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# Local content policies and petro-development in Sub-Saharan Africa: A comparative analysis

Jesse Salah Ovadia

*Lecturer in International Political Economy, Politics Building, School of Geography, Politics and Sociology, Newcastle University, 40-42 Great North Road, Newcastle upon Tyne NE1 7RU, United Kingdom*

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ABSTRACT

New legal frameworks for oil and gas have been created in Ghana, Uganda, Mozambique, Tanzania, Kenya and Liberia since 2013 to put in place local content policies (LCPs). There are a number of reasons why such policies have become popular with African governments for petroleum and mining. Beginning with Angola and Nigeria and moving to the newer adopters of these policies, a general weakening of oil and gas LCPs in Sub-Saharan Africa indicates a 'softer' approach to regulation over time and a the emergence of a more pro-business agenda. This paper seeks to conduct an in-depth survey of LCPs in oil and gas across Sub-Saharan Africa in order to identify differing approaches and analyze emerging trends in the legal and institutional frameworks within which local content frameworks are enacted and within which they will be implemented in order to advance petro-development in Africa.



## 1. Introduction

Local content policies are proliferating across Sub-Saharan Africa. From traditional exporters of copper, gold and other metals to the many newly oil-rich states, new policies are being crafted as new resource discoveries set off a rush to put in place legal frameworks to govern their extraction. Since 2013, Ghana, Uganda, Mozambique, Tanzania, Kenya and Liberia have passed new legislation to govern the exploration and production of oil and gas. In the past few years, local content policies (LCPs) have also garnered new attention from numerous international institutions and donor agencies. However, studies tend to focus on mining, and even when they look at oil and gas, LCPs are not often studied comprehensively. LCPs may temporarily relieve the pressure African governments feel to respond to expectations that have grown out of control even as oil prices continue to fall. However, if LCPs are not properly implemented, the relief will be time-limited. Lastly, in both oil and mining, LCPs are most popular when they are vague and not targeted at specific services or objectives. This lack of more refined policy objectives may limit the developmental benefit of local content.

The emerging petroleum regimes in Africa have been subjected to varying levels of individual scrutiny both from domestic non-governmental organizations and from international civil society organizations. The Natural Resource Governance Institute[1] has reviewed many of these laws while the Columbia Centre on Sustainable Investment[2] has surveyed local content frameworks in a number of countries. Both the World Bank Oil, Gas and Mining Unit and the OECD Development Centre, through the Policy Dialogue on Natural-Resource Based Development, are planning more detailed country analysis of local content frameworks in petroleum and mineral extraction. Others have done analyses of local content policies that take more thematic approaches and rely on examples from different countries as opposed to detailed examination of the various frameworks themselves (Ramdoo, 2015). Klueh et al. (2009) studied local content in a number of countries, but even as recently as 2009 it was only Angola and Nigeria that had notable policies when it came to African oil and gas. Hansen et al. (2014) have done a case study on local content in Tanzania, Uganda and Mozambique, but one that does not focus specifically on the oil sector.

LCPs increase the utilisation of national human and material resources in the extractives sector. In the case of petroleum, they domicile in-country oil and gas-related economic activity that was

*E-mail address:* jesse.ovadia@ncl.ac.uk

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[1] See, for example, recent analyses of legal frameworks for petroleum in Uganda (http://www.resourcegovernance.org/news/blog/ugandas-oil-revenue-management-framework-solid-start-not-nearly-enough) and Ghana (http://www.resourcegovernance.org/news/blog/ghanas-petroleum-exploration-and-production-bill-steps-forward-room-improvement).

[2] See http://ccsi.columbia.edu/work/projects/local-content-laws-contractual-provisions/.

previously located abroad. Local content policies promote indigenous participation in economies otherwise geared for the export of raw materials. They also encourage the development of local manufacturing and service provision through backward, forward and sideways linkages along the value chain for natural resources. In petroleum, LCPs work by encouraging and/or requiring exploration and production firms to use local companies for the procurement of goods and services and multinational oil service companies (OSCs) to domicile economic activities in the countries of extraction.

Physical and human capital development are also central to LCPs and fundamental for socio-economic development. Despite the small numbers of jobs available in oil and gas, the large number of goods and services needed for oil exploration and production offer numerous possibilities for employment. The oil and gas industry can only contribute to meaningful development through a combination of both appropriate investment of revenues and the development of productive linkages between the oil and non-oil economies. Taken together, these two approaches offer the possibility of petro-development in Africa (Ovadia, 2016b).

This paper is based upon an in-depth survey of LCPs in oil and gas across Sub-Saharan Africa. Through comparative analysis of the content of these new frameworks and the legal and institutional frameworks within which local content frameworks are enacted, I identify differing approaches taken by various African countries to petro-development. Overall, early adopters of LCPs in oil and gas have chosen ‘hard LCPs’ (concrete targets and regulations) while late adopters are largely opting for ‘soft LCPs’ (focused on training, competitiveness and voluntary shared value creation). This trend suggests a weakening in LCPs over time that may be the result of lobbying efforts by international companies, investors and Western governments.

