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# Interrogating the challenges of Host Communities Development Trust Fund under the Petroleum Industry Act in Nigeria

**Lambert Perefuwo Humphrey[1], Peter I Gasiokwu[2]**
[1] Faculty of Law, Delta State University, Oleh Campus, Nigeria
[2] Associate Professor, Department of Law, Faculty of Law, Delta State University, Oleh Campus, Nigeria
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**Abstract**
The Petroleum Industry Act, 2021 (PIA) represents the most comprehensive reform of Nigeria's petroleum legal framework since the Petroleum Act of 1969. Enacted after years of legislative delay, it seeks to enhance transparency, attract investment and address longstanding host community grievances through new governance and fiscal architecture. This article interrogates the structural challenges impeding the implementation of host communities' development trust. Using the doctrinal and socio-legal methods, it analyses the Act incorporation of chapter three which provides for the host communities development funding. The paper argued that despite its landmark status, the PIA suffers from fundamental contradictions and regulatory mishaps to environmental accountability. Its central focus on host community provision under section 239, which allocates 3% of annual operating expenditure to the host communities development trust. The article contends that this figure, inequitable when contrasted with the 30% Frontier Exploration fund under section 9, and is further undermined by the vague definition of host community in section 318 and risk of elite capture. Section 257(2) which penalizes communities for pipeline vandalism, violates constitutional presumptions of innocence. In conclusion, the article pointed out that unless section 239 is amended to increase funding from 3% to 10%, clarify beneficiary identification, and enforce transparent governance of the trust, the Petroleum Industry Act, 2021 will fail to achieve sustainable peace, prosperity and development in the Niger delta region in particular and Nigeria in general.

**Keywords:** Petroleum Industry Act, Host Communities Development Trust, Oil and Gas Governance, Niger delta

## Introduction

The inclusion of the novel concept of the Host Community Development Trust Fund in chapter three of the Petroleum Industry Act and subsequent implementation of the Petroleum Industry Act, 2021, is a near attempt to attract the desired investment of the industry, by promoting the involvement of the indigenous people, stating their roles, the Nigerian state and the oil companies in Nigeria [1]. Ensuring that the above goal of promoting the involvement of indigenous people do not become misplaced is essential as oil bearing communities play host to the multinational oil corporations [2]. The question is whether this will indeed be the game changer in Nigerian situation as compared to the impact of International legal regimes/resource right practice over ownership and control as in other jurisdictions globally.

The importance of oil revenue to the Nigerian Government cannot be overemphasized. Oil revenue had been regulated by the erstwhile Petroleum Act. This Act is now repealed by Petroleum Industry Act (PIA) 2021. The former Act became weak, sector regulation, inelastic, insufficient in oil operation of modern technologies, good governance and accountability in the oil sector [3]. The repealed legislation also lacked clear provisions and /or policy template for the participation of the host communities, local content development and training programmes for deserving Nigerians in the Petroleum Industry. The repealed Act did not also contain provisions to tackle, frontally, the socio-economic and environmental challenges of the people of the host communities arising from the negative impact of oil and gas exploration by the multinational oil companies.

The above circumstances are against the backdrop that the littoral states have been regularly collecting 13% derivation payments from the federation allocation [4]. Without prioritizing the developmental needs of the oil bearing communities. The Nigerian Constitution equally does not have any provision which directs or ensures that the 13% derivation funds regularly paid to oil producing states is deployed, specifically, or to a large extent, towards the amelioration of the crisis of underdevelopment of the host communities in the littoral states [5]. In order to improve the infrastructural development of the oil bearing communities and the indigenous people, the Federal Government had established some interventionist with the view of providing social amenities and infrastructure in the host communities.

In fact, this is in line with philosophy behind the United Nations' General Assembly Resolution No. 626 (VII), which was adopted in 1952, State's right to use and exploit their natural resources is inherent in their sovereignty. Also, in 1962, the General Assembly adopted Resolution 1803 (XVII) (Permanent Sovereignty over natural resources), which provides for inter alia: The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the state concerned [6].

It is against the foregoing principle that the Petroleum Industry Act, 2021 provide for the payment of 3% Host Communities Development Trust Funds to the oil bearing communities from oil operation and management by the settlors, this concept was to tackle the socio-economic and environmental challenges of the people in the oil impacted host communities. With the state's failure or neglect in this

direction, it created a recipe for violence, criminalities and continued agitations against the Nigerian State by indigenous people as well as cause incessant disruption or oil and gas exploration in the Niger Delta.

