**The Nigerian Oil and Gas Local Content Development Act[[1]](#footnote-1)**

The Nigerian Oil and Gas Industry Content Development Act (hereinafter referred to as “the Act”) was enacted in 2010. The Act was enacted to enhance the level of participation of Nigerians and Nigerian companies in the country's oil and gas industry.[[2]](#footnote-2) The interpretation section of the Act defines the Nigerian content as follows:

the quantum of composite value added to or created in the Nigerian economy by a systematic development of capacity and capabilities through deliberate utilisation of Nigerian human, material resources and services in the Nigerian oil and gas industry[[3]](#footnote-3)

Generally, the aim of the local content policy is to expand the benefits of oil, gas and mining activities for the national economy.[[4]](#footnote-4) This policy strives to give indigenous stakeholders access to economic opportunities, these opportunities are related to employment, partaking in supply chains or providing other related back up services. The policy can be further reinforced through methods such as targets for local workers or suppliers, preference procurement schemes for local businesses, industry or human capital development support from the government, or giving local businesses increased access to funding opportunities.[[5]](#footnote-5)

Before 2010, the Federal Government of Nigeria had various policies on local content development. The local content policy was made use of in contracts between the Government and International Oil Companies (IOCs) especially in Production Sharing Contracts (PSC) and Joint Operating Agreements (JOA). Special provisions on local content were usually entrenched in these types of contract ensuring the employment of citizens and making use of service providers in the country. Therefore, a 2005 model of PSC giving effect to greater participation of Nigerians read as follows:

ten (10) years from the effective date of this contract the number of citizens of Nigeria employed by the CONTRACTOR in connection with the Petroleum Operations in managerial, professional and supervisory positions, shall reach at least seventy-five (75%) percent of the total number of persons employed by CONTRACTOR in those positions. The CONTRACTOR shall further ensure that at the fifteenth (15th) and twentieth (20th) year after the effective date of this contract, the minimum level of the total number of Nigerian citizens engaged in Petroleum Operations in managerial, supervisory and other professional positions shall reach eighty (80%) percent and eighty-five (85%) percent respectively.[[6]](#footnote-6)

Although the terms in the PSC and JOA appeared to be robust with regards to the employment of Nigerians but evidence suggests that this has not been successfully implemented. Obligations are imposed on the holder of the OML but no requirement to ensure that contractors are similarly obliged. This has been imposed because obligations are contractual not statutory or regulatory.[[7]](#footnote-7)

To ensure compliance with the Local Content Act in the award or execution of a project or contract, the Nigerian Content Monitoring Board (NCMB) was established, amongst others, to monitor, issue directives, and to review all projects and activities.[[8]](#footnote-8)

There are other complimentary laws and regulations which work hand in hand with the Act. For instance, local content is provided for in the Petroleum Act as follows:

The holder of an oil mining lease shall ensure that-

(a). within ten years from the grant of his lease-

(i). 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

(ii). the number of citizens of Nigeria in any one such grade shall be not less than 60% of the total; and

(b). all skilled, semi-skilled and unskilled workers are citizens of Nigeria.[[9]](#footnote-9)

The Nigerian Content Plan concept is also entrenched in Section 7 of the Act stating that every contractor is obliged to comply with requirements of the Act and submit a plan of action on its Nigerian content. Section 7 states as follows:

In the bidding for any license, permit or interest and before carrying out any project in the Nigerian oil and gas industry, an operator shall submit a Nigerian Content Plan (“plan”) to the Board demonstrating compliance with the Nigerian content requirements of this Bill.[[10]](#footnote-10)

Likewise, Regulation 26 of the Petroleum (Drilling and Production) Regulations provides for the holder of an OPL within twelve (12) months of the grant of his license, and the holder of an OML upon the grant of his license to submit a detailed programme for the recruitment and training of Nigerians for the approval of the Minister.[[11]](#footnote-11)

The Act gives a directive which requires Nigerian content to be considered as an important element in the overall project development and management philosophy for project execution in the oil industry. To achieve this philosophy the Act provides in Section 2 as follows:

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 as an important element of their overall project development and management philosophy for project execution.

Also Nigerian independent operators are to be given first 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.[[12]](#footnote-12) This is however, subject to the fulfilment of such conditions as may be specified by the Minister.[[13]](#footnote-13) The Act requires that the Nigerian indigenous service companies be given exclusive consideration if they 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 the Act.[[14]](#footnote-14) It also specifies that there must be compliance with the provisions of the Act and that the promotion of Nigerian content development must be a major criterion for award of licences, permits and any other interest in bidding for Oil exploration, production, transportation and development or any other operations in Nigerian Oil and Gas industry.[[15]](#footnote-15)

The Federal Government, in furtherance of its Nigerian Content agenda, encourages International Oil Companies (IOCs) to surrender their marginal fields for assignment to indigenous concession holders. Also, to increase production, the Nigerian government has intensified the search for new discoveries and increased exploration and production activities in already discovered or abandoned fields known as marginal fields.[[16]](#footnote-16) To provide special incentives to marginal field operators, the Federal Government promulgated the Petroleum (Amendment) Act No. 23 and the Marginal Field Operations (Fiscal Regime) Regulations 2005 on the development of marginal fields. A Marginal Field is defined as any field that has reserves booked and reported annually to the DPR and has remained unproductive for a period of over 10 years. The main objectives of the government for introducing Marginal Field regime include: (i) expanding the scope of participation by small (indigenous) players in Nigeria’s oil industry, (ii) increasing the country’s oil and gas reserves base. (iii) providing opportunity for portfolio rationalization and (iv) enhancing employment opportunity.[[17]](#footnote-17)

The Act mandates the oil companies to do all fabrication and welding activities in Nigeria.[[18]](#footnote-18) To encourage the implementation of the Nigerian content in the companies, the Act enjoined the Minister in charge to grant tax incentives to companies which establish facilities, factories, production units or other operations within Nigeria for the purposes of manufacturing goods or providing services which were previously imported. The Act also requires foreign multinational companies to ensure that their subsidiaries own at least 50% of the equipment used for execution of work in the country.

