



# Multi-sectoral Local Content Development in Nigeria:

*Sailing Through Stormy Waters? (Part I – Oil & Gas and Cabotage)*

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## Introduction

Increasing globalisation has made it even more imperative for countries to ‘validly’ protect their economies through strategic initiatives including promoting local content (LC) and import substitution. In Nigeria, various attempts to restrict foreign/promote indigenous participation in the economy manifested in the indigenization policy and legislation of the late 1970s up to recent policy actions. However, since the mid-1990s, Nigeria liberalised her investment environment by enacting laws repealing the indigenisation laws, and strict exchange control regime as well as enacting the **Nigerian Investment Promotion Commission (NIPC) Act, Cap. N117 LFN, 2004** which generally allows foreign participation in any Nigerian enterprise. However, to achieve incremental fulfilment of its social obligations, especially creation of opportunities for Nigerians - it is essential that government put in place machineries to implement a holistic LC agenda.

This article (first of a two part series) examines critical issues in Nigeria's LC development plan and implementation strategy from a multi-sectoral perspective focusing on the oil and gas and maritime sectors.

## The Oil and Gas Industry: Cash Cow of the Nigerian Economy

Since the discovery of oil at Oloibiri in 1956, Nigeria's oil and gas industry has remained her cash cow despite fluctuations in global oil prices. Several policy initiatives seeking to promote increased Nigerian participation in the industry (with average results) culminated in passage of the **Nigerian Oil and Gas Industry Content Development Act, Cap. N124A, LFN 2004 (NCA)** in 2010. The NCA's principal objective is to provide for the development of Nigerian content (NC) in the industry, NC plan, supervision, coordination, monitoring and implementation of the NC. The NCA also prescribes minimum thresholds for use of local services and materials, and mandates technology transfer

from existing foreign operators while offering incentives to Nigerian owned operators.

The NCA provides in **section 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.” Also, Nigerian company – defined as “a company, formed and registered in Nigeria in accordance with the provisions of Companies and Allied Matters Act, with no less than 51% equity held by Nigerians” – is to be given preference in bids, while Nigerians are to be given first consideration for employment in the industry.

However, the NCA has some perceived drawbacks which prompted NCA Amendment Bill (NCAA Bill) passed in June 2015 by the 7<sup>th</sup> Assembly. The NCAA Bill can be considered as spent - not having gained presidential assent within the 30 day window prescribed in **section 58(4) 1999 Constitution (as amended)** and the factual and legal impossibility of the 7<sup>th</sup> Assembly (whose legislative mandate has since expired) in overriding a presumed Presidential veto.<sup>1</sup> However, its proposed amendments deserve some examination.



<sup>1</sup>The Bill was passed by the Senate on the day of their last sitting; furthermore, President Buhari cannot validly assent to bills passed by the 7<sup>th</sup> Assembly. The Bill's utility is limited to being reference material.

One of such amendments, which could be seen as potentially indicating the future direction of industry LC legislative policy, is the novel definition of Nigerian indigenous company to mean: “a company which: (a) its entire issued share capital is owned by Nigerians; (b) has its Board of Directors comprising only Nigerians; and (c) own all its assets.” This insertion has thus created a three-tier regime: Nigerian indigenous company (Tier 1), Nigerian company (Tier 2) and foreign company (Tier 3) with far-reaching implications for companies erstwhile considered as “Nigerian company” for the purpose of (amongst others), **sections 3(2), 16, 41 and 49 NCA**.

Another plausible development in the Bill is the clarification of the cloudy issues surrounding the utilization of the Nigerian Content Development Fund (Fund) under **section 104, NCA**. Although the NCA stipulates that the Fund shall be managed by the Nigerian Content Development Monitoring Board (NCDMB) - created under **section 69 NCA** - and employed for projects, programmes, and activities directed at increasing NC in the oil and gas industry, there was no provision for the ratio of funds to be utilised by NCDMB and those for projects. However with the proposed NCAA Bill amendments, 10% of the Fund is to be used by the NCDMB to ensure compliance with the NCA while 70% is to be disbursed to qualified Nigerian indigenous companies for in-country capacity development. This can be by way of grant for long-term, low-cost asset acquisition loans and infrastructure or facilities development support, equity investment, direct grants for in-country research and

development, technology acquisition and in-country manufacturing, **section 104(3)(a) and (b) NCAA Bill**. More so, there is the requirement on operators in the oil and gas industry to submit their annual Nigerian Content Performance Report to the NCDMB which shall conduct regular assessment and verification to ensure compliance with the provision of the NCA, **sections 60 and 62 NCA**.

