



SUSTAINABILITY OF LOCAL CONTENT POLICY IN THE NIGERIAN AND ANGOLAN OIL AND GAS SECTOR: AN ASSESSMENT

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Article Information:

Article Type:
Research Article

Manuscript Received:
15 January 2025

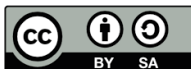
Final Revision Received:
4 March 2025

Published Online:
14 May 2025

Keywords:
Local content, sustainable development, Nigeria, Angola, oil and gas industry.

This study examines the effectiveness of local content policies in Nigeria and Angola's oil and gas industries, highlighting the historical prevalence of multinational corporations and the reliance on expatriate labour. Accordingly, both nations have extant relevant legislations—Nigeria's Nigerian Oil and Gas Industry Content Action, 2010 and Angola's Petroleum Decree 271/20—aimed at boosting local engagement, empowering domestic workers, and asserting control over natural resources. In our analysis, we explored how these legislations and policies relate to the United Nations Sustainable Development Goals, underscoring the need to balance economic growth, social equity, and environmental stewardship. By tracing the development of sustainability concepts from the UN Charter of 1945 to today, this study emphasises the interdependence of economic, social, and environmental factors. Insights from Nigeria's experience with local content regulations offer valuable lessons for Angola. The findings suggest that while these policies have the potential to drive economic growth and support sustainable development, their success relies on thoughtful implementation and design. Ultimately, the study argues that both countries can learn from each other to enhance their local content strategies and further their sustainable development aims in the oil and gas sector.

Cite this article: Ngozi Chinwa Ole, Eti B. Herbert, Onyekachi Eni, Eduardo G Pereira And Empire N. Hechime (2025). Sustainability Of Local Content Policy In The Nigerian And Angolan Oil And Gas Sector: An Assessment. The Journal of Sustainable Development, Law and Policy. Vol. 16:3. 71-95. DOI: 10.4314/jsdlp.v16i3.4



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Publisher: Institute for Oil, Energy, Environment and Sustainable Development (OGEES Institute), Afe Babalola University, Ado Ekiti, Nigeria.

1. INTRODUCTION

The oil and gas extraction industry has a unique feature that accommodates great foreign investment entrants from multinational companies (MNCs). MNCs obtain concessionary rights from the government to engage in petroleum exploration and operations under some complex contractual arrangements. Historically, foreign dominance of the extractive industry of developing countries may be connected to the colonial ties between the investing and host states. In contemporary times, the significant participation of foreigners in the petroleum sector of developing countries is mainly due to the lack of technical expertise on the part of the host state and the MNCs' possession of substantial financial resources required to operate the capital-intensive industry. By being the significant operators of the sector and possessors of the resources and expertise, the MNCs also have the ability to determine the persons to engage as labour in the value chain of the industry. The rippling effect of the foregoing state of affairs is the common practice of MNCs filling lucrative employment positions in the petroleum industry with expatriate workers to the detriment of locales. This has made the extractive sector one of the industries with the most expatriate workers. Indeed, expatriate workers receive higher remuneration than their local counterparts for similar job descriptions.¹

Most developing states depend on exploiting petroleum resources and ensuring prudent management of the resulting revenues flowing from petroleum activities to contribute towards sustainable development for the host country and its people.² Host states, endowed with mineral resources, are not only concerned with the possible economic they can accumulate from petroleum exploration. A responsible government would ordinarily want to ensure that the state's natural resources are also utilised for the development of the state's human capital resources.³ This is a means of addressing the scourge of unemployment and the attendant consequences associated therewith. The government would ordinarily explore means through which its citizens can be empowered. Thus, it is not uncommon for governments to establish policies or enact laws limiting the number or allocating the quota of expatriate workers within a sector.

¹ Michael Eboh, 'Nigeria's Expatriate Oil Workers Highest Paid in Africa' *Vanguard* (12 February 2013). <<https://www.vanguardngr.com/2013/02/nigerias-expatriate-oil-workers-highest-paid-in-africa/#:~:text=Expatriate%20workers%20in%20the%20Nigerian,oil%20and%20gas%20salary%20survey.>> accessed 13 August, 2024.

² Eduardo G Pereira and Tonje Gormley (eds), *Local Content for the International Petroleum Industry* (Pennwell Corporation 2018) XV.

³ T Hunter, 'Comparative Law as an Instrument in Transnational Law: The Example of Petroleum Regulation' (2009) 21(3) *Bond Law Review* 42, 67.

The extraction industry's value in local, regional, and state economies refers to local content.⁴

Several laws in Nigeria and Angola regulate employment and impute local content requirements in various industries in other states. Particularly concerning the petroleum industry, the Nigerian National Assembly enacted the Nigerian Oil and Gas Industry Content Act (NOGIC) in 2010. Ten years thereafter, her Angolan counterpart, by Petroleum Decree 271/20, created the local content requirement for the Angolan Petroleum Sector in 2020. Both laws seek to breach the gap created by expatriate dominance of the petroleum sector and entrench Indigenous participation in the sector. This is also a means through which host states can assert their sovereignty and control over their natural resources. Establishing local content law is a pervasive practice amongst oil-producing countries.⁵

While these actions are applaudable, examining their compliance with sustainability principles well encapsulated in the United Nations Sustainable Development Goals (SDGs) is essential. Adopting the doctrinal research methodology and a comparative approach, this study shall examine the applicable legal framework for the local content policy of Nigeria and Angola. It shall answer two questions: How does local content policy in Nigeria and Angola support sustainable development goals? How does local content policy impede on the realisation of sustainable development goals? The measure of local content policy on the prism of sustainable development is informed by the global drive towards the application of the sustainability criteria of any developmental drive. The choice of Nigeria and Angola is also informed by the fact that both countries are sub-Saharan African countries dependent on oil extractive industry for their subsistence. Since both countries underwent colonisation, they have had similar experiences of expatriate dominance of their petroleum industry. Having only recently established its local content legislation, it is expected that Angola can derive valuable lessons from Nigeria's experience, which has ten years prior experience in local content regulation of the oil and gas industry.

⁴ A Elias-Roberts, 'A Review of the Legal Framework of Local Content Provisions in Guyana' (2020) 18 (2) Oil, Gas & Energy Law Intelligence 1, 4.

⁵ T Acheampong, M Ashong, and VC Svanikier, 'An Assessment of Local-Content Policies in Oil and Gas Producing Countries' (2016) 9(4) Journal of World Energy Law & Business 282, 282–302.

2. LOCAL CONTENT AND SUSTAINABLE DEVELOPMENT: A NEXUS

2.1 Sustainable Development

The term sustainable development is traced to initial efforts to codify development in the United Nations Charter in 1945 following the end of the First World War.⁶ The United Nations Charter 1945 affirms that to create stability among nations, member states should commit to ‘higher standards of living, full employment, and conditions of economic and social progress and development’.⁷ It encourages member states to adopt individual and joint actions to achieve the mentioned goals.⁸ Following this, the World Bank (then the International Bank for Reconstruction and Development) was created to facilitate the improvement in member states’ economic and social development.⁹ However, the member states and World Bank’s activities were targeted mainly at economic development, while social and environmental protection was relegated to the background. In the words of Dias and Songi, ‘in practice, all too often development projects (especially mega-projects) ended up degrading the environment, displacing people, destroying communities, eliminating subsistence livelihoods, exploiting labourers, enslaving debt-bonded workers and exacerbating poverty’.¹⁰ The World Bank activities which flowed from the Charter were criticised as not being people-centred as they focused primarily on the key infrastructure that makes for economic development without attempting to factor in human and environmental protection.

The situation changed drastically with the adoption of the 1986 United Nations Declaration on the Right to Development. The 1986 Declaration emphasises the right of everyone to participate in and enjoy economic, social, cultural and political development on the basis of which fundamental human rights will be attained.¹¹ It creates an obligation on states to adopt national and international measures individually and communally to advance the full realization of the right approach to human development.¹² The 1986 Declaration introduces a right-centred approach to economic

⁶ Ayesha Dias and Ondotimi Songi, ‘Sustainable Development for Communities Hosting Extractive Industries: All is far from Fair’ (2012) 10 (3) Oil, Gas & Energy Law Intelligence 1.

