PROPOSALS TO THE LOCAL CONTENT BILL

2020

SEATINI

Strengthening Africa in World Trade

Introduction

The overall object of the National Local Content Bill, 2020 is to impose local content obligations on ALL persons using public resources or carrying on an activity under a license in Uganda. The Act applies to persons and entities: (i) carrying on an activity where public money is used or carrying out public procurement in accordance with the Public Procurement and Disposal of Assets (PPDA); (ii) carrying out a licensable activity under the provisions of the Mining Act, 2003, the Electricity Act, 1990, the Uganda Tourism Act, 2008, or any other license under an Act of Parliament. The Act also applies to persons in possession of an investment license or enjoying a tax incentive; an entity under a Public Private Partnership (PPP) agreement pursuant to the PPP Act, 2015; any person carrying out public works whose activities are financed through public borrowing or any similar arrangement. The Bill also seeks to provide a framework through which the 'Buy Ugandan Build Uganda' (BUBU) Policy can be made more binding. The Bill further seeks to address and remedy the shortcomings and defects within policy, legislation and guidelines such as those within the Petroleum sub sector, the Guidelines on Reservation Schemes to Promote Local Content, among others.

With the growing interest to attract Foreign Direct Investments (FDI) in all sectors, countries like Uganda must be able to align these investment inflows with its national development objectives. The country's FDI flows according to UNCTAD's 2020 World Investment Report reached a record high of USD 1.3 billion which can be attributed to the constant development of major oil fields and an international oil pipeline, as well as projects in construction, manufacturing and agriculture. The country's main investors come from Kenya, Germany, China and Belgium. Whereas in fact, some development partners have argued that a Local Content law could discourage FDI inflow into the country, statistics have shown that countries such as Ethiopia, Tanzania and Rwanda that have adopted very strict local content requirements receive much higher FDI inflows.

Why the local content is important?

- Provision of employment to the local people hence improving on their living standards
- because as they are employed, they earn income.
- Utilization of the former idle resources to avoid wastage since imported raw materials
- will no longer out compete local raw materials.
- Increase in government revenue. This is as a result of taxing incomes received by the
- locals who are employed.
- Reduction in brain drain as local people won't have to move out in search for green
- pastures.
- Reduction in profit repatriation
- Encourages creativity and innovations among local people hence boosting the domestic
- private sector
- Encourages growth of local small scale industries which boosts economic development
- Reduction in crime rates. Most people engage in crime so as to earn a living and
- therefore if local people are employed, they will not even have time to engage in crime
- Improvement in local infrastructures
- Reduction in foreign dependence in form foreign expatriates which promotes self
- sustainability.
- Improvements on local technology through technology transfer
- Makes local worker force competitive.

Item	Clause	Issue to consider /include participation	Justification
1	Clause 2: Interpretation "Ministry" means the ministry responsible for finance;	The Local content Department should be placed under the Ministry of Trade, Industry and co-operatives instead of Ministry of Finance	The Local Content bill is premised inter-alia on the "Buy Uganda Build Uganda (BUBU) Policy" which seeks to increase consumption and utilization of local products and increasing participation of the locally established firms in domestic trade which is purely a mandate of Ministry of Trade, Industry and Co-operatives.
2	Definition of a foreign Investor	As derived from the Investment Code Cap 92, A foreign investor is defined as a person who's not a citizen of Uganda; and or a company other than Ugandan. This is a Non-Conforming Measure to the EAC Common Market Protocol.	In order to address Non-Conforming Measures which hinder the realization of the EAC Common Market, this definition should be reviewed to include treatment of citizens from other EAC Partner States as nationals
3	Clause 3: Designation of a Department	The Bill does not provide for representation from Trade Unions and Civil Society Organizations.	Given the critical role played by Trade Unions and CSOs, it is important that their representation to the committee is acknowledged and catered for. Moreover, given that among the objectives of Local content is to create employment, it is critical that the two are represented on the committee in order to ensure that this is realised.

		The department Does not recognize the Local governments; and their obligations to promotion of local content. It should consist representation from the Local Government.	Uganda largely attracts resource seeking investments, which usually operate in local communities, it is important that the Bill provides for the role of Local Governments and specifies their obligations to promote Local Content.
4	Clause 3 (2) Functions of the Local Content Department.	Does not include their participation in investment, trade and related negotiations to promote local content.	In order to ensure that local content is promoted and secured in investment, trade and related negotiations, one of the functions of the Secretariat should be to participate in these negotiations.
5	Clause 8 First consideration for employment to Ugandan Citizens	Should critically point out employment to imply meaningful employment e.g., senior management positions.	Majority of foreign investments have led to employment of Ugandans into low skilled positions. This has resulted into low returns to Ugandans accruing from such mega investments. With BITs objecting to being compelled to recruit Ugandans to Senior Management positions, it is therefore important that meaningful employment is provided to Ugandans, and the local content Bill should be a precursor to this realization

Other Recommendations;

1. The Local content bill should be reviewed to make it compliant with the East African Community (EAC) Treaty and the EAC Common Market Protocol, specifically, giving consideration to the review of the interpretations of Ugandan company and Ugandan entity to include other EAC partner states i.e. Burundi, Kenya, Rwanda, South Sudan, and Tanzania.
2. The urgent pursuit for review of the EAC Treaty to provide for reciprocity. This will ensure equal treatment by partner states and address the current unfair trade among them, where one partner state enjoys the benefits of the treaty, and the various protocols, without extending the same treatment to other partner states.
3. Review all Uganda's Bilateral Investment Treaties and the Investment Code Act, 2019 to include provisions on Local Content. Including this provision would guarantee the Government of Uganda the policy space to place such performance requirements measures on foreign investors establishing and operating in the country.
4. Put in place a legal framework that protect local suppliers from delayed payments as a means to ensure continued cash flow, and thus guarantee them some financial security which is critical in sustaining business competitiveness and growth if they are to benefit from the Local Content legal framework.

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