



UNIVERSITEIT VAN PRETORIA  
UNIVERSITY OF PRETORIA  
YUNIBESITHI YA PRETORIA

**CRITICAL ANALYSIS OF THE IMPACT OF LOCAL CONTENT REQUIREMENTS ON THE RIGHTS OF WOMEN  
IN UGANDA'S EXTRACTIVE INDUSTRY**

**By**

**DICKINSON LONY AKENA  
(Student No. u19326913)**

Submitted in partial fulfillment of the requirements for the degree

**LLM IN EXTRACTIVE INDUSTRY LAW IN AFRICA**

Prepared under the supervision of

Adv. Leonardus J. Gerber

Department of Public Law

Faculty of Law

University of Pretoria

[NOVEMBER 2019]

# DECLARATION OF ORIGINALITY

UNIVERSITY OF PRETORIA

Full names of student: **DICKINSON LONY AKENA**

Student number: **u19326913**

Topic of work: **CRITICAL ANALYSIS OF THE IMPACT OF LOCAL CONTENT REQUIREMENTS ON THE RIGHTS OF WOMEN IN UGANDA'S EXTRACTIVE INDUSTRY**

## Declaration

1. I understand what plagiarism is and am aware of the University's policy in this regard.
2. I declare that this mini dissertation is my own original work. Where other people's work has been used (either from a printed source, Internet or any other source), this has been properly acknowledged and referenced in accordance with departmental requirements.
3. I have not used work previously produced by another student or any other person to hand in as my own.
4. I have not allowed, and will not allow, anyone to copy my work with the intention of passing it off as his or her own work.

SIGNATURE



## **ACKNOWLEDGEMENTS**

I dedicate this dissertation to my parents; my late mother Rosette Adong Lony (MHSRIP), whose words of encouragement to always pursue my dreams still ring aloud in my ears; to my father, J.J. Lony – words cannot express the gratitude I have towards a retired civil servant who cherishes education and service to people.

I am grateful to my supervisor, Adv. Leonardus J. Gerber, who made me pursue this course by a strange stroke of coincidence; the invaluable guidance he rendered to me during the course is much appreciated.

## ABSTRACT

This research report analyses Uganda's legal requirements on local content, particularly its impact on the rights of women to participate and obtain benefit from extractive industry activities. Regard is had to the fact that much of Africa's non-renewable natural resources have not been applied to the benefit of its peoples. Resultantly, governments have developed legislation and other requirements to among others, attract foreign direct investment without unnecessarily disadvantaging the nationals.

The discussion considers the situation in other common law countries – specifically Tanzania and South Africa – as well as the implications of obligations imposed on member countries by international treaties, agreements and frameworks. The research is anchored on the need to improve on the livelihood of women in extractive industries and thereby examines the implications of the law on their rights. The study then delves into a critical review of the effectiveness of the local content legal framework in Uganda and also draws lessons from Tanzania and South Africa for purposes of comparison. The study narrows the discussion to the problem of law and policy making which end up excluding and disadvantaging women. Recommendations made are intended to contribute to the body of knowledge in the extractives sector generally and on the local content stipulations and their impact on the rights of women specifically.

Recommendations include; embracing gender inclusiveness and taking into account women's views in policy and law making, balancing political rhetoric and agenda with the need to secure women's participation, as well as setting specific quotas to be complied with by extractives companies are paramount. Further, encouragement of women to participate in extractive industry activities, development of more cohesive and gender inclusive policies as well as adoption of a strategy approach in extractive industry policy making. Also, eradication of archaic practices which exclude women from participating in and taking direct benefits in extractives activities. Much as the local content requirements in Uganda are designed to engender equality and equity, more still needs to be done to enhance women's rights in the extractive industry.

## **LIST OF ACRONYMS**

GATT	General Agreement on Trade and Tariffs
MEMD	Ministry of Energy and Mineral Development
MMPU	Mining and Mineral Policy for Uganda, 2018
MNC	Multi-national companies
MPRDA	Mineral and Petroleum Resources Act, 2002
PAU	Petroleum Authority of Uganda
PCRTMSA	The Petroleum (Conversion, Refining, Transmission and Midstream) (Storage) Act, 2013
PEDPA	Petroleum (Exploration, Development and Production) Act, 2013
STAMICO	State Mining Company
TPDC	Tanzania Petroleum Development Corporation
TRIMS	Trade-Related Investment Measures
WiM	Women in Mining
WTO	World Trade Organisation

## **KEYWORDS**

(Economic, enablers, extractive, gender, local content, minerals, parameters, petroleum, women's rights)

## TABLE OF CONTENTS

<b>DECLARATION OF ORIGINALITY .....</b>	<b>2</b>
<b>ACKNOWLEDGEMENTS .....</b>	<b>3</b>
<b>ABSTRACT .....</b>	<b>4</b>
<b>LIST OF ACRONYMS .....</b>	<b>5</b>
<b>KEYWORDS .....</b>	<b>5</b>
<b>CHAPTER 1: INTRODUCTION .....</b>	<b>8</b>
1.1. BACKGROUND TO THE STUDY .....	8
1.2. AIMS AND OBJECTIVES .....	10
1.2.1. <i>Aims</i> .....	10
1.2.2. <i>Objectives of the study</i> .....	10
1.3. RESEARCH QUESTIONS .....	11
1.3.1. <i>Primary research question</i> .....	11
1.3.2. <i>Secondary research questions</i> .....	11
1.4. METHODOLOGY .....	11
1.4.1. <i>Research methodology</i> .....	11
1.4.2. <i>Research parameters</i> .....	11
1.4.3. <i>Limitations</i> .....	12
1.4.4. <i>Motivation for supporting case studies</i> .....	12
1.5. RELEVANCE OF THE STUDY .....	12
1.6. CHAPTER OVERVIEW .....	12
<b>CHAPTER 2: CONTEXTUALIZATION OF THE LOCAL CONTENT LEGAL FRAMEWORK IN UGANDA .....</b>	<b>13</b>
2.1. INTRODUCTION .....	13
2.2. LOCAL CONTENT REQUIREMENTS IN THE PETROLEUM SECTOR IN UGANDA .....	14
2.3. LOCAL CONTENT REQUIREMENTS IN THE MINERAL SECTOR IN UGANDA .....	17
2.4. WOMEN’S RIGHTS AND THE SOCIO-ECONOMIC DEBATE .....	19
2.4.1. <i>Enablers of women participation in extractive industries</i> .....	20
2.5. CONCLUSION .....	22
<b>CHAPTER 3: LESSONS FROM OTHER JURISDICTIONS – TANZANIA AND SOUTH AFRICA .....</b>	<b>24</b>
3.1. INTRODUCTION .....	24
3.2. THE CASE OF TANZANIA .....	24
3.3. THE CASE OF SOUTH AFRICA .....	29
3.3.1. <i>Black Economic Empowerment and the local content requirements</i> .....	29
3.4. WOMEN’S RIGHTS AND THE SOCIO-ECONOMIC DEBATE .....	30
3.5. CONCLUSION .....	32
<b>CHAPTER 4: APPLICATION OF THE BEST PRACTICES IN THE CONTEXT OF UGANDA .....</b>	<b>34</b>
4.1. INTRODUCTION .....	34
4.2. EFFECTIVENESS OF THE LEGAL REGIME ON PARTICIPATION AND PROCUREMENT .....	34
4.2.1. <i>Beyond the law</i> .....	37

4.3.	LOCAL CONTENT AND ENABLERS OF WOMEN’S PARTICIPATION.....	38
4.4.	CONCLUSION.....	42
<b>CHAPTER 5: CONCLUSIONS AND RECOMMENDATIONS.....</b>		<b>44</b>
5.1.	INTRODUCTION.....	44
5.2.	EMBRACING THE LAW AND GOOD PRACTICE – WHAT WAY FORWARD? .....	44
5.2.1.	<i>Recommendations</i> .....	46
5.3.	CONCLUSION.....	48
<b>BIBLIOGRAPHY.....</b>		<b>49</b>
PRIMARY SOURCES .....		49
	<i>Statutes, Statutory Instruments and Policies</i> .....	49
	<i>Treaties</i> .....	49
SECONDARY SOURCES.....		50
	<i>Journal articles</i> .....	50
	<i>Books</i> .....	51
	<i>Online sources</i> .....	51
	<i>Reports</i> .....	51

# CHAPTER 1: INTRODUCTION

## 1.1. Background to the study

The extractive industry in Africa is generally not fully developed, with very limited expertise and specialisation, to enable the citizens of its mineral-rich states to harness benefits associated with extraction.<sup>1</sup> One way to redress the challenge of skills gap is to develop local content policies which create linkages with other sectors of the economy.<sup>2</sup> Historically marginalized by societies, women have borne the brunt of the adverse effects, like displacement and environmental damage, associated with extraction of non-renewable natural resources.<sup>3</sup>

States hold the mineral resources in trust for their citizens.<sup>4</sup> Participation in the extraction value-chain is permitted according to the existing legal and policy framework.<sup>5</sup> Women's participation in extractive activities varies from providing support services to men, suppliers and also as casual labourers, especially in artisanal and small scale mining. Local content requirements seek to provide for involvement of women either at corporate level or as part of the human resource as well as actors in the extractives value chain.

Accordingly, the study analyses the local content legal framework in the extractive industry in Uganda, which springs from the national constitution.<sup>6</sup> Further, the study analyses other pieces of legislation and policies which regulate the extractive industry sectors of mining and hydrocarbons.<sup>7</sup> The study also argues

---

<sup>1</sup> C. Nwapi. *A Survey of the Literature on Local Content Policies in the Oil and Gas Industry in East Africa*. The SPP Research Paper (2016). Vol. 9 Issue 6. Available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2764501](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2764501)

<sup>2</sup> *Ibid.*

<sup>3</sup> International Council on Mining and Metals (ICMM) (2012), *Mining's contribution to Sustainable Development – An overview*, at 5. Available at: [https://learn-eu-central-1-prod-fleet01-xythos.s3-eu-central-1.amazonaws.com/5bfc08ba3f1dc/1833518?response-content-disposition=inline%3B%20filename%2A%3DUTF-8%27%27ICMM%252C%2520Mining%25E2%2580%2599s%2520contribution%2520to%2520Sustainable%2520Development%25202002.pdf&response-content-type=application%2Fpdf&X-Amz-Algorithm=AWS4-HMAC-SHA256&X-Amz-Date=20191005T114046Z&X-Amz-SignedHeaders=host&X-Amz-Expires=21600&X-Amz-Credential=AKIAIZ3QX2YUHH4E0O3A%2F20191005%2Feu-central-1%2Fs3%2Faws4\\_request&X-Amz-Signature=d18efe31237a6fa6bf1e4ed790fb05d6c0024f756d0ea12b904256623513aa7f](https://learn-eu-central-1-prod-fleet01-xythos.s3-eu-central-1.amazonaws.com/5bfc08ba3f1dc/1833518?response-content-disposition=inline%3B%20filename%2A%3DUTF-8%27%27ICMM%252C%2520Mining%25E2%2580%2599s%2520contribution%2520to%2520Sustainable%2520Development%25202002.pdf&response-content-type=application%2Fpdf&X-Amz-Algorithm=AWS4-HMAC-SHA256&X-Amz-Date=20191005T114046Z&X-Amz-SignedHeaders=host&X-Amz-Expires=21600&X-Amz-Credential=AKIAIZ3QX2YUHH4E0O3A%2F20191005%2Feu-central-1%2Fs3%2Faws4_request&X-Amz-Signature=d18efe31237a6fa6bf1e4ed790fb05d6c0024f756d0ea12b904256623513aa7f) (last accessed on 5<sup>th</sup> October 2019).

