/news/President-Kenyatta-flags-off-Kenyas-first-crude-oil-exports/539546-4593464-gynsum/index.html>> on 3 July 2018.

local communities who demand security, jobs, business opportunities and a share of oil proceeds.⁷ With this current state of affairs arises the urgent need to have structured and fact-based engagement process that will inform Local Content policy and shield the country from the resource curse menace.

Possible opportunities at the oil development phase include (but are not limited to):

- Direct employment in production well drilling, injection well drilling, pipelines, shipping terminals and refineries, materials/components transportation and warehousing, etc. Key skills required include plumbing, welding, electrical, heavy and light vehicles operation, and oilfield technicians (roughnecks, etc.);
- Supply goods and services, e.g. drilling equipment, pipes, tubes, hoses, fittings, IT support, hospitality and catering, environmental and waste management, oil field services (rig moves, fishing, equipment hire), hiring of light vehicles, mechanical repair of vehicles and equipment, heavy equipment haulage, accounting and legal, human resource, property leases and facility management, and quality assurance.

1.4. Definition and Scope of Local Content in Kenya's Prevailing Legal Framework

Local Content is a multifaceted and dynamic concept and therefore definitions and objectives vary greatly amongst stakeholders and countries.⁸ In Kenya, the definition of "local" content remains unsettled, with some stakeholders preferring a localist approach that prioritises or favours the oil producing region while others prefer a nationalistic approach that focuses on equitable participation at all stages of the petroleum value chain. These divergent approaches have been reflected in the proposed Local Content laws. For instance, section 2 of the Petroleum (Exploration, Development and Production) Bill, 2017 defines Local Content as *"the added value brought to the Kenyan economy from petroleum operations through systemic development of national capacity and capabilities and investment in developing and procuring locally available workforce, services and supplies, for the sharing of accruing benefits."* The term is also defined under the Petroleum Exploration, Development and Production (Local Content) Regulations, 2014 as *"the quantum or percentage of locally produced materials, personnel, financing, goods and services rendered in the petroleum industry value chain and which can be measured in monetary terms."*

We, however, believe that Local Content should be the seamless combination of the localist and nationalistic approaches to ensure frontline communities feel the benefits through affirmative action and equitable participation at all stages of the petroleum value chain across the country. For a more practical definition, one could say that Local Content is building a workforce that is skilled and building a competitive supplier base. This may cover requirements that a given percentage of domestic components (such as labour, supplies and technology) be embodied at each stage of the petroleum value chain to increase local participation.⁹

⁷ Etyang H, 'No oil will leave Turkana without security and jobs, protesters say' 27 June 2018, <https://www.the-star.co.ke/news/2018/06/27/no-oil-will-leave-turkana-without-security-and-jobs-protesters-say_c1778927> on 3 July 2018.

⁸ The World Bank, 'Kenya Local Content Exchanges - Local Content: Vision to Implementation' Petroleum Business Opportunities, Nairobi, 4 July 2017, 7.

⁹ Nwapi C, 'A Survey of the Literature on Local Content Policies in the Oil and Gas Industry in East Africa' (2016) 9(16) SPP Technical Paper 3 <<https://www.policyschool.ca/wp-content/uploads/2016/05/local-content-east-africa-nwapi.pdf>> accessed 7th March 2018.

The scope of Local Content varies from country to country, but typically encompasses the following measures:

Table 1: Classification of Local Content requirements

Category	Explanation
Employment of local workforce	Companies are required to provide employment opportunities for locals in all areas and during all phases of operations
Training & education	Short training and internships opportunities for local students and professionals, in partnership with local universities and institutes
Research & development (R&D) and innovation	Establishing oil & gas related R&D programmes with local universities. This requires government support through the national research centre, sponsorship, etc.
Technology transfer	This can be implemented through joint ventures (JVs) with locally-owned entities
Goods and Services	<ul style="list-style-type: none"> • Procurement of locally available or manufactured goods and service of comparable quality with those imported • Local business/supplier development e.g. through JVs
Corporate Social Responsibility (CSR)	Companies establishing CSR programmes and activities to benefit frontline communities – covering infrastructure, health, etc.

1.5. What forms do Local Content requirements take?

Local Content requirements are take two forms: quantitative and qualitative. Quantitative requirements impose obligations on companies in the form of legally binding targets, sometimes with sanctions for non-compliance.¹⁰ These targets are normally in terms of volume (that is, number of local staff to be employed or tenders to be awarded to local suppliers) or value (that is, a percentage of spending on local procurement).¹¹ For instance, Argentina's Hydrocarbons Law enjoins companies holding exploration permits or concessions to hire at least 75% of local employees. Nigeria has also set strict quantitative targets for employment and local sourcing, but with little success mainly because of the lack of supplier capacity and sufficient skills to be absorbed by the industry.

On the other hand, qualitative measures generally do not have specific quotas but can nevertheless be binding.¹² They include provisions enjoining companies to set up JVs with local companies or foster transfer of technology and knowledge or training of local workforce. Companies may also be required to publish their

¹⁰ Ramdoo I, 'Local content policies in mineral-rich countries: Part 1', (2016) Working Paper No. 193, Organisation for Economic Co-operation and Development, 11.

¹¹ Ramdoo, 'Local content policies in mineral-rich countries: Part 1', 11.

¹² Ramdoo, 'Local content policies in mineral-rich countries: Part 1', 11.

procurement needs or report their local to foreign employment ratios, although the ratios themselves are not imposed.¹³

Countries, such as Brazil, which have successfully used Local Content, have a combination of quantitative and qualitative requirements, based on their capacity to deliver, while ensuring a fair balance between their economic objectives and the viability of investments.¹⁴

Table 2: Classification of Local Content requirements

Requirements	Examples of Requirements
Quantitative Requirements	
Requirements based on numerical targets	<ul style="list-style-type: none"> Compulsory requirement to employ a percentage of local labour. Specific categories of procurement for local suppliers.
Requirements based on monetary value	<ul style="list-style-type: none"> Spending requirements regarding technological transfer. Requirements based on monetary value Spending requirements regarding technological transfer Requirements regarding R&D spending locally Value of wages paid to foreign staff not to exceed a share of the total payroll % of local procurement spending to be attributed to local suppliers Preferential price premium exclusively for local suppliers Ownership requirement: Compulsory state participation or joint venture with local firms to obtain licenses
Qualitative Requirements	
Reporting & justification	<ul style="list-style-type: none"> Petroleum firms to report and justify hiring foreign labour or sourcing inputs from abroad
Information sharing	<ul style="list-style-type: none"> Requirement to advertise job vacancies or publish tenders and procurement requirements
Capability & knowledge development	<ul style="list-style-type: none"> Requirement to train local labour or certify local suppliers; Firms encouraged to engage with academic institutions or training centres to align curricula to needs of the extractive sector
R&D contribution and transfer of technology	<ul style="list-style-type: none"> Firms required to transfer technology to local firms; Firms required to carry out some levels of R&D locally
Preferential treatment	<ul style="list-style-type: none"> Firms to hire local labour or source inputs from domestic suppliers only if available on a competitive basis

Source: Adapted from Ramdoo, 'Local content policies in mineral-rich countries: Part 1'

1.6. Why Local Content Matters for Kenya

The clamour for Local Content policy in Kenya is geared towards domesticating the industry in order to increase national wealth through employment of locals, value creation, enhanced local (human and business) capacity and capabilities, technology transfer, innovation growth, and research and development. Unfortunately, local participation in the industry, particularly oil and gas, has been hindered by inadequate financial and technical capacity and expertise, as well as lack of guidelines on Local Content and value chain participation.

¹³ Ramdoo, 'Local content policies in mineral-rich countries: Part 1', 11.

¹⁴ Mugano G, 'Revisiting local content requirements,' *The Herald*, 23 Jun, 2016 <<https://www.herald.co.zw/revisiting-local-content-requirements/>> on 23 March 2018.

Further, most extractives operations are located in marginalised areas such as Turkana and Kwale, which have historically been plagued with poverty and limited socio-economic development.¹⁵ Communities in these areas have high expectations of being the key beneficiaries of resource exploitation. Well-designed Local Content requirements will provide an enabling environment for such communities to have a “*Lick of the Spoon*” by getting a share of the benefits, including employment and business opportunities. It is on this premise that the Government has seen legislating on Local Content as a key strategy for promoting local participation in the oil and gas value chain. Questions, however, abound as to what is the best strategy? Does law provide a means to an end? Should the country start with an overarching policy document? What should be our priority areas as a country?

CHAPTER TWO

LEGAL AND POLICY FRAMEWORK GOVERNING LOCAL CONTENT IN KENYA

2.1. Current Legal Framework: Is it Adequate?

There is currently no specific policy, legislative or regulatory framework on Local Content apart from a few general and sector-specific provisions in different laws as discussed below. There is, however, a deliberate move by the Government to enact a specific legislation on Local Content, evidenced by a raft of draft legislation such as the Local Content Bill 2018 and the Petroleum (Exploration, Development and Production) Bill 2017.

Table 3: Legal and Policy Frameworks Applicable to Local Content in Kenya

Law/Statute/Policy	Relevant Provisions on Local Content
Current Legal and Regulatory Provisions	
Constitution of Kenya, 2010	Article 66(2) mandates Parliament to ‘enact legislation ensuring that investments in property benefit local communities and their economies.’ Article 69(1) also requires the State to ‘ensure sustainable exploitation, utilization, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits’, and to ‘utilize the environment and natural resources for the benefit of the people of Kenya.’ Local Content requirements are essentially meant to give effect to these constitutional requirements.
Petroleum (Exploration and Production) Act Cap 308 (1986)	The Act provides the general terms and conditions of a petroleum agreement (Production Sharing Contract – PSC) which include an obligation on a contractor to give preference to the employment and training of Kenyan nationals, and the use of locally available products, equipment and services. ¹⁶ The Act also establishes a Training Fund for the purpose of training Kenyan nationals in petroleum operations. Contractors are required to contribute to this fund in accordance with the provisions set out in the Petroleum (Exploration and Production) (Training Fund) Regulations.
Natural Resources (Classes of Transactions Subject to Ratification) Act, 2016	Some of the factors to be considered in deciding whether or not to ratify an agreement include adequacy of stakeholder consultation, the extent to which the agreement has struck a fair balance between the interests of the beneficiary and the benefits to the country arising from the agreement, and ‘the benefits which the local community is likely

¹⁵ Obiri J, *Extractive Industries for Sustainable Development in Kenya*, United Nations Development Programme (UNDP), Nairobi, September 2014, 5.

