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CHALLENGES MILITATING AGAINST INDIGENOUS OIL COMPANIES OPERATING IN NIGERIA'S UPSTREAM PETROLEUM INDUSTRY: STRATEGIES AND PANACEAS FOR THEIR SUSTAINABILITY

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ABSTRACT

This article examines the challenges faced by indigenous oil companies operating in Nigeria's upstream oil and gas sector. It provides a comprehensive analysis of the historical background, conceptual clarifications, and the legal framework applicable to these companies and offers recommendations for mitigating these challenges. The historical background highlights the introduction of marginal oil fields and local content policies as initiatives to encourage indigenous participation in the oil and gas industry. However, despite these efforts, indigenous oil companies continue to encounter significant hurdles such as paucity of funds, security risks, shortage of skilled personnel among others. This article adopts the doctrinal legal research methodology with consideration of both the primary and secondary sources of law. The legal framework analysis focuses on relevant statutes such as the Nigerian Oil and Gas Industry Content Development Act, 2010, the Petroleum Industry Act, 2021, the Companies and Allied Matters Act, 2020, the Companies Income Tax Act, 2007 and the Finance Act, 2023. The study examined some of the challenges faced by indigenous oil companies including limited access to financing, technological and technical expertise constraints, infrastructure deficiencies, and a lack of patronage from multinational oil corporations. The study found that these challenges hinder the ability of indigenous companies operating in Nigeria's upstream oil and gas sector to invest in exploration and production activities. These challenges further reduce operational efficiency, and impede healthy competitiveness. In conclusion, as a contribution to knowledge, the study designs a hybrid strategy or panacea for promoting the sustainability of indigenous oil companies in Nigeria. The study recommends strengthening the implementation of existing legal frameworks, enhancing access to financing, investing in infrastructure development, encouraging collaboration

and strategic partnerships between indigenous and multinational oil companies, and implementing market support and protection policies. Addressing these recommendations can help mitigate the challenges faced by indigenous oil companies, allowing them to contribute more effectively to Nigeria's economy, upstream sector and the overall growth of the oil and gas industry sustainability.

Keywords: Challenges, Local Content, Indigenous oil and gas companies, Marginal Fields.

1. INTRODUCTION

Nigeria is Africa's biggest oil producer, possessing the 2nd largest oil reserves on the continent and the 10th largest oil reserves, globally.¹ Its upstream sub-sector accounts for 80% of the Federal Government's foreign exchange revenues.² The activities in the upstream sector include exploration and production of crude oil and gas; drilling and operation of oil and gas producing wells, construction and operation of crude oil pipelines and gas gathering pipelines, crude oil and gas separation and treatment facilities and

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¹ Uyiosa Omoregie, 'Nigeria's Petroleum Sector and GDP: The Missing Oil Refining' *Journal of Advances in Economics and Finance* (2019) 4 (1) 1.

² Ministry of Petroleum Resources, National Petroleum Policy: Nigerian Government Policy and Actions (2017) <<http://www.petroleumindustrybill.com/wp-content/uploads/2017/07/National-Petroleum-Policy-Approved-by-FEC-in-July-2017.pdf>> accessed 14 June 2023.

operations.³ Given its capital-intensive nature, the upstream sub-sector is dominated by Multinational Oil Companies ('MNCs').⁴

Before the Nigerian Oil and Gas Industry Content Development Act, 2010, the upstream petroleum industry had been dominated by the MNCs.⁵ The predominance of the MNCs in Nigeria's oil and gas industry can be traced to when Shell D'arcy Petroleum Company acquired a concession from the British colonial government in 1937.⁶ The situation changed when the Federal Government of Nigeria ('the Government') started to play an active role in the petroleum industry when it entered into a participation agreement with SAFRAP (now Total Energies) in 1971.⁷ The Government's decision to participate in the petroleum industry stemmed from a resolution of the Organisation of the Petroleum Exporting Countries (OPEC).⁸ The Government participated through the Nigerian National Oil Corporation (NNOC) which was established to handle direct commercial operational activities in the oil industry on behalf of the Federal Government.⁹ The NNOC was later merged with the Ministry of Petroleum Resources to form the Nigerian National Petroleum Corporation (NNPC).¹⁰ Due to changes introduced by the Petroleum Industry Act, 2021 the NNPC has been commercialised and thus replaced by the Nigerian National Petroleum

³ Ibid, 21.

⁴ Fidelis Esira Arong and Egbere Michael Ikechukwu, 'The Perception of Nigerians on the Deregulation and Privatization Moves of the Government in the Oil and Gas Industry in Nigeria' *International Journal of Public Administration and Management Research* (2013) 2,(1) 122

⁵ Elimma Ezeani and Chinwe Nwuke, *Local Content and the Marginal Fields Programme: Challenges for Indigenous Participation in the Nigerian Oil Industry, Oil and Gas Energy Law Intelligence* (2017) 15 (1) 2 < www.ogel.org/articles.asp?key=3671 > accessed 14 June 2023.

⁶ Maxwell Michael Gidado, *Petroleum Development Contracts with Multinational Oil Corporations: Focus on the Nigerian Oil Industry* (PhD thesis, School of Law, University of Warwick 1992), 147.

⁷ Ibid, 83.

⁸ Offiong I. Akpanika, 'Technology Transfer and The Challenges of Local Content Development in The Nigerian Oil Industry' *Global Journal of Engineering Research* (2012) 11 (2) 126

⁹ Amade Robert Amana, Samuel Abu Amana, *State Objectives and Petroleum Development Contracts: The Case of Nigeria*, *World Affairs: The Journal of International Issues* (2013) 17 (2) 84 -86.

¹⁰ Ibid, 86.

Company Limited.¹¹ It is worth noting that, the NNPC collaborated with the MNCs for oil exploration and production activities as the MNCs already enjoyed dominance over Nigeria's petroleum resources due to their technological know-how, financial resources, management expertise, and international reputation.¹² Perhaps, the dominance of the MNCs spurred the Government to promote indigenous participation in the upstream sub-sector. The Government, seeking to promote indigenous participation, employed two methods: the Marginal Fields Programme ('MFG') and the Local Content Policy (LCP).¹³

The Marginal Fields Programme provided opportunities for Indigenous Companies ('ICs') to engage in the upstream sub-sector.¹⁴ The Marginal Fields Programme was introduced to remedy the abandonment of oil fields by MNCs by 'farming-out' the fields to indigenous companies.¹⁵ A marginal field according to law is a field or discovery which has been declared a marginal field before 1st January 2021, or which has been lying fallow without activity for seven years after its discovery before the effective date.¹⁶ It is any field discovered and left unattended for not less than ten (10) years, from the date of first discovery or such field as the President may, from time to time, identify as a marginal field.¹⁷

¹¹ Nigerian National Petroleum Corporation Act 1977 was repealed by Petroleum Industry Act, s. 310 (1) (e). See also Petroleum Industry Act 2021, s. 54(3).

¹² Ojo, Michael Olufemi and Adebunsi, B. S., 'The State of the Nigerian Petroleum Industry: Performance, Problems and Outstanding Issues' CBN Economic and Financial Review [1996] 34(3), 650; Ezeani and Nwuke (n5), 2.

¹³ Ezeani and Nwuke (n5), 1; Kalu-Ulu Torty C., Okon Anietie N. and Appah Dulu, 'Marginal Fields Development in Nigeria: A Review of Extant Strategies' Journal of Energy Research and Reviews (2023) 15 (1) 3; Peter Nwaguru and Waribugo Sylva, 'Local Content Strategy Implementation in Nigeria: Challenges and Prospects' African Journal of Business and Economic Development (2022) 2 (4) 35

¹⁴ Mobolaji Ezekiel and Okoro Benson Okwuchukwu, 'A Critique of the Legal Framework for the Development of Marginal Oil Fields in Nigeria' NAUJILJ (2020) 11 (2) 135.

¹⁵ Oruwari Humphrey Otombosoba and Adewale Dosunmu, 'Examining the Legal and Regulatory Framework on Marginal Oil Field Development in Nigeria' (Paper presented at the SPE Nigeria Annual International Conference and Exhibition, Lagos, Nigeria, August 2018) 1

¹⁶ Petroleum Industry Act 2021, ss. 94 (8) (a) and s. 318.

¹⁷ Guidelines for the Award and Operations of Marginal Fields in Nigeria, para. 4.

