

LOCAL CONTENT DEVELOPMENT IN THE OIL AND GAS INDUSTRY IN NIGERIA: PROBLEMS AND PROSPECTS

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ABSTRACT: *In the past, the major players in the oil and gas industry in Nigeria were the international oil companies (IOCs). There was inadequate skilled workforce in the industry especially with respect to indigenous participation in the oil and gas projects. Consequently, the IOCs relied heavily on expatriates to carry out projects in the oil and gas industry in Nigeria which ordinarily would have been handled by Nigerians. In order to boost local participation in the oil and gas projects and create more employment opportunities for the locals, the federal government of Nigeria in 2010, enacted the Local Content Act in recognition of the inadequacy of the indigenous human capital development in the oil and gas industry in Nigeria. However, the Local Content development policy of the federal government is without some problems which have affected the effective and efficient implementation of the policy. This paper therefore, examines the local content development policy of the federal government, identifies its problems and prospects, and makes appropriate recommendations.*

KEYWORDS: local content, development, oil and gas, industry, Nigeria

INTRODUCTION

In a bid to stem the tide of frequent use of expatriate workers to handle jobs that would have been ordinarily carried out by indigenous workers, the federal government in 2010 enacted the Local Content Act¹ to promote indigenous participation and empowerment in the oil and gas industry in Nigeria².

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¹ 2010

² Samuel Dike, *Energy Security: The case of Nigerian and Lessons from Brazil, Norway and the UK* (Pearl Publishers, port Harcourt 2015) P.64

The adoption of the local content policy in the oil and gas industry is seen as a strategy to boost the participation of indigenous oil firms in the supply chain of the sector and also to create more employment opportunities for the local workforce.³

Many nations in their quest to build local capacity and create employment for the locals have formulated local content policy to maximise the benefits from their oil endowment, by so doing improve the lives of their citizens as well as the economy. In like manner adaptation of local content in the oil and Gas sector in Nigeria has also helped in the improvement of the nation's economy. This is an improvement as this was not the case in the past where the oil and gas industry was dominated by major international oil companies (IOCs) that came with their large numbers of expatriate workers deployed to carry out projects in various onshore and offshore locations in the country. Expatriates were brought in as engineers and doctors amidst prevailing unemployment in the country and where operators were declaring huge profits without improving the working conditions of local staff.

This preponderance of expatriate workers has resulted in a paucity of jobs, skills development, capacity building and under-utilisation of the indigenous workforce and in the long run, a lack of sustained national economic development. Hence, this paper examines the development of local content in the oil and gas industry in Nigeria, identifies the problems and prospects of Nigerian local content and proffer solutions on how to effectively address the problems.

Conceptual Analysis

Local Content

The term "local content" has been defined by Ogbeifun as the engagement of Nigerians as employees, the participation of Nigerian investors in the industry and the use of Nigerian contractors in the execution of contracts.⁴ Obuaya provided his definition in line with the idea of value addition. He defines local content as a set of deliberate orientation and actions to build domestic capacity relevant for service and product delivery comparable within that industry and an opportunity to locally build a sustainable culture of service quality and capabilities exceeding customers' expectations and comparable to international standards through key local personnel and management.⁵ Though simple, Obuaya's definitions reflect on some important indices to examining the concept of local content such as 'deliberate orientation', 'capacity building', 'sustainable capability', 'product deliverability systems' and 'comparability.'

³ An Adedeji; The Role of Local Content Policy in Local value creation in Nigerian oil Industry. A Structural equation Modeling (SEM) Approach <https://www.sciencedirect.com/pii> accessed on 5th December, 2019

⁴ B Ogbeifun, 'How Content is Local Content?' Available at <www.ganji.com> Cited in O I Akpanika, 'Technology Transfer and the Challenges of Local Content Development in the Nigerian Oil Industry' 2012 (11) 2 *Global Journal Of Engineering Research*, 123-131 Available at <<https://www.ajol.info/index.php/gjer/article/viewFile/90642/80057>> accessed August 17 2019

⁵ T Obuaya, 'Local Content Implementation in Nigeria: A Road Map', being a paper presented at the Nigerian Oil and Gas Conference. Abuja. Nigeria. 2005

Section 106 of the Nigerian Oil and Gas Industry Content Development Act⁶ also defines the term 'Nigerian content' to mean "the quantum of composite value added or created in the Nigerian economy by a systematic development of capacity and capabilities through the deliberate utilisation of Nigerian human and material resources and services in the Nigerian oil and gas industry. Local content is about securing direct and indirect opportunities for employment and procurement to home nationals, at the same time as fostering the development of local skills, technology transfer, and use of local manpower and local manufacturing in capital projects."⁷

Development

The exact meaning of the term "development" is unclear; there is no general agreement about what it is or what should go in.⁸ However, Oxford Advance Learners dictionary defines development as the gradual growth of something so that it becomes more advanced, stronger, etc.⁹ while Seers suggested that development is when a country experiences a reduction or elimination of poverty, inequality and unemployment.¹⁰ For Owens, development is when there is development of people (human development) and not development of things.¹¹ This definition is faulty, human development cannot happen in isolation without reliance on the ('things') environment; therefore, development should encompass both humans and everything in the environment. Todaro described development as a multi-dimensional process involving the reorganization and reorientation of the entire economic and social system. This involves in addition to improvement of income and output, radical changes in institutional, social and administrative structures as well as in popular attitudes, customs and belief.¹² Todaro's definition gives the meaning, which the concept of development assumes whenever it is discussed in relation to countries. Development at this level of conceptualization is often understood in terms of economic development. This does not only signify economic development, but as Todaro noted above; it equally implies improving the social, administrative, political as well as people's cultural attitudes and beliefs that are anti-progress.¹³ In summary, development is about much more than advancing economic growth, the emphasis is placed on 'cultural and human value', 'self-esteem' and freedom from ignorance.¹⁴

⁶ 2010

⁷T Haidar, '4 Ways In Which Local Content Can Lead To Local Contentment', Available at <<https://www.oilandgasiq.com/oil-and-gas-production-and-operations/articles/4-ways-in-which-local-content-can-lead-to-local-co>> accessed August 17 2019

⁸ SB Adekunle and FM Alokpa, 'An Appraisal of the Nigeria Economic Recovery and Growth Plan, 2017- 2020' 2018 (12) 3 (51) *AFRREV* Available at <<http://dx.doi.org/10.4314/afrev.v12i3.3>> accessed 29 August 2019

⁹Oxford Advance Learner's Dictionary, Available at <<https://www.oxfordlearnersdictionaries.com/definition/english/development?q=development>> accessed 29 August 2019

¹⁰D Seers, The Meaning of Development, IDS Communication 44, 1969 Available at <<https://www.ids.ac.uk/files/dmfile/themeaningofdevelopment.pdf>> accessed 29 August 2019

¹¹ O Edgar, *The future of freedom in the developing World: Economic Development as political reform* (Pergamom Press New York 1987). Cited in Adekunle and Alokpa, (n.8)

¹² MP Todaro and SC Smith, *Economic development* (Addison-Wesley Pearson 2011). Cited in Adekunle and Alokpa, n.6

¹³OM Ikeanyibe, 'Development planning in Nigeria: Reflections on the National Economic Empowerment and Development Strategy (NEEDS) 2003-2007' (2009)20 (3) *Journal of Social Science*, 197-210 Cited in Adekunle and Alokpa, n.8

¹⁴ SB Adekunle and FM Alokpa, n.6

Oil and Gas industry

The Oil and Gas Industry is defined as activities connected with the exploration, development, exploitation, transportation and sale of Nigerian oil and gas resources including upstream and downstream oil and gas operations.¹⁵

