NIGERIAN OIL AND GAS INDUSTRY CONTENT DEVELOPMENT ACT: AN ASSESSMENT OF IMPLEMENTATION CHALLENGES

By

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Abstract

Nigeria understandably opted to introduce local content requirements into the oil and gas industry, purposely to create jobs locally, provide locally oil firms, manufacture local goods for oil and gas sectors and acquire new skills and technology. However, local content regime in Nigeria is not without some challenges, obstacles and barriers. This article, therefore, is intended to appraise the legal regime using content analysis with an objective of unrevealing the implementation challenges and the benefits or success recorded so far after the coming of the Act. The article posits that local content regime in Nigeria had developed an unrealistic targets that can hardly be achieved with the current business environment and; there was an apparent conflicts with the Nigeria's international obligations and World Trade Organization (WTO) treaties and some bilateral agreements. Hence, the article recommends for the setting of realistic targets that are intendem with Nigeria's capacity and capabilities. Also, measures of ease of doing business intendem with Nigeria's international obligations must be put in place with a view to enhancing participation of Nigerians and their indeginiuos oil and gas company.

Keywords: *Benefit, Challenge, Content, Development, Gas, Oil*

1.0 Introduction

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 natural resources 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 large number of expatriate workers deployed to carry out projects in various onshore and offshore locations in the country. 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.[1]

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 Act to promote indigenous participation in the value chain of oil and gas industry in Nigeria.[2] The adoption of the local content is seen as a strategy to boost the participation of indigenous oil firms in the supply chain of

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[1] Obuaya, T., 'Local Content Implementation in Nigeria: A Road Map', (being a paper presented at the Nigerian Oil and Gas Conference. Abuja. Nigeria. 2012) 76

[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 sector and also to create more employment opportunities for the local workforce.[3] This paper seeks to trace the historical development of local content policy and legislation with a view to anlysis the implementation challenges and the limited success stories, and to proffer some recommendations.

2.0 Historical Background of Local Content Policy and Legislation in Nigeria

The need to establish legal and policy instruments to enhance local content development in the oil and gas industry first filtered into the arena of national public discourse during the federal parliamentary debate on the Petroleum Profit Tax Bill in 1959.[4] This was just a year before Nigeria gained her independence from British colonial masters. Honourable, Jaja Wachukwu, a member of the Federal House of Representatives, while debating the Petroleum Profit Tax Bill before the legislative house, explained 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 …."[5]

Later in 1961, Chief Obafemi Awolowo, Leader of the Opposition Party at the federal parliament, moved a motion that called for a state programme of nationalisation. The motion stated thus: *"that this House is urged to approve in principle the nationalisation of basic industries and commercial undertakings of vital importance to the economy of Nigeria."* Such calls for economic nationalism resulted in the enactment of the Immigration Act.[6] 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. 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.

Another major step was taken under the military regime through the promulgation of the Companies Decree of (1968), which created a legal framework for the local incorporation of foreign companies operating in Nigeria. The Decree aimed to bring local subsidiaries of foreign owned firms under the control of the Nigerian Government and also enhance the participation of Nigerians in such businesses.[7] The Petroleum Decree,[8] also made provisions to enhance local content development under the Decree, a company that

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

[4] Ogbuagu, C.A 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' (2014)1 International Energy Law Review

[5] Ibid

[6] Cap. I1, LFN 2004

[7] O Uchenna, 'Towards Sustainable Local Content Development in the Nigerian Oil and Gas Industry: an Appraisal of the Legal Framework and Challenges' (2014)1 International Energy Law Review p. 18

[8] Ibid

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.[9]

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 Decree, 1972 with the aim of enhancing the participation of Nigerians in strategic economic sectors, including the oil and gas industry. The Nigerian Enterprises Promotion Decree, which is also known as "Indigenisation Decree," has an 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.[10]

The nationalisation of the industry is noted to have been influenced by the British Petroleum's (BP) violation of the Nigerian Government's oil embargo against South Africa during its apartheid regime. 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.[11]

There is also another view that Nigeria's efforts towards increasing local content 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.[12]

3.0 Legal Framework of Nigerian in Oil and Gas Industry Content Development

Nigeria's effort to maximize is earning from petroleum industry and encourages greater participation by Nigerians in the sector has been a recurring agitation as evident from some of the legislations preceding the Nigeria oil and gas industry content development Act including:

(a) **The petroleum training institute Act 1972[13]:** it established the petroleum Training Institute to provide courses for instruction, training and research in petroleum technology and to produce technicians and other skilled personnel required to run the petroleum industry[14]

[9] para.37 of the First Schedule to the Petroleum Act, Cap P10, LFN 2004
[10] Brown, S., Squire, B., & Lewis M.. The impact of inclusive and fragmented operations strategy processes on operational performance. (*International Journal of Production Research,* 48(14), (2010) 4179-4178.
[11] Effiong, J. *Oil and gas industry in Nigeria: The paradox of the black gold. Environment and Social Justice: (*An International Perspective Research in Social Problems and Public Policy, (2010) 18, pp. 323-349.
[12] Ibid
[13] Cap p 16 Laws of the Federation of Nigeria 2004; it was enacted on September 19, 1972
[14] Section 2 (e) of the PTDF Act

(b) **Petroleum Technology Development Fund Act 1973[15]:** it replaces the Gulf oil Training Fund (Administrator) Act 1964 and it established the Petroleum Technology Development Fund for the purposes of training and educating of Nigerians in the petroleum industry. It included training Nigerians to Qualify as graduates, professionals, technicians and craftsmen in the field of engineering, geology, science and management in the petroleum industry in Nigeria or abroad.[16] It also includes sponsoring regular or necessary visits to oil fields, refineries, petro-chemical plant and for arranging any necessary attachments of personnel to establishments connected with the development of the petroleum industry in Nigeria or abroad

(c) **Petroleum Equalization Fund Management Board Act 1975[17]:** It established the Petroleum Equalization Fund which was to be applied for the reimbursement of petroleum marketing companies for losses suffered by them arising from the sale of petroleum products at uniform prices throughout Nigeria and a management board to manage the affairs of the fund.[18]

(d) **Nigerian Investment Promotion Commission Act[19]**: It established the Nigerian Investment Promotion OCmission to enocuragr and prmote investment in the Nigerian economy and for related matters including the initiation of support measures to enhance the investment climate in Nigeria for both Nigerians and non-Nigerian investors[20].

(e) **Petroleum Act[21]:** it provides for the exploration of petroleum from the territorial waters and the continental shelf of Nigeria and to vest the ownership of all on shore and off shore revenue from petroleum resources derivable from there from in the federal Government and other incidental matters. The petroleum (Drilling and Production) Regulations[22] made pursuant to this Act provides that the license of an oil prospecting license shall within twelve months of grant of his license and the lessee of an oil mining lease shall on the grant of his lease, submit for the Minister's approval, a detailed programme for the recruitment and training of Nigerians[23]. It also provides for the training of Nigerians in all phases of petroleum operation whether the phases are handled directly by the lessee or through agent and contractors[24]

The Nigerian oil and Gas industry Content Development Act 2010 is the latest effort by Nigeria to afford its citizens more presence in the oil and gas industry. It transfers all functions and powers conferred on any agency or department of the Federal Government of Nigeria to carry out the implementation of Nigerian content development or policy in the Nigerian oil and gas industry by any law or enactment to the Nigerian Content Monitoring Board established under the Act.[25]

[15] Cap P 15 Laws Of The Federation Of Nigeria 2004; It Was Enacted On June 4 1973
[16] Section 2 (e) of the PTDF Act
[17] Cap p 11 Laws of the Federation of Nigeria 2004; it was enacted on October 15,1975
[18] Section 2 of PEFMB Act
[19] Cap N 117 Laws of the Federation of Nigeria 2004; it was enacted on January 16 1995
[20] Section 4(b) of the NIPC Act.
[21] Cap 10 Laws of the Federation of Nigeria 2004; it was enacted on November 27, 1969.
[22] Section 9 of the Petroleum Act empowers the Minister of Petroleum to make regulations for matters relating to licenses and leases granted under the Act and operations.
[23] Section 26 (1) of the petroleum (Drilling and Production) Regulation 1969
[24] Section 26 (2) of the petroleum (Drilling and Production) Regulation 1969
[25] Section 103 of the Act

3.1 The Nigerian Oil and Gas Industry Content Development Act

The act provides for the development of Nigerian content in the Nigerian oil and gas industry, Nigerian content plan, supervision, coordination, monitoring and implementation of Nigerian content. All the regulatory authorities, operators, contractors, subcontractors, alliance partners and other entities involved on any projects, operation, activity or transaction in the Nigerian oil and gas industry are mandated to consider Nigerian content as important element of their overall project development and management philosophy for project execution[26]

