

EMPOWERING JUDGES AND ENHANCING COMPLIANCE WITH THE LOCAL CONTENT ACT TO FOSTER SUSTAINABLE ECONOMIC GROWTH IN NIGERIA*

Abstract

This paper examined the critical role of empowering judges in enhancing compliance with the Local Content Act, a legislation aimed at promoting sustainable economic growth in Nigeria. Utilizing a doctrinal methodology, this paper analyzed the provisions of the Local Content Act, relevant case laws, and existing literature on the subject matter. It found out that many judges in Nigeria are not adequately informed about the provisions and objectives of the Local Content Act, hindering effective enforcement. Also, Judges require specialized training and capacity building to effectively interpret and apply the Act. There is also the absence of effective judicial oversight and monitoring mechanisms undermines compliance with the Local Content Act. Corruption and undue influence can compromise the independence and impartiality of judges, leading to inconsistent and unfair application of the Act. The paper however recommended that there should be regular training and capacity-building programme for judges on the Local Content Act and its application. Conduct of sensitization programmes to raise awareness among judges, lawyers, and stakeholders about the importance and objectives of the Local Content Act. Establish specialized courts or divisions to handle cases related to the Local Content Act, ensuring expertise and consistency in decision-making. Strengthen judicial oversight mechanisms to monitor compliance with the Local Content Act and ensure accountability. The paper concluded that empowering judges is crucial to enhancing compliance with the Local Content Act, which is essential for promoting sustainable economic growth in Nigeria. By addressing the challenges and limitations identified in this study, Nigeria can ensure effective enforcement of the Act, promote local content development, and foster sustainable economic growth. The recommendations provided in this study offer a roadmap for strengthening the capacity of judges and promoting compliance with the Local Content Act.

Keywords: Judges, Lawyers, Legislation, Economy, Accountability, Empowerment

1. Introduction

The importance of governance to mankind cannot be over emphasized. In this wise, the three arms of government are essential to provision of goods and services for a healthy economy. It is popularly quoted within public parlance that the welfare of the people is the essence of governance.¹ Also, the need for harmonious coordination of government cannot be over emphasized because government must work towards a just and egalitarian society for all. From law making to interpretation, implementation and execution, the public perception of governance should leave no one in doubt that we all live in just and equitable society for the common good which flows from the commonwealth. As a result, one arm of government that has remained over the years since the advent of independence for the Nigerian people from the jaws of colonialism is the judicial arm of government. The judicial arm of government plays a pivotal role in the interpretation and enforcement of laws in terms of court pronouncement by way of granting of prayers or reliefs sought by the parties before the Honourable Court. As a matter of fact, right from constitutional provisions, statutes, regulations, Decrees, Edicts, Bye Laws, and such other instruments including Gazettes are all subject to interpretation by the court.² This interpretation must be enforced in line with the dictates of the rule of law. To drive home this point by way of introduction, independence of the judiciary is a vital element of the rule of law in any society. According to the Bangalore Principle 1, a judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law and free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.³ Judicial independence entails both outward appearances and internal disposition. A judge shall be also independent in relation to society in general and in relation to the particular parties to a dispute which the judge has to adjudicate.⁴ Therefore, the essence and core objectives of enacting a law in any given society would be defeated if the arm of government saddled with the responsibility of interpreting the law is not properly empowered to do so. As a result, this paper will examine the need to empower our judicial officers in order to interpret the Nigerian Oil and Gas Content Development Act No 2 of 2010 in line with its legislative intent.

***By Ajogwu Martins IDACHABA, LLB (HONS.) LLM, PGD, PhD, Senior Lecturer and Post-Graduate Programme Coordinator, Faculty of Law, Baze University, Abuja, Tel: 08032224236, Email: Idachabamartins1@gmail.com, martins.idachaba@bazeuniversity.edu.ng**

¹ Section 14 (2) [b] of the constitution of the Federal Republic of Nigeria, 1999 provides that 'it is hereby, accordingly, declared that - the security and welfare of the people shall be the primary purpose of government'.

