

LOCAL CONTENT AND SUSTAINABLE DEVELOPMENT IN GLOBAL ENERGY MARKETS

Local Content and Sustainable Development in Global Energy Markets analyses the topical and contentious issue of the critical intersections between local content requirements (LCRs) and the implementation of sustainable development treaties in global energy markets including Africa, Asia, Europe, North America, Latin America, South America, Australasia and the Middle East.

While LCRs generally aim to boost domestic value creation and economic growth, inappropriately designed LCRs could produce negative social, human rights and environmental outcomes, and a misalignment of a country's fiscal policies and global sustainable development goals. These unintended outcomes may ultimately serve as disincentive to foreign participation in a country's energy market. This book outlines the guiding principles of a sustainable and rights-based approach – focusing on transparency, accountability, gender justice and other human rights issues – to the design, application and implementation of LCRs in global energy markets to avoid misalignments.

Damilola S. Olawuyi is an associate professor of petroleum, energy and environmental law at Hamad Bin Khalifa University (HBKU) College of Law, Doha, Qatar. He is also Chancellor's Fellow and Director of the Institute for Oil, Gas, Energy, Environment and Sustainable Development (OGEES Institute), Afe Babalola University, Ado Ekiti, Nigeria. He is an Independent Expert of the Working Group on Extractive Industries, Environment, and Human Rights Violations in Africa formed by the African Commission on Human and Peoples' Rights.

“A thorough analysis of local content. A go-to reference book. Having a robust local content policy is one tool to avoid the resource curse. But to succeed it must be carefully tailored to the circumstances of the country and must gradually evolve as local vendors, services, and employee capabilities are enhanced. “Local” content is necessarily just that—local, not truly national and certainly not global, but this book, while covering the globe, recognizes the need to tailor local content to local circumstances. Every host government and investor can benefit from the many wisdoms imparted in this book and from about the local-content experiences of various countries. The story of local content is a cautionary tale. Because the petroleum industry is capital, not labor, intensive, a local-content policy, no matter how robust, cannot provide full employment—especially in a country with a large population. Thus, every petroleum-producing country must avoid the resource curse, especially Dutch disease, which can lead to more unemployment than the petroleum industry can make up—no matter how robust the local-content program may be. Thus, a host government must pay equal attention to sustainability, which necessarily includes keeping an eye on competitiveness, as the title of this important book emphasizes.”

*Professor Owen L. Anderson, Distinguished Oil & Gas Scholar and
Co-Academic Director, KBH Center for Energy Law & Business,
the University of Texas at Austin, and Eugene Kuntz Chair in Oil,
Gas & Natural Resources, Emeritus and George Lynn Cross
Research Professor Emeritus, The University of Oklahoma,
United States of America*

“Damilola Olawuyi has brought together a group of leading energy and natural resources law scholars to address the important subject of local content requirements. These requirements are often contentious, and the contributions in this book unravel the many legal challenges that attend them. The contributors identify the value of measures that increase the benefits that flow to a host country or community from oil and gas operations, and, to a lesser extent, renewable electricity. At the same time the contributors explore the many difficulties. Local content requirements may be economically inefficient and inequitable in gender and wealth terms or as between regions; they may be hard to reconcile with environmental aspirations in sustainable development, and they may contravene international trade rules. In the course of 21 chapters, the contributing authors have analyzed the experience of a number of countries, and have identified a number of ways that careful legislative design can address the challenges, minimize misalignments and maximize the potential to reap local benefits and grow industries and employment opportunities. The book is a valuable contribution to the scholarship of energy and natural resources law, and it will be a key point of reference globally for researchers and policy makers interested in the characteristics high-quality local content requirements.”

*Professor Barry Barton: Professor of Law and Director of
the Centre for Environmental, Resources and Energy Law at
the University of Waikato, Hamilton, New Zealand.*

“There is a growing body of literature on local content requirements. No doubt because of the speed and importance of various developments in this area. This book provides a detailed and comprehensive account of local content policies and their interaction with sustainable development trends in energy markets. It provides an overview of the current state of play around the world and discusses future developments in great detail. The book is clearly essential reading for students in energy law, policy makers and international energy law practitioners. More generally, it should be read by those interested in direction of global energy markets.”

