

AN APPRAISAL OF THE LOCAL CONTENT REQUIREMENT IN THE NIGERIAN ELECTRICITY SUPPLY INDUSTRY

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Abstract

The Nigerian Electricity Sector is an emerging area of law. This is not necessarily because this area of law is novel but because of the increased attention given to this area by the Government through increased legislation and regulations. The new Regulations, reminiscent of the Federal Government's intentions to privatise the sector have started edging towards such regulations as embedded and captive energy. As a result of the tilt towards privatisation, there is also the need for Regulations to promote local content in Nigeria's Electricity Sector. It is the aim of this paper to appraise the legal framework for the human capital development in the Nigerian Electricity Supply Industry. In so doing, this paper will make use of the doctrinal approach. This Paper makes use of Sources of Laws (that is, legislations and case laws) as well as Secondary Sources of Laws (that is Articles and Presentations). The article recommends that beyond the enacting local content in the Nigerian Electricity Supply, there should be enforcement and supervision of the licensees by the Nigerian Electricity Regulatory Commission (NERC).

Keywords: Nigerian Electricity Supply industry, local content, licensees, regulations

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1.0 Introduction

Every country has to make a decision in delicately balancing two interests: attracting foreign investors to its country as well as protecting its citizenry. Nigeria, for example has tried to balance this via various Decrees. In some instances, the Government went to the other extreme and nationalised all foreign companies through the Nationalisation Policy as shown in the Nigerian Enterprises Promotion Decree. The trend shifted in the Nigerian Investment Promotion Commission which provides such guarantees as the free repatriation of capital and interests to the home country as well as guarantee on freedom from expropriation and nationalism.

Nonetheless, it is still in the interest of every sovereign nation to ensure the development of its human capital and citizenry. As such, what a number of developing countries have sought to deal with this problem by ensuring the attraction of foreign investors but at the same time, these foreign companies have to make use of Nigerian local content through patronising Nigerians goods, services, companies as well as Nigerian professionals as a matter of priority.

In the Oil and Gas Sector, the Nigerian Oil and Gas Industry Content Development Act 2010 (Local Content Act) has made provisions for local content in the oil and gas sector. It was not until 2013 that local content was provided for in the Nigerian Electricity Supply Industry through the issuance of the Nigerian Electricity Regulatory Commission Regulations On National Content Development For The Nigerian Electricity Supply Industry 2013.

The Electricity Act 2023 (EA 2023) has legislated local content such that the Act has for the first time provided for the necessity of Local Content in the Nigerian Electricity Supply Industry

2.0 Conceptual Clarification of Terms

2.1 Human Capital

Human capital refers to human beings who possess skills, knowledge and attitudes which are utilised in the production process¹. As has been said succinctly by Anna Bruce-Lockhart, in the 1960s, the term human capital was made popular by two American economists, Gary Becker and Jacob Mincer, who used it to describe the mixture of skills, knowledge, experience, habits and personality in each of us that can be put to productive use².

¹ R. A. Alani, W. A. Isola, "Human Capital Development in Nigeria" (*Institute of Organization and Management in Industry, Vol 5(3); p. 58 – 71 Year 2009*)<<https://api-ir.unilag.edu.ng/server/api/core/bitstreams/d7de067d-eb2e-4b6c-9d00-f2df6785e7b8/content>> accessed 18 March, 2024

² Anna Bruce-Lockhart, "What is Human Capital? Everything You Need to Know" (*World Economic Forum, 27 June, 2019*) <<https://www.weforum.org/agenda/2019/06/what-is-human-capital-know/>> accessed 18 March, 2024

2.2 Local Content

In recent times, the concept of local content has found traction particularly in the Third World and developing economies³. Essentially, this encourages the use of local materials, local skills and manpower. The Cambridge Dictionary defines local content as the materials, workers, etc. used to make a product that are from the area where the product is made rather than being imported⁴.

2.3 Nigerian Electricity Supply Industry

The Nigerian Electricity Supply Industry means the totality of activity in the production, transport and delivery of electrical energy to consumers and customers within the Federal Republic of Nigeria which activity including the generation, transmission, distribution, retail, trading of electricity energy and supporting services to any of these five segments⁵.

3.0 The Legal Framework for Human Capital Development in the Nigerian Electricity Supply Industry

3.1 National Electric Power Policy 2001

Chapter 11 of the Policy makes provision for human capital development in the Nigerian Electricity Supply Industry. Policy 11.0 stipulates that continuous education and training of personnel for the electricity industry is necessary to keep up with rapid technological changes. In achieving these aims, the Federal Government is enjoined to support the establishment of a National Electricity Institute⁶. Further, Electricity Sector Companies are encouraged by the Policy to train indigenous personnel and support the National Electricity Institute to Universities and Polytechnics⁷.

