

NORWEGIAN LOCAL CONTENT MODEL A VIABLE SOLUTION?

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Legal transplants have been used to improve national legal systems and advance a homogeneous and ordered global legal networks. As is the case in the petroleum sector which is home to numerous legal transplants where, laws, contracts, and regulations move from one place to another. Notably, the early consideration for legal transplants within the petroleum sector was predominantly based on promoting national legal frameworks which eventually developed to a global legal framework also known as Lex Petrolea. Importantly, while legal transplants promote similar global, objectives, considerable caution must be applied on how best to proceed “before and after the fact”; as legal rules relating to matters of national interests cannot be transplanted without careful analysis of the operation mechanics and legal aspects of rule. This must be done through the lenses of both countries where the law originates and the countries in which it is supposedly meant to operate despite similarities in legal structures. Substantial discussion needs to be conducted from both the donor and the recipient countries to identify whether both countries, face similar social problems capable of being resolved by these rules, and that the rules and mechanics will function in the same manner in both countries, then only can the said rules be transplanted. This article discusses transplant of local content requirements from Norway to Nigeria.

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INTRODUCTION

Since the eighties, several natural resource countries have become wealthier, at least more democratic and more peaceful. Yet, this is true for some countries without petroleum.¹ Many petroleum-rich countries underperform in matters relating to social and economic progress. Therefore, more prone to conflict and prompts more authoritarian resource nationalism debates. In fact, majority of petroleum rich countries have failed to reach their full potential consequently, leading to less economically stable environments.² Arguably, too often petroleum devises a strange effect on a country's political and economic health. Nevertheless, few countries like Norway have positively utilised institutional³ and legal frameworks,⁴ to benefit Norwegian society. Thus, Norway's accomplishment can be attributed to several inter-related factors, an institutional design reinforced under common political will,⁵ alongside sustained regulatory frameworks designed to facilitate the development of local competitive goods and services commonly known as Local Content requirements (hereinafter LC) of 1972. The legal provision indicated clearly stated objectives and rationales for fostering local participation.⁶ Thus Norway became a diversified economy where both international and local players had equal footing.⁷

Arguably, Norway has changed the discourse of LC in the petroleum sector.⁸ Prompting many governments (predominantly from developing

¹ Michael L. Ross, *The Political Economy of the Resource Curse*, 51 *WORLD POLITICS* 297 (1999), <https://www.cambridge.org/core/journals/world-politics/article/political-economy-of-the-resource-curse/EBEA5E178E7534C4BA38EE23D25322E0> (last visited June 10, 2017).

² Mark C. Thurber, David R. Hults & Patrick R. P. Heller, *Exporting the "Norwegian Model": The Effect of Administrative Design on Oil Sector Performance*, 39 *ENERGY POLICY* 5366 (2011), <http://www.sciencedirect.com/science/article/pii/S0301421511004125> (last visited June 10, 2017).

³ *Ibid.*

⁴ Tina Hunter, *The Role of Regulatory Frameworks and State Regulation in Optimising the Extraction of Petroleum Resources: A Study of Australia and Norway*, 1 *THE EXTRACTIVE INDUSTRIES AND SOCIETY* 48 (2014), <http://www.sciencedirect.com/science/article/pii/S2214790X14000148> (last visited February 27, 2017).

⁵ Thurber, Hults and Heller (n 2).

⁶ TINA HUNTER, *LEGAL REGULATORY FRAMEWORK FOR THE SUSTAINABLE EXTRACTION OF AUSTRALIAN OFFSHORE PETROLEUM RESOURCES. A CRITICAL FUNCTIONAL ANALYSIS* (The University of Bergen 2010), <https://bora.uib.no/handle/1956/4505> (last visited October 25, 2016).

⁷ Per Heum, *Local Content Development: Experiences from Oil and Gas Activities in Norway*, <https://brage.bibsys.no/xmlui/handle/11250/166156> (last visited February 15, 2017).

⁸ Theophilus Acheampong, Marcia Ashong & Victoria Crystal Svanikier, *An Assessment of Local-Content Policies in Oil and Gas Producing Countries*, 9 *THE JOURNAL OF WORLD ENERGY LAW & BUSINESS* 282 (2016), https://www.researchgate.net/profile/Theo_Acheampong/publication/305925692_An_assessment_of_local-content_policies_in_oil_and_gas_producing_countries/links/57cf0ed208ae057987ac0667.pdf (last visited May 24, 2017).

countries) to imitate (or at least try to) the “Norwegian LC Model” that has translated this potential industry into a “silver bullet” capable of enhancing job creation, cross-sector growth, and capacity building. In Mark Thurber words “Norwegian approach has inspired admiration and imitation as the canonical model of good bureaucratic design for a hydrocarbons sector”.⁹ Consequently, leading policy-makers to export the Norwegian LC to their respective jurisdictions.¹⁰ For instance, among many others the current Angolan, Ghanaian, Nigerian, and East Timor LCs developed mainly because of the Norwegian influence. This has been undertaken through the oil for development programme in Norway which aids developing countries in their effort to manage petroleum resources in a sustainable manner.¹¹ Therefore, in theory the exporting of legal concepts from Norway to other countries can be interpreted to disclose the effect of legal transplants.

While, legal transplants research is far-reaching and on the rise, there is no attempt here to support or disagree with the existing transplant theories including transferist¹² and culturalist¹³ theories. The intent of this paper is primarily to promote the discussion on “legal regulation and administration” in the petroleum industry. Thus this article seeks to emphasize on the vulnerabilities of transplanting micro-governance rules; which develop effects (often but not necessarily negative) on implementation processes and the regulation procedures.¹⁴ Importantly, this article highlights the position of LC rules which it argues that they are more organic in nature with a deep rooting of both political and economic motivation.¹⁵ Hence their importation of requirements from Norway into Nigeria is unlikely to reproduce the successful Norwegian model. This is for the simple fact that Norwegian

⁹ Thurber, Hults and Heller (n 2).

¹⁰ Jesse Salah Ovadia, *Local Content and Natural Resource Governance: The Cases of Angola and Nigeria*, 1(2) THE EXTRACTIVE INDUSTRIES AND SOCIETY 137 (2014), http://eprint.ncl.ac.uk/file_store/production/205976/93ECC058-DE0D-4AA8-93BA-01412A533FFA.pdf (last visited October 19, 2016).

¹¹ Oil for Development Programme, <https://www.norad.no/en/front/thematic-areas/oil-for-development/oil-for-development-programme/>.

¹² See more A. Watson, *Legal Transplants and European Private Law*, 5; La Porta, Rafael, *The Economic Consequences of Legal Origins*, 12; Also see IFC/ World Bank, *Doing Business in 2004: Understanding Regulation* (2004) xvi.

¹³ Pierre Legrand, *The Impossibility of Legal Transplants*, 2; Gunther Teubner, *Legal Irritants: Good Faith in British Law or How Unifying Law Ends Up in New Differences*, 11-32; Daniel Berkowitz, Katharina Pistor & Jean-Francois Richard, *The Transplant Effect*, THE AMERICAN JOURNAL OF COMPARATIVE LAW. The underlying belief among these opponents is that rules are not “self-explanatory” as they rely on more complex and subjective “cultural” particular meaning.

¹⁴ Pierre Legrand, *The Impossibility of Legal Transplants*.

¹⁵ Jan-Christoph Kuntze & Tom Moerenhout, *Local Content Requirements and the Renewable Energy Industry-A Good Match?* (Social Science Research Network 2012), SSRN Scholarly Paper ID 2188607, <https://papers.ssrn.com/abstract=2188607> (last visited February 16, 2017).

model is no one single model, in the sense that there is no one answer as to how institutions, politics and business relations should be organised to guarantee any industrial success.

