MEASUREMENT AND IMPLEMENTATION OF LOCAL CONTENT IN NIGERIA – A FRAMEWORK FOR WORKING WITH STAKEHOLDERS TO INCREASE THE EFFECTIVENESS OF LOCAL CONTENT MONITORING AND DEVELOPMENT

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EXECUTIVE SUMMARY

Local content policies offer exciting new potential for economic development in Nigeria by encouraging economic activity, value addition, and job creation. Through Nigerian content, Nigeria may finally be able to make its oil wealth a blessing instead of a curse. Almost three years after the passage of the landmark Nigerian Oil and Gas Industry Content Development Act (the Nigerian Content Act or NOGICD Act) in 2010, significant progress has been made. At this crucial juncture, this report reviews the progress made and next steps needed to further advance local content in light of important policy questions that need to be answered about the how the NOGICD Act operates in practice and how it is being implemented.

Nigeria has been working to implement local content through a newly created agency, the Nigerian Content Development and Monitoring Board (NCDMB). The NCDMB has an enormous task ahead of it. Upon its creation, the Board had to immediately begin receiving and reviewing Nigerian content plans and dealing with numerous applications for approvals. At the same time, it had to set policies and guidelines while embarking on an ambitious programme to improve Nigerian content through capacity building initiatives while it was still establishing itself as an independent agency and sorting out its physical space, staffing needs, budget, and internal processes. Almost three years after its formation, there are still several aspects of its mandate that it has barely begun to address and there is no standard or defined way to measure local content in Nigeria.

In terms of concrete deliverables, the NCDMB has an ambitious agenda for Nigerian content development and large capacity building projects. Local content has immense potential to transform the Nigerian economy. By creating jobs and substituting the importation of goods and services with in-country manufacturing, Nigerian content can allow the country to avoid the so-called ‘resource curse’ and transition to advanced capitalist development.

As Section 2 of this report describes, the Schedule to the NOGICD Act sets very specific targets in 280 separate oil and gas activities. However, that is only the beginning of addressing the crucial question of how to measure local content. The real question is how to calculate the percentage of local content in any given activity to determine what the existing level is compared to the target in the Act. This form of measurement has so far been an area that the NCDMB has been slow and/or reluctant to develop and may require more consultation, support and oversight from various stakeholders as well as the House Committee on Local Content. The Board has also been slow to move into the evaluation of Nigerian content in bidding for oil licences—a an important priority both for ensuring Nigerian content and for ensuring full benefit from the awarding of oil licences.

The Schedule does not adequately define how these target percentages or figures are to be measured. The NOGICD Act requires 100% compliance with all targets in order to operate in Nigeria even though many targets for Nigerian participation are well beyond the current capacity of Nigerian companies. Absent concrete definitions and guidelines for measuring Nigerian content, the NCDMB has fallen back on simplistic or surface measures for monitoring and evaluation. Where possible, they have relied on informal and opaque rules and procedures as well as the individual discretion of its key officers. This decision provides valuable flexibility and possibly even short-term local content gain, but at the cost of coordinated strategy and sustainable organisation-building. A robust and appropriate metric for measuring local content that is acceptable to both the NCDMB and international oil companies is now required to achieve the overall goals and objectives of the NOGICD Act.
The NOGICD Act has two mechanisms built in to deal with situations where local capacity is insufficient to meet a target in the Schedule. Firstly, Section 102 specifies that the NCDMB must review the Schedule every two years so that the National Assembly can amend it as required. The NCDMB has yet to carry out such a review. Secondly, through Section 11(4), the Minister of Petroleum Resources may authorise continued importation of goods and services required by the industry. This clause is known as the “waiver clause”. However, the Minister may only grant waivers for three years after the commencement of the Act – meaning the Minister will no longer have the power to grant waivers after April 2013. The immediate questions surrounding these two mechanisms require decisive and coordinated action by the Nigerian government to address future uncertainty and ensure the NOGICD Act continues to be an effective tool in promoting economic growth through local content.

In order to enhance local content, Section 3 of this report recommends that the NCDMB needs to work more closely with stakeholders – particularly civil society organisations, trade unions, and research institutions. Section 4 of this report highlights the need for the NCDMB to continue working through the Nigerian Content Consultative Forum (NCCF). Finally, Nigerian content requires professional conduct and transparent operations. Although it has begun to put some guidelines on its website, the NCDMB has yet to provide any meaningful data of Nigerian content development, the Nigerian content plans of the International Oil Companies (IOCs), or even on its own activities.

Despite the existence of waiver procedures, Section 4 of this report notes that the waiver process is discretionary and unclear. More puzzlingly, there is no evidence that since 2010 the Minister has ever granted a waiver under the NOGICD Act. There are major concerns with the system in place to enforce the NOGICD ACT and ensure its targets are reasonable, appropriate, and fairly enforced. It is only by devoting the necessary resources into developing a system that works that the targets in the NOGICD Act become meaningful and useful for the advancement of Nigerian content. More positively, it is noted that the NCDMB has been working to create a transparent system for collection and distribution of the Nigerian Content Development Fund (NCDF) and now seems ready to inaugurate the fund. Section 4 also notes the importance of promoting community content and concludes by recommending the NCDMB make more information about local content publically available, release more information about the activities of the NCDMB and the operating companies, and immediately begin developing robust metrics for measuring and reporting on local content.

With regard to the Schedule of the NOGICD Act, the National Assembly must set achievable targets that can be revised upwards as capacity develops and find other ways to communicate its capacity development priorities to the IOCs. Other recommendations made in this report include implementing the transparency and accountability measures proposed in 2011 by Tandice-B Solutions. Additionally, the NCDMB must draft the necessary the policies and procedures Nigerian content implementation and make publicly available those policies along with all available data on local content in Nigeria and plans submitted to the Board.

Since the adoption of local content policies, Nigeria has taken several steps toward leveraging its petroleum resources into economic development. Attention must now be paid to ensuring that more of the benefits of this wealth reach the average Nigerian—including Nigerians living in communities that host oil and gas activities. At this stage, the legal framework and institutional capacity has been put in place for successful implementation of local content. With broad input, transparent processes, and determined effort to resolve outstanding issues Nigerian content can be a driver for Nigerian development in the 21st century.
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1.0 AN OVERVIEW OF LOCAL CONTENT IN NIGERIA

Local content refers to a set of policies that increase the utilisation of national human and material resources in the oil sector and domiciles in-country oil-related economic activity previously located abroad. With passage of the Nigerian Oil and Gas Industry Content Development Act of 2010 (henceforth referred to as the Nigerian Content Act or NOGICD Act, a new agency called the Nigerian Content Development and Monitoring Board (NCDMB) was formed to implement local content policies.

1.1 HISTORICAL BACKGROUND

According to Willy Olsen (2008), “Local content is a means – not a goal… The purpose is to increase national wealth through economic growth and more employment of locals.” In Nigeria, local content also represents an attempt to move beyond the “indigenisation” policies of the 1970s. The stated aim of Nigerian content (local content policy in Nigeria) is the “domiciliation” of economic activity in Nigeria. In theory, the emphasis of domiciliation is on doing work in Nigeria that was previously done abroad, rather than on work being done by Nigerian-owned service providers. In practice, even under Nigerian content, a major emphasis on promoting Nigerian ownership remains. However, the acceptance of foreign multinational oil service companies has gained Nigerian content widespread support among both labour unions and industry groups.

The current local content push began in 2001 with a workshop organised by the National Petroleum Investment and Management Services (NAPIMS). Entitled “National Workshop on Improvement of Local Content and Indigenous Participation in the Upstream Sector of the Petroleum Industry,” the workshop produced a communiqué with a recommendation for the establishment of a National Committee on Local Content Development (NCLCD). The NCLCD then produced a report in 2002 highlighting their finding that the local content of goods and services in the upstream sector of the oil and gas industry in Nigeria was less than 5%, meaning that: “95% of the yearly expenditure of about $8 billion flows out of the country.” They proposed initial targets for aggregate local content value in the oil and gas industry from all the categories of 40% by 2005 and 60% by 2010. The NCLCD also recommended the drafting of a Nigerian Content Development Bill, which became the NOGICD Act (Ovadia forthcoming 2013).

A Nigerian Content Unit within Department of Petroleum Resources (DPR) was also created in 2002. One of its key actions was to produce a study on local content in Nigeria. The study (Heum et al 2003) was commissioned by the Norwegian Agency for Development Cooperation and executed through INTSOK within the context of the Memorandum of Understanding between Norway and Nigeria. At the same time, local content was being advanced by a group at the Lagos Business School (LBS), which spearheaded a series of workshops and conferences on how Nigerians can participate more in the oil and gas industry (Ovadia forthcoming 2013).

Shortly afterward, a Nigerian Content Division (NCD) was created within the Nigerian National Petroleum Corporation (NNPC) and appointed a Group General Manager to head the division; originally Joseph Akande, who was later replaced by Ernest Nwapa. At some point, the targets for Nigerian content were also changed to 45% by 2005 and 70% by 2010. Through the NCD, NNPC released a series of Nigerian content directives. The first set of
directives focused on three areas: manufacturing, materials, and engineering. The original ten directives were later increased to 15, and further revised to 23 directives by 2006. By 2007-2008, the NNPC-NCD had ordered all the international oil companies (IOCs) to form NCDs in their organisations with a manager at the level of General Manager. A final piece of the puzzle was put in place with the creation of the Nigerian Content Consultative Forum at a series of inaugural meetings in June 2005. The forum contains working sub-committees for the various industry groupings (including fabrication and engineering). By passage of the NOGICD Act in 2010, Nigerian content was, by most estimates, around 35 to 40 per cent (Ovadia forthcoming 2013). However, there is no standard or defined way to measure local content in Nigeria.

1.2 THE NIGERIAN CONTENT ACT

In April 2010, President Goodluck Jonathan signed the NOGICD Act into law. The NOGICD Act gives first consideration for awards of oil blocks, oil fields, and oil lifting to “Nigerian independent operators”; gives exclusive consideration to Nigerian indigenous service companies that meet certain conditions to bid on land and swamp operating areas; and creates the Nigerian Content Monitoring and Development Board (NCDMB) to enforce compliance with the act and build Nigerian capacity to participate in the oil and gas industry.

All exploration and production companies are required to submit Nigerian content plans for all bidding on tenders in the industry and comply with a series of regulations designed to domicile manufacturing and services relating to the oil and gas industry in-country. Among the NOGICD Act’s most controversial measures is a stipulation of a maximum of 5% of management positions for expatriate workers and a Schedule containing minimum levels of Nigerian content in any project. This schedule sets minimum targets in engineering, fabrication, materials and procurement, services, research and development, shipping and logistics, and many other categories. Included in the Nigerian content regulations are also minimum levels of Nigerian content in finance, including 100% of general banking services, 70% of monetary intermediation, and 50% of the amount of loans for credit. Finally, the NOGICD Act also gives the NCDMB authority to hand out hefty penalties – 5% of the project sum for each project or cancellation of the project.

