

OIL AND GAS LOCAL CONTENTS IN NIGERIA, GHANA AND BRAZIL: A COMPARATIVE ANALYSIS OF LEGAL AND POLICY FRAMEWORKS *

Abstract

The paper comparatively analyses the Nigerian oil and gas Industry Content Development Act 2010, Act No. 2, the Ghanaian Petroleum (Local Content and Local participation) regulations, 2013 (L.I 2204) and the Brazil's Oil & Gas Local Content Policy. The paper commences with an introduction, an examination of the history and development of local content regulation in the oil and gas industry in Nigeria, the Ghanaian Petroleum (Local Content and Local participation) Regulations, 2013 (L.I 2204) and the Brazil's Oil & Gas Local Content Policy. The paper adopts the historical, comparative, law and development approaches, in appropriate places. The paper ends with a conclusion and a set of recommendations.

Keywords: Comparative Analysis, Local Content, Oil and Gas, Nigeria, Ghana, Brazil.

1. Introduction

It is a well-known fact that 'a Local Content policy is of strategic importance to a country because of the lasting benefits it brings to the nation, such as enhancing the domestic industry and generating more income and jobs for the population. Additionally, the encompassing nature of oil and gas activities allows for the involvement of several industries that work beyond the oil and gas sector, ultimately bringing positive impacts to the entire domestic industrial output of a country. It has also been rightly stated that: 'the comprehensive execution of a well-run Local Content policy promotes the expansion of the supply chain's capacity on a competitive basis, allowing for the local industry to compete under equal conditions with its foreign counterparts. For a country the size and particular characteristics of Brazil, a competitive local industry reaps enormous results, because it can sell its services to a large global market, like the oil and gas sector, and it can also support its vast domestic market'. This is perhaps why 'the Brazilian government and its lawmakers have long identified the Local Content policy in the oil and gas segment as a strategic tool to promote sustainable growth. Local Content strategy is used in many countries, yet there is no universally agreed upon definition. Indeed, the definition is often specific to each country. In Brazil it refers to the percentage of locally produced goods, services and personnel rendered to the oil industry. Since its introduction, the Brazilian Local Content policy has sought to increase the participation of local companies in the provision of goods and services, improve professional training and technological development, enhance competitiveness amongst domestic companies and increase income and job generation.'¹

The subject of the use of local content in the development and management of natural resources accruing to different nations of the world have become very topical in modern times. An examination of local content issues rang from the quantum/percentage of locally produced materials, personnel, financing, goods and services rendered to the oil to applicable industries which can be measured in monetary terms. Local content or participation also refers to the level of indigenous ownership, for example in the oil and gas industry. This is because, every country that is endowed with specific natural resource(s), which commands comparative advantage over other nations, within its jurisdictional environment, owes itself a responsibility not only to ensure maximal utilization of same but also the responsibility of protecting same for the use and enjoyment of its citizens for generations yet unborn children and protect same from untoward external interferences. This is also why efforts are normally made to ensure sustained growth and development of such resource(s). Another reason why nations now consider local content or participation as paramount is due to the need to build a workforce that is skilled and building a competitive supplier base from the locality. This has, also, become very important due to the fact that in this day and age, every country would desire its citizens to capture the commanding heights of its economy and thus assist to keep its wealth within its borders, as well as providing jobs to the ever-increasing population.²

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¹ See https://www.iamericas.org/documents/energy/reports/Brazil_Oil_Gas_Local_Policy.pdf, visited on the 12th day of May, 2020, also the Institute of the Americas Report Brazil's Oil & Gas Local Content Policy: Lessons Learned Nelson Narciso Filho, September 2017, Pg. 1 of the report.

² Arizona-Ogwu. 2008. *Challenging the limelight of Nigeria's technology*. www.nigerianmuse.com