⁷ The United Nations Charter 1945, Art 55(b). For further commentary, see George A Finch, ‘The United Nations Charter’ (1945) 39 (3) American Journal of International Law 541.

⁸ Ibid, Art 56.

⁹ L Peribam, ‘The World Bank and the United Nations’ (1966) 3(4) IMF Finance and Development 18.

¹⁰ Ayesha Dias and Ondotimi Songi, ‘Sustainable Development for Communities Hosting Extractive Industries: All is far from Fair’ (n 2).

¹¹ The United Nations Declaration on the Right to Development 1986, Art 1.

¹² Ibid, Art 4.

development.¹³ One which right recognition and enforcement was the route upon which international, regional and national economic development is supposed to be predicated.¹⁴ The Right to Development Declaration recognises justice, equity and equality as central and primordial to development, thereby heralding a new rights-based approach.¹⁵ It laid the foundation for advancing the United Nations agenda, designed to integrate development into human rights. It has been a catalyst for recognising the right to development in several subsequent regional and international instruments dealing with human rights and sustainable development.¹⁶ While the Declaration is central to pushing a right-centred development narrative, it has also been a source of scholarly and political debate as the absence of a clear definition of the concept that the right embodies has introduced ambiguity.¹⁷

As noted, environmental protection was not incorporated in the development concept as provided for under the UN Charter 1945. As such, the developmental activities undertaken under the 1945 Charter came at the cost of environmental degradation. The butterfly effect of such environmental degradation was that pollution undermined human and social development, given that the right to life is intrinsically linked to a healthy environment. It also meant that funds intended for social and national development were sometimes used for environmental remediation. Experts also acknowledged that ‘although in individual instances there were conflicts between environmental and economic priorities were intrinsically two sides of the same coin’.¹⁸

Integrating environmental development and protection led to the 1972 United Nations Conference on the Environment. The major achievements of the conference in this regard can be summarised into three. First, it produced the Stockholm Declaration. The Declaration detailed various principles and recommendations to facilitate a marriage between eco-social development and environmental protection.¹⁹ Secondly, an action plan detailing environmental impact assessment and the environmental management system’s measures for this purpose was adopted.²⁰ The United Nations Environmental Programme was also established to execute some conference recommendations. The

¹³ R N Kiwanuka, ‘Developing Rights: The UN Declaration on the Right to Development’ (1988) 35 (3) *Netherlands International Law Review* 257.

¹⁴ Nico Schrijver, ‘A new Convention on the Human Right to Development: Putting the Cart before the Horse?’ (2020) 38(2) *Netherlands Quarterly of Human Rights* 84.

¹⁵ Ibid, see also Stefano Prato, ‘The Right to Development’ (2022) 65 *Development* 103-105.

¹⁶ Khurshid Iqbal, ‘The Declaration on the Right to Development and Implementation’ (2007) 1(1) *Political Perspective* 2.

¹⁷ Ibid.

¹⁸ John Vogler, ‘The International Politics of Sustainable Development’ in Giles Atkinson and others (ed), *Handbook of Sustainable Development* (Edward Elgar Pub 2014) 432-445.

¹⁹ Wayland Kennet, ‘The Stockholm Conference on the Human Environment’ (1972) 48 (1) *International Affairs* 33-45.

²⁰ Ibid.

UN Conference on the Environment necessitated the establishment of the World Commission on the Environment and Development, which produced a report, 'Our Common Future 1987'.²¹ The Report initially defined sustainable development as "development which meets the needs of the present generation without compromising the ability of the future generations to meet theirs".²²

Our Common Future Report 1987 precipitated the Rio Earth Summit of 1992, which was the United Nations Conference on Environment and Development (UNED). The crux of the 1992 Rio Summit was recognising that sustainable development should assume the front burner in international discourse with a particular focus on its three pillars, i.e. economic, social and environmental.²³ The Rio Summit was succeeded by the World Summit on Sustainable Development 2002, which produced a plan for sustainable development called Agenda 21 (the Johannesburg Plan).²⁴ It details the international steps that will be taken to achieve sustainable growth by the 21st Century. In 2000, the United Nations adopted the Millennium Development Goals (MDGs), which detailed eight sustainable development goals that countries will strive to attain by 2015.²⁵ Agenda 21 and MDGs have been replaced by the 17 Sustainable Development Goals designed to be attained by 2030 (Table A).²⁶ Sustainable development has, thus, become not a mere option, but a mandatory global standard for all countries in a globalised world that is more interconnected and interdependent for collective survival.²⁷

²¹ Brain R Keeley, 'The Brundtland Report: Our Common Future' (1987) 4(1) *Medicine and Law* 17-25.

²² World Commission on Environment and Development, *Our Common Future* (World Commission on Environment and Development 1987) 43.

²³ BA Goldman, 'Equity and the Rio Summit' (2011) 4(1) *Fordham Environmental Law Review* 1-9.

²⁴ Gary C Bryner, 'Agenda 21: Myth or Reality' in *The Global Environment* (Routledge 1999) 21.

²⁵ Sanjiv Kumar and others, 'Millennium Development Goals (MDGs) to Sustainable Development Goals (SDGs): Addressing Unfinished Agenda and Strengthening Sustainable Development and Partnership' (2016) 41 (1) *Indian J Community Med* 1-4.

²⁶ *Ibid.*

²⁷ Mercy O Erhun, 'The Role of the Nigerian Oil and Gas Content Act in the Promotion of Sustainable Economic Development' (2015) 5 (16) *Developing Country Studies* 111 118.

TABLE A: THE 17 SUSTAINABLE DEVELOPMENT GOALS (IYES: 2024)²⁸



While the Common Future Report attempted to define sustainable development, there have been divergence of opinion among scholars and organisations as to a consensus definition with each being subject to unending criticism.²⁹ Whatever the case is, sustainable development is founded on three pillars i.e. social, economic and environmental (Table 1).³⁰ Economic sustainability refers to meeting the current needs of present generation without compromising that of future generations.³¹ On the other hand, social sustainability entails measures aimed at poverty alleviation that do not compromise environmental protection or undermine economic stability.³² Environmental sustainability involves ecosystem protection, preservation and management, ecological integrity, regenerative exploitation of natural resources, etc.³³ The three indices are intrinsically connected. For instance, economic sustainability will be sustained longer than would have ordinarily been the case with sturdy

²⁸IYES, ‘Sustainable Development Goals (SDGs)’ (2024) <<https://sustainabilitytools.eu/basics/sustainable-development-goals/>> accessed 13th June 2024.

²⁹ Christopher Wanamaker, ‘The Environmental, Economic, and Social Components of Sustainability: The Three Spheres of Sustainability’ (2022) <<https://soapboxie.com/social-issues/The-Environmental-Economic-and-Social-Components-of-Sustainability>> accessed 13th June 2024.

³⁰ Ibid.

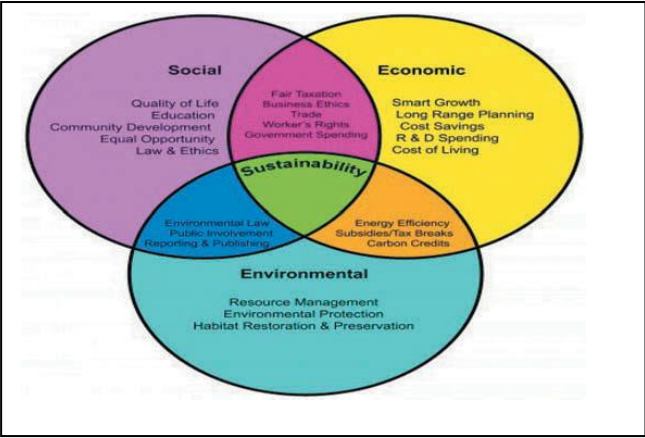
³¹ MJ Lobo and others, ‘An Evaluation of Interactive Map Comparison Techniques’ in Proceedings of the 33rd Annual ACM Conference on Human Factors in Computing Systems - CHI ’15 (New York 2015) 3573–3582.

