

THE PRACTICES AND IMPACT OF THE LOCAL/NATIONAL CONTENT: A CASE STUDY OF SOUTH SUDAN PETROLEUM SECTOR.

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The ultimate objectives of this paper is to explore, analyse, compare and extract the local content provisions embodied in the South Sudanese petroleum contracts and their timely practices. Then, evaluate their impact in changing the lifestyles of the population. Relevant clauses in various contracts that are in operations shall be pinpointed to expose the missing gaps and hurdles leading to practical implementations. Sectoral laws and regulation that were enacted by South Sudan to domesticate the local content policy shall be critically weighed on the aspect of enforcement mechanism. Relational analysis of local content application regionally and globally will be conducted for comprehensive insight to eliminate biases and misjudgement. Furthermore, the paper shall conclude by evaluating the practical impact of the local content programmes and influence as a critical link of social license by the local communities and the foreign oil companies.

Keyword: South Sudan, Petroleum Sector, Local/National Content and Foreign Oil Companies.

INTRODUCTION.

The local content is defined as the development of local skills, the technology transfer, use of local manpower, and local manufacturing (Silvana Tordo, David Johnston and Daniel Johnston, 2010). The above definition is not comprehensive in nature though it is the World Bank definition. Nevertheless, it covers a wider area in the application of the local content. Local content is a term which is increasingly used in petroleum contracts ensuring that the company is hiring local labour and procuring local goods and services from the host country instead of using imported goods and services or foreign workers (Oil contracts, 2015).

The term local and national content are often used interchangeably and cover the same meaning. The local content requirement from the general perspective has little impact if local policies are not in place to legalize and substantiate its implementation. Individual countries ought to enact their laws and policies that operationalize the provisions of local content in the petroleum contracts thoroughly. In recent past, oil producing countries (developing countries) have come under international scrutiny regarding institutional reforms including the enactment of local content policies to regulate foreign oil companies (FOCs). The use of local content policies to stimulate domestic manufacturing and create employment is not new (Michael Zisuh Ngoasong, 2014), however it has become prominent in the petroleum industry in developing countries in the last decade due to ongoing measures by governments to legislate previously local content directives/guidelines *ibid*.

SOUTH SUDAN PETROLEUM CONTRACTS AND LOCAL CONTENT POLICY.

The three operational petroleum contracts in South Sudan were signed prior to independent. These contracts were signed by the Republic of Sudan at a time of one united Sudan, and contracts for the oil blocks located in the South of the country were inherited by South Sudan when it separated from Sudan in 2011. These legal contracts embodied the local content clauses that were implemented with other mandatory clauses simultaneously. Worthwhile to note is that there were no isolated domestic laws regulating the local content at the time of one united Sudan. Issues pertaining to the local content applications were only addressed in the petroleum contracts which were narrowed down only to

employment, training and purchases of local goods and services with loose supervision approaches. South Sudan enacted petroleum law and petroleum regulations just one year after gaining independence. These petroleum legal regimes cover many areas involving procurement of goods and services, national goods and services, local employment and training and knowledge transfer. The contractor is also required to come up with the overall plans for the implementation of local content and to submit a report to the relevant authority on the implementation of the local content provisions. The distinction that features between the old system and new system is self-explanatory as explicitly discussed in detail below.

The obligatory requirement under the oil contracts is centred on employment, training and purchase of local goods and services as itemised hereinunder.

EMPLOYMENT.

From the start-up of the contract, foreign oil companies are allowed to employ expatriate on administrative and other technical professional positions. The technical and professional personnel are engaged together with local staff in preparation for taking over within predetermine timeframe. A contractor is often mindful when selecting professional and technical personnel who are expatriate because the contract obliges the contractor to give top priority to the employment of the qualified Sudanese national. Henceforth, the general requirement is that employment of expatriate is effected only if there are no qualified nationals at the time when they are needed. Article 27 of block E contract obliges the contractor to employ qualified nationals and state: (the contractor shall give top priority to the employment of qualified Sudanese nationals including skilled drivers and nurses) (Exploration and Production sharing agreement (EPSA August 2010). This block is still at the exploratory stage. However, the local content provisions requirement in the blocks are identical with other operational blocks without any slight difference.