Nigeria's LCP reportedly dates back to pre-independence when the Government initiated a raft of policy and legal measures with a view to promoting local content in the oil and gas industry.¹⁸ The oil mining leases ('OML') granted under the then Mineral Oils Act required lessees to commence a training scheme for the technical training of Nigerians.¹⁹ Similar provisions existed in the Petroleum Act 1969 (Repealed) as lessees were required to employ a certain percentage of Nigerian citizens in certain roles.²⁰ Others have pinpointed 1971 as a significant year for the promotion of LCP with the establishment of the NNOC.²¹ The NNPC is noted to have promoted local content through the employment of Nigerians as it transitioned into a fully integrated national oil corporation.²² The NNPC also promoted local content through its joint ventures with MNCs as it gave preferential treatment to indigenous firms, approved budgets and other mechanism which facilitated the employment of Nigerians and provision of business opportunities to indigenous firms.²³ It would seem that these steps and other measures failed to allay any concerns about a lack of progress with respect to the promotion of local content policy in Nigeria's oil and gas industry.²⁴ No doubt, this dissatisfaction paved the way for the enactment of the Nigerian Oil and Gas Industry Content Development Act 2010. This study attempts to examine the impact of the Nigerian Oil and Gas Industry Content Development Act and other laws on ICs, taking into consideration the gaps and weaknesses. The study begins with an introduction in part one and then proceeds to lay a theoretical foundation in part two. Part three of the study will consider the regulatory framework that applies to ICs while comparing the Brazilian and Ghanaian frameworks. Part four will consider the challenges faced by indigenous oil companies operating in Nigeria's upstream petroleum industry while part five is the conclusive aspect of the study with recommendations being proffered.

¹⁸ Uchenna Jerome Orji, 'The Nigerian Oil and Gas Local Content Regime and Its (Non-)Compliance with The TRIMS Agreement' Afe Babalola University: *J. of Sust. Dev. Law & Policy* (2018) 9 (2) 153

¹⁹ Ike Oguine, 'Nigerian Content in the Nigerian Petroleum Industry: Legal and Policy Issues' *Journal of Energy & Natural Resources Law* (2011) 29 (4) 406

²⁰ Petroleum Act 1969, First Schedule, para. 38.

²¹ Oguine (n19) 407; Okoro Victoria and Ndukwe Oko, 'Local Content Act Implementation and Its Impact on Nigeria Economy: An Appraisal' *Journal of Policy and Development Studies*, (2022) 13(2) 100.

²² Oguine (n19) 408.

²³ Ibid.

²⁴ Ibid.

2. THEORETICAL FRAMEWORK

There are different theories which are relevant to the challenges faced by indigenous oil companies operating in the upstream sector. Three theories will be discussed in relation to problems experienced by oil and gas companies operating in Nigeria's upstream sub-sector.

The Resource Curse Theory (RCT) was propounded in 1993 by Richard Auty.²⁵ RCT explains the inability of countries that possess vast natural and mineral resources to fully exploit or optimise their wealth, and the incapacity of their governments to adequately address the welfare requirements of their populations.²⁶ Findings based on empirical studies were made by Jeffrey Sachs and Andrew Warner to the effect that countries that possessed abundance in natural resources experienced slow economic growth compared to countries that either lacked or had low natural and mineral resources.²⁷ RCT has two economic subsets which are the Dutch Disease and the Rentier State.²⁸ The Dutch disease posits that a significant increase in income derived from natural resources can have adverse effects on other sectors of the economy, particularly export-oriented manufacturing, due to factors such as inflation or the appreciation of the exchange rate.²⁹

Dutch disease causes a shift of labour and capital from non-resource sectors to the resource sector, causing long-lasting impacts that can persist for

²⁵ Richard Auty, *Sustaining Development in Mineral Economies: The Resource Curse Thesis* (1st Edition, Routledge, 1993).

²⁶ The Natural Resource Governance Institute, 'The Resource Curse: The Political and Economic Challenges of Natural Resource Wealth' (March 2015) <https://resource-governance.org/sites/default/files/nrgi_Resource-Curse.pdf> Accessed 19 June 2023.

²⁷ Jeffrey D. Sachs and Andrew M. Warner, 'Natural Resource Abundance and Economic Growth' (1995) NBER Working Paper 5398 accessed <https://www.nber.org/system/files/working_papers/w5398/w5398.pdf> 28 August 2024.

²⁸ Jonathan Di John, 'The 'Resource Curse': Theory and Evidence (ARI)' Elcano Royal Institute (Madrid, 15 December 2010) <<https://www.realinstitutoelcano.org/en/analyses/the-resource-curse-theory-and-evidence-ari/>> accessed 19 June 2023.

²⁹ Arsham Reiszehad, 'The Dutch disease revisited: consistency of theory and evidence' *Environmental and Resource Economics* (2024) 87 (x) 554; James Custa, Shantayanan Devarajanb and Pierre Mandona, 'Dutch Disease and the Public Sector: How Natural Resources Can Undermine Competitiveness in Africa' *Journal of African Economies* (2022) 31 (1) i12.

decades. In the 1970s, Venezuela experienced the Dutch disease and during this period, the government decided to alleviate the financial burden on the agriculture sector by using the money generated from oil exports to cancel all agriculture-related debt.³⁰ The intention was to boost agricultural production and relieve the industry, however, contrary to expectations; this action had an adverse effect.³¹ As a result of the debt cancellation, many owners of large farms, known as *latifundios*, opted to sell or shut down their estates. These landowners then migrated to urban areas and established non-agricultural businesses.³² Consequently, Venezuela, like Nigeria, suffered a significant decline in its agricultural sector due to the overwhelming focus on its oil and gas resources. The other variant which is the rentier-state model posits that oil-producing states primarily generate revenue through external rents rather than taxation.³³

Rentier states exhibit three main features.³⁴ Firstly, they have economies heavily reliant on rent, which refers to non-productive elements like mineral or natural resources.³⁵ Secondly, a significant portion of this rent is derived from external sources (foreign companies or markets), allowing the economy to sustain itself without a robust domestic productive sector.³⁶ Lastly, only a minority of the population participates in the actual production of rent, the majority is actively engaged in the distribution and utilization of these rent-based resources.³⁷ The concept of the rentier state applies to the Nigerian context, particularly when considering the Nigerian local content policy within the oil and gas sector.³⁸ Nigeria can be characterized as a rent-seeking

³⁰ Barry Posner and Farid Tayari, 'What is the Resource Curse?' (a lecture note was prepared for Introduction to Energy and Earth Sciences Economics module at the College of Earth and Mineral Sciences at The Pennsylvania State University) <<https://www.e-education.psu.edu/ebf200/node/222>> Accessed 19 June 2023.

³¹ Ibid.

³² Ibid.

³³ Munira Rajkotwalla, 'Assessing the Rentier State Theory in the Gulf Cooperation Council' Cambridge Journal of Political Affairs [x] x (x) <<https://www.cambridgepoliticalaffairs.co.uk/articles/assessing-the-rentier-state-theory-in-the-gcc>> Accessed 22 June 2023.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Jude Okafor and Ernest Aniche, 'A Critical Appraisal of Enforcement of Nigerian Oil and Gas Industry Content Development (NOGICD) Act, 2010' Journal of Law, Policy and Globalization [2014] 31 (x) 83.

state, which is heavily dependent on oil revenue derived from rents or royalties paid by MNCs.³⁹ Oil and gas revenues constitute a significant portion of Nigeria's revenue and foreign exchange earnings.⁴⁰ It is important to note that the RCT theory has certain limitations such as the fact that policy measures may be a more potent factor than economic consequences of oil windfall revenues. Matthias Basedau notes that governments may adopt measures such as import-substitution, subsidies and an increase in public employment as a way of remedying dissatisfaction, yet this becomes not feasible when the oil boom ends.⁴¹ Jonathan Di John noted the existence of a selection bias as demonstrated by the use of oil booms as a central point in state formation of developing countries.⁴² He noted that natural resources played a vital role in stimulating capital accumulation and growth in developed economies like the United States, Canada, Australia among others, from 1870-1914.⁴³ Findings from quantitative studies conducted by Sam Jones revealed that contrary to conventional wisdom, high income countries actually possessed vast natural and mineral resources such as hydrocarbons.⁴⁴ Sam Jones further noted that foreign companies in Sub-Saharan Africa tend to dominate resource extraction due to the level of technical know-how and capital required to undertake extractive projects.⁴⁵ Despite the usefulness of the RCT in explaining the reasons for the social and economic challenges being experienced by indigenous oil and gas companies, it still must be pointed out that the theory is not entirely reliable due to the limitations already considered. Furthermore, Nigeria's developmental issues can be traced to its history of colonialism, civil war, and political instability.⁴⁶

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Matthias Basedau, 'Rethinking the Resource Curse in Sub-Saharan Africa' (2005) German Institute for Global and Area Studies, 11 and 12 < <http://www.jstor.com/stable/resrep07675> > accessed 01 September 2024.

⁴² Jonathan Di John, 'Is There Really a Resource Curse? A Critical Survey of Theory and Evidence' *Global Governance*, (2011) 17 (2) 175.

⁴³ Jonathan Di John, 'Is There Really a Resource Curse? A Critical Survey of Theory and Evidence' *Global Governance*, (2011) 17 (2) 175.