Therefore, the principal question underlined in this article, relates to whether legal and regulatory LC rules from Norway could ever be transplanted to other jurisdictions. Importantly, this article demonstrates that the process of a legal transplant is not only about the laws but also factors that influence the operation mechanics of the transplanted rule. Thus, this article identifies two jurisdictions Norway and Nigeria.¹⁶ Overall the discussion is conducted under five sections; The following Section provides details on each country's brief legal frameworks on LC development; and the implication of the rule since its adoption. Section II will discuss the models of legal transplants in general and particularly to transplants of LC rules from Norway to Nigeria, with the view of providing detailed concepts on differences between rule based regulation *vis-a-vis* the principle based regulation. Section III evaluates the adaptability of the rule and considers the potential dangers of transplanting detailed rules, by evaluating institutions, regulatory model, political will, objectives and rationale which have profound implication on the success or failure of a borrowed LC rule. Finally, the last Section provides concluding remarks.

I. LC LEGAL AND REGULATORY DEVELOPMENT IN NORWAY AND NIGERIA

LC is a policy tool used by governments to generate economic benefits for the local economy that go beyond fiscal benefits.¹⁷ The aim of LC involves a host country requiring an investor to purchase certain percentages of labour, goods and services locally.¹⁸ These percentages may either be fixed or subject to increase, and as a requirement LC may be imposed as a condition of obtaining a petroleum licence or subject to continuous operation within the petroleum industries.¹⁹ Often, LC is formulated either

¹⁶ Norway/Nigeria—the decision to evaluate these two countries stems from the fact that Petroleum plays a significant role to the economy, both countries started production pretty much the same time, both countries have had considerable international participation and participation of joint operations.

¹⁷ Silvana Tordo et al., *Local Content Policies in the Oil and Gas Sector* (World Bank Publications 2013).

¹⁸ Claudine Sigam & Leonardo Garcia, *Extractive Industries: Optimizing Value Retention in Host Countries*, http://unctadxi.org/en/SessionDocument/suc2012d1_en.pdf (last visited October 17, 2016).

¹⁹ Suzy H. Nikiéma, *Performance Requirements in Investment Treaties IISD Best Practices Series Best Practices Performance Requirements Investment Treaties En*, <http://www.iisd.org/sites/default/files/publications/best-practices-performance-requirements-investment-treaties-en.pdf> (last visited October 17, 2016).

as a provision within a hydrocarbon agreement (e.g. a production-sharing agreement (PSA) or license) or legislative instrument (e.g. a regulation, decree).²⁰ Whilst, the intended usage is universal and relates to increasing national content in countries often with huge economic rents, nevertheless, LC relates to value addition through activities in the petroleum sector which directly links two interrelated issues, first it stimulates the development of indigenous companies and second it encourages foreign investment and participation.

A. Norway

1. Overview

The petroleum industry has become the largest economic activity in Norway.²¹ This is because of deliberate attempt to make the industry work best for the society. During the early stages of oil exploration, the Norwegian authorities had two simple objectives: (a) Develop local capacity to regulate and manage petroleum resources and in turn evade the resource curse often associated with the industry²² and (b) delaminate boundaries with neighbors, as majority of the deposits lie on the Norwegian continental shelf—a process that eventually took over forty-five years.²³ Norway is said to be the only country that has this far delaminated its entire boundaries with the neighbors.

Notwithstanding, Norway did not have an explicit law pertaining to LC development in the petroleum sector. Nevertheless, Norwegian authorities never shied away from local integration through implied and express rules, mostly embedded in general principles based on procurement frameworks.²⁴ In fact Norwegian authorities had always been quite keen on having locals participate in various sectors including the hydro power sector from early 1900s.²⁵ Here, foreign investors needed to comply with various corporate structures and governance rules which detailed several provisions including the use of Norwegian goods and services. This practice provided Norwegian authorities with an edge and immense knowledge on how best to promote

²⁰ Acheampong, Ashong and Svanikier (n 8).

²¹ Heum (n 7).

²² Hunter, *Legal Regulatory Framework for the Sustainable Extraction of Australian Offshore Petroleum Resources. A Critical Functional Analysis* (n 6).

²³ Tina Hunter, *Regulation of the Upstream Petroleum Sector: A Comparative Study of Licensing and Concession Systems* (Edward Elgar Publishing 2015).

²⁴ Thurber, Hults and Heller (n 2).

²⁵ Hunter, *Legal Regulatory Framework for the Sustainable Extraction of Australian Offshore Petroleum Resources. A Critical Functional Analysis* (n 6).

local participation in sectors where foreign investment is predominant. Hence, after the discovery of oil, the proposition to facilitate value addition through local participation did not materialize as a surprise.

In the early 60's, Norway proclaimed sovereignty over the Norwegian continental shelf for exploration and exploitation of subsea natural resources.²⁶ This was undertaken through a law which operated as the principle statute governing petroleum operations until a more comprehensive legislation was passed in 1985. Key provisions of this law included the right to natural resources, exploration and production licences, and these still exist in current legal statutes despite various amendments introduced to cope with the ever changing sector.²⁷ This Act was more of an enabling law where, the main provisions relating to petroleum regime and petroleum activities was regulated under "royal declarations".²⁸ After the introduction of 1985 Petroleum Act, the 1963 Act was only limited to scientific research and exploration for exploitation of sub-sea natural resources other than petroleum resources.²⁹

2. Initial LC Developments

The introduction of the royal decree of 1965 and 1972 respectively garnered the growth and development of the industry. The Royal Decree 9 April 1965 governed the exploration for and exploitation of petroleum deposits in the sea-bed and its subsoil on the Norwegian continental shelf.³⁰ In relation to LC developments, although not explicitly mentioned it was administered under Article 4 of the declaration which guaranteed an exploration license to any entity Norwegian or foreign person, institution or association. In the early 70's the authorities were keen to introduce a

²⁶ Act of 21 June 1963 No. 12 relating to scientific research and exploration for and exploitation of subsea natural resources other than petroleum resources,

<http://www.npd.no/en/Regulations/Acts/Scientific-research-act/>

<http://www.npd.no/en/news/News/2015/Fifty-years-since-it-all-started/>.

²⁷ Section 2 where the King may grant Norwegian or foreign persons, including trusts, companies and other associations a permit to explore or exploit the natural resources. The King may grant Norwegian or foreign persons, including trusts, companies and other associations a permit to explore or exploit the natural resources.

²⁸ Royal Decree of 9 April 1965 relating to Exploration for and Exploitation of Petroleum Deposits in the Sea-Bed and its Subsoil on the Norwegian Continental Shelf,

http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/NOR_1965_Decree.pdf.

²⁹ Bernard Taverne, *Petroleum, Industry and Governments: A Study of the Involvement of Industry and Governments in the Production and Use of Petroleum* (Kluwer Law International 2008).

³⁰ It is here that the first licensing round was announced for 278 blocks in the North Sea, south of the 62nd parallel and the introduction to international participation. Also the second and third round was conducted under this provision.

comprehensive Norwegian oil policy; hence the parliament endorsed “the Ten Oil Commandments”, submitted by the Standing Committee on industry in a Storting White Paper dated 14 June 1971.³¹ These “oil commandments” supported the development of LC which later ensured that oil resources benefited the entire Norwegian society. These commandments were later firmly embedded within the royal declaration from 8 December 1972 which repealed Royal declarations from 9 April 1965.

The Royal Decree 8 December 1972 was introduced after the government was convinced to gamble with public funds, the Storting (Norwegian Parliament) established a tripartite model comprising central management, administrative and commercial functions. These included a policy making arm through a Ministry of Petroleum and Energy, a technical control and resource management arm through the Norwegian Petroleum Directorate and, a commercial participation arm because of incorporation of Statoil.³² This resource management model framed by the committee ensured that the natural resources benefited the whole community.³³ This decree witnessed the deliberate inclusion of nationals in the sector. LC developments were administered under Section 53 of the resolution, which required investors to prioritize and utilize Norwegian goods whenever they were competitive in price and quality. In support of the provision a special office, “the goods and service office”³⁴ was established within the Ministry to ensure the condition was adhered to during the process of allocating licences and operations of oil and gas activities. For instance, at the time of bidding, foreign companies could present Norwegian authorities with lists of their operators and the Ministry in consultation with “the goods and service office” could also add to the list of operators a local company that measured in price and quality per the demands of the IOC.³⁵ It was later noted that despite the technical and financial ability of a local company, Norwegian authorities recommended local companies, like Statoil and private companies (Hydro and Saga) to take up more important tasks within the industry.³⁶ This preferential treatment for Norwegian suppliers of goods resulted in Norwegian companies contracting and supplying 50-70% of

³¹ Tina Hunter, *Law and Policy Frameworks for Local Content in the Development of Petroleum Resources: Norwegian and Australian Perspectives on Cross-Sectoral Linkages and Economic Diversification*, 27 MINERAL ECONOMICS 115 (2014), <http://link.springer.com/article/10.1007/s13563-014-0051-y> (last visited October 28, 2016).

