



**Africa  
Centre for  
Energy Policy**



## **LOCAL CONTENT DEVELOPMENT IN THE PETROLEUM UPSTREAM SECTOR**


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**Comparative Analysis of Ghana,  
Nigeria and Angola**

Supported By:

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# **LOCAL CONTENT DEVELOPMENT IN THE PETROLEUM UPSTREAM SECTOR**

**A comparative Analysis of Ghana, Nigeria and Angola**

Africa Centre for Energy Policy

December, 2014

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## List of Abbreviations

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NC	National Content
WTO	World Trade Organization
TRIM	Trade Related Investment Measure
PNDCL	Provisional National Defense Council Law
NOC	National Oil Corporation
NNPC	Nigerian National Petroleum Corporation
IOC	International Oil Company
NCDMB	Nigerian Content Development and Monitoring Board
LCC	Local Content Committee
PC	Petroleum Commission
NCCF	Nigerian Content Consultative Forum

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## 1.0 INTRODUCTION

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Sub-Saharan African oil and gas producing countries have enormous potential to nurture and transform their economies through industrialization, jobs creation and equitable distribution of wealth. However, these countries are saddled with macro-economic instability and weak governance structures and institutions. In order to improve economic growth and the efficient management of natural resource endowments, a new course of policy direction for governments in the sub-region is being chartered in the petroleum sector and is intended to guide the development and management of the growing oil and gas sector as a mechanism to foster the economic transformation agenda.

One major goal of governments in the sub region is to optimize the exploitation of petroleum resource endowments for the overall benefit and welfare of their citizens in a sustainable manner. A major challenge in meeting this policy goal is; how to develop the oil and gas industry with optimal local content and participation to enhance national development and job creation. In this regard, the key policy objective is to maximize national value creation along the petroleum value chain, through employment, value creation, and transfer of knowledge and technology.

Regrettably, despite huge sums of money spent annually on projects in the oil industry, very little proportion of the accruable profit is available to indigenous oil service companies or invested in developing the nations' industrial base. The high capital flight associated with the oil companies operating in the regions invariably leaves behind a trail of environmental and socioeconomic hazards for the indigenous population to deal with.

Following this historical antecedent, developing oil producing countries are now seeking for more than just economic rent; they have adopted local content policies to boost the participation of citizens and to enhance value addition and ownership to achieve a desired critical mass in the oil and gas value chain<sup>1</sup>. For example, the Nigerian Oil and Gas Industry Content Development law has

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<sup>1</sup> The Africa Report (2014). [Local content: Cultivating homegrown talent](#). Accessed:

tough requirements on giving local companies priority in oil block licensing rounds and compels oil companies and service providers to hire Nigerians<sup>2</sup>.

Likewise, Ghana's local content law gives local companies first preference in the bidding for oil blocks and requires a minimum of 5% equity stake for Ghanaian firms – not including the government-owned Ghana National Petroleum Corporation – in every oil licence<sup>3</sup>.

Lastly, Article 6 of Decree/Order No. 127/03 of the Angolan 'General Regulatory Framework for Hiring of Services and Goods from National Companies by Companies in the Industry' stipulates that; in the contracting and subcontracting for the supply of goods and provision of services to the oil activities, Angolan state and/private companies enjoy preferential rights provided that the amount of the respective proposal is not more than 10% higher than that proposed by other companies<sup>4</sup>.

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## 2.0 RATIONALE

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The paper seeks to make broad policy recommendations on local content developments in the oil and gas industry within the framework of local content legislations in Ghana, Angola and Nigeria. The comparison between these three Sub-Saharan African oil and gas countries takes into consideration the similarities in their natural resource endowments, governance philosophy and economic development<sup>5</sup>.

Further, the paper throws a spotlight on the local content legal regimes of Nigeria, Ghana, and Angola based on their competitiveness, absorptive capacities and existing infrastructure. Lastly, the paper seeks to conduct a gap analysis to examine the capabilities and effectiveness of the implementation strategies adopted by these countries to implement the local content legislations.

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<sup>2</sup> Nigerian Oil and Gas Industry Content Development Act 2010. Act No. 2.

<sup>3</sup> Ghana Petroleum (Local Content and Local Participation) Regulations, 2013 (L.I.2204)

<sup>4</sup> Ministry of Petroleum, Angola. Decree/Order No. 127/03. Angolan General Regulatory Framework for Hiring of Services and Goods from National Companies by Companies in the Industry

<sup>5</sup> Comparative Analysis of the Nigerian and Liberian Local Contents Act. By Dr. Theophilus Olusegun Obayemi. 2013.

Accessed: <http://www.proshareng.com/articles/2553/Comparative-Analysis-of-the-Nigerian-and-Liberian-Local-Contents-Act>

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## 3.0 DEFINING LOCAL CONTENT

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The term 'Local Content' generally refers to the use of local resources and value addition in the value chain of an industry. Local content is commonly defined in terms of value addition to the local economy by; local staff, local materials, local services and facilities. Other school of thought defines local content for the petroleum sector in terms of ownership which often results in 'Nationalization' of assets<sup>6</sup>.

Warner (2011)<sup>7</sup> maintains that local content is the composite value contributed to the national economy from the purchase of bought-in goods and services, and includes wages, benefits, materials, equipment, subcontracts and taxes.

