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COMESA REGIONAL LOCAL CONTENT POLICY GUIDELINES: ENHANCING REGIONAL BENEFITS FROM INDUSTRIALISATION

LIST OF ACRONYMS AND ABBREVIATIONS

ACET	-	African Centre for Economic Transformation
AfDB	-	African Development Bank
CEEC	-	Citizen Economic Empowerment Commission
COMESA	-	Common Market for Eastern and Southern Africa
CSOs	-	Civil Society Organizations
CSR	-	Corporate Social Responsibility
EU	-	European Union
IGF	-	Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development
ILO	-	International Labour Organisation
IPIECA	-	International Petroleum Industry Environmental Conservation Association
LC	-	Local Content
LCPs	-	Local Content Policies
LCRs	-	Local Content Regimes
LCU	-	Local Content Unit
MiR	-	Made in Rwanda
NCC	-	National Council for Construction
NTO	-	National treatment obligations
OIES	-	Oxford Institute for Energy Studies
PAU	-	Petroleum Authority of Uganda
R&D	-	Research and development
RDA	-	Road Development Agency
SMEs	-	Small and Medium Entrepreneurs
SOE	-	State Own Enterprise
UNCTAD	-	United Nations Conference on Trade and Development
WTO	-	World Trade Organization

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Definitions of Terms

Local Content (LC): Defined in terms of the value contributed to the national economy through production and sourcing of national goods and services. This is the wealth local companies create in transforming materials and services purchased from other countries into revenue-generating output. **Local Content Requirements (LCRs):** Regulations that specify a defined proportion of a final good or service be produced within a specific jurisdiction. This covers a broad array of approaches, ranging from mandatory targets to soft requirements, to supportive policies and capacity building measures in all sectors.

Policy Guidelines: Statements by which to determine local content requirements course of action. These are recommendations or suggestions of how LCRs should be done in COMESA region and can be customised for individual Member States situations. They are rather a suggestion of a best practice in designing local content programmes.

Regulation: Rule or directive made in respect of Local Content in COMESA Member States. This include a rule, ruling, order, directive, act, law, by-law, statute, edict, canon, ordinance pronouncement, mandate, dictate, dictum, decree, fiat, proclamation, command, injunction, procedure, requirement, prescription, precept, guideline etc.

Value Chain: Systematic approach to examine, developing or enhancing Competitive Advantage by analysing the activities along a production or supply chain, selecting and developing or enhancing an activity that is deemed to add value to a good or services.

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1.0 Background to the Development of Regional Local Content Policy Guidelines

On the 8th September 2017 in Lusaka, Zambia, Ministers responsible for Industry adopted the COMESA Industrial Strategy and directed the Secretariat to profile policies/instruments being implemented in COMESA Member States, to promote Local Content for the purpose of sharing experiences. Further, Secretariat was directed to develop policy guidelines for promoting Local Content in the region and Member States. The ministers noted with concern that COMESA Member States remain challenged by undiversified economic structures with weak industrial base, high unemployment and economies vulnerability to commodity international prices. In this regard, the Local Content approach has been identified as one of the ingredients for successful industrialisation of the region.

There is a feeling that sustainable industrialisation in the COMESA region will be a mirage unless a well-articulated Local Content development programme is implemented. Local Content Policies (LCPs) will help COMESA Member States to benefit from their rich natural resources. COMESA Member States need to develop Local Content policy and embrace a fundamental shift in their industrial development agenda. The policy guidelines will help foster the development of domestic industries to generate "spillover[1]" effects in the domestic economy through consumption linkages.

Despite being endowed with vast resources COMESA Member States have been striving for a long time to ensure that their economies benefit from the investments, to add value on those natural resources. Member countries have failed to take advantage of investments in these natural resources to create sustainable economic development, be it creating jobs and developing local businesses or building skills and improving technologies. Local Content consists on processes aiming at building such economic capital at the regional, national and at community levels and meeting set public policy objectives. Therefore, introducing 'local content' into the regulatory frameworks of industrialisation in all sectors of the economy will contribute to the creation jobs, promotion of enterprise development and acquiring new skills and technologies.

Currently, there are various Local Content instruments/legislation or measures across COMESA Member States that are being initiated to incentivize companies on the use of local products, businesses, resources and workers, especially in the extractive industries. These instruments are sometimes being included as part of investment agreement contracts. In some instances, investors also have been implementing some Local Content policies related principles at the company level. Some have been effective at developing local businesses and capacity and in some cases, they have produced mixed results.

Therefore, there is still need to understand and achieve the proper balance between immediate tangible benefits and long-term economic development.

[1] The spillovers include technology transfers, skills development, and employment creations through employment locals and support to the local businesses

These guidelines offer guidance on designing and implementing Local Content initiatives in the COMESA region for industrialisation and ensure economic sustainability within member States.

The Guidelines provides guidance on how COMESA Member States can maximize local benefits through partnerships among Governments, private sector and civil society organizations (CSOs). Where possible the guidelines also provide case studies for purpose of sharing experiences. The objective of these guidelines is to ensure that governments are able to set clear policies and strategies on which companies will make commitments and publish transparent reports on results which CSOs can analyse and monitor progress of Local Content initiatives. The aim is to create an environment through regulation or measures that otherwise would drive structural change and industrial transformation within the COMESA Region. This is because not only will the greater local participation in all sectors of the economy create employment and industrial development, but also increases government's space through employees pay taxes, and fiscal revenues.

2.0 Definitions of Local Content

Although the term 'local content' is now widely used, no common definition exists. Definitions range from defining local content narrowly as local procurement of goods and services to more broad definitions referring to the total extent of investor involvement with the host economy. Following potential types of local content can be distinguished according to the AfDB Paper, "**Creating local content for human development in Africa's new natural resource-rich countries**" and "**Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development" (IGF)**

1. *Purchases from national suppliers of goods and services*: This constitutes the narrowest and most common definition of local content, although further definitional questions around how 'national supplier' is defined arise (e.g. location of company registration, extent of value addition in country, or equity ownership).

2. *Employment of local staff*: The employment of staff considered local, which in turn could be defined as nationals or those from the immediate surroundings of the operations. According to IGF, this employment can be direct or indirect.

3. *Support to local economic development*: through local enterprise development or social investment. By social investment one should understand contributions (either monetary, employee time and resources, or gifts in kind) which bring benefits over and above those directly associated with our core business activities. Under IGF, it is referred to "Downstream beneficiation" which can lead to increasing local processing, using the proceeds of the sector (e.g. foreign investors could commit to provide a share of commodities and natural resources, raw products to be processed locally). Industrialization would greatly benefit from downstream

value addition, through the use of local content; and also from sharing of technology and know how to local industries to allow them to grow organically.

4. *Effects on induced employment*: this includes people who are employed as a result of the spending of wages by employees of the operation in question concerned and, usually, also by the employees of suppliers and customers. Induced employment cannot be directly influenced by the company but could be a maximization objective for the government.

5. *Local participation, where foreign companies must provide equity participation to local actors, or involve them in management of their companies* (very common on extractives).

6. *Strengthen the linkages across economic sectors, notably through the use of infrastructure*; sharing of competencies, such as technology, know-how etc.

Local content regulations (LCRs) can also be defined as regulations that specify a defined proportion of a final good or service be produced or sourced within a specific jurisdiction. They have been used in various industries to help promote domestic development and are currently being used by the wind industry in countries including Canada, China, Spain, Brazil, India, Australia and Portugal with varying levels of success.

Three aspects emerge from the above definitions; **the procurement of goods and services**, **employment** that covers issues around **skills development**, and **corporate social responsibility**.

Potential benefits to host governments from increasing local content are great. At the same time, investors in large-scale projects such as oil, gas, and mining extraction or industrial projects generally have clear incentives for procuring and recruiting locally. Having suppliers nearby reduces lead times and facilitates a closer relationship to shape the development of products, services, and processes. Recruiting from the domestic market would similarly be in the company's interests, as the cost of such labour is likely to be lower than that of foreign workers with their associated benefits packages.

3.0 Guiding Principles for the development of policy guidelines

There is no "blueprint" solution to designing Local content regime. The choice of policy targets and implementation tools depends on specific country contexts. To avoid designing a blanket-based LCPs, Member States should analyse which resources' subsectors or clusters are most suitable for local content policy and support regulation. With a better understanding of the prioritized subsectors and clusters, they are advised to draw on the global good practices, carry out a skill and capacity gaps assessment, work out realistic LCs' targets with time frames and undertake consultations on related costs and benefits with all the key stakeholders.

To target the right value pools, COMESA Member States should ensure a detailed knowledge of the supply chains so that they understand where total value is in terms of revenue creation and employment, knowing that the potential of job creation also differs from one country to another.

