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## CHAPTER 12

### Role of Angolan local content requirements: A means for benefit sharing or an end in itself?

*Art and Science of Benefit sharing: Local Content  
Requirements in Angola's Petroleum Sector*

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**Résumé :** *Au cours des 40 dernières années, l'industrie pétrolière angolaise a subi d'importants changements structurels, juridiques et fiscaux pour assurer un partage équitable des avantages pétroliers. Néanmoins, ces changements n'ont pas infléchi positivement le développement social des citoyens angolais, ce qui a conduit à l'introduction des exigences relatives au contenu local (Local Content requirements - LC). Cet article soutient que le LC joue un rôle important pour accélérer le processus de partage des bénéfices. Cependant, leur formulation et leur mise en œuvre créent une discordance entre les parties prenantes. Actuellement, le LC est devenu une obligation légale qui reflète les engagements pris par les sociétés d'exploration et de production pour l'acquisition de main-d'œuvre, de biens et de services locaux. Dans le cadre du régime juridique pétrolier angolais, les pourcentages du LC sont censés générer des avantages économiques pour l'économie locale qui vont au-delà des avantages fiscaux. Les LC requirements servent de critères de jugement (avec les primes de signature et les programmes de travail minimums) lors des cycles de soumission pour l'attribution de blocs terrestres et offshore devant être déterminée par la compagnie pétrolière nationale Sonangol. À l'heure actuelle, les gouvernements et les compagnies pétrolières continuent de débattre des réalités quant à la meilleure façon de réaliser ces mandats sans affecter les investissements. L'introduction d'un règlement fondé sur des règles visant à poursuivre le développement du LC avec une clarté limitée fait craindre que le LC soit un moyen de partager les avantages. Cet article conclut donc que la formulation du LC seule avec des procédures de mise en œuvre limitées, sans mécanismes forts de surveillance, risque de devenir une recette pour le sous-développement, plutôt que pour le développement. La transparence et la responsabilisation des entreprises publiques qui jouent le rôle d'acteurs commerciaux et de régulateurs sectoriels sont primordiales dans la poursuite du développement économique. Sinon, de sérieuses inquiétudes, comme les pertes de recettes pour l'État, les dépenses extrabudgétaires qui contournent la surveillance budgétaire du Parlement et le parrainage politique, continuent d'être une source d'alarme.*

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CLAIRE ASIAGO BERRYL

**Abstract:** *Over the last 40 years, the Angolan petroleum industry has undergone major structural, legal and fiscal changes to ensure equitable sharing of petroleum benefits. Nevertheless, those changes have not been reflected positively in social development among Angolan citizens, thereby prompting the introduction of Local Content (LC) requirements. This article argues that LC plays an important role towards accelerating the process of benefit sharing. However, the formulation and implementation thereof creates a discord between the stakeholders. Currently, LC has become a legal obligation that reflects the commitments undertaken by the exploration and production companies to acquire local labour, goods and services. Under the Angolan petroleum legal regime, LC percentages are meant to generate economic benefits for the local economy that go beyond fiscal benefits. LC serves as judgment criteria (along with signature bonuses and minimum work programmes) at bid rounds for the award of both onshore and offshore blocks as may be determined by the national oil company Sonangol.<sup>1</sup> Presently, both governments and oil companies continue to debate the issue of how best to achieve these mandates without affecting investments. The introduction of a rule-based regulation to pursue LC development with limited clarity causes a concern as to whether LC is a means to benefit sharing. This article therefore concludes that formulation of LC alone with limited implementation procedures without strong mechanisms for oversight, risks becoming a recipe for underdevelopment instead of development. Transparency and accountability, of state-owned companies that act as commercial players and sector regulators are paramount in the pursuit of economic development. Otherwise, serious concerns like losses of revenues for the state, extra-budgetary spending that bypasses parliament's budget oversight and political patronage continue to be a cause for alarm.*

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1) Sonangol: Sociedade Nacional de Combustíveis de Angola, E.P.



## 1. Introduction

Angola has been a member of OPEC since 2007 and is currently reviewed as the second largest oil producer in Sub-Saharan Africa, with production levels of about 1.7bn barrels and proven reserves of approximately 9.5bn barrels.<sup>2</sup> However, estimated fuel (oil) exports account for over 98% of the country's merchandise export, while manufacturing and primary agricultural exports account for less than 1% each.<sup>3</sup> These disparities tend to offer a complicated business environment, with a narrow band of competitive supply of personnel, goods and services especially in the petroleum sector. Additionally, almost 97% of the oil production is generated from offshore activities also known as pre-salt layer production.<sup>4</sup> The increased ultra-deep water operations entail complex technology, which is capital-intensive, coupled with extensive risks which continue to preclude independent foreign players from participating without support from the large International Oil Companies (IOCs). Therefore, it is not surprising that local private players with limited access to finance, technical skills, technology, goods and services are equally excluded from taking part in the operations.

Although, the Angolan petroleum industry has undergone major structural changes in the last 40 years with state participation taking centre stage,<sup>5</sup> in practice however, little consideration has been accorded to local participation. The continuous exclusion of locals from the industry has provoked tension amidst communities, IOCs and the government. Prompting Angolan policy makers to reform policies and laws that promote social development and ensure that benefits are shared equitably. Hence the introduction of Local Content (hereinafter 'LC') in the petroleum sector, presumably on assumption and economics from the estimated US\$15 billion invested each year for oil extraction in Angola.

Arguably, LC is a tool that seeks to artificially increase the levels of local participation in a sector beyond levels that local capacity is currently able to meet.<sup>6</sup> As a requirement,

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2) 'OPEC/ : Angola' <[http://www.opec.org/opec\\_web/en/about\\_us/147.htm](http://www.opec.org/opec_web/en/about_us/147.htm)> accessed 13 October 2016.

3) UNCTAD, 'Training and Capacity Building Workshop on Sustainable Graduation: Policies and Strategies for Structural Transformation, Productive Capacity building and Inclusive Growth in Angola' 4 <[http://unctad.org/meetings/en/SessionalDocuments/aldc2013\\_02\\_ConceptNote\\_en.pdf](http://unctad.org/meetings/en/SessionalDocuments/aldc2013_02_ConceptNote_en.pdf)> accessed 13 October 2016.

4) 'OPEC/ : Angola' (n 1); Jesse Salah Ovadia, 'The Dual Nature of Local Content in Angola's Oil and Gas Industry: Development vs. Elite Accumulation' (2012) 30 *Journal of Contemporary African Studies* 395, para4. The continental shelf is divided into three bands: shallow water blocks; deep-water blocks; and ultra-deep-water blocks with the most lucrative block 0, operated by Chevron Shallow water ( Band A-Blocks0-13), deep water( Band Band B-blocks 14-30) and ultra-deep (Band C-31-40) . Presently blocks 0, 14, 15, 17 and 18 are at the forefront of the Angolan production. It was the discovery of the Garrisol field block 17 that led to the expansion of the offshore activities in 1996.