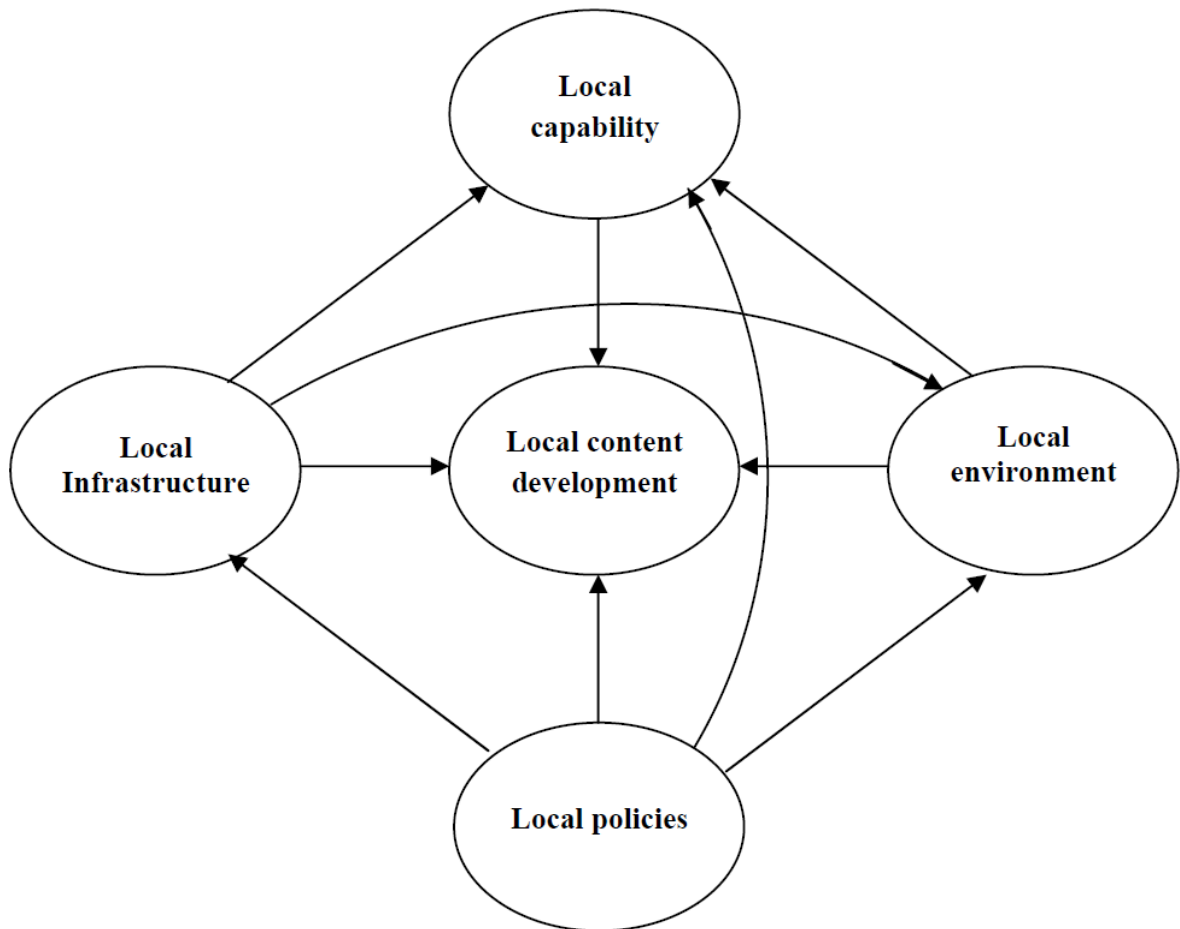
Many oil exporting countries have taken a positive approach towards local content development to maximize the benefits from oil and gas extraction<sup>8</sup>. Abolfazi and Behrouz (2012) argue that local content development is a function of four key factors: Local Capability; Local Policies; Local Environment and Local Infrastructure as demonstrated in the model below:

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<sup>6</sup> Venezuela Analyses.com (2007). Venezuela Decrees Nationalization of Last Foreign Controlled Oil Fields. Accessed: <http://venezuelanalysis.com/news/2245>

<sup>7</sup> M. Warner (2011). Local Content in Procurement: Creating local jobs and competitive domestic industries in supply chains. Greenleaf Publishing Ltd. UK.

<sup>8</sup> A conceptual model for local content development in petroleum industry. By: *Abolfazi, K. and Behrouz, N. (2012)*. Accessed: [http://www.growingscience.com/msl/Vol2/msl\\_2012\\_122.pdf](http://www.growingscience.com/msl/Vol2/msl_2012_122.pdf)

**Fig.1. Key Factor Of Local Content**

Abolfazi and Behrouz (2012)

Different countries have varied definitions for local content: For example, local content in Ghana is defined as the quantum/percentage of locally produced materials, personnel, financing, goods and services used in the oil industry and which can be measured in monetary terms. Local Participation on the other hand refers to the level of Ghanaian equity ownership in the oil and gas industry.

Similarly, the Nigerian Content defines local content as the quantum of composite value added to or created in the Nigerian economy by a systematic development of capacity and capabilities through the deliberate utilization of Nigerian human, material resources and services in the Nigerian oil and gas industry.



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## 4.0 WHY LOCAL CONTENT?

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The local content policy imperative in many countries is to protect local and infant industries. Warner (2011) opines that, regulations that give preference to domestic suppliers over foreign suppliers' falls within the category of 'Restrictive Import Quotas on the use of foreign goods and services'.

However, under the World Trade Organization (WTO) rules for Trade Related Investment Measures (TRIMS), local content laws are explicitly prohibited since it stifles competition<sup>9</sup>. Nevertheless, some foreign suppliers also enjoy export subsidies from their home countries such as export credit guarantees. Also, due to the size of most multinational companies, they have economies of scale and are able to negotiate global sourcing arrangements with international suppliers which avails them price advantage over local suppliers.

Some petroleum producing countries also use local content as a national security tool deployed to align the interest of government with that of societal demands. For example, Nigeria has enjoyed relatively lower oil related conflict and insurgency from 2010 to date to a large extent, due to effective and targeted implementation of local content laws<sup>10</sup>.

Also, in Liberia and Sierra Leon, the local content and affirmative action laws were used to achieve post conflict harmony<sup>11</sup>.

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## 5.0 COUNTRY ANALYSIS

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### 5.1 The Ghanaian Perspective

Ghana pegged her flag in the mask of oil and gas producing nations when she began commercial production of oil in 2010. Government adopted a policy to accelerate hydrocarbon exploration and production following the Jubilee Field discovery in the Deepwater Tano Block and the West Cape Three Points block.

