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I.



DROIT PRIVÉ

**UNVEILING LOCAL CONTENT PROVISIONS IN
EXTRACTIVE SECTOR LAWS IN CAMEROON:
PERSPECTIVES FOR SUSTAINABILITY OF NATIONAL
LIVELIHOODS**

Christopher F. TAMASANG¹

Abstract : This paper sets out to recognize and acknowledge the emergence, within the extractive sector, of the all-important concept of local content now *en vogue* in current literature on the extractive sector and to investigate how useful the law can be in the development of the concept in resources-rich countries that have, unfortunately, become ‘resource curse’ countries. Picking examples of legal provisions of the extractive sector laws in Cameroon, the study unveils Mining, Oil and Gas legislations with specific attention to local content development considering the fact that a veritable local content development law and policy can, without doubts, contribute enormously to economic growth and enhance the sustainability of national livelihoods. It emerges from the statutory interpretation and analysis that the extractive sector laws are not only dispersed and superfluous but are also fraught with lots of gaps rendering local content compliance and observance by multinational corporations, and enforcement by the State machinery a difficult task. The study then recommends a separate, comprehensive and more viable legislation entirely devoted to address local content questions in order to better enhance sustainable economic growth and development and improve on the livelihoods of Cameroonians.

Key words: extractive sector, laws, legislation, local content, national livelihoods, sovereignty, sustainable economic development, value addition.

¹ PhD (Natural Resources Law), Senior Lecturer, Faculty of Laws and Political Science, University of Yaounde II, Soa. I must seize this opportunity to acknowledge Mr Nkumbe Ebong Mekede, a PhD Student and a Graduate Teaching Assistant in the Faculty of Laws and Political Science of the University of Yaounde II who assisted me in gathering data for the research.

1. Introduction

1.1. Context and rationale to the study

Africa is a top producer of several non-renewable natural resources in the world. Unfortunately, most of such extractives are exported without significant value-addition on the continent. The exploitation of extractives has created an “*enclaved*” sector that is poorly linked to the rest of the economy. It has failed to foster upstream, downstream and perhaps side stream and lateral investments that should promote a broad-based economic transformation, create opportunities and industries that add value to the primary commodities.² The adoption by African Heads of State of the African Mining Vision (AMV) in 2009 is seen as an important milestone in this direction. Indeed, the AMV as an African initiative is a clear demonstration of Africa’s desire to enhance the development of non-renewable natural resources and forge the continent’s development pathway. Hence, the initiative advocates for a transparent, equitable and optimal exploitation of mineral resources to underpin development and promote local processing and value addition of raw materials to build human, financial, and institutional capital that can outlast the exhaustible resources.³ It calls for an improvement of the value chain and diversification of economies to reduce dependence on natural resources and in particular, resources from the extractive sector.

Prompted by the boom in the mineral and oil commodity prices in the mid-2000s and by the sharp rise in the profits of resource companies while resource-rich countries remained poor, governments in countries such as Nigeria and Brazil began to set up local content requirements in laws and

² The result is less diversified and commodity-dependent economies. According to the World Bank (2012), poverty rates in resource-rich African countries have generally fallen at a slower pace than those in countries without resources. Many countries in Africa suffer from this resource curse paradox widely documented in literature, where countries with abundant natural resources tend to register lower economic growth than those without these natural resources. Recently, the African Union, in its Common African Position (CAP) on the post-2015 Development Agenda³, reechoed these concerns “... that the benefits of Africa’s resources have been concentrated in a few enclave sectors and limited to narrow segments of society, thus exacerbating poverty, inequality and fragility”.

³ Available at (www.worldmininghistory.com) last consulted on December 12th, 2015.

policies. Since then, local content policies have spread rapidly, often broadened to include value addition, and have now entered the agendas of most resource-rich countries.⁴ According to Mercedes E. Milam⁵, what was once a “*gentlemen’s agreement*,” is now increasingly a binding constraint on resource companies. He has further underscored the evolutionary nature of local content policies and the role of knowledge with other countries in shaping what local content means, what works and what does not work and why.⁶

It is estimated that 90 percent of resource-driven countries now have legal provisions on local content⁷ although in different legal architectures. It is therefore interesting to note that local content and value addition strategy are some of the methods which resource-rich countries are adopting to increase the benefits to their economies from resource extraction, beyond securing optimal rents (royalties, taxes, shares, and other revenues). Consequently, delivering local benefits in the communities where extractives companies operate is no longer a choice. It is a necessity and one that is increasingly mandated by law. In the new competitive landscape of waning supply and increasing demand for mineral resources, companies in the extractive industries face rising expectations to do more than simply mitigate negative impacts, serve as sources of tax/royalty revenue, and act as good neighbours. Today, business success depends upon the ability of companies to develop local talent, build a competitive local supplier base, and deliver lasting socio-economic benefits to the areas where they operate. The growing number of reported cases of project interruptions due to non-technical risks including

⁴ Available at ([http:// www.acetforafrica.org](http://www.acetforafrica.org)) last consulted on January 10th, 2016.

⁵ Mercedes E. Milam is one of the Authorities in the Ministry of Mines, Industry and Energy of Equatorial Guinea. He made this statement during a conference in Vienna, Austria on Local Content Policies in Oil, Gas and Mining Sectors. The conference ran from the September 30 to October 1 2013. Attended that meeting were top global and regional institutional representatives from the World Bank’s Oil, Gas and Mining Policy Unit, Sustainable Development Network, The African Petroleum Producers’ Association and Exxon Mobil Corporation.

⁶ Ibid

⁷ McKinsey Global Institute (2013), “Reversing the curse: Maximizing the potential of Resource-driven Economies,” A report published in Washington, D.C. p 3.

stakeholder pressures, socio-economic conditions and national politics is a testament to this.⁸

Some companies have responded to non-technical risks through isolated investments in community development. Increasingly, however, companies are finding that they can drive more sustainable and commercial value with integrated investment approaches to community engagement by leveraging company resources (from the asset to corporate level), third-party expertise, civil society and multi-lateral partnerships, and proactively developing local capabilities with strategic planning.⁹ Although increasingly required by law in the mining, oil and gas industries, local content represents the most strategic contribution a company can make to securing its social license¹⁰ to operate and leaving a positive legacy in countries.¹¹ If designed and implemented effectively, local content offers an opportunity to unlock mutual benefit from resource extraction by focusing on companies' core competencies and supporting long-term economic growth prospects. It is particularly relevant to large-scale projects in the mining, oil and gas industries, yet the drivers, approaches, and tools for implementation can vary between these industries.¹²

As the demand for scarce resources grows, companies are operating in areas that have yet to see widespread benefits from oil and mineral extraction and have experienced what many perceive to be significant negative environmental and social impacts. In response, both communities and governments are seeking ways to capture more value from their resource wealth, leading to a more competitive landscape and higher expectations on international companies. Local content provision measures aim to create backward linkages such as reliance on inputs from the local economy and

⁸ Analysis by Environmental Resources Management of delays associated with a sample of 190 of the world's largest oil and gas projects (as ranked by Goldman Sachs) found that 73 percent of project delays were due to "above-ground" or non-technical risk, including stakeholder resistance, compared to 21 percent due to technical risk.

⁹ Hackenbruch, D and Pluess, J (2011), *Commercial value from Local Benefits in the Extractive Industries: Local Content*, 1st edition, Boston Press, p.5.

