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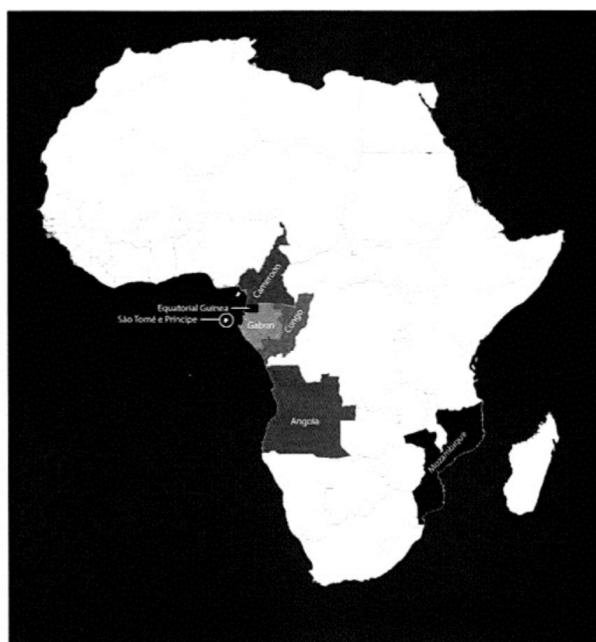
INDIGENOUS CONTENT
Turning the Oil Curse into a Blessing?

Several studies have tried over the years to demonstrate (or have concluded) that the existence of abundant natural resources in a country can constitute an obstacle to its economic development, enhance political instability and increase social inequalities. The "oil curse" is one of the reasons that countries have attempted to implement local content policies, aimed at using natural resource revenue to develop the services and manufacturing sectors, thus turning the curse into a blessing for the host country's economy and population, which should be one of the main beneficiaries of natural resource abundance.

In general, local content policies require companies active in the oil and gas sector to contribute to other industries and projects and even to areas that governments want to develop, such as education. However, there is no consistency or agreement between countries on the exact type of local content measures that should be put in place to effectively contribute to a country's social and economic development. With the same general goals, we have seen countries in different stages of development trying to enforce similar measures, often with different intensities and different levels of success. In fact, it has been extremely difficult to assess upfront the effectiveness of each particular measure in the short, medium and long term in both the economic growth and social development of these countries.



This article will summarily review the sources of local content and certain local content measures adopted by various African countries.

Sources of Local Content

Historically, there have been basically two ways that host countries have tried to implement local content measures. Some countries traditionally opted to have a single statute, which exhaustively deals with the various areas of local content (*e.g.* Nigeria), while others have instead opted to foresee the local content rules in various statutes. In this latter case, we will often find that the respective hydrocarbons' law has general local content provisions, which in turn are further regulated and developed by specific statutes applicable to different areas, such as: employment law, tax law, commercial law, etc. (*e.g.* Angola, Cameroon and Equatorial Guinea, among others).

However, in recent years, and given the wide scope of local content measures and experiences, even those countries that traditionally had adopted one model have progressed to hybrid models where overarching legislation is also typically complemented by sector- or activity-specific statutes and regulations. This is easily justified as the goal of indigenous content is to spread out the benefits deriving from the E&P industry to other economic sectors, thus generating revenue and promoting social welfare for the whole economy.

Petroleum contracts, with their natural flexibility, are also commonly a source of local content, sometimes imposing tougher requirements than those deriving from the law (*e.g.* Gabon), or anticipating future statutory obligations (*e.g.* Angola).

Implementation Measures

Although each country tends to implement each particular measure in accordance with their own legal system, stage of development and strategic goals, local content measures may include: a local/expatriate personnel recruitment ratio, local employee training obligations, training levies and contributions, preferential treatment of local suppliers, preferential regime for local E&P companies, national concessionaire regime, mandatory minimum participating interest for the National Oil

Company and/or indigenous companies, mandatory participation in energy or infrastructure-related projects, mandatory local insurance and national insurance company exclusivity, contributions for social projects (in cash or in kind), partnerships and joint ventures with local companies for the provision of goods and services, direct/indirect local ownership rules, obligation to build offices, and registration of vessels.

Here we provide a brief summary of certain local content rules applicable to the upstream sector in selected African countries:

Angola

Due to its impact on the industry, the foreign exchange requirements imposed by Angolan authorities are among the most interesting local content rules. Under the Foreign Exchange Law Applicable to the Petroleum Sector and respective regulations, operators are required to pay their local contractors in local currency and out of local bank accounts, and their foreign contractors also out of local bank accounts. Nonetheless, IOCs are entitled to hold and dispose of the funds corresponding to profits or dividends, incentives and other capital gains, and the recovery of their investment in financial banking institutions domiciled abroad.

Other relevant recent local content rules in Angola include certain incentives applicable to Angolan petroleum companies, which may benefit from a reduction in the rate of Petroleum Income Tax in production sharing contracts or other types of petroleum contracts. Additionally, they are exempt from the payment of signature bonuses, the obligation to carry the national concessionaire's subsidiaries (Sonangol P&P), and payment of contributions to social projects.

Mozambique

Among the most significant Mozambican local content rules set forth in the new Petroleum Law is the obligation of E&P companies to be registered in the Mozambican Stock Exchange. However, as the new Petroleum Law was recently enacted (in August 2014), it is still unclear how authorities will, in fact, impose this requirement. Any investor interested in the exploitation of petroleum resources in Mozambique is also required to partner with ENH, E.P. (the State's exclusive representative).