<sup>4</sup> World Bank (2010). *Granting Mineral Rights. A Good Practice Note*, at 3.

<sup>5</sup> P.D. Cameron, and M.C. Stanley, *Oil, Gas, and Mining: A sourcebook for understanding the extractive industries* (World Bank, 2017) at 58.

<sup>6</sup> The Constitution of the Republic of Uganda (1995) (as amended). Art. 244.

<sup>7</sup> The Mining Act, 2003; Petroleum (Exploration, Development and Production) Act (3 of 2013) ('PEDPA') (Uganda);

that the exploitation of and benefits accruing to nationals from non-renewable natural resources in Africa generally, has been a mix of hope and contradictions. As a result, efforts have overtime been undertaken by governments to redress historical imbalances which excluded most nationals, in particular women, from participating in and harnessing the benefits associated with extraction.

Local content has no universal meaning and countries adopt definitions most suitable for their unique circumstances, in addition to the development agenda pursued by the government of the day.<sup>8</sup> The study takes cognisance of varying meanings of local content which in certain instances have led to a country having separate and disparate policies in the oil, gas and mining.<sup>9</sup> In the context of the study S. Tordo, *et al*, provide a working definition of local content as “...the extent to which the output of the extractive industry sector generates further benefits to the economy beyond direct contribution of its value-added, as through links to other sectors.”<sup>10</sup>

As stated above,<sup>11</sup> countries have developed local content policy and legal frameworks covering contracting, employment, supplies by local players and sometimes even stipulating quotas.<sup>12</sup> In addition to other requirements to be complied with by the extractives companies, the extent of the benefits accruing to women, particularly, is yet to be seen. The inadequacy of capacity and skills by the local population to partake of the ring-fenced allocations could be partly responsible for the lack of ‘local benefit’.<sup>13</sup> The study advances the viewpoint that local content development should be driven by state-owned companies which should ensure gender inclusiveness especially “to the traditionally disadvantaged portions of the population.”<sup>14</sup> Further, the study advances the view that a sound legal framework should live up to the expectations of investors and also deliver real socio-economic returns to

---

The Petroleum (Conversion, Refining, Transmission and Midstream) (Storage) Act (4 of 2013) ('PCRTMSA').

<sup>8</sup> S.Tordo, *et al*; *Local Content Policies in the Oil and Gas Sector*. The World Bank. at 4. Available at: <http://documents.worldbank.org/curated/en/549241468326687019/pdf/Local-content-in-the-oil-and-gas-sector.pdf> (Last accessed on 1<sup>st</sup> October 2019).

<sup>9</sup> SEGOM; *Local Content Policies in the Oil, gas and Mining Sectors* (2013); at 5.

<sup>10</sup> *Supra*, at p.1.

<sup>11</sup> P.D. Cameron and M.C. Stanley, (2017), *Supra*.

<sup>12</sup> Mineral and Petroleum Resources Development Act (28 of 2002) (South Africa); PEDPA, ss. 124-127; The Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, (4 of 2013) ss.52-55; The Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, 4 of 2013(Uganda), ss. 52-55; Petroleum (Exploration, Development and Production)(National Content)(Regulations) S.I. 44 of 2016; Reg.9-23 (Uganda)

<sup>13</sup> P.D. Cameron and M.C. Stanley, (2017), *supra*, at 65.

<sup>14</sup> SEGOM; *Supra*, at p. 12.

the Government. In addition, the nationals should harness the benefits of extraction in the mining country where equity is ensured without fronting the interests of one group over the other.<sup>15</sup>

The study entails a review of Uganda's local content legal framework. It also takes into account international best practice as well as the need for conformity and consistency with its international obligations such as those under the World Trade Organization (WTO).

Therefore, the study seeks to analyse the effectiveness of the local content legal framework and its implications on gender equity. Particular regard is had to the socio-economic rights of women;<sup>16</sup> who invariably bear the brunt of the adverse effects from extractive industry activities, such as displacement, environmental effects like pollution of water sources and air, employment-related challenges, *inter alia*.

## **1.2. Aims and objectives**

### *1.2.1. Aims*

This study seeks to interrogate the local content stipulations in Uganda and other jurisdictions, as well as international best practice, and assess its implications on gender equity. Specific emphasis is placed on the socio-economic rights of women in the extractive industry. To achieve this, an in-depth analysis of the effectiveness of the local content legal framework was undertaken.

### *1.2.2. Objectives of the study*

In order to achieve the research aim, a number of supporting objectives need to be met. These include to conduct an in-depth analysis of Uganda's local content requirements as well as international best practice in the extractives industry. The study further assesses the implications of the legal stipulations of local content on gender equity, particularly their effectiveness in the enhancement of the socio-economic rights of women by extractive industries.

Since Uganda is a member of international organizations like the World Bank;<sup>17</sup> and the World Trade Organisation;<sup>18</sup> a review of some of the international instruments and agreements, such as the Agreement

---

<sup>15</sup> World Bank (2010), *Supra*, at p.4

<sup>16</sup> ICMM (2012). *Supra*, at 5.

<sup>17</sup> Uganda became a member on 27<sup>th</sup> Sep 1963. Available at: <http://www.worldbank.org/en/about/leadership/members> (Last accessed 8<sup>th</sup> June 2019).

<sup>18</sup> Uganda became a member on 1<sup>st</sup> January 1995. Available at: [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org6\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm) (Last accessed on 8th June 2019).

on Trade-Related Investment Measures ('TRIMS') which are likely to affect the implementation of the local content laws will be conducted.

### **1.3. Research questions**

#### *1.3.1. Primary research question*

- (i) The primary question of this research was to determine the efficacy of local content legal frameworks in facilitating the socio-economic rights of women in the extractive sector in Uganda.

#### *1.3.2. Secondary research questions*

- (i) What is the legal framework for local content and the rights of women in Uganda?
- (ii) How have other jurisdictions provided for women participation in the extractives industries? The case of Tanzania and South Africa.
- (iii) How can the best practices in other jurisdictions be applied in the context of Uganda?

### **1.4. Methodology**

#### *1.4.1. Research methodology*

This methodology followed includes an in-depth critical analysis of the local content legal framework of Uganda. This is augmented by a review of other common law jurisdictions. The research is conducted via a desktop analysis of legislation, policy documents,<sup>19</sup> reports, literature studies, as well as other relevant documents.

#### *1.4.2. Research parameters*

The study is limited to a discussion of the legal framework on local content with a specific bias towards the enhancement of the socio-economic rights of women. This, notwithstanding the general impact on the wider community in the extractives sector. Women participation in the extractives sector will be analysed against the backdrop of, for instance, their guaranteed participation at national level including board composition as opposed to not being reflected at lower levels of national participation. The study

---

<sup>19</sup> Mining and Mineral Policy for Uganda (2018) (MMPU); National Oil and Gas Policy for Uganda (2008).

identifies five parameters in Chapter 2, Section 2.4.1, against which the impact of local content requirements will be tested.

#### *1.4.3. Limitations*

The study is constrained by the lack of academic literature on local content and the rights of women in Uganda's extractives industry. To mitigate this limitation, the study makes reference to other sources like publications of the World Bank, International Council on Mining and Minerals.

#### *1.4.4. Motivation for supporting case studies*

The case studies of Tanzania and South Africa is for comparison purposes and intended to enrich the study with lessons from these jurisdictions. Further, the study is motivated by the possible lessons which can have a bearing or influence on Uganda's legal stipulations from local content requirements and best practices.

### **1.5. Relevance of the study**

The study is intended to contribute to the body of knowledge for future research studies in extractives industries particularly on the rights of women. The use of lessons from other jurisdictions and international best practice will be important to analyse how the rights of women are affected by local content stipulations. The study will also make recommendations for future studies.

### **1.6. Chapter overview**

Chapter 1 sets out the parameters of the study by providing a brief background to the study. It also highlights the need to determine the efficacy of local content requirements on the socio-economic rights of women in the extractive industry in Uganda. Chapter 2 takes it further and contextualizes the current legal framework with the objective of assessing the impact thereof on the rights of women. Chapter 3 analyses the local content regime and how Tanzania and South Africa have provided for women participation in the extractives industries. Chapter 4 presents an evaluation of the data and potential best practices which may be applicable to Uganda. Finally, Chapter 5 presents conclusions and recommendations from the study.

## CHAPTER 2: CONTEXTUALIZATION OF THE LOCAL CONTENT LEGAL FRAMEWORK IN UGANDA

### 2.1. Introduction

This chapter will contextualize the Ugandan legal framework on local content and also analyse its impact on the rights of women. Local content development is a key and integral part of harnessing the benefits which accrue from the extractives industry value chain. The study of the local content requirements in this regard will provide an insight into the impact of the legal stipulations on the rights of women in the extractive sector.

Oil as a natural resource was discovered in Uganda around 1920s by the colonial administration “...when natural oil seeps were first identified in the [Albertine Graben]”.<sup>20</sup> However, heightened exploration works gained momentum after independence in the 1960s before Government ultimately committed to pursue commercial exploration which culminated in the enactment of the *Petroleum (Exploration and production) Act*.<sup>21</sup>

The promulgation of the Constitution in 1995 heralded a new dawn of constitutionalism: the promotion and protection of human rights of persons and groups as enshrined in the bill of rights.<sup>22</sup> Indeed local benefit, as couched in Uganda’s legal framework on extractive industries, is intended to provide an array of benefits from the operations of extractive industry players to the citizens.<sup>23</sup> This framework, which is steeped in the Constitution,<sup>24</sup> has found realization in the Petroleum (Exploration, Development and Production) Act and the MMPU.

---

<sup>20</sup> David M. Anderson and Adrian J. Browne, ‘The Politics of Oil in Eastern Africa’, *Journal of Eastern African Studies* 5,2 (2011), pp.369-410, at 373. Available at: <https://doi.org/10.1080/17531055.2011.573187> (last accessed 30th October 2019).

<sup>21</sup> Cap.150, Laws of Uganda. Repealed by the *Petroleum (Exploration, Development and Production) Act 3 of 2013* (‘PEDPA’).

<sup>22</sup> Constitution of the Republic of Uganda 1995. Chapter 4, Art. 20 – 58.

<sup>23</sup> PEDPA. Ss 125-127. MMPU. Objective 9; Strategy 9.

<sup>24</sup> Constitution of the Republic of Uganda 1995. Art.244.

However, the Mining Act, 2003 is ominously silent on the local benefit which should accrue to the local population from the mining activities. To address this *lacuna*, government developed a new *Mining and Mineral Policy for Uganda (2018) (MMPU)*;<sup>25</sup> thereby paving the way for a new legal regime. The petroleum exploration, extraction and production sector has also undergone a review, with substantive laws to regulate its operations enacted.<sup>26</sup>

## 2.2. Local content requirements in the petroleum sector in Uganda

The oil and gas sector underwent a review which culminated in the *National Oil and Gas Policy for Uganda 2008*. This was the precursor to the present *Petroleum (Exploration, Development and Production) Act 3 of 2013 ('PEDPA')*, the *Petroleum (Refining, Conversion, Transmission and Midstream) (Storage) Act 4 of 2013*, and their associated subsidiary regulations.<sup>27</sup> The oil and gas policy recognises the fact that non-renewable natural resources like oil and gas potentially present opportunities for employment, wealth creation and economic transformation of a country.<sup>28</sup> To this end, the policy has, as one of its strategic objectives, the promotion of “employment of Ugandans in the oil and gas sector.”<sup>29</sup>

The PEDPA local content requirements are intended to leverage – through employment and production linkages – the benefits of the oil and gas commercialisation.<sup>30</sup> The PEDPA provides, as one of its purposes, for the development of local content in the petroleum industry.<sup>31</sup> Indeed, this enactment covers provision of goods and services,<sup>32</sup> training and employment,<sup>33</sup> and training and technology transfer.<sup>34</sup>

Generally, these provisions are not specific about the participation of women in the petroleum sector. Recognition of women’s right to participate here basically relates to the composition of the *Petroleum*

---

<sup>25</sup> Gained Cabinet approval in 2018.

