

Reconciling the local content laws and policies in Trinidad and Guyana with the CARICOM trade rules: lessons from the European Union

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ABSTRACT

Several Caribbean countries have local content laws that might go against the Revised Treaty of Chaguaramas and frequently reflect a patriotic mindset. Treaties between countries aiming primarily at the union of numerous independent nations might further complicate an industry already beset by challenges because they frequently necessitate the pooling of money and resources. This article will look at how the CARICOM nations of Trinidad and Tobago and Guyana deal with local content in their separate jurisdictions, and how it affects their CARICOM treaty obligations

1. INTRODUCTION

Globally, the oil and gas sector has been increasingly faced with public expectation for an equitable distribution of the benefits of oil and gas production.¹ This is more so for oil-rich developing countries which are plagued by the ‘resource curse’ syndrome, whereby the citizens live in abject poverty in the midst of their natural resources. Thus, the extractive industry, and in particular the oil and gas sector, can be a lucrative but complicated one. Governments often must balance the loss of potential profit to be made from valuable minerals when they allow foreign companies to extract and refine these minerals with the indispensable investment made by the companies that extract these minerals. This investment in the extractive industry by foreign companies is currently essential to the economies of Caribbean countries like Trinidad and Tobago (hereafter Trinidad) and Guyana. Governments have to balance the needs of their population, taking into consideration the cost of ensuring that the local economy benefits from the resource, and the possible

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1 Damilola S Olawuyi, ‘Local Content and the Sustainable Development Nexus’ in Damilola S Olawuyi (ed), *Local Content and Sustainable Development in Global Energy Markets* (CUP 2021) 1, 3.

environmental impact on the areas where mining and manufacturing is taking place, with the needs of these foreign companies which often dominate upstream, midstream and downstream industries. Many countries have responded to this challenge through the evolution of legal innovations and policies that are aimed at the maximization of the economic benefits of oil and gas production.

One of the key responses is the implementation of local content requirements and policies by various national governments.² The implementation of local content requirements and policies is posited as a measure through which oil-rich countries, particularly developing countries, can leverage on the exploitation of their natural resources to advance sustainable development in their countries.³ This article investigates the manner and extent to which the Caribbean Community (CARICOM) nations of Trinidad and Guyana engage with local content within their respective jurisdictions. A particular emphasis is placed on exploring and evaluating the extent to which sensitivity to local content rules within their domestic regimes impacts their obligations under the CARICOM treaty. The study also incorporates consideration of Caribbean jurisprudence in this area, and reference is made to the European Union (EU), a more mature region in certain aspects of this area of governance, in order to integrate additional insights.

This article is divided into nine sections. Section 1 is the introduction, which outlines the objective of the article and is followed by a general discussion about the significance of the local content policy in Trinidad and Guyana in Section 2. Section 3 discusses CARICOM trade rules and analyses how local content rules within the two CARICOM states can conflict with their obligations under this regional treaty. Section 4 examines the local content rules in Trinidad and Guyana in detail with abstracts from the policies within the two states, and the next section examines the local content rules in the two jurisdictions *vis-à-vis* the CARICOM rules. The next section engages in analysis of the EU in order to draw out comparative lessons that enrich consideration of the two CARICOM countries in relation to local content. This is followed by a discussion of the lessons learned, how some of the contentions identified throughout the article can be reconciled and the conclusion.

The concept of local content

A precise definition for the term 'local content' which is universally applicable seems elusive. The Natural Resource Governance Institute described local content as 'the value that an extraction project brings to the local, regional or national economy beyond the resource revenues'.⁴ Another writer described local content as 'the development of local skills, oil and gas technology transfer, and use of local manpower and local manufacturing in building a workforce that is skilled and building a competitive supplier base'.⁵ The definition of local content has further been expressed as '...the purchase or use by an enterprise of products of domestic origin or from any domestic source, or a regulatory requirement that some specific fraction of a good be produced domestically'.⁶ It is, however, noteworthy that even though the definition of local content changes

2 *ibid* 7.

3 *ibid*.

4 Natural Resource Governance Institute Reader, 'Local Content Strengthening the Local Economy and Workforce' <https://resourcegovernance.org/sites/default/files/nrgi_Local-Content.pdf> accessed 30 July 2020.

5 Joe Asamoah, 'Local Content in the Oil and Gas Industry' (Oil & Gas IQ) <<https://www.oilandgasiq.com/strategy-management-and-information/articles/local-content-in-the-oil-and-gas-industry>> accessed 30 July 2020. See also Isabelle Ramdoo, 'Designing Local Content Policies in Mineral – Rich Countries' (International Institute for Sustainable Development 2018) <<https://www.jstor.org/stable/resrep21957.4>> accessed 30 July 2020, who stated:

There is no established definition of what the terms 'local' and 'content' mean. In practice, however, the concept of 'local content' is understood to relate to a set of policy instruments elaborated by national and/or regional governments to ensure that a certain proportion of factors of production (such as labour, supplies of goods and services, technology and technical know-how) required at various stages of the mineral value chain is sourced from the domestic economy.

6 Michael Zisuh Ngoasong, 'How International Oil and Gas Companies Respond to Local Content Policies in Petroleum-Producing Developing Countries: A Narrative Enquiry' (2014) 73 *Energy Policy* 471 <<https://www.sciencedirect.com.ezproxygateway.sastudents.uwi.tt/science/article/pii/S0301421514003632?via%3Dihub>> accessed 20 August 2020. See also Silvana Tordo and others, 'Local Content Policies in the Oil and Gas Sector' (A World Bank Study) <<http://documents1.worldbank.org/curated/en/549241468326687019/pdf/>

depending on how one chooses to define it, the objective of local content is to transform resource-wealth into national development.⁷ Summarily, the term 'local content' simply describes the desire of host governments to benefit the nationals of host countries, and by extension the economies of host countries, by ensuring that any agreements entered into for the extraction and sale of resources include provisions that benefit host country individuals and companies through employment, granting of service contracts, education and community development, among others. This is in alignment with the principles of sustainable development.

Several of the targets set for the achievement of the United Nations (UN) sustainable development goals indirectly call for the implementation of local content requirements and policies by national governments. For instance, the UN recognizes poverty as one of the greatest challenges facing humanity in the present century. In the bid towards poverty reduction, the UN calls on governments to create opportunities for all persons to have equal rights to economic resources, as well as access to new technology.⁸ Similarly, in an effort to achieve affordable and clean energy for all, the UN calls for international cooperation to facilitate access to clean energy research and technology.⁹ Also, the achievement of sustainable development requires support for domestic technology development, as well as research and innovation, particularly in developing countries. Arguably, the definition of local content as 'the development of local skills, oil and gas technology transfer. . .',¹⁰ indicates that new technologies may be efficiently accessed where local content requirements and policies are in place. The principle of sustainable development encourages sustained economic growth through a minimum of 7 per cent gross domestic product growth per annum, as well as higher levels of economic productivity through technological upgrading and innovation.¹¹ To aid this, the UN calls for the promotion of development-oriented policies that support job creation, entrepreneurship, creativity and innovation.¹² Furthermore, the achievement of sustainable development requires the promotion of inclusive and sustainable industrialization and a significant raise in industry's share of employment and gross domestic product.¹³

Thus, local content policies that require the purchase or use by an enterprise of products of domestic origin or from any domestic source, or a regulatory requirement that some specific fraction of a good be produced domestically is significant to the achievement of sustainable development. Moreover, local content requirements and policies may contribute to achieving the goal of reduced inequalities between developed and developing or least developed countries.¹⁴ This is notwithstanding that the sustainable development goals expressly place emphasis on the need for global partnerships in the bid to achieve its agenda.¹⁵ This call for partnership indicates that the achievement of sustainable development extends beyond government responsibility to the participation of non-State actors such as multinational enterprises. In other words, local content requirements and policies ensure that non-State actors actively partner with national governments in the surge towards realizing the sustainable development goals.

Some common terms, conditions and practices for local content

Many countries set local content terms and conditions for the granting of contracts to foreign countries who want to operate within their borders. These countries base the grant of operating licences on whether a

Local-content-in-the-oil-and-gas-sector.pdf> accessed 17 August 2020 who explained that the definition of local content would depend on the social, political and economic objectives of the country where the local content policy is meant to be implemented.

7 Alicia Elias-Roberts, 'A Review of the Legal Framework of Local Content Provisions in Guyana' (2020) 2 OGEL <www.ogel.org/article.asp?key=3880> accessed 4 October 2020.

8 See the United Nations Sustainable Development Goals, goal 1 <<https://www.undp.org/sustainable-development-goals>> accessed 4 February 2022.

9 *ibid* goal 7.

10 See Asamoah (n 5).

11 The United Nations Sustainable Development Goals, goal 8.

12 *ibid*.

13 *ibid* goal 9.

14 *ibid* goal 10.

