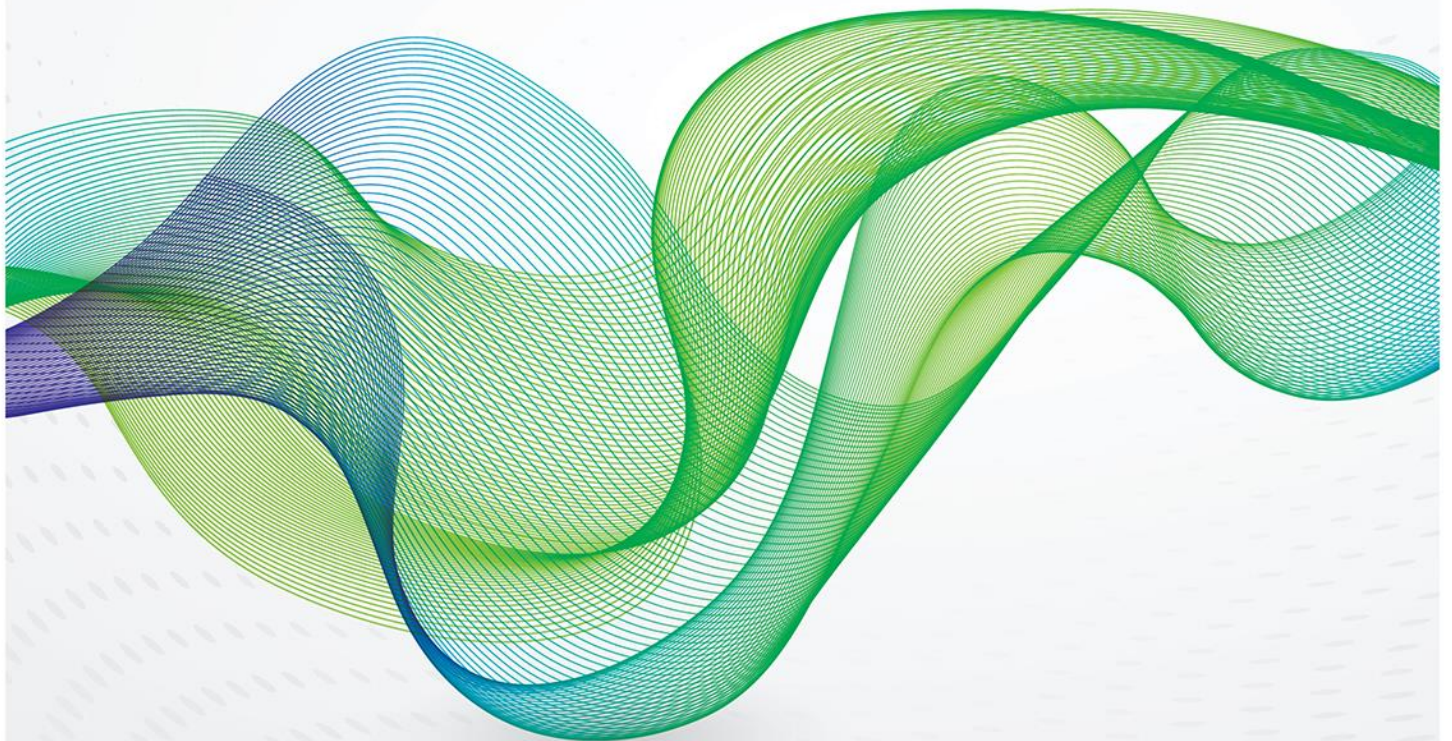




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Local content and procurement requirements in oil and gas contracts: Regional trends in the Middle East and North Africa



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Damilola S. Olawuyi,
Senior Visiting Research Fellow, OIES and
Associate Professor of Law, Hamad Bin Khalifa University, Doha, Qatar



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Abstract

Resource-rich countries in the Middle East and North Africa (MENA) region, especially Gulf countries - Kuwait, Iran, Iraq, Bahrain, Oman, Qatar, Saudi Arabia, and the United Arab Emirates (UAE) - are increasingly inserting local content requirements (LCRs) into their legal framework, through legislation, regulations, guidelines, industry contracts and bidding practices. Despite the clear and uniform overall policy drivers of LCRs and product mandating requirements in the MENA region, approaches taken to enforce LCRs vary and must be carefully understood and clarified to avoid misalignments and contractual mismatch between governments and international companies.

This paper examines how local content and procurement requirements have evolved in the MENA region. It provides a comparative analysis and profile of LCRs in MENA countries, in order to determine prevailing preferences and legal risk points. It concludes with recommendations on how investors and national authorities can evolve collaborative and achievable LCRs that minimise disputes and legal risks.



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I should stress very strongly that the views expressed, and any mistakes which remain, are solely my responsibility.

Damilola S. Olawuyi

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1. Introduction

The Middle East and North Africa (MENA) region, especially Gulf countries - Kuwait, Iran, Iraq, Bahrain, Oman, Qatar, Saudi Arabia, and the United Arab Emirates (UAE) - is home to some of the world's largest exporters of oil and natural gas.¹ MENA holds the world's largest proven gas reserves (approximately 45% of the global total),² and approximately 48% of the world's proven oil reserves.³ In 2016, Gulf countries accounted for about a third of the world's total crude oil production, with Saudi Arabia alone producing about 12 million barrels per day.⁴ Qatar is the third-biggest exporter of natural gas in the world.⁵ Iran has the second-largest gas reserves and the fourth-largest oil reserves in the world. Kuwait, meanwhile, holds 10% of the world's proven oil reserves.⁶ With highly oil-and-gas-dependent economies, the MENA region has historically provided opportunities for international oil and gas companies (IOCs) to spearhead oil exploration and production activities, and to acquire interests in fields with unexplored economic potential.⁷

However, determined to maximise the gains of foreign direct investment (FDI), MENA countries, like many other oil and gas producing countries, have increasingly introduced local content requirements (LCRs) - laws and policies that require foreign companies to give priority to nationals, domestic companies and locally produced material, in the procurement of goods and services used for petroleum operations.⁸ Generally, local content policies are designed to increase the degree of local benefits from the extractive sector, beyond what it would be in the absence of such policies, through the promotion of local employment, skills development, and national industry participation.⁹ LCRs are

¹ Although the economy of the Middle East is diverse enough to include non-oil producing countries such as Lebanon and Jordan, the region's chief economic mainstay is oil and gas production. See B Fattouh and J. Stern, *Natural Gas Markets in the Middle East and North Africa* (Oxford University Press, 2011) 1-5; also A. Moneef, 'The Contribution of the Oil Sector to Arab Economic Development' (OFID Pamphlet Series No. 34, Vienna: OPEC Fund for International Development, 2006); A. Richards and J. Waterbury, *A Political Economy of the Middle East* (Boulder, CO: Westview Press, 2008) 1- 31.

² This is only followed by South and Central America (19.4%) and North America (14%). Saudi Arabia alone holds around 16% of global oil reserves, while other Gulf States also hold significant crude reserves: UAE 5.8%, Qatar 1.5% and Oman 0.3%. See *BP Statistical Review of World Energy (65th Edition, BP, June 2016)* 20, <https://www.bp.com/content/dam/bp/pdf/energy-economics/statistical-review-2016/bp-statistical-review-of-world-energy-2016-full-report.pdf>; also B Fattouh and J. Stern, *ibid* at 1.

³ Followed by Europe (30.4%), Asia Pacific (8.4%) and North America (6.8%). See *BP Statistical Review of World Energy (65th Edition, BP, June 2016)* 20, *ibid*.

⁴ *BP Statistical Review of World Energy (65th Edition, BP, June 2016)*, *ibid*. See also *Organization of Petroleum Exporting Countries, Annual Statistical Bulletin 2017* (Vienna: OPEC, 2017) 30.

⁵ Due to its significant natural gas resources, Qatar is currently ranked as the richest country in the world, with the highest per capita GDP, and the largest global per capita sovereign wealth fund. See International Monetary Fund, *World Economic Outlook Database* (April 2017).

⁶ See *BP Statistical Review of World Energy (65th Edition, BP, June 2016)* 6, *above n 2*.

⁷ For example, Qatar's economy has been highly dependent on oil and gas. About 70% of total government revenue, more than 60% of gross domestic product, roughly 90% of export earnings and more than 90% of the foreign exchange revenues in Qatar are derived from the oil and gas sector. Kuwait's oil and gas resources account for 53% of GDP, 93% of government revenues, and 94% of export earnings. Saudi Arabia and the UAE have similar situations. See International Monetary Fund, *Economic Diversification in Oil-Exporting Arab Countries* (2016) 7-8 available at <https://www.imf.org/external/np/pp/eng/2016/042916.pdf> (accessed October 26, 2017).

⁸ It is estimated that over 90% of resource-rich countries have at least one form of LCR as regards their extractive industries, 50% of which are quantitative targets or requirements. See McKinsey Global Institute, *Reversing the Curse: Maximizing the Potential of Resource-Driven Economies*, (December 2013); International Petroleum Industry Environmental Conservation Association (IPIECA). *Local Content Strategy: A Guidance Document for the Oil and Gas Industry* (London: IPIECA, 2011); P Heum, R Kasande, O.F. Ekern & A Nyombi, *Policy and Regulatory Framework to Enhance Local Content: Yardsticks and Best Practice*, SNF Working Paper No. 02/11, 2011.