<sup>26</sup> See footnote 5; PEPDPA, PCRTMSA.

<sup>27</sup> Examples include: The Petroleum (Exploration, Development and Production) (Local Content) Regulations. S.I. 4 of 2016.

<sup>28</sup> National Oil and Gas Policy for Uganda 2018. at p.1.

<sup>29</sup> *Idem*. Objective 7(f). at p.27.

<sup>30</sup> R. Sen, *Enhancing Local Content in Uganda’s Oil and Gas Industry*, WIDER Working Paper 2018/110 (UNU-WIDER, 2018) at 1. Available at: <https://www.wider.unu.edu/sites/default/files/Publications/Working-paper/PDF/wp2018-110.pdf> (Last accessed on 1<sup>st</sup> October 2019).

<sup>31</sup> PEDPA. S.1 (f).

<sup>32</sup> *Idem*. S.125.

<sup>33</sup> *Ibid*. S.126.

<sup>34</sup> *Idem*. S.127.

*Authority of Uganda* (PAU) board of directors which board should have at least three women out of seven members.<sup>35</sup> In fact, as of November 2019, the composition of the Board of Directors of the PAU appointed in 2015,<sup>36</sup> satisfies the legal requirement with the Board Chairperson being a woman.<sup>37</sup> As such, the impact of the local content requirements will be addressed from the general viewpoint on national participation and national content.

Whilst the participation of women is fostered and guaranteed at board level, this is not reflected at lower levels of national participation. Be that as it may, a licensee, including its contractors and sub-contractors, is required in acquiring supplies to have preference for goods made in or available in Uganda and services rendered by Ugandan citizens and companies.<sup>38</sup> Where the goods and services are not available in Uganda, the licensee is required to procure them from a joint-venture company in which the Ugandan counter-part controls at least 48% shareholding.<sup>39</sup> Such local companies are also required to have capacity to make value addition to the goods and services to satisfy the health, safety and environmental standards as required by the licensee.<sup>40</sup>

The nature of Ugandan companies may present implementation challenges since the Companies Act, 2012, does not prohibit formation of a company by non-Ugandans provided it is incorporated in Uganda.<sup>41</sup> Given that the goods and supplies required by the petroleum industry are generally of a specialised nature, it may be easier for foreign nationals to establish businesses in-country. This enables them to take advantage since the local companies and citizens may not necessarily have the skills and specialized goods or equipment needed by licensees to operate.

---

<sup>35</sup> *Idem*. S.17(2)(3).

<sup>36</sup> <https://www.pau.go.ug/about-us/profile/petroleum-exploration-history/> (Accessed on 17<sup>th</sup> November 2019).

<sup>37</sup> PAU, *The Board of Directors*. Available at: <https://www.pau.go.ug/about-us/profile/board-of-directors/> (last accessed on 17<sup>th</sup> November 2019).

<sup>38</sup> PEDPA. *Supra*. S.125(1).

<sup>39</sup> *Ibid*. S.125(2).

<sup>40</sup> *Ibid*. S.125(4)(a).

<sup>41</sup> Act 1 of 2012.

According to Hansen:<sup>42</sup>

*“A recent report commissioned by Uganda’s Petroleum Department estimates the share of total foreign investment in the petroleum sector that is retained in Uganda (and therefore can be used as a proxy for local content in service etc.) to be around 14 per cent... This suggests that local inputs are more often than not provided by foreign firms and service providers. Indeed, so far there have been few successful initiatives to promote local capacity or transform the [local] economy...”*

Regarding training and employment of Ugandans, the PEDPA requires a licensee to submit to the PAU a comprehensive training programme for recruitment and training of Ugandans within every twelve months.<sup>43</sup> The training programmes need to take into account gender, equity and host communities.<sup>44</sup> The licensee is prohibited from changing the training programme or scholarship without clearance from the PAU.<sup>45</sup> The licensee is further required to provide an annual report regarding the programme execution.<sup>46</sup>

The training and technology transfer component requires a licensee to have a clear and defined training for its Ugandan employees, which could be achieved in-country or abroad.<sup>47</sup> The licensee is also required to commit to technology transfer to Ugandans;<sup>48</sup> which shall be a shared responsibility with the Government.<sup>49</sup> This is intended to enable Ugandans to become self-reliant and also render their acquired skills elsewhere in national development.

Another piece of legislation, the *Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act (2013) (PRCTMSA)*;<sup>50</sup> provides local content requirements somewhat akin to the PEDPA. For its part however, the PRCTMSA is unequivocal when it provides that “... (t)he licensee, its contractors and

---

<sup>42</sup> Michael W. Hansen, et al. *The Political Economy of Local Content in African Extractives: Lessons from three African countries at 13*. Available at: [https://scholar.google.com/scholar?hl=en&as\\_sdt=0%2C5&q=Michael+W.+Hansen%2C+et+al.+The+Political+Economy+of+Local+Content+in+African+Extractives%3A+Lessons+from+three+African+countries&btnG=](https://scholar.google.com/scholar?hl=en&as_sdt=0%2C5&q=Michael+W.+Hansen%2C+et+al.+The+Political+Economy+of+Local+Content+in+African+Extractives%3A+Lessons+from+three+African+countries&btnG=) (last accessed on 1<sup>st</sup> October 2019).

<sup>43</sup> PEDPA, S.126(1).

<sup>44</sup> *Ibid.* S.126(2).

<sup>45</sup> *Idem.* S.126(4).

<sup>46</sup> *Ibid.* S.126(5).

<sup>47</sup> *Ibid.* S.127(1).

<sup>48</sup> *Ibid.* S.127(2).

<sup>49</sup> *Ibid.* S.127(4).

<sup>50</sup> Act 4 of 2013.

subcontractors shall give priority to citizens of Uganda and registered entities owned by Ugandans in the provision of goods and services.”<sup>51</sup> These clear provisions can operate as a safeguard to the achievement of the local content requirements.

The Ugandan companies and individuals must have adequate resources and capacity to add value to the licensees’ operations.<sup>52</sup> The licensee, its contractors and subcontractors, are also required to purchase goods and services from Ugandan owned companies provided they are competitive in value and timeous.<sup>53</sup> Where the goods and services are not readily available in Uganda, a foreign company can supply them in joint venture with a Ugandan company.<sup>54</sup> The licensee is also required to annually report to the PAU on its “contractors and sub-contractors’ achievement in utilizing Ugandan goods and services during that calendar year.”<sup>55</sup> The law makes it an offence for a person to contravene the local content requirements on provision of goods and services by Ugandans.<sup>56</sup>

The law requires a licensee to submit to PAU a report – for approval - on recruitment and training of Ugandans in midstream operations within twelve months of the grant of a licence and subsequently every anniversary.<sup>57</sup> Any variation to the approved training programme can only be undertaken with the approval of PAU.<sup>58</sup> Training and technology transfer requirements bind the licensee to have clearly defined training programmes for its local employees.<sup>59</sup> Additionally, such licensee is required to ensure knowledge and skills transfer to Ugandans intended to boost their management and technical capabilities.<sup>60</sup>

### **2.3. Local content requirements in the mineral sector in Uganda**

The Mining Act, 2003,<sup>61</sup> was enacted to comply with the constitutional requirement to, amongst others, vest mineral ownership and control in Government. As of November 2019, the Act allows women to be

---

<sup>51</sup> *Supra.* S.53(1).

<sup>52</sup> *Idem.* S.53(2)(a).

<sup>53</sup> *Ibid.* S.53(3).

<sup>54</sup> *Ibid.* S.53(4).

<sup>55</sup> *Ibid.* S.53(5).

<sup>56</sup> *Ibid.* S.53(7).

<sup>57</sup> *Ibid.* S.54(1).

<sup>58</sup> *Idem.* S.54(4).

<sup>59</sup> *Ibid.* S.55(1).

<sup>60</sup> *Ibid.* S.55(2).

<sup>61</sup> Replaced Mining Act. Cap 248.

employed in mining operations, and even to engage in any underground work.<sup>62</sup> This is in stark contrast to earlier laws which barred women from being employed in mining operations.<sup>63</sup>

The Act stipulates conditions under which permits and other forms of authorisations can be obtained. It does not contain local content requirements to be complied with by mining actors. This position is now sought to be addressed in the new *Mining and Mineral Policy for Uganda (2018)* ('MMPU').

The making of a new *Mining and Mineral Policy for Uganda (2018)* ('MMPU') is an indication of government's cognisance of the industry's legal framework inadequacy and the need to streamline it.<sup>64</sup> Artisanal and small scale mining (ASM), hitherto unregulated, was also brought under the realm of regulation. The intention is to harness, among others, its revenue potential through licensing and royalty regime.<sup>65</sup> The policy crucially intends to lay a basis for "...gender mainstreaming, equity and human rights...";<sup>66</sup> to comply with the Constitutional command on equality before the law and freedom from discrimination.<sup>67</sup> It further provides for affirmative action in favour of groups marginalised on the basis of gender, age, disability or historical imbalances;<sup>68</sup> and the freedom to participate in economic activities by all persons.

The MMPU also states, as one of its objectives, the unequivocal need to "promote local content and national participation in the mining and mineral sector."<sup>69</sup> This is a positive step by the government since the Mining Act, 2003, enacted shortly after promulgation of the 1995 Constitution, does not have robust local content requirements. Indeed, at the time of submission, the Ugandan government had approved the principles for the *Mining and Minerals Bill, 2019*.<sup>70</sup> Therefore, this will pave way for the preparation of a Bill on the regulation of the Minerals and Mining sector for consideration and enactment into law by

---

<sup>62</sup> The Mining Act 2003. S.114.

<sup>63</sup> The Mining Act. Cap.248, S.124(n) – repealed by the Mining Act, 2003.

<sup>64</sup> MMPU. Policy Objective 2.4(i).

<sup>65</sup> *Ibid.* Policy Objective 2.4(v).

<sup>66</sup> *Ibid.* Policy Objective 2.4(vii).

<sup>67</sup> Article 21.

<sup>68</sup> Article 32(1).

<sup>69</sup> MMPU. *Supra.* Policy Objective 2.4(ix).

<sup>70</sup> Cabinet sitting of 14<sup>th</sup> January 2019. Available at: <https://cabinetsecretariat.go.ug/data/policies> (last accessed 3<sup>rd</sup> October 2019).

parliament. To achieve the local content imperative, the policy seeks to employ a strategy which would enhance local workforce, skills transfer in addition to use of locally sourced goods and services.<sup>71</sup>

The realisation of the policy objective may potentially be problematic since the “...actual implementation will be the preserve of key stakeholders including the private sector...”;<sup>72</sup> whose major preoccupation may be at odds with the government agenda. In turn, this could invariably delay realisation of the policy objectives, since labour, goods and services could be imported, mainly during the initial stages of the life of mine. And given that the mining sector is not yet fully developed, government is pursuing, through MMPU and the hydrocarbons legislation, a deliberate effort to empower local labour force and companies to participate in extractive industry.