¹⁶ Section 9(1)(g), *Petroleum (Exploration and Production) Act Cap 308 (1986)*.

	to enjoy from the transaction. ¹⁷ The consideration of the fair balance between the interests of the beneficiary and those of the country speaks directly to the issue of Local Content. There is also need to ensure that the local community benefits from the transaction, for example, through development of infrastructure and social amenities like schools and hospitals.
Public Procurement and Asset Disposal Act, 2015	One of the underlying principles of public procurement is the need to promote local industry and sustainable development. ¹⁸ Section 158 requires procuring entities to have in their tender documents a mandatory requirement for all foreign bidders participating in international tenders to source at least 40% of their supplies from citizen contractors. It also provides for exclusive preference to citizen contractors in the case of tenders worth less than Kshs.500 Million, where such projects are wholly funded by the National Government, County Government or a Kenyan body. This capping means that the locals can be only limited to small valued tenders as they are viewed as lacking the capability and capacity to deliver big tenders. There is also a prescribed margin of preference to bidders offering goods manufactured, assembled, mined, extracted or grown in Kenya subject to <i>availability</i> and the applicable <i>international or local standards</i> . ¹⁹ Preference is also given to firms with at least 51% Kenyan shareholders. ²⁰ The Act requires entities seeking to procure items not wholly or partially manufactured in Kenya to prepare a report detailing evidence of inability to procure local goods. ²¹ As a condition of award, the successful bidder must cause technological transfer or create employment opportunities for Kenyan citizens. These affirmative provisions serve as safeguards for Local Content compliance, and if properly implemented will ensure that the local industry is involved in the exploitation of natural resources.
National Construction Authority Regulations 2014	Regulation 12(3) provides that any foreign company seeking registration in Kenya must give an undertaking to enter into a joint venture with a local company/person for not less than 30% of the contract value.
Technical and Vocational Education and Training Act, 2013	The Act was designed to address the skills gap issue and, more so, to ensure an increased and sustained enrolment ratio of 20% by the year 2030. Relevant provisions include section 38, which requires TVET institutions to adopt appropriate national and international standards in training; and establish and promote appropriate collaborative arrangements with national and international agencies on standards and quality assurance. Section 39, training systems shall integrate on-the-job attachment and internships at all levels in order to provide relevant training for the development of appropriate practical and innovative skills.
Proposed Laws and Policies	
Petroleum (Exploration, Development and Production) Bill, 2017	The Bill requires upstream petroleum companies to employ or engage qualified and skilled “Kenyans” and give priority to services provided and goods manufactured in Kenya provided they meet the specifications of the petroleum industry as prescribed by the Kenya Bureau of Standards or any other internationally acceptable standard approved by the Authority. ²² While the term “local” is still debatable, the use of the term “Kenyans” suggests a nationalistic approach to Local Content. It should also be noted that Kenya’s petroleum sector is still at an infant stage of development, and that the standards envisioned in the Bill are not yet in place. This may create room for creative compliance whereby petroleum investors will go for the international standards which give preference to foreign as opposed to Local Content. The Bill also calls for: (a) contractors to submit

¹⁷ Section 9(1), Natural Resources (Classes of Transactions Subject to Ratification) Act 2016.

¹⁸ Section 3 (i), *Public Procurement and Asset Disposal Act* (2015).

¹⁹ Section 157 (9), *Public Procurement and Asset Disposal Act* (2015).

²⁰ Section 155(3) (b), *Public Procurement and Asset Disposal Act* (2015).

²¹ Section 155 (5), *Public Procurement and Asset Disposal Act* (2015).

²² Section 77(1), *Petroleum (Exploration, Development and Production) Bill* (2017).

	Local Content plans; (b) creation of a Training Fund to train Kenyan nationals in petroleum operations. The Bill is, however, upstream centric.																														
Petroleum Exploration, Development and Production (Local Content) Regulations, 2014	<p>The Regulations require foreign companies to give Kenyan citizens first consideration for employment and training in any upstream petroleum project executed by them. First considerations must also be given to locally available goods and services. The Regulations adopt a quantitative approach to Local Content by specifying the minimum Local Content targets that upstream petroleum operators must meet from the date of effectiveness of licence or petroleum agreement (<i>see the table below</i>), as well as levels to be achieved in areas such as engineering, fabrication and construction, materials and procurement, well drilling services, R&D, Exploration, subsurface, petroleum engineering and Seismic services, transportation, supply and disposal services.</p> <table><tr><td></td><td>Item</td><td>Start</td><td>5 Years</td><td>10 Years</td></tr><tr><td>1</td><td>Goods and Services</td><td>10%</td><td>50%</td><td>60% - 90%</td></tr><tr><td>2</td><td>Recruitment and Training</td><td></td><td></td><td></td></tr><tr><td></td><td>(a) Management staff</td><td>30%</td><td>50% - 60%</td><td>70% - 80%</td></tr><tr><td></td><td>(b) Technical core staff</td><td>20%</td><td>50% - 60%</td><td>70% - 80%</td></tr><tr><td></td><td>(c) Other staff</td><td>80%</td><td>90%</td><td>100%</td></tr></table> <p><i>Source: First Schedule of the Petroleum (Local Content) Regulations 2014</i></p> <p>Further, to be qualified to enter into a petroleum agreement or get a petroleum license, a petroleum entity must ensure a 5% equity participation of an indigenous Kenyan company other than the National Oil Corporation. Foreign companies seeking to provide goods, works of services to entities engaged in upstream petroleum operations are required to incorporate joint ventures with indigenous Kenyan companies and afford them a participation of at least 10% of equity or contract value.</p>		Item	Start	5 Years	10 Years	1	Goods and Services	10%	50%	60% - 90%	2	Recruitment and Training					(a) Management staff	30%	50% - 60%	70% - 80%		(b) Technical core staff	20%	50% - 60%	70% - 80%		(c) Other staff	80%	90%	100%
	Item	Start	5 Years	10 Years																											
1	Goods and Services	10%	50%	60% - 90%																											
2	Recruitment and Training																														
	(a) Management staff	30%	50% - 60%	70% - 80%																											
	(b) Technical core staff	20%	50% - 60%	70% - 80%																											
	(c) Other staff	80%	90%	100%																											
Local Content Bill 2018	Bill aims to maximize ownership financing in order to increase local value capture from all parts of the value chain created from oil, gas and mineral exploitation. It uses a variety of tools to reach its goal of benefiting the local economy through extractive projects, including requiring companies to submit Local Content plans. Despite the Bill’s positive intentions, there is no clear definition of the term “local” as relates to Local Content.																														
Energy Bill, 2015; Energy (Local Content) Regulations, 2014	Bill and Regulations provided for the submission of an annual and long term Local Content plan including sub-plans on employment and training; research and development; technology transfer; industrial attachment and apprenticeship; legal services; financial services; and insurance services.																														
Draft National Energy and Petroleum Policy 2015	The policy identifies inadequate manpower, technical capacity and Local Content as a key challenge in the oil and gas sector in Kenya. Government is urged to develop and implement a Local Content policy and legal framework covering technology and knowledge transfer, capacity building of local industry and local employment, and utilisation of locally available goods, services and human resources. The Bill does not apply to upstream petroleum and coal operations – by virtue of section 2 thereof.																														

Concluding Observations

In our view, there does exist an incongruence within the Local Content requirements in the existing and proposed legal framework. This, however, is not in mostly in the definition but on the variations in the measurement of local content success and the approaches. First, although the Petroleum Act Cap 308 makes reference to the issue of Local Content, it is silent on the applicable thresholds. An additional gap emanates from the definition of indigenous Kenyan company under the Public Procurement and Asset Disposal Act, which

is based on 100% ownership by Kenyan nationals. This could lock out room for joint ventures and other forms of partnerships with foreign companies that could bring local suppliers up to international standards. Further, different Local Content thresholds are spelled out in the respective laws and regulations, whereas others are quiet on the levels of Local Content sought to be achieved. There are also multiple bodies proposed to monitor and ensure compliance with the Local Content requirements. The other issue is the variation in the measurement of Local Content in the various legal frameworks. This can be harmonised first by setting a strategic objective for the country and how this can be achieved, and, secondly, by aligning all existing and future legislation with that objective.

2.2. Why local content may be a challenge to implement in Kenya

2.2.1. Lack of an Overarching Local Content Policy and Legal Framework

The theory behind Local Content policies is to encourage local participation in foreign direct investment through the use of local labour, goods and services. However, from the analysis above, Kenya lacks an overarching legal and policy framework to drive the Local Content agenda in the petroleum sector and link sector-specific development plans with the country's national development plans. Moreover, the Petroleum Act 1986 narrowly recognises Local Content by imposing an obligation under the PSC for contractors to give preference to the use of locally available products, goods and services. Notwithstanding the good intentions of this requirement, the fact that PSCs are often negotiated between the Government and petroleum companies may result to PSCs having different Local Content provisions. The lack of uniformity in all PSCs also means that it is difficult for companies to understand what provisions will be included in a PSC and the extent to which it can be negotiated.²³

Further, there is currently no independent regulator to monitor and enforce the relevant Local Content provisions in Kenya. This has made it difficult to keep track of the extent to which contractors are complying with the Local Content requirements in their PSCs.

2.2.2. Lack of Specialised/ Technical Skills

There is a general consensus that lack of specialized skills is a major obstacle to the realization of local participation in Kenya's petroleum sector, which is highly specialised and complex.²⁴ The World Economic Forum (WEF) Human Capital Report of 2017 places Kenya at position 101 in the development of future skills and knowhow, and position 74 in the use of specialized skills at work.²⁵ This paints a worrying picture for a country that aspires to be a technology hub in Africa.

²³ Oraro C, 'Local content in Kenya's oil and gas industry' Lexology, 24 February 2015 <<https://www.lexology.com/library/detail.aspx?g=87a225c8-cb72-47d2-929c-6c8ab8324383>> on 2 April 2018.

