

Appraisal of the Challenges, Problems and Prospects of the Nigerian Oil and Gas Industry Content Development Act 2010

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ABSTRACT

Nigerian oil and gas content requirements is a desperate response to control manpower shortage and foreign dominance in the industry through compulsory utilization of Nigerians to build in-country capacity and stimulate the economy to resolving national socio-economic problems, perennial conflicts and security challenges afflicting exploration in the region. The objective of this article is to assess the challenges, problems and prospects of the Nigerian content requirements, regarding enforceability and justifiability of the content rights, insecurity, marginalization and relegation of host citizens, environmental injustices, and restiveness, transfer of technology and succession plan and conducive environment for optimum peaceful exploration. The article adopted doctrinal research method, which basically relies on pure textual analysis of relevant legal resource materials. The article discovers that the host communities are the actual victims of the incidence of exploration in spite of legislative improvement and also a swap of 'local content' with 'Nigerian content'. The paper concludes that the extant regime is not adequate to deliver the enforceability of the content rights of Nigerians, the responsibilities of government to build capacity and transfer technology, compliance level of international oil companies, priority placement and empowerment of the host communities. Consequently, the article recommends linking Nigerian content with other critical sectors, technical training and capacity development of Nigerians by the federal government, proper placement of qualified indigenes of the host communities in the sector, amendment of the obnoxious section 2 of the Act to confer tangible justiciable rights on the citizens of Nigeria and the inclusion of compulsory in-country refining of hydrocarbon crude oil produced in Nigeria.

KEYWORDS

Nigerian Content Policy, Nigerian Content Requirement, Resource Curse, Environmental Justice

I. INTRODUCTION

The shortage of home-made skilled manpower and technical know-how, low value addition to the economy; youth restiveness and denial of stakeholders have been the core causes for the non- realization of the reform agenda in oil resource-rich countries including African nations. According to World Bank Report, there is significant shortage of human skills both in terms of number and quality, especially in the fields of science, technology, engineering and mathematics. The Nigerian oil and Gas Industry Content Development Act 2010 is a response to the challenges of continuing expatriate domination in the sector due to low skilled manpower, inadequate capacity and ill targeted agenda to revamp the dearth in

human capital development in the host communities, enhance linkages with other sectors and end foreign domination in the industry. The strategy has remained but the usual, traditional and conservative as the entire nations problems are pencilled for simultaneous solution using the top-bottom approach. This has been overtime proved to be wrong analysis of the situation because it has the capacity to substitute the host communities' reparation and remediation packages to places that have not suffered the incidence of exploration at all.

The principal principles of the local content policy is to ensure local investment in the sector; promote indigenous participation in the sector, technology transfer, employment generation for all categories of Nigerians, integration of the oil and gas industry into the mainstream economy through local refineries and petrochemical industries which were deliberately omitted. Typically, local content policy contains preferential treatment in matters of training, employment, contract bidding, procurement of goods and services, etcetera in favour of the host country. It is believed that this will generate technology transfer and facilitate the development of the host country's critical sectors within a given period of time. The erstwhile prominent local content provision in the defunct regime provides among others a 12 months' period for the holders of an OPL and OML licence or lease to submit a detailed local content plan for the recruitment and training of Nigerians for the approval of the minister. The realization of most local content policies suffers set-back due to potential incompatibility with International Trade Agreements and certain trade-offs.

Oil resource discovery and oil boom triggers expectations such as price reduction of petroleum products, employment opportunities, infrastructural development and the various multiplier effects on the families. Others include significant reduction in the costs of living of the people and consequent improvement in the quality of life, overnight establishment of various institutions, offering one diploma, certificate or the other in oil and gas management etcetera. Basically, local content requirement seeks to promote increased value addition, domestic product and national income.

Natural resource abundance ordinarily ought to promote growth, revenue boom, economic development, investments and quick human capital development referred to as 'big push' but in most cases it is not real. This article identifies the swap of the concept of 'local content' with 'Nigeria content' as reflected in the definition paragraph of the Act as an illusory to jeopardize the expectation of the oil and gas host communities. The resultant effect of this jeopardy is the continued dominance of foreigners in the sector to turn the blessing into paradox due to high level of technical and skilled manpower despondency prevalent in nations, zones and regions of abundant natural resources which can be averted through increased local participation, training and re-training of indigenous manpower, transfer of skill and technology, preferential and exclusive consideration of indigenous entrepreneurs and contractors, employment of locals and the use of local raw materials by foreign investors to eradicate the seeming paradox of resource-curse syndrome characteristic of commercial discovery of oil in the country . Nigeria sought to extend of its maritime boundary from 200 nautical miles to the maximum limit of 350 nautical miles seawards in 2009 in order to acquire more oil potential zones. In furtherance, it is factual that while the oil and gas sector requires skilled and specialized manpower to operate effectively, collaboration is needed with the educational sector mostly the technological colleges and universities to produce the needed manpower as well as to the health sector to attend to the health needs of the

industry workers to avert oversea medical trips that engulfs whooping sums as similar situation is required in the construction, hospitality, tourists and recreation sectors if we must reap the full benefit of the Nigerian Content Act.