2. An Examination of Oil/Gas Extraction and the Application of Local Content Regulations in Nigeria

The authors hereby reproduce the history of oil and gas exploration and exploitation in aspects of an earlier paper, presented by the 2nd author with his consent, as follows:³ 'In the year 1937, a consortium of Royal Dutch and Shell (Dutch and English Interests) known as Shell D'Arcy Company⁴ emerged and began oil exploration operations from its base at Owerri, and operated under the Mineral Oil Ordinance No.17 of 1914 and its subsequent amendments.⁵ It is to be noted that the 1914 Ordinance allowed only companies registered in Britain or any of its protectorates the right to prospect for oil in Nigeria and further provided that the principal officers of such companies must be British subjects.⁶ As later events have clearly shown in Nigeria today, the caveat that principal officers of oil exploring companies in Nigeria be British subjects never really operated to confer ownership rights in the oil companies to Nigerians. It can therefore be safely submitted that, right from the inception of the extraction of oil mineral resources in Nigeria, no legislation made clear provisions for the involvement of the local oil bearing communities at the level of policy formulation or involvement in the entire extraction, exploration and exploitation processes. This lacuna, it is submitted, has been largely responsible for the complete estrangement or alienation of the oil bearing Communities in the Niger Delta from the oil mineral resources extraction processes resulting, principally, in the current upheaval in the Niger Delta Region.

Historically speaking however, the activities of Shell D'Arcy, were interrupted by the Second World War (1939-1945) and it was not until the year 1946 that Shell D'Arcy returned to Nigeria to resume its activities, but this time in partnership with the British State owned oil company –British Petroleum. The partnership was known as Shell B.P. There has being several other developments since the return of Shell D'Arcy (better known now as the Shell Petroleum Development Company).⁷ For example, in the year 1945 an Anglo-American agreement paved the way for American companies to receive grants for petroleum rights in Nigeria. In the year 1955, the Mobil Producing Company acquired licenses for the exploration of oil in the areas relinquished by Shell B.P as well as offshore areas of South Eastern Nigeria. Subsequently, several other foreign oil and gas exploration companies entered the Nigerian oil industry (i.e. the petroleum industry). Some of them, however, left Nigeria when their licenses expired and in cases where no oil discoveries were made by them.⁸ Shell B.P, upon resumption of its geological investigation, drilled its first well at Ihuo situated northeast of Owerri in 1951 but found no oil. Fourteen other wells were later drilled but never produced oil in commercial quantity except at the well in Oloibiri in Ogbia Local Government Area of Bayelsa State. Having discovered oil in commercial quantity, the next step was the transportation of crude oil from the well head to the point of exportation. Pipelines were then constructed from Oloibiri to Port Harcourt to evacuate the crude oil. With the export of crude oil Nigeria, to Rotterdam on the 8th of March 1958, Nigeria formally entered the World Oil Club and experienced the transformation of Nigeria's hitherto Agrarian economy to a petro-dollar driven economy. The above and other development necessitated the enactment of the Pipelines Act.⁹ In the year 1958, Nigeria made its first export of crude oil out of a production of about 4,928 barrels of oil per day.

Subsequently, following Shell B.P's success other oil companies became attracted. Mobil took the lead that same year when it obtained exploration license in Nigeria, followed by Tennesse Oil and Gas Company (now Tenneco) in 1960. Thus within 3 years of the first export of crude oil in Nigeria, nine international oil companies were already operating in the country. These companies were later joined by others in the late 60s and 70s.¹⁰ There is sufficient evidence indicating that at the period of independence in 1960, oil administration structures inherited by the new Nigerian Government were basically sketchy. It has rightly been stated: Its group of personnel responsible for oil administration was barely up to the size of a unit of a Ministry with less than a total of ten petroleum geologist, engineers and geophysists.¹¹ The production of oil for export necessitated the setting up of a machinery for the co-ordination of the activities of the petroleum sector. Accordingly, a hydrocarbon section was created in the Mines and power Division in the then Ministry of Lagos Affairs.¹² In 1963, as oil was becoming

³ See the full article of: Abila, S.E: 'The Law And Policy Of Oil Mineral Resources Ownership In Nigeria' (2008), *Law, Oil And Contemporary Development Issues In Nigeria, Essays In Honour Of Late Honourable Justice Emmanuel Joel Igoniwari*, Malthouse Press Ltd, Lagos, chapter 2, Pp. 27 – 76.

⁴ Shell D' Arcy changed its corporate name in 1956 to Shell Petroleum and Development Company Ltd

⁵ Sees S.6(1) Mineral Oils Ordinance 1914

⁶ Olisa, M.M: *Nigeria Petroleum Law and Practice*(2nded) Lagos, Jonia Ventures Limited, 1997) pp.1-10

⁷ Shell D'Arcy changed its corporate name in 1956

⁸ For further information on the names of multinational oil companies currently involved in petroleum drilling and extraction activities in Nigeria, see the concluding part of this discourse on the history of oil and gas extraction in Nigeria below.