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<sup>9</sup> World Trade Organization (2014). Trade Related Investment Measures. Accessed: [http://www.wto.org/english/tratop\\_e/invest\\_e/invest\\_e.htm](http://www.wto.org/english/tratop_e/invest_e/invest_e.htm)

<sup>10</sup> Department of Petroleum Resources, Nigeria. (2013) Oil and Gas News. Accessed: <http://dpr.gov.ng/index/category/local-oilgas-news/>

<sup>11</sup> M. Warner (2011). Local Content in Procurement: Creating local jobs and competitive domestic industries in supply chains. Greenleaf Publishing Ltd. UK.

This led to a record time of 3.5 years in the development of the deep offshore Jubilee field; oil production began in December 2010<sup>12</sup>.

The Petroleum Commission Act (Act 821) which established the Commission was passed by an Act of Parliament, 2011 (Act 821) to regulate and manage the utilization of petroleum resources and, coordinate the policies in the upstream petroleum sector<sup>13</sup>.

Ghana's Local Content and Local Participation Regulations 2013, (L.I. 2204) was passed by parliament in November 2013. Pursuant to Regulation 48 of the Local Content L.I, a three month transition period was allowed for companies to adequately prepare themselves to comply with the regulations. Therefore, the L.I. took effect from February 2014 which meant that it took Ghana government approximately 3 years to develop the local content regulations after the commencement of oil production.

Notably, before the passage of the local content regulations, Ghana government was already applying local content laws as captured in PNDC Law 84 and the Model Petroleum Agreement. For instance, Sections 10 and 12 of PNDCL 84 stipulates that A contractor or sub-contractor shall, ensure that opportunities are given as far as is possible for the employment of Ghanaians having the requisite expertise or qualifications in the various levels of the operations.

Further, a contractor or sub-contractor shall, as far as practicable, in accordance with the Regulations and the petroleum agreement or sub-contract use goods and services produced or provided in Ghana for his operations in preference to foreign goods and services<sup>14</sup>.

## 5.2 The Nigerian Perspective

Oil was first discovered in Nigeria in 1956 at Oloibiri in the onshore Niger Delta by Shell-BP and joined the league of oil producing nations in 1958 when it began producing oil and gas<sup>15</sup>.

The local content policy action started in 1971 through the establishment of the Nigerian National Oil Corporation, (NOC). NOC was established as a vehicle for

<sup>12</sup> Tullow Oil Plc (2014). Jubilee Field: The story so far. Accessed: [http://www.tulloil.com/ghana/files/jubilee\\_esia\\_brochure.pdf](http://www.tulloil.com/ghana/files/jubilee_esia_brochure.pdf)

<sup>13</sup> Republic of Ghana. Petroleum Commission Act 2011, (Act 821)

<sup>14</sup> Ghana National Petroleum Corporation. Petroleum Exploration and Production Law 1984 (PNDC Law 84)

<sup>15</sup> NNPC 2014. History of the Petroleum Industry in Nigeria: Accessed <http://www.nnpcgroup.com/NNPCBusiness/BusinessInformation/OilGasinNigeria/IndustryHistory.aspx>

the promotion of Nigeria indigenization policy in the petroleum sector. It was later restructured into Nigerian National Petroleum Corporation (NNPC) in 1977 through NOC's merger with the petroleum ministry. NNPC flagged off the actual local content initiative through acquisition of interests in the operations of the International Oil Companies (IOCs). These interests grew to about 70%, with the responsibility of controlling all acreages and other activities.

The Nigerian Oil and Gas Industry Development Content Bill was laid in parliament for over a decade and was finally passed in 2010. This meant that for over half a century, the oil and gas industry operated without a legal regime that promoted the interest and participation of indigenous Nigerian companies in the industry.

The Nigerian Oil and Gas industry Content Development Act 2010, (Act No. 2) is framed within the context of growth of Nigerian entrepreneurship and the domestication of assets to fully realize Nigeria's strategic developmental goals. The scheme, has the potential to create over 30,000 jobs in the next 5 years, is geared to increasing the domestic share of the \$18 billion annual spending on oil and gas from 45% to 70%, in addition to enhancing the multiplier effects on the economy, through refining and petrochemicals.

### **5.3 Angolan Perspective**

Oil and gas was first discovered in 1955 in the Kwanza basin near Luanda. However, it was in the late 1960s that the offshore Cabinda reserves were discovered and stimulated the oil industry. By independence in 1975, oil had overtaken coffee as Angola's leading export. Major deepwater discoveries were made in the 1990s which soared production to about 2 million barrels per day in 2002<sup>16</sup>.

Since 1982, and consistently through the years, the Angolan government has passed legislation to set targets for the hiring of local labor to which the foreign oil companies must adhere. In 2002, the Angolanization policy framework was developed on the back of the Petroleum Decree-Law 20/80 which requires oil companies operating in Angola are required to develop their Angolan workforce from 70% to 90% as well as develop the local supplier market by 2010. The staffing targets are based on worker grades: (1) 100% Angolanization will be required for unskilled workers, e.g., drivers, janitors, etc., (2) 80%

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<sup>16</sup> Angola Today, Oil and Gas Report. History of oil in Angola. Accessed: <http://www.angola-today.com/country-profile/industries/oil-and-gas/>

Angolanization will be required for mid-level workers, e.g., travel agents, machinists, etc., and (3) 70% Angolanization will be required for higher level staff, e.g. managers, geologists, engineers, etc<sup>17</sup>.

Regretably, the Angolanization targets have not been met till date as a result of the inadequate local capacity and general low level of expertise in certain key priority areas.

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## 6.0 ANALYSIS OF LOCAL CONTENT LAWS IN GHANA, NIGERIA AND ANGOLA

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Juxtaposing the local content developments in Ghana, Nigeria and Angola, there are certain commonalities in the national development and use of human and material resources in the upstream petroleum sector. However, the Ghanaian definition encapsulates a more realizable output, as it seeks to measure local content achievements in monetary terms.

In the attempt to compare and analyze the local content legislations of these three countries, careful consideration must be given to context-specific issues since these countries are at different stages of their hydrocarbon development with Ghana being the youngest oil producer.

