

LOCAL CONTENT



Uganda – Petroleum
September, 2021



**Columbia Center
on Sustainable Investment**

A JOINT CENTER OF COLUMBIA LAW SCHOOL
AND THE EARTH INSTITUTE, COLUMBIA UNIVERSITY

The Project¹ - Background

Resource-rich countries are increasingly inserting requirements for local content (“local content provisions”) into their legal framework through legislation, regulations, contracts, and bidding practices. If successful, a policy to increase local content can lead to job creation, boost the domestic private sector, facilitate technology transfer and build a competitive local workforce. However, local content goals are often unfulfilled and the opportunities are not captured. For example, local content provisions typically require investors to meet targets measured as a percentage of investment, hours worked, equipment supplied, or jobs created. If targets are too high, they may either scare away investment or remain unmet as investors accept the fines or find loopholes. If they are too low, the country will not maximize potential linkages. This shows the importance of the framing of local content provisions. Targets, and other local content objectives, need to be carefully quantified, adapted to the local context and collaborative. Because local content provisions can be key to translating resource investments into sustainable benefits for the local population, this project examines the detail of the existing legal frameworks for local content in a number of countries.

CCSI has conducted a survey of the local content frameworks of a number of countries – identifying the key legislation, regulations, contracts and non-binding policies and frameworks dealing with local content issues in the mining and petroleum sectors². A profile was created for each country, summarizing the provisions in the legal instruments dealing with local content and highlighting examples of high impact clauses³ – those containing precise language which might be useful as an example to those looking to draft policies to enhance a country’s local content⁴. The profiles examine provisions dealing with local employment, training, procurement, technology transfer and local content plans as well as local ownership, depending on the country’s approach to and definition of local content. In addition, as key to translating provisions into action, the profiles look at implementation, monitoring and enforcement provisions as well as the government’s role in expanding local involvement. Aside from emphasizing the strong clauses, which may be adaptable across countries, the profiles summarize the provisions but do not provide commentary, because local content is so context-specific. The profiles are intended as a tool for policy makers, researchers and citizens seeking to understand and compare how local content is dealt with in other countries, and to provide some examples of language that might be adopted in a framework to achieve local content goals. Hyperlinks are provided to the source legislation, regulations, policies and contracts where available.

¹ The project is managed by Perrine Toledano, researched by Connor Olson, and was designed with Jacky Mandelbaum, Sophie Thomashausen and Elsa Savourey.

² General legislation with provisions that relate to local content (for example, tax laws with incentives for local procurement or employment in any industry), was not included in the review. The review included dedicated mining or petroleum sector or specific local content legislation, regulations, policy and contracts.

³ Those clauses are framed and singled out by a “thumb up”.

⁴ Our criteria for assessment of the quality of the provisions were language that is less likely to present a loophole, i.e. less likely to be subject to interpretation due to vagueness and more likely to lead to enforcement because of its clarity in terms of rights and obligations of both parties (state and investor), and reasonable in its obligations on the company. In addition, as mentioned above, we looked for clauses that encourage collaboration between the company and the government in defining local content targets and goals, and those where the government has a role, as well as clauses enabling implementation and monitoring of the requirements and those giving the government strong remedies to enforce companies’ compliance.

The Project - Background

The Impact of International Law

The World Trade Organization (WTO)'s agreements and investment treaties can present an obstacle to the realization of local content goals by prohibiting some types of local content requirements (a sub-category of “performance requirements”¹). CCSI therefore surveyed the relevant WTO agreements and investment treaties in each country profiled to identify the provisions that may prevent, counsel against and/or shield local content standards. These provisions are quoted in the profile in order to show the potential barriers to implementation of local content so that they can be kept in mind when countries enter into these international investment treaties². Free Trade Agreements other than the WTO agreements, some of which may contain investment chapters, are not included in the scope of the review, but may also be relevant and should be similarly kept in mind.

¹Performance requirements are measures in law, regulation or contract that require investors to meet specified goals when entering, operating or expanding in, or leaving a host country. Some are strictly mandatory; others are imposed as a condition for receiving some sort of added benefit or advantage.