⁹ Organisation for Economic Co-operation and Development, Working Party of the Trade Committee, *Local Content Policies in Minerals-Exporting Countries* (02 June 2017) 6-7 available at [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=TAD/TC/WP\(2016\)3/PART1/FINAL&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=TAD/TC/WP(2016)3/PART1/FINAL&docLanguage=En)



utilised by governments, especially in oil and gas rich countries, to generate broader economic benefits for the local economy, beyond fiscal benefits.¹⁰ These economic benefits may include employment of nationals, procurement of goods and services from companies resident in the host country, partnerships with local entities, development of endogenous technology and infrastructure, and the improvement of the skills and capacity of local businesses and the domestic workforce.¹¹

LCRs have become even more important in MENA countries following the global fall in oil prices.¹² Political emphasis on economic diversification in the Middle East tends to fluctuate with the price of oil.¹³ Since 2014, the price of a barrel of oil has fallen more than 70%, wiping out more than \$360 billion of revenue from Gulf countries in 2015 alone, about 21% of GDP in the region.¹⁴ With official forecasts by the Organization of Petroleum Exporting Countries (OPEC), showing that a return to \$100 per barrel price of oil may not be until after 2040,¹⁵ Gulf countries have to, more than ever, re-think how to diversify their domestic economies, and create new jobs in manufacturing and the emerging technology and innovation sectors in order to sustain current economic growth.¹⁶ The introduction of more robust LCR requirements is a positive attempt by Middle East countries to utilise oil and gas production as a key to add value to, and unlock the robust development of, other important sectors of their domestic economies.¹⁷

For example, in 2015, Saudi Arabia's national oil company, Saudi Aramco, launched its In Kingdom Total Value Add (IKTVA) programme, aimed at driving, measuring and monitoring the "added value" brought to the Kingdom by a contractor.¹⁸ Participation in, and compliance with, the IKTVA programme is required for doing business with Saudi Aramco.¹⁹ The IKTVA programme uses a complex formula to assess local content in terms of dollar amount of localised goods and services used, amount of salaries paid to Saudis, amount spent on, or allocated for, training and development of Saudis and the amount spent on local suppliers.²⁰ While governments across MENA favour LCRs as policy tools for maximising the degree of local benefits from the extractive sector through local

(accessed October 10, 2017); also M Levett, A Chandler, 'Maximising Development of Local Content across Industry Sectors in Emerging Markets' (Center for Strategic and International Studies, Washington DC; Grupo FARO, ACODE, 2015) 1-5.

¹⁰ I. Ramdoo, *Unpacking Local Content Requirements in the Extractive Sector: What Implications for the Global Trade and Investment Frameworks?* (2015) E15Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum; also D. Gbedi & J. Adebisi "Managing Local Content Policies in the Extractive Industries", (2013) 4 (7) Research Journal of Finance and Accounting 90.

¹¹ International Petroleum Industry Environmental Conservation Association (IPIECA), *Local content: A guidance document for the oil and gas industry* (2016)

http://www.ipieca.org/media/1384/local_content_2016.pdf

¹² M. Hvidt, 'Economic and Institutional Reforms in the Arab Gulf countries' *Middle East Journal* (2011) 65 (1) at 85–102, M Hvidt, 'Economic Diversification in the GCC Countries: Past Record and Future Trends' (Research Paper No.27, Kuwait Programme on Development, Governance and Globalization in the Gulf States, 2013)

¹³ M. Hvidt, Economic Diversification in the GCC Countries: Past Record and Future Trends, *ibid.*, also M. Hvidt, Economic Reforms in the Arab Gulf Countries: Lip Service or Actual Implementation?, in M. Legrenzi and B. Momani (eds.), *Shifting Geo-Economic Power of the Gulf: Oil, Finance and Institutions* (Farnham: Ashgate, 2011) 39–54.

¹⁴ International Monetary Fund (IMF), *Global Implications of Lower Oil Prices*, *International Monetary Fund* (2015) <https://www.imf.org/external/pubs/ft/sdn/2015/sdn1515.pdf>, also A Ghafar, 'Will the GCC be able to adjust to Lower Oil Prices' (2016), <https://www.brookings.edu/blog/markaz/2016/02/18/will-the-gcc-be-able-to-adjust-to-lower-oil-prices/>

¹⁵ Organization of Petroleum Exporting Countries (OPEC), '2015 World Oil Outlook', available at: http://www.opec.org/opec_web/static_files_project/media/downloads/publications/WOO%202015.pdf (accessed October 10, 2017).also 'OPEC: Oil won't be worth \$100 a barrel until after 2040', available at: <http://uk.businessinsider.com/opec-oil-wont-be-worth-100-a-barrel-until-after-2040>

¹⁶ K. C. Ulrichsen, *Insecure Gulf: The End of Certainty and the Transition to the Post-Oil Era* (New York: Columbia University Press, 2011); A. Ghafar, 'Will the GCC be able to adjust to Lower Oil Prices', available at: <https://www.brookings.edu/blog/markaz/2016/02/18/will-the-gcc-be-able-to-adjust-to-lower-oil-prices/> (accessed October 10, 2017)

¹⁷ M. Koren and S. Tenreiro, 'Volatility, Diversification and Development in the Gulf Cooperation Council Countries' (Kuwait Programme on Development, Governance and Globalization in the Gulf States, Research Paper No. 9, 2010).

¹⁸ See In Kingdom Total Value Add (IKTVA) Program, <https://www.iktva.sa/introduction/>

¹⁹ *Ibid.*

²⁰ See In Kingdom Total Value Add (IKTVA) Program, Program Brochure: Creating Value in the Kingdom, https://www.iktva.sa/wp-content/uploads/2016/04/IKTVA-brochure_EN.pdf (accessed October 10, 2017).



employment, skills development, and national industry participation,²¹ LCR clauses in petroleum contracts could also provide a basis for international oil companies (IOCs) and investors to negotiate some level of freedom to procure goods and services on the basis of cost, availability and quality. If carefully negotiated, LCRs can provide IOCs some form of autonomy, transparency and efficiency in sourcing goods and services for petroleum operations.

However, although proponents of LCRs point to its effectiveness in providing a level playing field for local industries, creating job opportunities for citizens, and fast tracking the transfer of technical expertise and skills, LCRs can lead to misalignments between governments and investors, especially in emerging countries with unclear and unspecific legal framework on LCRs.²² For example, while LCRs may specify the portion of total expenditures that must be comprised of locally sourced goods and services, procurement procedures are frequently not well established.²³ Potentially unresolved questions include: what amounts to sufficient local content? To what extent can the host Government participate in, or exercise control and influence over, the IOCs procurement process? And is there a requirement for the IOC to report or submit its local content and procurement plans to the joint management committee for approval prior to petroleum operations? If so, what should such a report show?

Lack of clarity, and resulting misalignment in understanding and expectations, between host government and an investor or contractor, on the meaning, nature, scope and methodology for implementing, measuring and reporting local content performance, can result in significant legal risks to the investor.²⁴ These risks include disallowance of costs for recovery, recalculation of tax obligations, fines, penalties, or even allegations of corruption and/or material breach of the host government contract; all of which may trigger the loss of the petroleum contract.²⁵ A misalignment of LCRs can also lead to distraction in investor-government communications, disruption in petroleum operations, and potentially costly formal dispute resolution with corrosive effects on the attractiveness of the investment and the host government to the international investment communities. Despite the importance of contractual clarity to the expectations of the host government and the IOC with respect to LCRs and related procurement processes, many modern petroleum agreements and regimes hardly raise or address them. To mitigate and eliminate legal risks relating to the application and implementation of LCRs, especially in the MENA region, investors need to know how LCRs have been dealt with in petroleum contracts and related policies in the MENA region, and how to negotiate clear and realistic LCR provisions when investing in the region.

This paper develops a profile of how local content and procurement questions have been addressed in petroleum agreements and regimes across the MENA region. It analyses emerging best practices

²¹ Ibid

²² See Trade Arabia, 'Big boost to Saudi industries as Aramco to double local market sourcing' (December 1 2015) http://www.tradearabia.net/news/IND_295936.html; S Tordo, M Warner, O Manzano, & Y Anouti, *Local Content Policies in the Oil and Gas Sector* (World Bank, 2013); see also R Darling, *Beyond taxation: How countries can benefit from the extractive industries through local content* (New York: Revenue Watch Institute 2011) 1-10, also Shared Value Initiative, *Extracting with Purpose Creating Shared Value in the Oil and Gas and Mining Sectors' Companies and Communities* (27-32) https://sharedvalue.org/sites/default/files/resource-files/Extracting%20with%20Purpose_FINAL_Full%20Report_Single%20Pages.pdf (accessed October 10, 2017).

²³ D Olawuyi, 'Legal Strategies and Tools for Mitigating Legal Risks Associated with Oil and Gas Investments in Africa' *OPEC Energy Review* (2015) 39 (3), 247-265, see also D Olawuyi and T Mercier, *Local content and procurement requirements in frontier African oil and gas jurisdictions – One size does not fit all* (Norton Rose Fulbright, 2015) <<http://www.insideafricalaw.com/blog/local-content-and-procurement-requirements-in-frontier-african-oil-and-gas-jurisdictions-one-size-does-not-fit-all>> (accessed October 10, 2017).

²⁴ Legal risks refer to the risk of financial, reputational or investment loss; legal liability; or dispute settlement costs to a company or institution that may arise from defective contractual arrangements or transaction. See R McCormick, *Legal Risk in the Financial Markets* (Oxford University Press, 2010) 1-3, see also D Olawuyi and T Mercier, *ibid*.