Historical Development of Policy Framework of Local Content Development in Nigeria

The need to establish legal and policy instruments to enhance local content development, or indigenous participation, in the industry first filtered into the arena of national public discourse during the Federal Parliamentary Debate on the Petroleum Profit Tax Bill in 1959.¹⁶ This was just a year before Nigeria gained her independence from British colonial rule. Honorable Jaja Wachukwu, a member of the Federal House of Representatives, while debating the Petroleum Profit Tax Bill before the Legislative House, had digressed to present this issue to members of the Federal House of Representatives. The Honorable Representative noted thus;

*“It must be remembered that nearly all our leading industries are in the hands of foreigners. For instance, our cement company, our air transport, our shipping, our tin and other mining industries, now oil and probably iron and steel”*¹⁷

Later in 1961, Chief Obafemi Awolowo, Leader of the Opposition Party in the Federal Parliament, moved a motion that called for a state programme of nationalisation. The motion stated thus: *“that this House approves in principle the nationali[s]ation of basic industries and commercial undertakings of vital importance to the economy of Nigeria.”*¹⁸

Such calls for economic nationalism resulted in the enactment of the Immigration Act.¹⁹ The Act established an expatriate quota system by specifying the ratio of Nigerian-to-non-Nigerians that could be employed by foreign business organisations located in Nigeria. This requirement was to enhance the involvement of Nigerian citizens in all economic sectors.²⁰ Later, in 1966, the government established an Expatriate Quota Allocation Board, with the responsibility of ensuring indigenous participation in the control, development and management of strategic economic sectors of Nigerian society.²¹ Another major step was taken under the military regime during the Nigerian-Biafran Civil War through the promulgation of the Companies Decree,²² which created a legal framework for the incorporation of every foreign company operating in Nigeria. The Decree aimed to bring local

¹⁵ Section 106 of the Nigerian Oil and Gas Industry Content Development Act, 2010

¹⁶ CA Ogbuagu, *Nigeria: Development Policies and Programmes* (University of Calabar Press: Calabar, 1995), pp.6–67. Cited in O Uchenna, ‘Towards Sustainable Local Content Development in the Nigerian Oil and Gas Industry: an Appraisal of the Legal Framework and Challenges-Pt I’ (2014)1 *International Energy Law Review* <https://www.researchgate.net/publication/328266210_Towards_Sustainable_Local_Content_Development_in_the_Nigerian_Oil_and_Gas_Industry_an_Appraisal_of_the_Legal_Framework_and_Challenges-Pt_I> accessed 11 October 2019

¹⁷ *ibid*

¹⁸ *ibid*

¹⁹ Cap.84 1962

²⁰ *ibid*

²¹ Ogbuagu, (n.16)

²²1968

subsidiaries of foreign owned firms under the control of the Nigerian Government and also enhance the participation of Nigerians in such businesses.²³

The Petroleum Decree²⁴ also made provisions to enhance local content development through the development of a huge indigenous manpower base in the industry. Under the Decree, a company that holds an oil mining lease is under a legal obligation to employ 75 percent of Nigerians in managerial, professional and supervisory grades within 10 years of the grant of the lease.²⁵ To enhance the transfer of technologies, the government also established the Industrial Training Fund Decree in 1971. The aim of the Decree was to encourage the acquisition of relevant skills that would support the development of indigenous manpower to meet the needs of the Nigerian economy, including the oil and gas industry. Later, the government established the Nigerian Enterprises Promotion Decree²⁶ with the aim of enhancing the participation of Nigerians in strategic economic sectors, including the oil and gas industry.²⁷

The Nigerian Enterprises Promotion Decree, which is also known as “Indigenisation Decree,” was established in the fulfillment of Nigeria’s Indigenisation Policy of 1971, which aimed to achieve the following objectives: to create an economically independent country with increased opportunities for indigenous Nigerian businessmen; to ensure greater retention of profits occurring from the economic sector; and to encourage further economic investment in the area of international and capital goods production. The Indigenisation Policy referred to the indigenisation programme as “a process of strengthening Nigeria’s political independence.”²⁸ The Indigenisation Decree established two schedules for categories of business enterprises which were exclusively reserved for Nigerians and businesses which foreigners were excluded from participating in on the basis of their sizes of operation and the levels of indigenous share participation. The Indigenisation Policy also sought to increase indigenous participation in the Industry.²⁹ This was one of the underlying reasons that gave rise to the establishment of the Acquisition of Assets (British Petroleum Co Ltd) Decree,³⁰ which nationalised the oil assets of British Petroleum that had operated with Shell Petroleum in a consortium known as Shell-BP. The Decree provided for the transfer of British Petroleum’s assets to the Nigerian National Petroleum Corp. The Decree further nationalised the Port Harcourt Refinery, which was owned by Shell-BP and also gave the Federal Government a 60 per cent interest in all operations in the industry.³¹

²³ O Uchenna, ‘Towards Sustainable Local Content Development in the Nigerian Oil and Gas Industry: an Appraisal of the Legal Framework and Challenges-Pt I’ (2014)1 International Energy Law Review <https://www.researchgate.net/publication/328266210_Towards_Sustainable_Local_Content_Development_in_the_Nigerian_Oil_and_Gas_Industry_an_Appraisal_of_the_Legal_Framework_and_Challenges-Pt_I> accessed 11 October 2019

²⁴ 1969

²⁵ para.37 of the First Schedule to the Petroleum Act of 1969

²⁶ 1972

²⁷ Uchenna,(n 23)

²⁸ CA Ogbuagu, (n.16)

²⁹ *ibid*

³⁰ 1979

³¹Mbendi Information Services, ‘Oil Refining in Nigeria - An Overview,’ <http://www.mbendi.com/indy/oilg/orgrf/af/ng/p0005.htm>. Cited in O Uchenna,(n 23)

The nationalisation of the industry is noted to have been influenced by British Petroleum's violation of the Nigerian Government's oil embargo against South Africa during its apartheid regime.³² However, it has been argued that the Nigerian-Biafran Civil War experience might have been responsible for the government's indigenisation efforts. The civil war experience is said to have made Nigerian policy-makers distrustful and resentful of foreign investors following the inability of the multinational corporations to co-operate effectively with the Nigerian Government during the civil war.³³ Another view is that the new awareness of confidence and importance aroused amongst Nigerians after the civil war was largely responsible for the eventual promulgation of the Indigenization Decree of 1972.³⁴

There is also another view that Nigeria's efforts towards increasing local control of the Industry arose from its membership of the Organisation of Petroleum Exporting Countries (OPEC). For example, after joining OPEC in 1971, Nigeria signed various participation agreements with several multinational oil companies that gave the country a minimum of 35 per cent participation in all concessions and a projected 51 per cent by 1981; with prospects that Nigeria would achieve a 100 per cent control of all oil concessions in the Industry. By 1973, Nigeria had acquired an average of 60 per cent of participating interests in the operation of the oil companies. This action was in line with OPEC Resolution,³⁵ which required all member countries to undertake, as far as was feasible, the direct exploration for, and development of, hydrocarbon resources and to acquire majority participation in the operation of the oil companies. Another effort to promote the development of local content was through the Federal Government's promulgation of the Decree Establishing the Petroleum Technology Development Fund (PTDF) in 1973 with the aim of providing training for Nigerians to qualify as professionals and technicians in all fields in the Industry. This was followed with the establishment of the National Office for Technology Acquisition and Promotion Act in 1979³⁶ to promote the acquisition and transfer of foreign technologies to Nigeria. One of the major objectives of the Act was to enhance national industrialisation and indigenous control in all economic sectors (including the oil and gas industry) following the successful transfer and localisation of foreign technologies.³⁷