II. CLARIFICATION OF CONCEPTS

Conceptual clarification is used here to express the meaning of terms, words and concepts used in this article as well as the specific application to which the terms, word or concepts are used. It is intended to make a concept, an idea, and word, term more precise, clear and easy for purposeful understanding. It also aims at offering deeper clarification of the terms, concept or word or idea used to extricate assumptions, and ambiguities to earmark clear boundaries.

A. Nigerian Content Act 2010

Nigerian Content Act, is used here to refer to the Nigerian Oil and Gas Industry Content Development Act, 2010 to provide for the development of Nigerian Content in the Nigerian content plan, supervision, coordination, monitoring and implementation of Nigerian content and related matters. It was enacted on the 22nd day of April 2010 after the assent of the then President Good luck Ebele Jonathan. It constituted in three parts and expressed in 107 sections with one schedule. It contains the basic principles of the Nigerian Content Requirement which enables indigenous participation, justiciable rights, the Nigerian content plan , the exclusive rights and the right of first consideration for the use of Nigerian products and services , indigenous companies and utilization of Nigerian Professionals ,banks ,Insurance , legal practitioners , vessels etc.

B. Nigerian Content Requirements

Nigerian Content Requirements is the total quantity and quality of value added to the Nigerian economy from the activities in the exploration, production, development, transportation, distribution and sales of Nigerian crude Oil and gas resources through the compulsory maximum utilization of National human, material resources, services and mandatory indigenous capacity building and manpower development of Nigerian citizens by a pre-planned training and re-training schemes of the need area in the oil and gas industry without compromising international standards. It is single sector based with priority consideration on Nigerians for award of oil and gas contracts, supply of Nigerian goods and services, training, employment and re-training of Nigerian employees, technology transfer aspirations and take-over bid.

C. Resource Curse

Resource Curse also referred to as the paradox of plenty and all is well where a man lives at the beautiful gate but his life is full of sorrow, a man who lives by the river side but washes his hands with spittle. It eventually leads to ills and significant social, economic, and political challenges incidental to the season of plenteousness which has become a significant feature of most resource abundant nations including Nigeria. Resource curse is the adverse effect of a country's abundant natural resource wealth in such a magnitude that the

abundant natural resources paradoxically appear to be a curse rather than a blessing. It is also a phenomenon that expresses that those countries with abundant material resources tend to develop at a very slow rate than other resource poor – countries.

D. Environmental Justice

Environmental justice according to the United States Environmental Protection Agency is the fair treatment and meaningful involvement of all people regardless of race, colour, national origin or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies. At the root of environmental justice is fair treatment and meaningful involvement of all people with respect to environmental issues and their environment. Fair treatment guarantees right to life and other rights. The African Charter on Human and Peoples' Rights is enforceable in Nigeria by virtue of section 12 of the Constitution of the Federal Republic of Nigeria 1999, provides that "All people shall have the right to a general satisfactory environment favourable to their development". This provision is akin to section 20 of the Nigerian Constitution 1999 was interpreted in *Gbemire v SPDC Limited & Ors*, when the court inter alia declared that; the continuous flaring of gas by Shell Development Company Ltd and NNPC in the course of its oil production and exploration activities in the Applicant's community is a gross violation of their fundamental right to life which includes a healthy environment as recognized by the section 20 of the Constitution of the Federal Republic of Nigeria 1999. Environmental justice means fair treatment of all persons without discrimination and involvement of all persons in the development, implementation and enforcement of environmental laws and policies.

III. HISTORICAL DEVELOPMENT OF THE LOCAL CONTENT REQUIREMENTS

The discovery of natural resource in any country comes with much excitement and expectation due to the anticipated windfalls that naturally accompany the exploitation of these resources. In nations where there are inadequate skilled human resources and technical know-how, foreign expertise is sought to exploit these resources, which results in foreign dominance of the sector from the onset. As a result of this fact, subsequently, the policymakers strategize to reap the maximum benefits for their nations by instituting appropriate policies such as; passing of petroleum law that governs how revenue from oil and gas is split between International Oil Companies (IOCs) and Governments is spent, security policies, protectionism and technology transfer plans. Similar strategies include local content development, tackling of national social and economic problems etcetera. One of the most commonly adopted strategies is the 'Local Content Requirement'. These policies aim at creating further benefits to the economies of the host nations beyond the direct contribution of the sector by linking the oil and gas sector to other sectors of the economy. It also does same through establishing deliberate plans to hand over the governance of oil and gas industry to the nationals to ensure maximum use of nationals both in material resources, goods and services and to maximize foreign direct investment (FDI) potentials. The hitherto structure of the Nigeria critical sectors shows that the sectors were characterized by the foreign dominance and control of the industry. In analysing this seeming irony, it becomes obvious that notwithstanding the teeming Nigerian market strength and opportunities for dynamic economic growth, the situation in the Nigerian oil and gas sector when weighed vis-à-vis the rich resource, local content expectation and

outcome, the circumstance can be described as a tragic hopelessness which can match into the resource-curse syndrome if precautions are not taken urgently.