1.3 NIGERIAN CONTENT TODAY

The NCDMB was formed shortly after passage of the NOGICD Act out of the NNPC-NCD with Ernest Nwapa, former NNPC General Manager of Nigerian Content, becoming its Executive Secretary and set up its headquarters in Yenagoya within six months of the law’s passage. The Board’s Governing Council consists of representatives from stakeholders and other government agencies. The Minister of Petroleum Resources acts as Chairperson of the Governing Council. The Board is also overseen by the House Committee on Local Content, which was set up in 2011.
The NCDMB has an enormous task ahead of it. Upon its creation, the Board had to immediately begin receiving and reviewing Nigerian content plans and dealing with numerous applications for approvals. At the same time, it had to set policies and guidelines while embarking on an ambitious programme to improve Nigerian content through capacity building initiatives while it was still establishing itself as an independent agency and sorting out its physical space, staffing needs, budget, and internal processes. Almost three years after its formation, there are still several aspects of its mandate that it has barely begun to address.

After setting up a physical office in Revenue House, Yenagoa and creating a basic website, one of the first guidelines issued by the Board covered remittance of the 1% of all contract sums, which operators are required to deduct at source and pay into a new Nigerian Content Development Fund (NCDF) to increase Nigerian content. The fund is not meant to provide operating funds to the NCDMB. Rather, it is for capacity building initiatives carried out by the NCDMB. Funding its operating costs as well as its start-up costs has been an issue for the Board, which has in turn limited its ability to get off the ground quickly. The NCDMB, which is supposed to receive a budgetary allocation under the submissions of the Ministry of Petroleum Resources, only made its first submission in November 2012.

The Board has also released guidelines covering enforcement of the expatriate quota, clarifying the requirement that Nigerian subsidiaries own at least 50% of the equipment to qualify as a Nigerian company, and laying out guidelines for information and communication technology (ICT) and marine services. It has also published templates for the Legal Services Plan companies are required to submit under the NOGICD Act. However, these publications represent only a small portion of the policies, procedures, and templates that are required for proper implementation of the Act.

**Box 1.2 - The NCDMB ICT Guidelines**

In May 2012 the NCDMB issued guidelines to industry regarding information and communication technology (ICT) for international oil companies, original equipment manufacturer (OEM) ICT companies, contractors, and subcontractors. The guidelines cover the design, procurement, deployment, and implementation of information systems, information technology, and communications services.

The guidelines stipulate that “The manufacture of components of ICT hardware in Nigeria shall be a mandatory requirement for all procurement, installation and related services in ICT hardware.” It is further stipulated that “Design, Procurement, Deployment/Installation and Support shall be executed by Nigerian indigenous ICT Companies, Nigerian Subsidiaries of International ICT OEMs and Nigerian Partners of International ICT OEMs.” Importantly, these regulations ensure that “Revenue and proceeds from engagements by the Operator with the OEM on ICT products, services and solutions shall be through the Nigerian Subsidiary of such ICT OEMs.”

Since the version released on the NCDMB are not signed or approved, it is not clear when the guidelines come into force. However, the guidelines state that “all OEM ICT companies involved in or interested in the Nigerian oil and gas industry shall within 3 months of this guideline submit a satisfactory plan to the Board for the manufacture of ICT hardware components in Nigeria.” They also require operators and OEM ICT companies to submit a Nigerian Content Performance Report to the NCDMB by March 1st each year.
The Board began reviewing and approving tenders for contracts within six months of being set up and also began a programme of monitoring and evaluation. However, enforcement of Nigerian content is still quite informal. The NCDMB has yet to issue any fines or cancel any projects. Instead, when the Directorate of Monitoring and Evaluation has found violations, it has chosen to begin a dialogue with the company involved on how best to remedy the situation. This approach may result in a new training programme, hiring of new Nigerian staff, or other actions to satisfy the Board. While the approach is useful for building local capacity and probably significantly more effective than issuing fines (which a company may calculate to be less burdensome than complying with the law), it does add a level of discretion in enforcement which could be abused.

Unfortunately, the Board has moved slowly to date in the area of capacity building. Prior to passage of the NOGICD ACT, the NNPC-NCD had already commissioned a comprehensive fabrication yards audit. According to a manager in one of the IOCs, the audit was actually sponsored by industry through the Oil Producers Trade Section (OPTS) of the Lagos Chamber of Commerce and Industry (LCCI) and was completed at a cost of $106,000. The IOCs felt this step was necessary because of claims and counterclaims being made by various fabricators. For instance, both Dorman Long Engineering and NigerDock, two large fabrication companies, claimed they were the only company in Nigeria that could do topside integration of a Floating Production, Storage, and Offloading vessel (FPSO), yet neither had any experience in this area.

The audit delivered a determination of “present and future in-country capacity and capabilities; determination of the specific competencies and capabilities of each fabrication yard; determination of the available skilled resources; evaluation of the support structures…; development of a system to quantify each yard’s abilities and to accommodate subsequent changes.” In addition to classifying yards by their activities and capacity, it found that while in the past Nigerian fabrication yards could handle only 15% of the industry’s requirements,

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2 Interview with an NCDMB official in the Directorate of Monitoring and Evaluation, November 2012.
capacity had recently improved to 40% and would likely increase further. Due to the thorough nature of the report, it provided both the NCDMB and the IOCs a very clear picture of the sector so that IOCs could know what level of Nigerian content was possible on a given contract and so that the Board could ensure the utilisation of that capacity. Unfortunately, to date the activity has not been repeated or duplicated in any other sector leading to a dearth of knowledge about local capacity. Additionally, due to the passage of time, even the fabrication yard audit is already out-of-date.

Box 1.3 – The Expatriate Quota

Policies to promote Nigerians occupying management and supervisory positions in Nigeria’s oil and gas industry date at least as far back as the passage of the Petroleum Act in 1969. Although it has been much slower than the country would like, progress has been made. Prior to the NOGICD Act, the Ministry of Interior already issued an expatriate quota, while the DPR monitored compliance in oil and gas. However, in one of the most contentious clauses of the NOGICD Act, Section 32 states that oil and gas operators can retain a maximum of 5% of positions for expatriates and requires operators to make application to and receive approval from the Board before making applications for expatriate quota.

The NCDMB issued draft guidelines on the expatriate quota in May 2011, though it stressed they are still under review. The guidelines do not mention the 5% target, instead laying out a procedure for applying to the Board and reporting on expatriate and Nigerian staff. The Board has encountered resistance to cooperation from the Ministry of Interior. Therefore, in order to monitor and enforce the quota, it has decided to issue unique ID numbers to each expatriate applicant. The only enforcement it can enact without cooperation from other ministries is to request IDs from expatriates encountered during monitoring and inspections and note any cases of non-compliance.

The NCDMB and IOCs continue to have strong differences on the issue, as evidenced by an exchange between Ernest Nwapa and the Nigerian Content General Managers of Shell, Chevron, and Exxon at a recent workshop put on by the House Committee on Local Content. At the workshop, Nwapa announced new plans to require expatriates to travel to its headquarters in Yenagoa and submit biometric data to the Board to counter fraud. The IOCs are strongly opposed to these measures and to the quota in general. However, the NCDMB estimates that stricter enforcement of the quota could create 1,000 jobs. More importantly, it gives more opportunities to Nigerians to gain the skills and experience they need to become oil and gas entrepreneurs, which is key to the long-term success of local content.

The other significant achievement of the NCDMB to date has been setting up the NOGIC JQS. Setting up a Joint Qualification System (JQS), or an online platform for Nigerian content registration, pre-qualification, and verification of capacities and capabilities is a requirement of the NOGICD Act. According to Sections 55 and 56 of the Act, the JQS must allow for evaluation of application of Nigerian content, provide a database for national skills development, and rank and categorise oil service companies based on capabilities and Nigerian content. While the system is far from providing all these capabilities, it has had to be designed from scratch. A first version of the system is now online and undergoing testing.3

3 See http://www.nogicjqs.com/.
In terms of concrete deliverables, the NCDMB has an ambitious agenda for Nigerian content development (see Figure 1.1). In terms of monitoring and evaluation, the Board has developed a Compliance Monitoring & Enforcement Strategy (COMES). The strategy calls for third party monitoring of Nigerian content compliance through the creation of a third party inspection task force. Essentially, the idea is that compliance can be better-monitored and evaluated by independent groups. The process also ensures a system less open to abuses. Soliciting candidates from the general public, each group of inspectors would include members with backgrounds in law, engineering, accounting, and oil and gas, as well as NCDMB personnel. The Board attempted to get the project off the ground in 2012 but its first attempt was unsuccessful. It plans to try again to launch the programme in early 2013.

Another new project for the Board is the Nigerian Content Employment Initiative (NCEI). According to Ernest Nwapa, the initiative requires all operators and foreign oil service companies to show in their reports to the NCDMB that they are identifying new employees for training. In each report submitted, the Board expects companies to identify new potential Nigerian employees. The Board will then use capacity building funds from the NCDF to train these Nigerians so that they can be hired for future projects and opportunities. The second phase of the plan will expand the requirement to indigenous oil and oil service companies.

The Board is planning to create an Annual Nigerian Content Index for each operating company to measure their commitment to local content. The planned index will turnover every three years and be used in future bid rounds for oil and gas blocks. The index will make up 25% of the final decision and will be made up of investment in employment, investment in upgrade of facilities, investment in new facilities & infrastructure, and performance on previous projects. There has been no word yet on when the first indices will be available.

The NCDMB has also expressed a desire to build an External Collaboration Model to attract foreign service providers to set up facilities in Nigeria. For this reason, it has created an Equipment Components Manufacturing Initiative (ECMI) and Original Equipment Manufacturer (OEM) Strategy. ECMI was launched in 2011. According to the Minister of
Petroleum Resources, in the first 12 months, 52 certificates were issued to equipment manufacturers and OEM representatives who met the technical requirements of NCDMB, representing over $500 million in investment commitment and in-country value addition through manufacturing. The Minister estimated that this would create 10,000 training and employment opportunities.\(^4\)

As part of the strategy, all OEM companies providing equipment to the industry will have to attain a Nigerian Content Equipment Certificate from the NCDMB, demonstrating evidence of a commitment to domicile manufacturing in Nigeria. The initial expectation is that these companies domicile a minimum of 10% of their manufacturing of equipment components in Nigeria so they can begin to substitute imported components with Nigerian-made ones. The strategy also calls for growth in components and frames by 2013, growth in equipment parts by 2015, and growth in equipment packages supplied by OEM suppliers by 2017.\(^5\)

In the proposed Offshore Rig Acquisition Strategy (ORAS), the NCDMB is encouraging the use of Nigerian contractors with their own equipment and technology. It is proposing phased increases in indigenous equity to meet the requirements of the NOGICD Act and is planning to assist with long term funding and equity financing through the NCDF. Unfortunately, the programme seems to exist largely in the presentations of the NCDMB. Another example of programmes that exist in name only seems to be the NCDMB “Enlightenment Plan” for oil bearing communities. No details of the plan to address the integration of oil bearing communities into the oil and gas chain have been released though it is mentioned in virtually all the presentations. This may be because, like many of the planned activities of the Board, it is specifically referenced in the NOGICD Act (Section 67).