5) Jesse Salah Ovadia, 'Local Content and Natural Resource Governance: The Cases of Angola and Nigeria.' [2014] the *Extractive Industries and Society* 2014, 1 (2), 137.

6) Rolake Akinkugbe and others, 'Africanisation-The-Africa-Sessions-Q1-2014.pdf' 3 <<http://>

it obliges IOCs to source personnel, goods and services locally, with the aim of promoting more benefits beyond traditional fiscal tools.<sup>7</sup> Currently their implementation has been met with a lot of debate among stakeholders involved in the sector, hence why this article argues that LC requirements in Angola should be utilised in the manner in which policy makers intended them, among the many means of ensuring effective benefit sharing and not as an end in itself. Moreover, this article maintains that achieving the objective of equitable distribution can only be achieved if two interrelated issues are directly linked. Firstly, LC needs to stimulate the development of indigenous companies through procurement of local labour, goods and services (local participation) while, secondly, encouraging foreign investment through private sector participation and formation of realistic joint ventures (foreign participation),<sup>8</sup> pointing to the interdependency relationship between the stakeholders. This approach is often adopted in order to provide local participation in the short term while training local citizens to operate the industry in the long term,<sup>9</sup> ultimately embodying the very spirit of LC as discussed in section 3.

Although emphasis on local participation has been at the centre of both political and economic spheres, nonetheless, frameworks that ensure local participation while taking into account the challenges involved in ultra-deep offshore activities are inadequate and often very limited in technical aspects. The government's decision to introduce LC in order to promote the tenets of benefit sharing is laudable. However, the retention of a rule-based system of regulation is alarming, as discussed in section 2. A rule-based regulation system is a set of legislatively detailed rules that govern firms' behaviour. They tend to focus on short-term product lines and services. Quite often, rule-based regulations impact negatively on the intended outcome by enabling firms to take a box-ticking approach to compliance with the law. This contrasts with a principle-based system of regulation which lays out broad set of standards that gesture in the direction of certain desired outcomes. Principle-based systems of regulation tend to remain competitive and often survive in complex and uncertain environments like the petroleum industry.<sup>10</sup> They encapsulate active evolution and management of

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[www.africappractice.com/wp-content/uploads/2014/03/Africanisation-The-Africa-Sessions-Q1-2014.pdf](http://www.africappractice.com/wp-content/uploads/2014/03/Africanisation-The-Africa-Sessions-Q1-2014.pdf)> accessed 17 October 2016.

7) Suzy H Nikiéma, 'Performance Requirements in Investment Treaties IISD Best Practices Series - Best-Practices-Performance-Requirements-Investment-Treaties-En.pdf'

<<http://www.iisd.org/sites/default/files/publications/best-practices-performance-requirements-investment-treaties-en.pdf>> accessed 17 October 2016.

8) Per Heum and others, 'Enhancement of Local Content in the Upstream Oil and Gas Industry in Nigeria: A Comprehensive and Viable Policy Approach' (2003) 10 <<http://brage.bibsys.no/xmlui/handle/11250/164539>> accessed 13 October 2016.

9) Ernest E Smith and others, *International Petroleum Transactions* (Third Edition edition, Rocky Mountain Mineral Law Foundation 2010).

10) Tina Hunter, *Legal Regulatory Framework for the Sustainable Extraction of Australian Offshore Petroleum Resources. A Critical Functional Analysis* (The University of Bergen 2010) <<https://bora.uib.no/>



the corporate social value proposition. This should be done through incorporating the principle-based regulation which tends to engage the engineering and design of compliance systems that grow organically. "Essentially, they also must deliver incentives for cultures to take root that are defined by their integrity in a dynamic risk environment, which forge a foundation of adaptability and enterprise."<sup>11</sup> Otherwise LC implementation will only exacerbate regulatory bottlenecks that lead to sizable loss of returns for the state, extra-budgetary spending that bypasses parliament's budget oversight, and political patronage, thereby majorly affecting the objective of LC development as discussed in section 4.12

This article questions the role of LC in the wider context of benefit sharing. Section 2 reviews the available literature and evaluates the rationale behind 'benefit sharing'. It points to the retention of a rule-based system of regulation as an additional reason why LC is unsuccessful in many countries. Section 3 examines updated LC legal frameworks and deliberates on their nature. Furthermore, it highlights their prescriptiveness and contentious issues that result from rule-based systems, such as regulatory gaps, political patronage and complex supply chain systems that hinder the development of LC. Section 4, on regulatory implications, reasons that the rule-based system deters the development of LC because the system is not innovative and regulators cannot respond to the unique issues that arise in the regulations. More importantly, rule-based regulation without mechanisms for oversight renders the objective of LC obsolete. Section 5 contends that LC cannot be discussed in a vacuum and therefore evaluates LC against the backdrop of the recent regulatory changes amended as per the decree passed by the president for the petroleum industry which is as recent as September 2016. Finally, section 6 will provide concluding remarks.

## 2. Rationale of benefit sharing

Resources in general and petroleum in particular have a tangible presence and are therefore amenable to discussions of control and ownership.<sup>13</sup> The petroleum sector encompasses a diverse group of participants (government, communities and investors), with strong interests in the decision to develop oil, gas or mineral resources and how accrued benefits can be shared among them.<sup>14</sup> This establishment points to the

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handle/1956/4505> accessed 25 October 2016.

11) Hunter (n 2).

12) Ovidia (n 3) 4.

13) Thomas W Wälde, 'Renegotiating Acquired Rights in the Oil and Gas Industries: Industry and Political Cycles Meet the Rule of Law' (2008) 1 *The Journal of World Energy Law & Business* 55, 56–58.

14) *The Art and Science of Benefit Sharing in the Natural Resource Sector* (February 2015) 7 <<https://commdev.org/wp-content/uploads/2015/07/IFC-Art-and-Science-of-Benefits-Sharing-Final.pdf>> accessed 18 October 2016.

understanding that parties involved require a balancing act of their interests.<sup>15</sup> The jurisprudence of permanent sovereignty over natural resources (a concept that has been discussed extensively and is far beyond the scope of this article) recognises this balance through the indelible right of states to dispose of their natural resources and the corresponding responsibility of respecting contractual obligations and property rights affected through the exercise of such power,<sup>16</sup> pointing to the rationale of benefit sharing as the balance of interest between stakeholders 'where there is a commitment to channel some kind of returns — whether monetary or non-monetary — back to the range of designated participants'.<sup>17</sup>

As a result, through their respective host governments, the state has the mandate to explore for these resources and, eventually, the duty to provide social development among other competing interests accruing from such resources. Nonetheless, the peculiarities of the petroleum industry (capital-intensive and complex technology) drives governments to grant exploration rights to foreign companies which go along with the parallel responsibility of developing social systems. In Angola nearly all operations are produced by foreign-owned corporations, despite the fact that majority of reserves reside with Angolan government.<sup>18</sup> The challenge for Angolan policymakers and regulators charged with investment portfolios, therefore, is to find a balance between attracting greater flows of foreign direct investment, and the possibility of maximising the domestic economic and social benefits that result from that investment. This objective can be better achieved through principle-based regulation which recognises the finite nature of the resources but, more importantly, seeks strategies that harness the opportunities created with the extractive industries to support sustainable economic development.<sup>19</sup>

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15) Wälde (n 12).