The situation equally affected the dwindling revenue receipts by the three tiers of government in Nigeria. In 2000, a searchlight for a lasting panacea towards the resolution and amelioration of crisis of underdevelopment and environmental degradation of the oil impacted host communities in the Niger Delta region was launched through the instrumentality of the Petroleum Industry Bill (PIB). The Federal Government of Nigeria (FGN) in conjunction with the National Assembly (NASS) worked on a proposed comprehensive Petroleum Industry Bill, which was aimed at responding to international best practices and to enthrone transparency and accountability in the oil and gas sector. It was a means to grow the economy of the nation as well as to improve the developmental demands.

The efforts at fashioning out a comprehensive legislation to regulate the oil industry was greeted with resistance by stakeholders in the oil sector for not been satisfied with the proposers. This accounted largely for the delay in the passage of the PIB by successive administrations. The resistance of such stakeholders either spontaneous or orchestrated with agitations by the youths in the Niger Delta due to crisis of underdevelopment, none involvement/neglect of the oil bearing communities.

As a result, the Federal Government of Nigeria decided to set up the Amnesty Programme and the Ministry of Niger Delta Affairs [7], so as to capacitate and assuage the youths of the Niger Delta region.

In the passage of time, the long awaited Petroleum Industry Bill was eventually passed and signed into law on 16th August, 2021 as an Act. This intervention was initiated to discourage militant behaviour, douse off the mounting tensions of repentant militant activities, in skills and education etc, so as to enable them to become employable and/or employers of labour. However, it is perceived as a controversial law due to the manifest conflicting interests of multifaceted stakeholders made up of state and non-state actors.

Nevertheless, there is the general consensus, that the said legislation is relatively more comprehensive and it is a work-in-progress or an amendable legislative experiment. In the light of the foregoing and due to the novelty nature of the Petroleum Industry Act (PIA) with regards to the inclusion of the Host Communities Development Trusts in chapter 3, a provision as a new intervention mechanism in the oil sector, this work, therefore, seeks to examine, analyze and make recommendations towards effective and efficient implementation of the said Host Communities Development Trust and its Funds created in the PIA under reference.

**Methodology**

This study adopts the doctrinal and socio-legal methods of legal research, it analyses the Petroleum Industry Act (PIA) incorporation of chapter three which provides for the host communities development funding.

Therefore, the paper relies on constitutional and statutory provisions, treaties, and reported decisions as primary sources, and on books, journal articles, and press reports as secondary sources. It does not cover entire Petroleum Industry Act 2021. The focuses mainly on chapter 3 where Host Communities Development Trust Funds was created in the PIA to illustrate developmental needs, the inadequacies of the legal framework and the apparent contradictions.

**Historical Review of the Petroleum Industry Act 2021**

The Petroleum Industry Act 2021 is unarguably the most controversial piece of legislation that Nigerian lawmakers have ever been challenged with. It was conceived and birthed in opposition. Over the past few years, Nigeria, Africa's top oil exporter, has been beset by a multitude of problems, suffered major production and export complications, exacerbated by an atmosphere of political instability, oil theft and pipeline attacks, stalled economic reforms and recovery, and the threat of oil price volatility. While the Nigerian Oil Industry has been cautiously optimistic towards overcoming these upheavals in 2018 hence, the push for the bill [8].

The oil and gas Industry contributes less than 10% to the country's gross domestic product; it contributes about 90% of the foreign exchange earnings and 60% of total income. So, expectedly, any happening in the industry tends to have effect on Government finances [9].

The past efforts at reforming the industry have remained largely unfruitful, until the introduction of the Petroleum Industry Bill 2020 (PIB). The Petroleum Industry Bill (PIB) started as an omnibus Bill, and was later divided into four separate Bills before merging in 2020 as a consolidated Bill [10].

Previous attempts at passing the Petroleum Industry Bill (PIB) in 2009, 2012 and 2018 failed because of factors such as lack of ownership, misalignment of interest between the National Assembly and the Executive, perceived erosion of Ministerial powers, staff opposition by the Petroleum host communities, and push back by investors on the perceived uncompetitive provisions in those versions of the bill.

The Petroleum Industry Bill (PIB) is not just an ordinary piece of legislation drafted to carry political marks, it is an outcome of deep research and commendable industry. The Bill is realistic, fair and balanced, as Government has tried to strike a balance between immediate revenue demands, for oil bearing communities and the need to attract long-term investment for the industry [11].

Despite the many years of rejections, suspensions and approvals, President Muhammandu Buhari presented the Petroleum Industry Bill (PIB) in 2020 (the Bill) to the 9th National Assembly for consideration and passage in September 2020. The Act is a single omnibus law that provides legal, governance, administrative, regulatory and fiscal framework for the Nigeria Petroleum Industry and development of Host Communities. It repeals existing Petroleum-related laws, with the bid to comprehensively reform the Nigerian Petroleum Industry [12].

