

EVALUATION OF THE LOCAL CONTENT ACT 2010*

Abstract

The Oil and Gas Industry in Nigeria accounts for over 70% of Nigeria's foreign exchange earnings, and Oil revenue contributes to the developmental projects of government at all levels. The major players of the Nigerian Oil and Gas Industry are the multinational oil companies operating in Nigeria, and the Federal Government. This has created problems of foreign domination of the Oil and Gas Industry which has led to huge capital flight from the country, unlimited inflow of expatriates and unemployment in Nigeria. In an attempt to address this problem, the Government enacted The Nigerian Oil and Gas Industry Content Development Act (Local Content Act) 2010, which is aimed at promoting indigenous participation in the Nigerian Oil and Gas Industry, and protecting the economic and social wellbeing of those engaged in the Oil and Gas Industry. Despite the promulgation of this Act, the Law has not fully achieved its objectives, and this is mainly due to the absence of capital, the quality of Nigerian engineers, and lack of proper enforcement of the laws by the regulatory agencies. This paper is aimed at analyzing the Local Content Act, the benefits of the Act to the Nigerian economy, and the challenges to the enforcement of the provisions of the Act. The paper will also make recommendations on how the objectives of the Act can be fully achieved in the Oil and Gas Industry in Nigeria.

INTRODUCTION

The Federal Government in an attempt to ensure that Nigeria assumes control of the exploration, exploitation and production activities in the Oil and Gas sector promulgated the Nigerian Oil and Gas Industry Content Development (Local Content Act) 2010. This law is aimed at ensuring that Nigeria derives maximum benefits from the Oil and Gas Industry through optimal use of local competences and resources. The Law is also aimed at reducing foreign domination of the Oil and Gas Industry in Nigeria, as well as ensuring that Nigeria is no longer a junior partner in the joint venture arrangements entered into with International Oil Companies (IOCs).

The Oil and Gas Industry in Nigeria accounts for over 70% of Nigeria's foreign exchange earnings, and contributes to the developmental projects and programmes of the Federal, state and Local government. Despite the huge revenue from the Oil and Gas Industry, the people still suffer from abject poverty, unemployment, hunger, sickness and diseases. This is as a result of the government's inability to transform the oil wealth into better welfare and quality of life for the people, and again, because over 90% of the yearly earnings from Oil and Gas escape the domestic economy as capital flight.

Although the Local Content Act, which was enacted to encourage indigenous participation in the Oil and Gas industry in Nigeria, and the reduction of capital flight from the Nigerian

* AMADI-HARRY Nancy, Ph.D, Faculty of Law, Madonna University Okija. amadinancy26@yahoo.com

economy amongst others has recorded some success. However, there are major impediments to the realization of the full objectives of this law, and this is the focus of this study. This research is therefore aimed at analyzing the Local Content Act, its benefits to the Nigerian economy, and the challenges to the enforcement of the provisions of this Act. Finally, this paper will make recommendations on how the objectives of this Act can be fully achieved.

The Nigerian Oil and Gas Industry Content Development Act 2010

The Nigerian Oil and Gas Industry Content Development Act were enacted in 2010 by the Federal Government. The objectives of the Act are to increase indigenous participation in the Oil and Gas Industry in Nigeria, as well as improving the economic and social wellbeing of those engaged in operating in the Oil and Gas Industry.

The Act- defines the Oil and Gas Industry as “all activities connected with the exploration, development, exploitation, transportation and sale of Nigeria’s Oil and Gas resources including upstream and downstream Oil and Gas operations¹. By Section 2 of the Act² - any company or organization that intends to operate in the Oil and Gas Industry in Nigeria, shall consider Nigerian content as an important element of their overall project development and management philosophy for project execution.

The Act defined Nigerian Content as- the quantum of composite value added to or created in Nigeria through the utilization of Nigerian resources and services in the petroleum industry resulting in the development of indigenous capability without compromising quality, health, safety and environmental standards³. It further defined a Nigerian company- as a company formed and registered in Nigeria in accordance with the provisions of the Companies and Allied Matters Act with not less than 51% equity shares by Nigerians⁴.

