

AN APPRAISAL OF JUDICIAL ENFORCEMENT OF LOCAL CONTENT: OBLIGATIONS AND PENALTIES FOR NON-COMPLIANCE IN NIGERIA*

Abstract

This paper appraised the judicial enforcement of local content obligations and penalties for non-compliance in Nigeria, adopting a doctrinal methodology. The paper examined the Nigerian Content Development and Monitoring Board (NCDMB) Act 2010 and its implementing regulations, as well as relevant judicial decisions. The paper revealed that despite the existence of local content legislation, judicial enforcement remains inadequate, leading to widespread non-compliance. The paper identified several challenges, including inadequate definition of local content obligations, insufficient penalties for non-compliance, lack of effective monitoring and enforcement mechanisms, inconsistent judicial interpretation of local content provisions the paper recommended the review and amendment of the NCDMB Act 2010 to clarify local content obligations, enhance penalties for non-compliance, and strengthen monitoring and enforcement mechanisms. Also, the development of guidelines and regulations: By the NCDMB and other regulatory bodies to provide clarity and consistency in the implementation of local content provisions. Capacity building for judicial officers: To enhance their expertise and understanding of local content provisions and their implications for the oil and gas industry. Furthermore, it was recommended that there should be an establishment of a specialized court or tribunal: To handle local content disputes and ensure effective enforcement of local content obligations. In conclusion, this paper demonstrates the need for effective judicial enforcement of local content obligations in Nigeria. The adequate enforcement of local content provisions is critical to promoting economic development, enhancing indigenous participation in the oil and gas industry, and ensuring compliance with legislative requirements. By addressing the challenges identified in this study, Nigeria can strengthen its local content framework and achieve its economic development goals.

Keywords: Enforcement, Goals, Development, Obligation, Compliance

1. Introduction

Local content is a domestic policy of any national government formulated to protect indigenous engagement for capacity development and execution of contractual obligations by nationals or companies owned by citizens of that country in order to develop domestic skilled manpower in areas or works dominated by expatriates. According to Balouga¹ in 2012 and Gbegi² & Adebisi in 2013, the Local Content Policy action started in 1971 through the establishment of the Nigerian National Oil Corporation, (NOC). NOC was established as a vehicle for the promotion of Nigeria's indigenization policy in the petroleum sector. It later metamorphosed into Nigerian National Petroleum Corporation (NNPC) in 1977 through NOC's merger with the Ministry of Petroleum. 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 Regulation 26 of the 1969 Petroleum Act, enforcement of local content policy, the springboard for sustainable economic transformation of Nigeria, was mere paper work. For an industry that contributes 80% of Nigerian government revenues and 95% of its foreign exchange this is entirely not in the interest of local content development to the Nigerian government this led to the clamor for policy change to protect individuals who are nationals and indigenous contractors in terms of capacity development and profiteering from their economy.

Nigeria is one of the few countries that has enacted legislation devoted to protection of local content in the year 2010. A major rationale for this enactment is to increase the 'Nigerian content' which means "the quantum of composite value added to or created in the Nigerian economy by a systematic development of capacity and capabilities through the deliberate utilization of Nigerian human, material resources and services in the Nigerian oil and gas industry."³ Countries that are rich in natural resources are wisely and exponentially making provisions for requirements of local content ("local content provisions") in their legal framework, through legislation, regulations, contracts, and bidding practices.⁴ If successful, a policy to increase local content can lead to job creation, boost the domestic private sector, facilitate technology transfer and build a competitive local workforce. However, local content goals are often unfulfilled and the opportunities are not captured due to some other factors. For example, local content provisions typically require investors to meet targets measured as a percentage of investment, hours worked, equipment supplied, or jobs created. 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. It is the duty of the local content regulatory authority to ensure a balance between foreign investment and use of expatriates and local content protection for economic growth.