²⁴ See also E4D/SOGA, 'Employment and Skills for Eastern Africa is an innovative public-private partnership', Progress Update, 2017, 18; Were A, *Manufacturing in Kenya: Features, Challenges and Opportunities*, Supporting Economic Transformation, Nairobi, 29 August 2016, 21 <<https://set.odi.org/wp-content/uploads/2016/09/Manufacturing-in-Kenya-Anzetse-Were.pdf>> on 12 April 2018.

²⁵ World Economic Forum, *The Global Human Capital Report 2017: Preparing People for the Future of Work* World Economic Forum, Cologny/Geneva, Switzerland, 2017 <www3.weforum.org/docs/WEF_Global_Human_Capital_Report_2017.pdf> on 12 April 2018.

In Turkana, where most upstream petroleum operations are taking place, the high rate of unemployment is linked to the mismatch between workforce skills and new employment opportunities.²⁶ Tullow Oil, for instance, cites the burgeoning skills gap as the primary impediment to its initiatives to include local workforce in its operations.²⁷ While the company has been committed to improving the representation of local staff, developing some of the sector-specific skills may take time and a coordinated effort by all stakeholders.²⁸

This challenge is most severe for vocational skills like pipefitting, welding, drilling and operation and repair of heavy equipment – all in demand in the sector. It is estimated that over 60% of employment opportunities in emerging petroleum sector are expected to require vocational and technical training.²⁹ Kenya has 978 accredited technical and vocational education and training institutions, but the courses offered are not aligned with industry standards.³⁰ For instance, it has recently emerged that Kenya has to employ expatriate labour for welding of oil pipelines because locals are not adequately trained.³¹ Other challenges include outdated training curricula, inadequate facilities to cater for the large number of students who wish to undertake the vocational programmes and a low quality of teaching staff.

2.2.3. Underdeveloped Local Supply Chain and Infrastructure

Regarding local supply, the quality of locally manufactured or available goods and services, comparable to their high costs, negatively affect their uptake by oil companies.³² This may continue being a thorny issue in the sector if segments of the manufacturing sector are not keen on improving technology to keep up with competitiveness in terms of quality and design variety.³³

Thus, more needs to be done in terms of policy development to create an enabling environment for local supplier capacity development. This requires a coordinated effort by industry, government and development organisations.

2.2.4. Information Asymmetry

Information asymmetry is a serious challenge in the sector especially regarding the foreign investors' needs and the goods and services locally available in Kenya. With this in mind, it remains uncertain how investors' needs and the local supplier capacity were quantified when designing the quotas envisaged under the Petroleum (Local Content) Regulations, 2014 without proper baseline data.

²⁶ Wasunna M, 'Kenya has a massive skills gap: how it can fix the problem' The Conversation, 22 February 2018 <<https://theconversation.com/kenya-has-a-massive-skills-gap-how-it-can-fix-the-problem-91170>> on 12 April 2018.

²⁷ Tullow Oil plc 2017 Annual Report and Accounts 28.

²⁸ Tullow Kenya BV, *Local Content Fact Sheet*, 2016

²⁹ Lundin Foundation, 'Education and Skills Training' —<<http://www.lundinfoundation.org/education-and-skills-training/>> accessed on 8 May 2018.

³⁰ Kuria S and Ayieko B, 'Why Kenya's Success in Extractives Depends on our Schools', Standard Digital, 16 August 2016 <<https://www.standardmedia.co.ke/business/article/2000212129/why-kenya-s-success-in-extractives-depends-on-our-schools>> on 12 April 2018.

³¹ Eastlands College of Technology, Specialised Welding Write Up 2018.

³² Were, *Manufacturing in Kenya: Features, Challenges and Opportunities*, 21.

³³ Were, *Manufacturing in Kenya: Features, Challenges and Opportunities*, 24.

In October 2015, Invest in Africa (IIA) recently launched a Kenya Chapter to promote linkages between investors and local business.³⁴ IIA has been working to enhance small and medium-sized enterprises' (SMEs) access to skills, markets and finance in partnership with leading entities in Kenya, such as Tullow Oil, Educate Global, Strathmore Business School, Shell, and Safaricom among others.³⁵ Through the African Partner Pool (APP) and Business Linkages Programme, IIA directly links SMEs to procurement opportunities from larger organizations sourcing for goods and services locally and offers capacity building to address their skills and knowledge gaps. The APP presently has a cross-sector database of over 1,300 vetted SMEs from Kenya.

Despite the presence of IIA in Kenya, most Kenyan suppliers lack a better understanding of the oil and gas sector and its needs to enable them come up with more innovative solutions to the investors' needs (*see figure 2 below*). The other key sources of information include the Extractives Baraza, Oilnews Kenya, and the World Bank Doing Business Index and Report, but none of these analyse the goods and services available in Kenya. Thus, SMEs which have not joined IIA's APP continue to struggle to make themselves visible to investors.

2.3. Compatibility of Local Content Requirements with International Law

During the forum, a question arose as to whether implementing Local Content requirements would not be restrictive contrary to the international trade rules applicable to members of the World Trade Organisation (WTO), including Kenya. The most frequently cited rules include the Agreement on Trade-Related Investment Measures (TRIMs), the General Agreement on Tariff and Trade (GATT), the Agreement on Subsidies and Countervailing Measures (ASCM), and the General Agreement on Trade in Services (GATS), all of which endorse the "national treatment" and "most favoured nation" principles, which oblige member countries to treat one another as they would their own nationals.

For instance, GATT proscribes the use of quantitative restrictions,³⁶ and requires countries not to discriminate between "like products" from local industries and imports.³⁷ Further, the Agreement on TRIMs contains an "illustrative list" of prohibited TRIMs which expressly includes "TRIMs that are inconsistent with paragraph 4 Article III of GATT which are mandatory/enforceable under domestic law which require the purchase/use by an enterprise of products of domestic origin or from any domestic source... in terms of volume/value or the proportion of volume/value of its local production." However, developing countries are permitted to retain those TRIMs to the extent that the measures are consistent with the specific derogations permitted under Article XVIII of the GATT 1994 by virtue of economic development needs.³⁸

This provision presents a good case for the adoption of Local Content policies in emerging oil and gas producing (developing) countries like Kenya. In support of this is Lee's argument that "fair trade" in the sense of a "level playing field" does not necessarily mean applying the same set of trade rules and conditions to every nation, but

³⁴ <http://www.investinafrica.com/about/what-is-iiia> accessed on 9 May 2018.

³⁵ <http://www.investinafrica.com/news/educate-global-mou> accessed on 9 May 2018.

³⁶ Article XI.1 of GATT.

³⁷ Article III of GATT.

³⁸ Ramdoo I, 'Do international trade rules prevent local content policies?' GREAT Insights Magazine, Volume 5, Issue 6, December 2016/January 2017 <<http://ecdpm.org/great-insights/shifts-trade-development/international-trade-rules-prevent-local-content-policies/>> on 11 April 2018.

also means recognizing that some countries are so disadvantaged that they need “reasonable accommodation” under the international trade system.³⁹

It should be noted that many WTO member states have designed Local Content requirements in disregard of the WTO rules in a bid to protect their infant industries, reduce reliance on imports, enhance domestic technological development and create job opportunities.⁴⁰ Yet, few complaints have been made to the WTO Committee on Trade-Related Investment Measures. For example, on 16th April 2015, 14 complaints were brought before the Committee, and most of these involved investment measures implemented by Russia, Indonesia and India (see Table 3 below).⁴¹

Table 4: Local Content Related Complaints to the Committee on Trade-Related Investment Measures as at April 2015⁴²

Subject matter	Complainant(s)	Respondent
Local Content requirements in telecommunication sector	Japan	Indonesia
LCRs in mining, oil and gas	EU, Japan, US	Indonesia
Industry law and trade law	EU, Japan, US	Indonesia
Minimum local product requirements (modern retail sector)	EU, Japan, US	Indonesia
LCRs which might be extended to public entities – automotive, health and agricultural sectors	US & EU	Russia
Solar power generation project – electric goods and telecommunication	EU	India
Oil and gas sector	EU, US, Australia, Norway, Canada, Japan	Nigeria
LCRs in telecommunication equipment used in banking sector	US and Japan	China
LCRs in electricity generation	EU	Turkey
LCRs in renewable energy sector	India	US

The above data indicates that almost all complaints were made by developed countries and only one of these was made against an African country – Nigeria – yet there are many African countries that have designed Local Content requirements. This trend affirms the acceptance by many developed countries that developing countries especially from Africa are justified to formulate Local Content as a means of promoting local participation in the oil and gas sector.

³⁹ Lee YS, *Reclaiming Development in the World Trade System*, 2nd ed (forthcoming), Cambridge University Press, Cambridge, 2016, 462–463.

⁴⁰ Murungi CN, ‘Introducing Local Content Regulation in Kenya’s Economy: A Case Study of Kenya’s Energy, Oil and Gas Sector’ (Master of Arts Thesis, University of Nairobi 2015) 33.

⁴¹ Murungi, ‘Introducing Local Content Regulation in Kenya’s Economy: A Case Study of Kenya’s Energy, Oil and Gas Sector’ 33.

⁴² WTO, ‘Concerns raised about investment measures favouring local products’ 16 April 2015 <https://www.wto.org/english/news_e/news15_e/monit_16apr15_e.htm> on 11 April 2018.

CHAPTER THREE

HARNESSING PARTNERSHIPS TO FOSTER LOCAL CONTENT DEVELOPMENT

3.1. Industry-Led Initiatives

Despite the lack of an overarching Local Content legal and policy framework in Kenya, some sector players have implemented a number of programmes, solely and in partnership with other players, to develop local capacity through training/apprenticeship and innovation. These include:

3.1.1. Morendat Institute of Oil and Gas sponsored by Kenya Pipeline Company Ltd

The MIOG was created in 2014 to offer capacity building to support the Northern Corridor Integration Projects (NCIP). The Institute offers competency based training in oil and gas pipelines management, operations and maintenance to develop human resource capacity for partner states (Kenya, Uganda, Rwanda and South Sudan). MIOG being a vocational education and training institute, falls under the Directorate of Technical and Vocational Education and Training (TVET) and is required to comply with the Kenyan TVET Act and related rules and regulations. In order to ensure training is linked to industry requirements in the oil & gas sector, MIOG will provide training addressing the midstream segment of oil and gas value chain. The courses currently offered include oil pipeline mechanical maintenance, oil pipeline laboratory technology, pipeline instrumentation and control maintenance, pipeline operations course, and firefighting. The institute is also positioning itself through partnerships both locally and internationally, to offer courses in upstream oil and gas.