In order to turn the tide of bad economy of the Nigerian nation through the oil and gas sector which has enormous potentials, various policies and laws have been pursued by the government. The laws were hitherto enacted in Nigeria at different times by different governments yet it still seems that the best is yet to come. These laws made various provisions to enforce local content requirement and attract development in the respective legislation, unfortunately they haven't achieved much, owing probably to absence of will-power on the part of the enforcement organs.

The foregoing handicaps triggered the desired outcry that brought about the enactment of the Nigerian Oil and Gas Industry Content Development Act 2010 with intent to disconnect and stop the ugly trend of foreign domination and propel indigenous participation in the oil and gas industry and propel the upturning of the table in favour of Nigerians at least by law. Not quite long after the establishment of the Act, that Nigerians and the Government realized that the oil and gas industry is a very capital intensive one and cannot employ as many people as expected. The legislation includes various regulations that lay out the rules and procedures for the implementation. The most tragic aspect of this legislation is misdirection of the target of the content derivatives to the top instead of the bottom. The oil and gas resource, like every other resource, is finite in nature. Nations are increasingly becoming pre-occupied with improving the chances for local participation in the exploitation of resources, especially mining and oil and gas explorations.

This is relatively due to global belief that the resources in these industries drive economic growth and can pull a nation out of poverty. Policymakers design policies with increasing local content by the use of incentives and performance standards to stimulate economic growth and nurture local industries. The situation was same in Ghana, when the country discovered oil in commercial quantity in 2007 in the offshore Southern part of Ghana. The then president of Ghana; Kuffor summarized this euphoria as a "short in the arm" the opportunity that would give Ghana the wings to fly and transform Ghana into an African Tiger" but it never did due to negative exigencies that the oil carries with it. The local content in the oil and gas industry is ordinarily expected to create value addition to the host nation, state, more especially the locality of the exploration respectively through the activities of the oil and gas industry.

Canada, Australia and several European nations in their automobile, electronics and tobacco industries have employed the use of content requirement, or export performance to their advantages. United Kingdom, Norway, Brazil, Malaysia and Trinidad and Tobago are not an exception. Nigeria is blessed with abundant natural resources including eight (8) major Ports, excluding oil Terminals with Cargo handling capacity of 35 million tonnes per annum, ten (10) terminals, one hundred and sixty-eight Jetties (165) and offshore oil installations and structures.

This background surely speaks for itself, that Nigeria is remarkably a nation, naturally endowed with abundant natural resources accounting for about 95% of our national income, making the oil and gas industry a critical sector in the Nigerian economy. The combined effect of these analyses reveals Nigeria as a big international resourceful nation with great

potentials but has been relatively eluded from the benefits of these resources due probably to the hiccups of the hitherto existing legal regime and may even continue with the new regime if certain adjustments are not made urgently as this paper will reveal at the end of this work. The Act is a protectionist policy and so tends to shield the nationals from global competition. It cannot be pretended that International economic laws and diplomacy still advocate globalization, competition and free market enterprise which is immensely promoted by the World Trade Organization and the General Agreement on Tariffs and Trade (GATT). Astonishingly, the wind of change has deflected global economic policies, globalization, free trade and competition for protectionism in different appellations to preserve national economies from unfair competition due to inherent low manpower capacities and infrastructural inadequacies and decadence.

Nigerian Oil and Gas Industry Content Development Act is believed will translate the benefits of massive natural resources endowed in the country into tangible national development realities through technology transfer, capacity building and take-over arrangement in the sector. However, irrespective of the differences in individual reasoning; the Nigerian Oil and Gas Industry Content Development Act, 2010 has launched the beginning of a new era in the Nigerian oil and gas Industry in a comprehensive package of legislation containing the ingredients of domestic economic policy, International trade policy, national security agenda, local economic development, socio-economic matters and strategies for technology transfer.

