

## THE LIMITS OF CORPORATE SOCIAL RESPONSIBILITY INITIATIVES IN THE NIGERIAN PETROLEUM INDUSTRY

Ike Chime

Faculty of Law, University of Nigeria Enugu Campus.

[ike.chime@unn.edu.ng](mailto:ike.chime@unn.edu.ng)

### Abstract

The Nigerian Petroleum Industry (NPI), a significant contributor to the country's economy, has long faced criticism as a major agent of environmental degradation and associated issues such as social injustices, health challenges, and economic disparities. With the Federal Government's failure to tackle these numerous issues or hold oil companies accountable, Corporate Social Responsibility (CSR) has emerged as a mechanism to ameliorate the harsh effects of oil exploration on host communities (HCs) in Nigeria and contribute to promoting sustainable development. However, the voluntary nature of CSR appears to have limited its effect, casting doubts about the effectiveness of CSR in fostering sustainable development within Nigeria's oil-producing region. The Petroleum Industry Act (PIA) 2021 has transformed the CSR landscape in the NPI by providing legal backing and making CSR compulsory for oil companies. This paper examines the concept of CSR and its significance within the NPI. It also evaluates the PIA 2021 and the nuances of the integration of CSR as a compulsory obligation under the Act in light of recent judicial pronouncements on the matter. While this reform represents a positive step in the right direction, this paper concludes that the Act contains potential gaps that stakeholders may exploit, which could undermine the intended objectives of these innovative provisions, and recommends measures that can address these gaps.

**Keywords:** *Corporate Social Responsibility (CSR), Petroleum Industry Act (PIA), Host Communities Development Trust Fund (HCETF), Host Communities, Settlor, International Oil Companies (IOC)*

### Introduction

The Niger Delta<sup>1</sup>, Nigeria's oil and gas region, has experienced significant development deficits caused by environmental damage with its attendant socio-

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<sup>1</sup> The Niger Delta, covering an area of 112,106 km<sup>2</sup>, is the largest delta in Africa and the third-largest globally. This region features Africa's largest freshwater swamp and serves as a biodiversity hotspot due to its vast array of plant and animal species, rendering it one of the world's most vulnerable geo-ecosystems. See I Ola, C Drebenstedt, et al, (2024) "Remediating Oil Contamination in the Niger Delta Region of Nigeria: Technical Options and Monitoring Strategies", *The Extractive Industries and Society*, Vol 17, 101405,

economic impact on the land and the people of the region. Oil spillages, pipeline blowouts, and gas flaring lead to loss of vegetation and soil contamination, causing health problems, reduced crop yields, environmental degradation, and various socio-economic challenges.<sup>2</sup> The Federal Government (FG) has at different times established boards/commissions/agencies to address the developmental challenge of the Niger Delta region oil Host Communities (HCs). The Oil Mineral Producing Areas Development Commission (OMPADEC) was established to rehabilitate and develop Nigeria's oil mineral-producing areas.<sup>3</sup> The Niger Delta Development Commission (NDDC)<sup>4</sup> replaced OMPADEC and aimed at facilitating rapid and sustainable development in the region. NDDC was complemented by the Ministry of Niger Delta Affairs<sup>5</sup> and the Amnesty Programme<sup>6</sup>. The FG's developmental programmes for regions HCs have failed to address the environmental and socio-economic challenges of the area. These initiatives fell short of their goals due to weak national, regional, and local leadership in Nigeria.<sup>7</sup>

The direct consequence of the failure of the FG agencies and programmes is that the HCs of the oil-producing region continue to suffer from the adverse effects of oil and gas exploitation, resulting in demands being made on oil companies, particularly international oil companies (IOCs) to address the need of these communities. The primary hypothesis for the imposition of these non-economic obligations is the link between IOCs and the state's dependence on the revenue from their operations.<sup>8</sup>

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<sup>2</sup> U Udok & EB Akpan, 'Gas Flaring in Nigeria: Problems and Prospects', [2017] 5(1) *Global Journal of Politics and Law Research*, 16-28; See also CA Odumugbo 'Natural Gas Utilisation in Nigeria: Challenges and Opportunities,' [2010] 2(6) *Journal of Natural Gas Science and Engineering*, 310-316.