3.1.2. Skills for Oil and Gas in Africa (SOGA)

SOGA is an initiative by the UK's Department for International Development, the Norwegian Agency for Development Cooperation and the German Ministry for Economic Cooperation and Development, which is being implemented by the German international development agency (GIZ).⁴³ Launched in 2015, SOGA is aimed at facilitating the development of technical skills to promote employment in the oil and gas sector in East Africa (Kenya, Uganda, Tanzania and Mozambique). The Kenyan SOGA project is structured to work very closely with the private oil industry players, the Directorate of TVET and some public technical universities in Kenya to develop systems and capacity for oil and gas technical skills. The underlying objective is to develop an oil and gas technical training system and curriculum that is competence-based and which meets the standards required by oil and gas companies.

3.1.3. Lodwar Vocational Training Centre (LVTC)

The LVTC, constructed and equipped by Lundin Foundation and Africa Oil Corp in collaboration with Turkana County Government, is playing a leading role in improving the availability and quality of technical and vocational education within Turkana County. The LVTC was developed after a needs assessment for which the opportunities/priority sectors identified included electrical, plumbing and hospitality. These were the areas most affected by insufficient skills as far as market demands were concerned. The Centre is currently working closely with Tullow Oil, which has offered sixty students from Turkana County a two-year scholarship to study electrical, plumbing, masonry, carpentry, welding, motor-vehicle repair and catering.

⁴³ 'Skills for Oil and Gas in Africa Programme Receives \$1.45 million from BG Group' OilNews, 27 January 2016 <<http://www.oilnewskenya.com/skills-for-oil-and-gas-in-africa-programme-receives-1-45-million-from-bg-group/>> on 10 April 2018.

3.1.4. Shell's GameChanger and other support programmes

Founded in 1996, Shell GameChanger works with start-ups and businesses on unproven early-stage ideas with the potential to impact the future of energy. This includes providing companies with support, expertise and seed funding, while they maintain the independence to make their own decisions. Through this programme, Shell has interacted with a number of innovators in Kenya helping them to turn their ideas into reality.

In addition, Shell Kenya has been supporting the Kenya Youth Business Trust (Mombasa), which has been instrumental in developing the capacity of young entrepreneurs.⁴⁴ Shell also supports Ukunda Youth Polytechnic to offer competence based programmes including instrumentation and control, welding, heavy and light machine operations, and mechanical technology and maintenance.⁴⁵

3.1.5. Base Titanium's Technical Trades Apprenticeship Programme

This programme is part of Base Titanium's policy of creating a rapid and sustainable workforce transition whereby more than 99% of its employees will be Kenya citizens by the year 2020. The programme was launched in 2014 in collaboration with the Technical University of Mombasa, and is aimed at providing the necessary combination of knowledge and skills to enable the apprentices to graduate as well rounded and qualified business people. The programme is designed to run concurrently with theory studies offered by tertiary institutions with Base Titanium providing the practical training facility to complement classroom learning. Target trainees include electricians, instrument technicians, mechanical fitters, diesel mechanics, welders, heavy mobile mining equipment trades, automotive electricians, plumbers, boilermakers and plasticians. The National Industrial Training Institute (NITA) visited Base's training facility in August 2014 and recommended the use of the apprenticeship programme as a model upon which to base the establishment of a consistent approach to skills development across other Kenyan industries and organisations.

3.2. Partnerships with Academia

The enactment of the Science, Technology and Innovation Act in 2013 has provided a platform for partnership initiatives that can potentially contribute towards in-country value addition. One such initiative is Linking Industry With Academia (LIWA), a regional platform that seeks to create and institutionalise linkages between academia (universities, research institutions and TVET's), private sector and government in areas of research, science, innovation, skills and technology.

In addition, the Extractives Baraza (hosted at Strathmore University), in partnership with Kipya Africa Ltd and the SEIC annually carry out the Mining 4i and Energy 4i events which showcase technical innovations (for the mining and petroleum sectors) from Africa's young industrious minds to stakeholders and industry professionals with the potential of investment and development. The pillars of the events, dubbed "4i", denote the interlinked concepts of Information, Interaction, Innovation, and Investment. The events target the larger extractives market, providing a forum that highlights industry specific innovations making way for growth of Local Content in the mining and energy sector. The winners of the past events have been able to secure legal assistance, funding, assistance with intellectual property protection and mentorship from movers and shakers within the industry.

⁴⁴ <https://www.youthbusiness.org/partnerships/shell/> accessed on 9 May 2018.

⁴⁵ <http://www.tum.ac.ke/topstory/286> accessed on 9 May 2018.

CHAPTER FOUR

PRIORITY ISSUES FOR CONSIDERATION AND CONSENSUS BUILDING

In light of the foregoing, the following issues were identified and extensively deliberated by stakeholders during the Local Content Scenarios Building and Dialogue Forum held on 28th – 29th May 2018, led by the key local content expert, Anthony Paul.⁴⁶

Issue 1: Developing a Sustainable In-County Value Addition Strategy – Going Beyond Oil & Gas

What are the pros and cons of having an in-country value addition strategy pursuant to Vision 2030? Can this be feasible in places such as Turkana, which might prefer a petroleum-focused strategy due to marginalization? How can we develop a Local Content strategy that aligns with national priorities while taking into account industry changes and local dynamics? How has the Kenyan Government contributed towards in-country value addition through its diverse projects, such as the LAPSET? How can we measure local participation as a result of these projects? Does the petrochemical industry present any opportunities?

The development of a sustainable in-country value addition strategy requires context setting and starting early with clearly defined objectives. Context setting involves looking through the entire oil and gas value chain to assess the scale of hydrocarbon operations and identify areas where the country should focus in its development of a strategy for shared value. A baseline assessment is equally vital to determine the existing industry capacity, size of local enterprise, level of participation, supplier landscape and institutional capacity for skills and SME development to inform strategic planning. The country should also conduct a demand and supply analysis not only to understand the business market, but also to look at the risks and existing market share gap. The market share gap reflects local companies' size (small, non-integrated, fragmented, lack of alliances) and access capabilities. The latter includes whether the company lacks: experience in value added activities for industry projects; new technology usage; upgraded technical competencies; business savoir-faire; marketing and promotion skills; access to affordable financing; enforced quality assurance measurements; and strategic/analytic business capabilities.⁴⁷ This will enable the country to determine the time and resources needed to close the gaps identified and make choices of where to start.

The country should then concentrate on the key elements for developing inter-sectoral linkages, including building an end-to-end value chain involving renewable energy, petrochemical industry, manufacturing, construction and knowledge-intensive service sectors, such as information and communication technology. Some of the key elements include standard setting, skills upgrading and supplier support programs, and transferability of skills across sectors. Joint ventures (JVs) and partnerships among key stakeholders (government, industry, etc.) are critical for building sector linkages to create an enabling environment for technology transfer, research and innovation, and SME and skills development. In doing this, it is vital to take into account the interests and obligations of each stakeholder. However, JVs should not be forced through mandatory provisions on local ownership as this may lead to “cowboy” JVs where local companies are subjected to predatory practices. An illustrative scenario is Atlas African Industries, which was suspended from trading by

⁴⁶ <http://extractives-baraza.com/eb-projects/extractives-policy-working-group>.

⁴⁷ Paul A, 'Presentation During Local Content Forum,' 28-29 May 2018.

the Nairobi Securities Exchange (NSE), leaving shareholders in cold.⁴⁸ Mandatory JVs may also lead to transfer of old technology to local companies due to intellectual property issues. Thus, encouraging international companies to base as much as possible their operations in the country has more value than local shareholding. It is also important for local companies to do due diligence before entering into JVs.

Importantly, clear regulatory requirements are necessary. This includes having a robust institutional framework charged with the implementation of the Local Content. However, overly ambitious Local Content targets may exacerbate supply bottlenecks arising from increased aggregate final demand. This would ultimately affect employment and output trends in other sectors of the economy, and create distortions and inefficiencies. Unrealistic targets may also lead to procurement corruption in which companies give bribes to be favoured. Thus, Local Content targets should be set consistent with what can be realistically achieved considering the capability and capacity shortfalls in Kenya. It is also important to balance between hard (prescriptive) and soft requirements to enhance backward linkages and competitiveness. To avoid pitfalls, the Government must carefully navigate to avoid policies and regulations that are too onerous as to discourage investment; focus on key value pools; optimize Local Content by making it a core value; embed Local Content in acreage bidding and partnerships; and unbundle contracts for communities to participate in contracts and tenders. Norway, for instance, included a requirement for oil companies to split up supply contracts into smaller parts suitable for local companies.⁴⁹

These elements must be aligned with national development priorities, especially manufacturing and infrastructure, to increase local participation and value addition. One of the cross-cutting issues in the Government's "Big Four" Agenda is land. Thus, community land rights should be addressed pursuant to the national land policy and the Constitution 2010 to incentivize local participation and maximize the benefits from the petroleum resource. The Government's diverse projects, such as the Standard Gauge Railway, have been instrumental in creating avenues for Local Content, but, as revealed during the forum, pressure has been mounted on contractors to recruit employees from the specific county where operations are taking place. This may raise tension in some areas, especially given the confusion around the definition of "local". Clarity on the definition of "local" is vital for purposes of target setting and enabling local communities to understand the scope of Local Content. Further, people are aware of the existence of the LAPSET, but they do not know when the project kicks off neither do they have an idea which opportunities exists in the project. As indicated above, this information asymmetry is the reason why Local Content development in Kenya may not be successful.