However, despite several decades of efforts, the government's attempts to promote local content through indigenisation policies and other related laws and policy instruments did not substantially improve local content or facilitate the transfer of technologies that would promote technological self-sufficiency or indigenous control of the Industry. Thus, indigenisation attempts failed to achieve the development and promotion of indigenous entrepreneurial capacity in the Industry. To a great extent, the failure of local content and indigenisation policies can be traced to the absence

³²A Akinrele, *Nigeria Oil and Gas Law* (Oil, Gas & Energy Law Intelligence: London, 2005) 227. Cited in *O Uchenna*, (n.23)

³³ For example, it is noted that "Shell-BP in 1967 made initial payment of oil royalties to the Biafran regime, incurring the anger of the Nigerian leaders against it and other Multinational companies in operation in Nigeria." See *CA Ogbuagu*, (n 16)

³⁴ *CA Ogbuagu*, (n 16)

³⁵ XVI.90 of June 1968

³⁶ Cap.N62 LFN 2004

³⁷*Uchenna*,(n23)

of indigenous expertise and technological capacity to exploit opportunities created by the establishment of such policies. Thus, the promotion of indigenisation policies succeeded in increasing the number of Nigerian shareholders in foreign companies located within the country without the enterprising zeal or the managerial/technical know-how to take on higher responsibility in the actual running of the economic sector.

Thus, another step that also appeared to enhance indigenisation efforts in the Industry was that the Nigerian Government began to participate in oil concessions through joint-venture arrangements with multinational oil companies. This also led to the establishment of the Nigerian National Oil Corporation (NNOC) as a vehicle for promoting indigenisation programmes in the Industry. It later became NNPC in 1977 through NNOC's merger with the Ministry of Petroleum. To further enhance the achievement of local content in the Industry, the NNPC was re-organised to pursue commercial objectives in 1988 and subsequently 11 subsidiary companies were established under the NNPC.³⁸ NNPC flagged off the actual local content initiative through acquisition of interests in the operations of the International Oil Companies (IOCs).³⁹ These interests grew to about 70%, with the responsibility of controlling all acreages and other activities. Although conscious efforts were made in the past through the Petroleum Act⁴⁰ and its subsidiary Regulations, enforcement of local content policy, the springboard for sustainable economic transformation of Nigeria, was mere paper work.⁴¹

Later, in 1991, the Nigerian Government established the Indigenous Concession Policy, which was aimed at expanding the scope of indigenous participation in the industry and diversifying the sources of investment and funds in-flow into the industry. This resulted in the award of onshore and offshore oil blocks to Nigerian entrepreneurs and gave birth to the emergence of indigenous oil companies in oil exploration and production. Although, it was observed in most cases that the award of oil blocks to indigenous oil companies 'appears to have been largely influenced by the extent to which prominent shareholders have been connected to the government' rather than on technical competence and expertise. This pattern appears to have also had a steady trend in the industry with successive governments granting oil blocks to their cronies.⁴²

However, by 2000, the Nigerian Content Policy was envisioned by the NNPC to serve as the basis for measuring local participation and job creation for Nigerians in the oil and gas industry. The objective of the policy was to increase the quantum of composite value added to, or created in, the Nigerian economy through the systematic development of capacity and capabilities and the deliberate utilisation of Nigerian human and material resources and services in the oil and gas. In an effort to realise the ideals of the policy, the Nigerian Content Division (NCD) was established within the NNPC⁴³ to ensure the effective implementation of the policy in the oil & gas industry

³⁸ *ibid*

³⁹J Balouga, 'Nigerian Local Content: Challenges and Prospects' Available at <<https://www.iaee.org/en/publications/newsletterdl.aspx?id=176>> accessed 20 August 2019

⁴⁰ Cap P10 Laws of the Federation of Nigeria, 2004

⁴¹ Balouga, (n.14)

⁴² Uchenna, (n23)

⁴³ CJS Azoro, 'National Participation in Nigerian Oil and Gas Industry: Prospects and Challenges', (2016) 6 (1)

with the objective of 45% implementation in 2006 and 70% implementation in 2010.⁴⁴ Its implementation efforts were to be focused on developing initiatives to build capabilities across the industry value chain. The immediate focus was on core industry activities and support services with the greatest impact on Nigerian content.

These key support industry areas include; fabrication, engineering, well and drilling services, refining, logistics, shipping, banking and insurance, manufacturing, materials as well as professional services. The NCD was required to produce Monthly and Quarterly Performance Reports, and the Nigerian Content Impact Report. Pursuant to its mandate, the NCD, on 13th of October, 2006, issued the Nigerian Content Development Directives. The directives, *inter alia*, stated as follows:

- a) FEED and detailed engineering design of all projects are to be domiciled in Nigeria;
- b) project management teams and procurement centres for all projects must be located in Nigeria;
- c) operators and project promoters must forecast procurement items required for projects and operational activities and forward the materials list to NCD on or before the 31st of January of every year, together with a master procurement plan (MPP) for ongoing and approved projects;
- d) fabrication and integration of all fixed (offshore and onshore) platforms weighing up to 10,000 tons are to be carried out in Nigeria; and
- e) all waste management, onshore and swamp integrated completions, onshore and swamp well simulations, onshore fluid and mud solids control, onshore measurement while drilling (MWD), logging while drilling (LWD) and directional drilling (DD) activities are to be performed by Nigerians or indigenous companies having genuine alliances with multinational companies.

The directives stated by the NNPC basically reads like a benefits plan which is similar to the Canadian-Newfoundland and Nova Scotia benefits plan, unfortunately there are lot of differences when the Nigerian situation is compared with the Canadian and the South African⁴⁵ situation, such as, the Canadian benefits policy is structured in a way to give a fair opportunity to Canadians to participate competitively in the supply of goods and services whereas the Nigerian benefits plan, are directives given by government to the multinational companies to ensure that local companies participate in the supply of goods and services.⁴⁶

Essentially, the directives by the NCD were aimed at ensuring that a greater portion of the work in the oil and gas industry was done in Nigeria with active participation of all sectors of the

Petroleum Technology Development Journal Available at <https://docplayer.net/30876361-National-participation-in-nigerian-oil-and-gas-industry-prospects-and-challenges-by.html#show_full_text> accessed 20 August 2019

⁴⁴ CO Obi, 'Local content development in the Nigerian oil and gas industry: Why it is not succeeding?' Available at <<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.891.6618&rep=rep1&type=pdf>> accessed 20 August 2019

⁴⁵ South Africa Industrial Participation policy insists that prospective foreign clients must demonstrate value-added benefits and local job creation, technology transfer, and that long-term viability of local ventures for all government parastatals' purchases or lease contracts, including goods, equipment, or services, with an imported content equal to or exceeding US\$10 million, are subject to an Industrial Participation Obligation. The seller/supplier who incurs an Industrial participation obligation will be required to participate in the South African economy. See *CO Obi*, n.18

⁴⁶ *Obi*, (n.44)

economy. Although the NCD directives did not have the force of law, it had far reaching effects since NNPC was a major partner in industry projects.⁴⁷

Legal Framework for Nigerian Content Development

Some of the laws regulating Nigerian Content Development are:

The Immigration Act⁴⁸

The Act provides that no person, other than a citizen of Nigeria, shall accept employment (not being employment with the Federal Government or a State Government) without the consent in writing of the Director of Immigration; or on his own account or in partnership with any other person, practice a profession or establish or take over any trade or business whatsoever or register or take over any company for any such purpose, without the consent in writing of the Minister given on such conditions as to the locality of operation and persons to be employed by or on behalf of such person, as the Minister may prescribe.⁴⁹ Any person desirous of entering Nigeria for any of the above mentioned purposes must produce the consent to an immigration officer; and the failure to do so shall be an offence under the Act, and any person who commits such an offence shall be liable on conviction to deportation as a prohibited immigrant.⁵⁰ The essence of the above provisions is to prevent the indiscriminate engagement of expatriates in positions where there are suitable Nigerian alternatives and these provisions apply even to activities in the petroleum industry.⁵¹

Thus, the Act imposes the requirement of expatriate quota (EQ)⁵² and other permits before a foreigner can undertake such engagements in Nigeria and where same is to be granted, it may be coupled with such conditions as to the development of local expertise as the Minister may prescribe.⁵³ Such permits are meant to last for a limited period of time and though may be renewed upon expiration, the application for renewal must show, *inter alia*, a detailed training programme for Nigerians in the field, list of Nigerians understudying the expatriate on a prescribed format showing date of employment, qualifications, Letter of No Objection from the Nigerian Content Monitoring Board for companies operating in the oil and gas sector and a list of Nigerian Senior/Management staff in the applicant's employment showing names, designations,

⁴⁷ Azoro, (n.43)

⁴⁸ Cap. I1 Laws of the Federation of Nigeria 2004

⁴⁹*Ibid*, S.8 (1). See *Awolowo v Minister of Internal Affairs* (1962) LLR 177

⁵⁰ *Ibid*, s. 8(2). See also *Shugaba Darman v Minister of Internal Affairs* (1982) 3 N.C.L.R. 915.

⁵¹ *CJS Azoro*, n.43

⁵² The EQ is a document that permits companies to employ expatriates to specifically approved job designations and also specifies the period of such employment. It is a form of approval granted to companies and registered firms to employ the services of expatriates with required skills and ability, with a view to training Nigerians understudying and transferring of the requisite skills during the period of employment. It is also a means of securing the transfer of requisite technology to Nigerians.

⁵³*Ibid*

qualifications, salaries per annum, etc.⁵⁴ Apart from the Nigerian Immigration Service, Other Agencies charged with the task of overseeing the EQ regime include the Nigerian Investment Promotion Commission, the Nigerian Local Content Board amongst others.⁵⁵

The Petroleum Act⁵⁶

Section 1 of the Act vests the entire ownership and control of all petroleum in Nigeria in the State.⁵⁷ The Act also empowers the Minister to grant licenses and leases⁵⁸ to operators in the petroleum industry.⁵⁹ The provisions of the First Schedule to the Act, in so far as they are applicable, apply in relation to all such licenses and leases.⁶⁰ Now, the First Schedule to the Petroleum Act empowers the Minister, if he considers it to be in the public interest, to impose on any such licence or lease special terms and conditions not inconsistent with the Act, including terms and conditions as to the participation by the Federal Government in the venture to which the licence or lease relates, on terms to be negotiated between the Minister and the applicant for the licence or lease.⁶¹

The cumulative effects of the above statutory provisions is that the Minister, acting on behalf of the Federal Government of Nigeria and in line with the principle of permanent sovereignty over natural resources, may, while granting an OEL, OPL or OML, impose on such a license or lease terms and conditions allowing the Federal Government to participate in the venture covered by the license or lease, and though such national participation is to be on terms to be negotiated between the Minister and the holder of the license or lease,⁶² such terms may extend to the development and/or use of local content for purposes of the venture. Furthermore, when an OML

⁵⁴Wikipedia, 'Nigeria -Apply for Expatriate Quota Approval Certificate', Available at <http://www.wikiprocedure.com/index.php/Nigeria_-_Apply_for_Expatriate_Quota_Approval_Certificate> accessed on 20 August, 2019. For a detailed outline of the procedure and documents required for the applications.

⁵⁵O Chinedu, 'Basic Steps in the Employment of Expatriates' <https://www.dcs1.com.ng/data/content/_1424782905_Q6PEJFC8TM.Pdf> assessed 11 October 2019.

⁵⁶ Cap P10 Laws of the Federation of Nigeria 2004

⁵⁷The term 'state' here refers to the Federal Government of Nigeria. Indeed, the Constitution also contains similar provisions. See the 1999 Constitution of the Federal Republic of Nigeria, s. 44(3). Also see AG-Federation v AG-Abia State (No. 2) (2002)6 NWLR (pt. 764) 542 where the Supreme Court, while confirming the vesting of ownership of petroleum resources in the Federal Government, further held that the Federal Government alone and not the littoral states can lawfully exercise legislative, exclusive and judicial powers over the maritime belt or territorial waters as well as sovereign rights over the exclusive economic zones subject to universally recognised rights.

⁵⁸That is an oil exploration license (OEL), or an oil prospecting license (OPL) or an oil mining lease (OML).

⁵⁹S.2(1) Petroleum Act Cap P10 Laws of the Federation of Nigeria 2004

⁶⁰*Ibid*, s. 2(3)

⁶¹ *Ibid*, First Schedule, Paragraph 35(a).

⁶²*NNPC v Famfa Oil Ltd* (2012)17 NWLR (pt. 1328) 148, the Supreme Court held that provisions of paragraph 2 of Deep Water Block Allocation to Companies (Backing Rights) Regulations 2003 (a subsidiary legislation under the Petroleum Act) which gives the Federal Government the arbitrary right to acquire five-sixth of an OPL or OML interest is invalid to the extent that it is inconsistent with paragraph 35 of First Schedule to the Petroleum Act which stipulates that such participation or acquisition must be made on terms to be negotiated between the Federal Government and the holder of the OPL or OML.

is granted, the holder thereof is required, within ten years from the grant of his lease, to ensure that the number of citizens of Nigeria employed by him in connection with the lease in managerial, professional and supervisory grades (or any corresponding grades designated by him in a manner approved by the Minister) shall reach at least 75% of the total number of persons employed by him in those grades; and that the number of citizens of Nigeria in any one such grade shall be not less than 60% of the total. He must also ensure, within the said period, that all skilled, semi-skilled and unskilled workers are citizens of Nigeria.⁶³

Petroleum (Drilling and Production) Regulations⁶⁴

The Regulations mandate the licensee of an OPL, within twelve (12) months of the grant of his license, and the lessee of an OML, upon the grant of his lease, to submit for the Minister's approval, a detailed programme for the recruitment and training of Nigerians.⁶⁵

The programme shall provide for the training of Nigerians in all phases of petroleum operations whether the phases are handled directly by the lessee or through agents and contractors.⁶⁶ Any scholarship schemes prepared, and any scholarships proposed to be awarded, by the licensee or lessee (whether or not related to the operations of the licensee or lessee or to the oil industry generally) shall be submitted for the approval of the Minister.⁶⁷ Once any such programme or scholarship scheme has been approved by the Minister, it may not be varied without his permission.⁶⁸ A report on the execution of such programme and the progress of Nigerianisation shall be submitted by the licensee or lessee at or about the end of June and December in every calendar year.⁶⁹

Indeed, the point must be emphasised that failure to comply with any of the above provisions constitutes a valid ground for the revocation of the license or lease.⁷⁰

Petroleum Development Fund Act⁷¹

The Act was enacted for purpose of establishing the Petroleum Technology Development Fund for the purposes of training and education of Nigerians in the petroleum industry.⁷² Section 1 of the Act established the Petroleum Technology Development Fund and requires that the following

⁶³First Schedule, Paragraph 38, Petroleum Act Cap P10 LFN 2004.