Professor Kim Talus, McCulloch Chair in Energy Law and Director of Tulane Center for Energy Law (Tulane University, United States); Professor of European Economic and Energy Law, UEF Law School; Professor of Energy Law, University of Helsinki, Finland

“The importance of local content enterprises to national or regional economies cannot be overstated. In their best forms, local content programmes enable countries or regions to capitalise on their comparative advantage to transform primary industries into competitive industries that are a valuable part of global supply chains and a catalyst for sustainable development. Resource-rich countries therefore rightfully rely on local content programmes to transform or enhance their economies. However, resource-rich countries tend to focus on the fiscal or economic benefits derived from local content policies, without paying commensurate attention to the externalities of such policies.

This book offers an excellent exposition and comparative analysis of local content requirements in the energy sector, as well as highlights the often-neglected issues for sustainable development, such as gender injustice, social exclusion, transparency, corruption, accountability, corporate social responsibility, environmental justice, climate change, human rights, and participatory development. It also appropriately considers the impact of current geopolitics and international treaty obligations and offers constructive recommendations for designing, applying and implementing local content requirements. For the African Legal Support Facility, whose mandate includes ensuring balanced negotiations and contracts between its regional member countries and investors in the energy, extractives and infrastructure sectors, the issues and recommendations discussed in this volume are relevant for advising on appropriate legal and regulatory frameworks, building capacity, and negotiating contracts that will ensure sustainable development. The initiative by Dr. Damilola Olawuyi and his esteemed colleagues to publish this insightful volume is not only commendable, but also timely as our countries strive to achieve the UN Sustainable Development Goals (SDGs) by 2030.’

Stephen Karangizi, Director & Chief Executive Officer, African Legal Support Facility, African Development Bank

“Olawuyi has brought together an impressive number of renowned specialists to discuss local content experiences in light of international treaty obligations on trade, investment, business and human rights. This much needed innovative approach provides solid understanding of several legal and fiscal regimes as well as valuable insights on how to design sustainable, transparent and effective local

content requirements in global energy markets. This is an important book for policymakers, scholars, stakeholders, lawyers and any interested observer.”

André Giserman, Deputy Superintendent of Local Content, Brazilian National Agency of Petroleum, Natural Gas and Biofuels

“Professor Olawuyi’s germinal scholarly work in creating the conceptual apparatus for, editing, and integrating the various chapters of this book, more or less closes a yawning gap in the literature by tackling an extremely important topic that lies close to the heart of the longstanding effort of resource-rich countries (mostly in the Global South) to benefit much more than has generally been the case from their natural resource endowments. The book sparkles with disciplinary cross-fertilization, creativity and insight in putting into a highly productive conversation, several bodies of knowledge and policymaking that are all-too-often incorrectly viewed and treated as isolated and disparate. In the result, he has produced a work of scholarship that will be just as useful to human rights, environmental, indigenous rights, and sustainable development scholars and practitioners as it will be to their counterparts who focus more closely on fields such as energy, trade, investment, or corporate law and policy.”

Professor Obiora Chinedu Okafor, United Nations Independent Expert on Human Rights and International Solidarity and York Research Chair in International and Transnational Legal Studies, Osgoode Hall Law School, Canada

TREATY IMPLEMENTATION FOR SUSTAINABLE DEVELOPMENT

Over the past three decades, a series of international treaties have entered into force to address pressing global concerns of social and economic development and environmental protection. On climate change, biodiversity and biosafety, desertification, agriculture and seeds, and trade and investment liberalisation, new regimes have been established to implement global commitments related to sustainable development, many with nearly universal membership. Successful domestic implementation of these international treaty regimes is one of the most significant challenges facing international law today. Although much has been written on the content and form of treaty law, there is relatively little that examines the transition from international legal theory and treaty texts to domestic regulation and practice.

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Preface and Acknowledgements

Determined to incentivise and maximise the use of local goods and services in their energy industries, resource-rich countries across the world are increasingly introducing local content requirements (LCRs) into their regulatory framework, legislation, guidelines, industry contracts and bidding practices. A number of studies have compiled the importance of LCRs as revolutionary and innovative regulatory measures that can unlock the competitiveness of the local economy, while allowing a country to strengthen its national industry and achieve other social benefits. However, notwithstanding the importance and prevalence of LCRs in global energy markets, LCRs have also been linked in a number of countries with producing conflict and misalignments with extant national obligations under core international treaty provisions on trade, investment, gender, environment, human rights and sustainable development.

Despite the tensions and trade-offs between LCRs and sustainable development-related treaties, a comparative analysis and evaluation of the normative underpinnings, functionality and sustainability of legal and fiscal regimes on LCRs, in the light of international treaty obligations on environment, trade, investment, business and human rights, has yet to receive a book-length, exhaustive and rigorous exposition and analysis. This book fills that gap. It provides an authoritative exposition of legal, fiscal and institutional frameworks on LCRs in global energy markets. It explores the values, assumptions and guiding principles that underpin LCRs and explores how questions of social exclusion, transparency, gender injustice, corruption, accountability, corporate social responsibility, environmental justice and participatory development in LCR formulation and implementation have been, and could be better, addressed.