The Local Content Act is clearly aimed at empowering Nigerians to participate in the Nigerian Oil and Gas Industry. In fulfilling this objective, it established the Nigerian Content Development and Monitoring Board (NCMB)⁵, located at Yenegoa, Bayelsa State, which is the regulatory body responsible for monitoring, coordinating and implementing the provisions of the Local Content Act. The NCMB has also been given the mandate to certify companies to ensure compliance with the provisions of the Act.

To achieve the main purpose of the Act, which is to encourage indigenous participation in the Oil and Gas Industry, Section 3(1)⁶ – provides that Nigerian independent operators will be given first consideration in the award of oil blocks, oil field license, oil lifting license and all projects for which contracts are to be awarded in the Nigerian Oil and Gas Industry.

¹ The Nigerian Oil and Gas Industry Content Development Act 2010. This Act shall hereinafter be referred to as the Local Content Act in this research work.

² Section 2 *Ibid*

³ Section 106 *Ibid*

⁴ *Ibid*

⁵ Section 4 *Ibid*

⁶ Section 3 (1) *Ibid*

Section 3(2)⁷- provides that there shall be exclusive consideration to Nigerian indigenous service companies that demonstrate ownership of equipment, Nigerian personnel, and capacity to execute such work to bid on land and swamp operating areas of the Nigerian Oil and Gas industry for contracts and services contained in the schedule to this Act. It further provides in Section 3(3)⁸ that compliance with the provisions of this Act and promotion of Nigerian content development shall be a major criterion for the award of licenses, permits, and any other interest in bidding for oil exploration, production, transportation and development or any other operations in Nigerian Oil and Gas Industry.

Operators in the Oil and Gas industry are defined under the Act as the “Nigeria National Petroleum Company (NNPC), its Subsidiaries and joint venture partners and any Nigerian, foreign or International Oil and Gas Company operating in the Nigerian Oil and Gas industry under any petroleum arrangement.

BENEFITS OF THE LOCAL CONTENT ACT 2010

The local Content Act is a veritable economic policy that encourages the use of indigenous resources in the Nigerian Oil and Gas Industry⁹. Clearly, the Law is aimed at achieving the following:

1. Reduction of Capital Flight from Nigeria
2. Human Capital Development
3. Empowerment/Employment
4. Limiting the influx of foreigners into the Nigerian Oil and Gas Industry amongst others.

This paper will discuss some of the benefits of the Local Content Act

1. Reduction of Capital Flight from Nigeria

The major Oil Servicing Companies operating in Nigeria, such as Saipem, Schlumberger, Weatherford, Halliburton etcetera, are either subsidiaries of the Oil Majors- Shell, Agip, total-Elf, Chevron, Exxon Mobil etcetera, or of the same countries with them. These subsidiaries service the Multinational Companies and carry out most of their jobs and as a result, there is a lot of connivance and inflation of contract values. This does not only lead to huge capital flight, but also contributes to the high cost of production per barrel of crude oil in Nigeria.

With the introduction of the Local Content Act, operators in the Nigerian Oil and Gas industry are mandated to use Nigerian Indigenous Service Companies in carrying out their operations.

By Section 7¹⁰- Operators are required to deliver a Nigerian Content Plan to the board. This plan must demonstrate compliance with the Nigerian Content requirement when bidding for not only licenses, permits, or blocks but for any project or activity ranging from the Front End

⁷ Section 3(2) *Ibid*

⁸ Section 3 (3) *Ibid*

⁹ Jegede, O. Overview of Nigerian Local Content Law in Oil and Gas Industry in Nigeria in <https://www.monday.com> 23rd December 2020. Accessed 20th May 2021.

¹⁰ Section 7 *Ibid*

Engineering Design (FEED), and Detailed Engineering Services, Fabrication and Construction, Materials and Procurement, Well and Drilling Services/Petroleum Technology, exploration, Subsurface, Petroleum Engineering, Seismic among others in the Oil and Gas Industry. The Board however, reserves the right to review and assess the Content Plan and if satisfied that the plan complies with the provisions of the Act, will issue a certificate of Authorization to the operator to proceed with the plan.