15 *ibid* goal 17.

company agrees on certain local content conditions. Such local content policies can be found in primary legislations, secondary legislations, regulations, policy statements, concessions and contracts, and in community development and impact agreements.¹⁶ For example, the Deepwater Model Production sharing contract of Trinidad requires a financial contribution to educational institutions that train nationals in the energy sector.¹⁷ Oil and gas contracts may also require that local contractors be hired.¹⁸ They may also require that contractors and subcontractors hire nationals over non-nationals.¹⁹ In fact, contracts may require that employment of non-nationals be minimized.²⁰ This may be subject to the terms of the contract or the laws of the State. Companies may be required to train nationals to work in the energy sector, sometimes at the company's expense,²¹ and to ensure their development by sharing technology and business expertise.²² Companies may also be placed under contractual obligation to comply with the local content policies of the nation where the natural resource is found.²³ In addition, there may be a prescribed percentage or minimum number of locals that must be employed by foreign companies.²⁴ There may also be a requirement that the size of the contract match the capacity of local enterprises,²⁵ and that there is equal treatment for local contractors in the tendering process.²⁶ Furthermore, companies may be required to purchase or use goods manufactured by local businesses, and they may also be required to build manufacturing plants which may determine whether they are granted the contract or not.

Some governments may stipulate a percentage of locally produced goods for retail sale, sometimes offering a reduction of taxes when this is done. Countries may also grant contracts to companies using local transportation services to carry their goods overseas only. Companies using local goods or services can sometimes be granted monetary benefits.²⁷ It may also be required that companies provide for utilization of goods and services of the host country in their bid proposals.²⁸ A requirement found in some contracts is that the contractor must fully exploit local goods, services and financing. Contracts are often structured to ensure synchronization of the financial, human and structural capacity of local businesses. Contracts sometimes include a specified quantity of local content which must be achieved. Advertisements are placed locally so as to ensure local business can participate with preference being given to local contractors and sub-contractors. With respect to workers, one practice which can be seen is that work permits are required in practice for non-national CARICOM citizens to work both in Trinidad and Guyana, and when a national becomes suitably skilled, policies are in place to ensure that such foreign workers are replaced with local workers.

Some have commented that this forces foreign companies to adhere to certain conditions if they want to operate in the host country, and that this may have negative effects on the economies of the countries where it is implemented because it may inhibit foreign direct investment.²⁹ It is also believed that many local content policies benefit nationals only from within the host country, which may be in violation of economic

16 Isabelle Ramdoo, 'Local Content Policies in Mineral-Rich Countries: An Overview' (European Centre for Development Policy Management Discussion Paper no 193 3:1) <<https://ecdpm.org/wp-content/uploads/ECDDPM-Discussion-Paper-193-Local-Content-Policies-Mineral-Rich-Countries-2016.pdf>> accessed 05 August 2020.

17 art 21(b)(ii), the Deepwater Model Production sharing contract of Trinidad and Tobago.

18 *ibid* art 25(2).

19 *ibid* art 25(4).

20 *ibid* art 25(5).

21 *ibid* arts 25(7), 39(9).

22 *ibid* art 39(8).

23 *ibid* art 39(1), also found in the Trinidad Petroleum Regulations (Shallow Water Competitive Bidding) Order, 2018 S14(f).

24 *ibid* art 39(2).

25 *ibid* art 39(3).

26 *ibid* art 39(6).

27 'Local Content Measures Scrutinized by WTO Members in Investment Committee' (World Trade Organisation) <https://www.wto.org/english/news_e/news19_e/trim_06jun19_e.htm> accessed 12 August 2020.

28 Petroleum Regulations (Shallow Water Competitive Bidding) Order, 2018 S10.

29 Holger P Hestermeyer and Laura Nielsen, 'The Legality of Local Content Measures under WTO Law' (University of Copenhagen Faculty of Law Legal Studies Research Paper Series, paper no 2015-4) accessed 12 August 2020.

integration treaties these countries may have signed.³⁰ However, it is argued that for many small economies like those of Trinidad and Guyana, local content policies may be an important way to prevent exploitation and the resource curse. In many resource-rich countries, local content practices can sometimes be found in policies that aim to maximize use of national workers by giving priority to employing citizens, while restricting use of foreign workers to situations where local workers cannot be found. Such local content policies promote the development of nationals' skills and expertise. Under contract, as mentioned above, training of nationals is required in some production sharing agreements. The aim of these training programmes is usually to qualify nationals to perform jobs foreign nationals would previously have performed. Meanwhile, it is noteworthy that oil and gas companies are often granted incentives which can include training subsidies when locals are trained, or exemption from taxes, but these are discretionary. Similarly, certain classes of companies receive tax credits once they are incorporated in the host country or are owned by nationals, while other companies receive tax exemptions if they satisfy local content requirements. Moreover, local content requirements have been expressed as a form of sustainable resource management, which creates a balance of social and economic development, as well as environmental protection in the management and use of natural resources.³¹

Hence, this article seeks to explore how the CARICOM nations of Trinidad and Guyana deal with local content within their respective jurisdictions, and how this impacts their obligations under the CARICOM treaty. To do this, the local content rules in Trinidad and Guyana will be explored to gain a greater sense of where these countries are with respect to their provisions for local content, and especially in relation to their position as signatories of the Revised Treaty of Chaguaramas (RTC).³² The importance of local content to these nations will then be considered with the aim of showing how these nations benefit from local content provisions. Then the RTC provisions will be explored to determine how they relate to local content. Next, Caribbean jurisprudence will be explored to determine what the Courts have ruled regarding local content. Lessons that may be important for Trinidad and Guyana will be explored with the hope of clarifying how the treaty provisions and local content provisions can be amalgamated. The study also makes reference to the EU, which is a significantly more mature region in certain respects in the spheres of regional cooperation, and oil and gas governance. Reference to the EU experience permits lessons to be suggested for CARICOM by way of comparison.

2. SIGNIFICANCE OF LOCAL CONTENT POLICY FOR TRINIDAD AND GUYANA

Economic hardships were directly related to the advent of local content policies as countries attempted to rescue their economies.³³ Some think that there may be undesirable outcomes for countries which have local content policies but fail to put regulatory institutions in place to monitor outcomes. In addition, some feel that local content policies restrict foreign companies' ability to make income.³⁴ However, it is proposed here that local content policies are important in order to assist the development of the nationals and businesses of host countries, particularly developing ones. This is especially relevant where countries are small and prone to the resource curse which occurs when there is little development of the infrastructure, economy and/or human resources of resource-rich countries. When this resource curse occurs, citizens live in relative poverty even though foreign businesses and economies benefit from exploitation of these resources. Proper planning by a government for its citizens can ensure that local content is used to avoid this resource curse by ensuring

30 *ibid.*

31 Olawuyi (n 1) 9.

32 On the RTC, see further the outline and examination of this treaty below.

33 Ramdoo (n 16).

34 Nazim Baluch and Richard Rambarran, 'Understanding Local Content Policy in Guyana's Oil & Gas Sector A Critical Overview' (Guyana Diaspora and Entrepreneurship Conference 21–25 July 2019, School of Entrepreneurship and Business Innovation, University of Guyana) <https://www.researchgate.net/publication/334457010_Understanding_Local_Content_Policy_in_Guyana's_Oil_Gas_Sector_A_Critical_Overview/citation/download> accessed 5 August 2020.

that revenue created through use of resources are invested in its nationals. Citizens can benefit through investment in nationals by employment, training and educational opportunities, and infrastructural development, among others. In addition, oil companies often provide scholarship opportunities for community development and resources for local communities such as community centres. This investment also comes in the form of providing for use of local business by foreign companies. Local businesses are also given the opportunity to build their capacity and thus be in a position to compete with international businesses. Linkages can be created within the international energy sector when these businesses gain the capacity that would allow them to perform jobs internationally.

3. THE CARICOM TRADE RULES

The small economies of several Caribbean countries necessitated the move to integrate and form a single market in order to create a stronger economic and trading block. This economic block was formed by the Treaty of Chaguaramas, later the RTC. The RTC established the CARICOM and the Caribbean Single Market and Economy (CSME). The Treaty of Chaguaramas³⁵ was agreed upon as a means to foster regional development through cooperation. The treaty solidifies economic integration, as outlined in the preamble, which states as one of its goals the improvement of access by nationals of Member States to the resources of all member countries without discrimination.³⁶ Non-discrimination, where non-nationals of Member States are treated as citizens, is mentioned both in the preamble and in Article 7, and seems to be an important requirement of member countries, presumably so that the treaty can work in the way it has been intended.³⁷ This treaty recognizes that integration is necessary to compete on an international scale with larger more developed countries. In fact, one of the objectives listed in the treaty is to improve economic leverage when dealing with the third states or entities. Indeed, on their own, the CARICOM Member States, which are relatively small in size and economy, in many cases lack the economic strength and capacity necessary to negotiate with large third states or large rich companies which exercise considerable negotiating power. CARICOM Member States through the RTC have expressed and recognized that there is a need to work together to establish an economic environment that facilitates the uninterrupted integration of the factors of production, movement and development both of infrastructure and businesses, which can lead to greater efficiency and better production both for export and for use by Member States. This is to be assisted by the development of the necessary infrastructure, and by paying attention to and adopting international standards.

CARICOM was meant to be the vehicle, whereby Caribbean nations would work together under CSME. Chapter 3 of the RTC governs this attempt at a single market. While the RTC does not specifically mention the term local content, its provisions provide for a unified approach to development and employment of labour across borders and thus in substance, they create local content rules. An example of a provision which in substance addresses local content on a regional scale is found in Article 6(b), which lists one of the objectives of CARICOM as 'full employment of labour and other factors of production', presumably among member countries.³⁸ Furthermore, Article 74(a) stipulates that laws and administrative practices regarding companies should be harmonized among Member States; this should make it easier for companies to expand operations to multiple Member States. Arguably, local content provisions under the RTC should include non-national companies, and CARICOM citizens would fall under this article. In addition, for a single market to work, the factors of production, which would include labour, need to be free to operate in any sovereign country which is a signatory to the RTC, which is one possible explanation for Article 74(a).