However, based on some commonalities, the development of LC Policy Guidelines in COMESA region is primarily driven by six[2] principles for regional industrialisation. These are outlined in figure 1.0 below.

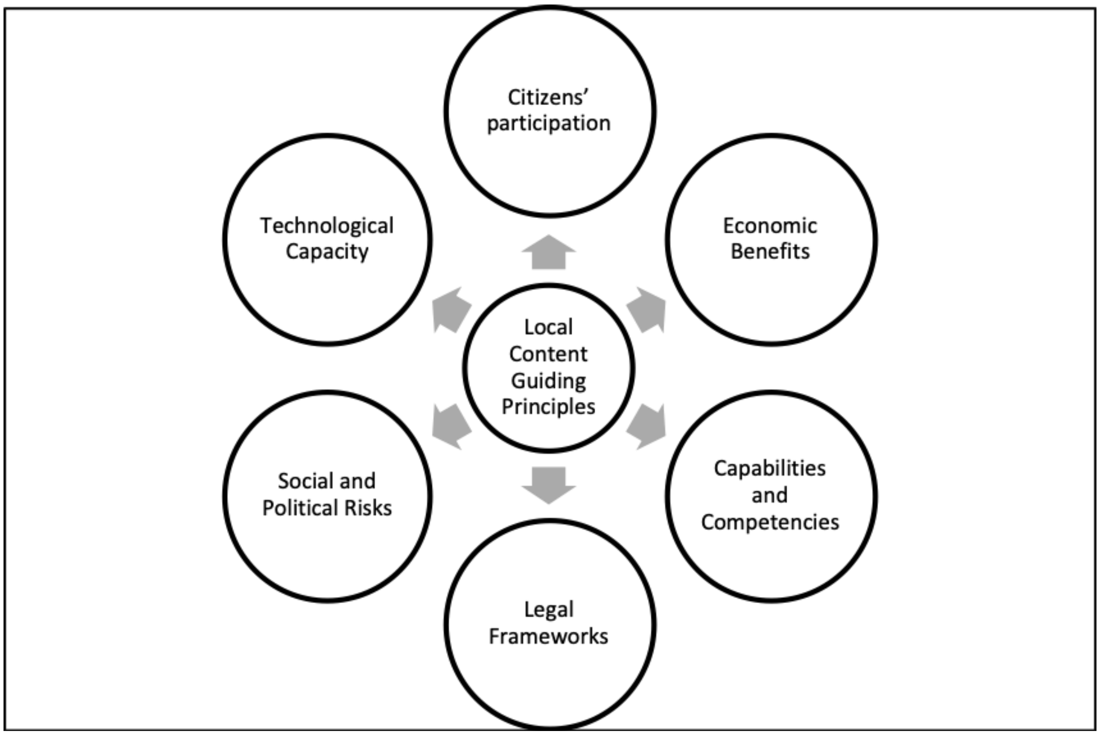

Figure 1.0: Local Policy Guiding Principles

(a) Domestic Capabilities and Competencies

This principle is based on the desire by Member States governments to increase the level of domestic capabilities and competencies over time. In many COMESA countries local industries do not have the experience and technological capacity to effectively undertake capital intensive operations. Through technology transfer and know-how Local content will help the domestic workforce and industries over time to develop the capacities to supply the goods, services and human resources needed to drive the operations of multinational companies, by substituting imports by domestically produced goods, and to create more local employment substituting foreign-based labour.

[2] See also Oxford Institute of Energy Services (2017)

(b) Creating a Level Playing Field for Local Citizens' participation

The second principle is based on the desire to create a level playing field for citizens, residents and home-based industries to participate in supply chains across the sectors including industries and retail activities. COMESA Member States should note that without creating a level playing field for new or emerging local industries and workforce to actively participate in activities across the sectors, and compete with international suppliers of goods and services, the cycle of excessive dependence on foreign goods and services may never be broken.

(c) Maximising Economic Benefits to Citizens

The third principle is the maximisation of economic benefits to citizens through job and employment opportunities. Local content will create opportunities for domestic employment, thereby contributing to growth in income, capacity development of nationals and overall increased economic growth of Member States.

(d) Improving Technological Capacity at Regional and National Level

The fourth principle is based on the need to ensure that COMESA region and countries benefit from multinational companies through technological transfer. Local content policy guidelines will encourage multinational companies to start creating capacity for companies to locally manufacture equipment, machinery and consumables when their price, quality, time of delivery and other terms are comparable to internationally available ones. It will also help to bring some level of technology or perform research and development (R&D) into the COMESA countries. By doing so, local companies will be able to boost their competitiveness through access to state-of-the-art technology, or benefit from technology transfer.

(e) Mitigation and Management of Social and Political Risks

COMESA Member States will need Local content 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. Governments need to utilise local content 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 exploitation of natural resources.

(f) Regional and International Legal Frameworks

The policy guidelines take cognisance of the restrictions the COMESA region might face in the implementation of Local Content policies/instruments due to restriction of the regional and international legal frameworks. As international legislations supersede national laws, Local Content policies in domestic laws and investor-State contracts should not be in conflict with WTO rules or the provisions set in international Investment Treaties and face court challenges that force Governments to abandon them[3]. COMESA countries which are members of the WTO are bound technically by the National Treatment obligation (NTO) clause under which foreign

[3] GIZ (undated)

companies cannot be forced to buy from local suppliers or hire local service suppliers if a better alternative in terms of price or quality exists abroad. However, regarding the services, it is important to look at the commitments made by Member States at regional or multilateral levels and understand to what extent have countries liberalized and how can we reconcile national local content regulations with regional commitments on FTA.

As embodied mostly in the agreement on Trade-Related Investment Measures (TRIMs), the General Agreement on Trade in Services (GATS) and the agreement on Government Procurement (GPA)- even though at the moment, COMESA countries are not yet members of GPA - , the WTO rules specifically, those measures that require or favour the use of domestic goods, impose quantitative restrictions on exports, grant subsidies contingent on local sourcing, treating domestic service providers preferentially, limit foreign companies' ability to acquire equity in a domestic service provider, or require foreign investors to invest through certain types of legal entities. Further, international Investment Treaties, either in their bilateral form or as multi-lateral Free Trade Agreements, contain provisions on National Treatment and restrictions on performance requirements, which constrain Governments' ability to design or enforce Local Content policies. When developing Local content policies, Member States should examine the commitments made in those treaties.

Regarding flexibilities, all LDCs are still allowed to grant export subsidies according to WTO. The question is not whether they are allowed to do so, but rather whether they have financial capacity to do so, as LDCs. A country can have flexibility, but if it doesn't have the means to provide subsidies (like developed countries) then the flexibility is not of much used.

4.0 Scope of the Policy Guidelines

These policy guidelines cover two spatial dimensions of Local Content in the COMESA region and Member States. These dimensions encompass all sectors of the economy in the COMESA region. The first spatial dimension of Local Content resides in the exploitation of the natural resources. This is entirely dependent on the actual location of the natural resource in Member States. Most large investments (especially in Oil, gas and mining companies) operate in highly integrated global value chains, in which the local economies do not necessarily participate. There is need to ensure that there is participation of local companies in the actual exploitation process (especially in extractive industry which has a highly capital-intensive process). These guidelines embrace policy measures that will ensure that capacity is created for local companies to participate in the production of inputs, required service supply and exploitation of natural resources by reducing risks and uncertainty, therefore enabling the provision of specialized knowledge and capital in the local economy.

The second spatial dimension is the distribution of economic activities and the participation of the locals in economic activities at country or regional levels.

Economic activities in member States determine how population and implementation of content initiatives concentrate across space. The issues that are of important consideration for local content are the availability of inputs, services, specialized labour and customers. For instance, most of the local economies in COMESA Member States are concentrated in urban areas and in the adjoining areas with well-developed transport and energy infrastructure. This implies that in order to develop an effective local content initiatives country need to ensure that sufficient backward and forward linkages are established based on the availability of inputs, services and specialised labour. The table below indicates some useful experiences in developing LC Policies:

Table 1.0 : Experiences and Lessons in Application of Local Content Policy

At COMESA level

In COMESA, most of the legislations on the local content where they exist are on mining and some cases are still fresh to be evaluated or simply relate to the equity participation during the company incorporation. Countries that are with well developed local content policies include DR Congo, Kenya, Uganda, Zambia, and Zimbabwe. Countries which have made some headways in development local policies but not yet well developed include Comoros, Egypt, Eritrea, Ethiopia, Malawi, Rwanda (currently in the processing of establishing a local content unit), Sudan, eSwatini.

Kenya, Zambia, and Zimbabwe are the three countries implementing well developed LCRs in a number of sectors apart from mining.

