Nigerian Oil and Gas Industry Content Development Act 2010: A Would-Have Been Panacea to Nigerian Energy Security Ambition/Subsidy Removal

Dr. Onyemere, John-Kennedy C[1], Chijioke Collins[2]

[1]*Senior Lecturer, Dept. Of Commercial and Industrial Law, Faculty of Law, Abia State University, Uturu, Nigeria*
[2]*Prof. of Law and Dean of Faculty of Law, Abia State University, Uturu, Nigeria*

ABSTRACT

The Nigerian Oil and Gas Industry Content Development Act 2010 is a landmark legislation aimed at enhancing local participation, Nigerian content and the optimal utilization of Nigerian companies, products, services and citizens' in Nigeria's oil and gas industry's activities and operations, to reduce the country's dependence on expatriates, imported refined petroleum products, energy crises and insecurity. This article adopted the doctrinal method of research to analyse the relevant legal materials on the discourse to evaluate the assertion that local refining of petroleum crude in Nigeria by Nigerian owned or Nigerian based refineries is the panacea to Nigeria fuel crises, insecurity and subsidy phenomenon. The paper discovered that despite the expectations from the Nigerian Content Policy, the mandatory local refining of Nigerian petroleum crude in Nigeria by Nigerian owned/based refineries was how-be-it omitted with the resultant crises from crude exportation, refined petroleum product importation and subsidy manipulations crises. The paper concludes that the inclusion of compulsory local refining of Nigerian crude in Nigeria by Nigeria owned/based refineries in Nigerian content Act will build and develop in-country refinery capacity, local participation and employment opportunities, technology transfer, ease Nigeria's dependence on fuel importation and lessen the financial burden of subsidy payments and indeed standout as a panacea to the Nigerian energy security ambition. This paper recommends, the urgent amendment of the Nigerian Content Act by including the compulsory local refining of Nigerian Hydro carbon crude oil in Nigerian refinery without inhibition, free and adequate supply of Nigerian crude oil to the Nigerian refineries for refining at the local currency, strengthening the implementation of the DCSO to end importation of foreign fuel, improve energy security, artificial scarcity, panic buying, increase employment opportunity, reduced cost of petroleum product and improved standard of living of Nigerians.

KEYWORDS

Nigerian Oil and Gas Industry, Local Content, Panacea, Subsidy Removal

I. INTRODUCTION

The Nigerian oil and Gas Industry Content Development Act 2010 is a response to the challenges of continuing expatriate dominion in the industry due to low skilled manpower, inadequate capacity and ill targeted agenda to revamp the dearth in human capital development, enhance linkages with other sectors and end foreign dominance in the industry. The strategy has remained usual, traditional and conservative as the entire nation's problems are pencilled for simultaneous solution using the top-bottom approach and oil and gas industry as a panacea. The basic principles of the local content policy in Nigeria is the security of local investment; promotion of indigenous participation, achievement of technology transfer, employment generation for all categories of Nigerians and the integration of the oil and gas industry into the mainstream economy through local refineries and petrochemical industries. Characteristically, local content policy promotes preferential treatment in training, employment, contract bidding, procurement of goods and services, etcetera in favour of the host country which is believed will generate technology transfer and facilitate the development of the host country's capacities in the critical sectors within a given period of time with attendant reduction in the costs of living of the people and consequent improvement in the quality of life, promotion of increased value addition, domestic product and national income .

Unfortunately, the target of the Nigerian Content policy in the current regime to promote growth, revenue boom, economic development, investments and quick human capital development, the 'big push' to the economy became a euphoria like the erstwhile local content provisions in the defunct regime which provided for a compulsory submission of a detailed local content plan for the recruitment and training of Nigerians for the approval of the minister by a holders of an OPL and OML licence or lease within a 12 months period.

II. HISTORICAL DEVELOPMENT OF THE NIGERIAN CONTENT POLICY

The discovery of natural resource in any country comes with much excitement and expectation due to the anticipated windfalls that naturally accompanies the exploitation of these resources. In nations where there are inadequate in-country skilled human resources and technical know-how, foreign expertise is sought immediately to exploit these resources, which results in foreign dominance of the sector from the onset. As a result of this quagmire, the policymakers of host countries midwife targeted policies such as local content development to harness the benefits of the oil windfall by enacting petroleum laws to govern the sharing of accruable revenue between International Oil Companies (IOCs) and Governments, security policies, protectionism and technology transfer plans, to tackle national social and economic problems etcetera. One of the most commonly adopted strategies is the 'Local Content Requirement'.

These policies aim at generating 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 critical sectors of the economy establishing deliberate plans to take over the governance of oil and gas industry by the nationals both in material resources, goods and services and to maximize foreign direct investment (FDI) potentials.

The structure of the Nigeria critical sectors shows that the sectors are characterized by the foreign dominance and control of the industry. In analysing this seeming irony, it becomes obvious that when weighed vis-à-vis the rich resource, local content expectation and outcome, the circumstance is described as a tragic hopelessness which matches into the paradox of resource-curse syndrome. 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 with various provisions to enforce local content requirements and attract development without including local content clause on the local refining of crude oil in Nigeria in the respective legislations, owing to this omission and the absence of political will-power on the part of the enforcement organs, the core aspirations haven't been achieved.

The foregoing shortcomings triggered the public outcry that hastened the enactment of the Nigerian Content Act 2010 with intent to disconnect and stop the ugly trend of foreign dominance and propel adequate indigenous participation in the oil and gas industry. 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. 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.

III. CONCEPTUAL CLARIFICATIONS

A. Nigerian Oil and Gas Industry

The oil and gas industry constitutes of three complex sectors, namely the Upstream, Midstream, and Downstream. The three distinct sectors jointly play different critical roles in both Nigerian and the global petroleum economics ranging from exploration, production, storage, transportation, and sale of oil and natural gas products. The oil and gas industry in Nigeria faces various challenges, ranging from crude oil theft, illegal refineries and pipeline canalisation, energy transition, low technological advancements, and environmental degradation due to climate change, oil spills, insecurity, moribund refineries, lack of funding, reduced investment and divestments of assets, gas flaring, and subsidy and market volatility. The industry is subject to various regulations, guidelines, policies and protocols, trade policies, laws and regulations governing the import and export of oil and gas products. Notwithstanding, the oil and gas industry is significant to both national and global its development and operations have significant impacts on the local environment and the society.

