Journal of Law, Policy and Globalization
ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online)
Vol.31, 2014

A Critical Appraisal of Enforcement of Nigerian Oil and Gas Industry Content Development (NOGICD) Act, 2010

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Abstract
Nigeria is abundantly endowed with mineral and human resources, and is reputed to be the seventh largest oil producing country in the whole world. Despite the huge investments made by Nigerian government in oil and gas sector, an average of $10 billion per annum, the contribution to Gross Domestic Product (GDP) is minimal an average of less than 30%. This abysmal contribution of oil and gas sector is often attributed to the high foreign content and low inputs by Nigerian firms or low local participation in the sector resulting to huge capital flight. Despite the introduction of local content policy since 2006 and enactment of the Nigerian Oil and Gas Industry Content Development (NOGICD) Act in 2010, Nigerians have very little share of oil and gas business over the years just about 14%. The thrusts of this study therefore is that the inability of the Nigeria Content Development and Monitoring Board (NCDMB) and the previous regulatory agencies to bridge capacity gap hinders oil and gas multinationals from complying with the Nigerian content directives.
Keywords: Local content, Nigeria, oil and gas, NNPC, oil multinationals, rentierism

1. Introduction

Nigeria is abundantly endowed with mineral and human resources and of all these mineral resources oil and gas with the proven 600 trillion cubic feet reserve of gas and estimated 40 billion barrels of reserve is the most strategic and fundamental to the Nigerian economy such that Nigeria is reputed to be the seventh largest oil producing country in the whole world. For instance, oil and gas sector alone constitute nearly 90% of the total revenue and foreign exchange earnings in Nigeria (United States Geological Survey).

Despite the huge investments made by Nigerian government in oil and gas sector, an average of $10 billion per annum, the contribution to Gross Domestic Product (GDP) is minimal an average of less than 30% (NBS, 2009). This abysmal contribution of oil and gas sector is often attributed to the high foreign content and low inputs by Nigerian firms or low local participation in the sector resulting to huge capital flight. Consequently, Nigerians have very little share of oil and gas business over the years just about 14% (NBS, 2009). For example, according to Egypt Drilling and Rigs Report (2005-2008) cited in Idemudia and Ite (2006): Nigeria and crude oil have been synonymous, since 1957 when multinational giant shell discovered the product in commercial quantities at Oloibiri, River State. For the greater part of the last four decades, the Nigerian oil industry was dominated by the globally recognized major oil companies in aspects ranging from exploration to production, refining and trading. Even core downstream operations were initially controlled by Shell Esso and BP, then later by Mobil, Texaco, Total, Elf and Agip. The service industry was not left out with foreign giants Halliburton, Schlumberger, Tidex, and a host of others holding sway.

Thus, the expected gains which would have accrued to Nigerians in terms of employment generation, high standard of living, capacity building and economic empowerment remain elusive. To assuage the strong concern of oil producing communities in Nigeria's oil rich Niger Delta, the administration of former president Olusegun Obasanjo initiated the local content policy for Nigeria to increase local capacity and participation in the petroleum industry. The Obasanjo government needed to achieve the objective by ensuring a substantial portion of the activities in the oil and gas sector, which is the main stay of Nigerian economy, were carried out in the country by Nigerian companies and Nigerian workers. This eventually led to the enactment of Nigerian Oil and Gas Industry Content Development Act in 2010.

As is currently, more than 70 percent of the jobs in the oil and gas sector are still carried out by foreigners, an action, which is contrary to the local content policy of Nigerian government. At a time, stakeholders in the industry argued that the government was not serious in attempting to stop the act of 'cheating', as it could not lobby the National Assembly to sign the Local Content Bill into law. Many described it as an aberration that such a bill geared towards improving indigenous participation in the oil and gas industry, after many years that it was initiated, has not been passed into law. As Hassan (2009) puts it: The Federal Government, during the administration of former president Olusegun Obasanjo had directed the Nigerian National Petroleum Corporation (NNPC) to ensure that certain percentage of jobs in the national oil and gas industry were given to local firms as part of its local content policy to ensure local participation of Nigeria companies in the petroleum industry.

For Amanze-Nwachukwu (2007) the 23 content policy directives or domiciliation guidelines were issued by Nigerian National Petroleum Corporation (NNPC) with the set out targets of achieving 45% local content by 2006 and 70% by 2010. While the Nigerian Oil and Gas Industry Content Development Act enacted subsequently in 2010 has a schedule detailing minimum levels of Nigerian content in different areas of Oil & Gas operations. There are 17 categories which are further divided into 280 line items covering virtually all areas of operational activities. In a nutshell, local content means the development of local skills, technology transfer, use of local manpower and local manufacturing. It is a policy geared towards utilization of the Nigerian human and mineral resources in the exploitation and exploration of the Nigerian hydrocarbon resources which would ensure that the percentage of locally produced materials, personnel, goods and services rendered to the oil and gas industry are increased, thereby generating more employment without compromising standards (Arizona-Ogwu 2008; Okusami 2010).

Thus, the Nigerian content is the quantum of composite value added or 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 environment standards in order to stimulate the development of indigenous capabilities. In order to achieve these, Nigerian Content Division (NCD) was created in the Nigerian National Petroleum Corporation (NNPC) to effectively monitor and enforce compliance. In 2010, Nigerian Oil and Gas Industry Content Development Act established the Nigeria Content Development and Monitoring Board (NCDMB) to replace Nigerian Content Division (NCD), and thus, empowers it to monitor and enforce compliance in the oil and gas sector.