The large scope of proposed activities reflects the enormity of the task assigned to the NCDMB. The expectations for Nigerian content are also massive, creating a situation where the Board feels a need to appear to be doing everything that is required of it. However, should it fail to achieve significant local content gains, the other side of the way expectations have been managed is that its efforts are likely to be viewed as lacking. A final issue is that to achieve many of its local content objectives, the NCDMB needs cooperation from various government ministries and agencies. For this reason, an Inter-Ministerial Committee (IMC) on local content implementation in the oil and gas industry has been set up to address policy questions and common issues. The committee, which is supposed to meet every six months, includes representatives from the Ministry of Finance, Ministry of Transport, Ministry of Petroleum Resources, Ministry of Trade and Investment, Ministry of Power, and Ministry of Interior. However, although it has begun meeting, the IMC does not seem to have much to show for itself yet. Many government officials and industry insiders do not even seem to be aware of its existence.

\(^4\) Presentation by the Minister of Petroleum Resources, Diezani Alison-Madueke, delivered by Ernest Nwapa at the House Committee on Local Content workshop ‘Operationalizing a Development Agenda for Local Content’, June 25-26 2012, Port Harcourt.

\(^5\) Presentation by Ernest Nwapa at the Global Local Content Summit, September 26-29 2011, London.
1.4 THE POTENTIAL OF NIGERIAN CONTENT

“I think local content in Nigeria has come to stay. It is something that the government has been pushing for a few years, but with the enactment of the law in 2010, it has become an imperative. The government believes that by ensuring that more is done in Nigeria we can create more jobs for our people, can retain more capacity and more spend in the country, and there will be more impact from the oil and gas industry on the GDP of the country. It’s also a major part of our national economy, so we believe if we do direct things to the oil and gas industry, it will translate to all that linkage sectors of the economy and the transferability of the capabilities that we are creating in the oil and gas industry will begin to impact deeply on the entire national economy”

~Ernest Nwapa, Interview Podcast
Available at http://www.localcontentsummit.com/

Local content has immense potential to transform the Nigerian economy. By creating jobs and substituting the importation of goods and services with in-country manufacturing, Nigerian content can allow the country to avoid the so-called ‘resource curse’ and transition to advanced capitalist development (Ovadia 2012a). The potential of Nigerian content is in linking the oil and gas industry to other sectors of the economy. In this way, sectors indirectly linked to oil and gas can still benefit from the enormous annual investment in resource extraction while expanding outside of the limits of the oil industry. While the benefit will accrue disproportionally to the Nigerian elite, through specific policy interventions, more of the benefit can be directed to small and medium enterprises (SMEs) and to communities affected by oil extraction.

Describing the benefit to SMEs through linkage programs, Esteves and Barclay write:

SME linkage programs have been especially successful in enabling SMEs to access financing and skills development programs, particularly those that provide technical mentoring and support for the development of business management skills (Deloitte, 2004; Jenkins et al, 2007; Nelson, 2007; Ruffing, 2006; UNCTAD, 2001). Linkage programs also focus heavily on institutional strengthening activities to encourage an enabling environment for SME development. One particular area of success has been in assisting women to establish their own small businesses by providing them with access to legal, business and financial systems, thereby reducing the gender gap that prevents many women from participating in economic life (ODI, 2005; Wise and Shtylla, 2007). (Esteves and Barclay 2011, 207).

Specific interventions can also be put in place to ensure the benefit reaches targeted groups. For example, in the Government of Ghana’s Local Content Plan (2011), it is written that “While Government will provide equal opportunities for all citizens of the Republic of Ghana, the participation of women in the oil and gas industry will be actively encouraged, facilitated and promoted. The LCC will ensure that Operators maintain a gender balance in their Annual Recruitment and Training Programmes.” Similarly, the NOGICD Act contains clauses that privilege host communities for employment and training opportunities and encourage companies to set up facilities and offices in those communities.
Nigeria is fortunate to already have existing capacity in numerous sectors that are indirectly linked to oil and gas and can benefit from local content policies. Additionally, the benefit of these policies can be felt in a number of economic activities. Oil and gas is not traditionally viewed as a sector that generates significant employment—particularly in developing countries due to the high level of skills and training required. In 2009, less than 0.14% of Nigerians were employed in the industry (NBS 2009). However, the sheer number of activities covered by oil and gas offers numerous possibilities for employment.

An idea of the breadth of economic activities required in oil and gas can be found by examining the Schedule to the NOGICD ACT. According to Emeka Ene, President of the Petroleum Technology Association of Nigeria, while the oil industry itself will never create hundreds of thousands of jobs, if you include manufacturing, you can create those jobs. Therefore, he argues, “Local content is a real opportunity for industrialisation across the country.” As Ene says, the biggest potential for job growth is in manufacturing. According to the Manufacturers Association of Nigeria Local Content Group (MANLOC), manufacturing activities that could benefit from local content in oil and gas include chemical manufacturing; paints; varnishes; industrial gases; boat/shipbuilding and repair; electric generator assembly; machining; equipment manufacturing; motor vehicle component manufacturing and assembly; metal manufacturing and fabrication; welding; steel; galvanized steel; steel pipe manufacturing; nail and wire manufacturing; cable manufacturing; production of flanges, connections, pumps, valves, and other common spares; manufacturing of subsea structures; compressors; cranes and hoists; substations and transformers; and more.

As mentioned above, another key area of potential for local content development in Nigeria is the large capacity building projects being pursued by the NCDMB. According to Ernest Nwapa, the Board has been working to establish 3-4 pipe mills, 2-3 dockyards, a subsea equipment manufacturing complex, and an FPSO topside integration facility in Nigeria. According to NCDMB estimates, the projects combined will generate over 100,000 new jobs for Nigerians as well as thousands of training opportunities.

Steel pipes are used for transportation of oil and gas. The first pipe mill in Nigeria is now operational in Abuja, run by a company called SCC. The pipe mill already has orders from Shell, AGIP, and Chevron (who were told by the Board they had to use SCC since it is the

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6 Presentation at the House Local Content workshop ‘Stimulating Local Capacity’, December 3 2012, Abuja.
only pipe mill with manufacturing domiciled in Nigeria). The demand for steel pipes is growing due to several new projects, the need to replace old pipes, and new construction related to Nigeria’s gas master plan. Demand is even greater outside the oil industry for water infrastructure. SCC can only produce 100,000 tonnes of Helical Submerged Arc Welded (HSAW) pipes annually. However, estimates for future demand range from 800,000 tonnes per year to over 4.5 million tonnes per year.\footnote{Ernest Nwapa, Presentation at ‘Stimulating Local Capacity’.}

The NCDMB’s Line Pipe Mills Strategic Initiative calls for ensuring full utilisation of existing HSAW capacity by the end of 2012, establishing a new HSAW mill by early 2014, a Longitudinal Submerged Arc Welded (LSAW) pipe mill by 2015, and mills for seamless pipes by 2017. The Chinese company Yulong Steel has already made a commitment to set up an LSAW plant in Bayelsa State that will produce 250,000 tonnes per annum, while another company is also interested in establishing a 200,000 tonnes per annum HSAW mill. These ventures are expected to keep $700 million in investments in Nigeria while creating roughly 10,000 direct and indirect jobs (Okafor 2012; Ajala 2011). Other estimates peg the value of retention as high as $2.8 billion per annum,\footnote{Speech by Diezani Alison-Madueke at ‘Operationalizing a Development Agenda for Local Content’} while Ernest Nwapa recently commented that 3 new pipe mills generate 15,000 jobs and 3000 training opportunities.\footnote{Ernest Nwapa, Presentation at ‘Stimulating Local Capacity’}.

In terms of other projects, Nwapa has said that he plans to have 2 new dockyards completed by 2015 at cost of $250 million. The projects will, according to him, generate 55,000 jobs and 20,000 training opportunities. The Board also plans to attract investment for an umbilical manufacturing facility/subsea manufacturing complex and subsea learning academy. The project is supposed to begin by 2015 at a cost of $250 million and will generate 5,000 jobs and 2,000 training opportunities. Finally, the NCDMB hopes to collaborate with Shell and Total on an FPSO topside integration facility, which would be operational by 2014 and generate roughly 30,000 jobs.\footnote{Ernest Nwapa, Presentation at ‘Stimulating Local Capacity’.}

There are however some skeptics—especially on the pipe mills projects. According to a Nigerian content manager in one of the IOCs, the Chinese investment may fall through because of security concerns. Nwapa has also mentioned the problem of security on the Bayelsa project. Concerns aside, this section has shown the incredible potential of local content and the seriousness with which Nigeria has taken up the challenge of capturing oil industry spend and encouraging economic growth, job creation, and poverty alleviation through local content. While there are many challenges ahead in the implementation of Nigerian content, not least of which is the sheer amount of work that needs to be done and the limited resources with which to do it, by all accounts the NCDMB is a competent and professional organisation that has made major strides since passage of the Nigerian Content Act. At the same time, the Government of Nigeria as a whole seems determined to succeed at using local content to fight the resource curse and finally develop the country through its oil and gas resources.
2.0 THE MEASUREMENT OF LOCAL CONTENT

“But the Nigerian Content measurement is an issue- when you call an IOC and ask ‘how are you doing with the Nigerian Content’, they will give you numbers like 70-85% and they may be right because what they are measuring is the fact that out of a hundred million dollars that they would have spent on their projects, they’ve given 85 million to Nigerian companies. So considering the fact a few years ago it used to be about 25%- everybody is clapping for themselves- we are all saying we are doing Nigerian content. But if you check, the real Nigerian content they do is not for us. How much of that 85 million that is given to Nigerian companies is spent in Nigeria? Then you will know that we still have a long way to go.”

~Ernest Nwapa, Presentation at ‘Operationalising a Development Agenda for Local Content’

The Schedule to the NOGICD Act sets very specific targets in 280 separate oil and gas activities. The targets are expressed as percentages in terms of overall spend, hours of labour, tonnage, or other defined measures. However, as the above quote illustrates, that is only the beginning of addressing the crucial question of how to measure local content. The real question is how to calculate the percentage of local content in any given activity to determine what the existing level is compared to the target in the Act.