It is worth noting that national oil companies are the foundation of any oil and gas industry especially in its development. Thus, the National Oil Corporation of Kenya should lead in the implementation of Local Content. In regards to buying of equity into National Oil, the Government has an equity interest in all licenses where it has an option of participation exercised through contribution. Equally, as the government begins exporting oil as part of the Early Oil Pilot Scheme, it may be important to consider having a new refinery at the source. As revealed during the Local Content forum, the Mombasa refinery was a storage facility that was run on old

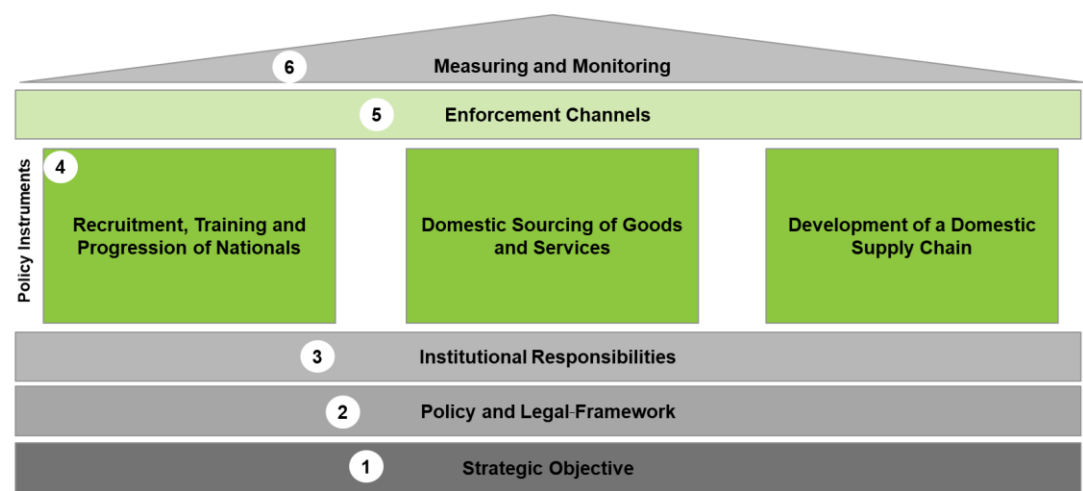
⁴⁸ Ngugi B, 'NSE Suspension Leaves Atlas Shareholders Stranded' *Business Daily*, 14 May 2017
<<https://www.businessdailyafrica.com/news/539546-3926900-yqvc2bz/index.html>> accessed on 5 July 2018.

⁴⁹ Herrera J, Morales M and Jarrín S, 'Local Content Frameworks in Latin American Oil and Gas sector: Lessons from Ecuador and Colombia' (2016) Research Paper Series 14, 17 <<http://ella.practicalaction.org/wp-content/uploads/2016/07/20160526-Grupo-Faro-Local-Content-Frameworks-in-Latin-America.pdf>> accessed 6 March 2018.

technology resulting in its shut down. Further, before setting up the new refinery, there must be competition. Setting up a new refinery means that it should be able to comfortably compete with other refineries so that the government is not offsetting local product cost versus imported.

Successful in-country value addition requires management of expectations and regular measurement to ensure compliance. An operator’s performance management framework is critical for tracking progress on Local Content implementation. Local Content can be measured in a variety of ways such as number of people trained, number of people certified, income received by locals, revenue accrued by owners of land, and the income streams to shareholders and creditors. It is also important to build support sectors to give support to the whole eco-system for building Local Content. It is also vital to have a good governance framework and to consider where the country is going before developing a Local Content governing framework.

Figure 1: Fundamental Elements of Local Content



Source: Dr. Jim Thomas, *Local Content Best Practice*, HIS Markit, July 2018

Oman In-Country Value Addition Blueprint

Oman’s Local Content experience illustrates the design of collaborative strategies. The country set up an In-country Value (ICV) Committee in 2012, chaired by the Undersecretary of the Ministry of Oil and Gas, to develop a sustainable approach to Local Content in line with Oman’s 2020 Vision.⁵⁰ The ICV Committee commissioned a study to diagnose the current market situation and identify the gap between supply and demand in the sector, in goods, services and ‘Omanisation’ of the workforce. The gap analysis led to the identification of opportunity areas for in-country value creation in the oil and gas sector between 2013 and 2020. These range from supply chain development and local employment opportunities to cross-industry development opportunities. The common denominator across all opportunities was ‘International Standards’: new goods and services consistent with international standards and new training programmes set to internationally accredited training standards. Specific initiatives were then defined in order to tap into these opportunities. The results of the analysis fed into the Oil and Gas Blueprint ICV Strategy which set the objective of increasing ICV in the Omani oil and gas sector from the baseline 18% level to 32% by 2020. A five-phase approach for the implementation of the ICV Strategy was adopted beginning 2013.

⁵⁰ IPIECA, *Local content Case studies* (London, UK: IPIECA 2016) 7
http://www.ipieca.org/media/2976/local_content_case_studies_2016.pdf accessed 6 March 2018.

Issue 2: Exploring the Interface between government-led and private sector-led contributions to Local Content.
Should the government or private sector drive Local Content agenda in the oil and gas sector? What has been their respective experience so far? What is the potential of private sector driven development? How can the private sector embed transfer of knowledge, technology and innovation through joint venture efforts with locally owned entities? What lessons can be borrowed from other sectors especially the mining sector?

There was consensus that both the government and private sector should lead in driving the Local Content agenda for it to be successful. Both stakeholders should play a role in collectively assessing existing industry capacity, supplier landscape, and level of local participation to inform strategic planning in line with industry standards. The private sector must take responsibility, for example, by investing in specialised technology, innovation and capacity building for specific job or value-chain-related skills. Companies can do this either independently or through joint initiatives with industry peers and other stakeholders (including suppliers). However, the government should provide incentives to encourage multinational companies to merge with small companies like the ones enjoyed with businesses under special economic zones. Importantly, there must be provision in the Local Content plans for inclusive and progressive local workforce and supplier participation, focused on increasing participation of vulnerable or historically marginalized groups. These initiatives must be seen as investments that will ultimately reduce operational costs in the long term.

Norway provides an inspiration of how private sector and government can collaborate to strengthen the capacity of domestic suppliers. In the initial phases, the Norwegian supply policy maintained that only domestic companies were allowed to supply the national petroleum sector. In order to achieve this, international suppliers were encouraged to bring their international supply chains to Norway and set up fully operational subsidiaries that recruit local staff. The government sponsored a supplier development programme to encourage the use of Norwegian local service companies. This focus on the sector's production chain enhanced links from foreign private firms and local firms to create industry clusters, which have grown to participate internationally. Additionally, the Norwegian government negotiated with oil companies through concessionary procedures to expand the existing knowledge and skills base to further facilitate the development of the local expertise in the sector.

On the local supply front, there was a call for concerted efforts between private sector and government to develop local enterprise and build a platform that integrates local suppliers in the oil and gas value chain and bridges demand and supply using technology. There was also emphasis on unbundling of contracts for services and supplies to enhance opportunities for local suppliers and service providers, especially small and SMEs. Further, SMEs may gain significant capacity development benefits by working as partners or subcontractors with large firms. SMEs and large businesses should each bring their own skills and expertise on board and maximize from each other. However, this can only be possible through information sharing with companies giving constructive feedback for growth and addressing market needs.

Access to affordable financing was cited as one of the key restraints for the growth of local businesses in Kenya, particularly SMEs. Despite efforts by government to promote SME development, including through the recent capping of interest rates, financial institutions still consider lending to SMEs as riskier, and any financial support often comes with significant collateral requirements. This limits the capacity of local businesses to meet the standards required for inclusion in the petroleum supply chain. Hence, there was a call for private sector payers to create financial vehicles for local businesses to support their ability to compete sustainably in the oil and gas

supply chain. It is also important to engage banks and other financial institutions to enable them understand extractives related businesses. The government should offer legal protection against unfair contractual arrangements, guarantee recovery of delayed payments, and co-finance development programmes with private sector.

Kenya's mining sector provides important lessons for Local Content development in the oil and gas sector. For instance, the *Mining and Minerals Policy 2016* provides for the development and enforcement of measures to ensure inclusion of local workforce, facilitate knowledge and skills transfer, and promote the use of local goods and services.⁵¹ The *Mining Act 2016* echoes the provisions of the Policy and enjoins mining companies to provide linkages with local universities for purposes of research, innovation and environmental management.⁵² Further, with the enactment of the Mining (Use of Local Goods and Services) Regulations, 2017, mining companies now have an obligation to submit a procurement plan for local goods and services, which must include measures to develop local supplier base and broaden access to opportunities and technical support.⁵³ These provisions lean towards companies as the key drivers of Local Content, albeit with support from government in terms of policy development. Illustrative examples include, among others, Base Titanium's apprenticeship programme, Shell Kenya's GameChanger programme, and Tullow Oil's support towards LVTC.

Box 2: Illustrative Private Sector Led Initiatives

It is worth to recognise on-going private sector led efforts to incentivise local participation. For instance, the Kenya Association of Manufacturers runs the Manufacturing Academy, which aims at providing technical and/or specialised training and services to enhance capabilities and the competitiveness of local manufacturing industry.⁵⁴ KAM also plays an important role in advocating the government to create an enabling environment to foster globally competitive manufacturing SMEs. In addition, Tullow Oil has been committed towards improving access to supply chain opportunities through targeted capacity development initiatives for local firms.⁵⁵ Notable examples include Kapese Transporters, Oilfield Movers, the Akiberan Aberu Women's Group (a group of individual grocery providers supplying food to Tullow), Morutena Contractors (which leases vehicles to Tullow), Kurrent Technologies and Lopii Contractors.⁵⁶ However, in the recent past, the company has slowed down on giving jobs to local suppliers. In 2017, 30% of the company's supplier spend was with Kenyan businesses, down from 33% in 2016 but with a higher absolute value due to increased expenditure related to the 2017 South Lokichar appraisal campaign.⁵⁷ Thus, there is need for coordinated efforts by government, industry and other development partners to create an enabling policy environment for Local Content development.

Issue 3: Linking Policy and Practice

How does the government maximize development of Local Content across industry sectors? How can home governments (foreign governments where companies are registered), private sector and host governments strengthen policies and regulations towards maximizing local firms' ability to participate in global supply chains?

⁵¹ Republic of Kenya, *Mining and Minerals Policy*, Ministry of Mining, Nairobi, 2016, 16.

⁵² Section 48(1), *Mining Act*, 2016.

⁵³ Regulation 7, *Mining (Use of Local Goods and Services) Regulations*, 2017.

⁵⁴ <http://kam.co.ke/the-manufacturing-academy/> accessed 12 June 2018.

⁵⁵ Tullow Kenya BV, *Local Content Fact Sheet*, 2016.