B. Local Content

Local content requirements (LCRs) is an ancient protective device of powerful expectations; to create jobs at home , train , retrain and transfer technology to the indigenes of the host community or nation so as to enable succession and channel business to home firms rather than foreign firms. Local content requirements are established through legal and institutional frameworks to confer legality and legitimacy to the policy. It creates significant potentials for the respective designs of the local content requirements and formulations.

The legal framework and requirements are either embedded in contractual agreements between governments and companies, in legislations , in bidding requirements as part of the criteria for winning contracts or in regulation and tax regimes that discriminate in favour of local industries .What is trending nowadays in most oil developing resource-rich countries is the insertion of local content provisions into the legal framework of the sector; through legislation, regulations, contracts award and bidding practices. However, if the policy is successful, it has the tendency to create jobs, boost the domestic private sector, facilitate technology transfer and build a competitive local workforce. Often times, local content goals are often unfulfilled and the opportunities are not captured.

If targets are too high, they may either scare away investment or remain unmet as investors accept the fines or find loopholes. If they are too low, the country will not maximize potential linkages. This shows the importance of the evolving local content targets, carefully quantified local content objectives of other sectors enables adaptation and collaboration, because local content can be a key to translating resource investments into sustainable benefits for the local population. Notwithstanding the potential benefit of the local content requirement to emerging economies, the World Trade Organization (WTO)'s agreements and Investment Treaties present an obstacle to the realization of local content goals by prohibiting some types of local content requirements.

There are several international trade disputes already generated in some countries and the potency for more. Countries implementing local content requirements should be aware of the possibility of a challenge to those provisions either through the WTO (state-to-state dispute settlement) or arbitration under the Bilateral Investment Treaties (which is investor-state dispute settlement). While the potential for such actions may be low, they remain a risk depending on the circumstances, and particularly should relations between the state and the investor sour over the course of the investment. It is designed to give its citizens; priority in terms of award of contract, employment opportunity, training and retraining opportunities, entrepreneurship and capacity building etcetera so as to positively add value and impact the national income, gross domestic product and personal income derivatives of the citizens.

It encourages the utilization and participation of citizens in the production activities of the industry. This approach is structured to be traditional and conservative in nature, national socio-economic in agenda, multi-purpose in direction, preferred consideration of the entrepreneurial operators in operation; indigenous goods and services supplied locally, training and employment of nationals etcetera as against its foreign counterpart.

It insists that priority consideration is given to nationals in the award of oil blocks, oil field licences, oil lifting licences , exclusive consideration to indigenous service companies that demonstrate sufficient ownership of equipment, national personnel and capacity to perform such operations, utilization of mandatory national services in the legal , financial institutions and insurance brokers registered in the country and retention of 10% of the revenue accruing in the nations bank account.

C. Local Refining of Crude in Nigeria

Local refining of Nigerian Crude refers to the process of processing Nigerian crude petroleum oil within Nigeria, by Nigerian-owned or Nigerian-based refineries to produce finished petroleum products for domestic use, regional markets and diaspora exportation, instead of exporting crude oil and importing refined petroleum products. It equally can be referred to as in-country conversion of raw crude oil into usable downstream products through fractional distillation, cracking, reforming and treating of hydrocarbon crude. It is antithetical to the

Nigerian's historical system where crude is exported abroad to be refined abroad in a foreign refinery and then imported as finished petroleum products such as petrol, kerosene, diesel, etcetera. Local as used here relates to the use of the term in real economics and legal parlance to mean in-country licensed, regulated refineries carried out by Nigerian owned or Nigerian-based; 'artisanal' or 'kpo-fire' is not inclusive. 'Artisanal' or 'kpo-fire is the small scale local crude refining and subsistent distillation process of stolen crude oil with the use of scrap metals to produce kerosene and petrol for local black markets. It is illegal, un-regulated and unlicensed, unsafe, with attendant severe environmental pollution, farmland destructions and negative health impact and most times death traps is not part of the framework of the formal local refining but can assist to resolve the Nigerian fuel quagmire if harnessed. Local refining of petroleum products in Nigeria can be performed in conventional refineries owned by NNPC Limited with slate plate optimum capacity of 445,000 barrels per day, though in a moribund state for years now. The refining can also be undertaken in a Modular refinery of smaller scale, skid-mounted plants with 1000 to 30,000 barrel per day capacity licensed by NMDPRA to private Nigerian investors to process crude closer to their production site, in the Niger Delta, such as Walter smith in Imo, Duport Midstream in Edo. The Mega Private refineries is another category of refinery with large scale private refining plants that can refine crude oil locally in Nigeria into petroleum products like the Dangote Refinery in Lagos with the capacity of refining slate plate capacity of 650000, barrel per day. The Petroleum Industry Act mandates domestic crude supply obligations, requiring crude oil producers to supply to local refineries in-country on a willing-buyer, willing–seller basis, policy direction and politicking has been the bane on the implementation of this provision. Local refining is the solution to Nigerian's fuel crises and subsidy phenomenon.

D. Panacea

Panacea is used here to explain "a remedy for all ills or difficulties" / an oversimplified, universal solution to complex problems just as Nigerian nation targeted to use the Nigerian content requirement policy to resolve all the perennial socio-economic problems of the country using oil and gas sector alone as a single-sector-driver. It is a one-size-fits-all, like the contractual boilerplate clause; an all-purpose solution for resource management instead of a multi-tier resource mechanism. In social-ecological research, scholars use "panaceas" to critique "overly simplified institutional prescriptions" that claim to solve all resource or governance problems. The assumption that scholars can deduce universal solutions, panaceas to problems of overuse or destruction of resources, rather opts for studying complex, multivariable, cross-scale system. Panacea refers not only to the Greek goddess of healing, but also connotes a remedy for all ills and difficulties.