16) Marc Bungenberg and Stephan Hobe, *Permanent Sovereignty Over Natural Resources* (Springer 2015) <<http://link.springer.com/content/pdf/10.1007/978-3-319-15738-2.pdf>> accessed 17 October 2016; James N Hyde, 'Permanent Sovereignty over Natural Wealth and Resources' (1956) 50 *Am. J. Int'l L.* 854; STEPHEN ZORN, 'Permanent Sovereignty Over Natural Resources', *Natural Resources Forum* (Wiley Online Library 1983) <<http://onlinelibrary.wiley.com/doi/10.1111/j.1477-8947.1983.tb00276.x/abstract>> accessed 17 October 2016.

17) Lila Barrera-Hernández and others, *Sharing the Costs and Benefits of Energy and Resource Activity: Legal Change and Impact on Communities* (Oxford University Press 2016) 271–274; D Schroeder, 'Benefit Sharing: It's Time for a Definition' (2007) 33 *Journal of Medical Ethics* 205, 2.

18) 'Angola Petroleum Activities Law, 2004.pdf' s 3 <<http://www.eisourcebook.org/cms/files/attachments/other/Angola%20Petroleum%20Activities%20Law,%202004.pdf>> accessed 17 October 2016.

19) Tina Hunter, *Legal Regulatory Framework for the Sustainable Extraction of Australian Offshore Petroleum Resources. A Critical Functional Analysis* (The University of Bergen 2010) <<https://bora.uib.no/handle/1956/4505>> accessed 25 October 2016; Claudine Sigam and Leonardo Garcia, *Extractive Industries: Optimizing Value Retention in Host Countries* <[http://unctad.xiii.org/en/SessionDocument/suc2012d1\\_en.pdf](http://unctad.xiii.org/en/SessionDocument/suc2012d1_en.pdf)> accessed 17 October 2016.

In Angola the discussion of how the costs and benefits of natural resource development are shared among stakeholders has been contended over the years. There is no doubt that Angola's retention of a rule-based regulatory approach contributes extensively to the contention. Scholars argue that, due to their rigidity, rule-based regulation tends to require continuous amendments that consistently fail to respond to the unique issues that arise in the regulation of petroleum exploitation<sup>20</sup> and more so in the development of LC in Angola. For instance, the introduction of laws relating to employing and training of nationals were formulated in the late 1970s. These included Law 10/79 mandating Sonangol E.P. to employ and train nationals and Decree no. 20/82 mandating foreign companies to hire and train Angolans in the oil industry ("Angolanisation"), which was later amended by Decree 20/94 of 27 May 1994 and eventually repealed. These laws championed the development of LC, efforts to employ Angolan workers and the building of technical-professional skills through training by IOCs foreign workers with the permission of the ministry of petroleum, "Minipet".<sup>21</sup> Although these laws existed, their prescriptive nature in relation to requiring investors to employ 100% Angolans from 1985-1990 was an uphill task and it therefore failed to achieve its aims. Also, the lack of a clear implementation process and duplication of duties failed to provide transparent, predictable and consistent wealth could feed into social development.<sup>22</sup> Currently, the majority of citizens in Angola have not benefited satisfactorily from the wealth created by the country's extractive resources. In fact, according to the UN statistics, over 70% of Angolans live below the poverty line despite the country being one of Africa's most resource-rich countries.

This led to the recognition of the roles played by the locals, which encouraged the pursuit of LC through strong state intervention as observed in the 2000s. The re-introduction of Decree 127/03 and Decree 17/09 was admirable, although their strict nature continues to impede the development of LC as discussed in section 3. Presumably their introduction was under the pretext that the lack of economic diversification and industrialisation was more a lack of responsibility and duty from the companies rather than recognition that the inflexible, prescriptive legislative mandates on job programmes for the domestic economy. In fact, according to the Angolan government, the push to promote LC through strong state governance was a way to ensure promulgation of LC which is generally impossible to comply with initially. Hence, the task of developing resources through granting rights, in relation to 33 of its 34 blocks was delegated to numerous IOCs that possess the necessary expertise and financial resources to undertake the task. This was done through the wholly state-owned national oil company Sociedade Nacional de Combustiveis de Angola (Sonangol) as the sole concessionaire.<sup>23</sup>

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20) Hunter (n 9) 178.

21) Decree 20/82 Mandatory Hiring and Training of Angolans by Foreign Companies Operating in the Angolan Oil Industry 1982 (SERIES NO 90).

22) Ovadia (n 3).

23) Angola Petroleum Activities Law, Principle of exclusivity of National Concessionaire 2004.pdf Article 4.



Owing to the existing challenges, the government promulgated The Angolan Constitution in 2010. It considers pertinent issues relating to LC and benefit sharing in relation to transparency, checks and balances. However, in practice, Angolan laws do not grant the National Assembly the power to investigate state-owned companies like Sonangol. Some of the noticeable progressive provisions include sovereignty provision which dictates that both single and indivisible ownership lies with the citizens of Angola, and they will exercise that right through their chosen representatives.<sup>24</sup> Even so, in practice, representatives are not elected but appointed through party lists.<sup>25</sup> Also, the constitution provides that natural resources that lie within Angola's jurisdiction are the property of the state<sup>26</sup> and the incumbent government will have the duty to encourage investors to their respective jurisdiction and in return provide investors with the protection of investments from national interferences. Additionally, the responsibility accorded to the government includes creating the necessary conditions required to effectively implement the economic, social and cultural rights of citizens. The government needs to promote the well-being, social solidarity and improved quality of life for the people of Angola, specifically amongst the most deprived groups of the population.<sup>27</sup> These progressive distinctions indicate how benefit sharing lies at the centre of discussions in the petroleum sector.

Ultimately, the concerns involve how stakeholders can best achieve LC mandates without unduly affecting investments while promoting benefit sharing. The convergence of interests among the stakeholders is imperative although, quite often, these interests conflict in a number of ways as will be discussed in section 3, and there is no spontaneity in resolving the issues due to the rigidity of the laws, thereby causing additional pressure on the already strained relationship between IOCs and the Angolan government. The pendulum swings in opposite directions: on the one hand, the IOCs argue that the rules formulated are prescriptive and have limited clarity on the definition and implementation process, thereby hindering operations. On the other hand, governments argue that, left to their own devices, the IOCs would never promote the development of LC because it is contrary to IOCs primary interest of making profit. The next section therefore investigates what the LC requirements in Angola are, whether they are prescriptive in nature and if they promote the tenets of sharing of benefits.