In the main, the Bill seeks to revise, update and consolidate existing Petroleum legislations including the taxation of upstream petroleum operations. The objectives of the bill are stated to include: Creating a conductive business environment for petroleum operations; enhancing exploration and exploration of petroleum resources for the benefit of Nigerians; optimizing domestic gas supplies, particularly for power generation and industrial development; establishing a progressive fiscal framework that encourages further investment in the petroleum industry while optimizing the revenue accruing to the government, others include deregulating and liberalizing the downstream

petroleum sector; creating efficient and effective regulatory agencies; promoting openness and transparency in the administration of petroleum resources in Nigeria; encouraging and promoting the development of Nigeria content [13]. These objectives requires balancing strict provisions with practical inter agency coordination [14].

To achieve these objectives, the bill provides among other things for: the restructuring and reorganization of industry's institutions and the regulatory frame work; a new fiscal regime for upstream oil and gas production; allocation of domestic gas supply obligations to licensees; and deregulation of the downstream sector.

The need for openness and transparency in the administration and management of Nigeria's vast crude oil and gas reserves cannot be overstated. The proposed law emphasizes the importance of openness and transparency in the sector, and declares that: "The grant of a Petroleum prospecting license or a Petroleum mining lease… shall be by open, transparent and competitive bidding process conducted by the inspectorate".

The effect of this provisions seems watered down by subsequent provisions which empower the President "to grant a license or lease under this Act" without expressly subjecting the President's powers in this regard to the requirement of an open and competitive bidding process. Under the current regime, companies and entities engaged in upstream petroleum operations are subject to Petroleum Profit Tax pursuant to the Companies Income Tax Act [15] while other companies (including those engaged in downstream Petroleum operations) are subject to company's income tax pursuant to the Companies Income Tax Act. The current rate of Petroleum Profit Tax is 50% for operations in the deep offshore and inland basin and 85% for operations onshore and in shallow waters.

The Bill proposes to replace the existing Petroleum Profit Tax with a Nigerian Hydrocarbon tax at the rate of 50% for petroleum operations onshore and in shallow water fields and 25% for petroleum operations in deep water, bituminous and frontier acreages. In addition to the Nigerian Hydrocarbon Tax, the Bill also proposes companies' income tax at the rate of 30% on upstream Petroleum operations [16].

That the bill is a step in the right direction which is not in dispute. Observers were of the view that the bill is indeed long overdue to simplify, harmonize and overhaul some of archaic petroleum laws and governance in Nigeria. The uncertainty surrounding the bill was already unsettling the sector, as stability and predictability is the hallmarks of sensitive and financially involving sector of national and global importance like the energy industry via the Petroleum Industry Act (PIA).

Aside fiscal terms, investors consider other equally important factors, including political risk, geological potentials of petroleum location and government's policies such as local content requirement among others before making investment decisions.

The Bill generated a lot of reactions and arm-twisting from stakeholders, both for and against its passage. The multi-national oil companies led the pack of those that are campaigning against the passage of the Bill. A significant number of multinational oil companies have stopped further investment in the industry while some have already disposed-off their oil wells. The anti-PIB forces contend that its passage would make Nigeria highly uncompetitive in the international oil market.

On the other hand, community stakeholders considered it a welcome development that would boost the revenue profile of government as well as enhance the stakes of the oil producing communities, by according more benefits to the oil regions. There were reasons to believe that Nigeria did not yet derive commensurate benefits from the Petroleum Industry. Inability of the Nigerian Government to meet, as at when due, demands for counterpart funding in the Petroleum sector. It made all revenues and paid into a central and requires appropriation or authorization by the legislature to spend for any projects [17]. It was largely due to the nature of state politics and weak regulatory environments occasioned by budgetary formalities and legislative procedures for passing appropriation laws in Nigeria [18].

The process and procedure relating to fiscal governance in the petroleum industry are some of the major challenges of the oil and gas sector, and partly responsible for the radical changes anchored on the Petroleum Industry Bill regime. The Nigerian government derives from the petroleum sector through the imposition of tax [19] on companies engaging in petroleum operations [20].

The practice of tax imposition constitutes an important source of revenue for the treasury and, of necessity, has substantial, economic consequences for the country [21]. In Nigeria, the task of collection of taxes in the petroleum sector was the responsibility of the Federal Inland Revenue Service (FIRS) [22] by virtue of the Petroleum Profit Tax Act (PPTA) and now Nigerian Revenue Service (NRS) [23].

With the introduction of the controversial Petroleum Industry (Governance) Bill (PIB), the Nigerian government hopes for a much more efficient and profitable Petroleum Industry Act [24].