The laudable objectives of the Act include; ensuring that substantial portion of the activities, materials, engineering, arts and human capital utilized in the oil and gas industry is domiciled within the country, domiciliation focus on local value addition and promotion of technology transfer, stopping oil and gas from being 'enclave' economy and create linkages to the wider economy, and Nigerianization of over USD 9 million annual spending in the petroleum industry

The anticipation of quick delivery of the loaded dividends into the multifariously challenged socio-economic state of Nigeria through the transformative synergy of the new order to the country and the industry is high. One point of attraction is the well thought-out guidelines issued to ease implementation problems, forsake errors and avoid mistakes though likely to suffer some set back due to the structure of the Act. The operations of critical sectors in any economy are interwoven and linked together and need to be pursued in order to produce the value chain need to engender economic transformation, reparation and remediation and improve revenue conservation.

International Trade Agreement (ITA) threatens the sustenance and establishment of Local Content Requirement. In 2011, an extensive nationwide survey jointly conducted by the Youth Network for Human Rights and Democracy and Friedrich-Ebert-Shifting, showed that a majority of the population believed that non-Nigerians profit more from the production of the oil than Nigerians do. Consequently, civil society groups in Nigeria mounted pressure on the government to develop a legal and regulatory framework to protect the interests of the Nigerian citizens more particularly those of the oil and gas region and publish details of agreements between the Nigerians and the foreign multinationals exploration companies .

The strategy of local content was evolved to avert the paradox of 'resource curse' maximize the benefits of this resource and ensure that citizens of host communities benefit generally

from it. In Uganda the discovery of oil and gas caused distortions in the customary land tenure system in the oil, conflict, displacement and substantial migration into the region.

IV. CHALLENGES AND PROBLEMS OF THE NIGERIAN CONTENT ACT

Challenges and problems of the Nigerian content requirements are vertically similar to each other. It expresses obstacles, bottlenecks, barriers and limitations hindering the realization of the primary and general aim and objectives of the Nigerian content initiatives more visibly noticed and established at a closer look and during the enforcement of the local content requirements. The under-listed discourse summarizes the challenges and problems of the Nigerian Content Policy seriatim.

A. *The inherent preferential treatment in favour of the Host in terms of employment, participation, training, product and services provision.*

One technical point that has been used for and against the local content requirements is the issue of preferential treatment meted to the host citizens in matters such as employment, participation, training, and award of oil blocks, procurement of goods and services, etcetera. It is trite that where the preferential treatment is not directed to the technical and managerial cadre in the industry, the expected derivatives of the local content objective may not be achieved, what can be achieved at best will be participation of the citizens without apparently any indication of transfer of any skill, technology or any succession. Preferential treatment to boast engagements must be targeted at particular skilled level of personnel with mandatory provisions requiring the company to compulsorily transfer the requisite skill and technology to the citizens as provided in the Petroleum Industry Act which appear to be a better provision but without teeth to bite.

B. *The Swapping of the content plan from 'local content' to Nigerian content.*

This is a critical problem because this subjugation has certainly upturned the anticipated benefit and solution to the host communities who had thought that the coming of this content plan will change the tide, fully confident that the policy is local content rather than Nigerian content. This seeming treachery against the host communities has destroyed the core values, expectations, loud ovation and the thought that remediation of the perennial sorrows of the local communities and its citizenry, who would have turned into stakeholders in the extraction activities in their own localities has been aborted. The incidence of the direct opposite of this thought is not palatable as it will take us back to the challenges of the hitherto local content plans of the yester years and their unfortunate incidences of the restiveness and criminality.

C. *The inadequacy of the Act to cater for the needs and aspirations of the citizens of Nigeria and the Host Communities*

- There is no direct provision that created the court with jurisdiction to hear matters arising from its enforcement and no direct provisions specifying the citizens' rights in the event that the company that refuse to employ them on ground of incapacity fails to give them the necessary training or fails to accord them priority including denial from the bidding preferences if their bids are the lowest financial bid without being 10% in excess lower than the lowest financial bidder. The rights of citizens are

by insinuations and necessary implications; in that the sections under the Act that attempted to create the right of Nigerians did not create tangible and specific rights.