By Section 10(1)¹¹- a plan shall contain provisions intended to ensure that

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

The operators are equally required to submit a Content Plan, which shall contain a detailed plan, satisfactory to the Board, setting out how the operator and their contractors will give first consideration to Nigerian goods and services, including specific examples showing how first consideration is considered and assessed by the operator in its evaluation of bids for goods and services required by the project¹². By Section 34¹³- all projects or contracts whose total budget exceeds \$100 million (USD), shall contain a “labour clause” mandating the use of a minimum percentage of Nigerian Labour in specific cadres as may be stipulated by the board.

Furthermore, international or multinational companies working through their Nigerian subsidiaries shall demonstrate that a minimum of 50% of the equipment deployed for execution of work is owned by the Nigerian Subsidiaries.¹⁴ The implication is that every international and multinational company in Nigeria must show that 50% of the equipment intended to be used to execute a project in Nigeria is owned by their Nigerian subsidiaries who will execute the project. These provisions are geared towards encouraging indigenous participation in Nigerian Oil and Gas industry and reduction of capital flight from Nigeria.

2. Human Capital Development

Most jobs in the Oil and Gas industry in Nigeria are being handled by expatriates. This is due to the neglect of human capital development, which has made Nigerians unfit for most positions and jobs in the Oil and Gas industry. The Local Content Act thus presents Nigerians the opportunity to acquire the requisite training, skills and knowledge that would enable them take positions and jobs that had hitherto, been handled by expatriates. The Act strongly advocates for training and employment of Nigerians in the Oil and Gas industry. Section 10 (1) (b)¹⁵ of the Act provides that- Nigerians shall be given first consideration for training and employment in the work programme for which the content plan was submitted.

¹¹ Section 10 (1) *Ibid*

¹² Section 12 *Ibid*

¹³ Section 34 *Ibid*

¹⁴ Section 41 (2) *Ibid*

¹⁵ Section 10 (1) (b) *Ibid*

By Section 30¹⁶ - Where Nigerians are not employed because of their lack of training, the operator shall ensure, to the satisfaction of the Board, that every reasonable effort is made within a reasonable time to supply such training locally or elsewhere and such effort and the procedure for its execution shall be contained in the operator's employment and training plan. Section 31¹⁷—provides that for each of its operations, the operator shall submit to the Board a succession plan for any position not held by Nigerians and the plan shall provide for Nigerians to understudy each incumbent expatriate for a maximum period of four years and at the end of the four year period the position shall become Nigerianised.

The operators are further mandated to submit annually, a plan satisfactory to the Board, setting out a programme of planned initiatives aimed at promoting the effective transfer of technologies from the operator and alliance partners to Nigerian individuals and companies¹⁸. These provisions are aimed at enhancing human capital development and training Nigerians to acquire relevant skills in the Oil and Gas industry.

3. Empowerment/Employment

The Local Content Act provides for indigenous participation in the Nigerian Oil and Gas industry, and strongly advocates for employment of Nigerians in the Oil industry. The Act states that Nigerians shall be given first consideration for employment and training in any project executed by any operator or project promoter in the Nigerian Oil and Gas industry¹⁹. It also mandated all operators or project promoters to maintain a reasonable number of personnel from areas within it's significant operations²⁰.

Furthermore, operators and companies operating in the Nigerian Oil and Gas industry are to employ only Nigerians in their junior and intermediate cadre or any other corresponding grades designated by the operator or company²¹.

In addition, all operators, project promoters, alliance partners and Nigerian indigenous companies engaged in any form of business, operations or contract in the Nigerian Oil and Gas industry, shall insure all insurable risks related to its Oil and Gas business, operations or contracts with an insurance company, through an insurance broker registered in Nigeria under the provisions of the Insurance Act²².