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24) Constitution of the Republic of Angola 2010 Article 3.

25) Maria Lya Ramos, 'Angola's Oil Industry Operations' <[http://www.osisa.org/sites/default/files/angola\\_oil\\_english\\_final\\_less\\_photos.pdf](http://www.osisa.org/sites/default/files/angola_oil_english_final_less_photos.pdf)> accessed 17 October 2016.

26) *ibid* Fundamental Tasks of the Government Article 16.

27) *ibid* Fundamental Task of the Government Article 21.

### 3. Legal framework

As mentioned earlier LC has been pursued in earnest by the Angolan Government since 1979. In 2002, the Angolan government introduced numerous prescriptive legislative instruments (regulations, decrees) as well as a provision in the hydrocarbon agreement (a production-sharing agreement or PSA), with the aim of requiring an investor to purchase certain percentages of labour, goods and services.<sup>28</sup> Under Angola's petroleum legal regime, LC percentages continue to serve as judgment criteria (along with signature bonuses and minimum work programs) at the bid rounds for the award of both onshore and offshore blocks as determined by Sonangol E.P. LC has become a legal obligation that reflects on the commitments undertaken by E&P companies for acquiring local labour, goods and services.

Accordingly, the principal law that governs petroleum activities in Angola is the Petroleum Activity Law (PAL) 2004 (Law 10/04). Although PAL neither mentions LC specifically nor constitutes a comprehensive LC framework, nonetheless it offers some pertinent provisions on employment and the procurement of goods and services. The PAL preamble also envisages the protection of the national interest, promotion of employment market development, the valorisation of mineral resources, protection of the environment, rationed usage of petroleum resources and an increase in the country's competitiveness on the international market.<sup>29</sup> Amongst them, PAL acknowledges the sovereignty of natural resources, along with the concept of benefit sharing by allocating all minerals rights to the state and by default safeguards the principles of economic and social policy through the government on behalf of Angolan citizens.<sup>30</sup> However, the rule-based nature of the law is noted under Article 88 which refers to infractions and penalties detailing what action/omission amounts to an offence, the penalty or fine incurred and the repercussion involved as a result of the offence

#### 3.1 *Employment and training*

Article 86 of PAL requires investors both local and foreign to employ only Angolan citizens in all categories and functions, except where no Angolan citizens exist in the national market with the required qualifications and experience. It indicates that, where there is a prospect of employing a foreigner, permission from the ministry is mandatory along with a proposed succession plan on how that position will be made available to locals within a non-specified duration of time. Failure to submit a plan and attain approval in return amounts to an offence liable with a penalty or fine as detailed in

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28) Akinkugbe and others (n 5); 'Angola Petroleum Activities Law, 2004.pdf' (n 17); Constitution of the Republic of Angola (n 23); Nikiéma (n 6); Hunter (n 2).

29) Angola Petroleum Activities Law, 2004.pdf (n 22).

30) *ibid* Article 3 & 4.

Article 88. Notably, the payment of fines does not release the offender (investor) from the liability to perform his duties and obligations which gave rise to such fines.<sup>31</sup> This is a testament to the prescriptive nature of the law which fails to take into account the current capacity of local personal to carry out offshore regulatory duties. Additionally, the mandatory requirement to achieve a given percentage of local participation varies extensively from local private companies to foreign companies. The motivation for this disparity is still unclear. Additionally, remuneration of nationals will be similar to that of foreign counterparts who hold similar positions: this provision fails to take into account challenges that involve the levels of experience or technical education, if any, that might be deemed necessary for carrying out the activities.<sup>32</sup> Currently there are no guidelines indicating succession procedures, experience, or knowledge required, unless the labour ministry is directed to help steer that front.

Annexed to Article 86 is the Decree-Law on the rules and procedures to observe in recruitment, integration, training and development of workers from the oil sector (Decree-Law 17/09), also known as the Angolanisation policy framework. This decree was developed on the back of Decree 20/82 which was initially formulated and later amended by Decree 20/94 to support Article 86 of PAL (discussed above). Although the decree suggests a rule that establishes rules and procedures to be observed in relation to the recruitment, integration, training and development of workers within the oil sector, its main focus is on the amount of the contribution payable by entities for training and hiring nationals.<sup>33</sup> It is seen as a revenue tool through contributions. The decree operates by prohibiting investors as illustrated within the provision, dealing with charges, breaches and fines which are by far the most prescriptive on several points of the country's local content objectives.<sup>34</sup> In other words, companies operating in the oil sector need to allocate a certain specified amount for the training of nationals.<sup>35</sup> Also, companies are required to enter into a programme contract with the ministry for the development of human resources and to present LC plans subject to obtaining a petroleum licence and additional continuous annual reports which are subject to continuous operation within the petroleum industry.<sup>36</sup> On the same token, employment percentages range from 51 to 90% of Angolan nationals for any organisation involved in carrying out oil and gas activities.<sup>37</sup> This points to the differences outlined between

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31) *ibid* Article 88.

32) *ibid* Article 86.

33) Article 1.

34) Decree 17/09 Recruitment, Integration, Training, Personal Development, Human Resources and Transfer of Knowledge s 14, 15 & 16.

35) *ibid* 12 Prospecting license holder 100,000 while Production license holder 300,000.

36) Decree 17/09 Recruitment, Intergration, Training, Personal Development, Human Resources and Transfer of Knowledge (n 34).

37) Decree 17/09 Recruitment, Integration, Training, Personal Development, Human Resources and Transfer of Knowledge.

the PAL and the decree. The downside involves a number of issues: first, the law is not clear on how the percentages should be achieved during and after the bidding procedures. Second is the burdensome task of training locals who may lack basic quality education: this is characterised by Angola's low level of economic development, reflected in the inadequate and weak education system. Also, the current legal obligation to remunerate nationals who hold similar positions to foreign counterparts makes it a difficult proposition for IOCs to prioritize LC development, at least in the initial stages where skills are a major concern. Finally, the lack of guidelines that indicate how the preferential treatment will be allocated, provides avenues for potential creative compliance through political patronage to be the measuring scale.

### 3.2. *Procurement of goods and services*

In relation to procurement of goods and services (materials, equipment, and machinery), Article 27 of PAL requires that national production of the same or approximately the same quality and which is available for sale and delivery in due time, at prices which are no more than 10% higher than the imported items including transportation and insurance costs and customs charges due, should be procured. Furthermore, this provision guarantees mandatory preference for Angolan companies to be consulted.<sup>38</sup> Emphasis has been laid down on the aspect of 'production' of goods locally as the determinant factor applicable in achieving preferential treatment. In relation to PAL definition of the term 'Production',<sup>39</sup> a whole range of activities have been listed; these activities do not necessarily extend to the term production in its common usage. Similarly, the concept of production as a requirement has been debated in various forums as to whether it embodies the concept of LC.<sup>40</sup> But of more importance is the fact that the current non-existent manufacturing industry, which account for less than 1%, is by no means able to cater for deep offshore operations. Interestingly, PAL recognises the need for a licensee (investor) to import consumables or durable goods intended for the execution of works in a prospecting license rights and obligations<sup>41</sup> which by default goes against the requirement to source locally. Arguably, this open ambiguous opportunity may be interpreted by the investors and might render the objective of LC obsolete.