¹⁰ See Dashaco, J.T. and Bande G. M.T. (2015), 'Social Licence and its Bearing in Cameroon, in: African Journal of Law, Numero Special, l'Harmattan, Paris, pp 75 -118 for a more detailed understanding of the concept of social licence,

¹¹ Ibid, p.15.

¹² Ibid.

local job creation, and increasing local participation through ownership and management; forward linkages such as processing sector output before exporting through the establishment of refineries, processing plants, petrochemical industries, and fertilizer production; and lateral linkages through transportation, communications, and financial services. From Angola to Indonesia, Nigeria to Timor-Leste, Trinidad and Tobago to Zimbabwe, the theory behind this paradigm shift in resource development is simple and laudable; the challenge is in the practice, so is the point of view of some authors.¹³

In Cameroon, within the mining, oil and gas sectors, the range of government actions to promote local content through existing pieces of legislation in force has been less satisfactory. As a matter of fact, there is need for a legislative review. Cameroon may be doing well in employment of local workers to some extent, but less so with service contracts, procurement of local goods, and local equity and management and is definitely falling short in technology transfer. The problem lies in the limited capacity and high costs of local companies, insufficient financial support, inadequate standards of certification, and inability of contractors to meet high industry standards. The prospects depend on how the industry, local businesses, and state institutions work together to overcome the obstacles facing local content opportunities.

Despite the strong contribution of oil in the State budget, development indicators continue to decline in Cameroon. Cameroon's growth rate fell to 3.5% between 2001 and 2007, and poverty and unemployment have increased. In addition, Cameroon ranks poorly in World Bank ratings on service delivery and Transparency International's Corruption Perceptions index. Although a marginal oil producer in Sub Saharan Africa, Cameroon's natural resource revenues are significant. Unfortunately, these revenues have failed to deliver poverty alleviation and improve national livelihoods.

A recurring argument explaining the failure of oil to contribute to national development and poverty reduction in Cameroon is that decision-making in the oil sector is reserved for a selected group of authorities and political elites. For a long time, revenues were initially not even included in the government's

¹³ Available at (www.acetforafrica.org) last consulted on December 16th, 2015.

national budget, but placed in an offshore account.¹⁴ This practice continued until the late 1990s when oil revenues began to appear in the state budget under pressure from development partners and multilateral development institutions like the World Bank and IMF.¹⁵ But the problem of translating such income into tangible benefits for local communities persists.¹⁶ While companies face increasing competition in accessing resources, there are also more demands from stakeholders, particularly communities, to remedy the legacy of missed opportunities in translating resource wealth into widespread benefits for communities.¹⁷ Mismanaged revenues by governments and entrenched corruption, combined with inefficiencies and poorly designed development projects, have limited opportunities for communities to reap direct local economic benefit of large-scale projects and have left many communities living in poverty¹⁸ and other social degraded conditions. This has contributed to rising tensions among communities, resource companies, and governments. This is an important driver for rising expectations of companies, particularly in the mining industry, in which there are increasingly vocal communities backed by international NGOs, which have elevated community concerns to a global level and engaged media and end users in demands for more local benefits from resource extraction.¹⁹ In sum, behind the above picture lies the real problem and it is that the extractive sector which can clearly make significant contributions to improving national livelihoods outside taxes, rents and royalties, has for a considerably long time been the exclusive business of the government and extractive companies not guided by clear and comprehensive laws and policies to define and ensure effective implementation of local contents requirements, an imperative for the sustainability of national livelihoods. The objective of this paper is therefore to find out how the rich extractive sector in Cameroon, through legislative development, can be made to provide more than just taxes, royalties

¹⁴Gauthier, B. and Zeufack, A. (2009), *Governances and oil revenues in Cameroon*, Oxcarre <http://resources.revenuewatch.org/en/official-document/governance-and-oil-revenues-cameroon>.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷Hackenbruch, D. and Pluess, J., *op. cit*, p. 34.

¹⁸ Ibid.

¹⁹ Ibid.

and rents to government but cross sector benefits by way of local content development and value addition.

1.2. Conceptual framework, relevant development related theories and methodology

A good number of countries from the developing world have discovered and are developing mining, oil and gas reserves. Stakeholders in such countries are anxious to obtain the highest benefits for their economies from the extraction of these exhaustible resources by elaborating comprehensive legal policies and options to achieve desired goals. One important theme of such policies is the so-called local content created by the sector; the extent to which the output of the extractive industry generates further benefits to the economy beyond the direct contribution of its value-added, as through links to other sectors.²⁰ Increasing local content is becoming a policy priority in many resource-rich developing countries, among both mature and recent entrants to the industry.²¹ In this part of the paper, concern shall be had mainly on the real understanding of the concept of local content and value chain/addition in the mining, oil and gas sectors. We shall also attempt a discourse on sovereignty and sustainable economic development as relevant development related theories and finally unravel the methodology utilized in this piece of research endeavour.

1.2.1. Conceptual framework

1.2.1.1. Local Content Explained

The term local content is polysemy in nature. It is for this reason that within the extractive sector, it needs to be situated appropriately. Local content can refer to jobs or value-added that is created anywhere in the domestic economy as a result of the actions of an oil and gas company, or it can narrowly refer to jobs that are created in the neighbourhood of the mining, oil and gas production plant.²² Local content may even refer to the provision, by the extractive companies, of infrastructure (schools, medical facilities) that is not an input into its own production but intended for the

²⁰ Tardo, S. and Yahya, A. (2011), *“Local content policies in the Oil and Gas Sector”*: A World Bank study, Greenleaf Publishing, Washington, DC, p.1

²¹ Ibid.

²² Ibid.

benefit of the local population (either of the nation generally or the neighbourhood of the installations). The term “*local content*” typically refers to the added value brought to a host country through the procurement of goods and services and local workforce development. Some companies expand this definition to include strategic community investments.²³ The World Bank defines local content broadly in terms of employment and procurement of inputs, as well as the basis of domestic ownership of firms.²⁴ The African Development Bank goes a step further to define “*local firm*” based on the place of registration, a majority of board members being nationals, and the proportion of shares held by nationals.²⁵ Generally, local content refers to the extent to which the exploitation of a natural resource benefits the economy beyond the revenue (rents, taxes and royalties) paid to the government, through upstream, downstream, side stream and lateral linkages.

Within Cameroon’s extractive sector laws including systematically the Petroleum, Mining and Gas laws, the concept of local content has not been explicitly provided for especially in the Petroleum and Mining legislation. As far as the Mining and Petroleum legislation are concerned, local content development issues can only be tacitly inferred from them but this is dangerous because even express articulation and respect of local content provisions is still seriously problematic. It therefore becomes even more difficult where, as in the existing legislation on Petroleum and Mining, express local content provisions are clearly absent and if there exist any, it is only one of inference. However, some treatment of local content can be traced in the Gas legislation²⁶. By way of definition, the Gas Code provides that local content refers to ‘all activities relating to local capacity building, use of local industrial and service companies and the creation of measurable value added for the local economy’.²⁷ To prove the importance of this concept, the

²³ Hackenbruch, D. and Pluess, J., op. cit, at p.3.

²⁴ Available at (www.aceforafrica.org), last consulted on December 4, 2015.

²⁵ Ibid.

²⁶ Law no 2012/6 OF April 19th, 2012 to institute the Gas Code and its enabling Instrument Decree No 2014/3438/PM du 16 fevrier 2014.

²⁷ S. 3, paragraph 9.

