

INTRODUCTION

Nigeria's oil and gas industry has continued to play a key role in the country's economic growth generating about 95% of total revenue and 80% of the national income of the country. To service the operations in the oil and gas industry Nigeria makes huge investments annually however, despite these investments in the sector, some important variables have not fared well, e.g., employment, inflation, housing, the energy sector, manpower/capacity development etc. The reasons are obvious, over 80 per cent of the government investment in the sector, gets their services internationally and the sector was designed to be capital intensive. The import is the dearth of jobs, skill development, capacity building/utilization and lack of sustained national economic development.

The Nigerian oil industry was originally the exclusive domain of International Oil Companies (IOCs) in areas ranging from exploration to production, refining and trading. Even the downstream operations were initially controlled by expatriate companies. It was noted that in the hydrocarbon industry, certain basic engineering services such as fabrication, engineering, procurement, construction, front end engineering design, are often carried out abroad where most of the equipment is manufactured; thereby employing citizens of other countries at the expense of Nigerians resulting in capital flight and leaving very little for the country's industrial base and general economic development.

Nigeria like other African countries recognized the need for her indigenes to take ownership and control of its natural resources for exploitation and transformation into economic growth. To achieve this goal, various policies and laws were pursued. The Nigerian Government commenced efforts to establish policies and legal measures to promote the development of local content in the oil and gas industry. Between 1959 and 1999, the government established several policies and legal measures to promote local content in the industry. To a large extent, such measures were not considered comprehensive and failed to achieve the desired objectives of indigenizing the industry and facilitating the diversification of Nigeria's economy. Some of the initial legislation included the *Petroleum (Drilling & Production) Regulations; Industrial Training Fund 1971, Petroleum Technology Development Fund 1973, The National Office of Technology Acquisition Act 1979 etc.*

A common response to the reason for this was the absence of a legal or statutory framework for Nigeria to harvest the technological, industrial, and economic intangible capital assets being generated by oil and gas activities for diffusion into the local economy.

Thus, in 1999, the Nigerian Government commenced new initiatives to establish a comprehensive policy regime for promoting the development of local content in the industry. This led to the establishment of several government committees to explore means of increasing local content levels in the industry to increase the contribution of the industry to Nigeria's gross domestic product (GDP). The reports of those committees all identified that Nigerian content development

initiatives required “an exhaustive systemic approach that would assess local content levels, identify constraints, develop clear policies and processes to stimulate growth and clearly define the roles and responsibilities of stakeholders”.

LOCAL CONTENT LAW IN THE NIGERIAN OIL AND GAS INDUSTRY

The Concept of Local Content

The term “local content” has been defined by B. Ogbeifun as the engagement of Nigerians as employees, the participation of Nigerian investors in the industry and the use of Nigerian contractors in the execution of contracts.¹ He defines local content as “a set of deliberate orientation and actions to build domestic capacity relevant for service and product delivery comparable within that industry and an opportunity to locally build a sustainable culture of service quality and capabilities exceeding customers' expectations and comparable to international standards through key local personnel and management”.

A major milestone for the Nigerian oil and gas industry was the enactment of the Nigerian Oil and Gas Industry Content Development Act in 2010. The *Nigerian Oil and Gas Industry Content Development (Local Content Act) 2010* (“The Act”) was enacted to promote indigenous participation in Nigeria's oil and gas industry to improve the economic and social well-being of those engaged in operating in the oil and gas industry. The Act provides for the development of Nigerian content in the Nigerian oil and gas industry, Nigerian content plan, supervision, coordination, monitoring, and implementation of the Nigerian content.