Since the enactment of the Nigerian version of the Local Content Act, the Nigerian Content Development and Enforcement Board (NCDMB) has had and exercised residual powers conferred by section 70(1) of the Local Content Act to which empowers it to provide "guidelines, definitions and measurement of Nigerian policy content indicator to be utilised in the oil and gas

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¹Balouga, J. (2012). Nigerian Local Content: Challenges and Prospects. *International Association for Energy Economics, Third Quarter*, Pp 23-26. <https://www.iaee.org/en/publications/newsletterdl.aspx?id=176>. Accessed 14 November 2024

²Gbegi, D.O. & Adebisi, J.F. (2013). Managing local content policies in the extractive industries. *Research Journal of Finance and Accounting*, 4(7), 90-98. <https://www.iiste.org> accessed on 13 November 2024

³ Local Content, Nigerian – Petroleum. Published by Columbia Centre on Sustainable Investment. A Joint Center on Columbia Law School and the Earth Institute of Columbia University, May 2014, p. 1

⁴ Ibid.

industry in Nigeria. It is in the light of this that this paper will examine judicial interventions as applicable in the local content development in Nigeria, obligations of the government, citizens and indigenous companies under the local content law as well as the penalties for contravention of the Nigerian Oil and Gas Industry Content Development Act, 2010 in Nigeria. The paper recommends ways in which judicial enforcement of local content especially as it relates to penalties can be strengthened within the local content policy development parlance.

2. Judicial Interventions in Local Content Development

It is a notorious fact that without enforcement, most laws will not be obeyed by members of the society. The utilitarian school of law believes that law must be backed up with inflicting pain or pleasure for substantial obedient. This paper notes a few instances where the provisions of the local content law in Nigeria has been judicially tested in the court. This has led us to the case of *Nigerian Content and Monitoring Board & Anor v A. G. Bayelsa State*⁵. The respondent commenced an action by way of Originating Summons at the Federal High Court, Yenagoa against the appellants as defendants therein, seeking the determination of the following question whether, in view of the provisions of section 71(2) and of the Nigerian Oil and Gas Industry Content Development Act, 2010, the purported establishment, operation and funding of the office of the Nigerian Content Monitoring Board at Bank of Industry Building 9th Floor, Plot 256 off Herbert Macaulay Way, Central Business District in the Federal Capital Territory, Abuja was contrary to law, illegal and unlawful. The Respondent claimed a declaration that the purported establishment, operation and funding of the office by the appellants was contrary to the provisions of section 71(2) and of the Act and therefore illegal and unlawful; an order directing the appellants, their servants, agents and or privies to close the office; and an order of perpetual injunction restraining the appellants, their servants, agents and or privies from further spending any public funds of the appellants in the running, operation and management of the office. The originating summons was supported by a 21-paragraph affidavit and a written address. The appellants in response to the originating summons filed a conditional memorandum of appearance, a counter-affidavit of nine paragraphs and a written address.

After considering the submissions of the parties, the trial court in its judgment held that the framers of the Nigerian Oil and Gas Industry Content Development Act, 2010 intended the Nigerian Content Development and Monitoring Board and its Governing Council to concentrate their sphere of operations in the oil and gas producing States of the Federation. It found that in view of the provisions of section 71(2) and of the Act, the establishment, operation and funding of the office of the Board at Bank of Industry Building, 9th Floor, Plot 256, off Herbert Macaulay Way, Central Business District in the Federal Capital Territory, Abuja was contrary to law, illegal and unlawful. Consequently, the trial court ordered the appellants to cease operations and vacate the office within fourteen days and to redeploy the staff thereat to the head office of the Board in Yenagoa, Bayelsa State. It also restrained the appellants from further spending their public funds in the running, operation and management of the office. Dissatisfied with the judgment of the trial court, the appellants appealed to the Court of Appeal. In determining the appeal, the Court of Appeal considered the provisions of section 71(1), and of the Nigerian Oil and Gas Industry Content Development Act, 2010 which state thus:

Section 71 (1) - There is established for the Board the Governing Council (in this Act referred to as the 'Council') which shall conduct the affairs of the Board. The Head Office of the Council and the Board shall be located in any of the oil or gas producing States of the Federation.