³² Heum (n 7).

³³ Thurber, Hults and Heller (n 2).

³⁴ Hunter, *Regulation of the Upstream Petroleum Sector* (n 22).

³⁵ Heum (n 7).

³⁶ See STEINAR HOLDEN, AVOIDING THE RESOURCE CURSE THE CASE NORWAY DEPARTMENT OF ECONOMICS (University of Oslo, June 2011), <http://folk.uio.no/sholden/wp/oil-ghana-norway.pdf>.

goods and services during this period.³⁷

Also, while concessions were awarded to foreign oil companies with exclusive rights for exploration, the local companies were tasked to be operators in production licences. This brought about joint participation of foreign and local companies and prompted international participation of local companies.³⁸ This promoted the position of local firms at a great advantage nevertheless, Norway never diverted its attention from international competition. Exacerbated by their geographic proximity and the existing maritime tradition local firms stimulated offshore oil production and eventually translated to improved international standards. Additionally, formation of Joint ventures (JV) through “State Participation Agreement” commonly known as Joint Participation Agreement was heavily encouraged and from 1974 JV became a vital component in the development of LC. For instance, the development approval for the Statfjord field was granted by Storting (Norwegian Parliament) in June in 1976. These led to incorporation of JV agreements among the companies both local and foreign to promote research and development cooperation through Norwegian institutions of higher learning.³⁹ As a result huge transfer of technology and technology know how was developed. Additionally, contractual agreements such as Frame and Training agreements would later assist in developing competence and know how among Norwegian contractors to develop new technology to the mutual benefit of the two parties.

Finally, the separation of financial management and commercial functions of Statoil in 1984, through the creation of the state’s direct financial interest (SDFI) ensured that the State received a large share of the value created by the petroleum activities;⁴⁰ promoted transparency levels and later enhanced among other things LC development and the functions each regulatory body. Considerably, the incorporation of the European Economic Area (EEA) and Energy Charter Treaty (ECT) in 1994, by the Norwegian authorities brought about significant changes to the petroleum sector because they often serve to restrict a member state’s capacity to develop national industry. Norway was bound provisionally by the rules of

³⁷ For discussion see, Dr Tina Hunter, *The Energy Charter Treaty as a Means of Developing National Industry and Commerce in the Exploitation of Petroleum Resources: An Analysis of the Application of Articles 5, 10 and 22 of the Energy Charter Treaty*.

³⁸ http://www.npd.no/Global/Engelsk/3-Publications/Facts/Facts2013/FACTS_2013.pdf.

³⁹ *Ibid.*

⁴⁰ Among others, a vital component to promoted LC development and participation was the Norwegian tax regime in the 70s which saw the governments take up to 85% of profits margins. But due to the drop of oil prices in the 80s the tax regime changed by some fraction of 78%. Per a Deloitte report the ordinary tax amounts to 27% and special tax 51%, noting that even today Norway oil is still heavily taxed for the state to acquire as much profits as possible.

the treaties that create mutual trade benefits for all parties. These provisions prevent a member state from requiring investors to purchase from local suppliers. Overall, preferential treatment was constrained to the objective criteria nonetheless, research indicates that Norway allowed government procurement to assist in the development of national industry by promoting international standards among local companies, good or service which measured in price and quality.

B. Nigeria

1. Overview

Nigeria is endowed with an array of mineral deposits, of which none are as important to the nation's economy as crude oil and gas.⁴¹ Initially only British subjects, and later the Shell Group, were entitled to explore for petroleum, and hence participate in the oil and gas industry in Nigeria.⁴² Following the country's independence in 1960, local involvement emerged through state participation, which fundamentally modeled the concept of LC to include state participation through a national oil company. Upon joining the Organization of the Petroleum Exporting Countries (OPEC) in the 1970s, state participation increased heavily, and emphasis was laid on the renegotiation of agreements to give the national oil company powers to administer this interest.⁴³ Consequently, the regulatory, fiscal and contractual systems of the Nigerian petroleum industry have undergone significant restructuring from inception to the present date.

Although the Minerals Oils Act 1914 contains a LC provision, this was

⁴¹ Together, oil and gas generate more than 80% of the country's total national revenue and over 90% of its foreign exchange earnings and contributes about 36.5% of its GDP. Proven oil reserves amount to 40 billion barrels, daily production is about 2.4 million barrels of crude oil and the estimated earnings of the extensive petroleum industry are around USD 36 billion per year. *See Oil and Gas: Major Industry Policies*, Federal Ministry of Industry, Trade and Investment, available at <http://finti.gov.ng/component/content/article/36-oil-a-gas/98-oil-a-gas.html>. Also in the past five years, over 65,000 direct employment and 250,000 non-direct employment positions have been created in the oil industry alone.

⁴² For a detailed early history of oil production in Nigeria, see Schatzl Ludwig, *Petroleum in Nigeria*, 1-5 (Nigerian Institute of Social and Economic Research, Ibadan 1969).

⁴³ Federal Ministry of Finance, *Report of the Fact-Finding Mission on Petroleum Taxation: Problems Affecting Petroleum Revenue and Miscellaneous Matters on the Petroleum Industry* (Federal Ministry of Finance, Lagos 1969). This report advocated that the government should participate in exploration and production. See also OPEC's 1968 and 1971 Resolutions urging member countries to participate in oil operations by acquiring ownership in the concessions held by foreign companies. Governmental partnerships with private sector enterprise were carried on throughout the 1970s and 1980s within a modified framework. This eventually led to adoption of production sharing contracts (PSCs), thus allowing for full state participation in the oil and gas sectors.

never adhered to in practice. Following her independence, Nigeria put this provision into practice (from establishing training programs to formulating legislation) to ensure that IOCs operating in the industry trained local personnel within the sector. The authorities applied the provisions of the Minerals Oils Act 1914 to all oil mining leases (OMLs) retrospectively, which required lessees to initiate a technical training program for the employment of Nigerians as tradesmen and craftsmen. In addition, lessees were required to train Nigerians with professional backgrounds to take up suitable managerial and senior managerial posts.⁴⁴ The only downside to these LC requirements was the lack of specific goals and a mechanism to ensure that rules were complied with. This eventually led to several laws being enacted, as briefly discussed below.

2. Initial LC Development

In 1969, the Petroleum Act replaced the Minerals Oil Act of 1914, and this remains the principal law governing oil and gas in Nigeria.⁴⁵ In relation to LC development, The First Schedule of the Act paragraph 37 guarantees the provision that obliges holders of OMLs, within 10 years of the grant of the lease, to ensure that at least 75% of the total number of persons employed in managerial, professional and supervisory positions (or any corresponding grades designated in a manner approved by the Minister of Petroleum Resources) are Nigerians. Furthermore, the Schedule provides that at the very least, 60% of employees in any one of these grades must be Nigerian and that all skilled, semi-skilled and unskilled workers in the oil and gas industry must be Nigerian nationals.⁴⁶

Annexed to the Petroleum Act are the Petroleum (Drilling and Production) Regulations [L.N. 69 of 1969]. This regulation provides an outline for implementing the LC provision as guaranteed under Part IV. This section governs the obligations of lessees and licensees and the recruitment and training of Nigerians. Section 26 provides that holders of Oil Prospecting Licenses OPL and lessees of OMLs need to submit to the minister for approval a detailed program for the recruiting and training of Nigerians. This must be undertaken within 12 months of receiving an OPL, and immediately for holders of OMLs. The initiated program must provide training on all phases of petroleum operations irrespective of who handles the operations. Further, Section 27 provides that any scholarship schemes

⁴⁴ *Ibid.*

⁴⁵ Section 1(1)-(3) of the Petroleum Act 1969, <http://www.placng.org/new/laws/P10.pdf>.

