

# Nigerian Petroleum Industry Act 2021 & Host Communities Development: Issues & Challenges

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## Abstract

The signing of the Nigerian Petroleum Industry Act in 2021 by the Buhari administration signified a paradigm shift from voluntary to statutory mandated community investment strategy of oil and gas companies in Nigeria. In order words, the discretionary Community investment strategies (Memorandum of Understanding) hitherto employed by oil and gas production and exploration companies to ameliorate the squabbles between them and their respective host community, and thereby gain unhindered access to operate no longer obtains. The deployment framework, processes and procedures to guide its (PIA) implementation is stated in the ACT. Also, further clarifications on gray areas in the ACT were expounded in the Nigeria Upstream Petroleum Regulatory Commission (NUPRC) guidelines. However, despite the robustness of the ACT and the NUPRC guidelines, settlers and host communities alike have raised pertinent questions regarding its implementation. The paper is aimed at objectively identifying the existing gaps in the Petroleum Industry Act and the NUPRC guideline as it relates to the host community component with a view to suggests/recommends possible solutions.

**Keywords:** Nigerian Petroleum Industry Act (PIA), Memorandum of Understanding, Nigerian Upstream Regulatory commission (NUPRC), Community Investment Strategy.

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## 1.0 INTRODUCTION

The importance of a stable and economically vibrant oil and gas industry to Nigeria's economy cannot be over-emphasized. This is because crude oil accounts for 75% of Nigeria's revenue gotten from sales, taxes, and royalties gleaned from the sector. Also, the sales of oil and gas makes up 95% of the country's foreign exchange earnings. Nigeria is ranked 10<sup>th</sup> in the world in terms of crude oil reserves with about 37 billion barrels worth of untapped oil reserves (Open Society Initiative for West Africa, 2014). In addition, Nigerian is within the top ten countries of the world with the most natural gas endowment with about 159 trillion cubic feet of proven natural gas reserve. Agriculture which was hitherto the mainstay of the economy around the early fifties and sixties has been relegated to the background. However, the huge dependence of the country on oil revenue has made its fiscal policy susceptible to external economic shocks emanating from oil price volatility. It is on the backdrop of the aforesaid that (Bredino, Fiderikumo & Agbarakwe, 2022) argues that the overdependence of government on revenue accrued from the oil and gas sector has adverse effect on the economy in the long run.

In recent time, the performance of the oil and gas industry in Nigeria has plummeted (Bello, 2017). This adverse turn of event can be attributed to several factors which can be dichotomized into external or internal factors. By external factors we are referring to those that are outside the control of the domestic economy such as crude oil price fluctuation in the international market. While internal factors are those that emanate from within the domestic economy such as; pipeline vandalization, gas flaring, disruption of oil exploration and production by host communities, corruption etc. According to (Hygenus, 2016), Nigeria lost US\$7bn (this is equivalent to over 700,000 bpd) due to pipeline vandalism and increased militant attacks in the Niger Delta Region in 2016 alone. Continuous crude theft and pipeline vandalism, and insecurity in the Niger Delta Region which resulted to production deferment, shortfall in supply of crude to refineries, environmental degradation, divestment, and abandonment of the water assets (onshore/shallow) has precipitated the sale of these assets by IOCs. For instance, 26 OMLs have been divested by IOCs in the Niger Delta Region in the past 11 years (Daily Trust, 2022).

In their bid to ameliorate the squabbles in the oil and gas host communities and the resultant consequences leading to the disruption of its activities, the Nigeria government and IOC's introduced several strategic community intervention programs aimed at having uninterrupted access to operate (Minima, Sofiri & Ifeanacho, 2018). However, while some scholars agree that the adopted community investment strategies employed by IOCs have recorded a degree of success in addressing the challenges faced by host communities, others are of the opinion that not only has it further aggravated the poverty indices, but has also served as a conflict trigger in the region (Minima & Bredino, 2018). The seeming inadequacies in previous community investment strategies in tackling the problems in the industry which is manifested in the continuous divestment of assets by IOCs further highlighted need for a more comprehensive community investment framework.

The signing of the Nigerian Petroleum Industry Act (PIA) 2021 by President Muhammadu Buhari marked a watershed in the reform of the Nigerian oil and gas sector. The Petroleum Industry Act is a product of the various complains of players in the oil and gas industry and its host communities. According to section (234) of the Act, the aim of the Act includes but is not limited to; fostering sustainable prosperity, provide direct social and economic benefits from petroleum operations to host community, and create a framework to support the development of host communities. This paper focuses on the host communities' development aspect of the act as sighted in chapter 3 of the Nigerian Petroleum Industry Act. The aim of this study is to identify the issues and challenges surrounding the implementation of the ACT.