The Contractor is not allowed to hire unskilled non-Sudanese labor as expatriate employees under the same article. The Contractor is moreover bound to have a minimum proportion of Sudanese nationals excluding unskilled labor, as its employees in Sudan of up to sixty (60%) percent after five years of the effective date and up to ninety 90% percent after ten (10) years from the effective date. The time frame allocated is not absolute on the side of the contractor. There is an allowance of excuse in case the contractor failed to meet the limit through a detailed report providing evidence of reasons as to why the limit was not met. One critical issue is the term "qualified Sudanese". Assumed oil sector is new, and there were no pre-training prior to the signing of the contract, the likelihood is that host nation will have a very insignificant representation in the management of sector from its' initial stage. The argument would be, non-nationals would be employed, and it is only after five to ten years that, national expertise can be realised. One would wonder why there are no intermediary programmes of training nationals between year one to year three after the effective date of the project. The need for the additional clause which obliges oil companies to train nationals in the shortest time possible in the event of no expertise from the beginning of the contract is necessary.

The requirement for the use of local labour can be challenging especially in a country where the educational level is minimal and where the oil sector is relatively new. History tells us that, educational level in South Sudan is weak, and the oil sector is new. Therefore, the use of local manpower as means to develop the necessary skills and knowledge, as obliged by the petroleum contracts is necessary to bridge or narrow the gap in South Sudan. Many petroleum contracts around the world embodied local employment clauses as an obligation. Contractors are also willing to train and employ locals where a little knowledge about the sector exist. In Afghanistan Amu Darya basin Contract, for instance, the contractor is obliged by the petroleum contract to train and employ qualified Afghan nationals for petroleum operations. Article 20.1 of the Afghan Amu Darya Basin contract states "the contractor agrees to as far as possible to train and employ qualified Afghan national and will undertake the schooling and training for staff positions, including administrative and executive management positions. The contractor will require its contractors and subcontractors to do the same".

TRAINING OF SUDANESE NATIONALS.

Training of nationals is done at various stages in the process of contract implementation. The first training is conducted six (6) months after the effective date of the contract. At this stage, the contractor is needed to prepare and carry out specialised training programmes for its qualified Sudanese employees engaged in petroleum operations. External and on-job training is the significant part of the training programmes. The idea is to prepare capable nationals to replace foreign employees or expatriate gradually when those nationals are capable of running the job. In addition to on-job training, the contractor is required to provide on a continuous basis for the training and career development of Sudanese nationals in order to qualify them for skilled, technical, administrative and managerial positions. Long term career field development plans are detailed on yearly programmes. On the procurement of goods and services, contractor is bound to give preferences to locally manufactured materials, equipment and consumables which are available in the local market and comparable in quantity and quality and delivery time of goods to be imported by the contractor. All

procurement of equipment, facilities, goods, materials, supplies and services required for petroleum operations shall be on arm's length basis. The contractor is furthermore required to utilize the services of Sudanese shippinglines, airlines or agency for passenger and cargo transportation provided that, such services are reasonably competitive in price and quality to the service otherwise available. The use of local goods and services by foreign oil companies is intended to stimulate the local economy and to create a fair global market in the long run. The central objective is that local firms gained the needed skills and experience. The overall operational linkages are not only to use the locally made goods and services, but it is more or less about how cost oil is spent by the contractor internally by promoting the living standards of nationals. Control in spending of cost oil constitutes a significant lift in elevating the poverty and play a vital role in changing the lives of the rural poor in the South Sudanese civil society.

SOUTH SUDAN PETROLEUM LEGISLATIVE FRAMEWORKS AND LOCAL CONTENT POLICY.