2. The *Problematique*

The core of the Nigerian content policy is to compel oil and gas multinationals to utilize the indigenous material and human resources with the aim of building local capacity, increasing local participation, dissuade capital flight, increase contribution of oil and gas to Gross Domestic Product (GDP) and facilitate backward and forward linkages. However, it is generally observed by industrial watchers that NNPC-NCD was not able to meet its stated target of 45% content by 2006 and given the situation on ground is not likely to meet the 2010 stated target of 70% local content. For example available data shows that NNPC-NCD has only been able to attain local content value of between 30% and 35% in 2009 (Mbamalu 2009). Thus, in spite of four years of initiating Nigerian content policy, there is still high foreign content in oil exploration and production in Nigeria.

Azudialu (2009) attributes this failure to achieve the local content targets to poor implementation of the policy by NNPC-NCD. While, Ndu (2008) argues that the poor implementation of the local content policy and as such poor performance is as a result of lack of commitment on the part of NNPC-NCD to effectively enforce compliance. But Amanze-Nwachukwu (2007) insists that it is as a result of the unwillingness of some oil multinationals to adhere strictly to the local content policy initiative in Nigeria. Mbamalu (2009), on the other hand, believes that the non-compliance by oil multinationals and ineffectiveness of NNPC-NCD to enforce compliance is due to absence of legal back up which confines or constrains NNPC-NCD to rely on the existing laws which are inadequate in ensuring effective enforcement. Yet, instances abound where legally backed up policy directives are hardly complied with or grossly abused by firms in Nigeria.

However, scholars like Amanze-Nwachukwu (2007) believe that the set out targets were *ab initio* not realizable considering the situation on the ground and other prevailing logistics, problems or inadequacies. In other words, that the time frame was too short for NNPC-NCD to realize its targets, because the policy was made in haste without proper feasibility study. The thrusts of this study is that the inability of the Nigerian National Petroleum Corporation (NNPC), or the Nigeria Content Development and Monitoring Board (NCDMB) that replaced it, to bridge capacity gap hinders oil and gas multinationals from complying with the Nigerian content directives.

3. The Rentierism of Nigerian State and the Challenges of Enforcing Nigerian Oil and Gas Industry Content Development Act, 2010

The theory of rentier state can be applied in the Nigerian case to the Nigerian content policy in oil and gas sector. The Nigerian state is, indeed, a rent-seeking state relying on oil revenue received from rents or royalties paid by oil and gas multinationals in their exploration and exploitation of oil and gas in Nigeria. For instance, oil and gas constitute nearly 90% of Nigerian revenue and foreign exchange earnings showing that Nigeria is a mono-product or mono-cultural economy where oil is the mainstay of the economy. Rents, therefore, predominate in Nigeria.

Thus, the Nigerian state satisfies all the characteristics enumerated above by Hazim Beblawi, which qualifies it to be referred to as a rentier state, specifically a rentier-oil state. In Nigeria, for example, rents or royalties accrue directly to the Nigerian state and only few, that is, the government functionaries are engaged in its generation, the rest are involved in its distribution. The implication of the above is that the Nigerian state is an allocation or a distributive state, and not a production state. Even the few productive activities in Nigeria are confined to the level of primary production, specifically exploration and production of oil and gas (i.e. upstream oil sub-sector) by the oil and gas multinationals.

Following from the above, the Nigerian state does not rely on taxation of its citizens for generation of (internal) revenue but rather on external revenue derived from rents on oil and gas. Some of these external revenues are used to subsidize the economy for the wellbeing of the citizens making them docile, corrupt, complacent and parasitic. One other characteristic that demonstrates the rentierism of the Nigerian state is the predominance of the public sector over private sector and even in the case of latter the informal sector dominates over formal sector. The implication of this is that the government is the largest and ultimate employer of labour creating a situation where the bureaucracy is grossly inefficient and ineffective.

The above explains the reason why Nigerian National Petroleum Corporation (NNPC) and the Nigeria Content Development and Monitoring Board (NCDMB) lack the administrative or institutional capacity to effectively monitor and enforce compliance of Nigerian content policy in oil and gas multinationals. Similarly, by relying on external rents from oil and gas instead of concentrating on how to generate revenue from domestic source like taxation the Nigerian state unwittingly diminishes its administrative capacity. As a result of this, state agencies like Nigerian National Petroleum Corporation (NNPC), Nigerian Content Division (NCD), and Nigeria Content Development and Monitoring Board (NCDMB) lack administrative/institutional capacity to build local capacity to absorb available opportunities created by the Nigerian content policy let alone monitor and enforce compliance.

The renterism of the Nigerian state has also created rentier mentality and rentier class, that is, a group of government functionaries or elites of the Nigerian state who collude with foreign firms to subvert the Nigerian content policy by allowing them to operate under their business cover or names to win contracts in return for a proportion of the proceeds. The rentier class apart from acting as front for their foreign counterparts is preoccupied with consumption of the national wealth and not creating or producing it. In other words, rentier mentality has resulted to the knack by the rentier class in Nigeria to be preoccupied with the sharing of the national cake and not the baking of it.

Thus, Beblawi (1990) writes that the elites of oil rich developing states have become rentier class or rent-seeking class, that is, the few that are engaged in generation of external rent as well as being in control of the distribution of it which gives them political influence and leverage. Little wonder that in spite of exploration and exploitation of oil in Nigeria since 1956 that Nigerians have little share of oil and gas business even upon the introduction of Nigerian content policy by Nigerian National Petroleum Corporation (NNPC) since 2006. For typical demonstration of the rent-seeking character of the Nigerian state see Table 1 which shows that almost all the barrels of crude oil produced in Nigeria are exported to other countries, very few are meant for local utilization and consumption.