Enabling legislation to the application of the Gas Code retakes the definition of local content.²⁸

With regard to the foregoing attempt at understanding the local content concept, one can state that Cameroon's extractive sector laws lacks comprehensiveness as far as the understanding of this concept is concerned in terms of the fact that clear definitional understanding is limited only to the Gas law and markedly absent in the Petroleum and Mining laws. In addition, it seems difficult to decipher effective enforcement mechanisms.

1.2.1.2. Local Content and the Value Chain

The extractive sector is spread along a value chain of recognizably different stages, some of which may even act as separate subsectors.²⁹ At each stage of the value chain, different technologies and inputs are utilized, so that the potential for local content enhancement is likely to be different along the value chain.³⁰ Over time, as the oil industry develops from its initial stages, the nature and extent of local content is likely to vary; some stages lend themselves more to the use of local inputs while others tend to rely more on imported inputs.³¹ The ability of the local economy to supply these various inputs also depends on its level of development and industrialization. In the Cameroonian experience, it is noted that value chain or value addition in the development of local content in the extractive sector and in particular the Mining and Petroleum sub-sectors, is significantly minimal especially given the weak regulatory role of the law in such sub-sectors. For the Gas sub-sector, there is provision for local content which is expected to enhance value addition but again, it seems to us immature to draw conclusions on the effective application of the law in this direction for the simple reason that it is only a year and half that the law actually entered into force.

²⁸ Art 2(i) of Decree No 2014 du 16 Fevrier 2016 for the implementation of the Gas Code 2012.

²⁹ Hackenbruch, D. and Pluess, J. (2011), *Commercial value from Local Benefits in the Extractive Industries: Local Content*, BSR Press, op. cit, at p.10.

³⁰ Ibid.

³¹ Ibid.

1.2.2. Relevant Development Related Theories

For obvious reasons, this paper has as a primary theoretical foundation, the theory of sovereignty which has been posited by renowned writers in International Law several centuries ago³² and more recently³³ too and which is also enshrined in many international legal instruments of differing strength.³⁴ States therefore have the sovereign right to exploit their natural resources pursuant to their own environmental policies but should be careful that this does not cause harm to another state and the whole idea behind this is the enhancement of sustainable development and improvement of the livelihoods of nationals. The study equally builds on sustainable economic development theory propounded by leading natural resources experts.³⁵ The study relies on the fact that a well thought out local content policy and legal framework can enhance sustainable economic growth and hence improve on the livelihoods of Cameroonian population.

1.2.3. Methodology

The methodology utilized in this write-up consists in data collection and in the treatment of such data. Data collection consisted essentially in the reading of records relating to natural resources generally and the extractive sector in particular. Over and above the reading of records, we endeavoured to identify statutory instruments from the extractive sector. This constituted our main primary source of data. The paper attempts, in the treatment of secondary data collected, to review existing literature on the subject in order to determine the thinking and contribution of others on local content matters and from these, to make our own modest contribution to the understanding and advancement of the subject. In dealing with primary source of data, we basically utilized the statutory interpretation approach of the provisions of the

³² In Grotius, H. (1609), *The Freedom of the Seas*, N.Y.

³³ Notably, Winston, P., Nagan, A. and Haddad, M. (2012), *Sovereignty in Theory and Practice*, 13 *San Diego Int'l LJ*

³⁴ For instance, the *Stockholm Declaration*, Principle 21; *The Rio Declaration*, Principle 2, and the *Convention on Biodiversity*, Article 3

³⁵ See notably Esteves, A., Coyne B. and Moreno A. (2013), *Local Content Initiatives: Enhancing the Subnational Benefits of the Oil, Gas, and Mining Sector*, *Natural Resource Governance Institute*; Ovadia D.S. (2015), *The Role of Local Content in Natural Resource-based Development*, *Osterreichische Entwicklungspolitik, Rohstoffe Und Entwicklung*,

extractive sector laws. This enabled us to unveil in each case, the intent of the legislator in the legal provision and to find out how feasibly applicable can such provisions be on the ground. The Institutional Strategic Approach consisted in analyzing the strategy and action plans of institutions whose work impact on the extractive sector, for instance the State, extractive companies and business and community organizations. In our thinking, such analysis could inform decision-makers on how local content issues could be properly addressed if sustainability of national livelihoods is anything to go by in Cameroon's extractive sector laws.

2. Local content provisions/stipulations in extractive sector laws and policies

As highlighted earlier, Cameroon's extractive sector has segregated laws and policies but such segregation is justified by the fact that there exist three different sub-sectors, to wit, the Petroleum, Gas, and Hard Mineral sub-sectors, each with its own specificities; and equally because the sector is truly broad but also undoubtedly sensitive. Albeit broad and sub-sector specific, there are however, certain matters that run across the board. One of such matters is, in our view, local content. What this means is that the extractive sector in Cameroon as elsewhere can only make its significant contribution to the national economy and sustain national livelihoods if local content considerations are given the widest imaginable and practical attention in the development of extractive laws and why not even treat it as a transversal issue. Now, to demonstrate that there is insufficient legislative attention to local content, where this has been manifested, we shall proceed to unveil the legislative initiatives in each of the sub-sectors in terms of what may qualify as local content requirements.

2.1. Provisions on Employment, Professional Training and other Social Infrastructural Development

The first and most salient aspect of local content development is undoubtedly employment, professional training and development of social infrastructure. In all economies of developing countries in general and Cameroon in particular, employment, professional training and the development of social infrastructure is seriously problematic. This ought not to be the case at least with resources-rich countries such as Cameroon.

Unfortunately, this has remained a critical issue in such countries. Current thinking is that the extractive sector can provide a milestone in the direction of addressing such problems. It is probably for this reason that some provisions can be discerned in the Petroleum, Mining and Gas legislations.

Beginning with the Petroleum Code of 1999³⁶ for instance, local content requirements with respect to the employment and professional training of Cameroonians are found in Section 77. That section provides that *the holder of a petroleum contract and its sub-contractors employ in priority qualified personnel of Cameroonian nationality for purposes of their petroleum operations*. Pertaining to professional or vocational training, the same section of the Code further provides that “*as soon as the petroleum operations start, the holder must set up and finance a training programme for Cameroonian personnel of all qualifications, according to the terms and conditions specified in the Petroleum Contract*”. With regard to the Mining Code,³⁷ issues pertaining to the employment of locals or nationals,³⁸ professional training³⁹ and social

³⁶ Cameroonian Petroleum Code is referred to as Law N° 99/013 of December 22, 1999 to institute the Petroleum Code.

³⁷ Law no 2010/011 of 29 July 2010 modifying and completing certain provisions of law no 2001/ 01 of April 16, 2001 to institute the Mining Code.

³⁸ Mining companies are called upon to employ the local population in the unfolding of some of their operations. But this particular obligation is not fully respected. For instance, the manpower of C&K Mining Inc. is divided into a local, national and foreign staff. Regarding the national workforce, in contrast to the 57 national workers the company employed in 2011, in 2013 it is composed of 60-63 contractual employees, including temporary and seasonal workers. Positions of responsibility are primarily entrusted to staff with the required skills and a mastery of the English language. It is important to note that no Baka, who are the indigenous people of the project area, is employed by C&K despite the agreement signed in April 2013 between C&K Mining Inc. and the Ministry of Employment and Vocational Training (MINEFOP) through the National Employment Fund (FNE), whose objective is to ensure a fair recruitment nationwide.

