

LOCAL CONTENT



Uganda – Petroleum



**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 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 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, procurement but also on technology transfer and local investment on research and development.
- The regulations grant the monitoring and implementation power to the Petroleum Authority.

| | |
|---|---|
| ✓ | 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 Petroleum \(Exploration, Development and Production Act, 2013\)](#) (“Act”)

Regulates petroleum exploration, development and production in Uganda. Contains few provisions related to local content.

Regulation

[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.

Policy

[National Oil and Gas Policy for Uganda 2008](#) (“Policy”)

Implemented to guide the development of Uganda’s emerging oil and gas sector following the commercial discovery of petroleum in 2006. Contains only very broad statements related to local content so these are not stated here.

Contract

Key definitions

“**National content:** (a) the level of use of Ugandan local expertise, goods and services, Ugandan companies, Ugandan citizens, registered entities, businesses and financing in petroleum activities; and (b) the substantial combined value added or created in the Ugandan economy through the utilisation of Ugandan human and material resources for the provision of goods and services to the petroleum industry in Uganda”

“**Ugandan company:**(..) a company incorporated under the Companies Act, 2012 and which— (a) provides value addition to Uganda; (b) uses available local raw materials; (c) employs at least 70% Ugandans; and (d) is approved by the Authority under regulation 9(4).”

“**Registered entity**”: a business owned by Ugandan citizens registered under the Business Names Registration Act or the Partnership Act, 2010

(National Content Regulations, Art. 4)



Rights application

- An application for an exploration license must include a proposal for training and employment of Ugandans.
- An application for a production license must include a proposal for procurement of local goods and services.
- 12 months after the grant of the license a wide scope detailed national content program needs to be submitted for approval.

Training and employment

- Licensee must have a succession plan.
- Applications for expatriate permits have to go through the Authority first.
- For management, technical and support staff, the regulations establish employment targets.
- A training strategy should be in place and the regulations suggest various training means.

Procuring goods and services

- Licensee must give preference to goods produced in Uganda and services provided by Ugandan citizens and companies that have the capacity to add value and to meet health, safety and environment standards.
- Ugandan citizens and companies must be notified of upcoming contracts, and of licensee's health, safety and environment standards.
- When a good or service is not available in Uganda, they might be procured by a foreign company in joint venture with a Ugandan company holding 48% of the shares.
- Bids for contract should include national content criteria that will count for 10% of the total score and prevail when winners are 5% apart.
- Some procurement sectors are exclusively reserved for Ugandans.

Technology Transfer

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

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 of 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.



- An application for a petroleum exploration license must include particulars of the applicant's proposal for training and employment of Ugandan citizens (Act, Art. 56(3)(f)).
- An application for a production license must include particulars of the applicant's proposals for employment and training of Ugandan citizens, and for procurement of goods and services from Uganda. A production license will not be granted unless these proposals are "satisfactory" (Act, Art. 71(3)(k) and (l) and 74(1)(e) and (f)).
- 12 months after the granting of the license, the licensees must submit a national content program to the Petroleum Authority for approval. It will include: the employment and training of Ugandans; the required quality, health, safety and environment standards for goods and services to be procured; the transfer of technology, knowledge and skills to Ugandan companies, Ugandan citizens and registered entities; research and development in Uganda; the procurement of goods and services obtainable in Uganda; local supplier development; partnership with Ugandan companies, Ugandan citizens and registered entities; the succession of expatriates by Ugandan citizens; support to local education institutions; support to partnerships and collaborations; services to be provided by Ugandan companies, Ugandan citizens and registered entities; and any other information as the Authority may require (National Content Regs, 7 (1)).
- If the Petroleum Authority is not satisfied it needs to return comments and requests for edits to the licensees. The licensee has 21 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)).



- 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 recruitment and training of Ugandan citizens, within 12 months of the grant of the license, and annually after that. Once approved by the Petroleum Authority, the program cannot be changed without its permission (Act, 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 (Act, 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 to provide educational institutions with company staff to teach petroleum topics (National Content Regs, Art. 19).