² John Zikama, Professional Ethics In: The Practice of Judges, Prosecutors and Advocates in Rwanda. *African Journal of Law, Ethics, and Education* (2024) Vol 7, Issue II, p.

³ Paragraph 29 of the Commentary of Bangalore Principle 1(1) deals with the issue in more detail: 'All attempts to influence a court must be made publicly in a court room, and only by litigants or their advocates. A judge may occasionally be subjected to efforts by others outside the court to influence his or her decisions in matters pending before the court. Whether the source be ministerial, political, official, journalistic, family or otherwise, all such efforts must be firmly rejected. These threats to judicial independence may sometimes take the form of subtle attempts to influence how a judge should approach a certain case or to curry favour with the judge in some way. Any such extraneous attempt, direct or indirect, to influence the judge, must be rejected. In some cases, particularly if the attempts are repeated in the face of rejection, the judge should report the attempts to the proper authorities. A judge must not allow family, social or political relationship to influence any judicial decision.' See Bangalore Principles of Judicial Conduct, 2002, bangaloreprinciples.pdf (unodc.org), accessed on 13 November 2024.

⁴ 'While a judge is required to maintain a form of life and conduct more severe and restricted than that of other people, it would be unreasonable to expect him or her to retreat from public life altogether into a wholly private life centred around home, family and friends.' Commentary, paragraph 31 'The complete isolation of a judge from the community in which the judge lives is neither possible nor beneficial [...]. A judge is not merely enriched by knowledge of the real world; the nature of modern law requires that a judge live, breathe, think and partake of opinions in that world [...] Increasingly, the judge is called upon to address broad issues of social values and human rights, to decide controversial moral issues, and to do so in increasingly pluralistic societies. A judge who is out of touch is less likely to be effective.' See Bangalore Principles 1(2) of Judicial Conduct, 2002, bangaloreprinciples.pdf (unodc.org), accessed on 16 May 2021.

According to the Natural Resource Governance Institute, what qualifies as local content often varies from country to country.⁵ For example, some countries refer to national content to emphasize that the inputs can be from anywhere in the country, while others seek to promote inputs from the resource-rich region specifically. There are often additional questions about what qualifies as a local business. Section 4 of the Nigerian Oil and Gas Content Development Act No 2 of 2010 established the Nigerian Content and Monitoring Board⁶ which among other core functions is empowered to train stakeholders in the Nigerian oil and gas content on matters relating to development and empowerment of Nigerians for higher stakes and control of its oil and gas resources. This is because the Nigerian Content and Monitoring Board is vital for economic development of Nigeria and human resources capacity building for more Nigerian content in the oil and gas industry. With the advent of the Federal Government policy on mass usage of compressed natural gas (CNG) for our automobile and electricity generation among others, there is no better time to empower stakeholders such as oil and gas consumers and other stakeholders than now. This is because the more citizens and non-citizens engage in usage of oil and gas services, the more the likelihood of conflict and conflict resolution and the more institutions of government saddled with conflict resolution such as the judiciary will be involved in the interpretation of the 'Local Content Act'.

2. The Essence of the Nigerian Oil and Gas Content Development Act No 2 of 2010 in the Nigerian Oil and Gas Industry

The quality of the human resources in any organization or given society would eventually culminate in the quality of its products and overall productivity. In the same vein, the quality of the external stakeholders to an organization would help greatly in further realizing the core objective of the organization. The Nigerian Oil and Gas Content Development Act No 2 of 2010 hereinafter referred to as the Local Content Act covers other legal and institutional frameworks for the regulation of the oil and gas industry in Nigeria. A careful reading of sections 1 and 2 of the Nigerian Oil and Gas Content Development Act No 2 of 2010 buttressed this assertion as follows:

1. Notwithstanding anything to the contrary contained in the Petroleum Act or in any other enactment or law, the provisions of this Act shall apply to all matters pertaining to Nigerian content in respect of all operations or transactions carried out in or connected with the Nigerian oil and gas industry.⁷

Section 2 provides..... 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.⁸

The above provisions provide oversight functions on the Board to ensure that the laws in the oil and gas industry and the regulators in this vital industry ensure that the local content for Nigerians is utilized for the betterment of the Nigerian economy. The Local Content Act is unequivocally a safety and transgenerational measure for the security of employment, capacity development and Nigerian stakeholders' interest within the oil and gas industry in Nigeria. It is transgenerational because the high of influx of expatriates in this vital industry deserves regulation. Section 3 (1) of the Nigerian Oil and Gas Content Development Act No 2 of 2010 provides that Nigerian independent operators shall 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 subject to the fulfilment of such conditions as may be specified by the Minister. It is crystal clear that the Nigerian Oil and Gas Content Development Act No 2 of 2010 prescribes conditions to be met by the Nigerian stakeholders in the oil and gas industry. It is therefore not an automatic access for every Tom, Dick and Harry to play anyhow in the oil and gas industry. Rather, it saddles the Honourable Ministers in charge of Petroleum and Gas to prescribe criteria for stakeholders' participation for optimal benefits of domestic and international oil and gas markets.⁹

Section 3 (2) provides that there shall be exclusive consideration to Nigerian indigenous service companies which 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. The Local Content Act reserved the privilege of exclusive consideration to Nigerian indigenous service companies in terms of oil and gas service consideration within the oil and gas sector. The Local Content Act further deepens that need to protect Nigerian human resources in the oil and gas industry because section 3 (3) of the Act reiterated the need to ensure that it ensures compliance with the provisions of the Act and promotion of Nigerian content development which shall 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. It is undoubtedly asserted that despite all the quests, zeal and efforts of the current and past Nigerian governments to diversify the Nigerian economy. The oil and gas industry is still a major economic drive for the smooth operations of governance in Nigeria as a sovereign entity. Therefore, any law which seeks to regulate influx of foreigners and promote local content development of this vital sector must be implemented within the spirit and letters of such laws. Therefore, in order to ensure that the Local content law is interpreted for proper sustenance of its legislative intent, it is vital to further support and build the capacity of the Nigerian Judiciary.

⁵Local Content Strengthening the Local Economy and Workforce. NRG Reader, March 2015, p. 1

⁶ Section 69 of the Act

⁷ Section 1 of the Nigerian Oil and Gas Content Development Act No 2 of 2010

⁸ Ibid. Section 2

⁹ Ibid. Section 3

Flowing from above, local content is not just targeted at increasing capacity and capability of the local community workforce but is targeted at infrastructure that will support business development in the local economy. In all these efforts, conflict resolution is inevitable and the roles of the judiciary is equally a key factor.

3. An Overview of the Key Components of the Local Content Act across Some Other Jurisdictions

It should be borne in mind that local content legal and institutional framework is not peculiar to Nigeria as a country. An anatomy of this part of the paper will help us understand the rationale behind protection of local content policies by the government and other stakeholders outside Nigeria. It should be noted that local content policy is not supposed to be antithetical to the expatriate quota and other policy guidelines issued from time to time by various immigration service providers across jurisdictions in the globe. A major yardstick for local content policy is the need to protect and enforce indigenous Quotas, embedded in laws, regulations or contracts, are provisions to require companies to award a certain percentage of hires, contracts or equity ownership to local companies or professionals.¹⁰ This will engender indigenous job creating and compliment the efforts of various agencies of government in terms of ensuring equal opportunity for citizens in terms of employment. Another yardstick for local content policy protection is the need for training program requirements or incentives which are aimed at requiring or encouraging foreign companies to build the skills of the domestic workforce. This initiative is transgenerational for economic sustenance and local content capacity development and empowerment. It ensures that certain skilled manpower and skill requirement is not solely dependent on foreigners who could leave the shores of one country for another. Furthermore, public education initiatives, wherein the state opens training centers, establishes programs or organizes overseas scholarships to build a cadre of expertise in sectors with strategic links to oil and minerals are part of local content policy programmes. This ensures proper orientation for citizens and communities to ensure growth and plough back into their various communities for even enjoyment of their natural resources and other social benefits. It suffices to add that incentives for small businesses in terms of development, inclusive of fostering better access to credit for small business owners or opening business incubation centers would be activated and sustained with a properly monitored local content policy initiative in any given jurisdiction. Local content policy and legal frameworks ensure the processing and production of derivative products, such as refining crude oil or smelting minerals, which can capture significant economic benefits if done domestically but also can be expensive and complicated to construct if done outside of its domestic enclave.

