



HOST COMMUNITIES DEVELOPEMENT TRUSTS UNDER THE PIA: POLICY VS. PRACTICE.

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INTRODUCTION

The Petroleum Industry Act (PIA) was enacted in 2021 to regulate Nigeria's oil and gas industry. One of its key provisions is the establishment of Host Communities Development Trusts under Chapter 3 of the PIA.¹ The introduction of the Host Community Development Trust was aimed at addressing the existing gaps in catering to the needs of host communities, under an unregulated CSR structure adopted by oil operators, and to aid the development of the economic and social infrastructure of communities in petroleum producing areas.

BACKGROUND

For several years, host communities and oil exploration companies have had their differences regarding how revenue generated from oil exploration is to be deployed for the purposes of protection of Host Communities. On the one hand, host communities lament how their sources of livelihood have been adversely affected by the activities of oil companies and on the other hand, the oil exploration companies lament how several initiatives to reach those affected have not yielded any tangible results. These and other reasons have led to the signing of several Global Memorandum of Understanding (GMOU) and the establishment of Corporate Social Responsibility (CSR) initiatives with an aim to respond to the needs of the host communities which have been affected by the activities of oil exploration and production.

In order to create a balance and protect the interest of the Host Communities, the Act in Section 240 (2),² mandates the oil firms (Settlers) to contribute to the Host Communities Trust Fund of an amount equal to 3% of their actual annual operating expenditure of the preceding financial year, with respect to their petroleum operations

¹ Section 234 of the Petroleum Industry Act, 2021

² Section 240 of the Petroleum Industry Act, 2021

affecting the host communities as a way of addressing the environmental and social impacts of oil exploration and production. Also, donations, gifts, grants, or honoraria can be made to the trust for the attainment of its objectives.

OBJECTIVES OF THE HOST COMMUNITIES' DEVELOPMENT TRUST.³

1. Finance and execute projects for the benefit and sustainable development of the host communities.
2. Undertake infrastructural development of the host communities within the scope of funds available to the Board of Trustees for such purposes.
3. Advance and propagate educational development for the benefit of members of the host communities.
4. Support local initiatives within the host communities, which seeks to enhance protection of the environment.
5. Invest part of available fund for and on behalf of the host communities.

IMPLEMENTATION OF THE 3% ANNUAL OPERATIONAL EXPENDITURE (OPEX)

The Petroleum Industry Act, 2021 was conceived to bring much-needed reform to Nigeria's oil and gas sector, promoting transparency, efficiency, and fairness. One of its cornerstone features is the establishment of the Host Community Development Trust (HCDDT), which mandates oil companies to contribute 3% of their annual operating expenditure towards the development of their Host Communities, this is to ensure that communities directly impacted by oil extraction receive adequate compensation and development support.⁴

However, the efficacy of Compliance with the relevant provisions of the PIA as it relates to the Host Communities Development Trust remains yet to be seen. The lackluster efficacy in the implementation of the PIA provisions has led to some adverse effects, such as:

1. Socio-Economic Discontent: Host Communities, already vulnerable to environmental degradation and livelihood loss, face exacerbated socio-economic challenges leading to heightened tensions and potential social unrest.
2. Environmental Degradation: The absence of promised funds under the PIA severely constrains efforts to mitigate environmental damage and invest in sustainable community projects, perpetuating ecological decline. Unfulfilled financial obligations hinder environmental remediation and sustainable development initiatives, entrenching environmental degradation in host communities.
3. Erosion of Trust: Repeated defaults erodes the foundation of trust with Host Communities, fostering a hostile operating environment and impeding effective sector

³ Section 239 of the Petroleum Industry Act, 2021

⁴ Section 240 (2) Petroleum Industry Act, 2021

management. Unmet financial commitments undermine the credibility and trustworthiness of oil companies, straining relationships with Host Communities and complicating sector operations.

It is incumbent upon the settlors to fulfill their obligation with respect to establishment of the Host Communities Development Trust and contributions to the Host Communities Development Trust Fund as mandated by the Petroleum Industry Act (PIA). Non-compliance with this provision may provoke hostility among the Host Communities, potentially leading to unrest and chaos.⁵



ACTIONS BY THE NIGERIAN UPSTREAM PETROEUM REGUATORY COMMISSION

The Nigerian Upstream Petroleum Regulatory Commission (NUPRC), the regulator, has recently inaugurated a board of trustee (BOT) forum for Host Community Trust Implementation, this became imperative as there is a need for not just a one-stop-shop for resolving host community issues but a vehicle that would enable the smooth administration of the Host Community provisions of the Petroleum Industry Act (PIA) 2021.⁶ This is indeed a welcome development as it is hoped that the initiative will foster transparency and accountability and the overall implementation of the provision of the PIA as it relates to the Host Communities.

⁵ [https://www.vanguardngr.com/2023/10/pia-3-opex-confusion-as-oil-firms-seize-host-communities/#:~:text=Section%20257%20\(2\)%20of%20the,Companies%2C%20NOCs%2C%2](https://www.vanguardngr.com/2023/10/pia-3-opex-confusion-as-oil-firms-seize-host-communities/#:~:text=Section%20257%20(2)%20of%20the,Companies%2C%20NOCs%2C%2) - Accessed on May 22, 2024.

⁶ <https://www.nuprc.gov.ng/nuprc-inaugurates-bot-forum-for-host-community-trust-implementation/> - Accessed on May 22, 2024

RECOMMENDATION

To ensure effective implementation, we recommend the following measures to be taken by the government and the settlors:

1. **Robust Enforcement Mechanisms:** The NUPRC is expected to enforce strict compliance of the provision of the law as it relates to the Host Communities. This includes imposing penalties for defaults and ensuring that oil companies adhere with the provisions of the PIA and relevant regulations.
2. **Transparent Reporting:** The implementation of the Petroleum Industry Act's (PIA) enhanced financial reporting obligations for companies⁷ will foster greater transparency within the industry leading to increased accountability and effective enforcement of the provisions of the PIA. This, in turn, will promote a transparent and responsible business environment, where companies are held accountable for their actions and are likely to comply with the provisions of the PIA and relevant regulations.
3. **Legal Recourse:** Providing host communities with a clear legal pathway to seek redress in cases of default can deter companies from neglecting their obligations and it will prevent the Host Communities from resorting to self-help.
4. **Capacity Building:** Strengthening the capacity of local institutions to manage and oversee the implementation of the HCDDT ensures that funds are utilized effectively for community development projects. We believe that the Board of Trustees (BOT) inaugurated by the NUPRC⁸ will effectively manage and oversee the implementation of the HCDDT.

CONCLUSION

The Petroleum Industry Act holds significant promise for Nigeria's oil-producing states, but its success hinges on the timely implementation of its provisions. Addressing the issue of compliance with the provision of the PIA through robust enforcement, transparency, and community involvement is crucial for fostering a sustainable and equitable oil and gas sector in Nigeria. By prioritizing these measures, the Nigerian government and oil companies can build a more harmonious and mutually beneficial relationship with the Host Communities, ensuring that the benefits of the country's vast oil resources are shared more equitably.

⁷ Section 277 of the Petroleum Industry Act, 2021

⁸ <https://www.nuprc.gov.ng/nuprc-inaugurates-bot-forum-for-host-community-trust-implementation/> Accessed on May 22, 2024