⁴⁴ Sam Jones, 'Sub-saharan Africa and the "Resource Curse": Limitations of the Conventional Wisdom' DIIS Working Paper no 2008/14, < <https://www.jstor.org/stable/pdf/resrep13465.pdf?acceptTC=true&coverpage=false&addFooter=false> > accessed 28 August 2024.

⁴⁵ Ibid.

⁴⁶ Olanrewaju John. Shola, 'Understanding Nigerian Development Crisis' *Afro Asian Journal of Social Sciences* (2015) 6 (1) 3; Clarence J. Bouchat, *The Causes of*

Another relevant theory is the underdevelopment theory or dependency theory developed by André Gunder Frank, Immanuel Wallerstein, and Samir Amin in the late 1960s and early 1970s⁴⁷. The statement suggests that development and underdevelopment are interconnected aspects of the same economic process.⁴⁸ It argues that the capitalist system hinders the development of potentially underdeveloped countries.⁴⁹ The capitalist system operates globally, incorporating all societies, regardless of their colonial history.⁵⁰ This system is maintained through power imbalances in trade relationships, favouring developed nations. The world is divided into two main groups: the economically powerful developed countries and their opposites, which are exploited by the centres but also, exploit their peripheries.⁵¹ MNCs are seen as key agents in the neo-colonialism process, facilitating the transfer of surplus from the periphery to the semi-periphery or centre.⁵² To achieve development, the connections between underdeveloped regions and capitalist centres need to be severed or weakened.⁵³ Some propose a combination of self-reliance and socialism as a solution, ultimately aiming for a non-exploitative socialist world system.⁵⁴ This theory is relevant to the challenges of the indigenous companies because these companies may struggle to compete due to the fact that they lack access to advanced technology and capital, which are mostly controlled by foreign companies. Unlike the indigenous companies, the MNCs have vast financial

Instability in Nigeria and Implications for the United States (Strategic Studies Institute and U.S. Army War College Press, 2013),6.

⁴⁷ Aksom, H. and Tymchenko, I. "How institutional theories explain and fail to explain organizations", *Journal of Organizational Change Management*, (2020) 33 (7) 1223-1252. <https://doi.org/10.1108/JOCM-05-2019-0130>, accessed August 20, 2024.

⁴⁸ David Lea, 'Developing Theory and Its Relevance to Problems of Development in Papua New Guinea' *Pacific Economic Bulletin* [2000] 15 (2) 108 < https://open-research-repository.anu.edu.au/bitstream/1885/157605/1/152_dependency.pdf > Accessed 19 June 2023.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid .

⁵³ Ibid.

⁵⁴ Olujobi, O.J., Irumekhai, O.S. An Analysis of the Abolition of Premium Motor Spirit (PMS) Subsidies in Nigeria: A Breach of Social Contract or Climate Change Action?, *Discover Sustainability*, (2024), 5, 71, <https://doi.org/10.1007/s43621-024-00252-z> accessed August 16, 2024. <<https://link.springer.com/content/pdf/10.1007/s43621-024-00252-z.pdf> accessed August 16, 2024.

resources, control of technology, expertise and access to global markets. It should be noted that this theory has limitations such as the fact that the underdevelopment theory's general propositions may not accurately capture the diverse experiences of developing countries, including those with abundant natural resources. The theory fails to explain the reasons for the lack of capital investment and accumulation in developing countries in the past.⁵⁵ Also, the theory fails to take into account that underdevelopment in some countries is linked to the irresponsible leadership and corrupt leadership on the part of the leaders in those countries.⁵⁶

The last theory to be considered is the institutional theory; it was introduced in the late 1970s by John W. Meyer and Brian Rowan. The theory predicts the processes through which social and political structures, including schemes; rules, norms, and routines, become established as authoritative guidelines for behaviour that govern interactions in society.⁵⁷ According to this theory, authoritative guidelines for behaviour are created, diffused, adopted, and adapted over time.⁵⁸ This means that for organizations to succeed and prosper, they must conform to the prevailing rules and belief systems in their environment.⁵⁹ It has been further argued that institutional theory is a policy-making mechanism that emphasizes the importance of adhering to formal and legal aspects of government directives.⁶⁰ The institutional theory is relevant to obstacles faced by indigenous oil companies operating in Nigeria's upstream petroleum industry. Nigeria's regulatory framework plays a role in shaping business practices and experiences of indigenous. Thus, regulatory issues such as red tapism, incoherent laws and policies, weak enforcement of laws, all have adverse effects on these

⁵⁵ Colin Leys, 'Underdevelopment and Dependency: Critical Notes' *Journal of Contemporary Asia* (2008) 7 (1) 98.

⁵⁶ Emmanuel Oladipo Ojo, 'Underdevelopment in Africa: Theories and Facts' *The Journal of Social, Political and Economic Studies* (2016) 41 (1) 89, 94 and 95.

⁵⁷ Baraka Kambi and Michael Kambi, 'Local Content Agenda: The Role of Institution Theory on Policy and Practical Challenges in Local Procurement Practice by Mining Entities in Tanzania' *Humanities and Social Sciences Letters* [2017] 5(1) 4
<<https://archive.conscientiabeam.com/index.php/73/article/view/784/1115>>
Accessed 19 June 2023.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid.

indigenous companies⁶¹. This theory is very much applicable to Nigeria as stakeholders have noted the legal and political risks Nigerian companies have to surmount in order to acquire divested assets.⁶² The institutional theory has certain limitations with respect to the Nigerian context. For instance; the theory fails to take into cognizance the possibility the fact conformity with the institutional framework does not guarantee success or business continuity as external factors and pressures may significantly influence the success of business organisations within the given sphere of operations. The theory also fails to consider the extent to which individual choices and actions can impact the affairs and operations of business entities.

3. LEGAL FRAMEWORK

3.1 Legal Framework Applicable to Indigenous Companies in the Upstream Oil and Gas Sector

Several laws apply to the operations of indigenous companies (ICs) in the upstream oil and gas sector. Some are of general application, for example, the Constitution of the Federal Republic of Nigeria 1999 (amended), and the Companies and Allied Matters Act 2020, among others, while some are specific industry laws, for instance, the Nigerian Oil & Gas Industry Content Development Act 2010, the Petroleum Industry Act 2021, the Nigerian Extractive Industries Transparency Initiatives 2007, the Gas Flaring, Venting and Methane Emissions (Prevention of Waste and Pollution) Regulations 2022, among others. This paper will limit its examination of the applicable laws to a few laws that are somewhat more pertinent for indigenous companies in the upstream oil and gas sector.

3.1.1 The Nigerian Oil & Gas Industry Content Development Act ("NOGICDA" or 'the Act') 2010.

Section 2 of the NOGICDA mandates that all entities, including regulatory

Olujobi, Olusola Joshua., Irumekhai, O.Suleiman (2024), An Analysis of the Abolition of Premium Motor Spirit (PMS) Subsidies in Nigeria: A Breach of Social Contract or Climate Change Action? Springer Nature, Discover Sustainability 5, 71 (2024). 2.6 Impact Factor (2022), Switzerland, Q-2 Journal, Ranked 55th Percentile, Indexed in Scopus), available online at <https://doi.org/10.1007/s43621-024-00252-z> <https://link.springer.com/content/pdf/10.1007/s43621-024-00252-z.pdf> (accessed March 19, 2024).

⁶² Ediri Ejoh, 'IOCs divestment: Okwuosa Lists Challenges, Opportunities for Indigenous companies' Vanguard Newspapers (Lagos, February 16, 2024) < <https://www.vanguardngr.com/2024/02/iocs-divestment-okwuosa-lists-challenges-opportunities-for-indigenous-companies/> > Accessed 19 June 2023.

bodies, operators, contractors, subcontractors, alliance partners, and other organizations engaged in projects, operations, activities, or transactions within the Nigerian oil and gas sector must recognize Nigerian content as a significant aspect of their overall approach to project development and management. This means that Nigerian content should be given due consideration and incorporated into the philosophy governing the execution of the project. According to the Act, preference will be given to Nigerian independent operators when it comes to granting oil blocks, oil field licenses, oil lifting licenses, and contracts for projects within the Nigerian oil and gas industry. However, this preference is contingent upon fulfilling specific conditions outlined by the Minister of Petroleum Resources.⁶³ The Act also stipulates that exclusive consideration be given to Nigerian indigenous service oil companies which demonstrate ownership of equipment, Nigerian personnel and capacity to execute such work to bid on land and swamp operating areas of the Nigerian oil and gas industry for contracts and services listed in the Act.

