

THE LOCAL CONTENT BILL, 2016
ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

- 1—Short title.
- 2—Interpretation.
- 3—Application.
- 4—Object and purposes.
- 5—Guiding principle.

**PART II—ROLE OF THE NATIONAL AND
COUNTY GOVERNMENTS**

- 6—Obligations of the National and County Governments.

**PART III—ESTABLISHMENT OF THE LOCAL
CONTENT DEVELOPMENT COMMITTEE**

- 7—Establishment of the Local Content Development Committee.
- 8—Functions of the Committee.
- 9—Assessment of local capabilities.
- 10—Membership of the Committee.
- 11—Term of office.
- 12—Qualifications for appointment.
- 13—Disqualification from membership.
- 14—Vacation of office of member.
- 15—Conduct of the affairs of the Committee.
- 16—Sub-committees of the Committee.
- 17—Secretariat.
- 18—Functions of the Secretariat.

PART IV—LOCAL CONTENT PLANS*Local content plan*

19—Minimum local content.

20—Local content plan.

21—Review of local content plan.

22—Local content certification.

Employment and Skill Development Plan

23—Capacity building.

24—Employment and skills development plan.

25—Education and training for nationals.

26—Consideration of employment of local persons.

27—Succession plan.

Transfer of Technology and Research Plan

28—Strategies for transfer of technology.

29—Fiscal support for the transfer of technology.

30—Transfer of technology plan.

31—Facilitation of transfer of technology by an operator.

32—Submission of technology transfer reports.

Research and Development Plan

33—Research and development plan.

34—Implementation of strategies to promote knowledge transfer and research.

35—Funding of research and development.

Financial Services Plan

36—Submission of a financial services plan.

Local Content Performance Reporting

37—Local content performance report.

38—Assessment of performance report.

PART V—STRATEGIES FOR LOCAL CONTENT DEVELOPMENT

39—Procurement.

40—Preference of local companies.

41—Preference of local goods and services.

42—Contracting services from local companies.

43—Thresholds for Kenyan equity stake in operator.

44—Financial incentives.

45—Fund for Training and Development.

PART VI—MISCELLANEOUS PROVISIONS

46—Annual work programmes.

47—Monitoring local content of expenditure incurred.

48—Impact assessment.

49—Reporting by a connected entity.

50—Support measures.

51—Public participation.

52—Offences.

53—Offence by a body corporate.

54—Revocation of licence.

55—Regulations.

PART VII—TRANSITIONAL PROVISIONS

56—Existing contracts and agreements.

**SCHEDULE—PROVISIONS RELATING TO THE
CONDUCT OF MEETINGS OF THE
COMMITTEE**

THE LOCAL CONTENT BILL, 2016**A Bill for**

AN ACT of Parliament to provide for a framework to facilitate the local ownership, control and financing of activities connected with the exploitation of gas, oil and other mineral resources; to provide a framework to increase the local value capture along the value chain in the exploration of gas, oil and other mineral resources; and for connected purposes

ENACTED by the Parliament of Kenya, as follows —

PART I—PRELIMINARY

1. This Act may be cited as the Local Content Act, 2016. Short title.

2. In this Act, unless the context otherwise requires — Interpretation.

“Cabinet Secretary” means the Cabinet Secretary responsible for matters related to the extractive industry;

“company” means a firm or entity whose business enterprise is incorporated or otherwise organised under the Laws of Kenya and whose principal place of business is in Kenya and which is effectively owned and controlled by nationals of Kenya;

“connected entity” means a person, firm or entity contracted by an operator to perform a specified component of the operator’s obligations under a licence issued pursuant to this Act;

“extractive industry” means the oil, gas and mining sectors in Kenya;

“local content” means maximizing the level of usage of local goods and services, people, businesses and financing;

“local goods” means materials or equipment mined, produced or manufactured in Kenya and for this purpose, a good shall be considered to be manufactured, processed or assembled if it differs substantially in its basic characteristic, purpose or utility or in the case of a manufactured good, if the cost of local materials, labour

and services used in the manufacture of such goods constitutes at least fifty percent of the cost of the finished product;

“local person” means a person, firm or entity performing works, services or supplying goods and materials to an operator, whether as a subcontractor or otherwise, whose business enterprise is incorporated under the Laws of Kenya and whose principal place of business is in Kenya and which is effectively owned and controlled by a Kenyan national;

“operator” means a person, firm or entity licensed by the Government to undertake exploration, development and extraction activity with respect to natural resource in the extractive industry;

“value chain” means sequential stages in the extractive industry life cycle including exploration and development, production, treatment, transportation, refining or other beneficiation, and distribution.

3. This Act shall apply to all commercial activities related to the exploration, extraction, development and exploitation of oil, gas and other mineral resources in the extractive industry in Kenya.

Application.

4. The objects and purposes of this Act are to—

Objects and purposes.

- (a) promote the maximisation of value-addition and the creation of employment opportunities in the extractive industry value chain through the use of local expertise, goods, services, businesses and financing and their retention in the country;
- (b) provide a framework for the—
 - (i) establishment of a monitoring, evaluation and reporting system in the implementation of this Act;
 - (ii) development of indigenous skills across the extractive industry value chain; and
 - (iii) application of the mechanism of local content by an operator under this Act;
- (c) enhance the participation of local persons in extractive industry value chain;

- (d) facilitate the development of a competitive, capable and sustainable labour force;
- (e) enhance local ownership and use of local assets and services in the extractive industry; and
- (f) maximise value addition through local content development and local participation in extractive industry operations.

5. All persons shall, in the performance of their functions under this Act, be guided by the following principles—

Guiding principles.

- (a) the national values and principles of governance set out under Article 10 of the Constitution;
- (b) the principles of ownership of natural resources set out under Article 62 of the Constitution;
- (c) the principle of equity in the sharing of benefits accruing from natural resource exploitation set out under Article 69 of the Constitution; and
- (d) co-ordinated public participation in the formulation and implementation of policies and plans related to the extractive industry.

PART II—ROLE OF THE NATIONAL AND COUNTY GOVERNMENTS

6. (1) The National and County Governments shall, to the extent of their constitutional mandate, put in place measures to ensure the maximum development and adoption of local content by an operator under this Act.