⁹ Ibid. This Act was later amendment in 1963

¹⁰ The Companies are Shell B.P, Texaco, Tenneco, Gulf Oil, Nigeria Agip Oil Company, Phillips Petroleum and Esso Exploration.

¹¹ Yalaju: *Nigerian Journal on Energy Law Understanding the Nigerian Oil Industry*(2006) vol.1 p.2

¹² Yalaju: Ibid.

more significant in the nation's economy, the hydrocarbon section of mines and power was up-graded to Division. As the responsibilities of the Division continued¹³ to grow, the government uplifted it to a full-fledged Ministry of Petroleum Resources and Energy in 1975.¹⁴

Meanwhile, in 1967 the Petroleum Profits Tax (Amendment Decree No.1) was passed in an attempt by government to improve its financial receipts from the oil industry¹⁵ in the year 1968 oil the Navigable Waters Act was passed to prescribe measures to combat oil pollution as the volume of production and export increased.¹⁶ In the year 1971, the government established an oil company known as Nigerian National Oil Company (NNOC). It was to explore, products. In 1977, the NNOC was merged with the Ministry of Petroleum Resources (Which had become more of the supervisory agency of the industry) to form Nigerian National Petroleum Corporation (NNPC). This later establishment has undergone a number of internal re-organizations. Presently, several other changes have taken place in the oil and gas industry. As has been aptly observed:

The role of the Nigeria Government in the oil industry has gradually progressed from a regulatory one to direct involvement in oil exploration and exploitation, Initially, Government's interests were limited to the collection of royalties and other dues offered it by oil companies and making rudimentary laws to regulate the oil industry, without real discernible government policy on petroleum. However, as oil assumed a more significant posture in the country's economy, the Government became more active.¹⁷

In concluding this segment on the discussion of the historical perspectives on the discovery and development of oil mineral resources in Nigeria, it is to be observed that colonial policies even before the advent of oil and gas in the Nigeria economy were directed as exploring and exploiting the natural resources of the colonized territories in Africa and other parts of the world for the sole benefit and advantage of the crown and British citizens. Furthermore, it is submitted that a study of the history and development oil mineral resources in Nigeria clearly show that the operations in the oil and gas industry have always being dominated by multinational oil companies, which have always enjoyed unfettered access to the lands of the oil producing communities upon the issuance of grants by the central government of the appropriate licenses to so enter and prospect for oil mineral resources in the Niger Delta Region of Nigeria. This, it is submitted, have over the years alienated the oil producing communities in the Niger Delta Region from the main stream of the activities of the oil producing companies and have been a veritable source of friction between the oil mineral producing communities and the multinational oil companies. This is not saying however that, there have been no attempts at indigenous participation in the oil and gas industry.

There are two notable attempts at introducing indigenous participation into the upstream sector of the oil and gas industry. This, perhaps explains why attempts made by indigenous participants including the Henry Stevens Petroleum Company and Nigus Petroleum Company ended up woefully.¹⁸ While Dubri Oil, became the first Nigerian oil producing company to be granted license to explore oil mineral resources in 1987, eleven other Nigerian companies were granted Oil¹⁹ Prospecting License (OPL) in 1990. Even at that however, it is instructive to note that these indigenous companies were encouraged to farm out part of their lease holdings (to maximum of 40%) to foreign technical partners to help address the usual problems of funding and technical expertise.²⁰ By the year 1992, twenty Nigerian companies had been licensed to prospect for oil. These companies had however hardly overcome the problems of technology and manpower, funding, team effort and community relations and have hardly made any appreciable impact in the oil and gas industry.²¹

14 Amu, L.A.O, *A Review of Nigeria's Oil Industry* (Lagos; NNPC Publication) p.5. See also Yalaju Ibid.

15 See Amu, L.A.O, op cit p.7. The Decree based the calculation of royalty and petroleum profits tax on posted prices Etikerentse, G: op cit p.10

16 Etikerentse, G: op cit p.10

17 See Etikerentse, G.: Op cit p.10. This paper totally agrees with Etikerentse in his view that the principal reason for Nigeria's non-challant attitude towards the petroleum industry originally was the result of Nigeria's colonial administration's exclusionary policies and also the dependence of oil companies on Britain and other developed countries for capital, technology and management skills.