⁴⁶ Para. 38 (a) (i) of the First Schedule to the Petroleum Act: see also clause 17(1) Oil Mining Lease 92.

prepared or proposed to be awarded by the lessee will be submitted to the Minister for approval.⁴⁷

Subsequently, to enhance the relevant skill sets needed, the Nigerian authorities enacted a subsidiary legislation the Petroleum Training Institute PTI Act (Cap. 356). This entered force on 19 September 1972 with the intention to address, enhance and promote courses of instruction, training and research in the petroleum sector.⁴⁸ This was done under a memorandum of understanding signed together with a bilateral agreement with the Soviet Union. In the initial stages, several Soviet experts were contracted to provide training programs and equipment. A major part of the resources of the Petroleum Training Institute (PTI) came from the Petroleum Technology Development Fund, which also acted as an advisor to the PTI.⁴⁹ However, the PTI came under immense criticism, in relation to the trainers' levels of knowledge, which were said not to have kept abreast of changes in this fast-moving industry.⁵⁰ Consequently, IOCs opted for in-house training and brought in foreign trainers.

In addition, the Petroleum Technology and Development Fund (PTDF) Act (Cap. 355) came into force on 4 June 1973 and was intended to support the PTI Act. The Fund was available for training Nigerians to qualify as professionals, technicians and craftsmen in the fields of engineering, geology, science and management within the industry. Support was provided in the form of scholarships to various universities, colleges and institutions of petroleum both locally and abroad. This Act failed tremendously to pick up and it came under heavy criticism in relation to the process followed in determining how the resources were to be allocated and who benefited from them.⁵¹ In early 2000 an investigation was launched to

⁴⁷ Petroleum (Drilling and Production) Regulations [L.N. 69 of 1969], available at <http://faolex.fao.org/docs/pdf/nig120683.pdf> (accessed November 2015). Section 29 of the Act further stipulates that a report on the execution of the programme mentioned in Regulation 26 and the progress on "Nigerianization" shall be submitted by the licensee or directly by the lessee or through agents and contractors.

⁴⁸ Petroleum Training Institutes Act, http://www.placng.org/new/laws_of_nigeria3.php?sn=445.

⁴⁹ Gbolahan Alli-Balogun, *Soviet Technical Assistance and Nigeria's Steel Complex*, 26(4) JOURNAL OF MODERN AFRICAN STUDIES 623–637 (December 1988).

⁵⁰ *Ibid.*

⁵¹ For a detailed discussion see, Olatunde Julius Otusanya, *An Investigation of the Financial Criminal Practices of the Elite Indevolving Countries—Evidence from Nigeria*, 19(2) JOURNAL OF FINANCIAL CRIME 175–206 (2012). (Permanent link to this document: <http://dx.doi.org/10.1108/13590791211220449>. Downloaded on: 05 January 2016, at: 01:54 (PT). This case illustrates how politicians at the top of the hierarchy of governance in Nigeria used public funds to enrich themselves, their political party and their political associates to the detriment of the Nigerian state. The case demonstrates how they blatantly disregarded the law in failing to obtain the approval of the Federal Executive Council. As the Senate Ad-Hoc Committee on PTDF 2006 explained).

inquire some findings. The investigations further revealed that PTDF became a repository of slush funds, which were easily accessed by government officials to satisfy pressing projects of “national interest” in violation of the law establishing the fund.

3. Indigenous Policy

The indigenization policy often referred to as “Nigerianization” means a framework that encourages active participation of indigenous companies in the oil & gas industry. This concept can be viewed as having mainly evolved from the Niger Delta region,⁵² which then spread further to the entire country. In 1989 the government introduced the indigenization policy to retain ownership and control of the sector, and this was administered from 1989 to 2000. The policy involved the allocation by the regulatory authorities of oil acreages to indigenous oil companies,⁵³ based on guidance criteria which were interpreted with broad discretion. The criteria involved four basic principles: (a) the grants were made on a discretionary basis based on existing seismic data; (b) ownership of the grantee company truly resided with Nigerians as beneficial owners and not as nominees of foreign entities; (c) a grantee was deemed the operator with a Nigerian managing director; and (d) the grantee was entitled a farm-out with or without the existence of a technical agreement.⁵⁴ Most importantly is that the grantee could have foreign technical partners but with no more than forty percent participating interests.

The aim of the policy was to promote the participation of Nigerians in the petroleum sector. Even though some Nigerians held managerial positions in the upstream sectors because of the PTI and PTDF Acts, very little *Nigerianization* and transfer of technology had taken place. This policy was heavily criticized with several irregularities, as noted in the findings of

⁵² For a detailed discussion, see Asume Isaac Osuoka, *Oil and Gas Revenues and Development Challenges for the Niger Delta and Nigeria*, available at http://www.un.org/esa/sustdev/sdissues/institutional_arrangements/egm2007/presentations/isaacOsuoka.pdf (last visited November 2015).

⁵³ The first set of grants was made in the 1970s and 1980s to Henry Stevens Company, Nigus Petroleum and Niger Delta Oil Co. Later, Dubri Oil acquired a concession by assignment from Philips Oil Company Ltd. in 1987. However, it was not until 1991 that Professor Jubril Aminu, the Minister of Petroleum at the time, awarded 11 concession blocks to Nigerian entrepreneurs on a discretionary basis. This was followed by another round of allocations in 1993, and eventually resulted in more than 40 indigenous E & P companies holding OPLs under the programme. In 1999, OPLs for nine blocks were awarded and subsequently revoked. Finally, during the current Year 2000 Licensing Round 22 blocks were offered to the entire industry, both onshore and offshore, through a process of competitive bidding.

⁵⁴ *Ibid.*

the Christopher Kolade Enquiry.⁵⁵ The issues identified mainly concerned levels of transparency in respect of the allocation of participation rights, following which 31 oil production licenses that had been awarded to indigenous companies were revoked in February 2000.⁵⁶ This effectively marked the end of the indigenization policy. Although the process of its implementation was flawed, which rendered its objective obsolete, the policy did, however, prompt the growth of some indigenous oil companies that remain active in the upstream sector.⁵⁷

4. Allocation of Marginal Fields to Locals

Local participation later re-emerged in the form of the allocation of marginal fields⁵⁸ to indigenous companies, which forms a constituent part of the indigenization policy (discussed above) in respect to the oil sector.⁵⁹ The first Marginal round in Nigeria was conducted in 2001. This allocation was carried out pursuant to the Petroleum (Amendment) Decree No 23, 1996.⁶⁰ Arguably this was a blow to the industry, with IOCs arguing strongly

⁵⁵ See Alexander's Gas and Oil Connections, *Nigerian Government to Sue Ex-Minister Dan Etete over Disputed Oil Block* (August 24, 2002), available at <http://www.gasandoil.com/news/africa/ba0e13562819681eaf76d3c307775119>.

⁵⁶ See Shuabeed Bode, *How Feasible Is Nigeria's Policy of Increasing Petroleum Production?*, available at <http://www.dundee.ac.uk/cepmlp/gateway/?news=27956>; Anthony A. Akinola, *Nigeria: The Nation's History of Corruption*, THE GUARDIAN (15 January 2015), available at: <http://allafrica.com/stories/201501151062.html>.

⁵⁷ Zebra Energy, Conoil Upstream arm, Oando and Sahara Oil.

⁵⁸ According to Nigerian law, fields are classified as marginal if among other factors they have been left unattended for over a period of time after discovery but a minimum of 10 years. Nevertheless, according to "The 2013 Guidelines" the definition of a Marginal Field contained in the Petroleum Act 1969 (as amended) as well as the (2001 Guidelines) were retained. Some of the features of a Marginal Field include (i) fields not considered for development based on fiscal and market conditions (ii) fields in which only one exploratory well has been drilled for having high gas and low oil reserves (iii) fields that have been abandoned by leaseholders for more than 3 years for economic or operational reason.