²Countries implementing local content requirements should be aware of the possibility of a challenge to those provisions either through the WTO (state-to-state dispute settlement) or arbitration under the bilateral investment treaties (which is investor-state dispute settlement). While the potential for such actions may be low, they remain a risk depending on the circumstances, and particularly should relations between the state and the investor sour over the course of the investment.



Highlights

- In 2016 Uganda issued petroleum regulations dedicated to National Content.
- Uganda's definition of national content refers to concepts of local ownership, local employment, and local creation of value added.
- Ugandan regulations not only include requirements on employment, training, and procurement but also on technology transfer and local investment in research and development.
- The regulations grant the monitoring and implementation power to the Petroleum Authority.
- In 2019, Uganda issued a National Local Content Bill, which regulates all local content for all sectors, including situations where industry-specific local content does not suffice, including petroleum regulations.
- The goal of the 2019 policy is to impose local content regulations on everyone using public resources or carrying out activities that require a license in Uganda.

✓	Employment Requirements
✓	Procurement Requirements
✓	Training Requirements
✓	Technology Transfer Requirements
✓	Monitoring and Enforcement Mechanisms
✓	Government Obligations in Support of the Companies' Program



International law

Legislation

[The National Local Content Bill, 2019](#). Regulates all local content across the country, including when industry-specific local content bills are silent on matters.

Regulation

[The Petroleum \(Exploration, Development and Production Act, 2013\)](#) (“Act”) Regulates petroleum exploration, development, and production in Uganda. Contains few provisions related to local content.

Policy

[The Petroleum \(Exploration, Development and Production\) \(National Content\) Regulations, 2016](#) (“National Content Regs”) Regulates the implementation of national content in petroleum exploration, development, and production in Uganda.

Contract

Key definitions

“Ugandan Company: means a company incorporated under the Laws of Uganda which is wholly owned and controlled by citizens of Uganda.”

“Local Content: includes the quantum or percentage of (a) locally produced goods; (b) locally provided services; and (c) the utilization of personnel, financing, goods, and services by a local content entity in any operation or activity carried out in Uganda.”

“Local Content Entity: “ (a) Government, including a government Ministry, Department, Authority, Local Government, Local Authority, statutory body or agency; (b) natural or artificial person, a partnership or any other entity; (c) an individual or entity contracted or subcontracted by a local content entity listed in paragraph (a) and (b); carrying out an activity prescribed in section 1 of this Act.”

(National Content Regulations, Art. 4) & (The National Local Content Bill 2019, Art. 2)

Overview



Rights application

- An application for an exploration license must include a proposal for the training and employment of Ugandans.
- An application for a production license must include a proposal for the procurement of local goods and services.
- Local Content is a consideration in the approval processes of bids to the Ministry of Energy, Oil, and Mineral Development.

Training and employment

- Licensee must have a succession plan.
- Applications for expatriate permits have to go through the Authority first, but only if there are no qualified Ugandan citizens.
- Companies must develop a training strategy for Ugandans and submit it to the relevant authority to explain how they'll transfer skills.

Technology Transfer

- The license should include a technology transfer plan.
- The licensee should encourage tech transfer through joint ventures or licensing agreements.
- Any expense on local R&D should be approved by the Authority and reported upon.

Procuring goods and services

- Licensee must give preference to goods produced in Uganda and services provided by Ugandan citizens and companies with the capacity to add value and meet health, safety, and environment standards.
- Ugandan citizens and companies must be notified of upcoming contracts and licensee's health, safety, and environment standards.
- The new Local Content Bill confirms the list of goods and services that are to be provided by Ugandan entities exclusively and outlines how the preferencing of goods on the Ugandan market should be done.
- There are regulations on when companies are allowed to reject Ugandan goods and services in the procurement process

Monitoring and enforcement

- Both quarterly and annual reports on national content performance should be submitted for approval.
- The licensee is also responsible for passing on the national content obligations to its contractors and sub-contractors.
- Performance default is liable to receive a penalty.
- The Petroleum Authority is responsible for monitoring and enforcing the national content regulations.