Olusola Ogunsakin, Nigerian Content General Manager (NCGM) at ExxonMobil, notes “[Measurement] is a very important area, but it’s an area still to develop”, “If there is a target of 70% or 65%, how are you going to measure that? It’s still a problem.” There are different factors that go into determining local content. One of the most obvious is whether the company doing the work is Nigerian or foreign. However, as Nwapa pointed out in the same speech as the above quote, “A foreign company that manufactures items in Nigeria is a better Nigerian Content company than a Nigerian indigenous Company that goes to import those goods from abroad.” This suggests that the Nigerian content level is actually higher when a foreign company manufactures items in Nigeria.

Ogunsakin’s counterpart at Chevron, Raymond Wilcox, adds even more complexity by noting the difficulty in measuring the use of Nigerian labour vs. expatriate labour in services domiciled in Nigeria. He notes that paying an expatriate who resides in Nigeria US dollars is not 0% Nigerian content since they spend money in-country. Similarly, paying a local manager in Nigerian naira is not 100% local content if that manager spends or invests his money abroad. Even more importantly, Wilcox notes that labour only accounts for 10-20% of a given contract. In manufacturing, raw materials are amongst the largest inputs. Therefore, Wilcox argues, “If we don’t produce steel and we don’t have OEM technology, the actual local content will be very low.” Reinforcing this view, Nwapa notes, “On fabrication, I can also claim 50% [Nigerian content] Fifty per cent of tonnage. But as you all know, the steel that you buy is still an export-it is still capital flight.”

12 Interview, December 2012.
13 Comments made at ‘Stimulating Local Capacity’.
14 Interview, December 2012.
Absent concrete definitions and guidelines for how to measure Nigerian content, the NCDMB has fallen back on simplistic or surface measures for monitoring and evaluation—concentrating mostly on Nigerian ownership (whether or not a company is 51% Nigerian-owned). With the focus solely on indigenous ownership, Nigerian content risks repeating the failures of the indigenization policies of the 1970s.\textsuperscript{15} NCDMB personnel privately confided that perhaps they need to focus on more than capitalisation, but that has not happened yet.\textsuperscript{16} This statement is underscored by estimates of how much work is actually being domiciled in-country when awards are given to Nigerian companies. According to Balouga (2012), “over 70 per cent of the contracts awarded to Nigerian companies are executed overseas, thereby defeating the primary objective of Nigerian content development which is to develop in-country capacity by executing contracts in Nigeria using Nigerian local resources.”

Given these dynamics and concerns, many in the audience at the recent ‘Stimulating Local Capacity’ workshop in Abuja were eagerly awaiting Ernest Nwapa’s presentation. The House Committee on Local Content had invited him to speak on “Measurement and Evaluation of Capacity Utilisation Towards Enhanced Nigerian Content Development”. Unfortunately, Nwapa soon announced that he was changing the topic because focusing on measurement “is not helpful”. “We will measure,” he said, “but it will not be the first priority of the Board.” Instead, Nwapa contended, “the important thing is how many jobs have we created; how many yards have we upgraded? That is my measurement of Nigerian content.”

Nwapa is not wrong that job creation and capacity development are important aspects of Nigerian content development. However, meaningful measurement tools are a basic requirement for any programme or initiative. For this reason, Section 5 of the NOGICD Act specifically requires the NCDMB to ensure “measurable and continuous growth of Nigerian content.” Not only can they be used to provide a needed analysis of domestic capacity to contribute to the oil and gas industry, but more importantly measurement tools allow the government to plan effectively, set meaningful targets for themselves and for stakeholders, and monitor/evaluate progress. Neither the NCDMB in its current form nor the previously existing NNPC-NCD could take any action without contemplating such tools. However, rather than invest in developing quality measurement tools and comprehensive guidelines for Nigerian content development and disseminating these widely, the NCDMB has developed its tools haphazardly and with a lack of overall planning and coordination. It has released guidelines piecemeal and without taking the time or effort required to fit such pieces into an overall strategy for local content development or to solicit collaboration or even feedback from stakeholders.

Where possible, the NCDMB has relied on informal and opaque rules and procedures as well as the individual discretion of its key officers. This decision provides valuable flexibility and possibly even short-term local content gain, but at the cost of coordinated strategy and sustainable organisation-building. To substantiate this assessment, this section of the report will proceed by introducing some literature and key findings from studies on the measurement of local content around the globe before sketching out some of the activities and undertakings of the Board, how the Board approaches local content, and recent developments in Nigerian content.

\textsuperscript{15} For a review of the indigenization era and its connection to the current moment of local content, see Ovadia (forthcoming 2013).
\textsuperscript{16} Interview, November 2012.
2.1 A REVIEW OF EXISTING KNOWLEDGE ON MEASURING LOCAL CONTENT

In recent years, new work has been done on local content – mostly focusing on procurement and on solid minerals rather than oil and gas. This work is still highly important to the study of local content in Nigeria, as are the well-known examples of Brazil, Malaysia, and Norway. While services may be more important to the oil industry than to solid minerals, it is still estimated that procurement accounts for 54% of annual spend in the Nigerian oil and gas industry (NNPC-NCD 2008). Even if an increasing amount of procurement is done through Nigerian intermediary companies, very few goods are manufactured in Nigeria, and even fewer use Nigerian raw materials.

From the beginning, it is worth addressing the criticism that local content policies – especially ones backed by rigorous measurement criteria – damage foreign investment and private sector initiative. As Rebecca Darling (2011) notes in a report on local content for Revenue Watch Institute, “The private sector and industry associations emphasise the importance of predictability in a host country’s regulatory environment. As such, a relatively set legislative scenario with systematic and oversight, even if it is a rigorous legal setting, make a country a very attractive place in which to do business.” Therefore, rigorous monitoring and evaluation should not be cast as a deterrent to investment. This principle is even truer for oil and gas than it is for solid minerals due to the strategic importance of petroleum resources.

In Heum et al (2003), which made the initial case for local content in Nigeria’s oil and gas industry, the authors noted the need for impartial judgement of local content achievements. They therefore recommended evaluation of the operating companies by an independent body, possibly “an international panel of experts or an auditor company.” The study also specifically recommended that it would fall to government or a government agency to “establish a method of measuring local content and communicate it clearly to all,” while it would fall to operating oil and gas companies to “measure monthly, and report annually of every 6th month, on progress being made with achieving the targets of local content.”

In Darling’s (2011) report, the author notes that the formulae for calculating local content are often opaque. She concludes “Many policies do not include [monitoring and oversight] schemes and lack: benchmarking data, measurable criteria, defined penalties, or independent, well-functioning agencies of authority. As a result, there is a lot of room for corruption, rent seeking, non-compliance, and ultimately, unrealised LC potential.” Fortunately for Nigeria, the country has a significant advantage in that measurable criteria are given in the schedule of the NOGICD Act, penalties are defined (though not enforced), and the NCDMB acts as a largely well-functioning agency of authority. NCDMB and its predecessor NNPC-NCD have even provided some good benchmark data. Therefore, once targets and criteria are properly defined and a comprehensive system is put in place to evaluate compliance, Nigeria should be well-positioned for effective implementation.

In his book, Local Content in Procurement, Michael Warner (2011a) argues that “reporting local content is more than simply the reporting of the figures themselves. It is about understanding, and above all explaining, precisely what it is that the metric is measuring, and what is happening in the wider economic or business environment that might be influencing figures and trends.” Unfortunately, Warner (2010) notes that “The mandatory definitions and reporting requirements of state regulators, and the voluntary metrics and reporting standards
of companies, vary widely; from crude measures such as the country address on an invoice, to verified certificates proving that goods are of domestic origin.”

Warner (2011a; 2010) provides a typology of metrics for measuring local content. The typology breaks down metrics into three headings: in-house systems (which measure the national citizens employed in the sector), metrics that measure both services and goods, and specific metrics (which apply to either the measure of goods or the measure of services). The assumption behind Warner’s analysis is clearly that the more accurate the metric, the more success a country can have in implementing local content. However, Warner notes that many metrics produce erroneous results. He therefore points out that improved metrics for local content may actually lead to a fall in reported levels of local content. This is because it is a myth “that reporting higher levels of Local Content necessarily means that performance is improving.” It is simply not the case that “the higher the level of local content recorded, the better.” Although the point is well-taken, it is understandable why in this context the NCDMB is weighing carefully its options before proceeding to seriously consider the measurement of local content.

According to Warner, the category of in-house systems includes simple head counts; head counts by job type; evaluating hours; value of wages, benefits and social taxes; value of wages, benefits and social taxes disaggregated by job type, and value of national wages compared to the value of social taxes and expenses paid to expatriates. All of these systems are based of fairly easy to acquire human resources data, however there is no supply chain penetration in these metrics. There are a few metrics that can be used to measure both services and goods. These include: evaluating the nationality of companies in vendor registers, nationality of companies in tax registers, the number of contracts (for goods and services) awarded to nationally-owned vendors, and the value of contracts awarded to nationally-owned vendors. Unfortunately, most of these metrics produce either completely erroneous results or otherwise data of only limited value.

In terms of service-specific metrics, the metrics Warner identifies include head counts of service provider employees, evaluating value of wages spent on national employees under contract, and value of contracts less the value of wages and bonuses to foreign employees. Some of these measurements can also be done simply for the contracts of largest value. It goes without saying that measuring the value of wages is more accurate than measuring hours (as is prescribed in the NOGICD Act), or relying on headcounts. However, the metric is most accurate if it measures wages, benefits, and social taxes combined. Goods-specific metrics include: evaluating the value of contracts for goods going to suppliers and sub-suppliers certified as supplying goods of domestic origin as % of total expenditure, the proportion of value of contracts for goods retained in the domestic economy, and value of contracts less proportion of imported components of purchased goods. While many of these are complex measures that involve major data-gathering efforts, they are all fairly accurate. It is also worth noting that the data needed is not beyond the capabilities of the NCDMB in Nigeria if it had proper resources at its disposal.

Warner (2010) also notes that some metrics focus on local content development instead of levels of local content in goods, services, or human resources. These include metrics that focus on assessing the levels of training of nationals, the career progression or nationals, and the development of domestic suppliers. The inclusion of these metrics is recognition that Ernest Nwapa is not wrong to highlight the importance of key deliverables for local content development in the measurement of local content progress.
In addition to the typology of measurement metrics, Warner reviews several important debates. This includes the problem of defining local suppliers (several definitions may exist), as well as regional or community suppliers. This is a challenge also noted by the World Bank in its recent report on local content in the mining sector in West Africa (2012).

Warner (2010) notes that due to the difficulties of getting operators the needed data, “Probably the most time consuming such metric to define, and most prone to error, is where a local supplier is described by the proportion of equity owned by national citizens.” However, this is less of a problem in Nigeria since the operators simply require contractors to submit their registration documents from the Corporate Affairs Commission in order to get information on equity share.