²⁵ D Olawuyi and T Mercier, *ibid*. For example in Iran's legal framework expressly provides that failure to achieve a 51 percent local content could lead to contract termination or reduction in Remuneration Fee. See Iran's *Maximum Utilization of Production and Services Potency in Providing Country's Needs and Promotion of Exports* 2012.



and trends related to local content requirements in the MENA region, including recommendations on how investors and national authorities can evolve realistic and collaborative LCRs and procurement processes that minimise disputes and risks.

The paper proceeds in five sections. After this introduction, section II surveys LCRs and practices in MENA countries, outlining the main drivers of, and approaches to, LCRs in the region, specifically in Gulf countries that are home to the region's largest petroleum and natural gas projects. Section III examines the main legal risks and debates surrounding the design and implementation of LCRs in the MENA region, especially how misaligned LCRs may affect IOCs' cost structures. Section IV examines how investors and national authorities can evolve holistic and adaptive procurement processes that minimise contentions and risks. A collaborative approach framework must address four key issues: clear legislative framework; collaborative institutional support; collaborative contractual terms; and performance communication. Section V is the conclusion.

1.2 Survey of Approaches to LCRs in MENA countries: methodology

The methodology approach of this study is based on a doctrinal analysis and comparative survey of the drivers of, and approaches to, LCRs implementation in oil and gas producing countries in the MENA region. The paper relies primarily on publicly available model petroleum contracts of jurisdictions with oil and gas exploration and production (E&P) activity: Algeria, Egypt, Iran, Iraq (Kurdistan Region and Federal), Jordan, Kuwait, Lebanon, Libya, Syria, Qatar, Oman, Saudi Arabia, and Yemen, as well as legislation and guidelines released by national authorities and oil and gas institutions in these countries, to determine the prevailing approaches to LCRs in the MENA region. Desk-based analysis of published literature on the nature and scope of LCRs is also undertaken. Existing works in the field have satisfactorily compiled the meaning, nature and scope of LCRs especially in Africa, North America, Latin America and Europe.²⁶ What remained absent was a detailed examination of the drivers and approaches to LCR implementation in the MENA region. This paper moves the debate forward by developing a profile of LCRs in the MENA region, and then discussing how LCR implementation in the region can be better streamlined and clarified to minimise disputes.

Due to the scope of the study and the nature of the methodological approach, the survey, by no means, can be regarded as representative. However, since it is combined with the review of the literature, it builds a rough profile of how local content and procurement questions have been addressed in petroleum agreements and regimes across the MENA region.

2. Drivers of LCRs in the MENA Region

There are five key drivers of the increased adoption of LCRs in the MENA region. First is the desire by host governments to increase the level of domestic capabilities and competencies over time. In many MENA countries, IOCs are often brought in mainly because local industries do not have the

²⁶ See Organisation for Economic Co-operation and Development, Working Party of the Trade Committee, *Local Content Policies in Minerals-Exporting Countries* (n 8) above; also T Acheampong, M Ashong, & V Svanikier, 'An Assessment of Local-Content Policies in Oil and Gas Producing Countries' *Journal of World Energy Law & Business* (2016) 9(4), 282–302; Columbia Centre on Sustainable Investment, *Local Content Laws & Contractual Provisions* <http://ccsi.columbia.edu/work/projects/local-content-laws-contractual-provisions/> (accessed October 10, 2017).; also S Tordo, M Warner, O Manzano, & Y Anouti, *Local Content Policies in the Oil and Gas Sector* (World Bank, 2013); Grupo Faro Acode *Local Content Frameworks in Latin American and African Oil and Gas Sector* (ELLA Research Design and Methods Papers, 2015); P Heum, *Local Content Development - Experiences from Oil and Gas Activities in Norway*. SNF Working Paper No. 02/08 (Institute for Research in Economics and Business Administration. Bergen, 2008); J Easo and A Wallace, *Understanding Local Content Policies in Africa's Petroleum Sector*. Notes from the Field - An English Law Perspective on the Oil & Gas Market (2014); also S Ospanova, 'Local Content Policy: Kazakhstan Review' (2010) International Institute for Environment and Development. <http://pubs.iied.org/pdfs/G02761.pdf> (accessed October 10, 2017).; C Nwapi, *A Survey of the Literature on Local Content Policies in the Oil and Gas Industry in East Africa* (School of Public Policy Technical Paper, University of Calgary, Volume 9, Issue 16 2016).



experience and technological capacity to effectively undertake petroleum operations.²⁷ LCRs proceed from the premise that domestic workforce and industries should over time develop the capacities to supply the goods, services and human resources needed to drive the oil and gas value chain, by substituting domestically produced goods for imported goods, and to create more local employment by substituting domestic labour for imported or foreign-based labour. LCRs across the MENA region therefore emphasise the desire and need for IOCs to adopt practices that foster the development of a better-trained, qualified domestic workforce over the term of the petroleum contract.²⁸ Virtually all of the surveyed regimes mandate preference for local goods, services, consumables, works or enterprises. In all of the jurisdictions examined, the IOC has an obligation to give due and proper consideration to preferring locally-sourced services and goods when their price, quality, time of delivery and other terms are comparable to internationally available ones. They also mandate the IOC to prepare plans and programmes for training and educating nationals during the term of the contract. The aim is to ensure that the capabilities of the local workforce are enhanced over time.

A second driver is the desire to create a level playing field for citizens, residents and home-based industries to participate in oil and gas exploration activities. Without creating a level playing field for new or emerging local industries and workforce to participate in oil exploration activities, and compete with international suppliers of goods and services, the cycle of excessive dependence on foreign goods and services may never be broken.²⁹ Governments in MENA countries have therefore promoted LCRs as a deliberate programme and policy aimed at ensuring that local industries are given a chance to compete with foreign suppliers. For example, the Saudi Arabia IKTVA programme emphasises the goal of creating a level playing field for local participation by adopting uniform evaluation processes in sourcing services and materials, and by promoting uniform access to project information for local suppliers.³⁰ Similarly, the ultimate goal of Oman's In Country Value Strategy (ICV), launched in December 2013, is to increase the country's total spend retained in order to benefit business development, contribute to human capability development and stimulate productivity in Oman's economy.³¹ Like the Saudi IKTVA Programme, the Oman ICV Programme introduces a joint supplier registration system as a single window system for registering suppliers in a 'common pool'.³² The aim is to provide equal opportunities for local industries to participate in oil and gas activities.

A third driver of LCRs in the MENA region is the desire to maximise economic benefits to citizens through job and employment opportunities. Virtually all of the surveyed regimes in the MENA region mandate IOCs prioritise the employment of suitably qualified nationals.³³ By mandating the employment of nationals, the aim is to create opportunities for domestic employment, thereby contributing to growth in income, capacity development of nationals and overall increased economic growth of an oil producing country. Local employment is consistently among the topmost concerns of

²⁷ T Muller, and M. Schitzer 'Technology Transfer and Spillovers in International Joint Ventures' Munich (Discussion Paper No. 2003-22, 2003), also M Levett, M., and A. E. Chandler, *Maximizing Development of Local Content across Industry Sectors in Emerging Markets* (Washington, DC: Center for Strategic and International Studies, 2012)

²⁸ See for example ss1-2 Iran's *Maximum Utilization of Production and Services Potency in Providing Country's Needs and Promotion of Exports* 2012, see also Art. 23 Jordan Model Production Sharing Agreement of February 2007; also Art. 19.1 Oman Model Exploration and Production Sharing Agreement Dated April 24, 2004; Iraq (Federal) 2009 Technical Service Contract for Oil Field; Production Sharing Contract (2007) Kurdistan Region; Art. 17 INA Contract of 1998 for the Exploration, Development and Production of Petroleum Between the Government of the Syrian Arab Republic and Syrian Petroleum Company and INA-Industrija Nafta dd.- NAFTAPLIN; Algeria's Law n°05-07 dated 28 April 2005.

²⁹ See S Tordo, M Warner, O Manzano, & Y Anouti, *Local Content Policies in the Oil and Gas Sector* (World Bank, 2013) 115-117.

³⁰ See Saudi In Kingdom Total Value Add (IKTVA) Program, Program Brochure: Creating Value in the Kingdom, n. 20.

³¹ Sultanate of Oman, The Oil and Gas Industry In-Country Value Development Strategy: 2013-2020 (1-5)

<http://www.incountryvalueoman.net/getattachment/fc8254ec-0c1e-496a-84c1-2f841f42f8e4/ICV-Brochure>

³² Ibid.

³³ See for example Art. 26 Republic of Yemen Model Production Sharing Agreement 2006, Art. 23 State of Qatar Model Development and Production Sharing Agreement of 2002; Art. 23 Jordan Model Production Sharing Agreement of February 2007; also Art. 19.1 Oman Model Exploration and Production Sharing Agreement Dated April 24, 2004; Art. 17 INA Contract of 1998 for the Exploration, Development and Production of Petroleum Between the Government of the Syrian Arab Republic and Syrian Petroleum Company and INA-Industrija Nafta dd.- NAFTAPLIN



nationals, and often a central issue driving disputes, grievance and conflict.³⁴ More local jobs could result in more support for projects. Employing more citizens and community members can also help improve company-community relations, enabling IOCs to obtain the social license to operate.³⁵ Given the negative impacts of oil and gas development on surrounding communities, local content can help compensate the afflicted communities through job creation and value addition in the communities.³⁶

A fourth driver is the desire of oil producing countries to improve national technological capacity. All of the surveyed petroleum contracts mandate IOCs to give preference to locally manufactured equipment, machinery and consumables when their price, quality, time of delivery and other terms are comparable to internationally available ones. They also include requirements to bring some level of technology or perform research and development (R&D) into the country, so local companies can boost their competitiveness through access to state-of-the-art technology, or benefit from technology transfer.³⁷ By mandating IOCs to utilise locally made technology in petroleum operations, this directly reduces the importation of technology for petroleum operations. This could in turn compel IOCs, as well as service companies, to invest in technologies and facilities for local manufacturing and service provision.³⁸ For example, some IOCs operating in the MENA have opened technology venture arms of their operations in order to speed up the development and deployment of innovative technologies that could complement oil and gas exploration activities.³⁹ By opening up technology ventures, IOCs can facilitate the domestic production and availabilities of technologies required for oil and gas exploration.