Implementation

- The Petroleum Authority will establish a national supplier database, a database of human capabilities and technical skills.
- The Petroleum Authority might require welding activities to be done in Uganda.
- A new local content department will be established to ensure that implementation is done following the relevant rules.

Applications for Rights



- An application for a petroleum exploration license must include particulars of the applicant's proposal for the training and employment of Ugandan citizens (Petroleum (Exploration, Development and Production) Act, 2013, Art. 56(3)(f)).
- An application for a production license must include particulars of the applicant's proposals for the employment and training of Ugandan citizens and for the procurement of goods and services from Uganda. A production license will not be granted unless these proposals are "satisfactory" (Petroleum (Exploration, Development and Production) Act, 2013, Art. 71(3)(k) and (l) and 74(1)(e) and (f)).
- If the Petroleum Authority is not satisfied, it needs to return comments and requests for edits to the licensees. The licensee has twenty-one days after receipt of the comments to return a new plan. The Authority then has twenty-one days to approve the plan, and the licensee is not authorized to deviate from the approved program without the approval of the Authority (National Content Regs, 7(2) and 7(3)).



- The National Local Content Bill provides additional details regarding the Contents of a Local Content Plan (The National Local Content Bill 2019, Schedule 3):



“1. The procurement and utilization of goods and services obtainable in Uganda;
2. The employment of Ugandan citizens, their remuneration as well as the minimum qualification requirements;
3. Workforce development strategies in relation to Ugandan citizens including training plans and projections to address any skill gaps that may have been identified in relation to the local labour force;
4. Strategies to transfer technology, knowledge, and skills to Ugandan citizens;
5. Local supplier capacity development;
6. Where applicable, subcontracting and creation of partnerships with Ugandan and resident companies;
7. Succession plan for all jobs held by foreigners or activities being undertaken or done by foreigners;
8. Training and capacity building for Ugandan citizens;
9. A detailed list of goods and services to be provided exclusively by Ugandan entities and citizens or in accordance with the Act;
10. Strategies for the support of local participation in the activities of the bidder;
11. The minimum estimated expenditure that will be made by the bidder in fulfilment of its local content obligations; and
12. Any other information as prescribed by regulations.”

Applications for Rights



- The National Local Content Bill requires that local content is a bidding criterion at all levels of procurement, from the government's licensing process to the contractor's licensing process.
 - Local content must be a consideration during the bidding process, and the bid documents must state the minimum local content requirements. Each bid that is subjected to local content obligations shall be evaluated on its ability to execute the local content requirements; the bid can proceed if the local content requirements are deemed sufficient. Next, the bid will be graded and compared to others based on the highest value of local content. The bidder then must prove to the appropriate entity that they will be able to follow through on their plan (The National Local Content Bill Arts. 24 and 25).

Training and Employment



- All contracts whose total budget exceeds US \$1,000,000 must contain a labour clause mandating the use of a minimum percentage of Ugandan nationals in specific categories stipulated by the Authority (National Content Regs, Art. 15).
- The licensee must submit a detailed program for the recruitment and training of Ugandan citizens within twelve months of the license being granted and then annually henceforth. Once approved by the Petroleum Authority, the program cannot be changed without its permission (Petroleum (Exploration, Development and Act 3 Production) Act, 2013 Art. 126(1) and (4)).
- The training program must include training in all phases of operations and take into account gender, equity, persons with disabilities, and host communities (Petroleum (Exploration, Development and Act 3 Production) Act, 2013, Art. 126(2)).