From the provisions of sections 2 and 3 of the NOGICDA, it can be deduced that the Act seems to advocate a framework that promotes the interest of indigenous oil and gas companies in line with the institutional theory. Section 16 of the Act further demonstrates this as it provides that, the selection of contract recipients will not be solely determined by choosing the lowest bidder if a Nigerian indigenous oil company can perform the job. The disqualification of a company cannot be based on the fact that it is not the lowest bidder financially, as long as its bid price does not exceed the lowest bid by more than 10 percent. The Act mandates the Minister of Petroleum Resources to full utilization and steady growth of indigenous companies engaged in exploration activities.⁶⁴ Section 43 of the Act mandates that every operator must implement a programme that aligns with Nigeria's plans and priorities and satisfies the Nigerian Content Development and Monitoring Board ('NCDMB'), to facilitate the transfer of technology to Nigeria concerning their oil and gas operations. Section 45 of the Act adds support to the laudable provisions of Section 43 by encouraging the establishment of joint ventures, partnerships, and licensing agreements between Nigerian and foreign contractors, as well as service or supplier companies, and these arrangements must adhere to the standards of the Nigerian content development requirements, and also satisfy the NCDMB. Under section 70(h) of the Act, the NCDMB is required to support local contractors and

⁶³ Nigerian Oil And Gas Industry Content Development Act 2010, s.3(1)

⁶⁴ Ibid .s. 41(1)(a).

Nigerian companies in enhancing their skills and resources to promote the advancement of Nigerian content within the oil and gas sector in Nigeria. It is important to state that under section 106 of the Act, a Nigerian company is defined as a company formed and registered in Nigeria under the provision of the Companies and Allied Matters Act 2020 with not less than 51 % equity shares by Nigerians.

Certain problems exist with respect to NOGICDA such as the fact that the Act mandates that Nigerian independent operators be given first consideration subject to the fulfilment of conditions specified by the Minister of Petroleum.⁶⁵ However the Act fails to define what or who is an independent operator. It only defines the word ‘operator’, which curiously admits of foreign or international oil and gas companies operating in the Nigerian oil and gas industry under any petroleum arrangement. This is an ambiguity that can lead to disputes by MNCs engaged in Joint Venture Arrangements with the NNPC, thus defeating the intendment of the Act. Furthermore, the Act is riddled with certain words which can cause ambiguity and disputes, words such as ‘first consideration’, ‘Nigerian independent operator’, ‘junior and intermediate cadre’ Furthermore, the provisions of section 3(2) of the Act which declares that exclusive consideration is to be given to Nigerian indigenous companies which demonstrate ownership of equipment, Nigerian personnel and capacity to execute work in relation to the contracts and services detailed in the Schedule to the Act seem unduly restrictive. The list of services in the Schedule to the Act is quite comprehensive but the list and attendant conditions might be restrictive for indigenous oil and gas firms operating in a harsh business environment like Nigeria. It is important to note that under section 102 of the Act, the NCDMB is mandated to review the Schedule to the Act biennially and transmit its review to the National Assembly, yet, since the enactment of the Act; nothing seems to have been done as no amendments have made to the Schedule. In addition to this, it has been noted that there are several bureaucratic hurdles militating against the award of contracts to indigenous companies.⁶⁶ There is the issue of lack of diligent monitoring and

⁶⁵ Ibid, s. 3(1).

⁶⁶ Uwem Udok, Mary Udofia and Olusola Okunbolade, Local Content Development In The Oil And Gas Industry In Nigeria: Problems And Prospects' European Journal of Training and Development Studies (2020) 7 (1) 78

enforcement of the provisions of the Act by the NCDMB.⁶⁷ It is worth noting that low levels of economic and infrastructure development constitute a drawback to the creation of an enabling environment in which indigenous businesses can grow and thrive by taking advantage of the Act.⁶⁸

3.1.2. Petroleum Industry Act 2021

The Petroleum Industry Act 2021 ('PIA') is the primary law governing the oil and gas industry. One of the objectives of the Act is to deepen local content practice in the oil and gas industry.⁶⁹ The PIA also seeks to encourage local investment in the petroleum industry.⁷⁰

Concerning the participation of indigenous companies in the upstream sector, the PIA contains provisions dealing with marginal oil fields, particularly in section 94 of the Act. Section 94(1) permits a producing marginal field to continue to operate under the original royalty rates and farm-out agreements, however, such marginal fields are to convert to a petroleum mining lease under the Act within 18 months from the effective date. It is important to state that before the advent of the PIA, marginal fields were governed by the provisions of the repealed Petroleum Act and either the holder of an oil mining lease or the President of the Federal Republic of Nigeria could farm out the marginal field.⁷¹ According to the provisions of the PIA, any marginal field which was declared before January 1, 2021, and is currently non-producing, will be transformed into a petroleum prospecting lease.⁷² The Nigerian Upstream Petroleum Regulatory Commission ('NUPRC') has the authority to grant a petroleum prospecting license through a bidding process, as stipulated in Section 74 of the Act when the government has taken over control of a marginal field.⁷³

⁶⁷ Olujobi Olusola Joshua, 'Promoting Oil And Gas Industry Content Development Act, 2010: A Review Of The Prospects, Challenges and the Way Forward' *MUNFLJ* (2021) 7 (x) 39.

⁶⁸ Olakunle Thomas Ayoola, *Nigerian Oil and Gas Industry Content Development Act's Perceived Performance Impact* (PhD Dissertation, College of Management and Technology, Walden University, 2017) 45 https://www.ucl.ac.uk/bartlett/sustainable/sites/bartlett/files/local_content_policies_nigerian_oil_and_gas_industry_content_development_acts_perceived.pdf accessed 03 September 2024.

⁶⁹ Petroleum Industry Act, 2021, s. 2(e).

⁷⁰ *Ibid*, section 66(1)(e).

⁷¹ *Ibid*, section 17.

⁷² *Ibid*, section 94 (2).

⁷³ *Ibid*, section 94 (3).

According to the Petroleum Industry Act, any marginal field that has not been transferred to the government within three (3) years of the effective date will undergo the following process: The holder of the oil mining lease must submit a field development plan for the marginal field. With the commission's consent and subject to the terms and conditions approved by the commission through regulations, the holder can farm out the discovery. Alternatively, the holder can relinquish the field per the provisions of the Petroleum Industry Act.⁷⁴ Section 94(9) of the PIA prohibits the declaration of any new marginal fields.

Concerning the fiscal regime for oil and gas companies, the provisions of section 260(5) of the PIA expressly provide that upstream oil and gas operations are subject to the Companies and Income Tax Act 2007 ('CITA').⁷⁵ Section 260 further levies a hydrocarbon tax upon the profits of upstream oil and gas companies dealing with crude oil. It is submitted that subjecting the indigenous upstream oil and gas companies to the provisions of the PIA and the CITA amounts to double taxation which will inevitably lead to higher operating costs and financial challenges for ICs.

The PIA has certain gaps and deficiencies which can affect the business prospects of indigenous oil and gas firms in the country. To begin with, one of the objectives of the PIA is to deepen local content practice, yet, it fails to define or specify what 'local content' is or entails under the PIA. Furthermore, the NUPRC is not clothed with any specific duties or powers that deal with local content practices in the upstream sector. Furthermore, the PIA fails to emphasise preferential treatment for indigenous companies in relation to the bidding and award process provided for under sections 73 and 74 of the PIA respectively. This is at variance with the provisions of section 3(1) and (3) of NOGICDA. Furthermore, the provisions of the PIA failed to aid the increase of the participation of indigenous companies in the upstream sector when considering the provisions of 95(11) which deals with the alienation of interests in prospecting license or prospecting mining lease. Section 95(11) of the PIA should have been drafted to recognise ICs as the proposed transferees in the event that a prospecting license or prospecting mining lease is being assigned, transferred or novated. Again, the PIA fails to take into account the disparities in the financial might of MNCs and ICs, with the provisions of section 103 demonstrating this point. Section 103 requires financial contribution for remediation of environmental damage as

⁷⁴ Ibid, section 94 (4).

⁷⁵ Ibid, section 302(1).

condition precedent to the grant of a license or lease. It is submitted that this is a shortcoming or gap that could work against the ICs especially when the fact is clear that the major culprits of environmental damage in Nigeria have been MNCs.⁷⁶ Lastly, although the PIA aims to foster a business environment conducive for oil and gas operations, it does not sufficiently address the challenges that may be faced by ICs in recovering their costs incurred from upstream oil and gas operations. It fails to make provisions for incentives which can aid or assist the ICs in their upstream activities. This runs contrary to objectives and technical functions of the NUPRC dealing with national policies on upstream activities as detailed in section 6(j) and 7(a) of the PIA.

3.1.3 Companies and Allied Matters Act 2020

From the provisions of section 106 of the Nigerian Oil & Gas Industry Content Development Act and sections 70(2), 273 and 302 of the Petroleum Industry Act 2021, it is clear that the only type of business organisation permitted to operate in the upstream oil and gas sector. Of relevance is Section 273(1) of the Petroleum Industry Act 2021 which states thus:

Section 273 (1) Any person, other than a company, who engages in upstream petroleum operations either on his account or jointly with any other person or in partnership with any other person to share the profits arising from the operations, commits an offence.