Obligations of the National and County Governments.

(2) In ensuring that the National Government fulfils its obligations under subsection (1), the Committee shall—

- (a) identify sectors in which value-addition opportunities exist along the extractive value chain industry with respect to various goods and services and focus the local content, participation and supply capability development in those sectors;
- (b) facilitate the realisation of local content through—
 - (i) managing the pace and scheduling of extractive industry programmes in order to enable locals to take advantage of opportunities along the extractive value chain;

- (ii) facilitating local capability development through in-country programmes in order to enable full participation by locals in the extractive industry value chain;
 - (iii) the implementation of strategies that ensure that preference is given to locally owned, controlled and financed enterprises and to those that demonstrate commitment and capacity for maximising local value-addition, participation and capability development; and
 - (iv) the development and implementation of strategies for the development of local skills, business know-how, technology, financing, capital market development, and wealth capture and distribution;
- (c) ensure delivery of maximum local value-addition by —
- (i) measuring and reporting on the performance of operators in the extractive industry; and
 - (ii) periodically comparing the local content and participation performance amongst operators, between projects and operations and with other countries and identifying opportunities for improvement and best practices; and
- (d) pursue supportive policy objectives across all policy frameworks with the view to giving effect to the objectives of this Act.

(3) The National Government shall, in performing its functions under subsection (2), collaborate with the County Governments.

(4) Each county government shall, for the performance of its functions under subsection (1)—

- (a) assist local contractors and companies within the respective counties to develop their capabilities and capacities to further the attainment of the goal of developing local content in the extractive industry within the respective county;
- (b) implement the cross-cutting policies formulated by the National Government with respect to the implementation of local content;

- (c) implement strategies that enable local participation in the various activities along the extractive value chain in the respective county;
- (d) monitor and put in place measures to facilitate the implementation of local content performance by all operators in the respective county in accordance with the provisions of this Act;
- (e) conduct regular audits for the purposes of monitoring and implementing compliance with the provisions of this Act in the respective county;
- (f) set targets, in collaboration with the Committee, for the achievement of local content and participation in relation to specific projects, operations and operators and support these targets with appropriate contract terms; and
- (g) perform such other function necessary for the implementation of the objectives of this Act.

PART III— ESTABLISHMENT OF THE LOCAL CONTENT DEVELOPMENT COMMITTEE

7. There is established a committee to be known as the Local Content Development Committee.

- 8.** (1) The functions of the Committee shall be to—
- (a) oversee, coordinate and manage the development of local content in Kenya;
 - (b) make recommendations and advise the Cabinet Secretary on the formulation of policy and strategies for the development and implementation of local content;
 - (c) make recommendations to the Cabinet Secretary on the minimum standard requirements for local content and the development of local content plans under this Act;
 - (d) appraise, evaluate and approve local content plans and reports submitted to the Committee pursuant to section 20;
 - (e) oversee, in consultation with the county governments, the implementation of local content policies and strategies by operators;

Establishment of the Local Content Development Committee.
Functions of the Committee.

- (f) collaborate with county governments in the implementation of strategies to improve the capacity of local persons, businesses and the capital market to fully leverage the objectives of this Act; and
 - (g) carry out such other functions that may be necessary for the achievement of the objects and purposes of this Act or that may be conferred by any other law.
- (2) The Committee shall, in implementing this Act—
- (a) ensure measurable and continuous growth in the development and adoption of local content with respect to all activities in the extractive industry; and
 - (b) consult with, and collaborate with the county governments.

9. The Committee shall—

Assessment of local capabilities.

- (a) within a period of six months from the date of its constitution, develop and keep under regular review, a comprehensive register of all equipment and service categories required to effectively supply the needs of the extractive industry;
- (b) assess the capacity of the local industry to supply the goods and services identified under paragraph (a); and
- (c) adopt policies and measures aimed at progressively enhancing the capabilities of local enterprises to compete effectively on quality, price, quantity and reliability in the supply of goods and services required in the extractive industry.

10. (1) The Committee shall consist of—

Membership of the Committee.

- (a) a chairperson appointed by the Cabinet Secretary in accordance with subsection (2);
- (b) the Principal Secretary responsible for matters relating to petroleum and natural gas or a representative designated in writing;
- (c) the Principal Secretary responsible for matters relating to finance or a representative designated in writing;

- (d) the Principal Secretary responsible for matters relating to industry and enterprise development or a representative designated in writing;
- (e) the chairperson of the Council of Governors;
- (f) four persons nominated by players in the extractive industry in such manner as the Cabinet Secretary shall determine and appointed by the Cabinet Secretary; and
- (g) the Director who shall be the secretary to the Committee.

(2) The persons nominated under subsection (1) (a) and (f) shall be appointed by the Cabinet Secretary by notice in the *Gazette*.

(3) There shall be paid to the members of the Committee such allowances as the Cabinet Secretary may, in consultation with the Salaries and Remuneration Commission, determine.

11. The persons nominated under section 10 (1) (a) and (f) shall be appointed for a term of four years renewable for one further term.

Term of office.

12. A person shall be qualified for appointment as—

Qualifications for appointment.

- (a) the chairperson of the Board if that person —
 - (i) holds a degree from a university recognised in Kenya;
 - (ii) has knowledge and at least ten years experience in matters relating to the extractive industry; and
 - (iii) meets the requirements of Chapter Six of the Constitution; or
- (b) a member of the Board under section 10 (1) (f) if that person—
 - (i) holds a degree from a university recognised in Kenya;
 - (ii) has knowledge and at least five years experience in matters relating to the extractive industry; and
 - (iii) meets the requirements of Chapter Six of the Constitution

13. A person is not qualified for appointment as a member of the Committee under section 10 (1) (a) and (f) if that person—

Disqualification from membership.

- (a) has violated Chapter Six of the Constitution;
- (b) is adjudged bankrupt; or
- (c) has been convicted of an offence and sentenced to imprisonment for a term of more than six months.

14. (1) The office of a member of the Committee appointed under section 10 (1) (f) shall become vacant if the member—

Vacation of office of member.