E. Subsidy Removal

Economically, a subsidy itself is defined by the Organisation for Economic Co-operation and Development (OECD) as "government action that confers advantage on consumers or producers, in order to indirectly supplement their income or lower their costs". The International Monetary Fund (IMF) correspondingly defines subsidies as "current unreciprocated payment that government units make to enterprises on the basis of production activities or quantities/values of goods or services, under-priced and overused. Subsidy removal is "a formal elimination of subvention on products formerly funded". It is a system that enables the customers pay prices below the market rates for good or product they consume. More generally, it is "the deliberate decision of government or institutions to stop disbursement of subvention on products or services previously funded" and "the strategy of allowing the forces of demand and supply to regulate the prices of goods and service. Nigeria's petroleum subsidy was initially a social welfare tool but developed into a system connected to rent-seeking, import reliance, and monetary leakages. By 2022, subsidy payments exceeded $10bn annually. The 2023 removal of fuel subsidy aimed to end fiscal unsustainability, incentivize local refining, and reallocate funds to capital and social spending. On May 29, 2023, President Bola Tinubu at inauguration ground announced 'Fuel subsidy is gone ', that was an ambitious announcement to end an age-long regime that consumed one-third of Nigeria's recurrent expenditure. Though designed as a financial corrective measure to lessen debt, control corruption, and save funds for infrastructure; the unexpected removal activated abrupt price blows, inflation, and welfare losses. The recent blow of hardship is the practical evidence on the macroeconomic and microeconomic effects of the 2023 subsidy removal which reveals that subsidy is not a panacea' measures to mitigate either a short-term hardship or securing long-term gains but local refining is. Subsidy removal is not an end in itself but a transition which can save economic conditions and investment, but without mitigation it widens poverty, inflation, and inequality. The sudden removal of subsidy impacted on the mental health status of primary healthcare workers and community members.

IV. PRINCIPAL PROVISIONS OF THE NIGERIAN CONTENT ACT 2010

A. Local Content Requirement

The Act requires that a minimum of 50% of the total value of goods and services required by oil and gas companies must be procured locally. The Act equally requires 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 industry shall consider Nigerian content which the Nigerian locality value chain a significant culture and practice in the overall project development, management and execution . In line with the compelling principles of the locality project compliance principle, any company, contractor, regulator alliance partners who desires to engage in any activity in the Nigerian oil and gas industry etcetera must be owned by a Nigerian fully or 51% of the company's equity must be owned by a Nigeria. It is in this light that the DCOS is requiring the crude producers in the Nigerian oil and Gas company to supply crude oil and condensates for the local refineries on the basis of supplier and willing buyer basis, the challenge is the enforcement of this golden provision to end the starvation of the local refineries whose full scale operation would have taken Nigeria out of the fuel crises. The Act provides that Nigerian Independent Operators be compulsorily utilized and granted first/priority consideration in the award of oil blocks, oil field licences, oil lifting licences and in all projects for which contract is to be awarded in the Nigerian Oil and Gas industry subject to the fulfilment of specified ministerial conditions. Similar provisions are made in favour of Nigerian indigenous service companies that demonstrate ownership of equipment, Nigerian personnel and capacity to execute the work. The Production Curtailment and Domestic Crude Oil Supply Obligation (PCDCOSOR) Regulations 2023 empowers the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) to enforce crude oil dedication for local refineries and curtailment of production. It mandates crude producers to prioritize domestic supply over exports, using export curtailments as enforcement mechanisms. By virtue of the Domestic Supply Obligation (DSO), the NUPRC allocates a portion of every crude producer's quota specifically to local refiners. The implication is that crude producers cannot export their crude oil unless they have earmarked and fulfilled their allocated domestic supply obligations or face denial of export permits as punishment. The Petroleum Industry Act (PIA) guarantees that prices and supply terms are commercially negotiated terms between the producer and the refiner based on international market prices. There will be no production curtailment; the regulations ensure that producers operate their wells optimally while still adhering strictly to allocated OPEC production quota. The NOGICDA made provision for funding of local companies and indigenous service providers to support indigenous companies in marine logistics, fabrication, gas processing and modular refining.

B. Nigerian Content Plan

The content plan is the deliberate and structure strategy in the Nigerian oil and gas industry driven by law to provide a platform for the utilization of Nigeria, Nigerian professional, service providers, products etcetera without outsourcing. It is planned process through which Nigerians could recover its lost years in the hands of foreign domination arising from in-country capacity, non-utilization of Nigerians or rejection and/or refusal to allow participating meaningfully in the industry. Pursuant to this disposition, oil and gas companies operating in the Nigerian oil and gas industry are required to submit a Nigerian Content Plan to the Nigerian Content Development and Monitoring Board (NCDMB) for approval. The requirement of the submission of the content plan is to assess the compliance rate of the oil and gas companies and ascertain if the plan contains the requisite requirements such as first/priority and exclusive considerations of the Nigerian citizens with regard to any project in the Nigerian oil and gas industry in accordance with the provision of the Act.

C. Employment and Training

The NOGICDA compels the employment, training and re-training of Nigerians in the oil and gas industry because the oil and gas industry is technologically driven and requires top-notch competences and not half-baked mediocre competences. Training and education are classic requirements for the engagement of in-country resources, where there are no trained persons to take up the role requiring utmost specialty, the resultant effect is that the expatriate will be engaged.

In order to overcome this task the NOGICDA 2010 provided that the company who reject a Nigerian due to incapacity shall train such Nigerian to acquire the competence for which he was rejected. To ensure compliance, the Act requires the operators or licence holders alliance partners etcetera to submit to the Board their employment and training plan to ascertain the rates and standard of compliance by the companies. To ensure that Nigerians are employed, in large number the Act limited the company to only 5% percent for expatriates in management position which is subject to the approval of the Board and the Ministry of Internal Affairs for expatriate quota. The challenge we have, regarding section 30 of the Act which provides for the compulsory training of Nigerians rejected for no capacity, is how justiciable, realizable and tangible is this right of compulsory training since there is no check-up provision of safeguard and the provision is akin to the right of education provided in section 18(3) of the Constitution of the Federal Republic of Nigeria 1999, as amended. Secondly, why is the Company only mandated to train upon rejection; why not the Act mandate the companies to train routinely so that Nigerians will be qualified and ready at any time of engagement. I am tempted to align myself with renowned authors and publicists who holds the view that since the said rights are aligned with the chapter two of the Constitution of the Federal Republic of Nigeria 1999, and might be treated as environmental rights which has always been adjudged non justiciable. However, the case of Centre for Oil Pollution Watch (COPW) v Nigeria National Petroleum Corporation inter alia established two significant doctrines, that NGOs' has locus standing to institute public interest Suit for environmental nuisance and that the chapter 2 of the Constitution of the Federal Republic of Nigeria 1999 which ordinarily is non-justiciable becomes justiciable when read together with the provisions of chapter 4 of fundamental rights. This invariably creates constitutional basis for the justifiability of environmental protection and safety rights and has put paid to the fear whether the rights created by Nigerian Content Act is tangible, though the prophecies of what the courts will do and nothing pretentious is still the heartbeat of the law.