From, the provisions of section 273 of the Petroleum Industry Act 2021, it can be deduced that only companies can operate in the upstream oil and gas sector. However, it is important to state that only Nigerian companies can operate in the upstream oil and gas sector as the provisions of section 78(1) of the Companies and Allied Matters Act 2020 ('CAMA 2020') prohibit foreign companies from carrying on business in Nigeria without incorporating an entity in Nigeria.

3.1.4 Companies Income Tax Act

The Companies Income Tax Act 2007 ('CITA') is a major law that regulates the taxation of companies that operate in Nigeria. Section 40 of the CITA

⁷⁶ Olusola J. Olujobi, Olabode A. Oyewunmi and Adebukola E. Oyewunmi, 'Oil Spillage in Nigeria's Upstream Petroleum Sector: Beyond the Legal Frameworks' *International Journal of Energy Economics and Policy*, (2018) 8(1), 220.

prescribes the rates of tax payable by companies in the following manner:⁷⁷ Medium-sized companies are taxed at 20 kobo for every Naira, while large Companies are taxed at 30 kobo for every Naira. It is important to state that these tax rates exist in addition to the rates payable for hydrocarbon tax, levied under section 261 of the Petroleum Industry Act.⁷⁸

One laudable provision under the CITA is that it does not restrict the amount of capital allowances to be deducted from the assessable profits of companies engaged in upstream oil and gas operations.⁷⁹ Paragraph 24(7) of the Second Schedule to the CITA was amended by section 9(b) of the Finance Act 2023 to the effect that companies engaged in upstream gas operations are not restricted in the amount of capital allowances that may be deducted from their assessable profits in any year of assessment. However, it must be stated that more detailed incentives can be provided under the CITA for ICs in the upstream sub-sector. For instance; section 36 gives a **three-year** tax holiday to new companies engaged in mining of solid minerals, one then wonders why can this not be applied to ICs in the upstream oil and gas sub-sector? It seems clear that the incentives within the CITA available to the upstream sub-sector which can be capitalised on by ICs are insufficient.

Apart from insufficiency of incentives, there are other issues in the CITA which affect may negatively affect the fortunes of ICs operating in the upstream oil and gas sub-sector. For example, section 34 of the CITA which hitherto provided for rural investment allowances for companies has now been deleted by section 7 of the Finance Act 2023. Thus, this limits the allowances that ICs can claim. In addition to this is the fact that the CITA seems to lack specific provisions that are relevant to the peculiarities of the upstream sub-sector. Further to this, is the ambiguity of some of its provisions of the CITA in relation to tax reliefs, deductions and allowances which might make it difficult to claim reliefs or deductions. For instance, the provisions of section 42(2) of the CITA require legislative redrafting in order to be clearly construed. Finally, section 23 (1)(q) of the CITA represents a limitation to the ICs as it does not make exceptions for Nigerian companies

⁷⁷ Small Companies are Taxed in Accordance with the Provisions of Section 23(1)(o) of the Companies Income Tax Act 2007; see Finance Act 2019, s. 16.

⁷⁸ See sections 267 and 268 of the Petroleum Industry Act, respectively, on the Chargeable Tax and Additional Chargeable Tax Payable in Certain Circumstances.

⁷⁹ Companies Income Tax Act, Second Schedule, Para. 24(7); See also Finance Act 2023, s.9(b).

engaged in upstream petroleum operations.⁸⁰

3.15 Guidelines for the Award and Operations of Marginal Fields in Nigeria

The Guidelines for the Award and Operations of Marginal Fields in Nigeria ('the Guidelines') were issued in 2020 by the (defunct) Department of Petroleum Resources ('the DPR'). The DPR has been replaced by the Nigerian Upstream Petroleum Regulatory Commission ('the NUPRC') as the regulator of the upstream oil and gas industry.⁸¹ The NUPRC is empowered under section 10(a) of the Petroleum Industry Act to enforce regulations, policies or guidelines formerly administered by the Department of Petroleum Resources.

The Guidelines form one of such instruments previously administered by the DPR. Paragraph 5.2 of the guidelines states the steps involved in the award process of marginal fields while Paragraph 5.4.2 mandates that an applicant demonstrate evidence of technical and managerial capability to meet the objective of undertaking expeditious and efficient development of a marginal field. Paragraph 5.4.4 mandates that an applicant present a comprehensive strategy for indigenous capability and manpower. The company is also required to make available its plan for local input in the provision of materials and services to the industry. Paragraph 5.4.6 requires that the indigenous company be wholly or substantially Nigerian and that it is registered principally for exploration and production business. At the pre-qualification stage, attention is also paid to the background and experience with exploration and production at a sufficiently high level in addition to the Federal Character Representation. All indigenous companies that are duly registered to carry out exploration and production operations in Nigeria are eligible to participate, save for, companies (and their promoters) that are indebted to the Federal Government.⁸²

The enforcement and monitoring of the Guidelines by the NUPRC is not without challenges. This is because the NUPRC is bedevilled with challenges of its own such as conflicting roles with the Nigerian Midstream and Downstream Petroleum Regulatory Authority ('NMDPRA'), delay in the implementation of its enabling legislation i.e. the PIA.⁸³ Also, there are

⁸⁰ Finance Act, 2021, s.7(a).

⁸¹ Petroleum Industry Act, 2021, s7(a)(b) and (c).

⁸² Guidelines for the Award and Operations of Marginal Fields in Nigeria, para 5.4.8.

⁸³ Udeme Akpan, 'PIA: Administrative Challenges, Inadequate Funding, others Hinder Implementation – Investigation' Vanguard (Lagos, July 10, 2023) <

perceptions by stakeholders that the issue of corruption has not been resolved and that there is a lack of transparency.⁸⁴

3.2 Comparative Analysis of the Legal Framework Regulating Indigenous Oil Companies in Brazil and Ghana's Upstream Petroleum Industry

The study conducts a comparative analysis of the legal framework regulating Indigenous oil companies in Brazil and Ghana's upstream petroleum industry to gather foresight for the growth and sustainability of Nigeria's upstream petroleum industry:

a. Brazil

Brazil has a longstanding history of industrial development policies for the oil and gas sector, beginning with the creation of Petrobras in 1953.⁸⁵ The government, through Petrobras, implemented Local Content Requirements (LCRs) to foster the growth of supplier companies and address challenges in the national oil industry, particularly in refining and deep-water production.⁸⁶ These policies helped build a complex industrial and innovation system in Brazil. After opening the upstream sector to other companies in 1995, the 1997 Brazilian Oil Law enacted a new regulatory framework, establishing the National Energy Policy Council (CNPE) and the National Oil, Gas and Biofuels Agency (ANP) to oversee the industry and Concession Agreement was adopted as part of this new framework.

In 1997, Brazil adopted local content policies as a way of driving sustainable growth and development.⁸⁷ This was done through Law No. 9478 of August 6, 1997, the Regulation of the Petroleum Industry in Brazil. The provisions of Chapter III, Section I, Article 3, empowered the Federal Government of

<https://www.vanguardngr.com/2023/07/pia-administrative-challenges-inadequate-funding-others-hinder-implementation-investigation/> accessed 13 June 2024.

⁸⁴ Olufunke Afolami, 'PIA: Success and Drawbacks Two Years on' Energy Focus Reports (December 4, 2023) <<https://www.energyfocusreport.com/pia-success-and-drawbacks-two-years-on/>> accessed 13 June 2024.

⁸⁵ Eduardo G. Pereira, Aaron Koenck, William A. Clavijo Vitto, Fernanda Delgado, João Victor Correia Lopes and Ana Carolina Marins De Carvalho, Brazil's Local Content Requirements: Evolution, Lessons Learned & International Trade Limitations, Oil and Gas, Natural Resources, and Energy Journal (2024) 9 (3) 388.

⁸⁶ Ibid.

⁸⁷ Abiodun Amuda-Kannike, Sylvanus Abila and Deinmobowei O. S. Abila, Oil and Gas Local Contents in Nigeria, Ghana and Brazil: A Comparative Analysis of Legal and Policy Frameworks, IJOCLLEP (2020) 2 (3) 113, 118.

Brazil to own the oil and gas within the territory of Brazil. Under Article 4, the monopoly of oil and gas resources is vested in the Federal Government of Brazil by Article 177 of the Constitution of the Federative Republic of Brazil. Brazil promotes local content policy religiously with stringent sanctions for non-compliance to build local capacity thereby promoting indigenous participation in its oil and gas industry.

In Brazil, the country leveraged sophisticated technologies to enhance offshore oil extraction, particularly in deep-water and pre-salt fields. The country's national oil company Petrobras significantly relied on technologies which has occasioned substantial developments in drilling and production *modus operandi* in the country. The country reformed its upstream petroleum industry's regulatory framework to promote transparency and attract investment to the sector and founded the National Agency of Petroleum, Natural Gas, and Biofuels to regulate the industry and to promote energy efficiency, security, transparency and sustainability in the oil industry.

