

National Participation in the Nigeria Oil and Gas Industry: Prospects and Challenges

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Abstract

This considers the concept of national participation and development of Nigerian content in the country's oil and gas industry. It analyzes the state of the oil and gas industry in Nigeria. An attempt is made to succinctly elucidate on the otherwise illusory concept of national participation. The various policy and legal framework for the realization of Nigerian content in the development of the industry is considered as well as the prospects and challenges attendant to such initiatives. While the paper finds that significant progress has been recorded in the development of local content in the industry, it makes adequate recommendations towards addressing some of the key challenges to such development in the industry. Thus it is strongly believed that the implementation of the policy on national participation will involve greater majority of Nigerians actively in the oil and gas industry and this will ensure the age long desired control of the sector.

Keywords: national participation, local content development, oil and gas industry, Nigeria

INTRODUCTION

The participation of Nigerian indigenous companies (i.e. companies owned by Nigerians) in the oil industry is one of the most complex issues confronting the country. The oil and gas in Nigeria plays a crucial role to the sustenance of the nation and fuels her economic development activities. The industry has been widely described as the nation's live wire literature abounds on its role and significance in Nigeria." Nonetheless, an estimated \$8 billion is spent annually on servicing the industry in operations such as fabrication, engineering procurement, construction (EPC), Front End Engineering Design (FEED), conceptual designs and seismic studies. This figure is projected to hit \$15 billion within the next few years

Regrettably, despite these huge sums of money spent in servicing the industry and only a very little proportion of the accruable profit is spent in Nigeria. This is attributable to the fact that the international oil companies (IOCs) have over time dominated the Nigerian oil industry, and repatriate majority of these amounts abroad, where most of the equipment are manufactured; providing employment opportunities for citizens of other countries. The major reason for this situation has been attributed to low local content which is a situation where most of the service contracts are awarded to foreign firms because local indigenous firms lack the requisite skills, technical expertise, manpower and production capacity and capability to compete favourably with their foreign counterparts.

There is no doubt that the ultimate objective .of any oil-producing, developing country is to control and operate all phases of its industry. However, this ultimate objective may conflict with the profit-oriented interest of the IOCs. Such indigenous participation in the oil industry is not profitable to the IOCs and so one cannot be optimistic for change and growth if this issue is left to purely market forces. The fact that historically, Nigerians have had very little share of the country's oil wealth precipitated the urgent need to reverse this trend in the wake of the country's return to democracy. To address this anomaly, the Federal Government of Nigeria have initiated several policies and enacted some legislations towards the statutorization of such golden initiative. This paper critically examines the various issues associated with national participation in the petroleum industry in Nigeria, particularly the key statutory and/or policy framework regulating same.

The Nigerian Petroleum Industry

The petroleum industry in Nigeria is the largest on the African continent. As of 2014, Nigeria's petroleum industry contributes about 14% to its economy. Therefore, though the petroleum sector is important, it remains in fact a fraction of the country's overall economy. Oil and gas exports account for more than 98% of export earnings and about 83% of federal government revenue, as well as generating more than 14% of its GDP. It also provides 95% foreign exchange earnings, and about 65% of government budgetary revenues.

Nigeria's proven oil reserves are estimated by the U.S. United States Energy Information Administration (EIA) at between 16 and 22 billion barrels (3.5x10⁹ m), but other sources claim there could be as much as 35.3 billion barrels (5.61x10⁹m). Its reserves make Nigeria the tenth most petroleum-rich nation, and by the far the most affluent in Africa. In mid-2001 its crude oil production was averaging around 2.2 million barrels (350,000 m) per day, nearly all of the country's primary reserves are concentrated in and around the Delta of the Niger River, but off-shore rigs are also prominent in the well-endowed coastal region. Nigeria has a total of 159 oil fields and 1481 wells in operation according to the Ministry of Petroleum Resources. The most productive region of the nation is the coastal Niger Delta Basin in the Niger Delta or 'South-south' region which encompasses 78 of the 9 oil fields. Most of Nigeria's oil fields are small and scattered and as of 1990, these small unproductive fields accounted for 62.1% of all Nigerian production. This contrasts with the sixteen largest fields which produced 37.9% of Nigeria's petroleum at that time.