- (a) is adjudged bankrupt;
- (b) is convicted of a criminal offence and sentenced to a term of imprisonment of at least six months;
- (c) is convicted of an offence involving fraud or dishonesty;
- (d) is absent, without reasonable cause, from three consecutive meetings of the Committee;
- (e) resigns in writing addressed to the Cabinet Secretary;
- (f) is removed from office by the Cabinet Secretary for —
 - (i) being unable to perform the functions of his or her office by reason of mental or physical infirmity; or
 - (ii) failing to declare his or her interest in any matter being considered or to be considered by the Committee; or
- (g) dies.

15. (1) The Committee shall conduct its affairs in accordance with the provisions of the Schedule.

Conduct of the affairs of the Committee.

(2) Except as otherwise provided in the Schedule, the Committee may regulate its own procedure.

16. (1) The Committee may establish such sub-committees as it may consider necessary for the performance of its functions and the exercise of its powers under this Act.

Sub-committees of the Committee.

(2) The Committee may co-opt any person to sit on any sub-committee established under subsection (1), whose knowledge and skills are found necessary for the performance of the functions of the Committee but such person shall have no right to vote at the meeting.

17. (1) The Cabinet Secretary shall designate an appropriate administrative unit within the Ministry responsible for matters relating to the extractive industry to serve as the Secretariat of the Committee.

Secretariat.

(2) The Secretariat shall consist of —

- (a) the Director who shall be competitively recruited by the Public Service Commission and appointed by the Cabinet Secretary; and
- (b) such other public officers as the Cabinet Secretary shall, in consultation with the Committee, designate for the proper performance of the functions of the secretariat under this Act.

(3) The Director and persons designated under subsection (2) (b) shall possess such knowledge and experience in matters relating to the extractive industry as the Cabinet Secretary shall, in consultation with the Committee, determine.

18. The functions of the Secretariat shall be to —

Functions of the Secretariat.

- (a) provide technical and administrative services to the Committee;
- (b) implement the decisions, strategies, programmes and policies of the Committee;
- (c) make recommendations to the Committee on the formulation and implementation of programmes for the achievement of the functions of the Committee;
- (d) on behalf of the Committee, establish and maintain relationships with international, national and local institutions involved in the extractive industry and other related activities;
- (e) collaborate with State agencies, financial institutions and other stakeholders in the implementation of policies, strategies and programmes developed pursuant to this Act;

- (f) train, disseminate information and provide linkages and networks with local and international institutions which engage in capacity building on local content development and application;
- (g) conduct studies, research and investigations in order to enhance the development of local content in the extractive industry in Kenya;
- (h) maintain a local content data base setting out information on—
 - (i) projects, operations and programmes on extractive activities with respect to each county, including the goods and services required with respect to the activities and the timelines for their delivery;
 - (ii) suppliers of goods and services relevant to the extractive industry in Kenya;
 - (iii) human resource development programmes and initiatives of the operators and their connected entities, including work permits awarded and their related commitments;
 - (iv) business development programmes and initiatives; and
 - (v) the progress of activities by operators, State-owned agencies and connected entities in the adoption of local content;
- (i) make arrangements for periodical evaluation of the policies and programmes in relation to the objects and functions of the Committee; and
- (j) perform such other functions as may be assigned to it by the Committee.

PART IV – LOCAL CONTENT PLANS

Local content plan

19. (1) The Cabinet Secretary shall, in consultation with the Committee and by notice in the *Gazette*, set the minimum local content to be applied by an operator engaging in any extractive activity undertaken under this Act.

Minimum local content.

(2) An operator shall, in carrying out extractive activities under this Act, comply with the minimum local content requirements prescribed under subsection (1).

20. (1) An operator shall, before applying for, or bidding for a licence, permit or interest and before engaging in any extractive activity, prepare and submit to the Committee a local content plan with respect to the extractive activity in the prescribed form. Local content plan.
- (2) An operator shall, for the purposes of subsection (1),—
- (a) submit a long term local content plan corresponding to the work programme with respect to the entire project which shall be submitted together with the bid or application to engage in the extractive activity; and
 - (b) once approval to carry out the extractive activity is granted, submit an annual local content plan with respect to each year of the programme in relation to the extractive activity.
- (3) An operator shall, in preparing a local content plan, set out the following information—
- (a) the procurement and utilization of locally produced goods and services available in the locality in which the extractive activity is to be undertaken, where such goods meet established standards in the extractive industry;
 - (b) the qualification requirements and employment of local persons to be engaged in the extractive or related activities and the standards for the remuneration of such employees;
 - (c) workforce development strategies in relation to locals including training plans and projections to address any skill gaps that may have been identified in relation to the local labour force;
 - (d) strategies for the support of local participation in the activities of the operator; and
 - (e) the exploration and production work programme and budget estimate with regard to the local content component of the project.
- (4) An operator shall set out, in local content plan, the strategies through which the operator shall—
- (a) give first consideration to goods produced and services delivered locally; and

- (b) give first priority to qualified local persons with respect to employment by the operator.

(5) An applicant shall, subject to the provisions of this Act and for the purposes of subsection (2), include in the local content plan, the following plans—

- (a) employment and skills development plan;
- (b) research and development plan;
- (c) technology transfer plan;
- (d) financial services plan;
- (e) succession plans for positions not held by Kenyans; and
- (f) such other plans as the Cabinet Secretary may prescribe.

21. (1) The Committee shall review and assess the local content plan submitted to it by an applicant under section 20 within a period of sixty days from the date of receipt of the plan.

Review of local content plan.

(2) The Committee shall, in reviewing and assessing the local content plan under subsection (1), carry out public participation and shall, for this purpose—

- (a) publicise the plan in at least one newspaper of wide circulation in the area with respect to which the extractive activity is to be undertaken and through such other media as the Committee may consider appropriate;
- (b) involve the relevant stakeholders in the extractive industry or persons that are likely to be affected by the decision to approve the application to engage in the extractive activity and afford such persons an opportunity to be heard; and
- (c) take into account any representations that may be made to the Committee prior to making its decision.

(3) The Committee shall, upon reviewing and assessing a local content plan, inform the applicant of its decision to approve or refuse the approval of the plan within a period of seven days from the date of its decision.