- The National Content Regulations set targets for recruitment:
 - for management staff, at least 30% percent from the start of petroleum activities and the percentage must increase to at least 70% percent within five years after the start of the petroleum activities
 - for technical staff, at least 40% percent from the start of petroleum activities and the percentage must increase to at least 60% percent within five years after the start of the petroleum activities and 90% within ten years
 - Support and middle staff, at least 95% from start of operations (National Content Regs, Art. 17).
- 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 (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.”

- For all positions not held by Ugandans, a succession plan needs to be submitted to the Authority for approval (National Content Regs, Art. 20).
- Before making any application for a work permit for expatriates, the licensee needs to request a recommendation from the Authority. This application should involve the following details: “(a) job titles; (b) certified or notarised academic transcripts and curriculum vitae accompanied by recommendations certifying the experience and job history referenced; (c) a description of responsibilities; (d) the duration of the proposed employment in Uganda; (e) evidence that Ugandan nationals are not qualified for the job; (f) list of Ugandans identified for training; (g) an individual training plan for the replacement of the expatriates; and (h) any other information required by the Authority” (National Content Regs, Art. 21).

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” and to meet the licensee’s health, safety and environment standards, and meet criteria specified in regulations to be prescribed by the Minister (Act, 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” (Act, 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 and timeline for delivery. 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).
- 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)).



- Some contracts specified in the schedule of the regulations 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, (p) Waste management, where possible (National Content Regs, Art. 10 (1)).
- 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.”

- A company is not authorized to provide goods, works or services for petroleum activities unless it is in the national supplier database (National Content Regs, Art. 11).
- Every licensee, contractor and subcontractor should ensure that the bidding process includes national content (local goods, local employment and technology transfer) as one of the requirements for qualification and it should be allocated 10% of the evaluation score. When bids are closed by 5% the bid with the highest level of national content should be selected (National Content Regs, 12 and 13).



- Workshop on the bidding process should be held and contract length and payments should be adapted to facilitate the participation of Ugandans in the Petroleum Sector (National Content Regs, Art. 12):



“(2) Every licensee, contractor and subcontractor shall hold quarterly tender workshops to educate Ugandan citizens and companies about the procurement process, requirements, performance standards and lessons from previous bidding processes.

(3) Whenever possible, a licensee, contractor or subcontractor shall provide contract periods that allow other Ugandan companies, Ugandan citizens and registered entities to join the petroleum sector as follows— (a) for a capital intensive contract, a maximum duration of five years; and (b) for low cost contracts, a maximum duration of three years. (4) A licensee, contractor and subcontractor shall provide payment terms that feature more frequent payment milestones, shorter durations and, where possible, up front to help Ugandan companies, Ugandan citizens and registered entities with purchases of materials.”

- Licensee, operator and subcontractors, before starting a new activity and where applicable should establish a tender office (National Content Regs, Art. 14):



“(1) Where applicable, before carrying out any work or activity in Uganda, a licensee, contractor and subcontractor shall establish in Uganda, a tender office where information regarding petroleum activities and procurement can be obtained.

(2) The Authority may, in addition to the requirements under subregulation (1) require a licensee to maintain an office in a community in Uganda where the licensee has significant activities.”



- 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 (Act, Art. 127(2) and (3)).
- Knowledge transfer is to be a shared responsibility of government and the licensee (Act, 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).



- 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).
- Every year the licensee should submit a consolidated annual national content performance report (National Content Regs, Art. 25):



“(3) The national content performance report shall specify, national content expenditure, on both a current and cumulative cost basis and shall set out:

- (a) the employment achievement in terms of hours or days worked by Ugandan citizens and foreign workers and their status;
 - (b) the Ugandan citizens trained and employed indicating particulars by name, job and level of training and employment;
 - (c) the procurement achievement in terms of quantity of locally manufactured materials and materials of foreign origin;
 - (d) the names of Ugandan companies, Ugandan citizens and registered entities contracted, the contracts awarded, the value of each contract awarded and duration of the contract;
 - (e) technology transfer initiatives, research and development programs and any training programs provided by the licensee; and
 - (f) any other relevant information required by the Authority.
- (4) The Authority shall undertake regular assessment and verification of the national content performance report filed by a licensee in compliance with these Regulations as may be considered appropriate by the Authority.”