To actualize the aim of the study content analysis was adopted and the paper is divided into six sections. The first is the introductory section which is followed by conceptual clarification. The third section presents the previous development framework, the fourth is an overview of host community component of the PIA: an overview. The fifth section is the critical issues for PIA-HCDT implementation and the last is the conclusion & recommendation.

## 2.0 CONCEPTUAL CLARIFICATION

The concepts used in this paper are defined hereunder for the purpose of clarity and comprehensiveness.

### Petroleum Industry Act (PIA)

The Petroleum Industry Bill was assented to, and signed by President Muhammadu Buhari in August 21<sup>st</sup> 2021, thus making it an Act which is referred to as the Petroleum Industry Act (PIA). This Act is meant to regulate the host community development activities of players in the oil and gas industry. The PIA Act is made

up of five (5) chapters, however, this paper focuses on the host communities' component of the PIA which is contained in chapter three (3).

### Host Community Development Trust (HCDT)

This is the PIA stipulated institutional structure used in the implementation of development projects and programs and entrenchment of sustainable prosperity in oil and gas host communities.

### Settlers

By settlor's we are referring to all oil and gas companies (international and indigenous) operating in the Nigerian oil and gas upstream sector of the country.

### The Regulation

This refers to the guidelines on the operations of settlers in the oil and gas industry drawn up by the Nigerian Upstream Petroleum Regulatory Commission (NUPRC). This regulation is meant to throw more light on the PIA Act for clarity and unambiguity.

### SPDC

The Shell Petroleum and Development Company is one of the oil and gas multinational companies operating within the Niger Delta Region. It is one of the settlers.

## 3.0 PREVIOUS DEVELOPMENT FRAMEWORK

The activities of oil and gas multinational companies have been blamed for the high rate of poverty indices in the Niger Delta Region. The community dwellers who are the direct sufferers of the activities of these companies, have vented their frustrations by way of obstructing the activities of the settlers, denying them access to their facilities, kidnapping of the staff members, pipeline vandalization etc. [Ibid]. Both the Nigeria State and Oil and Gas multinational companies have made several efforts to address the squabbles between the host communities and the companies and by so doing, ameliorate the consequential impact on their activities. In this session, an attempt has been made to review some of the government and selected oil and gas intervention development strategies.

### 1. Government Development Interventions

Literature is replete with instances where the Nigerian state instituted several ministries and organizations aimed at mitigating the resistance of host communities and granting the oil and gas companies unhindered access to operate. It has been argued however, that the Nigerian state is an ally of the oil and gas companies, as such; its interventions were merely designed to enable these companies perpetuate their business concerns at the expense of the host communities (Ray, 2007; Aaron, 2005; Fiderikumo & Bredino; 2018). Such interventions include the formulation of the Niger Delta Development Board (NDDDB), Niger Delta Basin Development Authority (NDBDA), Oil Mineral

Producing Areas Development Commission (OMPADEC), Niger Delta Development Commission, Ministry of Niger Delta Affairs, and the setting up of the “1.5%” Presidential Task Force.

The aforesaid host community development interventions failed to address the challenges faced in the region. Some of the factors responsible for the failure of the above strategies include but is not limited to;

- i. Each of the aforesaid strategy has a political outlook.
- ii. The political structures empower the state to manipulate the agencies for political patronage.
- iii. State agencies adopt top-down approach in the planning and implementation of development programs and project.
- iv. Absence of sustainability element in the conceptualization, identification and implementation of projects and programs.

According to Nosode (2003), the top-bottom approach of state interventions has proven to be ineffective in implementing sustainable projects and tackling incidence of poverty in the Niger Delta region. Specifically, the projects and programmes embarked upon by these interventions do not meet the actual needs of the people in these regions.

## 2. SPDC Intervention Strategy

The state interventionist strategy geared towards tackling resistance issues and poverty incidence in host communities were highly unsuccessful. Persistent community resistance issues and interruptions of its activities precipitated SPDC to re-strategize on better result oriented ways. The various interventionist strategies adopted by SPDC are highlighted in details in the following paragraphs.