The Council may establish branch office of the Board in any of the gas or oil producing States of the Federation.

The Court of Appeal examined sections 69, 70(1) 71(2) (3), and 73(1) of the Nigerian Oil and Gas Content Development Act, 2010 and applied quite a number of rules of interpretation of statutes in bringing out the legislative intent. The Court of Appeal upheld the provisions of the Nigerian Oil and Gas Content Development Act, 2010 as stated in the Originating Summons and Counter Affidavit of the parties before the court. The essence of examining this case is because no matter how beautiful the intention of the law maker and the executive is, the judiciary plays a major role in governance and giving biting force to existing legislation. The judiciary therefore ought to be brought on board in terms of periodic capacity building to understand the intention of the executive in presenting a Bill before the National Assembly and the legislative intent behind the passage of the bill into law by the legislature for the common good of the society especially in terms of protection of our commonwealth among which are human and natural resources to which Nigeria is greatly endowed. To buttress this point, the local content Act is one of such executive and legislative initiatives which the Judiciary must be made to see through the beneficial enforcement for growth of the social order and economic development of Nigeria.

In addition, the Nigerian Oil and Gas Industry Content Development Act, 2010 does not use the term 'Nigerian company' outside of its definition in section 106 of the enactment as "a company formed and registered in Nigeria in accordance with the provision of the Companies and Allied Matters Act with not less than 51% equity shares by Nigerians" in section 106. The Nigerian Oil and Gas Industry Content Development Act, 2010 includes many potential variants, including 'Nigerian indigenous operator' under section 3(1), 'Nigerian indigenous service companies' under section 3(2), 'Nigerian indigenous contractors' in section 15, 'Nigerian contractors and service or supplier companies' under section 45, and 'indigenous companies' in sections 41(1)(a), 48 and 49(1) to identify sector participants to which its different provisions purport to apply. Our interest here is to focus the judicial minds of our Judges (*Coram*) on these salient provisions in order not to elevate technicality and defeat their legislative essence. There is no definition in the Nigerian Oil and Gas Industry Content Development Act, 2010 of any of these terms, or of the term 'Nigerian service company', which has created interpretation and compliance challenges in relation to the Act. Acknowledging that the local content prescriptions in the Schedule to the Act are not exhaustive, where the minimum

⁵*N.C.M.B v A.-G. Bayelsa State* (2023) 3 NWLR (Pt 1871) 395

Nigerian content for any service is not explicitly prescribed in the Schedule, section 11(2) of the Local Content Act currently empowers the NCDMB to prescribe an appropriate minimum content level for various services and projects pending the inclusion of such prescription in the Schedule through legislative amendments of the statute⁶The President of the Federal Republic of Nigeria can exercise powers directly or through the Ministry of Petroleum Resources, but the Petroleum Act specifically prohibits the Minister charged with responsibility for petroleum resources from delegating his powers to make regulations. This may be counterproductive where urgent action is needed to arrest a local content initiative in the national interest.

In the absence of judicial or legislative confirmation, this has resulted in industry participants either assuming and acting on the basis of their own understanding or seeking clarification from the NCDMB. Those who are dissatisfied with the policy interpretation and application may thereafter approached the Courts by way of Originating Summons or any other mode of commencing such action as we saw in the case of *Nigerian Content and Monitoring Board & Anor v A. G. Bayelsa State*⁷. This is why it is apt to prepare the minds of the court about the uniqueness of the Nigerian Oil and Gas Industry Content Development Act, 2010 for the good of the nation. In my view, any interpretation by the court contrary to the Long Title of the Local Content Act might be a disservice to national prosperity. This is because, over the years, foreigners in collaboration and for the benefit of a few Nigerians have enjoyed and plundered our natural resources at the detriment of human and natural resources for economic development. It is the intention of this paper to posit that the judiciary is a factor, if there will be further social and economic development from the local content legislation. As a result, the roles of the judiciary in this wise cannot be over emphasized. Giving biting force to the Nigerian Oil and Gas Industry Content Development Act, 2010 through judicial enforcement is therefore inevitable.