(4) Where the Committee refuses to approve a local content plan, it shall furnish the applicant with a written statement of the reasons for the refusal.

(5) An applicant may, where applicable, within a period of thirty days from the date of notification of the decision by the Committee refusing to approve the local content plan and receipt of the written statement under subsection (4)—

- (a) revise the local content plan taking into account the recommendations of the Committee; and
- (b) submit the revised local content plan to the Committee.

(6) Where the Committee fails to notify the applicant of its approval or otherwise of the local content plan or revised local content plan, the local content plan shall be deemed to be approved upon the expiry of ninety days from the date of submission or re-submission of the local content plan, as the case may be.

22. (1) The Cabinet Secretary shall, in consultation with the Committee, prescribe rules on local content certification and in so doing shall—

Local content certification.

- (a) prescribe a methodology for determining the percentage of local content in goods and services acquired or delivered in Kenya;
- (b) the metrics to be applied in determining the achievement of the minimum local content levels and in-country spending for the provision of goods and services in the extractive industry value chain;
- (c) develop standards for the accreditation of independent companies to certify such levels of local content;
- (d) accredit independent companies as independent certifying agents under this Act; and
- (e) enforce compliance with the provisions of this Act by accredited independent certifying agents.

(2) An accredited independent certifying agency shall be responsible for measuring the local content found in goods and services acquired or contracted by an operator under this Act.

(3) A certificate issued by an accredited independent certifying agency shall be proof of local content compliance by an operator, and shall be attached to the annual reports submitted to the Committee by an operator under this Act.

(4) The Committee shall use the local content certificate to audit the fulfilment by an operator, of its obligations to local content development under this Act.

Employment and Skill Development Plan

23. (1) An operator shall, in order to develop the skills and capacity of local persons and enterprises to participate effectively in its extractive industry operations, prepare and implement strategies and plans for the utilization of—

Capacity building.

- (a) technical service contracts, joint ventures and strategic alliances to broaden opportunities for local persons and enterprises to build capacity;
- (b) technology transfer strategies with local enterprises to provide credible and measurable plans on incremental transfer of technological know-how to locals; and
- (c) on-the-job internships locally and internationally and cross-posting of staff between and across institutions to equip locals at all levels of the extractive value chain with the view to developing a critical mass of knowledgeable and competent national skills pool.

(2) An operator shall, for the purpose of this section, prepare an employment and skill development plan in the form prescribed under section 24.

24. (1) An operator shall prepare and submit to the Committee, together with its local content plan, an employment and skills development plan with respect to the extractive activity to be carried out by the operator.

Employment and skills development plan.

(2) An employment and skill development plan submitted under subsection (1) shall include—

- (a) a forecast of the employment and training needs of the operator or other connected entity which shall include –

- (i) a specification of the skills needed;
 - (ii) the anticipated skill shortages in the local workforce;
 - (iii) the specific training requirements; and
 - (iv) the anticipated expenditure that will be incurred by the operator or other connected entity in implementing the employment and training plan;
- (b) a time frame within which the operator, or other connected entity shall provide employment opportunities for the local workforce for each phase of the extractive activity to enable members of the local community prepare for such opportunities;
- (c) efforts made and procedures adopted for the accelerated training of local persons; and
- (d) the information in the implementation of the strategies and plans set out under section 23.

(3) An operator shall, in addition to the requirement under subsection (1) and upon commencing its extractive activities under this Act, submit to the Committee a quarterly report setting out —

- (a) the employment and training activities undertaken during the reporting period; and
- (b) a comparative analysis of the employment and training plan and the employment and training activities to monitor compliance.

(4) The quarterly report submitted to the Committee under subsection (3) shall specify the number of new local persons employed during the respective quarter and their job descriptions.

(5) The Committee may request for such further information with respect to the education and skills development plan as the Committee considers necessary for the purpose of the implementation of this Act.

25. (1) Where local persons are not employed due to their lack of expertise, the operator shall, to the satisfaction of the Committee—

Education and training for nationals.

- (a) make every reasonable effort within a reasonable time to supply such training locally; and
- (b) implement strategies for the capacity building of local persons in the respective field.

(2) An operator shall set out the procedure for the execution of the training of local persons in the employment and skill development plan submitted to the Committee under section 24.

(3) A training carried out by an operator under subsection (1) shall extend to the training of local persons and public officers in the entire value chain of extractive operations.

(4) An operator shall, for the purposes of subsection (1), prepare in consultation with the Committee, programmes for industrial and technical education and training including the grant of scholarships and implement such programmes with a view to training local persons to replace foreign personnel as soon as reasonably practicable and to affording local persons an opportunity of occupying senior positions in the operations of the operator.

(5) Local persons shall be selected and trained in a manner that is consistent with the performance standards of the operator in relation to the extractive activities to be undertaken by the operator.

26. (1) An operator shall, as far as is possible—

- (a) give first consideration to the employment of local persons who have the requisite expertise or qualification in various levels of the extractive operations in accordance with this Act;
- (b) minimise the employment of foreign personnel; and
- (c) ensure that foreign employees are engaged only in positions for which the operator cannot, after reasonable advertisement in at least two newspapers of wide circulation in Kenya and in such other media as the Committee may determine, find available Kenyan nationals having the necessary qualifications and experience.

Consideration of employment of local persons.

(2) An operator shall, in meeting the requirements set out under subsection (1) —

- (a) maintain such reasonable number, as may be determined by the Committee, of local personnel from the area that the operator carries out its significant operation;
- (b) not engage in discriminatory practices on grounds of race, nationality or gender in the conditions of service provided for personnel; and
- (c) determine, in accordance with the existing laws and regulations that may be prescribed by the Cabinet Secretary, the rules of employment including salary scales in such manner as to ensure that all employees in the same category enjoy equal conditions of employment irrespective of their nationality.

27. (1) An operator shall, with respect to each of its operations, submit to the Committee a succession plan for any position not held by a local person within a period of six months from the commencement of its operations.

Succession plan.

(2) A succession plan shall provide for the understudy, by local persons, of each incumbent expatriate for such period as shall be determined by the Committee on a case by case basis and at the end of such period, the position shall be assumed by the local person.