Finally, Warner (2011b) lists factors to consider in identifying practical local content metrics. These factors include the question of what the objective of local content is in a given situation, simplicity, materiality, cost effectiveness, verifiability, comprehensibility, and whether or not the metric promotes the ‘right’ behaviours in terms of local content development. On this topic, the World Bank (2012) report also contributes some idea of factors or elements of local content to consider. In their report, the Bank divides these elements into participation of citizens (in terms of employment, employment in management or skilled employment, and ownership) and the extent of value added locally. This distinction in terms of two kinds of local content may be helpful in focusing the priorities of the NCDMB and is also common in Angola where different government agencies are responsible for these different elements of local content (see Ovadia 2012b).

The World Bank distinction is the basis for several principles of local content that can be used to organise and rationalise local content policy and guide measurement. For example, it is proposed that preference should be given first to companies that have “significant participation from local citizens across all three areas of ownership, management, and employment.” In terms of understanding how to give preference to companies demonstrating higher levels of local value addition in procurement, the Bank’s report follows Warner in distinguishing between goods and services. For manufactured products, it says, preference should be for products that are being “substantially transformed” locally. This privileges companies engaging in value production over companies that engage primarily in importing/trading activities. For services, the preference should be for companies where “the majority of the service is undertaken, managed, and controlled locally rather than provided from elsewhere.” These principles should be the basis of any metric for measuring local content developed for the Nigerian oil and gas industry.

The World Bank has suggested a framework for categorising suppliers based on the principles of participation and value-added. Figure 2.1 depicts six categories for both goods and services to demonstrate the range of possibilities. The difficulty comes in determining where a given company falls on in these categories, how to weight different aspects of local participation and value-added, and how to compare higher local participation with higher value-added in determining higher local content – especially if that participation is largely based on national ownership. Acknowledging these difficulties, the Bank notes: “In order to maintain simplicity in the framework, only two levels for value addition are presented here (i.e., whether a company is adding meaningful value locally or not) and three levels for local participation (to reflect the variety of local participation that exists). Clearly more categories
can be created by increasing the number of thresholds. Measurement could also be done on a continuous scale (e.g., based on per cent local ownership or per cent value add)."

![Figure 2.1 Framework for Categorising Suppliers by Participation and Value-Added](image)

Source: World Bank 2012

2.2 THE REPORTING AND APPROVALS PROCESS FOR NIGERIAN CONTENT

According to Darling (2011), there has been a trend in recent years toward incorporating local content very early in the extractive life cycle. As she explains, “The reason for targeting this earlier phase is that projects are designed, procurement and employment requirements assessed, financing needs estimated, and timelines established in this phase. In essence, this is when the crux of LC opportunities and necessary steps to maximise on those opportunities are delineated.”

It is therefore not surprising that the NCDMB has been working to incorporate local content as early as possible. As detailed in Vines et al (2010), Nigeria has a chaotic and counter-productive history of awarding oil blocks piecemeal and without an open or fair bidding process. According to Ernest Nwapa, the Board plans to be involved going forward at the earliest stages of the extractive life cycle by approving Nigerian content plans and principles during the main bidding phase for new blocks after pre-evaluation studies have been completed. Following the award of the block, the NCDMB expects to approve the Nigerian content plan component of the Master Exploration Programme. This plan will detail Nigerian content in all exploration activities. During preliminary field development, the NCDMB again expects to approve the Nigerian content plan component of the Preliminary Field Development Plan, covering Nigerian content in the field development phase. To date, the NCDMB has yet to put in place the systems, policies, and capabilities that will allow them to participate in local content evaluation at the early stages of the extractive life cycle. This

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17 Ernest Nwapa, Presentation at Global Local Content Summit.
remains an important priority both for ensuring Nigerian content and for ensuring full benefit from the awarding of oil licences.

Once a final investment decision is made, the NCDMB will be responsible for Nigerian content oversight and approvals in contract tenders. This is the system that has already been put in place and has been functioning since shortly after passage of the NOGICD Act in 2010. The system, depicted in Figure 2.2, begins with approval for tender advertisements and involves participation by the Board in the pre-qualification process, evaluating bids to align the Nigerian content scope for each economic activity with Nigerian content regulations, approving the final contract award document based on technical and commercial reports, and conducting compliance monitoring using the Nigerian content metrics it will develop and the Third Party Inspection and Monitoring Task Force it plans to create.\footnote{Ibid.}

Figure 2.2 - NCDMB Interface with Operators & Project Promoter During Contracting

Unfortunately, while the core of this system is in place, several important tools and capacities have not yet been developed or put in place. The NCDMB began suggesting potential metrics for determining Nigerian content in contracting and determining the base Nigerian content benefit of using different categories of contractors shortly after its creation based on initial discussions and work done by the NNPC-NCD. These metrics are depicted in Figures 2.3 and 2.4. While Figure 2.3 describes a rubric for measuring inputs in terms of materials and labour to determine the Nigerian content, Figure 2.4 describes Nigerian content in terms of categorization of the contractors themselves, awarding a higher level of Nigerian content based on the ownership of the contracting company.
However, rather than beginning to specifically lay out how Nigerian content would be measured, the NCDMB decided to turn its attention to how it would gather data from the operators and contractors and creating forms for the operators to report on Nigerian content. In the proposed system, described in Ovadia (forthcoming 2013), the Nigerian Content Division of each operator would have been responsible for completing a form for every contract (Form 1) and a form for every subcontractor on a given contract (Form 2) in order to gain NCDMB approval. While Form 1 would include the details of the contract, including a breakdown of different activities (Engineering, Fabrication, Procurement and Services), the
various subcontracts, their category of Nigerian content, and the value of the contract; Form 2 would be used to distinguish the total value of the activity, the foreign fees earned, and the Nigerian fees earned (for services) as well as the fees earned and man-hours worked by foreign and Nigerian labour at various levels from senior management to “junior/artisan” (local temporary staff) labour. While the forms were developed and ready to be used in 2010, a decision was later taken to abandon them and attempt to develop a new metric.

While a new system was being developed, an informal system for gaining approvals and for monitoring and evaluation developed. In this system, operators are asked to submit a Nigerian content plan for new projects or if they are changing the scope of a current project. It is unclear whether the NCDMB released a template for the plan or if operators and contractors simply developed a template themselves, however several operators and contractors use a similar basic structure for their Nigerian content plans. Generally, the plan reviews the purpose of the plan, describes the project and scope of the work, and provides a preliminary schedule for execution of the project. If the plan is being developed by an operator to begin the pre-qualification process, the plan will also include a description of the strategy for putting out the tender and will also identify potential vendors and/or contractors.

The Nigerian content plans of the operators generally break down the project activities in a table where they provide both the Nigerian content target from the NOGICD Act and their own target for the given activity. The plan then includes sections on training, financial services (banking and insurance), legal services, and research and development to meet the NOGICD Act requirements to submit plans in these areas. Operators also generally commit to requesting Nigerian content plans from contractors, monitoring the contractors’ performance, and paying one per cent of the contract value to the Nigerian Content Development Fund.

When the contractor has been approved, the NCDMB is invited to a “kickoff meeting” for new projects with the operator and contractors present. Meetings for individual projects would also be held at a “midterm evaluation” and “end of project evaluation” so that the Board can evaluate whether Nigerian content objectives are being met. In the absence of forms for reporting on the progress in achieving Nigerian content in a given project, there are now no formal or written reports submitted to the Board after the initial Nigerian content plan. While operators seem to still be submitting the annual Nigerian content reports on their overall operations as required by the NOGICD Act, informants in the NCDMB and operating companies seem to indicate that the Board lacks the human resources to read the reports. Therefore, a team from the NCDMB will schedule a meeting at the operator’s headquarters so the NCDs can report orally to the Board every six months with nothing more than a basic PowerPoint presentation. According to a manager in the NCD of one of the operating companies, “There is no standard system for monitoring” since “They don’t have the resources they need.” The main data the officials from the Board seem to demand from the presentations is about the numbers and positions of expatriate workers.

According to an official in the NCDMB Directorate of Monitoring and Evaluation Directorate, the main purpose of the “kickoff meeting” is to identify deliverables and set it up so they will be able to evaluate early whether objectives are being met. Until Third Party

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Draft versions of the NCDMB monitoring Forms 1 and 2.

Nigerian Content Plan Template from operator.

Interviews, November/December 2012.
Monitoring is launched, the Directorate is handling inspections, although the team is short-staffed. According to them, most inspections are done unannounced. For now, the only reason the NCDMB is managing is because they have personnel seconded from the operators and because there have not been many new projects in the industry since 2010.\textsuperscript{22} Given the current situation, it seems that the NCDMB does not have the tools it needs or systems in place to do its job effectively. There are also indications that there may be a lack of communication or coordination between the Directorate of Monitoring and Evaluation and the Directorate of Planning, Research and Statistics, which is responsible for evaluating projects and delivering approvals before projects commence (see next section).

2.3 COMMENTS, CONCERNS, AND RECENT DEVELOPMENTS

This section will review issues that have arisen since 2010 with the Schedule to the Nigerian Content Act before moving to describe some of the most recent developments in the NCDMB’s activities. As noted above, the Schedule contains hundreds of targets for various categories of goods and services required by the oil and gas industry, though it does not adequately define how these target percentages or figures are to be measured. The NOGICD Act requires 100% compliance with all targets in order to operate in Nigeria. The NCDMB is tasked with enforcing this regime and requiring compliance with all the prescribed minimum targets for Nigerian content in order to approve new projects in the industry even though many of the targets for Nigerian participation are well beyond the current capacity of Nigerian companies.

The inability of Nigerian companies to supply the goods and services required by the NOGICD Act is not in dispute. Ernest Nwapa has directly stated: “if you read the Schedule of the Act, you will know that there is hardly any part of that Schedule that you can comply with a hundred per cent. So as a board, our job is not even to ensure compliance, first of all we have to work with the industry to create those capacities before we can then start insisting on compliance.”\textsuperscript{23} Nwapa’s assertion is backed up by the data presented in Figure 2.5. The figure is misleading, however, since there are a growing number of individual targets – from legal and financial services targets to marine services such as dredging and installation – where Nigerian capacity is sufficient to meet the requirement.

The rigid targets set in the Schedule have been fiercely opposed by the IOCs operating in Nigeria. Shortly before passage of the NOGICD Act, they began lobbying through OPTS against aspects of the bill that they were opposed to. Since its passage, OPTS has been pushing to amend the NOGICD Act and remove the Schedule. They have been joined by some of the embassies in Abuja – most notably the US embassy.