Section 3 of the Act provides:

1. *Nigerian independent operators shall be given first consideration in the award of oil blocks, oil field licenses, oil lifting licenses and in all projects for which contract is to be awarded in the Nigerian oil and gas industry subject to the fulfillment of such condition as may be specified by the Minister.*
2. *There shall be exclusive consideration to Nigeria indigenous service companies which demonstrate ownership of equipment Nigerian personnel and capacity to execute such works to bid on the land and swamp operating areas of the Nigeria oil and gas industry for contracts and services contained in the schedule to this Act*
3. *Compliance with the provisions of this Act and promotion of Nigerian content development shall be a major criterion for award of licenses, permits and any other interest in bidding for oil exploration, production, transportation and development or any other operations in Nigeria oil and gas industry*.[27]

The Act also established the Nigerian Content Development Board[28] and foisted it with the responsibility of making procedure to guide, monitor, coordinate and implement the provisions of the Act[29]. It is also to implement the provisions of the Act with a view to ensuring a measurable and continuous growth of Nigerian Content in all oil and gas arrangements, project operations, activities or transactions in the Nigerian oil and gas industry.[30]

[26] Section 2 of the Act

[27] This provision negates Article III of the General Agreement on Tariffs and Trade (GATT) 1994 to which Nigeria is signatory. The National Treatment on Internal Taxation and Regulation Clause mandates contracting parties not to utilize their internal taxes, laws and regulation relating to distribution or use of products or requirement affecting internal sales, offering for sale, purchase transportation of products whether imported or domestic so as to afford protection to domestic production. The Nigerian Content Development Act is a Protectionism personified. Similarly, the Agreement on Trade Related Investment Measurers (TRIMs Agreement) one of the Multilateral Agreement on Trade in Goods, prohibits trade related investment measurers such as local content requirement for inconsistency with GATT 1994. See Article 2 on National Treatment and Quantitative restrictions.

[28] It shall be hereinafter referred to as "The Board"

[29] Section 4 of the National content Development Act

[30] Section 5 of the Act

Any operator interested in bidding for any license, permit or interest in the Nigerian oil and gas industry mandated to submit a Nigerian content compliance plan to the Board before carrying out any project and the Board if satisfied that the plan is in compliance with the provisions of the Act, issue a certificate of compliance with the Nigerian content requirement of the Act[31] to the operator.
The purpose of the plan as stated in section 10 of the Act is to ensure that:

a) First consideration shall be given to services provided from within Nigeria and to goods manufactured in Nigeria; and
b) Nigerians shall be given first consideration for training and employment in the work programme for which the plan was submitted

Any collective agreement entered into by the operator, project promoter or other body submitting the plan with any association of the employees respecting terms and conditions of employment in the project consistent with this section.

Section 11 of the Act provides:

1. As from the commencement of this Act, the minimum Nigerian content in any project to be executed in the Nigerian Oil and Gas Industry shall be consistent with the level set in schedule to this Act.[32]
2. Where a project description is not specified in the schedule to this Act, the Board shall set the minimum content level for the project or project item pending the inclusion of the minimum content level for the project or project item through an amendment of the schedule to this Act by the National Assembly.
3. All operators, alliance partners and contractors shall comply with the minimum Nigerian content for particular project item, services or product specification set out in the schedule to this Act.
4. Notwithstanding the provisions of subsection(1) of this section, where there is inadequate capacity to any of the targets in the schedule to this Act, the minister may authorized the continued importation of the relevant item and such approval by the Minister shall not exceed 3 years from the commencement of this Act.[33]

The Nigerian content plan submitted to the Board is expected to contain a detailed plan satisfactory to the Board, setting out how the operator and their contractors will give first consideration to the Nigerian goods and services including specific examples showing how first consideration is considered and assessed by the

[31] Sections 7 & 8 of the Act
[32] The Schedule to the Act contains the code description and the Nigerian Content (NC) level requirement for every sector of oil and gas industry.
[33] C.M. Anyawu "Productivity in the Nigerian Manufacturing Industry" http//www.centbank.or/OUT /PUBLICATIONS/ACCASSIONALPPAERS/RD/2000//ABE-00-PDF (accessed on Sep, 17, 2011) alludes the steady decline in the Nigerian Manufacturing sector to low level technology arising from inability of Nigerian industries to revolutionalise and acquire modern machines, epileptic power supply, lack of funds and poor infrastructures which correspondingly increase production cost. Beset with these problems which have defied solution, inserting a local content clause with regards to project items and restricting approval for importation of items to 3 years from 2010 ie 2013 constitutes an aberration that could sabotage the oil and gas industry.