Nigeria's petroleum is classified mostly as 'light' and 'sweet', as the oil is largely free of sulphur. Nigeria is the largest producer of sweet oil in OPEC. This sweet oil is similar in composition to petroleum extracted from the North Sea. This crude oil is known as 'Bonny' light', Names of other Nigerian crudes, all of which are named according to export terminal, are Quo Ibo, Escravos blend. Brass River, Forcados and Pennington Anfan.

There are six petroleum exportation terminals in the country. Shell owns two, while mobile Chevron, Texaco, and Agip own one each. Shell also owns the Forcados Terminal, which is capable of storing 13 million barrels (2,100,000m) of crude oil in conjunction with Nearby Bonny Terminal. Mobil operates primarily out of the Qua Iboe Terminal in Akwa Ibom State, while Chevron owns the Escravos Terminal located in Delta State and has a storage capacity of 3.6 million barrels (570,000 m). Agip operates the Brass Terminal in Brass, a town 113 km southwest of Port Harcourt and has a storage capacity of 3,558,000 1565,700m). Texaco operates the Pennington Terminal.

Oil companies in Nigeria investigate offshore production as an alternative area of reduction. Deepwater production mainly involves underwater drilling that exists 400 metres or more below the surface of the water. In Nigeria, the deepwater sector still has a large avenue to expand and develop. The amount of oil extracted from Nigeria is expected to expand from 15,000 bbl/d (2,400 m/d) in 2003 to 1.27Mbb/d (202,000 m/d) in 2010.

Deepwater drilling for oil is especially attractive to oil companies because the Nigerian government has very little share in these activities and it is more difficult for the government to regulate the offshore activities of the companies. The deepwater extraction plants are less disturbed by local militant attacks, seizures due to civil conflicts, and sabotage. These advancements offer more resources and alternatives to extract the oil from the Niger Delta, with hopefully less conflict than the operations on land.

Natural gas reserves are well over 187 trillion ft (2,800 cm), the gas reserves are three times as substantial as the crude oil reserves. The biggest natural gas initiative is the Nigerian Liquefied Natural Gas Company, which is operated jointly by several companies and the state. It began exploration and production in 1999. Chevron is also attempting to create the Escravos Gas Utilization project which will be capable of producing 160 million standard ft of gas per day. The majority of Nigeria's natural gas is flared off and it is estimated that Nigeria loses 18.2 million US\$ daily from the loss of the flared gas.

Nigeria's total petroleum refining capacity is 445,000 barrels per day (70,700 m/d). There are four major oil refineries: the Warri Refinery and Petrochemical Plant which can process 125,000 barrels (19,900 m³) of crude per day, the New Port Harcourt Refinery which can produce 150,000 barrels per day (24,000 m³/d) (there is also an 'Old' Port Harcourt Refinery with negligible production), as well as the now defunct Kaduna Refinery. The Port Harcourt and Warri Refineries both operate at only 30% capacity.

The Nigerian government earns income from oil through the sale of crude, gas, petroleum Profit Tax (PPT), royalties and rent (from the industry operators). Three major business arrangements are operated in the industry, to wit: Joint Ventures (JV) i.e. Joint Operating Agreements (JOA) between the Federal government and multinational operators such as Shell, Agip, Chevron and Elf; Production Sharing Contract (PSC) i.e. arrangements between the government and operators, where NNPC acts as concessionaire, usually in the offshore operations where the operator funds exploration, development and production activities and revenues are shared between both parties: and Service Contract (SC) i.e. where Oil prospecting License (OPL) title is held by the NNPC while the operator designated as the contractor provides all the funds required for exploration and production works. In the event of a commercial find, the contractor recoups its cost in line with the procedures stipulated in the contract. The difference with the PSC is that while the SC covers only one OPL, the PSC may span more than two or more OPLs at a time. Also, the SC covers a fixed period of five years and should the effort result

in no commercial discovery, the contract automatically terminates.