³² HE Daly, ‘U.N. Conferences on Environment and Development: Retrospect on Stockholm and Prospects for Rio’ (1992) 5 The Journal of the International Society for Ecological Economics 9–14.

³³ C Brodhag and S Taliere, ‘Sustainable Development Strategies: Tools for Policy Coherence’ (2006) 30 Natural Resources Forum 136–145.

environmental policies.³⁴ A protected environment is a pre-cursor for social sustainability.

TABLE B: THE NEXUS BETWEEN SOCIAL, ECONOMIC AND ENVIRONMENTAL SUSTAINABILITY



2.2 Local Content

As reiterated, ownership of petroleum resources has resulted in a recognisable right of permanent sovereignty over natural resources under various international instruments, including the United Nations General Assembly Resolution 1803 (XVII).³⁵ Following this, a state can transpose its right to permanent sovereignty over natural resources to meaningful regulation that will extract the best out of its petroleum resources.³⁶ It is widely recognised that the primary benefit of petroleum resources is revenue generation for most host states.³⁷ In the words of Nwapi, ‘resource extraction, together with the availability of foreign markets for extractive resources, provides opportunities for a country to integrate into the global economy and generate revenues that can be

³⁴ Ibid.
³⁵ Articles 1 and 2 of the UNGA Res 1803 (XVII) ‘Permanent Sovereignty over Natural Resources 1962. See, *The Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)* (Judgment) [2005] International Court of Justice Rep 116, Paragraph 244.
³⁶ BH Mwashambwa, ‘The Domestication of the Principle of Permanent Sovereignty over Natural Resources in the Tanzania Petroleum Industry: The Move Towards Nationalism is it a Sovereign Right or Wrong?’ (2023) 1 Oil, Gas & Energy Law Intelligence 3.
³⁷ Gavin Bridge, ‘Global Production Networks and the Extractive Sector: Governing Resource-Based Development’ (2008) 8 Journal of Economic Geography 391.

ploughed back into its domestic economy'.³⁸ Beyond revenue generation, there is a general recognition that economic and social development can be extrapolated from the petroleum sector through local development policies.³⁹ This recognition started from the Norwegian Petroleum Sector, with the initial concept being developed through a Royal Decree in 1972 and incorporated into various petroleum contracts, especially the initial part of joint operating agreements.⁴⁰ In a country like Nigeria, it was first cited in the Nigeria Petroleum Institute Act of 1972.⁴¹ In all, the local development policies is partly developed from the need to move away from a sector dominated by foreign oil companies to one dominated with increased local participation.⁴²

Local content broadly speaking are series of policies, regulations, contractual provisions and interventionist actions by a host government to improve local participation in the petroleum industry, thereby contributing to overall national development. Ezeani and Nwuke defines local content as policies, regulations and laws aimed at increasing the utilization of indigenous capacity and national resources in the petroleum sector.⁴³ It entails fixation of a minimum ratio of work programme requirement in the utilization of national resources and services.⁴⁴ The International Petroleum Industry Environmental Conservation Association defines local content as 'the local resources a project or business utilizes or develops along its value chain while investing in a host country'.⁴⁵ The United Nations Conference on Development and Trade in a Report defines local content as the use of products and services of domestic origin.⁴⁶ Some scholars see it as the creation of a local skilled workforce in the petroleum industry and a competitive supplier base.⁴⁷ In general, local content is designed to unveil

³⁸ Chilenye Nwapi, 'Defining the "Local" in Local Content Requirements in the Oil and Gas and Mining Sectors in Developing Countries' (2015) *Law and Development Review* 189.

³⁹ *Ibid.*

⁴⁰ BC Asiago and M Kapesa Wasunna, 'Are Local Content Requirements in Developing Petroleum Sectors Sustainable? Managing Expectations while Aligning Sustainable Principles with Regulatory Policy' (2018) 16 (4) *Oil, Gas & Energy Law Intelligence* 1, 4.

⁴¹ *Ibid.*

⁴² Oruwari Humphrey Otombosoba and Adewale Dosunmu, 'Local Content Policy and its Implications on Marginal Oil Fields Operations and the Nigerian Economy' (2016) 5(6) *International Journal of Research and Development* 354: 357.

⁴³ Elimma C Ezeani and Chinwe Nwuke, 'Local Content and the Marginal Fields Programme: Challenges for Indigenous Participation in the Nigerian Oil Industry' (2017) 15 *Oil, Gas & Energy Law Intelligence* 1.

⁴⁴ Camila Borges, Alexandre Szklo & Jose´ Alberto Buche, 'Windfall Profits Arising from the Subadditivity of Costs after Unitization and Compliance with Minimum Local Content Requirements in Brazilian Deepwater Offshore Oil Fields' (2014) 7 (4) *Journal of World Energy Law and Business* 390, 393.

⁴⁵ IPIECA, *Local Content: A Guidance Document for the Oil and Gas Industry* (2nd Edition 2016) 23.

⁴⁶ United Nations Conference on Trade and Development, *World Investment Report 2007: Transnational Corporations, Extractive Industries and Development* (United Nations Publication 2007) ch 5, 129.

⁴⁷ Damilola S Olawuyi, 'Local Content and the Sustainable Development Nexus' in Damilola S Olawuyi, *Local Content and Sustainable Development in Global Energy Markets* (Cambridge University Press 2021) 7, 7. BC Asiago and M Kapesa Wasunna, 'Local Content and the Marginal Fields Programme:

the competitiveness of the indigenous workforce while reinforcing the indigenous industry.⁴⁸

Other components of local content include: provisions aimed at creation of more jobs for locals; acquisition of needed technologies from the local industry; research and development; etc. The Petroleum Commission of Nigeria opines that local content “refers to the quantum or percentage of locally produced materials, personnel, financing, good and services supplied to the petroleum industry measured in monetary terms”.⁴⁹ In the context of creation of jobs for locals, in some states there are mandatory provisions that concerned IOCs shall hire a certain percentage number of their work force from the indigenous population.⁵⁰ The latter always prove challenging where the local population does not have the requisite capacity to meet the percentage local content requirement.⁵¹ However, job creation clause is always strengthened by an obligation on the IOCs to train capacity and educate some of the locals in certain area of needs.⁵²

Local content initially originated from Norway in codified instruments, especially general instruments for regulating the petroleum sector; initial provisions in various host countries were mainly incorporated in contractual instruments.⁵³ The contractual instruments are typically between the state and the international oil companies. However, the situation has considerably changed as most host countries have adopted regulatory instruments on local content. Angola has several instruments on one or more aspects of local content, including the Enterprise Promotion Fund Law 2008, Recruitment and Development of the Workforce in Petroleum Activities Law 2009, etc.⁵⁴ Nigeria has adopted the Oil and Gas Local Content Development Act 2010⁵⁵ and the Petroleum Industry Act 2021. The Canadian Petroleum Resources Act and the Canadian Oil and Gas Operations Act contain local content provisions.⁵⁶ For a country like Equatorial Guinea, adopting the National Content Regulation 2014 and the

Challenges for Indigenous Participation in the Nigerian Oil Industry’ (2017) 15 (1) Oil, Gas & Energy Law Intelligence 7.

⁴⁸ Damilola S Olawuyi, ‘Local Content and the Sustainable Development Nexus’ (n 11) 7.

⁴⁹ Petroleum Commission, ‘What Is Local Content and Participation’ (2020) <<https://www.petrocom.gov.gh/local-content/>> accessed 28th May 2024.

⁵⁰ C. Hilary-Nwokonko, ‘Enhancing Local Content in the Upstream Oil and Gas Industry in Nigeria: An Appraisal of Current Policy’ (2004) 2(1) Oil, Gas & Energy Law Intelligence 4.

⁵¹ Eduardo G Pereira and Tonje Gormley (eds), *Local Content for the International Petroleum Industry* (n 1).