⁵⁶ Tullow Kenya BV, *Local Content Fact Sheet*, 2016.

⁵⁷ Tullow Oil plc 2017 Annual Report and Accounts 53.

How can private sector interests help Kenya develop a strong Local Content policy? What gaps have impeded the formulation of a Local Content policy in Kenya?

Despite the absence of a Local Content policy, the government has been keen on establishing synergies to promote cross-sectoral Local Content development. Acknowledging information asymmetry as the key barrier to Local Content development, the Ministry of Industry, Trade and Cooperatives launched the Kenya E-Trade Portal in 2017 to help ease the way Kenyans access business opportunities both locally and internationally.⁵⁸ The Portal is designed to provide information on local and international suppliers of various goods and services, import duties, target market abroad, and county trade related information, among other features.⁵⁹ The tool will enable county governments to build local supply capacity and list all the products that can be sourced locally before investors consider international suppliers. The Ministry of Trade has also developed a strategy with eight subsectors, namely fisheries, energy, services (tourism, education, health, etc.) to address the country's supply side constraints. This is because Local Content is meaningful if the country has the capacity to meet industry needs. The Ministry is also developing a local supplier development programme that addresses supplier capacity gaps country wide to inform capacity building strategies.

The role of private sector and government varies greatly in terms of Local Content policy development and practice.⁶⁰ While the government deliberates on the applicable legal and policy framework and monitors PSCs, the private sector should be ready to invest and leverage on policy to actualise the Local Content discourse. However, there was consensus that both stakeholders should establish partnership programmes to create an enabling environment for Local Content development beyond the oil and gas sector. This includes programmes to build human capacity, enable SMEs to access finances, and provide technical mentorship and support for the development of business management skills.

In addition to defining policy, the Government should equip and strengthen existing institutions, including NOCK, to be enablers of Local Content policy. The government should also create a level playing field for local businesses to participate in the oil and gas sector. This can be done by establishing a one-stop-shop system for registering suppliers in a common pool; simplifying and fast-tracking business registration processes; adopting uniform evaluation processes in sourcing goods and services; and ensuring uniform access to project information for local businesses. As stated above, there is need to develop measures to promote business linkages. The private sector must also define its goals and objectives to facilitate this.

Further, delegates bemoaned the lack public participation and corruption as the key constraints to Local Content policy development, especially at county levels. It was revealed that some investors often employ a "know-it-all" approach from the inception phase of projects, ignoring the participation of local leadership and affected communities. The government was, therefore, urged to operationalize access to information law and ensure effective public participation and transparency in the design of Local Content policy. All stakeholders, including county governments and other agents who have a critical role in in the development of Local Content policy, must be engaged adequately. Communities should be sensitized on the potential benefits and impacts from the

⁵⁸ <https://www.cio.co.ke/news/ministry-industry-trade-cooperatives-launch-kenya-e-trade-portal/>.

⁵⁹ <https://www.cio.co.ke/news/ministry-industry-trade-cooperatives-launch-kenya-e-trade-portal/>

⁶⁰ Ana Maria Esteves, Bruce Coyne and Ana Moreno, *Local Content Initiatives: Enhancing the Subnational Benefits of the Oil, Gas and Mining Sectors*, Briefing, Natural Resource Governance Institute, July 2013 <https://resourcegovernance.org/sites/default/files/Sub_Enhance_Benefits_20151125.pdf> on 12 June 2018.

inception stage of projects. Any public participation approach must be alive to the country's political environment to quell any potential conflicts that may disrupt the implementation of projects.

Access to reliable information was cited as a critical element to investment decision making, but this is the biggest missing link in Kenya as information is not available. The challenges of access to information can be resolved by working with the national government to see what is or is not available and if national interest is sound, then focusing on each county is irrelevant.

Issue 4: Strategic Capacity Development

How can we build local capacity and incentivize domestic employment, research and innovation in the emerging oil and gas sector? How do we strike a balance between technical level and degree level skills? Why should the youth be interested in the technical skills? How can the local supply chain be strengthened to become competitive?

According to Anthony Paul, local capacity building comprises two key pillars: human capability (training and skills development; and enterprise development.⁶¹ As to the first pillar, Kenya has recognised the need for competence based education and training (CBET) system and the TVET Authority is now improving the mode of training in technical institutes with some institutes like Rift Valley and Nairobi Technical using Smart Classrooms to improve the approach of skills training. Other emerging institutions include Morendat Institute of Oil & Gas (MIOG) and the Eastlands College of Technology, which is currently employing accelerated learning techniques to up-skill welders to the required coding levels that satisfy local industry demand.⁶²

While these initiatives are positive, delegates considered it necessary for training and skills development to be strategic and comprehensive. This, according to Anthony Paul, involves participation of various stakeholders in training and skills development, including all aspects of improving and expanding industry-specific skills, business skills, and the experience base (built through education, on-the-job training, cross-postings, mentoring, coaching and research).⁶³ However, it must be recognised that skills development is more than training, not only technical skills are involved, and that there are roles for various stakeholders other than oil and gas companies. There is need for partnerships between government and academia to bridge the knowledge gap in relation to oil and gas, for example, by ensuring that the training curricula and facilities are fit-for-purpose. Targeted training and skills transfer programmes can be effective in raising the local human capabilities in line with industry needs.

Use of innovation is very important. This is already being done by some companies and institutions, but mostly not documented. Further, Kenya needs to build its information technology to build a strong knowledge base.⁶⁴ Collaborative efforts between industry and local institutions are essential in developing specialist skills and increasing international competitiveness of local enterprises. The government should implement measures to improve the value add, know-how (technical and business) and innovation capability of local enterprises and institutions. There needs to be a smooth mechanism for knowledge transfer and also someone to manage this knowledge through a knowledge management system. Government support through research and development, and fiscal incentives to multinational companies, will be an important factor in building

⁶¹ Paul A, Presentation During Local Content Forum, 28-29 May 2018.

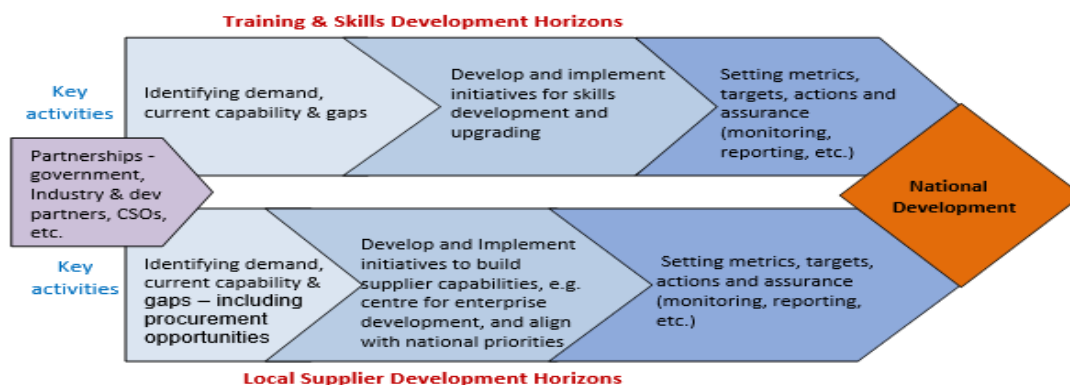
⁶² Eastlands College Of Technology, Specialised Welding Write Up 2018.

⁶³ Paul A, 'Presentation During Local Content Forum,' 28-29 May 2018.

⁶⁴ Paul A, 'Presentation During Local Content Forum,' 28-29 May 2018.

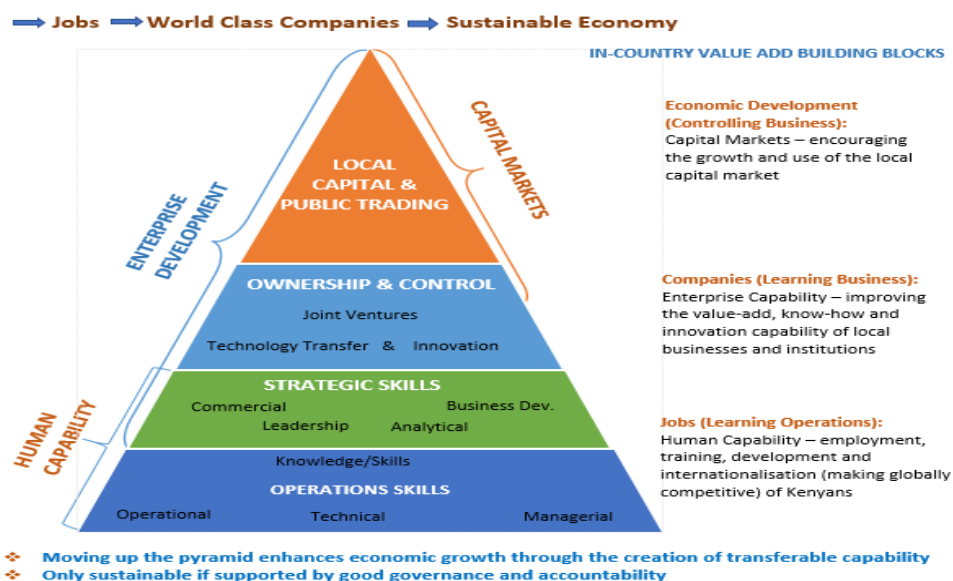
internationally competitive local enterprises. Like in Norway, there is need to encourage creation of joint ventures to foster transfer of technology—the skills and operating practices required in the oil and gas sector—and business acumen of local companies. A centre of excellence, equal to Trinidad and Tobago’s Centre for Enterprise Development, may be established mainly to enhance the capabilities of local enterprises.

Figure 3: Training & Skills Development Horizons



For capacity building initiatives to be successive, the Government must carry out an auditing of the capabilities of the local enterprises and workforce vis-à-vis the industry demand, and establish an online one-stop-shop database of skills and expertise to access and develop standards based on this. This must be aligned with national priorities, particularly in regards to education, energy, infrastructure and manufacturing, which are key sectors for value addition. Equally, there must be a requirement for investors to publicly certify that a local expert is not available before importing skills. Realistic and measurable milestones and timelines must also inform the initiatives to manage expectations and show tangible progress over time.⁶⁵

Figure 5: Capacity Building Pillars



Source: Anthony Paul, ‘Presentation During the Local Content Scenarios Building and Dialogue Forum’, 28-29 May 2018, Intercontinental Hotel, Nairobi

⁶⁵ IPIECA, *Local content strategy: A guidance document for the oil and gas industry*, IPIECA, London, United Kingdom, 2011.