3. Obligations of the Government under the Local Content Law

The role of the government in making, implementing and enforcing local content law enforcement across the three tiers of government cannot be over emphasized. In recent times, the 9th National Assembly especially through the House of Representatives made moves to amend the Nigerian Oil and Gas Content Development Act, 2010 to cover more sectors aside from the oil and gas sector alone.⁸The House of Representatives National Content Development Bill seeks to repeal the Nigerian Oil and Gas Industry Content Development Act 2010 (the Local Content Act 2010), and to enact a new multi-sector statute that would extend local content regulation and enforcement across the mining, information communication technology, construction and power sectors if enacted (the NCDE Bill). This is a good development in terms of setting the pace for other African nations to ensure Africans benefitted optimally from their resources at the expense of their foreign counterparts. Be that as it may, the Nigerian Senate also deliberated on another local content focused bill: the Nigerian Oil and Gas Industry Content Development Amendment Bill (the Senate NOGIC Amendment Bill). The Bill, which was sponsored for legislative consideration by Senator Teslim Folarin, has passed its second reading at the time but this paper could not verify its passage into law by both legislative Houses as of this time of the preparation for its presentation. The Senate National Oil and Gas Investment Content Amendment Bill however proposes to amend and clarify, rather than repeal, the Nigerian Oil and Gas Industry Content Development Act, 2010 (Local Content Act) and preserves its singular petroleum sector focus.⁹ In order for the country to benefit optimally from this laudable initiative of local content development, other Ministries, Departments and Agencies (MDAs) should collaborate and as much as possible uphold and apply the Nigerian Oil and Gas Industry Content Development Act, 2010. In recent times, The National Information Technology Development Agency (NITDA) released guidelines on Nigerian content development in information and communications technology (ICT). Based on the guidelines, the NITDA seeks to achieve a target of 50%localcontent in the industry and will require all companies to register Nigerian entities with predominant Nigerian representation. In the views of PricewaterhouseCoopers International Limited (PWC), the guidelines are controversial as there is no clear basis in the law for NITDA to impose local content requirements on companies operating in the sector.¹⁰ This paper disagrees with PWC in the sense that there are technological initiatives and software development which may be akin to and applicable to the oil and gas sector. In the same vein, the omnibus power provisions of NITDA Act must be exhausted to ensure that it protects local content policy development of the government. This is the more reason why the amendment sought by the 9th National Assembly through the House of Representatives must be supported so that such lofty initiatives and policy proposals being pushed forward by agencies such as NITDA would not be defeated if challenged in the court of law.

Section 104 of the Local Content Act currently requires the deduction at source of the sum of 1% of every contract awarded to every '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' and that such sum shall be paid into the Nigerian Content Development Fund (the NCD Fund) for purposes of 'funding the implementation of Nigerian content development in the Nigerian oil and gas industry'. The Fund is currently managed by the NCDMB and is required to be employed for projects, programmes and activities directed at increasing Nigerian content in the industry. Curiously, the HOR NCDE Bill proposes to

⁶ Section 11(2), Nigerian Oil and Gas Industry Content Development Act, 2010

⁷ *N.C.M.B v A.-G. Bayelsa State* (2023) 3 NWLR (Pt 1871) 395

⁸ Udo Udoma & Belo – Osagie: Nigeria Rethinks Local Content: The Senate's Nigerian Oil and Gas Content Development (Amendment) Bill 2020 (and how it compares with the House of Representatives' Nigerian Content Development and Enforcement Bill 2019) p. 2 available at www.uubo.org accessed on 14 November 2024.

⁹ Ibid.