A lot more parallels can be drawn on the core principles of the Ghanaian, Nigerian and Angolan local content legislations. However, there are significant variations in the approach and implementation strategies of local content development of these countries as espoused below:

### 6.1 Governance Structure

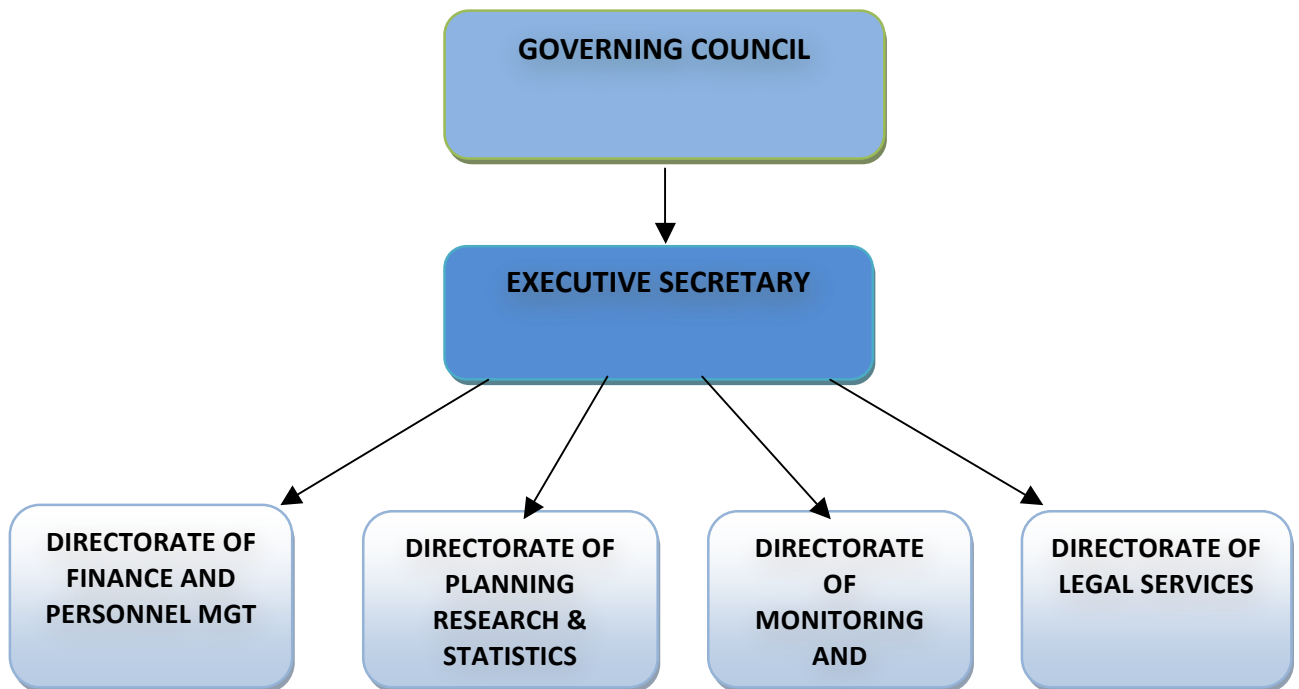
#### 6.1.1 Nigeria

The Nigerian Content Development and Monitoring Board (NCDMB) was established by President Goodluck Jonathan with the mandate to effectively implement the Nigerian Content Act which was signed into law in April 2010. The structure of the board is in two levels:

1. The Governing Council
2. The Executive Council

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<sup>17</sup> World Bank (2011). CSR in the Oil Sector in Angola: World Bank Technical Assistance Study. Accessed: <http://www.sarpn.org/documents/d0000331/page3.php>

**Fig.2** Structure Of NCDMB

Section 71 of the NC Act, Act No. 2 makes provision for the establishment of the Governing Council with the authority to manage and superintend the affairs of the Board. Section 72(a) stipulates that the chairman of the board shall be the Minister of Petroleum Resources. Section 72(b) identifies the institutional representatives of the board as;

- (i) Nigerian National Petroleum Corporation,
- (ii) the agency in charge of technical regulation of the industry,
- (iii) Ministry of Petroleum Resources,
- (iv) Petroleum Technology Association of Nigeria,
- (v) Nigerian Content Consultative Forum,
- (vi) Council of Registered Engineers of Nigeria,
- (vii) National Insurance Commission; and
- (c) Executive Secretary who shall be the Secretary of the Council.

Section 73(1) further stipulates that the Chairman and members of the Council shall be appointed by the President.

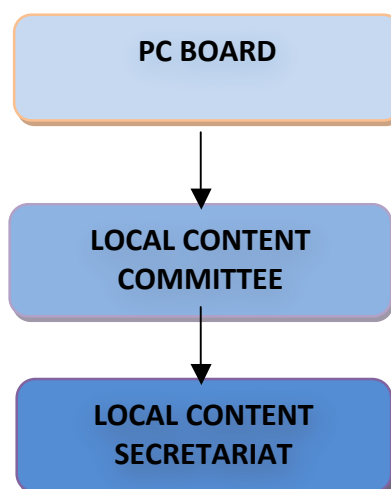
### 6.1.2 Ghana

Section 8(2) of Ghana Petroleum Commission Act 2011, (Act 821), specifies that, the Commission shall establish the Local Content Committee (LCC) to deal with the Local Content and Local Participation Programme. Likewise, Section 8(3) states that the LCC shall be chaired by a member of the Petroleum Commission (PC) Board.

Pursuant to Regulation 5(1) of the Petroleum (Local Content and Local Participation) Regulations 2013, (L.I. 2204), the board of PC established the LCC in March 2014 in line with its efforts to ensure that the Commission is managed within a sound and proper governance framework. In August 2014, the 8-member LCC was sworn into office by Honourable Emmanuel Armah Kofi Boah, the Minister of Energy and Petroleum. They are engaged on part time basis and comprises of members from the following institutions:

1. The Ministry of Energy and Petroleum
2. The PC Board
3. CEO of Petroleum Commission (Board Chairman)
4. Director for Special Service at PC (as Head of the Local Content Secretariat)
5. National Development Planning Commission
6. Ghana Oil and Gas Service Providers Association
7. Parliamentary Select Committee on Mines and Energy.