⁵⁹ In order to understand how the concept of Marginal fields came about a brief evaluation of Nigeria's oil and gas industry growth is imperative. Divided into four categories, the first era also known as IOCs era from 1956 to 1970, in which the oil companies dictated the pace with minimal State involvement. The second era as identified by Nigerians as from 1971-1980 as the era of State Participation. This was a result of joining OPEC, formation of NOC to take over interests. Up to 60% was up for a grab. In the third era from 1981-1989, apparent need of real and active partnerships between IOCs and indigenous companies, along with technology transfers. The final era, from 1990 to the present has been a time of industry transformation. This era has seen the emergence of indigenous participators especially in view of the Marginal Fields Decree of 23, which introduced the marginal fields concept for the first time and which has enable the increased Nigerian content in the Nigerian oil and gas industry.

⁶⁰ Petroleum (amendment) decree no. 23 of 1996, [http://www.babalakinandco.com/resources/lawsnigeria/AMENDMENTS/9623PETROLEUM%20\(A%20MENDMENT\)%20.htm](http://www.babalakinandco.com/resources/lawsnigeria/AMENDMENTS/9623PETROLEUM%20(A%20MENDMENT)%20.htm).

against the policy of farming out marginal fields to Nigerians.⁶¹ The government also intended to carry out petroleum activities with operating companies involving the farming out of un-produced, unapprised or abandoned fields on existing OMLs to independent lease holders on a periodic basis on the basis of this decree. The 2nd Marginal Field Licensing Round was conducted in 2013. The Department of Petroleum Resources (DPR) issued the Guidelines for Farm-out and Operation of Marginal Fields 2013 (the 2013 Guidelines). These guidelines set out the procedure to be followed in the bidding for 31 (thirty-one) marginal fields of which 16 onshore and 15 offshore fields are available for indigenous companies (substantially Nigerian owned) to grapple with. Each indigenous applicant could only bid a minimum of 3 marginal fields.⁶²

Even though a very laudable policy, there existed inherent limitations to its success.⁶³ The limitations included the fact that it was not formally embedded in the petroleum law: It was merely a pursuit of policy regulated by DPR hence issues relating to transparency levels were raised. Second, most acreage allocated to indigenous companies were already relinquished by IOCs, therefore exploitation involved high risk, cost and low profitability which were considered uneconomic to develop, the government equally did not provide financial support to indigenous companies to enhance the process of exploration and production.

5. The 2006 Local Content Policy

The lack of coordination of the legislative and contractual provisions described above led to the re-evaluation of LC development in the sector. Hence, a study was commissioned on the local supply chain in the upstream sector and in August 2003, it submitted its report, which was entitled “Enhancement of Local Content in the Upstream Oil and Gas Industry in Nigeria—A Comprehensive and Viable Policy Approach” (the “INTSOK Report”).⁶⁴ Simultaneously, the Nigerian authorities also prepared a National Committee Report at the same time. The difference in the results of these reports resulted in their consolidation by way of a synchronised report

⁶¹ Some oil companies argued very strongly that the delay in developing the fields subject to their leases was not the result of the fact that those fields were marginal, but rather due to OPEC quotas, which curtailed their ability to produce let alone exploit any new areas.

⁶² E. C. Ezeani & C. Nwuke, *Local Content and the Marginal Fields Programme: Challenges for Indigenous Participation in the Nigerian Oil Industry*, 15 OIL, GAS & ENERGY LAW JOURNAL (OGEL) (2017), <https://www.ogel.org/article.asp?key=3671> (last visited February 15, 2017).

⁶³ *Ibid.*

⁶⁴ *Ibid.*

on the enhancing of LC in the upstream sector of the oil and gas industry in Nigeria. This “Synchronized Report” formed the basis of the 2006 local content policy.⁶⁵ For several reasons, the 2006 LC policy, although extensive and detailed on LC issues, did not bring about increased participation in the upstream oil industry. Firstly, since policies do not equate to legal obligations nor have legal ramifications, allocation was undertaken on a discretionary basis. This meant that the implementation process was insufficiently transparent, which in turn led to lack of an ineffective supervision and monitoring system. Secondly, the LC target of transferring wealth from the oil sector to locals, thus transforming their lives, was not achieved. Thirdly, it failed to promote partnerships and investment, through the joint venture vehicles, and a big portion of technical prowess was never achieved because of excluding tertiary education systems. This led to lower levels of skilled personnel able to take managerial positions in foreign companies operating in the oil and gas sector.

6. The Oil and Gas Industry Content Development Act, 2010

The emergence of LC legislation in the form of the Nigerian Oil and Gas Industry Content Development Act, 2010 (the “NOGICD Act”) came about because of conflicts between various inconsistent regulatory frameworks and regulatory bodies mandated to oversee the development of LC. As noted above, these included the PTI and PTDF, the indigenization policy and the marginal field’s policy among other things. Furthermore, various agencies enforced their veto rights, which led to discrepancies in the implementation of these regulations. An illustration of this is provided by the fact that both Department of Petroleum Resources and National Petroleum Investments Management Services were administering different rules governing LC at the same time.⁶⁶

The promulgation of the NOGICD Act placed emphasis on the Nigerian government’s aim, as expressed in a policy drawn up in the early 2000s, to secure more indigenous participation in the industry. Some illustrations of these intentions include indigenization and the bid on marginal fields licensing rounds carried out in 2013, where 15 offshore fields were awarded to Nigerian “local” companies under the 2013 Marginal

⁶⁵ *Ibid.*

⁶⁶ Eghosa Osa Ekhaton, *Public Regulation of the Oil and Gas Industry in Nigeria: An Evaluation*, 21 ANNUAL SURVEY OF INTERNATIONAL AND COMPARATIVE LAW 43 (2016), <http://heinonline.org/HOL/Page?handle=hein.journals/ansurintl21&id=55&div=&collection=>.

Fields Licensing Round.⁶⁷ Efforts to achieve efficiency and ensure compliance with and monitoring of LC requirements led to the adoption of the NOGICD Act.

As primary legislation, the NOGICD Act takes precedence over all the other acts, regulations and decrees in all matters pertaining to national content development in the oil and gas industry.⁶⁸ It abolished all other Nigerian content regulatory bodies, and establishes the Nigerian Content Development and Monitoring Board (the “Board”) as a new regulatory body. The functions of the Board include responsibility for creating regulations to guide, monitor, coordinate and implement the provisions of the NOGICD Act. Its other core functions include reviewing performance reports from contractors to gauge their compliance with the provisions of the NOGICD Act.⁶⁹ The NOGICD Act’s aim is the development of Nigerian content in the oil and gas industry. Subject to acquiring any host government contract for operations, all bidders must ensure that they comply with the provisions of this act. This is done through submission of various plans covering LC, transfer of technology, research and development, financial, legal and insurance issues. The NOGICD Act further requires that any operations by a contractor are subject to supervision, coordination, monitoring and implementation by the Board.

The Act provides for preferential treatment for Nigerian independent operators as well as indigenous service companies, even though it does not identify the differences between operating and service companies.⁷⁰ It provides that independent operators will be given first consideration in respect of the award of oil blocks, oil field licenses, oil lifting licenses and contracts for new projects. Furthermore, the NOGICD Act provides that Nigerian indigenous service companies will have exclusive consideration in respect of certain contracts so long as the indigenous contractors demonstrate ownership of equipment, Nigerian personnel and capacity to execute such work.⁷¹ The NOGICD Act also offers incentives to contractors

⁶⁷ Ugwushi Bellema Ihua (University of Kent, UK), Chris Ajayi (K10 Resources, Nigeria), Kamdi Nnanna Eloji (University of Birmingham, UK), *Nigerian Content Policy in the Oil and Gas Industry: Implications for Small to Medium-Sized Oil-Service Companies*.

⁶⁸ “Oil and gas industry” is defined in the Act as all activities connected with the exploration, development, exploitation, transportation and sale of Nigeria’s oil and gas resources including upstream and downstream and it applies, *inter alia*, to oil and gas operations including all oil and gas operating companies, their contractors and sub-contractors in the implementation of projects in the petroleum industry.

⁶⁹ Ekhaton (n 65).