⁵² BC Asiago, ‘Virtuous or Vicious Circles? The Assessment of the Newly Adopted Angolan Local Content Decree for the Petroleum Sector’ (2021) 19 (1) Oil, Gas & Energy Law Intelligence 12.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ajibola Olomola and Sina Olumide, ‘The Quest for Local Content in the Upstream Sector of the Nigerian Oil and Gas Industry’ (2005) 1 Oil, Gas & Energy Law Intelligence 2.

⁵⁶ Eduardo G Pereira and Tonje Gormley (eds), *Local Content for the International Petroleum Industry* (n 1).

National Technological Institute Hydrocarbon Decree 2004 is significant for regulating local content.⁵⁷ Some of the local content provisions are designed in a manner that is responsive to the changing needs of the concerned host state.

2.3 Nexus between Local Content and Sustainable Development

As reiterated, the 17 SDGs are designated to be achieved by 2030 at the latest. Some of the 17 SDGs are intrinsically connected to local content, either from a positive or a negative note. From a positive note, Goal 1 provide aspirational target that extreme poverty will be eradicated in its entirety by 2030. The poverty is measured by a benchmark of people living below \$1.25 per day. It further provides that ‘by 2030, ensure that all men and women, particularly the poor and the vulnerable, have equal rights to economic resources, as well as access to basic services, ownership and control over land and ...natural resources’.⁵⁸ Indomitably, local content reinforces ownership and control because it includes all such acts that will enable a host community to acquire control of their petroleum sector, including but not limited to increased participation of domestic companies, the proliferation of domestic companies and the development of local workforce.⁵⁹ Thus, the implementation of local content regulations along the mentioned indices may accentuate the rights to control and owner petroleum resources especially by indigenous host communities. However, while local content may invariably increase the level of control and ownership, there is less certainty as to its contribution in terms of promoting gender equality and equity. In the words of Olawuyi, ‘despite the rise in LCRs in terms of providing employment, there remains a considerable gap in the distribution of benefits and risks as well as access to socio economic opportunities for women’.⁶⁰

Other relevant SDG Goals are Goal 7 and Goal 8 on free energy access for all and employment opportunities for all respectively. Goal No 7 provides for access to affordable, reliable and sustainable energy for all by 2030. Following this, it aims to ‘expand infrastructure and upgrade technology to supply modern and sustainable energy services for all in developing countries by 2030’.⁶¹ It identifies the expansion of key critical infrastructures as necessary to attain universal access to energy resources. It has been mentioned that local content provisions typically aim to expand the existing infrastructural basis by mandating a certain percentage of content of indigenous products and services.⁶² Thus, it can potentially contribute to free, reliable, sustainable energy services for all. Goal 8 provides that by 2030, it is intended to attain full and

⁵⁷ Ibid.

⁵⁸ The United Nations SDGs A/Res/70/1, Goal 1.4.

⁵⁹ Isabelle Ramdoo, *Designing Local Contents in Mineral Rich Countries* (IISD, 2018) 2-9.

⁶⁰ Damilola S Olawuyi, ‘Local Content and Sustainable Development Nexus’ (n 11) 4.

⁶¹ The United Nations SDGs A/Res/70/1, Goal 1.4.

⁶² Ibid, Goal 7.

productive employment and decent work for all with equal pay for work of equal value.⁶³ This is well within the provisions of a typical local content regulation where international oil companies are given a percentage number of locals to employ. Although the idea of a segregation requirement for employment is subject to criticism as contrary to the spirit of equality, which is captured in Goal 10 to the effect that by 2030, nations should strive to achieve social, economic and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status. It further provides that it shall guarantee equal opportunity for all by eliminating discriminatory laws and practices. In some contexts, the bar is intentionally lowered for locals to the exclusion of foreigners with better credentials contrary to the spirit of equality as espoused in the SDG.

The technology transfer component is another good attribute of local content regulation in promoting sustainable development. Abe opines that local content regulations trigger revenue generation and technology transfer.⁶⁴ In the words of Kalyuzhnova, 'the typical expression of local content is through legally binding requirements relating to procurement and employment of labour at the domestic level, as well as technology transfers'.⁶⁵ Goal 17 of the SDGs aims to promote 'the development, transfer, dissemination and diffusion of environmentally sound technologies to developing countries on favourable terms.' Thus, when rightly deployed, local content regulations facilitate the transfer of technology to host communities.

However, if not correctly designed, local content regulations have been widely acknowledged to be antithetical to free trade and the inflow of foreign direct investments. Goal 17.10 of the SDGs provides that member states shall 'promote a universal, rules-based, open, non-discriminatory and equitable multilateral trading system under the World Trade Organisation'. The General Agreement on Tariffs and Trade 1947 is an agreement made under the auspices of the World Trade Organisation.⁶⁶ It prohibits restrictive and discriminatory practices such as local content that seeks to give local products and services an edge over others.⁶⁷ Paragraph 17.14 provides that member states shall enhance policy coherence for sustainable development. Most local content regulations contain provisions that mandate the sourcing of certain materials,

⁶³ Ibid, Goal 8.

⁶⁴ Oyeniyi Abe, 'Local Content Requirements in Nigeria's Extractive Sector and the Implications for Sustainable Development' (2022) 66 (1) *Journal of African Law* 79.

⁶⁵ Yelena Kalyuzhnova, 'Chapter 15: Local Content Policies and Institutional Capacity for Sustainable Resource Management' in Stella Tsani and Indra Overland (eds), *Handbook of Sustainable Politics and Economics of Natural Resources* (Edward Elgar 2021).

⁶⁶ Robert Howse and Joanna Langille, 'Continuity and Change in the World Trade Organization: Pluralism Past, Present, and Future' (2023) 117 (1) *American Journal of International Law* 1-47.

⁶⁷ Ibid.

work capacity, and services from the local cum indigenous market.⁶⁸ These provisions have been established in most context to discriminate against foreign goods and services.⁶⁹ Thus, in this regard, local content regulation are antagonists to the successful implementation of the mentioned goals of SDGs. It has also been argued to constrain the inflow of foreign investments.⁷⁰ In the context, where the local market is not yet fully developed to meet the percentage local content needs, a foreign company will be constrained in fulfilling its obligations and this will in turn deter them.⁷¹ Again, the local manpower may not be developed enough to efficiently be useful to the concerned foreign company.⁷² The cumulative effect is that the inflow of foreign investments will likely be constrained or deterred by these requirements.⁷³ Overall, local content regulations like Janus are potentially capable of promoting sustainable development as well as constraining its realisation. In all, a lot is contingent on how well the regulations are designed.

3. LOCAL CONTENT AND SUSTAINABLE DEVELOPMENT IN SELECTED JURISDICTIONS

This section shall examine the extent to which local content has entrenched, complied or impeded sustainable development. Two countries of interest shall be discussed in this section. These countries comprise of Nigeria and Angola. Both countries have the unique features of being oil producing states in Africa. Local content legislation is in force in both countries, with Nigeria being the earlier in time and Angola the later. It is essential to examine how local content has fared in both countries thus far and the implications for sustainable development.

3.1 Nigeria

In the Nigerian Context, local content has been defined as:

“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,

⁶⁸ Eduardo Pereira and others, ‘Reconciling the Local Content Laws and Policies in Trinidad and Guyana with the CARICOM Trade Rules: Lessons from the European Union’ (2022) 15 (1) *Journal of Energy and Natural Resources Law* 245-265.

⁶⁹ Uchenna Jerome Orji, ‘The Nigerian Oil and Gas Industry Content Development Act and GATT Treaty Obligations: On a Path of Harmony or Discord?’ (2020) 7 *Latin American Journal of Trade Policy* 56, 68.

⁷⁰ Damilola S Olawuyi, ‘Local Content and the Sustainable Development Nexus’ (n 11) 7.