operator in its evaluation of bids for goods and services required by the operator.[34]The Board is similarly mandated to consider the Nigerian Content when evaluating any bid where the bids are within 1 percent of each other at Commercial stage. The bid Containing the highest level of Nigerian content should be selected provided the Nigerian content in the selected bid is at least 5 percent higher than its closest competitor.[35] It is further provided that Nigerian Should be given the first consideration for employment and training in any project executed by any operator or project promoter in the Nigerian Oil and Gas Industry The board is however to ensure that the operator or project promoter maintains a reasonable number of personnel from areas Where it has significant operation[36]

The Act provides that where Nigerian are not employed because of their lack of training, the operator is assigned the responsibility of ensuring to the satisfaction of the Board that every reasonable effort is made within a reasonable time to supply such training locally or elsewhere and such effort and the procedure for its execution should be contained in the operator's E and T plan.[37] The operator is also mandated to submit a succession plan to the Board for any position not held by Nigerians and the plan should provide for Nigerians to understudy each incumbent expatriate for a maximum period of four years and at the end of the four years period, the position should become Nigerianised.[38]

The Act unequivocally stipulates that all contracts or projects whose total project exceed 100 million dollars should contain a "Labour Clause" mandating the use of minimum percentage of Nigerian labour in specific cadres as may be stipulated by the Board[39]. Companies operating in the Nigerian oil and gas industry are also to employ only Nigerians in their junior and intermediate cadre or any other corresponding grades designated by the operator or company[40]. Similarly for every project for which a plan is submitted, an operator is mandated to carry out a programme and make expenditure, to the satisfaction of the Board for

[34] Against the background of phony Nigerian contractors and service providers parading several certificates of excellent performance and production of various items which are difficult to authenticate, utilizing Nigerian products and services is synonymous with opening a *Pandora* box. As aptly stated in the *Nigerian tribune*, Wednesday, February 2011, Nigerian contractors who have paid a kickback know that no government engineers will have the moral courage to pronounce their works as shoddy. Instead the Engineer will issue the contractor a certificate of excellence. Even when the contract begins to fail, the contractor will not be sanctioned because impunity thrives in Nigeria

[35] Section 14of the act

[36] Section 28 of the Act, it is a palliative

[37] It is geared towards the provision of the necessary platform to ensure transfer of technology to Nigerians and erode the monopoly which non Nigerians have retained over the years in the technical aspects of the oil and gas sector.

[38] Section 31 of the Act; in the absence of sufficient checks and balances to ensure professionalism is not sacrificed on the altar of indigenization. The provision for automatic take over after four years could breed mediocrity and ineptest.

[39] Section 34 of the Act

[40] Section 35; prior to this Act, Nigerians have been employed in various capacity in the oil industry in building of roads, bridges, clearing of drilling sites, transportation of materials and equipment and the building of staff housing and recreational facilities See Gbadebo Olusegun Odularu "*Crude Oil and The Nigerian Economic Performance Oil and Gas Matters*", 2008 http://www.Ogbus.ru / eng/ (accessed on September 17, 2011)

the promotion of education, attachment training, research and development in Nigeria in relation to its work programme and activities[41].

The operator is further foisted with the responsibility of giving full and effective support to technology transfer by encouraging and facilitating the formation of joint ventures, partnering and the development of licensing agreements between Nigerian, foreign contractors and service or supplier companies. Agreements for all such joint ventures or alliances is expected to meet the requirement of Nigerian content development to the satisfaction of the board[42].

Except where it is impracticable to retain a Nigerian financial institution or organization, no operator, contractor or any other entity is authorized to obtain financial services extraterritorially[43]. Operators, project promoters, contractor and any other entity engaged in the Nigerian arena are also mandated to carry out all fabrications and welding activities in the country[44].