35 Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy, 2259 UNTS 293 (Nassau, Bahamas 05 July 2001).

36 *ibid*, preamble.

37 See ch 3 on the Establishment, Services, Capital and Movement of Community Nationals in the RTC.

38 The Revised Treaty of Chaguaramas, Objectives of the Community (n. 35).

The treaty as mentioned before also prohibits discrimination on the ground of nationality.³⁹ This can possibly apply to prevent discrimination when non-national CARICOM citizens seek employment in any CARICOM nation. Local content policies in substance can also be seen in Article 35 which allows for the Council for Human and Social Development to establish common measures for accreditation so as to enable employment of nationals in any Member State. In addition, Articles 45 and 46 of the RTC allow for the free movement of Community Nationals, necessary for those seeking employment in Member States. However, Article 45 frames this as a goal to be achieved, meaning it is an ongoing effort on the part of sovereign Member States. Article 46 specifically allows certain classes of Community nationals to seek employment in Member States.⁴⁰ This, however, is formulated as a first step, meaning that more steps must be taken to achieve the necessary integration. Additionally, the classes of nationals listed may exclude CARICOM citizens with the necessary skills to seek employment in the energy sector. This could be an obstacle to full integration of the regional labour force.

Article 51(a) allows for the employment of human resources across borders. However, this is stated as a goal to be achieved, indicating that CARICOM members have yet to achieve this goal. This could be one possible reason why the local content policies of oil-rich CARICOM nations do not include non-nationals. One article explains this hesitancy as being linked to economic and job insecurity, stating: 'the CSME also envisages the integration of the regional market for services. In this context, however, competent decision-makers have decided to move with some degree of caution and circumspection, given national paranoia about the vulnerability of various island economies to an unrestricted influx of unskilled labour in search of job opportunities.'⁴¹ Thus, while the RTC does not mention the term 'local content', there is no ambiguity about whether member countries are allowed to exclude non-nationals who are citizens from other CARICOM countries from benefiting under their local content policies. This can be seen in the provisions that encourage free movement and employment, as well as those that prohibit discrimination. Thus, local content arguably is included in the substance of the RTC. Guyana and Trinidad are both signatories to the RTC and have been members of CARICOM since 4 July 1973. The RTC came into force on 1 August 1973. This treaty replaced the 1965 Caribbean Free Trade Association.⁴²

Why is this treaty relevant for local content?

Although the treaty does not mention local content, it is arguably important nevertheless, when considering local content, because its substance speaks to integration of local content. This integration of Member States' labour force, whereby technology and ability could be shared and harnessed could assist these nations in achieving economic development and international competitiveness. This increased economic strength, gained through proper integration measures and the execution of thorough economic planning, could lead to greater power, or at the very least improve the lives of CARICOM citizens.

Inclusion of non-national CARICOM members in local content would be one way to improve attempts at integration and would be in keeping with the provision for non-discrimination which can be found in Article 7(1) of the RTC. To exclude non-national CARICOM members arguably can be considered a form of discrimination and breach of the agreement. The RTC as mentioned before makes provisions for movement of skilled CARICOM citizens. Failure to include skilled non-national CARICOM members in local content provisions can deny the host country the ability to make use of these people, who could in turn have the opportunity to teach their skill to the nationals of the CARICOM Member State with the resources. Restrictions

39 *ibid* art 7(1).

40 *ibid* art 46—Movement of Skilled Community Nationals University graduates, media workers, sportspersons, artists and musicians.

41 The Integrationist Caribbean, The Revised Treaty of Chaguaramas <<http://www.theintegrationistcaribbean.org/economic-integration/the-revised-treaty-of-chaguaramas/>> accessed 5 August 2020.

42 Chaguaramas Development Association <<https://www.chaguaramas.com/discovery-zone/chaguaramas-history/treaty-of-chaguaramas>> accessed 6 August 2020.

such as these can impede the working of the CSME and its aim to foster regional integration. Including non-national CARICOM citizens in local content would also fulfil one of the aims of the RTC, which is to ensure education and training of citizens of Member States. Companies in the energy sector, which are often required to train nationals will, if non-national CARICOM citizens are included in the local content provisions, also be required to train these CARICOM citizens. Such citizens, while benefiting from the training which is often a condition of local content policies and contracts, could also benefit the region by further training other CARICOM citizens.

The RTC is aimed at the integration of CARICOM Member States' economies. Meaningful regional integration would require some of the insecurity which exists about availability of jobs and economic stability to be put aside. Arguably, one of the objectives of the RTC is that non-nationals should be allowed to work in other Member States where they may not be a citizen. The argument can be made from an economic perspective that these non-national CARICOM citizens should be regarded as local content, especially when considering that one of the aims of the RTC is to increase bargaining power. This would mean that an oil contact between the CARICOM countries and the international oil companies will have implications, not only for the Member State, but also for all members of CARICOM and their nationals. Many Member States, however, may not be willing to negotiate as a block nor to consider their resources as part of a pool of resources. This may be another explanation for the exclusion of non-CARICOM citizens in local content policies of resource-rich CARICOM Member States.

4. THE LOCAL CONTENT RULES IN TRINIDAD AND GUYANA

Local content can be defined broadly to encompass nationals and businesses of a specific country. It can be limited to the residents or businesses of a specific area within a specific country, in which the resource is found. The latter is not the case in Trinidad and Guyana. Trinidad's regulations apply to Trinidad nationals and businesses and similarly, Guyana's regulations apply to Guyana nationals and businesses. This is presumably because these countries are relatively small, with their oil deposits scattered around the country.

Guyana's rich history shows that wells were built there as early as 1916; however, major oil production was set in motion in 2015 when oil-bearing sandstone reservoirs were discovered.⁴³ Guyana has a dualist legal system and therefore treaties must be incorporated into law before they can be enforced in this nation.⁴⁴ Local content policy cannot outrightly be found in the Petroleum laws of Guyana. Guyana's Petroleum Act Chapter 92:01,⁴⁵ and the Guyana Petroleum (Production) Act Chapter 65:05,⁴⁶ do not contain any provisions for local content. Local content provisions can, however, be found in the substance of other laws. For example, the Petroleum (Exploration and Production) Act Chapter 65:10 declares that being a citizen is one condition of being granted a licence.⁴⁷ The Petroleum (Exploration and Production) Act of Guyana also includes general obligations concerning the employment and training of Guyanese nationals as well as the procurement of goods and services that can be procured locally. Section 36(1) of the Petroleum (Exploration and Production) Act provides as follows:

43 OilNow, 'Guyana History with Oil Dates Back Centuries' <<https://oilnow.gy/featured/guyana-history-with-oil-dates-back-centuries/>> accessed 04 August 2020.

44 Clive Pegus, 'Review and Analysis of Compliance of the National Labour Legislation of Guyana with CARICOM Model Labour Laws' <https://www.ilo.org/wcmsp5/groups/public/--americas/--ro-lima/--sro-port_of_spain/documents/projectdocumentation/wcms_305924.pdf> accessed 12 May 2022.

45 Petroleum Act, ch 92:01, Laws of Guyana. This Act regulates the importation, storage and sale of petroleum.

46 Petroleum (Production) Act, ch 65:05, Laws of Guyana. This short Act has only two sections and concerns the ownership or vesting of petroleum in State.

47 Petroleum (Exploration and Production) Act, ch 65:10 (1986), Laws of Guyana, s 9(1)(a) no individual shall be granted a licence unless he is a citizen of Guyana.

'A petroleum production licence shall not be granted to an applicant therefor unless-

- ... (iv) the applicant's proposals for the employment and training of citizens of Guyana are satisfactory;
- (v) the applicant's proposals with respect to the procurement of goods and services obtainable within Guyana are satisfactory⁴⁸

Local content policy for Guyanese nationals was formulated in 2020, approximately 5 years after the announcement of the major oil discovery. The 2020 local content policy specifically provides for Guyanese Citizens.⁴⁹ In describing local content plans, the policy seeks to recognize Guyanese persons in the operator's activities and programmes, and states that the activities of the operator should be sub-divided so as to gain an accurate projection of the number of Guyanese persons, suppliers and sub-contractors, which would be needed to perform the job, to accurately plan for the training of Guyanese persons, to ensure the capacity of Guyanese suppliers is sufficient, and to enable other capacity building initiatives which support the objectives of governmental policy for local content specifically in the petroleum sector.⁵⁰ The policy also aims to amplify benefits to local employment, local businesses, Guyanese persons and suppliers and investors.⁵¹ Furthermore, the policy stipulates that operators and primary contractors shall engage in such a way that gives Guyanese persons and suppliers 'first consideration' and 'adequate opportunity' to provide labour, goods and services.⁵² The local content policy of Guyana sets the stage for a forthcoming legal framework for local content and mentions non-national CARICOM citizens under section 1.13, where it states as follows:

It is the intent of the Government of Guyana that this policy be implemented in full. ... As a backstop to assure policy delivery, the government is considering codification of the policy through regulation, underpinned by the necessary legal framework, consistent with international trade obligations, *including under CARICOM*. In the interim, it is the expectation of the Government that all relevant parties implement the policy speedily, comprehensively and in good faith, facilitating the smooth transition of all parties to formal regulation in due course . . .