The Policy also encouraged tertiary institutions to offer courses in electrical engineering and management⁸.

3.2 Nigerian Electricity Regulatory Commission Regulations on National Content Development for The Nigerian Electricity Supply Industry 2013 (NCD, NESI Regulation 2013)

The Regulation is made applicable to all licensees of the Nigerian Electricity Regulatory Commission⁹. The Regulation imposes on licensees the duty of having the development of Nigerian content as a key component of their philosophy for project execution. Licensees have a duty to give priority to Nigerian companies and

³Joe Asamoh, "Local Content in the Oil and Gas Industry" (*Oil and Gas IQ*, 22nd September 2014) <<https://www.oilandgasiq.com/strategy-management-and-information/articles/local-content-in-the-oil-and-gas-industry>> accessed 10 October, 2024

⁴Cambridge Dictionary, "Local Content" (*Cambridge Dictionary*) <<https://dictionary.cambridge.org/dictionary/english/local-content>> accessed 10 October, 2024.

⁵The Regulation On National Content Development For The Power Sector 2014

⁶Policy 11.1 (i) of the National Electric Power Policy

⁷Policy 11.1 (ii) of the National Electric Power Policy

⁸Policy 11.1 (iii) of the National Electric Power Policy

⁹Regulation 2 of the NCD, NESI Regulation 2013

personnel in awarding contracts. Further, Nigerian goods and services should be given priority¹⁰.

Unlike the 2014 Regulation, the NCD, NESI Regulation 2013 provides that within 30 days of the end of each half year in the financial year, all companies shall submit a list of contracts, subcontracts and purchase orders exceeding ₦15,000,000 or such other limit as the Commission may determine awarded during the year¹¹. Further, such contracts should contain a Labour Clause¹².

3.3 The Regulation On National Content Development for The Power Sector 2014 (NCDPS Regulation 2014)

Although this Regulation was made pursuant to the Electric Power Sector Reform Act 2005, the Regulation is still very much relevant to this topic. The Objectives of this Regulation is stated in **Regulation 3** inter alia:

- i. The deliberate utilization of Nigeria's human and material resources, goods, works and services in the industry¹³.
- ii. Operating the NESI at all levels of its complexity to involve Nigerian people and expertise¹⁴.

In furtherance of its Objective, the Nigerian Electricity Regulatory Commission (NERC) should establish a Joint Qualification System (JQS)¹⁵. The JQS is the sole system for Nigerian content registration and pre-qualification of contractors in the NESI. The NERC has the duty to promote the continuous growth of Nigerian content in recruitments¹⁶, procurements, implementation of projects, operations and consultancies in the NESI by ensuring strict compliance with the Regulation¹⁷.

The Regulation applies to all licensees of the Nigerian Electricity Regulatory Commission¹⁸. The Regulation imposes on licencees the duty of having the development of Nigerian content as a key component of their philosophy for project execution¹⁹. Licensees have a duty to ensure that first consideration is given to qualified Nigerian companies for the supply of goods and services²⁰. Also, priority is to be given to goods made in Nigeria and to services provided by Nigerian firms in the award of contracts²¹. Licensees have the duty to ensure that no more than 5%

¹⁰Regulation 10 of the NCD, NESI Regulation 2013

¹¹Regulation 9(b) of the NCD, NESI Regulation 2013

¹²Regulation 9(c) of the NCD, NESI Regulation 2013

¹³Regulation 3(1)(a) of the NCDPS Regulation 2014

¹⁴Regulation 3(1)(b) of the NCDPS Regulation 2014

¹⁵Regulation 4(c) of the NCDPS Regulation 2014

¹⁶Regulation 10 of the NCDPS Regulation 2014

¹⁷Regulation 6 of the NCDPS Regulation 2014

¹⁸Regulation 3(1)(b) of the NCDPS Regulation 2014

¹⁹Regulation 4 of the NCDPS Regulation 2014

²⁰Regulation 6 of the NCDPS Regulation 2014

²¹Regulation 9 of the NCDPS Regulation 2014

of the managerial position is reserved for expatriates²². Intermediate and Junior positions are however reserved exclusively for Nigerians²³.

Further, licensees have the duty to formulate a legal framework for the development and promotion of Nigerian content²⁴. Licensees must ensure that industry agreements are in compliance with the requirements. Moreover, all licensees must ensure that its contractors and subcontractors must comply with the Nigerian Content Development²⁵.

This requirement to comply with the Regulations may be waived by the NERC where there is a shortage of Nigerian content. However, this waiver cannot last for a period of more than three (3) years²⁶. Interestingly, the licensee also needs to show that efforts are being made to train employees²⁷. Eventually, the Regulations envisages that the Nigerian employees should be able to take the positions of the expatriates.