Under the Local Content Act, the concept is classified as “Nigerian content” and is defined as 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 and material resources and services in the Nigerian petroleum industry.”***

Local content requirements are usually imposed by States on firms to facilitate the achievement of national economic objectives including the promotion of economic diversification, the reduction of import dependency, the promotion of indigenous participation in strategic economic sectors, the promotion of exports, the facilitation of technology transfers as well as skills acquisition and job

¹ B Ogbeifun, ‘How Content is Local Content?’ Available at <www.ganji.com> Cited in O I Akpanika, ‘Technology Transfer and the Challenges of Local Content Development in the Nigerian Oil Industry’ 2012 (11) 2 Global Journal Of Engineering Research, 123-131 Available at <<https://www.ajol.info/index.php/gjer/article/viewFile/90642/80057>>

creation; and the advancement of social and environmental objectives to promote sustainable trade investments in host communities.

Under the Act, indigenous Nigerian companies are meant to be given exclusive consideration for the execution of oil and gas contracts and services where such companies demonstrate evidence of basic qualifications such as the ownership of equipment, the availability of Nigerian personnel and the possession of the capacity to execute projects on land and swampy areas.

The Act further provides that every local content plan is required to contain provisions which would ensure that “*first consideration* shall be given to services provided from within Nigeria and to goods manufactured in Nigeria...”.

MANAGING EXPATRIATES IN THE OIL AND GAS INDUSTRY

Who is an Expatriate?

In the simplest terms, an expatriate *is an employee sent by his organization to a different country to work*. They can also be explained as people who live in a country temporarily having the intention to return to their native home after a given time. Expatriates differ from tourists or migrants due to the length of time they stay in such foreign lands and their reason for travelling.

Reasons For the Influx Of Expatriates in the Nigerian Oil And Gas Industry

Historically, Nigeria has been heavily endowed with crude oil and natural gas deposits. The discovery of oil (commercial quantity) in Nigeria in 1956 was followed with the influx of multinational companies (MNCs) into Nigeria. Their entrance also increased the number of foreigners coming into Nigeria to work. Among these foreigners are people being sent on international assignments by their respective home-based organizations. The need for these expatriates came because of the expansion of the activities of multinational companies (MNCs) into foreign countries including Nigeria due to the establishment of subsidiaries. This has resulted in the constant influx of expatriates from the foreign organizations that come to represent their respective parent companies. These expatriates play important roles for the organizations they represent as they are heavily relied upon by their organizations for knowledge and skills transfer to new employees and sustenance of uniform organizational culture in the new subsidiaries. These international assignees or expatriates are also needed to develop global competencies within a management team thereby strengthening the organization’s competitive advantage. Expatriate assignments also increased due to rapid globalization and boundary-less business ventures. There are at least 8,000 expatriate workers, who account for about 12 per cent of the overall workforce in the oil sector - although the actual figure is probably much higher. It should be noted that the

number of expatriate workers in unskilled and semi-skilled jobs has been increasing over the past few years. Expatriate workers often occupy positions requiring special skills and expertise, with which Nigerian workers cannot compete. They are also employed as trainers of new tools, equipment and technology and hold managerial positions in multinational oil companies.

LEGAL FRAMEWORK FOR THE MANAGEMENT OF EXPATRIATES IN THE INDUSTRY

The *Immigration Act 2004*, *Immigration Regulations, 2017* and The *Nigerian Oil and Gas Industry Content Development Act 2010* (the Act) provide the major legal framework for the application and management of Expatriates in the Nigerian oil and gas industry, while the Ministry of Interior, Nigerian Immigration Service and the Nigerian Content Development & Monitoring Board (NCDMB) (the Board) are vested with the powers relating to the administration and management of Expatriates and Expatriate Quota in the oil and gas industry. Since the administration of the Act is vested in the Board, the Board provides the procedure through the publication of '*Guideline for Application of Expatriate Quota, Succession Plan & Deployment of Expatriate in The Nigerian Oil And Gas Industry*'.