More recently, Guyana approved its Local Content Act 2021.⁵³ The said Act implemented several goals of the local content policy.⁵⁴ However, the Act also pointed out the definition of Guyanese companies and Guyanese nationals without any reference to CARICOM.⁵⁵

Turning to Trinidad and Tobago, this country also has a dualist legal system. It passed the Caribbean Community Act,⁵⁶ which ensures that the RTC can be enforced. Similarly, Trinidad has local content provisions specifically for nationals. A subsidiary of the Trinidad Act contains petroleum regulations which state that a licensee shall:

minimise the employment of foreign personnel, ensure that such employees are engaged only in positions for which the operator cannot, after reasonable advertisement in at least one daily newspaper circulating

48 s 36.

49 Guyana Ministry of the Presidency Department of Energy, Guyana Petroleum Sector, 'Realising Local Content Benefits and Value Retention from Guyana's Petroleum Resources', Local Content Policy, January 2020, s 2.1.

50 *ibid.*

51 *ibid* Guyana Local Content Policy, p 13.

52 *ibid* 2.2.3.

53 Local Content Act 2021.

54 *ibid.*

55 *ibid.*

56 Trinidad and Tobago Caribbean Community Act, No. 3 of 2005.

in Trinidad and Tobago, find available nationals of Trinidad and Tobago having the necessary qualifications and experience; determine the rules of employment including salary scales in such manner as to ensure that all employees in the same category enjoy equal conditions irrespective of nationality.⁵⁷

It goes on to say:

...prepare, in consultation with the Minister, programmes for industrial and technical education and training, including the grant of scholarships, and carry such programmes out diligently with a view to training nationals of Trinidad and Tobago to replace foreign personnel as soon as reasonably practicable and to affording nationals of Trinidad and Tobago every possible opportunity for occupying senior positions in the operations of the licensee.⁵⁸

The Trinidad Petroleum Act was passed in 1980, prior to the time in which Trinidad became a signatory to the RTC. The Petroleum Act mentioned local content but it was not until 2004 that Trinidad created its local content policy. These regulations specifically provide only for nationals. For example, one provision gives a definition of 'Local Content and Participation' as '*collectively referred to as "local value-added" . . . defined in terms of ownership, control and financing by citizens of Trinidad and Tobago*'.⁵⁹ The Petroleum Regulations (Shallow Water Competitive Bidding) Order 2018 also contains local content requirements, as does the Deep-Water Depth Model Production Sharing Contract 2013. Neither of these regulations recognize nor include non-national CARICOM citizens.

Local content policies in Trinidad are not limited to the Petroleum Act and Regulations. They can also be found in the substance of other laws such as the Fiscal Incentives Act chapter 85:04 in S3 where they are not expressed as local content but as value added minus the amount paid to non-nationals (section 3(1)(b)). This Act ensures local companies receive grants if they aid economic development. Local content provisions can also be found in the substance of the Unemployment Levy Act chapter 75:03, which places a levy on the profits of Petroleum companies which is then used to train unemployed nationals. While providing for nationals, this levy may discourage investment as section 12 makes it clear that the levy does not affect any income tax to be paid by petroleum companies. Local content in the substance of the law can also be seen in the Petroleum Production Levy and Subsidy Act chapter 62:02, which is a levy on petroleum production, which funds subsidies on petroleum and its products that are used by nationals.

In Guyana, local content policies are seen as a way to correct market failures by ensuring that companies invest in development of local skills related to the energy sector. One factor that is noted with concern in the Guyana 2020 Local Content Policy is that the policy includes several confidentiality provisions,⁶⁰ which goes against the normal spirit of transparency and openness in the disclosure of the local content information. All information regarding local content should be publicly available as this is critical to efficient and effective market functioning in the industry. The Local Content Policy is seen as a way to assist local businesses to integrate into global energy markets by creating backward linkages, their purpose being to 'ensure a more equitable distribution of the resource rents and to make sure that the local community also benefits from the extraction'.⁶¹ Nevertheless, it is relevant to note that such confidentiality provisions were not included in the Local Content Act in Guyana. Similar benefits have been enumerated for Trinidad as well as other resource-rich countries. However, in Trinidad and Tobago there are no confidentiality provisions in their local content

57 Trinidad and Tobago Petroleum Regulations (Legal Notice no. 5 of 1970), s 42(f), made pursuant to the Trinidad and Tobago Petroleum Act (no. 46 of 1969).

58 *ibid* s 42(g).

59 'Local Content and Local Participation Policy and Framework', Trinidad and Tobago Energy Sector, p 6.

60 (n49) See s2 s2.6.12, s3.2.8.2; s3.2.10.7 and s3.3.6.

61 Bobby Gossai Jr, 'Local Content Policy for Guyana: Maximizing Economic Benefits' (OilNow) <<https://oilnow.gy/opinions/local-content-policy-for-guyana-maximizing-economic-benefits/>> accessed 20 August 2020.

policies. While resource-rich countries adopt local content policies in their attempts to improve the local economy by leveraging linkages to extractive projects beyond the revenues these generate, the local content policies can violate treaty provisions.⁶²

5. THE LOCAL CONTENT RULES IN TRINIDAD AND GUYANA VIS-A-VIS THE CARICOM RULES

While CARICOM Member States have largely integrated and adopted the CARICOM trade rules into their laws and policies, in practice, integration is missing in the area of local content. Some CARICOM Member States⁶³ have implemented local content policies which strictly aid citizens and businesses incorporated within their country, and owned by locals, instead of assisting CARICOM citizens generally.

The local content policies in Trinidad and Guyana conflict with some of the provisions of the RTC. While the local content policies are intended to benefit nationals, they can negatively impact the CSME. Notwithstanding, provisions which in form echo local content provisions, assist Community nationals, and allow for the development of human resources can be found in Article 63. Here, the provisions aim to ensure the training of human resource of CARICOM Member States in areas such as entrepreneurship, and state the aim to develop an industry-oriented curriculum. However, these aims are also listed in a way which suggests that it is an ongoing effort, which may be another factor possibly accounting for the exclusion of non-national CARICOM citizens from the local content provisions in Trinidad and Guyana.

The RTC does not provide for mandatory employment of community nationals by Member States, and no employment quota is agreed upon among the states. This is conceivably in keeping with state sovereignty and a government's right to legislate or regulate for the benefit of its citizens. The provision for free movement of CARICOM nationals as well as there being no need for a work permit in the RTC provisions should, however, facilitate employment of non-national CARICOM citizens. However, in practice, work permits are sometimes still required for non-national CARICOM citizens who do not qualify for the CARICOM Skilled National Certificate, and employment depends largely on the needs of the various employers in Member States.⁶⁴

Article 32 prohibits restrictions on the right to establishment, with Article 32(3)(1)(a), allowing non-nationals of CARICOM to conduct non-wage-earning activities of a commercial or industrial nature. This could ensure that non-national CARICOM members are not excluded from establishing sole trader businesses. Article 32(3)(2) describes non-wage earning activity as activity performed by self-employed persons. This arguably opens the doors for non-nationals of CARICOM Member States to be included in local content if they are self-employed and performing activities of a commercial or industrial nature in the energy sector. However, this opportunity can be obstructed by Article 32(5) which establishes criteria for nationality within Member States to prevent abuses. This arguably further illustrates CARICOM Member States' insecurity about job availability and economic stability. Under Article 32(5), companies must be substantially owned by a citizen of the Member State or someone with sufficient connection under immigration laws to be considered a national. This demonstrates both that local content rules subsist in laws which are not directly connected to the energy industry, and that local content rules can exist in the substance of laws.

62 Columbia Centre on Sustainable Development, "Local Content" Trinidad and Tobago Petroleum' <<http://ccsi.columbia.edu/files/2014/03/Local-Content-Trinidad-and-Tobago-Petroleum-CCSI-June-2014.pdf>> accessed 20 August 2020. See also A Elias Roberts, 'The Development and Implementation of Local Content in the Extractive Industries in Trinidad and Tobago and Guyana' in Eduardo Pereira and others (eds), *Sovereign Wealth Funds, Local Content Policies and CSR-Developments in the Extractive Sector*, CSR, Sustainability, Ethics & Governance Series (Springer International 2021).

63 In particular, Trinidad and Tobago and Guyana as explored in this article above. See also Barbados National Energy Policy (2017–2037), and St Lucia, A National Services Policy & Strategy for Saint Lucia (2017).

64 Note that the CARICOM-CSME Free Movement of Skills Certificate is a document that is issued to any CARICOM national that falls under the approved categories listed in the RTC. This certificate eliminates the need for a work permit in a CARICOM country.

Article 37 aims to prohibit any restrictions on the provision of services by non-nationals of Member States. However, this is done in terms which suggest that it is an ongoing activity and thus may also explain the exclusion of non-national CARICOM citizens from local content provision in Trinidad and Guyana. It is also possible that there is no direct mention of local content in the RTC because as mentioned before, there is no one definition for local content and its definition often depends on location and situation. In addition, definitions of local content often refer to locals or citizens of a country while CARICOM and CSME are meant to benefit the nationals of Member States.

6. LESSONS FROM THE EU BY WAY OF COMPARISON

Consideration of the EU provides a useful way of informing the present analysis by way of comparison. The EU is a helpful region to look towards for insights and lessons because it is more mature than CARICOM in certain significant respects in relation to regional cooperation and oil and gas governance. This is due in part to the EU's origins in the Treaty of Paris 1951,⁶⁵ whereas the RTC in its original form was signed much more recently in 1973.⁶⁶ This means that CARICOM has had a substantially shorter period in which to develop. It is also notable that the EU, taken cumulatively, constitutes one of the world's major developed regions, whereas CARICOM incorporates developing countries; reference to the EU thus also permits interesting insights to be drawn for CARICOM by way of this juxtaposition of developed/developing circumstances.