From the Nigerian perspective, one of the biggest problems is the desire of the operating companies to use only one company to provide a particular service on a given contract. As one official from the NCDMB notes, capacity may exist in many given areas, but it may be spread amongst several local companies. Few local companies are big enough to fully meet the demands of even a particular contract. However, there is little collaboration amongst Nigerian companies that provide the same services and little desire amongst operators to split responsibility for a project between different companies.\textsuperscript{24}

\textsuperscript{22} Interviews, November/December 2012.
\textsuperscript{23} Presentation at ‘Operationalizing a Development Agenda for Local Content’
\textsuperscript{24} Interview, November/December 2012.
The NOGICD Act has two mechanisms built in to deal with situations where local capacity is simply insufficient to meet a target in the Schedule. Firstly, Section 102 specifies that the NCDMB must review the Schedule every two years so that the National Assembly can amend it as required. Secondly, through Section 11(4), the Minister of Petroleum Resources may authorise continued importation of goods and services required by the industry. This clause is known as the “waiver clause”. In Nigeria’s previous experience with the Cabotage Act (2003), which regulates Nigerian participation in inland shipping, setting unrealistic targets and allowing waivers to be granted removes any incentive to improve capacity and only results in a system with more opportunities for corruption though an additional approvals process. Therefore, the NOGICD Act specifies that the Minister may only grant waivers for three years after the commencement of the Act – meaning the Minister will no longer have the power to grant waivers after April 2013.

Given the inability of Nigerian companies to meet the demands for goods and services covered by the Schedule of the NOGICD ACT and the limit to the Minister’s ability to grant waivers, there is a high degree of uncertainty about the future of local content in Nigeria. For this reason, at the House Committee on Local Content workshop ‘Stimulating Local Capacity’, held in Abuja in December 2012, one of the panels was devoted to the question of waivers and waiver administration. In the session there was a spirited debate between local manufacturers who oppose an extension of this power and the IOCs who strongly argue in favour of it. Raymond Wilcox, NCGM at Chevron, asked in his comments after the presentation, “If the waiver winder closes, what happens to the industry?” Larry Osai, a former senior manager at Shell, gave one answer: “It’s going to grind the industry to a halt.” Privately, other managers in operating companies have made similar comments, with one telling me that if the waiver power expires “they will shut down the place” [meaning it will devastate the Nigerian oil industry].

There is however some uncertainty as to how important the continuation of the waiver system is for the oil and gas industry. In fact, it is not even

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25 The NCDMB has yet to carry out this review though the NOGICD Act is more than two years old.
26 Interviews, November/December 2012.
clear that the Minister has ever issued a waiver under the NOGICD Act. This is a topic that will be further discussed in Section 4 of this report.

While no one from the NCDMB spoke at that session in the workshop, it is widely held that the Executive Secretary is opposed to extending the power to grant waivers.\textsuperscript{27} The consensus that did emerge from the presentations and discussion afterward, captured in the summary made by the Chairman of the session, is that while waivers may need to be extended, it should be done so for a limited time period and the power to grant waivers should not be at the Minister’s discretion. Rather, all participants seemed to agree that there should be a set procedure that sets out the criteria and conditions for granting a waiver and that the process should be open to public consultation.

As noted above, there has been much discussion about the metrics used to even determine compliance with the targets in the Schedule to the NOGICD Act. At some point after the NCDMB abandoned its early efforts at developing a metric along with the reporting forms it had created, the Directorate of Planning, Research and Statistics began developing an electronic template for measuring compliance with the Act. At the ‘Stimulating Local Content’ workshop, Ernest Nwapa announced that stakeholders (meaning the operating companies) have already received the template, which is an Excel spreadsheet, and were scheduled to provide feedback at a meeting scheduled for December 6.

Speaking after the December 6 meeting, some of the NCGMs, expressed disappointment that the template developed by the NCDMB is a rather simplistic tool for gathering information, not a tool for evaluating targets or capacity. Several of the IOCs have been working in-house on their own very technical measurement models and have had to bring in engineers and computer programmers to work on the system. Therefore, they were disappointed by the framework presented by the Board. In the words of one NCGM: “If you are going to measure local content accurately, you probably need a whole department just to do that and disaggregate every aspect of your activities. It is very complex… Our enterprise systems are shared globally by all [the company’s] subsidiaries. SAP is not built and the other programs we use are not built to properly measure local content.”\textsuperscript{28}

The apparent failure of the NCDMB’s new metric for measuring and gathering data on Nigerian content suggests that, given the limits on the Board’s resources, it needs to cooperate more with a broad range of stakeholders in order to meet all of its obligations and develop the systems required to monitor, enforce, and enhance local content in Nigeria. There is a role for the House Committee on Local Content in ensuring proper metrics are in place for the measurement of Nigerian content. At the same time, the inclusion of a broad range of stakeholders will ensure transparency in local content oversight.

\textsuperscript{27} Interviews, November/December 2012.

\textsuperscript{28} Interviews, December 2012.
3.0 INCLUSION OF STAKEHOLDERS IN THE PROMOTION OF LOCAL CONTENT

Stakeholder collaboration is universally recognised as crucial to the success of local content policies. The NOGICD Act names certain stakeholder groups and gives them roles in local content development – from positions on the NCDMB Governing Council to participation in the Nigerian Content Consultative Forum (NCCF). The NCDMB has also demonstrated openness and willingness in many instances to meet with, work with, and learn from various interested groups. However, the question remains – who does the NCDMB view as stakeholders in the promotion of Nigerian content?

Figure 3.1 – NCDMB Stakeholder Collaboration Diagram

At the recent Global Local Content Summit, Ernest Nwapa presented a diagram of the NCDMB’s stakeholder collaboration model (see Figure 3.1). Noticeably absent from the Board’s thinking are civil society organisations and research institutions. The exclusion of these groups and redefinition of “stakeholder” to mean industry and industry groups, finance, and other government agencies limits the possibility of meaningful contribution from various sources. Additionally, there is some evidence to suggest that based on their narrow definition of stakeholder, the NCDMB is not properly consulting important groups such as labour unions as well as organisations with important networks and expertise in development and poverty alleviation.

International oil companies have “bought into” local content as part of the commitment they feel is necessary to receive a “social licence to operate” in Nigeria. This suggests a need to work with organisations that have knowledge and experience with how local content is operating on the ground and in particular communities and social groups. Industry groups remain an important partner for the Board. Overwhelmed by the magnitude of the task ahead,
the NCDMB has also been limited in its ability to work with industry, professional associations, and other development partners. To its credit, the NCDMB, along with the Ministry of Petroleum Resources, has demonstrated awareness of the importance of the media and sophistication in its handling of its core messages and controlling information. It has also demonstrated flexibility in its approach to the IOCs. This section will proceed by considering the stakeholders mentioned above and how they could be better used in the promotion and development of local content in Nigeria.

3.1 INTERNATIONAL OIL COMPANIES

One of the biggest surprises of Nigeria’s local content push has been the extent to which international oil companies, while expressing discomfort with certain provisions of the law, have embraced the basic premise of local content. Arguing that Nigerian content should be about capacity development and job creation, Raymond Wilcox of Chevron told the recent “Stimulating Local Capacity” workshop that “We are core collaborators on the journey of Nigerian content.” On the NOGICD Act, Wilcox says “It’s very well intended and we support it through and through.” This is a view shared by Ogunsakin of ExxonMobil, who says “We are very committed to the Act.”

While they support the premise of Nigerian content, the IOCs feel burdened by some of the NOGICD Act’s requirements. According to Yomi Orenuga, former NCGM at Total, IOCs feel “they are being pushed out of their core businesses” by the requirements that they ensure compliance with targets for services they require but do not supply themselves that are higher than existing Nigerian capacity. To meet the requirements and also expectations of Nigerian regulators, IOCs have been pushed to create indigenous capacity in areas where it did not previously exist. For Orenuga, “it is asking too much and taking the operator out of its main business to ask them to build steel pipes,” however, IOCs have a number of tools at their disposal to comply with Nigerian content requirements.

According to Esteves and Barclay (2011), “Resource companies are now engaging in a range of local procurement interventions that are designed to increase local business access to contract opportunities.” They write:

These strategies include assigning higher preference weightings to local businesses in competitive bidding processes; sole sourcing arrangements with local suppliers; price matching, that is allowing local suppliers to match the price of other suppliers; breaking large contracts into smaller ones (unbundling) to create opportunities for smaller local suppliers; requiring non-local suppliers to sub-contract locally or to enter joint ventures with local suppliers; providing technical and management training and mentoring; and linking local businesses to other service providers and agencies that promote technological innovation and provide access to finance.

Many of these strategies are already being used by IOCs in Nigeria to boost local content, and also to reduce cost and gain a competitive advantage.

The Nigerian Content Divisions of the IOCs generally feel like they have not been given sufficient direction about the government’s local content priorities – especially for capacity

29 Interviews, December 2012.
30 Comments made at “Stimulating Local Capacity”.
building. This concern dates back to before the passage of the NOGICD Act. With the NOGICD Act, the IOCs recognised that they would need to get out in front of the push for local content. OPTS was already being reactivated to lobby the government on wider industry restructuring. Therefore, the IOCs decided to work through OPTS on local content as well. In 2010, they hired Mackenzie, who was already working with OPTS on the Petroleum Industry Bill, to conduct a study on local content in Nigeria focusing on an analysis of local capacity to meet the targets of the Schedule to the NOGICD Act and what activities could be undertaken to quickly deliver enhanced indigenous capacity.

The Mackenzie report began by categorising all 280 items in the Schedule, putting them in three groups: (1) targets that should be addressed at a later date; (2) targets for which capacity building initiatives were possible and feasibility studies could be undertaken right away; and (3) targets for which capacity building initiatives could be undertaken immediately. This final category, in the words of one of the NCGMs, consisted of activities that “will give us a big bang and move local content faster.”31 With the study in hand, the NCGMs began implementing capacity building initiatives. All of this work was done without reference to the role of OPTS. Instead, the individual IOCs took credit for the individual projects they undertook without mentioning the coordinating role of the Local Content Subcommittee.32

By 2012, a subcommittee of the Local Content Subcommittee had divided the most important capacity development initiatives (CDIs) and those that would deliver the biggest boost to indigenous capacity amongst the operators and was moving toward implementation. Through the CDI subcommittee, Shell committed to developing local capacity to produce seamless pipes, Chevron committed to developing indigenous capacity to assemble valves, Total committed to developing the local production of barites (a mineral used in drilling), ENI committed to a capacity building project around marine services, and ExxonMobil committed to projects on welding qualification and on developing a local plant for producing umbilicals.