### i. Assistance/Philanthropy Strategy

As a way of mitigating the persistent resistance of its host communities and consequent obstruction of its operations, SPDC started the assistance/philanthropic strategies in early 1960s. This community investment strategy has to do with the provision of agricultural extension programs and supply of seedlings and other agricultural equipment to its host communities to boost agriculture. The idea behind this approach stems from the complaints of community indigenes against the companies regarding the destruction of their livelihood support system. Thus, this strategy was geared towards providing support to the communities to ameliorate the impact of the activities of the oil and gas multinationals companies which have resulted to the destruction of their livelihood support system. Besides the agricultural extension schemes, other interventions such as; water schemes, construction of schools, construction and renovation of health care facilities were also initiated under this strategy.

The top-down approach of this strategy in terms of conceptualization and implementation made it ineffective and unsustainable. A major set-back of this strategy was that projects were conceptualized and implemented in host communities without the inputs of host communities. Consequently, this strategy failed to foster sustained prosperity and harmonious relationship between the host community and oil and gas companies.

### ii. Community Development Strategy

The failure of the philanthropic strategy to grant the oil companies the social-license to operate and engender peaceful and harmonious relationship between the company and its host community precipitated the introduction of the community development strategy. Note however, that the philanthropic approach was not totally discarded, on the contrary, it was slightly adjusted to accommodate other issues which were overlooked in previous strategy. This strategy gave room for the introduction of negotiations of Memorandum of Understanding (MoUs) with host communities. This was the first attempt at getting host communities involved in the development of their communities. Using this strategy, SPDC negotiated over a thousand Memorandum of Understanding (MoU) with its host communities across the Niger Delta region.

A major set-back of this strategy is the dearth of adequate human resource to administer this strategy. Put differently, individuals who were assigned to serve as community relations were non-professionals. Imagine an engineer or an accountant appointed as head of community relation department. The conceptualization and deployment of projects and programmes on behalf of host communities from the office posed yet another challenge to the success of this strategy. The “divide and rule” approach was predominantly employed by the company’s community relations personnel to gain access to the communities. Thus strategy brought about the littering of communities with abandoned infrastructural projects originally designed to address the presumed socio-economic needs of the host communities.

### iii. Sustainable Community Development (SCD)

The introduction of the Sustainable Community Development (SCD) Strategy was imperative given the failure of the philanthropic and community development strategies. This approach is bottom-top and proactive approach to host community development. It represents a paradigm shift from the then popular view of the ideology that “the main purpose for business is business” to creating shared values that aligns business objectives to host communities development needs. This strategy is hinged on providing direct social and economic benefits to host communities through a multi-stakeholder engagement framework that is geared towards building social capital and local ownership.



**Figure 1.0: Diagram showing different intervention strategies by SPDC**  
(Source: Authors)

#### 4.0 Host Community Component of the PIA: An Overview

As stated earlier, the Nigerian Petroleum Industry Act is made up of five (5) chapters. Our focus however, is on chapter three (3) which is dedicated to host communities’ development. According to section (234) of the Act, the objective of the PIA is to; foster sustainable prosperity; provide direct social and economic benefits for petroleum operations to host communities; enhance peaceful and harmonious co-existence between licensees and host communities; and create a framework to support development of host communities [8].

In line with the Petroleum Industry Act stipulation in section (235), the settlor or oil and gas company is expected to incorporate a host community development trust for the benefit of the host community for which the settlor is responsible. The host community development trust is a collection of several communities within the circumscribed area of the settlors operation. The objective of the host community development trust as stipulated in section (239), subsection (3) is as follows;

*“(a) finance and execute projects for the benefit and sustainable development of the host communities; (b) undertake infrastructural development of the host communities within the scope of the funds available to the Board of Trustees for such purposes; (c) facilitate economic empowerment opportunities in the host communities; (d) advance and propagate educational development for the benefits of members of the host communities; (e) support healthcare development for host communities; (f) support local initiative within the host communities,*

*which seek to enhance protection of the environment; (g) support local initiatives within the host communities which seek to enhance security; (h) invest part of the available fund for and on-behalf of the host communities; and (i) assist in any other development purpose deemed beneficial to the host communities as may be determined by the Board of Trustee”*

A cursory view or retrospection of the objectives of preceding interventions by the government and oil and gas multinationals show that there exist a high of semblance of improvement however with little or no positive outcome. Thus, the widespread fear amongst stakeholders in the industry, especially the impacted oil bearing, poverty ravaged communities that this may just end up being another “white paper” exercise.