**The Petroleum Industry Act 2021**

On the 16th of August 2021 the president finally signed the Petroleum Industry Bill into the Petroleum Industry Act 2021, now bringing to a close of 20-years effort to reform Nigeria's oil and gas sector, with the aim of creating an environment more conducive for growth of the sector and addressing legitimate grievances of communities most impacted by extractive industries [25]. The Petroleum Industry Act represents an effort by Africa's leading oil-producing communities to respond to this changing environment. However, if properly and vigorously implemented, the Petroleum Industry Act (PIA) can represent the gold standard of natural resource management, with clear and separate roles for the subsectors and the industry; the existence of a commercially-oriented and profit-driven national Petroleum company; the codification of transparency, good governance, and accountability in the administration of the Petroleum resources of Nigeria; the economic and social development of host communities; environmental remediation; and a business environment conducive for oil and gas operations to thrive in Nigeria [26].

We now have an Act providing for legal, governance, regulatory and fiscal framework for the Nigerian Petroleum Industry, the Host Communities, and for related matters. From the different transmutations it underwent, and particularly following its recent passage into law. It eventually approved 3% to host communities and 30% for Frontier Exploration Fund which is an affront against the people of oil bearing communities, an upward review from 3%

**The Host Community Development Trust: Historical Perspective**

With the manifestation of the impact of oil exploration in the oil bearing communities, the region and the Federal Government developed approaches to douse off agitations through the establishment of intervention agencies such as the establishment of the Niger Delta Development Board (NDDB), Presidential Task Force (PTF), the Oil Mineral Producing Areas Development Commission (OMPADEC) [27], Niger Delta Development Commission (NDDC) and the Resource Control Syndrome. Resource control can be defined as the way and manner the government revenue are shared among the various tiers of government, or how the resources available are harnessed and determined. The move was led by former Governor of Delta State Chief James Onanefe Ibori which encompasses all the South South governors of Nigeria. The struggles leading up to the abrogation of the onshore/offshore dichotomy, restructuring of the country and voluntary memorandum of understanding to negotiate with settlors [28]. Above all, the Nigerian State failed at all level to fulfill the obligation to offer good governance anchored on equitable political arrangements, and transparent administrative practices.

This failure to encourage genuine power sharing has triggered rivalries between the central government, the region and the oil bearing communities which unintentionally turned out to be confrontational in the region.

The yearnings and agitations led to the establishment of the amnesty program, the Niger Delta Ministry and the recent enactment of the Petroleum Industry Act 2021, which was enacted to frontally address the needs of the core oil bearing and impacted host communities, and all these interventionists' agencies and bodies are aimed at redressing the imbalances and calling for justice and development by the disadvantaged people [29].

**1. Host Communities**

Host communities are communities situated in or appurtenant to the area of operation of a settlor and other community as a settlor may determine [30]. Communities that host Petroleum operations are critical stakeholders in guaranteeing a prosperous Petroleum Industry, that is why, relative to other communities, they deserve priority status in deriving direct social and economic benefits from Petroleum within their communities [31].

Littoral communities to deep-water area of operations along the Gulf of Guinea of the Nigerian shoreline up to 500m inland provided such community is gazette by the National Boundary commission. They are for settlors operating in shallow water and deep offshore, the littoral communities and any other community determined by the settlors shall be host communities for the purposes of this Act.

Littoral communities to shallow water area of operations within Nigeria's shallow waters identified as a host community prior to enactment of the Act, and any other community identified and determined by the settlor.

**1.1 Objective of Host Communities**

- To foster sustainable prosperity within host communities
- To provide direct social and economic benefits from Petroleum operations to host communities;
- To enhance peaceful and harmonious co-existence of host communities; and
- To create a framework to support the development of host communities.

**2. The Host Communities Development Trust Fund**

The concept of "Trust" to be incorporated by the Board of Trustee for the benefits of the host communities for which the responsibilities pursuant to the Companies and Allied Matter Act by section 234 of PIA. The Petroleum Industry Act provides that the name of the trust shall contain the phrase 'Host Communities Development Trust' (HCDT). The funds is in the form of a trust can only be utilize by the budget and development plan of the Host Communities Development Trust (HCDT) to be drawn up by the Board of Trustee and also by extension, the management committee which is to be appointed by the Board of Trustees in line with the directive of the settlors. The essences of the Host Communities Development Trust (HCDT) is to prevent exploitation of the Host Communities, degradation of the environment and avoid oil theft and vandalization of oil installation. The Act in section 235 (1)(4)(5) mandates the settlor to establish a Trust and a Trust fund from which community development project will be executed.

The concept of the Host Community Development Trust (HCDT) is not totally new to the Nigerian Petroleum Industry. There is an earlier liberation in the Global Memorandums of Understanding (GMoUs) used by some International oil companies (IOCs) to execute projects within host communities under their Corporate Social Responsibility (CSR) initiative. What the Petroleum Industry Act (PIA) has done this to standardize the Corporate Social Responsibility (CSR) initiative and make it mandatory [32].

Thus, oil companies that operate the Global Memorandums of Understanding (GMU) may find it easier to transition to the Host Community Development Trust (HCDT) by transferring the Corporate Social Responsibility (CSR) initiative to the Host Community Development Trust (HCDT) [33].