Activities in the oil and gas industry are classified into the Upstream and Downstream sectors. Upstream oil and gas activities involve operations in the areas of Exploration and Production (E & P) of oil as well as services that lead to these E & P activities i.e. from drilling the initial appraisal wells, through seismic data processing, to drilling of wells and extraction of crude oil, condensates, natural gas or associated gas from the well. The

Downstream oil and gas activities involve refining the products from crude oil, and distribution until it reaches the final consumer. There are three main functional areas within the downstream sector, *viz.*: refining, distribution and marketing of petroleum products. The downstream sector is of strategic importance to the nation, as petroleum products constitute a key source of energy used for various purposes.

Concept of National Participation

The term, 'national/Nigerian participation', aptly christened 'Nigerian Content' or 'local content', has been defined as 'the quantum composite value added or created in the Nigerian economy through the utilization of Nigerian human and material resources for the provision of goods and services to the petroleum industry. This view is apposite the definition detained in section 106 of the Nigerian Oil and Gas Industry Content Development Act which defines the term 'Nigerian content' to mean 'the quantum of composite value added or Created in the Nigerian economy by a systematic development of capacity and capabilities through the deliberate utilization of Nigerian human and material resources and services in the Nigerian oil and gas industry. 'However, according to Tam Brisibe, 'local content means different things to different people...the common denominator is value addition in the country. Obuaya, a leading voice in the clamour for higher participation of local companies in the industry, provided his definitions in line with this idea of value addition. He defines local content as 'a set of deliberate orientation and actions to build domestic capacity relevant for service and product delivery comparable within that industry' and 'an opportunity to locally build a sustainable culture of service quality and capabilities exceeding customers' expectations and comparable to international standards through key local personnel and management.' Though simple, Obuaya's definitions reflect on some important indices to examining the concept of local content such as 'deliberate orientation', 'capacity building', 'sustainable capability', 'product deliverability systems' and 'comparability'.

The concept of local content is global and not restricted to Nigeria, as it has previously been undertaken in several other oil-producing countries. Warner views local content from an angle of 'community content'; stating that 'ultimately, community content is about realizing a competitive advantage for an oil and gas development company in the eyes of both the local population and the country's guardians of economic policy.'³³ He further observed that two distinct public policies strategies for achieving higher local content targets stand. The first strategy is where the state requires oil companies to give greater preference to those nationals and national suppliers who can compete internationally on cost, quality and timeliness, i.e. what can be termed local content participation. This policy is implemented through negotiated conditions and agreements between host countries and multinationals evidenced by issues such as lower pre-qualification and tender appraisals criteria and lower tariffs on imported machinery and semi-finished materials not available in the country. The second policy strategy is where governments propose a 'step change', i.e. gradual change of local content capacity achieved by consciously building the capability of national and local skills to access opportunities, considered as 'local capability development'. It can also be argued that while the former strategy can be considered more of a 'push model', the latter is more of a 'pull model'.

Warner considers the latter strategy as a more progressive model that would involve considerable undertakings from the IOCs such as providing direct and prolonged assistance to indigenous firms to improve their quality and reliability; payment of premiums or subsidies to overcome some of the higher costs incurred in capacity development; payment of additional insurance premiums to support local suppliers and contractors; investing in physical infrastructure such as buildings and utilities; and providing financial services such as venture capital, credit guarantees and short-term loans to local suppliers and contractors. He stressed that 'we should not be so naive as to expect changes in local content and community investment practices to occur in the absence of the right dedicated incentives.

The essence of the national participation or local content concept *vis-a-vis* the petroleum industry is to develop adequate manpower and technical capacity among the indigenes to power the industry. The absence of this is to the benefit of the IOCs, since there will be no competition to its status and role in the industry as technical supplier. As aptly captured by Turner, the IOCs resist the transfer of technology for use in the processing of petroleum as part of efforts to avoid displacement. The national oil companies (NOCs) are viewed by the IOCs as potential disrupters of market share and profits in the industry. The IOCs are therefore, naturally reluctant

to transfer petroleum technology and managerial skills, and their petroleum development policies are usually aimed at making the host nations technologically dependent. Another reason for this monopoly can be traced to the sophisticated and capital-intensive nature of the petroleum technology, which becomes obsolete so quickly because of the fast-changing nature of the industry and the need to find new ideas to deal with these changes.