- The constituting nomenclature of the Nigerian Content Development Monitoring Board (NCDMB) is defective and disturbing in that the said nomenclature suggests that the Board which is the major organ driving the Nigerian Content policy presupposed its core assignment as 'monitoring' rather than implementation and enforcement of the Act. Poor implementation and enforcement were the main fulcrum for the failure of the hitherto regimes of the local content in Nigeria.
- The constitution of the Governing Council as provided in section 72 of the Act is not balanced but lopsided. The composition of the Governing Council as it were, excluded representation from the Nigerian Bar Association and the Nigerian Financial Institution having added representation from the Insurance Industry. A look at the provisions of sections 49, 51 and 52 of the Act rightly suggests that the Act accorded the pride of place to the Insurance Industry, the Financial Industry and the Legal profession. Under the Act it is mandatory for every operator to utilize the financial services of Nigerian financial institutions, the services of Nigerian Insurance institution and services of Nigerian legal service providers. One wonders why the other two industries were excluded in the composition of the Governing Council. This Omission will negatively affect the operations of the Council in matters relating to the two industries. This is an anomaly, for it would have enhanced the implementation of the Nigerian Content Act and the Regulations associated with the Act.
- Lack of provisions for the specific roles of the Directorates in the Act. This may give room to speculations, usurpations of duties and failure of the system because duties were not streamlined. Unfortunately, the Directorates are not enough to match the functions listed in the Act as to link each directorate to specific functions. If this be so, which Directorate will be linked to implementation and enforcement?
- The penalty for contravention of the Act is minimal and may encourage default. Sanctions the major punishment not deterrent enough, the right provisions of the Act are mere normative sections without power of coercion, corruption and lack of transparency); institutional overlap, jurisdictional conflicts, weak enforcement organs and mechanisms, conflict between local laws and international trade and investment treaties.
- The Act failed to create a transparent process for oil licencing, leases, permits, award of oil lifting contracts on the first and exclusive considerations to Nigerian Contractors and Service Companies where several threshold qualifications exists.
- The Act made provision only for administrative resolution of issues arising from implementation of the Act. There is weird uncertainty of the right of action of the citizens due to the debilitating words of the sections creating the rights and the absurdity of section 2 of the Act in view of chapter 2 of the Constitution where the right envisaged and constituted as rights in the Act is provided in chapter 2 of the constitution.

D. The Board is saddled with too many functions and many of the said functions are unnecessarily duplicated, repeated and cumbersome. The Act failed to assign responsibility and statutory obligation in the operations and process of the Board to the Nigerian Extractive Industries Transparency Initiatives (NEITI) Commission to ensure transparency, due process, accountability in the activities of the Board and to eliminate corrupt practices. The Act is flawed in these under-listed areas:

- The there are no provisions for accountability, transparency, checks and balances on these numerous functions saddled on the Board in the Act and this is dangerous as there seem to be total exclusion of the court intervention.
- The functions of the Board as captured in section 70 of the Act is verbose and repetitive.

E. Incompatibility with world trade agreements such as; GATT, TRIMs, WTO leading to anticipatory disputes from WTO member states over breach of WTO agreements, GATT, TRIMs etcetera, enforcement challenges; poor enforcement measures and no compliance of the rules of requirement, Inadequate funding and financial shortage.

F. *Corruption, and the absence of necessary political will-power to steer compliance*

In 2007 an article in The Economist posed the question as to whether oil sector reform is possible in a country where corruption prevails in all aspects of life. This article suggested that reforming Nigeria's oils sector was feasible but would require significant commitment and political will from the Nigerian government and Nigerians. Despite the much needed reforms outlined in the Petroleum Industry Act 2021, the Nigerian oil industry continues to be plagued by corruption, mismanagement and inefficiency. The awarding of oil licenses and contracts lacks transparency and effective oversight. Theft and mismanagement of oil revenues exacerbate the flow of illicit funds in Nigeria and limit the industry's potential to promote development. Nigeria is plagued by both grand and petty corruption, with studies confirming that 50 percent of all drugs sold in Nigerian drugstores in the 1990s were counterfeit. This has devastating consequences for health outcomes in the country. In short, all aspects of life in Nigeria are directly affected by corruption.

G. *Performance challenges arises as policymakers in Nigeria should prioritize reforms that Increase transparency and oversight in the oil sector as well as increase the efficiency of the Nigerian National Petroleum Corporation Limited*

NUPRC, NDMPRA and the NCMB tasked with regulating the oil industry. Presently, Nigerians are embroiled in uncertainty whether the oil subsidy on the importation of fuel has been removed or not and how it operates. This is due to the problem of lack transparency. With better management of oil resources and efficient oversight of the industry, Nigeria should be able to translate its vast oil wealth into development gains for its people and hence eliminate the need for a subsidy.

H. *Local Content Policy is one sector based and need to be linked to other critical sectors*

The Covid-19 pandemic has shown vividly that the health sector need capacity upgrade and building which can readily be achieved through local content plan in that sector. The Nigerian Content Policy is one sector based and this fact hinders its potentials in the economy.

I. *Dearth of Developed local supply chain that can compete on an international basis*

There is dearth of Developed local supply chain that can compete on an international basis and there is huge upfront cost to develop local supply chain that can compete with the international counterparts.

J. *Crucial Technological Challenges, Capacity and Capability Gaps*

There are crucial technological challenges, capacity and capability gaps across industries and sectors including low interest in science subjects, lack of motivation of students and study of science subjects in schools that can translate as foundation for the subsequent building of research development and innovations. Lack of good supporting infrastructure (transport, water, electricity etcetera, Poor academic curriculum/vocational training/investment in R&D and Sectorial or sectional local content policy requirement.