Similarly, all operators, contractors, and other entities engaged in any operation, business or transaction in the Nigerian Oil and Gas industry requiring legal services shall retain only the services of a Nigerian legal practitioner or a firm of Nigerian legal practitioners whose office is located in Nigeria²³. Again, the operators, contractors and any other entity engaged in any

¹⁶ *Section 30 Ibid*

¹⁷ *Section 31 Ibid*

¹⁸ *Section 44 Ibid*

¹⁹ *Section 28 Ibid*

²⁰ *Section 28 (2) Ibid*

²¹ *Section 35 Ibid*

²² *Section 49 Ibid*

²³ *Section 51 Ibid*

operation, business or transaction in the Nigerian Oil and Gas industry requiring financial services shall retain only the services of Nigerian financial institutions or organizations, except where to the satisfaction of the Board, this is impracticable²⁴. Operators, contractors and entities engaged in the Nigerian Oil and Gas industry are equally mandated to carry out all fabrication and welding activities in the country²⁵.

These provisions are clearly aimed at empowering Nigerians to participate in the Oil and gas Industry. Although some prominent Nigerians own Oil producing companies, the majority of Nigerians are in the servicing industry, particularly, in the construction, catering and technical support services. With the introduction of the Act, Nigerians have been given better opportunities for empowerment and employment in the Oil and Gas industry.

4. Reducing The Influx Of Expatriates

Both the Multinational and the Oil Servicing Companies operating in Nigeria come to the country with numerous expatriates on the excuse that they possess special skills which Nigerians do not possess. These companies have their expatriate quota which they violate at will. At their head offices, expatriates are seen occupying different positions including working as material managers, transport managers etcetera. They use Nigeria to solve their unemployment problems by bringing in welders, mechanics, filters and even carpenters as experts. The Local Content Act is therefore timely, as it is aimed at controlling the influx of expatriates into the country.

The Act provides that an operator or project promoter for each of its operations may retain a maximum of five percent of management positions as may be approved by the Board as expatriate positions to take care of investor's interest²⁶. The operators are also required to make application, and receive the approval of the Board before making any application for expatriate quota to the Ministry of Internal Affairs or any other agency or ministry of the Federal Government²⁷.

These provisions are aimed at controlling and regulating the infiltration of expatriates in the Nigerian Oil and Gas industry. It is pertinent for us to point out that the Local Content Act does not intend to prevent foreigners from taking an interest or investing in the Nigerian Oil and Gas industry, but only insist that they must do so subject to the fulfillment of the conditions stipulated in the Act.

While we agree that the provisions of the Act are laudable and aimed at encouraging Nigerian composition in the upstream sector of the Oil and Gas industry, there are still major clogs or impediments to the realization of the objectives of the Act. This paper will discuss some of the challenges to the implementation of the provisions of the Local Content Act.

²⁴ Section 52 *Ibid*

²⁵ Section 53 *Ibid*

²⁶ Section 32 *Ibid*

²⁷ Section 33 *Ibid*

CHALLENGES OF THE LOCAL CONTENT ACT 2010

1. Problems of Acquisition of Land in Nigeria

One of the problems hindering the implementation of the Local Content Act in Nigeria is the difficulty in acquisition of land by individuals in Nigeria. Access to land in Nigeria is affected by the operation of the Land Use Act²⁸. The principal aim of the Act was to make land more accessible for both public and private use. However, its operation so far seems to have proved otherwise.

By Section 1 of the Act²⁹- all land in each state in Nigeria is vested in the State Governor to be held in trust and administered for the common benefit of all Nigerians. This section divested not only private land owners of their freehold rights but also stripped traditional land management institutions and community leaders of their control over family and community land³⁰.

Other provisions of the Act which has created problems of land availability for Nigerians include Section 34(5)³¹- which empowers state governments to extinguish all private rights in individual under developed land holdings in excess of 0.5 hectares and take them over without compensation for public purposes including redistribution. Similarly, Sections 28³²- also provide for revocation of previously granted statutory rights of occupancy with minimal compensation.

These provisions gave the government cheap control of land and create problems of land availability for individuals to establish business. The result is that people cannot have access to land in Nigeria to establish their own business or companies. They are faced with numerous problems including community hostilities.