When South Sudan seceded from Sudan and inherited the petroleum activities with regards to the oil blocks located within its territory, focuses were on the establishment of the petroleum legal frameworks to concurrently govern the oil sector in line with the oil contracts. Petroleum represents a strategic resource in South Sudan and a primary source of revenue for the national government as well as to the states and local governments. Article 173 of the Transitional Constitution of the Republic of South Sudan, vested the ownership of petroleum in the people of South Sudan and states; "ownership of petroleum and gas shall be vested in the people of South Sudan and shall be developed and managed by the national government on behalf of and for the benefit of the people Transitional Constitution of South Sudan, 2011.

Development and management of petroleum resources are guided by fourteen (14) principles under the same article which are translated into petroleum Act 2012 for practicality. The local content policy is embodied under those guiding principles, and the Act is very much explicit on mandatory and daily implementation and monitoring. The Petroleum Act of South Sudan covers the local content requirement under chapter fifteen (15), articles 63 to 67 respectively. The first attempt is on procurement of goods and services under the article 63 of the Act which states; "procurement of goods and services that exceed a prescribed threshold value shall follow open, transparent non-discriminatory and competitive tendering procedures as Prescribed in the regulations The Petroleum Act of South Sudan, 2012". Two elements featured in under this provision. (1) prescribed threshold and; (2) open, transparent non-discriminatory and competitive tendering procedures. Services companies in the oil sector also provide employment and other services to local populations because they are required to have a legal presence in the home country where petroleum activities being carried out and give priority to the employment of locals. The employment element matters and represents a big incentive to their works which in turn is an advantage to local citizens. Article 64 of the Act provides for the acquisition of national goods and services. Under this article, foreign oil companies are required to acquire materials, equipment, machinery and consumer goods of national production of the same or approximately the same quality as foreign materials, equipment, machinery and consumer goods and that are available for sale and delivery in a timely manner at prices that are no more than ten (10) percent higher than the price for imported items. Foreign oil contractors are furthermore required to acquire national services to the extent that the services are similar to those available on the international market and their prices, when subjected to the same taxes charges, are no more than ten (10) percent higher than the prices charged internationally for similar services.

Article 65 of the same Act focuses on employment and training of South Sudanese nationals. The obligatory requirement under this article is that, foreign oil contractors or subcontractors shall ensure that job opportunities arising as result of oil operations are given to South Sudanese nationals who have the required expertise or qualifications at various level of petroleum activities on equal, fair and non-discriminatory basis. Unskilled labour shall not be contracted to aliens whatsoever. The phrase like "required expertise or qualifications at various level of petroleum activities" pose a challenge to South Sudanese nationals due to the fact that, they were not initially exposed to the sector prior to separation of the country and as such could not possibly possess the needed expertise or qualifications unless undergone a special intensive training programmes.

Foreign oil contractors and subcontractors are locally obliged to carry out specialised training and henceforth, are expected to prepare and implement plans and programmes to train South Sudanese nationals in job classifications and in all aspects of petroleum activities including the plans and programmes for post-graduate training and scholarship.

Article 66 of the same Act undertook the issue of how knowledge can be transferred from foreign oil companies to nationals in a given transition. Under this section, foreign oil contractors are required to encourage and facilitate the transfer of skills, knowledge, competence and know-how to the nation by the formation of joint ventures, partnering and the development of licensing agreements with service and supply entities indigenous to the country. Oil companies are not expected to compromise the protection of proprietary rights to immaterial assets including technology and know-how from copyright, patent, trademark, trade name and other intellectual property infringement. South Sudan as developing country has benefited from expertise and technology being brought in by the foreign oil companies. As of the date of writing this paper, South Sudanese working in the petroleum sector with relevant know is above forty (40) percent. This

is because of continuous engagement by the foreign oil companies in the different areas of petroleum operations on both industrial and economic point of view. In developing countries, technology transfer is a solution for the improvement of industrial and economic sectors (A.S. Mohamed, S.M. Sapuan, M.M.H. Megat Ahmad, A.M.S. Hamouda and B.T. Hang Tuah Bin Baharudin,2012).