D. Technology Transfer

Another cardinal principle of the Act is the promotion of transfer of technology and expertise to Nigerian companies and institutions. The expertise required to access the control of the operation of the Nigerian Oil and Gas industry is alien, expertise which needs to be inculcated in Nigerians; in-capacity has been the major reason for foreign domination in the industry. The Act made a significant provision to ensure that technology from the expatriate is transferred to Nigerians to enable them eventually transit to succession of management of the oil and gas industry in Nigerian. Though these provisions exist, sincere enforcement has been elusive because of the federal government of Nigeria and its agencies' evasion of in-country capacitation as a national priority, achievable through thematic innovations research and development. Leaving technology transfer in the hands of those who will lose their primary source of livelihood and well-being to drive is a mirage. An effective mechanism for the transfer of technology on Nigerians to build and enhance in-country capacity will be by an independently thought out transfer of Technology Agreement with the pedigree of proficient world class oil and gas technology engineering expatriate company for technology transfer engagement purpose only, and not co-opting technology transfer into the portfolio of engagement in an oil and gas exploration licence of the oil and gas companies that has the primary purpose of dominating and remaining relevant to the industry.

E. How Compulsory Local Refining Of Nigerian Crude in the Nogicda 2010 Will Secure Nigeria Energy Ambition

The Petroleum Industry Act 2021 and "Naira-for-Crude" policy are designed to prioritize local refining, pay for crude in naira, and keep more value in the economy, if this provision is enabled by the Nigerian Content Act 2010 requiring all refining of Nigerian crude to be in Nigeria or Nigerian based companies and not elsewhere, the ambition of energy security would have been achieved. Under Domestic Crude Supply Obligation (DCSO), crude producers are mandated to supply local refiners. The benefits of local refining of Nigerian crude oil are enormous.

- The energy safety and security assurances arising from the compulsory local refining of crude oil in Nigeria by Nigerian refinery or Nigerian based refinery will automatically reduce Nigerian dependence on importation of petrol, diesel, and jet fuel which generally gulped foreign exchange earnings and exposed Nigeria to supply shocks. The Act could reduce Nigeria's dependence on imported goods and services, improve the country's balance of payments by inserting the mandatory refining of Nigerian crude locally for both local consumption and exportation.

- Local refining of petroleum crude in Nigeria results in foreign exchange preservation and the cutting of the cost of importing over 40 million liters of gasoline per day . Fuel import bills drain external reserves, drive naira depreciation and create foreign exchange scarcity for other sectors.
- By producing products at home, Nigeria reduces fuel imports, which helps its trade imbalance and currency pressure. The statistics shows that much is lost in terms of revenue on fuel importation.
- The mandatory local refining of Crude oil in Nigerian refinery and/or Nigerian based refineries will engender industrialization and massive job creation. It will enable direct jobs creation in engineering, operations, logistics, and supports downstream industries like plastics, lubricants, and chemicals. The Act could create employment opportunities for Nigerians in the oil and gas industry, move from an extractive mode where the settlors export crude and create value abroad, to building domestic capacity and industrial development in Nigeria.
- The compulsory refining of Nigerian hydro carbon crude oil in Nigerian refinery and/or Nigerian based refineries will enhance value preservation and retention. It has the potentials of capturing more in-country values. Crude oil as feedstock and raw material for finished petroleum products sells at yardstick prices, but refined products of multi-dimensional values of variant uses carry higher margins. Over the years hydrocarbon crude oil were exported out of Nigeria to be refined abroad and subsequently returned into Nigeria as expensive imported finished petroleum products. Mandatory local refining of crude oil in Nigeria by Nigerian refineries and/or Nigerian based refineries is meant to end that cycle of Nigerian energy crises and insecurity. The Act could increase local participation in the oil and gas industry, leading to economic growth and development.
- The refining of hydro carbon crude oil in Nigeria by Nigerian refineries will drastically reduce crude oil theft/transport costs amongst other variables. The Modular refineries near fields of crude oil production can process crude that would otherwise be lost or hard to evacuate through pipeline mechanisms.

F. Effect of Omission of Nigerian Content in Local Refining In the Nogicda 2010

Omitting local refining of Nigerian hydrocarbon crude in the Nigerian Oil and Gas Content Act could have significant consequences, including

- Increased reliance on imported refined petroleum products due to lack of local refining capacity, without local refining, Nigeria would continue to export crude and rely heavily on imported refined products, which could lead to increased costs and vulnerability to global market fluctuations and loss of revenue.
- The exclusion of mandatory local refining of Nigerian local crude in Nigeria in the Nigerian owned refinery or Nigerian based refinery with 51% Nigerian equity has resulted to subsidy removal by different governments with its attendant consequences, fuel scarcity, panic buying of petroleum products, high cost of petroleum products, pressure on Nigerian foreign exchange, economic dependence on foreign refineries, high cost of transportation and difficulties and exacerbating economic challenges.