K. *Stringent Provisions of the Act likely to encourage full Compliance*

The set targets in key categories are so ambitious despite the fact that the in-country capacity to meet target is grossly inadequate. This enables planners to define what is realistic and achievable. Regulatory requirements should define explicit targets for local content development rather than a generalized objective. It should be subject matter driven rather sector based.

L. *The Nigeria content adopt the top-to- bottom instead of Bottom-to-Top approach*

The Nigeria content adopt the top-to- bottom approach to solving oil and gas sector challenges involving the locality which imposes national priority in place of local priority considerations without any means of assuaging the incidences of oil and gas exploration on the host communities and the localities. The implication is that while the government want to save the indigenous companies from the competition of foreign firms, it dangerously exposes the indigenous populace to the tragedy of competitions from the foreign-locals (other nationals) without any special consideration or priority placement accorded to the host community taking into cognizance that it was this seeming oppression, denials, exclusion, environmental degradation and injustices that lead to restiveness and all manners of criminality in the creeks and extractive industry sites.

M. *The efforts at transfer of technology is left in the hands of contractors, indigenous companies, multi-nationals, alliance partners etcetera without government involvement.*

It appears impossible for the multi-nationals who are making a living from their first class activities in the oil and gas industry to actually transfer technology to the Nigerians who will succeed them and take over the control of the sector from them. Man by nature is selfish and will always patronize things that will give him maximum benefit and give less attention to activities that will cause losses to him, succession and transfer of technology is one of them. The government of the Federal Republic of Nigeria should be at the hub of this pursuit using thematic research, innovations and development to network Nigerian Institutions of technology, Petroleum Institute and institutions of higher learning both within and outside Nigeria to achieve technology transfer rather than depending wholly on the people it wants to sack from their job.

N. The provisions of the rights of the citizens regarding first priority, exclusive priority in terms of training, education, re-training, winning of contract, award of contract, supplies, utilization of Nigerians, goods and services are not framed in concrete terms but in webbing or wobbling terms that is capable of several interpretation and misconceptions that may lead to injustices to the host communities and Nigerians.

Section 2 of the Act which appears to be the leading section of the Act purports to undermine the rights of citizens as provided by the Act as the wordings tend to neutralize or vitiate the strength and viability of the rights envisaged and renders them nugatory. Section 2 of the Act appears to be a principal provision moderating other provisions and if this is confirmed, it means that the right provided by the Act is merely advisory and provisional. Section 2 provides, that;

all regulatory authorities, operators, contractors, subcontractors, alliance partners, and other entities involved in any project, operation, activity or transaction in the Nigerian Oil and Gas Sector shall consider Nigerian Content as an important element of their overall project development and management philosophy in project execution.

O. The Federal Government failed to invest on thematic research and innovations to develop local capacity and capabilities as is other jurisdictions.

A closer look at the Act suggests the reason why the Nigerian Content policy has not achieved its core objectives. Enforcement which means implementation, application, execution, putting into practice etcetera is broad based.

P. The extant Act failed to address the causes of the perennial problems such as infrastructure deficiencies and developmental lapses in the host communities by not assigning certain percentage of the fund derived from the sector specifically for the development

The host communities as a palliative measure to cushion the effects of the incidences of exploration, and environmental degradation and other denials. The trust fund created by sections 234 and 235 of the Petroleum Industry Act 2021 is not sufficient and will be fraught with accessibility difficulties. The Petroleum Industry Act 2021 only focused on fund and mindless of the training, manpower development, capacity building, skill acquisition and infrastructural development of the host communities in the core sectorial areas of need to transform the restive youths.

Q. There is no local content provision for in-country and local refining of hydrocarbon crude produced in Nigerian

To contain inflation, enhance value creation, stimulate the economy and create employment. The problem of omission of the refining of Nigerian Crude locally and compulsory supply of adequate crude to local or indigenous refineries to refine locally in the Act.

V. PROSPECTS OF THE NIGERIAN CONTENT POLICY

The Nigerian local content requirements in the oil and gas sector have thrived so far in comparison to achieve to a reasonable extent the participation of the Nigerians in the

Industry both the indigenous companies, products and services including training, re-training, education and other categories of preferential treatment in contract bidding and award of Nigerian. It is observed that the Act need to be amended substantially to be able to achieve is lofty objectives to the fullest. The Act equally triggered the innovation expressed in the creation of the structured HCDDT and given a chapter of attention to the host communities. It is still work in progress. The application of the Nigerian content requirements in the oil and gas sector reveals that though the content has a huge prospect and has achieved a few things, the entire legis corpus requires total overhauling in the composition of the Act, its contents and implementation mechanisms so as to achieve the core essence of the extant regime.