Fifth, LCRs are also used in many rentier states of the MENA to mitigate and manage social and political risks that may result from rising domestic expectations for better and more equitable distribution of wealth and authority.⁴⁰ Despite the diverse programmes designed to increase the direct financial flows of oil wealth to nationals through subsidy programmes, individuals may not perceive what they may consider commensurate benefits. This can lead to pressure from the population to increase the more tangible benefits.⁴¹ Although these problems could be addressed by specific policies designed to consider the exact grievance, governments utilise LCRs as a tool for bringing jobs and income to a specific group, area or group where there is considerable dissatisfaction with the presence of the oil and gas operations.⁴² By introducing detailed LCRs, countries can ensure that

³⁴ See J Ovadia, *The Role of Local Content Policies in Natural Resource-Based Development* (Österreichische Entwicklungspolitik. Rohstoffe und Entwicklung, 2015) 37-38; also S Tordo, M Warner, O Manzano, & Y Anouti, *Local Content Policies in the Oil and Gas Sector* (World Bank, 2013) 7-15.

³⁵ S Tordo, B. Tracy, and N. Arfaa, 'National Oil Companies and Value Creation.' (Washington, DC: World Bank Working Paper 218, 2011) 1-10; World Bank, 2014. *Human Capital for the Oil, Gas and Minerals Industries. Science, Technology, and Skills for Africa's Development* (201490) 1-4; also Esteves & Barclay, *Enhancing the Benefits of Local Content: Integrating Social and Economic Impact Assessment into Procurement Strategies* (Impact Assessment and Project Appraisal, 2011) 205.

³⁶ R Ado, *Local Content Policy and the WTO Rules on Trade-Related Investment Measures (TRIMS): The Pros and Cons*, *International Journal of Business and Management Studies* (2013) 2 (1), 142.

³⁷ See n. 22.

³⁸ T Muller, and M. Schitzer, 'Technology Transfer and Spillovers in International Joint Ventures', n. 27; also D Coe, E. Helpman, and A. W. Hoffmaister, 'International R&D Spillovers and Institutions' IMF (Working Paper No. WP/08/104, International Monetary Fund, Washington, DC, 2008); also A Glass and K. Saggi. 2008. "The Role of Foreign Direct Investment in International Technology Transfer." In *International Handbook of Development Economics*, edited by A. Dutt and J. Ros. Cheltenham, UK, and Northampton, MA: Edward Elgar Publishing.

³⁹ For example IOCs such as Conoco Phillips, General Electric, Shell, and ExxonMobil have opened up technology innovation centers and programmes at the Qatar Science and Technology Park to discover sustainable technologies for their oil and gas operations in Qatar. See Qatar Science and Technology Park (QSTP), ConocoPhillips Water Sustainability Centre, <https://qstp.org.qa/companies/conocophillips/>

⁴⁰ See M. Cook and H. Mahdavy, 'The Pattern and Problems of Economic Development in Rentier States: The Case of Iran' in M. Cook, *Studies in the Economic History of the Middle East: From the Rise of Islam to the Present Day* (Oxford University Press, 1970), 435-436; also A. Krueger "The Political Economy of the Rent-Seeking Society", (1974) *American Economic Review*, 64(3): 291-303.

⁴¹ See C Hanlin, *The Drive to Increase Local Procurement in the Mining Sector in Africa: Myth or Reality?* MMCP Discussion Paper No. 4. Making the Most of Commodities Programme (MMCP), 2011); See J Ovadia, *The Role of Local Content Policies in Natural Resource-Based Development* (n. 34).

⁴² Ovadia, *Ibid*.



access to the control of oil wealth is evenly distributed among the interest groups and tribes across the country. For example, the Qatar petroleum agreement stipulates that the Deputy Manager of the petroleum operation shall be an individual appointed by the national oil company.⁴³ Such a provision allows the host country to at all times control and ensure that a greater spectrum of the society have direct access to petroleum operations.

Despite the clear and uniform overall policy objectives of LCRs, the approaches taken by MENA countries in enforcing LCRs vary and must be carefully understood and clarified by an IOC to avoid contractual misalignments and disputes. While the diversity of approaches in implementing LCRs in the MENA region is by itself not a problem, the tendency to consider MENA as one homogenous region often creates problems for investors that fail to consider the unique LCR obligations and applicable regime in each MENA country before going in to do business. Furthermore, given that LCRs allocate and share a bundle of rights, obligations and risks between IOCs and the host government, IOCs need to ensure that clear, transparent and achievable LCRs are incorporated into their petroleum contracts. The next section provides a survey of the fundamental themes on LCRs found in petroleum contracts and legislation and guidelines in MENA countries.

3. Approaches to LCR Implementation in the MENA region

A survey of petroleum contracts in MENA countries reveals five key variations in approaches adopted to LCR implementation in the region. These are variations in: definition of 'local'; local content threshold; role of government and/or national oil company in procurement processes; source of local content obligations; and monitoring/ institutional coordination for LCRs.

1. The Definition of “Local”: As presented in Table 1, all of the surveyed regimes mandate local content, whether in terms of priority or preference for local goods, services, consumables, works or enterprises.⁴⁴ However, several of these countries do not exactly define the term local.⁴⁵ There are therefore widespread variations in the categories of people and entities that could come under the broad conceptualisation, and must be given priorities, as locals. Generally 'local' is defined in terms of nationals, and companies owned, or majority controlled by nationals (Qatar, UAE, Oman, Saudi Arabia, also Jordan).⁴⁶ In terms of employment, these countries expressly aim to ensure that qualified nationals are given first consideration in matters of employment and that adequate provision is made for the training of nationals on the job. “Local” in these countries therefore refers to nationality, rather than the locality or country where the oil and gas activities take place.

However, other MENA countries adopt a more expansive definition of locals that include services by locally-registered firms and entities and the employment of local manpower which will include nationals and residents (Yemen, Algeria, Iran, Lebanon, Iraq (Federal))⁴⁷. “Local” in this case is equivalent to domestic entities or local players, meaning goods, services or labour sourced from the national locality or region where the oil and gas activities take place, as opposed to nationality or citizenship of the provider of the goods, services or labour. This distinction is indeed very important in MENA countries and could be a legal risk point if not properly clarified and handled. Generally, in the MENA region, relationships between IOCs, nationals and expatriate workers could be very fragile due to consistent agitations for more direct participation of nationals in the running of petroleum

⁴³ Art. 23 Model Development and Production Sharing Agreement of 2002, State of Qatar.

⁴⁴ See n. 28.

⁴⁵ On the importance of clarifying the meaning of 'local', see C Nwapi, 'Defining the 'Local' in Local Content Requirements in the Oil and Gas and Mining Sectors in Developing Countries', *Law & Development Review* (2015) 8:1, 187-216.

⁴⁶ Often described as the 'Saudisation' or the 'Qatarisation' policy, the aim of nationality focused local content policies is to increase local skills and competencies and thus enable the progressive coverage of roles respectively by Saudi or Qatari personnel.

⁴⁷ See n. 28.



operations.⁴⁸ While LCRs designed to give special recognition and priority to nationals may provide a mechanism for addressing this fragility, it could be a legal risk point for IOCs in instances whereby it is difficult to find a right fit for the required goods, services or labour from the available pool of nationals.⁴⁹ Also, conceptualising 'local' in terms of nationality could result in project delays and cost inflation for the investor where locally-produced goods are not immediately available or only available at much higher costs. However, the benefits of maintaining social stability in a resource-bearing locality and, more broadly, the impetus to retain a social license to operate may be more important for an IOC than the loss to be occasioned by these tradeoffs.⁵⁰

A more flexible model to managing such tradeoffs is found in the Qatari PSC which provides that Contractor shall, *when possible*, give first consideration or preference to locally manufactured or locally available goods.⁵¹ This provides some flexibility for an IOC to consider other categories of locals if the IOC so decides for operational reasons, or in cases when suitably qualified nationals or service providers are not available.

2. Local Content threshold: In several MENA countries, the minimum level of "local content" to be achieved for each category of goods and services is not expressed as a percentage or with a timeframe, rather, the obligation is simply to give priority to services, materials, equipment, consumables and other goods when their price, quality, time of delivery and other terms are comparable.⁵² For example, the Syrian PSC provides that materials may be imported if the local price for such items is more than 10% higher than the international price before custom duties, after transportation and insurance costs have been added.⁵³ Similarly, the Jordanian PSC provides that Contractor shall give preference in employment to suitably qualified Jordanian nationals, provided, however, that Contractor has the right to employ its own key personnel in appropriate positions. The Qatar PSC is flexible, stating that Contractor shall, when possible, select contractors who are nationals of the State of Qatar or companies that are majority owned by Qatar nationals.⁵⁴ The Qatari PSC also notes that in purchasing goods for petroleum operations, Contractor shall, when possible, give preference to locally manufactured or locally available goods so long as their technical specifications, quality and time of delivery and services are comparable to internationally available ones.