4. An Overview of the Nigerian Content Policy in Oil and Gas Sector

The Nigerian content policy was formally initiated in 2006 under Obasanjo's Administration, following the initial submission of a draft of National Content Development in 2003 by Nigerian National Petroleum Corporation (NNPC). The 23 content policy directives or domiciliation guidelines of Nigerian content policy were issued by Nigerian National Petroleum Corporation (NNPC) with stated projects of achieving 45% and 70% local content by 2006 and 2010, respectively (Balogun, 2008). Based on the above local content guidelines and targets, the projected sector by sector contributions to local content in absolute figures are stated below in Table 2.

The thrust of the Nigerian content policy, therefore, is to compel oil and gas multinationals to utilize the indigenous material and human resources with the aim of building local capacity, increasing local participation, dissuade capital flight, increase the contribution of oil and gas to Gross Domestic Product (GDP), and facilitate backward and forward linkages. In a nutshell, Nigerian content policy provides that contracts to be awarded by oil and gas multinationals operating in Nigerian to oil servicing firms must be executed in-country in a fabrication yard located in Nigeria by a Nigerian firm with high percentage of Nigerian workers or in joint venture partnership with a foreign firm; and procurement of materials and services needed to execute the contracts should as well be sourced from local manufacturers. In order to achieve these set out targets, the Nigeria National Petroleum Corporation (NNPC) was charged with the responsibility of ensuring compliance or ensuring that the oil and gas multinationals comply with the 23 local content directives or domiciliation guidelines.

The law establishing Nigeria National Petroleum Corporation (NNPC) empowers it to regulate business and productive activities in oil and gas sector. Thus, NNPC relies on the law establishing it to enforce Nigerian content policy while awaiting the passage of the Nigerian content bill into law. Consequently, NNPC has often blamed its inability to effectively enforce local content policy on the inadequacy of existing law. But our argument here is that the problem is more fundamental. The Nigerian National Petroleum Corporation, thus, set up the Nigerian Content Division (NCD) in March 2005 headed by a Group General Manager (GGM) as an organizational framework for effective implementation of the policy. So, while the Nigerian National Petroleum Corporation (NNPC) still reserves the right to enforce, the Nigerian Content Division (NCD) was charged with the responsibility of monitoring compliance, planning and building capacity. Thus, the Nigerian Content Division (NCD) comprises three departments, namely, (a) Capacity Building Department (b) Planning Department and (c) Monitoring Department.

The above departments are collectively charged with the following responsibilities; (i) study best practices and advise NNPC management on Nigerian content (ii) obtain applicable data from industry and plan for new opportunities (iii) develop strategies for capacity building, skill competency and supplier enhancement (iv) drive Nigerian content implementation and monitor compliance; and (v) coordinate sectoral working committees. In order to complement the work of Nigerian Content Division (NCD), the Nigerian National Petroleum Corporation (NNPC) in alliance with key industry stakeholders (i.e. oil and gas multinationals) and other operators set up the Nigerian Content Consultative Forum (NCCF). The Nigerian Content Consultative Forum (NCCF) has eight sectoral working committees covering the fabrication, engineering, manufacturing, petroleum engineering and subsurface, banking and insurance, and shipping and logistics, and other subsector committees.

The oil and gas multinationals that make up the Nigerian Content Consultative Forum (NCCF) are to actively participate in monthly meetings of the committees to discuss issues of compliance, default or violations and review capacity building programmes. In accordance with the industry coordination procedures, Nigerian content offices have been set up in all operator companies and managers appointed to coordinate company local content activities. The Nigerian Content Division (NCD) in collaboration with Nigerian Content Consultative Forum (NCCF) has developed the Joint Qualification System (JQS) to facilitate the Exploration and Production (E&P) contracting process in oil and gas industry. Joint Qualification System (JQS) will provide a databank of available goods and services suppliers to the Nigerian petroleum industry and streamline the pre-qualification process in order to open up available opportunities for qualified local contractors to participate in the oil and gas sector.

Despite the establishment of these institutions or institutional frameworks available data demonstrate that Nigerian National Petroleum Corporation (NNPC) has not been able to attain its stated targets of achieving 45% of local content in 2006 and from all indications will not be able to achieve 70% of local content by 2010 (Ajumogobia, 2009). For example, even Nigerian Content Division (NCD) data show that after two years of actively pursuing Nigerian content policy objectives, Nigerian content has grown from just below 10% to over 35% based on scientific metrics used for measurement as at 2008. This is still below 45% set target for 2006, that is, two years earlier. In addition, Mbamalu (2009) observes that the current available data show that Nigerian National Petroleum Corporation (NNPC) has only been able to attain local content value of between 30% and 35% in 2009.

Therefore, when compared with other oil producing countries, Nigeria has an extremely low level of local content in its petroleum industry. For example, facts from NNPC show that while some countries had domesticated its oil industry to a large extent, Nigeria can only boast of a mere five percent local content level by 2007. Comparative figure, for some other oil producing countries like Brazil, Malaysia, Norway and Indonesia are 70%, 70%, 50% and 25%, respectively. See Table 3 for details of the comparative figure.

Although, there are conflicting data on the level of local content achieved in Nigerian oil and gas industry, but none of data suggests that the local content targets are being attained. Moreso, other indices like Gross Domestic Product (GDP) show that the local content target is yet to be attained. Even the Nigerian Content Division (NCD) recognizes this shortcoming when it states that despite huge investments made by the Federal Government of Nigeria (FGN) in oil and gas sector of the economy, an average of US$ 10 billion per annum, its contribution to GDP growth has been minimal. For example, available data indicate that the contribution of oil and gas sector to the country's Gross Domestic Product (GDP) decline in the local content regime from 24.26% in 2005 to 17.54% in 2008 for details see Table 4 below.