Issue 5: County Level Perspectives on Local Content

How can county governments contribute towards in-country value addition especially in relation to extractives? What are the current initiatives undertaken by county governments towards building local capacity to engage in the extractives sector? Are there any impediments that county governments are experiencing towards supporting their constituent members to actively engage and benefit from the extractives sector?

One of the roles of County Governments under the Fourth Schedule of the Constitution 2010 is to ensure and coordinate the participation of communities in governance at the local level and assist them to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level. Based on this, there was consensus that county governments have contributed significantly towards infrastructural development and capacity building, and trainees have been absorbed in local and international companies. For instance, the County Government of Taita Taveta is collaborating with Taita Taveta University and Germany to enhance mineral production through capacity building of miners and exchange in knowledge for value addition.⁶⁶ However, stakeholders identified information asymmetry as one of the key impediments that hinder the participation of most county governments in Local Content development. There is little understanding of “local” content among communities and policy makers at the country level.

To address this, there was a call for the sensitization and education of communities to demystify Local Content issues in each sector and enable them take advantage of available opportunities. There is need of partnership between County Government and the national government to create awareness and identify areas where value addition opportunities exist along the oil and gas value chain with respect to various goods and services and focus on building human and supply capabilities in those areas. This should include auditing of the available natural resources and how they can be utilized sustainably for the benefit of county residents. For instance, Turkana County Government, having reached an agreement on oil revenue sharing, should now focus on capacity building to increase the local population’s share of employment and business opportunities in the sector. The skills and enterprises should be as diverse and transferable as possible to allow application along and beyond the petroleum sector value chain.

Further, there was consensus that the challenges in the current petroleum legislation will be better addressed when the Petroleum (Exploration, Development and Production) Bill 2017 becomes law. This, however, requires adequate public participation, separation of personal and community interests and carrying out of due diligence to ensure all stakeholders, including ward representatives, play a role in the discussions leading to the passage of the Bill.

WAY FORWARD






Local Content is an eco-system of its own having many players and interdependent processes. Lessons from Brazil indicate that everything that can be done in Kenya must be done in Kenya to promote local market and industry. However, implementing this in Kenya might be difficult in light of the current regulatory environment, infrastructure conditions, as well as the quality of education vis-à-vis the exacting standards of the industry.

⁶⁶ Ben Jackson, ‘County woes learning institutions for enhanced mineral production’ Hivisasa, March 2018 <https://hivisasa.com/posts/county-woes-learning-institutions-for-enhanced-mineral-production> accessed 21 June 2018.

Kenya needs to understand what is available for the country, what is missing and what the country is looking for. This means that the country needs to contextualize where it is first so as to understand where it is going and reduce this into a realistic strategic plan for in-country value addition. It is also imperative to understand the oil and gas full value chain to determine the value that is to be derived from Local Content. This can be done by breaking down the areas of spend. It is important to note that one cannot participate in the sector unless they have the capacity. If procurement strategies are not right, then locals cannot participate. Therefore, procurement strategies and capacity development need to be addressed so as to allow locals to participate in the oil and gas sector. It is also important to have a good governance framework informed by transparency and accountability principles as enshrined in Article 10 and 232 of the Constitution of Kenya, 2010.

ANNEX 1: INTERNATIONAL BEST PRACTICES ON LOCAL CONTENT

This section identifies Local Content scenarios from six countries: Oman, Brazil, Norway, Trinidad and Tobago, Ghana and Nigeria. The choice of these case studies is largely based on the length of the country's experience with Local Content in the form of in-country development policy and legislative frameworks.

Country	 Brazil	 Nigeria	 Norway	 Ghana	 Trinidad & Tobago
Legislative & Policy Framework	Brazil's Oil Law of 1997 (No. 9478/97) sets out the general LC principles. ⁶⁷ <i>Decree Nº 8.637 of January 15, 2016</i> eases some of the Local Content requirements. The Tender Protocol and the Model Contract 2015 set out the specific Local Content obligations.	Nigerian Content Policy, 2000; Oil and Gas Industry Content Development Act, 2010	Norway Local-content Law (Art. 54 of the Royal Decree of 1972); Petroleum Act 1985; Petroleum Act No. 72 of 1996; Petroleum Regulations 1997; 1974 and 1979 Licenses	Local Content and Local Participation in Petroleum Activities Policy, 2010; Petroleum (Local Content and Local Participation) Regulations, 2013. ⁶⁸	Petroleum Act and Regulations Chap. 62:01. Regulations 42 (f) and (g) deal with employment and training. Local Content & Local Participation Policy & Framework, 2004 – non-binding Vision 2020 strategic plan of 2005 complements LC with educational and industrial policies. ⁶⁹
Focus	Bidding rounds for Concession and Production Sharing Contracts. LC covers: <ul style="list-style-type: none"> • Procurement Requirements; • Technology Transfer Requirements; • Monitoring and Enforcement Mechanisms; and • Government Obligations in Support of the Companies' Programs. 	Indigenous participation and domiciliation. LC covers <ul style="list-style-type: none"> • Employment Requirements; • Procurement Requirements; • Training Requirements; • Technology Transfer Requirements; • Monitoring and Enforcement Mechanisms; and • Government Obligations in Support of the Companies' Programs. 	In-country procurement LC covers: <ul style="list-style-type: none"> • Employment Requirements; • Procurement Requirements; • Training Requirements; • Technology Transfer Requirements; and • Monitoring & Enforcement Mechanisms 	Oil concessions, in-country fabrication, procurement & services. LC covers <ul style="list-style-type: none"> • Employment Requirements; • Procurement Requirements; • Training Requirements; • Technology Transfer Requirements; • Monitoring & Enforcement Mechanisms; and • Government Obligations in Support of the Companies' Programs 	In-country fabrication <ul style="list-style-type: none"> • Employment Requirements; • Procurement Requirements; • Training Requirements; • Monitoring and Enforcement Mechanisms; and • Government Obligations in Support of the Companies' Programs.
Definition of Local Content	Local Content means the proportion between the value of the goods produced and services rendered in Brazil in accordance with the terms of the Model Contract 2015 and the total value of the goods used and services provided for this purpose.	LC is "the quantum of composite value added to or created in the Nigerian economy by a systematic development of capacity and capabilities through deliberate utilization of Nigerian human, material resources and	There is no definition of "Local Content" in Norwegian law	LC is "the quantum or percentage of locally produced materials, personnel, financing, goods and services rendered in the petroleum industry value chain and which can be measured in monetary terms". ⁷¹ Regulation 9 provides "qualified <i>Ghanaians</i> " -	LC is the "maximizing the level of usage of local goods and services, people, businesses and financing." More specifically, Local Content and participation – collectively referred to as "local value-added" – is defined in terms of ownership, control, and

⁶⁷ Other laws include Regulation No. 6/2007 and Resolution No.36/200, ANP Regulation No. 8/2007 and Resolution No. 38/2007, which specifies the procedure for audit of Local Content certification; and ANP Regulation No. 9/2007 and Resolution No. 39/2007, which specifies the reporting procedure and format.

⁶⁸ Other relevant legal instruments include the Petroleum (Exploration and Production) Act 1984, Petroleum Commission Act, 2011 and the Model Petroleum Agreement.

⁶⁹ Tordo and Anouti, *Local Content in the Oil and Gas Sector: Case Studies*, 171.

	(Model Contract 2015, Art. 1.3.15). (Nationalistic approach)	service in the Nigerian oil and gas industry.” ⁷⁰ (Nationalistic approach)		Nationalistic approach	financing by citizens of T&T (nationalistic approach)
Institutional Responsibilities	<p>Petrobras plays a central role in enhancing the competitive basis for local suppliers and creating job opportunities.</p> <p>The National Energy Policy Council (CNPE) develops Brazil’s LC policy and the National Agency for Petroleum, Natural Gas and Biofuels (ANP) oversees its implementation.</p> <p>Program for the Mobilization of the Oil and Gas Industry (PROMINP) launched in 2003 to maximize goods and services (national industry content) within competitive and sustainable basis. PROMINP initiated the creation of Petrobras Supply Chain Financing Program offering competitive financing to suppliers contracted by Petrobras.</p>	<p>Act establishes the Nigerian Content Development and Monitoring Board (NCDMB) to monitor, coordinate, and implement the provisions of the Act and establishes the Nigerian Content Consultative Forum to provide the platform for information sharing. NCDMB conceived the Equipment Component Manufacturing Initiative (ECMI) in 2011, to address capacity gaps in supply of equipment to the petroleum sector from local manufacturers. Also established a joint qualification system</p>	<p>Norwegian Ministry of Petroleum and Energy (MPE) is mandated to implement Local Content policies and laws through regulations and licenses. The Research Council of Norway manages the research and development agreements and ties the oil and gas industry to the research institutes in Norway.</p>	<p>The Petroleum Commission is mandated under section 3(f) of the Petroleum Commission Act, 2011 to promote Local Content in petroleum activities. The Commission does this through the Local Content Committee, which oversees, coordinates and manages the implementation of Local Content.</p> <p>Ghana has established the Enterprise Development Centre (EDC) to provide support to Ghanaian SMEs so they can position themselves to take advantage of business opportunities in the oil and gas sector.</p> <p>A common qualification system is established to verify, monitor and evaluate companies and their Local Content implementation.</p>	<p>The Permanent Local Content Committee (PLCC) appointed in 2004 drives the implementation of LC. The PLCC creates and maintains LC database. Government oversees objectives and policy in order to maximize Local Content – identifies where local-added opportunity capture exists from the sector; and determines how to enable delivery of maximum local value-added.</p>
Monitoring & Enforcement	<ul style="list-style-type: none"> Companies are required to prove compliance with their LC obligations to ANP by presenting a Local Content Certificate issued by independent, ANP-accredited certifiers. Non-compliance by more than 65% attracts an ANP fine of 60% of the value of the non-achieved Local Content.⁷² 	<ul style="list-style-type: none"> Companies must submit annual Local Content reports called Nigerian Content Performance Reports. The NCDMB monitors and investigates companies in relation to their compliance with Local Content requirements. Penalties are prescribed – 5% of the “project sum”. 	<ul style="list-style-type: none"> The MPE has mandate to monitor and supervise compliance with laws. Enforcement mechanisms and penalties for non-compliance are not Local Content specific. 	<ul style="list-style-type: none"> Companies must submit annual Local Content reports. The Petroleum Commission may monitor and investigate companies in relation to their compliance with Local Content requirements. Penalties are prescribed – monetary fines and jail terms of up to 2 years. 	<p>Companies need to maintain records of Local Content expenditure and submit a detailed quarterly statement of Local Content.</p>

⁷¹ Regulation 49, *Petroleum (Local Content and Local Participation) Regulations*, (2013).