However, while local content obligations are flexible and without mandatory thresholds in countries such as Jordan, Syria and Qatar, in other MENA countries, including Saudi Arabia, Iran, Oman, and Libya, a percentage threshold of local content that must be met, and the timeframe, is expressly set out.⁵⁵ A local content indicator approach is adopted in Saudi Arabia, Oman, and Libya, which set out a percentage rating of a company based on specific criteria defined on the basis of values ascribed to

⁴⁸ World Bank, 2014. *Human Capital for the Oil, Gas and Minerals Industries*. Science, Technology, and Skills for Africa's Development.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ See Art. 23 (2) of the Qatari PSC, n. 43.

⁵² Art. 26 Yemen Model Production Sharing Contract of 2006, n. 28.

⁵³ See Art. 17 of Syria's INA Contract of 1998 for the Exploration, Development and Production of Petroleum Between the Government of the Syrian Arab Republic and Syrian Petroleum Company and INA-Industrija Nafta dd.- NAFTAPLIN.

⁵⁴ See Art. 23 (2) of the Qatari PSC, n. 28.

⁵⁵ Saudi Arabia, Libya and Oman's minimum threshold approach follow the Saipem Externalities Local Content Evaluation (SELCE) Model, which provides a quantitative evaluation, in monetary terms of socio-economic effects produced by local content. The tool uses the multiplier approach to measure direct, indirect and induced socio-economic impacts generated by Saipem Operating Companies in the countries in which they are based. Three main categories are identified and quantified: (a) Economic value created, in terms of locally sourced purchases, taxes paid to local authorities and employees' salaries; (b) Employment created; and (c) Human capital development, including increased life-time earning expectancy due to the training received from the company. For each category, the total impact (given by the sum of direct, indirect and induced impacts) and the multiplier factor (i.e. numbers providing the magnitude of an impact) are calculated. See Saipem, SELCE Model: *Local Content for Sustainable Development*,

http://www.saipem.com/en_IT/static/documents/Saipem_Local_Content.pdf



each criterion. For example, the Saudi Arabia IKTVA programme places an obligation on contractors to achieve 70% local content by the year 2021 (70 by 21 threshold).⁵⁶ It also plans to raise the export of Saudi made energy goods to 30% by 2021.⁵⁷ Similarly, the Oman ICV programme plans to raise the percentage of retained local benefits to the Sultanate from 18% to 32% by 2020.⁵⁸ Similarly, under Iran's legislative framework, a minimum of 51% of the cost of every project must be executed through domestic labor.⁵⁹ Under the Libyan PSC, Operator is obliged to spend at least 50% of its approved budget on supplies, equipment and services available locally.⁶⁰ In these rare cases where a percentage is expressed, local content obligations are often indexed to overall revenue spent during the operations. For example, LCR is measured in Saudi Arabia based on the following formula:

$$\% \text{ IKTVA} = \frac{A + B + C + D}{E} \times 100$$

A= Localised goods and services (\$)

B= Salaries paid to Saudis (\$)

C= Training and development of Saudis (\$)

D= Supplier development spend (\$)

E= In relation to revenue spend

The IKTVA programme raises several questions and interpretational challenges. One is that given that this programme was launched in 2015, with a 2021 target, it is unclear to what extent existing right holders under petroleum agreements with Saudi Aramco and the Government of Saudi Arabia created prior to 2015 have to comply with the IKTVA programme. Furthermore, the IKTVA's formulaic approach represents a shift from previous policy, where local content was not a formal requirement, to one where local content development is mandatory and could result in contractual default, and resulting penalties, for operators or suppliers that fail to comply.⁶¹

The flexible approach adopted across Europe and in MENA countries such as Iraq, Syria, Jordan and Qatar is arguably a more straightforward approach that allows an operator to align the implementation of LCRs with prevailing market realities. This flexibility is particularly important for operators to maintain quality when locally manufactured goods or services are unavailable or more expensive to source. The flexible approach also reduces legal risks relating to non-compliance with employment or LCR thresholds.

3. The Role of the State: Government and national oil company participation in procurement processes vary. While LCRs may specify the portion of total expenditures that must be comprised of locally sourced goods and services, procurement procedures are frequently not well established. Several MENA regimes provide the contractor with the flexibility to design and propose its own procurement processes and procedures, so long as they comply with LCRs and are based on generally accepted standards in the international petroleum industry (for example Jordan, Iraq (Kurdistan Region)).⁶² What constitutes international best practice, especially when there is a dispute relating to compliance with LCRs, may however be subject to debate and complex litigation. Furthermore, in some regimes, government must be informed after the fact through yearly statements, audits or mandatory performance standards that demonstrate compliance with LCRs and procurement requirements

⁵⁶ See In Kingdom Total Value Add (IKTVA) Program, *Program Brochure: Creating Value in the Kingdom*, n. 20.

⁵⁷ Ibid.

⁵⁸ Sultanate of Oman, *In Country Value*, <http://www.incountryvalueoman.net/getattachment/fc8254ec-0c1e-496a-84c1-2f841f42f8e4/ICV-Brochure>

⁵⁹ See n. 28.

⁶⁰ See Libyan Exploration and Production Sharing Agreement IV.

⁶¹ See In Kingdom Total Value Add (IKTVA) Program, *Program Brochure: Creating Value in the Kingdom*, n. 20.

⁶² See n. 22.



(Oman, Iran, Saudi Arabia, UAE); in others, procurement plans must be submitted prior to the commencement of petroleum operations (Lebanon, Iraq (Federal)).⁶³ A variation arises where the national oil company or a management committee is directly involved in an advisory capacity (Qatar) and, in more extreme cases, government must be informed and may participate in procurement activities above certain financial thresholds (Libya, Egypt).

Understanding the variations in the designated role of the national oil company or government in the procurement processes is critical to avoiding disputes. As governments increasingly seek to exercise some form of influence in contractors' procurement processes to ensure total value in terms of local content, it is important for IOCs to clarify, from the outset, the level of government involvement in the process. A common approach in Europe, for example, is to mandate the Contractor to submit a LCR compliance and procurement plan within sixty (60) days from the effective date of the petroleum agreement.⁶⁴ This allows the IOC to design and develop its own procurement practices, while providing the State an early opportunity to make inputs. Government participation in procurement processes, as a way of monitoring LCRs and transparency, poses significant risks and delay for petroleum operations, especially in several MENA countries where government approval processes could be slow and bureaucratic. Government participation in procurement processes should be avoided by IOCs concerned with the efficiency of their petroleum operations in the MENA region. However, when necessary especially in large projects with greater transparency requirements, government participation in procurement processes could be limited to contracts with a significant financial threshold.⁶⁵

4. Source of the Obligation: Obligations relating to LCRs can change very quickly in MENA countries and often emanate from sources beyond domestic legislation and existing petroleum agreements signed with an operator. For example, many oil and gas producing countries such as Nigeria, Mexico, Angola, Australia, Ghana and Brazil have enacted comprehensive legislative frameworks dedicated to local content,⁶⁶ therefore providing clarity on the meaning, nature and scope of LCRs applicable to petroleum operations. In the MENA region, while LCRs and product sourcing requirements that must be met by an operator are often expressly laid down in petroleum agreements, the scope and content of such requirements are not comprehensively codified in domestic legislation, and can be expanded in routine guidelines released by the national oil company or in general public procurement laws. Several countries in the MENA region are yet to develop clear and comprehensive legislative frameworks dedicated to local content, Iran being an exception having adopted a local content law in 2012.⁶⁷ For example, centralised guidelines on local content, product

⁶³ Ibid

⁶⁴ See for example, Croatian Hydrocarbon Agency, Croatian Model Production Sharing Contract, 1st Onshore licensing round (2015)

http://www.azu.hr/Portals/0/Dokumenti/PSA%20onshore_1507.pdf

⁶⁵ For example, many European Union member countries align their financial thresholds with EU legislation (in which government notification and participation is required for procurements above 414,000 Euros for supply and service contracts), while some countries impose more stringent national procurement rules where the procurement contract exceeds EU financial threshold (Norway). Outside the European Union, thresholds ranging from \$100,000 (Liberia, Azerbaijan, Nigeria) to \$20 Million (Mexico) have been stipulated. See Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (Utilities Directive); also Cyprus Model Exploration and Production Sharing Contract (2012); Norway's Act 29 November 1996 No. 72 Relating to Petroleum Activities; Brazil's Production Sharing Contract for Exploration and Production of Oil and Natural Gas (undated); Mexico's Contract for the Exploration and Extraction of Hydrocarbons under Production Sharing Modality (2014) ; also *The Nigerian Oil and Gas Industry Content Development Act 2010*, Chapter P10 Laws of the Federation of Nigeria (LFN) 2004.

⁶⁶ See *The Nigerian Oil and Gas Industry Content Development Act 2010*, *ibid*; also Mexico's Hydrocarbons Act 2014 (Ley de Hidrocarburos); *Ghana's Petroleum (Local content and Local Participation in Petroleum Activities) Regulations 2013*; *Angola's Decree Law on the rules and procedures to observe in recruitment, integration, training and development of workers from the oil sector*; Brazil's Law No. 12.351 of 2010. For a summary and overview of these laws, see Columbia Centre on Sustainable Investment, Local Content Laws & Contractual Provisions <http://ccsi.columbia.edu/work/projects/local-content-laws-contractual-provisions/> (accessed October 10, 2017).