⁶⁴ 1969.

⁶⁵*Ibid*, Paragraph 26(1). Note that the whereas the holder of an OPL has a compliance grace period of 12 months commencing from the effective date of the grant, the holder of an OML is obliged to comply immediately he is granted the OML. One begins to wonder the reason for the dichotomy. Surely this cannot be predicated on the statutory dichotomy in the duration of the OPL and OML since the latter generally has a longer lifespan. See the Petroleum Act, First Schedule, Paragraphs 6 & 10. It also appears that there is no such obligation on the holder of an OEL. The cumulative effect of the above is the statutorisation of unsatisfactory uncertainties in this piece of legislation. See *Azoro*, n.43

⁶⁶ Petroleum (Drilling and Production) Regulations, Paragraph 26(2)

⁶⁷ *Ibid*, Paragraph 27.

⁶⁸ *Ibid*, Paragraph 28.

⁶⁹ *Ibid*, Paragraph 29.

⁷⁰ First Schedule, Paragraph 25(1) (b), Petroleum Act, Cap P10 Laws of the Federation of Nigeria 2004. See the case of *FGN v Zebra Energy* (2002)18 NWLR (pt. 798) 162.

⁷¹ Cap. P15 Laws of the Federation of Nigeria 2004

⁷² See the long title to the Petroleum Technology Development Fund Act, *ibid*

monies be paid into the Fund, to wit: (a) the balance of monetary assets outstanding in the accounts of the Gulf Oil Company Training Fund at the commencement of the Act; (b) all further sums payable to or received by the Minister charged with responsibilities for matters relating to petroleum development in terms of any agreement made by the Government and any company in relation to petroleum oil prospecting or mining concessions; and (c) any other sums, from time to time, freely donated or accruing to the Government or the Fund for the training and education of Nigerians in the petroleum industry as the said Minister may direct. The money in the Fund together with interest (if any) payable in respect thereof shall be applied for the purpose of training Nigerians to qualify as graduates, professionals, technicians and craftsmen, in the fields of engineering, geology, science and management in the petroleum industry in Nigeria or abroad.⁷³

National Office for Technology Acquisition and Promotion Act⁷⁴

The Act governs the Transfer of Technology in Nigeria. The Act established the National Office for Technology Acquisition and Promotion (NOTAP).⁷⁵ The principal function of NOTAP pursuant to the provisions of the Act is to monitor the transfer of foreign technology to Nigeria. The Act makes it mandatory to register all contracts or agreements for the transfer of foreign technology entered into by any person in Nigeria with NOTAP as well as registration of every contract or agreement entered into by any person in Nigeria with another person outside Nigeria within 60 days from the execution or conclusion of the contract. The Act provides that every contract is registrable if its purpose or intent is, in the opinion of NOTAP, wholly or partially in connection with any of the following purpose: the use of trademarks; the right to use patented inventions; the supply of technical expertise in the form of the preparation of plans, diagrams, operating manuals or any other form of technical assistance of any description whatsoever; the supply of basic or detailed engineering; the supply of machinery and plant; and the provision of operating staff or managerial assistance and the training of personnel.⁷⁶

The Nigerian Oil and Gas Industry Content Development Act⁷⁷

The Act was enacted by the National Assembly for the purpose of giving fresh impetus and vigour to the push for local content development in the petroleum industry. The essence of the Act, as stated in its long title, is to provide for the development of Nigerian content in the Nigerian oil and gas industry; to provide for the Nigerian content plan, supervision, coordination, monitoring and implementation of Nigerian content; and for related matters. Furthermore, the major aim of the

⁷³ Without prejudice to the generality of the foregoing, the Act prescribes that the Fund be utilised as follows: (a) to provide scholarships and bursaries, wholly or partially in universities, colleges, institutions and in petroleum undertakings in Nigeria or abroad; (b) to maintain, supplement, or subsidise such training or education specified above; (c) to make suitable endowments to faculties in Nigerian universities, colleges, or institutions approved by the Minister; (d) to make available suitable books and training equipment in the institutions specified above; (e) for sponsoring regular or as necessary visits to oilfields, refineries, petro-chemical plants, and for arranging any necessary attachments of personnel to establishments connected with the development of the petroleum industry; and (f) for financing of and participation in seminars and conferences which are connected with the petroleum industry in Nigeria or abroad. See Petroleum Technology Development Fund Act, s. 2.

⁷⁴ Cap N62 Laws of the Federation 2004

⁷⁵ Section 1

⁷⁶ Section 4 (d)(i- e)

⁷⁷ 2010

Act is therefore to increase the participation of Nigerians in the oil and gas industry and the creation of value from the industry for Nigerians Section 1 makes the provisions of the Act applicable to all matters relating to Nigerian content in respect of all operations in the oil and gas industry notwithstanding anything to the contrary contained in any other statute. Section 2 of the Act enjoins all stakeholders' licenses and sub-contractors to develop a local content plan and consider it as part of their policy. The Act establishes a legal and regulatory framework for the growth of the indigenous oil and gas companies, by giving priority to Nigerian independent operators in the award of oil blocks, oil field licenses, oil lifting licenses and all projects, subject to the fulfillment of such conditions as may be specified by the Minister.⁷⁸

The Act establishes the Nigerian Content Monitoring Board (the Board), and charges it with the responsibility of providing guidelines, monitoring, coordinating and implementing the provisions of the Act.⁷⁹ The Act further provides for exclusive consideration to be given to Nigerian companies⁸⁰ for all oil and gas projects in inland and swamp water areas, subject to proof of acquisition or lease of the equipment to be utilised during the project, verifiable by satisfactory evidence of such acquisition or lease.⁸¹ Compliance with the Act is mandatory for the award of all necessary licenses and permits in the industry.⁸² The Act makes it mandatory for operators to submit a Nigerian Content Plan to the Board in the bidding stage and prior to executing any project.⁸³ The Nigerian Content Plan provides, amongst other things, that: first consideration shall be given to services provided from within and goods manufactured in Nigeria; Nigerians shall be considered first for training and employment in the work plan for which the plan was submitted.⁸⁴ Section 11(1) of the Act provides for minimum percentage specifications of Nigerian content in any project to be executed in the Nigerian oil and gas industry as listed in Schedule A to the Act. These range from 45 to 100 per cent for the majority of service categories, with the exception of four marine service categories ranging between 30⁸⁵ and 40 per cent.⁸⁶ Section 11(4) of the Act gives the Minister of Petroleum the power to grant waivers where there is insufficient capacity to meet the targets set by the Act. The Board is charged with the responsibility of setting minimum content levels for project descriptions not specified in Schedule A.⁸⁷ The Act also provides for domestic provision of insurance, legal and banking services, except where it is impracticable to do so.⁸⁸ The Act allows companies to explore offshore insurance with the written approval of the National Insurance Commission where there is evidence of exhaustion of local capacity.⁸⁹ It is worthy of note that the Act is not clear as to the procedure for determining the 'impracticability'

⁷⁸ Section 3(1), Nigerian Oil and Gas Industry Content Development Act 2010.

⁷⁹ *Ibid.* Section 4

⁸⁰ Section 109, *ibid.* Nigerian company is defined as companies registered under the Companies and Allied Matters Act (CAMA) and with at least 51 per cent equity holding by Nigerians.