The clamour for national participation by developing oil-producing states reflects two significant international developments. These are: (a) the efforts by developing, oil-producing countries to acquire the necessary technical capacity to be able to control their oil industries; and (b) the assertion of the principle of permanent sovereignty over natural resources. These developments have given rise to an adverse relationship between the economic power of the IOCs and the political sovereignty of most developing countries.

Policy Framework for Nigerian Content Development

The local content policy action started in 1971 through the establishment of the Nigerian National Oil Corporation, (NNOC). NNOC was established as a vehicle for the promotion of Nigeria's indigenization policy in the petroleum sector. It later became NNPC in 1977 through NNOC's merger with the petroleum ministry. NNPC flagged off the actual local content initiative through acquisition of interests in the operations of the Indigenous Oil Companies (IOCs). These interests grew to about 70%, with the responsibility of controlling all acreages and other activities. Although conscious efforts were made in the past through the 1969 Petroleum Act and its subsidiary Regulations, enforcement of local content policy, the springboard for sustainable economic transformation of Nigeria, was mere paper work.

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

The NCD was formed as a strategic unit for the purposes of driving and monitoring the implementation of the policy. Its implementation efforts were to be focused on developing initiatives to build capabilities across the industry value chain. The immediate focus was on core industry activities and

support services with the greatest impact on Nigerian content. These key support industry areas include; fabrication, engineering, well and drilling services, refining, logistics, shipping, banking and insurance, manufacturing, materials as well as professional services. The NCD was required to produce Monthly and Quarterly Performance Reports, and the Nigerian Content Impact Report.

Pursuant to its mandate, the NCD, on 13th of October, 2006, issued the Nigerian Content Development Directives. The directives, *inter alia*, stated as follows: (a) FEED and detailed engineering design of all projects are to be domiciled in Nigeria; (b) project management teams and procurement centres for all projects must be located in Nigeria; (c) operators and project promoters must forecast procurement items required for projects and operational activities and forward the materials list to NCD on or before the 31st of January of every year, together with a master procurement plan (MPP) for ongoing and approved projects; (d) fabrication and integration of all fixed (offshore and onshore) platforms weighing up to 10,000 tons are to be carried out in Nigeria; and (e) all waste management, onshore and swamp integrated completions, onshore and swamp well simulations, onshore fluid and mud solids control, onshore measurement while drilling (MWD), logging while drilling (LWD) and directional drilling (DD) activities are to be performed by Nigerians or indigenous companies having genuine alliances with multinational companies.

Essentially, the directives by the NCD were aimed at ensuring that a greater portion of the work in the oil and gas industry was done in Nigeria with active participation of all sectors of the economy. Although the NCD directives did not have the force of law, it had far reaching effects since NNPC was a major partner in most industry projects.

Legal Framework for Nigerian Content Development

1. Nigerian Content and the Immigration Act

The Immigration Act provides that no person, other than a citizen of Nigeria, shall accept employment (not being employment with the Federal Government or a State Government) without the consent in writing of the Director of Immigration: or on his own account or in partnership with any other person, practice a profession or establish or take over any trade or business whatsoever or register or take over any company for any such purpose, without the consent in writing of the Minister given on such conditions as to the locality of operation and persons to be employed by or on behalf of such person, as the Minister may prescribe. Any person desirous of entering Nigeria for any of the above mentioned purposes must produce the consent to an immigration officer; and the failure to do so shall be an offence

under the Act, and any person who commits such an offence shall be liable on conviction to deportation as a prohibited immigrant.

The essence of the above provisions is to prevent the indiscriminate engagement of expatriates in positions where there are suitable Nigerian alternatives and these provisions apply even to activities in the petroleum industry. Thus, the Act imposes the requirement of expatriate quota and other permits before a foreigner can undertake such engagements in Nigeria and where same is to be granted, it may be coupled with such conditions as to the development of local expertise as the Minister may prescribe. Such permits are meant to last for a limited period of time and though may be renewed upon expiration, the application for renewal must show, *inter alia*, a detailed training programme for Nigerians in the field, list of Nigerians understudying the expatriate on a prescribed format showing date of employment, qualification etc and a list of Nigeria Senior/Management staff in the applicant's employment showing names, designation, qualification, salaries per annum etc.