⁶⁷ See n. 28.



mandating and procurement procedures contained in the Saudi IKTVA programme and the Oman ICV strategy introduce additional layers of obligations with respect to employment, product sourcing, training and total in-country expenditure, all of which could alter the profitability or otherwise of a project for an IOC. To avoid legal risks relating to uncertainty and misalignment with respect to the level and time frame of local content to be achieved, it is prudent for an IOC operating in the MENA region to ensure that LCRs are clarified beforehand and memorialised in the petroleum agreement.

5. Monitoring and Institutional Coordination: One key reason for the lack of clarity on the scope and content of LCRs in the MENA region is that while several MENA countries stipulate LCRs, only Saudi Arabia, Iran and Oman establish institutions or mechanisms for monitoring and enforcing such requirements. Oman's ICV Program Management Office is responsible for monitoring and quantifying the total value add by an operator, while Saudi Aramco directly evaluates and monitors the "added value" brought to the Kingdom by a supplier.⁶⁸ Countries such as Jordan, Qatar, Lebanon and Syria establish contractual LCRs, they do not provide clarity on how such requirements are to be implemented or measured, both by an IOC or by the government.

Measuring and quantifying value-add is difficult without establishing mechanisms for effective monitoring and enforcement. One reason why Nigeria is often viewed as a local content success story is that its LCRs is backed by the Nigerian Content Development and Monitoring Board ("NCDMB"), which is mandated to oversee, monitor and implement the provisions of the NCDA.⁶⁹ Ghana has followed Nigeria's example in establishing its own "Local Content Committee", mandated to monitor and coordinate all aspects of the implementation of Ghana's 2013 Regulation. Tanzania's 2013 Local Content Policy similarly evinces an intention to establish a "National Local Content Committee" which will be chaired by its Ministry of Petroleum.⁷⁰ In addition to promoting public awareness and reducing uncertainty on the scope of LCRs, a focal local content unit can coordinate and spearhead the development of a standardised approach to local content and product sourcing, in alignment with government priorities and domestic laws. Such an agency can also guide Operators and investors in formulating and developing petroleum operations or projects that are in line with the country's national vision; and more specifically that can result in real, measurable and long-term local benefits. A local content agency can also monitor and investigate companies in relation to their compliance with local content requirements. For example, the Nigerian NCDMB has clear statutory powers to prescribe penalties of at least 5% of the project total on any entity that fails to comply with LCRs.⁷¹ Fines levied by the NCDMB are paid into a Local Content Development Fund dedicated to training and supporting local enterprises. From the perspective of an IOC, such a clear institutional approach reduces ambiguities and surprises with respect to LCR enforcement and implementation, while from a government and policy standpoint it ensures that LCRs are indeed actually monitored and enforced such that they can result in real and quantifiable benefits in the long run.

Establishing a focal LCR agency or unit can also enable it to function as a one-stop shop that can coordinate with other relevant agencies and ministries to maximise and fast track the attainment of national local content objectives. This is particularly important considering that several ministries, departments and agencies have a role to play in quantifying added value. For example, apart from agencies overseeing the oil and gas industry, the education ministry has a role in assessing and monitoring local capacity and training programmes, while labour ministries and departments have a role in measuring the quantity and quality of local jobs added by a petroleum project, same for the technology departments and ministries that have roles to play in facilitating the transfer and deployment of petroleum technologies. The wide range of stakeholders underscores the importance of coordination. A focal agency can bring together and coordinate local content initiatives across all

⁶⁸ See *In Kingdom Total Value Add (IKTVA) Program, Program Brochure: Creating Value in the Kingdom*, n. 20; also Sultanate of Oman, *The Oil and Gas Industry In-Country Value Development Strategy: 2013-2020* (1-5), n. 31.

⁶⁹ S. 4 of *The Nigerian Oil and Gas Industry Content Development Act 2010*, n. 65.

⁷⁰ Ghana's Petroleum (Local content and Local Participation in Petroleum Activities) Regulations 2013, n.58.

⁷¹ S. 4 of *The Nigerian Oil and Gas Industry Content Development Act 2010*, n. 65.



relevant sectors of the economy. With robust intergovernmental coordination, getting approvals for local content initiatives is less cumbersome and more straightforward for an IOC. Developing a coordinated implementation approach could also simplify the process of passing information between government ministries, thereby removing inefficiencies and bureaucracy.

The diverse LCR regimes, and the unclear scope of local content obligations, across the MENA region raises several legal risks and uncertainties for an IOC, a very small share of which can be managed through traditional contractual documentation. Furthermore, specific problems arise due to lopsided laws or contracts that grant the national oil company or State broad discretion to participate in an Operator's procurement process as a way of monitoring local content. While it is very important to include contractual terms that specifically mitigate these risks, contractual provisions alone are not sufficient to address all of these legal risks. In order to retain IOC interest and confidence in oil activities in the region, MENA countries can do more to ensure that LCRs are clear, specific and aligned with global best practices to minimise contentions. Without a strong regulatory and institutional foundation that provides clarity and certainty for investors, it is difficult to compete with jurisdictions that provide clearer and more realistic terms and requirements for IOCs. The next section discusses the need for a collaborative approach, between national authorities and IOCs, in minimising legal risks and disputes relating to LCRs in the MENA region.

4. Mitigating legal risks relating to LCRs: the need for a collaborative approach

As can be seen in jurisdictions such as Norway, Nigeria, Ghana, Mexico and Brazil, where LCRs have been implemented with varying levels of success, LCRs must be backed by a clear, specific and transparent legislative framework, including a robust performance monitoring mechanism.⁷² While setting national requirements and targets for local content reflects a political commitment towards ensuring domestic value creation and long-term economic growth, the next step for national authorities across the MENA region is to develop comprehensive and holistic legal frameworks that clarify and simplify LCRs. Rather than approach LCRs from a compliance or mandatory project requirement mindset that demands more local content or introduces more punitive enforcement measures, governments across the MENA region must adopt a more collaborative approach built on clear, transparent and attainable LCRs, with adequate institutional support for IOCs to achieve those goals.

Rather than focusing only on specifying mandatory or quantitative LCR targets or thresholds for IOCs, a collaborative approach to LCR is built on creating a supportive regulatory and business-friendly economic environment for IOCs to deliver greater value in the host country.⁷³ Under this approach, governments have a prominent role to play in reducing regulatory and administrative barriers to domestic investments; providing fiscal incentives for IOCs to establish or support small and medium enterprises in the host country; updating intellectual property laws to provide greater protection for domestically produced technology; simplifying approval processes and fees for licenses and permits and providing and ensuring greater inter-ministerial coordination amongst key ministries and agencies that have roles to play in the employment, training and education components of LCRs.⁷⁴ Under a collaborative approach, governments will work closely with IOCs and local communities to set out

⁷² See T Acheampong, M Ashong, & V Svanikier, 'An Assessment of Local-Content Policies in Oil and Gas Producing Countries' n. 22, also C Nwapi, *Defining the 'Local' in Local Content Requirements in the Oil and Gas and Mining Sectors in Developing Countries* (2015) 8:1 Law & Development Review, also How host governments can improve local content (13 January 2015) <http://www.arabianindustry.com/oil-gas/comments/2015/jan/13/how-host-governments-can-improve-local-content-4928053/?artpno=2>

⁷³ Organisation for Economic Co-operation and Development, Working Party of the Trade Committee, *Local Content Policies in Minerals-Exporting Countries* (n.8) above.

⁷⁴ On the importance of reducing barriers to technology absorption at national levels, see D. Olawuyi, "From Technology Transfer to Technology Absorption: Addressing Climate Technology Gaps in Africa" (2017) *Journal of Energy & Natural Resources Law* DOI:10.1080/02646811.2017.1379667.



realistic and achievable LCRs, and then develop supportive regulatory and institutional frameworks for the delivery of the agreed targets.

There is a strong economic case, in terms of cost, reputation and effectiveness for adopting a collaborative approach.⁷⁵ Apart from the fact that governments and the public will ultimately benefit more when LCRs are achieved by an IOC, failure to effectively minimise legal risks associated with LCRs could carry significant financial, legal and reputational risks for national authorities, especially when LCRs become subjects of extensive litigation.⁷⁶ Such risks may also manifest themselves in disruptions to petroleum operations due to disputes, such as community protests over a perceived lack of benefits from a project, including potential harm to employees due to such protests. Furthermore, in a competitive oil and gas sector, a country's ability to attract investors and technologies (including financial institutions and lenders) needed to develop oil resources will depend on the processes, procedures, practices and approaches put in place to reduce contractual risks, such as those that could result from misaligned LCRs. IOCs on the other hand could avoid fines, penalties, or even allegations of corruption and/or material breach of the host government contract, which may result from misaligned LCRs.

To minimise legal contentions and risks relating to LCRs, the following action points should be considered by governments and IOCs when adopting LCRs:

4.1 Establish clear and comprehensive local content laws

The starting point is for national authorities across the region to establish clear, transparent and comprehensive local content laws that can provide guidelines on LCRs, particularly in the oil and gas sector. Such laws should, amongst other things, provide clear definitions of key concepts such as local, local content, local company, project sum and in-country value. There is also a need to clearly identify the skills, competencies, technologies and economic activities that a country wants to improve or build upon as part of local content implementation. Such clear definitions will reduce ambiguities with respect to the scope and content of LCRs.

