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**DEVELOPING A SUSTAINABLE LOCAL
CONTENT POLICY - Focus on Nigerian Content
Initiatives**

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Developing a Sustainable Local Content Policy-Focus on Nigerian Content Initiatives

Outline of Presentation

- § Introduction
- § Overview of Nigerian content initiatives - brief history, definition, objective and targets
- § Current regulatory policies – Government policies, Legislation and Contractual obligations
- § Challenges in implementing local content
- § Creating the right environment and budgetary implications
- § Establishing the right policy frame work – examples from other jurisdictions; and
- § The way forward

INTRODUCTION

- § Liberalization of investment and exchange control laws and regulations in developing countries
- § Investment friendly environment
- § Conflict between desire to attract foreign capital and the need to protect their citizens and industries from being dominated by foreign nationals
- § Maintaining a balance
- § Development of local content policies.

OVERVIEW OF NIGERIAN CONTENT INITIATIVE

Brief History

- § Crude oil discovered in commercial quantities in Oloibiri in Rivers state in 1956
- § Steady increase in the discovery, exploration and production of crude oil by NNPC in different contractual arrangements with IOCs
- § 11th largest oil producer in the world
- § High expectations of development of indigenous oil and gas supplies industry
- § Legislative and policy initiatives by successive governments to ensure management succession and technology transfer.
- § Very little success recorded

Definition of Nigerian content

Quantum of composite value added to or created in the Nigerian economy by a systematic development of capacity and capabilities through the deliberate utilisation of Nigerian human and material resources and services in the Nigerian oil and gas industry.

Objectives and Target

- § Increased participation by Nigerians in the oil and gas industry
- § Utilization of local raw materials and services
- § Fabrication of oil and gas facilities in-country
- § Reduction in the expatriate staff of operating and service companies
- § Capacity building through the development of local expertise
- § Gradual increase of the wealth generated by Nigerians.
- § Economic growth
- § 70% target by 2010

CURRENT REGULATORY POLICIES ON LOCAL CONTENT

§ Policy

§ Legislation

§ Contractual Obligations

POLICY

NNPC Directives of 13th October 2006

- § FEED and detailed engineering design to be domiciled in Nigeria.
- § Project Management Teams and Procurement Centres to be located in Nigeria.
- § Annual submission of Materials List and Master Procurement Plan for approved projects to the NCD by 31st January
- § Fabrication and integration of all fixed platforms weighing up to 10,000 tons, piles, decks, anchors, buoys, jackets, pipe racks, bridges, flare booms, storage tanks, galvanizing works for LNG and process plants in Nigeria.

- § **Assembling, testing and commissioning of subsea valves, xmas trees, wellheads and system integration to be carried out in Nigeria.**
- § **A minimum of 50% of the tonnage of FPSO topside modules must be fabricated in Nigeria. FPSO contract packages to be bid on this basis.**
- § **Third party services relating to fabrication and construction must be carried out in Nigeria**
- § **Contract awards for major projects must include binding agreements between the main contractor and Nigerian content sub – contractor(s)**
- § **All low voltage earthing cables of 450/750 v grade and lighting cables of 600/1000 V grade must be purchased from Nigeria cable manufacturers.**
- § **All carbon steel pressure vessels to be fabricated in Nigeria.**

- § Seismic data acquisition projects, seismic data processing projects, reservoir management studies and data management and storage services are to be carried out in Nigeria.
- § Concrete barges and floating platforms are to be fabricated in Nigeria.
- § Operation and maintenance of offshore production units, in particular FPSOs and FSOs, are to be performed by Nigerian companies.
- § Full utilization of Nigerian registered Insurance companies to maximize Nigerian content before placing risk offshore.
- § Full compliance with the provisions of the Cabotage Act.
- § Submission of detailed training and understudy programs by operators to maximize utilization of Nigerian personnel in all their areas of operations.

LEGISLATION

Petroleum Act

- § Regulations 25 and 38 of the First schedule to the Petroleum Act 1969, Cap P10 Laws of the Federation of Nigeria 2004**
- § Regulation 26 of the Petroleum (Drilling and Production) Regulations**

Regulation 25

The Minister may revoke any oil prospecting licence or oil mining lease, if in his opinion the licensee or lessee has failed to comply with any provision of this Act or any regulation or direction given thereunder.

Regulation 38

- § The holder of an oil mining lease shall ensure that within ten years from the grant of his lease the number of citizens of Nigeria employed by him in connection with the lease in managerial, professional and supervisory grades (or any corresponding grades designated by him in a manner approved by the Minister) shall reach at least 75% of the total number of persons employed by him in those grades and the number of citizens of Nigeria in any one such grade shall be not less than 60% of the total
- § The holder of an oil mining lease shall ensure that within ten years from the grant of his lease all skilled, semi-skilled and unskilled workers are citizens of Nigeria”.

Regulation 26

- § The licensee of an oil prospecting licence shall within twelve months of the grant of his licence, and the lessee of an oil mining lease shall on the grant of his lease, submit for the minister's approval, a detailed programme for the recruitment and training of Nigerians.
- § The programme shall provide for the training of Nigerians in all phases of petroleum operations whether the phases are handled directly by the lessee or through agents and contractors.