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ *Ibid.*

safety and environment standards in order to stimulate the development of indigenous capabilities'.⁷⁴

The essence of the enactment of local content instrument for the Nigerian oil and gas sector is to adopt a protectionist approach to incentivise domestic participation in the industry by the employment of technology, workforce and services derived from the local market.⁷⁵ The NOGID Act is not the first statutory attempt by Nigeria to exercise economic dominance over her domestic industry resources. The Nigerian government had made an initial attempt at the indigenisation policy established by the Indigenization Decrees of 1972 and 1977. The Nigerian Enterprises Promotion Board was created under the Decree to ensure its implementation. This was an attempt by the government to prevent capital flight to foreign land and economic empowerment of Nigerian citizens.⁷⁶ The indigenization policy was replicated in the oil and gas sector through the establishment of the Nigerian National Oil Corporation, (NNOC) in 1971, marking the Nigerian government's decision to actively participate in the sector that is majorly responsible for the economic subsistence of the country.⁷⁷ The NNOC went on to become Nigerian National Petroleum Corporation, which eventually transformed to Nigerian National Petroleum Company Limited under the current regime of the Petroleum Industry Act 2021.⁷⁸ According to Oniemola and Gbede, the creation of the Petroleum Trust Development Fund in 1973 was a policy drive towards the actualisation of local content.⁷⁹ It was reckoned that there was the need training, research and development in order to bridge the knowledge, skill and competence gap of indigenous personnel if they are to assume the technical responsibilities of expatriate workers.⁸⁰

The Act established the Nigerian Content Development and Monitoring Board (NCDMB), which is tasked with the core responsibility of implementing and ensuring

⁷⁴ NNPC 2006. 'Nigerian Content' <www.nnpconline.org> Cited in James Monday Unam, Claudius Jamike Agorzie & Taiwo Olufemi Asaolu, 'Local Content Policy and Technological Capacity Building of SMEs in the Nigerian Oil & Gas Industry', Proceedings of the 5th Annual NAAE/IAEE International Conference, April 23-24th, 2012, 352, 355.

⁷⁵ Peter Kayode Oniemola and Olusegun Gbede, 'A Decade After: Reflections on Some Salient Provisions of the Nigerian Oil and Gas Industry Content Development Act 2010' (2020) 11(4) *Gravitas Review of Business & Property Law* 138, 139.

⁷⁶ Chibuzo SA Ogbuagu, 'The Nigerian Indigenization Policy: Nationalism or Pragmatism?' (1983) 82 (327) *African Affairs* 241, 241.

⁷⁷ Prince Ossai Chukwuma, 'Effect of Nigeria Local Content Policy on Small and Medium Scale Enterprises in Rivers State' (2024) 9 (2) *Academia Networks Journal of Advanced Educational Policy* 14, 15.

⁷⁸ See, Petroleum Industry Act 2021, ss. 53 and 54.

⁷⁹ Peter Kayode Oniemola and Olusegun Gbede, 'A Decade After: Reflections on Some Salient Provisions of the Nigerian Oil and Gas Industry Content Development Act 2010' (2020) 11(4) *Gravitas Review of Business & Property Law* 138, 142.

⁸⁰ *ibid.*

industry operators comply with local content requirement of the Act.⁸¹ In a bid to obtain any licence, permit or interest industry operators are expected to submit their Nigerian Content Plan to the NCDMB for approval and issues of Certificate of Authorization if it is satisfied that the plan complies with the local content requirement of the Act.⁸² The powers of the NCDMB expand beyond mere implementation of the Act. The board is at liberty, subject to legislative ratification, to even enlarge the local content mandate of the Act.⁸³ To enable a smooth operation of NCDMB towards the implementation of the objective of the Act, the Nigerian Content Development Fund was established, which is to be derived from 1% deductions from each contract awarded for any petroleum upstream sector transaction in Nigeria.⁸⁴ Although, the Act applies to activities in the upstream and midstream subsector of the petroleum industry, it is unclear why the source of the fund has been limited to commercial activities in the upstream subsector. However, it has been suggested that the dominance of the IOC in the upstream subsector may be responsible for this outcome.⁸⁵

The NCDMB is not expected to Act alone in this regard. It is required to act in consonant with other industry regulators to realise the objective of the Act. Indeed, the NUPRC and Nigerian Midstream and Downstream Petroleum Regulatory Authority, by virtue of being the two regulatory bodies in the oil and gas sector, derive omnibus powers from Section 2 NOGIC Act to infuse and uphold local content requirement in the project development and regulatory philosophy of the sector. Indeed, there are a couple of specific local content provision under the Petroleum Industry Act 2021. For instance, where petroleum prospecting licensee realises commercial discovery of petroleum, the licensee is to formulate a field development plan, which is subject to approval by the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) before the licensee can commence petroleum exploration. Part of the requirement which the licensee must satisfy before NUPRC may approve its field development plan is that it has obtained Nigerian content plan approval as required by NOGIC Act.⁸⁶ The host community development plan is also required to be in conformity with NOGIC Act.⁸⁷

NOGIC Act has an ambitious policy target of realizing the infusion of 70% local content into the petroleum industry by the year 2020. Thus, indigenous oil companies are to be given prime consideration in the grant of licence to operate oil blocks, oil field, oil lifting and award of contract for any petroleum projects.⁸⁸ This is provided that the

⁸¹ NOGICD Act, s. 4.

⁸² NOGICD Act ss. 7 and 8.

⁸³ NOGICD Act ss. 70 and 102.

⁸⁴ NOGICD Act s. 104 (1) and (2).

⁸⁵ J Emeka Nwaokoro, 'Signed, Sealed but Will it Deliver? Nigeria's Local Content Bill and Cross-Sectoral Growth', (2011) 4 (1) *Journal of World Energy Law and Business* 40, 48.

⁸⁶ Petroleum Industry Act 2021, s. 79 (1) (g).

⁸⁷ Petroleum Industry Act 2021, s. 253 (f).

⁸⁸ NOGICD Act, s. 3(1).

indigenous company is able to demonstrate capacity and competence in that regard. For the purpose of procurement of goods and services in oil and gas operations, priority is to be given to locally manufactured goods. The essence of this provision is to encourage local manufacturers and help correct the foreign exchange deficit associated with an importation dependent economy. The Act goes on to set minimum local content that industry operators are expected to comply with in the schedule to the Act. It is anticipated that the Act may have failed to set out minimum content for specific project. In such instances, the NCDMB is in a position to fill that void by stipulating a minimum content or stimulate a process for legislative intervention for statutory amendment.⁸⁹

Although significant improvement has been reported towards this step following the recorded increment in local operators in marginal field operation,⁹⁰ it is unclear whether the policy has successfully achieved the aforesaid objective of 70% local content. Nevertheless, it has been argued that indigenous participation and local content does not translate to the same thing. While the former refers to the daily engagement of Nigerians in petroleum industry activities, the later implies the integration of petroleum operations into the Nigerian economy. Indigenous participation does not inevitably promote local content. Thus, emphasis should not only be placed on domestic human and material input, but on the overall output reflected in the value it adds to the Nigerian economy.⁹¹ A worthwhile local content policy will necessarily culminate into sustainable growth and wealth for the economy of the state.⁹²

While the petroleum upstream sub-sector may have gained much traction in local content, much success has not been achieved in the downstream sub-sector, with particular reference to petroleum refining. Despite having four refineries with a combined production capacity of 445,000 bpd, these facilities have remained moribund for years. The petroleum production capacity of Nigeria far outweighs its refining capacity, thereby resulting in inadequate supply of petroleum product to meet the local consumption demands. Attempts to get the refineries operating optimally has been unsuccessful. Even the recently constructed Dangote Refineries has not been able to kick start production due to regulatory disagreement.⁹³ In a bid to breach this gap, resort is constantly made to export of over 90% crude oil to foreign countries for refining, while the refined petroleum products are bought back at a higher cost and

⁸⁹ NOGICD Act, s. 11(2).

⁹⁰ Adeola Adenikinju, 'Local Content Development in the Nigerian Oil and Gas Industry: A Model for Indigenisation' (Seplat Petroleum Development Company Plc Annual Report and Accounts, 2018) <https://www.seplatenergy.com/media/5uwj4igl/sep_5595_local-content.pdf> accessed 13 August, 2024.