4. An Overview of the Nigerian Oil and Gas Content Development Act No. 2 of 2010

Prior to the enactment of the Nigerian Oil and Gas Content Development Act No. 2 of 2010, the Nigerian oil industry was originally the exclusive domain of the International Oil Companies (IOCs) in areas such as exploration, production, refining and trading to mention but a few. Even the downstream operations were initially controlled by expatriate companies such as Shell, Esso and BP, Mobil, etc. Intervention by the Federal Government resulted in the nationalization of assets of the major oil players was therefore necessary to create a more beneficial oil and gas sector. As part of the justification for this paper, let us refresh our memories with key aspects of the Local Content Act. The Federal Government of Nigeria, under the leadership of President Goodluck Ebele Jonathan (GCFR), in March 2010 signed the Nigerian Oil and Gas Content Development Act No. 2 of 2010 into law with a commencement date of 22 April 2010. The Act has 107 sections with a comprehensive Schedule made pursuant to the Act. This law in question is a value addition to the economic and social fabric of the Nigerian nation.¹¹ This is because Local content is the value that an extraction project brings to the local, regional or national economy beyond the resource revenues.¹² The Nigerian Oil and Gas Content Development Act of 2010 makes provisions to enhance local participation in all aspects of oil operations, including the following: 65 percent of Divers in offshore energy projects must be Nigerians; 60 percent of steel ropes used in projects must be made locally from Nigeria; all contracts awarded in excess of \$100 million¹³ must include a 'labour clause,' mandating the use of minimum percentage of Nigerian labor or the use of indigenous companies of a minimum size.

Institutional Organs for the Enforcement of Local Content Act in Nigeria

Without losing sight of the institution of judiciary, it is necessary to state that the Minister is assigned several roles in enforcement and policy regulation of the Local Content Act. The Executive Secretary¹⁴ and the Governing Council. The Executive Secretary is saddled with several responsibilities among which are to serve as the Chief Executive and Accounting Officer of the Board; and (b) responsible to the Council for the execution of the policies and the administration of the daily affairs of the Board; The Nigerian Content Monitoring Board¹⁵ is also a creation of the Local Content Act aside from the Governing Council. A major observation by this paper is the current reality wherein President Tinubu has split the Ministry of Petroleum into two portfolios with a Minister of Petroleum and another Minister for Gas. Section 106 of the Act defines the Minister as the Minister of Petroleum Resources. It is suggested that Minister of Gas resources should also exercise oversight duties over agencies of government under his Ministry for easier coordination of the gas component of the Act.