¹⁰ Nigeria Regulatory Alert: Local content guidelines introduced for the Information and Communications Technology (ICT) sector. May2014, p. 1

delete these requirements, but does not expressly indicate how the implementation of Nigerian content development in the oil and gas industry is to be funded.¹¹

Aside from MDAs, the Nigerian Content Development and Enforcement Board (NCDMB) which is a creation of section 69 of Nigerian Oil and Gas Industry Content Development Act, 2010 must ensure periodic compliance with the dictates of the Local Content Act 2010. Section 70 empowers the NCDMB to among other functions:

- (a) implement the provisions of this Act;
- (b) implement the regulations made by the Minister in relation to any
- (c) supervise, coordinate, administer, monitor and manage the development of Nigerian content in the Nigerian oil and gas industry;
- (d) supervise, coordinate, administer and monitor the implementation and development of Nigerian content as specified in the Schedule to this Act in the operations of operators, contractors and all other entities in the Nigerian oil and gas industry;
- (e) appraise, evaluate and approve the Nigerian content plans and reports submitted to the Board in compliance with the provisions of this Act;
- (f) award Certificate of Authorization and conduct reviews of the Nigerian content plans and reports submitted to the Board in compliance with the provisions of this Act;
- (g) administer and operate the e-market place and Joint Qualifications Systems set up in accordance with the provisions of this Act;
- (h) assist local contractors and Nigerian companies to develop their capabilities and capacities to further the attainment of the goal of developing Nigerian content in the Nigerian oil and gas industry;
- (i) make procedures to guide the implementation of this Act and ensure compliance with all the provisions of this Act;
- (j) monitor and coordinate the Nigerian content performance of all operators in accordance with the provisions of this Act;
- (k) make auditing procedures and conduct regular audits for the purposes of monitoring and implementing compliances with the provisions of this Act;
- (l) provide guidelines, definitions and measurement of Nigerian content and Nigerian content indicator to be utilized throughout the industry;
- (m) conduct studies, researches and investigations that may further the attainment of the goal of developing Nigerian content in the Nigerian oil and gas industry;
- (n) organize conferences, workshops, seminars, symposia, trainings, road shows and other public education fora to further the attainment of the goal of developing Nigerian content in the Nigerian oil and gas industry;
- (o) delegate any of its functions to any agent or operative appointed by the Council; and
- (p) do legally anything necessary to be done to facilitate the carrying out of its functions.

In the same vein, another beautiful innovation of the Local Content is the establishment of the Nigerian Content Consultative Forum by virtue of section 58 of the Nigerian Oil and Gas Industry Content Development Act, 2010. The Forum is comprised of key industry stakeholders, government and regulatory agencies and representatives from the following sectors- (a) fabrication; (b) engineering; (c) finance services, legal and insurance; (d) shipping and logistics; (e) materials and manufacturing; (f) information and communication technology; (g) petroleum technology association of Nigeria; (h) education and training; and (i) any other professional services nominated by the Board.

At this juncture, one may advise as submitted above that agencies such as NITDA should be drafted into the 'Forum' as a feedback mechanism and efficient inter agency collaboration. In essence, the NCDMB, the Governing Council, the Forum and other stakeholders exists to ensure that the economy benefits optimally from the 2010 Act. Therefore, the Federal Government is urged to engender full support for all stakeholders in the Local Content policy protection and expansion initiatives. Other agencies in the oil and gas industry aside from those mentioned in this paragraph must give effect to section 15 of the Act which mandates all operators and alliance partners to maintain a bidding process for acquiring goods and services which shall give full and fair opportunity to Nigerian indigenous contractors and companies.

4. Obligations of the Nigerian Citizens and Indigenous Companies under the Local Content Act 2010

Nigerian citizens are critical to the success of the local content policy initiatives of the government. Therefore, it is necessary to examine the role of the citizens in benefitting optimally from local content formulation and protection. Citizen collaboration would ensure that violation of practices such as expatriate quota violation is promptly reported to the appropriate agencies of government such as the Nigerian Immigration Service as well as the NCDMB. Section 2 of the Local Content Act 2010 also envisaged citizen participation through the philosophy of the statute when it provides that all regulatory authorities, operators, contractors, subcontractors, alliance partners and other entities involved in any project, operation, activity or transaction in the Nigerian oil and gas industry shall consider Nigerian content as an important element of their overall project development and management philosophy for project execution. This section makes the regulation and protection of local content policy an all-comers affair with different layers of regulatory roles. Section 25, 26 and 27 of the Local Content Act 2010 engenders communal participation through the establishment by the Board of a Project Office, Personnel Local Office and Office in Community operation respectively. Therefore, citizens from communities where projects are executed might invariably work in these listed