Resource-based development has been widely studied in recent years. The ‘Making the Most of Commodities Programme’[3] led to UNECA's (2013) report on local linkages by the same authors. UNECA followed this up in 2014 with a report on dynamic industrial policies that focuses on the ways global value chain analysis can help create linkages between extractive industries and other sectors of the economy. As described in Ovadia (2014), several similar reports released around the same time from the OECD, UNDP, African Union, UNIDO, African Development Bank, and Africa Progress Panel also focused on resource-based development.[4] Work on resource-based development begins with the insight that natural resources can have unique developmental potential. As I have noted elsewhere (Ovadia, 2016a), this is not a new idea, but one that in recent years has worked in reverse in the form of arguments about a so-called ‘resource curse’. The possibility of ‘positive oil exceptionalism’ does not deny that resources often have negative impacts but rather, as many authors have pointed out (Obi, 2010; Saad Filho and Weeks, 2013; Heilbrunn, 2014), that the resource curse thesis is highly deterministic. The insight that different policy options implemented in different social, political and economic contexts will bring about different developmental outcomes is the starting point for the analysis that follows.

In some respects, the scope for positive outcomes/positive oil exceptionalism has narrowed due to the fall in the price of oil. At the same time, the study of oil-backed economic development through LCPs is now even more important given the limits of development through the revenues from petroleum resources alone. Local content offers the oil and gas industry a development strategy the can promote economic diversification and growth in the non-oil economy. Such structural transformation, industrialization and diversification is the only path to long-term and sustainable economic and social development. In the wake of the oil price shock, LCPs can therefore be understood as more important for oil-rich developing countries, not less. Additionally, as the currencies of Africa's oil producers are devalued with the fall of oil, the possibilities for encouraging domestic manufacturing and service provision increase.

Although there has been a lot of interest in local content policies, there has also been divergence in terms of enthusiasm and support for them. The World Bank (Tordo et al., 2013) remains neutral on LCPs while the OECD's draught Framework of Public–Private Collaboration for Shared Resource-Based Value Creation[5] does not even mention the idea of targets or regulations. While there may merits to the idea of public-private partnerships (see Ramdoo, 2015), local content undeniably involves a cost to the government and possibly (although not necessarily in the long term) to investors. This cost explains the Africa Economic Outlook 2014's general negativity toward LCPs—although the report generalizes about local content in extractive and non-extractive sectors when it notes ‘localisation requirements can encourage linkage development’ but can also ‘simultaneously inhibit upgrading opportunities further down the value chain’ (AEO, 2014: 193). Such concerns have led to discussions about ‘alternatives’ to local content (Kolstad and Kinyondo, 2015).

The analysis below—developed from careful charting of legislation and regulations across the continent as well as from interactions with senior government officials[6]—reveals that although new possibilities have opened for what I have called a ‘petro-developmental state’, there have at the same time been backward steps. The paper begins with the experience of African oil producers post-independence, describing early experiences of trying to assert national control and what went wrong. In Section 2, I chart Angola, Nigeria and Ghana's recent experiences with the adoption of local content policies as countries who already have oil production and a record of implementation to review. In Section 3, the paper moves to review more recent debates and the adoption of local content legislation in several emerging African oil producers, namely Uganda, Mozambique, Tanzania, Kenya and Liberia. The paper then concludes by reviewing new trends and policy implications of the push for local content in oil and gas.

In each country described below, a government ministry, department, agency or state-owned company is responsible for advancing local content in oil and gas in order to nurture diversified economic development and bring about structural transformation. In each case, powerful internal and external groups limit the autonomy of these institutions and water down the policies they seek to enact. Domestic forces are seeking to direct the benefit of LCPs to local elites while foreign forces seek to limit the short-term cost to international capital. To succeed, it will therefore be

[3] See http://www.commodities.open.ac.uk/mmcp and Morris et al. (2012).

[4] See AMV (2011), UNDP (2012), UNCTAD (2012), UNIDO (2012), Africa Progress Panel (2013), UNECA (2013, 2014) and AEO (2014) for a sample of such material.

[5] Available at http://www.oecd.org/dev/Framework_Public-Private_Collaboration_FINAL.pdf.

[6] In addition to analyzing legislation and production sharing contracts, the methodology for this study involved observation and participation at oil industry events about local content and development through natural resources. Since 2012, I have interacted with senior officials in government regulators and state oil companies at a series of at least ten oil industry events. Some of these events may be considered public, others were held under ‘Chatham House rules’ and in some the information I gathered was through private conversations or communication after the fact. At these events, government and private sector representatives often felt more comfortable voicing opinions and information not available in the public domain. Although I was engaging with officials in their public capacities, I have chosen to label several interactions in which information was gathered as ‘semi-private comments’. To protect their identities, I am including only the year of the event. To what extent I identify the position of the informant depends on how identifiable they are and what conditions were placed on the event I met them at.