The EU had its initial origins in the establishment of the European Coal and Steel Community under the terms of the Treaty of Paris 1951.⁶⁷ The Treaty was an agreement between France, Germany, Italy, Belgium, the Netherlands and Luxembourg, with its primary emphasis falling on fusing the French and German coal and steel industries.⁶⁸ These industries were linked under the control of a High Authority, which operated at a 'supranational level' of governance,⁶⁹ ie it operated independently of the six countries. This planted the seeds of a much more developed supranational governance level that would gradually evolve and enlarge over time, doing so in an ongoing and increasingly substantial way, up to the present.⁷⁰ A prohibitive reluctance on the part of states to cede substantial national power to a supranational governance level, arguably evident in the history and development of CARICOM as analysed above, was mitigated somewhat by Europe's very particular geo-political circumstances in the 1950s. Here, it was thought that the Treaty of Paris's novel fusion of coal and steel industries would make it much more difficult for either France or Germany to go to war in the future, with World War II having recently concluded (1939–1945).⁷¹ That war in turn had been preceded by the devastation of World War I (1914–1918). These arrangements were built upon by the Treaties of Rome in 1957.⁷² This comprised the signing of two treaties, one of which established EURATOM, a community of the same six countries that aimed to further co-operate in the use of atomic energy.⁷³ The other treaty, also incorporating

65 Treaty of Paris 1951 (Traité instituant la Communauté européenne du charbon et de l'acier).

66 See, Alicia Elias-Roberts, Professor Stephen Hardy, and Professor Winfried Huck (eds.), *EU and CARICOM: Dilemmas versus Opportunities on Development, Law and Economics*, (Routledge Book Series – Transnational Law and Governance, United Kingdom, 2020).

67 The ECSC was in operation for 50 years until it expired in 2002, having laid in its initial phase a key basis for the EU developments to follow.

68 Berthold Rittberger, 'The Treaty of Paris' in Erik Jones, Anand Menon and Stephen Weatherill (eds), *The Oxford Handbook of the European Union* (OUP 2012) 79–94.

69 Tsebelis George and Geoffrey Garrett, 'The Institutional Foundations of Intergovernmentalism and Supranationalism in the European Union' (2001) 55(2) *International Organization* 357. On 'multilevel governance' and the EU, see Gary Marks, 'Structural Policy and Multilevel Governance in the EC' in Alan Cafruny and Glenda Rosenthal (eds), *The State of the European Community* (Lynne Rienner 1993) 391–410.

70 Desmond Dinan (ed), *Origins and Evolution of the European Union* (OUP 2014).

71 See further, 'The Postwar Context', in Desmond Dinan (ed), *Origins and Evolution of the European Union*, Part II (OUP 2014).

72 The Treaty establishing the European Atomic Energy Community (EAEC or Euratom); Treaty establishing the European Economic Community (EEC).

73 The Treaty establishing the EAEC or Euratom, 1957.

the same six countries, established the 'European Economic Community', which was presently renamed the 'European Community' and then renamed again as the 'European Union'.⁷⁴

These economic developments served to extend economic integration in the six founder countries beyond coal and steel. The treaty arrangements did not incorporate or engage 'local content' directly, but one witnesses the beginnings of a level of integration that served in its own right to moderate what might be described as the semblance of local content rules within a gradually cohering internal market. Thus, the Treaty of Rome created a customs union for the six countries that enabled the free movement of goods, and a common customs tariff was also applied to goods entering the EU.⁷⁵ A common market was enabled in concert with this, based on the gradual removal of barriers to trade, the introduction of free movement rights for workers, and prohibition of anti-competitive practices.⁷⁶ Common policies on agriculture and transport were also introduced. As a consequence, the oil and gas sector within the EU has benefitted from this emerging common market, which has been undergirded by a tradition of free movement of workers across Member State countries. This facility for worker movement has remained a core feature of the evolving internal market over time, and has expanded in concert with the free movement of goods, capital and services across the Member States.⁷⁷ Thus, within the EU, it can be seen that a sophisticated regime was beginning to emerge that was in essence endeavouring to balance single market interests at a point in time when CARICOM and its single market regime under the CSME framework were yet to be created. This has given it a longer period in which to mature and evolve. It is also notable that much of these developments were driven initially by the urgency of a need to reconstruct post-war Europe while also ensuring France and Germany in particular would be disinclined towards war in the future as a consequence of the new co-dependence of their major industries and the increasingly interconnected nature of their economies. Again, such particularized post-war drivers have not acted on CARICOM in a comparable way, meaning that its initial evolution did not commence at the same intensive pace.

The pace and intensity of these initial developments meant that augmentation of the EU's rudimentary supranational level of governance was soon required, and so the Treaties of Rome established substantial supranational institutions that have since gone on to evolve and develop further over time. Most importantly, these include: the establishment of an Assembly that has since evolved into the EU's European Parliament; a Council; a Commission; and the European Court of Justice, which in current times has been renamed the Court of Justice of the European Union (CJEU).⁷⁸ A Merger Treaty of 1965 consolidated some of the existing supranational institutional architecture,⁷⁹ and by the 1970s a surge in Accession Treaties was beginning as other European countries moved to join the Union. The UK, Ireland and Denmark each joined in 1972, followed by Greece (1979), and Spain and Portugal (1985). Austria, Finland and Sweden each joined in 1995, and the most pronounced number of Accession Treaties in a single year to date occurred in 2004.⁸⁰ Again, 'local content' was not an overt consideration or component of EU Treaty law, yet it is clear that a regime incorporating issues pertinent to local content matters was expanding as an increasing number of Member States and their nationals joined to participate in a heavily integrated and consolidated EU economy. At its peak the EU included 28 Member States, until the UK left the EU in January 2020, leaving 27 Member

74 The Treaty establishing the EEC, 1957.

75 As noted above, the official name of the EU at this time was still the 'European Economic Community'.

76 Neil Fligstein and Alec Stone Sweet, 'Institutionalizing the Treaty of Rome' in Alec Stone Sweet, Wayne Standholtz and Neil Fligstein (eds), *The Institutionalization of Europe* (OUP 2001) 29–55.

77 Catherine Barnard, *The Substantive Law of the EU* (OUP 2019).

78 The aims of EU internal market, which emerged this period, are stated as follows: 'The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.' Treaty on European Union, art 3(3).

79 Merger Treaty, signed on 8 April 1965, in force 1 July 1967.

80 Poland, Czech Republic, Slovenia, Hungary, Estonia, Latvia, Lithuania, Slovakia, Cyprus (S), Malta.

States.⁸¹ It is noteworthy that in contrast to CARICOM nations such as Trinidad and Guyana, which involve relatively small developing economies that can benefit from economic consolidation, the EU Member State economies have sought to benefit from economic consolidation in a similar fashion, but have typically involved comparatively large and developed economies. Thus, the ‘purposes’ behind the EU and CARICOM single markets are very similar, namely to galvanize a stronger economic and trading block; however, the ‘actual economic conditions’ of the participating nations in both regions of the world tend to differ significantly.

Criteria for EU membership itself includes the need for a stable democracy, respect for human rights, application of the rule of law, protection of minorities, a functioning market economy and the agreement to adopt common rules, standards and policies of EU law.⁸² These factors have come to increasingly undergird the EU’s single market and associated governance regime over time, including its substantial institutions and its regulatory and participatory architecture at the supranational level. This partially distinguishes the EU regime design that moderates governance in the sphere of oil and gas from the less supranationally developed CARICOM schematic outlined above.⁸³ Again, it is to be noted that the robust governance architecture and regime design that operates supranationally to govern the EU single market, and which therefore moderates local content-oriented issues, was gradual in its evolution and design.⁸⁴ Thus, CARICOM actors seeking to draw inspiration from an EU-style template in the sphere of energy governance with reference to local content issues would be well advised to remain cognizant of the fact that transition towards a more EU-oriented schematic will likely take some time, and involve not only complex developments in governance design, but also a political will on the part of participating states to cede substantial powers to supranational institutions.

Bearing this in mind, attention can usefully be drawn to the Single European Act 1986, which played a crucial role in EU evolution.⁸⁵ It was deemed necessary to assert under this Act that the EU was to remove remaining barriers to trade by 31 December 1992 at the latest in order to complete the internal market properly.⁸⁶ This set of reforms in essence enabled the highly developed form of single market that presently functions, with the preceding market structure subject to more substantial constraints. ‘Co-operation’ procedure also enhanced the European Parliament’s role in law-making under the 1986 Act, as it was perceived that extant problems around democratic accountability and public input into decision making at the supranational level were due to be exacerbated by moving market inputs and controls further away from people within Member States and upwards towards the higher level of the EU’s multi-level governance regime.⁸⁷ The Treaty of Amsterdam of 1997 further refined the system,⁸⁸ as did the Treaty of Nice of 2001,⁸⁹ with the latter Treaty in particular placing an emphasis on yet further ‘enhanced co-operation’ between Member States. Although the term local content does not surface in EU treaty provisions here, the emergent governance design in essence creates EU-wide local content rules insofar as it provides for a unified approach to economic development in concert with the freely moving employment of labour. Thus, the free movement of workers accorded to EU nationals across the Member States as a whole can be viewed as affording local content protections within the EU single market. While such augmented features may provide a beneficial model for CARICOM as it develops due to the level of harmonization that can be realized with reference to local content and other issues across diverse nations, there is also a cautionary tale here: the system must be careful to

81 Thomas Muinzer, ‘An Evaluation of the Implications of EU Climate and Energy Governance for the UK in Light of Brexit’ (2017) 23(2) *European Journal of Current Legal Issues*.