National Office for Technology Acquisition Promotion (NOTAP) ACT 1971

**An Act to establish the National Office for
Technology Acquisition and Promotion to
monitor, on a continuing basis, the transfer
of foreign technology to Nigeria and to
provide for other related matters**

NIGERIAN CONTENT BILL (NCB) - SALIENT PROVISIONS

Definition of Nigerian company/directors – CAMA and NCB compared

CAMA	NCB
Incorporation of a 100% foreign company allowed.	The bill is silent on shareholding structure of the company.
Nigerian company is a company incorporated in Nigeria irrespective of nationality or ratio of shareholding	An indigenous company or contractor whose company shares are wholly owned by Nigerians.
Places no restriction on the nationality of the directors of a Nigerian company	Prescribes minimum 60% Nigerian directorship.

Minimum Nigerian content

- § Minimum Nigerian content for different projects set out in the schedule e.g fabrication of hull and topside modules 90%
- § Need to understand that some targets may not be immediately attainable
- § Silent on what would happen if operators, contractors, etc were unable to comply due to unavailability of human and material resources
- § A detailed waiver provision should be considered similar to Ministerial waiver under the Cabotage Act.

Award of contracts not to be based solely on lowest bidder

The award of contract shall not be solely based on the principle of lowest bidder; where a Nigerian indigenous company has a capacity to execute such job, the company shall not be disqualified exclusively on the basis that it is the highest financial bidder, provided the value does not exceed the lowest bid price by 10%

- § Increases the cost of doing business
- § Justifiable on the ground that indigenous companies cannot be expected to compete with foreign oil service companies – tax holiday
- § A specific time frame may be set
- § Adopted in the UK when local content was being developed
- § Similar clause contained in Angolan PSC

Restriction on employment of expatriate staff

An operator is allowed to retain a maximum of 5% of management position as expatriate positions and prior approval of NCD required before applying for expatriate quota.

- § Approval may lead to duplication of roles between the NCD and the Ministry of Internal Affairs
- § Need for harmonisation
- § Adopted in August 1996, tagged the “new deal”. Criticised for duplicity of roles

Offences and Penalties

A fine of 5% of the project sum and or cancellation of the project upon conviction is prescribed for erring operators, contractors, sub - contractors.

- § Vague provisions that may make it difficult to secure a conviction
- § Length of time to secure a conviction may limit the effectiveness
- § Carrot and stick approach may be more effective
- § Definition of operator – NNPC and JV partners

First consideration to Nigerians

Nigerian independent operators are to be given first consideration in the award of oil blocks, oil field licenses, oil lifting licenses and in all projects for which contract is to be awarded in the Nigerian oil and gas Industry subject to the fulfilment of such conditions as may be specified by the minister.

- § Grants the Minister wide powers and could be subject to abuse
- § Conditions vague, should be defined

Regulatory Authority

Conflict in the provisions of these sections on the government agency, which has the power to implement and enforce the provisions of the bill NCD or DPR

- § Define roles to avoid future conflicts
- § Harmonise if implementation is joint

List of documents to be submitted and approvals required for contracts of \$1,000,000.00

- § Cumbersome provisions on documents to be submitted and approvals required from the NCD for award of contracts
- § The workability of some of the provisions is very doubtful
- § Implementation may lead to a lot of delays and bureaucratic bottlenecks

Establishment of offices in local communities

- § Laudable and will bring oil companies closer to the communities
- § Development of infrastructure
- § Employment for the locals
- § Stop the civil unrest.

Labour Clause

Labour clause mandating the use of a minimum percentage of Nigerian labour in specific areas stipulated by the NCD for contracts over \$100 million.

Technology Transfer

Submission of a plan to the NCD annually setting out initiatives aimed at promoting the effective transfer of technology to Nigerian individuals and companies

§ Initiative left to the IOCs

§ NCD should take the initiative and specify the conditions that must be met by operators.

Research & Development

§ Research and Development (R&D), training, growth of in-country capacity and professional registration.

Regulations to encourage
foreign and indigenous
companies to set up
operations locally

§ Fiscal framework; and
§ Tax incentives for local
production

Insurance

Insurance of risks with Nigerian registered insurers and prior approval of the Nigeria Insurance Commission (NAICOM) to be obtained before insurance risk can be placed offshore.