#### **2.4. Women’s rights and the socio-economic debate**

Arguably, legislation impacts women’s involvement in mining activities and, as such, determines whether realisation of deliberate efforts by governments and other actors ultimately yield the intended enhancement of women’s rights.<sup>73</sup> The extractives industry undoubtedly impacts women’s rights at all levels and in Uganda. Apart from constitutional provisions on equality and the right of women to take part in economic activity unimpeded, local content requirements in the oil and gas sector as analysed in this chapter are largely general in nature. The major exception is the strict requirement to have at least three women represented on the board of directors of PAU.<sup>74</sup> The MMPU and approval by Cabinet of the principles for the Mining and Mineral Bill, 2019, is indicative of a new law to be enacted by parliament to regulate the industry.<sup>75</sup> This deliberately underscores the need for gender mainstreaming in addition to the objective “[t]o promote local content and national participation in the Mineral Industry”.<sup>76</sup>

Generally, the Constitution guarantees the right of women to “equal treatment with men and that right shall include opportunities in ... economic and social activities”.<sup>77</sup> The preamble to the Constitution recognises the historical injustices and imbalances created by Uganda’s turbulent past and makes

---

<sup>71</sup> MMPU. Objective 9 and Strategy 9.

<sup>72</sup> *Idem*. Chapter 6; 6.0.

<sup>73</sup> Women in Mining. 2017., Can a Mining Law Unlock the Potential of Women? at 13. Available at: [https://internationalwim.org/wp-content/uploads/2017/05/ASI-IWiM-2017-Can-a-mining-law-unlock-the-potential-of-women\\_FINAL\\_08\\_....pdf](https://internationalwim.org/wp-content/uploads/2017/05/ASI-IWiM-2017-Can-a-mining-law-unlock-the-potential-of-women_FINAL_08_....pdf) (last accessed on 5<sup>th</sup> October 2019).

<sup>74</sup> PEDPA. S.17(3).

<sup>75</sup> *Supra*. n.68.

<sup>76</sup> *Ibid*.

<sup>77</sup> The Constitution of the Republic of Uganda. Art.33(4).

deliberate a command to redress this through affirmative action.<sup>78</sup> The effect is to encourage women to participate in a trade or economic activity of one's choice and to reap the benefits arising therefrom like any other citizen. As a result, specific requirements in the extractives sector legislation is key in realising this objective.

It is therefore also apparent that the legal requirements permit women to take part in mining activities, which is a positive step towards achieving parity in the labour market and industry. Further, it is worthwhile to engender the participation of women in extractives activities through provision of specific quotas in employment and provision of goods and services. Given that Uganda is member of several international and regional bodies which espouse, without exception, the participation of women in economic activity, including mining, it is important that it incorporated women empowerment provisions in its local content requirements.

#### 2.4.1. *Enablers of women participation in extractive industries*

The impact of the local content requirements can best be assessed by testing them against a few other parameters – in this case those adopted by the *Women in Mining* (WiM) 2017 report.<sup>79</sup> The WiM report identifies five enabling factors which are well established and internationally recognised and respected. As such, they provide a basis to test the effectiveness of the legal requirements and best practice. The five enablers listed below will be used gauge the impact of the local content requirements in Uganda.

- (i) *“Visibility, leadership and political will to commit to change;*
- (ii) *Combining top-down and bottom-up approaches between government and civil society;*
- (iii) *Coordination across government at all levels as well as with non-mining institutions;*
- (iv) *The participation of men as well as women in the change process, and*
- (v) *Commitment to a long-term vision, as changing entrenched societal norms and behaviours occurs over long time frames.”<sup>80</sup>*

Local content requirements do not have a uniform application, since the participation of women in mining depends on whether they are in large-scale mining or artisanal and small-scale mining activities. Gender mainstreaming is invaluable to enable realisation of the country's requirements on local

---

<sup>78</sup> *Idem.* Art.32 and 33(5).

<sup>79</sup> *Women in Mining.* 2017. *Supra.* at p.5.

<sup>80</sup> *Ibid.*

content.<sup>81</sup>As such government has taken gender aspects into consideration when developing policies and laws to govern the extractives sector. This is evidenced by the deliberate provisions on equality of both men and women engage in mining activities and affirmative action in favour of women and other marginalised groups.<sup>82</sup> What follows is an explanation of the five parameters mentioned above.

Regarding the first enabler on *'Visibility, leadership and political will to commit to change'*, Government of Uganda has committed to engender women's participation in economic activities in all sectors without exception to mining. Women's groups and civil society play a major role in enhancing women's participation in mining, particularly artisanal and small-scale mining. Indeed, the MMPU provides, as one of its guiding principles that:<sup>83</sup>

***"Mainstream Gender, Equity, Human rights and inclusiveness in the mining industry. Women and children are increasingly getting involved in the extractive industry especially in artisanal and small-scale mining (ASM). Women are often overlooked by initiatives and development programs directed at transforming the mining sector... A liaison framework that ensures that women, youth and persons with disabilities are able to efficiently and effectively inform its decisions, policies and programmes in mining needs to be put in place. The Government will ensure equitable access to the benefits of resource development and that they are within reach to all categories of Ugandans."***

Drawing from the foregoing, the second enabler involves a *'combination of the top-down and bottom-up approaches'* to policy and the legislative process. More commitment by government and civil society is required to particularly encourage women to take a more active role in mining activities. Such can be achieved through women's associations and advocacy by interested parties as well as civil society.

The third enabler, *'Coordination across government'* entails harnessing the synergies of the government agencies involved in mining regulation as well as those departments and agencies charged with gender mainstreaming. This ensures that the gender aspects are not side-stepped by the mining agencies and actors. Besides, a single legislation would suffice to deal with mining and gender related

---

<sup>81</sup> *Idem.* at p.33.

<sup>82</sup> See: Constitution of the Republic of Uganda. *Supra* n.65, and n.75.

<sup>83</sup> MMPU, Guiding principle 2.5.

activities to obviate the enactment of multiple pieces of legislation to deal with mining and gender-related aspects in the sector.<sup>84</sup>

The fourth enabler is *'participation of men as well as women in the change process.'* Uganda's petroleum and mining legislation is silent about community engagement by the extractives industries. Suffice to state that this is a key determinant of women's participation mining related consensus-building where, if not properly managed, women's voices and viewpoints are left out.<sup>85</sup>

Lastly, *'Commitment to a long term vision'* involves deliberate efforts by both government, civil society and other actors to undertake deliberate measures which challenge and ultimately change established practices and culture at a wider societal scale against a measurable benchmark.<sup>86</sup> The now repealed Mining Act,<sup>87</sup> prohibited employment of women in underground work – a position which was replaced by the more progressive law of 2003.<sup>88</sup> The National Oil and Gas Policy, the precursor policy to the present PEDPA and its regulations as well as the MMPU, are examples of commitment by government to long term vision. They address some of the historical injustices which adversely affected women by curtailing their involvement in extractive activities by committing to ensure gender equity and participation by nationals.

International obligations placed on nations under WTO and its TRIMs makes it difficult to fully operationalize local content requirements since international actors are always reluctant to honour country impositions.<sup>89</sup> This, however should not be an excuse by the relevant government actors not to implement the local content requirements.<sup>90</sup>

## 2.5. Conclusion

Much as the Ugandan legal requirements on local content can be classified as being progressive, the provisions are general in nature. As such, they are yet to achieve the intentional constitutional command regarding enactments to prescribe affirmative action in favour of women and other groups who have been

---

<sup>84</sup> *Idem.* at p.40.

<sup>85</sup> *Idem.* at p.42.

<sup>86</sup> *Idem.* at p.40.

<sup>87</sup> See n.60.

<sup>88</sup> Mining Act, 2003.

<sup>89</sup> A. Kiyondo and E. Villanger (2016). Local Content Requirements in the Petroleum Sector in Tanzania: A thorny road from inception to implementation? at.6. available at: <https://www.cmi.no/publications/file/5925-local-content-requirements-petroleum-tanzania.pdf>. (last accessed on 5<sup>th</sup> October 2019).

<sup>90</sup> *ibid.*

disadvantaged on grounds of gender, among others. It is imperative to engender the participation of women in extractives activities through provision of specific quotas in employment and provision of goods and services.

The making of the MMPU is a demonstration of government's realisation of the inadequate nature of the present mineral regime in as far local content, gender inclusiveness and participation of women is concerned. The approval by Cabinet of the principles of the draft *Mining and Minerals Bill (2019)* vindicates its commitment to have in place a better mining and mineral regime. Indeed, provision for specific local content requirements to apply to large scale, as well as ASM, where most women are involved in the latter activities, is recommended.

The five enablers will provide a basis for further analysis in Chapter 4. These enablers, when used to compare the impact of the local content requirements of Uganda with the requirements in Tanzania and South Africa, will inform the policy and strategic direction to be pursued.

In chapter 3, the study delves into an analysis of how other countries, particularly Tanzania and South Africa, have provided for women participation in the extractives industries. Further, a review will be carried out, of the local content requirements and best practices which could have a bearing or influence on Uganda's legal stipulations.

## CHAPTER 3: LESSONS FROM OTHER JURISDICTIONS – TANZANIA AND SOUTH AFRICA

### 3.1. Introduction

This chapter presents an analysis of how other jurisdictions, particularly Tanzania and South Africa, have provided for women participation in the extractives industries. As such, local content requirements and best practices, where applicable to Uganda, will be reviewed. A comparison of the case of Tanzania and South will be used to assess, as alluded to in Chapter 2, the five enablers of women’s participation in extractive activities.

Like most countries, Tanzania and South Africa have legal frameworks governing the extractives industries which vest the ownership of the mineral wealth in the state to hold in trust for the citizens.<sup>91</sup> The local content requirements contained in the various legislations present an opportunity for participation by the citizens in extractive industry activities. Besides, they also to contribute to economic development and empowerment of women and other marginalized groups.

### 3.2. The Case of Tanzania

In Tanzania, local content is defined as:

*“...the quantum of composite value added to, or created in, the economy of Tanzania through deliberate utilization of Tanzania human and material resources and services in the mining operations in order to stimulate the development of capabilities of indigenous people and to encourage local investment and participation.”<sup>92</sup>*

This definition is quite broad and encompasses the totality of the economic benefits that mining activities contribute to national development as well as benefit accruing to indigenous Tanzanian people.

---

<sup>91</sup> The Mining Act. Cap.123, Tanzania. (Revised Edition 2018). S.5(1); The Petroleum Act, 2015. S.4(1). Mineral and Petroleum Resources Development Act, 2002 (‘MPRDA’), South Africa. S.3(1).

<sup>92</sup> The Petroleum Act, 2015. S.3(1).

Such a comprehensive definition helps to capture the intention of the legislature to create value and benefit to the nation.

A holder of a mineral right is required, while procuring goods and services to give 'preference' to Tanzanian locally produced goods and services provided by Tanzanian citizens.<sup>93</sup> In the absence of locally produced goods or services, then the provider must be a 'local company' in 'joint venture' with a foreign company.<sup>94</sup> The local company must hold at least 25% stake in the joint venture.<sup>95</sup> The holder of the mineral right must also prepare and submit a five year procurement plan of professional local services, goods, equipment, among others, to the Mining Commission.<sup>96</sup> Such mineral rights holder is also obliged, within sixty days of the calendar year end, to submit a report regarding "its utilization of Tanzanian goods and services during the calendar year".<sup>97</sup> The company should as well submit a "detailed local supplier development program in accordance with approved local content plans."<sup>98</sup>

Suffice to note here that the mining law does not proffer a meaning of what 'local content plans' are; thereby leaving room for wide interpretation. In the context of this study, they will be taken to mean what goods and services the mineral right holder plans to procure from Tanzanian companies and citizens.