The International oil companies within scope of the Host Community Development Trust (HCDT) are those in the upstream sector and owners of designated facilities. See section 239 of the Act.

In the midstream sector of the Petroleum Industry. The holders of Petroleum Prospecting License/Oil Prospecting License, Petroleum Mining Lease/Oil Mining Lease, holders of license to operate Petroleum crude oil and natural gas transportation pipelines, in the midstream Petroleum operations and are currently obligated to incorporate the Host Community Development Trust (HCDT). See sections 23593) and 318 of PIA. In the case of a collective operators under a joint operating agreement with respect to upstream operations, the operators are to appoint an operator who would be responsible for complying with the requirement to incorporate the Host Community Development Trust. See section 236 of PIA.

**2.1 Objectives of the Host Community Development Trust**

It provides in section 236 that the Constitution of the host community development trust shall allow the host communities development trust to manage and supervise the administration of the annual contribution of the settlor as

contemplated under the Act and any other sources of funding. The objectives of the Trust as provided under are to be specified in the Constitution and it shall include the following:

- To finance and execute projects for the benefit and sustainable development of the host communities;
- Undertake infrastructural development of the host communities within the scope of funds available to the Board of Trustees for such purpose;
- Facilitate economic empowerment opportunities in the host communities
- Advance and propagate educational development for the benefit of members of the host communities;
- Support healthcare development for the host communities;
- Support local initiatives within the host communities, which seek to enhance the protection of the environment;
- Support local initiatives within the host communities which seek to enhance security;
- Invest part of the available fund for and on behalf of the host communities
- Assist in any other developmental purpose deemed beneficial to the host communities as may be determined by the Board of Trustees.

**3. Regulations of the Host Communities Development Trust**

The Nigerian Upstream Petroleum Regulatory Commission and the Nigerian Midstream and Downstream Petroleum Regulatory Authority are empowered under section 238 of the Act to make regulations in respect to host communities on areas within their competence and jurisdiction, to guide and safeguard the utilization of the trust fund.

Such regulation includes a grievance mechanism to resolve disputes between setters and host communities; the regulations shall include the ability to make the adjustments to reduce expenditures where the available funds for the administration are insufficient to fund the ongoing operations by doing the following:

- Reduce the number of members of the Board of Trustees and frequency of meeting;
- Not fund the reserve fund nor hire fund manager.
- Reduce the number of members of the management committee and the frequency of meeting and;
- Reduce the frequency of meetings of the host community advisory committee.

The settlor is required under section 135 the Act to incorporate host communities development trust for the benefit of host communities which the settlor is responsible for.

For the purpose of setting and authorize a Board of Trustees to be registered by the Corporate Affairs Commission (CAC) as a corporate body under the Companies and Allied Matters Act.

**4. Templates of Implementation of the Host Community Development Fund**

**a. Incorporating the Host Communities Development Trust (HCDT)**

The Petroleum Industry Act (PIA) generally require oil companies (settlors) with existing operations or facilities under construction to incorporate the host communities development trust (HCDT) within 12 months of the effective date of the Petroleum Industry Act (PIA).

For other operations the host communities development trust is to be incorporated prior to the application for field development plan for oil prospecting license (OPL), Petroleum prospecting license and Petroleum mining lease holders, and prior to commencement of commercial operation for licensees of designated facilities granted under Petroleum Industry Act.

In incorporating the host communities development trust (HCDT), the oil companies is to consult with the host communities to appoint of trustees and apply to the corporate affairs commission (CAC) for registration of the host communities development trust. However, the corporate structure of the host communities development trust (HCDT) in the Petroleum Industry Act and its funding pattern. Suggest that the more suitable corporate trustee.

**b. Timeline for setting up the trust is provided in section 235. The trust shall be incorporated**

- Within 12 months from the effective date of existing oil mining leases;
- Within 12 months from the effective date of existing designated facilities;
- Within 12 months from the effective date for existing new designated facilities under construction;
- Prior to the application for a field development plan for existing oil prospecting license;
- Prior to the application for a field development plan under a Petroleum prospecting license or product m8ining lease granted under the Act;

Failures of the holder of a license or lease to comply with its obligation as stated above after having been informed of such failure in writing by the commission or authority may be ground for the revocation of the applicable license or lease as provided according to section 236 of PIA.

**c. Sources of Funding for Petroleum Host Community's Development Trust[2]**

Section 238 expressly states that the constitution of each communities shall establish a fund comprising of more than one account ("host communities development trust fund") to be funded under this Act. Each settlor through the operator is required to make an annual contribution of 3% of its Actual operating expenditure of the proceeding financial year in the upstream Petroleum operation affecting the host communities fund was established.