**Fig.3 Structure of the LCC**

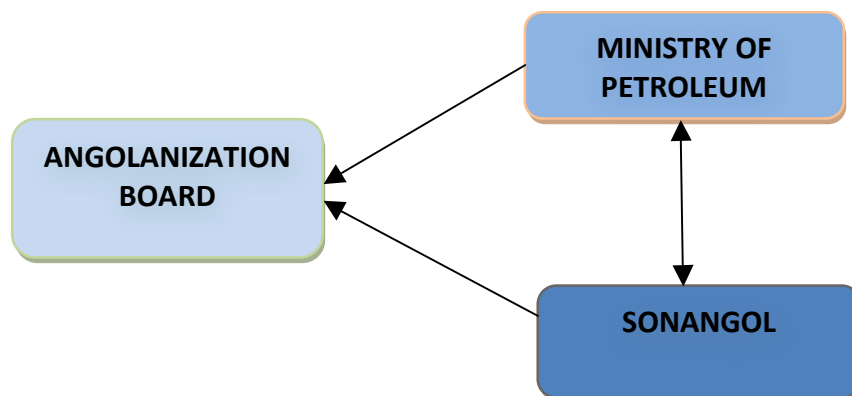


### 6.1.3 Angola

The Angolan Ministry of Petroleum and the National Oil Company (Sonangol) are the agencies in charge of implementing the Angolanization Plan. The governance structure is in two tiers. Each agency has a dedicated directorate dealing with local content with the Ministry of Petroleum in charge of regulation of the oil and gas industry whiles Sonangol acts as the implementation agency for the Ministry<sup>18</sup>.

The independence of Sonangol has been questioned by many industry players for potential conflict of interest since they are partners to the petroleum agreements and at the same time, performs a regulatory function.

**Fig. 4 Structure Of Angolanization Board**



In analysing the governance structure of these countries, one cannot lose sight of the fact that, unlike Nigeria and Angola, the Ghanaian Local Content Regulations does not specify institutional membership of the LCC. Rather, the composition of the LCC was established by the PC Board.

Since Ghana's local content regulations does not provide for the constitution of the membership of the LCC, the composition of the board may not yield the right balance of expertise needed to effectively implement the laws.

Whiles the NC Act 2010 provides that the Minister for Petroleum Resources is chairman for the governing council of the NCDMB, Ghana's local content regulations does designate the chairmanship of the Local Content Committee to

<sup>18</sup> D. Clarke (2004). Petroleum Prospects and Political Power. Accessed: <http://www.issafrica.org/pubs/books/Angola/10Clarke.pdf>

the Minister for Petroleum and Energy. This suggests that, the NCDMB under the chairmanship of the Minister has stronger enforcement powers.

### **6.2 Executive Powers**

The Nigerian Content Development and Monitoring Board and the Angolanization are constituted by the Presidents of the two countries. Therefore, they have more executive powers as compared to Ghana's Local Content Committee that is established by the Petroleum Commission Board.

More so, the legislative framework of the Nigerian content law is stronger than Ghana's local content regulations. In the scheme of legislations, Nigerian content is based on a primary legislation which is the Nigerian Oil and Gas Industry Development Act 2010, Act No. 2, while Ghanaian content is based on a piece of secondary legislation, which is the Petroleum Local Content and Local Participation Regulations 2013, (L.I. 2204). The regulations in turn draw its strength from Petroleum Commission Act 2011, (Act 821) and PNDC Law 84.

### **6.3 Local Content Requirements**

In accordance with Section 2 of the Nigerian Content Act 2010, all regulators, operators, contractors, subcontractors, alliance partners and other entities involved in any project, operation, activity or transaction in the Nigerian oil and gas industry shall consider Nigerian content as an important element of their overall project development and management philosophy for project execution.

Likewise, Regulations 3 of the Ghanaian Local Content Regulations stipulates that, a contractor, subcontractor, licensee, the Corporation or other allied entity carrying out a petroleum activity shall ensure that local content is a component of the petroleum activities engaged in by that contractor, subcontractor, and licensee, the Corporation or other allied entity.

The Angolan local content requirement attempts to capture different levels of Angolan content engagement depending on the complexity of services required. Article 2 of the Angolan Ministry of Petroleum Order No. 127/03 provides for business relationships to be established between national companies suppliers of goods and services and companies in the Oil Sector are based on the following systems:

1. Rule of Exclusivity for the Angolan Business Initiative that reserves all activities which do not require a high capital value and basic average and



in-depth non-specialised know-how in which the participation of foreign companies has to take place only on the initiative of Angolan companies come under this system.

2. System of semi-compliance which requires the participation of foreigners in all areas which require a reasonable level of capital in the oil industry and in-depth not always specialist know-how where the participation of foreign companies has to be permitted only in association with national companies or on their initiative come under this system.
3. Competition system which requires the possibility of partnerships between Angolan companies and foreign companies the competition system means all oil activities (offshore and onshore) not described in the systems above and which require a high level of capital in the oil industry and in-depth specialist know-how.

Considering the provision for local content requirements of these countries, it is apparent that the Nigerian local content requirements enjoin other regulatory bodies to comply, and to give priority to the NC law where it is in conflict with other laws. Conversely, the Ghanaian local content requirement is focused on companies and does not put credence to participation and compliance of other government agencies. This limits the enforcement powers of the PC, especially where there are overlapping roles of government agencies. For example, in the recent helicopter crash offshore in the Western Region in May 2014, there was confusion between Petroleum Commission and the Ghana Civil Aviation Authority as to which agencies was responsible for search and rescue operation and also crash scene investigation.

The Nigerian and Angolan content requirements further identify companies and projects that should be regulated by the NCDMB and the Angolanization Board respectively. In the case of PC, it is unclear as to which companies, projects or activities should be regulated by the PC. This has caused some confusion in the industry as they are still waiting for guidance from the PC.