⁹¹ A Olomola and S Olumide, 'The Quest for Local Content in the Upstream Sector of the Nigerian Oil and Gas Industry' (2005) 3 (1) Oil, Gas & Energy Law Intelligence 1, 9.

⁹² Offiong I Akpanika 'Technology Transfer and the Challenges of Local Content Development in the Nigerian Oil Industry' (2012) 11 (2) Global Journal of Engineering Research 123, 129.

⁹³ Abdullateef Aliyu, 'Dangote Refinery not yet Licensed – NMDPRA' *Daily Trust* 20 July 2024 <<https://dailytrust.com/dangote-refinery-not-yet-licensed-nmpdra>> accessed 25 August, 2024.

imported to Nigeria for domestic use.⁹⁴ Importation of refined petroleum product has adverse impact on purchased price by the final consumers. The Nigeria government had been subsidizing the price of petroleum product until it was recently removed due to its economic unsustainability.⁹⁵ Reliance on importation of refined petroleum products defeats the essence of local content, with particular reference to the petroleum downstream sector.

The core objective of local content strategy is to generate employment and enhance sustainable economic growth and enlarge the national treasury. However, this objective remains elusive for Nigeria except there are existing legal framework which creates enabling environment to enable a thriving domestic and foreign investment in the petroleum sector.⁹⁶ As laudable as the idea of infusion of local content for the oil and gas sector, Nigeria has to beware of the pitfalls associated with local content policy and set up mechanisms to nip these challenges in the bud before they materialise. One of such pitfalls is the sacrifice of competence and professionalism in the altar of local content. In anticipation of this challenge, in the instance of lack of adequate local capacity, the minister is tasked with the authority to grant leave for such item or service to be procured abroad.⁹⁷

The major strategy for enforcement of NOGIC Act is the imposition of sanctions such as fine and project cancellation.⁹⁸ It is unclear whether the NCDMB has capacity to prosecute offences under the Act. Although it may be safely assumed in its favour, in view its general powers to implement the Act. The Act did not state the relevant court conferred with jurisdiction to exercise criminal jurisdiction or determine other disputes arising from the Act, thereby leaving room for calling in aid Section 251 of the Constitution.⁹⁹ However, there are no reported instance where any of the stated sanctions was imposed on a defaulting entity. Instead the board favours an informal approach, as recourse is usually had on the use of negotiation strategy to engage

⁹⁴ Theophilus Acheampong, Marcia Ashong & Victoria Crystal Svanikier, 'An Assessment of Local-Content Policies in Oil and Gas Producing Countries' (2016) 9 *Journal of World Energy Law and Business*, 282, 291.

⁹⁵ Ozili K Petersen and Kingsley Obiora, 'Implications of Fuel Subsidy Removal on Nigerian Economy' (2023) MPRA Paper 120509 3. <https://mpra.ub.uni-muechen.de/120509/1/MPRA_paper_120509.pdf> accessed 25 August, 2024.

⁹⁶ P Heum and Others, 'The Synchronized Report on Enhancement of Local Content in the Upstream Sector of the Oil and Gas Industry in Nigeria', (Institute for Research in Economics and Business Administration Report 25, 2003) 31. <https://openaccess.nhh.no/nhh-xmlui/bitstream/handle/11250/164539/R25_03.pdf?sequence=1&isAllowed=y> accessed 13 August, 2024.

⁹⁷ NOGICD Act, s. 11 (4).

⁹⁸ NOGIC Act, s. 68.

⁹⁹ Emmanuel Isaac Onuche and Samson Ojodomo Onuche, 'Assessing the Developments, Innovations and Downsides of the Nigeria's Oil and Gas Industry Content Development Act 2010' (2021) 2 *Madonna University Law Journal* 1, 12.

defaulting entities to reach certain compromise.¹⁰⁰ While this approach may yield result, it is subject to abuse associated with the exercise of discretion. If the application of imperative administrative instrument does not proffer the desired result, the use of incentives is a viable option that may persuade compliance.¹⁰¹

3.2 Angola

Angola is an oil producing state. Like most developing oil-rich states that underwent the scourge of colonialism, it has also experienced its own fair share of foreign dominance of her petroleum industry. In a bid to assert her economic sovereignty, it has also harped onto the local content policy for the petroleum sector. Local content requirement has been a part of the oil and gas sector in Angola since 2002, under the coordinating guide of Sonangol, the state-owned oil producing company. Under this regime, local content was given effect mainly through Production Sharing Agreements signed between the state and petroleum multinational companies.¹⁰² Angola's local content policy is driven by the mandate of stakeholders promoting benefit sharing in the best possible means without necessarily compromising investments interest. This is in line with the constitutional responsibility of government to guarantee the economic conditions, social welfare, quality livelihood for Angolan citizens.¹⁰³

In the Angolan context, local content means: 'all and any of the activity in the petroleum sector that includes participation of the business and the national citizen citizens, Angolan commercial companies and commercial companies under Angolan law, the use of goods and services produced in Angola, and the integration and development of the Angolan workforce in a consistent and sustainable way'.¹⁰⁴ Local content in Angolan parlance is referred to as *Angloniização*, translated as Angolanisation in English language. Angolanisation is statutorily defined as: "all activities related to recruiting, training and development of national staff, as well as the transmission of knowledge by technical opportunities for national technicians and their replacement".¹⁰⁵

The objective of the Angolanisation is a nationalization measure which consists of a process of transfer of expatriate job roles in the oil and gas sector to Angolan citizens. Specifically, Angolan local content objective seeks to address the two interconnected issues: capacity development of indigenous companies by encouraging procurement of indigenous labour, goods and services; stimulate foreign investment in the sector

¹⁰⁰ Eduardo G Pereira and others, 'Carrot or Stick? Enforcing Compliance with Local Content Requirements in the International Oil and Gas Industry' (2022) 20 (3) Oil, Gas & Energy Law Intelligence 1, 23-24.

¹⁰¹ Chiagozie Hilary-Nwokonko, 'Enhancing Local Content in the Upstream Oil and Gas Industry in Nigeria: An Appraisal of Current Policy' (2003) 2 (1) Oil, Gas & Energy Law Intelligence 1, 10.

¹⁰² JS Ovadia, 'Local Content and Natural Resource Governance: The Cases of Angola and Nigeria' (2014) 1(2) Extractive Industries and Society 137-146.

¹⁰³ Fundamental Task of the Government, Art. 21.

¹⁰⁴ Presidential Decree 271/20 on Local Content Regulations, Art. 3 (d).

¹⁰⁵ Presidential Decree 271/20 on Local Content Regulations, Art. 3 (a).

through joint ventures formation and private sector involvement.¹⁰⁶ If indigenous work force is to assume the role of the expatriates, they have to possess the requisite competence and capacity to operate the highly technical oil and gas industry. The transfer process entails a systematic and progressive approach whereby expatriate skills and knowledge are transferred to personnel of Angolan origin. The success of the programme, which was first launched in 2010, depends on Competence Assurance System (CAS) targeted at promoting competence for indigenous personnel through formal training, on-the-job training and capacity building.¹⁰⁷

The Presidential Decree 271/20 on Local Content Regulations is the specialised statutory framework for local content in Angola. However, there are litany of legal instruments that directly or indirectly addresses issues relating to local content. These instruments comprise of laws and decrees which came into force as far back as later part of the 1970s up to 2020. For a start, Law 10/79 conferred the mandate on Sonangol to employ and train Angolan nationals. Another instrument of note is the now repealed Decree no. 20/82, directing foreign companies to engage and train Angolan workers in the petroleum industry. Expatriates are only to be considered for employment in the instance of shortage of qualified Angolan nationals, subject to the approval of the Ministry of Petroleum. The Ministry of Petroleum also plays an annual supervisory function of approving the recruitment plans of industry operators. The regime has a quota system which requires strict compliance with the set out minimum ratio of locale that must be employed by oil companies, in accordance with respective skill set on a graduating scale as years go by.¹⁰⁸ The foregoing are the pioneer legal instruments which set the ball rolling for the advancement of local content in Angolan petroleum sector.