- The National Content Regulations specify additional requirements for the plan (Art. 17): “The plan submitted by the licensee in subregulation (1) shall include:
 - (a) an outline of the (i) hiring and training needs of the licensee and the licensee’s major contractors with a breakdown of the skills required; (ii) the activity-specific training requirements; and (iii) the anticipated expenditure to be made directly by the licensee in implementing the employment and training plan;
 - (b) a time frame for employment opportunities for Ugandan citizens for each phase of the petroleum activity (...)
a clearly defined training strategy for Ugandan citizens employed by the licensee, which may be carried out in or outside Uganda and may include scholarships and other financial support.”
- A licensee may be required to train government officials and provide educational institutions with company staff to teach petroleum topics (National Content Regs, Art. 19).



- The licensee shall include in the plan a clearly defined training strategy for Ugandan citizens employed by the licensee, which may be carried out in or outside Uganda and may include scholarships and other financial support (National Content Regs., Arts. 17 and 18):



“(3) The licensee shall provide training and knowledge transfer through different means including: (a) internships and attachment of Ugandan citizens in petroleum activities; (b) support of the industry enhancement centre including health, safety, and environment and quality standards; (c) support of existing institutions in Uganda by providing knowledge and technology; (d) mentorships; (e) scholarships; (f) sending resource persons to training institutions for purposes of knowledge and technology transfer; and (g) where necessary, establishing training centers. (4) The licensee shall, upon request by the Authority, provide industrial training for students and support to education institutions.
(5) Where possible, the training shall be undertaken in Uganda.”

- Petroleum companies cannot employ a non-citizen of Uganda unless there are no qualified Ugandan citizens, as certified by the Ministry (The National Local Content Bill, Part III, Art. 8, Clause 1).
- Companies must give hiring preference to Ugandan citizens and may only employ a non-citizen if the prior authorization has been granted by the relevant authority (The National Local Content Bill, Part III, Art. 9, Clause 2).
- Companies have to demonstrate that they made an effort to hire a Ugandan citizen before they hire a non-citizen (The National Local Content Bill, Part III, Art. 9, Clause 3).
- Companies are not allowed to require that a Ugandan citizen hold a foreign technical qualification in order to become employed (The National Local Content Bill, Part IX, Art. 39, Clause 1).

Training and Employment



- If non-citizens employed in Uganda and citizens are doing similar jobs, the difference in salary between the two cannot exceed ten percent (The National Local Content Bill, Part III, Art. 8, Clause 2):



- “All employment positions held by Ugandan citizens shall attract salaries, wages, and benefits commensurate to the job description except that the difference in salary between the Ugandan citizens and the non-citizen employed in a similar job shall not exceed ten percent.”

- If a non-citizen of Uganda is hired, the *National Local Content Bill* outlines how the skills will be transferred to Ugandan citizens (The National Local Content Bill, Part III, Art. 9):



- “(4) Every employment position held by a non-citizen shall be deputized by a Ugandan citizen for purposes of skills transfer. (5) A person who engages in an activity to which this Act applies shall submit to the Department a succession plan for every position not held by Ugandan citizen.”



- A license must include a commitment to transfer knowledge to Ugandans, to establish management and technical capabilities as well as facilities for technical work in Uganda. Requirements for knowledge transfer will be detailed in separate regulations (Petroleum (Exploration, Development and Act 3 Production) Act, 2013, Art. 127(2) and (3)).
- Knowledge transfer is to be a shared responsibility of government and the licensee (Petroleum (Exploration, Development and Act 3 Production) Act, 2013, Art. 127(4))
- The licensee should encourage knowledge transfer through joint-venture and license agreements (National Content Regs, Art. 23):



“(4) A licensee shall support technology transfer by encouraging and facilitating the formation of joint ventures and partnerships and the development of technology licensing agreements between Ugandan companies, Ugandan citizens and registered entities, and foreign contractors and service or supplier companies.

(5) Agreements for joint ventures and partnerships referred to in subregulation (4) shall be sustainable and shall meet the requirements of national content development to the satisfaction of the Authority.” (...)

“(7) A licensee shall organise in-country events and trade fairs aimed at establishing contact between international companies and Ugandan companies, Ugandan citizens, and registered entities.

(8) A licensee may, upon request by the Authority or on its own initiative, with the approval of the Authority, support the establishment and upgrading of any facility in Uganda for technical, vocational or commercial work and technology transfer.”