2. Inability to Secure Credit by Private Business Owners

The problems of land availability have further created problems of inability to secure credit from banks. Investors in Nigeria find it difficult to access loans to set up their business. This is because most banks usually ask for collateral before advancing credit, and majority of citizens wishing to borrow money using land as security cannot find any. This is further compounded by Section 22³³ – which makes all private transactions including sales, assignments and mortgages carried out without the written consent of the state governor unlawful. The effect is that a lot of transactions remain irregular and the ensuing interest in land remain undocumented thus preventing their holders from being able to use them as security for loans from banks for investment purposes.

²⁸ The Land Use Act Cap L5 Laws of the Federation of Nigeria (2004)

²⁹ Section 1 *Ibid*

³⁰ Onuoha, R.A. *The Law of Land and Company Security in Nigeria. Reformation & Development of Viable Alternatives*. Owerri, ANON (2008) Pg 133.

³¹ Section 34(5) *Ibid*

³² Section 28 *Ibid*

³³ Section 22 *Ibid*

3. Lack of Enforcement of Laws by the Regulatory Agencies

The regulatory agencies that are responsible for ensuring compliance with the laws, and policies regulating the Oil and Gas industry in Nigeria are lacking in their duties. The effect is that there is constant violation of government policies in the Oil and Gas industry in Nigeria. Some of the multinational companies introduce new certification that would make indigenous oil servicing companies unfit to service the major oil companies. These multinational companies take advantage of the weak regulatory system to violate immigration laws in their bid to bring foreign oil servicing companies into the country. They also bring in obsolete and unserviceable equipment into the country in the name of oil tools for carrying their operations. And since the regulatory agencies are unable to enforce the laws, the aim of the Local Content Act, which is to encourage the use of local resources and indigenous participation in the Oil and Gas industry in Nigeria, is completely defeated.

4. Quality of Nigerian Engineers

The quality of engineers produced by Nigerian institutions leaves much to be desired. This is mainly due to the poor allocation of funds to the ministry of science and technology in our budget, and also to the absence of appropriate science equipment in our institutions. This has resulted in a situation where students do mainly theories with little or no practical teachings in their various institutions. Consequently, most graduates or engineers from higher institutions do not possess the relevant skills to fit into the Oil and Gas industry. This is coupled with the fact that some higher institutions do not offer courses that are relevant to the Oil and Gas industry. Even the Petroleum Training Institute at Warri, that is financed by the NNPC, to produce manpower that would manage the Oil and Gas industry in Nigeria and other parts of Africa has not done much in that direction. The institution which was originally established to award Bachelors, Masters, and Doctoral degree in Oil and Gas related courses now awards Certificate and Diploma courses. Hence, they are unable to make much impact in the Oil and Gas Industry both within and outside the country.

RECOMMENDATION

-Amendment of the Land Use Act-

The Land Use Act should be amended to remove certain provisions which hinder accessibility and easy acquisition of land. Section 22, which requires the governor's consent to transactions, should be removed because it only adds to the cost of land acquisition without serving other useful purpose. Similarly, section 34(5)-which empowers state governments to extinguish all private rights in individual under developed land holdings in excess of 0.5 hectares without compensation, should also be amended because it only works hardship on the citizens. If some of these provisions are amended, it will be easier for citizens to acquire land to establish business and consequently, there will be more indigenous participation in the Oil and Gas industry in Nigeria.

-Acquisition of Land by Government for Industrial Purposes

Government should create an enabling environment for investors by acquiring large expanse of land to serve as industrial areas in different cities, like that of Igomu in Lagos and Trans Amadi in Port Harcourt. These areas which must be provided with basic amenities such as

uninterrupted power supply, portable water etc, can be allocated to persons who want to establish companies or business upon payment of certain rent or fees. Such industries or companies should be given tax break as a way of encouraging them to stabilize financially. This will encourage indigenous participation in the Oil and Gas industry.

-Invest in Human Capital Development

Government should invest in training Nigerians to acquire relevant skills that would help them fit into the Oil and Gas industry. Nigerians should be trained to acquire skills in different areas like drilling technology, instrumentation, seismic studies and other areas relevant to the Oil and Gas industry. Our institutions should offer courses that are relevant to the Oil and Gas industry. The Petroleum Training Institute in Warri, should be reorganized to achieve its original purpose of providing adequate manpower for the Oil and Gas industry in Nigeria and other African countries. The Federal Government should allocate more money to the Ministry of Science and Technology in its budget to enable it work in partnership with the Nigerian Universities. Attention should be given to Research and Development as in done in Singapore, South Korea and Hong Kong, to mention a few.