⁷⁰ The 2006 policy classified oil companies in two categories: service companies (to include category A-F) and operating companies (to include A-E) this would be a good referral point. However, the 2006 policy had given a good distinction

⁷¹ Section 3 of the NOGICD Act.

for compliance with the major criterion forbidding of a license. These incentives apply especially in relation to the award of licenses, permits and any other interest, and the Act also lays down penalties for failure to comply. In addition, the Act places emphasis on the promotion of measurable growth of Nigerian content by means such as the internal sourcing of goods and services. Other ways of developing Nigerian content include technology transfer, local sourcing of insurance, financial and legal services and giving preference to Nigerians in respect of employment and training. The Schedule to the NOGICD Act outlines the specific aspects of developing the minimum amounts of local materials, services and personnel to be used by oil and gas operators. It provides a detailed list, including time periods and specific levels to be achieved during the implementation of the Act.

Overall, although both countries cited the incorporation of LC, it is apparent that its application, development straddles different rationales, sectors and instruments as discussed above. In that, it is apparent that Norway maintained the two main ideals of local and foreign participation. While Nigeria focused only on one ideal of local participation. Thus, making the concept rather complicated in terms of transplant and consequently, adaptation.

II. LEGAL TRANSPLANT

A. *Models of Legal Transplant*

This argument, “most laws operate in a society very different from the one in which it was originally created” could not be further from the truth in relation to development of the petroleum regimes.⁷² Generally, petroleum laws, contracts, and standard practices (including individuals) even though operate nationally have constantly moved from one jurisdiction to another; in search of appropriate legal systems to which stakeholders identify and define the individuality of each development. In practice, internationalization of petroleum law emerged because of modelled laws and contracts from industry institutions,⁷³ which has brought about a homogenous legal framework also known as *LexPetrolea* (this issue is outside the scope of this paper).

Presently, petroleum laws in general are very similar if not identical in presentation; and mostly regulate the sovereign right to natural resources,

⁷² For discussion see by Ilias Bantekas, John Paterson & Maidan Suleimanov, *Oil and Gas Law in Kazakhstan: National and International Perspectives*.

⁷³ Association of International Petroleum Negotiators (AIPN) or American Petroleum Institute API, https://www.aipn.org/about_AIPN.aspx; <http://www.barrowscompany.com/>.

exploration and production licences, and resource management etc.⁷⁴ This is because most petroleum regimes move from one jurisdiction to another, thus this article assumes the transplant aspect. Often transplants are undertaken either through “copy-paste”⁷⁵ method or those that result from “harmonization trends”⁷⁶. There is an important distinction between the models of legal transplants, in the first scenario there is a blind copy-paste act of the legal rule hoping that it would aptly suit a modern society just for the sake of fitting in and without any prior assessment; on the other hand in the synchronization-harmonization view the motivation goes beyond a simple copy-paste act, that exceeds the interests of the origin country (the exporter) as there is an actual transition process that needs to be completed. An adaptation to the local legal culture then successively follows once the legal institutions start following the imported models.

This article takes cognizance that LC transplant discussion has been undertaken from the harmonization trends. This involves legal ideas conducted with the existing development trends that go beyond the interests of the origin country (Norway) and, with the ultimate idea to contribute to, the transformation of oil wealth into broader industrial base for national wealth in recipient country (Nigeria).⁷⁷ These sets of motivation tend to determine the rationale to transplant LC.

B. Rationale for LC Transplant

Developing LC stems out from many reasons importantly, is the need for policy makers to transplant rules as result of their success

⁷⁴ See BERNARD TARVENE PETROLEUM, INDUSTRY AND GOVERNMENTS; A STUDY OF THE INVOLVEMENT OF INDUSTRY AND GOVERNMENTS IN THE PRODUCTION AND USE OF PETROLEUM. 2nd Edition. Wolters Kluwer Law and Business; Also see Thomas Walde & Alan Page, Editorial, 11 JOURNAL OF ENERGY & NATURAL RESOURCES LAW 1, 4 (1993).

⁷⁵ This is the mere import of legal rules (either complete or partial) as an act that is blindly copied and pasted, whose aim is to achieve “modernisation” of the society through the adoption of trends designed elsewhere and valued as positive or good by the receptor society (as in the case where Kenya copied the Ghanaian Local Content regulation).

⁷⁶ This suggests a synchronization—harmonization with prevailing waves and tendencies truly motivated by a transition process and the need to catch up with other societies and associations, justified by a high chance of improving and developing its legal system for the benefit of their nationals. A list of countries in such transition would include Cuba, Vietnam, China, and even certain African countries like Angola, Ethiopia, and Mozambique (...) the development of the institutional and legal framework for a market economy (including the creation of a market-based financial system)”.

⁷⁷ For discussion see, Enhancement of Local Content in the Upstream Oil and Gas Industry in Nigeria. A Comprehensive and Viable Policy Approach. A joint study by commissioned by: [//extrayendotransparencia.grupofaro.org/wp-content/uploads/2014/12/Enhancement-of-LC-in-the-upstream-oil-and-gas-industry-in-Nigeria.pdf](http://extrayendotransparencia.grupofaro.org/wp-content/uploads/2014/12/Enhancement-of-LC-in-the-upstream-oil-and-gas-industry-in-Nigeria.pdf).

elsewhere,⁷⁸ with the primary intent for policy makers to find solutions to similar problems and thereby justified by a high chance of improving and developing its legal system for the benefit of their nationals.

A more related point is donor involvement in policy formulations where international institutions, consultancies and donor agencies tend to encourage other countries (usually developing countries) to consider transplant of rules that have been formulated elsewhere. This simplistic view stems from the desire to establish a “win-win” situation on the part of international development, corporate structures and diplomatic interests. While these sound quite objective goals, limited attention is given to the practicalities and realities on the ground, which promote social change within a recipient country through a foreign law.⁷⁹ For instance, developed countries and more so in Norway have an existent manufacturing industry, commerce and public service. It is deemed to be an established democracy with a well-developed legal system, a good welfare system that includes free education, free health care and social services. Therefore, in borrowing Norwegian rules where, suppliers identify with quality, delivery, lead-time, cost performance, backed up with a financial stability and the ability to implement continuous improvements should be evaluated against the ability of a country like Nigeria which often characterised by high population growth, low income, and poor health care and inadequate social services, and financial instability.

This then brings forth certain pertinent questions, was there any criteria designed both by the donor and recipient countries to help guide or determine how this enterprise will be conducted? Are there any existing principles other the economic advantage that will assist the foreign institution be “naturalised”?⁸⁰ In 2003, the Norwegian initiative to advise oil-producing nations through the Norwegian Agency for Development Cooperation (NORAD) and the Norwegian Ministry of Petroleum and Energy (NPE) agreed on memorandum of understanding with the Nigerian authorities. Both Norway through INTSOK and Nigeria government consulted and came up with a report “*Enhancement of Local Content in the Upstream Oil and Gas Industry in Nigeria—A Comprehensive and Viable*

⁷⁸ See Jesse Salah Ovidia, The Dual Nature of Local Content in Angola’s Oil and Gas Industry: Development vs. Elite Accumulation.

⁷⁹ *Can an Effective Legal System for Economic Growth Be Imported? Which Is the Assumption Behind a Decade’s Worth of World Bank—Generated Institutional Reforms?* (Katharina Pistor, Curtis Milhaupt, J. Law and Capitalism). WHAT CORPORATE CRISES REVEAL ABOUT LEGAL SYSTEMS AND ECONOMIC DEVELOPMENT AROUND THE WORLD 3.

⁸⁰ On Uses and the Misuse of Comparative law, The Modern Law review, <http://onlinelibrary.wiley.com/doi/10.1111/j.1468-2230.1974.tb02366.x/epdf>.

Policy Approach” (the “INTSOK Report”). Concurrently, Nigerian authorities also rolled out a national report of content development. Simultaneously leading to a “*Synchronised*” report due to the disparity between the two reports. In the synchronized report, several issues were discussed and considered, more so, was the gap between industrial objectives and present realities or capabilities where, the idea was to access the Nigeria supply and service industry and to propose measures to enhance private sector participation. Ultimately, the recommendation put forward were as follows:

(a) Unless both the oil companies as well as the government carry out shared responsibilities in building the capacity, none of the objectives raised on LC will be met.⁸¹ Hence, the government should design a local content that is compatible with major trends in the market and to have oil companies accept major responsibilities in developing LC.⁸²

(b) Set a clear vision for LC and clearly define the term, process, measurements for developing and increasing LC.

