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SEATINI

Strengthening Africa in World Trade

WHY UGANDA URGENTLY NEEDS A BINDING FRAMEWORK FOR LOCAL CONTENT

Preamble

We the undersigned stakeholders working towards Micro, Small and Medium Enterprises (MSMEs) development in Uganda wish to express our concern over the recent decision by H.E the President of the Republic of Uganda to reject the National Local Content Bill, 2020 which was recently passed by the Parliament on 20 May 2020 and was submitted to the President for Assent.

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

The President objected to signing the Bill arguing that the Bill conflicts with the East African Monetary Union, the EAC Customs Union Protocol, and the EAC Common Market Protocol. However, other partner states have already been reported not to comply with the provisions therein. For example, countries like

Kenya, Tanzania and Rwanda implement very strict local content requirements, especially in the area of government procurement. The other argument, especially reiterated by the member of the European Union is that the Local Content Act, 2020 will discourage foreign investors. However, experiences from the highest FDI importing countries indicates that investors are attracted by resources, availability of labor, market size, rule of law, and infrastructure development.

We wish to note that;

- Over the years, global efforts have increasingly dealt with specific discussions on how to include a Multilateral Investment Agreement. For example, under the General Agreement on Trade in Services (GATS) is the supply of services by a foreign company setting up operations in a host country — i.e. through foreign investment and under the Trade-Related Investment Measures Agreement which provides that investors' right to use imported goods as inputs should not depend on their export performance. Developing countries like Uganda have however expressed concern that a multilateral agreement would add obligations to developing countries while limiting their ability to align investment inflows with national development objectives.

- With the growing interest to attract Foreign Direct Investments (FDI) in all sectors, investment importing countries such as Uganda are increasingly adopting investment liberalization through signing Bilateral and Regional Investment Agreements, as well as enacting investment laws that provide legal protection to investors and their investments.

- As such, FDI inflows to Uganda have continued to surge over the years. According to UNCTAD's 2020 World Investment Report, FDI flows to Uganda reached a record high of USD 1,3 billion in 2019, a 20% increase from USD 1 billion in 2018, which can be attributed to the constant development of major oil fields and an international oil pipeline, as well as projects in construction, manufacturing and agriculture. FDI stock also grew to USD 14.3 billion in 2019. Due to the discovery of oil reserves in addition to the country's other rich natural resources, new investors might be interested in the country in the future. FDI mainly goes to the coffee and mining sectors, with Kenya, Germany and Belgium being the country's main investors.

- However, despite this surge the country's level of development has remained very low, notwithstanding the numerous development promises attached to FDI. For instance, while FDI inflows grew by 20% between 2018[1] and 2019, unemployment rate instead increased by 0.09% within the same period. In terms of poverty, while the country's poverty rate was last published in 2013 at 19.7%, a recent presentation by the Ministry of Finance, Planning and Economic Development reported an increase in the country's poverty rate, estimating it at 21.4%.

- According to a recent report by UNECA on the ABC of Industrialization in Uganda, the failure to direct investment has resulted into the growth of services sector investments, at the expense of the industrial and manufacturing sectors, yet these offers forward and backward linkages.

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1 According to the World Bank, unemployment rate in Uganda in 2018 stood at 1.75% while in 2019, it increased to 1.84%.

- Uganda's market has continued to be flooded with imported products, some of which are already largely produced or manufactured locally. Aside from the products, even services such as retail trade has been dominated by foreign actors from Korea, China, India who set up supermarkets and import products already made in Uganda, and subject Ugandan suppliers to delayed payments, thus frustrating them. As such, the benefits of the Buy Uganda Build Uganda policy which was adopted in 2014 has remained a dream.

- The passing of this bill is expected to support all efforts towards entrenching import substitution and ultimately export promotion. This is now demanded by the new order. By ensuring that the goods and services are manufactured and delivered to the customers by Ugandans, and by ensuring that subcontracting to Ugandan contractors in civil works is undertaken, the law shall go a long way to assure Ugandans of jobs, increased capacity utilization in industries and therefore output, skills upgrading, and finally, increase our capacity to export while using our own raw materials.

- Even government procurement projects have seldom benefited local contractors and entrepreneurs. Whereas in any country, the government is the largest buyer, the uptake of Uganda government procurement opportunities has largely been dominated by foreigner. The road construction and upgrading projects have been taken up by Chinese, South African, Arabian and Ghanaian companies. Joint ventures have not been deliberate, and yet this would provide an opportunity for local contractors, to join in these projects given their nature, that they require very high capital investment, which is yet to be available to Ugandan entrepreneurs and contractors. This is notwithstanding the fact that the government of Uganda is not bound by any Government Procurement agreement, except under the EAC Common Market protocol under Article 35.

- Currently, about 75 per cent of the country's national budget is focused on public procurement and until this Local Content law is put in place, 60 per cent of taxpayers' money will continue to be externalized through civil works contracts, purchase of goods and services as well as the procurement of international consultants.

It is our considered view therefore, that the absence of a comprehensive legally binding framework has been a major barrier and a driver of local citizens' failure to benefit from locally implemented investment projects. A binding framework on Local Content can contribute towards greater FDI inflows. Countries such as Ethiopia, Tanzania and Rwanda that have adopted very strict local content requirements receive much higher FDI inflows. This is especially given the fundamental link between the benefits of local content laws and the growth and potential of a country's market size, a key factor in determining FDI inflow.

We therefore call for:

1. The Parliament of Uganda should urgently review the Local Content Bill, 2020 to make it compliant with the East African Community (EAC) Treaty and the EAC Common Market Protocol, specifically, giving consideration to the review of the interpretations of Ugandan company and Ugandan entity to include other EAC partner states i.e. Burundi, Kenya, Rwanda, South Sudan, and Tanzania.

2. The urgent pursuit for review of the EAC Treaty to provide for reciprocity. This will ensure equal treatment by partner states and address the current unfair trade among them, where one partner state enjoys the benefits of the treaty, and the various protocols, without extending the same treatment to other partner states.

3. Review all Uganda's Bilateral Investment Treaties and the Investment Code Act, 2019 to include provisions on Local Content. Including this provision would guarantee the Government of Uganda the policy space to place such performance requirements measures on foreign investors establishing and operating in the country.

4. The President of Uganda to urgently assent to the Local Content Bill, 2020 with the proposed amendments. This will help to narrow the competition for contracts and market opportunities to only the regional partners.

5. The Ministry of Trade, Industry and Cooperatives to, through the Ugandan Mission in Geneva to demand for the extension of the LDCs waiver to phase out all measures inconsistent with the Trade Related Investment Measures (TRIMs) Agreement such as Local Content. If not extended, the waiver will expire at the end of 2020.

6. Put in place a legal framework that protect local suppliers from delayed payments as a means to ensure continued cash flow, and thus guarantee them some financial security which is critical in sustaining business competitiveness and growth if they are to benefit from the Local Content legal framework.

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