Joint ventures formation between the local companies and foreign oil subcontractors have contributed a lot in absorbing the modern knowledge. Many state-owned or indigenous companies were able to partner with their foreign counterparts to carry out some petroleum activities. One major challenge with the formation of joint ventures is capital on the side of local companies. Foreign oil companies often carry the risks of covering the business activities initially with their local partners on carried basis even if they were supposed to pay their share as required by the objectives of the joint venture agreement. Joint ventures are common in the international oil industry. Most companies are willing to take on partners for large-scale or high-risk ventures to diversify their investment. Some of the proposed Russian joint ventures are characterized by 100% carry for production association partner through development including operating costs Daniel Johnston, international petroleum fiscal system and production sharing contracts, 1994. The chapter concludes by local content plans and reporting mechanism under Article 67 where foreign oil contractors are required to prepare and implement annual local content plans that are adequate for systematic implementation as set forth in the above articles. This annual local content plan shall be submitted to the ministry of petroleum and mining and a summary of such plan is published by notice in the Gazette and made available by any other appropriate means to inform interested persons in the plan. The content of the plan includes (1) a plan for procurement of national goods and services (2) a detailed plan and programme for local recruitment, employment and training including post-graduate training and scholarships and (3) a plan for the transfer of skills, knowledge, competence and know-how. The contractor is required to submit and publish an annual report describing the initiatives regarding local content taken in the preceding year and their positive results. Regional experience tells us that, local content has abundantly contributed to the petroleum sector transformation taking Angola and Nigeria as examples.

It widely believes that billions of dollars is being invested in Nigeria and Ghana on a yearly basis. Given that upwards of US\$15 billion is invested each year in oil extraction in each of these countries, capturing more of this spend through productive economic activity could have a dramatic impact on the economy (Jesse Salah Ovadia,2014)

. The realisation of the positive impact of local content is associated with efforts to ensure that petroleum resources are used to help build the skills and talents of the national manpower. Brazil of recent past has appeared to have a successful history is using local content policy to develop necessary capacities through it national oil company Petrobras. Building local education and training capacity has enabled the country to maintain a sense of national ownership over its oil and gas sector and has ensured that Brazil now has solid presence on the world stage (Jim playfoot, phil Andrews and Simon Augustus,2015).

REGIONAL AND INTERNATIONAL INFLUENCE ON LOCAL CONTENT.

The introduction and implementation of the local content requirement have gained regional and international attention both in term of local employment and the use of local products and services. Governments in various oil producing countries made public intervention by designing and issuing regulatory regimes that suit the timely implementations of plans and programmes put forwards by the oil companies with regards to local content. Nigeria in 2003 and 2005 has issued the oil and gas industry content development bill and content policy respectively with the objectives of setting directives on domiciliary of services; award of low-tech on-shore supply contracts to indigenous firms and preferences for domestic sources of commodities, including a target of 45% to be achieved by 2009.

This approach in Nigeria has not resulted in significant benefits for most Nigerian due to many factors including capital and corrupt local contractors. The associated major activities, e.g., exploration, drilling, production, well intervention and service provision remained primarily controlled and managed by foreign multi-national companies (H.U. Nwosu, I.N. Nwachukwu, S.O.T. Ohaji, and S.D. Probert,2006).