¹¹ Ibid, Udo Udoma & Belo – Osagie: Nigeria Rethinks Local Content: The Senate's Nigerian Oil and Gas Content Development (Amendment) Bill 2020 (and how it compares with the House of Representatives' Nigerian Content Development and Enforcement Bill 2019) p. 2 available at www.uubo.org accessed on 14 November 2024.

offices or through their Youth groups and traditional institutions ensure procedural and coordinated oversight on the projects in site for the benefits of their communities and the Nigerian economy as a whole. In the same vein, the Non-governmental Organisations and Community Groups such as Age – grades must ensure that through the National Content Forum participate and make inputs in the Employment and Training Plan submitted for the Board by operators. Proper citizen participation as an obligation as it is explained above will ensure the viability of section 30 of the Nigerian Oil and Gas Industry Content Development Act, 2010 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 for its execution shall be contained in the operator's Employment and Training Plan. These efforts should also envisage the implementation of a succession plan by Nigerians in line with section 31 of the Nigerian Oil and Gas Industry Content Development Act, 2010 which requires 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 Nigerianized. Citizens and indigenous Nigerian companies must not leave everything to the Board because there are other unique and innovative provisions which takes them into consideration in project management and implementation.¹² An example is section 35 of the Act which requires all operators and companies operating in the Nigerian oil and gas industry to employ only Nigerians in their junior and intermediate cadre or any other corresponding grades designated by the operator or company.¹³ Section 58 of the Nigerian Oil and Gas Industry Content Development Act, 2010 which is stated above was established to generate feedback and enhance citizens participation such as we have the Consumer Forum in the Nigerian electricity sector coordinated by the National Electricity Regulatory Commission (NERC). This will enable the NCDMB to know how to tailor their policy formulation to compliment whatever data or information gathered by the Planning, Research and Statistics Department of the NCDMB and other stakeholders.¹⁴

5. Penalties for Non-Compliance with Local Content Statute

The teaching of elementary law classified law into various schools of law such as natural law, sociological school of law, positivist school of law, utilitarian school of law, realist school of law as well as historical school of law to mention but a few. Positive laws are commanded by political superiors.¹⁵ Austin calls these superiors the 'sovereign', and he defines 'sovereign' as the person or persons who are not in the habit of obeying anyone else, and whom everyone else is in the habit of obeying. Positive laws are general commands by people who themselves are not bound by them, and who can enforce obedience from everyone else. The utilitarian school of law complimented the above thoughts with its 'pain and pleasure' theory as the essence of the law. Jeremy Bentham and other theorists of the utilitarian school believes in sanctions – base law. By way of application, they do not believe that law can be efficient if not backed up with sanctions. For these theorists, the law is about pain or gain. The gain typifies a reward system such as conferment of rewards such as national awards while pain should be in form of payment of fines, imprisonment and community service for the law to be effective. Therefore, since law is about rights, obligations, duties and sanctions for commission or omission to carry out a legal duty, the Nigerian Oil and Gas Industry Content Development Act, 2010 would be an incomplete legislation without appropriate sanction – based provisions for violators of the statutory obligations commanded by the legislation. Therefore, there are certain obligations or activities which the Nigerian Oil and Gas Industry Content Development Act, 2010 mandates must be done on the shores of Nigeria. For instance, section 53 of the Act requires all operators, project promoters, contractors and any other entity engaged in the Nigerian oil and gas industry to carry out all fabrication and welding activities in the country except it is shown to the Minister of Petroleum Resources there is no capacity for in-country fabrication in Petroleum Resources there is no capacity for in-country fabrication. In this circumstance, the Minister may approve importation of welded products for a period not exceeding 3 years as stated in Section 11 of the Act.¹⁶