The Board also has the responsibility of establishing, maintaining and operating a Joint Qualification System (JQS) to constitute an industry databank of available capabilities and a consultative body to be known as Nigerian Content Consultative Forum (NCCF) to provide a platform for information sharing and collaboration in the Nigerian oil and gas industry with regards to upcoming projects in the oil and gas industry, information on available local capabilities and other policy proposals that may be relevant to Nigerian content development.[45]

Within sixty days of the beginning of each year, each operator is expected to submit their annual Nigerian Performance Report covering all its projects and activities for the year under review[46].

A fund known as the Nigerian content development fund to be funded by one percent deductions to be made at source from every contract awarded to any operator, contractor, subcontractor, alliance partner or any other entity involved in any project, operation, activity or transaction in the upstream sector of the Nigeria oil and gas industry is to be established for the purpose of implementing the Nigerian content monitoring

[41] Section 37. The efficiency of the Board's monitoring and oversight function as far as qualitative training is concerned is dependent on their appreciation of the various levels of training required by each cadre of employee and this could pose a huge challenge

[42] Nigeria has been engaged in several projects aimed at laundering the image of Nigeria to make it more attractive for investors including Mass Movement for self-Balance Social Justice and Economic Recover (MAMSER) 1981, Heart of Africa 1999 and rebranding Nigeria project in March 2009. This provision is evidently directed at luring investors to participate in its economic development which has so far yielded negligible result; section 47 which provides for the Minister to make regulations which should require any operator to vest in or set up a facility, factory, production units or other operations within Nigeria for the purpose of carrying out any production, manufacturing or tor providing a service otherwise imported into Nigeria is to encourage technological and infrastructural development of Nigeria but the implied compulsion could contribute to investor flight as it would undoubtedly increase the cost of doing business with added cost to consumers.

[43] Section 52 of the Act

[44] Section 53 of the Act

[45] Section 56 and 57 of the Act

[46] Section 60 of the Act

development. The said fund is to be managed by the Board and employed for projects, programmes, and activities directed at increasing Nigerian content in the oil and gas industry[47].

Non-compliance with any of the provisions of the Nigerian oil and gas industry content development Act by any operator, contractor and subcontractor is punishable with conviction and a fine of five percent of the project sum or each offending project or cancellation of the project[48].

4.0 Implementation Challenge of the Nigerian Oil and Gas Industry Content Development Act

The Act has been acclaimed a major achievement in paving the way for greater participation of Nigerians in the oil and gas sector. The Act is also expected to grant Nigerians reprieve from the backlash from the discontent in the Niger Delta which in the last decade has spiraled out of control[49]. The anticipated smooth transfer of technology to Nigerians, and employment opportunities has also restored hope to millions of unemployed Nigerians that the Nigerian government is delivering on its poverty alleviation measure.

However, realization of the above expectations appears to be unrealistic. This is because the implementation of the Act has been generating considerable anxiety among participants. There is reasonable apprehension that the Act could be subversive of the sector rather than confer the touted economic and technological advancement on Nigeria.

In the light of the socio-economic realities of Nigerian situation, the Act is more emotive than practical. It constitutes a forced arrangement between multinational oil corporations operating and proposing to operate in Nigeria and the indigenes or locals without taking cognizance of the evident constraints of the practical application of most of its provisions.

Below are some challenges that constrained the implementation of local Act:

4.1 Poor/Inadequate Infrastructure

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. While Canada and South Africa have standard infrastructure and notably efficient and steady power, good roads network, world class health and educational facilities which

[47] Section 103 snd104 of the Act

[48] Section 68 of the Act

[49] On October 1, 2011 during the celebration of Nigeria's 50th Independence anniversary two car bombs were detonated killing tem people and destroying several properties. The Movement for the Emancipation of the Niger Delta (MEND) the main militant group in Nigeria claimed that the attack was to protest the impoverishment of their communities and the unabated pollution arising from oil exploration in the Niger-Delta. See "car bomb attacks on Nigeria independence day kill" The Telegraph, September 24, 2011.

is good for foreign investments. 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.[50]

4.2 Unfriendly Business Environment

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 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.[51] 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 lack of continuity in policy by subsequent government which automatically creates its own policies.[52]

4.3 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 prequalification and tender processes.[53] There are also complaints of discrimination and underutilisation 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.[54] 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.[55]

Legal services also appear to be an area which has suffered some neglect with regard to Nigerian content strides. Section 51 of the Act[56] 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

[50] 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/challengesFacingNigerian LocalContentInOilAndGasIndustry/15 - 20 djvu.txt

[51] Ibid

[52] Simatupang, T.M. The synergism index: A measure of supply chain synergism. (*International Journal of Physical Distribution & Logistics Management,* 35(1), 2005) pp. 44-62.