The first major test of the **NCA** was witnessed during the legal dispute between Lagos Deep Offshore Logistics (LADOL) and Samsung where it was reported that Samsung in a Joint Venture (JV) with LADOL bided for and was awarded an Engineering Procurement Contract (EPC) for the construction of



Egina Floating Production Storage and Offloading (FPSO) by Total Upstream Nigerian Limited (TUNL). Upon the award, Samsung terminated its JV with LADOL which gave rise to concerns that it sought to undertake the modules earmarked for in-country fabrication abroad therefore not in compliance with its LC compliance obligations. After months of dispute, issues were settled and parties announced in-country capacity development to drive the project.<sup>2</sup>

The NCDMB has arguably performed optimally - given the resources at its disposal - resulting in increased LC utilisation in the industry. According to the NCDMB,<sup>3</sup> local content utilisation has grown from a paltry 5% in 2010 to 26% in 2017 with a projection of 70% by 2027 following the implementation of its 10-year strategic road map. In addition, it has also began the implementation of Service Level Agreements (SLAs) with its partners; the first, with Nigerian Liquefied Natural Gas (NLNG) was signed in May, 2017. Another milestone in Nigeria's oil and gas industry has been capacity development of Nigerians through collaborative in-country training programs between NCDMB and International Oil Companies (IOCs). It has also set things in motion to intensify its

LC Intervention Fund (LCIF), which has recently been increased from \$100 million to \$200 million, through partnerships with financial institutions, notably, Bank of Industry (BoI) supporting a single-digit interest loan (between 5% - 8%) to indigenous operators in the oil and gas industry.

To develop in-country capacity, the NCDMB recently announced (following the Nigerian Oil and Gas Research and Development Fair and Conference in September, 2017) it would establish a *Research and Development Council* to include representatives of upstream and downstream companies, relevant agencies of government, the academia, Nigerian University Commission and top research centres. The Council, upon establishment would chart a new course in the drive to increase LC through intensive research and development and investment in research projects in universities.<sup>4</sup>

There is no doubt the implementation of these lofty policies would put LC utilisation in an upward trajectory. However, the re-introduction and speedy passage of the NCAA Bill (as may be further improved by legislative and

<sup>2</sup>See, Niyi Aderibigbe, Samsung – Ladol Truce: Nigeria's Local Content Act Has Passed First Efficacy Test [www.ventureafrica.com/samsung-ladol-ruce-nigerias-local-content-act-passed-first-efficacy-test/amp/](http://www.ventureafrica.com/samsung-ladol-ruce-nigerias-local-content-act-passed-first-efficacy-test/amp/) (accessed 1/10/2017)

<sup>3</sup>In its Q2 2017, Local Content Digest Magazine. See, <http://www.ncdmb.gov.ng/lcdm/NCDMB-Local-Content-Digest-magazine-PRESS-Q2-2017.pdf> (accessed 25/09/2017)

<sup>4</sup>See, “Oil Industry to get Research & Development Council - NCDMB” on <http://ncdmb.gov.ng/press-releases/> (accessed 29/09/2017)



allied debate), and other initiatives, particularly disciplined implementation of NCDMB's 10-year strategic road map are of utmost importance to industry stakeholders, who are keen on taking advantage of them for optimum growth. The provisions of the recently issued *Executive Order* on promotion of LC in public procurements is also indicative of Federal Government's wholistic thinking in that regard. The ball is in the government's court to fast track LC gains in the oil and gas industry and consolidate same towards achieving the administration's Economic Growth and Recovery Plan (EGRP).

Fg's efforts to diversify the economy and grow non-oil revenues does not necessarily mean a de-prioritisation of the oil and gas industry, consequently it does not portend significant negative impact on the industry; rather it means healthy competition from more growth points. Perhaps one good illustrator of LC capacity development is that the resumption of hydrocarbon prospecting in Sokoto, Benue and Chad basins involved mostly if not entirely Nigerians. The upcoming marginal field licensing round, provides another avenue to increase NC and an opportunity to demonstrate FG's unflinching commitment to increasing LC in the Nigerian oil and gas industry.

### Shipping and Admiralty: The Gateway Coastal Trade to other Sectors

Coastal and inland shipping was also heavily dominated by foreign operators leading to the enactment of the **Coastal and Inland Shipping (Cabotage) Act (CA), Cap. C51 LFN, 2004** in 2003. The CA was primarily to restrict the use of foreign

vessels in domestic coastal trade and promote the development of indigenous tonnage. Foreign participation is restricted-foreigners are only allowed to participate upon waivers granted by the Minister of Transportation and fulfilment of special foreign registration requirements. Accordingly, registration of a vessel under the CA is restricted to ships with considerable Nigerian content.