Corruption also bedevilled Brazil's upstream petroleum industry but the country has made substantial endeavours to promote transparency in the sector through stringent enforcement of its auditing and compliance frameworks while Ghana promoted transparency in the management of its oil revenues through stringent enforcement of the Extractive Industries Transparency Initiative (EITI) provisions. Nigeria can enforce stringent anti-corruption measures to promote transparency in its oil revenue management through sincere and stringent implementation of the Nigerian Extractive Industries Transparency Initiative Act 2007 (NEITI) to bolster sustainability and confidence in Nigerian upstream petroleum industry⁸⁸ like the selected case study countries.

Brazil set numerous community development undertakings and environmental protection blueprints or frameworks to shape Indigenous oil companies' goodwill and to combat environmental degradations and other social impacts of their operations on the host communities while Ghana promoted environmental stewardship and community development as part of its indigenous oil companies' corporate social responsibilities practices to

⁸⁸ Olujobi, Olusola Joshua, Recouping Proceeds of Corruption: Are There Any Need to Reverse Extant Trends by Enacting Civil Forfeiture Legal Regime in Nigeria? *Journal of Money Laundering Control* (2021),24,4, 806-833.

mitigate the impact of oil operations on the host or local communities⁸⁹.

b. Ghana

In Ghana, the upstream petroleum activities are reported to have commenced in 2007 with commercial production in 2010.⁹⁰ Ghana's hydrocarbon exploration and production activities are mostly done along four major sedimentary basins: the inland Voltaian Paleozoic Basin, the Accra-Keta Cretaceous Basin (Eastern), Saltpond (Central) Paleozoic Basin, and the prolific TanoCape Three Points Cretaceous basin (Western).⁹¹ Ghana's legislative framework governing the upstream oil and gas activities includes the Petroleum (Exploration and Production) Act 1984 (PNDC Law 84); 56 the Ghana National Petroleum Corporation Act 1983 (PNDC Law 64); the Petroleum Income Tax Act, 1987 (PNDC Law 188); the Petroleum Commission Act, 2011 Act 82; and the Petroleum Revenue Management Act, 2011 (Act 815).⁹² Local content policy in Ghana is regulated by the combination of the following legal framework: The Petroleum (Local Content and Local Participation) Regulations, 2013, Local Content Policy, Industrial Policy, the Petroleum Law and the Model Petroleum Agreement. The challenge has been political interference, corruption and limited access to funds to implement its mandates among other unnecessary inferences with the activities and affairs of the oil and gas regulatory authorities by the government thereby impeding their efficiency in promoting local content in the industry.

The Petroleum (Local Content and Local Participation) Regulations, 2013 was formulated and the term 'local content' is defined as 'the quantum or percentage of locally produced materials, personnel, financing, goods and services rendered in the petroleum industry value chain and which can be measured in monetary terms.'

Regulation 1 provides for the regulations which include *inter alia* developing

⁸⁹ Olujobi, O.J., Irumekhai, O.S., An Analysis of the Abolition of Premium Motor Spirit (PMS) Subsidies in Nigeria: A Breach of Social Contract or Climate Change Action?, *Discover Sustainability* (2024), 5, 71.

⁹⁰ Shafic Suleman and Joshua Jebuntie Zaato, Local Content Implementation and Development in Ghana's Upstream Oil and Gas Sector for Sustainable Development: Contemporary Issues on Policy Management, *Discover Sustainability* (2021) 2 (21).

⁹¹ Theophilus Acheampong, Marcia Ashong and Victoria Crystal Svanikier, 'An assessment of local-content policies in oil and gas producing countries' *Journal of World Energy Law and Business* (2016) 9 (x),293.

⁹² *Ibid.*

local capacity in the petroleum industry through a mix of education and skills transfer.⁹³ The Regulations cover local content matters in petroleum activities.⁹⁴ Indigenous Ghanaian companies are given preferential treatment in the grant of a petroleum agreement or a licence concerning petroleum activities.⁹⁵ They also enjoy preferential treatment in the acquisitions of goods and services as the entities must establish a bidding process that gives preference to indigenous Ghanaian companies.⁹⁶

Regulation 49 defines an indigenous Ghanaian company as a company incorporated under the Companies Act, 1963 with at least 51% of its equity owned by a Ghanaian holding at least 80% of executive and senior management positions and 100% of non-managerial and other positions.

Under the Regulations, there is a requirement for a minimum requirement of 5% equity participation by Ghanaian companies in petroleum contracts and licenses.⁹⁷ No doubt, this is aimed at ensuring that Ghanaians benefit directly from the petroleum resources. A general obligation is imposed on entities carrying out petroleum activities to ensure that local content forms part of its activities and requirements.⁹⁸ Companies involved in petroleum activities must submit a local content plan as part of their development plan, detailing how they will achieve the required local content levels.⁹⁹ Non-Ghanaian companies are required to submit an employment and training sub-plan to the Petroleum Commission.¹⁰⁰ The plan will outline matters like the time frame within which Ghanaian employees may be hired by the company¹⁰¹, employment and training activities for a certain reporting period¹⁰², the number of new Ghanaian employees employed during the quarter for that period.¹⁰³ The Regulations also mandate that companies must patronise

⁹³ Petroleum (Local Content and Local Participation) Regulations, 2013, Regulation 1(b).

⁹⁴ *Ibid*, Regulation 2.

⁹⁵ *Ibid*, Regulation 4(1).

⁹⁶ *Ibid*, Regulation 11.

⁹⁷ *Ibid*, Regulation 4(2).

⁹⁸ *Ibid*, Regulation 3.

⁹⁹ *Ibid*, Regulation 7.

¹⁰⁰ *Ibid*, Regulation 17.

¹⁰¹ Petroleum (Local Content and Local Participation) Regulations, 2013, Regulation 17(1)(b).

¹⁰² *Ibid*, Regulation 17(2)(a).

¹⁰³ *Ibid*, Regulation 17(3).

Ghanaian insurers¹⁰⁴, lawyers¹⁰⁵ and financial services institutions.¹⁰⁶ However, exceptions exist where the company may use foreign insurance services¹⁰⁷ and foreign financial institutions particularly where the desired services or capacities are unavailable in the country.¹⁰⁸

To ensure the purposes of the Regulations are not defeated, the Petroleum Commission is required to monitor and investigate the activities of the petroleum companies or entities.¹⁰⁹ In addition, the Ghanaian government established the Enterprise Development Project ('EDC') to improve the capacity of indigenous companies to meet the standards of the oil and gas sector.¹¹⁰ The project is being financed by a consortium of multinational oil companies known collectively as 'Jubilee Partners'.¹¹¹ Austin Dziwornu has noted that the EDC can aid in the realisation of Ghana's local content policy.¹¹² This is because the EDC has exposed the indigenous businesses to the norms and values in the oil and gas industry providing opportunities to network, thus gaining social capital among others in the country.

Ghana's local content policy is not without challenges as earlier stated, financial constraints pose a hurdle to the active engagement of Ghanaian companies in the oil and gas sector. In Ghana, the lack of adequate support from local banks for high-risk exposure upstream activities creates long-term financing constraints.¹¹³ Ghana has invested in training and capacity-building exercises to promote local expertise in the oil and gas industry such as partnerships with international oil and gas companies, and energy, and oil and gas educational institutions. Ghana formulated policies and regulations to boost its local content and Indigenous oil companies' capacities or involvement in the oil and gas activities in the country.

3.3 Lessons Nigeria Can Learn from Brazil and Ghana for the Sustainability

¹⁰⁴ Ibid, Regulation 27(2).

¹⁰⁵ Ibid, Regulation 29.

¹⁰⁶ Ibid, Regulation 31(1).

¹⁰⁷ Ibid, Regulation 28.

¹⁰⁸ Ibid, Regulation 31(2).

¹⁰⁹ Ibid, Regulation 44.

¹¹⁰ Austin Dziwornu Ablo, *Local Content and Participation in Ghana's Oil and Gas Industry: Can Enterprise Development Make a Difference? The Extractive Industries and Society* (2015) 2 (2) 323.