<sup>3</sup> Oil Mineral Producing Areas Development Commission Decree (OMPADEC) Decree, No. 23 of 1992

<sup>4</sup> Niger-Delta Development Commission (Establishment, Etc.) (NDDC) Act, 2000

<sup>5</sup> The Ministry of Niger Delta was created on September 10, 2008. ThisDay, *Why We Created Niger Delta Ministry*, By Yar'Adua <https://allafrica.com/stories/200809120002.html> (last visited January 28, 2025)

<sup>6</sup> The Amnesty Program Subsequently, President Umaru Yar'adua on June 25, 2009. Xan Rice Nigeria begins amnesty for Niger Delta militants, <https://www.theguardian.com/world/2009/aug/06/niger-delta-militants-amnesty-launched> (last visited January 28, 2025)

<sup>7</sup> Uduak & Akpan (no. 2).

<sup>8</sup> Oil dependence can be defined as the share of oil revenues in public revenues, gross domestic product (GDP), or as a share of exports. See B Ertimi, S Tamat, K Norlin, and HA Mohd. (2021).

They are considered power brokers with sufficient leverage to influence the governance process.<sup>9</sup> Furthermore, the industry's negative social and environmental externalities are deemed to require that the companies to contribute to measures aimed at ameliorating the impacts of their operation on human and natural environments.<sup>10</sup>

Generally, companies engage in community development programmes depending on their size, local needs, and their corporate beneficial initiatives<sup>11</sup>. However, the growing awareness of the adverse impacts of petroleum activities on the human and natural environment, along with the abysmal failure of host governments, fuels the call for the re-examination and expansion of the social responsiveness of oil companies, demanding that they improve their operating standards in these countries while collaborating with host governments and citizen groups to find lasting solutions to societal ills.<sup>12</sup> The consequence of these demands is the expansion of the acceptable roles and responsibilities of IOCs into areas that do not conform to the strict functions of business in society.<sup>13</sup>

### **Corporate Social Responsibility (CSR) and the Nigerian Petroleum Industry**

Corporate social responsibility (CSR) is defined as an assumed or imposed extension of a corporation's primary purpose.<sup>14</sup> For Carnegie, "*there is but one right mode of using enormous fortunes – namely that the possessors should so administer these to promote the permanent good of the communities from which they were gathered*".<sup>15</sup> CSR is the idea that companies have broader responsibilities in society than simply

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"The Policy Framework of Natural Resource Management in Oil-Dependence Countries" *Economies* 9, no. 1: 25. <https://doi.org/10.3390/economies9010025>

<sup>9</sup> *Ibid.*

<sup>10</sup> B Ertimi, RD Handoyo, KH Ibrahim, FR Muhammad. (2023) "The Environmental Curse in Oil Dependence Countries: A Missing Dimension of the Oil Curse", *J. of Law and Sust. Develop.* 11(12):e2164. Available from: <https://ojs.journalsdgs.org/jlss/article/view/2164>

<sup>11</sup> D Windsor, "The Future of Corporate Social Responsibility," *International Journal of Organizational Analysis*, 9(2) p. 225

<sup>12</sup> D. Korten, *When Corporations Rule the World*, (West Hartford, Conn.: Kumarian Press, 1995) 2.

<sup>13</sup> The perceived responsibility of petroleum companies with regard to human rights is seen from two perspectives. First is the need for them to prevent the violation of the rights of their employees and host communities and secondly, their role in encouraging and providing host governments to protect the rights of the people in the country. See B Adjibolosoo (ed) *International Perspectives on the Human Factor in Economic Development* (London: Praeger, 1998).

<sup>14</sup> J. Hass, *Corporate Social Responsibility in a Changing Society*, (New York: Theo. Gaus' Sons Inc. 1973) 12.

<sup>15</sup> Carnegie A, *The Gospel of Wealth and Other Timely Essays* (New York: The Century Co 1900).

the obligation to make a profit. Typically, a corporation's charter predetermines the functions that it would perform within its chosen environment. The products produced, and services provided are not necessarily produced or performed for the overall benefit of society but to accumulate and distribute profits to the shareholders.<sup>16</sup>

While wealth creation is central to the economic role of business, society determines the value system which surrounds the enterprise and influences the ends to which the wealth is committed. This interaction with society has led to corporate involvement in areas external to their usual functions in the form of charitable foundations and other activities, commonly referred to as corporate social responsibility.<sup>17</sup> Corporate social responsibility reflects the perception of a shift from government to companies as the source of social improvement and the means to promote specific items of social welfare. It is a matter of how far a company impacts its environment by incorporating non-economic concerns into its decision process.