The above includes both the upstream and downstream subsectors, that is, contribution of the crude oil & natural gas and refined oil & liquefied gas. The oil and gas GDP sector growth rate in 2006 as indicated in table 4 above, the year set out for achieving 45% local content value, was -4.51% even as the contribution of oil sector to government revenue rose from 80.5% in 2003 to 84.7% in 2006 (CBN, 2008). The inference is that while the contribution of oil sector to public revenue is increasing, its contribution to GDP is decreasing, meaning that the objective of Nigerian content policy of increasing the contribution of oil and gas sector to GDP is not being realized. But for the contribution of crude oil and natural gas in comparison with other sectors and subsectors of the economy see Table 5 below.

Also in the Table 5, the contribution of crude petroleum and natural gas declined from 37.22% in 2004 to 36.47% in 2007. Even between 2005 in which the local content policy was formally initiated and 2006 in which the first local content target was set, the contribution of crude petroleum and natural gas declined from 38.87% to 37.61% representing a percentage decrease of 1.26%. From these data above, it is clear that the first local content target has not been met; yet all the oil and gas multinational corporations operating in Nigeria claim to be complying with Nigerian content policy. Aside from assisting in capacity building, it seems that the so-called compliance of the oil and gas multinationals stops at the level of contract bidding and submission of tenders by oil servicing companies.

Most of these oil and gas multinationals like Shell, Agip, Chevron, Texaco, Total, Exxonmobil, etc, are contented to limit their compliance of the Nigerian content policy at the level of invitation for pre-qualification tender or bidding. As such, they are not bordered by what happens at the level of execution of the contract provided the contract is satisfactorily carried out or standards are maintained. This is exactly what Omoh & Hector in Nana (2003) were referring to when they state: Oil gas multinationals are only prepared to comply with the directives at the contracting stage, but not at the implementation stage. In order to qualify, most of the oil majors go into joint ventures with Nigerian companies at the contracting, but only to default at the implementation stage by given or subcontracting it to foreign firms.

Similarly, Azudialu (2009) seems to corroborate the above assertion when he states that there are some cases of collusion between some of the oil multinationals and certain “briefcase” contractors in Nigeria to paint foreign oil service companies indigenous all in bid to satisfy the local content policy. The “briefcase” contractors are those indigenous firms that act as fronts for foreign oil servicing firms. Thus, many scholars attributed the inability of the Nigerian Content Division of NNPC to ensure compliance or to implement and enforce Nigeria content policy in oil and gas industry to weakness of the regulatory agency and absence of enabling law. The Nigerian Oil and Gas Industry Content Development Bill was subsequently enacted into law in 2010 establishing Nigerian Content Development and Monitoring Board (NCDMB) as the regulatory agency replacing NNPC-NCD.

5. The Enactment of Nigerian Oil and Gas Industry Content Development (NOGICD) Act in 2010

Previously, the Nigerian Content Division (NCD) was a part of NNPC established in 2006 to achieve the following goals (i) to achieve 45% local content in oil and gas spend by 2006; (ii) to achieve 70% local content value in the provision of materials, services and equipment to the local oil and gas industry by 2010; (iii) to create an economic engine for growth, driving employment, wealth creation and improved linkage between the Oil and Gas industry and other sectors of the Nigerian economy. The division is working to enable a transformed Oil and Gas industry with well-developed in-country capacity and local capabilities, a competitive supply and services sector and ultimately, the hub for energy service delivery in Africa (Adebola, Okoro and Nwasike 2006; Okolo 2006; Nwapa 2007).

But following the inability of the Nigerian Content Division of NNPC to ensure compliance or to implement and enforce Nigeria content policy in oil and gas industry, Nigerian Oil and Gas Industry Content Development (NOGICD) Bill was signed into law by President Goodluck Jonathan on April 22, 2010. The Nigerian Content (NC) Act 2010 (as is called in short) establishes the Nigerian Content Development and Monitoring Board (NCDMB). Thus, Balouga (2012) suggested that the Nigerian Content Consultative Forum (in charge of networking in the oil and gas industry), the Nigerian Content Division (an arm of NNPC) and the newly created Nigerian Content Development and Monitoring Board, NCDMB, (charged with the responsibility of strictly enforcing compliance) must work in tandem for the success of the local content policy.

However, the Nigeria Content Development and Monitoring Board (NCDMB) was established and vested with the responsibility to implement the provisions of the Act, make procedural guidelines and monitor compliance by operators within the oil industry. The Board is expected to perform the following functions, among others; (i) implement the Act’s provisions and regulations made by the Minister; (ii) supervise, coordinate, administer, monitor and manage the development of Nigerian content; (iii) assist local contractors and Nigerian companies to develop their capabilities and capacities; (iv) make procedures to guide the implementation and ensure compliance with the provisions of the Act; and (v) monitor and coordinate Nigerian content performance of all operators in accordance with the provisions of the Act (Okusami 2010).

The Board also has powers to: (i) approval of Nigerian Content Plan; (ii) issuance of Certificate of Authorization; (iii) setting minimum Nigerian content level for project or project items which were not included in the Schedule A to the Act; (iv) determine if Nigerian indigenous contractors have the capacity to perform services listed in the schedule of services; and (v) issuing Regulations for the industry regarding Local Content (Okusami, 2010). NCDMB is as well charged by the Act to ensure that there are both human capacity building and industrial capacity development. There is a strong emphasis on employment and training of Nigerians and development of human capacity through deliberate and sustained efforts, programmes and policies. Some of the methods include understudying, on-the-job training and project-driven training opportunities, such that over the life of a field development, local human capacity is developed in order to be available for another field development or project. There is also provision for waivers but for only three years after the commencement of the Act (April 2013). To be granted waivers, the operator is expected to show commitment towards building in-country capacity in areas where such inadequacies exist (Daniel 2013; Izeze 2013).