- Each host community's development trust may also receive donations, gifts, grants, or honoraria that are provided to host communities for the attainment of its objectives.
- Profits and interest accruing to the reserve fund of the host community's development trust shall also be distributed to the applicable host community's development trust fund.

**d. Allocation/Utilization of Funds for Petroleum Host Communities Development Trust**

The board of trustees shall by section 244 in each year allocate from host communities development trust fund a sum equivalent to:

- 75% of the capital fund out of which the board of trustee shall make disbursement for projects in each of the host communities as may be determined by the management committee in furtherance of its objectives, provided that any sums not utilized in a given financial year will be rolled over and utilized in subsequent year.
- 20% to the reserve fund, which sums shall be invested for the utilization of the host communities development trust whenever there is a cessation in the contribution payable by the settle and;
- An amount not exceeding 5% to be utilized solely for the administration cost of running the trust and special projects which shall be entrusted by the Board of trustees to the settlor, provided that at the end of each financial year, the settlor shall render a full account of the utilization of fund to the board of trustees and where any portion of the fund is not utilized in a given year.
- It shall be returned to the capital fund.

**Matrix for the Distribution of Trust Fund**

By section 244 the settlor is required to provide to the Board to Trustees a matrix for the distribution of the trust fund to the communities as provided. The board of trustees shall utilized the matrix for distribution of the fund in the community development trust fund to each of its host communities.

**Fund Managers**

The board of trustees shall engage a fund manager to invest in the reserve fund as the fund accrues.

The board of trustees is empowered by section 245 of PIA to manage the interest and profits accruable from the investment of the reserve fund and allocate gain in accordance with section 244 of the Act.

**The Settlor**

A settlor by virtue of section 536 of PIA is any holder of an interest in an oil Prospecting License, an Oil Mining Lease, a Petroleum License, or a Petroleum Mining Lease whose area of operations is in or appurtenant to any community or communities falling within the definition of host communities.

**Responsibilities of the Settlor**

**1. Delineation of the Host Communities**

The settlor shall be responsible for delineation of the host communities. In delineating the host communities, the settlor shall recognize:

a. Communities under the GMOU/MOU of the settlor prior to enactment of the Act.
b. Communities situated in or appurtenant to the area of operations of the settlor.
c. Communities along the deep-water area of operations along the gulf of Guinea of the Nigerian shoreline up to about 500m inland.
d. Communities along shallow water of the area of operations.
e. Communities within the retained area after relinquishment.
f. Communities recognized by a court of competent jurisdiction.

**2. Community Mapping for Host Communities Trust[1]**

Prior to setting up the trust, the settlor is empowered by section 246(1) to:

a. Determine host communities, structure and number of Trust clusters.
b. Call a meeting with the host communities (Communities Meeting) to deliberate on, and approve the establishment of the trust, including agreeing the name of the Trust and the persons nominated by the community as trustees of the Trust. The Minutes of the meeting shall be drawn up by the settlor and shall be signed by two representative of the host community and a representative of the settlor.
c. Contact nominees as trustee to inform them of their nomination as trustees of the Trust.
d. Conduct a participatory needs assessment.
e. In conjunction with the proposed trustees.
    - Development the host community development plan.
    - Development the fund matrix for the Trust.

An annual report of the Activities of the host communities development trust accompanied by its audited accounts shall be submitted by the settlor to the Commissioner or Authority as the case may be, not later than 31 May of a particular year.

**3. Board of Trustees**

Board of trustees shall be set up by the settlor [34] at it is provided for by the Host Community Development Trust constitution:

**Duties and Functions of the Board of Trustees**

The board of trustees shall be responsible for the general management [35] of the Host Communities Development Trust and shall be responsible for:

- Members of the board of trustees (BOT) will include persons of integrity and high professional standing who shall come from the relevant host communities
- It is not clear whether the requirement for Board of Trustees (BOT) members to come from the host Communities refers to residential or indigenous status.
- Board of trustees (BOT) members shall appoint one f themselves as chairman.

  The Secretary of the BOT shall be appointed by the settlor. Presumably from among the members of the Board of trustees (BOT)
- Each member of the board of trustees (BOT) is responsible for the general management of the trust including approval and supervision of project to be funded by the Trust's funds, appointment of fund managers to manage the reserve fund of the Host Communities Trusts (HCDT's) Management committee and appointment of its members.
- The settlor must consult with the community in respect of the selection of the first trustees, who shall be nominated for appointment by the host communities at the Communities Meeting organized for the that purpose.
- The Board of Trustees must consult with the advisory committee When selecting additional or replacement trustees, who shall be duly appointed in line with the constitution of the Trust.