Local content laws can also be very helpful in addressing overlaps and limitations in other domestic laws that could hinder the successful implementation of LCRs.⁷⁷ For example, procurement laws that have elaborate provisions on procurement procedures may hinder the coherent implementation of LCRs and may result in misalignments and risks if they do not clarify if such procedures apply in the oil and gas sector. The adoption of clear and specific LCRs could provide opportunities for a country to harmonise LCRs with existing laws to avoid overlap and mismatch.

Most importantly, the local content legislation should establish a designated institution or focal point as a one-stop shop for LCRs. This would help simplify the processes and procedures for seeking and obtaining regulatory permits and investment approvals; it would also serve as a rallying point that could foster intergovernmental coordination and linkages amongst the many institutions that currently play important roles in the delivery of local content initiatives.

4.2 Establish collaborative focal institution on local content

To provide adequate institutional support for IOCs to achieve LCRs and goals, it is important to establish a focal institution, committee or administrative unit that will coordinate the design, approval and implementation of local content plans across the life cycle of a project. While such a focal institution can be established as a supervisory committee of a petroleum contract, a more long-term

⁷⁵ For theoretical viewpoints on the utility of a collaborative approach to regulation, see S Shapiro and R. S. Rabinowitz, 'Punishment versus Cooperation in Regulatory Enforcement: A Case Study of OSHA' (1997) 49 *Administrative Law Review* 713-720.

⁷⁶ D Franks, R Davis, A Bebbington, H Saleem, D Kemp, and M Scurrah, *Conflict Translates Environmental and Social Risk into Business Costs*, (Proceedings of the National Academy of Sciences, 111: 21, 2014) 7576-7581.

⁷⁷ C Nwapi, *Defining the 'Local' in Local Content Requirements in the Oil and Gas and Mining Sectors in Developing Countries*, n. 63; also J Ovadia, 2015. *The Role of Local Content Policies in Natural Resource-based Development*, (n. 34).



approach is to establish a national local content agency or unit that will oversee LCRs in multiple sectors of the economy.

Apart from serving as a one stop shop that will streamline the approval processes for local content implementation, such an institution would also provide methodologies and tools for operators to report and monitor their compliance with LCRs so as to minimise disputes. By empowering and establishing a focal institution on projects, investors across multiple sectors can obtain relevant information and develop a standardised approach to tracking, monitoring and complying with LCRs. A coordinated approach can also reduce duplication and overlap, conflicting regulations, increased administrative costs and delays.

4.3 Adopt collaborative contract terms on LCRs

As part of contract negotiations, national authorities and IOCs need to jointly define at the outset what constitutes success in terms of local content and value addition. The scope of objectives must be specific, measurable and achievable to avoid ambiguities and misalignments. Rather than adopting a rigid and inflexible approach, a collaborative approach that clarifies the expectations of the government, while providing the IOC with the flexibility to develop its local content plans and procurement procedures could achieve greater results in the MENA countries. Also, rather than stipulating blanket and unrealistic timeframes, countries, in defining LCRs and ambitions, must recognise that the timeframe for delivering in-country value may vary from project to project and could be affected by political and other factors not envisaged during contract negotiation.

The negotiation stage is also a great opportunity for an IOC and the government to agree up front on the costs and tradeoffs of complying with local content initiatives over time. As earlier noted for example, complying with product mandating requirements could mean project delays or higher costs on the part of the IOC, especially when suitable and reasonably priced alternatives are not immediately available locally. This can change the profit margin of a project or affect the timeline for petroleum operation activities. These tradeoffs must be very well considered during contract negotiation stages to avoid long-term misalignments and contentions and to achieve a mutually beneficial and realistic contractual framework. For example, if the government insists on a local content timeline, fiscal terms such as profit oil and recovery costs, amongst others, could be amended to protect the margins of the IOC, while achieving the aggressive LCR timelines stipulated by the government.

4.4 Measure and communicate performance

One of the outstanding elements of the Saudi IKTVA programme, and the Oman ICV Strategy is that, unlike other regimes in the region, they both establish reporting obligations and fixed key performance indicators (KPIs) that mandate suppliers to provide quarterly status updates and annual reporting on the scope and level of compliance with LCRs. Periodic reporting of targets, accomplishments and strategies provides a collaborative opportunity for both parties to mutually evaluate the feasibility and efficacy of LCRs and to explore approaches that can improve performance and deliver shared wins for both sides. Timely and effective communication can reduce the likelihood of disputes as it allows both parties to explore if, and how, a company is achieving LCRs. KPIs could also provide a basis for renegotiating or amending LCRs when established targets may be difficult to achieve. It is therefore imperative for both parties to agree upon, and incorporate, KPIs and reporting requirements with respect to LCRs during contract negotiations, rather than just stipulating that LCRs must be achieved.

5. Conclusion

The increased adoption of LCRs by MENA countries provides practical opportunities for national authorities to maximise in-country benefits and value from resource extraction activities. LCRs can also serve an investor's desire to ensure freedom to procure on the basis of cost, availability and quality, and the mutual desire for a transparent and efficient process. LCRs can however result in significant legal risks and misalignment between governments and investors if the procedures for implementing, reporting



and measuring local content are not well clarified from the outset. Legal contentions and risks relating to LCRs in MENA countries can be exacerbated by the absence of robust legal and institutional frameworks on LCRs across the region. There is therefore a need for national authorities across the MENA region to adopt comprehensive legal frameworks that clarify the meaning, nature, scope and methodology for implementing, measuring and reporting local content performance. A clear, comprehensive and realistic legal framework on LCRs is an absolute requirement for MENA countries to move their local content policy goals from aspirations to realisations.

Furthermore, the compliance approach to local content that is increasingly adopted in the region may be counterproductive to the policy aims of LCRs. Governments in the region need to adopt a collaborative approach to LCRs, built on common understanding, shared values and benefits, and propelled by collaborative and supportive institutions. Care must also be taken by both parties to develop and agree upon LCRs and procedures that are clear, practical and achievable.

With regard to emerging challenges facing the development of a coordinated regional framework or approach on LCRs, especially in light of the recent isolation of Qatar by several Middle East countries,⁷⁸ future research will be necessary to develop a better understanding of the importance and future of the Gulf Cooperation Council in promoting such a shared regional approach to local content policy development, implementation and market integration.

⁷⁸ See B. Fattouh and B. Farren-Price, 'Feud between Brothers: The GCC Rift and Implications for Oil and Gas Markets' (Oxford Institute for Energy Studies, June 2017) 1-2.



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Table 1: SURVEY OF LOCAL CONTENT AND PROCUREMENT REQUIREMENTS IN THE MENA REGION

Country	Source	Provision	Comments
Iraq (Federal)	<p>2009 Technical Service Contract for Oil Field</p> <p>Law of Public Contracts ("CPA Order") 87 of 2004</p> <p>Implementing Procurement Regulation No. 1 of 2008 as amended</p>	<p><u>Local Content</u></p> <p>Preference shall always be given to Iraqi entities and firms and to locally manufactured goods, materials, equipment, and consumables.</p> <p>No later than six months after the effective date of the agreement, Contractor shall prepare and submit for joint management committee approval, employment and personnel procedures showing compliance with the local content requirement.</p> <p><u>Procurement</u></p> <p>Any procurement above IQD 50 Million must comply with procurement laws.</p> <p><u>Procedure</u></p> <p>Two stage public tender process: Open to all interested bidders and issued publicly; bidders pay for tender and winning bidder pays for tender advertising costs incurred by Government; bid and performance bond usually required.</p> <p>Procurer must have an opening committee and a separate evaluation committee for the tenders in accordance with the regulations.</p>	<p>Under the Iraqi federal regime, local content is defined in terms of maximising participation and value for local players.</p> <p>Although the national oil company is not directly involved in the procurement processes, contractor is expected to submit local content and procurement plans to the joint management committee for approval, prior to petroleum operations. This report must demonstrate strategies aimed at complying with local content and procurement requirements, and may be audited by the committee to verify accuracy.</p>



Country	Source	Provision	Comments
Iraq (Kurdistan Region)	Production Sharing Contract (2007) Kurdistan Region	<p><u>Local Content</u></p> <p>The Contractor shall give priority to <u>Equipment and Materials that are readily available in the Kurdistan Region</u> and other parts of Iraq to the extent their price, grade, quality, quantity, specifications, purchase, delivery and other commercial and technical terms are comparable in all material respects with those generally available in the international petroleum industry.</p> <p><u>Procurement</u></p> <p>As soon as possible after the effective date of the petroleum agreement, Contractor must provide the Management Committee (comprising an equal number of members designated by each Party: two (2) members designated by the Government and two (2) members designated by the Contractor) with a copy of its procedures for procurement of Equipment and Materials and/or services for the petroleum operations. Such procedures and criteria, including the criteria for tender evaluation, shall be in accordance <u>with generally accepted standards in the international petroleum industry.</u></p>	The petroleum agreement in the Kurdistan Region provides the contractor with the flexibility to design and propose its own procurement processes and procedures, so far they are based on <u>generally accepted standards in the international petroleum industry.</u>
Iran	Iranian Petroleum Contract 2015 Maximum Utilization of Production	<p><u>Local Content</u></p> <p>Contractor shall give priority to local contractors, locally manufactured materials, equipment, machinery and consumables, so long as their prices, performances, technical specifications, quality and time of</p>	<p>Under the Iranian regime, local content is defined in terms of maximising participation and value for local players.</p> <p>Although the national oil company is not directly involved in the procurement processes,</p>