The Act in addition establishes a Nigerian Content Development Fund managed by the Board and funded through a 1% deduction at source of every contract awarded to any operator, contract, subcontractor, alliance partner or any other entity in any project, operation, activity or transaction in the upstream sector on the industry. The Act also has a schedule detailing minimum levels of Nigerian content in different areas of Oil & Gas operations. There are 17 categories which are further divided into 280 line items covering virtually all areas of operational activities. The main focus areas for implementation by NCDMB include; (i) training and employment of Nigerians; (ii) promoting indigenous ownership of marine vessels, offshore drilling rigs, etc; (iii) establishment of critical facilities such as pipe mills, dry docking and marine facilities, pipe coating facilities; (iv) integration of indigenes and businesses residing in oil producing areas into mainstream of industry economic activity; and (v) promoting services which support industry activities such as banking, insurance, legal, etc (Okusami 2010).

Under the "Preferred Consideration" for Nigerian companies of the Act, bid processes and contract awards must now consider and reward Nigerian content. "First consideration" is to be given to Nigerian independent operators in the award of oil blocks, oil field licences, oil lifting licences and all projects for which conditional contracts are to be awarded in the oil and gas industry. "Exclusive consideration" is to be given to Nigerian indigenous service companies for prescribed contracts/services (as set out in the Act's Schedule), where such companies demonstrate sufficient ownership of equipment, Nigerian personnel and capacity to perform such operations (Ihua 2010). The Act specifies minimum levels or thresholds of Nigerian content for any 'project' to be carried out in the Nigerian oil and gas industry (see the Schedule to the Act for the precise list of operations and corresponding content, which ranges from 45 percent to 100 percent). If a project description is missing from the Schedule, the Board has the right to set the minimum content requirement (Abolfazi and Behrouz 2012; Daniel 2013; Izeze 2013).

Yet three years after enactment of the Bill and establishment of the NCDMB, the Board has not recorded any significant improvement on the enforcement of the Act. But the problem is more fundamental than this, the truth is that Nigeria is an oil-rentier state and as a rent-seeking state, she lacks the wherewithal to strengthen the administrative capacity or organizational framework of her regulatory agencies; and as well the political will to ensure compliance. Rentier oil-states are innately administratively weak states, because by relying mainly on external rents they unwittingly diminish their administrative capacity. Inefficient bureaucracy and institutional weaknesses are, therefore, by-product of rentierism.

The rent-seeking character of the Nigerian state has also created a rentier class, that is, a rent-seeking class with a rentier mentality which collude with the foreign oil servicing firms to cash in on the institutional incapacity of the regulatory agencies to subvert the Nigerian Content (NC) Act by acting as fronts for them to win contracts in return for a proportion of the proceeds.

6. Capacity Gap and Oil and Gas Multinationals' Poor Compliance with the Nigerian Content Directives

As we noted above, the Nigerian Content Division (NCD) of the Nigerian National Petroleum Corporation (NNPC) or the Nigeria Content Development and Monitoring Board (NCDMB) that replaced it, is also, charged with the responsibility of building capacity in oil and gas sector in order to bridge capacity gap that may result from various opportunities created by the Nigerian content policy. This involves gathering data, identifying areas of opportunities, equipping, empowering, training and developing interventions in consultation with the Nigerian Content Support Fund (NCSF) and other operators in oil and gas industry. In the light of this, the Nigerian Content Division (NCD) now Nigeria Content Development and Monitoring Board (NCDMB) has identified various areas of opportunities in the oil and gas sector for details see Table 6 below.

Aside from fabrication and engineering, opportunities available in other subsectors are not quantified in the table above which underscores the inability of Nigerian Content Division (NCD) now Nigeria Content Development and Monitoring Board (NCDMB) to discharge its responsibilities in terms of planning and capacity building, specifically data gathering. Even that of Engineering subsector is incomplete, as the number of engineers required to carry it out is not stated. Perhaps, in order to correct this anomaly NCD eventually worked out the estimated amount of money to be spent in manufacturing, material and fabrication subsectors in next five years identifying the estimated number of jobs to be created in the fabrication subsector only. See Table 7 below for details.

However, the Nigerian Content Division (NCD) of the Nigerian National Petroleum Corporation (NNPC) claims to have currently developed over 20 intervention projects to bridge local capacity gap in the oil and gas industry, which include infrastructure upgrades, resource training and certification, information management and financing. For example, the Nigerian Content Division (NCD) action plan undertaken to build technical capacity include (a) training of 1000 engineers 300 per quarter in basic engineering design in 2006 in collaboration with Petroleum Trust Development Fund (PTDF) (b) facilitating certification and training of 100 welders in collaboration with Petroleum Trust Development Fund (PTDF) (c) working with industry stakeholders to enable local manufacture of steel plate and pipe (d) working with PTDF and INTSOK to commence upgrade of selected fabrication yards in readiness for increased local fabrication (e) driving the launch of the Nigerian Content Support Fund (NCSF) to make available to local service providers funds for execution of contracts at low and competitive interest rates and (f) developing a Nigerian content through comprehensive capacity data base, and capacity of its national suppliers, manufacturers and local service providers and baseline data for tracking in-country capacity known as Nigerian Content Data Management Bank.