VI. CONCLUSION

This article started with a well-structured introduction, through the doctrinal research approach, reviewed literatures on the historical development amidst relevant conceptual clarifications, x-rayed the challenges, problems and prospects of the Nigerian Oil and Gas Industry Content Development Act 2010. The article discovered among other things, that the Act lacked the adequate potentials to create or add expected value in the economy, lives of Nigerians generally and the host communities in particular, the Act lacked the requisite potentials to secure a stringent and efficient implementation of the Act to compel compliance with the provisions of the Act, the Act also failed to make enforceable provisions to ensure the enforcement of the principle of utilization of Nigerians and the priority and exclusive considerations offered by the Act, the Act also failed to secure the mechanism for the building of national capacity, capabilities, transfer of technology and succession which are the core values of the extant local content regime, the Act pays lip service to the issue of training, education, re-training as the government of Nigeria left every strategy of transfer of technology on the operators, contractors, sub-contractors, alliance partners etcetera without realizing that national capacity is the bride of any oil rich nation that wants to succeed the expatriates and that transfer of technology of building of national competences should be a national imperative amplifies by sincere and capital intensive investment in paper and development as the driver of the nation's succession and transfer of technology plan, the Act failed to address the causes of restiveness and all sorts of criminalities and hostilities in the oil rich zone which frustrate oil and gas investments and to enable conducive atmosphere to efficient and effective and peaceful working environment for the oil and gas workers to enable large production in the zone.

RECOMMENDATIONS

A lot more need to be done to improve the effectiveness of the Nigerian Oil and Gas Content Development. We have drawn recommendations from the outcome of the analysis of this article. The recommendations considered are herein as follows:

A. Reconstitution and Re-designation of the Board (NCDMB)

The functions of the Board should be shared among the directorates to function in line with their respective portfolios, while an additional directorate of implementation and enforcement be created to perform the core functions of enforcement and implementation

of the policy. The Governing Council should be reconstituted to include a representative of the legal profession from the Nigerian Bar Association, Finance and the Banking Industries. This will balance the leverages in the council as these institutions are amongst the institutions and professions that the Act specifically requested to be mandatorily utilized by the operators because the counterparts of this sectors which is the insurance sector is represented in the Governing Council. The exclusion of these sectors in the Governing Council is inappropriate and wrong.

The Nigerian Content Development Monitoring Board (NCDMB) should be re-designated and renamed the Nigerian Content Development Implementation, Enforcement and Monitoring Board. An assessment of the overall meaning and implication of these words, 'monitoring, enforcement and implementation' buttresses the point that if added or used to replace monitoring, it will prima facie suffice the object, mission and core values and responsibilities of the Board.

B. A Directorate of Enforcement and Implementation which Directorate should be put in place as the centre point of the enforcement of compliance and implementation of the Act for the maximum benefits of Nigerians and the aspirations of the operators and the initiators of this great innovation and idea.

C. The too many functions of the Board should be restructured as follows:

- Implement and regulate the provisions of the Act and any Regulations made by the Minister under the Act, delegate any of its functions to an agent and do anything legally necessary to facilitate the performance of its functions. Supervise, coordinate, monitor, administer and manage, the implementation, development of the Nigerian content as specified in the Schedule to the Act, the e-market place and the Joint Qualification System (JQS) set up by the Act and the performance of all operators in accordance with the provisions of the Act.
- Appraise, evaluate and approve the Nigerian Content Plan and Reports submitted to the Board in compliance with the Act.
- Award certificates, permits, licences of authorization and reviews of the Nigerian Content plan and reports submitted to the Board in compliance to the Act
- Assist local contractors and Nigerian companies to develop their capabilities and capacities to further the attainment of the goals of developing Nigerian content
- Make procedures, guidelines for audit and regular auditing of performances and measurement of the Nigerian content indicators utilized throughout the country
- Conduct studies, researches, investigations, organize conferences, seminars, workshops, symposia, trainings and other publications for a to further the attainment of the goal of the Nigerian content.

D. *Amendment of the Act*

The Act should be amended by deleting the obnoxious portions of section 2 of the Act that renders all other sections of the Act particularly the sections creating rights suggestive and directory instead of making them tangible and enforceable rights. The Act should also be amended to include a section or clause of reassurance that the sections of the Act creating rights of the Nigerian citizens, professionals, Indigenous operators, service providers and

contractors stalled and nugatory by the provisions of Chapter 11 of the Constitution of the Federal Republic of Nigeria 1999.

E. Re-definition of the local content development requirement

The local content development requirement definition should represent the process that grows and sustains foreign direct investment and transit the economic imperatives from a consumer economy or rent-state to a production economy. It must radically deviate from the conservative and traditional nationality models of top-to-bottom approach prevalent in most jurisdictions operating LCR but adopt a definition that emphasizes the bottom-to-top approach giving priority attention to the locality in the strategic areas of capacity development with linkages to both production, consumption and service activities in the economy that addresses the peculiarities of the particular economy.