1. **In Kenya** there are more three Local Content Acts that provide framework to increase the local value capture along the value chain in the exploration of gas, oil and other mineral resources, telecommunication, Public Procurement and Asset Disposal (in public institutions), participation in the private security sector, National Construction Authority, and investment in the insurance sector. The National Construction Authority Act (2011) for example, imposes local content restrictions on "foreign contractors," defined as companies incorporated outside Kenya or with more than 50 percent ownership by non-Kenyan citizens. The act requires foreign contractors to enter into subcontracts or joint ventures assuring that at least 30 percent of the contract work is done by local firms. Regulations implementing these requirements are in process. The other Act is the Kenya Insurance Act (2010) which restricts foreign capital investment to two thirds with no single person controlling more than 25 percent of an insurers' capital.

2. **In Zambia**, the Petroleum (Exploration and Production) Act No. 10 of 2008 (Petroleum Act) that came into force on 26th September 2008 does not define 'local content'. However, provisions in the law refer to: employment and training of citizens of Zambia and local business development; goods and services required for production and processing operations to be obtained in Zambia; materials and products made in Zambia; and service agencies located in Zambia and owned by Zambian citizens or companies registered under the Zambian Companies Act. It further defines the structures responsible for working on related regulations, which are: the Minister responsible for Mines; the Petroleum Committee; and the Technical Committee. With the proliferation of

malls across major cities the Zambian government has been exploring various avenues to enhance citizens' participation in the economy through public procurement.

The other is the Citizen Economic Empowerment Commission (CEEC) Act No. 9 of 2006, which supports targeted citizens owned businesses who have suffered marginalization and aims to create a level playing field. There is also the National Council for Construction (NCC) Act No. 13 of 2003, which regulates and builds capacity through training in construction industry Road Development Agency (RDA), Local Authorities and other government institutions should be executed by Zambian citizen-owned companies. In 2018, the Government also adopted the local content strategy to support initiatives aimed at encouraging Local Content Requirement in all economic sectors.

3. **Zimbabwe** has been implementing local content regimes that enhance citizens' participation in the country's industrialisation agenda. This includes the removal goods from the Open General Import License Scheme through Statutory Instruments SI 164 which list goods that have to be sourced locally and restricting imports. In 2007, the government passed the Indigenization and Economic Empowerment Act, which requires that "indigenous Zimbabweans" (i.e. black Zimbabweans) own at least 51 percent of all enterprises valued over $500,000. This applies to platinum and diamonds. In the non-resource sectors, the government grants waivers based on achievements of certain initiatives such as technology transfer, creation of employment, and value addition. In other sectors, such as primary agriculture, transport services, and retail and wholesale trade including distribution, foreign investors may not own more than 35 percent equity.

Specific countries outside of the region

1. **Norway** is well-known for resource-based industrialization. In 1972, Norway's LCPs were enacted in the context of an established industrialization process for labour skills, technical complexity, institutional capacity and regulatory framework. Its Petroleum Act (Sections 8, 23, and 54) requires: (1) competitive Norwegian suppliers be given genuine opportunities to secure orders; (2) operating companies inform Norwegian supply and contractor industries in advance of bidding processes; and (3) operators have a duty to perform in Norway at least 50% of all the related research and development (R&D). Soon after the LCPs' publication, Norway's Goods and Services Office was established as the national institution to: (1) review tendering procedures to ensure that local companies are given a fair chance of participation; (2) establish minimum local content requirements; (3) support developing local supply industries through joint ventures; (4) encourage R&D and transfer of technology; and (5) monitor implementation through a result framework.

   In consideration of the importance of oil and national oil companies in the national economic development, Norwegian government used Statoil, a well-managed SOE, initially as one of instruments for LCP implementation. In line with the increased competitiveness in international oil markets, it began to reduce Statoil's role as an instrument for local content development in late 1990s. After a merger with Norsk Hydro, a private-public company, Statoil became more market oriented at home and began to increase its footprints abroad. Having expanded in 25 countries, and grown stronger in the growing global competition, Statoil has made great contribution to Norwegian economic development. It is possibly because of the great impacts of the sound LCPs upon national economic development that Norway was listed among the top 3 best performing resource-driven economies in the world in 2013 (McKinsey, 2013).

2. **Malaysia**, though less well-known than Norway, is also one of well performing resource-driven economies in the world. In 1974, Malaysian government launched the reform of oil sector to encourage the development of a local supply sector through licensing requirements. They included among others: (1)

mandatory local incorporation of foreign oil companies and a minimum share of domestic equity holding; and (2) the obligation to acquire all materials and supplies locally or to purchase them directly from the manufacturer when not locally available. In consideration of the strategic importance of oil in the national economic development, Petroliam Nasional Berhad (Petronas), a SOE, was created and given exclusive power to develop the country's petroleum sector. It started business developmentally in August 1974; and with growing competitiveness in global oil markets in late 1980s, shifted to a strategy of enhancing efficient operatorship, developing technical skills, risk sharing with private oil companies (POCs), and supporting the local supply industry. When Malaysia's resource base matured in early 1990s, it decided to look for oil and gas abroad not only for a sustainable operation, but also enhancement of international competitiveness. To guide national oil companies in international operation, Malaysia government issued a number of policies and support measure in in mid 1990s and early 2000s. In 2010 for example, it laid out a comprehensive package of competitiveness-enhancement measures in its Economic Transformation Program. One of the measures identified therein aimed at enhancement of competitiveness through development of regional industrial clusters, trade hubs and integration of LCPs.

3. **Brazil**, though like Norway and Malaysia as the countries with good LCPs designs, is challenged with a partial policy reversal now. To jumpstart natural resources-based industrialization, it worked out LCP and other policies in late 1990s. After a limited liberalization of petroleum sector to private oil companies (POCs) for enhancing cooperation and competition in 1997, Brazilian government began to impose local content requirements on oil companies in the context of inadequate skilled labour force and lack of technical complexity in 1999. The objectives of the local content regulation were: (1) encouraging the exploration and production of the country's petroleum resources to remain self-sufficient in oil production and reducing natural gas imports, and (2) increasing the contribution of the sector to local economic development. Since the large pre-salt discoveries in 2007, the government has partially reversed its policy of cooperative and competitive participation, granting Petrobras (a SOE) privileges over the prolific pre-salt basin and paving the way for increased state participation in the sector.

   In 2011 and 2014, Petrobras invested U$$ 157 billion, but could hardly achieve the local content commanded by its exploration licenses. The large pre-salt discoveries have led to an exploding demand for additional investment, sophisticated technologies and skilled labour force. Domestic supply of related equipment and services is, however, not competitive; and local manufacturing industry, short of technological capabilities. As a result, development of backward and forward linkages has been constrained locally. More and more extractive multinational companies plan to set up Brazilian subsidiaries, but also have to face the challenge of the partial policy reversal. Besides, wages are rising as skilled labour has proven scarce, adding to problems with infrastructure, taxes, and bureaucracy. A fast-growing petroleum sector coupled with too ambitious local content targets has exacerbated supply bottlenecks arising from increased aggregate final demand. This has ultimately affected employment and output trends in other sectors of the economy, and created distortions and inefficiencies. Furthermore, the size and location of the petroleum projects has also affected the type of potential linkages, and the speed at which they can efficiently develop.

4.1 Local Content Opportunities

Local Content presents opportunities in terms of revenue, businesses and potential for employment creation that require deep and detailed knowledge, in order to inform the strategic orientation of Government policy. Governments need to be clear about the specific development failure they are trying to address through Local Content policies. Measures can then be designed with a view to responding to the underlying development failures, such as unexploited economies of scale or a mismatch of supply and demand for skilled labour. This requires in-depth information on the gaps between the needs of the productive sectors at different stages.

Analysis of the gap between the needs and existing skills and capacities at the domestic level is key to deciding to what extent Governments can support firms in building their capabilities to join the value chain.

Local content can also contribute to technology and know-how Transfer.

These guidelines focus on developing capacities among COMESA Members to identify Local Content opportunities in various sectors of the economy. Table 1.0 below gives some examples of Local Content opportunities in the value chains of some sectors for domestic participation; though not exhaustive may provide a very good starting point for COMESA Member States.

Regarding opportunities, there are two possible approaches which complement one another: sector approach and skills development approach:

(i) A sectoral approach: identify 5 – 6 sectors, where countries have already clearly started to develop, through their National Development Plans.. These can include (i) extractives (mining, oil, gas etc); (ii) agricultural (look at specific value chains); (iii) retail sector (specially where big supermarket are present); (iv) specific industries (automotive; textile; pharmaceuticals; leather etc); (v) services (IT; tourism; financial etc).