18 Adetutu, O: 'The Petroleum Industry in Nigeria' An overview (2000) *Modern Practice Journal of Finance and Investment Law*, Learned Publishment Ltd. Vol4. No.3 p.326

20 Adetutu, O: Op cit p.327

21 Ibid.

Apart from the above isolated cases it is clearly evident that as part of its development Nigeria's oil policy principally allowed foreign oil companies to engage in oil exploration in the country. The Nigerian government participated only as a partner where the contracting oil companies established commercial production of oil. Onoh J.K,²² has rightly observed, that a result of the said oil policies a number of foreign companies began to apply for oil prospecting license (OPL) which, allowed a company to prospect and drill for oil as opposed, to oil exploration license (OEL) that, allowed a company to prospect and not drill oil. This prospecting policy attracted a number of foreign oil companies. The major oil companies which later joined Shell BP are the American Overseas Petroleum which later became Texaco, Mobil, Tennessee Nigeria Incorporated (now called Tenneco), Gulf, Nigeria Agip Company, Safrap (now called Elf) and Esso West Africa. The present position of the oil industry shows the presence of over 16 multinational oil companies which represent the Dutch, Japanese, British, United States of America, Italian, French and Nigerian interest.²³ The above scenario necessitated the enactment of Nigerian Oil and Gas Industry Content Development Act 2010, Act No. 2 discussed below.

3. Nigerian Oil and Gas Industry Content Development Act 2010, Act No. 2

According to the Nigerian Oil and Gas Industry Content Development Act 2010 Act No. 2, the Act is meant to 'provide for the development of Nigerian content in the Nigerian oil and gas industry, Nigerian content plan, supervision, coordination, monitoring and implementation of Nigerian content; and for related matters.'²⁴ The Act which came into operation on the 22nd day of April, 2010 was enacted by the National Assembly of the Federal Republic of Nigeria and provides that: '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. 2. 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. 3.-(1) 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. (2) 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 this Act. (3) Compliance with the provisions of this Act and promotion of Nigerian content development 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. 4. The Nigerian Content Development and Monitoring Board ('the 'Board') established in accordance with this Act shall make procedure that will guide, monitor, coordinate and implement the provisions of this Act. 5. The Board shall implement the provisions of this Act with a view to ensuring a measurable and continuous growth of Nigerian content in all oil and gas arrangements, projects, operations, activities or transactions in the Nigerian oil and gas industry.'²⁵

Different actors see the local content policy of Nigeria in different ways, depending on the background and status of the observer. Some see it as a quantum of composite value to be created in the Nigerian economy through the utilization of Nigerian human and material resources for the provision of goods and services to the petroleum industry within acceptable quality, health, safety and environmental standards in order to stimulate the development of indigenous capabilities.²⁶ The local content regime is intended to liberate and systematically develop capacity of Nigerians in project execution and operations of the upstream, mid-stream and downstream sectors of the Nigerian Oil and Gas industry.²⁷ Worthy of note is Section 15 of the Local Content Act, which describes a Nigerian Company as "a company formed and registered under the companies and Allied Matters Act²⁸ with not less than 51 percent equity shares by Nigerians;". This provision shows beyond shadow of doubts that the intent of the Local Content Act is to ensure equity control of the Oil and Gas sectors of Nigeria. The background to local content had been laid in Nigeria with the adoption of the state-controlled regime of the Oil and Gas sector through the formation of the Nigerian National Oil Corporation (NNOC), the forerunner of the Nigerian National Petroleum Corporation (NNPC). The Local Content Policy was thus strengthened in 2005, when the Nigerian Content Division (NCD) was established by the NNPC, with a mandate to transform the Oil and gas industry into the economic engine for job creation and national growth by developing in-country capacity

22 See John, W.: *Niger Delta Rich Region Poor People* (Enugu, Snaap Press Ltd, 2005) P.10

24 See <https://www.ncdmb.gov.ng/images/GUIDELINES/NCACT.pdf>, visited on the 12th day of May, 2020.

25 Ibid.

26 H. Christopher & W. Micheal "A Push for Local Content" (2009) 29:1 *Oil & Gas Investors*, at 10

27 See Heum et al. 'Enhancement of Local content in the Upstream Oil & Gas Industry in Nigeria' (2003) at 46.

28 See *Companies and Allied Matters Act, Cap C 20* Laws of the Federation of Nigeria (LFN) 2004.

and indigenous capabilities. To ensure a greater proportion of the work will be done in Nigeria, with active participation of Nigerians in all sectors of the economy, and ultimately to ensure that Nigeria will be positioned as the hub for service delivery within the West African sub-region and beyond.²⁹