³⁹ Capacity building (knowledge transfer and/or training) is an essential element of local participation. Indeed, a project can only be beneficial to a community if it can continue the said activity or those related to it. The Korea Mining Incorporation trains its employees on certain working techniques specific to the mining industry and the driving of their heavy engine vehicles. However, the question of choice of individuals to train, the nature of the training and sustainability of acquired skills after training remains.

activities are dealt with in Section 16 (g).⁴⁰ Within the province of local content development laws in the extractive sector in Cameroon, we do infer provisions relating to employment, professional training and the development of social infrastructures. In fact, section 62 of the Cameroon Gas Code⁴¹ states that the development of national gas resources must be accompanied by a “*local content*” component that specifies the benefits of gas projects for Cameroon’s economic, social, industrial and technological development. Local content referred to in section 62 above must normally comprise a human resources development aspect and a local enterprises and industries development aspect.

Still within the framework of employment and professional training, section 63(2) of the Gas Code of 2012 provides that local content include notably a vocational and technical training programme for Cameroonians nationals in order to upgrade their skills in gas trade and a programme of recruitment of Cameroonians nationals at all duty positions and at all levels in gas companies signing the gas agreement, or any other structure involved in the gas sector. Section 65 of the Cameroon Gas Code on its part states that gas companies must as a matter of priority employ staff of Cameroonian nationality with the required competence.

From the foregoing prescriptions of the Petroleum, Mining and Gas laws, the following analysis could be helpful in attempting to unveil the meaning that lies behind the provisions of the law in respect to employment, professional training and perhaps other social infrastructure. *Primo*, it is interesting to know that all the extractive laws allude to employment, professional training and social infrastructure and as highlighted earlier, these are disturbing issues in economies intending to be emergent in the next decades and consequently such legislative efforts can only be lauded. But it is equally interesting to note very quickly that but for the Gas legislation, the Petroleum and Mining laws are very peripheral on issues of employment, professional training and other social infrastructures let alone mention of such

⁴⁰ It is clearly stated that an agreement may be concluded between the holder of an exploration permit and the State in order to develop and mine or finance the mining of a discovered mineral. This agreement may include among others provisions relating to obligations concerning employment, vocational training and social activities.

⁴¹ Law no 2012/6 of April 19, 2012 to institute the Gas Code.

matters as local content requirements. This view is glaring from the fact that these matters are dealt with in the extractive sector laws proper and no mention is made of same in the enabling instruments. Of course, we are conversant with the fact that in proper legislative crafting process, while the law alludes to these issues, the details for its understanding and effective implementation are addressed in the enabling instruments. In the case of the Petroleum and Mining legislations, this is markedly absent. The Gas legislation is more comforting than the other two just mentioned. It actually articulates not only on the local content requirement but has really devoted a whole section on local content meanwhile in the Petroleum and Mining legislations, local content requirements are not only inferential but also scantily dotted. A careful perusal of the Gas legislation reveals that the law does not just delve into prescribing expressly employment, vocational training and other social infrastructural matters to be undertaken by the gas companies intending to operate in Cameroon but actually opens up by stating first what local content is, in the context of gas exploitation.

Secundo, local content, as indicated earlier, means the recruitment and use of local manpower and the development of their skills. Unfortunately, while extractive sector legislations prescribe employment, professional training and development of social infrastructures to accommodate them, they leave a vacuum in terms of the percentage of persons to be recruited and trained, the training programmes and timetables in each case. By the tenors of article 77 of the Petroleum Code for instance, mention is made of the establishment of training programme and the consequent finance of all Cameroonian personnel of all qualifications under conditions fixed by the Petroleum Contract. Although, this provision of the Code must be lauded, one must not hesitate to state that these being pertinent issues, they ought generally to be addressed by the enabling provisions at least by indicating the percentage of manpower to be recruited and trained before allowing the individual petroleum contracts to determine the specific training programmes and timeframes. The average Cameroonian is interested in seeing this at least in the enabling legislation and all the more so as the contracts signed between the state and the multinationals especially petroleum contracts are usually not accessible to the public by way of publication for the citizens to be informed about this fact. Furthermore, even if the public is allowed to access the

contracts, this should be a condition precedent to signing the contract and not subsequent to it as this will create no impact for an already negotiated and signed contract. Indeed, the justification for insisting on this percentage issue is that in the case of industrial mining for example, the needs became critically important.

However, in the light of the Information Technology Age, the above arguments on employment and professional training in connection with local content provisions may actually be difficult to implement with the advent of machine automation⁴² where jobs and wages are seriously threatened. Most of the work in industry today is performed by machines designed with intent to replace man and its efficiency has been proved in many cases. The danger is therefore that very little recourse is made to services hitherto performed by man. This being the case, the whole idea of extractive sector laws insisting on the recruitment and training of local manpower and our suggestion that the percentage of such manpower be mentioned at least in the enabling instrument to the law and also the contract, is altogether frustrated. What must then be the way forward for the Cameroonian extractive sector legislator? It seems to us safe to say that the legislator must reconcile, in the context of local content laws, recruitment, training and social infrastructural development with technology transfer provisions in such a way that technology, which is inevitable here, does not completely replace manpower as is increasingly the case in the developed world.

Another challenge in relation to the provision on employment and training in particular for local content development is the misalignment between objectives and instruments. If a policy maker thinks that there is an externality or a failure, he should actually ensure that there is indeed an externality and that the instrument chosen corrects the externality.⁴³ For

⁴² For a more detailed understanding of machine automation and its impact on jobs and wages, see generally, Feng, A. and Graetz, G. (2011), *Rise of the Machine: The effects on Labor –Saving Innovations on Jobs and Wages*, Discussion Paper No. 8836, Bonn; Acemoglu, D. and Restrepo P. (2015), *The race between Man and Machine: Implication of Technology for growth, factor shares and Employment*, Michigan; Miller, B. and Atkinson, D.R. (2013), *Are Robots taking over Jobs or Making them?*, ITIF, USA.

⁴³ See generally, *Local content in the Oil and Gas Sector*, World Bank Studies, Washington DC, 2013

example, if the labour force is not adequately trained to satisfy the requirements of the extractive sector, the policy maker should first establish whether training would be sufficient or if the situation demands rather structural changes to the country's educational system. If training would overcome the shortfall, imposing minimum local employment targets on extractive companies may not provide the optimal outcome.⁴⁴

2.2. Provisions/Stipulations on the development of Local Enterprises/Industries and Local transformation of Products

2.2.1. Stipulations on the Development of Local Enterprises/Industries

An important trend in local content development in recent times is the assurance that local enterprises/industries expand as a result of the rush by multinationals to exploit natural resources in resources-rich countries of the developing world. Of course, this should make sense as the sustainability of national livelihoods depends largely on local industry growth and not on multinationals that come for a purpose and leave as soon as such a purpose has been achieved. So therefore, the extractive sector legislator in particular must ensure, by inserting provisions in extractive sector laws, on the obligation of multinationals to partner with local enterprises/industries. The present extractive sector laws in Cameroon are to an extent, emphatic on this albeit evasively. The Petroleum Code for instance, conditions the award of contracts for construction and the supply of goods and services to Cameroonian companies safe where the terms are competitive with regard to quality, price, quantities, delivery, conditions for payment and after-sale-