- A licensee may decide to invest in local research and development where necessary. If so, it should be approved by the Petroleum Authority after submission of the following information: “(a) the objectives of the research and development and how it relates to the licensee’s petroleum activities; (b) how Ugandan citizens, Ugandan companies, registered entities, and education institutions shall participate in the research and development; and (c) the estimated cost of the research and development” (National Content Regs, Art. 24).
- Within one month of the completion of the research, a report needs to be submitted to the Authority (National Content Regs, Art. 24).

Procuring Goods and Services



- The Licensee must give preference to goods “produced or available in Uganda” and services provided by Ugandan citizens and companies (undefined), which must have the “capacity to add value,” meet the licensee’s health, safety, and environment standards, and meet criteria specified in regulations to be prescribed by the Minister (Petroleum (Exploration, Development and Act 3 Production) Act, 2013, Art. 125(1) and (4)).
- Ugandan citizens and companies must be notified of the licensee’s health safety and environment standards and of upcoming contracts “as early as practicable” (Petroleum (Exploration, Development and Act 3 Production) Act, 2013, Art. 125(3)).
- The national content program must contain a detailed plan on how the licensee will give preference to goods that are locally manufactured or available in Uganda, where the goods meet the quality requirements. The national content program must similarly content a detailed plan on how the licensee and its subcontractors will give preference to services offered by Ugandan companies, citizens, and registered entities, including during the evaluation of the bid (National Content Regs, Art. 8).
- Licensee, operator, and subcontractors are required to simplify the procurement contracts (National Content Regs, Art. 10 (3)):



“Every licensee, operator, contractor, and subcontractor shall provide additional and timely information and reduce the size and complexity of the scope of works by unbundling of contracts and formulate work packages which are affordable by Ugandan companies, Ugandan citizens and registered entities.”

- If the goods and services required are not available in Uganda, they may be provided by a foreign company, but only where it enters into a joint venture with a Ugandan company with a share capital of at least 48% (Act, Art. 125(2)). This Ugandan company must be approved by the Petroleum Authority (National Content Regs, Art. 9 (4)):



“A Ugandan company shall, before entering into a joint venture (..), be approved by the Authority and shall— (a) have technical and financial competence and be able to deliver the goods and services in a timely manner; (b) demonstrate capacity to transfer knowledge and technology to Ugandan citizens; and (c) have experience in provision of the required goods and services.”

- When there is no Ugandan company able to provide goods or services, the license can procure from any company within a period specified by the Petroleum Authority (National Content Regs, Art. 9 (6)).
- When the Ugandan company doesn’t have the required quality, technical capacity, or financial means, the licensee may put in place a suppliers’ development program to be approved by the Petroleum Authority (National Content Regs, Art. 9 (7)).

Procuring Goods and Services



- Some contracts specified in the schedule of the regulations (and the national content bill) are exclusively reserved to Ugandan companies and citizens: (a) Transportation, (b) Security, (c) Foods and beverages, (d) Hotel accommodation and catering, (e) Human resource management, (f) Office supplies, (g) Fuel supply, (h) Land surveying, (i) Clearing and forwarding, (j) Crane hire, (k) Locally available construction materials, (l) Civil works, (m) Supply of locally available drilling and production materials, (n) Environment studies and impact assessment, (o) Communications and information technology services, and (p) Waste management, where possible (National Content Regs, Art. 10 (1) and National Content Bill, Schedule 2).
- As compared to the Petroleum Act, the National Local Content bill specifies that the preference should go first to goods manufactured in Uganda then to those available.
- Local Content entities must give preference to goods manufactured in Uganda and services that are provided by Ugandan entities (National Local Content” Bill, Part III, Art.4, Clauses 1-2):



- “(a) a good shall be taken to be manufactured in Uganda where the production, manufacture, processing, assembling, or making of such a good is carried out wholly or partly in Uganda; and (b) a service is taken to be provided in Uganda if it provided in Uganda by a Ugandan entity.”