(3) All positions held by local persons shall attract salaries, wages and benefits as may be set out in the conditions of service of the operator with respect to local employees.

(4) An operator shall submit to the Committee, a report on the conditions of service and staff demography of all persons employed or contracted by the operator.

Transfer of Technology and Research Plan

28. (1) The Cabinet Secretary shall, in consultation with the Committee and in collaboration with the relevant State agencies and county governments—

Strategies for transfer of technology.

- (a) formulate a strategic plan on the transfer of technology with respect to various operations in the extractive industry; and
- (b) publicise in such manner as it shall consider appropriate, the strategic plan.

(2) The Cabinet Secretary shall set out in the strategic plan formulated under subsection (1) —

- (a) the provisions to be included in contracts, agreements, concessions and licences granted to an operator for the transfer of technological know-how to local persons in the extractive industry value chain;
- (b) a framework for the monitoring and evaluation of the implementation of the policy on transfer of technology;
- (c) the strategies designed to increase the capability and international competitiveness of local persons; and
- (d) a road map toward the achievement and sustenance of a degree of control by local enterprises over operations in the extractive industry.

29. The Cabinet Secretary shall, for the purpose of facilitating the transfer of technology and know-how and in consultation with the Committee and the relevant State agencies, submit recommendations to the Cabinet Secretary responsible for finance on fiscal incentives and a criteria for obtaining the fiscal incentives to facilitate the implementation of activities by—

Fiscal support for the transfer of technology.

- (a) foreign companies which aim to develop technological capacity and skills of local enterprises; and
- (b) local persons who establish factories and production units in the country.

30. (1) Every operator shall prepare and submit to the Committee, together with its local content plan under section 20, a plan for the implementation of its transfer of technology programme.

Transfer of technology plan.

(2) A plan submitted under subsection (1) shall include—

- (a) a plan of activities aimed at promoting the effective transfer of technology from the operator to a local company or citizen;
- (b) the specific requirement for the transfer of technology;

- (c) the expected outputs;
- (d) timeframe for the implementation of the activities set out in the plan; and
- (e) the anticipated expenditure that will be incurred by the operator.

31. (1) An operator shall facilitate the transfer of technology and shall, for this purpose—

Facilitation of transfer of technology by an operator.

- (a) prepare and adopt technology transfer agreements with locals to provide credible and measurable plans on incremental transfer of technological know-how to locals; and
- (b) facilitate the formation or entry into joint ventures and partnering through licensing agreements between local persons and foreign operators or supply companies.

(2) The Committee shall, for the purpose of this section, prepare an assessment tool for the monitoring and evaluation of the transfer of technology by an operator under this Act.

32. An operator shall not commence its extractive activities unless it has prepared and submitted to the Committee, an annual report on the implementation of the technology transfer plan and the initiatives being undertaken by the operator in implementing the plan.

Submission of technology transfer reports.

Research and Development Plan

33. (1) An operator shall, before the commencement of its extractive activities, prepare and submit to the Committee, its research and development plan.

Research and development plan.

- (2) A research and development plan shall contain—
 - (a) a three to five year plan of the research initiatives to be undertaken by the operator in Kenya;
 - (b) a plan on the expenditure to be incurred in implementing the research and development plan; and
 - (c) request for proposals for research and development initiatives related to the activities of the operator.
- (3) An operator shall—

- (a) annually review and update the research and development plan submitted to the Committee under subsection (1); and
- (b) submit the updated plan to the Committee, annually.

34. (1) The Committee shall, pursuant to the objectives of this Act, put in place measures and implement strategies in order to bridge the knowledge gap in relation to the extractive industry and promote research and development in the extractive industry.

Implementation of strategies to promote knowledge transfer and research.

(2) The Committee shall, for purposes of subsection (1), liaise with academic sector regulatory bodies in the review and reformation of local training curricula and equipment of training facilities to be fit-for-purpose.

35. (1) An operator shall set aside, annually and for the purpose of carrying out research and development activities in Kenya, such percentage of the gross revenue received by the operator as the Cabinet Secretary in consultation with the Committee may, by notice in the *Gazette*, prescribe.

Funding of research and development.

(2) The funds set aside under subsection (1) shall be applied as follows—

- (a) fifty percent shall be allocated to research and development programmes in Kenyan universities; and
- (b) fifty percent shall be applied to research and development activities within the facilities of the operator, established in Kenya.

(3) The Cabinet Secretary for finance shall, in consultation with the Cabinet Secretary and for the purposes this section, establish a fund in accordance with the Public Finance and Management Act.

No. 18 of 2012.

Financial Services Plan

36. (1) An operator shall submit to the Committee, together with its local content plan under section 20, a financial services plan setting out—

Submission of a financial services plan.

- (a) the nature of the financial services required by the operator;

- (b) a forecast of the financial services required for the duration of the project; and
- (c) the expenditure plan relating use of financial services in relation to the project.

(2) An operator shall, upon the commencement of its operations under this Act, submit to the Committee, a bi-annual plan setting out—

- (a) the financial services utilised in the preceding six months and the expenditure incurred by the operator in the procurement of these services;
- (b) a forecast of financial services required in the ensuing six months and the projected expenditure for the financial services; and
- (c) the nature of financial services provided and the expenditure for the financial services made by the operator.

(3) An operator and any connected entity shall open and maintain a bank account with an indigenous Kenyan bank and transact business through banks in the Kenya.

(4) The National Government shall, for the purpose of enhancing the local capabilities to participate in the extractive industry value chain, put in place measures, including financial incentives that encourage the use of local financial institutions in financing extractive operations in Kenya.

(5) For the purpose of this section, “an indigenous Kenyan Bank” means a bank that has one hundred percent Kenyan or a majority Kenyan shareholding.

Local Content Performance Reporting

37. (1) An operator shall within forty-five days of the commencement of each year after commencement of extractive activities submit to the Committee, an annual local content performance report covering all its projects and activities for the year under review.

Local content performance report.

(2) The report shall be in a format prescribed by the Committee and shall contain information regarding—

- (a) expenditure by the operator on local content including the current and cumulative cost basis by category; and

- (b) the employment achievement in terms of hours worked by local persons and foreigners as well as their job positions and remuneration.