2. Nigerian Content and the Petroleum Act

Section 1 of the Petroleum Act vests the entire ownership and control of all petroleum in Nigeria in the State. The Act also empowers the Minister to grant licenses and leases to operators in the petroleum industry. The provisions of the First Schedule to the Act, in so far as they are applicable, apply in relation to all such licenses and leases.

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

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

ensure, within the said period, that all skilled, semi-skilled and unskilled workers are citizens of Nigeria.

More elaborate provisions for the development of local content in the Nigerian petroleum industry is contained in the Petroleum (Drilling and Production) Regulations, which is a subsidiary legislation under the Petroleum Act. The said Regulations mandate the licensee of an OPL, within twelve (12) months of the grant of his license, and the lessee of an OML, upon the grant of his lease, to submit for the Minister's approval, a detailed programme for the recruitment and training of Nigerians. The programme shall provide for the training of Nigerians in all phases of petroleum operations whether the phases are handled directly by the lessee or through agents and contractors. Any scholarship schemes prepared, and any scholarships proposed to be awarded, by the licensee or lessee (whether or not related to the operations of the licensee or lessee or to the oil industry generally) shall be submitted for the approval of the Minister. Once and such programme or scholarship scheme has been approved by the Minister, it may not be varied without his permission. A report on the execution of such programme and the progress of Nigerianization shall be submitted by the licensee or lessee at or about the end of June and December in every calendar year.

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

3. Nigerian Content under Contractual Arrangements

There are several contractual arrangements between the HNPC and the IOCs which deal with the issues of local content, particularly as regards to training and transfer of petroleum technology. For example, the NNPC's draft service contract obliges the contractor to:

.. make the maximum use of available indigenous Nigerian manpower in the conduct of petroleum operations under this contract. The contractor shall within six months after the effective date and after consultation with the NNPC submit for NNPC's approval a detailed recruitment programme, and within 12 months, submit for NNPC's approval, a training programme for all Nigerians employed by the contractor in the conduct of all petroleum operations...

In other service contracts in Nigeria, it is possible to find a schedule for the training of local manpower, to the following effect:

	By third year	By fifth year	By tenth year
Unskilled	100	100	100
Skilled	50	75	100
Clerical and supervisory	50	75	90
Technical	50	75	85
Management	50	75	85

The main objective of these contractual provisions concerning manpower training is to control and operate all phases of the oil industry.

4, Nigerian Content and the Petroleum Technology Development Fund Act

The Act was enacted for purposes of establishing the Petroleum Technology Development Fund for the purposes of training and education of Nigerians in the petroleum industry. Section 1 of the Act established the Petroleum Technology Development Fund and requires that the following monies be paid into the Fund, to wit: (a) the balance of monetary assets outstanding in the accounts of the Gulf Oil Company Training Fund at the commencement of the Act; (b) all further sums payable to or received by the Minister charged with responsibilities for matters relating to petroleum development in terms of any agreement made by the Government and any company in relation to petroleum oil prospecting or mining concessions; and (c) any other sums, from time to time, freely donated or accruing to the Government or the Fund for the training and education of Nigerians in the petroleum industry as the said Minister may direct.

The money in the Fund together with interest (if any) payable in respect thereof shall be applied for the purposes of training Nigerians to qualify as graduates, professionals, technicians and craftsmen, in the fields of engineering, geology, science and management in the petroleum industry in Nigeria or abroad.

5. The Nigerian Oil and Gas Industry Content Development Act, 2010

For purposes of giving fresh impetus and vigour to the push for local content development in the petroleum industry, the National Assembly enacted the Nigerian Oil and Gas Industry Content Development Act. The essence of the Act, as stated in its long title, is to provide for the development of Nigerian content in the Nigerian oil and gas industry; to provide for the Nigerian content plan, supervision, coordination, monitoring and implementation of Nigerian content; and for related matters.