- Companies are only allowed to reject Ugandan goods and services during procurement if (National Local Content Bill, Part III, Art. 5, Clauses 1-4):



- “(1) A local content entity shall only reject a good locally manufactured in Uganda or a service provided by a Ugandan entity where such a good does not meet the required quality, quantity, or timeline for delivery.
- (2) Where a good locally manufactured in Uganda or a service provided by a Ugandan citizen or company does not meet the required quality, quantity, or timeline for delivery or completion, the local content entity may, with the written authorization of the Department, procure the good or service as directed by the Department.
- (3) Where a good or service is procured in circumstances prescribed in subsection (2), the Local Content Entity shall ensure that the good is supplied or the service is provided by an entity that has entered into a joint venture with a Ugandan company or citizen.
- (4) The request for authorization under subsection (2) shall state (a) the nature of the good or service to be procured; (b) the availability of similar goods or services in Uganda; (c) the purpose for which the good or service is required; (d) the minimum quality, quantity, and timeline for delivery required by the local content entity; (e) the market price for the good or service; (f) the market price for similar goods or services; and (g) any other information that may be prescribed by the Minister by regulations.”

Procuring Goods and Services



- A good locally manufactured in Uganda or service provided by a Ugandan citizen or company shall not be solely rejected on grounds of (The National Local Content Bill 2019, Article 5):



- “(a) quality, if (i) in case of a good, such a good is certified by a national standards agency in Uganda to meet the standards developed or approved for that good or service; (ii) in case of a service, such a service is provided in accordance with best industry practices; or (iii) the manufacturer of such a good or the person rendering the service is willing and able to produce goods or provide services meeting the required quality within a reasonable time;
- (b) price, if (i) such a good or service is required by this Act or any other law to be exclusively procured within Uganda; (ii) the manufacturer of such a good or the person providing the service is willing and able to negotiate the price for such a good or service; or (iii) such a good or service is competitive as regards to price when compared with similar goods manufactured or services rendered by persons and entities from member states of the East African Community; or
- (c) quantity or timeline for delivery, if it can be demonstrated by the manufacturer of the good or the person providing the service that it can meet the quantity and timelines for delivery of such a good or a portion of the required goods or services.”

- The National Local Content Bill 2019 also outlines the manner in which preference of goods available on the Ugandan market (The National Local Content Bill 2019, Article 7): :



- “Preference of goods readily available on the Ugandan market. (1) A local content entity shall give preference to goods and services that are readily available on the Ugandan market and shall exclusively grant contracts for procuring such goods or services to Ugandan entities. (2) Subsection (1) shall apply where- (a) there are no similar locally manufactured goods on the Ugandan market; or (b) the goods or services, though manufactured in Uganda, do not meet the required quality, quantity, or timeline for delivery. (3) In this section, a good is readily available on the Ugandan market where the good is not locally manufactured in Uganda but is available on the Ugandan market and sold by a Ugandan entity. (4) The Minister shall annually publish in the gazette and in a newspaper of wide circulation goods that are readily available in Uganda.”

Monitoring and Enforcement



- The licensee is required to pass on the national content obligations to contractors and sub-contractors (National Content Regs, Arts. 27 and 28):



27 “(1) The licensee shall communicate its national content policy, programme, targets and procedures to its contractors and subcontractors and ensure that the contracts signed with contractors and subcontractors have the provision for national content.

(2) A licensee shall ensure that its contractors and subcontractors comply with the licensee’s national content policy.”

28“(1) A licensee shall ensure that contractors and subcontractors are contractually bound to report on national content compliance to the licensee and, upon request by the Authority, directly to the Authority.

(2) A licensee shall report to the Authority, on a quarterly basis, in respect of its monitoring and enforcement of compliance by contractors and subcontractors.”