A local company is defined as "a company or subsidiary company incorporated under the Companies Act, which is entirely owned by a Tanzanian citizen or a company that is in a joint venture partnership with a Tanzanian citizen or citizens whose participating shares are not less than 51% percent."<sup>99</sup> This makes it easier to determine the entry levels for suppliers of goods and services, unlike in the case of Uganda where the Companies Act does not define a Ugandan company.<sup>100</sup>

As part of the local content plans, the mineral rights holder is required to submit to the Mining Commission a detailed plan for the recruitment and training of Tanzanians. This should be achieved within twelve months of the licence and at every licence anniversary thereafter.<sup>101</sup> The training plan needs to take into accounts all phases in mining; taking into consideration gender, equity and persons with

---

<sup>93</sup> The Mining Act. *Supra*. S.102(1).

<sup>94</sup> *Ibid*. S.102(2).

<sup>95</sup> *Ibid*. S.102(3).

<sup>96</sup> *Ibid*. S.102(4).

<sup>97</sup> *Idem*. S.102(7).

<sup>98</sup> *Ibid*. S.102(8)(b).

<sup>99</sup> *Ibid*. S.102(9).

<sup>100</sup> See n.37.

<sup>101</sup> The Mining Act. *Supra*. S.103(1).

disabilities, among others.<sup>102</sup> The law requires a clear training plan and technology transfer to Tanzanian citizens both locally and abroad.<sup>103</sup> This provides a clear agenda to empower the nationals in the mining sector to enable them build capacity. This lessens the need for holders of mineral licences to import such an invaluable resource ultimately helping to retain foreign exchange in-country, thus contributing to economic growth and development.

The composition of the Mining Commission is only specific about having at least one woman which is less than one third of the required membership of eight persons.<sup>104</sup> The absence of a deliberate enactment in the Mining Act for women's participation either singly or in cooperatives is responsible for heavily male dominated mining sector in Tanzania.

The local content regulations,<sup>105</sup> made under the Mining Act, provide a detailed break-down of the local content requirements. These include value addition, job creation, development of local capabilities and achieving employment quotas. However, the regulations are silent on any requirement for participation by women either in the licence holders' activities or through the government stake in mining.

In the petroleum and hydrocarbons sector, the natural gas policy<sup>106</sup> recognizes the lack of capacity by the Tanzanians to participate in the natural gas sector which is mainly dominated by foreign players. As such, the government committed to develop 'sound policies' to build the local capacity to enable the harnessing of the benefits accruing from natural gas.<sup>107</sup> The realization that participation by women and other vulnerable groups in natural gas activities would greatly save the amount of time wasted in search for 'firewood' for cooking attests to deliberate gender mainstreaming efforts.<sup>108</sup> Preference is had to locally manufactured goods and services rendered by Tanzanian citizens or local companies.<sup>109</sup> In addition, it is pertinent to note that the rest of the provisions regarding training and employment plans by licence holders are akin to those in the Mining Act.<sup>110</sup>

---

<sup>102</sup> *Ibid.* S.103(2).

<sup>103</sup> *Idem.* S.104(1).

<sup>104</sup> *Idem.* S.21(7).

<sup>105</sup> The Mining (Local Content) Regulations, 2018.

<sup>106</sup> The National Natural Gas Policy of Tanzania 2013.

<sup>107</sup> *Idem.* at p.14.

<sup>108</sup> *Idem.* at p.20.

<sup>109</sup> Petroleum Act, 2015. S.219(1).

<sup>110</sup> *Supra.* Cap.123.

Ovadia,<sup>111</sup> argues that “[t]he state mining company, STAMICO, has little direct involvement in local content, though it holds the state’s interest in some of the country’s biggest mines...STAMICO is not heavily involved in designing LCPs, nor has it instituted many policies to encourage local participation in its own mines.” The detachment of the state mining company from local content development and oversight could easily make it difficult to track the impact of local content requirements. This is more so regarding the statutory reporting and as well as gender mainstreaming in the mining sector.

The Commissioner for petroleum apparently has little authority over the sector as evidenced by the lack of a role played during the enactment of the Petroleum Act 2015.<sup>112</sup> Instead the Tanzania Petroleum Development Corporation (TPDC) ‘plays a more direct role in drafting and implementing oil and gas policy than does STAMICO in mining.’<sup>113</sup>

The multiple oversight roles given to several state agencies invariably leads to confusion due to ambiguity as to which agencies provide regulatory control and oversight in the petroleum and mining industry.<sup>114</sup> On the procurement front, instances were sighted where the state procuring agencies provided more detailed local procurement requirements. However in others, it was easier for local companies to participate in mining related procurements thereby underscoring the need for a uniform application of the law and standard.<sup>115</sup> The apparent competing and overlapping roles by the state agencies make it laborious to track the impact of the local content regimes on the rights of women. This is unsurprisingly not specifically catered to in the legislation but lumped generally under the commitment to promote gender mainstreaming.

The legal Tanzania framework does not provide a mandatory requirement for the creation of forward and backward linkages in the mining sector.<sup>116</sup> This is so notwithstanding the reservation of certain supplies to be made by Tanzanian-owned companies.<sup>117</sup> The ambiguous and discretionary regime leaves

---

<sup>111</sup> J.S.Ovadia, *Local Content in Tanzania’s Gas and Mineral Sectors: Who regulates?* CMI Brief 16:6 (Bergen: Chr. Michelsen Institute, 2017) at 2. Available at: <https://www.cmi.no/publications/6314-local-content-in-tanzanias-gas-and-minerals> (last accessed on 1<sup>st</sup> October 2019).

<sup>112</sup> *Ibid.*

<sup>113</sup> *Ibid.*

<sup>114</sup> *Ibid.*

<sup>115</sup> *Idem.* at p.3.

<sup>116</sup> M. Hansen, *et al.* at p.13.

<sup>117</sup> *Ibid.*

the creation of the forward and backward linkage to the extractive industry private players whose major motivation is profit maximisation.

Also, the strategic intention of multi-national companies (“MNCs”) as well as the political and governance aspects of the government of the day are key in understanding of the local content regime. To this end, the strategic agenda of the MNCs influence how they respond to the legal requirements especially in the creation of the forward and backward linkages. It is argued that:

*“Benefits accruing from large scale mining have only benefitted a few people with much of the proceeds retained by investors. The only area where majority Tanzanians would have benefitted from mining activities is local content which entails linking mining activities with wider economy. However, this is the area which remained untapped throughout the first phase of mining liberalisation in Tanzania...”<sup>118</sup>*

Corporate social responsibility activities by mining companies have also been used to obtain a social licence to operate from local communities as well as give back to society as part of corporate citizenship.<sup>119</sup> A lot of emphasis was placed on health, education, water and roads as well offering support to communities adversely affected by disasters.<sup>120</sup> This notwithstanding, it was argued that mining communities perceive corporate social responsibility to be inadequate and unresponsive to the needs of these communities.<sup>121</sup>

Limited capacity and pressure from international financial institutions to make the sector more attractive and competitive were cited among reasons for failure by the Tanzania government to implement local content provisions.<sup>122</sup> As a result, the MNCs gained traction and became more powerful since they could influence local content activities to their advantage thereby negating the benefits intended to accrue to the Tanzanian citizens.<sup>123</sup>

---

<sup>118</sup> J. Poncian and C. George. *Mineral Extraction for Socio-Economic Transformation of Tanzania: The Need to Move from Papers to Implementation of Mining Policy and Law*. Journal of Social Science Studies (2015); Vol:2(2) at 166-167. Available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2623924](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2623924)

<sup>119</sup> *Ibid.*

<sup>120</sup> *Ibid.*

<sup>121</sup> *Ibid.*

<sup>122</sup> *Idem. at p.168.*

<sup>123</sup> *Ibid.*

### 3.3. The Case of South Africa

South Africa presents a rather peculiar jurisdiction given its history of apartheid. The Mineral and Petroleum Resources Development Act, (2002) ('MPRDA'),<sup>124</sup> provides the basis for the development of "a broad-based socio-economic empowerment charter.... [for] the entry of historically disadvantaged South Africans into the mining industry, and allow such South Africans to benefit from the exploitation of mining and mineral resources."<sup>125</sup>

From the outset, the South African legal regime intricately presents a delicate framework premised on the need to redress racial imbalances in the minerals sector. The new Constitution of the Republic of South Africa, 1996 (as amended) marked the end of the apartheid era. It also guaranteed the right of South Africans to engage in trade of their choice and equality before the law.<sup>126</sup> The intention was to "transform" the South African society into an inclusive one as well as review wealth distribution to benefit all.<sup>127</sup>

The MPRDA and the Mining Charter were promulgated and implemented to realize the legislative intent to redress the racial imbalances which kept majority black South Africans out of the extractives industry. This was done taking into account the reality that black South Africans mainly provided casual labour and engaged in other low paid jobs.

#### 3.3.1. *Black Economic Empowerment and the local content requirements*

The Mining Charter defines local content to mean the "the value added during assembly and manufacturing of the mining good that is produced in South Africa". Mining goods within the context of the Mining Charter "refers to capital goods and consumables used by a right holder or by a contractor on behalf of a right holder."<sup>128</sup>

A mining right holder must procure a set quota of at least 70% mining goods manufactured in South Africa; out of which at least 21% produced by historically disadvantaged South Africans. Crucially, 5%

---

<sup>124</sup> Act 28 of 2002. S.100(2)(a).

<sup>125</sup> The Broad-based Socio-Economic Empowerment Charter for the Mining and Minerals Industry, 2018 ('The Mining Charter').

<sup>126</sup> Constitution of Republic of South Africa. Art.9.

<sup>127</sup> D. Botha and F. Cronje, *Women in mining: A conceptual framework for gender issues in the South African mining sector*. South African Journal of Labour Relations (SAJLR). Vol. 39 No.1 (2015) at 11.

<sup>128</sup> The Mining Charter. *Supra*. at p.10.

goods must be produced by women or youth controlled companies; among others.<sup>129</sup> Regarding services,<sup>130</sup> of the 80% threshold for locally sourced services, 15% must be supplied by women controlled companies; and 10% by a BEE compliant company, among others. Specifically required is for a mining right holder not to grant women owned and controlled companies less favourable terms than any other company.

Specified and standardized coding is required by the department of trade to ensure compliance with the local content requirements.<sup>131</sup> “[A]...mining right holder shall provide proof of local content for mining goods in the form of certification from the South African Bureau of Standards (SABS) or any other entity designated by the Minister.”<sup>132</sup> The Charter also contains comprehensive provisions regarding employment of historically disadvantaged South Africans 20% of whom must be women at board and executive level management with a further 25% at senior management level.<sup>133</sup>

It is apparent that the South African legal regime and Mining Charter mainly target redressing of historical imbalances created by apartheid. However, the detailed quotas to be complied with by mining right holders vindicates Government’s broad agenda to realise the trickle-down effect of the mineral resource rents for the benefit of all.

#### **3.4. Women’s rights and the socio-economic debate**

In both Tanzania and South Africa, the regulatory regimes are clear about what local content is as well as the requirements to be fulfilled by the mining right holders. In the case of Tanzania, there appears to be no deliberate government effort by way of enactment or regulation to secure rights of women to participate in mining related activities. However, the South African framework is clear about the need to comply with the local content requirements so much so that even specific quotas are reserved for women owned and controlled companies.

In Tanzania, the many regulatory centres for local content implementation have caused confusion. Ovadia,<sup>134</sup> argues that:

---

<sup>129</sup> *Idem.* Art.2.2.1.1.

<sup>130</sup> *Ibid.* Art.2.2.2; 2.2.2.1; 2.2.2.1.4.

<sup>131</sup> *Idem.* Art.2.2.3.1.

<sup>132</sup> *Ibid.* Art.2.2.3.2

<sup>133</sup> *Ibid.* Art.2.4.1, 2.4.2, 2.4.3.