82 European Commission, ‘Conditions for Membership’ <https://ec.europa.eu/neighbourhood-enlargement/policy/conditions-membership_en>

83 See generally the analysis of CARICOM above.

84 Dinan (n 70) above.

85 Single European Act 1986 (2 EC Bull No 11).

86 Hans-Joachim Glaesner, ‘The Single European Act: Attempt at an Appraisal’ (1986) 10 *Fordham Int’l LJ* 446.

87 Some of the serious problems posed by a persisting ‘democratic deficit’ at the EU’s supranational level are drawn out in: Thomas Jensen, ‘The Democratic Deficit of the European Union’ (2009) 1 *Living Reviews in Democracy*.

88 Treaty of Amsterdam, 1997 <<https://www.europarl.europa.eu/topics/treaty/pdf/amst-en.pdf>>

89 Treaty of Nice, 2001 <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12001C/TXT&from=EN>>

remain cognizant of democratic accountability and public input into decision making, given that certain market controls and functions are moved away from people and governments within particular states and somewhat and rebalanced across a diversity of states.

In relation to energy governance as a narrow issue, a particularly crucial milestone occurred in 2007 with the adoption of the Treaty of Lisbon (coming into force on 1 December 2009).⁹⁰ Prior to this Treaty, although the EU had engaged in fairly extensive governance in the area of energy law via alternative non-energy-specific levers and powers,⁹¹ energy itself had been controlled internally by the Member States, because the direct constitutional capacity to govern in this sphere had been retained at Member State level.⁹² The Treaty of Lisbon moved energy 'upward' into the EU's constitutional legal order for the first time, thus including oil and gas, by incorporating it into the EU's Treaty on the Functioning of the European Union (TFEU) as a 'shared competence'.⁹³ This permitted the EU level to undertake action in the area of energy more explicitly, easily and extensively.⁹⁴ In other words, energy governance was now 'shared' between the individual Member States and the EU level for the first time.⁹⁵ Here, again, although local content does not emerge as an overt preoccupation in EU Treaty law, the movement of governance control upward to the supranational level cemented the facility for a substantial degree of coherence and unity of approach to be facilitated in the area of oil and gas law and policy across EU Member States.⁹⁶ It may be that some form of pronounced constitutional reframing of energy governance in the spirit of these developments might prove helpful in the context of the CSME as it develops, and so such an approach could be usefully kept under review by the CARICOM nations in relation to local content provision.

At the present time, the EU supranational level has used these expanded powers as a means of leading on the construction of an extensive energy policy framework, locking it into binding supranational law, meaning that it is binding across the Member States.⁹⁷ In general terms, this legislation has endeavoured to: facilitate a strong degree of interconnection of gas and electricity networks across the Union; achieve stronger levels of energy security, including oil stocking⁹⁸; harmonize the internal market for gas and electricity across the Union and liberalize it so that it is open to competition; apply a Union-wide framework that endeavours to

90 Treaty of Lisbon, 2007 <http://publications.europa.eu/resource/cellar/688a7a98-3110-4ffe-a6b3-8972d8445325.0007.01/DOC_19>

91 For an insightful consideration of EU energy competences, see Kaisa Huhta, 'Between State Sovereignty and Transnational Economic Integration: Article 194(2) TFEU and the Evolution of EU Competences in the Energy Sector' (2021) 70.4 *International & Comparative Law Quarterly* 991. On the way in which constitutional competences interact with energy law to form a complex 'Energy Constitution', see Thomas L Muinzer, 'Conceptualising the Energy Constitution: Lessons from Northern Ireland' (2020) 140 *Energy Policy* 111408.

92 The Lisbon Treaty made the change by inserting Title XXI into the Treaty on the Functioning of the European Union. The first subsection of the Title establishes as follows:

In the context of the establishment and functioning of the internal market and with regard for the need to preserve and improve the environment, Union policy on energy shall aim, in a spirit of solidarity between Member States, to:

- (a) ensure the functioning of the energy market;
- (b) ensure security of energy supply in the Union;
- (c) promote energy efficiency and energy saving and the development of new and renewable forms of energy; and
- (d) promote the interconnection of energy networks. (Title XXI, art194(1))

93 Energy is an area of '[s]hared competence between the Union and the Member States': TFEU, art 4(2)(i) ('energy').

94 A useful introductory overview of energy law in the EU is provided by: Kim Talus, *Introduction to EU Energy Law* (OUP 2016).

95 Treaty on European Union art 5(1) and (2) asserts that the Union can only act in those areas where the Member States have given it power to act through the Treaties' provisions. The CJEU has asserted that 'the Community Treaties established a new legal order for the benefit of which the States had limited their sovereign rights, in ever wider fields' (CJEU Opinion 1/91 on Draft Agreement between EEC and EFTA); this means that Member States are obliged to implement the provisions of EU law in their national systems and therefore EU law will always 'trump' national law in any dispute.

96 For an account of the interaction between EU energy policy and law, see Heiko Kruger, *European Energy Law and Policy: An Introduction* (Edward Elgar 2016).

97 Volker Roeben, 'Establishing the Energy Union' in *Towards a European Energy Union*, Part 1 (CUP 2018).

98 The EU is a net importer of energy, see further: <https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Energy_production_and_imports#The_EU_and_its_Member_States_are_all_net_importers_of_energy>

ensure open processes are followed for hydrocarbon licensing.⁹⁹ The EU has an Agency for the Co-operation of Energy Regulators and a Council of European Energy Regulators in place to assist in overseeing the Union's internal energy market and associated matters in a coherent manner.

Again, while local content is not an overt thematic concern, the unified approach to oil and gas markets and governance, sectoral development and the free movement of labour employment for Member State nationals that the Union broadly harmonizes across Member State borders in effect crystallizes and locks in local content rules particular to the EU's internal market. This provides a basis on which national EU companies are treated in largely the same manner across the Union. Mandatory employment of community nationals by Member States, employment quotas, and similar, do not feature in the oil and gas sector; as established above, EU nationals are subject to the free movement of workers principle, and so workers are free to move and take up employment within the Union in other Member States in an unconstrained way, free from discrimination.¹⁰⁰ As also noted, these entitlements are specific to the EU Member States and their nationals, meaning that non-EU workers are constrained by conventional visa and work permitting requirements where they seek employment within a Member State. Worker-based immigration is managed by the EU's supranational level and the Member States jointly, with an emphasis to make important determinations falling on the Member States individually.¹⁰¹ This means, for example, that a non-EU national who has visa permission to work in the Republic of Ireland in some capacity cannot by virtue of that permission to work within Ireland move to, eg Denmark in order to work in Denmark's north sea oilfields, even though Ireland and Denmark are both part of the EU's single market.¹⁰²

Since 1994, a European Economic Area (EEA) has operated that includes the EU itself, and Iceland, Lichtenstein and Norway.¹⁰³ While there are significant differences between exclusive EEA membership and full EU membership, the EEA arrangements mean that Iceland, Lichtenstein and Norway participate in the EU's internal market, and in doing so must operate in accordance with EU rules, albeit that they are not EU Member States themselves.¹⁰⁴ EU regulations have had the effect of requiring EU and EEA members to treat their nationals and suppliers on the same level, with the EU and EEA countries being required to adjust their oil and gas regulations accordingly. In the EU setting, prior to its recent exit from the Union,¹⁰⁵ the UK

99 Other headline legal-political objectives concern the promotion of augmented energy efficiency levels, an increase in the uptake of current renewables technologies and the development of new and renewable forms of energy, including hydrogen. See further *Energy Policy: General Principles* (European Parliament, Fact Sheet) and associated Fact Sheets maintained by the European Parliament and Commission: <<https://www.europarl.europa.eu/factsheets/en/sheet/68/energy-policy-general-principles>>

100 Spaventa, Eleanor, 'The Free Movement of Workers in the Twenty-First Century' in Anthony Arnall and Damien Chalmers (eds), *The Oxford Handbook of European Union Law* (OUP 2015) 459–475.

101 The European Commission's 'Immigration Portal' summarizes that 'Each EU country alone decides the "total number of migrants that can be admitted to the country to look for work" and "[a]ll final decisions on migrant applications"'. EU Immigration Portal, 'Who Does What?' <https://ec.europa.eu/immigration/general-information/who-does-what_en>

102 It is also notable that an EU Charter of Fundamental Rights was given formal legal recognition by the Treaty of Lisbon (although opt-outs were permitted for Poland, the UK and the Czech Republic): art 6(1) TEU. The EU Charter is wider in scope than the European Convention on Human Rights (ECHR), which the EU has also accorded formal legal recognition: art 6(2) TEU. The Charter concerns civil, political, economic, social and societal rights from both European and international conventions. The CJEU is required to interpret EU law in accordance with the ECHR. This interpretive function is limited to laws and actions of EU institutions within the EU Treaties. Clearly, the articulation of these rights interacts with local content issues pertaining to the rights of citizens in local communities; however, the rights are very generalized, in principle such rights apply to all persons, and just how robust and effectual the Charter is in practice can be debated.