- Quarterly reports on performance on national content covering all petroleum activities should be submitted to the Authority (National Content Regs, Art. 25). In particular, for the quarterly training and recruitment it should include: “the number and names of new employees hired during the quarter; (b) evidence of fair and transparent recruitment process including advertisement of all vacancies in the local print media; (c) place of residence at the time of hiring; (d) qualifications and previous experience; (e) training report; and (f) any other information as required by the Authority” (National Content Regs, Art. 18).
- The National Local Content bill refers to a range of offenses ranging from failing to comply with the requirements on national content to fronting practices and falsification of reports. Depending on the range of offenses, the person is liable to a maximum fine of 50000 currency points and an additional fine of 25000 currency points per day for the perpetuation of the offense post-notification. The person is also liable to a maximum of ten years of imprisonment (National Local Content Bill, Arts. 31 and 32)



- The Petroleum Authority is responsible for establishing a national supplier database and a national human capacity register. It might also impose a requirement to conduct fabrication and welding activities in Uganda (National Content Regulations), Arts. 11, 30, 31):



11“(1) The Authority shall develop a national supplier database for petroleum activities. (2) A company shall not provide goods, works, or services for petroleum activities unless it is in the national supplier database. (3) The Authority shall, in consultation with the licensees, develop criteria that shall be used for qualification of Ugandan companies, Ugandan citizens, and registered entities to the national supplier database. (4) The Authority shall undertake qualification of Ugandan companies, Ugandan citizens, and registered entities on an annual basis by advertisement in newspapers of national and international circulation and in other electronic and print media. (5) The Authority shall publish the list of Ugandan companies, Ugandan citizens, and registered entities that are qualified to provide goods, works, and services for petroleum activities in the national supplier database by 31st December of each year.”

30“(1) Where possible, the Authority may require a licensee, contractor, subcontractor, and any other entity engaged in petroleum activities in Uganda to carry out fabrication and welding activities in Uganda. (2) The Authority shall determine and advise on the capacity of the welding industry in Uganda.”

31“(1) The Authority shall, in consultation with industry stakeholders, establish, maintain, and operate a national human capacity register which shall be administered in accordance with these Regulations and guidelines issued by the Authority. (2) The register referred to in subregulation (1) shall constitute a database of available human capabilities and technical skills in Uganda and may be used for recruitment of personnel by licensees, contractors, and subcontractors.”



- The bill establishes the creation of a local content department that is responsible for the implementation of local content. The department's functions include (The National Local Content Bill, Part II, Article 3, Clauses 1,2 & 3):



- “ (...) (a) oversee, coordinate, and manage the development of local content in Uganda; (b) advise Government on local content issues in Uganda; (c) develop a national local content plan; (d) approve local content plans; (e) undertake public education on local content in Uganda; (f) develop national content evaluation systems; (g) develop guidelines for the implementation of local content in Uganda; (h) monitor and evaluate the local content performance of local content entities in accordance with this Act; (i) develop auditing procedures and audits for the purposes of monitoring compliance with this Act; (j) provide definitions and indicators for the measurement of local content in Uganda; (k) conduct studies and research to promote the development of local content in Uganda; (l) monitor and audit compliance with local content obligations under this Act; (m) promote local content development in Uganda; and (n) perform any other functions as may be assigned by the Minister.”
- “The Department shall in reference to local content have the following powers to (a) institute local content inquiries; (b) review contracts and activities in reference to local content obligations; (c) review and approve contracts as prescribed in this Act; and (d) order for the termination of contract.”



Agreement on Trade-Related Investment Measures (TRIMs)¹

- Uganda has been a member of the WTO since January 1, 1995.
- All World Trade Organization (WTO) Members must adopt and abide by the obligations of TRIMs. This can impact a country's ability to impose certain local content requirements (referred to as "investment measures"), to the extent they affect trade in *goods*.
- Uganda, as a Least Developed Country, is only required to implement TRIMs to the extent consistent with its individual development, financial and trade needs and administrative and institutional capabilities, subject to notification to the General Council.
- The following types of local content requirements are covered by TRIMs²:
 - requiring a company to purchase or use products of domestic origin – TRIMs prohibits discrimination between goods of domestic and imported origin;
 - limiting the amount of imported products that an enterprise may purchase or use depending on the volume or value of local products that the enterprise exports;
 - restricting foreign exchange necessary to import (e.g., restricting the importation by an enterprise of products used in local production by restricting its access to foreign exchange); and
 - restricting exports.