A major provision for application of sanctions or penalties for the violation of the Nigerian Oil and Gas Industry Content Development Act is section 68 of the Nigerian Oil and Gas Industry Content Development Act, 2010 which provides that an operator, contractor or sub-contractor who carries out any project contrary to the provisions of this Act, commits an offence and is liable upon conviction to a fine of five per cent of the project sum for each project in which the offence is committed or cancellation of the project. In order to ensure that the Local Content Act has a more biting force pursuant to section 101 of the Nigerian Oil and Gas Industry Content Development Act 2010, the Minister of Petroleum Resources in exercise of the powers conferred on him has made the Nigerian Oil and Gas Industry Content Development, Compliance and Enforcement Regulations, 2021 to provide pragmatic strategies for the implementation and enforcement of the respective enabling sections of the Act.¹⁷ These Regulations of 2021 gives effect to section 68 of the Principal Act in ensuring efficient and accountable promotion of local content in the diverse sectors of the oil and gas industry.¹⁸ The 2021 Regulations is binding on all persons and agencies that are subject to the principal Act and Regulations made in pursuance thereof.¹⁹ The immediate benefits of these regulations are 'full utilisation and growth of indigenous companies in areas such as exploration, seismic data processing, engineering design, reservoir studies, Manufacturing and fabrication of equipment; and other facilities as well as the provisions of other support services for the Nigerian Oil and gas industry.²⁰ Other important provisions are

¹² Section 31 of the Nigerian Oil and Gas Industry Content Development Act, 2010

¹³ Ibid. Section 35

¹⁴ Ibid, section 58

¹⁵ Hart H L A, *The Concept of Law*, (Clarendon Press, Oxford, 2nd edition, 1994); Legal Positivism vs Natural Law Theory and Treatise by Pinar Okur on Classification of law. Researchgate Technical Report April 2019, :<https://www.researchgate.net/publication/332247267> accessed 10 November 2024

¹⁶ Ibid. section 53

¹⁷ Nigerian Oil and Gas Industry Content Development Act (No 2) 2010

¹⁸ Regulation 1 of the Nigerian Oil and Gas Industry Content Development compliance and enforcement 2021

¹⁹ Ibid. Regulation 2,

²⁰ Ibid. Regulation 41 and Akindele Legal Practitioners' Treatise on Review of Nigeria's Local Content Legislation, p 3. Full treatise available at www.akindele.com accessed 12 November 2024

Sections 47-48 which make it mandatory for the Minister of Petroleum Resources to make regulations that will require any operator to invest in or establish production, manufacturing or service capacity which is currently being imported into Nigeria and in return seek appropriate fiscal framework and tax incentives for such operators.²¹ Therefore, any operator, alliance partner, contractor or project promoter, who in bidding for any Licence, Permit or Interest, fails to submit a Nigerian Content Plan as required by section 7, 10, and 13 of the Principal Act shall be liable for an offence and upon conviction, punishable under section 68 of the Act.²² In furtherance of the above penalties for non-compliance, any operator, alliance partner, contractor or project promoter, who in bidding for any Licence, Permit or Interest, fails to obtain certificate of authorization from the Board for a project as required by the provisions of section 8 of the Principal Act is liable for an offence and upon conviction be punished under section 68 of the Act.

Failure to give first consideration and comply with the minimum Nigerian content attracts punishment flowing from Regulations 5 of the Nigerian Oil and Gas Industry Content Development, Compliance and Enforcement Regulations, 2021 to section 68 of the principal Act. Regulations 5 specifically targeted violations of section 10(1)(a), and 12 liable under section 68 of the principal Act while violation of section 10(b)(b) of the principal Act which bothers on falsification of information and false representation are made punishable under section 125A of the Criminal Code or any other relevant law applicable in Nigeria upon conviction be punished under the same law.²³ Any operator, alliance partner, contractor or project promoter, or company operating in Nigerian oil and gas industry who employs a non-Nigerian in its junior or intermediate cadre or any other corresponding grades designated by the operator or company is liable for an offence under section 35 of the principal Act and upon conviction punishable under section 68 of the principal Act.