(ii) An approach based on the competencies you want to promote through local content. Eg. (i) employment by skills categories; (ii) upstream industrial development; (iii) downstream beneficiation; (iv) technology transfer; (v) maximization of infrastructure use; (vi) supply chain development; or value chain development etc. This approach will then tailor local content policies to meet those objectives. It is as important to develop skills and human resource capabilities to meet industrial development needs.

Table 2.0:Example of Local Content Opportunities in the Value Chain

Sector	Local Content Opportunities	
General Supply of goods and services	• Accommodation • Basic professional services (e.g. legal and accounting) • Transportation services • Mailing and courier services • Printing and photography	• Catering • Cleaning and laundry services • Land scaping and gardening • Logistics and warehouse
Construction	• Air-conditioning maintenance • Carpeting and floor covering • Road marking and signage • Roofing and waterproofing	• Eathworks • Waste recycling and management • Sewerage, stormwater and drainage • Warehousing
Goods (wholesale, distribution, manufacturing)	• Appliances and electrical goods • Furniture and fixtures • Uniforms • Food supplies	• Cleaning supplies • Automotive parts • Office equipemnt and stationery
Tourism	• Supply of vegetables • Hotel linen supply	• Hand craft and other art facts • Joint venture

	• Contract farming • Provision of extension services	• Promotion of domestic tourism • Exploitation of unique natural resources • Travel agencies
IT	• Design and Hosting of Website • Content development • Local language email address	
Automobile	• Manufacturing of automobile parts for example at international the guideline is that of not more that 40% of the parts must be produced by local companies	• Technology transfer • Intership for skills development

Source: Adopted from IPIECA (2011 and 2016)

4.2 Approaches to Local Content Policies

There are two different approaches to Local Content enacted in legal frameworks, policy documents, tender protocols or contracts. The first one is mandatory in nature (or relies on efforts from companies to grant preferences to local stakeholders). The second one is an incentive-driven approach.

The mandatory approach is a "requirement-based" approach. This happens when a government puts in place policies that expressly state what measures are required to be undertaken by investors abide by certain requirements. Although these policies are mandatory in nature they can also rely on good will and the ability of the companies to do so. For example, governments may impose quantitative targets on firms to source a certain percentage of their procurement spending through domestic suppliers or require companies to give preference to local firms during tendering processes in an attempt to stimulate the development of upstream supply chains. Similarly, they may impose limits on the number of foreign nationals that can be employed by companies.

The incentives-driven approach is where a government acts as a facilitator, providing incentives to firms to increase their use of local factors of production, their transfer of technology, or the capacity development or training for local staff. These can take the form of financial support, fiscal incentives, tariff exemptions, or reduced interest rates, which are only available to firms that meet Local Content policy objectives. Strategic partnerships with companies and other relevant stakeholders such as research institutions and chambers of commerce also form part of this approach. Examples of the two approaches to Local Content are given in the Table 2.0 below.

Table 3.0: Examples of mandatory and incentive based approaches

Example of the LC mandatory approach is Kenya, where there is a **40% Budget Rule, Executive order of March 2015:** This is a presidential order which requires that all ministries, departments and agencies set aside 40% of their procurement budget to the preferential purchase of local goods and services. In this regard, all Ministries, Department and Agencies are required to make quarterly reports on how they are complying with the presidential directive. The State Department of Trade receives these reports, make analysis and submit recommendations to the President's Office and the Public Procurement Oversight Authority (PPOA). The other one is the **EAC 35% Rules of Origin in the Automobile Sector:** Kenya is also implementing the EAC 35% Rules of Origin in the Automobile Sector. This requires that for a car to be exported to Kenya from any of the EAC Member State 35% of the parts must be manufactured in that country. This encourages development of spare parts manufacturing as compared to motor assembly.

Example of incentive-based approach is in Rwanda, where the Government through the Ministry of Labour has developed a demand list containing skills that are not available in Rwanda. Under the Labour Act 2009 and the Investment code an investor who invests more than US$ 250,000 is automatically allowed to hire up to three expatriate employees, with the residence and work permit fees of the investor and up to three expatriate employees waived for the first year. In case there is a need for more than three expatriate employees, the enterprise can apply to the agency and will be subject to the regular conditions for work permits stated in the labour Act of 2009. However, Foreign Companies are required to enter into a Memorandum of Understanding (MoU) with the Immigration Department to ensure that within specified period, normally three years, there is capacity building programmes for the locals to take up these positions. In the tourism sector, the Tourism Law of 2014 and Ministerial Order of 2016 provide incentives for employment of local people. Together, the law and ministerial orders regulate the operations of all tourism entities in the country, including accommodation establishments, restaurants, bars, nightclubs, tour operators, travel agencies, tour guides, tourism information offices, cultural tourism entities (cultural villages, private museums), and any other entity as may be determined by Order of the Minister.

5.0 Policy Guidelines

Specific Policy Guidelines have been developed at both regional and national levels. The guidelines outline specific policy statements that need to be taken into consideration at each level. The guidelines also have policy enablers and suggest a framework with specific activities for effective monitoring of the Local Content implementation in the region. The monitoring framework provides detailed description of actions required for effective monitoring and enforcement of the Local Content provisions.

5.1 Regional Policy Guidelines for Local Content

At regional level, LC guidelines may take the form of a framework for regional integration and inter-country transfer of technology and specialized skills. Under COMESA co-operation on industrial development a Policy Guidelines could be utilized to promote Local Content in the region. COMESA Member States would be better positioned to draw on resources from its immediate neighbours than from more remote countries. In this context, the Guidelines have the following clearly defined objectives:

(i) enhancing regional integration, through mechanisms to support national policy coordination and coherence with regional objectives;

(ii) Providing guidance for national policy makers to better use regional instruments (such as regional industrial policy; trade policy; standards) in support of local content instruments ; and

(iii) Providing a framework for deeper cooperation, in particular in the field of technology; innovation; skills development.

In this regard, the COMESA Secretariat must play a supporting and coordinating role, and an instrumental role in advancing regional resource-based industrialisation[4]; specifically by:

- ✓ establishing mechanisms to strengthen the definition of "rules of origin" in support of Local Content requirements, in particular to include value addition cumulation to deepen regional value-chains;
- ✓ promoting intra-COMESA investment and inclusive business practices in Member States[5],
- ✓ Ensuring that LC are integrated into and consistent with regional trade, investment and industrialisation strategies;
- ✓ promoting regional economies of scale across all sectors of the economy, to enhance regional Content and value addition opportunities and investment, for the acceleration of regional integration and trade;
- ✓ establishing a regional observatory for sharing regional talent mobility in the development of skills;
- ✓ establishing regional centres of excellence for innovation, R&D and skills development;
- ✓ promoting formalisation of SMEs and SMIs at country level[6], with a view to integrate them in regional and international value chains;
- ✓ helping countries, in addition to the use of country legislation to improve local participation, to develop strategies for incentives for skills development, entrepreneurship development, financing opportunities and sharing experiences as complementary tools for local content development;

[4] ACET. (2017). *Study on Local Content and Value Addition in Mineral, Oil and Gas Sectors: Policies, Legal and Institutional Frameworks-Trends and Responses in Selected African Countries*.www.acetforafrica.org. SYNOPSIS JULY 2017

[5] LC provisions shall include low income people on the supply side as workers, producers and entrepreneurs at various points within the value chain. The African Mining Vision highlights the importance of "gender and ethnically inclusive" extractive industries in the African context (ILO, 2016, p7).

[6] Zambia's emerald industry provides a best practise example for COMESA region to formalise and improve livelihoods in the ASM sector (ILO, 2016 p 24). In the Lufwanyama district of the Copperbelt province, the Zambian government has amalgamated some 400 locally-owned emerald-mining plots into 10 large-scale mines. The ASM plot owners were then directed to form cooperatives or companies, which were partnered with foreign investors. This has boosted emerald production from Zambia with clear benefits in terms of incomes and job security for local small-scale miners. Further, the Association of Zambian Women in Mining has played an important role in ensuring better returns for women engaged in artisanal gemstone mining.

- ✓ establishing platforms for sharing of regional experiences in small and medium enterprise development, actively participate in regional value chains; and
- ✓ establishing mechanisms to encourage resource companies to support all the pillars of Local Content such as employment of local, procurement of goods & services, and skills development & technological transfer.

At national level, there is need to develop Local Content policies based on the following pillars of developing successful Local Content. These include: value-addition and competitiveness, inclusiveness and transparency, realistic and achievable targets, phase in and phase out, addressing the challenges of infrastructure and trade/industrial policy deficiencies and putting in place an effective Legal and legislative framework.