Meanwhile, the Nigerian Content Division (NCD) collaborator Petroleum Trust Development Fund (PTDF) claims to have budgeted $20.5 million for training Nigerians to fill the demand gap created by the Nigerian content policy in the execution of several planned and ongoing projects in oil and gas industry. This includes $10 million for welder training and certification programme, $2.8 million for enhancement of fabrication capabilities of indigenous companies in collaboration with Norway and which PTDF committed $560, 000 as well as $10 million for engineering design training programme (EDTP) of which over $5 million has already been spent (Financial Times 2009).

Petroleum Trust Development Fund (PTDF) has, also, claimed to have spent $6.7 million training Nigerians to acquire skills in the use of four types of modern software needed in the design of engineering projects in the oil and gas industry, and $3 million committed in the training of Nigerians in other types of software and complimentary packages to be completed in December 2009. In all the four modern softwares needed in the design of engineering projects, namely, HYSYS, PDMS, PRIMAVERA and INTOOLS; only 400 engineers have been trained so far in HYSYS. The NCD also claims that there has been unprecedented growth in fabrication industry, for example, an annual fabrication tonnage in local yards has grown from 10, 000 Tons to 120,000 Tons per annum making the major local players like Nigerdock, Dorman Long and Frezone to upgrade and expand their fabrication yards or facilities to accommodate the growing demand. While, the engineering man-hours performed in Nigeria has increased from 250,000 to 2 million (NNPC 2012).

Aside from building technical capacity, Nigerian Content Division (NCD) of the Nigerian National Petroleum Corporation (NNPC) claims to be building financial capacity through the establishment of the Nigerian Content Support Fund (NCSF) in collaboration with the Nigerian Content Consultative Forum (NCCF). Owing to the Nigerian content policy, the Nigerian service providers or indigenous oil serving firms need fund to (a) obtain working capital for contract execution (b) secure investment funds for upgrade of facilities (c) finance manpower development plans (d) procure tools equipment and machinery (e) purchase and maintain service and support vessels, and (f) build new facilities and plants.

The fund available in the Nigerian Content Support Fund (NCSF) include (a) $350 million available at single digit interest rate for local suppliers as working capital (b) NNPC and international oil corporations (IOCs) provides an US $ 100 million unfunded guarantee anchored on a robust legal framework, and (c) commitment from local banks to the tune of US $345 million out of the initial US $ 350 million from a pool of 10 banks. So far, over 50 local companies with contracts-in-hand have applied for the fund in an ongoing process and applications are still being received from interested local services providers. But information concerning how many of these applications that have been granted is not available meaning that Nigerian Content Division (NCD) has failed to provide the needed data.

However, in spite of all these claims made by the Nigeria Content Development and Monitoring Board (NCDMB) previously Nigerian Content Division (NCD) of the Nigerian National Petroleum Corporation (NNPC) and its collaborators, the capacity gap remains. For example, Ibiyemi in Ogodo (2007) notes that the Federal Government has identified shortfall of 46,950 local professionals under the implementation of the Nigerian content policy to fill the supply-demand gap in the execution of exploration and production (E&P) projects in the upstream subsector of the Nigerian oil and gas industry discovered during an oil and gas industry-wide skills gap audit. For the breakdown of this shortage see Table 8 below.

Similarly, Chukwu (2009) notes that study shows that 4-5 million engineering man-hours is executed annually for the Nigerian oil industry, but available in-country capacity can only support about 1 million man-hours which is underscored by the availability of about 1000 engineers as against the 3,600 required.

In the same vein, most oil majors believe that indigenous insurance companies lack both financial capacity and technical capacity to underwrite and manage risks. In other words, that local indigenous insurance firms lack risks underwriting capacity both in financial and technical terms. Also, despite consolidation in the banking sector, they are yet to be positioned to seriously involve in financing long-term investments in oil and gas industry in Nigeria (Babington-Ashaye 2009).

Thus, Balogun (2008) notes that the phenomenal growth in the industry in terms of expenditure, financing and technology is visibly not matched by commensurate increase in the level of locally sourced contractors, suppliers, skilled technicians and entrepreneurs as there is no consistent and concerted effort to groom local expertise and encourage participation. In this regard, Chukwu (2009) observes that the current low engineering capacities, together with poor infrastructural facility are major hurdles militating against realization of the Nigerian content targets.

Similarly, Amanze-Nwachukwu (2007) notes that it is not as if the oil majors do not want to buy fully into the policy, but they are considering the capital intensity of their business and the manpower ability of Nigerian firms being able to do these jobs and whether Nigerians have technical know-how. From the foregoing, it is obvious that the Nigerian Content Division (NCD) of the Nigerian National Petroleum Corporation (NNPC) now Nigeria Content Development and Monitoring Board (NCDMB) has not been able to build sufficient capacity towards bridging the capacity or demand gap existing as a result of shortfalls between available indigenous capacity and available opportunities thrown up by Nigerian content policy. This capacity gap makes it difficult for oil and gas multinationals operating in Nigeria to comply with the Nigerian content policy.

The implication is that the oil and gas multinationals can only comply fully by either compromising standard or stall production either of which can reduce their profits. Oil and gas multinationals are private firms and are in business to maximize profits, and thus, are unlikely to comply with any directive or policy that will minimize their profits or choose from any of the above options. However, the Joint Qualification System (JQS) has provided the oil and gas multinationals avenue to comply at the level of pre-qualification contracting process, only to default at actual contract awarding or at execution stage of the contract by diverting the contract to a foreign firm sometimes citing delay, poor quality or incompetence on the part of the Nigerian firm as the reason for doing so.