<sup>134</sup> See n.107 at p. 3 - 4.

*“Amongst the different agencies, there are different approaches to local content and even definitions of what local content means. This has led to confusion and inconsistency between different official policies, legislation, and regulations in terms of what local content is and what constitutes a local company. Various agencies are navigating issues of overlapping authority as they arise instead of taking an integrated approach to maximizing local content.”*

MNCs have continued to ‘employ large contingencies of expatriates and also import most inputs which qualify as local content supplies notwithstanding the existence of local providers in Tanzania.<sup>135</sup> Such challenges are attributable to absence of specific targets, monitoring mechanisms and sanctions; unfavourable business environment to enforce local content stipulations, and the apparent government disinterest in promoting a conducive business environment.<sup>136</sup>

The South African Mining Charter requires at least 10% women to be employed in mining activities in addition to the 40% local labour force to be employed at all levels.<sup>137</sup> This deliberate requirement is indicative of the acceptance that women should be accorded opportunity to participate in extractive activities.

Botha,<sup>138</sup> argues that:

*“According to the Act and the Charter, the mining industry was supposed to reach a quota of 10% women in core mining activities by 2009. ‘Women employed in core mining activities’ implies that women should hold positions equivalent to those of men, in other words, fill positions in mining that include, among other activities, mining, metallurgy, engineering and geology...[and] also required to do the manual labour associated with mining.”*

The number of women employed in the mining sector is still significantly low, with most of them employed in administrative and supportive roles, even with the well-intentioned legislative enactments

---

<sup>135</sup> M. Hansen, *et al.*

<sup>136</sup> *Ibid.*

<sup>137</sup> I. Ramdoo. *Local content Policies in mineral-rich countries. An overview. ECDPM Discussion Paper No. 193 (2016)*. Available at:

<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=2ahUKEwiQ7Ojy5PrkAhVPJBoKHVojCjkQFjABegQIChAE&url=http%3A%2F%2Fecdpm.org%2Fwp-content%2Fuploads%2FECDPM-Discussion-Paper-193-Local-Content-Policies-Mineral-Rich-Countries-2016.pdf&usq=AOvVaw0DHponLvUd3ECYsU9ytj62> (Last accessed 1<sup>st</sup> October 2019).

<sup>138</sup> See n.123.

and policies.<sup>139</sup> Difficulties abound for women in extractives ranging from lack of proper training and mentoring, health and safety challenges, resistance to women participation by male colleagues, sexual harassment, unfair work shifts, among others.<sup>140</sup> It is notable that the women's participation in the extractives sector is still inadequate – even with deliberate policies and enactments intended to enhance their participation at par with men.

### **3.5. Conclusion**

The two jurisdictions provide a mixture of hope and confusion regarding local content requirements especially on the participation of women in the mineral sector. In the case of South Africa, the law provides a promising premise for the development and achievement local content. However, it appears skewed towards redressing historical wrongs created by apartheid thereby not providing any definite hope for other non-black South Africans. The assumption that only black South Africans suffered the horrendous effects of apartheid may not be entirely correct. As such, there is need to have a uniform legal regime for the benefit of all South Africans, without exception.

This notwithstanding the legal framework in both Tanzania and South Africa recognise the need to have a robust local content regime as a way of building forward and backward linkages. Such linkages, when well harnessed, can spur economic growth and development. Besides, the gender-blind framework in Tanzania can cause unintended problems for women who could become more marginalised in extractives activities.

The Tanzanian case is indicative of a jurisdiction which is grappling with local content implementation as exhibited by the many conflicting power centres. The end result is that often times they operate without regard to the roles played by other agencies on the same subject. For a sector which has little local technical capacity –human and capital –Tanzania's mineral sector is susceptible to expatriate actors who end up playing the roles ring-fenced for local actors. The local communities have nevertheless benefitted from the corporate social responsibility activities especially in health, education and environment.

---

<sup>139</sup> Botha (2015). *Ibid.*

<sup>140</sup> *Ibid.*

The lessons from Tanzania and South Africa informed the analysis of the data in chapter 4 which will basically involve a comparative analysis of the literature on Uganda. Therefore, what follows is an analysis and evaluation of the data with a view to propose best practices which may be applicable to Uganda.

## CHAPTER 4: APPLICATION OF THE BEST PRACTICES IN THE CONTEXT OF UGANDA

### 4.1. Introduction

*“Global evidence suggests that while the benefits of extractive industry projects are captured primarily by men, women bear a disproportionate share of social, economic, environmental risks.”<sup>141</sup>*

The above quote succinctly places in context the analysis of local content stipulations and its impact on women’s rights. Indeed, it is one thing to have robust local content stipulations and another to realise the intended objectives especially regarding participation and benefit by women. Men have time and again dominated the extractives sector and captured its rents at the disadvantage of women. An exposition into the impacts of local content laws and practices on women’s rights has witnessed ever growing literature with various recommendations. Countries can only adopt local content laws best-suited for their circumstances. This chapter analyses and applies the data vis-à-vis the enabling factors of women’s participation identified in Chapter 2 in the context of Uganda, and draws on some illustrative comparisons derived from Chapter 3.

### 4.2. Effectiveness of the legal regime on participation and procurement

The Constitution of Uganda 1995 is specific in its recognition of the equality of all persons before the law.<sup>142</sup> Further, to enable participation by all in the economy, it has, through affirmative action, provided for redress of imbalances created by history.<sup>143</sup> However, PEDPA does not have any provisions specifically requiring participation by women in extractive activities except that regarding the composition of the PAU Board of directors to have at least three woman.<sup>144</sup> This omission to provide for women representation at other levels of the company is a negation of the government commitment to ensure gender equity in all spheres of life.

---

<sup>141</sup> Gender in Extractive Industries. The World Bank (2013). Available at: <https://www.worldbank.org/en/topic/extractiveindustries/brief/gender-in-extractive-industries>

<sup>142</sup> Art. 21(1).

<sup>143</sup> *Idem.* Art. 32.

<sup>144</sup> See n.35.

On a positive note, however, as of November 2019, the Board of directors of the Uganda National Oil Company ('UNOC') had replaced the pioneer female executive director with yet another female.<sup>145</sup> Further, the UNOC, as part of its national content policy directly offers jobs to Ugandans in the oil sector as well as through partnerships and joint ventures.<sup>146</sup>

The law requires a licensee who is to procure goods which are not available in Uganda to do so through a 48% Ugandan owned company.<sup>147</sup> There is, however, no guarantee that ownership intrinsically translates into transfer of skills and know-how in the management of the business. Besides, the licensee may not give preference for Ugandan-made goods given the sophisticated nature of inputs required in extractives industry and may not be available given Uganda's hugely underdeveloped economy.

In comparison with Tanzania, a mineral right holder may, where the preferred locally produced goods are not available, obtain such goods from a local company in joint venture with a foreign company.<sup>148</sup> The local company must have at least 25% ownership in such joint venture when procuring goods for the petroleum sector.<sup>149</sup> This low threshold, compared to Uganda's 48%, can be used to attract foreign direct investment in the petroleum sector and also be used as a vehicle to spur economic growth.

A Ugandan company is one which has been incorporated in Uganda. Foreign nationals are not precluded from incorporating a company provided its memorandum and articles of association are incorporated in Uganda. Practically, foreigners interested in tapping the local content benefits will incorporate local companies and take the benefits to the disadvantage of the intended beneficiaries who are local Ugandans. This is akin to the Tanzania situation where MNCs took advantage and employed many expatriates in addition to substantially importing inputs ring-fenced as local content supplies yet many suppliers existed in-country.<sup>150</sup>

The Tanzanian case presents more clarity when it comes to the meaning of a local company. It means "a company or subsidiary company... which is entirely owned by a Tanzanian citizen or a company that is

---

<sup>145</sup> <https://ugbusiness.com/7657/proscovia-nabbanja-new-national-oil-company-chief-executive-officer>

<sup>146</sup> <https://www.unoc.co.ug/national-content/>

<sup>147</sup> PEDPA. S.125(2).

<sup>148</sup> The Mining Act (2010), Tanzania. S.102(2)

<sup>149</sup> *Ibid.* S.102(3)

<sup>150</sup> M. Hansen, *et al.* Supra

in a joint venture partnership with a Tanzanian citizen or citizens whose participating shares are not less than 51%”.<sup>151</sup>

Much as it is important to use locally manufactured goods or those procured through entities partly owned by Ugandans, the requirement to add value to the supplies require huge capital expenditure. Most local suppliers could be hamstrung by lack of resources to improve the supply value chain. As such, the key actors – both government agencies and licensees – need to invest in training and capacity building of the local companies and suppliers. Besides, there is no deliberate government programme to skill women in extractive industry-related activities.

Even when the law presently allows women to take part in mining activities including underground work, the absence of deliberate local content provisions in the Mining Act, 2003 is peculiar. This is because just like in the petroleum sector, the realisation of equitable use of mineral resources can best be done through local content stipulations and practices. It is therefore a welcome development that the MMPU now includes proposals on local content and national participation.<sup>152</sup> Indeed, owing to the inadequacy of the mining and minerals legal framework, the Ugandan government approved the principles for the *Mining and Minerals Bill, 2019* as a precursor to a new law.<sup>153</sup> The objectives, among others, are to “promote local content and national participation in the Mineral Industry”.<sup>154</sup> As of November 2019, the bill had not yet been introduced in parliament for debate and enactment.

The South African case presents an interesting position given its history of apartheid. The legal framework in the mineral and petroleum sector places a heavy burden on holders of mining rights to comply with set quota regarding employment and purchase of mining goods. For example, 70% of mining goods should be made in-country with at least 21% having been produced by a historically disadvantaged South African as well as 5% produced by women or youth controlled company.<sup>155</sup> As is the case in Uganda and Tanzania, these requirements may be onerous to fulfill given that the target beneficiary group may not be able to supply the usually specialised mining goods. This could be due to high poverty levels and lack of sophistication

---

<sup>151</sup> See n.95.

<sup>152</sup> MMPU, Policy 2.4(ix)

<sup>153</sup> See n.70.

<sup>154</sup> *Ibid.*

<sup>155</sup> Mining Charter. Art. 2.2.1

Much as the threshold in South Africa is slightly lower for services, the view advanced above regarding inadequate capacity and technical ability may hamper realisation of the quota. What is pertinent is that women or women controlled companies should be given terms which are no less favourable than men controlled companies. In this way, achieving gender equity and encouragement of women to participate in economic activity in the extractives sector is commended.

The Black Economic Empowerment (BEE) strategy introduced by the Mining Charter aims to empower the black South Africans who suffered the negative effects of apartheid. Though not classified as local content requirements, the affirmative action taken to encourage participation by black South Africans into the mineral and mining sector is indeed a deliberate effort to operationalize an inclusive economy.

The MPRDA and the Mining Charter required the mining industry to reach a quota of 10% women in core mining activities by 2009. This practically meant that women are supposed to be involved in mining activities at all levels just as men to satisfy the need to achieve equity.<sup>156</sup>

#### 4.2.1 *Beyond the law*

The recognition by Uganda, Tanzania and South Africa of the rights of all citizens, including women, to participate in socio-economic activities of their choice is indicative of a progressive outlook. Specifically in extractive activities, women play a major role both as workers and support mine workers as caregivers.<sup>157</sup>

The challenges women are faced with in extractives sector are aptly captured in the argument thus:

*“Despite all the legislative measures and well-intended initiatives, the number of women in mining in South Africa is still relatively low and they are mainly employed in administrative and supportive positions in the industry. Furthermore, the nature of work in mines, specifically underground, is hazardous and extensive training is required... Women also face a range of obstacles in the mining sector, such as insufficient professional and career development, including poor mentoring systems and career paths; inadequate infrastructure facilities; health and safety issues; physical ability challenges; resistance by male workers; sexual harassment; shift work; and issues related*

---

<sup>156</sup> Botha. *Supra.* at 11.