The IOCs undertook these projects for several reasons. For starters, they needed to point to their capacity development initiatives in order to apply for waivers in areas where they could not meet the targets set in the NOGICD Act. More importantly, as several NCGMs have stated, the local content initiatives they have undertaken make business sense. They reduce cycle time and lower transportation costs. At the same time, they believe that generating employment for Nigeria, in the words of one NCGM “increases our relevance and our relationship with the country, giving us a social licence to operate.”33

While the IOCs are now coordinating more with the NCDMB, the CDIs they have undertaken have been their own initiatives. The IOCs looked to the stated priorities of government officials, however they decided what projects to undertake and what initiatives to take on first. They coordinated amongst themselves instead of with the NCDMB or Ministry of Petroleum Resources. A further concern is that the initiatives only begin to address the targets in the Schedule to the NOGICD Act. However, the advantage for the IOCs in working together on the CDIs is that when they need to write gap closure plans to receive a waiver,

31 Interview, November/December 2012.
32 The NCGMs have briefed the NCDMB about the CDIs – most recently in a meeting with Ernest Nwapa on December 14, 2012. However, when the NCGMs meet together with the Board, they present their combined activities as being the initiatives of “industry” rather that of OPTS. Many industry insiders and government officials involved in oil and gas and local content remain unaware that the Local Content Subcommittee of OPTS even exists.
33 Interview, November/December 2012.
they can refer not only to their own CDI, but also to the other initiatives being undertaken by industry as a whole. Industry is generally supportive of this system. For this reason, in a discussion on the continuation of waiver authority, Igo Weli, NCGM of Shell Petroleum Development Company (SPDC), argued that the government must continue to tie waivers to concrete CDI projects.  

3.2 INDUSTRY STAKEHOLDERS AND THE NCCF

Besides the international oil companies, several industry groups and professional associations are well represented as stakeholders in Nigerian content development. Section 58 of the NOGICD Act lists eight stakeholder groups to be represented in the Nigerian Content Consultative Forum (see Figure 3.2).

![Figure 3.2 – Industry Stakeholders in the NCCF](from Section 58 of the NOGICD Act)

1. Fabrication
2. Engineering
3. Finance services, legal and insurance
4. Shipping and logistics
5. Materials and manufacturing
6. Information and communication technology
7. Petroleum Technology Association of Nigeria (PETAN)
8. Education and training

A fabrication subgroup was formed under the NCCF in 2010 chaired by Chukwuma Henry Okolo of Doman Long Engineering. Oil and Gas Design Engineers of Nigeria (OGDEN) represents engineering in the NCCF, while the Council of the Nigerian Society of Engineers (COREN) is represented on the NCDMB Governing Council. Representatives of finance services, legal, and insurance also participate in the NCCF, while the National Insurance Commission is represented on the Governing Council of the NCDMB. The Nigerian Chamber of Shipping (NCS) represents shipping and logistics, while the Manufacturers Association of Nigeria Local Content Group (MANLOC) represents material and manufacturing. The Petroleum Technology Association of Nigeria (PETAN), an umbrella organisation for indigenous oil service providers, is specifically named in the NOGICD Act and is also represented on the NCDMB Governing Council. Finally, the Oil and Gas Trainers Association of Nigeria (OGTAN) is also represented in the NCCF and Governing Council for education and training. A more complete list of industry groups and stakeholders can be found in Figure 3.3.

For the most part, the organisations mentioned above are consulted regularly by the NCDMB. More recently, the Board has also begun specific joint initiatives with many of these groups, in particular with OGTAN and PETAN. However, the NCCF has not been called in over a year, which has been a cause for concern amongst some of the groups mentioned above. According to one industry insider, the reason is simply that the Board has been distracted by

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34 Presentation at “Stimulating Local Capacity”.
other priorities. While for some time the Board let their relationships with several industry groups decline, the NCDMB has, to its credit, recently assigned a liaison officer for each of the eight stakeholder groups in the NCCF.

<table>
<thead>
<tr>
<th>Stakeholder Group</th>
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<tr>
<td>Oil Producers Trade Section (OPTS), Lagos Chamber of</td>
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<tr>
<td>Commerce and Industry (LCCI)</td>
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<tr>
<td>Nigerian Content Consultative Forum (NCCF)</td>
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<tr>
<td>Petroleum Technology Association Of Nigeria (PETAN)</td>
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<tr>
<td>Manufacturers Association of Nigeria Local Content</td>
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<tr>
<td>Group (MANLOC)</td>
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<tr>
<td>Council for the Regulation of Engineering in Nigeria</td>
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<tr>
<td>(COREN)</td>
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<tr>
<td>Oil and Gas Design Engineers of Nigeria (OGDEN)</td>
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<tr>
<td>National Insurance Commission (NAICOM)</td>
</tr>
<tr>
<td>Oil and Gas Trainers Association of Nigeria (OGTAN)</td>
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<tr>
<td>Nigerian Chamber of Shipping (NCS)</td>
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<tr>
<td>National Association of Small and Medium Enterprises</td>
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<tr>
<td>(NASME)</td>
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<tr>
<td>Equipment Leasing Association of Nigeria (ELAN)</td>
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<tr>
<td>National Association of Small Scale Industrialists</td>
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<tr>
<td>(NASSI)</td>
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<tr>
<td>Nigerian Economic Summit Group (NESG)</td>
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<tr>
<td>Nigerian Bar Association</td>
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<td>Chartered Institute of Bankers of Nigeria</td>
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3.3 CIVIL SOCIETY AND RESEARCH INSTITUTES

As mentioned above, the NCDMB has made little effort to reach out to civil society and independent research institutions. A partial list of such organisations with an interest in local content is provided in Figure 3.4. For their part, few civil society organizations (CSOs) or researchers have taken much interest in local content – preferring instead to focus on wider industry restructuring, particularly the debates around the PIB. Given the significance of local content, this failure on the part of civil society is a major oversight.

<table>
<thead>
<tr>
<th>Research Institution</th>
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<tbody>
<tr>
<td>Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN)</td>
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<tr>
<td>Nigeria Union of Petroleum and Natural Gas Workers (NUPENG)</td>
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<tr>
<td>Centre for the Study of Economies of Africa (CSEA)</td>
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<tr>
<td>Centre for Public Policy Alternatives (CPPA)</td>
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<tr>
<td>Africa Network for Environment and Economic Justice (ANEEJ)</td>
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<tr>
<td>Nigerian Institute of Social and Economic Research</td>
</tr>
<tr>
<td>Centre for Petroleum, Energy Economics and Law, University of Ibadan (CPEEL)</td>
</tr>
<tr>
<td>Initiative for Public Policy Analysis</td>
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<tr>
<td>Stakeholder Democracy Network (SDN)</td>
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35 Interview, November/December 2012.
According to recent research by Revenue Watch Institute, there are several roles for CSOs – both in supporting government and in working with oil companies. They write: “local CSOs can be a bridge between the company and the business community. This may require helping build the capacity of the CSO, which could then play a role in monitoring and reporting local spending. Where commercially appropriate, CSOs could be allowed access to business plans, local content strategies and other information supporting the transparency of business dealings.” In turn, government agencies and industry can support CSOs by providing facilities, training, or access to information linked to building the capacity of local businesses.

There are many roles CSOs can play in local content. CSOs can be involved in advocacy, organizing or aggregating local businesses, partnerships for implementation, creation of business hubs, independent monitoring and reporting, access to finance (micro-finance), and advisory services to companies.

Trade unions are among the most important actors on the terrain of civil society. Unfortunately, the NCDMB has made very few efforts to research out to labour despite labour’s obvious interest in the successful implementation of local content. Of the two major trade unions in the oil and gas sector, the Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN) is more concerned and engaged with local content because its members are more senior and skilled workers. Although PENGASSAN is interested in the potential for economic growth and development through local content, its main interest is job creation and the provisions of the NOGICD Act relating to the expatriate quota.

According to the General Secretary of PENGASSAN, the union feels they have not been consulted on the real issues of expatriate abuses, nor on the question of training – another area of local content development that the NCDMB has pursued without consultation with labour. The NCDMB has concentrated on narrow issues of enforcement of the expatriate quota without understanding the link between expatriate quota abuse and the key issue for PENGASSAN, which is that Nigerians need better training in order to be able to take over positions – especially for positions that are highly technical and/or involve deep offshore oil extraction. According to PENGASSAN, NCDMB has proceeded on several training initiatives and capacity building projects without consulting labour or seeking feedback.  

After feeling frustrated by the lack of engagement from the NCDMB, unions complained to the Ministry of Labour, which directed the Executive Secretary of the Board to meet with PENGASSAN in April 2012. At that meeting, according to PENGASSAN, Nwapa promised to share new draft guidelines on the enforcement of the expatriate quota, allow PENGASSAN to make inputs, and then call a stakeholders forum on the question of the new guidelines. While the NCDMB did dispatch a senior official to make a presentation to PENGASSAN on the guidelines and share a copy with them, they did not accept any feedback on the guidelines prior to publishing them on their website. Although the guidelines are still considered to be a draft, PENGASSAN notes that they are already being used. Meanwhile, no stakeholder forum has been called.

The difficulties the NCDMB may be having in engaging with civil society may be because no key officials in the Board seem to have any experience working with civil society organisations or with labour. Engaging further with civil society may help the NCDMB to

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36 Interview, December 2012.
37 Interview, December 2012.
promote local content and achieve its objectives in terms of development and transparency. Reaching out to Nigerian research institutes is also necessary to generate the indigenous knowledge and awareness needed to sustain the push for Nigerian content and the applied research needed to direct future Nigerian content development.

3.4 THE MEDIA

Since its formation, the NCDMB has developed a sophisticated strategy for using the media to promote local content and ensure its messages are reaching the Nigerian public. In fact, newspaper articles remain one of the only accessible sources of information on the activities of the Board given the lack of information on the NCDMB website. One of the most interesting media initiatives has been the column Dr. Ibilola Amao has written on Nigerian Content Development as part of The Vanguard’s monthly Sweet Crude supplement. Writing and educating the public about Nigerian content remains crucial the success of local content initiatives.

Figure 3.5 – Media with an Interest in Local Content Identified by FOSTER

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<thead>
<tr>
<th></th>
<th>The Vanguard, Sweet Crude Supplement (Edited by Hector Igbikioowo)</th>
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<tbody>
<tr>
<td>2</td>
<td>Africa Oil+Gas Report (Edited by Toyin Akinosho)</td>
</tr>
<tr>
<td>3</td>
<td>Africa Energy (David Slater, Senior Analyst)</td>
</tr>
<tr>
<td>4</td>
<td>Oil Africa Review</td>
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</table>
4.0 TRANSPARENCY AND REFORM FOR LOCAL CONTENT OVERSIGHT

As part of the promotion of local content, the NCDMB picks local companies to give support to and requires that IOCs use local companies in Nigeria for goods and services provision. Part of its role is to privilege certain entrepreneurs and to provide fiscal incentives that foster their growth (as per Section 48 of the NOGICD Act). A second part of its role involves approving Nigerian content plans before tenders for contracts. The system only works if the NCDMB has the confidence and trust of IOCs, international oil service companies, and Nigerian companies that they are acting in a fair and impartial manner to promote local content. This confidence can only be built upon professional conduct and transparent operations.