#### **6.4 Preference to Goods and Services**

Article 7 (Law No. 14/03) affirms that, the function of the preferential treatment given to Angolan concessionaires shall be to reduce unfavourable conditions and unequal competition between national and foreign investors and to contribute towards the constitution consolidation and strengthening of the participation of

Angolan citizens in the ownership and management of national wealth in an open free market economy<sup>19</sup>.

In Ghana, Regulation 11 of L.I. 2204 stipulates; a contractor, subcontractor, licensee or other allied entity shall establish and implement a bidding process for the acquisition of goods and services to give preference to indigenous Ghanaian companies.

Also, Section 3 of the NC Act 2010 grants that, Nigerian independent operators shall be given first consideration in the award of oil blocks, oil field licenses, oil lifting licenses and in all projects for which the contract is to be awarded in the Nigerian oil and gas industry subject to the fulfillment of such conditions as may be specified by the Minister.

### 6.5 Equal Rights

In Angola, Article 4(1) of the Decree-Law No. 17/2009 on Recruitment and Training provides that; Angolan personnel and foreigners employed who occupy the same position and have similar job descriptions shall enjoy the same monetary and social benefits, as well as the same employment conditions; any type of discrimination is expressly prohibited.

On the other hand, the local content regulations of Ghana and Nigeria do not explicitly address condition of service for local employees. This has the potential to create unrest and may give rise to wage discrimination against local employees which seem to be the case in these countries. For example, in May 2014, Ghanaian rig workers went on strike to demand better condition of service which grinded all operations in offshore Ghana to a halt. Among others, they complained of the vast income differentials or inequality between them and the expatriates<sup>20</sup>.

### 6.6 Succession Plan

Section 31(1) of the NC Act provides that, for each of its operations, the operator shall submit to the Board a succession plan for any position not held by Nigerians and the plan shall provide for Nigerians to understudy each incumbent expatriate for a maximum period of four years and at the end of the four year period the position shall become Nigerianized.

Similarly, Regulation 18(2) of the Local Content Regulations stipulates that, the

<sup>19</sup> Angolan Law on the Promotion of the Angolan Private Business Community 2003, (Law No. 14/03)

<sup>20</sup> Joy FM 2014, Another Strike at Sea on Jack Ryan Rig. Accessed:

<http://www.myjoyonline.com/business/2014/august-9th/another-strike-at-sea-on-jack-ryan-rig.php?print=1>

succession plan submitted by the operator, contractor or subcontractor shall make provision for Ghanaians to understudy the requirements of the position held by a non-Ghanaian for a period determined by the Commission on a case-by-case basis after which the position occupied by the non-Ghanaian shall be assumed by the Ghanaian.

In accordance with Article 7 (1)(2) of Decree No. 13/10 of Hiring of Angolan National and Foreign personnel stipulates that hiring of foreign personnel can only be done with prior authorization from the Ministry of Petroleum at the request of the interested company. The company must prove that in the domestic market, there are not sufficient and available Angolan citizens with the skills and experience required for the exercise of office or position in question. There must be a;

- a) public announcement about the availability of places in the job description or role to play and indication of academic and technical and professional experience required;
- b) declaration to be issued by the Centers for Employment and Vocational Training of the Ministry of Public Administration, Employment and Social Security, on the absence and / or non-availability of Angolan citizens in the national labor market with the required qualifications and experience in public announcements relating to vacancies for the posts or duties to fill in the companies' personnel charts.

While the Nigerian law provides for a succession period of 4 years, succession plan in the Ghanaian regulations is to be determined by Petroleum Commission on case by case basis, this gives room for subjectivity and use of discretion which may in turn lead to corruption.

Angola has a more rigid policy on succession plan since companies have to seek clearance from both the Ministries of Petroleum and Employment and submit a succession plan to both Ministries before work permit can be obtained for the expatriate worker.

#### **6.7 Allowance for Expatriate Positions**

The determination of the number of expatriates in management positions is another area of interest. Section 32 of the NC Act 2010 requires that, for each of its operations, an operator or project promoter may retain a maximum of five

per cent of management positions as may be approved by the Board as expatriate positions to take care of investor interests.

Whereas management position for expatriates as provided in the Local Content Regulations 2013 for the start is 70% and it is expected to reduce to 40% in 5 years.

Article 4(1) of the Decree-Law No. 17/2009 on Recruitment and Training stipulates that all foreign companies and Angolan companies in which a majority holding is owned by foreign entities which are engaged in the prospecting, exploration, appraisal, development and production of petroleum in Angola as well as the companies engaged in petroleum refining and processing, storage, transport, distribution and marketing of petroleum products shall employ Angolan citizens in all positions at all levels<sup>21</sup>.

Article 4(2) further articulates that; should it demonstrated that there is not a sufficient number of duly qualified and experienced Angolan citizens available in the national labour market, foreign nationals may only be hired with the prior authorization from the Ministry of Petroleum.

It is quite clear from the above legislations that in theory and practice, Angola has the most stringent local content law on engaging foreign workers. The Nigerian content also makes room for only 5% foreign management staff which has worked so far considering the availability of expertise and skills in the country. Albeit Ghana is a relatively young oil nation, the local content target on expatriate positions does not seem ambitious enough considering the abundance of transferable skills in Ghana.

### **6.8 Financial Services**

Financial services in the oil and gas industry has been earmarked by industry experts as one of the critical areas of the industry with high value retention potential for local content development. In this light, Section 52(3)(f) of the NC Act 2010 requires all operators, contractors and sub-contractors to maintain a bank account in Nigeria in which it shall retain a minimum of 10 per cent of its total revenue accruing from its Nigerian operations.

Similarly, Regulation 31(1)(2) of Ghana's local content regulations articulate that, a contractor, subcontractor, licensee or other allied entity that requires

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<sup>21</sup> Angolan Law on Recruitment, Training and Development of Angolan Personnel 2009, Decree-Law No. 17/2009.

financial services with respect to a petroleum activity shall retain only the services of a Ghanaian financial institution or organization. Unless approval is sought from Petroleum Commission before a foreign financial services can be used.