-Establishment of Banks for the Oil and Gas Sector

Just as we have the bank of Agriculture, it is recommended that Government should establish banks for the Oil and Gas sector. Oil and Gas business is capital intensive and requires Special Banks that would grant long term loans to those Nigerians that are venturing into the business. Most banks in Nigeria lack the financial base to fund Oil and Gas operations and therefore cannot make any meaningful impact on Local Content development. Moreover, most indigenous contractors and Oil Servicing Companies do not have the financial muscle to compete favorably with Oil Companies from foreign countries with huge capital. By establishing Special Energy Banks that would empower indigenous companies and local investors, it will not only increase their level of participation in the Oil industry but will give them the necessary experience that will engender technology transfer.

-Invest in Technology Transfer

Government should invest in and aggressively pursue technology transfer in the Oil and Gas industry in Nigeria. Although there has been a considerable increase in the number of Nigerians in managerial and professional positions in firms involved in upstream and downstream operations. However, there is no evidence of technology transfer in the Oil and Gas industry in Nigeria. It is therefore recommended that government should urgently programme and pursue her own unique strategy for technological advancement. Government should also ensure that Nigerians receive the necessary trainings and experience that would engender technological transfer in the Oil and Gas Industry.

-Training and Funding the Staff of the Regulatory Agencies

Government should try as much as possible to train the staff of its enforcement agencies for effective enforcement of Oil and Gas regulations. The regulatory agencies should also be allowed to source for funds from permits, approval and licenses rather than relying merely on government allocations. This will enable them discharge their duties independently without

any form of bias. It is also recommended that the staff of the Department of Petroleum Resources (DPR), should be properly trained to ensure that all operators in the Oil and Gas industry comply with environmental standards and procedures for environmental control as stipulated in the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN) 2000. Similarly, the National Petroleum Investment and Management Services (NAPIMS)³⁴, should stand up to their duties in the Nigerian Oil and Gas industry. Members of the Immigration should also be given adequate trainings that would enable them monitor the activities of these foreign companies properly.

-Full Passage of the Petroleum Industry Bill

The Petroleum Industry Bill (PIB), was initially designed to complement the Local Content Act. The delay in passing the PIB has therefore hindered the implementation of the Local Content Act. This has created a lot of uncertainties concerning the laws regulating Oil and Gas operations. Both the PIB and the Local Content Act are aimed at encouraging local participation in the Oil industry, as well as promoting the use of local resources in the Nigerian Oil and Gas industry. Since both laws are targeted at achieving employment, training and investment in Nigeria Oil and Gas industry, it is imperative that for there to be a full realization of the objectives of the Act and for Nigerians to reap the benefits of the Local Content Act, the PIB must fully come into effect. This research therefore recommends that the Petroleum Industry Bill should be fully passed into law.

CONCLUSION

The Local Content Act is an economic tool which is aimed at encouraging Nigerian composition in the upstream sector of the Oil and Gas industry. Clearly, the law is aimed at growing and developing the Nigerian economy by encouraging indigenous contractors and companies to participate in the Oil and Gas industry. The law advocates for training and employment of Nigerians in the Oil and Gas industry, as well as promoting the use of Nigerian owned equipment in the Oil industry. It also ensures that Nigerian operators in the Oil and Gas industry are given first consideration in the award of Oil blocks, licenses and works in the Oil and Gas sector before foreigners. Although the law is aimed at encouraging the use of local resources and competences, there are still major challenges to the full implementation of the Local Content Act, which have been discussed in this paper. Government must therefore invest in human capital development and technology transfer, especially now that the president has seen the need to include manufacturing, telecommunication and other industries to the Act. Nigeria should amend her laws, and train the staff of its regulatory agencies for effective enforcement of the laws regulating the Oil Industry if it must achieve the full benefits of the Local Content Act.

³⁴ The body that manages the Interest of the Federal Government of Nigeria in Oil and Gas Industry.