<sup>157</sup> *Ibid.*

*to pregnancy and working hours... Although there is no lack of good intentions, the gender issue in the mining sector is fraught with difficulties.”<sup>158</sup>*

Notwithstanding the challenges alluded to above, women are prominent actors, particularly in artisanal and small scale mining activities where their rights to dignity, equality and economic survival have been trampled upon. To better understand this injustice, it is important that the effects of legal requirements in enhancing women’s rights are considered in relation to the five enabling factors earlier identified in chapter 2.<sup>159</sup>

It is worthwhile to state here that obligations placed upon countries as a result of membership of international organizations sometimes negatively impact the implementation of country-specific local content provisions.<sup>160</sup> As a member of the WTO and party to Trade Related Investment Measures (‘TRIMS’), Uganda, under the principle of “national treatment” is required to treat WTO (and GATT implementing) member countries as they would treat Ugandans.<sup>161</sup> This means that implementation of local content requirements on specific procurement and employment requirements would be against the spirit of the agreement. The exception is where the measures are taken by developing countries “to raise the general standard of living of their people, to take protective or other measures affecting imports”.<sup>162</sup> This temporary relief may not be beneficial to developing countries given their slow rate of growth and development, not to mention instances of rampant corruption and rent seeking by the elite.<sup>163</sup> Indeed, it is also argued that the breach of such international obligations by developing country local content laws is pertinent for their pursuit of their national economic development plans.<sup>164</sup>

#### **4.3. Local content and enablers of women’s participation.**

Since the legal frameworks in mineral-rich countries vest ownership of the non-renewable natural resources in the state for the benefit of its people, local content frameworks intended to harness the fruits of extraction have been developed.<sup>165</sup> Women, though historically disadvantaged, have continued take part in extractive industry activities. Below is a discussion of the five enabling factors to women’s

---

<sup>158</sup> *Ibid.*

<sup>159</sup> *Supra.* Section 2.4.1.

<sup>160</sup> A. Kiyondo and E. Villanger (2016). *Supra.*

<sup>161</sup> Nwapi. *Supra.*

<sup>162</sup> TRIMS. Art. 2 & 4; General Agreement on Trade and Tariffs (‘GATT’). Art. XVIII.

<sup>163</sup> Nwapi. *Supra.*

<sup>164</sup> *Ibid.*

<sup>165</sup> See n.3.

participation in extractives industry as an invaluable tool of measuring the impact of the local content requirements of their rights.

*(i) Visibility, leadership and political will to commit to change.*

The government of Uganda has demonstrated commitment to guarantee the participation of women in extractive activities. Indeed the MMPU has among its guiding principles the need to 'mainstream gender, equity, human rights and inclusiveness in the mining industry.'<sup>166</sup> The commitment to involve women and youth, among others, in policy formulation and decision making in artisanal and small-scale mining (ASM) activities is commendable. The promise to ensure equitable access to resource benefits in mining sector vindicates the first enabling factor.

In Tanzania, the government realised that the hydrocarbons sector was dominated by foreign players. Its commitment to reform the sector through legislation to benefit the Tanzanian people demonstrates leadership and political commitment to change the extractives sector for the better.<sup>167</sup> Implementation of such policies obviates the tendency by the MNCs to source supplies and expatriate workers from elsewhere.

The firm stance taken by the South African government to enforce the requirements of the Mining Charter have faced stiff resistance from some industry players.<sup>168</sup> This resistance is indicative of the complex nature of extractives industry stakeholder interests which are bound to clash with public interest policy decisions.

Once government and its implementing agencies are visible and demonstrate leadership and political will to commit to change, policies and legislation which promote and enhance local content will be embraced by industry players. Besides, there will be competing private interests by some rent seeking government officials and MNCs, which sometimes threaten to derail the legal requirements. As a result, the rights of women and other vulnerable groups get trampled upon and are relegated to the background.

*(ii) Combining top-down and bottom-up approaches between government and civil society*

---

<sup>166</sup> MMPU, Guiding Principle 2.5.

<sup>167</sup> The National Natural Gas Policy of Tanzania 2013.

<sup>168</sup> *Mining Technology*. Available at: <https://www.mining-technology.com/features/the-final-shape-of-south-africas-new-mining-charter/>.

This particular factor forms part of the discussions of the other four and is considered as having been reviewed. Besides, the constant engagements between government and civil society, albeit through law suits at times, is a demonstration of the functionality of the governance systems particularly regarding human rights. Civil society engagements help to trigger dialogue and consultations which is a necessary vehicle to drive the agenda of ensuring that rights of women in extractive activities are promoted and respected.

*(iii) Coordination across government at all levels as well as with non-mining institutions*

The MMPU proposes, as part of the implementation arrangement, an- inter-sectoral coordination committee with representatives from over a dozen government agencies, private sector and development partners.<sup>169</sup> Involvement of non-mining actors ensures that there is inclusiveness of all actors and people who are affected or will be affected by the policy and actual mining activities. What is pertinent in the case of Uganda is that the policy oversight function is the preserve of the Ministry of Energy and Mineral Development (MEMD).<sup>170</sup>

*(iv) The participation of men as well as women in the change process*

Among the many cross cutting issues, it is stated that:

*“Women participation in mining activities is important in the socio-economic development process. The Government has conducted awareness campaigns for women to participate in mining activities and facilitated establishment of Women in Mining Associations. However, women face economic and socio-cultural barriers which restrict their effective involvement in mining activities, and as a result they receive minimal benefits.”<sup>171</sup>*

Women in mining associations are a useful tool to voice women’s concerns and proposals for change in policy and the law, especially to cause government and other actors to act with due regard to women’s interests. This brings equity and parity when it comes to ensuring that women are given no lesser terms compared to men in mining related activities.

---

<sup>169</sup> MMPU. Chapter 6., Implementation arrangements.

<sup>170</sup> *Ibid.*

<sup>171</sup> MMPU, *Supra.* Chapter 4., 4.3.

(v) *Commitment to a long term vision*

Since ‘changing entrenched societal norms and behaviours occurs over long time frames’, government commitment should ensure that small incremental changes are introduced consistently. Some of the entrenched norms in society involve discrimination against women especially practices which prevent them from taking part in underground work and other mining-related activities. It is important that the economic agenda pursued by the government of the day goes beyond merely self-preservation but engendering women’s rights to participate in economic activities of their choice.<sup>172</sup>

Much as Tanzania has been able to deliver stability and legitimacy, it has not been successful in developing a successful private sector which is necessary for a developed linkage-economy to harness local content benefits.<sup>173</sup> And given that the effects of rent-seeking were not easy to discern, uncoordinated activity by the political class negates any meaningful efforts to build a robust local content regime.<sup>174</sup>

Government policy plays a significant role in having a stable economy to achieve linkage benefits. A drawback to an effective legal framework is the policy decisions taken by the government of the day mainly intended to deliver particular political interests as opposed to furthering a country’s national development imperatives.<sup>175</sup> In the case of South Africa which has a more established mineral history compared to Uganda and Tanzania, many jobs have been lost as a result of lack of policy stability.<sup>176</sup>

Arguably the world’s richest nation in terms of non-oil reserves, South Africa had ‘some 880,000 jobs’ in the mining sector by the late 1980s which reduced to under 500,000 jobs by 2014.<sup>177</sup> This was because “the government has often ignored the results of consultation with industry in its deliberations and has delivered legislation and regulation that suits the government’s political agenda rather than the nation’s long-term developmental interests.”<sup>178</sup> Governments are encouraged to develop more consistent,

---

<sup>172</sup> M. Hansen. *Et al.* at 17.

<sup>173</sup> *Ibid.*

<sup>174</sup> *Ibid.*

<sup>175</sup> *The Zambezi Protocol*. Brenthurst Discussion Paper 7/2016: Result of a Dialogue on Natural Resource Policy in Africa. at 7. Available at: <http://www.thebrenthurstfoundation.org/workspace/files/brenthurst-paper-201607.pdf> (Last accessed 4th October 2019).

<sup>176</sup> *Ibid.*

<sup>177</sup> *Ibid.*

<sup>178</sup> *Ibid.*

‘cohesive, inclusive and strategic approach’ to enable the development of a long term vision in the extractives industry, notwithstanding the politics of the day.<sup>179</sup>

To develop a sound local content regime, it is advisable not to have stringent conditions which do not consider ‘skills gap in the country’ and thereby negatively impact its potential to ‘fast-track economic development.’<sup>180</sup> It is further submitted that to obtain optimal benefits from local content requirements, nations must be transparent when developing and implementing to “avoid or reduce the likelihood of elite capture of the benefits of the policy.”<sup>181</sup> These generalizations are largely applicable to Uganda as well as Tanzania and South Africa.

#### **4.4. Conclusion**

The effects of local content stipulations provide a mix of hope and contradictions given the varying interests of the players both at government and local levels. Even without a uniform definition of local content in all three countries, it is apparent that the intentions of the governments are clear: to create linkages in the extractives sector. This in turn can be used as a vehicle to spur economic growth through attraction of foreign direct investments which result into employments for citizens, local economic development and generally help the governments of the day to achieve their political agenda.

Resultantly, women are allowed to participate in extractives activities on equal footing with men. Governments have even taken deliberate measures, through affirmative action to integrate gender inclusiveness in the various policies and laws which are intended to enhance the rights of women in extractives sector. Participation by all stakeholders in mining policy and law making engenders a sense of ownership and accountability which are important in ensuring that the extractives sector benefits women, men, children and other stakeholders alike. However, despite the numerous positive impacts of the extractives industry on the rights of women, the evidence has shown that even with the best policies, laws and intention of government and other actors, women have still been short-changed since their role is still minimal.

The five enablers have vindicated the notion that government visibility, leadership and political will coupled with top-down and bottom-up approaches, coordination across government, participation of

---

<sup>179</sup> *Ibid.*

<sup>180</sup> C. Nwapi (2016). *Supra.*

<sup>181</sup> *Ibid.*

women and men and commitment to long term visions to change are integral local content implication. These are pertinent to realise the rights of women in the extractives industry. What is apparent is that the public interest needs to be balanced against the interests of capital and other industry interests to enable a country realise the potential of extraction.

## CHAPTER 5: CONCLUSIONS AND RECOMMENDATIONS

### 5.1. Introduction

The analysis of the local content requirements with lessons from Tanzania and South Africa provided insights on how the Uganda legal framework and practice can be enriched to engender women's participation. In this chapter, a discussion of the conclusions and recommendations provide the ultimate snap-shot of the research report.

### 5.2. Embracing the law and good practice – what way forward?

The report set out the parameters of the study in a brief background and highlighted the need to determine the impact of local content requirements on the socio-economic rights of women in Uganda's extractives industry. With lessons from Tanzania and South Africa, the report contextualized the current legal framework with the objective of assessing the impact thereof on the rights of women.

Much as the Ugandan legal requirements on local content are partly general in nature, they are progressive. Efforts to achieve the constitutional imperative of equality before the law, gender inclusiveness and affirmative action in favour of marginalised groups are underway. In instances where there are already provisions on local content such as in the petroleum sector, these are commended.