F. The adoption of incremental and compartmentalized strategy that links other critical sectors

The law and regulation of the Nigerian local content strategy should adopt an incremental and compartmentalized strategy that is linked to other critical sectors in the implementation of the local content by taking stock of what skills are available and in what compartments at any given time and set their local content strategy accordingly to grow competences in that area of shortage and then engage same strategy on the other compartments accordingly. When there are sectorial linkages in the content policy, the benefits accruing to the locality and the nation through the multiplier effect will be enormous. Linking the oil and gas sector to the rest of the Nigerian economy will support sharing of strategies for improving training opportunities, domiciliation of capacity, technology services and development upgrade of facilities and infrastructure with critical focus on the underdeveloped of manufacturing and agro industries.

G. Developing Stronger Collaboration with the Education Sector for Sustainable Development and Thematic Innovation

The Board needs to build stronger collaboration with the educational institutions in the country those offering or capable of mounting courses in these core areas of need of the industry to make necessary structural changes to meet the demand for technical skills and know-how. A more practical way to ensure technology and skills transfer is through the establishment of mentorship programmes in collaborations with IOCs, technological Institutes and networks so that local companies can learn much faster Abolishment of any Known definition of local Content. It is recommended that to avoid breach of the rules of WTO and GATT on the trade related investment measures, Nigeria should abolish any known legal definition of its local content and employ the indirect methods of measuring, ranging from man hours, finance, volume or weight of goods supplied.

H. There should be periodic review of the NCDA after 4-6 years to make it more practical in view of its lessons from implementation.

The Local content model must be able to analyse national development priorities in order to align local `content activities with development priorities which can greatly enhance the benefits to the company and host country. 8. There should be adequate legal provisions in

the local content legislations and regulations to enable joint ventures with local firms, developing local education and training institutions, industrial collaborations and local procurement, training and skill development of local workforce in the locality through scholarship in relevant area of needs in the oil and gas industry. The law should provide more stringent implementation strategies and sanctions on the operators of the industry in terms of what the companies will suffer if they default. There should also the injection of transparency and accountability strategies into the process with the political will power to enforce the law to the letters.

I. Government should provide enabling environment for the local content to thrive, infrastructural facilities, investment in education research

And development and fiscal incentives. There should be possible synergy for the local supply chain for human and material resources which can benefit from the progress in the oil and gas industry.

J. The Government through all its agencies involved in the enforcement of the Nigerian Content Development should be open to dialogue and communications with stakeholders in the industry.

A healthy relationship will facilitate a more effective implementation. The IOC's and other companies whose agreements are affected by the legislation should be incentivized to apply the legislation; for instance, operators that have vigorously pursued and have evidence of innovation in the core areas of value creation, capacity building, transfer of technology to Nigerians, should be granted tax breaks as incentive for various levels of local content. The discretionary ministerial powers to waive local content requirements spelt out in the Act should be made more transparent or better still transferred to the Governing Council to ensure transparency and avoid corruption.

K. Despite the existence of the NCDF, consideration need to be made to create a more favourable financial climate for the Small and Medium Enterprises (SME's) for example the creation of special loan or funding packages to grow SME's businesses with the availability of tax concessions similar to what IOCs enjoy.

L. The government through its agencies should provide public education on the extent and ways through which the oil revenue could be of benefit to host communities to avoid agitation and unrest in the future because of high expectations not being met.

The government should take up the responsibility of training of its nationals and transfer of technology to enhance capacity building and make succession bid possible, thereby enable the host communities to be fix in the business of exploration and exploitation.

M. Survey of local capabilities to determine existing and potential capabilities so as to fill the gaps between the health and safety capabilities of local workers and the standards for technical and operational integrity set by international oil and gas operators.

The academic curriculum and training should be practical oriented and aligned to industry requirements and capacity building across sectors including NNPC, FIRS and professional services.

N. *The bottom-to-Top approach that concerns the subnational should be adopted in resolving locality problems rather than the top-to-bottom approach.*

The bottom-to-top approach will transform the host communities from hostility to stakeholder ship due to participatory corporate governance and partnership between the investors and the communities where the facilities and the infrastructures are built and operated, leads to harmonious business environment with resultant increase in investment and domestic national income and carries the sub-nationals along in the projects of the oil and gas industry.

O. *The Act should be amended to provide for the compulsory local refining of the Nigerian.*

Hydrocarbon crude oil whether in a private or public Nigerian refinery and adequate crude should be supplied to the refinery at the Nigerian Naira currency rate for their maximum production capacity of the designated barrel of oil per day.

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