Annexed to the PAL under Article 27 of is Decree 127/03 on the general regulatory framework for hiring of services and goods from national companies in the oil industry.<sup>42</sup>

<sup>38</sup>) Angola Petroleum Activities Law, 2004.pdf (n 22).

<sup>39</sup>) *ibid* Article 2(18).

<sup>40</sup>) Simon Lester, 'What Are Local Content Requirements?' <<http://worldtradelaw.typepad.com/ielpblog/2013/04/what-are-local-content-requirements.html>> accessed 19 October 2016.

<sup>41</sup>) Angola Petroleum Activities Law, 2004.pdf (n 22).

<sup>42</sup>) *ibid* Article 27.

This guarantees the use of national goods and services in of oil operations. This decree establishes the basic rules to be complied with when contracting local suppliers in relation to goods and services for oil operators. It recognises a three-tier system. First is the 'rule on exclusivity' which identifies areas of business exclusively reserved for local suppliers and a preference rule in favour of local suppliers at least where goods and services are identical to those available in the international market and prices are no more than 10% higher. The decree provides that all activities that do not require a high capital value, and are basic average, should be carried out by local Angolan companies.<sup>43</sup> This provision recognises specific areas of operation where locals can contribute positively with limited support from IOCs.<sup>44</sup> The drawback involves activities listed for preferential treatment based on the production provision that do not directly correspond with offshore operations. They are mainly service based activities that could be carried out with limited state interference, therefore obviously not adding much value towards benefit sharing. More importantly, the participation involves an opportunity for the elite to play favourites, as the problem lies in the criteria utilised to select either personnel or companies who merit preferential treatment.<sup>45</sup> Also, LC requirements increase the cost of intermediate goods and, consequently, the price of the final goods, leading to higher prices that can deter foreign investments and participation.<sup>46</sup>

Second is the rule of semi-compliance (joint ventures), also known as foreign participation, where the characteristics of capital intensity and technical input in offshore exploration and the pre-salt layer in particular make it difficult for locals to participate without the assistance of large IOCs. This rule helps to mitigate the challenges that involve acquisition of capital and in-depth technical know-how by training locals to enhance their competence and skills. As the law dictates, this provision is undertaken with the permission of the ministry of petroleum.<sup>47</sup> This approach is often adopted in order to provide local participation in the short term while training local citizens to

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43) *ibid* Article 2(1(1)).

44) Decree 127/03 General Regulatory Framework for Hiring of Services and Goods from National Companies by Companies in the Oil Industry, Article (n 30). The following business opportunities are covered by this system: pressure tests on oil and/or gas storage tanks and pipelines; transportation of equipment materials and foodstuffs or sounding and production platforms; supply of industrial and drinking water; catering; supply of technical material; general cleaning and gardening; general maintenance of equipment and vehicles; operators and managers of supply points (airports, seaports and service stations); inspection of the quality of products distributed and sold (oil products and derivatives); retailers of lighting oil gas and lubricants; transport of products from the terminals to the supply points.

45) Ramos (n 24).

46) Francisco Veloso, 'Local Content Requirements and Industrial Development Economic Analysis and Cost Modeling of the Automotive Supply Chain' <[http://msl.mit.edu/theses/Veloso\\_F-thesis.pdf](http://msl.mit.edu/theses/Veloso_F-thesis.pdf)> accessed 17 October 2016.

47) Decree 127/03 General Regulatory Framework for Hiring of Services and Goods from National Companies by Companies in the Oil Industry (n 31).



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operate the industry in the long term. Ultimately, this rule eventually builds relationships with local companies and promotes domestic content.<sup>48</sup> The downside is that companies associated with the presidency are more likely to be considered for operations and increasingly; evidence suggests that IOCs pay massive fees to public officials and other Angolan elites to contract with 'front' companies that too often lack the technical or financial expertise, ultimately delegating the work to a foreign company.<sup>49</sup>

Third is the rule of competitive system which covers all activities that have not been mentioned above and which require a high level of capital in the oil industry and in-depth specialist know-how. Although this provision is not comprehensive in nature, this article argues that with additional instruments, e.g. the law for the promotion of business for local private companies 2003 (Law 14/03) and the decree on open tender procedures for supply of goods and services (Decree 48/06), it can be used to interpret the ultimate objective for which the legislation was intended.

The law for the promotion of business for local private companies 2003 (Law 14/03), which is annexed to the PAL, provides more opportunity for private national companies to play a significant role in the sector that would potentially promote benefit sharing. It involves the participation of the Angolan business community, which is critical to the success of LC. The decree was a result of the challenges encountered by local companies in carrying out activities in the oil sector. These challenges included fiscal incentives such as exemption from and reduction of industrial, income, import and other duties, financial support in the form of subsidies, loans, promotion of venture capital, technical support and special right privileges. In doing so, the government introduced the preferential treatment given to national private companies through Sonangol.<sup>50</sup> This was in line with the all the above-discussed rules for Angolan businesses for sourcing goods and services that require minimum capital and non-specialised knowledge. The downside of this decree is that it fails to provide criteria for issuing the preferential opportunities.

An additional instrument that can be used to further interpret the competitive clause is the decree on open tender procedures for supply of goods and services, Decree 48/06. It was approved to implement Article 26 of the PAL and which is line with Decree 14/03 (discussed above). This decree sets out a general rule for competitive tenders to award contracts. It also regulates the selection of the associates of Sonangol E.P.

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48) Abolfazi Kazzazi and Behrouz Nouri, 'A Conceptual Model for Local Content Development in Petroleum Industry/Growing Science' 2 2165.

49) Ramos (n 24).