⁴⁴ Policies to support the training of nationals would be more closely related to the externality in question. Furthermore, as argued by Weitzman (1974), when there is uncertainty about costs and benefits, price interventions tend to produce results closer to the optimal result than quantity regulations. In our example, incentives and/or subsidies for training may produce better results than mandatory requirements. A similar case can be made about market failures. Consider MNCs' superior market power. The imposition of minimum local content targets may not produce the optimal outcome. The problem may be a lack of adequate competition regulation and/or market supervision. Therefore, regulations that try to ensure full, fair, and reasonable access to procurement opportunities for domestic suppliers might generate outcomes that are closer to the optimal solution.

service.⁴⁵ The Mining Code on its part provides that the Mining Agreement may be concluded between the holder of an exploration permit and the State for the development and working of a new mine or financing thereof. The said agreement must in particular provide for: ...relations with supplier and sub-contractors...⁴⁶ Although one cannot deny the intention of the legislator to enhance the growth of local enterprises/industries from the consequence of foreign investors in the Petroleum and Mining sectors, one must be quick to state that such intent is so skeletally expressed in the Mining Code and may tempt one to wonder whether effective enforcement can truly follow. This wonder is even stronger as the scope and content of such relations is not defined by an enabling instrument but may, according to the wordings of the Mining Code, be done by the so-called Mining Agreement which, as earlier stated, is a closed arrangement. On the part of the Petroleum Code provisions, a reading of it could suggest that where the Cameroonian companies are not competitive in terms of the quality and quantity of services required by the petroleum companies and the subcontractors, the latter could get those services from companies situated out of Cameroon. In fact, it does not suffice for the law to insist on holders and subcontractors to grant contracts for the construction and supply of goods and services when the terms are competitive, but it is more important for the State of Cameroon to create an enabling environment to make the local enterprises and industries more competitive so that the development of local enterprises and industries be more holistic and make local content to be more properly felt.

However, on this subject, the Gas Code appears to have made more realistic though incomplete in-roots as it provides that “local content must include notably; a programme and conditions for giving priority to local enterprises with the required capacities for the supply of goods, products, materials, tools, equipment and service delivery”⁴⁷. It further states that, conditions for the periodic assessment of the capacities of local enterprises that can take part in the construction operation and the maintenance of specific gas installations and, as the case may be, a plan for the development

⁴⁵ See s. 76 of the Petroleum Code

⁴⁶ See s. 16(new)(1) paragraph 8 of Law No 2010/011 of 29 July 2010 to amend and supplement certain provision of Law No 2001/1 of April 2001: Mining Code.

⁴⁷ See s. 63(1)

and upgrading of enterprises lacking such capacities.⁴⁸ It does not end there. The Code continues to provide that: in awarding contracts, gas companies and their subcontractors are bound to give preference to companies under Cameroonian Law that meet international standards for constructions, service delivery of materials, equipment and products relating to gas activities.⁴⁹

A reading of the above provision of the Gas Code in connection with the development of local enterprises and industries clearly indicates that there is some sort of a will to develop the local enterprises and industries but, a profound examination of the said dispensation gives the impression that for those gas companies and their sub-contractors to ever give preference to Cameroonian local enterprises and industries, the latter must indeed meet the standards set by the gas companies. Otherwise, the so-called preferential treatment to be granted to them is merely a farfetched requirement on the part of the Gas Code. By the way, the main activities observed falling within the ambit of enhancing the development of local enterprises by sub-contracting is so far limited to the completion of the environmental and social impact assessment (ESIA) by Soft Business Management Consulting Group which is a Cameroonian consulting firm based in Yaoundé.⁵⁰ The Korea Mining Incorporation also affirms that they use dynamite supplied by a local subcontractor.⁵¹ The question however, is whether sub-contracting with local enterprises is a choice on the part of the multinational once the latter are qualified? The answer is obviously negative. One can therefore logically question the non-involvement of local suppliers in the construction of the base camp of the Korea Mining company and on the origin of the materials used to build them. Grounded on such analysis, it may be safe to state that the local participation requirements for partnership by way of sub-contracting for instance are insufficient and may not as such help to create local wealth.

⁴⁸ See s. 63 paragraph d

⁴⁹ See s. 66(1)

⁵⁰ Nguiffo, S. and Bamenjo, J. (2013), *The Monitoring of Social Obligations of Mining Companies in Cameroon*, op cit, at p.20

⁵¹ Ibid.

2.2.2. Stipulations on Local Transformation of Products

The whole philosophy behind local transformation of products is relatively recent. The trend has from time immemorial generally been for multinationals to come in, extract natural resources and proceed to transform them to finished goods outside the resource-rich country. Today, local transformation is founded on the fact that when imposed, local enterprises benefit in terms of services, the state equally benefits as taxes on such transformation processes are paid, and nationals benefit as jobs are created, lending more credence to the legislator's insistence on employment and others just discussed above. The result of all of these is contribution to economic growth of the country and consequently improved and sustained national livelihoods. The first time the Cameroonian legislator considered local transformation of exploited natural resources as one instrument of economic development was in 1994. That was in the so-called Forestry Law.⁵² The extractive sector legislator has borrowed this spirit so much so that the extractive sector laws equally make allowance for local transformation of products. In this respect, section 16 (paragraph 11) (new) of the Mining Code for instance, focuses on local transformation. That provision actually places a floor of at least 15% of the minerals extracted by mining companies in Cameroon to be transformed locally. But it must be stated that the transformation can only take place where there exist the required facilities, equipment and technical knowhow to unfold with it.⁵³ However, the experience in the forestry sector has demonstrated that the beginning was not

⁵² Law No. 94/001 of 20 January 1994 to lay down Regulations on Forestry, Wildlife and Fisheries Resources, s. 71(1) and (2) and Decree No 95-531-PM of 23 August 1995 to determine conditions of implementation of forestry regulations, s. 116(1) and (2).

⁵³ It is therefore incumbent on the competent authorities to set forth the needed human and material resources to ensure the proper transformation of at least 15% of the minerals extracted by the mining companies as the law requires. Perhaps, it is for this reason that Assistance for Artisanal Mining (CAPAM) was created and given the needed resources to processed gold and other minerals. But this can only be effective and efficient where the extractive companies do declare all their extractions so that the 15% required by the law for local transformation actually takes place. Local transformation shall equally be land marking as already mentioned with the existence of adaptive tools to this end. In the absence of the needed material resources and technical knowhow, transformation shall merely be an illusion.

easy but with the passage of time, the process has taken roots and it is hoped that this will be more facilitated in the mining sector.