⁷⁰ Section 106, *Nigerian Oil and Gas Industry Content Development Act* (2010).

⁷² Herrera, Morales and Jarrín, ‘Local Content Frameworks in Latin American Oil and Gas sector: Lessons from Ecuador and Colombia’ 15.

ANNEX 2: LOCAL CONTENT SCENARIOS BUILDING AND DIALOGUE PROGRAMME

Developing a Sustainable In-Country Value Addition Strategy: Real-Time Policy Options for Kenya's Petroleum Sector

28th – 29th May 2018

DAY 1: SCENARIOS BUILDING WORKSHOP (28 th May 2018)		
MC: Davis Osoro, Extractives Strategist, Oxfam International		
Time	Topic	Person/Organization Responsible
8:00-8:30AM	Arrival and Registration	
8:30-9:00AM	Welcoming and Opening Remarks	Conveners
9:00-9.20AM	Oil & Gas Sector Brief with a Focus on Kenya	Sahil S.R. Shah, Policy & Strategy Advisor, Kenya Business Guide
9:20 – 10:00AM	Presentation of the Technical Paper on “Developing a Sustainable In-Country Value Addition Strategy: Real-Time Policy Options for Kenya’s Petroleum Sector”	Technical Validation Committee on Local Content - Represented by Mwendia Nyaga, CEO, Oil & Energy Services Limited
10:00-10:30AM	TEA BREAK	
Local Content Scenarios for the Petroleum Sector in Kenya		
10:30 – 11:15AM	An introduction to local content approaches and considerations. How to contextualize local content in emerging oil and gas-producing countries? How can Kenya align local content with national priorities, particularly manufacturing? What are the key considerations?	Key Expert: Anthony Paul, Principal Consultant Energy and Strategy, Association of Caribbean Energy Specialists Limited
11:15-12:00PM	Scenario 1: How to build local capacity and incentivize domestic employment, enhancement of the local supply chain	Key Expert: Anthony Paul, Principal Consultant Energy and Strategy, Association of Caribbean Energy Specialists Limited
12:00-1:00PM	Scenario 2: Enhancing local content across the entire value chain. How to embed transfer of knowledge and technology through joint venture efforts with locally owned entities	Key Expert: Anthony Paul, Principal Consultant Energy and Strategy, Association of Caribbean Energy Specialists Limited
1:00 - 2:00PM	LUNCH BREAK	
2:00- 2:45 PM	Scenario 3: Research, development, and innovation. How to increase value addition across the entire value chain	Anthony Paul, Principal Consultant Energy and Strategy, Association of Caribbean Energy Specialists Limited
2:45 - 3:00 PM	Review of the Day and Closing Remarks	Chair, Technical Validation Committee on Local Content – National Oil Corporation of Kenya

DAY 2: ROUNDTABLE AND PANEL DISCUSSIONS (29 th May, 2018)		
MC: Dr. Melba Kapesa Wasunna, Director, Extractives Baraza – Strathmore University		
8.00:8:30 AM	Arrival and Registration	
8:30 - 8:35AM	Welcoming Remarks	Conveners
8:35 – 8:40AM	Opening Remarks	Dr. Rose Ngugi, Executive Director, KIPPRA
9:00-9:30AM	Keynote Address	Ms. MaryJane Mwangi, CEO, National Oil Corporation of Kenya
9.30 – 10:00 AM	Key Lessons from Scenarios Building on Day 1	Technical Validation Committee on Local Content
10:00 – 10:30 AM	Overview of the scenarios from Day 1	Key Expert: Antony Paul, Principal Consultant Energy and Strategy, Association of Caribbean Energy Specialists Limited – world renowned local content expert
High Level Panel Discussion 1 – Developing a Sustainable In-County Value Addition Strategy – Going Beyond Oil & Gas		
Key Issues for Discussion:		
<ul style="list-style-type: none">What are the pros and cons of having an in-country value addition strategy pursuant to Vision 2030? Can this be feasible in places such as Turkana, which might prefer a petroleum-focused strategy due to marginalization?How can we develop a local content strategy that aligns with national priorities while taking into account industry changes and local dynamics?How has the Kenyan Government contributed towards in-country value addition through its diverse projects, such as the LAPSET? How can we measure local participation as a result of these projects?Does the petrochemical industry present any opportunities?		
10:30 - 11:15 AM	Panelists <ul style="list-style-type: none">Ms. MaryJane Mwangi , CEO, National Oil Corporation of KenyaOdenda Lumumba, CEO, Kenya Land Alliance and Chairman, KCSPOGMoses Njeru, CEO, Kenya Chamber of MinesIkal Angelei, Executive Director, Friends of Lake TurkanaAlaka Lugonzo, Coordinator, Association for Women in Energy and Extractives in Kenya (AWEIK) Moderator: Dr. Gathuru Mburu, Managing Director, Kipya Africa Ltd.	
11:15- 11:30 AM	Tea Break	
High Level Panel Discussion 2: Exploring the Interface between Government-Led and Private Sector-led Contributions to Local Content		
Key Issues for Discussion:		
<ul style="list-style-type: none">Should the government or private sector drive local content agenda in the oil and gas sector? What has been their respective experience so far? What is the potential of private sector driven development?		

<ul style="list-style-type: none"> • How can the private sector embed transfer of knowledge, technology and innovation through joint venture efforts with locally owned entities? • What lessons can be borrowed from other sectors especially the mining sector? 	
11:30 AM -12:15 PM	<p>Panelists</p> <ul style="list-style-type: none"> • Susan Munyori, Local Content Manager, Tullow Oil/KOGA • Wangechi Muriuki, Country Manager, Invest in Africa – Kenya • Elizabeth Rogo, Founder &CEO, Tsavo Oilfield Services Limited • Mwendia Nyaga, Chief Executive Officer, Oil & Energy Services Limited • Jeff Alondo, Head, Enterprise Banking, Stanbic Bank Kenya Limited <p>Moderator: Eng. James Mwangi, CEO, Kurrent Technologies Ltd.</p>
<p align="center">High Level Panel Discussion 3: Linking Policy and Practice</p> <p>Key Issues for Discussion:</p> <ul style="list-style-type: none"> • How does the government maximize development of local content across industry sectors? • How can home governments (foreign governments where companies are registered), private sector and host governments strengthen policies and regulations towards maximizing local firms’ ability to participate in global supply chains? • How can private sector interests help Kenya develop a strong local content policy? • What gaps have impeded the formulation of a local content policy in Kenya? • How can we push the correlation between county and national govern towards a common agenda for local content development? 	
12:15-1:00PM	<p>Panelists:</p> <ul style="list-style-type: none"> • H.E. Hon. Francis Kimemia, Chairperson, Infrastructure & Energy Committee,Council of Governors • Becha Hadley, Executive Director, CANCO/KOGWG • Dr. Korir Sing’Oei, Head of Legal Team, Executive Office of the Deputy President • Joseph Emathe Namuar, Ministry of Water Services, Environment & Mineral Resources, Turkana County Government • Ken Kiumbe, Head of Corporate Planning and Strategy - National Oil Corporation of Kenya • Dr. Chris Kiptoo, Principal Secretary, State Department of Trade, Ministry of Industry, Trade and Co-operatives <p>Moderator: Doris Mwirigi, Managing Director & CEO - Energy Solutions Africa Ltd</p>
1:00-2:00PM	LUNCH BREAK
<p align="center">High Level Panel Discussion 4: Skills & Capacity Building in Kenya’s Petroleum Sector</p> <p>Key issues for Discussion</p> <ul style="list-style-type: none"> • How can we build local capacity and incentivize domestic employment, research and innovation in the emerging oil and gas sector? • How do we strike a balance between technical level and degree level skills? Why should the youth be interested in the technical skills? • How can the local supply chain be strengthened to become competitive? 	

2:00- 3:00 PM	Panelists <ul style="list-style-type: none">• Dr. Kevit Desai, Principal Secretary, TVET- Ministry of Education• Prof. Catherine Ngila, Deputy Director, Training, Academic & Linkages – Morendat Institute of Oil & Gas, KPC• Dr. William Otta Osawa, Manager, Standards and Compliance, Technical & Vocation Education and Training Authority• Andrew Olea, Project Manager, Eastlands College of Technology• Malcolm Marega, Director, Optisafe (K) Ltd• Eva Kigo, Program Manager, Lundin Foundation• Brian Muriuki, Chairperson, Kenya Oil and Gas Association Moderator: <i>Gilbert Makore, East Africa Regional Advisor on Extractive Industries, Oxfam International</i>	
High Level Panel Discussion 5: County Level Perspectives on Local Content		
Key issues for Discussion <ul style="list-style-type: none">• How can county governments contribute towards in-country value addition especially in relation to extractives?• What are the current initiatives undertaken by county governments towards building local capacity to engage in the extractives sector?• Are there any impediments that county governments are experiencing towards supporting their constituent members to actively engage and benefit from the extractives sector?		
3:00- 3:40 PM	Panelists <ul style="list-style-type: none">• H.E. Hon. Majala Mlagui, Deputy Governor, County Government of Taita Taveta• Sen. Fatuma Dullo, Isiolo County• Sen. Ledama Olekina, Narok County Moderator: <i>Ms. Gloria Wawira, Legislative Associate, Parliament of Kenya</i>	
3:40– 4:00 PM	<ul style="list-style-type: none">• Way Forward• Closing Remarks and Forum Closure	<ul style="list-style-type: none">• Forum Conveners• Chair, Technical Validation Committee on Local Content – National Oil Corporation of Kenya

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