As stated in section 234(1), paragraph (d) of the PIA ACT, a framework will be created to support and drive host community development. By framework, we are referring to a set of principles, philosophy, guidelines as well as institutions aimed at achieving target or stated objectives. Thus, the PIA framework is a conglomeration of all the institutions that are to be set-up for the purpose of achieving the objectives stated in section 234(1) as well as guidelines or principles spelling out; the number of membership in each segment of the institution, criteria for selection, duties and functions, and grounds for withdrawal of membership (or recall).

The PIA structural framework can be dichotomized into three main institutions namely;

1. The Commission or Authority
2. The Settlor



3. The Host Community Development Trust (HCDT)

**The Commission or Authority**

Is a body set-up for the purpose of making regulations and monitoring the activities of the settlor and HCDT to ensure compliance with the PIA ACT. Presently, the Nigeria Upstream Regulatory Commission (NURC) has been commissioned to play the aforementioned role. In addition to making regulations within its areas of jurisdiction, the commission is to provide a grievance handling mechanism to mediate in cases of conflicts between settlor and host communities.

**The Host Community Development Trust (HCDT)**

Is the grassroots institution designed to drive local community development. Section 235(1) of the PIA ACT mandates the settlor to incorporate the HCDT (after prior consultation with the host community) within 12 months from the effective date for the existing oil mining lease. In line with Corporate Affairs Commission

(CAC) requirement for registration, a Board of Trustee (BoT) selected from the concerned community shall be constituted. The criteria for the qualification and number of persons who shall constitute the BoT is to be determined by the Settlor. Also, the Nigerian Upstream Regulatory Commission (NURC) is to develop guidelines or regulations for the smooth operation of the HCDT. The objective of the HCDT as stated in Section 239(1) (a) is to “*finance and execute projects for the benefits and sustainable development of the host communities*”. To carry out the above objective and ensure equitable distribution of the envisaged development projects from the funds allocated to it from the settlor, other sub-committees such as the Management Committee (MC) and Advisory Committee (AD) are to be set-up. The Act mandates the BoT to set-up the Management Committee, while the Management committee set-ups the Advisory committee. Figure 2 show the diagrammatic view of the Petroleum Industry Act structural framework.

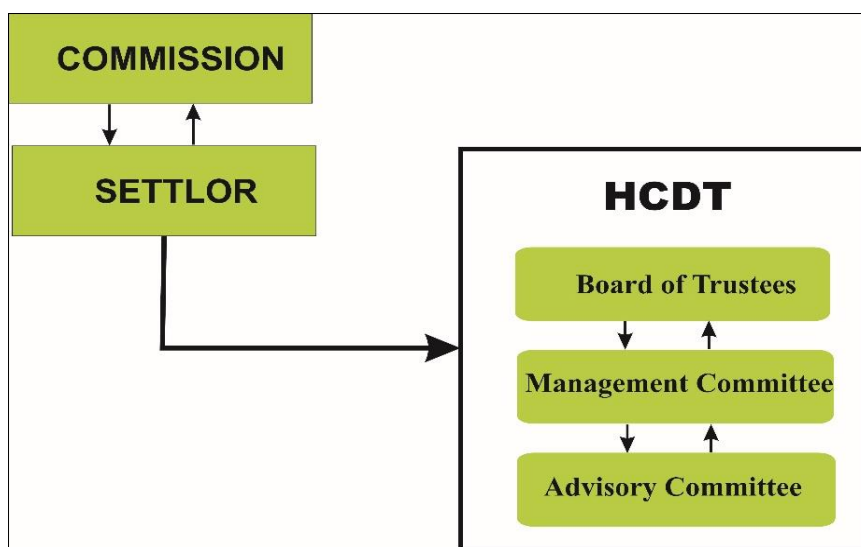


Figure 2: PIA Structural Framework

**5.0 Critical Issues for PIA-HCDT Implementation**

The Petroleum Industry Act is a relatively new strategy introduced by the Federal Government to address the numerous challenges faced by oil and gas bearing communities in Nigeria. It represents a shift from voluntary to statutory corporate social responsibility mandate in the petroleum industry. However, there are some critical issues that have been identified in the course of its implementation. Some of these critical issues have been briefly explained as follows:

a) **Political Dualism in Host Communities**

The existence of political dualism in oil bearing host communities poses serious challenge in the setting-up of the Petroleum Industry-Host Community Development Trust. A politically dualistic community is one in which the traditional ruler belongs to a political

party that is different from that of the local government authority. Consequently, there is likely to be power tussle between the traditional stool and the local government as whose candidate should be installed in any of the structure of the PIA-HCDT framework. Recall that section 242(2) empowers the settlor to determine the members of the Board of Trustees (BoT) in consultation with host communities. The poser then is, given the existence of political dualism in some communities who should the settlor consult, and at what level? The above critical issue is one of the reasons why some Host Community Development Trusts are yet to be inaugurated. Although, the idea behind the PIA is to ensure that direct social and economic benefits accrued from the petroleum industry gets to the host communities, it is not intended to wear a political

outlook, hence, the inclusion of local government was not considered.