38. (1) The Committee shall, within thirty days after receipt of the local content performance report under section 41, assess and review the report to ensure compliance with the provisions of this Act.

Assessment of performance report.

(2) For the purposes of assessment and verification of the report, an operator shall permit an employee or a designated agent of the Committee access to their facilities, documents and information as the Committee may require.

PART V—STRATEGIES FOR LOCAL CONTENT DEVELOPMENT

39. (1) An operator shall maintain a bidding process for the acquisition of goods and services which shall provide a fair opportunity to local persons to participate in the provision of goods and services in relation to the extractive activities to be undertaken by the operator.

Procurement.

(2) Any bid relating to extractive industry projects shall provide for the maximum utilization of goods and services available in Kenya throughout the extractive industry value chain.

(3) An operator shall, in considering and evaluating a bid in relation to a project in the extractive industry—

- (a) carry out a bidding process in a manner that ensures the equal treatment of local persons and that a fair opportunity is given to local companies to compete in the bidding process;
- (b) take into account the local content; and
- (c) give preference to local persons where the price differential does not exceed ten percent of the bidding price quoted by a foreign entity.

(4) The award of a tender shall not be based solely on the principle of the lowest bidder where a local company has the capacity to undertake the project and a local company shall not be disqualified solely on the basis that it is not the lowest financial bidder unless the value exceeds the lowest bid price by ten percent.

40. An operator shall give first preference to a local company in the grant of a licence or award of a contract

Preference of local companies.

with respect to extractive activities, subject to the fulfillment of the conditions specified in this Act.

41. (1) An operator shall use goods produced in Kenya and services rendered by a local person in preference to goods produced outside Kenya and services rendered by a foreign company in such manner as may be prescribed under this Act.

Preference of local goods and services.

(2) Notwithstanding subsection (1), where the goods or services required in relation to an extractive activity are not available locally, the Cabinet Secretary may, subject to such conditions as the Cabinet Secretary may impose, authorise the continued importation of the required goods or service.

42. (1) In granting concessions and other agreements relating to ventures within the extractive industry, the National Government shall encourage the establishment of joint venture between international investors and local business enterprises.

Contracting services from local companies

(2) The Committee shall, in consultation with the Cabinet Secretary, prescribe thresholds to be met by State entities in the procurement of components in the extractive industry value chain that shall be reserved exclusively for local sourcing.

(3) A State entity shall not award a tender to an applicant for the carrying out of any extractive or related activity under this Act unless the applicant meets the local content input threshold that may be prescribed by the Cabinet Secretary which shall not be less than thirty percent.

43. (1) Subject to the provisions of this Act, the Cabinet Secretary shall, in consultation with the Committee and from time to time, issue guidelines and contracting standards on the thresholds to be attained by each operator with respect to the percentage of local equity ownership of extractive industry companies.

Thresholds for Kenyan equity stake in operator.

(2) The interest of a local Kenyan company arising in an agreement or licence with respect to an extractive activity shall not be transferable to a non-indigenous Kenyan company.

44. The Cabinet Secretary responsible for matters relating to finance may, in consultation with the Committee

Financial incentives.

- (a) implement tax incentives for the promotion of capacity building and training in various aspects of the extractive industry;
- (b) adopt supportive and non-distorting tariff measures to expedite the expansion of the capabilities of local enterprises to meet the objectives of this Act; and
- (c) allow tax deductibility for certain categories of training expenditure, including research and development expenditure, where the training is for the benefit of Kenyan nationals.

45. (1) There is established a fund to be known as the Local Content Training and Development Fund.

Fund for
Training and
Development.

(2) An operator shall annually remit a non-tax deductible training levy consisting of such percentage of its net revenues as the Cabinet Secretary may, in consultation with the Committee prescribe to the Fund in support of the objectives of this Act.

(3) The Cabinet Secretary shall prescribe in regulations under the Act the manner in which the Fund shall be operated and applied.

PART VI—MISCELLANEOUS PROVISIONS

46. (1) An operator shall prepare and submit to the Committee an annual work plan of the programmes and budget with respect to an extractive activity by the operator.

Annual work
programmes.

(2) An operator shall, in preparing an annual programme and budget, set out —

- (a) an estimate of the local content component of the extractive activity; and
- (b) the activities that are to be undertaken in relation to the extractive project.

(3) The Committee shall, upon receipt of the annual work plan under subsection (1)—

- (a) determine the specific projects which shall be subject to procurement in accordance with this Act; and
- (b) publish in at least two newspapers of wide circulation, in its website and such other media as

the Committee shall consider appropriate, the list of the projects and details relating to the specific projects.

(4) All tenders in the extractive industry shall only be advertised, evaluated and awarded in Kenya.

(5) An operator who intends to advertise a tender in the extractive industry outside Kenya shall apply for, and obtain the approval of the Cabinet Secretary prior to such advert.

47. (1) An operator shall maintain the records relating to its operations in such proper form as to facilitate the determination of the local content expenditure incurred by the operator with respect to its operations under this Act.

Monitoring local content of expenditure incurred.

(2) The records maintained by an operator under subsection (1) shall include supporting documentation certifying the cost of local goods, labour and local services procured by the operator and shall be subject to audit by the Committee or such other agent appointed Committee for that purpose.

(3) An operator shall, for the purpose of subsection (2), submit to the Committee, an annual statement of local content which shall include information regarding the—

- (a) payments made to local licensees who supply local goods and local services to the operator;
- (b) payments to local suppliers who supply local goods;
- (c) payments to local licensees and local suppliers for providing a service in the supply of non-local goods;
- (d) payments made to non-local licensees and suppliers who supply local and non-local goods;
- (e) payments of salaries, profits, dividends on shares and other tangibles paid to persons who are Kenyan nationals; and
- (f) list of all contracts awarded during the period under consideration and services or equipment contracted.

(4) For the purpose of determining the level of local content in respect of an operation under this Act, the

Committee or accredited independent certifying agency under section 19 shall—

- (a) take into account all costs incurred as direct materials, direct sub-contracts, indirect materials, indirect subcontracts, construction management and other costs; and
- (b) not include any taxes or other statutory payments to government including payments made under contract or concession agreements.