The Regulation further provides those professional services such as Engineering, Insurance, Legal; Financial and Capital Market Services should be executed by Nigerian professionals²⁸.

3.4 The Electricity Act 2023 (E.A, 2023)

The Objectives of the Act, stated in **Section 1** of its provisions include inter alia:

(g) stimulate policy measures that will attract investments across the Nigerian electricity value chain to re-energise economic growth, drive job creation and improve the living conditions of Nigerians;

(n) promote indigenous capacity in technology for renewable energy sources through a framework for local content in the Nigerian electricity supply industry.

The Minister of Power has the duty to execute the Objectives of the Act²⁹.

In furtherance to the recommendation of the National Electric Power Policy 2001, the EA 2023 establishes the National Power Training Institute of Nigeria³⁰. The Institute has the following functions inter alia: to serve as a focal point for human resources development and workforce capacity building as well as to train practitioners as well as professionals in the power sector³¹. The Institute has the

²²Regulation 10(b) of the NCDPS Regulation 2014

²³Regulation 10(d) of the NCDPS Regulation 2014

²⁴Regulation 6(a) of the NCDPS Regulation 2014

²⁵Regulation 7 of the NCDPS Regulation 2014

²⁶Regulation 9(g) and (h) of the NCDPS Regulation 2014

²⁷Regulation 10(e) of the NCDPS Regulation 2014

²⁸Part V of the NCDPS Regulation 2014

²⁹Section 5(1)(D) of the E.A, 2023

³⁰Section 125 of the E.A, 2023

³¹Section 186(1) and (2), EA 2023

power to collate and maintain a database on existing manpower and skill-gap in the NESI based on its trainings and research³².

The Act further establishes a Power Training Fund. These monies accruable from this Fund shall be utilised to promote and encourage the acquisition of skills and human capacity development in the NESI with a view to generating a pool of indigenously trained manpower sufficient to meet the needs of the power sector and the economy in general³³. This Fund is exempt from tax under the E. A 2023³⁴.

Section 227 of the EA 2023 empowers the NERC to monitor and ensure compliance with the local content requirement provided for under NCDPS Regulation 2014. **Section 228 of the EA 2023** reiterates the commitment of the Federal Government to prevent unlawful expropriation of assets in the power sector.

One would have expected that the Electricity Act, having been enacted nine (9) years after the issuance of the NCDPS Regulations 2014 would have taken the chance to fill up gaps in the framework and to rectify the problems that would have arisen in the course of implementing the Regulations. It is a sad disappointment that the legislators and stakeholders failed to take advantage of this opportunity.

Nonetheless, it is commendable that the Regulations have been recognised by legislative process.

4.0 A Contrast Between the Nigerian Oil and Gas Industry Content Development Act 2010 (Local Content Act) and the Regulation on National Content Development for the Power Sector 2014 (The Regulation)

One of the striking contrasts that is immediately noticed after an initial perusal of the two legal frameworks is that while the Local Content Act has a more forceful tone, the Regulation is more suggestive. For example, while the Local Content Act provides for exclusive consideration³⁵ given to Nigerian goods, services and professionals in certain areas, the Regulations suggests that Nigerian goods, services and professionals should be given priority³⁶.

By the provisions of the Act, compliance to the Act is a major criterion in the awarding of contracts. For the Regulations on the other hand, the licensees are merely enjoined to ensure that contractors and subcontractors comply with the local content requirement of the Regulations³⁷.

The Act enjoins that while bidding for contracts, the company that shows that highest percentage of Nigerian local content should win the competition³⁸. There is no such requirement under the Regulation. Undoubtedly, the Act seeks to promote a

³²Section 186(2)(f), EA 2023

³³Section 203, EA , 2023

³⁴vSection 204, EA , 2023

³⁵Section 3(2) of the Local Content Act

³⁶ Regulation 6 of the NCDPS Regulation 2014

³⁷Regulation 7 of the NCDPS Regulation 2014

³⁸Section 16, E.A 2023

healthy competition between licensees to ensure that Nigerian local content has the pride of place.

In other respects, the Act is similar to the Regulations.

5.0 Recommendations

The Electricity Act 2023 as well as the 2014 Regulations are instrumental in understanding the legal framework for the development of human capital in the Nigerian Electricity Supply Industry. Nonetheless, it is recommended as follows:

- i. That the Electricity Act should be amended to provide for a more robust framework in relation to the development of human capital in the Nigerian Electricity Supply Industry.
- ii. The Electricity Act should move from sounding suggestive to actually imposing rights and duties on licensees.

6.0 Conclusion

In conclusion and from the foregoing, it is obvious that the legal framework for the development of human capital in Nigeria still leaves more to be desired.