(i) Value-addition and competitiveness

The most important success factor ensure a fit between local content and national development plan, and ensure that the local competencies are available. COMESA Member States shall not merely focus on the transfer of skills from foreigners to locals, but more importantly, they need to design policies based on a wider strategy focused on increasing domestic value-added products and stimulate job creation for locals and the participation of domestic businesses in the value-chains. This is because most of COMESA Member States domestically based firms do not have the requisite capacity to supply strategic sectors, and suffer from a demand bias of foreign firms against sourcing locally. COMESA Member States should use the following principles in order to develop the Local Content in the wider context of value-addition and competitiveness:

- ➢ Ensure that companies give priority to purchase local products and services when they are competitive in terms of price, quality and timely availability;
- ➢ Foster efficient supply channels to ensure that Local Content is used carefully and have access to the technology and skills they need to improve their capabilities[7];
- ➢ Ensure that Local Content is an entire part of the wider industrial development and trade policy;
- ➢ This focus on value-addition and competitiveness is particularly relevant given that Local Content regime nearly always constitutes one of the best tools to stimulate domestic value addition and empower domestic businesses through their participation in the supply-chains;
- ➢ Ensure that the actual interpretation of specific Local Content provisions is clear and feasible, so that for example local are not only available but also at reasonable price; and
- ➢ Ensure that Local Content scheme carefully balance costs and competitiveness.

[7] UNCTAD (2014) argue that "Where used in a protective setting, with few pressures to invest in building competitive capabilities, they can result in inefficient suppliers that saddle the economy with high costs, outdated technologies or redundant skills."

(ii) Inclusiveness and Transparency

The second learnt lesson in the application of Local Content regimes, as a most common stakeholder concern in their perception relates to how Local Content regimes are formulated, particularly in some COMESA Member States with regard to lack of inclusiveness and transparency. To address these concerns, COMESA Member States should focus on process, i.e. the institutions and channels by which Local Content regimes are formulated and enforced based on a number of key questions/considerations, specifically:

(a) There is need for a clear channel for involvement/consultation of foreign firms to provide inputs into (i) proposed legislation and/ or guidelines that govern Local Content and (ii) proposed changes to the regime under scheduled reviews. When such inputs are provided, there must be assurances that the inputs will be considered, and implementation assessed for possible adjustments. Further, there must be considerable effort to ensure that the obligations to comply with Local Content regime are equally imposed on both foreign and domestic firms.

(b) There is also need to ensure that, with respect to the public sector, the input of key economic line ministries such as the Ministries of Trade, Commerce, Finance and Agriculture, are not left out in the consultation process so that Local Content measures are not challenged by outside bodies (such as a potential dispute in the WTO[8]).

(c) The coherence coherence with other policies being driven by different ministries at the national level is to be considered. For example, the Ministry of Trade might be driving processes to attract FDI, while at the same time Industry might be doing local content, which may provide limitations for foreign investors. Same for finance, who might be giving tax breaks to foreign investors, while local investors might not have same conditions. It is not only about consistency with international commitments, but also about domestic policies.

Government shall also solicit the input of chambers of commerce, private sector and civil society bodies (including trade unions and community representatives) from the regions and social groups that should, in principle, see the largest benefits from the Local Content measures. The ultimate aim of a successful Local Content process is built on a commitment by industry operators to take – and accept – a major share of the responsibility to achieve the objectives that are set. The ideal end result of a successful Local Content regime should be buy-in from both the public sector and domestic suppliers (i.e. acting as the *demandeurs* for higher levels of Local Content) as well as the foreign and domestic operators that will be tasked with complying with

[8]Under the World Trade Organization (WTO) the most relevant rules with implications for LCRs include the General Agreement on Tariffs and Trade (GATT), the agreement on Trade-Related Investment Measures (TRIMs), the General Agreement on Trade in Services (GATS), and the agreement on Government Procurement (GPA)

the stated targets, at the risk of losing all or part of their markets. Local community that always has the highest expectation should also consulted. They are the one sometimes that extractive industries need to satisfy in terms of social license to operate. So governments need to consult them, because they are the first beneficiaries of local content in most cases

For more inclusiveness and transparency, the following shall be adhered to:

- Ensure that the process of setting and enforcing Local Content targets are administered by institutions with a clear and specific mandate;
- Ensure that relevant institutions tasked to administer Local Content regime are given the resources to effectively carry out their mandate;
- Ensure that the staffing of these institutions in charge of Local Content are made on the basis of technical considerations and industry knowledge, rather than political or social affiliations, with a balance of government employees and technicians with industry experience; and
- Ensure that institutions managing Local Content scheme are staffed with people of integrity.

(iii) Realistic and achievable Targets

The most difficult challenge COMESA Member States might face in the design of Local Content regime is of where to apply Local Content targets, and at what level to set relevant targets. This question is particularly difficult in setting where industrial capacity is low (or in many cases, non-existent) but where there is a strong socio-economic or political imperative towards creating the largest number of jobs or firms in the shortest period of time possible.

Therefore, the need for realistic and achievable targets is particularly important. Member States may note that the use of Local Content should be based on demand and supply forces. If the level of the target is set too high relative to current capacity, the combination of rapidly rising demand coupled with a slowly growing quantum of local supply will inevitably lead to higher prices for domestically sourced content. Likely higher are prices faced by consumers, unless the firm in question operates in a highly competitive market (which can lead to bankruptcy very quickly), or has the cash reserves to absorb the higher costs of production including inflation cost. This is particularly true in the short-run, when the quantity of local inputs – whether production plants, skilled/unskilled labour, or service providers – is fixed, so there are fewer options available in the domestic market vis-à-vis the equipment that could be sourced globally. In order to ensure realistic and achievable targets the following must be adhered to:

- Ensure *inter alia* that investors are not only specifically aware of industry requirements for Local Content, but also keenly aware that lack of compliance would cause difficulties in future bidding rounds[9]; and even lose some benefits such as tax incentive.

[9] Similar approaches were used in Norwegian and the United Kingdom.

- Ensure that thresholds in local content legislation are conceived as long-term targets rather than immediate minimum levels backed by the threat of regulatory retaliation (e.g. fines and sanctions), rather than setting highly ambitious and potentially unrealistic targets,

- Do not set arbitrarily ambitious targets across the entire industry; instead develop an optimal Local Content regime that mandates sector specific companies to develop plans for domestic capacity-building, which the companies themselves expect to work, based on their understanding of production realities and the constraints within the domestic economy;

- In designing Local Content scheme ensure that, as conditions change – for example, as capacity improves, or as global/domestic economic conditions change, as technology moves in new directions, or as new information is available to policymakers with respect to current and potential local capacity – the Local Content targets and policies change in tandem[10]; and

- Ensure that Local Content legislation has clear definitions of key terminologies, specifically what constitutes a "local" or "indigenous" company[11].

(iv) Phasing out the implementation

The fourth pillar is that Local Content regimes– like any form of protection – should be carefully calibrated, implemented over time, and ideally reduced over time as capacity improves. This pillar suggests that Local Content targets should be modified to allow year-by year increases, based on realistic expectations, from current levels of industry capacity to full "localization" of the good or service supplied. Unlike areas like banking and legal services where ambitious levels can be immediately visualized, where most COMESA countries already may have strong domestic capacity, other areas like manufacturing that suffer disproportionately from a high-cost setting could be granted longer phase-in periods. Targets can then be reduced also overtime as industries become competitive.

In order to ensure phasing in and phasing out of Local Content the following must be adhered to:

- Ensure that Local Content measures have a clearly defined time limit (with a possibility for extension on certain conditions), to ensure that protection does not create an

[10]UNCTAD (2014) recommends that this requires primarily a clear statutory obligation to regularly review the local content regime at an appropriate interval, with the active involvement of all stakeholders (both domestic and foreign) and more importantly, political will.

[11] If this is not clear, arguably, a domestic affiliate of an international service provider could qualify as a "local" company even though actual service or material provision is outsourced outside the country.

entrenched group of firms that thrive from the existence of regulatory barriers[12];

- Member States with low industrial/manufacturing capacity may need between 10 and 15 years to develop necessary capacity to cope with international competitive standards;
- Strengthen Private-Public partnerships, as a way to replace protection in the long run;
- Governments and foreign industries to work together to develop supply chains;

(v) Addressing the challenges of infrastructure and trade/industrial policy deficiencies

The fifth pillar consists of addressing basic infrastructural and trade/industry policy deficiencies before implementing a wide-ranging Local Content programme. COMESA Members States must understand that Local Content is not a panacea to sustainable industrialization of the economy. In order for Local Content policies to address the challenges of industrialization the following must be adhered to:

- Policymakers should ensure that Local Content measures are not isolated from wider and deeper structural changes to the economy;
- Governments must exploit their unique advantage of being endowed with a lot of natural resources by creating industrial parks and clusters, or building technological capacities and shaping governance for upgrading local businesses in global value chains;
- Ensure that all stakeholders at the community level are actively involved in the design of all investments to make sure they maximize the benefits from natural resources; and
- Ensure deliberate measures are put in place to address basic infrastructural and trade/industry policy deficiencies and countries that have big challenges can adopt an incremental approach to local content before implementing a wide-ranging Local Content programme. Ambitious Local Content targets, in the absence of basic infrastructure and weal industrial capacity, may act as an additional cost on foreign operators, with a risk that this will have a deterrent effect on investments (further exacerbating the low domestic "spillovers" on employment and supply) or reduce their profits, which could in turn lead to shareholder pressure back home to further reduce investments and exposure in the host country.