- The omission of obligatory home-grown refiner and refining of Nigerian hydro carbon crude in Nigeria by a Nigerian owned refinery or Nigerian based refinery with about 51% Nigerian equity triggers petroleum crises and scarcity and consequently, encourage artisanal refining, which is illegal, hazardous to the environment, to users and usages and as well as the absence of proper regulation and oversight, which leads to uneven environmental pollution and health hazards.
- Underdevelopment of local refining transfer of technology capacity on refinery and refining of petroleum products. This has created a gap where foreign companies dominate technical operations in the Nigerian oil and gas industry to the detriment of qualified Nigerians who would have occupied such positions. This has continually hindered the growth of Nigeria's refining sector, limited industrial dependence, lessened the advancement of technological knowledge, local expertise, perpetuating dependence on foreign expertise and foreign refineries and limiting economic opportunities.
- Corruption and serial manipulations are the resultant effects and consequences of the non-inclusion of the obligatory refining of Nigerian crude by the Nigerian owned/Nigerian based refineries created the gap that subsidy is always activated to fill so as to reduce the incidence of high consumers purchasing prices of petroleum products and simultaneously alleviate the suffering of Nigerians which subsidy removal and its serial manipulations without palliatives such as compulsory refining and building/refurbishing, revamping of moribund refineries to operational full capacities breeds
- Non-compliance with international obligations as the omission might also contravene Nigeria's obligations under international agreements, such as the World Trade Organization's (WTO) General Agreement on Tariffs and Trade (GATT) and the Trade-Related Investment Measures (TRIMS) Agreement.

V. CHALLENGES AND LIMITATIONS

The challenges and limitations of the Nigerian Content Act includes the characteristic slow nature of the implementation of the Nigerian Content Act resulting from of weak institutions, inadequate enforcement will-power and the inability of the operators to ensure compliance, lack of infrastructure for the effective operations of the enforcement organs of the Nigerian Content Act to support the development of the oil and gas industry. It equally includes capacity constraints in that Nigerian Companies have inadequate capacity to meet the demands of the oil and gas industry in Nigeria coupled with systemic corruption of the organs and the system.

VI. CONCLUSION/RECOMMENDATIONS

The Nigerian Oil and Gas Industry Content Development Act 2010 would have been a sure panacea to the energy security ambition if the Act had included the local processing of Nigerian crude locally in Nigerian refineries and/or Nigerian based refinery having weighed the benefits of local refining and the hazards the country is passing through due to foreign importation of petroleum products and the joke called subsidy, one will quickly agree that if local refining of crude in Nigeria is made a Nigerian content policy, it would fast track both the repair or refurbishment of the conventional refineries and the building of new ones with diverse configurations that will take care of the country petroleum needs. By including the refining of the Nigerian Crude locally in Nigeria, the Act would have drastically reduced if not completely eliminated Nigeria's dependence on imported refined petroleum products and the misgivings of subsidy, this is because the insertion of the local refining content in the Act, would have resulted in the repair, revival, upgrade and revitalization of the local refineries as the case may be. It might as well, engineer the building of new modern refineries. It would have equally assisted in addressing the hydra-headed clogs on the wheel of the laws by liberalizing the issuance of refinery licensing, construction and maintenance, improve the country's energy security as well as reducing the financial burden of subsidy payments on the economy.

In view of the expressions in this discourse, it is consequently recommended after evaluating the strength and weaknesses of subsidy in Nigeria and its associated myths, that laws and regulations be strengthened to support local refining, ensuring compliance with international standards. There is desperate and urgent need to amend the NOGICDA 2010 to include the mandatory local refining of Nigerian Hydro carbon crude oil in Nigerian refinery or Nigerian-based refinery without any inhibition, there should be uninhibited and adequate supply of crude oil produced in Nigeria to the Nigerian refineries for refining at the local currency rates. More so deliberate investment in local refining infrastructure development and modernization should be encouraged to increase capacity and efficiency and enhance the promotion local content. Encourage the use of local products and services in the oil and gas industry to stimulate economic growth, address environmental concerns, implement measures to prevent pollution and ensure sustainable practices in refining operations.

REFERENCES

[1] Nigeria, Tanzania, Brazil, Gabon, Ghana, Trinidad & Tobago, Wales, United Kingdom, United States of America, Switzerland, Indonesia etcetera.

[2] The aims and objectives of the Nigerian Oil and Gas Industry Content Development Act 2010

[3] An approach that the hydra-headed problems emanating from the locality can be tackled from the centre using the oil and gas industry as the driver, with the belief that, if the problem is resolved at the centre, it will spread to the locality.

[4] Period of twelve months pursuant to the defunct Regulation 26 of the Petroleum (Drilling and Production) Regulations 1969

[5] Tordo, S. and others ibid; Gene M.G. 'The Theory of Dynamic Content Protection and Content Preference', [1987] 96 Quarterly Journal of Economics, No. 4, 583

[6] Limi, A. 'Did Botswana Escape from the Resource Curse?' [2006] African Development International Monetary Funds, Working Paper WP/06/138 and Sachs and Warmers, 'the Big Push, Natural Resources Booms and Growth', Journal of Development Economics (1999)59 (1) 43-76.

[7] Ibid, n 4 and similarly, paragraph 38 of Schedule 1 of the Petroleum Act 1969 provides that Nigerians in the managerial, professional and supervisory grades in connection with the lease must be 75% of total number of staff within 10 years of the grant of OML and that Nigerian in any one grade must not be less that 60%

of the total workforce and all skilled, semi-skilled and unskilled workers must be citizens of Nigeria.

[8] Section 7 of NOGICDA 2010

[9] ibid

[10] Now renamed Petroleum Prospecting Licence (PPL) by virtue of the extant PIA 2021

[11] Now renamed Petroleum Mining Lease (PML) by virtue of the extant PIA 2021 regime

[12] Armah and Torku, 'Are Nigeria's Current Policies Sufficient to Avoid the Occurrence of the Resource Curse'? In N. Apt, Position Nigeria in the Global Context (Forthcoming) Nigeria, IFRA Publishers 2014, 7; Nwapi, C, ibid

[13] Tordo S. and others National Oil and Companies and Value Creation, Washington, D.C, World Bank Publications 2011, 24

[14] Tordo and others, Local Content Policies in the Oil and Gas Sector, Washington, D.C., The World Bank Study Series Publications (2013)1-5; Tordo, S. and others. ibid

[15] Now renamed Settlors pursuant to section 318, which is the interpretation section of the PIA 2021

[16] Ado, R., 'Local Content Policy and the WTO Rules of Trade-Related Investment Measures (TRIMS): The Pros and Cons', International Journal of Business and Management Studies, (2013)137-146. Local Content Policy is used interchangeably in this article with Local Content Requirement.