In addition, Regulation 33(1) maintains that, a contractor, subcontractor, licensee or other allied entity shall maintain a bank account with an indigenous Ghanaian bank and transact business through banks in the country.

However, the provision for the use of financial services in Ghana local content regulations is quite ambiguous. For instance, it makes provision for the use of Ghanaian Financial Institutions on one hand, and indigenous Ghanaian banks on the other. However, there is a fine line between them.

Furthermore, while the Nigerian content is explicit on the volume of business to transact through Nigerian banks (10%), the Ghanaian Regulations is silent on the volume of business to transact through Ghanaian banks, which makes it challenging to measure and assess compliance.

#### **6.9 Consultative Forum**

Whereas the Ghanaian Local Content Regulations does not provide for the setting up and use of an external consultative body, the Nigerian Content Board has an advisory arm set up under Section 57 of the Nigerian Content Act 2010, known as the Nigerian Content Consultative Forum (NCCF) which provides a platform for information sharing and collaboration in the Nigerian oil and gas industry with respect to:

- (a) upcoming projects in the oil and gas industry;
- (b) information on available local capabilities; and
- (c) other policy proposals that may be relevant to Nigerian content development.

The involvement of the Nigerian Content Consultative Forum in the implementation process ensures broad base consultation with stakeholders and industry players. Their advice and feedback helps the Nigerian Content Board to make informed decisions.

#### **6.10 Offences and Penalties**

In Nigeria, Section 68 of the NC Act 2010 stipulates that an operator, contractor or sub-contractor who carries out any project contrary to the provisions of this Act, commits an offence and is liable upon conviction to a fine of five per cent of

the project sum for each project in which the offence is committed or cancellation of the project.

Ghana's Local Content Regulations also provides for offences and penalties. For instance, Regulation 46 instruct that; a person who intentionally submits false documents to the Commission or a citizen who acts as a front for a foreign company or a person who connives with a citizen or an indigenous Ghanaian company to deceive the Commission to achieve the local content requirement commits an offence and is liable on summary conviction to a fine of not less than 100,000 penalty units and not more than 250,000 penalty units or to a term of imprisonment of not less than one year and not more than two years. A penalty point is Twelve Ghana Cedis (GHC12) as set by the Attorney Generals Department.

Further, Article 86 of the Angolan Law of Private Investment (Law No. 20-11) provides for offences and penalties. The law stipulates that a contractor's wilful or negligent failure to comply with legal obligation shall be liable to:

- a) A fine of the corresponding value of the contract which ranges between USD 0.00 to USD 10,500,000.00
- b) Forfeit exemptions, fiscal incentives and other facilities granted
- c) Cancellation of contract

In comparison, the Nigerian and Angolan laws carry rigorous financial sanctions as compared to that of Ghana. However, the Ghanaian local content law goes beyond financial sanctions to incorporate criminal charges which is viewed by many as a disincentive to investment.

### **6.11 Acceptance of Gifts**

Section 92(1) of the Nigerian Content Act provides that, the board may accept gifts of money, land or other property on such terms and conditions, if any, as may be specified by the person or organization making the gift. Comparatively, there is no mention of acceptance of gifts in the Ghanaian and Angolan local content regulations. This provision in the NC Act could potentially give rise to conflict of interest among the members of the Board and makes them susceptible to bribery and corruption.

### 6.12 Establishment of Local Content Support Fund

Section 104(1) of the Nigerian Content Act states 'A Fund to be known as the Nigerian Content Development Fund (the "Fund") is established for purposes of funding the implementation of Nigerian content development in the Nigeria oil and gas industry'.

In addition, Section 104(2) states that, a sum of one per cent of every contract awarded to any operator, contractor, subcontractor, alliance partner or any other entity involved in any project, operation, activity or transaction in the upstream sector of the Nigeria oil and gas industry shall be deducted at source and paid into the Fund.

Likewise in Angola, Article 12 of Decree-Law No. 17/09, sets up the Fund for the Training and Development of Angolan Human Resources in the Petroleum Sector, subject to the management of the Ministry of Petroleum. Section 1 of the law highlights the establishment of the Fund for the Training and Development of Angolan Human Resources in the Petroleum Sector and financial means for supporting the training. Companies in production contribute 15 Dollar cents per barrel of oil produced.

Ghana's local content regulations do not make provision for the establishment of a development fund to support capacity building of its citizens in the sector. As a result, many indigenous Ghanaian companies are not able to execute contracts effectively due to funding challenges. The problem is exacerbated by the exorbitant interest rates Ghanaian banks charge on loans to companies.

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## 7.0 SUCCESS STORY - Local Content Development in Brazil

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Brazil introduced local content policies in the oil and gas sector in 2003. Even though Local content policy is not expressly established in the Brazilian Petroleum Law (Law 9.478/97), they develop local content on a competitive basis through contracts between government and international oil companies. For instance, local content is evaluated as a key requirement in the award of blocks and concessions as shown in the formula below.

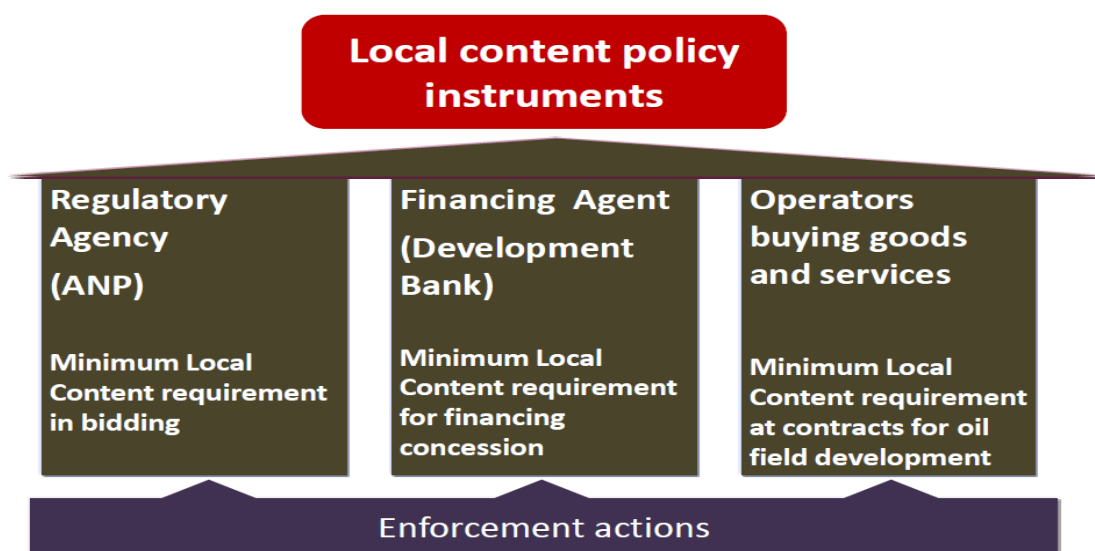
*Minimum Local Content Assessment Formula*