Application for Expatriate Quota in the Oil and Gas Industry

1. Any operator, Service Company, project promoter, or stakeholder applying for an expatriate quota in the oil and gas industry, including companies providing service(s) or intending to provide service(s) in the Industry shall seek and receive the approval of the Board before making any application for the expatriate quota to Federal Ministry of Interior, except where such expatriate position(s) fall under the 5% Management positions for investor interests as prescribed in Section 32 of the Act that has been previously approved by the Board.
2. The Applicant Company shall provide documentary evidence to show that the position(s) applied for have been advertised in at least two major Nigerian newspapers, the Nigerian Oil and Gas Industry Content Joint Qualification System (NOGIC JQS), the internet and social media sites and that the post(s) had been advertised internally in the company and that no qualified Nigerian indigene has been found within Nigeria for the position(s).
3. The Applicant Company shall notify the Board of receipt of applications, planned interview dates and results of the interview for each vacancy advertised.
4. Operators and Service Companies with international affiliations wishing to establish new quota positions by using staff from their international operations will have to submit the staff credentials to the Board along with a Capacity Building Plan in one of the following areas:
 - Employment of Nigerians in areas identified by the Board
 - Training of Nigerians in areas identified by the Board

- Facility upgrades or revamp as identified by the Board
- Sponsorship of a Research and Development initiative as identified by the Board

The *Nigerian Oil and Gas Industry Content Development Act 2010* (the Act) allows operators and project promoters to retain a maximum of five percent (5%) of their management roles as expatriates' positions with the condition that the operators submit a succession plan to the Nigerian Content Development and Monitoring Board (NCDMB). The purpose of the succession plan is to provide for Nigerians to understudy the expatriate for a maximum period of four (4) years, following which the position would become "Nigerianised"

Section 33 of the Act provides that all applications for EQAs must be submitted to the NCDMB for approval before submission to the Federal Ministry of Interior. This includes applications for a Temporary Work Permit. The application to the NCDMB shall be supported by the following documents-

- Succession plan
- The organizational chart of the applicant company
- Advert Report (for new applications)
- Job descriptions/ qualifications for the required positions
- Training schedule for understudies and other Nigerian Staff
- Employment commitment
- Past FMI approval letters for the required positions; and
- Proof of expatriate registration with professional bodies in Nigeria.

In addition to the above, the NCDMB requires that expatriates working in the Nigerian oil and gas industry will undertake biometric registration as part of the conditions they must fulfil before their organizations can secure EQAs. This is to ensure that the details of all foreigners working for operating and service companies in Nigeria are captured on the Nigerian Content Joint Qualification System (NOGICJQS) being operated by the NCDMB.

VISAS AND PERMITS AVAILABLE TO EXPATRIATES TO WORK IN NIGERIA

1. Subject To Regularization Visa ("STR Visa")

Upon the grant of the Expatriate Quota, companies is expected to apply to the Nigerian Embassy in the Expatriates' home country or permanent residency, requesting that the employee be granted a Nigerian STR Visa. The STR Visa is to be utilised for a period of ninety (90) days during which the company must make an application to the Comptroller General of the Nigeria Immigration Service ("NIS") to regularize the stay of the expatriate. The application is accompanied by some required documents.

2. **Combined Expatriate Residence Permit And Alien Card (“CERPAC”)**

Upon receipt of the STR Visa, the expatriate who intends to live and work in Nigeria for more than 56 days would be required to obtain a Combined Expatriate Residence Permit and Alien Card (“CERPAC”). CERPAC is a work or residence permit required for any foreigner to reside in Nigeria for any lawful purpose. CERPAC may be renewed upon expiration.

3. **Temporary Work Permit (“TWP”)**

Regarding short term consultants providing specific services in the industry, companies may apply for a temporary work permit (TWP). This can only be obtained from the office of the Comptroller General of Immigration, Nigeria Immigration Service, Abuja. A TWP is usually issued for an initial period of 3 months and may be renewed once.

MANAGEMENT OF EXPATRIATES IN THE INDUSTRY AND ITS RELATED ISSUES

Expatriate employment is fraught with so many challenges in the oil and gas industry. These challenges are multidimensional and often range from adapting to a new environment and culture to tax-related issues, immigration and so much more.

Most organizations, which require expatriates to run their operations, attempt to manage the personal expectations of their expatriate employees and the regulatory needs associated with expatriate employment. The steps taken in this direction will usually go a long way in ensuring that the expatriates and their employers comply with all the relevant laws and regulations.