[17] Tordo, S. and others, ibid 11; Tordo, S. and others, ibid, n 11

[18] Nwapi, C., 'Defining the Local in Local Content Requirements in the Oil and Gas and Mining Sectors for Sustainable National and Sub-national Economic Development in Developing Countries', (2015) Paper Presented at the 2015 Law and Development Conference, New Orleans , USA.; see also sections, 49,50,51, 52 and 53 of the Nigerian Oil and Gas Industry Content Development Act 2010.

[19] Cluster services include the various professional support services relied upon by the transportation and ancillary services, the oil and gas bunkering and cluster services, port industry, shipping and ancillary services, offshore services, ship building and ship repairs, marine services to facilitate regulatory compliance, competitive edge and operational efficiency, etcetera.

[20] Michael, Ross and others, 'The Political Economy of Resource Curse World Politics, University of California Press (1999) 51(2)297-322; Karl T.L. 'The Paradox of Plenty: Oil Boom and Petro-States', Studies in International Political Economy, Berkeley, University of California Press (1997) 342; Jeffrey D, Sachs and Others, 'National Resource Abundance and Economic Growth and Development', Discussion Paper (1995) (No. 517a), Cambridge Harvard Institute for International Development, 97; Michael D. S, 'Winners and Losers: 'How Sector Shape the Developmental Prospects of States', I Ithaca N.Y. Cornel University Press (1994)272.

[21] Petroleum Act 1969 and the Petroleum (Drilling and Production) Regulations, Industrial Training Fund Act 1971; Petroleum Technology Development Fund 1973; the National Office of Technology Acquisition Act 1979 and the Coastal and Inland Shipping (Cabotage) Act, 2003.

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

[23] Section 103, ibid, n 15

A.M. Esteves, and M.A. Barclay, 'Enhancing the Benefits of Local Content: Integrating Social and Economic Impact Assessment into Procurement Strategies' Journal Impact Assessment and Project Appraisal (2011) 29(3)201-215.

[24] Tordo and others ibid and Tordo, S. ibid, n and others ibid; Warner, M. 'Local Content in Procurement: Creating Local Jobs and Competitive Domestic Industries in Supply Chains', London Routledge (2011) 17-34 ebook, https://doi.org/10.4324/9781351278089; Veloso, F. M. 'Understanding Local Content Decision: Economic Analysis and Application to the Automotive Industry' Journal of Regional Science, (2006)46(4), 747-772.

[25] Part IV of the PIA 2021

[26] Sections 7, 8, 32, 68-76, 81 of the PIA 2021

[27] U.P. Adiela, 'Oil Exploration and Production in Nigeria: From Bottom to Top and Beyond', An Inaugural Lecture, Series 83, Rivers State University, Port Harcourt, (2022) Series No. 83, Pp 55-62

[28] Ibid, p. 63

[29] ibid

[30] N. Musa, 'Analysis of Crude Oil Market Volatility and Macroeconomic Conditions: Empirical Evidence From Nigeria', Review of Business and Economics Studies (2024) 11(4) 61-71; G.P. Danladi, 'Oil Price Volatility and Economic Growth in Nigeria: Evidence From ARCH and GARCH Models', Elicit Journal of Economics and Management Studies (2026) 2(1) 37-60

[31] Nigerian Upstream Petroleum Commercial Regulations 2025; Nigerian Upstream Petroleum Safety Regulations 2024; the Acreage Management and Petroleum (Drilling and Production) Regulations; Nigerian Upstream Petroleum Environmental Regulations 2022; Nigerian Upstream Petroleum Environmental Remediation Regulations 2025; Gas Flaring, Venting and Methane Emission (Prevention of Waste and Pollution) Regulations 2023; Nigerian Upstream Petroleum (Assignment of Interest) Regulations 2024; Production Curtailment and Domestic Oil Supply Obligation Regulations 2023; frontier Basins Exploration Administration Regulations 2023; Significant Crude Oil and Gas Discovery Regulations 2023; Nigerian Upstream Petroleum Unitization Regulations 2023; Nigerian Upstream Petroleum Host Communities Development Regulations (NUPHCDR) 2022; Nigerian Midstream Downstream Petroleum Host Communities Development Regulations (NMDPHCDR) 2023; Petroleum Licensing Round Regulations 2022; Petroleum Royalty Regulations 2022; Petroleum Conversion and Renewal Regulations 2022, Nigerian Upstream Decommissioning and Abandonment Regulations 2026 etcetera

[32] Guideline for the Release of Staff in Nigeria Oil and Gas Industry based of Regulation 15A made under the power of the Minister of Petroleum Resources pursuant to section 9 of the Petroleum Act 1969 and section 3 of the Petroleum Industry Act 2021. This Guideline generated two contradictory decisions in two cases before court of coordinate jurisdiction between 2021 and 2022; Design, Construction, and Operation of Oil and Gas Production Facilities 2023; Guidelines for Flare Gas Measurement, Data Management & Reporting Obligations 2018; Guidelines for the Implementation of Risk-Based Inspection in the Nigerian Oil and Gas Industry 2020; Safety Case Guidelines for Oil and Gas Facilities and Guidelines for Work at Height and Confined Space Entry 2020.