103 The European Commission summarizes that the EEA 'seeks to strengthen trade and economic relations between the contracting parties and is principally concerned with the four fundamental pillars of the internal market, namely: the free movement of goods, people, services and capital'. European Commission, Eurostat Statistics Explained: European Economic Area <[https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Glossary:European_Economic_Area_\(EEA\)](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Glossary:European_Economic_Area_(EEA))> accessed 10 February 2022.

104 This relationship is outlined and evaluated in detail, with particular reference to Iceland, in Johanna Jonsdottir, *Europeanization and the European Economic Area* (Routledge 2012).

105 A Referendum took place on the UK's membership of the EU on Thursday 23 June 2016, and the public voted in favour of leaving by 52 to 48 per cent. A withdrawal agreement between the UK and the EU was negotiated, and after a subsequent transition period, the UK had separated and a new trade deal was in place by 1 January 2021.

provided a prominent example of a Member State with substantial oil and gas reserves that had needed to adjust its governance regime to be in harmony with these rules. The UK's pre-Brexit oil and gas regime is outlined in 'UK Oil and Gas Law: Current Practice and Emerging Trends',¹⁰⁶ including its adaptiveness to EU market principles that endeavour to standardize treatment of nationals and suppliers and level out market competition in a broadly harmonized way.¹⁰⁷ In the EEA setting, Norway, which is currently 'the world's 14th biggest oil-producing country and the 8th biggest producer of natural gas',¹⁰⁸ affords a similar example. Heum has analysed the Norwegian experience and attempted to draw lessons that could benefit other regions and markets like CARICOM as follows:

the essential base line for success in local content development, for Norway as for any country, is to stay dedicated to the fundamental task, which is to involve and enhance the domestic knowledge base through arrangements that allow for a dynamic industrial and technological development, that gradually expands domestic competences and capabilities to competitive levels.¹⁰⁹

Research has highlighted that the Norwegian approach to local content-related issues has been rooted traditionally in 'principles-based regulation'¹¹⁰ combined with the 'promotion of foreign participation' in the petroleum sector.¹¹¹ Interaction between these factors, and EU–EEA harmonization standards have acted as major drivers of Norway's current approach.¹¹² Thus, these elements also hold potentially useful lessons for CARICOM development. More broadly, the EU–EEA relationship itself indicates that CARICOM and the CSME might also seek to interconnect in novel ways with external nations to yield useful results, as the EU has endeavoured to do via its formalized associations with the non-EU members Iceland, Lichtenstein and Norway in the context of the EEA arrangements.

7. LOCAL CONTENT RULES IN TRINIDAD AND GUYANA VIS-A-VIS THE CARICOM TRADE RULES: A SYNTHESIS

Returning to previous considerations of CARICOM against the backdrop of the EU considerations outlined above, it appears that the local content rules of Trinidad and Guyana do not seem to be consistent with the RTC since it does not make provisions to include non-national CARICOM citizens. This can be seen when regarding the local content provisions of these nations which are beneficial to nationals of these countries, citizens and locally incorporated businesses which are locally owned. These policies at the very least violate the provision for non-discrimination which could be found in the RTC. In addition, the requirement in practice, for non-national CARICOM citizens to be in possession of a work permit is another example of how treaty provisions are not observed. Provisions that only require training of nationals and use of locally incorporated businesses to provide goods and services in the energy sector to the exclusion of non-national CARICOM citizens seem to be at opposition to the aim of integration contained in the RTC. One might

106 Greg Gordon, John Paterson and Emre Usenmez (eds), *UK Oil and Gas Law: Current Practice and Emerging Trends*, Volumes I and II (3rd edn, Edinburgh University Press 2018).

107 See, eg *ibid* vol 1 I-6.64, I-6.68; *ibid*, Judith Aldersey-Williams, 'Competition Law and the Upstream Oil and Gas Business', vol 2, ch 11.

108 Editorial, 'Norway Eyes Expansion of Oil and Gas Industry under Policy Proposal', *Climate Home News*, 11 June 2021 <<https://www.climatechangenews.com/2021/06/11/norway-eyes-expansion-oil-gas-industry-policy-proposal/>> accessed 14 September 2021.

109 Per Heum, 'Local Content Development – Experiences from Oil and Gas Activities in Norway' (2008) Working Paper, SNF/Centre for Applied Research, Norway, 4.

110 This can be contrasted with 'rules-based regulation', which involves governments adopting strict internal control mechanisms: see further Beryll Claire Asiago, 'The Rise of Local Content Regulations in the Upstream Petroleum Sector' (Doctoral Thesis, University of Eastern Finland, 2020), 113–132.

111 *ibid* 32.

112 *ibid*.

contrast this position with the legally binding principle of the free movement of workers in the EU's single market, which has been outlined above.

As previously examined, there may be several reasons why non-national CARICOM citizens are exempted from the local content rules. One determinant may be because no exact definition of the term local content exists. This would mean that the meaning would vary based on the nation, the situation and the point in time the policy or law was created, and would depend on the needs of the nation, and the capacity of local businesses to handle the commercial demands that may be made by foreign companies as well as the large-scale infrastructure that may need to be built. In addition, the policies of governments may change when a new party is elected into power. International political interference has also proved to be a challenge to Caribbean integration leading to competition for scarce resources among CARICOM nations. This could possibly explain the exclusion of non-national CARICOM citizens in the local content provisions. The EU does not rely on an overt definition of local content either, but it can mitigate these sorts of problems via the substantial supranational institutional architecture that it has developed as a means, in part, of enforcing and securing harmonized standards across the EU Member States.

These possible explanations aside, it is proposed that the lack of provisions which include Expats in local content violate the substance of the RTC. In considering the local content policies, it is unlikely that at present, any non-national CARICOM citizen would be considered Guyanese or Trinidadian for the purposes of the local content policies. Similarly, it is unlikely that goods and services offered by non-national CARICOM citizens would be considered Guyanese or Trinidadian under their local content policies.

Jurisprudence

Caribbean courts have not benefitted from any litigation which directly explores local content policies and laws in the energy sector. However, the treatment of a non-national CARICOM citizen has been explored, with reference being made to the RTC provisions which ensure freedom of movement and non-discrimination. In the Trinidad case of *Dianne JhamillyHadeed v The Attorney General OF Trinidad and Tobago*,¹¹³ the plaintiff (P) sought a referral to the Caribbean Court of Justice, seeking a ruling with respect to breaches to P's rights to free movement and non-discrimination under the RTC. P claimed these breaches occurred when she was unable to qualify under section 15(1A) of the Legal Profession Act (LP Act) Chapter 90:03, to practice law. This section made provisions only for nationals of Trinidad who did not receive certain qualifications enumerated within the regional treaty for legal education, the Council of Legal Education Act Chapter 39:50 (hereafter the CLE Act), to be admitted to practice law after working with a qualified lawyer for 6 months. Non-nationals who desire to practise law in Trinidad are required to obtain the LEC through the options permitted by the LP Act and the CLE Act. The Registrar of the Supreme Court refused to process P's application to be admitted to practice law under section 15(1A) of the LP Act on the basis that she was not a national of Trinidad and Tobago. P pointed to other non-nationals who had previously been admitted under section 15 requirements. P who was awarded a Certificate of Recognition of Caribbean Community Skills Qualification from the Trinidad government contended that this section was unconstitutional, in breach of S4 and S5 of the Constitution of Trinidad and discriminated against her as a CARICOM citizen. The Certification of Recognition of Caribbean Community Skills Qualification is a requirement for someone belonging to the allowed classes of worker, to work in another CARICOM Member State.¹¹⁴

P's claim for constitutional relief sought declarations that section 15(1A) of the LP Act contravened her constitutional rights enshrined in section 4(a), (b) and (d) of the Constitution of Trinidad and Tobago. P contended that section 15(1A) applied and conferred a benefit on nationals of Trinidad and Tobago only and had the effect of depriving P, by reason of P's origin, of those constitutional rights and accordingly is

113 Claim No CV2018-02726.

114 Government of the Republic of Trinidad and Tobago Ministry of Foreign and CARICOM Affairs <<https://foreign.gov.tt/services/csme/>> accessed 10 August 2020.

null, void and of no effect. P further contended that the decision of the Registrar of the Supreme Court, that P was ineligible to apply for admission to practise law was unconstitutional, null, void and of no effect. P claimed to be deprived of a legitimate expectation to be admitted to practise as an Attorney-at-Law in Trinidad and Tobago. P sought an order striking through the words ‘a national of Trinidad and Tobago’ appearing in section 15(1A) of the LP Act and replacing it with ‘any person’.