⁸¹ *Ibid.* Section 3(2)

⁸² *Ibid.* Section 3(3)

⁸³ *Ibid.* Section 7

⁸⁴ *Ibid.* Section 10(1)

⁸⁵ For such services as domestic clearing of cargo and marine logistics

⁸⁶ For such services as marine insurance and marine consulting

⁸⁷ Section 11(2), Nigerian Oil and Gas Industry Content Act, 2010

⁸⁸ *Ibid* Sections 50 to 52

⁸⁹ *Ibid* Section 50,

of each situation. This would therefore form part of the remit of the Board. The Act further provides for operators to establish their offices within the catchment areas/host communities and to submit an employment and training plan,⁹⁰ capacity building and succession plan where there is no immediate local capacity.⁹¹ The Act also establishes a fund to be known as the Nigerian Content Development Fund ('the Fund'), for purposes of funding the implementation of Nigerian content development in the Nigerian oil and gas industry. Every operator, contractor, subcontractor, alliance partner or any other entity involved in upstream activity shall contribute one per cent of the contract value to the Fund.⁹² The Act extends its sphere of influence to the Coastal and Inland Shipping (Cabotage) Act,⁹³ as the Board is mandated to work with NIMASA⁹⁴ to ensure the realisation of local content objectives in the maritime sector.⁹⁵ Until now, the principle of the lowest bidder had been the criteria for award of contracts in the Nigerian oil and gas industry. However, under the Act, this is no longer the sole consideration for determining which company will be awarded contracts to execute projects. This is because an indigenous company, which has the capacity to execute a project, would not be disqualified in the bidding process as long as its quoted value is not 10 per cent higher than the lowest bid.⁹⁶ The Act further provides for Operators and Project Promoters to give priority to bids containing the highest level of Nigerian content where the bids are within one per cent of each other at commercial stage, provided the Nigerian content in the selected bid is at least five per cent higher than its closest competitor.⁹⁷ The operators and alliance partners are also required to maintain a bidding process for acquiring goods and services that shall give full and fair opportunity to Nigerian indigenous contractors and companies.⁹⁸ In spite of these laudable provisions in the Act, the Act has been criticized for being too ambitious and overreaching the Petroleum Act⁹⁹

The Petroleum Industry Bill

The Petroleum Industry Bill (PIB) also lends its support to the local content policy, by providing for the award of licences or leases to the National Oil Company or any indigenous oil company,¹⁰⁰ which is defined as one with at least 60 per cent ownership by Nigerians.¹⁰¹ It is important to note that the ownership percentage proposed under the PIB differs from the 51 per cent equity shareholding for Nigerians under the Act.¹⁰² The PIB proposes to ensure that a holder of a petroleum mining lease employs a minimum of 95 per cent Nigerians in supervisory/management

⁹⁰ Sections 28 and 29, *ibid* (this is also provided for in Section 404 of the Petroleum Industry Bill)

⁹¹ *Ibid* Sections 30 and 31

⁹² *Ibid*. Section 107

⁹³ No 5 of 2003 Laws of the Federation of Nigeria 2004

⁹⁴Section 108, Nigerian Oil and Gas Industry Content Act, 2010.

⁹⁵*Ibid* Section 16

⁹⁶*Ibid*. Section 14,

⁹⁷*Ibid*. Section 15

⁹⁸ *Ibid* Section 41(2),

⁹⁹ I. Atsegbua, "The Nigerian Oil and Gas Industry content Development Act 2010: An Examination of its Regulatory Framework"(2012) 30 OPEC'S Energy Review 4, 992. Cited in Dike (n.2) 64

¹⁰⁰ Section 257 of the Petroleum Industry Draft Bill 2009 Available at <<http://www.oandopl.com/wp-content/uploads/PIBDrpftBill2008.pdf>> accessed 20 August 2019

¹⁰¹ Section 494, *ibid*

¹⁰² Section 109, Nigerian Oil and Gas Industry Content Development Act 2010.

positions, in addition to Nigerians constituting at least 60 per cent of its Board of Directors.¹⁰³ Although the PIB is yet to be passed into law, it is designed to supersede pre-existing oil and gas industry legislations.¹⁰⁴

PROBLEMS OF LOCAL CONTENT DEVELOPMENT IN THE OIL AND GAS INDUSTRY IN NIGERIA

Lack of Infrastructural Base:

The infrastructure in Nigeria cannot presently support industrial growth, some of the infrastructural challenges include, insufficient power supply, poor transportation and telecommunication network, inexistent public utilities, just to mention a few. For instance, regular electricity supply required for the manufacturing and fabrication industry is yet to be given adequate attention as no effort is made to make the oil and gas industry a driver of sustainable electricity production. The time-framed given to authorise the continued importation of items where there is inadequate local capacity is unrealistic as all such items required to be produced locally will suffer set-backs as a result of inefficient power supply. This will lead to continuous importation of such items.¹⁰⁵ While Canada and South Africa have standard infrastructure and notably efficient and steady power, good roads network, world class health and educational facilities which is good for foreign investments.¹⁰⁶ Countries like Norway were a highly industrialised economy before oil was discovered, meaning that all infrastructures necessary for a society to function effectively were all in place. This contributed to the suitable development of their petroleum industry.¹⁰⁷

Lack of Funds for Indigenous Companies

The oil and gas sector is capital intensive. Indigenous companies lack access to funds to enable them participate effectively and efficiently in this sector of the economy.¹⁰⁸ Nigerian banks lack the financial base to make any meaningful impact on local content development. The biggest Nigerian banks are tiny banks when it comes to energy financing. Most Nigerian banks operate in dilemma-laden territory as most indigenous contractors have no proper business structure.¹⁰⁹

Political Instability and Bad Investment Climate

There have been frequent attacks on foreigners and foreign interest in the Niger Delta in the last few years. This is certainly detrimental to industrial growth. The investment climate is very poor

¹⁰³Sections 403 of the Petroleum Industry Bill 2009 Available at <<http://www.oandopl.com/wp-content/uploads/PIBDrpftBill2008.pdf>> accessed 20 August 2019

¹⁰⁴OI Obasi, 'Analysis of the Nigerian Oil and Gas Industry Content Act 2010' Available at <<https://docplayer.net/21738461-Analysis-of-the-nigerian-oil-and-gas-industry-content-act-2010-ozim-ifeoma-obasi-aelex-lagos-oobasi-aelex-com.html>> accessed on 20 August 2019

¹⁰⁵ *MO Erhun*, (n.1)

¹⁰⁶ *CO Obi*, (n.18)

¹⁰⁷ JA Omenikolo and RO Amadi, 'Challenges facing Nigerian Local Content in the Oil and Gas Industry' (2010) 1 *Continental J. Renewable Energy*, 15 – 20 Available at <https://archive.org/stream/challengesFacingNigerianLocalContentInOilAndGasIndustry/15> - 20 djvu.txt

¹⁰⁸ *MO Erhun*, (n.1)

¹⁰⁹ *J Balouga*, (n.14)

in Nigeria, beside poor infrastructure, adequate housing is not affordable, improper health care and a poorly motivated crime fighting unit, if not addressed, those challenges do not encourage foreign direct investment.¹¹⁰ Conversely, in Canada, there is a proper investment climate like a clean and safe environment, relaxing atmosphere. The political stability in South Africa helps to boost investors' confidence because there is no rampant change of policies, government is predictable and so policies are not made today and changed tomorrow which would be the situation if there is an illegal change of government which automatically creates its own policies.¹¹¹