[33] M. O. Omozue, E.T. Kore-Okiti, E. Okwuokei, 'Assessing the Right of Sustainable Environmental Development in Nigeria', International Research Journal of Multidisciplinary Scope (2024) 5(3) 865-878"
[34] Sections 10(1)(1)(b), 28 and 30 of NOGICDA 2010
[35] ibid
[36] Sections 31, 43-47 of NOGICDA 2010
[37] Bryan A.G., Black's Law Dictionary 7th Edition, p. 323 defined legality as right created and recognized by law
[38] Mineral Oil Ordinance 1894, 1914; Petroleum (Drilling and Production) Regulation made pursuant to Petroleum Act1969; section 1 (1) to (3) Petroleum Act 1969 saved pursuant to section 2(b) of section 310 of PIA 2021
[39] Arts 10 and 15 of Law 12.351/2010 which modified Brazil Petroleum Law 9.478/1997
[40] Stanislaw L, 'The Petroleum Sector Value Chain' Silvana Tordo, Brandon S Tracy & Noora Arfa (eds.), National Oil Companies and Value Chain, World Bank Working Paper No. 218, 2011, pp. 8-9 available at:<http://siteresources.worldbank.org/INTOGMC/Resources/9780821388310.pdf>:WTI Advisor, Local Content Requirements and the Green Economy, Paper presented at the Adhoc Expert Group Meeting on Domestic Requirements and Support Measures in Green Sectors: Economic and Environmental Effectiveness and Implications for Trade, 13-14 June 2013 Salle XXI, Palais des Nations Geneva, p. 7 available at http://unctad,org.meetings/en/Contribution/DITC_TED_13062013_ Study_ WTI.pdf:
[41] Local Content Requirement generated State-State dispute arose between Canada and India based on alleged default of the World Trade Agreement
[42] Arts 2.1 and 2.2 of the Trade Related Investment Measures and Art. III: 8(a) of the World Trade Agreement (GATT 1994
[43] In a WTO dispute on LCR 'DS412' between Japan and Canada, Japan alleged that Canada's use of LCR was in breach of Art III: 8(a) of GATT and TRIMS agreement. Art III: 8(a) provides, that the Article shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of products purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods for commercial sale. Canada argued that its program was consistent with Art III: 8(a) because the LCRs have environmental objective and were not for profit, WTO Arbitration on May 6, 2013 ruled agreeing with Japan. Similarly in DS 456 U.S Feb. 6, 2013 started a WTO, LCR case against India under the Jawaharial Nehru National Solar Mission (NSM) for solar modules claiming that the program is inconsistent with GATT and TRIMS agreements, no decision has been issued yet. It is notable to highlight some of the WTO provisions that may apply to LCRs
[44] Section 3 and 10 NOGICDA 2010
[45] Section 12, ibid
[46] Section 28, ibid
[47] Section 3(1), ibid
[48] Section 51, ibid
[49] Section 52, ibid
[50] Section 49, ibid

[51] Pursuant to section 318 of the PIA 2021 refers crude to be petroleum, which is in liquid conditions upon production from a reservoir either in its natural state or after the extraction of water, sand or other foreign substances from it, but before any of such oil has been refined or otherwise treated, other than oil extracted by destructive distillation from coal, bituminous shales or other stratified deposits

[52] The main feedstock of Nigerian crude is typically grades of Bonny Light, Forcados, Escravos etcetera.

[53] Local refinery, Nigerian-owned refinery or Nigerian-based refinery must be a company formed and registered in Nigeria under the Company laws of Nigeria, with not less than 51% equity shares owned by Nigerians. The 51% equity status is the parameter for determining if a refinery or a company is local or foreign.

[54] The finished petroleum products include the PMS/Petrol, AGO/Diesel, DPK/Jet Fuel, LPG, Fuel oil, bitumen and petrochemical feed-stocks. The exact slate depends on the refinery configuration and the crude type.

[55] PMS/Petrol, AGO/Diesel, DPK/Jet Fuel, LPG, Fuel oil, bitumen and petrochemical feed-stocks

[56] O.L. Bebeteidoh, S. Kometa, K. Pazouki and R. Norman, 'Sustained Impact of the Activities of Local Crude Oil Refiners on Their Host Communities', Heliyon Cell Press Journal, Elsevier (2020) 6(6)DOI:doi.org

[57] O.L. Bebeteidoh, S. Kometa, K. Pazouki and R. Norman, ibid.

[58] I.M. Osebor, 'Harnessing the Advantages of Local Crude Oil Refinery to Solve the Fuel Cruses in Nigeria', NJPS (2024) 3(1) 203-215; K. Nwajiaku-Dahou and Networks, 'The Socio-Economic and Public Health Implications of Artisanal Crude Oil Refining in South-South States of Nigeria', International Journal of Research and Innovation in Social Sciences (2024)1

[59] Port Harcourt Refineries I and II, Warri and Kaduna refineries

[60] Seems to be the largest single train refinery in the world and designed to meet most of Nigeria's fuel demand locally.

[61] Section 109 of the PIA 2021

[62] Domestic Crude Supply Obligation (DCSO) pursuant to section 109(1) of the PIA 2021 and Regs. 9(1), 17(1) and 18(1) of PCDCOSOR 2023

[63] In the first quarter of 2026, 61.9Million barrels were allocated to local refiners but only 28.5million barrels were supplied in spite of the ingenious PIA provision of Naira-for –crude policy designed to priortise local refining, pay for crude in Naira and keep more value in the economy

[64] B. Naanen and P. Tolani, 'Private Gain Public Disaster: Social Context of Illegal Oil Bunkering and Artisanal Refining in the Niger Delta Port Harcourt', Niger Delta and Environmental Relief Foundation Pub, Google Scholar (2014)

[65] E. Ostrom, & M. Cox, 'Moving Beyond Panaceas: A Multi-Tiered Diagnostic Approach for Social-Ecological Analysis', Environmental Conservation, (2010). 37(1), 1–13

[66] E. Ostrom, & M. Cox, ibid.

[67] E. Ostrom, 'A Diagnostic Approach for Going Beyond Panaceas', Proceedings of the National Academy of Sciences (2007) 104(39) 15181-15187. This is also indexed on PubMed.

[68] B. Vieira et al, 'Regulatory Experimentation as a Panacea in Emerging Markets: The Brazilian Central Bank's Approach to Financial Innovation Through a Regulatory Sandbox', Cambridge University Press(2025), published online 10,

December 2025; L.C. Dos Anjos and P. Leurquin, 'Regulatory Experimentation as a Panacea in Emerging Markets: The Brazilian Central Bank's Approach to Financial Innovation Through a Regulatory Sandbox', Cambridge Forum on AI: Law and Governance, (2025) 1(41) 1-14

[69] Data 2025 update IMF Working paper WP/2025/270
A. Majekodunmi, 'The Political Economy of Fuel Subsidy Removal in Nigeria', Journal of Management and Social Sciences Research (2013) academic.edu

[70] E.G Udo and O.M. Akpan, 'Fuel Subsidy Removal and Welfare of Residents in Niger Delta Region of Nigeria', International Journal of Research and Innovation in Social Science (2025); O. Ajuwon and K.J. Abiodun, 'Impact of Fuel Subsidy Removal on the Cost of Living in Nigeria', Journal of Smart Economic Growth (2026) 10(3) 77-116