(vi) Legal and legislative frameworks

In jurisdictions such as Brazil, China, Malaysia, Mexico, Norway, Nigeria, Ghana and Trinidad & Tobago where LCRs have been implemented with varying levels of success, LCRs have been backed by a clear, specific and transparent legislative framework, including a robust performance monitoring and review mechanism.

After securing political commitment, ensuring local content is aligned with national development plans and setting national requirements and targets for Local Content towards ensuring domestic

[12]A key lesson from successful local content programmes, from Norway to Malaysia, is that the initial industrial gains from protection were often dissipated as insulated local suppliers – provided with a guaranteed and legislated industry demand, removed from market prices and technological trends – gradually lost sight of standards of international competitiveness, and suffered a strong adjustment during periods of market liberalization.

value creation and long-term economic growth, the next step for national authorities across the COMESA region shall be to develop comprehensive and holistic legal frameworks that clarify and simplify LC. Rather than approach LCRs from a compliance or mandatory project requirement mind-set that demands more Local Content or introduces more punitive enforcement measures, governments across the COMESA region should adopt a more collaborative approach built on clear, transparent and attainable LC measures, with adequate institutional support for companies or investors to achieve those goals. The LC measures should be prepared on the basis of inputs received from all stakeholders.

According to OIES[13] (2017) study, a collaborative approach to develop a LCP built on creating a supportive regulatory and business-friendly economic environment for investors will deliver greater value in the COMESA countries. Under this approach, governments have a prominent role to play in addressing various hindrances to domestic and foreign investments; providing fiscal incentives for companies to establish or support small and medium enterprises in member countries; 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 LC scheme. A collaborative approach will help governments to work closely with companies and local communities to set out realistic and achievable LC measures, and then, develop supportive regulatory and institutional frameworks for the delivery of the agreed targets.

Furthermore, in a competitive private sector, a country's ability to attract investors and technologies (including financial institutions and lenders) needed for sustainable industrialisation will depend on the processes, procedures, practices and approaches put in place to reduce contractual risks, such as those that could result from misaligned LC measures. To minimise legal contentions and risks relating to LC, the following action points should be considered by governments, and when adopting LC measures:

- Integrate LC in the national vision;
- Establish clear and comprehensive Local Content laws;
- Establish collaborative focal institution on Local Content;
- Adopt collaborative contract terms on LC; and
- Measure and communicate performances.

In implementing the measures outlined above countries may consider the following steps to develop Local Content as a guiding framework. As shown in Figure 2.0, developing Local Content scheme is a continuous process. It does not matter at what stage the Member State is in terms of implementing LC. These steps are necessary for sustainable participation of the locals in the national economy.

[13] Oxford Institute of Energy Services

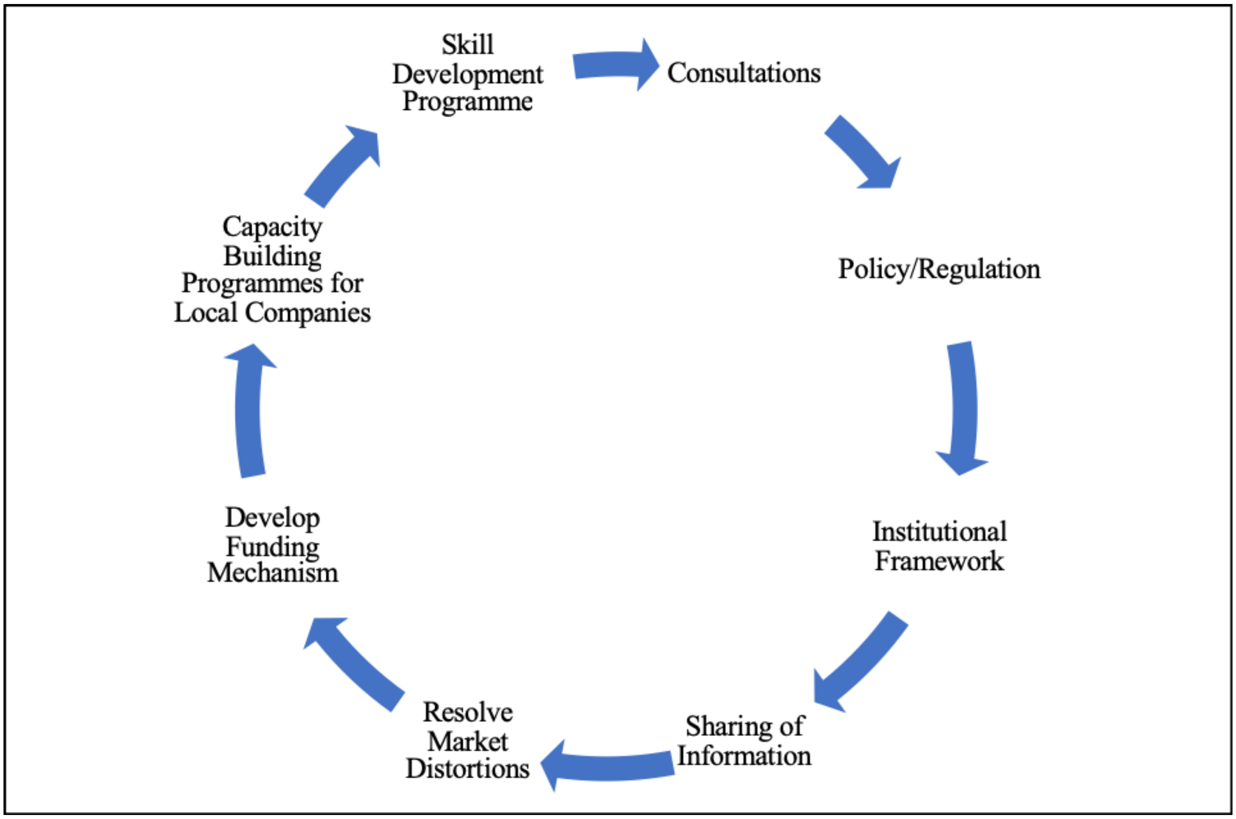

Figure 2.0: Local Content Requirements Cycle

(1) Consultations with all relevant stakeholders

This will help to establish ways of working, information exchange and define commonly agreed goals with all stakeholders, more specifically, companies, local SMEs, communities and civil society. Therefore, it is important that all these major stakeholders are invited to Local Content assessment consultations which should include the risk analysis and agreeing on sector priorities and phases to implement the regulations. This is always the first step in developing Local Content policy or regulation that addresses the concerns of key stakeholders.

(2) Develop local policy or regulations

After Local Content assessment/consultations, the next step is related to policy formulation, legislation and regulations on an effective Local Content policy based on thefollowing:

- facts and reality on ground;
- coherence;
- Predictability;
- capacity development plan;
- employment to be generated;

- local participation plan;
- review process;
- monitoring and evaluation.

(3) Institutional framework for implementation and enforcement

Local Content policies or regulations in themselves will not change anything. After the development policies or regulations there is need for Governments to assess and revise institutional arrangements as needed. One of the issues that need to be addressed at this stage is the annual Local Content assessment report which should contain demand and supply gap analysis.

(4) Sharing information from all stakeholders and capitalizing local content opportunities

Successful implementation of Local Content requirements requires significantly increased Local Content information exchange among key stakeholders. One of the ways to address information asymmetry in the Local Content requirements is to have a platform for information sharing such as establishing a web-based information system of local suppliers. The local content legal tools will also bring a number of opportunities to various stakeholders: local suppliers can connect to large firms and provide their services and goods; Job seekers will have much job opportunities, Governments will have the opportunity to widen the tax base with new business opportunities, among others.

(5) Develop a mechanism for resolving market distortions

Implementation of Local Content policies or regulations may create market distortions. It is important that |Governments resolve these market distortions through review of taxation arrangements to take into account the local policy requirements, including production cost differentials by ensuring that no one is left out as the market distortions can affect large firms as well as the local suppliers of goods and services among which SMEs.