¹⁰Natural Resource Governance Institute: Local Content Strengthening the Local Economy and Workforce, March 2015, p 1 https://resourcegovernance.org/sites/default/files/nrgi_Local-Content.pdf Accessed 12 November 2024

¹¹ Bello, O. (2010). Jonathan inaugurates Nigerian Content Governing Council, orders strict compliance', *Business- Day*, 6 September 2010, p.6

¹²Natural Resource Governance Institute: Local Content Strengthening the Local Economy and Workforce, March 2015, p 1 https://resourcegovernance.org/sites/default/files/nrgi_Local-Content.pdf Accessed 12 November 2024

¹³ Section 17 of the Nigerian Oil and Gas Content Development Act No. 2 of 2010

¹⁴ Ibid Section 81

¹⁵ Ibid. Section 69

The Requirement of a Nigerian Content Plan

Section 7 of the Local Content Act mandates that in the bidding for any licence, permit or interest and before carrying out any project in the Nigerian oil and gas industry, an operator shall submit a Nigerian Content Plan (‘the Plan’) to the Board demonstrating compliance with the Nigerian content requirements of this Act.¹⁶ By virtue of section 11 of the Act, the content of the Plan include:

- (1) ...provisions intended to ensure that-
 - (a) first consideration shall be given to services provided from within Nigeria and to goods manufactured in Nigeria; and
 - (b) Nigerians shall be given first consideration for training and employment in the work programme for which the plan was submitted.
 - (2) Any collective agreement entered into by the operator, project promoter or other body submitting the plan with any association of employees respecting terms and conditions of employment in the project shall contain provisions consistent with this section.
11. (1) As from the commencement of this Act, the minimum Nigerian content in any project to be executed in the Nigerian oil and gas industry.

Section 11 (3) is key among provisions relating to our discourse in the sense that it provides that all operators, alliance partners and contractors shall comply with the minimum Nigerian content for particular project item, service or product specification set out in the schedule to this Act.

The Plan submitted by any operator or project promoter for any project shall contain an Employment and Training Plan (E and T Plan) which shall include-

- (a) an outline of the -
 - (i) hiring and training needs of the operator or project promoter and operator's major contractors with a breakdown of the skills needed,
 - (ii) anticipated skill shortages in the Nigerian labour force,
 - (iii) project specific training requirements, and
 - (iv) anticipated expenditures that will be made directly by the operator in Quarterly implementing the E and T Plan as a forecasted and actual expenditure;
- (b) a time frame for employment opportunities for each phase of project development and operations, to enable members of the Nigerian workforce to prepare themselves for such opportunities;
- (c) the operator or project promoter shall- report to the Board quarterly on employment and training activities for the reporting period and compare this to the E and T Plan and the report shall include-
 - (i) number of new employees hired during the year,
 - (ii) their place of residence at the time of hiring, and
 - (iii) their employment status; and
- (d) any other information required by the Board for the purposes of implementing the provisions of this Act.

Section 12, 13, 14, 15, 16 and 17 of the Local Content Act made concessions to Nigerians and Nigerian Indigenous companies in instances such as contract bids, contracts, subcontracts, purchase orders, etc.

Establishment of Project Offices across the states and regions

Section 25 of the Act mandates the establishment of project offices by project promoters and operators in catchment areas where projects are to be carried out.¹⁷ These offices are to be established before the commencement of the projects and are required to have authority to take decisions on project management and procurement.¹⁸ This provision has the capacity to compel contractors to utilize local skills and in so doing, local technical, vocational education and capacity will be enhanced across time. The provision of this section has potential to bring about rural development and deepen Nigeria’s economic base as it should cause significant relocation of project offices/operations to the catchment areas that would in turn help to promote urbanization of the development and utilization of indigenous vocational and technical crafts and technologies

Sanction(s) for violation of the Local Content Act

All these lofty provisions of the Act would be merely cosmetic without some measure of sanctions for contravention or violation of the extant law and regulations (if any) on the Local Content law. Section 68 of the Act 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. For the entire Act to be effective, the executive and judicial arm of government must collaborate to support the legislative sweats exerted into enacting this punishment section of the Local Content Act.