**§ Utilisation of Nigerian law
firms and financial
institutions**

Establishment of a Joint Qualification System (JQS)

- § Industry data bank of available capabilities
- § Sole system for Nigerian content registration and pre - qualification of contractors
- § Verification of contractors' capacity and capabilities
- § Tracking and monitoring of performance

Nigerian Content Consultative Forum

- § Information sharing on local capabilities
- § Collaboration on upcoming projects in the industry

Contractual Obligations - PSC

- § Non - Nigerian staff shall be kept to a minimum
- § The number of citizens of Nigeria employed by the contractor must be as follows:
 - 10 years – 75% of total
 - 15 years – 80% of total
 - 20years – 85% of total
- § Contractor to submit detailed programme for recruitment and training of Nigerian personnel
- § Disengagement of Nigerian employees to be with the approval of the Ministry of Petroleum Resources or other designated agency

CHALLENGES IN IMPLEMENTING LOCAL CONTENT

- § Capacity – manpower, skills and technical know – how, raw materials etc
- § Quality – harmonisation with international standards
- § Capital – capital intensive industry, lack of adequate funding, high interest rates and short term facilities offered by Nigerian banks. Restricted access to foreign loans
- § Size of indigenous companies – large global players, small independents
- § Infrastructure – high cost of doing business
- § Role played by IOCs and foreign oil service companies
- § Challenging regulatory framework – lack of implementation, consequences of breach

CREATING THE RIGHT ENVIRONMENT AND BUDGETARY IMPLICATIONS

- § **Capacity Building** - concerted effort by all stakeholders particularly, Nigerians to build local capacity.
- § **Federal Government** - training programmes, adequate funding of institutions, PTI, NWI, strict monitoring of the training programmes of IOCs, independence of Petroleum Technology Development Fund (PTDF) etc
- § **IOCs** - substantial training and technology transfer, investment in local communities, contracting process, which would cede operations to Nigerians should be encouraged
- § **Foreign Governments** – relaxation of visa procedures and issuance of study visas in appropriate cases
- § **Indigenous companies** - improve quality of their products, investing in staff and capital assets, mergers and acquisitions with other companies to compete with foreign oil service companies

Adequate Funding – Nigerian Content Fund Initiative Objective

- § To build local capacity through the creation of a pool of local funds, which would be available to Nigerian companies for the execution of oil and gas projects
- § Participants so far are a consortium of 9 local banks, the IOCs and NNPC
- § Loan Packages - \$1million - \$50million
- § Low risk exposure due to guarantee provided by NNPC and IOCs

Security Issues

- § Attention must be given to the unrest in the Niger Delta
- § Inclusion of host communities in oil and gas activities in their communities
- § Provision of infrastructure – water, electricity, health, employment, corporate social responsibility
- § Location of corporate offices of IOCs in host communities

Budgetary/Fiscal Incentives

§ Tax Holiday

§ Investment Capital Allowance

§ Import duty recovery provisions

Joint/technical Alliances

- § Joint venture/technical alliance should be encouraged between Nigerians and foreigners to bring in the much – needed capital**
- § Adequate monitoring by relevant agencies.**

Contract Structure

A simple contracting process should be adopted where it is easy to determine the contractor and subcontractor for easy monitoring of local content index.

Dialogue between policy makers and IOCs

- § To understand challenges faced in the implementation
- § To collaborate for success.

ESTABLISHING THE RIGHT POLICY FRAME WORK

Policy

- § Lacks the force of law
- § Threat of sanctions
- § Challengeable
- § Appeal to people's sense of right and wrong
- § Different standards will apply

Legislation

- § Clear objective
- § Defined regulatory authority
- § Prescribed penalties for breach
- § Vague and cumbersome provisions should be removed
- § Substantive issues such as acquisition and/or effective transfer of technology, the process of acquiring and or transferring in real terms, should be addressed
- § Simpler legislative format may be considered

Other Jurisdictions

The United Kingdom

- § Establishment of the offshore supply office (OSO) set up to assist domestic firms gain a large share of the petroleum supply and the service market.
- § Introduction of an auditing procedure for monitoring purchases made by all companies
- § Provision of financial assistance to the U.K supply industry.

“There were no legal sanctions imposed on companies for failure to meet local content objectives, however, such companies could expect difficulties in future bidding rounds. While there was not an explicit metric employed for giving local firms an edge, the operators were at times pressured to accept bids from U.K. firms that may not have been competitive on purely commercial grounds” – Atlantic Canada pg 32

Norway

- § Establishment of the Goods and Services Office (GSO) to monitor contract awards to Norwegians
- § Policies to ensure technology transfer and personnel imposed
- § Statfjord field leased to an operating group led by Mobil with a proviso that Statoil had the right to eventually take over as the operator – Dam pg 60 - 66

According to Oystein Loreng in Norway: Economic Diversification and the Petroleum Industry

“international oil majors were placed in a role of technical assistance and joint teams were used to fast track the Norwegian company into full fledged operators. Consensus in Norway was that the operatorship was needed to learn the tools of the trade and to be able to meet foreign oil companies as equals”.

THE WAY FORWARD

- § Create the right enabling environment
- § Develop the right attitude – all stakeholders
- § Regulatory and implementing officers to be trained
- § Understand that achieving 70% local content by 2010 is a target – it took the Norwegians 30years
- § Achieving success will take a lot of time, effort, commitment and dogged determination

Local content development in Nigeria will not put foreign companies operating in Nigeria out of business but will merely make it a level playing field where both Nigerians and foreigners can effectively compete. The market is big enough, so let's all make it happen.

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