[53] 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 accessed 11 October 2023

[54] Ibid

[55] N Garrick, '4 years of Nigerian Content: Challenges abound despite Relative successes' Available at accessed 21 August 2019

[56] Nigerian Oil and Gas Industry Content Development Act 2010

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.[57] 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.[58]

4.4 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. 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 had wielded the big stick against Total by 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.[59]

4.5 Corruption

Corruption is an endemic challenge in Nigeria that has defied attempts to curb the economic subversion engendered by its prevalence. There is no evidence that sufficient safe guards have been provided to ensure transparency in the implementation of the Act.

The likelihood of politicians frustrating the spirit and intendment of the Act by utilizing the local content requirement in all transaction in the oil and gas sector to further their personal interest, installing their cronies in choice position and plundering the sector constitutes an inherent challenge to the implementation of the Act. Nigeria is incapable of addressing this handicap which is synonymous with expecting regulator to be self-regulatory.

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[57] Stevens, P. *"Resource Impact: A curse or a blessing?"* Center for Energy, Petroleum and Mineral Law and policy, (University of Dundee, Dundee, UK., 2003) p. 23

[58] Ibid

[59] Iledare, O.O. *"Analyzing the impact of Petroleum Fiscal Arrangements and Contract Terms on Petroleum E&P Economics and the Host Government Take."* (Presented at the 2004 SPE Nigeria Annual Technical Conference and Exhibition held in Abuja, Nigeria. 2004) pp. 2-5.

The efficacy of the Local Content Act is dependent on its ability to scale the corruption hurdle which his the bane of regulatory mechanisms in Nigeria. Corruption has been traced to the fact that:

> *The government is the focus of power in most developing countries, determining the level and nature of economic activity. The government is to a very significant degree the economy. It is the greatest industrial and agricultural power. It is the biggest industrial and agricultural power. It is the biggest contractor. It is often the sole owner of natural resources ---. It is the greatest concentration of power political, economic and bureaucratic. Together with the accelerated pace of economic development which provides such a fertile ground for corruption clamouring for permits, contracts, certificates, import licenses and which have you, the temptation becomes overwhelming to jump the queue, to lubricate one's way and to make certain results*[60].

The Board is not insulated from the pervading corruption which could stifle accountability and constitute a major impediment to the enforcement of the Act.

The Implementation of the Act could also introduce ethnic consideration which could degenerate to ethnic tensions. This is because ethnicity would definitely be brought into play in the "allocation" of positions in the sector. This could spell doom for a country that is already polarized along ethnic lines.

Due to the haste with which the Act was passed in total disregard of the need to establish the enabling functional social-economic environment, there is clear and present danger that the implementation of the Act will breed mediocrity, politicize positions as well as enthrone ethnic cleavages and parochialism

4.6 Lack of synergy between IOCs and Nigerian Universities in Research and Development

There is lack of or poor 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 is stipulated in the Canadian- Newfoundland & Nova Scotia local content requirements. Also, the Korean policy succeeded through the implementation of Science, Technology and Innovation (STI) policy.[61] They took into consideration the importance of R&D which is also a part of STI policy.[62] 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.[63] Thus, when

[60] Eker Vadjer "The Origin of Corruption irregular in incentives in Nigeria" Journal of African Studies (1981): 174

[61] Adekalu, S. & O. Oludeyi, Appraisal of Petroleum Technology Development Fund (PTDF) Mandates on Human Capacity Development in Nigeria; Benefits for Nigerian Youths, (*Global Journal of Human Resource Management,* Vol.2, No.1, 2014) pp.30-37,

[62] Ibid

[63] Ibid

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.[64]

4.7 Uncertainties/Unrealistic Content Target 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.

4.8 Conflict with International Treaties/Agreements

The Act did not take cognizance of the investment of multinationals operating in the oil and gas sector engaged in joint venture agreement with Nigeria. It is evidently not predicated on negotiations with such multinational. Arbitrarily skewing the provisions of the Act in favour of locals is inequitable and negates Nigeria's World Trade Organization (WTO) obligations to engage in free and fair trade. Engaging in protectionism in the oil and gas sector could discourage foreign investors from other sectors since there is a possibility that the government could extend its local content policy to other sectors of the economy.