- All trustees must meet the minimum eligibility criteria specified in the Act and the Regulations.
- The settlor or the Board of Trustees (as applicable) shall ensure the number of trustees is an odd number and shall not exceed nine in number, with adequate representation of all stakeholders within the communities.
- Determining the criteria, process and proportion of the Host Communities Development Trust Fund to be allotted to specific development programs.
- Approving the projects for which the Host Communities development Trust Funds shall be utilized.
- Proving the appointment of fund management committees of the Host Communities Development Trust Funds shall be utilized.
- Approving the appointment of fund managers for purpose of managing the reserve fund.
- Set up the management committee of the Host Communities Development Trust and appoint its members.
- Determining the allocation of funds to Host Communities based on the matrix provided by the settlor.

**Management Committee**

This is provided for by section 245 of PIA. The constitution of the host Communities Development Trust Funds wherein the Board of Trustees is required to set up the management committee for the Host Development Trust. Thus, one representation of each community who shall be nominated by the host community as a nonexecutive member; and executive members selection by the Board of Trustees shall be Nigerians of high integrity and professional standing, may not necessarily be members of the host Communities. A person appointed or selected shall serve a term of four years in the first instance and may be appointed for another term of four years and no more.

The Board of Trustees shall determine the selection process, procedure for meeting, financial regulations and administration procedures for the management committee.

They also determine remuneration, discipline, disqualification, qualification and removal of members of the management committee. A secretary to the management committee is also mandatory to be appointed to keep the books of the communities.

**Duties of the Management Committee**

The management committee is to be set up by the Board of Trustees under section 247(4) of PIA within 30 days of the establishment of the trust.

The duties of the management committee include:

1. The general administration of the trust at various committees.
2. Preparation of the budget of the trust for submission to the Board for approval.
3. Developing and managing the contracting processes for the award of trust project subject of the Board's approval.
4. Determining the project award winners and contractors to execute the trust project subject to the Board's approval.
5. Supervising the execution of trust projects.
6. Nominating funds managers to the Board of Trustees for approval.
7. Reporting the Board on its (the Committee's) Activities, the Activates of contractors and other service providers.
8. Undertaking any functions or duties assigned to it by the Board of Trustless
9. Setting up the Host Communities Advisory Committee.

**Advisory Committee**

The management committee is mandated to set up the Advisory Committee by virtue of section 249 of PIA [36]. In selection of the members of the Advisory Committee, the management committee is to consult with host communities to get a representative from each community subject to the approval of the Board of Trustee (BOT).

**Role of the Advisory Committee:**

a. Articulating community development project to be transmitted to the managing committee.
b. Advisory the management committee on Activities that may lead to improvement of security of infrastructure and enhancement of peace-building within the community and the entire area of operations of the settlor.
c. Ensure accountability and transparency in all dealing and give full, complete and timely information to the full assembly of all the Host Communities on all issue of common interest regarding the various benefits coming to the community benefits.
d. Ensure that trust is inclusive and represents the interested, youths, the aged and all segments of its member communities and provide a fair and equal opportunity for all to serve.
e. Nominating a member to represent the Host communities on the management committee.
f. Monitoring and reporting progress of trust projects in the communities to the management committee.
g. Advising the management committee on Activities that may lead to the improvement of security and enhancement of peace building in the community.

**Challenges of Host Communities Development Fund**

The flaws of the PIA are evident in its provisions on host communities. These challenges are directly opposed to the general objectives enshrined in the law. The trust lacks measures that would have directly adduced socio-economic development if properly implementations. The minimum standard of the oil bearing community's protection/sustainability for peaceful co-existence between the oil companies and the host communities have not been achieved due to a number of problems particularly, inadequate existing legal frameworks for the welfare and development of indigenous people. These problems also account for a low level of public/oil bearing communities participation in the process of decision making [37].

The challenges are as follows:

First, the language is ambiguous and not very precise. It is not very clear whether the settlor's obligations to the Host Communities Development Trust are in addition to the existing community levies or instead of them. Perhaps the biggest ambiguity of chapter 3 is the definition of the 'host community', the Act leaves most of the definition of the host community up to the oil companies. This could be

problematic because the oil companies can easily manipulate the scope of the trust's geographical impact. This lack of specificity creates uncertainty and could cause disputes to arise if other stakeholders define it differently.

Second, it also gives the companies (settlors) powers to determine who sits on the board and the conditions for their termination, this could create a benefactor-beneficiary or employee relationship of sorts between the oil companies have all the cards while the communities are left with little control over the process. This is predicated on the fact that the Petroleum Industry Act (PIA) gives the companies power to nominate who sits on the board of trustee with only a minor obligation to 'consult' the community. PIA conferred all the power to the settlers to determine the membership of the board of trustee and various committee in the Host Community Development Trust Fund. Furthermore, because; the positions on the trustees, management and advisory board have very few local content considerations.