**Section 23(1) and (2), CA** prescribes conditions for registration thus: "subject to sections 9-12, a vessel shall not be registered for use in the domestic trade unless the Minister is satisfied that - (a) the vessel is **wholly and beneficially owned by Nigerian citizens or by a company wholly and beneficially owned by Nigerian citizens** and a vessel or company is wholly and beneficially owned by Nigerian citizens where all the shares in the vessel and the company are held by Nigerian citizens free from any trust or obligation in favour of any person not a citizen of Nigeria; (b) the vessel is on bareboat charter to Nigerian citizens and is under the full control and management of Nigerian citizens or a company wholly and beneficially owned by Nigerian citizens in terms of subsection (1) (a); (c) the vessel is owned by a company registered in Nigeria and the **percentage of shares in the company owned by Nigerian citizens is not less than 60 per cent**; (d) any foreign vessel is licensed in compliance with Part II of this Act; (e) the **vessel is exclusively manned by officers and crew of Nigerian citizenship** except where Section 10 applies; and (f) the vessel possesses all certificates and documents in compliance with international and regional maritime conventions to which Nigeria is a party including all safety and pollution

requirements imposed by a Nigerian law and any international convention in force. **A vessel shall not be registered for use in the domestic trade unless the controlling interest in the company is owned by Nigerian citizens.**" (emphases supplied). Despite these lofty CA's provisions, its administration has been fraught with much controversy. The indiscriminate grant of waivers to foreign owned and operated vessels has posed a serious setback to the realization of CA's intent. According to **section 9 CA**, "the Minister may on the receipt of an application grant a waiver to a duly registered vessel on the requirement **for the vessel under this Act to be wholly owned by Nigerian citizens where he is satisfied that there is no wholly Nigerian owned vessel that is suitable and available to provide the services or perform the activity described in the application.**" (emphasis supplied). Similar waivers are granted to foreign vessels with regards to manning and production requirements, **sections 10 and 11 CA**.

It is particularly important to note that these waiver provisions under the CA has been proposed for amendment under a bill presently before the House of Representatives. Under **sections 19, 21 and 23, Coastal and Inland Shipping (Amendment) Bill 2016 (CAA Bill)**, Nigerian Maritime Administration and Safety Agency (NIMASA) has regulatory oversight for compliance requirements of the Act and would advise the Minister on grant of such waivers. However, the application would be deemed granted where the Minister fails to communicate the decision to the applicants within 45 days. This is a welcome development as it would create certainty and promote transparency in Nigeria's Cabotage regime. This bill when passed into law would complement **Para 5.3.4, Guidelines on Implementation of Coastal and Inland Shipping (Cabotage) Act, 2007** which has a similar provision. Nevertheless, the CAA Bill seeks to put the Minister in a compelling position to implement the advice of NIMASA. It is prescient that similar bill be presented before the Senate and its passage fast tracked for optimum LC impact in the Cabotage regime.

Another significant drawback to full optimization of Cabotage potential by

the Act is the absence of implementation strategy for the Cabotage Vessel Financing Fund (the Cabotage Fund) created under **sections 42 – 45 CA**. The Cabotage Fund was created to promote the development of indigenous ship acquisition capacity by providing financial assistance to Nigerians in domestic coastal shipping. Despite the provisions of the **Cabotage Vessel Financial Fund Guidelines 2006**, indigenous ship owners find it herculean accessing the Fund (currently standing at more than \$100 million), since its creation under the Act. The Ship Owners' Association of Nigeria (SOAN) whose members have reportedly been in compliance with their contribution requirement, has intensified advocacy efforts towards making NIMASA commence the disbursement of funds in the Cabotage Fund. Such would ease the acquisition of new vessels and increase local capacity to compete with foreign owned vessels.

Growing the capacity of indigenous companies to participate in the Cabotage regime, impels their access to low interest rate loans contemplated by the Cabotage Fund. NIMASA, as principal implementer of the Cabotage regime, could take a cue from NCDMB: must evaluate and ensure full compliance and implementation of the CA.

Another point worthy of mention is inter-agency cooperation in ensuring compliance with LC requirements as envisaged under **section 105, NCA** - NCDMB and NIMASA are to collaborate to ensure compliance with LC development in the CA. In furtherance of this provision, the NCDMB and NIMASA set up a joint committee (in December, 2016) to: define appropriate documentation to ascertain ownership of vessel and authentication; examine the effect of Temporary Import Permit (TIP) on marine vessel ownership and advice on promotion of investment in vessel construction; maintenance capacity including maritime training and sea certification for Nigerians. NIMASA's efforts at increasing LC development in the maritime industry culminated in the

establishment of the first Maritime University for in-country capacity development.

### Conclusion

There is no doubt that LC optimization is requisite in the growth of the Nigeria's oil and gas and maritime industries and NCDMB and NIMASA must further collaborate to ensure that the gains in the industries are consolidated. It is therefore imperative for indigenous and in particular, foreign operators in the oil and gas and maritime industries to key into NCDMB and NIMASA's LC implementation plan through local content compliance strategy which would in the long run make them competitive, optimising compliance cost and avoiding regulatory penalties.

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