Existing multinational companies threatened by the erosion of their right to monitor their investment are bound to relocate to neighbouring countries with more favourable investment conditions. This could push Nigeria further the edge of economic destitution.

Its important to be aware of the bilateral/multilateral treaties Nigeria has signed and the types of obligations contained therein. Investment treaties usually contain the following types of obligations; and each may likely affect the framework of Nigerian oil and gas content development:

1) Non-discrimination provision ('National treatment & Most favored nation') obligations;

2) Non restrictions on capital transfer;

3) Pre-establishment protection, which prevent State from imposing conditions on foreign investors that are not imposed on domestic investors, such as , requirements to transfer technology to local firms, to form a joint venture or to reinvest a certain amount of capital in the host country.

[64] Atoyebi, O.M. *Overview Of The Local Content Measures In Nigeria Vis-À-Vis The Obligations Under The Nigerian Content Development Management Board Act,* available at Petroleum Technology Development Fund (PTDF) of 1973 Act No 25 of 1973. This was amended in Cap 15 of 2000

A careful reading of the provisions of the local content Act, would definitely made us to understand that, the relevant provisions of the Act that are in conflict with Nigeria's international obligations are those that contains the overall objectives of giving preference to Nigerian indigenous suppliers, local services and goods manufactured locally.

5.0 Benefit / success of Local Content Implementation in Nigeria

There has been a systematic but gradual improvement in local content in the industry since the Nigerian Oil and Gas Industry Content Development Act was signed into law in 2010, and with the Nigerian Content Development and Monitoring Board (NCDMB), driving its implementation.[65] Nigerians have developed competence in jobs previously reserved for foreigners, and the majority of jobs previously undertaken outside Nigeria are now performed by Nigerians and in Nigeria. Below are some benefits or success stories from the implementation of local content Act:

5.1 Reduction of Capital Flight from Nigeria

The major Oil Servicing Companies operating in Nigeria, such as Saipem, Schlumberger, Weatherford, Halliburton etcetera, are either subsidiaries of the Oil Majors- Shell, Agip, total Elf, Chevron, Exxon Mobil etcetera, or of the same countries with them. These subsidiaries service the Multinational Companies and carry out most of their jobs and as a result, there is a lot of connivance and inflation of contract values. This does not only lead to huge capital flight, but also contributes to the high cost of production per barrel of crude oil in Nigeria. With the introduction of the Local Content Act, operators in the Nigerian Oil and Gas industry are mandated to use Nigerian Indigenous Service Companies in carrying out their operations. By Section 7[66] Operators are required to deliver a Nigerian Content Plan to the board. This plan must demonstrate compliance with the Nigerian Content requirement when bidding for not only licenses, permits, or blocks but for any project or activity ranging from the Front End Engineering Design (FEED), and Detailed Engineering Services, Fabrication and Construction, Materials and Procurement, Well and Drilling Services/Petroleum Technology, exploration, Subsurface, Petroleum Engineering, Seismic among others in the Oil and Gas Industry. The Board however, reserves the right to review and assess the Content Plan and if satisfied that the plan complies with the provisions of the Act, will issue a certificate of Authorization to the operator to proceed with the plan.

5.2 Establishment of Private Oil Prospecting and Oil Services Firms

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.[67] Local

[65] Ibid

[66] Section 7 of the Local Content Act, 2010

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

Fabrication has intensified with the adoption of local content programme which has helped to boost local production, buld 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.[68]

5.3 Joint Venture (JV) with the NNPC

The NCDMB had 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 Act, this kind of project was executed in foreign fabrication yards, with its attendant capital flight.[69]

6.0 Conclusion

With the little success the Nigerian Oil and Gas Industry Content Development Act recorded so far; it is beginning to generate widespread cynicism and pessimism and the euphoria generated by its enactment is waning due to unresolved issues encompassing it. Infrastructural decay, corruption, apparent conflicts with BITs and WTO's provisions, absence of cognizable technological advancement and efficient manpower assailing its implementation constitute a major hurdle to the actualization of the spirit and intendment of the Act.

Should Nigeria insist only on implementation of the self-serving provisions of the Act without taking much needed actions to improve basic infrastructure and set up realistic targets commensurate of it's capacity and; measures that ease doing business intendem with Nigeria's international obligations, it would be tantamount to encouraging mediocrity to prowl the oil and gas sector. This could spell doom for the sector and further devastate the ailing Nigerian economy.

[68] Ibid
[69] Ibid