50) Osmel E Manzano and others, 'Local Content in the Oil and Gas Sector' (The World Bank 2013) 78994 <<http://documents.worldbank.org/curated/en/549241468326687019/Local-content-in-the-oil-and-gas-sector>> accessed 17 October 2016.

in the performance of petroleum operations and the entities procuring goods and services for the execution of petroleum operations. The concept of "national associate" to mean "a corporate entity which is formed under Angolan law, with registered office in Angola which in such capacity associates itself to the National Concessionaire in any of the forms set forth in Article 14, paragraph 2" presents a challenge in distinguishing it in practice from an Angolan firm which is understood to be "a sole trader or in the form of a company has been legally and regularly constituted and established in Angola with an effective headquarters on national territory and which is wholly owned by Angolan citizens or where at least 51% of the share capital is held by Angolan citizens or Angolan firms exclusively or jointly." The associate concept can be construed to mean an Angolan local company, which ultimately brings about difficulty in understanding the different roles between an associate firm and an Angolan firm. Also, by default this would suggest that any foreign entity registered in Angola and that associates itself with the national concessionaire can be deemed to be national, irrespective of the requirement for an equity participation of at least 51%. The decree also sets out different procedures on how the procurement of goods and services should be undertaken, where emphasis is on the value or amount of the contract. It underlines the rule of exclusivity mentioned in Decree 14/03 for Angolan businesses in sourcing goods and services that require minimum capital and non-specialised knowledge. Also, it promotes the proposal of not more than 10% higher value for Angolan services than that proposed by other foreign companies. The challenge lies under the provision in Article 4 where state companies compete for supply of national goods and services in equal circumstances as with national private companies. It is obvious that resources lie extensively with state companies, therefore national private companies will always be at a disadvantage.<sup>51</sup>

Conversely, the success of LC is not only determined by local participants but also through positive contribution by other significant stakeholders like IOCs.<sup>52</sup> Economists argue that "if foreign multinationals are exactly like domestic firms, it will not be profitable for them to enter the domestic market neither will the host countries see the need to host them. After all, there are added costs of doing business in another country."<sup>53</sup> These vertically-integrated companies have large share of professional and technical workers in their workforce, products that are new or technically complex and high levels of product differentiation and advertising.<sup>54</sup> It is exactly these characteristics of the investing firms that make them attractive to local economies.<sup>55</sup> Notably, these

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51) Decree 48/06 Rules Open Tender Procedures for Supply of Goods and Services 2006.

52) Per Heum and others, *Enhancement of Local Content in the Upstream Oil and Gas Industry in Nigeria/ : A Comprehensive and Viable Policy Approach* (SNF 2003) <<https://brage.bibsys.no/xmlui/handle/11250/164539>> accessed 19 October 2016.

53) Veloso (n 46).

54) *ibid.*

55) *ibid.*



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firms are concerned with making and repatriating profits thereby articulating comparative advantages of Angola's legal and fiscal systems associated with international sourcing, choosing supply chain configurations that maximise profits. However, quite often these systems tend to preclude local suppliers from participating in the sector.<sup>56</sup> Even so, it is exactly these systems that enable companies to take advantage of value and supply chain global sourcing arrangements which often hinder local companies from taking part in the activities. The challenge to this objective, as noted in Angola, is the lack of recognition of this pool of available resources that IOCs can share with local companies through consortiums and joint ventures.

Overall, it is evident that Angolan laws take into account the two interrelated issues which include indigenous and foreign participation as reflected in the 'rule of exclusivity', the 'rule of semi-compliance' and 'competitive systems' that facilitate the development of LC. However, it is apparent that the spirit of LC is not entirely reflected in the frameworks based on the challenges noted, which mostly relate to the lack of clear legislative mandates as discussed above. As a matter of fact, although investors are expected to meet these mandates, this article confirms that the mandates are ambiguous, and have no coherence or consensus on the content or application thereafter other than sanctions in case of non-compliance.<sup>57</sup> As noted above, none of the Angolan laws evaluated define the term 'local content' or the 'content' of what local content should be. Although decree 127/03 synonymously refers to the term 'Angolanisation', which closely resembles utilising local personnel, goods and services over those available in the international markets, there is not much discussion on the terminology. As measuring standard, the laws continuously indicate 'production' of national goods but, surprisingly, it is not precise as to what amounts to production or a process of production. The eminent question involves whether the purchase of foreign good assembled in-country by locals amounts to local goods. Notably, although the law acknowledges the preferential treatment for private local companies, the law is not clear on what criteria will be used for selecting companies and personnel. Unless the law provides for objective criteria, this provision may well promote impunity based on political ties. Finally, even though the law refers to international standards as a means to measure quality among and between foreign and national supplies, it is not clear which particular international market standards are referenced and neither is it clear which procedures are most likely to benefit Angola other than just being an international standard or an industry best practice. Therefore, beyond the theoretical benefits of LC as highlighted in legal frameworks detailed above, the next section will evaluate how regulators can utilise their discretion to mitigate the concerns during implementation. The next section illustrates the importance of independence of a

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<sup>56</sup>) *ibid* 10.

<sup>57</sup>) Berryl Claire Asiago, 'Fact or Fiction: Harmonising and Unifying Legal Principles of Local Content Requirements' (2016) 34 *Journal of Energy & Natural Resources Law* 337.



regulator in ensuring LC development. Further, it affirms that non-existent mechanisms for oversight and transparency can be problematic in holding both Sonangol E.P. and IOCs accountable, making LC development a challenge.

## 4. Regulatory implications

### 4.1. Implementation

This article argues that, as a performance standard, LC success may depend less on existing legal frameworks and more on questions of governance. An analysis of institutions and organisations is increasingly considered an important part of understanding economic outcomes. Arguably, the nature of regulation plays a major role in the interpretation: prescriptive rules limit innovation, while principle-based rules provide an objective, flexible avenue to respond to the current issues. More importantly the nature of regulation involves two parallel issues.<sup>58</sup> Taking into consideration LC content on one hand, and the legal technique used on the other hand, we can draw two basic conclusions. First, there is need for an institutional setup which points to the design of the entity ultimately responsible for implementing LC requirements, viewed against the extent of the degree of discretion in the law. Second is the need for an existing oversight mechanism that safeguards the essence of transparency, indicating the checks and balances available against the severity of the requirement and the ability of the regulator to not misuse their position.

Legal gaps are acceptable, although responsible institutions with a clear, limited mandate to interpret these gaps are required. In many developing countries, virtually all substantive powers to oversee and implement LC requirements are given to either the Minister in charge of the sector in question (e.g. Energy or Trade or Economic Development), or the state-owned monopoly that de jure falls under the relevant Minister's administrative and political control, and de facto operates as an independent political and economic entity. In Angola, the division of responsibilities are defined in the legislation and by law the Ministry of Petroleum is responsible for implementation and oversight, yet in practice, Sonangol E.P. seems to hold excessive political and financial power as indicated in the report submitted by NORAD, a development agency under the Norwegian Petroleum Directorate. The idea to curtail Sonangol E.P. powers and have the Ministry of Petroleum ("Minipet") in charge was introduced by the Norwegian authorities. The assumption was that Angola would have a legal institutional change and that the Minipet or a separate body under the Minipet would assume

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<sup>58</sup> Christopher Decker, *Modern Economic Regulation: An Introduction to Theory and Practice* (Cambridge University Press 2014) 189.

regulatory functions to those of NPD. Clearly this development did not take place as Sonangol E.P. was not willing to relinquish its powers.<sup>59</sup>