2.3. Stipulations on Technology Transfer

Technology transfer has been en vogue in many international discourses since the Rio encounter of 1992. During discussions in that meeting, it emerged that technology transfer to developing countries is critical in any efforts to foster sustainable development including the exploitation of natural resources of a country. Hence, the Convention on Biological Diversity signed in 1992 obliges contracting parties to take legislative, administrative or policy measures, as appropriate with the aim that the private sector facilitates access to, joint development and transfer of technology referred to in paragraph 1 of the Convention for the benefit of both governmental institutions and private sector of developing countries.⁵⁴ This provision of the Convention actually fits into the situation under study in the sense that Cameroon, which is a contracting party to the convention, has taken legislative, policy or administrative measures through its extractive sector laws, and the aim is to have the private sector (extractive multinationals for instance) facilitate access to technology transfer for the benefit of both governmental institutions (the ministries, public and para-public) and the local enterprises as private sector. Whether the legislative and policy initiative regarding such technology is sufficiently wide enough to cover meaningful local content development is a question that will be answered in the next paragraph. But just before that, it is probably important to answer a preliminary question. What really is technology transfer? It is the process of transferring skills, knowledge, technologies, methods of manufacturing, and samples of manufacturing among institutions to ensure that scientific and technological developments are accessible to a wider range of users who can then further develop and exploit the technology into new products, processes, applications, materials or services.⁵⁵

In the light of the foregoing analysis, it becomes plausible to investigate the appropriateness of the legislative and policy measures taken by the Cameroonian extractive sector legislator in answer to the convention's

⁵⁴ See article 16(1) and (4) of that convention

⁵⁵ Available at www.aceforafrica.org, last consulted on December 4, 2015

prescriptions and realities in the exploitation of mineral resources. In the Mining Code for example, one can infer technological and knowledge transfer. It is therein provided that the application for a mining permit... must be submitted in triplicate... alongside with... a statement giving details of the applicant's technical and financial resources⁵⁶. This means that the Mining Code places as a condition *sine qua non* for an applicant for a mining permit, prove of the existence of sound and adapted technology which of course, shall be transferred to the country once the mining permit has been signed by the President of the Republic.

A number of concerns have not been addressed by the Mining legislation. One, what kind of technology transfer does the legislator envisage for a proper local content development for the improvement of national livelihoods? Is it the vertical or horizontal⁵⁷ technology transfer? It appears from the scanty provision of the code that this is to be determined by the multinational exploiter of the extractive resource because even the enabling legislation to the Mining Code which ought to have clarified such an issue is, unfortunately, completely silent on the point. But we are of the opinion that the law should integrate horizontal technology transfer, details of which should be carved out in the enabling instrument to the Mining Code if local content development must only be addressed in each of the extractive legislation. In any case, capacity building is at the centre of this kind of technology transfer.⁵⁸

⁵⁶ See s. 45 paragraph 4 of the Code

⁵⁷ Vertical technology transfer refers to that technology transfer where the multinational brings in technology, direct nationals to and around the use and not training them on how to acquire and use the skills after their departure. Those who brought the technology use same to achieve their objectives and thereafter they go away with their skills and the nationals remain as blank as they were before the so called technology transfer. Horizontal technology transfer on the other hand refers to transfer of technology where the multinationals bring in the latter, train nationals and equip them with the necessary skill on how to use the technology in such a way that after their departure, nationals remain with the knowledge and skills and can be able use this for national development and improvement of national livelihoods.

⁵⁸ Indeed, capacity building ensures that a project remains beneficial to a community if it can continue the said activity or those related to it . The Korea Mining Incorporation trains its employees on certain working techniques specific to the mining industry and the driving of their heavy engine vehicles. However, the question of choice of individuals to train, the nature of the training and sustainability of acquired skills after training remains.

Technological and knowledge transfer can involve licensing agreements or setting up joint ventures and partnerships to share both risks and rewards of bringing new technologies.⁵⁹ Two, even with the scanty provision on technology transfer, one is at lost as to who determines the appropriateness of the technology to be transferred, who monitors the effective transfer of such technology and who and how is reporting done at the level of improvement on national livelihoods. These are all pertinent concerns which in our humble view, would have been taken care of by the enabling legislation to the Mining Code. Unfortunately again, this is not the case.

It is interesting to note that the Petroleum Code does not allude to transfer of technology especially in the upstream sector. As indicated above, the only allusion made in the Code from which one can infer local content is that relating to sub-contracting construction and supply of local materials to local enterprises.⁶⁰ Technology transfer was not envisaged at all in this Code. Meanwhile, at the time of drafting the Code, technology transfer matters were already hotly debated in the international⁶¹ and national circles. So, whatever the reason that may ground such an oversight, we cannot hesitate to hold that it is serious enough in the light of present day developments in that domain of the subsector. Then of course, it is consensus thinking that these sloppy provisions unrelated to technology transfer may not enhance veritable local content development in Cameroon and consequently frustrate the improvement of national livelihoods.

Still on the technology transfer front, the Gas Code on its part seems to have been more ambitious than the Petroleum and Mining Codes. In this respect, Section 67 of the Gas Code is to the effect that gas companies are bound to submit to the State and execute, according to their priorities, a

⁵⁹When we talk of technology transfer, it can either be horizontal transfer or vertical transfer. Horizontal transfer is the movement of technologies from one area to another. Vertical transfer on its part occurs when technologies are moved from applied research center to research and development departments.

⁶⁰ See for details article 76 and 77 of the Code

⁶¹ See Hunter, D., James Salzman, and Durwood Zaelke (1998), *International Environmental Law and Policy*, Foundation Press, N.Y. p 884. Although discussed with specific focus on transfer of technology for the handling and treatment of waste, it must be understood that in the domain of petroleum exploration and exploitation, a lot of pollution occur by way of waste.

technological and knowledge transfer programme related to their activities in a bid to encourage, facilitate and enable the gradual replacement of expatriate personnel of gas companies by local personnel. In fact, the code is more ambitious in the sense that this provision envisages the entire dimension of technology transfer on the part of the gas companies including technological and knowledge programme and facilitate gradual replacement of expatriate of gas companies by local personnel. However, the provision is obscure in that it refers to ‘gradual replacement of expatriate personnel of gas companies by local personnel’ and one has reason to question what amounts to gradual. This question is pertinent because one would have expected the enabling law to the Gas code to spell out clearly when replacement may be due and how and who determines this.

In any case, whether it is the Petroleum, Mining or Gas Code and their enabling instruments, the intent of the legislator regarding local content must be the same and this is the more reason why one can rightly question the essence of addressing local content related issues in different but related codes of the extractive sector.

3. Some foreign good practices with respect to local content development

Local content development is fast becoming indispensable in resource-rich countries across the world. Such countries have realized fairly recently that for a considerable long time their non renewable resources of the extractive sector have been tapped by multinationals almost totally for their own gains and that after the exploitation exercise, the resource-rich countries have lamented for being unable to record any legacy. Consequent upon this state of affairs, there is an awakened spirit to develop local content policies in the extractive sector in most resource-rich countries and the aim has generally been, as indicated above, to encourage the participation and development of national labour, goods and services, technology, and capital. The objectives and guiding principles of these policies are sometimes outlined in overall or specific policy statements or plans.⁶² Often principles and objectives are further detailed in primary or secondary legislation, as well as in negotiated contracts, licensing agreements, or concession agreements. These are referred

⁶² World Bank (2013), op cit, p.37

to as ‘channels of policy implementation’.⁶³ Implementation itself may rely on a variety of policy tools, including petroleum rights allocation systems, taxes, tariffs, incentives, penalties, procurement rules, and training arrangements.⁶⁴ In this section, we briefly describe the policy statements, channels, and legal tools used by some resource-rich countries in connection with the design and implementation of local content policies and show how they have up-graded their local content developments in the extractive sector laws and how the practice has been of immense benefits to the countries in general.