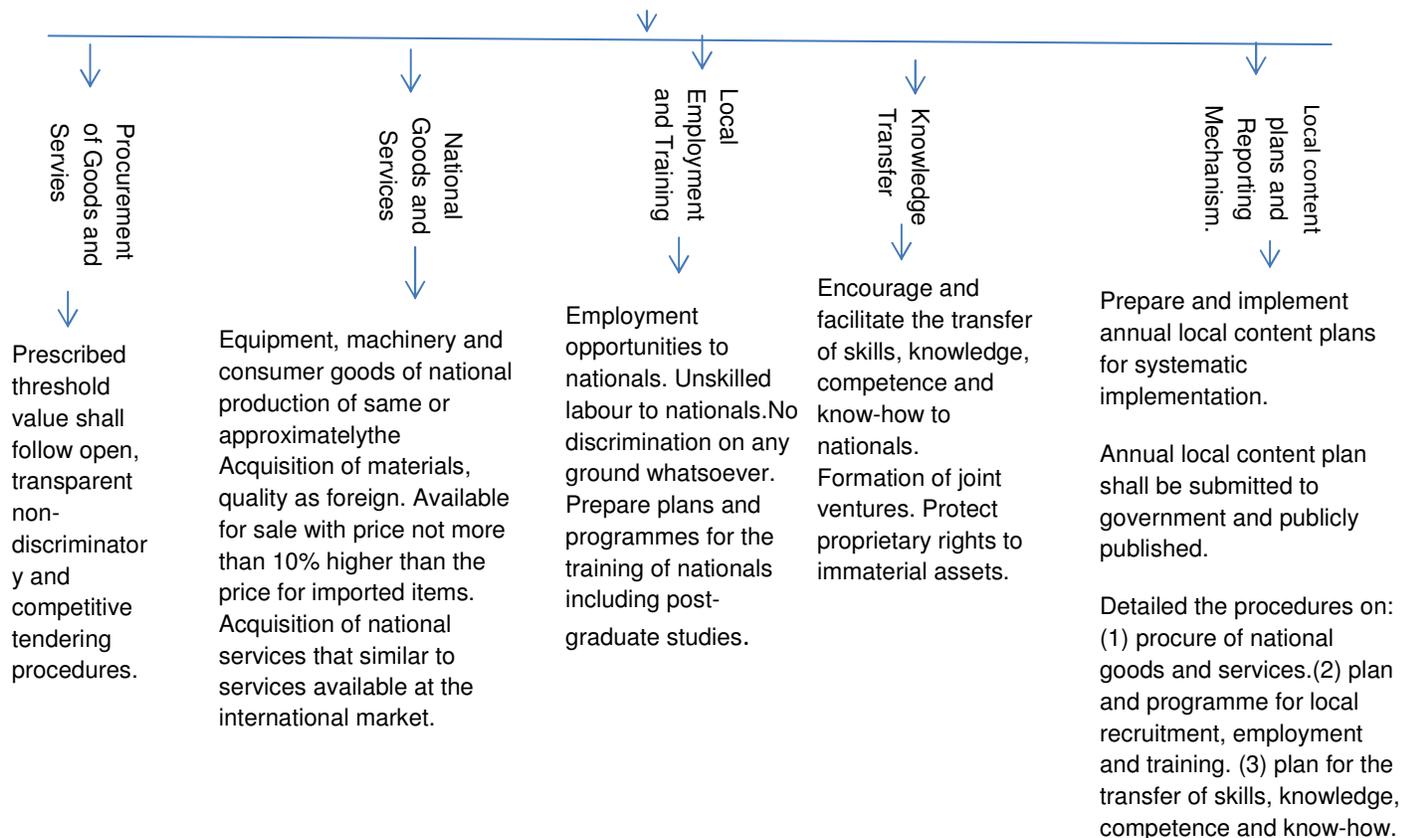
Only minor contracts have been awarded to local contractors *ibid*. Several factors, ranging from locally inadequate finance being available, corrupt local operators, lack of technical expertise and the conflicting attitudes of multi-national operators and local contractors have contributed to this *ibid*.