Section 1 makes the provisions of the Act applicable to all matters relating to Nigerian content in respect of all operations in the oil and gas industry notwithstanding anything to the contrary contained in

any other statute. All regulatory authorities, operators, contractors, and other entities involved in any project, operation, activity or transaction in the Nigerian oil and gas industry shall consider Nigerian content as an important element of their overall project development and management philosophy for project execution.

The Act makes mandatory for Nigerian independent operators to be given first consideration in the award of oil blocks, oil field licenses, oil lifting licenses and in all projects for which contract is to-be-awarded in the Nigerian oil and gas industry subject to their fulfillment of such condition as may be specified by the Minister.

Prospects of Local Content Development in the Oil and Gas Industry

Since the signing into law of the Nigerian Oil and Gas Industry Content Development Act in 2010, and with a visionary and dynamic agency, the Nigerian Content Development and Monitoring Board (NCDMB) driving its implementation, there has been a systematic but gradual improvement in local content in the industry. With Nigerians developing competence in jobs that were the exclusive preserve of expatriates, most of the jobs that were executed outside Nigeria are now being performed by Nigerians and in Nigeria. This has led to the retention of a large chunk of the industry expenditure in-country, with the attendant positive impact on employment generation and growth of Gross Domestic Product (GDP).

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

Also for the first time in the history of the industry, ExxonMobil have used locally-made pipes, while other International Oil Companies (IOCs) have also committed to use locally-made pipes for crude oil transportation. With this commitment, many companies have also commenced the setting up of pipe mills in Nigeria. Offshore living quarters have also been fabricated in Nigeria for the first time in the history of the industry, for Ofon Phase II project being developed by French oil giant, Total. The Ofon Phase II Living Quarters platform and topside was

built for Total Exploration and Production Nigeria by EIFFEL construction Metallic of France, with OOP Engineering Limited as local content partner.

****Popham Walter Odusote (PWO), an engineering and project management firm has also successfully completed the detailed engineering for the living quarters of the Egina FPSO for Total. The Egina FPSO living quarters will have a total accommodation capacity of 242 persons-on-board. The engineering man-hours on the living quarters design is 86,400 hours expended over a period of seven and a half months. The total engineering man-hours Samsung Heavy Industries (SHI) personnel in PWO office is 9,720 man hours. The total engineering man-hours with SHI in Goeje, South Korea is 1,820 man-hours, bringing the grand total man-hours for the project to 97,940 man-hours.

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

Currently, provision of subsea systems engineering and project management along with subsea Christmas trees, production and intervention control systems, manifolds, flowline connection systems, installation support and associated spares are done in the United Kingdom and also integrated into the FPSOs in Korean yards. Fabrication, assembly and testing of manifolds and associated structures are done mostly by Norwegian firms while the contract for the umbilicals, flowlines, risers and oil loading terminal activities are executed mostly by Italian contractors. The commissioning and start-up of the subsea umbilicals; flowlines and risers connecting the subsea wells to the FPSO, along with the oil-loading terminal, consisting of an offloading buoy and offloading lines and part of the FPSO anchoring system are done in Nigeria with the assistance of foreign companies. However, with the signing of the Nigerian Content Act, the NCDMB has unveiled robust plans to ensure that the industry carry out integration of FPSO locally.****

Challenges to the Development of Local Content in Nigeria

It has not been an all-success story for local content development in the Nigeria petroleum industry, despite the robust policy and legal frameworks for same. The several challenges faced in this regard, particular emphasis being placed on the regime of the Nigeria Oil and Gas Industry Content Development Act may be summarized thus:

1. ***Uncertainties and imprecision of most key provisions of the Act:*** A lot of uncertainties trail the meaning and practical application of most key concepts and provisions in the Act. For example, the term 'first consideration' was not defined in the Act, nor did the Act spell out the guidelines for the Board to determine the veracity of the criteria employed by the operator in determining first considerations within the provisions of the Act. Also, the Act failed to define the terms 'management position' and 'intermediate cadre. In the absence of clear statutory guidance on the import of such key terms in the Act, its implementation is being undermined as various companies adopt their own interpretations while the NCDMB remain helpless. Consequently, this has seen the influx of all kinds of expatriates into Nigeria to do jobs that ordinarily should be Nigerianized.
2. ***Insufficient sanctions for breach:*** The sanctions for non-compliance under the Act are negligible (5% of the project amount) and therefore insufficient to prevent breach, Remember that many countries give tax advantages and incentives to these companies for obeying their home country's local content policies, laws and directives, Moreover under the Nigerian JV system, some 60% of this negligible penalty (5%) will eventually be paid for by Nigeria through NNPC. This means that only 2% will be the actual penalties payable by the IOC for breach as against the heavy tax benefits for obeying their home country's local content laws and policies to Nigeria's detriment!
3. ***No role for PENGASSAN and NUPENG in the Act:*** The implementation of the Act can only be effective to the extent that the NCMB is effective. Thus, any lapse by the Board spells doom as the benefits of the Act will elude Nigerians. It is therefore very pathetic to note that unlike similar laws in the industry, the oil workers unions (PENGASSAN and NUPENG) and the labour unions, i.e. Trade Union Congress (TUC) and Nigeria Labour Congress (NLC) are not represented on the board of the NCMB. The omissions of unions who are on the field and whose members have been fighting for the greater and effective involvement of Nigeria creates doubt as to whether the government

really wants the Act to be effective or whether it was merely passed to stave off domestic pressure.

4. **Implementation Difficulties:** The implementation of some provisions in the Act portends serious difficulties. For instance, the Board is statutorily required, within a timeframe of 30 days, to issue a Certificate of Authorization for every project. This certificate is to be issued after a review and assessment of the Nigerian content plan for the project. This raises serious issues as to the credibility of the review to be done within 30 days and as to how all unclear issues in the plan can be resolved within this period without undermining the objectives of the Act. Furthermore, the requirement to submit a Nigerian content plan as a pre-condition for the award of any contract in the industry will pose serious administrative bottlenecks to the Board in view of the heavy traffic of contracts executed in the industry.
5. **Exploitable lacunae in the Act:** Many operators now hide under the provisions of the Act to embark on all manner of contract staffing and casualization, contrary to the intents of the Act and the dictates of the 'Guidelines on Labour Administration issues in Contract Staffing/Outsourcing in the Oil and Gas Sector' as issued by the Federal Ministry of Labour and Productivity in May, 2011 is also clear.
6. **Ministerial Waivers:** Section 11(4) of the Act gives the Minister of Petroleum the power to grant waivers where there is insufficient capacity to meet the targets set by the Act. This is a huge discretionary power that is susceptible to abuse, especially in view of the fact that the infrastructural base for the development of the required technology are still largely undeveloped. Indeed our experience has shown that discretionary powers are a major source of corruption and like vices in Nigeria. The fact of the above circumstances and more pose serious challenges to the realization of the local content initiative in the Nigerian oil and gas industry.

Conclusions/Recommendations

Although there appears to be implementation challenges bedeviling the various frameworks for the development of Nigerian content in the oil and gas sector, it is expected that the existing regimes will address the otherwise growing gap between annual expenditure and the percentage of national participation in the oil and gas industry. This however, will not be attained unless the various issues arising in this regard are addressed. Though it is advisable to have a review of the Nigeria Oil and Gas Industry Content Development Act so as to

address some of the challenges already highlighted, in the main, the Ministers of Petroleum, Labour and Interior Affairs should collaborate with the NCDMB and issue such guidelines and directives that will help clear up the uncertainties in the Act, ease the implementation thereof and ensure a robust compliance enforcement strategy. Particularly any application for exparte quota or renewal thereof should not be granted unless a one month advert of the position and relevant qualification for same placed in at least two national newspapers and there is no Nigerian with such qualification available to take up the position.

It must be emphasized that the effective implementation of the Nigerian content initiatives is not a task for NCDMB alone. This calls for the active support of all relevant bodies such as the Immigrations, Customs, and Nigerian Police etc. In addition, the National Assembly and indeed all the State Houses of Assembly in Nigeria need to monitor the implementation thereof to deliver greater dividends to their constituents. Host communities and the various community development committees are also enjoined to do the same.