The manner in which local content policy is codified under law varies considerably from one country to another. Local content provisions may be embedded within the wider primary legislation governing petroleum exploration and development, or they may be the object of a separate law. Article 50 of the Law on Sub Soil and Subsoil Users in Kazakhstan, for instance, mandates that bids for new sub surface mineral rights include commitments to minimum levels of local content in goods, works and services, and the training of Kazakh personnel.⁶⁵ Article 1 of the same law establishes a minimum requirement for 95 percent of employees to be Kazakhstani citizens, and Article 78 requires that, for the purpose of contractor selection, procuring entities reduce the price of bids from Kazakhstani producers by 20 percent.⁶⁶

In fact, in some countries, local content laws have been very comprehensive to embody principles, implementation flexibilities and enforcement mechanism. In Nigeria for example, the 2010 Oil and Gas Content Industry Development Act provides for, among other items: a local content monitoring regime integrated with the process of contracting suppliers and service providers; penalties for noncompliance with the local content legislation; ministerial waivers for certain requirements of the legislation for a temporary period, including, where targets established by law cannot be complied with due to limited local market capabilities; and the establishment of a Nigerian content development fund to support the

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ World Bank (2013), op cit, p.38

development of national suppliers. Inherent in some of the legal and regulatory requirements for local recruitment, training, and promotion of nationals is the intent to preference nationals over foreign workers. In Nigeria, targets and preferences for national recruitment, training, and promotion are mandated by a combination of primary legislation and intervention by the regulator.⁶⁷ There equally exist provisions relating to the domestic sourcing of goods and services within the 2010 Oil and Gas Content Industry Development Act.

The 2010 Nigerian Oil and Gas Industry Content Development Act goes further, stipulating not only local sourcing targets for a wide range of goods and services but also, under Article 41(b), requiring that international companies operating as Nigerian-registered companies “shall demonstrate that a minimum of 50 percent of the equipment deployed in the execution of work be owned by Nigerian subsidiaries”. This means that international companies that wish to be eligible to tender for work in Nigeria have to place into Nigerian ownership (that is, local companies with greater than 51 percent Nigerian equity) at least 50 percent of their equipment and technologies to be used in the contract.⁶⁸

In Brazil, the strong local content policy framework and regulations have driven an increasing share of local employment, goods and services, and are contributing to reestablish Brazil as an extractive nation.⁶⁹ Brazilian

⁶⁷ Article 35 of the 2010 Nigerian Content Development Act requires that only Nigerians be employed “in junior and intermediate cadre [positions].” It is then left to the regulator—the Nigerian Content Development Monitoring Board—to agree with oil and gas companies on the minimum percentage of Nigerian labor in different job grades. This is mandated under Article 24 of the Nigerian Content Development Act, which requires a “Labor Clause” to be inserted in project agreements (or similar contracts) mandating the use of a minimum percentage of Nigerian labor in specified job levels.

⁶⁸ The advantage of this particular policy for technology transfer to the Nigerian economy is clear. But the policy is also not without challenges. These obligations may challenge the ability of equipment producers and service suppliers to protect propriety technologies. Meanwhile, not finding solutions to this challenge may prevent these companies from accessing local markets.

⁶⁹ Prior to 2002 there was no minimum local content requirement in Brazil. However, through the various bid rounds, local content rules have become more tangible and specific to different fields according to on/offshore and the depth of water involved. The primary objective of the Brazilian local content policy is to “maximize goods and services national

regulations mandate targets for goods and services of domestic origin. In this sense, they encourage the emergence of a competitive local supply industry by incentivizing inward investment by international suppliers and service contractors that strive to meet these targets. If set too high compared to existing and short-term local supply capability, policy targets might reward less than competitive suppliers.⁷⁰

Another leading practice in Africa is that of Ghana. In fact, Ghana has put forth an attractive local content regulation in the continent. Since 2010, Ghana has been working on local content policies in both the solid minerals and then hydrocarbon sectors. The passage of the Minerals and Mining General Regulations, 2012-LI 2173, marked the beginning of the implementation of local content policies in the mining sector. In the oil and gas and the petroleum sectors, the Local Content and Local Participation Regulations, 2013-LI 2204, defined Ghana's expectations of local content.⁷¹ The Minerals and Mining Law, 2006 (Act 703) sought to promote a localization policy and facilitate production linkages. Clause 50(3) of Act 703 calls for eventual "*localization*" of mining staff. However, the frameworks provided in the legislation were too generic and left the Ghana Minerals Commission (MC) with considerable discretion in enforcement. The passage of the Minerals and Mining (General) Regulations, 2012-LI 2173, was expected to be a game changer. The LI 2173 provides a clear interpretation of Act 703 and focuses on three areas, namely: (i) the employment and promotion of a local workforce, (ii) the procurement of locally produced goods and services, and (iii) additional licensing and reporting requirements. The regulation requires holders of mineral rights to hire a minimum of local staff in various employment categories, with the mineral commission working with mining companies to identify staff positions that can be filled by Ghanaians, local candidates that can be trained to replace foreign staff, a

industry content, within competitive and sustainable basis, in the implantation of oil and gas projects in Brazil and abroad." Petrobras' strategic investment plan calls for 65 percent of equipment and services to be sourced from domestic suppliers

⁷⁰ Some industry observers have voiced concerns over the extent to which the industrial base that is being constructed through the current mandatory local content targets is competitive and sustainable, when compared to similar industries in China, South Korea, Singapore, and Norway.

⁷¹ See Columbia Center for Sustainable Development, 2014

training programme and timing for local staff to replace foreign staff.⁷² In capacity development, the law provides that the government and petroleum companies should support local training and technical institutions to develop capacity of international standards to train Ghanaians.

With regard to the provision of goods and services by Ghanaian companies, the extractive sector law provides that all operators must as far as possible use goods and services produced or provided in Ghana by Ghanaian companies, even if their prices are higher by up to 10%. It further provides that foreign companies that supply goods and services must have local participation of at least 10% initially and increase by 10% per year. Within the framework of technology transfer, the law provides that Oil companies must prepare and implement plans for the transfer of technology which plans should be monitored by specific institutions mandated to do so.

Outside the developing world, some good practices are insightful from some fairly recent discovery of resources in the developed world. With respect to Australia, for example, local content policy is designed to promote the development of a sustainable local industry, while abiding closely to international obligations on trade and competition law.⁷³ Thus, incentives, rather than mandated obligations, are the crucial policy tool.⁷⁴ One of the most notable incentives is the exemption from import tariff on equipment related to petroleum operations where such equipment is proved not to be available in Australia granted to oil companies and service companies in

⁷² This provision requires existing license holders to present for approval a program for the recruitment and training of Ghanaians, including plans for the replacement of expatriates with Ghanaians. The regulation aims to promote local knowledge and to minimize the number of expatriates assigned to less complex jobs for which local capacity exists. The regulation specifically imposes a ceiling on the number of expatriate staffers a mining lease holder can have. It requires that the proportion of expatriate staff should not exceed 10 percent of the total of senior staff within the first three years, and 6 percent after three years. In other words, after six years of the passage of the LI, mining lease holders' maximum expatriate staff numbers should not exceed 6 percent of the total senior and management staff of the holder. Unskilled labor and clerical positions are generally to be reserved for Ghanaians. In addition, a comprehensive five-year plan to replace expatriates with Ghanaians, including training programs, is to be submitted to the MC for review and approval.

⁷³World Bank (2013), *op cit*, p.59

⁷⁴ *Ibid*.

exchange for the formulation and execution of an Australian Industry Participation (AIP) plan.⁷⁵ Furthermore, companies bidding for large Commonwealth procurement contracts (over \$20 million) may be required to prepare and implement an AIP plan. The process provides a mechanism for potential suppliers to familiarize themselves with the capabilities of small and medium-sized enterprises and to identify qualified suppliers. The international or foreign good practices x-rayed above may be helpful to resource rich countries of the developing world, Cameroon for example, in crafting more comprehensive, practical, reliable, sustainable and enforceable local content laws in their extractive sectors.