Apart from the specialized law on local content in Angola, another legal instrument of critical importance is the Petroleum Activity Law (PAL) 2004 (Law 10/04), which is the prime sector specific law that regulates the petroleum industry. PAL also contain certain provisions having local content implications, even though it does not make specific reference to the term, 'local content'. Article 86 PAL mandates operators of the oil and gas sector to exclusively engage the services of Angolan nationals in every aspect of their operations, except in instances of lack of qualified or experienced Angola. As it is, an oil company cannot just employ a foreign unilaterally employ a foreigner under the guise of lack of competent national; such company would also need to seek and obtain the leave of the Minister of Petroleum. The minister would only grant such leave

¹⁰⁶ Claire Asiago Berryll, 'Role of Angolan local content requirements: A Means for Benefit Sharing or an End in itself? Art and Science of Benefit sharing: Local Content Requirements in Angola's Petroleum Sector' in Patrick Chaumette (ed.) *Economic Challenge and New Maritime Risks Management: What Blue Growth?* (GOMILEX 2017) 255, 276.

¹⁰⁷ Saipem, 'Local Content for Sustainable Development' 7-8. <https://www.saipem.com/sites/default/files/2022-12/saipem_content%20for%20sustainable%20development.pdf> accessed 26 August, 2024.

¹⁰⁸ Martín Vinet Brand, 'Local Content Policies in the Oil Industry: A Comparative Analysis' (Master Thesis Politecnico Di Milano 2007) 52.

where the applicant company presents a succession plan indicating how it intends to fill such position within a stipulated time. PAL did not indicate a stipulated time for the succession plan. This would imply that the prerogative lies with the applicant company to indicate the window period of the succession plan. This could the applicant company undue advantage to stipulate a very lengthy time. However, it lies within the administrative power of minister to refuse grant of leave if it is considered that the proposed time is inordinately lengthy. On the other hand, outright failure to obtain the leave of the minister before employing a foreigner into a company attracts penal liability or fine.¹⁰⁹

Another local content related provision of note in the PAL is its Article 27. This provision clearly indicates preference for locally manufactured goods, which should be of equal quality and standard with the foreign version of similar goods. In any case, the locally manufactured goods cannot be put for sale at a value higher than 10% of the price of the foreigner counterpart. This provision has the effect of creating a price control mechanism targeted at ensuring that local goods can compete against their foreign counterpart.

There are two laws which act as annexures to Article 86 and 27 of PAL. In furtherance of the provisions of Article 86 PAL, Decree-Law 17/09, which is an extensive provision on the rules and procedures to be complied with in workers recruitment, integration, training in the oil sector. The rules also apply to supply of goods and services procurement by operators of the oil sector. Article 27 PAL also has its own Annexed in the Decree 127/03, which provides specific regulation for indigenous companies engaged in hiring of goods and services for its operation.

The Presidential Decree 271/20 on the “Legal Framework on Local Content in the Petroleum Industry” is not only the most recent, but the only specialised and most comprehensive law on local content in Angola. The Decree was established on 20th October 2020. It specifically stipulates that Angolan nationals shall constitute not less than 70% of the employees in the petroleum sector. Companies may engage the services of foreign workers only to the extent of absence of Angolan nationals with the requisite qualifications for the job. Local content requirement is not limited to oil extractive companies; oil servicing companies which supply goods and services in the industry are also bound to comply with the requirement.

Companies operating in the sector are expected to make annual contribution towards the development of local content in the sector. The contribution is charged to each barrel of oil produced within each year at the ratio of US\$ 0.15 per each dollar. Prior to petroleum production, companies merely undertaking petroleum exploration activities

¹⁰⁹ Claire Asiago Berryl, ‘Role of Angolan local content requirements: A Means for Benefit Sharing or an End in itself? Art and Science of Benefit sharing: Local Content Requirements in Angola’s Petroleum Sector’ in Patrick Chaumette (ed.) *Economic Challenge and New Maritime Risks Management: What Blue Growth?* (GOMILEX 2017) 255, 263.

are obligated to make a contribution at a fixed amount of US\$ 200,000 per annum. It was indicated that the specific purpose of the fund is for the training of Angolan personnel.¹¹⁰ The essence is to equip them with the requisite competence and capacity to render services in the petroleum industry. If oil servicing companies are also bound to comply with the local content requirement it begs the question why they are excluded from making contributions to the fund for development of local content capacity or Angolan nationals.

Companies participating in the petroleum industry are either categorised as Angolan companies, incorporated companies under Angolan law and foreign companies, which are all required to register and obtain certification from the National Concessionaire to be eligible for hire for any contract for service. The law also has three categories of oil and gas sector activities, indicating the extent to which various category of companies may partake in each of these lists of activities. These are: the exclusivity, the preference and the competition list. Goods and services categorised into the exclusivity list are the exclusive preserve of Angolan companies, which are wholly owned by Angolan nationals. For activities under the preference list, while companies registered in Angola may partake in such venture, preference would ordinarily be given to Angolan companies. Any other activities that are not listed in the above-mentioned categories are opened to incursion by foreign companies. They are referred to as the competition category. Since activities in the later category are competitive, market forces usually come into play in determining which of the companies is selected.¹¹¹

It is mandatory that each oil and gas contracts should contain a local content clause. In other words, it has to be certified that parties execute the contract in compliance with the local content requirement of the law. Every agreement of the nature of technical assistance and foreign management are required to encapsulate comprehensive training programme, knowledge and technology transfer and proof of skills advancement for local employees. The applicable company is required to present documentary proof of the commitment to the National Concessionaire and Ministry of Petroleum.¹¹²

The strict application of local content requirement in the Angolan oil and gas sector is evidenced by the stiff penal regime under Angolan law. Fines stipulated for each of the offences provided under the law ranges between 10% -25% of the training contribution. Half of what is obtained as fine is channeled into the State budget, while

¹¹⁰ Isabelle Ramdoo, 'Designing Local Content Policies in Mineral-Rich Countries' (The International Institute for Sustainable Development 2018) 34-35.

¹¹¹ United Nations Trade and Development, 'New Regulations on Local Content in the Oil Sector' (2020) <<https://investmentpolicy.unctad.org/investment-policy-monitor/measures/3601/angola-new-regulations-on-local-content-in-the-oil-sector>> accessed 14 August, 2024.

¹¹² United Nations Trade and Development, 'New Regulations on Local Content in the Oil Sector' (2020) <<https://investmentpolicy.unctad.org/investment-policy-monitor/measures/3601/angola-new-regulations-on-local-content-in-the-oil-sector>> accessed 14 August, 2024.

the other half is channeled into the Social Fund of the Ministry of Petroleum.¹¹³ Until a fine is completely paid off, the liable company is barred from entering into any other contract.¹¹⁴

The local content regime of Angola is revolutionary and sparks of nationalist inclination to reclaim what the country appears to have been deprived by foreigners. While this may be worthy of applaud, Ovadia's verdict on the impact of local content policy in Angola's petroleum industry is that: despites its existence for decades, "it has largely failed to increase the developmental benefits accruing from the country's resource wealth".¹¹⁵ While being optimistic about the economic development prospect of the current local content drive, the learned author submitted that it has "also become important mechanism for unequal growth and new form of elite accumulation".¹¹⁶ On another front, Beryl submits that "the prescriptive nature of these LC mandates, with limited implementation procedures, sweeping discretion of the regulator along with non-existing strong mechanisms for oversight contribute to the challenges faced in implementing LC".¹¹⁷ This may suggest the human factor which usually interfere against regulatory implementation.

3.3 Reflections

Local content requirement provides avenue through which resource-rich countries can derive benefit accruable from the wealth of their natural endowment,¹¹⁸ by the employment of local material and human resources in the oil and gas sector.¹¹⁹ It is the intention of petroleum producing countries, particularly within the African region, to utilise local content legislation for economic diversification and opportunities creation

¹¹³ Columbia Center on Sustainable Investment 'Local Content Angola – Petroleum' <<https://ccsi.columbia.edu/sites/default/files/content/docs/publications/Local%20Content%20-%20Angola%20-%20CCSI%20-%20July%202021.pdf>> accessed 25 August, 2024.