Similar to Nigeria, Ghana passed a local content law in 2013 with the aim of promoting internal and external linkages between Ghana's oil and gas sector and the broader economy. A centre known as Enterprise Development Centre (EDC) was established to enhanced the capacity of indigenous Ghanian firms and promote their participation in the petroleum sector. It finds that the EDC facilitates interaction between local entrepreneurs, officials of state institutions and foreign oil companies, which enhances local entrepreneurs' knowledge of the oil and gas sector and provides enterprises with an entry point (Austin Dziwornu Ablo,2015).

This approach may not benefits all enterprises but could render significant benefits to some well-established medium to large enterprises at a time. Kazakhstan has a detailed policy especially on targets to be achieved within the specific period. In 2009, the law of the Republic of Kazakhstan (No.223.IV) formalised local content development and set

Diagram of South Sudan local content model.

Local content parameters.



targets for Kazakh contents in works (60%), services (70%), staff (70-90% lower to senior personnel), services providers (95% local staff) and local goods (15%) to be achieved by 2012 Note 4, pp 473. In 2010, a new law on subsoil and subsoil use sets target of 50% certified local procurement from Kazakh suppliers by 2012, mandatory joint ventures with KazMunay-Gas, the national oil company (51% minimum share) in all new exploration and production contracts and the powers to obtain fields rights without open tender, IOCs that cannot satisfy requirements risk losing their preferential right to the extraction contract *ibid*. From the literature above, local content policy played a vital role in realising and diversifying the benefits accruing from the petroleum activities if necessary policies are put in place. Local content under the petroleum contracts without regulatory support is likely to yield insignificant fruits as expected by the host country in term of job creation and establishment of the local industry whereby necessary knowledge and technology can be transferred.

CONCLUSION.

Local content should not be understood as a social welfare. The similarity between the them is that, they are geared toward community betterment but, in fact, they completely different in nature. The main distinction is that, local content take some forms of mandatory approach at the national, regional and grassroots level with the intention being driven by economic improvement and knowledge transfer, whilst the social welfare underscore a quasi-requirement under the oil contracts to win the confidence of the local population to avoid the negative attitude towards the oil companies by the local population. Social welfare provisions often refer to efforts exerted by the oil companies to provide some benefits to host communities directly affected by the petroleum activities. Most companies address social welfare in their voluntary corporate social responsibility (CSR) programmes Note 3, pp 96. Social welfare are enclosed under national and international law and other good practices and standards in the area of corporate social responsibility.

Local content under the United Sudan is addressed solely in the petroleum contracts and focus mainly on employment, training and purchase of goods and services. There was no domestic law that regulate the local content application at that time. Absent of laws and regulations in the sector post the threats of checks and balances and represent a significant gaps and hurdles in the smooth implementations of the local content requirement. Nevertheless,

significant changes were realized regarding the positive impact of local content under the contracts despite that; there was no law enacted at a time. The new Petroleum Act 2012, of South Sudan covers wider areas relating to the local content. One of the fundamental questions is the application of the new law, as when, shall it come to effect. It is easy and also unfair to apply such law with regards to the old contracts that entered into before the law came into existence. The application of the new law should be subjected to the contracts that were signed after and should set a clear basis for new players in the oil industry.

The demand for full and timely implementation of local content policies has gained a huge support regionally and internationally. Host governments utilized local content policies to promote the local industry and solve the impeding issue of unemployment of the youths and import sophisticated knowledge from the international oil companies. Foreign oil companies moreover use robust local content provisions to soften the opposing views when securing their oil contracts. Henceforth, the demand is two-sided scenario between the host governments and foreign oil companies with different objects but with the same goal. South Sudanese for sure has benefited from the provisions of local content embodied in the contracts both in term of massive youths employment, training and transfer of technology as well as uses of local goods and services. Unlike to the oil revenues that is controlled by the government, benefits accruing as a result of local content applications are quickly felt by the local populations. Communities living around the oilfields are often classified as advantageous people because of the rapid positive change of their lifestyles due to oil activities. Issues of the environmental matters, displacement and compensation, clean drinking water, and better health facilities are constantly being tackled by the tripartite parties, being the government, local population and the oil companies.

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