4. Highlights on some challenges to local content development and implementation in Cameroonian Law

To start with, a pertinent issue connected to local content development in the extractive sector laws is national compliance with international regulations on the subject. Both global and regional negotiated agreements regulate trade between nations.⁷⁶ The World Trade Organization (WTO) for instance, oversees compliance with such rules. The most relevant agreements among WTO members with implications on local content policies and laws include the General Agreement on Tariffs and Trade (GATT), the agreement on Trade-Related Investment Measures (TRIMs), the General Agreement on Trade in Services (GATS), and the agreement on Government Procurement (GPA). The agreement on TRIMs is based on the “*national treatment*” principle of Article III of the GATT, and pertains to trade in goods. TRIMs apply to all WTO members, Cameroon inclusive and prohibit local content requirements that mandate particular levels of local purchases by an enterprise. The rules also prohibit trade balancing requirements that restrict the volume or value of imports that an enterprise can purchase to an amount

⁷⁵ The criteria adopted by the federal government to assess Australian Industry Participation plans include the anticipated impact of the investments on employment of nationals and participation of Australian suppliers, and take into account whether the project will: Introduce new or enhanced skills into the Australian workforce; Encourage efforts to develop strategic alliances with Australian suppliers; Promote regional development; Support Australian research and development activities; Create innovative products and/or processes and Integrate Australian industry into global supply chains.

⁷⁶ Local content in the oil and gas sector, a World Bank study, (2013) op cit, at p, 28.

related to the level of products it exports.⁷⁷ The rules may equally impose restrictions on the design of local content policies and laws. For example, the imposition of minimum targets for the participation of domestic subcontractors/suppliers may be contrary to a country's WTO undertakings.⁷⁸ Like many other international agreements, Cameroon sometimes do not respect these trade regulations either by failing to comply with or where there is compliance, effective implementation may not be ensured and consequently the veritable development of local content becomes a huge challenge.

Secondly, the improvement of national livelihoods/welfare depends, to a large extent on the development of local content policies and laws. What this means is that local content development should be clearly focused to achieve among others, the above objective. Consequently, there is need, within any sector of the economy, to cluster objectives and goals and synergize institutional plans and strategies to achieve the same. Unfortunately, we have observed in our research, that in the case of Cameroon, the legislator seems to have different objectives and goals for the same sector – the extractive sector with its mining, oil and gas subsectors as far as local content development is concerned. This is evident from the dispersed and unnecessary duplication of

⁷⁷ In essence, the rules require a host country to extend to foreign investors a treatment that is at least as favorable—insofar as the purchase of products is concerned—as the treatment it accords to national investors in like circumstances. The TRIMs agreement allows for transitional arrangements to maintain certain (protectionist) measures for a limited time following a country's entry into the WTO. The grace period is two years in the case of developed countries, five years for developing countries, and seven years for least-developed countries. In this regard, with the exception of Vietnam, all developing countries that produce oil and/or gas acceded to the WTO prior to 2006, which would suggest that their eligibility for transitional arrangements under GATT has expired.

⁷⁸ Part III of the GATS contains provisions on access to WTO members' markets by foreign suppliers, and the treatment of national suppliers. In the case of market access, all WTO members should accord services and service providers from other WTO member countries and show them treatment no less favorable than that provided for under the common terms, limitations, and conditions mutually agreed among WTO members. Furthermore, Article XIII of GATS extends to government procurement. As with TRIMs, GATS has provisions for the "special and differential treatment" (SDT) of developing countries, which allow for certain exceptions from the general rule. In addition, there are provisions that allow flexibility to encourage foreign suppliers to assist in technology transfers and training through offsets of particularly relevance to the design of LCPs.

local content stipulations in the mining, oil and gas sub-sectors by the legislator although addressing or alluding to local content in similar articulations in these sub-sectors. The extractive sector legislator is challenged to think across all the subsectors that make up the sector since the objective is or ought to be one – contribution to sustainable economic growth and development and by extension the improvement of national livelihoods or welfare through a thoroughly thought out industrial investment policy that passes the Mill and Bastable tests.⁷⁹

Another setback to local content development in the extractive sector laws in Cameroon is a shallow coverage of matters. For example, we have argued above that the provision on employment and professional training is shallow enough as it does not stipulate the percentage of nationals to be employed, the period within which nationals must be employed, the quality/level of training that must be afforded to the nationals by the multinational investors, and who attests whether or not these matters have been addressed. In addition, most of the provisions on local content are tacit and not express and these gives room for multiple interpretations. These and other gaps are challenging to the effective implementation of the extractive local content provisions.

A related challenge is that the extractive sector laws do not prescribe clear monitoring and development institutions let alone the monitoring mechanisms. This is critically important as most multinationals will not be honest enough to implement their obligations either arising from the legislative stipulations or from their contractual arrangements for exploitation of extractive resources. To bring them to book, there must be an effective monitoring organ with clearly defined mandates whose report can then serve as evidence of respect or not of the local content clauses and give reason for pressure to be brought to bear on the almighty multinationals to keep its legal commitments or be prosecuted in accordance with existing legislation. It is therefore our considered opinion that, institutional development and clear mandatory prescriptions for monitoring will play the role of watch-dog in the

⁷⁹ The Mill test requires the protected sector to eventually survive international competition without protection; the Bastable test is more stringent and calls for the present value of future benefits arising from the policy to compensate the present costs of protection. To be viable, Local Content Policies in the extractive sector would need to pass both tests.

development, compliance and effective implementation of local content provisions.

5. Conclusion and projections

The discussions above lead one to come to a number of conclusions. Firstly, that a majority of resource-rich countries of the developing world and Cameroon specifically have to date, not recorded significant legacy from the exploitation by multinationals of their natural resources in general and their non-renewable natural resources in particular. Secondly, and flowing from the first, local contents developments initiatives are not yet widespread in resources-rich countries of the developing world meanwhile a true development of the local content policies are a cornerstone for sustainable economic development and poverty reduction. Thirdly, that the rich extractive sector in Cameroon can be made to provide more than just taxes, rents, and royalties to government but cross sector benefits by way of local content development and value addition which require at least an elaborate coverage of the extractive sector laws. Fourthly, that in Cameroon, as in many other developing economies, local content laws and policies which ought to guide and guarantee sustainability of national livelihoods are, unfortunately, dispersed and superfluous with the result that implementation of such policies and laws is haphazard and uncoordinated.

With the foregoing shortfalls therefore, there is need to review local content provisions in the extractive sector laws so that omissions, tacit inferences, obscurity, dispersion and duplication of important local content hallmarks such as employment, professional training and other social infrastructure; development of local enterprises and local transformation of products; and technology transfer are properly handled. In this regard, we suggest and strongly too that the Cameroonian legislator should adopt an all-embracing or comprehensive and viable legislation addressing only local content matters for the extractive sector – Mining, Oil, and Gas subsectors. Such a law which must be crafted together with its enabling instruments should address among the hallmarks just outlined above, such other issues as a local content monitoring and evaluation institution; a National Content Development Fund to support the development of national suppliers; strong,

dissuasive but also feasible sanctions for non-compliance or violation of local content laws and why not incentives for compliance with local content provisions. In fact, all these issues should be addressed by the laws so that contractual arrangements may only be inspired by the Law since, as we know, most of the extractive contracts are not usually open negotiations where the public could make valuable inputs in view of ensuring the sustainability of their livelihoods.