Third, the Act expressly sates that the members appointed to the management board need not be members of the community but upstanding Nigerians. This is particularly problematic because these members of the management team who are presumably highly skilled may lack the motivation to act in the interest of the community as against personal or other interest [38], and which could be marred or influence by some external factors which include the over bearing nature of Nigerian polities and weak institutions, but in the same breath creates hurdles to this development.

Fourth, the Petroleum Industry Act (PIA) transfers the responsibility of Petroleum infrastructural security to the community by stating that anywhere an Act of vandalism, sabotage or civil unrest occurs that causes damage to Petroleum facilities or affects production activities within the Host Community, then the community shall forfeit its entitlements under Chapter 3 to the extent of the repairs, under this provision, the communities essentially bear the cost of repair for damage to facilities within their communities regardless of their role in that damaging activity, notwithstanding the fact that pipeline vandalism for oil companies and rogue security agents, the unarmed groups in check to protect the structural integrity of facilities within their communities. This violates the constitutional presumption of innocence.

Five the Petroleum Industry Act (PIA) in chapter 3 failed to provide for the direct resolution of conflict and management of grievances on a day-to-day basis among the critical players in the Host Communities Development Trust (HCDT) like the settlors and the Host Communities. It assigns this task to the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) while staying silent on the role of state governments as the custodians of security in their states where Petroleum operations take place.

Lastly, it also vests oversight functions on the commission and this is concerning because of the strength of regulatory institutions in Nigeria which are sometimes notorious for their approach to responsibility. This is viewed by the host communities as elite capture of what should ordinarily benefit them.

The bureaucratic bottlenecks have ensured that no communities can successfully access the so-called community Trust Fund, but reducing the oil-bearing communities to hostages in their own land with a percentage as paltry. With the above analysis and consideration of the incorporation of Host Communities Development implementation does not enhance the International Legal Regime in terms of the right of the indigenous people over natural resources as stipulated in Article 21(1) and 2 of the African charter on Human and People Rights. That all people shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusion interest of the people who own the wealth/resources. In no case shall a people be deprived of it. Where any people have been disposed of their land or their land spoiled by human Activities (such as oil exploration) they are entitled to recovery of their property as well as adequate compensation".

This position of international law can be found in the following:

1. International Labour Organization (ILO) Convention, No. 107 and 169
2. United Nation (UN) Draft Declaration on the Right of Indigenous Peoples in 1994.
3. African Charter on Human and People's Right
4. Principle of Permanent Sovereignty over Natural Resource

However, a new intervention mechanism and a near ownership recognition statute, control and management and the inclusion of indigenous people in the oil industry in line with the United Nations resolutions is the way forward.

**Conclusion**

In this study, efforts have been made to analyse the enacted Petroleum Industry Act (PIA) 2021, and incorporation of chapter 3 into the Act. The essence of the Host Community Development Trust Fund (HCDTF) is to address the developmental needs of the oil-bearing communities in the oil producing areas, foster sustainable prosperity within host communities, provides direct, social and economic benefits and their participation/control of the fund among the indigenous people through the "trust."

It is a general principle of law that, whenever there is a wrong, there is also a remedy provided for. The International legal Regime which prompted the enactment of the Petroleum Industry Act (PIA, 2021) and the incorporation of the ''Trust Fund'' in chapter 3 of it made generous provisions. The enactment of the PIA 2021 is meant to set Nigeria and the indigenous people in particular free from the clutches of oppression by the settlors and the government of the day. In this work, the researcher took time to explain why the repeal of the laws were necessary and the incorporation of the concept of host communities' development fund (HCDF), became a turning point. However, with the challenges identified, host communities' agitations needs to addressed, as such, this paper proffers the following recommendations, to wit;

1. Under the host community development trust (HCDT) concept we recommend that there should be a compendium containing the publication of all board members and managerial team members which will be easier to identify decision makers in the community to avoid miss-management and financial impropriety. Ensure clear guidelines on what specific assets and infrastructure, the people needed in terms of environmental and geographical considerations in line with relevant international best practice. The settlors should not be given discretionary decision-making

power in this regard. This is fundamental to the purpose of this legislation.

2. The appointment of the board of trustees by the settlors to perform any specific duties as provided by the Act such shall be isolated from political interference and based on professional credible indigenes who had lived in the community for specific years.
3. Most importantly, the three (3) percent annual expense contribution by the settlors should be increased to 10 percent as requested for by the oil producing communities, this is feasible considering the irreversible environmental impact of oil operation in Nigeria. This is a call for amendment to the relevant section of the Petroleum Industry Act (PIA) 2021.
4. Key provisions in the host community development trust (HCDT) as it stands are troubling, the critical designating of what constitute the host community in the first place, determining the constitution of the board of trustees intended to manage the trust fund of each community and also issues regarding the lack of enforceable timeframe for project implementation should be identified and clarified by the Act.

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