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ Ibid.

of its Indigenous Oil Companies Operating in the Upstream Petroleum Industry

The key lessons Nigeria could learn from Brazil and Ghana for the sustainability of its Indigenous oil companies operating in the upstream petroleum industry:

In Brazil, the diversification and risk management of a state-owned oil company called Petrobras is a successful strategy to diversify its operations such as deep-water exploration and production to combat its over-reliance on a particular category of oil field or geological region. This diversification strategy mitigates the risks related to intermittent erratic oil prices, operational challenges¹¹⁴ and the global demand for energy transition to low-carbon sources of energy or carbon neutrality to mitigate the adverse effects of climate change such as greenhouse gas emissions and global warming among others.¹¹⁵

In Ghana, the government encouraged local oil and gas companies to invest in different areas of the industry such as supply chain services, exploration, production, geological survey, seismic, lube, security, logistic or haulage and refining operations among others. This is to expand the capacity of the Ghanaian oil companies away from just exploration and production to promote a more resilient and sustainable oil and gas industry. Nigerian oil companies can replicate this by adopting diversification strategies to mitigate the risks associated with crude price volatilities in the international oil markets and operational uncertainties associated with oil and gas operations¹¹⁶ by encouraging investments in other oil and gas sub-sectors

¹¹⁴ Olujobi, O.J., Olarinde, E.S., Yebisi, T.E., Okorie, U.E., (2022), COVID-19 Pandemic: The Impacts of Crude Oil Price Shock on Nigeria's Economy, Legal and Policy Options, *Sustainability* (2022), 14(18), 11166, <<https://doi.org/10.3390/su141811166>> August 17, 2024.

¹¹⁵ Olujobi, Olusola Joshua et al (2023), Legal Responses to Energy Security and Sustainability in Nigeria's Power Sector Amidst Fossil Fuel Disruptions and Low Carbon Energy Transition, *Heliyon*, Open Access, Elsevier BV, 9(7), e17912, <[https://www.cell.com/heliyon/fulltext/S2405-8440\(23\)05120-4](https://www.cell.com/heliyon/fulltext/S2405-8440(23)05120-4)> accessed August 5, 2024.

¹¹⁶ Olujobi, O.J., et al, Carbon Emission, Solid Waste Management, and Electricity Generation: A Legal and Empirical Perspective for Renewable Energy in Nigeria, *International Environmental Agreements: Politics, Law and Economics*, DOI 10.1007/s10784-021-09558. <<https://link.springer.com/article/10.1007%2Fs10784-021-09558-z#citeas>>accessed August 17, 2024.

such as the promotion of more investment in renewable energy technologies projects or sources¹¹⁷.

Ghana enacted an unambiguous, unwavering, and transparent legal and regulatory framework to boost its regulatory institutions and to promote coherent and stringent implementation of its policies to attract more investments and promote sustainability in its oil industry which Nigeria can replicate in its oil and gas sectors.

Brazil promotes local content by necessitating foreign companies to partner with local companies to promote values, skills, substantial investment and technology transfers in the industry. Ghana also encouraged joint venture partnerships among international oil firms and local oil companies to boost the growth of indigenous oil firms through constant training.¹¹⁸

Nigeria can promote the sustainability of its Indigenous oil companies operating in the upstream petroleum industry by strengthening its local content policies via the promotion of partnerships or business mergers between foreign and local companies to enhance its capacity and boost the healthy business competitiveness of indigenous oil companies like Brazil and Ghana.

Nigeria can invest more in technologies and training in local capacities development and growths of indigenous oil companies operating in Nigeria's upstream petroleum Industry through cutting-edge or modern technologies and focus on building local capacities or skills to improve efficiency and innovation of indigenous oil companies operating in Nigeria's upstream petroleum industry.

In Nigeria, prioritization and protection of the host community development funds through constant engagement of the host communities environmentally affected by oil and gas operations can promote long-term business

¹¹⁷ Olujobi, O.J., "The Legal Sustainability of Energy Substitution in Nigeria's Electric Power Sector: Renewable Energy as Alternative, Protection Control Modern Power System (2020), 5, 32, <<https://doi.org/10.1186/s41601-020-00179-3>> accessed August 19, 2024.

¹¹⁸ Olujobi, O.J., Nigeria's Climate Change Act 2021: A Pathway to Net-Zero Carbon Emission, Energy Security and Sustainability, Environmental Science and Pollution Research, (2022), DOI 10.1007/s11356-024-33347-1 accessed August 17, 2024.

relationships strengthen Indigenous oil companies' resiliency and sustainability of the oil and gas industry, and ensure that the benefits of oil resources are maximized for Nigeria's economic growth and development¹¹⁹.

4. CHALLENGES FACED BY INDIGENOUS OIL COMPANIES OPERATING IN NIGERIA'S UPSTREAM PETROLEUM INDUSTRY

1. **Limited access to capital and financing:** Due to the capital-intensive nature of oil and gas projects, the indigenous oil and gas players require significant amounts of capital to execute the oil and gas projects and there is an acute need for finance as indigenous oil companies struggle with debts.¹²⁰ However, securing capital is not always straightforward as there are certain challenges such as unattractive lending terms including interest rates, tenor, transaction costs, security requirements, and excessive or outrageous ratings among others.¹²¹
2. **Faulty security architecture:** Crude oil theft, vandalism, and insecurity of life and property are the risks besetting the indigenous players in the upstream sector of the oil and gas industry.¹²² The issue of oil theft and vandalism constitutes a security risk for investors partnering with new

¹¹⁹ Olujobi, O.J., & Odogbo, I.S., Strategic Evaluation of the 2021 Nigeria Climate Change Act: Surmounting Challenges, Paving the Way for Success, and Envisioning Future Trajectories", *Social Sciences & Humanities Open*, (2024),10, 2024, 100928. <https://www.sciencedirect.com/science/article/pii/S2590291124001256?via%3Dihub>

¹²⁰ Indigenous oil Firms Battle for Survival as Debts Hit Banks *The Punch Newspapers* (27 December 2018) <<https://punchng.com/indigenous-oil-firms-battle-for-survival-as-debts-hit-banks/>> Accessed 19 June 2023.

¹²¹ Exploring Funding Opportunities For the Gas Sector in Nigeria (Axxela, 25 February 2021) <https://www.nigeriangasassociation.org.ng/assets/pdf/resources/The%20NGA%2012th%20International%20Conference%20Presentations_axxel%20limited_Bolaji%20Ogunsanya.pdf> Accessed 21 June 2023.

¹²² Kingsley Jeremiah, 'Addressing uncertainties in the upstream oil sector through regulatory instruments' *The Guardian* (Abuja, 10 August 2022) <https://guardian.ng/energy/addressing-uncertainties-in-upstream-oil-sector-through-regulatory-instruments/> Accessed 21 June 2023.

marginal field owners. While there are opportunities available, the persistent business and security risks remain a challenge for potential operators. Previous marginal field owners have experienced frustration due to inconsistent returns on investment caused by crude theft.¹²³ Nigeria's daily loss of 108,000 barrels in 2022, as reported by the NUPRC, is significant and unacceptable for a country heavily reliant on borrowing¹²⁴.

3. **Low patronage:** Industry players have complained about the low patronage from international oil companies. Indigenous operators have taken loans from local and international banks to enhance their exploration and production capabilities, experts emphasize the significance of IOCs operating in the country supporting and utilizing the services of these indigenous oil operators. By doing so, indigenous operators can fulfil their financial obligations to the banks that provide them with loans.¹²⁵
4. **Lack of technological expertise and infrastructure:** Technological advancements have played a vital role in the entire process of oil production, ranging from initial exploration to the refining stage.¹²⁶ Innovations in upstream processes have led to significant improvements, enabling the extraction of larger quantities of oil and gas and enhancing the recovery rates as a result, these technological developments have increased profitability and overall gains from existing oilfields. Indigenous oil companies encounter difficulties due to limited technical capabilities to effectively manage their acquired oil fields and licenses. As a result, they encounter challenges related to a lack of expertise in key

¹²³ Editorial, 'Futility of marginal fields amid security challenges' The Guardian (13 July 2022) <<https://guardian.ng/opinion/futility-of-marginal-fields-amid-security-challenges/>> Accessed 19 June 2023.

¹²⁴ Olujobi, O.J.; Olarinde E.S, Yebisi, T.E., The Conundrums of Illicit Crude Oil Refineries in Nigeria and Its Debilitating Effects on Nigeria's Economy: A Legal Approach, *Energies* (2022). 15(17), 6197,, <<https://doi.org/10.3390/en15176197>> accessed August 17,2024.

¹²⁵ Nigerian Content Development and Monitoring Board, Nigerian Content: Indigenous Players Still Battling With Patronage Nigerian Content: Indigenous Players Still Battling With Patronage (Press release)<<https://ncdmb.gov.ng/nigerian-content-indigenous-players-still-battling-with-patronage-nigerian-content-indigenous-players-still-battling-with-patronage/>> Accessed 21 June 2023

¹²⁶ Oruwari Humphrey and Adewale Dosunmu, 'The Critical Success Factors for Marginal Oil Field Development in Nigeria' *Journal of Business and Management Sciences* [2017] 5 (1) 5

technical areas in the sector¹²⁷

5. **An insufficient number of skilled staff:** The Nigerian Oil and Gas Industry Content Development Act 2010 has fostered the promotion of local employment by multinational companies and the engagement of indigenous firms, resulting in a scenario where both indigenous and multinational companies are vying for Nigeria's limited skilled labour pool.¹²⁸ The local companies experience significant employee turnover, as their trained staff are often lured away by international oil companies.
6. **Harsh fiscal framework:** Nigeria as a rent-seeking state heavily depends on revenue generated from oil and gas exploration and exploitation activities.¹²⁹ The incumbent administration has not indicated any intention to move away from the rentier state approach.¹³⁰ The revenue-generation activities of the Federal Government have created a system where multiple taxes and royalties are levied on oil and gas companies. Indigenous companies operating in the upstream oil and gas sector are liable to pay several taxes such as the Company's Income Tax,¹³¹ the Hydrocarbon tax,¹³² the Tertiary Education Tax,¹³³ The National Agency for Science and Engineering Infrastructure Levy,¹³⁴ *et al.* These taxes, levies and royalties will certainly diminish the margin of profits to be derived by indigenous companies and make their business operations very difficult to conduct.
7. **Corruption and lack of transparency in selecting qualified candidates:**

¹²⁷ Ibid, 6.