The Local Content policy may be conceptualized as a protectionist policy aimed at shielding in various spheres of Nigeria's Economy. A major, discernible subject in the oil and Gas industry has been the tendency towards government control of a vital area of the nation-state economy as earlier stated above. The local content Act has a number of provisions that spell out its objectives and amongst others is Section 1 of the Act which provides for the application of the Act to all matters pertaining to Nigerian Content in respect of all operations or transactions carried out or connected to the oil and gas industry notwithstanding anything contained in the petroleum Act.³⁰ Section 2 of the Act is also an appeal to all regulatory authorities, operators, subcontractors, alliance partners and other entities involved in project, operation, activity or transaction in the Nigerian oil and gas industry to consider Nigerian Content as an important element of their overall project development and management philosophy for project execution. Section 3 of same Act stipulates that indigenous Nigerian companies and independent operators shall be accorded first consideration in the award of oil blocs, oil field licenses, oil lifting and all other projects being awarded in the Nigerian oil and gas industry. Section 3(2) reinforces compliance with the Bill in all spheres. Section 4 provides for the Nigerian Content Monitoring Board and this is further strengthened by sections 71 and 72 of the Act which provide for a Governing council as well as details of the composition of the Governing Council established for the Nigerian Content Development and monitoring Boards. Section 6 of the Act provides for modification of all pre-existing petroleum arrangements, agreements, contracts or memoranda of understanding, in order to bring such terms in conformity with the Act. The Act further provides that in the bidding for any license, permit or interest and before carrying out any project in the Nigerian Oil and gas industry; an operator shall submit a Nigerian content plan (NCP) to the board demonstrating compliance with the Nigerian content requirement of the Act.³¹ Section 8 empowers the Board to issue Certificate of Authorization where an operators plan as reviewed and assessed is in conformity with the provisions of the Act. By virtue of Section 9 of the Act, the Board is vested with power to conduct a public review relating to the exercise of its duties, while section 10 provides for detailed contents of the plan. According to the Act, the award of contract shall not be based solely on the principle of lowest bidder. Thus, where a Nigerian indigenous firm has the capacity to execute a project, it shall not be disqualified on the basis that it is not the lowest bidder. Section 28 and 29 of the Act, provides that qualified Nigerians shall be given first consideration for employment and training in any project executed in the oil and gas industry. Accordingly, any plan submitted must specify an Employment and Training plan. Sections 36, 37, 38 and 39 of the Act dwell on Research and Development regulations requiring research and development programmes as well as specific budget to the satisfaction of the monitoring Board.

The above and others are a number of issues that can be pointed out from the Local Content Regulation in Nigeria and what it has to protect.

4. The Ghanaian Petroleum (Local Content and Local Participation) Regulations, 2013 (L.I 2204)

In exercise of the power conferred on the Minister responsible for Energy by section 22 of the Petroleum Commission Act, 2011 (Act 821), the Regulations were made this 5th day of July, 2013 as follows: 'The purpose of these Regulations is to (a) promote the maximisation of value-addition and job creation through the use of local expertise, goods and services, businesses and financing in the petroleum industry value chain and their retention in the country; (b) develop local capacities in the petroleum industry value chain through education, skills transfer and expertise development, transfer of technology and know-how and active research and development programmes; (c) achieve the minimum local employment level and in-country spend for the provision of the goods and services in the petroleum industry value chain as specified in the First Schedule; (d) increase the capability and international competitiveness of domestic businesses; (e) create petroleum and related supportive industries that will sustain economic development; (f) achieve and maintain a degree of control for Ghanaians over development initiatives for local stakeholders; (g) provide for a robust and transparent monitoring and reporting system to ensure delivery of local content policy objectives; (h) provide for the submission of the local content plan and related sub-plans by contractors, subcontractors, licensees and any other allied entity involved in the petroleum industry including (i) the provision of goods and services; ^ (ii) the transfer to the Corporation or the Commission ' and Ghanaians of advanced technology and skills related to petroleum activities; (iii) a recruitment and training programme; and (i) supervision, coordination, implementation and monitoring of local content. These

29 A comparative profile of the Nigerian National Petroleum Corporation, (NNPC, 2008) P.36.

30 See section 1, *the Nigerian Oil & Gas (industry and content development) Act 2010*.

31 Ibid. section 7

Regulations apply to local content with respect to petroleum activities.³² Local content in Ghana is considered as the level of Ghanaian ownership in the oil and Gas industry. To qualify as a Ghanaian indigenous company, the company must have at least 51% of its equity owned by a Ghanaian with 80% executive and senior management positions occupied by Ghanaians.