#### 4.1.1. De jure regulator

Technically, the oil and gas sector in Angola is primarily governed by the Minipet, which is responsible for the co-ordination, supervision and control of the activities of the oil and gas sector. Under the PAL, the government, acting through the Ministry of Petroleum, is responsible for supervising LC operations including the plans by IOCs.<sup>60</sup> In practice, however, despite Sonangol E.P. being under the Minipet, all oil operations including LC development are undertaken and overseen by Sonangol. Notably, since 1987, the Norwegian government has been providing technical skills to strengthen the role of the Ministry of Petroleum, with a recent renewed interest from the Oil for Development programme, "to promote improved management of national petroleum resources as one of the tools for sustainable economic and social development in Angola." This includes the capacity of regulatory control and to develop policies and strategies.<sup>61</sup> This did not take place as Sonangol E.P. was unwilling to relinquish its powers indicating the political reality of Angola's petroleum regime.<sup>62</sup>

Additionally, it is important to recognise that LC straddles different sectors and there is no way to evaluate it from the perspective of the petroleum industry alone. With respect to the public sector, input of other ministries that fall outside the sector in question, particularly the Ministries of Trade, Commerce, and Finance, should be actively solicited. Especially when LC measures target provision of employment and the preferential mandate of local goods and services, that may be challenged in outside bodies (such as a potential dispute in the trade and investment treaties e.g. WTO and BITs, although these are not covered in this article). Although in principle the PAL recognises the duty of other ministries like finance, environment and trade, the practice is that these ministries have limited access to oil operations carried out by Sonangol. For instance, the Ministry of Finance has limited access to Sonangol E.P. accounts. All revenues received from IOCs (signature bonus, royalties) that need to be transferred to the national treasury are instead reinvested on Sonangol E.P. Group.<sup>63</sup> According to the 2002 IMF audit report, the central bank was "unaware of the values of export sales by Sonangol E.P. and foreign currency generated".<sup>64</sup> Structurally, Sonangol

<sup>59</sup> 'The Oil for Development Programme in Angola' (*NoradDev*) <<http://norad.no/en/front/thematic-areas/oil-for-development/where-we-are/angola/>> accessed 18 October 2016.

<sup>60</sup> Angola Petroleum Activities Law, 2004.pdf (n 22).

<sup>61</sup> 'The Oil for Development Programme in Angola' (n 60).

<sup>62</sup> Ramos (n 24).

<sup>63</sup> *ibid.*

<sup>64</sup> 'Some Transparency, No Accountability: The Use of Oil Revenue in Angola and Its Impact on Human

E.P. performs functions that should be under the purview of the Ministry of Finance or the Central Bank. Sonangol E.P. plays a monitoring role, bypassing the Ministries of Petroleum and Environment and other political institutions to provide checks and balances to potential challenges in the sector.

#### 4.1.2. De-facto regulator

It is therefore clear how Sonangol E.P. (the state-owned oil company) is at the centre of oil operations in Angola. It holds various roles, including sole concessionaire therefore lead negotiator for every oil and production licence, regulator (contractual agreements and LC) and sometimes operator, which points towards a potential conflict of interest or indeed opportunistic behaviour. Currently, research indicates that Sonangol E.P. administers and regulates oil through the sweeping and discretionary powers accorded to it, bypassing other ministries that would most likely ensure efficient checks and balances.<sup>65</sup> This goes against the principle of the separation of operations from regulatory activities.<sup>66</sup> Notably, decisions of Sonangol E.P. are not subject to any sort of legislative review or appeal, there are hardly any statutory powers or budgetary resources and procedures that limit its operations. Also, being the largest company in Angola with over thirty subsidiaries (banking, transport, communications, health care, etc.), which does not promote diversification that adds value<sup>67</sup> to the economy but only seems to have total control of all other operations, tending to limit other local private companies from participating in the sector. The diversion of revenues from the public domain and national treasury by re-investing in large projects without parliamentary approval diminishes the intent of the projects initiated. In addition, oil companies pay a contribution to Sonangol E.P. for social projects. These revenues are not disclosed and Sonangol E.P. has control over the use of funds. Currently, the lack of coordination between Sonangol, Minipet and other key stakeholders promotes duplication of responsibilities that serve to create a parallel process for sharing of benefits let alone for developing LC.<sup>68</sup>

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Rights: V. Expenditure Discrepancies' <<https://www.hrw.org/reports/2004/angola0104/5.htm>> accessed 18 October 2016.

65) Ramos (n 24); Ovadia (n 3); Dr Pete Custers, 'War and The Oil Economy of Angola- Disparate Exchange in the Context of Africa' (November 2002) <<https://www.google.fi/url?sa=t&rct=j&q=&esrc=s&source=web&cd=6&cad=rja&uact=8&ved=0ahUKewjekNbj8OPPAhWJDcAKHT7SDCkQFghRMAU&url=http%3A%2F%2Fwww.petercusters.nl%2Ffile%2F13&usg=AFQjCNG71-cn65DIfyVZ2OEXIbavNPh7g>> accessed 18 October 2016.

66) Heum and others (n 52) 49.

67) *ibid* 48.

68) *Ibid*.

#### 4.2. *Monitoring and Evaluation*

Who watches the watchman? This fundamental question is seemingly an endless one when political and financial power as discussed above is vested on Sonangol, making transparency and accountability elements of implementation that are difficult to determine. As principles of efficient regulation dictate, parliaments need to enforce regular reporting and rigorous oversight of state-owned companies, yet in Angola this is aggravated by the fact that Angolan political system seem not to grant National Assembly the power to scrutinise state-owned companies like Sonangol. The NOC is accountable only to the president, and information on the oil industry tends to be concentrated within the presidency, Sonangol E.P. and key ministries.<sup>69</sup> Little information is disseminated to the legislature in relation to contract or other oil-related policies. In addition, legislators are not elected but appointed through party lists, making extremely partisan legislators who often prioritise party loyalty ahead of public interest. In the judiciary, the president appoints all the judges of the Constitutional Court, the Supreme Court and the Audit Court, presenting limited opportunity to ensure efficient checks and balances. Also in the executive sphere through ministries, especially the petroleum ministry, Sonangol E.P. exerts all the political power making the ministry weak in conducting sufficient checks and balances.<sup>70</sup> In addition, boards of national companies like Sonangol E.P. are selected based on political patronage as opposed to professional qualification. For instance, every oil block has a chairman from Sonangol E.P. who may communicate with the ministry at will but subject to approval from Sonangol E.P. board.<sup>71</sup>

As one would expect, by having a seat apportioned at the table as a shareholder/stakeholder, officials in many governments enhance their ability to continuously monitor the activities of private partners<sup>72</sup> and the progress of strategies, policies and laws that measure their performance against that of regional neighbours, other developing countries and maybe industrialised nations to ensure their objective is achieved. Unfortunately, the difficulty to determine that success exists in understanding how to measure LC. Improvement is hard to quantify because political capture and patronage becomes the measuring scale.

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69) Ramos (n 24).

70) *ibid.*

71) *ibid.*

72) Asiago (n 57).