Additionally, under the law, oilfield service providers are required to associate with Mozambican nationals or companies.

As regards the recruitment and training of local manpower, the holders of the right to conduct petroleum operations must ensure the recruitment and training of local employees, preferably those who reside in the concession area, and ensure their participation in the management and performance of petroleum operations. The expatriate employment quotas vary between 5% and 10% of the total workforce.

Mozambican individuals and companies, as well as IOCs associated with Mozambicans, have a preferential right in the granting of concession contracts for the conduct of petroleum operations.

Gabon

Under the recently-enacted Petroleum Law, the Gabonese State may elect to have a maximum participation of 20% in the share capital of a petroleum company requesting or holding an exclusive exploitation authorization. Moreover, the State must mandatorily hold a participating interest of at least 20% in the contractor group under a production sharing contract.

In respect of the employment of foreign citizens, in addition to setting forth that foreign employees may only be hired if there is no Gabonese national available in the market for the respective position, Gabonese law also prohibits companies from hiring more than 5% expats for unqualified positions, and more than 10% for qualified or management positions.

Equatorial Guinea

The most interesting local content rules of Equatorial Guinea include the obligations of oil & gas service providers to have a national shareholder (either a natural or a legal person), and the nationals' participating interest in foreign companies has to be at least 35%.

Additionally, in Equatorial Guinea, the law determines that after the first commercial discovery, the contractor shall, to the extent that it has not already done so, construct a prestigious building for its offices in Equatorial Guinea using modern and permanent materials and of an appropriate size and design approved by the Ministry.

Cameroon

The Gas Code was the first statute that specifically addressed local content in Cameroon, setting forth the general principles on this matter. Under the Gas Code, companies should valorize Cameroonian gas resources by (i) developing local human resources, companies and industries, (ii) proposing detailed local content measures during the negotiation of the gas agreements, and (iii) creating a special account to establish and develop local training facilities and companies. Additionally, the payment of a contribution for these purposes is typically required, and set between 1% and 5% of the total investments projected for the commencement of the gas project.

The Petroleum Code also has interesting local content rules. For instance, oil companies are required to conduct and finance training programs for their local personnel, the terms of which must be included in the relevant petroleum contract. Also, Cameroonian companies are also granted a preferential right in the award of contracts for the provision of oilfield goods and services.

In terms of recruitment, the Cameroonian authorities require that certain unskilled professions constituting low-skilled labor may not be carried out by expatriate employees, except if the manpower department of the Ministry of Labor certifies that suitable local employees are not available.

São Tomé e Príncipe

Although general Saotomean law does not set forth local content requirements, the country's petroleum law contains the obligation to hire and train national employees, with the purpose of replacing foreign employees within a reasonable timeframe, as agreed with the National Petroleum Agency.

Additionally, E&P companies are required to cooperate with the governmental authorities in public actions to promote the economic and social development of the country and business activities in

São Tomé e Príncipe. National employees should also benefit from the same remuneration as foreign employees, without any type of discrimination.

Republic of the Congo

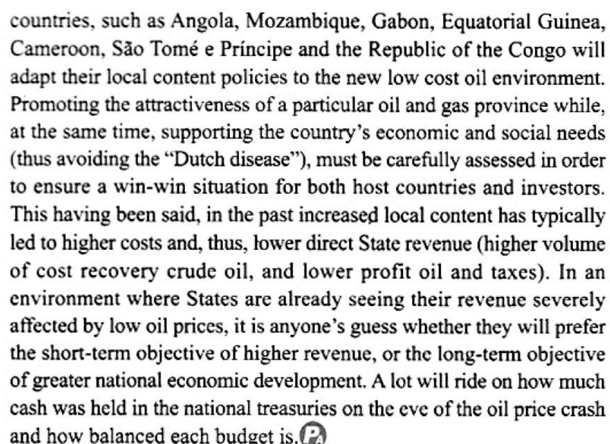
In the Republic of the Congo, from a strictly legal standpoint, subcontractors are required to have a registered presence in the country (either a company or a branch). Additionally, 30% of the subcontractors' share capital must be held by Congolese nationals.

Local content obligations foreseen in the laws of the Republic of the Congo also include the giving of preference to local suppliers and, if E&P companies fail to award a contract for oilfield goods or services to companies held by Congolese nationals (provided that prices, quality and terms of delivery are the same), they are required to provide a list of imported goods to the Ministry, explaining why they have not used Congolese companies.

However, not all of the above rules have been consistently enforced by local authorities.

Conclusion

With the ongoing drop in crude oil prices and the reduction in foreign direct investment in the upstream sector, it is still unknown how host



countries, such as Angola, Mozambique, Gabon, Equatorial Guinea, Cameroon, São Tomé e Príncipe and the Republic of the Congo will adapt their local content policies to the new low cost oil environment. Promoting the attractiveness of a particular oil and gas province while, at the same time, supporting the country's economic and social needs (thus avoiding the "Dutch disease"), must be carefully assessed in order to ensure a win-win situation for both host countries and investors. This having been said, in the past increased local content has typically led to higher costs and, thus, lower direct State revenue (higher volume of cost recovery crude oil, and lower profit oil and taxes). In an environment where States are already seeing their revenue severely affected by low oil prices, it is anyone's guess whether they will prefer the short-term objective of higher revenue, or the long-term objective of greater national economic development. A lot will ride on how much cash was held in the national treasuries on the eve of the oil price crash and how balanced each budget is.

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