Alternatively, most Nigerian oil servicing firms enter into questionable joint venture with foreign oil servicing firms thereby colluding with them to subvert and violate the directives of the Nigerian content policy in return for a part of the proceeds. For example, the Nigerian oil-servicing firms enter into joint venture with their foreign counterparts to scale the pre-qualification process sometimes with encouragement or assistance of the oil and gas multinationals. On winning the contract, the foreign oil-servicing firms go ahead to execute the contract at the implementation stage and then reward the Nigerian oil-servicing firm accordingly. In some cases, some Nigerian oil-servicing firms actually win the contract on their own only to subcontract to a foreign firm on account of incompetence.

The oil and gas multinationals are usually accomplices in this sort of arrangement, and even when they are not involved or aiding it, they often look the other way when they discover it. Following from this Balogun (2008) argues that locating a project in Nigeria does not automatically make it Nigerian content compliant, except if it can boast of majority indigenous ownership with a proven programme of actual technology transfer.

We, therefore, conclude that the inability of the Nigerian National Petroleum Corporation (NNPC), or the Nigeria Content Development and Monitoring Board (NCDMB) that replaced it, to build adequate indigenous capacity to absorb the available opportunities hinders oil and gas multinationals from complying with the Nigerian content directives. We also, discovered that the oil and gas multinationals are not alone in violating the local content directives. They aid or rather are aided by the Nigerian oil servicing firms in doing this whenever the indigenous oil servicing firms collude with their foreign counterparts to subvert the local content policy in a questionable joint venture during the execution or implementation of the contract. Oil and gas multinationals are comfortable with this sort of arrangement in order to avoid stalling or reducing production.

This collusion between the Nigerian oil service firms and their foreign counterparts demonstrates the rentier mentality and rent-seeking character of the Nigerian rentier class. The Nigerian content policy is, therefore, breached in three major ways, one, when oil majors divert the contract to foreign oil servicing firm at the actual contracting stage or execution stage, two, when Nigerian oil-servicing firms and foreign oil-servicing firms enter into questionable or fraudulent joint venture partnership, only for the latter to execute it, and three, when a Nigerian oil-servicing firm, perhaps as a result of incompetence to execute the contract subcontract it to a foreign firm.

It is not as if Nigerian National Petroleum Corporation (NNPC) is completely unaware of these sharp practices at the execution or implementation stage of the contract by the industry players. But it is unable to enforce compliance, because of its inability to monitor compliance at that level and build enough indigenous capacity to meet the demand of the oil and gas multinationals. By relying on the awarding stage of the contract it, thus, assumes that the oil and gas multinationals are all complying with the directives.

7. Conclusion

We have been able to arrive at the conclusion that Nigerian National Petroleum Corporation (NNPC), or the Nigeria Content Development and Monitoring Board (NCDMB) that replaced it, has not been able to attain its local content targets not necessarily because of lack of enabling laws to enforce but because of the inability to bridge the capacity gap existing between available indigenous capacity and available opportunities created by the Nigerian content policy in the oil and gas industry.

The crux of our argument is that the reason for the inability of the Nigerian National Petroleum Corporation (NNPC) to achieve its local content targets is more fundamental than the lack of enabling laws to enforce compliance. It is inherent in the nature of the Nigerian state. The Nigerian state by all indications is a rent-seeking state relying predominantly on external rents accruing from exploration and production of oil and gas by oil majors to meet her expenditure. Nigeria is, indeed, an oil-rentier state.

The rentierism of the Nigerian state has created a number of consequences, namely, a weak administrative capacity or inefficient bureaucracy and a rentier class imbued with a rentier mentality as well as docile, parasitic, corrupt and complacent political leadership. The end is that it created inefficient state agencies with institutional weaknesses of which Nigerian National Petroleum Corporation (NNPC) is one. The Nigeria Content Development and Monitoring Board (NCDMB) that replaced it as the regulatory agency, also demonstrates a good example of this institutional weakness. Institutional incapacity is, thus, an attribute of this rentierism of the Nigerian state. The import of the above is that as long as the Nigerian state is rent-seeking, the policy of achieving Nigerian content targets will always remain inspirational for a long time rather than being a concerted policy of monitoring and enforcing compliance and building local capacity to match available opportunities in the oil and gas sector.

8. Recommendations

Given the fundamental nature of the problem there is need therefore to suggest a far reaching recommendation that is more fundamental than mere strengthening the institutional/organizational framework of the Nigerian National Petroleum Corporation (NNPC) or any other regulatory agency to shore up its ability to monitor and enforce compliance, and bridging any capacity gap. Our main recommendation, therefore, is that Nigeria should diversify the revenue base of the economy to reduce her excessive dependence on oil revenue by mainstreaming other domestic sources of revenue like direct tax and as well as developing other sectors of the economy. Diversifying the economy and revenue base will be, indeed, a step in the right direction towards stripping Nigerian state of its rentierism or rentier character. This is a fundamental factor which if not addressed will always encumber the Nigerian content policy with or without enabling laws.

Other minor or specific recommendations, which follow from the above though less fundamental to it, include; (i) strengthening the administrative or institutional capacity of NNPC or NCDMB to monitor compliance; (ii) adequately equipping and funding NNPC or NCDMB to build adequate capacity necessary for bridging capacity gap. However, a thorough and strict enforcement of Nigerian Content (NC) Act will create jobs in the crisis-ridden Niger-Delta region for the teeming and restive youths thereby empowering them economically. A strict enforcement of NOGICD or NC Act is, therefore, desideratum for reducing the restiveness of the youth in the Niger-Delta region, especially in this post-amnesty rehabilitation programme.