In November 2013, the Petroleum Local Content Participation Regulation 2013 L.I.2204 was promulgated to *inter-alia* promote maximization of value-addition and job creation through the use of local expertise, goods and services business, financing in the petroleum industry value chain and their retention in Ghana. The local content committee established by the Board of the commission is required to oversee the implementation of the Regulation. The development of the local content in Ghana is premised on the following key objectives as captured in the L.I.2204.

1. Maximizing the patronage of Ghanaian goods and services and thereby increase in country spend.
2. Increased employment of Ghanaian professionals by ensuring the localization of job opportunities
3. Facilitate technology and skills transfer through training research and development
4. Local participation by encouraging Ghanaians to have equity ownership and management participation in upstream petroleum activities
5. Develop local capacities resulting in increased capabilities and competitiveness of indigenous Ghanaian companies and individuals.

Every petroleum project, activity or transaction is expected to have a long term and annual Local Content plan which would be assessed and approved by the commission.

5. Brazil's Oil & Gas Local Content Policy

The 'current Brazilian Local Content policy commenced in 1997 with the approval of the Petroleum Law (Law n° 9.478). The Law set the framework for an open market, ending Petrobras' - Brazil's National Oil Company - state monopoly. It also established the CNPE (National Council for Energy Policy), linked to the Presidency of the Republic and presided by the Minister of Mines and Energy, whose duty it is to propose national policies and specific actions to the President of the Republic and ANP (National Agency of Petroleum, Natural Gas and Biofuels) the federal authority and body that oversees the oil and gas industry in Brazil. According to ANP's institutional framework, the Agency's three core responsibilities are: Regulating, Contracting and Monitoring. ANP Bidding Rounds promote the contracting of exploration and production blocks, where E&P contracts containing specific local content requirements are signed between the Brazilian Government, via ANP, and the oil companies that win exploratory blocks at the Bidding Rounds'.³³ Brazil has been an oil producing nation since the 1930s. The country practices extreme protectionism in her oil and gas sector to the extent that only Brazilian owned companies could mine for mineral resources. The enactment of the Brazilian National petroleum policy 1953 and establishment of the Petrobras same year as a national oil company were national policy initiatives to ensure state monopoly in exploration, production, refining and transportation of petroleum in the country.³⁴ Petrobras has since made giant strides in petroleum technology development particularly in deep-water drilling, where it achieved a new deep-water record with production at lengths in excess of 1,850 Meters, from its Rancador field in 1999. Brazil's protectionist agenda was at its peak in the early 1980s when Petrobras developed local technology in collaboration with supply firms for offshore production. Local content in Brazil was above 90 percent in the 80s. working alone and in collaboration with local and foreign partners, Petrobras grew offshore technology frontiers in floating and sub-sea production systems, offshore drilling and telecommunications and information services for offshore production up to the level of becoming, arguably the most experienced and innovative company in deep offshore worldwide. The Brazilian local content model has attracted the attention of the Nigerian government. The two countries have recently entered into an agreement to collaborate on local content development issues.³⁵

³²https://www.petrocom.gov.gh/wp-content/uploads/2018/12/13-Local-Content-and-Local-Participation-Regulations-L_I-2204.pdf, visited on the 12th day of May, 2020.

³³ See https://www.iamericas.org/documents/energy/reports/Brazil_Oil_Gas_Local_Policy.pdf, visited on the 12th day of May, 2020, also the Institute Of The Americas Report Brazil's Oil & Gas Local Content Policy: Lessons Learned Nelson Narciso Filho, September 2017, Pg. 1 of the report.

³⁴ See 'Government of Brazil, National Petroleum Agency' in Heum, et al. *enhancement of local content in the upstream oil and gas industry in Nigeria*, a study commissioned by the Norwegian Agency for Development and Cooperation and the Norwegian Ministry for petroleum and Energy, 2003, at 46. See also Akinrele, A, *Nigerian oil and Gas law* (UK Oil, Gas & Energy Intelligence OGEL, 2005) at 68

³⁵ This day, on-line at <http://www.thisdaylive.com/articles/local-content-nigeria-to-adopt-brazils-model/95277>> accessed 29 October 2011.