The Act provides for a Fund to be set up and be known as the Nigerian Content Development Fund (the "Fund") for purposes of funding the implementation of Nigerian content development in the Nigeria oil and gas industry.[[19]](#footnote-19) The sum of one per cent of every contract awarded to any operator, contractor, subcontractor, alliance partner or any other entity involved in any project, operation, activity or transaction in the upstream sector of the Nigeria oil and gas industry is deducted at source and paid into the Fund[[20]](#footnote-20) and the Fund shall is managed by the Nigerian Content Development Board. Proceeds from the fund should be employed for projects, programmes, and activities directed at increasing Nigerian content in the oil and gas industry.[[21]](#footnote-21) To ensure compliance with the provision of the Act, it further provides that:

(2) All operators shall submit to the Board, every six months, its Legal Services Plan

(LSP).[[22]](#footnote-22)

(3) The LSP shall include-

(a)comprehensive report on:

(i) legal services utilized in the past six months by expenditure,

(ii) a forecast of legal services required during the next six months, and

(iii)the projected expenditure for the services;

(b)a list of:

(i) external solicitors utilized for legal services in the past six months,

(ii) the nature of work done, and

(iii)the expenditure made by the operator; and

(c)the annual legal services budget for the past one year in Naira and foreign currencies.[[23]](#footnote-23)

In section 52, the Act requires that all operators, contractors and any other entity engaged in any 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 impracticable.

Section 38 of the Act provides that Nigerian must be employed in all cadre, however, 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 (E and T Plan).[[24]](#footnote-24)

More importantly the Act provides for sanctions against any erring operator or company that fails to comply with the provisions of the Act. Such erring operator or company is liable upon conviction to a fine of 5% of the project sum, or cancellation of the project.

1. The Nigerian Oil and Gas Industry Content Development Act, 2010. [↑](#footnote-ref-1)
2. KPMG Nigeria on The Nigerian Oil and Gas Industry Content Development Act, 2010

   <[www.ng.kpmg.com](http://www.ng.kpmg.com)> accessed 06 May 2017. [↑](#footnote-ref-2)
3. See the Interpretation Section of the Act. [↑](#footnote-ref-3)
4. Esteves MA et al., “Local Content Initiatives: Enhancing the Subnational Benefits of the Oil, Gas and Mining Sectors” (2013) 2, Natural Resources Governance Institute [www.resourcegovernance.org](http://www.resourcegovernance.org) accessed 05 May 2017. [↑](#footnote-ref-4)
5. Esteves AM et al., (n 783) 2. [↑](#footnote-ref-5)
6. **Osagie EG “**An Overview of the Nigerian Oil and Gas Industry Local Content Initiative” (2013) *Energy mix report* <[http: energymixreport.com>](http://energymixreport.com/an-overview-of-the-nigerian-oil-and-gas-industry-local-content-initiative/) accessed 05 May 2017. [↑](#footnote-ref-6)
7. Adefulu A “Nigerian/Local Content Policy” (2010) *Odujinrin & Adefulu &Co., Lagos*

   [www.odujinrinadefulu.com](http://www.odujinrinadefulu.com) accessed 19 May 2017. [↑](#footnote-ref-7)
8. Section 4 of the Nigerian Oil and Gas Industry Content Development Act, 2010. The power of NCMB to monitor implementation of the Act is contained in Sections 59 and 60 of the Act. [↑](#footnote-ref-8)
9. Section 38 of the Petroleum Act, Cap. P10 laws of the Federation of Nigeria, 2004. [↑](#footnote-ref-9)
10. Akindelano “Review of Nigeria’s Local Content Legislation” 5 <http://akindelano.com>> accessed 17

    May 2017. [↑](#footnote-ref-10)
11. Regulation 26 of the Petroleum (Drilling and Production) Regulations, 1969. [↑](#footnote-ref-11)
12. Section 3(1) of the Act. [↑](#footnote-ref-12)
13. Section 3(1) of the Act. [↑](#footnote-ref-13)
14. Section 3(2) of the Act. [↑](#footnote-ref-14)
15. Section 3(3) of the Act. [↑](#footnote-ref-15)
16. Akpanika OI and Udoh FD “The Challenges of Marginal Fields Development in Nigeria” (2008) 14(2-3) *Ecology, Environment and Conservation Paper* 235 <[www.envirobiotechjournals.com](http://www.envirobiotechjournals.com)> accessed 9 May 2017. [↑](#footnote-ref-16)
17. Humphrey O and Dosunmu A “The Critical Success Factors for Marginal Oil Field Development in Nigeria” (2017) 5(1) [*Journal of Business and Management Sciences*](http://www.sciepub.com/journal/JBMS)1-10 *<*[http://pubs.sciepub.com/jbms/5/1/1](http://pubs.sciepub.com/jbms/5/1/1/)> accessed 09 May 2017. [↑](#footnote-ref-17)
18. Section 53 of the Act. [↑](#footnote-ref-18)
19. Section 104(1) of the Act. [↑](#footnote-ref-19)
20. Section 104(2) of the Act. [↑](#footnote-ref-20)
21. Section 104(3) of the Act. [↑](#footnote-ref-21)
22. Section 51(2) of the Act. [↑](#footnote-ref-22)
23. Section 51 (3) (a-c) of the Act. [↑](#footnote-ref-23)
24. Section 30 of the Act. [↑](#footnote-ref-24)