48. (1) The Committee shall monitor and evaluate compliance by every person under this Act of the obligations imposed on such person under this Act.

Impact assessment.

(2) The Committee shall prepare and submit to the Cabinet Secretary, a report on its activities under subsection (1) and shall, for this purpose, set out information on —

- (a) each licensed extractive operation;
- (b) the extent to which State entities mandated to implement specific obligations have so acted;
- (c) objectives that are yet to be attained by an operator or State agency under this Act and the reasons for such observation;
- (d) strategies for corrective measures specifying the authority to implement the objectives that are yet to be attained; and
- (e) recommend best practices for greater and faster attainment of the objectives of the Act.

(3) The Committee shall evaluate the performance of the National Government against the objectives of this Act, and shall prepare and submit to the Cabinet Secretary and to the Senate, an annual performance report.

49. (1) An operator shall ensure that its partner, contractor, subcontractor or any other connected entity is contractually bound to report local content information to the operator and, if requested, to the Committee.

Reporting by a connected entity.

(2) An operator or connected entity shall permit an agent designated by the Committee to access the records of the operator or connected entity for the purposes of

assessment and verification of the local content information reported by an operator or connected entity under this Act.

50. (1) The Committee shall make recommendations to the Cabinet Secretary on the implementation of strategies that would facilitate and sustain the adoption of local content under this Act.

Support
measures.

(2) In making its recommendations under subsection (1), the Committee shall take into account the state of development of the local private sector, and may, propose strategies for the—

- (a) provision of affordable financial assistance including low-interest loans and preferential contracts from State agencies;
- (b) provision of below-market loans for projects with significant domestic content;
- (c) promotion of local assembly industries through incentives that promote the importation of components and discourage the importation of fully assembled industrial equipment;
- (d) provision of export credit assistance;
- (e) implementation of affirmative action with respect to local labour through limitations on the engagement of expatriate personnel.

51. (1) The Committee shall, in consultation with the Cabinet Secretary, prescribe guidelines for the conduct and promotion of public participation of stakeholders in the extractive industry or affected by a project carried out under this Act.

Public
participation.

(2) In carrying out public participation under this Act, an operator, the Committee and any other person required to undertake public participation shall—

- (a) be guided by the principles of citizen participation in counties set out under section 87 of the County Governments Act; and
- (b) conduct the public participation through such means as may be necessary to ensure that the greatest number of citizens within the respective county and the relevant stakeholders —

No. 17 of 2012.

- (i) are informed of any decision to be undertaken under this Act which affects them; and
 - (ii) have an opportunity to participate in the decision making process including the submission of any memorandum or information that they may have with respect to the matter;
- (c) conduct the public participation through such for a as may be necessary for effective public participation under paragraph (b) including the structures for citizen participation established by a county government pursuant to section 91 of the County Governments Act.
- (3) The Committee shall, for the purpose of subsection (1)—
- (a) develop the human resources in the extractive industry through education and training activities;
 - (b) stimulate and increase the participation of the local communities in the human resources development activities, improving the capability of the locals and small-scale businesses to engage in the provision of goods and services in the extractive industry chain;
 - (c) stimulate and direct the participation of professional associations and organizations in the field of local content;
 - (d) stimulate and support the activities of technological research and or development in the extractive industry;
 - (e) carry out public education activities in order to educate operators, the public and industry stakeholders on local content policy and requirements for the implementation of this Act; and
 - (f) promote the international cooperation in the extractive industry in accordance with the national interest.
- (4) In carrying out the activities specified under subsection (3) the Committee shall promote the —

- (a) involvement of the National Government in the setting of policies and plans for the implementation of the objectives of this Act;
- (b) county governments in their engagement with the National Government, the operators and connected entities engaged in the extractive industry;
- (c) co-operation between non-state actors including community based organisations and non-governmental organisations and the State agencies in advocacy, provision of local services and capacity building; and
- (d) involvement of local communities in identifying their needs, enhancing their capacity to produce and deliver goods and services that meet the established standards and to engage in various stages of the extractive industry value chain.

52. (1) A person who submits a plan, returns, report or other document and knowingly makes a false statement, commits an offence and shall be liable, upon conviction, to a fine of not more than two million shillings or to imprisonment for a term of not more than three years, or to both.

Offences.

(2) A Kenyan citizen who acts as a front or connives with a foreign citizen or company to deceive the Committee as representing an indigenous Kenyan company to achieve the local content requirement under these Regulations, commits an offence and is liable, on conviction, to a fine of not more than three million shillings or to imprisonment for a term of not more than five years, or to both.

(3) A person who connives with a citizen or an indigenous Kenyan company to deceive the Committee as representing an indigenous Kenyan company to achieve the local content requirement under these Regulations commits an offence and shall be liable, on conviction, to a fine of not more than three million shillings or to imprisonment for a term of not more than five years, or to both.

- (4) An operator or other connected entity which—
 - (a) carries out extractive activities without the required local content requirement;

- (b) fails to submit a local content plan;
- (c) fails to satisfy the content requirement of a local content plan; or
- (d) fails to submit its local content performance report or annual work plan to the Committee,

commits an offence and is, on conviction, liable to a fine of five percent of the value of the proceeds obtained from the extractive activity in respect of which the breach is committed but which shall not exceed two million shillings, or to the cancellation of a contract with respect to the extractive activity.

(5) A person who is convicted of an offence under this Act for which no penalty is provided shall be liable to a fine not exceeding eight hundred thousand shillings, or to imprisonment for a term not exceeding twelve months, or to both.

53. (1) Where an offence is committed by a body corporate or an association of persons under this Act, a person—

Offence by a body corporate.

- (a) who is its director, officer, or partner; or
- (b) who is concerned in the management of its affairs,

at the time of the commission of the offence, is deemed to have committed that offence unless that person proves that the offence was committed without the consent or connivance of that person and that the person exercised such diligence to prevent the commission of the offence as the person ought to have exercised, having regard to the nature of the person's function in that capacity and to the circumstances.

(2) A person may be prosecuted for an offence under subsection (1) notwithstanding that the body corporate or association of persons has not been convicted of the offence.

