Sustainable Development and Community Content in the Oil and Gas Industry

By:

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Local content measures are being advanced as mechanisms that foster achievement of the sustainable development goals (SDGs). The oil and gas industry as represented by IPIECA, "the global oil and gas association for environmental and social issues", has situated itself within the SDGs, outlining the industry's "potential to contribute to all 17 SDGs" in a report developed in partnership with the United Nations Development Program and the International Finance Corporation and presented at the United Nations High-Level Political Forum in 2017. As the executive summary to the joint report – "Mapping the Oil and Gas Industry to the Sustainable Development Goals: An Atlas" – notes, "oil and gas production can foster economic and social development by providing access to affordable energy, opportunities for decent employment, business and skills development, increased fiscal revenues, and improved infrastructure. However, oil and gas development has historically contributed to some of the challenges that the SDGs seek to address – climate

change and environmental degradation, population displacement, economic and social inequality, armed conflict, gender-based violence, tax evasion and corruption, increased risk of certain health problems, and the violation of human rights." Local communities that host and/or are impacted by natural resource extraction are at the fore of the impacts that these challenges generate. This contribution, therefore, focuses on the inequalities that result *within* countries as a result of the activities of the oil and gas industry and which endure in spite of the local content policies that are adopted. Without endorsing local content as a legal/policy option that captures the position of local communities regarding the oil and gas industry, it argues that it is necessary to clarify the definition of local content because if the scope of local content is unknown, there is a likelihood that it will remain difficult to determine whether goals are being met especially with regard to host and impacted communities.

Local content policies and requirements vary across jurisdictions and so does the definition of local content. Usually, local content is mostly understood as local content requirements ("LCRs") that are mandated by government through legislation or policy or included in investor-state natural resource contracts. Countries adopt LCRs in order to "maximize the gains" of FDI "through the promotion of local participation in FDI and the use of local raw materials". LCRs usually require local procurement of goods, local service provision, employment of citizens of host states as well as active participation of local companies. Some commentators regard local content as measures that extend beyond government mandated requirements. In their definition of local content, these commentators mostly outline the government mandated view of LCRs but also note that "[l]ocal content *may even refer* to the provision, by the oil company, of infrastructure (schools, medical facilities) that is not an input into its own production but intended for the benefit of the local populations (either of the nation generally or the neighborhood of the installations)." While local content is now mostly viewed through the lens of a "compliance regime", these authors argue that many oil and gas companies adopted the view that local content is part of CSR.

As the *Nigerian Oil and Gas Industry Content Development Act* demonstrates, LCRs mostly have a national focus which, in Nigeria's case, involves the

promotion of “Nigerian content”. Beyond the national view of local content, it has been argued that community development agreements (“CDAs”) formed between host and impacted communities and extractive companies by which the companies pledge to provide benefits, including infrastructure development, to host and impacted communities form part of local content. The Nigerian Content Development and Monitoring Board specifically incorporates these CDAs, known in Nigeria’s oil and gas industry as the Global Memorandum of Understanding, as part of its local content monitoring work. Commentators also regard community content, a set of government mandated requirements akin to LCRs but which focus specifically on host and impacted communities, as part of local content. Beyond commentary, the Nigerian Content Development and Monitoring Board has adopted a set of community content guidelines.

The broad view of local content then includes government mandated LCRs that operate nationally (including government incentives to facilitate local content), mandatory community content measures, CDAs, and voluntary CSR initiatives. However, the dominant view of local content remains the government mandated LCRs. Many Third World countries that adopt the government mandated model of LCRs do so to foster economic development. However, LCRs have been critiqued as being “both a mechanism for promoting large-scale economic development and at the same time a mechanism for the elite to capture oil rent by legitimising policies that play favourites and privilege particular capitalists.” While relevant for economic development, LCRs may not generate the necessary benefits for local communities and are not panacea for the challenges that pervade natural resource extraction. Hence, community content has garnered some traction.

In Nigeria, the *Nigerian Oil and Gas Industry Content Development Act* requires that all entities involved in Nigeria consider “Nigerian content” as an “important element” of their “management philosophy.” Nigerian content is the philosophy that currently drives the execution of projects and other activities in Nigeria’s oil and gas industry. The Act defines Nigerian content as “the quantum of composite value added to or created in the Nigerian economy by a systematic development of capacity and capabilities through the deliberate utilization of Nigerian human, material resources and services in the Nigerian oil and gas industry.” It focuses on “Nigerian” content with almost no specific references to

host and impacted communities. It is the recently adopted community content guideline that turns its attention toward host and impacted communities. Viewed from the perspective of government-required guidelines such as Nigeria's community content guideline, community content is a set of measures that seek to effect LCRs in host and impacted communities. The purpose for which these measures are adopted is not only to further economic development in the communities but also somewhat problematically to serve as a mechanism for industry's acquisition of a social license to operate and mitigating conflict in oil-producing areas. Nigeria's community content guideline requires that host and impacted communities receive preference regarding employment, training, procurement and other relevant areas of LCRs.Community content remains within the shadow of local content, broadly defined, making it difficult to assess whether references to local content in the policies of governments, international institutions and extractive companies include community content initiatives or only refer to measures that do not yield direct benefits to host and impacted communities.

The joint report referenced in the first paragraph of this contribution outlined several aspects of the SDGs that are impacted by the broad definition of local content in the oil and gas industry. SDG 1 (end poverty in all its forms everywhere) in this view would require *inter alia* investment in "local development" and CDAs while SDG 4 (ensure inclusive and equitable quality education and promote lifelong learning) would require the establishment of "company strategy for local content to promote sustainable development", which would in turn facilitate acquisition of the social license to operate. For its part, achievement of SDG 8 (promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all) is interpreted to require, *inter alia*, local procurement and supplier development as well as local employment – a more traditional view of local content. SDG 10 (reduce inequality within and among countries) and SDG 16 (promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels) would involve communication with local communities, and community engagement and consent respectively.

Clearly, the report severally incorporates the range of issues that are regarded

broadly as ‘local content’ and often references them individually. However, in its discussion of SDG 17, it states that “[t]ransparency around plans and policies, particularly related to such issues as the environment and local content, can also be important for communicating with local stakeholders, managing risk and maintaining a social licence to operate”. Here, local content could mean any of the measures discussed above and does not necessarily suggest a focus on the host and impacted communities, who often mostly encounter the challenges that the SDGs seek to address at a scale that is more severe than those encountered by citizens outside these communities. Hence, clear articulation of policies and measures directed to respond to challenges that host and impacted communities encounter cannot be overemphasized. And even where a measure, such as CDAs, is directed towards host and impacted communities, while it is convenient to easily brand them as contributing to the SDGs, it remains necessary to critically assess their place as measures that, according to Kenya’s Endorois community, reflect communities’ “choice and self-determination” and reflect the view that development is “an increase in peoples’ well-being, as measured by capacities and choices available.” This also exposes a fundamental consideration for which even the SDGs do not necessarily provide a robust response. While building schools, ensuring that community members have employment preference or implementing other measures that assist industry actors in the acquisition of a social license to operate are laudable initiatives that could foster achievement of the SDGs, host and impacted communities’ choice and self-determination mostly remain elusive.

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