Protection of specialized Services: Legal and Financial Services

Section 51 of the Local Content prohibits outsourcing of legal service in the oil and gas industry to foreigners. This is in giving effect to statutory and judicial provisions of section 2, and 12 of the Legal Practitioners Act and the case of *Awolowo vs Federal*

¹⁶ Ibid. Section 7

¹⁷ Ibid. Section 25

¹⁸ 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. European Centre for Research Training and Development UK (www.eajournals.org *International Journal of Education Learning and Development* (2015) Vol.3, No.1, p. 32

*Minister of Internal Affairs.*¹⁹ Section 51 the Act provides that the operators and other investors in any operations, business or transaction in Nigeria oil and gas industry can only retain a Nigerian Legal Practitioner or a firm of Legal Practitioners located in Nigeria. In this wise, section 49 (1) of the Act requires all operators, project promoters, alliance partners and Nigerian indigenous companies engaged in any form of business, operations or contract in the Nigerian oil and gas industry, shall insure all insurable risks related to its oil and gas business, operations or contracts with an insurance company, through an insurance broker registered in Nigeria under the provisions of Insurance Act as amended. The financial services sector is also captured by section 52 which provides that all operators and investors in need of financial services can only retain the services of Nigerian financial institutions except in situations to the satisfaction of the Board it is unrealistic to do so.

5. Challenges of Enforcement of Local Content Act

As part of efforts to recognize and solve the challenges of implementation and enforcement of the Local Content Act is the reason why thoughts are put to paper to drive home the need to assist the judiciary align justice sectors reforms with ongoing reforms in the oil and gas industry for optimal development of the Nigerian economy from the viewpoint of local content development. Funding of local indigenous companies in highly capital-intensive sector remains a major challenge in assisting local companies and individuals. The dichotomy between the local fabricators of machines and equipment compared to their foreign competitors seems wide and therefore would take time for these gaps or disparity to be bridged for meaningful contribution to the oil and gas sector by local engineers, contractors among others. This is why the law gives a percentage participation to local contractors and indigenous skilled manpower for participation in contract bids, contracts, purchase orders, etc.

6. The Roles of Judges in the Implementation of the Local Content Act

Having established the importance of the Nigerian Local Content Act to the Nigerian economy and especially the oil and gas industry, it is apposite to state that the judiciary as an arm of government and especially judges as major stakeholder in the justice sector must be on the same page in order to ensure that the legislative intent of the Local Content Act is not defeated by the nuances of legal practitioners and legal technicalities. The Nigerian judiciary is a creation of statute. The 1999 Constitution by virtue of Chapter VII²⁰ created the Judicature which comprises the Supreme Court of Nigeria, the Court of Appeal, the Federal High Court, the State High Courts, the Sharia Court of Appeal, the Customary Court of Appeal,²¹ Code of Conduct Tribunal, Magistrate Courts, District Courts, Customary Courts, Area Courts, Juvenile Courts, amongst others.²² The enormous power of the judiciary is akin to the power of the citizens to choose their leaders. This power was exercised in the case of *Rt. Hon. Rotimi Chibuike Amaechi v INEC & 2 Ors*²³ where a full panel of the Supreme Court held that there can be no doubt that there is a plenitude of power available to this Court to do which the justice of the case deserves.²⁴ It is the submission of this paper that the power of the courts can call for reforms and pronouncement of vacuum in the law or other laws which are inimical or may constitute obstacles to the Local Content Act as the Honourable Court may find out from time to time. Therefore, the ethical conduct of judges in case management system and the general management of the body of laws in Nigerian cannot be over emphasized.