¹²⁸ Economist Intelligence, 'Nigeria: Local participation in the oil sector is growing' <<http://www.eiu.com/industry/article/341161618/nigeria-local-participation-in-the-oil-sector-is-growing/2013-11-12>> Accessed 24 June 2023

¹²⁹ Fada, Douperre Paul and Solomon Charles Ibimina Karibo, 'The Policy and Politics of the Nigerian Local Content Policy in the Nigerian Petroleum Sector' International Journal of Advanced Research in Public Policy, Social Development and Enterprise Studies [2021] 4 (2) 158

¹³⁰ Renewed Hope 2023: Action Plan for A Better Nigeria (All Progressives Congress) 34 <https://apc.com.ng/img/apc_renewed_hope.pdf> Accessed 21 June 2023

¹³¹ Companies Income Tax Act 2007, s40..

¹³² Petroleum Industry Act, 2021, ss. 261, 267 and 268

¹³³ Finance Act, 2023, s.26; Tertiary Education Trust Fund (Establishment, Etc.) Act, 2011, s.1.

¹³⁴ National Agency for Science and Engineering Infrastructure Act, s.20(2); Federal Inland Revenue Service 'Information Circular for The Administration of The National Agency for Science and Engineering Infrastructure Levy' (Information Circular, 1st September 2022) <<https://www.firs.gov.ng/wp-content/uploads/2022/09/information-circular-for-the-administration-of-naseni.pdf>> Accessed 19 June 2023

Corruption has been identified as one of the factors militating against the effective implementation of local content development in Nigeria.¹³⁵ Nigeria ranks 145 out of 180 countries on Transparency International’s index which represents an indictment of the pervasive state of corrupt practices in Nigeria.¹³⁶ The lack of transparency in the award of marginal fields has tainted the upstream sector with allegations of incessant favouritism and endemic corruption in the industry.¹³⁷

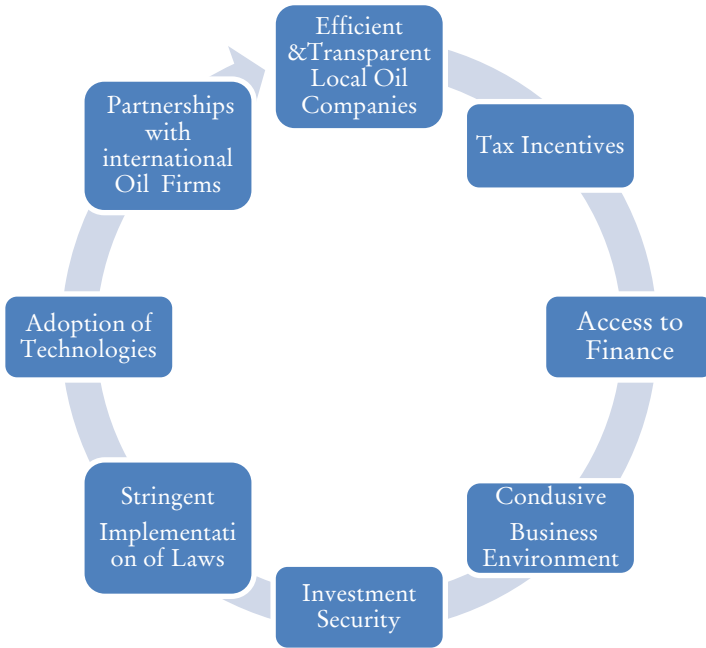


Figure: 1 A Hybrid Strategies or Panaceas Designed for Promoting

¹³⁵ Peter Nwaguru and Waribugo Sylva, 'Local Content Strategy Implementation in Nigeria: Challenges and Prospects' African Journal of Business and Economic Development [2022] 2 (4);

¹³⁶ Transparency International, 'Our Work In Nigeria' (February 2024) <https://www.transparency.org/en/countries/nigeria> Accessed 19 June 2023

¹³⁷ Kingsley Jeremiah, 'FG Urged to Release Identity of Marginal Fields' Awardees' The Guardian (Abuja, 02 February 2022) <<https://guardian.ng/energy/fg-urged-to-release-identity-of-marginal-fields-awardees/>> Accessed 21 June 2023.

Sustainability of Indigenous Oil Companies' Operation in Nigeria's Upstream Petroleum Industry

Figure 1 is showing the strategies or panaceas designed by the study for promoting the sustainability of indigenous oil companies operating in Nigeria's upstream petroleum industry to promote economic growth and development in the country.

5. CONCLUSION

The marginal fields and local content policies were introduced to encourage the participation of indigenous companies in the oil and gas industry. Despite these initiatives, indigenous oil companies still encounter numerous obstacles. The challenges faced by Indigenous oil companies operating in the upstream sector of Nigeria's oil and gas industry stem from security risks, operational constraints, and corrupt practices among others.

Some of the laws applicable to indigenous companies in the upstream sector can pose challenges for the companies, especially in matters of levies, royalties and taxation. In addition to legal constraints, Indigenous oil companies face challenges in areas such as access to financing, technologies and technical expertise, infrastructure, and market-healthy competition. Limited financial resources and difficulty in obtaining funding hinder their ability to invest in exploration and production activities. Furthermore, the lack of advanced technologies and technical expertise can impede their operational efficiency and productivity. Insufficient infrastructure, particularly in remote areas, adds to the challenges confronted by these companies.

5.1 Recommendations

To remedy these challenges, the following recommendations are proposed for adoption and implementation to combat the challenges militating against Indigenous oil companies operating in Nigeria's upstream petroleum industry for their sustainability:

1. **Strengthen Implementation of Laws:** It is crucial to ensure the effective implementation of existing laws governing the oil and gas industry, with a specific focus on provisions that support the growth and development of

ICs. The NCDMB and NUPRC can achieve this via the enactment of subsidiary legislations under the enabling provisions in the relevant Acts. The NCDMB has already some ministerial regulations such as Nigerian Oil and Gas Industry Technology Transfer Regulations, Nigerian Oil and Gas Research and Development No.52, Registration of Oil and Gas Professionals with Nigerian Professional Bodies-No.48, Training in the Nigerian Oil and Gas Industry, Compliance and Enforcement Regulations. However, with the current state of dissatisfaction, more needs to be done in strengthening enforcement of the laws.

2. **Enhance Access to Financing:** Measures should be taken to improve Indigenous oil companies' access to financing, such as establishing dedicated funds or development finance incentives for supporting their operations. Institutions like the Central Bank of Nigeria or the Nigerian Sovereign Investment Authority can be entrusted with managing the funds.
3. **Infrastructure Development:** Invest in infrastructure development, particularly in remote oil-producing regions, to improve accessibility and reduce operational costs for indigenous companies. This includes the construction of roads, power supply, and other essential facilities necessary for oil and gas operations.
4. **Collaboration and partnerships with international oil companies:** Encouraging partnerships and alliances can enhance the competitiveness and collective capabilities of indigenous companies. Indigenous companies can create strategic partnerships with multinational oil companies to develop capabilities in areas they are deficient in, as well as, facilitate the transfer of technology. Section 45 of the Nigerian Oil & Gas Industry Content Development Act recognises potential partnerships like these.
5. Indigenous oil companies should invest in asset ownership to obtain benefits from NCDMB because the Nigerian Oil and Gas Industry Content Development Act utilizes asset ownership as a key criterion for defining Nigerian companies and granting them certain benefits and advantages.¹³⁸ Companies are also enjoined to set fair and reasonable prices that will attract patronage to encourage healthy competition and

¹³⁸ Nigerian Content Development and Monitoring Board, 'Nigerian Content: Asset Ownership Key To Nigerian Content Development -Wabote' (Press release) <https://ncdmb.gov.ng/asset-ownership-key-to-nigerian-content-development-wabote/> Accessed 21 June 2023.

sustainability.¹³⁹

¹³⁹ Nigerian Content Development and Monitoring Board, 'Local Coys Must Be Competitive-ES NCDMB' (Press release) <https://ncdmb.gov.ng/local-coys-must-be-competitive-es-ncdmb/> Accessed 21 June 2023.