6. Comparative Analysis

The comparison to be embarked on will be made easier by identifying few landmarks that can be generally identified across all the nations. These could be History, licenses, Employment requirements, Technology transfer, Nigerian Content Monitoring Board, Indigenous competition.

Licenses

This can be identified as described and elaborated above. It is identified that whereas in Nigeria, the focus of the Local content Regulations is to the extent that licenses for oil blocs and oil fields are open to companies from within and outside the country, major regard and priority is given to indigenous companies, in Ghana to qualify as a Ghanaian indigenous company, the company must have at least 51% of its equity owned by a Ghanaian with 80% executive and senior management positions occupied by Ghanaians. On the other hand, Brazil has a requirement of 80 percent of the companies to be indigenous owned companies, while the other 20 percent can come from outside the country but the requirement of major employment from indigenes of the country. On the opposite end, Brazil has limited its licenses to only indigenous companies in Brazil. However, there is the Petrobras majorly involved in exploration and exploitation of these mineral resources, while all other companies are only introduced for the purpose of trading. This excessive protectionist principle introduced by Brazil has caused monopoly which has led to lack of transparency and accountability in the oil and gas sector in Brazil.

Employment Requirement: Whereas Nigeria and Ghana has a high level employment requirement for these companies to employ majority of their staffs from indigenes of their country, Brazil has no major requirement in that regard as all their companies are indigenous and therefore will do nothing more than employing their indigenes to carry out functions having been trained.

Technology Transfer: This factor has created controversies over the years in the academia as to the possibility of achieving technological transfer especially in Nigeria. However, this is not the matter for discussion in this paper. Nigeria and Ghana expect technology transfer from the industries that carry out their activities in their country, especially setting out provisions for time frame within which an indigenous staff should have been able to acquire technological skill in a particular regard. This is not the case with Brazil, as Brazil invested in learning the technological processes from Norway and afterward set up their indigenous companies moving at their pace. The implication is, as at when Brazil began exploring, they had acquired the required information and knowledge required to run their indigenous companies and industries.

Nigerian Content Monitoring Board: All the countries in perspective have provisions for a monitoring board, to monitor activities to ensure that the local content is adequately utilized.

Indigenous Competition: While in Ghana, indigenous companies are made to compete among themselves in bidding for oil bloc and more, Nigeria and Brazil have no place for such competition. This is because Brazil has only one major company involved in the process of exploitation (Petrobras) which distributes to every other company for trade; therefore, there is no need for competition. Similarly, Nigeria gives licenses to companies in Nigeria and in diaspora. However, priorities are given to indigenous companies in the granting of licenses. Therefore, there is no competition.

7. Conclusion and Recommendations

The paper comparatively analysed the Nigerian Oil and Gas Industry Content Development Act 2010, Act No. 2, the Ghanaian Petroleum (Local Content and Local participation) Regulations, 2013 (L.I 2204) and the Brazil's Oil & Gas Local Content Policy. The paper commences with an introduction, an examination of the history and development of local content regulation in the oil and gas industry in Nigeria, the Ghanaian Petroleum (Local Content and Local participation) Regulations, 2013 (L.I 2204) and the Brazil's Oil & Gas Local Content Policy. The paper adopted the historical, comparative, law and development approaches, in appropriate places. There is therefore need for local content regimes which would help in providing jobs to the peoples of the benefiting nations. Considering the existing monopoly that is observed to have taken over the petroleum industry in Brazil by reason of the competition in the industry, it is recommended that the country adjusts its local content regulations to allow for the incorporation of foreign owned companies into the oil industry but on certain terms that will still keep the country with great autonomy over the industry. This will allow for competition amongst companies in the industry thereby reducing the extent of monopoly and exploitation. This will also help in bringing about reduced prices and increased production quality and greater access into the international market. It is further recommended, that Nigeria move away from its local content laws which are merely a prototype of the British laws, and adjust the provisions to ensure training of our indigenes for the purpose of manning positions of authority in the petroleum industry, thereby transferring adequately the heritage of the country back into Nigeria. It is also recommended that Nigeria and Brazil emulate the standards of internal competition that is noticed in the Ghanaian

Petroleum (Local Content and Local Participation) Regulations, 2013 (L.I 2204) for development and Growth in the petroleum industry.