Overall, the book aims to: enhance an understanding of the intersectional nature of, and the relationship among, LCRs, sustainable development, distributive justice, gender justice, social licence to operate and corporate social responsibility in the energy sector, especially the question of whether LCRs aid or hinder the domestic implementation of sustainable development treaties and norms in energy markets;

analyse how LCRs may result in misalignment with World Trade Organization agreements and other international trade and investment treaties; analyse the general legal, fiscal and contractual framework governing LCRs, highlighting examples of contractual provisions and clauses such as employment of nationals, training, procurement, technology transfer and project participation requirements; explore how LCRs may result in negative social, human rights and environmental outcomes if not backed by robust legal and governance safeguards; and highlight how lessons learned from surveyed jurisdictions can influence the design of sustainable, transparent and effective LCRs in global energy markets.

The book is prepared in a user-friendly style to enhance its utility among its primary audience, namely students, corporations, energy departments and ministries, law firms, courts and arbitrators, notably international and regional committees and tribunals before whom arguments over local content clauses and policies often come for resolution. The book analyses the key roles that international institutions such as the Organization for Petroleum Exporting Countries, Gas Exporting Countries Forum, Organization for the Harmonization of Business law in Africa (OHADA), International Energy Agency, International Maritime Organization, World Trade Organization, and national institutions such as national oil companies, the Ministry of Petroleum Resources, Department of Petroleum Resources, Local Content Development and Monitoring Boards, and National Extractive Industry Transparency Initiatives, play in developing and implementing high-leverage LCRs. This book provides a worldwide audience of business leaders, policy makers and administrators an authoritative and invaluable guidebook and toolkit to access, understand and appreciate theoretical, legal, fiscal and institutional frameworks applicable to the effective design, application and implementation of LCRs.

Any writing process requires significant planning and organisation. In this regard, I must register my profound gratitude to many helping hands, without whom the publication of this book would not have been possible. First and foremost, my thanks and appreciation go to God the Almighty for the successful publication of this book. Secondly, I appreciate the kind motivation and support of the President and Founder of Afe Babalola University – Aare Afe Babalola, OFR, CON, SAN, FNIALS, FCI Arb., LL.D – for his unflinching support of me and my family. Aare Afe Babalola's journey and global achievements provide reinforcing pillars and instructive pathways that one could only aspire to follow.

Furthermore, I am especially indebted to everyone at Qatar Foundation and Hamad Bin Khalifa University (HBKU), Doha, Qatar, for their exceptional love and support over the years. Special thanks to Dean Susan L. Karamanian for being ever so kind and supportive, and to Professor Clinton W. Francis, the founding Dean of the HBKU College of Law, for providing remarkable opportunities and support to organise the 2018 Doha Energy Experts' Workshop that greatly furthered my interest in this area.

Preface and Acknowledgements

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Finally, I would like to thank my dear wife Oluwabunmi and our amazing twin girls, Titalayo and Oluwatoni, for their love, support and inspiration. Thanks are also due to my exceptional students whose class contributions and ideas served as timely seeds that blossomed into this book. I thank you all for your support and kindness, and I commit this book to your scholastic minds.

This book has endeavoured to state the position of the law as of 30 June 2020, although authors have been able to take into account subsequent developments in one or two instances.

Damilola S. Olawuyi
Doha, Qatar
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Abbreviations

AECID	Spanish Agency for International Development Cooperation
AEP	Angola Enterprise Program
AMC	Australian Marine Complex
ANC	African National Congress
ANP	National Petroleum Agency
ANPG	Angola's National Oil, Natural Gas and Biofuels Agency
APPEA	Australian Petroleum Production & Exploration Association
ASCM	Agreement on Subsidies and Countervailing Measures
BBBEE	Broad-Based Black Economic Empowerment
BEE	Black Economic Empowerment
BHRU	Business and Human Rights Unit
BITs	Bilateral Investment Treaties
BNDES	National Bank for Economic and Social Development
BREXIT	British Exit from the European Union
CAMA	The Companies and Allied Matters Act 1990 of Nigeria
CBD	Citizens and Business Department
CCIA	Angolan Chamber of Commerce and Industry
CDAs	Community Development Agreements
CDBs	Community Development Boards
CEDAW	Convention on the Elimination of All forms of Discrimination against Women
CEMAC	Central African Economic and Monetary Community
CEPA	Comprehensive Economic Partnership Agreement
CER	Canadian Energy Regulator
CFRN	Constitution of the Federal Republic of Nigeria
CNL	Chevron Nigeria Limited
CNPE	National Council for Energy Policies
CRES	Centre de Recherches Entreprises et Societies
CSB	Ceduna Sub-Basin