Although it has begun to put some guidelines on its website, the NCDMB has yet to provide meaningful data of Nigerian content development, the Nigerian content plans of the IOCs, or even on its own activities. On the positive side, the staff of the NCDMB are generally regarded as honest, hardworking, and capable. In the assessment of one Nigerian content manager in the NCD of one of the IOCs: “They are good. They work hard too. They respond to you by email all the time very quickly. If you have any problem – even on the weekend or in the middle of the night. For Nigerian government officials, I think they are very good.”

On the whole, the Board has worked hard to be professional and has also expressed commitment to greater openness. The reason they may not have yet fostered more transparency may in fact simply be that they are overwhelmed with too many priorities and tasks that require immediate attention.

4.1 THE NIGERIAN CONTENT DEVELOPMENT FUND

One of the biggest outstanding tasks for the NCDMB is launching the Nigerian Content Development Fund. Section 104 of the NOGICD Act calls for the Board to create the NCDF and collect one per cent of every contract awarded in the upstream sector for this purpose. While there has been some resistance to this extra cost, the strongest resistance may actually be logistical concerns over how to deduct this money and how it will be used. The Board has made it clear that the NCDF must be used for capacity building projects and not for its own operating costs. It has been working to create a transparent system for collection and distribution of the one per cent and now seems ready to inaugurate the fund.

The NCDF initiative will be run by professional fund managers and be insulated from the Board. A consortium of BGL Plc and UBA Capital Ltd has been appointed as the Joint Financial Advisers and is currently providing fund management advisory services. Several banks are participating in the fund, including UBA, Zenith Bank, First Bank, Fidelity Bank, and GTB. According to Chibundu Edozie, Deputy Managing Director of BGL, the aims of the Fund are to deepen Nigerian content via: (1) Provision of partial guarantee in accessing credit facilities; (2) Direct investment in addressing capacity building issues and promoting human capital development; (3) Deployment of other forms of commercial interventions in executing infrastructure projects and capital investment; and (4) Provision of interest incentives to ingenious companies in order to reduce cost of fund.

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38 Interview, November/December 2012.
39 Presentation to “Stimulating Local Capacity”.
The NCDMB expects the NCDF to collect as much as US$150 million annually and has created an advisory committee to oversee the fund and ensure transparency processes are put in place. It has decided to use 30% of this money for direct capacity building interventions and 70% will not be spent, but rather will be used as guarantees for indigenous companies seeking access to finance at more favourable terms. However, Ernest Nwapa has also mentioned a program to also use the NCDF to rebate a portion of the interest indigenous companies pay on their bank loans—as much as 50% of the interest. Given its size and apparent transparent processes, the NCDF will, when it is finally operational, make a meaningful contribution to Nigerian content development.

4.2 THE QUESTION OF WAIVERS

As they have done with the one per cent remittance, expatriate quota, and other issues, the NCDMB has released guidelines on the administration of waivers that provide information on the procedure for waivers, what is required, and how to justify a waiver application. However, there does not seem to have been strict adherence to the guidelines in practice, leading to considerable confusion in the industry. Despite the existence of waiver procedures, Nigerian Content Divisions report the waiver process is discretionary and opaque.

As mentioned in Section 2 above, the recent “Stimulating Local Capacity” workshop saw a debate about the continuation of the waiver clause in the NOGICD Act beyond the three year limit prescribed in the law. There was widespread agreement that the system as it stands now is discretionary. According to Yomi Orenuga, “When you apply now for a waiver, it is not really clear if it will come.” Agreeing that the Minister should not have the kinds of discretionary powers now prescribed under the NOGICD Act, Larry Osai argues the current system “opens the door to corruption” As Nigeria moves toward the elimination of waivers, he called for greater transparency, publication of waiver applications and approvals, and explicit penalties for not following waiver commitments. Henry Okolo, who argued that the waiver system should not be continued, allowed that if waivers are needed, categories should be limited, debated transparently, and discussed publicly. If you ask for a waiver, the details of the request should be published in a newspaper. All of this led Hon. Asita Honourable, Chairman of the Local Content Committee of the National Assembly to comment that “Continuing to allow the Minister to grant waivers is discretionary and it is wrong.”

The discussion described above suggests a need to examine how waivers have been granted since 2010. It is at this point that the issue becomes even more confusing. As a condition for approval, the waiver guidelines state the application must include “evidence of nationwide publicity and advertisement through the media notifying the public of the requirement of such capacity and the report of all enquiries in response to such publicity” and “evidence of the public hearing/ sensitisation workshop with the supplier industry on the opportunities available for attracting the capacity in-country and the resolutions at the forum.” However, there has been no evidence of such advertisements or that any such workshop has taken place. Furthermore, the conditions for approval state clearly that the Honourable Minister of Petroleum Resources “shall be the only approving authority for granting the waiver.” However, in conversations with NCGMs and other managers in the NCDs of IOCs, what has become apparent is that there is no evidence that since 2010 the Minister has ever granted a waiver under the NOGICD Act.

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40 Presentation to “Stimulating Local Capacity”.
41 Presentations and discussions at “Stimulating Local Capacity”.
According to a source in the Nigerian Content Division of one operating company, the source’s company has gotten “maybe three” waivers since 2010. When challenged that it is not possible that the company can be in compliance with all but three targets in the Schedule to the NOGICD ACT, the source replied “How do you know? You can’t know that! How do you measure those targets in the Schedule? If there is no set definition of the target, you can’t know if there is compliance!”

The above comment underscores the importance of the measurement issues taken up in Section 2. However, the comment also suggests some waivers are being granted. When asked how many waivers his company had received, the NCGM of another company said that in practice there are two types of waivers: “ministerial waivers” and “Board waivers”. According to the NCGMs of ExxonMobil and Chevron, neither company has received any ministerial waivers—the waivers they have received have been from the NCDMB in the form of a formal letter, signed by the Executive Secretary, stating that a particular project can go ahead. This seems to be the system that has been in place since 2010, although one of the NCGMs did mention that his company was now being asked by the NCDMB to apply for its first ministerial waiver.

The fact that this system has continued for more than two years indicates major concerns with the system in place to enforce the NOGICD Act and make sure its targets are reasonable, appropriate, and fairly enforced. The general confusion in the industry about the waiver system stems from confusion and inconsistency on the part of the Ministry of Petroleum Resources and the NCDMB. The House Committee on Local Content, which is tasked with oversight of the Board will need to find a way of addressing these inconsistencies. It is only by devoting the necessary resources into developing a system that works that the targets in the NOGICD Act become meaningful and useful for the advancement of Nigerian content. Building on the insights of Section 3, it is reasonable to suggest that in order to put a system in place that balances the needs of industry with the priorities of government and, certainly to help ensure the fairness of that system, civil society should have a role in resolving the question of waivers.

4.3 COMMUNITY CONTENT

Delivering benefits from local content policies to the communities that host oil extraction is a stated aim of the Nigerian Content Act and is perceived as a way of addressing the ongoing conflict in the Niger Delta. Several clauses in the NOGICD Act are intended to deliver a benefit to host communities by requiring companies to set up offices and production in the areas they operate in. As mentioned in Section 1 above, the NCDMB has also been eager to implement an “Enlightenment Plan” for oil bearing communities, though details of the plan have not been released to date.

In many of his speeches, Ernest Nwapa has called on the IOCs to increase their training and hiring of Nigerians from the communities in which they operate and has called for greater community participation in the supply chain. Each NCD has a manager responsible for community content. However, as Nwapa points out, too often the IOCs meet their contractual obligations by “hiring” workers from their host communities and paying them simply to stay

42 Interview, November/December 2012.
43 Interviews, November/December 2012.
home. It is through community content that IOCs receive their social licences to operate. Therefore, it is in the interest of operating companies to and the NCDMB to work harder to ensure the benefits of Nigerian content are reaching individuals at the community level.

4.4 RECOMMENDATIONS

There are many areas for improvement in terms of transparency and reform in the way Nigerian content is being implemented. A report produced by Tandice-B Solutions (2011) on the accountability and transparency challenges for enhancing Nigerian content reviews some of the key challenges, such as accountability and transparency in the award of oil blocks, leases and contracts and transparency in the bidding process for indigenous contractors, along with other issues identified in this report such as transparency in the management of the NCDF, the absence of a standard operating framework for monitoring effectiveness of implementing the Act, and accountability and reporting on compliance. Unfortunately, many of the recommendations in the Tandice-B report have not yet been implemented – by government or by the IOCs.

Both the IOCs and NCDMB have shown an interest in making more information about local content publically available, and as mentioned at the beginning of this section, there is a strong incentive to put in place transparent processes. It seems though that there needs to be greater push or demand for transparency –especially from Nigerian civil society – for this openness to translate into meaningful change. With proper resources, the NCDMB is likely to put more of its policies and procedures online, along with more data on local content in Nigeria. The biggest obstacle right now may simply be that the policies and procedures, along with the data and statistics, do not yet exist.

One thing that can and should be done immediately is to release more information about the activities of the NCDMB and the operating companies. To comply with the NOGICD Act, IOCs are submitting Nigerian Content Plans and reports on their plans for legal services, financial services, technology transfer, and education and training. Although some information, particularly the cost and value of contracts, may be proprietary, there is no reason that more of the data being submitted to the NCDMB should not be put online. For more substantive transparency, both government and oil companies will have to communicate their Nigerian content commitments more openly and allow civil society and stakeholder groups to hold them accountable.

Robust metrics for measuring and reporting on local content are required to ensure effective implementation of the Nigerian Content Act. For these to be developed, the NCDMB and the Local Content Committee of the National Assembly are going to have to work together with the operating companies, industry groups, labour, CSOs, research institutions, and other stakeholders to develop a strong measurement system with independent evaluation capacity. At the same time, they will have to expand their outreach to communities and to the Nigerian public more generally to communicate the successes, challenges, and opportunities presented by Nigerian content. This outreach must go hand in hand with a standard for measuring local content in order for a clear picture to emerge about where Nigeria started from and what has been accomplished.

44 Presentation at “Stimulating Local Capacity”.
The Schedule to the NOGICD Act will have to be reviewed by the Ministry and the Board at some point. While IOCs are calling for significant reductions in the categories of services covered by the Act, a more important priority is to set achievable targets that can be revised upwards as capacity develops. At the same time, there is nothing wrong with the government, through the National Assembly, Ministry of Petroleum Resources, and NCDMB, communicating their priorities for building indigenous capacity. More direction from these actors will result in more efficient allocation of resources and adoption of local content. Although there is a risk that without the need to apply for waivers and commit to particular gap-closure initiatives the IOCs will not take on as much of the burden, it is likely that enough incentives exist for the IOCs to continue engaging in their capacity development initiatives even if more reasonable targets are put in place and the waiver system is allowed to expire.

There will still be a role for the NCDMB to play in pushing the government’s priorities and insisting upon policies that are good for Nigerian content, but may not necessarily be in the short-term interests of the operating companies. However, the Board’s task will be made significantly easier if it enlists support from civil society and the Nigerian public, which is generally very supportive of Nigerian content.
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