¹¹⁴ Decree Law 17/09, Art. 16

¹¹⁵ Jesse Salah Ovadia, 'The Dual Nature of Local Content in Angola's Oil and Gas Industry: Development vs. Elite Accumulation' (2012) 30 *Journal of Contemporary African Studies* 395, 395.

¹¹⁶ *ibid*

¹¹⁷ Claire Asiago Beryll, 'Role of Angolan local content requirements: A Means for Benefit Sharing or an End in itself? Art and Science of Benefit sharing: Local Content Requirements in Angola's Petroleum Sector' in Patrick Chaumette (ed.) *Economic Challenge and New Maritime Risks Management: What Blue Growth?* (GOMILEX 2017) 255, 276.

¹¹⁸ AN Adjei and I Ackah, 'Application of Business Frameworks to Evaluate Growth Strategies for Indigenous

Companies in the Upstream Oil & Gas Sector: A Case Study for Ghana and Ivory Coast' (2023) 21 (4) *Oil, Gas & Energy Law Intelligence* 1, 18.

¹¹⁹ EC Ezeani and C Nwuke, 'Local Content and the Marginal Fields Programme: Challenges for Indigenous Participation in the Nigerian Oil Industry' (2016) *Oil, Gas & Energy Law Intelligence* 3.

for citizens.¹²⁰ This is reflected in the local content regime of the two countries under consideration in this study.

There are several routes through which local content can be admitted into a system. These measures could take the form of policy, guidelines, regulatory, contractual or legislative mechanism. The two countries under consideration both adopted the legislative approach to local content regulation. The legislative approach is a rule-based system whereby law is enacted with specific legal requirement or obligation for the implementation of local content. It entails express stipulation of local content elements; clear determination of the conditions of indigenous companies equity participation in the sector; strict reporting, monitoring and approval of local content plans and implementation strategy.¹²¹ This system may have been adopted by these countries considering its status as a transparent and imperative mechanism that can easily extract the seriousness and commitment of stakeholders and the general public towards its implementation.¹²² The choice of legislative approach by both countries is an indication of the seriousness attached to the issue of local content in the petroleum industry of both countries.

Generally, local content regime can either be protectionist or collaborative in nature. In the protectionist local content regime, stiff and rigid procedures are for IOCs are to comply with in a bid to give advantage to indigenous oil companies. On the other hand, a collaborative regime requires the joint commitment and cooperation of the regulators and MNCs to spur the development of local industry to thrive in the industry.¹²³ From the case study of this paper, it is clear that both countries operate a strict local content legal regime, hence both could be rightly regarded as protectionist regimes.

However, Angola appears to have a stricter protectionist local content regime than Nigeria. Angola appears to have nationalised its oil and gas sector, so much dependence lies on the national oil companies for the implementation of the local content regime of the state. On the other hand, Nigeria still has an oil and gas sector majorly dominated by MNC, hence, the corporation of MNC has to a large extent required for the implementation of the local content regime of Nigerian oil and gas sector. This is more so as the NCDMB hardly imposes penalty on defaulting MNC but would rather engage them in a mediatory session to extract compliance from them. To this extent, it could

¹²⁰ Elijah Dickens Mushemeza and John Okiira, 'Local Content Frameworks in the African Oil and Gas Sector: Lessons from Angola and Chad' (2016) 72 ACODE Policy Research 10.

¹²¹ Berryl Claire Asiago, 'The Inevitability of Legal Flexibility over Certainty - the Case of Local Content Requirements in the Upstream Petroleum Sectors' (2021) 19 (4) Oil, Gas & Energy Law Intelligence 1, 3.

¹²² Deana Silverstone, 'Ethical Dilemmas in the Oil Fields: Is Legislation the Answer? An Assessment of Legislative Provisions Addressing Ethical Obligations in Conflict, Post-Conflict and Emerging Oil Producing Countries in Four Recently Passed Petroleum Laws in Africa' (2016) 14 (4) Oil, Gas & Energy Law Intelligence 1, 13.

¹²³ Emmanuel Isaac Onuche and Samson Ojodomo Onuche, 'Assessing the Developments, Innovations and Downsides of the Nigeria's Oil and Gas Industry Content Development Act 2010' (2021) 2 Madonna University Law Journal 1, 13.

be said that in principle, Nigerian operates a protectionist local content regime, while its local content regime is collaborative in practice.

According to Asiago, the disadvantage of adopting the strict legislative option is its penchant for limiting the receptiveness and elasticity for effective attainment of regulatory objectives, thereby restricting innovation as a result of rigid compliance with rules. Also, there are higher economic and social costs implication arising from the need to constantly adjustment the rule to fit into emerging circumstances.¹²⁴ This submission resonates more with the Angolan situation. This would definitely have implication on SDG 16, of building strong institutions.

Regarding the issue of fund raising for the operations of local content, Nigerian and Angolan regimes clearly indicate how funds are to be generated for this purpose. The Nigerian regime clearly indicated the upstream sector as the source of the fund. Although Angolan law on local content did not indicate that the contribution for local content is charged to companies operating in the upstream petroleum sector, charging the levy on each barrel of oil produced and petroleum exploring activities implicates the petroleum upstream sector. In the case of Nigeria, the fund is to be contributed to the NCDMB for management towards the general implementation of the NOGICD Act. On the other hand, her Angolan counterpart specifically limit the use of the fund for training of Angolan nationals in the oil and gas sector, to deepen their capability to assume dominant position or advantage in the oil and gas sector. The dangers of leaving the management of the fund at the discretion of the regulatory agency has the tendency to lead to fund utilisation on matters which does not address the core essence of local content law.

4. CONCLUSION

This study undertook a comparative assessment of the local content regime in Nigeria and Angola and its implication for SDGs. From the perspective of the two countries under consideration in this study, local content has been utilized as a means of protecting the economy and national interest of petroleum host states. Both countries adopted a legislative approach, whereby legislative instruments are enacted to concretise the strict application of local content requirement in the oil and gas industry. It is observed that the Angolan local content legal regime has stricter provision than that of its Nigerian counterpart. However, concerns have been raised regarding the strict application and implementation of the provisions in practice.

By supporting the participation of indigenous workforce in the petroleum sector, local content supports sustainable development, particularly goal 7 and 8, which are

¹²⁴ Berryl Claire Asiago, 'The Inevitability of Legal Flexibility over Certainty - the Case of Local Content Requirements in the Upstream Petroleum Sectors' (2021) 19 (4) Oil, Gas & Energy Law Intelligence 1, 3.

respectively targeted at sustainable energy accessibility and decent work for all. Resort to local goods and service would definitely lead to reduction of cost of production compared to the cost of importation of foreign goods and expatriate service which tend to be highly priced. Whereas production cost is reduced, this would implicate a reduced price of petroleum output, thereby making energy more affordable and accessible to all. Local content essential strives to balance the equation of oil sector work place discriminatory practice against local work forces, who are devalued and underpaid compared to their foreign counterpart. However, a cursory look at the local content legal regime of Nigeria would reveal it concentrated to setting a favourable that nothing was mentioned about equality of remuneration. On the other hand, it can also be argued that the preferential treatment given to local goods and services amounts to discrimination against foreign goods and service, which does not accord with spirit and letter of SDG 8.

From the foregoing, it is clear that local content requirement of the law can either be an enabler or disabler of sustainable development goals. Replicating either side of the coin would depend on not just the letters of the law but also depend on its implementation. It is however, noted that that the Nigerian local content legislation predated the establishment of the SDGs, hence may not have contemplated it or put its requirement into perspective. On the other hand, the extant local content legislation was established post-SDGs, hence ought to have taken cognizance of it, but this was not the case. It is therefore suggested that necessary amendments should be effected on both legal regimes to put them in proper perspective with the SDGs.