By analogy with a responsible individual, a responsible company would be one that takes account of the interests of others and adopts an ethical point of view towards them. That is, a company that regards the interest of society as valuable and hence factors societal needs and concerns into its decision.<sup>18</sup> Part of what makes a responsibility social rather than moral in nature is that it is based largely upon the actual expectations of the public. These expectations may closely coincide with the moral point of view, but they need not do so. For a corporation that wants to be socially responsible, the implication of this character of corporate social responsibility is that the organisation must strive to be flexible and capable of accommodating those changes that periodically occur in society's demand and expectations of corporations

Prior to 2021, the Nigerian Petroleum Industry (NPI) was regulated by the Petroleum Act of 1969 and other ancillary laws. The 1969 Act was obsolete, inelastic, and unsuited for modern good governance and accountability in the oil sector.<sup>19</sup> The 1969

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<sup>16</sup> A. Kennedy, *The End of Shareholder Value: Corporations at the Crossroad*, (Cambridge, Mass.: Peruses Publishing, 2000) 11.

<sup>17</sup> J. Brummer, *Corporate Responsibility and Legitimacy: An Interdisciplinary Analysis*, (New York: Greenwood Press, 1992) 25.

<sup>18</sup> J Parkinson: "The Socially Responsible Company" in M. Addo, (ed.) *Human Rights Standards and the Responsibility of Transitional Corporations* (The Hague: Kluwer Law international, 1999) 59.

<sup>19</sup> NC Ole and EB Herbert, 'The Nigerian Offshore Oil Risk Governance Regime: Does the Petroleum Industry Act 2021 Address the Existing Gaps?' [2022] 31(3) *Studia Iuridica Lublinensia* 143-163.

Act had no provisions for CSR initiatives.<sup>20</sup> In a bid to engage in CSR initiatives, oil companies entered into Memoranda of Understanding (MOUs) with HCs.<sup>21</sup> These MOUs were not mandatory, making it difficult to monitor and enforce the objectives of these agreements.<sup>22</sup> The use of MOUs by HCs to secure CSR from oil companies was a colossal failure. Hence, despite significant increases in the oil IOC's CSR spending on community development, there has been little to no growth occurred in the region.<sup>23</sup> host communities continued to fight the oil companies in a bid to protect their environment, but this approach of the HCs frustrated the activities of the oil companies.

The Federal Government took a further initiative in establishing the Amnesty Programme and the Ministry of Niger Delta Affairs. These initiatives aimed to pardon and train militants and bring about peace in the region. The Amnesty Programme sought to deter militant actions, ease tensions, and equip former militants with skills and education, allowing them to impact the economy positively. The Ministry of Niger Delta Affairs focused on meeting the region's specific needs while fostering development.<sup>24</sup> While these initiatives were successful in reducing violence and promoting peace in the Niger Delta, the underlying problems remained unsolved. Thus, host communities continued to battle poverty, unemployment and environmental degradation.<sup>25</sup>

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<sup>20</sup> Ibid. While the majority of arguments have been that legal provisions allow for the improvement of the communities from the proceeds arising from oil proceeds revenue, the realities on the ground showed that those proceeds had not been channelled into the host communities' needs. The Allocation of Revenue (Federation Account, Etc.) Act LFN 2004, in its section 2, provides that the littoral states be given 13% derivation payments from the federation allocation but makes no provision prioritising the developmental needs of the oil-bearing and impacted areas in their states. The Nigerian Constitution does not have any provision that directs or ensures that the 13% derivation funds regularly paid to oil-producing states are deployed, specifically, or to a large extent, towards ameliorating the crisis of underdevelopment of the host communities in the littoral states. See JS Omotola (2007). "From the OMPADEC to the NDDC: An Assessment of State Responses to Environmental Insecurity in the Niger Delta, Nigeria". *Africa Today*, 54(1), 73–89. <http://www.jstor.org/stable/27666875>

<sup>21</sup> L Osemeke, S Adegbite and E Adegbite, *Key initiatives in corporate social responsibility: Global dimension of CSR in corporate entities* (Cham: Springer International Publishing 2016) 357-375.

<sup>22</sup> Ibid.

<sup>23</sup> A Mamudu, A Mamudu, F Elehinafe, D Akinneye, (2021) "Recent trends in corporate social responsibilities in Nigeria-A case study of major oil firms in the Niger Delta region", *Scientific African*, vol 13.

<sup>24</sup> PO Okolo, 'NDDC, Conflict, Peace-Building and Community Development in the Niger Delta Region' (2014) 2(1) *Global Journal of Political Science and Administration* 36-51.