#### b) **Determination of Host Communities 3% OPEX**

The Petroleum Industry Act in section 240(2) mandates the settlors to make an annual contribution of 3% of their operations expenditure of the previous year to host communities for the purpose of embarking of development projects and programs. Specifically, the 3% OPEX is to be paid to the HCDT Trust fund. According to the Act, the 3% OPEX shall be allocated in the following manner;

- i. 75% shall be used for development projects and programs in line with the allocation matrix provided by the PIA
- ii. 20% is the investible funds to be paid into a separate account and invested with the annual profit therefrom plunged back to be used for development projects and programs. This fund is mainly to provide a cushioning effect whenever the settlor ceases to pay the annual contribution.
- iii. 5% will be used as admin fund to running the HCDT. This fund is meant to take care of the administrative cost of running the Trust. It covers expenditure items such as; meeting allowance, salaries, board office consumables etc.

The big question that oil and gas host communities as well as observers keep asking is who determines the value of the annual 3% OPEX payable to these communities? And how can these communities be certain that these values will not be doctored to their disadvantage? According to the Section 235(6) the Nigerian Upstream Regulatory Commission (NURC) referred as the "Commission or Authority" is vested with the mandate to serve as the watch-dog to the oil and gas companies and the Host community Development Trust (HCDT) to ensure compliance. The settlors are expected to report to the NURC who will determine the 3% OPEX due the concerned host communities. Whether or not the NUPRC will be objective in dispensing their duties, and ensuring that these communities are not short-changed remains to be seen.

#### c) **Management of 5% Admin Fund**

In line with section 244(c) 5% of the HCDT Trust Fund shall be allocated for the administration of the trust. The Act empowers the settlor to manage this fund on-behalf of host communities and provide a comprehensive financial statement showing how the fund was disbursed to the Board of Trustee. The issue with the above stipulation is that the regulation as well as the Act did not lay down specific and practical guidelines on how the 5% will be assessed in the running of the HCDT. It is expected that this gap will be covered by the settlors HCDT guidelines which is a prerequisite for the incorporation of the Trust.

#### d) **Determination of Host Communities by Settlor**

According to section 235(3) settlor operating in shallow water and deep offshore, the littoral (coastal) communities and any other community determined by the settlors shall be host communities. The critical issue with this clause is that communities could take undue advantage by setting-up fishing fictitious settlements where non-exist in order to make claims and possible inclusion in the list of communities.

### 6.0 CONCLUSION & RECOMMENDATION

The signing into law of the Petroleum Industry Act on 16<sup>th</sup> August 2021 heralded a new stage in the development of oil bearing communities. This is indeed a welcomed development given the years of neglect, high rate of poverty incidences, and environmental degradation of the region. Although, the contents in chapter 3 of the Petroleum Industry Act aptly shows that the Federal government have heeded the plea of the people for better living conditions. However, there are critical issues that should be considered to ensure successful implementation as discussed in the previous section.

Oil producing companies are not development experts; as such they lack the required expertise to implement some of the content of the PIA document. Thus, we strongly, recommend as follows:

1. That settlors employ the services of development experts or specialized non-government organization (NGOs) in the conceptualization and implementation of the PIA.
2. Even though the government does not have a reliable data on how much income the multinationals oil firms make, we also recommend that the NURC get the data and should arm the HCDT with the Settlor's income to enable it determine the 3% that accrues them annually. This will eliminate doubt, minimize distrust, enhance harmonious co-existence and facilitate the actualization of host communities' development.
3. The local government have performed abysmally in the development of the rural areas irrespective of the huge allocations and internally generated revenue they collect. We therefore recommend that the Settlers leave them out and relate directly with the paramount rulers and Community Development Committees (CDCs) of the host communities.
4. Settlers are advised to conduct proper verification of status and owners of littoral communities and settlements before final registration. They may possibly use services of a third party if necessary.

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