LEGAL CHALLENGES

1. **Non-Compliance with Nigeria’s Visa Regime and Residency-** One of the critical aspects of expatriate employment in Nigeria is the need for organizations seeking expatriate employees to comply with the laws and regulations defining Nigeria's visa regime and residency.

Expatriates have been seen to accept employment (not being employment with the Federal Government or a State Government) without the consent in writing of the Director of Immigration, take up partnerships with other people, practice professions and establish or takeover trades and/or business without the consent in writing of the Minister.

Companies deploying expatriates in the Nigerian oil and gas industry meant to ensure full compliance with the guidelines and requirements of the Ministry of Interior and NCDMB including registration on the Nigerian Oil and Gas Industry Content Joint Qualification System (NOGICJQS) as well as biometrics enrolment of all expatriate personnel in their employment

have been complicit in disregarding the various rules governing expatriates residing and working in Nigeria.

2. **Quota Trafficking by Organizations in the Industry-** The administration and applicability of Expatriate Quota (EQ) positions have remained a contentious issue between Legal Practitioners, Human Resource officers, and Regulatory Agencies. Quota trafficking is one prevalent abuse in the EQ administration process, especially in the oil and gas industry. Legal Practitioners and Human Resource officers are caught between the demand of meeting the business needs of their organizations and the huge challenges of meeting the statutory requirements of the regulatory agencies. Unfortunately, in their quest for meeting the perceived urgent needs of their organizations, most of them tend to undermine the law in this respect. Any organization, which fails to align the job portfolio of its expatriate employee to the EQ approval granted to it, will be deemed to violate the regulations guiding EQ administration.

One way of identifying an expatriate whose job profile does not correspond with the EQ position occupied is through his business card. The designation on his residence permit will be different from the one on the business card. Legal Practitioners, Human Resource officers and Resident Expatriates need to note this and ensure that the right things are done to remain compliant.

Another variant of Quota trafficking happens where there is no contractual agreement between company A and company B and the expatriate employed by Company A is working for Company B. This is mostly found in the oil and gas industry. **1 in 10 expatriates is working for companies they do have contractual agreements with, nor are they registered under.** Where an expatriate is required to fill a particular position and the company does not have the approval to accommodate the need, the EQ approval process allows a company to either re-designate an existing position or apply for an additional position.

3. **Disregard for Understudy Development-** A key administrative protocol of the EQ regime requires strict adherence to the principle of understudy. Quota approvals are issued with certain prescribed conditions, which the beneficiary companies must comply with. The conditions are explicitly stated in the letter bearing the approval of the Honorable Minister of the Federal Ministry of Interior (FMI).

Item 2(i) on the approval letter states that “for each expatriate quota position granted and on which an expatriate is placed, two (2) Nigerian understudies with minimum qualification of B.Sc./HND in the relevant profession/ discipline should be attached”.

The purpose of the understudy scheme is to ensure that Nigerians are given job opportunities in every organization and strategically placed to take advantage of skills and technology transfer. The understudies should be placed in a position to either assume the job or be allowed to vie for the position after the 10-year life span of the EQ position. Adherence to the understudy scheme and EQ utilization are monitored by the NIS, State Security Service (SSS) and the FMI. It is imperative to state that the EQ returns submitted on monthly basis to NIS is a statutory self-reporting process, which documents the extent to which beneficiary companies satisfy the condition upon which the approval is granted. The returns are reviewed, and questions are raised accordingly by the NIS and other relevant regulatory agencies to address any instance of non-compliance. FMI has the power to withdraw EQ approvals granted to an organization if such an organization abuses the conditions upon which the approvals were issued.

4. **Abuse of Expatriate Quota by Married Couples-** There are cases where foreign nationals with accompanying spouse status work in the same establishment as the principal expatriate. This is a violation of the law. Any organization desirous of giving employment to an accompanying spouse must place such an employee on its expatriate quota approval. Similarly, dependents, who are accompanying parents, are not allowed to take up paid- employment.