From the history of legal education in Nigeria in terms of production of quality human resources for the justice sector especially training to become a lawyer, it is evidence that there is no module or course content which specifically trains the law student on what to do as a judge and imbibe in him all the skills required to be a successful judge. Lawyers who are duly called to the bar are either appointed through the magistracy, legal practice or academic and even from the official bar to become judges. The vital roles of the judge revolve around the trajectory of interpretation of statutes and a sound knowledge of the Interpretation Act and their application to facts, evidence presented before the court. This is why stakeholders and policymakers such as the Securities and Exchange Commission, Economic and Financial Crimes Commission, Nigerian Deposit Insurance Corporation, etc usually organize capacity building platforms for training of judges and other stakeholders in the justice sector on the need to acquaint the courts with the modus operandi and overall legislative intent of their enabling law in terms of its application for the good of the Nigerian society. There is no gain saying that no egalitarian society can thrive without a virile judiciary and a sense of justice as it ought to be done. Therefore, it is apposite that this branch of government that is saddled with the responsibility of giving justice must be well equipped to deliver justice in order to attract investors into the Nigerian economy.

Undoubtedly, there are trade unions in the oil and gas sector who also serve as watchdogs in the content policy of regulators and stakeholders in the sector. As a result, these trade unions approach the courts to seek redress from time to time on issues relating to local content protection in form of class action, enforcement of collective bargain and agreements, picketing, strikes or other forms industrial actions. This might occur as a result of industrial dispute between employers and employees in the oil and gas sector. Expectedly, this would necessitate the need for the courts to be abreast of developments in the local content application of the law in order to uphold the law and justice between parties. It is the duty of the courts to give effect to principal and subsidiary legislation made in pursuance of the Act. For instance, the Act in Section 40, 41 and 42 empowers the Minister to make regulations in respect of capacity building, growth of indigenous companies in various areas such as exploration,

¹⁹ (1962) LLR 117

²⁰ Parts I & II

²¹ Constitution of the Federal Republic of Nigeria, 199 (as amended), sections 230, 237, 247, 252, 270, 275, and 280.

²² Akinola, O. B., Judging the Judge: Lessons from Nigeria and Selected Jurisdictions. *Readings in Contemporary Law and Policy Issues: Essays in Honour of Hon. Justice Iche N. Ndu, Former Chief Judge, Rivers State*, edited by Fagbohun O. and Oloworaran B., (2012), p. 375

²³ S.C. 252/2007

²⁴ *Rt. Hon. Rotimi Chibuike Amaechi v INEC & 2 Ors*, S.C. 252/2007

engineering design etc and for ensuring that professional employees are registered with Nigerian professional bodies. Section 47 of the Act also permits the Minister to make regulations which requires operators to invest in or set up facilities factories etc for the purpose of carrying out any production or manufacturing in Nigeria. A proper understanding of the principal legislation will help the courts to apply the regulations to serve the ends of justice in case it is being contested or any action taken in respect thereof is being contested or challenged in court.

In empowering our judges to uphold the Act, there is need to encourage comparative review of extant laws as envisaged for the protection of indigenous skilled labour and contract procedure and processes for the betterment of the economy in other jurisdictions. It is trainings of this nature and papers of this nature that will expose the court to the modus operandi of resolving knotty provisions of the Local Content Act especially in terms comparison with sister legislation in some other jurisdictions at least for persuasive and advisory effect on the nuances of the local content legal and institutional frameworks. A foray into some jurisdictions will reveal that Ghana operates its local content by enforcing the *Ghana-Tullow Agreement* which provides that 'in the acquisition of plant, equipment, services, and supplies... the contractor shall give preference to materials, services, and products produced in Ghana...if they...meet standards generally acceptable to international oil and gas companies...' ²⁵ In the same vein, the Indonesian Bill on Mineral and Coal Mining of 2008 requires all companies to process and refine mining products in Indonesia. ²⁶ Nigeria, Ghana and Indonesia are not alone in the quest to ensure local content development and capacity building as Timor Leste, a country in Asia's production sharing contract for Area A stipulates that 'the Contractors shall draw to the attention of suppliers based in Timor-Leste, in such a manner as the Ministry agrees, all opportunities for provision of good and services in petroleum operations. ²⁷ The Afghan Amu Daya Basin contract requires that the 'contractor agrees to as far as possible train and employ qualified Afghan nationals...and...will undertake the schooling and training... The contractor will require the contractors and subcontractors to do the same.' ²⁸ In the words of Akindelano, ²⁹ with respect to the provision of section 3(1) and 3(2) to Nigerian Independent Contractors and Nigerian Indigenous Service Companies, the overall focus of the Act does not appear to be on the ownership structure (whether foreign or Nigerian) of the companies or operators participating in the Oil and Gas Industry. Having said that the contents of Section 3(1) and (2) cannot be ignored. The Act does not define 'Nigerian independent operators' and does not define 'Nigerian Indigenous service companies' both of which are used in the Section. For the sake of clarity, section 106 of the Act defines Nigerian Company as: 'A company formed and registered in Nigeria in accordance with the provisions of the Companies and Allied Matters Act with not less than 51% equity shares by Nigerians.' ³⁰