(6) Funding mechanism for local content development

The implementation of the Local Content regime comes with some associated costs such the cost for stakeholder consultations, capacity building for local companies and skills development to address the skills gap. Therefore, it is important that Governments identify, assess and engage sustainable national funding sources. A number of donors may be engaged for possible funding. However, local companies can develop their business and take up local content opportunities in working in partnership with large firm including the foreign companies.

Government should also ensure that skills development, training suppliers in quality and standards and other prerequisites are provided for.

(7) Capacity building for Local companies

There is need for government to establishing business opportunities and information exchange through promotion of trade associations, and chambers of commerce. Deliberate programmes should be put in place to design and deliver comprehensive capacity building programmes such as technical training, investment financing, contracting strategies, procurement & proposals, international secondments, and incubators. There is also need to a value chain mapping analysis for the development capacity building programmes.

(8) Skill Development

One of the challenges in implementing Local Content regime is lack of skills among the local in the growth sectors. Therefore, it is important that government addresses this problem by assessing skills gaps in curricula compared to extractive industries and requirements/standards and enhance the vocational training programmes and curricula as needed. This can also be done through developing vocational and apprenticeship offerings, and enterprise-based trainings accreditation.

5.2 Local Content Policy Enablers

There are four "policy enablers[14]" that are worth considering in order for the region to have Local Content requirements regime. These are presented in Figure 3.0 below. These are elements that would facilitate effective implementation of Local Content policy instruments/regulations.

[14]IGC. (2017). Establishing a Local Content Unit for Rwanda, Policy note, April 2017

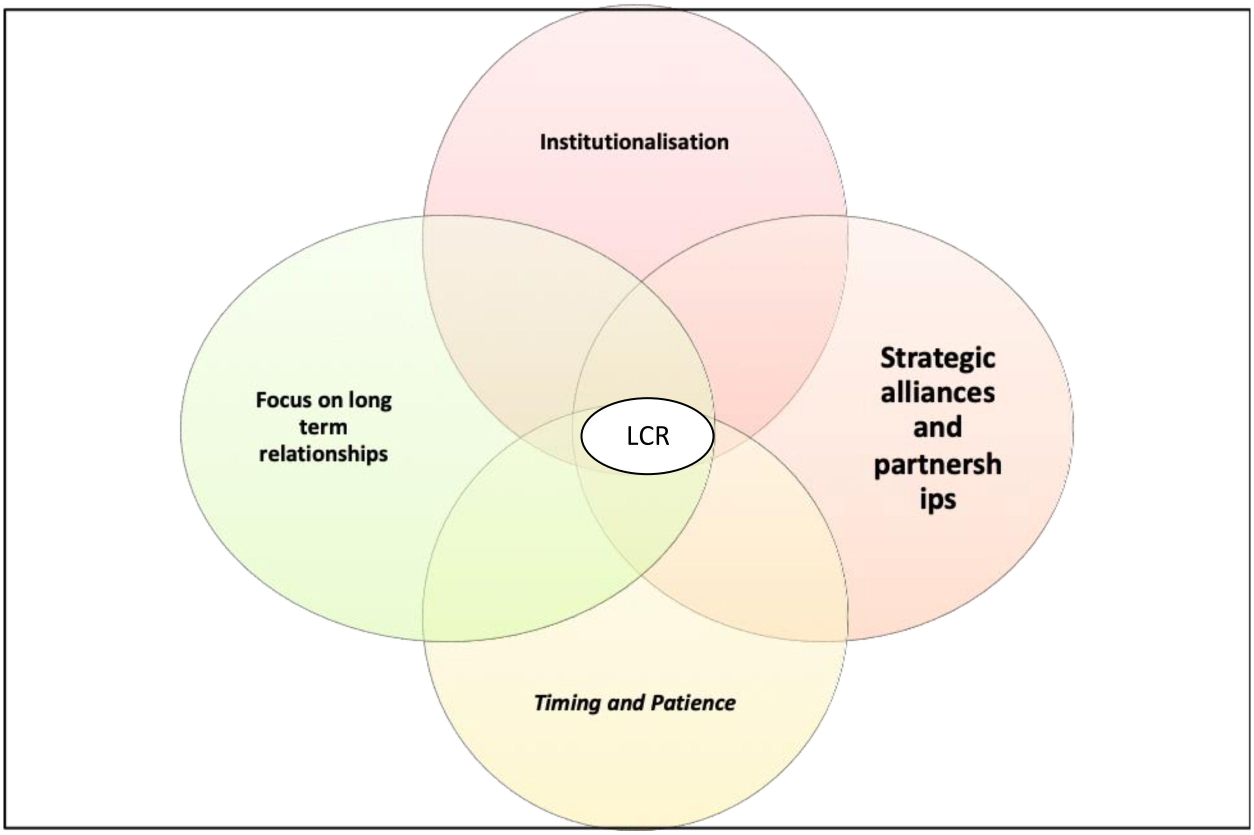

Figure 3.0: Local Content Enablers

Enabler 1: Institutionalisation of Local Content by Establishing a Special Unit

Improvements in the business environment are important (e.g. Member Countries' improvement in the Ease of Doing Business) but not sufficient to stimulate supply chains. Business Linkages will not be made by themselves, even if the information is available. Therefore, it is important that COMESA Member States establish institutions at regional and country level with the purpose of stimulating active relationship building that are important for improving job creation and reducing trade imbalances.

IGC (2017) argue that Local Content regulations such as those related to Latin America's car industries, which often had strict local purchase rules for all producers (e.g., x% of certain goods must be purchased from domestic firms) do not work and have negligible effects on Local Content use for two reasons. Firstly, it is easy to circumvent such policies through creative accounting practices and deceptive statistics. They are difficult for governments to enforce and raise administrative costs considerably. Secondly, such policies do not explicitly address either of the two constraints to improving Local Content use mentioned above, namely information asymmetries and quality-constrained local suppliers. Instead, it would force producers to use higher-cost and lower-quality domestic inputs, creating market inefficiencies that would thus reduce the overall productivity and competitiveness of the export sector. This both discourages foreign investment in the host country and also raises costs to local consumers.

The best approach is to have a designated Local Content Unit (LCU) in order to persuade, facilitate and monitor improved Local Content use for all investments. The unit must have a small but highly professional team that can liaise with investors in a co-operative manner, and with a deep understanding of both (a) local capabilities, and (b) the feasible modes of engagement of local firms in supply-chains. Such an approach would address the problems[15] that come with LCRs regulations.

Through LCU, the government's will be able to match domestic firms to large exporters ensures improved implementation and monitoring of use of local suppliers. An example of the possible benefits an LCU may bring can be found in Ghana. Tullow Oil was only able to identify reliable domestic supplier relationships after it actively reached out to new suppliers and provided targeted training. This suggests that none of these benefits would have likely arisen from a 'local purchase' rule alone. In addition, Tullow Oil was only able to invest in training local suppliers because of the size of its oil investments. The LCU would be used to extend such services and training schemes to a much larger range of businesses. Member States may consider setting up independent national Local Content unit. The Unit should work with all industries in the country and develop its knowledge of local companies and have the mandate to convene meetings with domestic firms to assess which firms have the ability, the scale and interest to engage with the supply chain.

Enabler 2: Creation of Strategic alliances and sustainable Partnerships

One of the key lessons in countries that have successfully implemented Local Content schemes is that there are significant benefits through greater supply chain linkages. These cannot be 'forced' through Local Content regulations, but can only work through effective and sustainable partnerships. It is important to create strong partnerships with all investments, including with multinationals, and use the Local Content policy as an anchor to align national objectives with business interests. These alliances can be created both at regional and country levels (see Study case below). Madagascar is one of the countries in the COMESA Region that have used such partnership with the private sector to promote Local Content.

[15]The problems of information asymmetries and quality-upgrade local suppliers: The LCU would use its extensive knowledge and relationships with local suppliers to 'suggest' possible new linkages and based on initially explored potential linkages, the LCU would further work together with the anchor firm to ensure the potential suppliers receive the appropriate training and capability building to produce the required input specifications and meet the input quality standards.