Winner Bid = Max (0.4 x Minimum Exploratory Programme) + (0.4 x Signing Bonus) + (0.2 x Local Content offered)  
 Local content is measured in terms of personnel, goods and services without jeopardizing price, time and quality.

The Brazilian National oil Company (Petrobras) which represent government interest in all agreements is the dominating operator with high local content ambitions. Local content development has been earmarked as the fulcrum for the growth of their local petroleum industry. The National Agency of Petroleum, Natural Gas and Biofuels (ANP) is the regulatory body responsible for monitoring local content results.

Significant contributory factors to the success of local content developments in Brazil is the availability of absorptive industrial capacity and the active involvement of the Brazilian Development Bank (BNDES) in financing at least 10% of all concessions. Below is a composite model for local content implementation and enforcement in Brazil<sup>22</sup>.

**Fig. 5. Local content framework of Brazil**



<sup>22</sup> Petrobras 2014. PROMIMP, Oil and Gas Brazilian Industry. Accessed: [www.investidorpetrobras.com.br/lumis/portal/.../fileDownload.jsp?...](http://www.investidorpetrobras.com.br/lumis/portal/.../fileDownload.jsp?...)



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## 8.0 TENSIONS IN LOCAL CONTENT IMPLEMENTATION

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Local content policies are generally aspirational; every country, developed or developing has faced the challenge of how to develop local capacity and as a result, alternated between periods of protectionism and liberalism. Local content legislation seeks to artificially increase levels of local participation in an industry beyond levels that local capacity is currently able to meet. As a result, at the point of promulgation it is generally impossible to comply with<sup>23</sup>.

It has become crystal clear that African economies are challenged in achieving the balance between local content requirements and an enabling investment environment. This has created an inherent tension between local content requirements and local operating realities. For example, Section 30 of the Ghana Investment Promotion Act 2013 (Act 865) prohibits discrimination against foreign investors and gives them equal rights with Ghanaian citizens. In the same vein, the Petroleum (Local Content and Local Participation) Regulation 2013, (L.I. 2204) restricts the involvement of foreigners in both human resource and supply chain activities of the industry.

Similarly, in Angola, local content legislations are regulated by different institutions, there is no single institution to supervise enforcement. Various stakeholders, sometimes with conflicting agendas and responsibilities, govern different aspects: Sonangol takes local content compliance into account when evaluating bids; the Petroleum Ministry (*Ministério dos Petróleos*) demands annual reports on training and succession planning; while the Labour Ministry (*Ministério de Administração Público, Trabalho e Segurança Social*) enforces the 70:30, national to expatriate rule and inspects work locations.

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## 9.0 CONCLUSION

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The wheel of local content development in the oil and gas industry in Sub-Saharan African countries has been set in motion. Although critics argue that such policies undermine efficiency, distort competition and deter investment in

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<sup>23</sup> Africa Practice, Africa Session Q1 2014. Africanisation: Local content and the evolving investment reality

the economy. Ghana, Nigeria and Angola have made great strides in the local content front. It is quite clear that Nigeria has a robust governance structure for the effectual implementation of the Nigerian Content law. Also, due to abundance of transferable skills and absorptive capacity of the economy, they have also made significant gains in boosting local participation in the area of human resourcing and supply chains.

The 27 years old war and civil unrest in Angola send the country back into the Dark Age. By the time the war finished around 2001, most of the country's infrastructure was shattered, industries collapsed and the manpower base was derelict. The attempt to resuscitate the oil and gas industry since 2001 necessitated the enactment of new laws including the Angolanization plan. Even though the country has made modest gains in local content development, a lot more effort is still needed to upscale the skills level and educational qualification of the citizens to participate in the fast growing oil and gas industry.

Contrary to experts' advice, Ghana took a shorter route to accelerate the development of its oil industry within 4 years after the Jubilee field was discovered in 2007. Commendably, the local content regulation (L.I. 2204) was passed 3 years after production commenced in December 2010. However, the governance and monitoring of its implementation is been subsumed into the wider function of Petroleum Commission activities. This threatens the achievement of the core objectives and the targets set out the law. It is therefore envisaged that, the local content committee should be given complete autonomy in order to effectively implement the L.I.2204 without interference.

On the other hand, the willful return of well educated and trained Ghanaians in the diaspora with strong industry and professional experience has served as a catalyst to the growth of local content. They have contributed to the human capital development of most multinational companies operating in Ghana, and are also able create the businesses needed to meet local content requirements. Some of the 'returnees' come back with substantial financial resources, good industry networks and a sophisticated understanding of international finance capable of actively participating in the sector.

As the industry evolves in Ghana, the local content regulations would be subjected to review in parliament after years of implementation and stakeholders would have a platform to debate the regulations and proffer remedies and suggestions to strengthen the local content regulations.

## 9.1 Summary

The common thread that runs through successful local content policies include the following principles:

- There is no single approach to local content development; the policies need to reflect the political and commercial realities of the local environment.
- Local content development should focus on value addition in-country spend and not ownership.
- There must be an effective local supplier's development programme to boost the competitiveness of the indigenous people.
- The concept of 'Local local Content' should be addressed in developing a robust local content policy. This is the phenomenon where communities within which petroleum activities take place demand more compensation from the industry.