Eventually, the above consideration proved helpful in formulating the Nigerian national content Act discussed in the following Section. Overall, these rationales might work in relation to fundamental legal rules, whose background and purposes are obvious or easy to understand e.g. traffic rules, nevertheless, significance should be accorded to rules whose understanding requires a deeper study of the society e.g. LC requirements, as discussed in the following chapter.⁸³

III. ADAPTABILITY OF THE RULE

It is evident from the application of LC, that neither did both countries share similar problems to warrant the imitation of the model nor did they both concede on what the content LC should abide or how it should be implemented to warrant a transplant of a rule. Further, this section identifies with five significant issues which ought to have been considered as adaptability test for a transplanted model, these include:

A. *Institutional Design*

Institutions have long been recognized to either develop, promote or

⁸¹ *Ibid.*

⁸² Here the recommendation emphasized the need for the policy to not fight the frame agreements but enhance industrial capacity so that parties in such agreements choose to locate value addition.

⁸³ Eric Gillman, *Legal Transplants in Trade and Investment Agreements: Understanding the Exportation of U.S. Law to Latin America*, 41 GEO. J. INT'L L. 263, 282-300 (2009).

fail to capture the essence of a transplanted rule. Technically, institutions provide the checks and balances that underpin the effectiveness of rule, without checks and balances, corruption goes unrestrained. Structurally, in Norway, the division of labor between government and business was quite categorical. In working out the logistics of operation Norway, separated business from politics and the creation of NOC was not just for ideological purposes but also for practical purposes. While businesses were to operate in the realm of business principles to create international competitive frameworks, it was no doubt that such principles were to be governed by transparent political decisions.⁸⁴ The institutional design consisted of a three distinct government bodies which provided useful checks and balances, helped minimize conflicts of interest, and allowed the NOC, Statoil, to focus on commercial activities while, other government agencies regulate oil operators including Statoil itself.⁸⁵ It is coupled by continuous training of public servants, business and the political sphere. Also, information concerning reports, inspections and fines easily available at an individual's/interested groups request. Additionally, all revenue from petroleum activities are channelled into a special fund called, Government Pension Fund Global, and it is invested in stocks, bonds and property abroad. A four percent of the capital is spent annually to cover state expenses. Hence institutional frameworks based on transparency rules has been the core for oil operations in Norway, it is not a wonder that the country has continued to champion global transparency initiatives like EITI principles (a global initiative that seeks to promote transparency in company payments and government revenues from oil, gas and mining) among countries that have extractive resources.⁸⁶ In 2010, Norway became the first country in the Organization for Economic Cooperation and Development to publish its oil-revenue figures as part of the EITI.

Whereas, in Nigeria, the division of labor was predominantly peer oriented during political independence and more so at the formation of OPEC. Presently, Nigeria's LC development has been to satisfy political elite. Public officials are awarded wide discretionary powers, which only goes ahead to encourage impunity and corruption.⁸⁷ Thereby indicating symptoms of weak institutions, which economically, impedes development since funds are not necessarily invested to promote development of the

⁸⁴ See Per Heum, Local Content Development—Experiences from Oil and Gas Activities in Norway, https://brage.bibsys.no/xmlui/bitstream/handle/11250/166156/1/A02_08.pdf.

⁸⁵ Thurber, Hults and Heller (n 2).

⁸⁶ Norway at the forefront of extractive industries transparency efforts, <https://eiti.org/news-events/norway-will-implement-eiti>.

⁸⁷ As discussed in Section 2 of the article.

country as a whole, but extends politicians' control over the private sector and blocks competition. Currently, while Nigeria legal frameworks indicate clear legal parameters for operations, political and regulatory institutions that provide checks and balances to potential malfeasance in the oil industry are weak or non-existent. Under the evaluated Acts and the NOGICD Act, both the Minister for Petroleum Resources and the Board have been given far reaching discretionary powers, when determining whether to waive the obligations for a contractor under the Act. This has raised possible conflict of interest and situations where public officials who are also dealers in the oil and gas sector have been allowed to be involved both in bidding and in the regulatory processes involved in licensing, monitoring and enforcing compliance. Such issues may benefit only the political elite, and will prevent the wider public from benefiting from the resources. Even though Nigeria authorities recognise the need for transparency, research indicates that one of the ailments affecting the country has been transparency, corruption, capital flights and misuse of funds to run personal business.⁸⁸ In relation to EITI, the prospects for transparency have somewhat stalled, despite the initiative not being entirely dormant, but the vitality that used to characterize NEITI has largely receded.⁸⁹

B. Choice of Regulatory Model "Principle Versus Rule Based"

Commonly, legal cultures determine extensively what pattern or change occurs in countries that have their legal systems transplanted from abroad and those that develop their systems, irrespective of the legal family from which their laws come.⁹⁰ This is because countries that develop their own systems consider what is inherent to their systems and as thus regulate matters of interests by evaluating issues that matter. As mentioned by Pierre Legrand, he argues that where a law is borrowed the recipient country cannot understand the underlying objective and rationale for formulating a particular rule/law. Other scholars argue that "in enacting a rule for reasons they know, as a product of the way they think, with the hopes they have, and in enacting "THE" particular rule and not others, the countries (in this case

⁸⁸ See INGE AMUNDSEN, WHO RULES NIGERIA? (November 14, 2012), <http://www.peacebuilding.no/Regions/Africa/Nigeria/Publications/Who-rules-Nigeria>; Also see Sola Fajana, Sectoral Activities Programme Working Paper Industrial Relations in the Oil Industry in Nigeria http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_161189.pdf.

⁸⁹ For discussion see Nicholas Shaxson, *Nigeria's Extractive Industries Transparency Initiative Just a Glorious Audit?* (November 2009), https://eiti.org/files/NEITI%20Chatham%20house_0.pdf.

⁹⁰ Eric Gillman, *Legal Transplants in Trade and Investment Agreements: Understanding the Exportation of U.S. Law to Latin America*, 41 GEO. J. INT'L L. 263, 282-300 (2009).

the Norwegians) are not just doing that, they are doing something characteristically Norwegian.⁹¹ For instance, in 1972 Norway, drafted the “ten commandments” and subsequently embedded it to the 1972 Royal Declarations. This was drafted in high level of generality to ensure flexibility to respond to new issues while focusing on the main outcome. As such they opted for an objective—based regulation which rely on broadly stated principles by which companies conduct their operations and the basis for decision making for public authorities.⁹² This sort of regulation seeks to implement the policy objective through objective principles as opposed to specific rules.

Meanwhile, Nigeria opted for a rule-based regulation, one that is prescriptive in nature and often do not appreciate the constraints facing the industry, thereby allowing space for creative compliance. The option for a rule based regulation, with many laws requiring extractive companies law to submit stringent local content plans. These provisions rely extensively on legislative rules to regulate LC requirements. These prescriptive rules often lead to regulatory inconsistencies and rigidity and are very prone to creative compliance to adjust to new situations.⁹³ While rule-based regulation may have been necessity in the initial stages to ensure growth of the industry, like the formulation of PTI Act. Presently, research indicates that objective-based approach to legislation is preferable regulation for petroleum activities. Based on Norway’s option with broad principles and a regular performance review which prompted an optimal resource management.

This emphasizes that there is more to a rule than encryption of words, often denoted to the culture of a given group of people, accompanied by a series of historical, anthropological, and ideological concepts. Pierre Legrand highlights the fallacy of a transplanted rule, which is determined by many variables but more so interpretation ability of the recipient country. He maintains that successful transplants are impossible and transplanting a legal rule per se is insufficient, as the whole process would require transplanting all over again an entire “legal culture”.⁹⁴ It is therefore, advisable that in attempting to transplant legal rules whose understanding requires a deeper study of the society e.g. LC requirements, considerable

⁹¹ Pierre Le Grand Adapting Legal Cultures—I have changed the titles from French to Norway https://books.google.fi/books?hl=en&lr=&id=88TbBAAQBAJ&oi=fnd&pg=PA55&dq=impossibility+of+legal+transplants&ots=5JyrrHcBs6&sig=RK7ZFyxeGYzHEnBNBIcmeXcREmM&redir_esc=y#v=onepage&q=impossibility%20of%20legal%20transplants&f=false.