It is imperative to engender the participation of women in extractives activities through provision of specific quotas in employment and provision of goods and services. The MMPU is testimony to the government's realisation that the present provisions of the Mining Act, especially on local content, are inadequate particularly on gender inclusiveness and participation of women. The approval by government of the draft *Mining and Minerals Bill (2019)*, is indicative of the deliberate efforts by the Uganda government to improve the benefits to Ugandans from the minerals sector. This more so in the artisanal and small scale mining where most women are involved.<sup>182</sup>

Lessons from Tanzania and South Africa, albeit peculiar in some instances, provide a useful benchmark in setting local content requirements without losing sight of the national development imperative. The case studies revealed the tendency by governments to pursue a particular political trajectory which

---

<sup>182</sup> See *supra* Section 2.3, 2.5, 4.2.

sometimes negates the rights of citizens, especially women, in extraction. The South African case is an example where in a bid to redress historical wrongs, economic growth was affected when so many jobs were lost in the mining industry.

Besides, both Tanzania and South Africa are cognisant of the need to have in place a comprehensive local content framework to help build forward and backward linkages in the economy; thereby spurring economic growth and development. In the case of Tanzania, however, it is apparent that the gender-blind legal provisions on local content result in the continued marginalisation of women in extractives activities.

The mineral sector is also a playground for the political elite whose intentions are majorly rent seeking rather than being aligned to the national development agenda. This invariably negates the efforts of the agencies charged with management and oversight of the mineral sector. In the end, for a sector with limited local technical capacity, both human and capital, foreign players ultimately take up the roles and benefits intended for local actors.

Local communities benefit from the local content related activities of extraction, such as corporate social responsibility activities in health, education and environment. It is important for the governments to ensure that the mining companies do not become surrogate governments to whom the local populace look up to for provision of essential social services.

It is submitted that the effects of local content stipulations provide a mix of hope and contradictions due to the varying interests of the players both at government and local levels. But this notwithstanding, and even without a uniform definition of local content in all three countries, the intention to create linkages in the extractives sector is apparent. The result is attraction of foreign direct investments which translates into jobs for the citizens and ultimate economic growth, among others.

The right of women to participate in extractives activities on equal footing with men is guaranteed through the equality and gender inclusive provisions. As such, a sense of ownership and accountability prevails especially where women are consulted and their viewpoints are respected and incorporated into policy and law making.

The presence of clear provisions on local content and the deliberate effort to secure women's participation and benefit have still not comprehensively addressed their exclusion, to a certain extent by the actors in extractives sector. As the main caregivers to families in the extractive sector as well as the ones who are adversely affected by the negative effects of extraction, the impact of the law on their rights

has been quite significant. Indeed the benefits of extraction to women can be said to be trickling in rather than flowing in.

The five enablers have vindicated that notion that government visibility, leadership and political will coupled with top-down and bottom-up approaches, coordination across government, participation of women and men and commitment to long term visions to change are integral local content implication.<sup>183</sup> These are pertinent to realise the rights of women in the extractives industry.

#### 5.2.1. *Recommendations*

The findings of this research suggest the following recommendations to address imbalances created by local contents laws on the rights of women in extractive industries. The recommendations, though not prescriptive will contribute to the body of knowledge and for future research on local content and women's rights.

All players in the extractive industry should embrace the legislative process so that the views of women and advocacy groups are integrated to have a holistic realization of the gender aspects. It's not enough to have local content requirements in enactments and policies; deliberate efforts should be taken to implement them beyond the declarations. Participation thresholds for locals in foreign companies providing mining goods should be set low like Tanzania's 25% compared to Uganda's 48% to attract foreign direct investment and accelerate economic growth.

Government should, as much as possible put in place one central agency to perform the oversight function over the extractives industry. This will invariably avoid existence of multiple power centres which can breed confusion in the industry.

Political rhetoric should not be simply used to gain access to political power. In any case, reports of the mineral companies regarding their compliance with local content requirements such as education and training, employment and procurement of goods and services should be made publicly available for inspection by the public.

Observance of international agreements such as the TRIMs should not be used by corrupt and rent-seeking politicians and individuals to side-step local content requirements.<sup>184</sup> It is prudent to observe the

---

<sup>183</sup> See *Supra*. Section 4.3.

<sup>184</sup> See *Supra*. Section 4.2.

country local content regulations and only defer to international agreements and obligations where the former are inadequate.

Encouragement of women to participate in extractive activities at all levels is commendable and this is indicative of the commitment to engender the rights of women. Deliberate measures should be put in place to discourage the continued marginalisation of women in extractives activities.

The state should play the intricate balancing act between advancing and achieving the public interest, on the one hand, and taking great precautions not to violate its obligations under international conventions or bilateral investment treaties ('BITs) on the other.<sup>185</sup> Therefore, as much as it is important to have in place a local content legal framework, "... government must ensure the meaningful economic participation for historically marginalized people in the mining industry."<sup>186</sup> The author argues that the South African government should be unapologetic for the stance taken regarding the broad-based economic empowerment. He however cautions that such action should not expose government to litigation for failure to follow due process to achieve the local content targets set by law.<sup>187</sup>

Governments are encouraged to develop more consistent, 'cohesive, inclusive and strategic approach' to enable the development of a long term vision in the extractives sector, notwithstanding the politics of the day.<sup>188</sup> This will invariably ensure that some of the constraints to women's engagement in extractive activities are threshed out during the consultative processes.

Many archaic cultural practices have kept women out of economic activity – other than subsistence farming. Government and civil society should chart out deliberate efforts to educate girls and women as a way of getting rid of such practices. Ring-fencing of tailor-made training for women is therefore proposed.

---

<sup>185</sup> J. Feris. *Local Content Requirements in the Extractive Industry: A double-edged sword*. Mining and Minerals and International Arbitration Alert (2016). Available at: [https://www.google.com/search?xsrf=ACYBGNQKOS9MIVsJfBbUqRH8mRyR69CIWw%3A1570193780746&ei=dEGXXdefLc7gUf3clpgL&q=Jackwell+Feris.+Mining+and+Minerals+and+International+Arbitration+Alert+%282016%29&oq=Jackwell+Feris.+Mining+and+Minerals+and+International+Arbitration+Alert+%282016%29&gs\\_l=psy-ab.3...13320.15721..21062...0.2..0.356.2189.2-6j2.....0....1..gws-wiz.....0i71j35i39.z\\_ZB51lq1OA&ved=0ahUKEwjXqZ7U04LIahVOCbQKHx2uBbMQ4dUDCAo&uact=5](https://www.google.com/search?xsrf=ACYBGNQKOS9MIVsJfBbUqRH8mRyR69CIWw%3A1570193780746&ei=dEGXXdefLc7gUf3clpgL&q=Jackwell+Feris.+Mining+and+Minerals+and+International+Arbitration+Alert+%282016%29&oq=Jackwell+Feris.+Mining+and+Minerals+and+International+Arbitration+Alert+%282016%29&gs_l=psy-ab.3...13320.15721..21062...0.2..0.356.2189.2-6j2.....0....1..gws-wiz.....0i71j35i39.z_ZB51lq1OA&ved=0ahUKEwjXqZ7U04LIahVOCbQKHx2uBbMQ4dUDCAo&uact=5). (last accessed on 5<sup>th</sup> October 2019).

<sup>186</sup> *Ibid.*

<sup>187</sup> *Ibid.*

<sup>188</sup> *The Zambezi Protocol. Supra*. See n.171.

### 5.3. Conclusion

Finally, even with the blend of hope and contradictions, the impact of the local content requirements examined in this report has been significant and engendered the economic rights of women in extractives industries. However, much as the law guarantees the rights of women to participate in extractives activities, the implementation arrangements have sometimes ended up excluding them through gender neutral local content provisions. Even then, women are indeed taking on the mantle on equal footing with men as evidenced by the case of the Uganda National Oil Company ('UNOC') whose first chief executive officer – a woman – was at the time of writing replaced by another woman.<sup>189</sup> For a country to develop and lift itself out of poverty, deliberate efforts should be made to enable women and other vulnerable groups to harness benefits of extraction. To this end, robust local content requirements should be vigorously implemented and monitored.

---

<sup>189</sup> See n.142

## BIBLIOGRAPHY

### Primary sources

#### *Statutes, Statutory Instruments and Policies*

Constitution of Republic of South Africa (1996) (as amended)

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

Mineral and Petroleum Resources Development Act (28 of 2002) (South Africa)

Mining and Mineral Policy for Uganda (2018) (MMPU)

National Oil and Gas Policy for Uganda (2008)

Petroleum (Exploration, Development and Production) Act (3 of 2013) ('PEDPA')

The Broad-based Socio-Economic Empowerment Charter for the Mining and Minerals Industry, 2018 ('The Mining Charter') (South Africa)

The Mining Act, 2003 (Uganda)

The Mining Act. Cap.248 (Uganda)

The Mining Act. Cap.123, Tanzania. (Revised Edition 2018).

The National Natural Gas Policy of Tanzania 2013

The Petroleum Act, 2015 (Tanzania)

The Petroleum (Conversion, Refining, Transmission and Midstream) (Storage) Act (4 of 2013) ('PCRTMSA')

The Petroleum (Exploration, Development and Production) (National Content) (Regulations) S.I. 44 of 2016 (Uganda)

The Mining (Local Content) Regulations, 2018(Tanzania)

#### *Treaties*

General Agreement on Trade and Tariffs ('GATT')

Trade Related Investment Measures ('TRIMS')

## Secondary sources

### *Journal articles*

A. Kiyondo and E. Villanger (2016). Local Content Requirements in the Petroleum Sector in Tanzania: A thorny road from inception to implementation?

C. Nwapi. *A Survey of the Literature on Local Content Policies in the Oil and Gas Industry in East Africa*. The SPP Research Paper (2016). Vol. 9 Issue 6.

David M. Anderson and Adrian J. Browne, 'The Politics of Oil in Eastern Africa', *Journal of Eastern African Studies* 5,2 (2011)

D. Botha and F. Cronje, *Women in mining: A conceptual framework for gender issues in the South African mining sector*. South African Journal of Labour Relations (SAJLR). Vol. 39 No.1 (2015)

I. Ramdoo. *Local content Policies in mineral-rich countries. An overview*. ECDPM Discussion Paper No. 193 (2016).

J. Poncian and C. George. *Mineral Extraction for Socio-Economic Transformation of Tanzania: The Need to Move from Papers to Implementation of Mining Policy and Law*. Journal of Social Science Studies (2015); Vol: 2(2)

J.S. Ovadia, *Local Content in Tanzania's Gas and Mineral Sectors: Who regulates?* CMI Brief 16:6 (Bergen: Chr. Michelsen Institute, 2017)

R. Sen, *Enhancing Local Content in Uganda's Oil and Gas Industry*, WIDER Working Paper 2018/110 (UNU-WIDER, 2018)

SEGOM; *Local Content Policies in the Oil, gas and Mining Sectors* (2013)

S.Tordo, *et al*; *Local Content Policies in the Oil and Gas Sector*. The World Bank

*The Zambezi Protocol*. Brenthurst Discussion Paper 7/2016: Result of a Dialogue on Natural Resource Policy in Africa.

### *Books*

P.D. Cameron, and M.C. Stanley, *Oil, Gas, and Mining: A sourcebook for understanding the extractive industries* (World Bank, 2017)

### *Online sources*

J. Feris. *Local Content Requirements in the Extractive Industry: A double-edged sword*. Mining and Minerals and International Arbitration Alert (2016)

*Mining Technology*. Available at: <https://www.mining-technology.com/features/the-final-shape-of-south-africas-new-mining-charter/>

### *Reports*

Gender in Extractive Industries. The World Bank (2013)

International Council on Mining and Metals (ICMM) (2012), *Mining's contribution to Sustainable Development – An overview*.

Women in Mining. 2017., Can a Mining Law Unlock the Potential of Women?

World Bank (2010). *Granting Mineral Rights. A Good Practice Note*