

CCJ Annual International Law Moot 2025 - Fact Pattern

The State of Anteegua and Barbooda

v.

The Republic of Guytrin

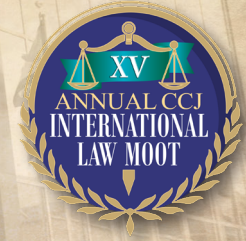
In 2021, the Republic of Guytrin, a CARICOM Member State, began production of crude oil. Prior to becoming an oil producer, Guytrin's economy was heavily dependent on agriculture and mining, with its main exports being sugar, rice, and bauxite. At the time of the first significant offshore oil discovery in 2019, Guytrin was battling a serious economic crisis marked by low foreign currency reserves, fluctuating commodity prices and rising levels of unemployment. For decades, the country had unsustainably high levels of external debt and participated in the International Monetary Fund programme for Highly Indebted Poor Countries.

With a view to ensuring that the exploitation of its petroleum resources would benefit Guytrinians and support sustainable development, the Government adopted in 2020 a Local Content Policy (LCP) for the Petroleum Sector. Key objectives of the LCP are employment and labour market development, value creation or addition in the domestic economy, and promotion of innovation, technology and research and development.

The LCP captures the principle that in making decisions concerning recruitment and procurement to execute petroleum activities, operators and their contractors shall give "first consideration" and provide "adequate opportunity" to Guytrinian persons having appropriate qualifications and experience and to Guytrinian suppliers where capable and competitive. Another core principle of the Policy is that operators shall undertake programmes that address the training of Guytrinian persons and capacity development of Guytrinian suppliers, as well as other capacity development initiatives to support national training institutions and local research and development.

Also in 2020, the Government concluded a production sharing agreement (PSA) with HexxMobil, an American multinational oil and gas corporation. Under the PSA, HexxMobil is required to give preference to Guytrinian suppliers during bidding processes where their bids are competitive with foreign bids in skills, resources, availability and price and meet its technical and financial requirements. In addition, the agreement requires HexxMobil to employ with priority Guytrinians in all aspects of petroleum operations to the extent that such nationals with the requisite qualifications and experience can be found, and to minimize the employment of foreign personnel. HexxMobil is further required, at its own expense, to train nationals and ensure their development by imparting to them technology and business expertise in all areas of energy sector activity.

In 2022, HexxMobil concluded an agreement with the Kalino and Lokano indigenous groups of Guytrin, who live in the coastal regions where HexxMobil's offshore operations are located. Under this community agreement, HexxMobil commits to giving preference to tenderers that bring the greatest opportunities to the Kalino and Lokano indigenous groups, for example, by involving indigenous owned businesses in the contract or employing and/or training indigenous persons.



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Guytrin's Local Content Policy has generated concerns across CARICOM that it runs counter to the Revised Treaty of Chaguaramas (RTC). Several Member States have voiced such concerns in the Council for Trade and Economic Development (COTED) and the Conference of Heads of Government of CARICOM. In 2022, the Conference mandated the establishment of a Working Group on Local Content to make recommendations regarding the development and application of local content legislation, policy and plans in the CARICOM Single Market and Economy (CSME), in the context of the RTC.

In the CARICOM Member State of Antegua and Barboda, the private sector has stridently registered concerns that the local content initiatives in Guytrin hinder the full enjoyment of the rights of other CARICOM nationals, contrary to the RTC. The private sector has urged the Government to bring proceedings in the Caribbean Court of Justice (CCJ) to safeguard the rights of other CARICOM nationals in Guytrin.

On 18 July 2024, Antegua and Barboda filed an Originating Application in the CCJ, seeking a declaration that Guytrin has breached Articles 7, 32, 36 and 46 of the RTC. It alleges that Guytrin's Local Content Policy, the local content provisions of the PSA between Guytrin and HexxMobil and the community agreement between HexxMobil and the indigenous groups are discriminatory on the grounds of nationality only and impair the rights of other CARICOM nationals to establish businesses, provide services and seek employment as skilled nationals in Guytrin.

In its Defence, the Republic of Guytrin argues that its Local Content Policy enshrines objectives and principles, not mandatory requirements. Moreover, it asserts that the procurement and hiring practices of HexxMobil, as well as the community agreement, are actions of private actors, not the State. Further, to the extent that the Government is considered to have undertaken any actions which restrict the right of establishment, the right to provide services or the freedom of movement of skilled Community nationals under the RTC, such actions are justified by Articles 43 and 47 of the Treaty.

At a Case Management Conference on 14 November 2024, the Court ordered that CARICOM is permitted to be an Amicus Curiae pursuant to Rule 18.2 of the Caribbean Court of Justice (Original Jurisdiction Rules) 2024.

All relevant procedural matters have been observed and the matter is set down for hearing at the Seat of the Court on 20 and 21 March 2025.

Senior Counsel of Antegua and Barboda will argue that the Republic of Guytrin has violated Articles 7, 32, 36 and 46 of the RTC. Junior Counsel will argue that Articles 43 and 47 of the RTC do not justify Guytrin's violations of the Treaty.

Senior Counsel of Guytrin will argue that Guytrin has not violated Articles 7, 32, 36 and 46 of the RTC. Junior Counsel will argue that if Guytrin has violated those provisions of the RTC, such violations would be justified by Articles 43 and 47 of the Treaty.