Discrimination and Under-Utilisation of Nigerian Services

According to Ihua, although the local content policy has led to increased opportunities for small and medium sized enterprises (SMEs) in the industry and thus resulting in more contract awards in both cases, this cannot yet be considered as a higher SMEs participation because there are still several bottle-necks to the award of such contracts such as tedious pre-qualification and tender processes.¹¹² There are also complaints of discrimination and under-utilisation of indigenous capacity in the oil and gas industry despite the ever growing number of local oil service companies the latter's annual gross earnings still account for less than 5 percent of the sector's aggregate annual contracting budget.¹¹³ These allegations of discrimination have been made with particular regard to project rates and also remuneration in relation to Nigerian man hours when compared to the value of expatriate man hours. Linked to this are also allegations of the poaching of skilled Nigerian workers from indigenous firms by foreign companies in the services sector of the industry, thereby reducing the human capital base of local firms.¹¹⁴ Legal services also appear to be an area which has suffered some neglect with regard to Nigerian content strides. Section 51 of the Act¹¹⁵ provides that all operators, contractors and other entities in any operations, business or legal services transaction in the Nigerian oil and gas industry requiring legal services shall retain only the services of a Nigerian Legal Practitioner or a firm of Legal Practitioners located in Nigeria. However, according to several prominent legal practitioners, the amount of legal instructions emanating from the industry is still considerably low despite the promulgation of the Act. With most of the notable, considerable high fee earning transactions still largely given to foreign law firms.¹¹⁶ Even the local media has been denied the much desired opportunity to advertise the activities of upstream companies in Nigeria. Some of these companies, including Nigeria LNG prefer to spend huge media budgets running into millions of dollars on foreign media like CNN, upstream journals and magazines. They hardly spend 20 percent of such annual budget on Nigeria media.¹¹⁷

¹¹⁰ Omenikolo and Amadi, (n.75)

¹¹¹ Obi, (n.18)

¹¹² UB Ihua, 'Local Content Policy and SMEs Sector Promotion: The Nigerian Oil Industry Experience' (2010) 5(5) International Journal of Business and Management, 3-13
<<https://pdfs.semanticscholar.org/6384/244237c90e2ea90baf4ba91019041e286aa4.pdf>> accessed 11 October 2019

¹¹³ J Balouga, (n.14)

¹¹⁴ N Garrick, '4 years of Nigerian Content: Challenges abound despite Relative successes' Available at <<https://www.energymixreport.com/4-years-nigerian-content-challenges-abound-despite-relative-successes/>> accessed 21 August 2019

¹¹⁵ Nigerian Oil and Gas Industry Content Development Act 2010

¹¹⁶ N Garrick, (n.81)

¹¹⁷ J Balouga, (n.14)

Issues of Non Compliance

One of the core allegations that have been raised is that some multinationals have continued to violate the provisions of Nigerian Content Act through the use of expatriates, who perform job functions that Nigerians have capacity to execute. It has also been alleged that instead of resorting to the sanctions provided by the Act to enforce compliance, the Nigerian Content Development and Monitoring Board (NCDMB) instead resorts to a more collaborative or persuasive approach to get the erring multinationals to comply with the provisions of the Act.¹¹⁸

A recent example of non-compliance allegedly involved Total Exploration and Production Nigeria Ltd and its contractors Saipem and Hyundai Heavy Industries (HHI) of Korea, whom the NCDMB accused of gross violations of sections 28, 33 and 41 (2) of the Act by deploying non-compliant assets and expatriates. The NCDMB in this case however, appears to have wielded the big stick against Total by apparently stopping the company's Ofon-2 project. The NCDMB also banned Italian engineering, construction and drilling contractor, Saipem, as well as Hyundai Heavy Industries (HHI) of Korea, the contractor for Total on the project from participating in the ongoing and future tendering processes in Nigeria's oil and gas industry as a result of what the board called "abuse of expatriate quota and procurement processes."¹¹⁹

Corruption

Nigeria has a legacy of widespread corruption and absence of transparency. Corruption does not support any economic growth; it rather reduces confidence in both public and private institutions.¹²⁰ Corruption can stifle accountability and result in economic subversion. The pervading corruption in the country constitutes a major impediment to the enforcement of the Act. The requirement to submit a Nigerian content plan every six months as a pre-condition before the award of contract may result in the creation of more bottlenecks in the contract award process and resulting in more corrupt tendencies, if not well managed. Section 37 of the Act has the tendency of opening the flood gate to the issuance of certificate of excellence to contractors even when such contracts are failing as a result of kickbacks received by government engineer which weaken their moral courage to pronounce their work as shoddy.¹²¹

Inadequacy of Educational System

There are no adequate training facilities in the Nigerian educational sector. This is as a result of poor funding by government which is opined to have compromised technical education and research initiatives. There is no Research and Development (R&D) collaboration between the multinational oil companies operating in Nigeria and the universities and other research institutions due to the omission of research and development in the Nigerian content policy but this is stipulated in the Canadian- Newfoundland & Nova Scotia local content requirements.

¹¹⁸ *ibid*

¹¹⁹ *Garrick, (n,81)*

¹²⁰ *Omenikolo and RO Amadi, (n.75)*

¹²¹ *Erhun, (n.1)*

Also, the Korean policy succeeded through the implementation of Science, Technology and Innovation (STI) policy.¹²² They took into consideration the importance of R&D which is also a part of STI policy.¹²³ In 1979, technology development cooperation between foreign oil companies and Norwegian research institutions was introduced. Cooperation agreements made the oil companies contribute funding, insight and expertise to develop technology in Norway.¹²⁴

Thus, when appropriate skill is lacking in any production system, it results in poor quality output which undermines capacity building and sustainable development in any nation. This has made it difficult to produce balanced indigenous engineers and technicians to satisfy the local content requirements of the Act.¹²⁵

Uncertainties and imprecision of most key provisions of the Act

A lot of uncertainties trail the meaning and practical application of most key concepts and provisions in the Nigerian Oil and Gas Industry Content Development Act. For example, the term 'first consideration' was not defined in the Act, nor did the Act spell out the guidelines for the Board to determine the veracity of the criteria employed by the operator in determining first considerations within the provisions of the Act. Also, the Act failed to define the terms 'management position' and 'intermediate cadre. In the absence of clear statutory guidance on the import of such key terms in the Act, its implementation is being undermined as various companies adopt their own interpretations while the NCDMB remain helpless. Consequently, this has seen the influx of all kinds of expatriates into Nigeria to do jobs that ordinarily should be Nigerianised.

Insufficient sanctions for breach

The sanctions for non-compliance under the Act are negligible (5% of the project amount) and therefore insufficient to prevent breach. Many countries give tax advantages and incentives to these IOC companies for obeying their home country's local content policies, laws and directives, Moreover under the Nigerian JV system, some 60% of this negligible penalty (5%) will eventually be paid for by Nigeria through NNPC. This means that only 2% will be the actual penalties payable by the IOC for breach as against the heavy tax benefits for obeying their home country's local content laws and policies to Nigeria's detriment.

Weak Institutions

The NCDMB is not willing and able to enforce the provisions of the Act against erring MNOC's who flout the provisions of the Act. The Act has been criticized for being too ambitious in view of the provisions contained in the Act. These provisions create a complete transformation of the indigenous participation in the oil and gas projects in all ramifications. However, the NCDMB does not have the political will to enforce these provisions in view of their ambitious nature.