Kokaram J did not refer the case to the Caribbean Court of Justice because P had failed to articulate issues of community law in the original claim. The court decided that ‘Simply put, in the absence of “pleadings” by Ms. Hadeed of potential breaches of the RTC and an amendment to the pleadings to reflect same, the questions for referral do not arise from the constitutional dispute before this Court so as to require a determination by the CCJ.’¹¹⁵ However, the court commented on Regional integration stating ‘Implementation of the very idea and concept of a Community of States necessarily entails as an exercise of sovereignty the creation of a new legal order and certain self-imposed, albeit perhaps relatively modest, limits to particular areas of State sovereignty. Community law and the limits it imposes on the Member States must take precedence over national legislation, in any event at the Community level.’¹¹⁶ The court went on to explain that ‘... A violation of Community law is not so much caused by the existence of domestic laws that seemingly contradict it but by whether and how these laws are applied in practice,’ and noted that the court in its appellate jurisdiction was ‘constrained to interpret domestic laws so as, if possible, to render them consistent with international treaties such as the RTC.’¹¹⁷ Eventually, the court held that the section was unconstitutional as it discriminated against Hadeed and other CARICOM nationals. The reasoning engaging notions of community law and sovereignty here can be seen to harmonize with general trends in the jurisprudential thinking of the EU’s supranational court, the CJEU. This court has consistently held to the principle of the supremacy of EU law, although that principle itself is not referred to in the EU Treaties; the CJEU has held that the principle is implied by the treaties. The CJEU articulated this position in an influential energy case, *Costa v ENEL* Case 6/64,¹¹⁸ where C challenged a bill from an Italian nationalized electricity body, arguing that nationalization had infringed the Italian constitution and EU Treaty articles. Here, the CJEU asserted that: ‘The Member States have limited their sovereign rights, albeit in limited fields, and have thus created a body of law which binds both their nationals and themselves.’

The Court of Appeal in the *Hadeed* case¹¹⁹ stated that Article 5 of the treaty establishing the Council for Legal Education allowed Trinidad to deny entrance to practice law if someone did not have an LPC and allowed Trinidad to create additional requirements for entry into practice. Bereaux J.A. held that the Parliament of Trinidad and Tobago was entitled to give its nationals the option of pursuing qualifications, which entitles them to practise in Trinidad by enacting legislation. While this case does not concern the laws or regulations of the oil and gas sector, it is an example of national laws being in conflict with the RTC. It also shows the interpretation by domestic courts in the Caribbean region to adhere to the substance of the provisions of the RTC which allows for the inclusion of non-national CARICOM citizens into the local content of Trinidad. In this case where a non-national CARICOM law student contested the decision to exclude her by leaning on the right of CARICOM citizens to non-discrimination, it was important to note the court’s interpretation and application of the State’s obligations under the RTC and rights conferred on P. By analogy, this case opened the way for other non-national CARICOM citizens working or aiming to work in the oil and gas sector to challenge some of the laws and regulations which are in place that exclude them. The above case stands out as one where local content and protectionist provisions of a CARICOM State have been contested by a non-national CARICOM citizen. While not binding, the rulings of Trinidadian

115 RTC establishing the Caribbean Community (n 35) Hadeed 67.

116 *ibid* Hadeed 69.

117 *ibid* Hadeed 80.

118 [1964] ECR 585.

119 Civil Appeal No P310 of 2019 Claim No CV 2018-02726.

courts are very persuasive in other CARICOM countries such as Guyana and would also be considered by judges in the Caribbean Court of Justice, the regional court which exercises exclusive jurisdiction in relation to the RTC. Here, one witnesses further divergence in CARICOM–EU regime design, insofar as legal determinations of the CJEU are binding on the EU and must be enforced by the courts of Member States.

8. LESSONS LEARNED

There have been concerns expressed that local content policies could have disadvantages such as forcing companies to employ local contractors who may not have the necessary capacity to perform the job.¹²⁰ This some argue, may cause bottlenecks in the supply chain if the local companies, existing in an underdeveloped economy, lack the necessary capacity to perform the job adequately. Another argument against enacting local content policies is the possibility that the objectives of the government may not match the capacity and capability of the workforce and contractors. This would mean that governments often overestimate the capabilities of the factors within the supply chain. Another is that local content policy may not improve economic performance or the education and training of nationals if resources are mismanaged. Yet another is that local content policies may be contrary to international regulations such as those of the World Trade organization and indeed, they could be inconsistent with international and, in this case, regional treaties.¹²¹ One study even discovered that having local content requirements has limited long-term economic growth and innovation. This study was done by the Organisation for Economic Co-operation and Development. In addition to this, Trinidad and Guyana lack the necessary regulatory bodies which would ensure that local content policies are adhered to and which would impose sanctions where necessary. It is notable in this respect that the EU's supranational court, the CJEU, can reinforce domestic Member State enforcement through its own facility to sanction and impose fines, known as infraction costs, on EU Member States for non-compliance with pertinent EU law.

Nevertheless, local content policies have been found to increase diversification and allow for development by encouraging discovery and entrepreneurship. They also support local development through training programmes which eliminates weaknesses in the factors of production and gives local businesses a competitive edge through avenues such as tendering processes that favour local businesses. These policies help to generate employment as well as remunerate those affected by the exploitation of the resource.¹²² The benefits can outweigh the disadvantages to these small Caribbean economies, thus it is necessary that these governments adequately manage benefits received from these local content policies. It is proposed that to do so, CARICOM nations should be aware of the needs and capacity of the region and therefore should adopt a definition of local content which can serve the RTC's purpose. Some authors believe that local content policies that are beneficial to citizens cannot be designed separately from regional and national efforts.¹²³ Indeed, national and regional policies should reflect those that are taking place within the energy sector. While some of these policies may be against some provisions of the existing RTC, regional policies should recognize that efforts to boost economies may include local content policies, the more difficult part being the inclusion of non-national CARICOM citizens and companies in local content policies. Here, while the EU provides a useful template that can inform CARICOM considerations, one also notes various CARICOM–EU disparities, including the EU's position as the third largest economy in the world after the USA and China, its pronounced level of pan-Member State market integration, and its current position as a net energy importer that relies on countries such as Russia for the importation of substantial quantities of oil and gas.¹²⁴ Thus, it seems clear that the EU experience can usefully inform thinking pertinent to CARICOM's development in this area,

120 Natural Resource Governance Institute Reader (n 4).

121 Natural Resource Governance Institute Reader (n 4) ch 2, The Case For (and against) Local Content Policies in the Petroleum Sector.

122 Natural Resource Governance Institute Reader (n 4) ch 2.

123 Ramdoo (n 16).

124 See further, Eurostat, 'From Where Do We Import Energy?' <<https://ec.europa.eu/eurostat/cache/infographs/energy/bloc-2c.html>>

yet the comparator is also subject to limitations, and bespoke CARICOM-specific solutions will likely be required that reflect the region's distinct set of needs and circumstances.

Countries who are signatories to the RTC can prepare to adequately meet the challenges that may come with enacting local content policies by investing in capacity building so as to not make unrealistic demands on companies to hire local contractors if these contractors are unprepared for the work load. Governments should conduct analysis of the local content rules and its application to ensure proper adherence to the policies.¹²⁵ These should include an examination of the local and regional development goals. A capability study should be conducted to gauge where the weaknesses may lie in the factors of production. This would include a study of the local and regional supply chain as well as assessment of any risks to the environment and the local and regional populations. The potential cost both nationally and regionally, both monetary and environmental, should also be assessed. Governments enacting local content policies should also be prepared by forming regulatory bodies that enact sanctions when local content rules are not adhered to. These changes, when implemented could propel the region forward by employing benefits received from local content policies to increase regional development. It is notable that these sorts of useful approaches do not require the rapid and robust development of expanded EU-style supranational institutions to assist in the multi-level regulatory process; the introduction of such powerful institutions do not currently marry up with CARICOM circumstances and its level of regime evolution. As such, efforts to introduce them at the present time could slow or act as an obstruction to the swifter and more practical means of progress outlined above.

9. CONCLUSION

The RTC aims to foster regional integration. This can be seen in the provisions that allow CARICOM citizens the freedom of movement and those that prohibit discrimination. Local content is addressed in the substance of the policies of the RTC which ensure training and employment of CARICOM citizens and which aim for the full utilization of regional labour. Yet, the local content provisions of Trinidad and Tobago and Guyana, which can be found in regulations and in policies, both in form and in substance, arguably violate the provisions of the RTC by discriminating against non-national CARICOM citizens through their exclusion. Local jurisprudence while not specifically addressing local content in the energy sector, called attention to the importance of the RTC and integration, specifically with respect to the provisions about non-discrimination and freedom of movement. While there may be disadvantages of employing local content policies, with adequate investigation, preparation and cooperation among CARICOM Member States, the Caribbean region could reap benefits of economic development and become internationally competitive. The end result of proper use of local content gains could echo for generations. It has been seen that the EU provides a mature, integrated region that CARICOM analysts and policy makers can look to in order to draw comparative lessons. This is a highly fruitful exercise; however, it has also been stressed that the EU's novel single market context is loaded with its own forms and traditions that have been in a process of ongoing evolution since the 1950s. Moreover, 'local content' does not operate as an explicit regime driver within the EU in a manner comparable to its more overt manifestation in the CARICOM setting. In concert with this, there are significant disparities in EU-CARICOM political-legal and socio-economic circumstances in relation to oil and gas (and beyond). These disparities indicate that CARICOM's local content development can be usefully informed by the EU experience, but that the sorts of tailored, CARICOM-specific solutions pointed to above will ultimately be required in order to better accommodate the region's distinct needs and circumstances. CARICOM states should consider developing flexible and collaborative approaches, supplier development programmes, negotiation among business associations in the various Member States, etc. to reconcile the conflicts identified in this article with their local content rules and the RTC.

125 IPIECA Local Content Task Force, 'Local Content Strategy. A Guidance Document for the Oil and Gas Industry' <<https://www.ipieca.org/resources/good-practice/local-content-strategy-a-guidance-document-for-the-oil-and-gas-industry-1st-edition/#:~:text=IPIECA%20has%20also%20developed%20a,the%20potential%20value%20of%20local>>