List of Abbreviations

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CSG	Commercial-Scale Coal Seam Gas
DEC	Directorate of Economy and Concessions
D.PRO	Directorate of Production
DSB	Dispute Settlement Body
ECCAS	Communauté Économique des États de l'Afrique Centrale
EEA	Employment Equity Act
EEA	European Economic Area
EGA	Environmental Goods Agreement
EGASPIN	Environmental Guidelines and Standards for the Petroleum Industry in Nigeria
EIA	Environmental Impact Assessment
EOPS	Early Oil Pilot Scheme
EPRA	Energy and Petroleum Regulatory Authority
EU	European Union
FISO	Fideicomiso Público para Promover el Desarrollo de Proveedores y Contratistas Nacionales para la Industria Energética
FPIC	Free, Prior, Informed Consent
GAB	Great Australian Bight
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariff and Trade
GMOU	Global Memorandum of Understanding
GPs	United Nations Guiding Principles on Business and Human Rights
HRBA	Human Rights Based Approach
HDSA	Historically Disadvantaged South Africans
HIPC	Heavily Indebted Poor Country
HLCS	Housing and Living Conditions Standard
IAAC	Impact Assessment Agency of Canada
IBA	Impact and Benefit Agreement
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IFC	International Finance Corporation
IGFMMMSD	Intergovernmental Forum on Mining, Minerals Metals and Sustainable Development
IKTVA	In Kingdom Total Value Add
ILUAs	Indigenous Land Use Agreements
ILO	International Labour Organization
IMF	International Monetary Fund
IOCs	International Oil Companies
APIECA	International Petroleum Industry Environmental Conservation Association

ICTSD	International Centre for Trade and Sustainable Development
JOA	Joint Operating Agreement
JVs	Joint Ventures
LNG	Liquefied Natural Gas
LCRs	Local Content Requirements
NAFTA	North American Free Trade Agreement
NCDMB	Nigerian Content Development and Monitoring Board
NDDC	Niger Delta Development Commission
NDP	National Development Plan
NEITI	Nigerian Extractive Industries Transparency Initiative
NERSA	National Energy Regulator of South Africa
NLNG	Nigerian Liquefied Natural Gas Company
NOSDRA	National Oil Spill Detection and Response Agency Act
OECD	Organisation for Economic Co-operation and Development
OFEPHI	Organización Federal de Estados Productores de Hidrocarburos
OHADA	Organization for the Harmonization of Business law in Africa
OIC	Organization of Islamic Cooperation
OLADE	Latin-American Energy Organization
OPA	Ontario Power Authority
OPAGGSA	Offshore Petroleum and Greenhouse Gas Storage Act
OPEC	Organization of Petroleum Exporting Countries
PAL	Petroleum Activities Law
PDO	Plan for Development and Operation
PDVSA	Petróleos de Venezuela, S.A.
PEDEFOR	Program for Stimulus to Competitiveness in the Supply Chain, Development and Enhancement of Suppliers in the Oil and Natural Gas Sector in Brazil
PIGB	Petroleum Industry Governance Bill
PPAs	Power Purchase Agreements
PPAD	Public Procurement and Asset Disposal
PRODEPRO	Programa de Desarrollo de Proveedores
PROMINP	Program for the Mobilization of the Oil and Gas Industry
PSA	Production Sharing Agreement
PSC	Production Sharing Contract
SDA	Skills Development Act
SNH	Société Nationale des Hydrocarbures
SNPC	Société Nationale des Hydrocarbures du Gabon
SOI	Report Sea of Indifference: Australian Industry Participation in the North West Shelf Project
SPDC	Shell Petroleum Development Company
SRP	Supplier Relationship Programme

List of Abbreviations

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TIVET	Technical, Industrial, Vocational, and Entrepreneurship Training
TVET	Technical and Vocational Education and Training
TRIMs	Trade-Related Investment Measures
UDEAC	Union Douanière et Économique de l'Afrique Centrale
UDHR	Universal Declaration of Human Rights
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNFCCC	United Nations Framework Convention on Climate Change
USAID	US Agency for International Development
WTO	World Trade Organization

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