¹²²The essence of the Korean STI policy was to create an enabling atmosphere to achieve technological breakthrough which will promote global industrial competitiveness and economic growth for the Korean economy. The initiative behind the policy was to increase the quality of life and sustainable development

¹²³ *Omenikolo and RO Amadi*, (n.75)

¹²⁴ *Obi*, (n.18)

¹²⁵ *Erhun*, (n.1)

Limited Scope of Local Content Act

The Scope of the Local Content Act is restricted to the oil and gas sector in Nigeria. It is not extended to other critical sectors of the Nigerian economy. These other critical sectors include road construction, railway construction, construction of dams and bridges, marine and aviation development. The absence of local content policy in these critical sectors of the Nigerian economy has led to the influx of expatriates in these sectors to handle jobs which are predominantly reserved for Nigerians.

Prospects of Local Content Development in the Oil and Gas Industry in Nigeria

Since the signing into law of the Nigerian Oil and Gas Industry Content Development Act in 2010, and with a visionary and dynamic agency, the Nigerian Content Development and Monitoring Board (NCDMB) driving its implementation, there has been a systematic but gradual improvement in local content in the industry. With Nigerians developing competence in jobs that were the exclusive preserve of expatriates, most of the jobs that were executed outside Nigeria are now being performed by Nigerians and in Nigeria. This has led to the retention of a large chunk of the industry expenditure in-country, with the attendant positive impact on employment generation and growth of Gross Domestic Product (GDP).¹²⁶ Following enormous investment in human capital by the Nigerian National Petroleum Corporation (NNPC) and some of its joint venture partners over the years, a new crop of highly competent and experienced Nigerian engineers, geologists and geophysicists has emerged. Today, some of them have established private oil prospecting and oil services firms, which are classified as indigenous contracting firms.¹²⁷ Local Fabrication has intensified with the adoption of local content programme which has helped to boost local production, build capacity and generate employment opportunities. Companies like Nigerdock, Saipem, Chevron and Nigerian Petroleum Development Company (NPDC) have been actively involved in local fabrication of Jacket and helipad.¹²⁸

Driven by the NCDMB, the Act recorded its major achievement when Mobil Producing Nigeria Unlimited (MPNU) built three wellhead platforms locally for the development of 20 new oil fields in the country. MPNU, operator of the Joint venture (JV) with the NNPC, used a local company to execute two of these facilities at the Snake Island Integrated Free Zone in Lagos. Mobil's feat was a landmark achievement as the facilities were the largest fabrication contracts carried out in-country by Nigerian companies for the NNPC/MPNU Joint Venture. Before the enactment of the Act, this kind of project was executed in foreign fabrication yards, with its attendant capital flight.¹²⁹

Also for the first time in the history of the industry, ExxonMobil have used locally-made pipes, while other International Oil Companies (IOCs) have also committed to use locally-made pipes

¹²⁶ HO Onyi-Ogelle, 'National Participation in the Nigeria Oil and Gas Industry: Prospects and Challenges' (2016) 7 (2) *Journal of Emerging Trends in Educational Research and Policy Studies (JETERAPS)*, 134-144 Available at <<http://jeteraps.scholarlinkresearch.com/articles/National%20Participation%20in%20the%20Nigeria.pdf>> accessed 20 August 2019

¹²⁷ *J Balouga, (n.14)*

¹²⁸ *ibid*

¹²⁹ *Onyi-Ogelle, (n.93)*

for crude oil transportation. With this commitment, many companies have also commenced the setting up of pipe mills in Nigeria. Offshore living quarters have also been fabricated in Nigeria for the first time in the history of the industry, for Ofon Phase II project being developed by French oil giant, Total. The Ofon Phase II Living Quarters platform and topside was built for Total Exploration and Production Nigeria by EIFFEL construction Metallic of France, with OOP Engineering Limited as local content partner. Popham Walter Odusote (PWO), an engineering and project management firm has also successfully completed the detailed engineering for the living quarters of the Egina FPSO for Total. The Egina FPSO living quarters will have a total accommodation capacity of 242 persons-on-board.¹³⁰

Though much success has been recorded in the execution of certain categories of projects in the oil and gas industry in Nigeria and by Nigerians, the integration of fabricated steel structures into Floating Production Storage Offloading (FPSO) vessels is yet to be done locally. A typical FPSO for each of the Nigeria's five deepwater oilfields has a length of over 300metres: weight of more than 110,000tonnes and 60metres of width. But of the over 110,000tonnage, only about 8,000tonnes are fabricated in Nigeria by indigenous contractors as all the major fabrication works are done in Korean yards by Hyundai Heavy Industries and Samsung Heavy Industries. Though Nigerian indigenous companies fabricate structural steel components of up to 8,000 tonnages, these structures are transported to foreign fabrication yards for integration into the main FPSOs, before the FPSOs sail to Nigeria, on completion.¹³¹

Currently, the commissioning and start-up of the subsea umbilicals, flowlines and risers connecting the subsea wells to the FPSO, along with the oil-loading terminal, consisting of an offloading buoy and offloading lines and part of the FPSO anchoring system are done in Nigeria with the assistance of foreign companies. However, with the signing of the Nigerian Content Act, the NCDMB has unveiled robust plans to ensure that the industry carry out integration of FPSO locally.¹³²

The beneficiaries of the Amnesty programme of the Federal Government have taken advantage of the local content policy in the oil and gas sector to get employed in the various oil servicing firms and the multi-national companies in the industry. The Amnesty programme designed for ex-militants has helped to train some of them to acquire skills in various crafts like welding, fabrication, plumbing, exploration and production and oil supply services. In view of the local content policy in the oil and gas sector, majority of those who have completed their training have been integrated into the system and are gainfully employed in some of the multi-national oil companies.

¹³⁰ *Ibid*

¹³¹ *Ibid*

¹³² *ibid*

CONCLUSION

The overall objectives of local content development is attracting foreign direct investments, job creation, human capacity development, technology transfer and adding value to the economy. The differences between the successes of the countries reported in this paper and Nigeria include; poor infrastructure in Nigeria which cannot support industrial growth, poor investors' climate which includes security and clean environment. Identifying the causes for the poor implementation of the Nigerian local content policy is important and the challenges will be taken into consideration while developing a framework for a more effective implementation. More so, Local Content Act plays a vital role in the advancement of the Nigerian Oil and Gas Industry and it also gives first consideration to Nigerian independent operators. This creates a platform for the Nigerian Company to contribute immensely towards the growth of the Nigerian economy. The Local Content Act, however, needs to be fully implemented by the Nigerian government as not all companies within the industry have embraced its provisions.

Recommendations

The following recommendations are made for effective implementation of the local content development programme

1. Appropriate power needs to be generated so as to support industrial growth. Telecommunication and all other public utility infrastructure will need to be subsequently developed, a good investment climate should be encouraged and transparency in both the government and private sector should be pursued in order to create investor confidence.
2. The Nigerian Content Development Fund established by the Act and managed by the Board should extend its hand to bailing out indigenous companies by operating a kind of revolving loan to indigenous companies to enable them actively participate in the oil and gas sector of the Nigerian economy.
3. The Nigerian Oil and Gas Industry Content Act needs to be amended to clarify certain terms that were not defined under the Act which many operators now exploit to embark on all manner of contract staffing and casualisation, contrary to the intents of the Act. The huge discretionary powers of the Minister of Petroleum also need to be checked to avoid abuse.
4. Furthermore, there is a need for private-public partnership to reinforce the implementation of human capital development agenda for the Niger Delta. Emphasis should be placed on the provision of modern technological facilities and social welfare package that can transform the region from its present situation to an industrial area.
5. There is need for an amendment of the Act to extend the scope of its application to other critical sectors of the Nigerian economy like construction industry, for instance, construction of Railway lines, roads and dams.