- 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.”

- A licensee, contractor or subcontractor who fails to comply with the requirements on national content commits an offence and is liable to a fine of maximum 5000 currency points, and an additional fine of 500 currency points during the duration of the offence (National Content Regs, 32).
- If a licensee, contractor or subcontractor repeatedly fails to comply with the national content requirements, the Minister may decide to suspend the licence or withhold approvals or consent for the licensee until the licensee complies with these Regulations (National Content Regs, 32).
- Hiring a person that is not legally present in Uganda is liable of a 5000 currency point penalty + 500 currency point per day of duration of the offence (National Content Regs, Art. 22).

Monitoring and Enforcement

- Every licensee, contractor and subcontractor is required, during working hours, to allow the Authority or an authorised officer access their facilities and all documentation and information required for the verification of national content compliance (National Content Regs, Art. 27).
- The Petroleum Authority is responsible for national content monitoring (National Content Regs, Art. 5):



“The Authority shall, in undertaking national content monitoring:

- (a) supervise, coordinate and monitor the development of national content in petroleum activities;
- (b) appraise and evaluate the national content programmes and reports submitted to the Authority in compliance with these Regulations;
- (c) develop and operate the national content evaluation system for licensees, operators, contractors and subcontractors;
- (d) assist Ugandan companies, Ugandan citizens and registered entities to develop their capabilities and capacities to further the development of national content in petroleum activities;
- (e) develop guidelines for the implementation of national content;
- (f) monitor and evaluate the national content performance of licensee in accordance with these Regulations;
- (g) develop auditing procedures and conduct regular audits for the purposes of monitoring compliance with these Regulations;
- (h) provide definitions and indicators for the measurement of national content;
- (i) conduct studies and research that may further the development of national content in petroleum activities;
- (j) organise conferences, workshops, seminars, symposia, trainings, road shows and other means of public education to further the development of national content in petroleum activities;
- and (k) carry out any other function necessary for national content monitoring and enforcement.”



- 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 Regs, 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.”



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 23 August 2019, 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 17 BITs signed by Uganda, 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.”



- The National Content Study recognizes that:
 - “for national content ambitions in the petroleum industry to become a success, capacity building and industrial diversity are prerequisites. Thus, it is crucial for Uganda to pursue long term political commitment for capacity building to reap the benefits of national participation”.
 - “It is important however, to emphasize that successful national content development cannot be achieved by regulation and legislation alone. An extensive framework often tends to lead to rules that are too ambitiously and strictly enforced, which easily leads to consumption of wealth, inferior industry development, violation of international obligations and corruption”.
 - “National content should be achieved through capacity building”.
 - “Real contributions to capacity building, by creating a credible atmosphere for industrial collaboration as well as for the transfer of competence and technology, are the only route to create lasting value to society”.

- The National Content Study proposes the following measures (many of which are yet to be implemented in the framework):
 - Institutional framework**
 1. Establish a government body for national content enhancement
 2. Regulate procedures for procurement
 3. Define and operationalize how national content shall be measured
 4. Have the oil companies commit to local content development
 5. Have an Oil and Gas Industry Suppliers Association established
 6. The national content policy should be an integrated part of the National Development Plan
 7. The corruption perception should be reduced
 - Capacity building in people**
 8. Capacity of vocational training has to be strengthened
 9. Training centers should be established by the international oil companies
 10. Uganda should establish institutions of excellence for higher level of education
 - Enterprise development**
 11. An adequate capacity building program for the industry should be developed
 12. Teaming between Ugandan and foreign firms should be encouraged
 13. An SME program for the petroleum sector should be established
 14. Industry projects with a large market potential should be identified
 15. Restructuring of the industry should be encouraged
 - Facilitating national participation**
 16. Contracts should be structured to align with local capacity
 17. A central information office for national content should be established
 18. A national register for prequalified companies should be established
 - Monitoring national content achievements**
 19. Apply a holistic approach to measure and monitor national content
 20. Establish a system for how to evaluate national content performance