Country	Source	Provision	Comments
	and Services Potency in Providing Country's Needs and Promotion of Exports 2012	<p>delivery and services are comparable to internationally available ones.</p> <p><u>Procurement</u> Procurement is generally conducted through advertised enquiries of tenders.</p>	contractor is expected to submit local content and procurement plans to the joint management committee for approval, prior to petroleum operations.
Jordan	<p>Model Production Sharing Agreement of 2007</p> <p>Tenders and Auctions Law 1922</p> <p>Supplies Regulation No. 32, for the year 1993</p> <p>Government Works Regulation No. 71, for the year 1986</p>	<p><u>Local Content</u> Contractor shall give preference to <u>locally manufactured materials, equipment, machinery and consumables</u> as long as their price, quality and time of delivery are in line with those internationally available.</p> <p>Contractor shall also give preference in employment to suitably qualified Jordanian nationals, <u>provided, however, Contractor has the right to employ its own key personnel in appropriate positions.</u></p> <p><u>Procurement</u> Procurement is generally conducted through advertised enquiries of tenders.</p> <p>Currently Jordan has prepared a draft Government Procurement Regulation that will introduce the use of an eProcurement system.</p>	The local content requirement in the Jordanian regime is typical with what applies in other countries in terms of emphasising preference for local materials, equipment, machinery and consumables.
Lebanon	<p>Model EPA for 2017 Offshore bid round, Decree 43 dated 19 January 2017 (Art. 6.8)</p> <p>The Public Accounting</p>	<p><u>Local Content</u> Operator must give <u>preferential treatment to the procurement of Lebanese originating goods and services</u> when such goods and services are internationally competitive with regard to quality, availability, price and performance. Goods manufactured in Lebanon are given a 10% preference to foreign</p>	The Lebanese local content and procurement regime is flexible and less stringent. Local content is defined in terms of preferential treatment for local goods. The procurement rules apply only to Major Contracts. For such contracts, Government is to be informed by the Operator, after the fact about reasons and justifications for the selection of a



Country	Source	Provision	Comments
	<p>Law promulgated: Decree Law No.14969 dated 30/12/1963</p> <p>Petroleum Activities Regulations for Lebanon Implementing Law no. 132 dated 24/8/2010 (Offshore Petroleum Resources)</p> <p>The Bidding System: Decree No. 2866 dated 16/12/1959</p>	<p>goods.</p> <p><u>Procurement</u></p> <p>Major contracts for the procurement of goods and services for the purpose of petroleum activities shall be subject to public tender. The quality, price, delivery and guarantees offered shall be taken into account when evaluating bids and awarding contracts. Major contracts mean any contract that materially or substantially affects the design or functionality of Facilities, the concept or timeline of Development, Production or resource management and depletion policies. Major contracts mean also contracts of substantial value, meaning that the performance or non-performance of the contract may substantially affect the economy of the project or the financial strength of the Right Holder.</p> <p><u>Threshold:</u> Major contracts mean any contract that materially or substantially affects the design or functionality of Facilities, the concept or timeline of development, production or resource management and depletion policies. It also means contracts of substantial value, the performance or non-performance of which may substantially affect the economy of the project or the financial strength of the right holder.</p>	<p>supplier.</p> <p>Although the national oil company is not directly involved in the procurement processes, contractor is expected to submit local content and procurement statement to the joint management committee for approval, prior to petroleum operations. This report must demonstrate strategies aimed at complying with local content and procurement requirements, and may be audited by the committee to verify accuracy.</p>



Country	Source	Provision	Comments
		<p><u>Procedure</u></p> <p>Under the public tender process, invitations for pre-qualification to tender or to submit bids shall be distributed to a reasonable number of suppliers considered or expected to be capable with regard to quality, qualifications and experience to deliver the goods or render the services required. A reasonable time limit shall be provided for the preparation of bids.</p> <p>A certified copy of the list of pre-qualified bidders shall be submitted to the Petroleum Administration <u>for information</u>; also the Petroleum Administration <u>shall be informed of the decision subsequent to the award of major supply contract.</u></p>	
Libya	EPSA IV	<p><u>Local Content</u></p> <p>Operator must give priority to local supplies and services. Operator <u>shall be obliged to spend at least 50% of its approved Budget on supplies, equipment and services available locally.</u></p> <p><u>Procurement</u></p> <p>Libya runs a centralised procurement system in which Government has direct control over procurement of goods and services. The Libyan Government has not yet passed a procurement law, and has only introduced a series of procurement regulations based on International Federation of Consulting Engineers (FIDIC) procurement guidelines.</p>	The Libyan regime imposes a 50% local content requirement on contractors. The procurement process in Libya is also not typical as it is centralised and prescribed by the Government.



Country	Source	Provision	Comments
Syria	<p>INA Contract of 1998 for the Exploration, Development and Production of Petroleum Between the Government of the Syrian Arab Republic and Syrian Petroleum Company and INA-Industrija Nafta dd.-NAFTAPLIN (Art. 17)</p> <p>Government Procurement Law 51/2004 Approved by the People's Assembly on November 24, 2004 Promulgated by President Bashar Al-Assad on December 9, 2004</p>	<p><u>Local Content</u></p> <p>Contractor shall give priority to local contractors, locally manufactured materials, equipment, machinery and consumables, so long as their prices, performances, technical specifications, quality and time of delivery and services are comparable to internationally available ones.</p> <p>However materials may be imported if local price for such items at the Contractor or Operator's base in Syria is more than 10% higher than the international price before Custom Duties, but after transportation and insurance costs have been added.</p> <p><u>Procurement</u></p> <p>Procurement is generally conducted through advertised enquiries of tenders.</p>	<p>The local content requirement in Syria is typical to what applies in other countries in terms of emphasising preference for local materials, equipment, machinery and consumables.</p> <p>Under the Syrian regime, participation and approval of the national oil company in procurement processes is not required.</p>
Qatar	<p>Model Development and Production Sharing Agreement of 2002 (s. 23.2)</p>	<p><u>Local Content</u></p> <p>Contractor shall, in selecting its personnel to work on Petroleum Operations, give priority to the nationals of the State of Qatar. Contractor shall also prepare plans and programmes for training and educating Qatari nationals</p> <p>Contractor shall, when possible, select contractors who are nationals of the State of Qatar or companies, which are majority</p>	<p>The local content requirement in Qatar is typical to what applies in other countries in terms of emphasising preference for local materials, equipment, machinery and consumables.</p> <p>Under Qatar's regime, local content is defined in terms of maximising participation and value for Qatari nationals and companies owned, or majority</p>



Country	Source	Provision	Comments
		<p>owned by Qatar nationals.</p> <p>In purchasing goods for petroleum operations, Contractor shall, when possible, give preference to locally manufactured or locally available goods so long as their technical specifications, quality and time of delivery and services are comparable to internationally available ones.</p> <p><u>Procurement</u></p> <p>The Qatar PSC establishes a tender committee, which can give non-binding advice on the method of procurement for goods and services.</p> <p>Procurement is generally conducted through advertised enquiries of tenders in local newspapers and Qatar Petroleum (QP) website. QP also has an e-Registration system through which all procurements are advertised and submitted.</p>	<p>controlled by nationals</p> <p>Qatar PSC however establishes a tender committee, which can give non-binding advice on several operational issues, including the method of procurement for goods and services.</p>
Oman	<p>Model Exploration and Production Sharing Agreement Dated April 24, 2004 (s. 19.1)</p> <p>Oman In Country Value Program</p>	<p><u>Local Content</u></p> <p>Company shall give Omani Nationals preference over expatriate manpower and shall use all reasonable efforts to employ and train Omani nationals.</p> <p><u>Procurement</u></p> <p>The Oman In Country Value Program introduces a Joint Supplier Registration System (JSRS), an electronic public procurement portal through which all procurements are advertised and submitted.</p>	<p>Under Oman's regime, local content is defined in terms of maximising participation and value for Omani nationals and companies owned, or majority controlled by nationals</p> <p>The Ministry of Oil and Gas maintains a central procurement database through which it monitors and evaluates the total in-country value added by an operator.</p>



Country	Source	Provision	Comments
Yemen	Republic of Yemen Model Production Sharing Agreement 2006 (s. 26)	<p><u>Local Content</u></p> <p>Contractor, and its subcontractors, shall give priority to local contractors and subcontractors, locally manufactured materials, equipment, machinery and consumables, so long as their price, quality and time of delivery and services are comparable to internationally available ones, and their prices are not higher by more than 10%</p>	The local content requirement in Yemen is typical to what applies in other countries in terms of emphasising priority for local materials, equipment, machinery and consumables.
Saudi Arabia	<p>Participation Agreement with Major Oil Companies 1972</p> <p>Concession Contract Between the Government of Saudi Arabia and AUXIRAP for Exclusive Exploration and Prospection Rights in Saudi Arabia 1965</p> <p>Saudi Aramco In Kingdom Total Value Add (IKTVA) program</p>	<p><u>Local Content</u></p> <p>Company shall give Saudi nationals preference over expatriate manpower and shall use all reasonable efforts to employ and train Saudi nationals.</p> <p><u>Procurement</u></p> <p>The Saudi Arabia In Country Kingdom Value Program introduces an electronic procurement portal through which all procurements are advertised and submitted.</p>	<p>Under Saudi Arabia's regime, local content is defined in terms of maximising participation and value for Saudi nationals and companies owned, or majority controlled by nationals</p> <p>The national oil company (Saudi Aramco) maintains a central procurement database through which it monitors and evaluates the total in-country value added by a supplier or operator.</p>