## 5. 'Readjustment Model': Restructuring the petroleum sector

The above noted challenges are not only limited to LC development but transcend the entire petroleum industry. These challenges include: duplication of duties by a de facto regulator, transparency concerns in management of oil activities and the process of competitive bidding of tenders (or lack thereof) which have led to significant changes, at least on paper. Although there was no mention of LC as the immediate motivator for the remodel, there is no doubt that some of those changes might impact development of LC in a major way. Arguably, this new model is said to be inspired by international best practices of other petroleum producing countries as confirmed by a benchmarking exercise. However, the review was undertaken in consideration of the specific circumstances of the Angola environment and legal regime.

The most important of these circumstances is the restructuring of Sonangol E.P. to establish other able entities to ensure the effective operation of the Angolan oil sector. The consideration to establish an independent regulatory agency and the rationalisation of Sonangol E.P.'s role can be traced as far back as 1987 through the NORAD programme and most recently 2011, when the Angolan government published its National Energy Security Policy and Strategy (NESPS).<sup>73</sup> Therefore, the passing of Presidential Decree 109/16, which reflects upon the principles of efficiency, transparency and stability in the industry, has reiterated Sonangol E.P.'s role as the grantor of concessions for petroleum exploration and production, but with the removal of Sonangol E.P.'s ability to be involved in petroleum exploration, production and operational activities. This means that Sonangol E.P. will no longer interfere with all the other activities which include development of LC other than those it is mandated to carry out. This practice will add credibility and transparency to the operation of activities in the sector, including the tendering process which is vital for the development and implementation of LC. Most importantly there will be review and amendment to Sonangol by-laws, that include restructuring the governance of Sonangol. Arguably, restructuring has already been undertaken through the establishment of executive committee made up of members of the company's board in charge of Sonangol E.P. and entrusted with bringing added efficiency and transparency. The underlying concern, as noted earlier, is more to do with the ability of Sonangol E.P. ceding its financial and political powers in practice to the established agencies.

Secondly the restructuring includes creating a new inter-ministerial petroleum sector agency. This establishment will be responsible for general petroleum sector coordination, preparation of licensing rounds and the resolution of disputes between different stakeholders in the sector.<sup>74</sup> It will also carry out administrative roles which

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73) Roberts (n 74).

74) Peter Roberts, 'Angola Petroleum Reforms Signal Improved Investment Opportunities' <<http://www.africanbusinessreview.co.za/finance/2587/Angola-petroleum-reforms-signal-improved-investment-opportunities>>



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include preparation for public tendering for oil blocks and resolving conflicts between ministries. This agency can be said to closely resemble the Norwegian Petroleum Directorate and the Nigeria Department of Petroleum Resources, at least in its set of responsibilities which are to provide technical assistance to the Ministry as well as the commercial arm of the ministry, the NOC.

Third is the creation of a high council for monitoring the petroleum sector. This body will be responsible for issuing opinions on multiannual plans for the oil sector, approving investments with high value and strategic importance and monitoring the execution of these investments. Notably it will also be responsible for assisting the Angolan state in the exercise of its shareholder rights. Fourth, is maintaining the Minipet's regulatory powers and authority. This discussion is of critical importance, along with the separation of Sonangol's duties and responsibilities. As noted above, Sonangol E.P. has not been willing to relinquish its powers to the ministry. This will synergise a lot of activities within the sector.

Finally, the Ministries of Finance, Environment, Public Administration, Labour and Social Security will be maintained as supervising ministries for sectoral matters. This means that the corresponding ministries will continue to play the roles mandated to them, although the agency will coordinate their roles and resolve their disputes respectively. This is a perfect outcome for LC development as obligations and development straddle various ministerial mandates and it is only effective if there is sufficient coordination. However, the challenge arises with the resolution to continue to have the president of the Republic as the head of the executive, which is expected to remain the highest supervising body, monitoring the Agency, Minipet, the High Council and other public entities. Notably, the current appointments that are vital for transparency and accountability involve the position of chairperson of Sonangol and head of Sovereign wealth fund which just happen to be the President's daughter and son. They are more likely to question the process of transparency and nepotism, as it has been raised by the opposition. This opposes the objective of the restructuring for the sake of transparency and accountability.

Interestingly, it is not clear which organisation will be fully responsible for handling matters related to LC development This article argues that the continued neglect of a proper regulatory body to ensure LC is complied with will only leave room for duplication of roles. Meanwhile, one suggestion would be to delegate the mandate of implementing LC to the High Council, being that it deals with investment-related issues.

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accessed 31 October 2016; *ibid*; 'Legal News- Angola Readjustment Model for the Organization of the Petroleum Sector'.

## 6. Conclusion

This article has demonstrated that Angolan LC was indeed formulated to function as a tool that secures equitable sharing of benefits. Also, the above-mentioned discussions have confirmed that Angola's LC links the two interrelated issues, which include the development of indigenous companies through procurement of local labour, goods and services (local participation) while encouraging foreign investment through private sector participation and formation of joint ventures (foreign participation). However, it concedes that the prescriptive nature of these LC mandates, with limited implementation procedures, sweeping discretion of the regulator along with non-existing strong mechanisms for oversight contribute to the challenges faced in implementing LC.

There is no doubt that the development of LC is here to stay since the stakeholders view the petroleum sector as the main source of revenue therefore a silver bullet to a society's economic growth and diversification through employment, capacity building, industrialization and leverage. Although the intention for their introduction is laudable however, without consideration of crucial issues like implementation and compliance procedures their objective will be overridden by circumstances. Compliance is inevitable in evaluating LC success, currently companies are quickly identifying with alternative yet effective ways to ensure its conformity. Unfortunately, compliance is relative due to the existing distortions like ambiguity in the laws, which only fuel evils like creative compliance.

Therefore, the ideal way to curb this obstacle would be either to formulate clear inward looking policies that consider socio-economic and political climate of given population. As well establish strong institutional frameworks that can oversee the continuous implementation of these mandates, or have investors set their own standards and decisions on how to comply with the mandates. Provided there is adequate incentives to promote strong local participation, strong institutions to oversee implementation and provision of recourse to address concerns that would crop in the process. This would be an ideal scenario for both the stakeholders, the investor will benefit from the firm's ability to minimize potential negative impacts on its cost and, thus, on the overall economy which is after all the intent of the government. Additionally, the demand to purchase local goods at higher costs leads to increased company expenses which are contrary to primary interest profit making. In a situation like that it is imperative for government to offer certain minimal incentives to make it attractive for an investor to comply with a level of LC without creating an obvious price distortion in the final price thereby promoting a reduction in operational costs and the seamless flow of supplies of goods and services.

Importantly the petroleum industry and more so ultra-deep shore exploration activities are subject to substantial technological and economic changes due to the unforeseen contingencies and other events that may arise which may be most efficient if resolved



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by a regulator. Therefore, the establishment of an independent regulator is essential in delivering duties through the provision of clear limited discretionary powers with less prescriptive rules which continue to be a recipe for underdevelopment as opposed to development for the Angola petroleum industry.