7. Judicial Attitude towards upholding the Provisions of the Local Content Act

This paper will be incomplete without a few forays into the judicial attitude to some provisions of the local content Act. In the case of *Nigerian Content and Monitoring Board & Anor v A. G. Bayelsa State* ³¹ 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(3) 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:

²⁵https://resourcegovernance.org/sites/default/files/nrgi_Local-Content.pdf accessed 13 November 2024

²⁶ Ibid

²⁷ Ibid

²⁸ Ibid.

²⁹<https://akindelano.com/dl/OD%20-%20Local%20Content%20Act.pdf> accessed 13 November 2024

³⁰ Ibid. Section 106

³¹ *N.C.M.BvA.-G.BayelsaState* (2023) 3 NWLR (Pt 1871) 395

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 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.

8. Ways to enhance Compliance with the Local Content Act for Sustainable Economic Growth

From the exposition above, there are discernible ways to enhance compliance with the Local Content Act by stakeholders. This paper identifies some of them which are:

- i. Train and retrain judges and other stakeholders in the justice sector to have a thorough understanding of the Nigerian Oil and Gas Content Development Act No 2 of 2010 and the Regulations made in pursuance of the principal Act.
- ii. Constant capacity building, should not be one off but periodically structured to have the maximum impact on the economy.
- iii. Partnership with NJI, Nigerian Institute of Advanced Legal Studies and other training agencies in furtherance of capacity development within the justice sector.
- iv. Assertion of independence by judges against internal and external forces which wants judges to interpret the laws based on the whims and caprices of forces who wants their interests upheld through the instrument of the court of law.
- v. Problem of corruption has to be tackled headlong through the institutionalization of the oil and gas sector. It is apposite to note that it is notorious that foreign interests might be seen to make attempts to compromise agencies of government in charge of procurement such as the Bureau for Public Procurement (BPP) and the courts. The times we are in calls on the judiciary to sustain its image as the last hope of the common man.
- vi. There is need for sustainable and protective judicial activism in giving effects to the dictates of the local content Act, its regulations and other allied provisions in line with the objective of the local content law.
- vii. The need to reduce technicality in lieu of upholding substantive law. For the Nigerian economy to grow, foreign investors especially in the oil and gas sector must have the perception that their investments are safe, secure and rewarding through a just judicial system.

This paper recommends that there should be regular training and capacity-building programme for judges on the Local Content Act and its application. Conduct of sensitization programmes to raise awareness among judges, lawyers, and stakeholders about the importance and objectives of the Local Content Act. Establish specialized courts or divisions to handle cases related to the Local Content Act, ensuring expertise and consistency in decision-making. Strengthen judicial oversight mechanisms to monitor compliance with the Local Content Act and ensure accountability

9. Conclusion

The uniqueness and nuances of the law and practice of Local content provisions has necessitated the need for proper and constant training of judges and other justice sector stakeholders. The judiciary plays a vital role in sustaining rule of law which has been proven to be a catalyst for economic growth, sustainability among others. There is a need to protect the legislative interest on this courageous route of protecting local practitioners across various sectors of the Nigerian economy.