Table 4.0: Case Study on strategic alliance and partnerships (see GIZ, undated and ILO, 2016 p 13)

In Fort Dauphin, Madagascar, the multinational mining corporation Rio Tinto (RT) has invested US$ 940 million into an ilmenite and zircon mine and spent over US$ 8.5 million on procurement related to the mine in 2013. However, a combination of the region's remote location, its low literacy rate, local SMEs' lack of market orientation, mismatches between the skill profiles of RT vacancies and local workers' skills, a weak government, and low levels of investment into that region have prevented the mining project from contributing sustainably to the region's economic development. In 2013, Rio Tinto and GIZ joined forces to implement a 3-year strategic alliance covering Madagascar and Mozambique. The key approach underlying the alliance's Local Content strategy was (I) to develop a local supplier development program for RT and (ii) to share lessons and spread know-how on Local Content. For these purposes, the alliance identified Local Content opportunities in four sectors through regional mappings and skills assessments of potential suppliers and developed a data base of local companies supplying extractive industries. In order to help businesses meet RT's procurement requirements, the alliance then trained over 90 local employees' business skills and provided daily coaching to eight MSMEs, six of which received procurement contracts worth over US$ 170,000 from RT, thereby creating 112 jobs. It also gave support to the local business centre (CARA) and shared its experiences with the Madagascar Chamber of Mines and oil companies. To mainstream processes relating to Local Content, it setup a new Local Content Steering Committee within RT, which meets weekly and includes the CEO of RT. Moreover, the alliance organized a 3-day LC Practitioners' Workshop and raised awareness on Local Content issues at various national and international workshops. Partly because of the alliance's activities, the Malagasy Mining Code has incorporated Local Content.

This case study offers several key lessons for promoting Local Content. First, as local businesses need time to improve their skill level, address Local Content issues early on and raise the visibility of the tender process. Second, lengthy corporate processes, staff changes, and investors' low interest in Local Content make it difficult to obtain their buy -in through- out the whole commodity cycle. Third, differentiate between Local Content and CSR, as Local Content is part of a company's business model. Fourth, build the capacities and the business model of your partner (i.e. a business centre) to ensure the project's sustainability. Fifth, be creative with regard to the evaluation of Local Content, clearly state Local Content's qualitative dimensions, and do not focus only on its quantitative aspects.

Enabler 3: A clear focus on Long-term Supply Contracts/Relationships

Governments should avoid focusing on short-term supply contracts. Although business linkages produce short-term benefits to suppliers (e.g., increasing output and employment), the main benefits accrue over the medium to long-term through the required quality improvements that suppliers need to meet in order to supply multinationals. Long-term benefits and productivity improvements ultimately are the ones that drive economic growth and export promotion. Therefore, it is paramount, rather than trying to focus only on brokering short-term supply contracts, the region and countries should seek to stimulate long-term relationships that result in wider supply chain upgrading and exports. This applies across industries.

Enabler 4: Timing and Patience

Member States should note that while institutionalizing Local Content requirement can be promising, it will take time for these institutions to develop their capacity and to show initial results. It takes time for businesses to form long-term relationships with investors/companies. Therefore, regional and Members States targets should initially be procedural (focused around identifying firms), before brokering new contracts between multinationals and domestic suppliers[16]. For that reason, it is important to start small and expand over time.

4.3 Institutional Arrangement for the implementation of Local Content Policy

The institutional framework for the implementation of these policy guidelines should be guided by COMESA Treaty particularly, Chapter Twelve "Cooperation in Industrial Development".

4.3.1 Role of the COMESA Secretariat

The function of the COMESA Secretariat shall be:

- Profile Local Content policies/laws and regulations implemented in Member States;
- Monitor and keep under constant review the implementation of Local Content programmes across sectors;
- Submit from time to time reports and recommendations to the industry committee of experts concerning the implementation of Local Content programmes in the region
- Work closely and exchange information on best practices of LCRs with designated institutions in Member States; and
- Perform any other function that Council, on recommendation of the Sectoral Ministerial meeting on industry may assign.

4.3.2 Role of COMESA Member States

Member States need to establish appropriate "National Local Content Institutions[17]" which shall be supervised by an appropriate Ministry/ Government agency. The function of such an institution shall include the following:

(i) Development of short-term, medium- and long-term national development plans and local content plans;
(ii) Promoting public awareness and reducing uncertainty on the scope of LCRs;
(iii) Aligning Local Content policies with local development plans and establishing different funding mechanisms;
(iv) Coordinating and spearheading the development of a standardised approach to Local Content in alignment with Governments priorities and domestic laws;

[16] IGC (2017) recommends a period of at least one year before brokering new contracts with multinationals and domestic suppliers
[17] This could consist of Committees or Unit with an independent board of directors

(v) Providing guidance to companies or investors in formulating and developing industry 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;

(vi) Monitoring and investigating companies in relation to their compliance with Local Content requirements; and

(vii) Clearly defining legal obligations and uniform sector specific frameworks for all projects and create oversight institutions with relevant capacities.

4.3.3 Role of the Private Sector

The private sector plays a critical role in the implementation of LC scheme for sustainable industrial development. The function of the private sector should include:

- Undertaking a diagnostic of demand and supply capacities for all Local Content opportunities;
- Pro-actively participate in the development of a clear national Local Content strategy;
- Producing regular, transparent, auditable reports; and
- Any other requirement as stipulated in the detailed short-term, medium- and long-term national and local plans.

4.3.4 Roles of Civil Society Organisations, NGOs and NGIs

Civil Society Organisations, NGOs and NGIs play a unique role in establishing the representative structures in the development of LC regime, particularly in ensuring that local people's collective interests and take care of. These groups and networks serve as vehicles for citizens to voice their interests and thus become parties in decision-making processes. There functions should include:

- Advocate for resource allocation and implementation of sound Local Content policies;
- Create a space for multi-stakeholder Local Content planning; and
- Oversee and monitor compliance by governments and raise concerns and advocate for suitable action in the case of noncompliance.

4.4 Monitoring, Review and Enforcement

Having these policy guidelines is not an end in itself. There must be a built-in independent monitoring and enforcement mechanism, which ensures various stakeholders, including public institutions, can be made accountable. There are three[18] key elements that need to be put in place both at the region and country level for an effective monitoring, review and enforcement mechanism. These include clear reporting requirements for companies, strong systems for collecting data on the results of the interventions, and common reporting framework.

At regional level, the Secretariat of COMESA must put a strong system for collecting data on the Local Content practices in Member States and provide a platform for sharing the results of these interventions. This should also include developing a mechanism for providing technical backstopping and capacity building for Member States.

At Member State level, there is need to put in place clear reporting requirements for companies for mandated prescriptive obligations or non-mandatory targets, such as minimum percentages of local employment required for companies to report regularly against those benchmarks, using a standardized reporting template. The reporting requirement must also facilitative measures, such as incentives to purchase local goods and services, or to conduct local R&D, firms should be required to report regularly on their achievements in these areas, again using a standardized reporting template.

Lastly, if firms are obliged to submit plans for increased Local Content, the format for these reports should also be standardized. The content of the reporting requirements should be tailored to the nature of the policies chosen and must include all relevant reporting areas, such as gender-disaggregated data to ensure proper monitoring and follow-up of gender-equitable development strategies.

These reporting frameworks must be standardised at regional level. This will allow governments to gather and aggregate data from across many operations; obtain a holistic picture of the region and sectors' progress toward Local Content goals[19]; and use information collected from companies as subtle pressure to improve companies' performance on Local Content. There are various options for governments to collect data, but in general it is ideal to have companies only reporting to one agency, and for all stakeholders to be able to find the data in a centralized accessible place. In some cases, this can be in a sector ministry or a trade and industry ministry. Countries may also choose to set up an independent Local Content unit to collect data. The independent unit would have the mandate, to review agreements relating to sector specific investments; collect, collate and analyse data on the operations of companies for decision making and for dissemination.

However, what is critical is that the Monitoring, Review and Enforcement mechanism must have clear targets agreed upon by governments, companies and communities on the basis of which companies can make commitments and report on results. Interested parties could then evaluate

[18] IGF. (2018). *IGF Guidance for Governments: Local content policies*. Winnipeg: IISD.

[19] For example, in the case of a requirement to purchase locally "where feasible," country-wide reporting data gives bureaucrats some basis to assess claims by individual companies regarding their ability or inability to purchase locally.

and report on the progress of Local Content initiatives[20]. A list of examples of Local Content policy design and monitoring that should be led by different stakeholders (government, companies and CSOs).

5.0 Conclusion

These regional Local Content policy guidelines provide practical opportunities for national authorities to maximise in-country benefits and value from resource extraction activities. The Local Content Policy Guidelines will help Member States to develop Local Content schemes that provide frameworks for investors to better source local factors of production, while making sure there is no negative implications for costs, availability and quality.

However, Member States shall note that LC 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 LC in COMESA countries can be exacerbated by the absence of robust related legal and institutional frameworks across the region. There is therefore, a need for national governments across the COMESA 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 LC is an absolute requirement for COMESA 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. Governments in the region need to adopt a collaborative approach to build on common understanding, shared values and benefits, and propelled by collaborative and supportive institutions. Care should also be taken by both parties to develop and agree upon LC scheme and procedures that are clear, practical and achievable.

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