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Table 1: Nigerian Crude Oil Production and Exports, 2003-2007

Year	Reserve (Million)	Production (000 Barrels)	Exports (000 Barrels)
2003	33,000	844,100	791,016
2004	33,550	911,045	871,287
2005	35,000	918,972	843,533
2006	36,220	869,197	817,668
2007	Na[1]	803,001	790,816

[1]Not available.
Source: Nigerian National Petroleum Corporation (NNPC), 2008.

Table 2: The Projected Nigerian Content Value Contributions 2006-2010.

Sectors	Average Annual Spend (US$m)	2006 (US$m)	2007 (US$m)	2008 (US$m)	2009 (US$m)	2010 (US$m)
Engineering	900	270	340	495	605	720
Installations	1,100	220	233	263	295	330
Construction	1,100	330	465	523	625	770
Fabrication	1,500	500	610	705	850	1,000
Procurement	5,400	475	600	1,000	1,700	2,500
Others		105	320	650	1,150	1,480
Total	10,000	1,900	2,568	3,631	5,225	6,800

Source: Nigerian National Petroleum Corporation (NNPC) and Nigerian Content Division NCD, 2006.

Table 3: Comparative Figures of Local Content Level in 2007

Countries	Local Content Level (%)
Nigeria	5
Brazil	70
Malaysia	70
Norway	50
Indonesia	25
Mexico	na[1]

[1]Figure for Mexico not available
Source: *http://thenewsng.com/business/losing-the-local-content-race/5/14/2009*.

Table 4: Oil and Gas Sector Contribution to Real GDP 2003-2009

Description/Year	2003	2004	2005	2006	2007	2008	2009
Oil & Gas % Contribution[3]	26.53	25.72	24.26	21.85	19.60	17.54	15.54[1]
Oil & Gas Sector Growth Rate	23.90	3.30	0.50	-4.51	-4.54	na[2]	na[2]

[1]Figure represent third quarter of the year.
[2]Not available.
[3]Includes crude and refined oil or the upstream and downstream subsector.
Sources: 1. National Bureau of Statistics (NBS), Nigerian Statistical Fact Sheets, 2008,
2. *http://www.nigerianstat.gov.ng/11/21/2009*.
3. Nigerian National Petroleum Corporation (NNPC).

Table 5: Gross Domestic Product by Economic Activity at Currents Basic Prices (Percentage Distribution) 2004-2007

Activity	2004	2005	2006	2007
a. Agriculture	34.21	32.76	32	32.71
i. Crop production	30.48	29.02	28.50	29.16
ii. Livestock	2.14	2.15	2.04	2.10
iii. Forestry	0.45	0.42	0.40	0.41
iv. Fishing	1.14	1.17	1.06	1.04
b. Mining & Quarrying	37.33	38.99	37.76	36.62
i. Coal Mining	0.00	0.00	0.00	0.00
ii. Crude Petroleum & Natural Gas[1]	37.22	38.87	37.61	36.47
iii. Metal Ores	0.00	0.00	0.00	0.00
iv. Quarrying & Other Mining	0.11	0.12	0.15	0.15
c. Manufacturing	3.07	2.83	2.57	2.52
i. Oil Refining	0.20	0.20	0.20	0.20
ii. Cement	0.05	0.06	0.06	0.07
iii. Other Manufacturing	2.82	2.57	2.31	2.25
d. Others	25.5	25.42	27.67	28.15
Total	100	100	100	100

[1]Excludes refined oil or the downstream subsector.
Source: 1. National Bureau of Statistics (NBS), Nigerian Statistical Fact Sheets, 2008.

Table 6: Opportunities and Challenges Arising from Nigerian Content Guidelines and Directives

Sector	Opportunities	Challenges
Shipping	Participation of Nigeria shippers in the international crude oil transportation.	
Fabrication and Galvanizing Plants	(a) Over 200, 000 tons of fabrication works identified from 2005 to 2009. (b) Proposed galvanizing plant will open the market for all pipe racks and other basic structures in the LNG projects to be fabricated in country.	
Engineering	Average of 2 million man-hours of engineering design annually, estimated at $3 billion over next five years.	
Materials and Manufacturing	a. Manufacturing of steel pipes and plates locally. b. Manufacturing of heat exchangers, heaters. c. Manufacturing of pumps, valves, etc.	Steel pipe plants to set up locally.
Logistics	Supply base and distribution hub, offshore transport logistics, bulk storage and silo, warehouse.	

Source: *http://www:nigcontent.com/7/8/2006*.

Table 7: Opportunities and Investments in the Manufacture, Material **and Fabrication Subsectors**

Subsectors	Opportunities
Manufacturing	An estimated $17 billion to be spent in manufacturing in the next five years.
Materials	An estimated $ 25 billion to be spent on procurement of materials in oil and gas industry in the next five years.
Fabrication	a. An estimated $ 20 billion is projected to be spent in fabrication in the next five years. b. There is currently potential for creation of 10,000 new jobs in the fabrication subsector in the next five years.

Source: *http://www.nigcontent.com/12/17/2009*.

Table 8: Capacity Gap in the Oil and Gas Sector

Subsectors	**Shortfalls**
Welders for Deepwater Projects	4,050
Skilled Workers for Fabrication Projects	19,700
Well Services	2,800
Procurement, Construction and Installation Services (PCI)	12,800
Engineering Design Training Programme (EDTP)	2,600
Skilled Workers for Upgrading Petroleum Training Institute (PTI), Federal Polytechnic Ekowe, National Technical Institute, Bonny and National College of Petroleum Studies, Kaduna.	5,000
Total	46,950

Source: *http://www.financialstandardnews.com*/6/10/2009.