¹ The TRIMs Agreement clarifies existing rules contained in Articles III (National Treatment Obligation (NTO)) and XI (Prohibition on Quantitative Restrictions) of the General Agreement on Tariffs and Trade (GATT), 1994.

² It is important to be aware of the types of measures prohibited under the TRIMs Agreement, in order to avoid the potential for dispute settlement under the WTO - a state can bring an action against another state for an alleged violation of the TRIMs Agreement (i.e. "state-to-state action").



General Agreement on Trade in Services (GATS)

- A separate WTO agreement, the General Agreement on Trade in Services (“GATS”), covers investment measures related to services (in Article XVI), including the following which are relevant to local content:
 - Requirements to use domestic service suppliers
 - Limits on the number of service suppliers
 - Limits on the total value of service transactions or assets
 - Limits on the total number of service operations or quantity of service output
 - Limits on the total number of natural persons permitted
 - Restrictions on or requirements for certain types of legal entities (e.g., joint venture requirements)
 - Imposition of domestic equity
- GATS only applies to those service sectors that the country chooses to include in its Schedule of Commitments. Uganda’s [commitments](#) relate only to tourism and travel related sectors and GATS is therefore unlikely to affect the implementation of Uganda’s local content framework.



- As at 1 June 2013, Uganda had entered into **17 bilateral investment treaties** (BITs) but only 6 were in force.¹
- Investment treaties are international agreements between two or more countries which establish the terms and conditions of foreign investment within each country and provide rights directly to the investors of each country which is party to the treaty. The treaties can contain restrictions on local content requirements.²
- Investment treaties can contain the following types of provisions, each of which affects a country's ability to impose local content requirements:
 - non-discrimination provisions (“national treatment” and “most-favored nation” obligations), which are relevant in the context of local content when:
 1. host countries require some foreign investors to source from certain goods and service providers but don't impose similar requirements on other investors; and
 2. host countries give an advantage to some domestic or foreign goods and services providers, but not to a foreign provider whose state has a relevant treaty with the host country. (Note that this is relevant only where the foreign provider of goods or services has, or intends to have³, a presence in the host country);
 - restrictions on capital transfers;
 - “pre-establishment” protections, which prevent a state from imposing conditions on foreign investors that are not imposed on domestic investors, such as requirements to transfer technology to local firms, to establish the firm through a joint venture, or to reinvest a certain amount of capital in the host country;
 - incorporation of the TRIMs agreement; and
 - *explicit* prohibition of performance requirements that go beyond what is restricted by the TRIMs Agreement.

¹ According to UNCTAD's [country specific list of bilateral investment treaties](#)

² It is important to be aware of the BITs a country has signed and the types of requirements prohibited under it, in order to avoid the potential for arbitration against the country - the majority of investment treaties allow investors to bring arbitration claims directly against the country in which they have invested (“investor-state arbitration”).

³ This will be relevant for “pre-establishment treaties” i.e., those that set conditions under which an investor may enter into the territory of a party, not only the conditions once the investment is made.



- Of the 7 BITs signed by Uganda, six were in force, 11 were reviewed (and are available on [UNCTAD's Database](#)).
- Aside from the inclusion of National Treatment Obligations and Most Favored Nation clauses, which are present in most BITs, performance requirements are more specifically prohibited in the following BIT:

Uganda and France

“Article 3 – Fair and Equitable Treatment

Either Contracting Party shall extend fair and equitable treatment in accordance with the principles of International Law to investments made by nationals and companies of the other Contracting Party on its territory or in its maritime area, and shall ensure that the exercise of the right thus recognized shall not be hindered by law or in practice. In particular though not exclusively, shall be considered as de jure or de facto impediments to fair and equitable treatment any restriction to free movement (sic), purchase and sale of goods and services, as well as any other measures that have a similar effect.”