As of today, twelve years after the Local Content Act came into existence as a law, the stipulations on the allocation of the number of new expatriates or extension of stay of those already in the country to work in a company or a particular project is only on the paper used in writing the Content Act.

Some foreign operators have abused their allowed expatriate quota with impunity simply because they have found ways of circumventing the system that was supposed to monitor compliance. Some companies even bring in all kinds of “expatriates” under the guise of expertise without recourse to approval from any government monitoring agency.

Some individuals in government agencies are guilty of corrupting what would have been a good government policy of building local capacity and adding value to the economy.

The Nigerian Immigration Act gives the Ministry of Interior the powers to approve or revoke expatriate quotas and lists the objectives of the Expatriate Quota Policy to include filling up the inadequate supply of manpower, training local manpower, attracting foreign investment, and achieving the transfer of technology, whereby two Nigerians will be attached to understudy an expatriate. However, it is obvious these objectives have not been achieved, probably because of improper coordination among concerned government agencies.

This situation is worsened by the non-existence of a coordinated strategy for determining the skills gap in the oil industry today which would have addressed gaps in the strategies set out in expatriate quota management.

Although multi-national operators in the country's oil and gas industry handling jobs that require the involvement of expatriates are mandated to first give Nigerians the opportunity to vie for the job before advertising such positions to foreigners, companies have devised ways of manipulating this aspect of the Content Act.

Section 32 of the Act, which stipulates that an operator or project promoter may retain a maximum of **5% (five per cent)** of management positions, as may be approved by the Content Board as expatriate positions, to take care of investor interests has also been grossly abused by some foreign operators.

MANAGING THE CHALLENGES

The local Content Development Act has been seen increasingly as an important tool that could support the federal government to upgrade its manpower capacity with results that benefit the government, the private sector and the economy.

It is clear from the above that there are various challenges surrounding expatriate employment in Nigeria. However, these challenges are not insurmountable. It is therefore imperative that organizations and the monitoring boards ensure that multinational oil and gas companies operating in Nigeria ensure that all the multinational's local staff constantly acquire necessary skills and know-how through understudy, workshops and seminars and ensure its partners support the Nigerian Local Content policy through training of local staff, transfer of technology and skills development.

For the government to achieve the local content target, it must adopt initiatives to create enabling environment for increased involvement of Nigerians in the oil and gas industry.

There is also a need to adopt transparent measures for granting permission to set up industrial units that adopt liberal sector policies in consonance with overall national economic policy as well as the establishment of institutions which support the private initiatives.

To achieve full implementation of the local content law, the government will need to embark on a series of market-oriented policy reforms to integrate the economy towards achieving competitive economic growth and globalization.

Local-content policies need to look beyond the simple generation of economic rents to focus on the development of linkages that will endear more growth and economic development of the oil-producing regions and the nation.

CONCLUSION

The Local Content Act is one of the most successful economic policies of the Federal Government in recent times. It is important to note that the Local Content Act does not try or intend to bar foreigners from taking an interest in the Nigerian oil and gas industry, but subject to the fulfilment of conditions specified by the Act. Nigerian operators and Nigerian service companies are considered first in the award of oil blocks, licenses and works in the oil and gas sector before foreigners. The Act welcomes foreigners to be operators, shareholders, investors, and partners in the industry if they conform to the provisions of the Act.

The passing into law of the Nigerian Oil and Gas Industry Content Development Bill is a step in the right direction. However, the critical issue remains that of monitoring and enforcement or else the overall benefits of the law will not be felt by Nigerians. It is therefore hoped that the Local Content will create jobs, build indigenous technical expertise, stimulate other sectors of the economy, and ultimately increase Nigeria's gross domestic product.

Enforcing local content depends on the availability of an industrial-supply base that can act as growth levers. If some of the strategies and recommendations made are well implemented, the local content law will have a greater positive impact on the indigenes and the economy at large.