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***KENYA GAZETTE SUPPLEMENT***

**SENATE BILLS, 2016**

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**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—

- (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.

Assessment of local capabilities.

10. (1) The Committee shall consist of—

- (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;

Membership of the Committee.

- (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.

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

Consideration  
of employment  
of local persons.