[71] N.J and A. Aregbesola, 'Impact of Subsidy Removal on School Administration, Teachers, job Performance and Students', Academic Performance in Secondary Schools in Nigeria', International Journal on Integrated Education(2023) 6(9)21

[72] Vanguard News, 'Fuel Subsidy is gone', Tinubu, and May, 29 2023; Punch, 'Flashback: Subsidy is gone', Tinubu declares. The punchng.com (3837126137271736148); Fuel subsidy is gone- www.vanguardngr.com, May 29, 2023

[73] N.O. Bashir and R.A. Kuye, 'Post Fuel Subsidy Removal in a High Inflation Environment: Lesson for Monetary- Fiscal Policy Mix Coordination in Nigeria', Working/Discussion Paper listed on IDEAS RePEc (2025)

[74] D.T. Diri, D.E. Chibuogwu, E.C. Nwosu and E.E. Otoibhili, 'Fuel Subsidy Removal and Fiscal Reallocation in Nigeria(2023-2025): Implication for Economic Growth', International Journal of Research and Scientific Innovation (2026)13(2)321-328

[75] M. Shuaibu, 'Poverty Rate Jumps to 63% after Subsidy Removal in Nigeria' Policy Study presented at Agora Policy (2025)

[76] Association of Resident Doctors, University College Hospital, Ibadan, 'Early Impacts of Fuel Subsidy on Mental Health Status of Primary Healthcare Workers and Community Members in Nigeria: A Cross- Sectional Study, PubMed (2024).

[77] Section 41(2) of NOGICDA 2010

[78] Section 2 of NOGICDA 2010

[79] Sections 3(1) and 10(1) of NOGICDA 2010, NOGICDA 2010 did not define a Nigerian Company to be 51% equity ownership but a cross reference to section 394(3)(f)CAMA 2020 clarifies same.

[80] Domestic Crude Oil Supply (DCOS)

[81] Section 109(1) and (4)(a) and (b) of PIA 2021

[82] Section 3(1) of NOGICDA 2010

[83] Section 3(2) of NOGICDA 2010

[84] Made pursuant to section 109(2) of PIA 2021

[85] Regs. 16(1), 17(1) and 18(1) of Production Curtailment and Domestic Crude Oil Supply Obligation (PCDCOSOR) Regulations 2023

[86] Regs. 9(1)(2)(b), 16(1), 17(1) and 18(1)Ibid

[87] Regs. 14(1) and15 of Production Curtailment and Domestic Crude Oil Supply Obligation (PCDCOSOR) Regulations 2023

[88] Reg. 9(1) of Production Curtailment and Domestic Crude Oil Supply Obligation (PCDCOSOR) Regulations 2023

[89] Section 109(2) of PIA 2021 and Reg. 10(5) of Production Curtailment and Domestic Crude Oil Supply Obligation (PCDCOSOR) Regulations 2023
[90] Regs. 6(1) and (71) ibid
[91] Section 104 of NOGICDA 2010
[92] Section 7 of NOGICDA 2010
[93] Sections 10(1)(a) 12 and 15 of NOGICDA 2010
[94] Section10(1)(b), 28(1) of NOGICDA 2010
[95] Section 30 of NOGICDA 2010
[96] Section 30, ibid
[97] NOGICDA 2010; Nigerian Oil and Gas Industry Content Development Act 2010; Nigerian Content Act 2010 means the same in this article
[98] Section 29 of NOGICDA 2010
[99] Section 32 NOGICDA 2010
[100] Sections 32 and 33 NOGICDA 2010
[101] NOGICDA 2010
[102] Chapter II of the CFRN 1999 which provides for the fundamental objectives and directive principles of state policy which has been adjudged as non-justiciable.
[103] U.U. Chukwumaeze Socio-Economic and Cultural Rights- The Panacea to threats on Prospects of Successful Democracy in Nigeria' in U.U. Chukwumaeze and S. Erugo In Search of Legal Scholarship – Essays in Honour of Ernest Ojukwu, Abia State University Law Center (2001) 40
[104] N.O. Obiaraeri Human Rights in Nigeria, Millennium Perspective, Owerri, Perfect Concepts (2001)1-23
[105] (2019) 5 NWLR (Pt. 1665) 81; (2021) 2 Carbon and Climate Law Review 158
[106] Sections 16(1) (a) to (d), (2) (b) (d) and 20 CFRN 1999 as Amended.
[107] O. W. Holmes Jr., 'The Path of the Law', Harvard Law Review (1897) 10(8) 457-478
[108] Sections 43-46 of NOGICDA 2010
[109] Section 31 of NOGICDA 2010
[110] Section 31 of NOGICDA 2010
[111] Y.S.A. Matsuda and H. Kmura, 'On the Role of Technical Cooperation international Technology Transfers', Journal of International Development (2012)24(3)316-340, technical assistance and Cooperation agreements are the top channels for technology transfers; UNIDO Guidelines for Evaluation of Transfer of Technology Agreements 09401.en, Chpts I-V; K. Gronhaug,'Knowledge Transfer: The Case of Norwegian Technology Agreements', Omega Journal (1989) 17(3)273-279; B.O. Oyedoyin et al, 'Technology Transfer Process in Nigeria: From R&D Outputs to Entreprenurship', International Journal of Technology Transfer and Commercialisation (IJTTC) (2013) 12(4)13; I.M.-Z. S. Chelala, 'Trade Agreements and International Technology Transfer', Working Paper University of Gottingen (2020) 1
[112] Section 109(1) of the PIA 2021
[113] Nigerian Oil and Gas Industry Content Development Act 2010
[114] A.O. Adeniran and M.B. Yusuf, 'Fuel Importation as a Primary Forex demand driver and exchange rate instability', European Journal of Business and Innovation Research (2021) 14(1) 180-189

[115] Nigeria spent N2.01tn 2020, 4.556tn in 2021; 7.71tn in 2023 to 7.51tn in 2024, NBS Trade Data- Annual Import Bill trends, ‘National Bureau of Statistics, Petrol import Bill trends 2020-2024 cited in Punch.
[116] ibid, n 112
[117] Nigerian Oil and Gas Industry Content Development Act 2010
[118] ibid