(3) Subsection (1) shall not affect the liability of the body corporate or association of persons for the offence referred to in that subsection.

54. The Cabinet Secretary may revoke or suspend for such period as may be prescribed, the licence issued to an operator under this Act that is subsequently convicted of an offence under this Act.

Revocation of licence.

55. (1) The Cabinet Secretary shall, in consultation with the Committee, make regulations generally for the better carrying out of the provisions of this Act.

Regulations.

(2) Notwithstanding the generality of subsection (1), the Cabinet Secretary may make Regulations –

- (a) setting out the minimum standards required to be met by operators and connected entities under this Act;
- (b) the minimum standards, facilities, personnel and technology for the training of personnel in the extractive industry;
- (c) for the conditions and targets for the formation of joint ventures or partnerships between multinational services and manufacturing or Service companies in all sectors of the economy and certified indigenous companies for the purpose of technology acquisition;
- (d) setting out targets for the utilization and growth of in-country capacity of companies in Kenya in the respective extractive activities along the value chain;
- (e) setting out the requirements and targets for growth in research and development of the extractive industry in Kenya;
- (f) setting out details of information required to be submitted by an operator or connected entity under this Act;

Cap. 2.
No. 23 of 2013.

(3) Regulations made under subsection (2) may prescribe different standards and other requirements—

- (a) for services of different types or descriptions rendered in relation to neglected children; and
- (b) in respect of different kinds of licencing.

(4) For the purposes of Article 94(6) of the Constitution –

- (a) the authority of the county executive committee member to make Regulations shall be limited to bringing into effect the provisions of this Act and the fulfilment of the objectives specified under subsection (1); and

- (b) the principles and standards set out under the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013 in relation to subsidiary legislation shall apply to Regulations made under this Act.

PART VII—TRANSITIONAL PROVISIONS

56. Upon the commencement of this Act, all oil and gas arrangements, agreements, contracts or memoranda of understanding relating to any operation or transaction in the extractive industry in Kenya—

Existing contracts and agreements.

- (a) existing before the commencement of this Act shall continue in force as if entered into pursuant to this Act; and
- (b) entered into after the commencement of this Act shall be in conformity with the provisions of this Act.

SCHEDULE

(s. 12)

PROVISIONS RELATING TO THE CONDUCT OF MEETINGS OF THE COMMITTEE

1. The Committee shall meet at least once in every three months to conduct the business of the Committee.

2. The chairperson may on his or her own motion, or upon request by a member, call a special meeting of the Committee at any time, where he or she considers it expedient for the transaction of the business of the Committee.

3. Other than a special meeting, or unless three quarters of members agree, at least fourteen days' written notice of every meeting of the Committee shall be given to every member of the Committee by the Director.

4. The quorum at a meeting of the Committee shall be half of the members or such greater number as may be determined by the Committee in respect of an important matter.

5. The chairperson shall preside at the meetings of the Committee and in the absence the chairperson, the vice-chairperson or a member of the Committee elected by the members present from among their number shall preside.

6. The matters of the Committee shall be decided by a majority of the members present and voting and in the event of equality of votes, the person presiding shall have a casting vote.

7. The proceedings of the Committee shall not be invalidated by reason of a vacancy among the members or a defect in the appointment or qualification of a member.

8. At the first meeting of the Committee, the members shall elect a vice-chairperson, not being an *ex-officio* member, from among its members.

9. Subject to the provisions of this Schedule, the Committee may determine its own procedure and the procedure for any committee of the Committee and for attendance of any other persons at the meetings and may make standing orders in respect thereof.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

This Bill seeks to provide a framework for the development and adoption of local content through ownership, control and financing of activities connected with the exploitation of gas, oil and other mineral resources by local persons and local enterprises in order to ensure –

- (a) the development of local economies;
- (b) stimulation of industrial development;
- (c) increase in local capability;
- (d) building of a skilled workforce; and
- (e) the creation of a competitive supplier base.

The Bill is premised on Article 69(1) of the Constitution which imposes an obligation on the State to, among other things,–

- (a) ensure the sustainable exploitation, utilization, management and conservation of the environment and natural resources and ensure the equitable sharing of the accruing benefits; and
- (b) utilize the environment and natural resources for the benefit of the people of Kenya.

In addition, Article 66(2) of the Constitution further provides that—

Parliament shall enact legislation ensuring that investments in property benefit local communities and their economies.

The discovery and exploitation of natural resources in a particular area has always led to the expectation that the local communities and country in which the resources are found would develop economically and socially and that the benefits of such resource exploitation would trickle down to the communities. It has however been found that this is often not the case particularly owing to –

- (a) lack of capacity by the local communities to participate in the extractive or connected activities owing to lack of capacity or involvement in the said processes;
- (b) lack of technology and technical know-how;
- (c) lack of public participation; and
- (d) lack of a legal framework for the exploitation of natural resources in a manner that ensures that the benefits accruing from such exploitation find their way to the communities and country as a whole.

This Bill therefore seeks to provide a framework to ensure that local content is entrenched in every aspect of the extractive industry value chain through –

- (a) involvement of local communities in the extractive industry value chain and hence, the enhancement of the income received by such locals following their involvement in the extractive processes;
- (b) ensuring that land owners and owners of resources receive the revenue due to them;
- (c) targeting income streams to local communities, local enterprises and financial institutions.

This Bill will therefore be expected to facilitate the development of local economies through the creation of employment opportunities and by ensuring the procurement of goods and services that are produced locally, stimulating local industrial development, capacity building and to increase the local capability to meet international standards in the supply of goods and services.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not delegate legislative powers nor does it limit the fundamental rights and freedoms.

Statement on how the Bill concerns county governments

The Bill provides a framework through which the benefits relating to the exploration of natural resource will cascade to the local communities in which the resources are found. As a result, it is expected that the county governments, whose economies are expected to be directly impacted by the exploitation of these resources. The county governments would therefore be expected to be at the forefront in ensuring that local content is realised under this Act. The Bill is therefore a Bill concerning county governments in terms of Article 110 (1) (a) of the Constitution.

Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 16th June, 2016.

GIDEON MOI,
Chairperson,
Standing Committee on Energy.