⁹² Hunter, *Legal Regulatory Framework for the Sustainable Extraction of Australian Offshore Petroleum Resources. A Critical Functional Analysis* (n 6).

⁹³ *Ibid.*

⁹⁴ http://www.banrepcultural.org/sites/default/files/colf_reyesgaitan_mariapaula_tesis.pdf.

caution has to be applied, consideration of immediate increase in local content (for example, increasing the percentage of local employment in the petroleum sector) will lead to its longer-term increase (such as the provision of training in appropriate skills to the local labour force).

C. Clear Regulatory Rationale and Objective

In Norway, the authorities were interested in what the industry requirements were and knowledge on whether as a country they had the critical required skills, capacities and know-how in bringing about desired effects beyond just compliance. For instance, although LC was never defined nevertheless, the objectives were clearly stated. Three aims were central and at the top of the pyramid was to maximize value creation to include local participation from petroleum activities where such exploration was to be conducted in a prudent manner through a resource management model. Secondly, the authorities considered environmental concerns as a significant component to the extraction of petroleum activities and lastly, the need for internationalisation of Norwegian petroleum industry. Evidently, all these three aims have been successfully implemented⁹⁵ and currently, Norway is at the forefront with value addition and local participation, as estimated with 250,000 jobs have been created in Norway from oil and gas activities in comparison to its population ratio.⁹⁶ Presumably the reason as to why many other countries with oil resource would choose to emulate the model. For instance, the goal promoting Norwegian local participation, was not discussed in short-term goals. The task of ensuring locals have sufficient technical capacity was not merely a matter of employing Norwegians but was deliberately and systematically developed from a long term industrial policy plan which can withstand the test of time. Additionally, it was not sufficient that a local firm be awarded a contract for the mere sake that it is local. In fact, foreign companies were equally considered if they passed the technical, financial and legal test.

In Nigeria LC is defined to include value creation or addition in the Nigerian economy, development of capacity in other words putting emphasis on utilization of Nigerian human, material resources and services. Nonetheless, the lack of clarity in terminologies used e.g. local company, promote ambiguous interpretation and currently allow for briefcase

⁹⁵ 10 commanding achievements <http://www.npd.no/en/Publications/Norwegian-Continental-Shelf/No2-2010/10-commanding-achievements/>.

⁹⁶ 10 commanding achievements <http://www.npd.no/en/Publications/Norwegian-Continental-Shelf/No2-2010/10-commanding-achievements/>.

companies to continuously be awarded contracts for the sake of political affiliation with little intrinsic worth of their technical or financial expertise. Also, even though, Nigerian nationals account for about 80% of regular employment in the oil sector, where locals also make up most contract and subcontract workers. However, Nigerian authorities continue to determine the value additions concerns from political perspectives associated with ethnic and communal affiliations, which are exacerbated by non-transparency, non-accountable authority, and a weak legal framework that provide dynamics for elite accumulation through the application of the employability principle (three-year rule).⁹⁷ In addition, Nigeria continues to have a narrow industrial base, despite the increase on new technologies in the petroleum sectors, despite locals making up most contract and subcontract workers, the numbers are decreasing due to increased outsourcing.⁹⁸ For instance research indicates that in Nigeria the economy heavily depends on oil, while manufacturing accounts for less than 5% of national production. These ailments, impact heavily on the ability of investors to rely on local products. Even though Nigeria is in the process of amending this provision, the succession plans are still very prescriptive and do not encourage long term participation of locals and foreign players.

D. Political Will

Finally, Norway has had a long experience of managing natural resources, using foreign capital and technical competence to develop natural resources from the mineral industry dating back 1500-1600s. This translated to even stronger institutional frameworks for the petroleum activities due to the ailments often associated with the sector. Thus, Norway benefited from being an industrial economy way before oil and gas was discovered.⁹⁹ Additionally, well-developed shipping building industry ameliorated the discourse on offshore exploration of oil and gas. Also, in relation to the Norwegian petroleum industry, it has no doubt that petroleum operations have transcended boundaries to take part in other commercial activities outside the national jurisdiction, in fact in relation to offshore exploration Statoil is highly endorsed. Also, ministers who do not have the strong support of Stortinget, must resign.

⁹⁷ Section of the NOGICD Act 2010.

⁹⁸ See Sola Fajana, *Industrial Relations in the Oil Industry in Nigeria*, Working papers are preliminary documents circulated to stimulate discussion and obtain comments, http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_161189.pdf.

⁹⁹ Heum (n 7).

Meanwhile, Nigeria political will, as observed above has been used to promote several political objectives from policy-making to determining the roles of political elites.¹⁰⁰ They tend to be at the forefront of most revisions and thus failed to successfully achieve the objectives of LC. Nigeria, does not have a long tradition of dealing with foreign investments this impacts heavily on choice of policies. In addition, oil is central to operations in Nigeria, which makes it a significant asset for political assertions.

CONCLUSIONS

Discussions above indicate that Norway did not necessarily have “The model” that could be transplanted elsewhere. Many factors converged to support and encourage the development of local participation and value addition in country. These included, political will, rule of law, democratic regulatory institutions which prompted authorities to identify factors that would work best for Norway. Therefore, the unfolding discourse on legal transplant, and particularly, LC development (if there is a need) to other countries should be undertaken in the context of emulating others who are perceived as either fundamentally similar (in legal cultures, political set up, economic and trade related activities) or as perceived to be facing the same problems. While resource curse can be argued to be a “same problem” across oil producing nations, hence the need to transplant rules that can mitigate the ailment, however it is evident that LC is not the only solution to resolve resource curse. Besides imposing LC requirement will only be a method of speeding up a process of finding global legal solutions to similar problems, but will neglect the potential of other alternatives that might have far more positive outcome.

Even though, “Transferist” argues that transferring rules is socially easy therefore not interested in what happens to the law after it has been transplanted, seems like a distant proposal in relation to LC development. In that, LC requirements often are accompanied by incentives and sanctions which are evaluated against performance (or lack thereof) based on consistent monitoring and evaluation standards, hence the operation within a country is fundamental in recognising the success or failure of the rule. Arguably LC development from Norway is neither easy nor socially adaptable to Nigeria as the two countries are in no measure perceived to be similar or face the same problems. For instance, although LC in Nigeria has

¹⁰⁰ Rabiu Ado, *Accounting, Accountability and Governance in Upstream Petroleum Contracts: The Case of Local Content Sustainability in the Nigerian Oil and Gas Sector*, <https://openair.rgu.ac.uk/handle/10059/1586> (last visited February 16, 2017).

been in place for decades, it has largely failed to increase the developmental benefits accruing from the country's resource wealth. The country has a history of civil wars and interruption among poor communities residing in areas where petroleum activities often taken place. On the basis that their agricultural lands have been degraded, fishing waters polluted and areas of settlement affected, their history is somewhat troubled and the demand for repatriation is continuous. Additionally, statistics indicate that for every oil worker in Nigeria, one financially supports to eight or more other people is underway, unlike Norway where the state provides for everyone's social amenities. For this reason, Nigeria policy makers should have considered the need to formulate rules through an inward-looking sphere, rather than attempt to borrow a rule that most likely will not function in the way it is anticipated. Also, the fact that, Norwegian Spursuedan economically oriented model backed with transparent political rules, while the Nigerian model continue to be politically oriented model backed with non-transparent economic rules, suggest that the underlying objective of the rule had been overridden by circumstances, making it almost impossible to work in the recipient country.

Finally, the inherent dangers of transplanting micro-governance rules from developed to developing countries, will only continue to fuel the existing tension between the multinationals Oil Companies and States. As matters of national interest that are strongly embedded under the sovereignty principle continues to align with political interests. For such reason, considerable debate ought to be undertaken not to limit foreign capital and participation which are essential for the growth of any industry but more so for the petroleum industry. Therefore, while governments choose to create a market demand through a legislative action, often borrowed from other societies, may limit LC goals or objectives as the goals of one country may not always mirror sovereign interests of another.