In addition to the major sanction prescribed by section 68 of the principal Act, section 69(5) of the Senate Bill attempts to provide more stringent measures for enforcement of compliance with this new requirement. It introduces new sanction provisions to the effect that operators who fail to remit the increased deductions to the NCD Fund within the timeframe stipulated in regulations to be made by the Minister, shall be liable to administrative sanctions including the following:

- a) recommendation for revocation of operating licences and permits
- b) the cancellation of projects, contracts, or certificates as applicable;
- c) the imposition of fines;
- d) refusal to process statutory approvals; and
- e) any other actions prescribed in Ministerial Regulations to be made on the NCD Fund.

This paper acknowledges the several sanctions prescribed by the 2021 regulations but posits that the position being pushed for amendment is a welcome development to avoid legal technicalities which may defeat any regulation in the court of law.

This paper recommends in the light of the context in which this paper is written, it could be deduced that the job of ensuring that the Nigerian Oil and Gas Industry Content Development Act 2010 is not a mere cosmetic legislation is all encompassing. Citizens, communities, communal groups, age-grades, indigenous companies, the Forum, other agencies, Ministers and MDAs as well as the judiciary are major stakeholders in seeing to efficient enforcement, obedience to statutory obligations and application of penalties for violation of the Act. Therefore, it is recommended that the judiciary should have a thorough understanding of the Nigerian Oil and Gas Industry Content Development Act 2010 in to make pronouncements in line with the legislative intent of the Act. This paper therefore canvasses the exercise of the political will on the part of the executive arm of government, judicial activism on the part of the judiciary, fair and periodic exercise of legislative oversight on the part of the legislature to ensure that the objective of the Nigerian Oil and Gas Industry Content Development Act, 2010 and the Nigerian Oil and Gas Industry Content Development, Compliance and Enforcement Regulations, 2021 are not defeated for sustainable economic development in terms of indigenous manpower for the sector and general well being of Nigerians. Executive policy implementation must resist the challenges and pressure of efficient implementation by foreigners and their foreign interests. This is because the oil and gas industry is an industry with deep pocket stakeholders. Therefore, the local content protectors and regulators must resist the temptation for corruption which has permeated several spheres of the Nigerian society.

6. Conclusion

Nigerian Oil and Gas Industry Content Development Act, 2010 and the Nigerian Oil and Gas Industry Content Development, Compliance and Enforcement Regulations, 2021 are not bereft of lofty provisions but needed to be applied in order to ensure that the social and economic development in terms of human and natural resources of Nigerians benefits Nigerians optimally. This paper will be incomplete without emphasis on the impact of the case of *Nigerian Content and Monitoring Board & Anor v A. G. Bayelsa State*²⁴ on interpretation of section 71(2) of the Nigerian Oil and Gas Industry Content Development Act, 2010. In the light of the numerous provisions of the laws examined above, no price would be too much to pay in order to ensure that the judiciary becomes conversant with the provisions of this lofty legislation as much as possible and as soon as possible. This is without prejudice to training and retraining of judicial officers who presides in our courts for the betterment of the society. Past and present government must be commended for bringing Nigeria at par with few countries in the world who have enacted and are implementing the local content law in their shores. The investments in the enactment of the Nigerian Oil and Gas Industry Content Development Act, 2010 is so huge that any likely consequence of judicial expulsion of any of its provisions must be given the attention it deserves in order to arrest such ugly incidents. This is not to tame but train our judiciary to see the why, when, where and how this legislation was enacted for the common good of optimal utilization of our oil and gas resources which has been a major boost for our economic sustainability.

²¹ Ayonmike C S & Okeke B C, The Nigerian Local Content Act and Its Implication on Technical and Vocational Education and Training (TVET) and the Nation's Economy. *International Journal of Education Learning and Development* (2015) Vol.3, No.1, p 33

²² Ibid. Regulation 3(1)

²³ Ibid. Regulation 5(2). Same applies to regulation 5(5)

²⁴ *N.C.M.B v A.-G. Bayelsa State* (2023) 3 NWLR (Pt 1871) 395