Nigeria should also strive towards the development of indigenous technology and the requisite infrastructure needed to drive the industry and not rely completely on technology transfer from the IOCs. Efforts should also be made to adapt locally whatever technology that is imported. This will be in line with the United Nations Centre for Trade and Development (UNCTAD) Code of Conduct for the Transfer of Technology. All these, it is believed, will go a long way to reposition the country in for enhanced dominance of the industry.

REFERENCE

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Technical capacity here refers to the 'systematic and formulated knowledge about the industrial art in the field of petroleum and capable of changing as a result of researches leading to new discoveries.' See DHN Alleyne, 'The State Petroleum Enterprises and the Transfer of Technology', in United Nations (ed), *State Petroleum Enterprises in Developing Countries* (New York: Pergamon Press, 1980), p.111. It has two aspects, these are the intangible and the tangible. The intangible relates more to knowledge and skill and the ability to use same innovatively to maintain and create modifications of the physical assets which were imported. The tangible is the physical embodiment of the technology i.e. the equipments, tools, machinery and plant. The transfer of only one of these aspects would result in technological dependence of the developing, oil-producing state. See K Khan. *The Transfer of Petroleum Technology and Petroleum Development in Developing Countries: with Special Reference to Trinidad and Tobago*, (1986) 4(1)*JENRL*, 11-12.

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

The project, which was under MPNU's Satellite Fields Development Programme phase 1 (SFDP-1), was -tended to develop the resources of over 20 discovered but undeveloped oilfields in the NNPC/MPNU Joint Venture acreage. Phase one of the project (SFDP-1) comprises the Abang, Oyot and Itut (AOI) fields located in Oil Mining Leases (OMLs) 67 and 70. Offshore Nigeria. Niger dock was contracted to fabricate *the* Abang and wellhead platforms, piles, coating and corrosion protection; installation of mechanical/electrical equipment skids, testing, sea-fastening and load-out; while Dorman Long Engineering Smiled was also contracted to fabricate the Oyot wellhead platform. The completion/load-out of the platform was carried out at the Snake Island Integrated Free Zone Lagos base of Nigerdock by EIFFEL Nigeria Limited, a local subsidiary of EIFFAGE Construction Metallique of France, contractors to the project. See *ibid*

The platform has 140 personnel on board, with total weight of 6.800metric tones, with total floor area of 5.300square metres on seven levels and a helideck being fabricated by Aveon Offshore in Port Harcourt, Rivers State. See *ibid*

FPSOs are floating vessels that store crude oil produced in both deep and shallow offshore and offload it into export tankers for shipment. With storage tank that can store up to two million barrels of oil, FPSO also has helicopter landing facilities, accommodation facilities for over ISO personnel and source of power supply. See *ibid*

Samsung Heavy Industries (SHI) of Korea won the contract for the construction of the FPSO for the Egina Oil field being developed by French oil giant, Total. But for the current court action over the project, the integration of the FPSO was originally planned to take place at the Lagos Deep Offshore

Logistics (LADOL) base in Lagos, with first oil scheduled for 2017.

Another worrisome example is found in s. 30 of the Act which provides that 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 or its execution shall be contained in the operator's E & T plan. The Act woefully failed to provide any guidance as to what will amount to a reasonable time. The result is that the IOCs continue to hide under such provisions to undermine the law, bring in their nationals and deny Nigerians of such opportunities. Even partnership with Nigerian universities which will promote collaboration in research and technology transfer is being relegated to the background, while the IOCs extend financial support and research grant to the universities in their home countries.

Code outlines the following process for technological development in the industry; (a) the identification of the technological needs; (b) the acquisition of information on alternative sources of the technology required, including local sources; (c) the evaluation and selection of the appropriate technology for the assignment; (d) the breakdown of the package of technology supplied into the items to be imported and those to be developed locally; (e) negotiation of the best possible terms and conditions for the technology to be imported; (f) the adaptation and absorption of imported technology and the development of indigenous technology; (g) the dissemination of the newly acquired technology to other users. See AF Ewing, UNCTAD and the Transfer of Technology 1976) 10(3) *Journal of World Trade Law*, 197-214, 206.