<sup>25</sup> Ibid.

On August 16, 2021, the Petroleum Industry Act (PIA) was signed into law. The PIA is phenomenal and unique as it operates as a one-stop law for all matters in the NPI, including the participation of oil companies in CSR. The PIA removed CSR from the realm of voluntary requirement and made it a statutorily mandated obligation that an oil company must comply with or risk losing its licence/lease. The Act contains copious provisions<sup>26</sup> on the *modus operandi* of CSR by oil companies in their host communities and further authorises the Authority<sup>27</sup> or the Commission,<sup>28</sup> as the case may, to further make Regulations for effective implementation of the provisions of the Act as it relates to CSR.

### **Host Communities' Development Trusts (HCDT)**

The PIA 2021 introduced a new CSR regime within the NPI. The Act aims to promote sustainable prosperity for host communities, provide direct social and economic benefits from petroleum operations to these communities, enhance peaceful and harmonious coexistence between licensees or lessees and host communities, and establish a framework to support the development of host communities.<sup>29</sup> These initiatives include financing and implementing projects for the sustainable development of host communities, undertaking infrastructural development within the available budget, promoting educational development for community members, supporting local initiatives aimed at environmental protection, investing a portion of available funds for the host communities, and assisting with any other beneficial development purposes.<sup>30</sup>

Section 235(1) of the PIA obliges every oil company operating in a particular area to incorporate Host Communities Development Trust (HCDT) for the area, and where two or more oil companies are operating within an area, the oil companies shall collectively incorporate and operate the HCDT jointly. The Act defines host communities as "communities situated in or appurtenant to the area of operation of a settlor, and any other community as a settlor may determine under Act."<sup>31</sup> A settlor is "a holder of an interest in a petroleum prospecting licence or petroleum mining lease, whose area is located in or appurtenant to any community or communities,"<sup>32</sup>

<sup>26</sup> See Chapter 4 of the PIA (ss 35-257).

<sup>27</sup> Nigeria Midstream and Downstream Petroleum Regulatory Authority (NMDPRA). The Authority is responsible for implementing the provisions of the PIA as it relates to downstream and midstream sectors.

<sup>28</sup> The Nigerian Upstream Petroleum Regulatory Commission (NUPRC). This Commission replaced the defunct DPR and is saddled with the implementation of the PIA as it relates to the upstream sector.

<sup>29</sup> s. 234

<sup>30</sup> *Ibid*, s239(3)

<sup>31</sup> The PIA 2021, s310(1).

<sup>32</sup> *Ibid*

which is synonymous with a petroleum prospecting licensee or petroleum mining lessee. The Act allows the licensee/lessee, for the purpose of host communities' developments, to determine its host communities, in which case, an oil company may include any other community as its HC for the purpose of the HCDT.<sup>33</sup>

Section 235(1) uses the word "shall", which connotes a compulsory requirement.<sup>34</sup> Hence, failure to comply is grounds for revocation of the oil company's licence/lease.<sup>35</sup> This marks a significant departure from oil companies' previous voluntary approach to community development. Also, the HCDT is different from the past, where IOCs could independently choose which CSR activities to undertake in host communities. Under the new regime, oil companies are required to conduct needs assessments in consultation with HCs<sup>36</sup> before developing a host community development plan.<sup>37</sup> This assessment should identify the community's specific needs, the potential effects of oil and gas operations and a strategy for addressing these needs and effects. A HC's development plan should articulate the community's vision for sustainable development, identify specific goals, conduct a Strength, Weakness, Opportunities and Threat (SWOT) analysis and outline CSR projects based on the outcome of the assessment.

Upon the establishment of the HCDT, the law mandates its incorporation, and the oil company shall, in consultation with the HCs, appoint and authorise the Board of Trustees (BoT) for the HCDT, which will manage, supervise, and oversee the trust's activities.<sup>38</sup> The settlor shall determine the composition and criteria for appointing BoT members, provided that the BoT's membership of the HCDT is subject to the approval of the Nigerian Upstream Petroleum Regulatory Commission (Commission) or Midstream and Downstream Petroleum Regulatory Authority (Authority), as appropriate. The PIA establishes an HCDT Fund as the statutory source for financing oil companies' CSR in their HCs under the new regime. Pursuant to section 240(2), each upstream sector company operating within the host communities shall contribute an amount equal to 3% of its annual actual operating expenditure from the previous financial year to the HCDT Fund. It is unclear why the Act limits contributions to the HCDT Fund solely to companies operating in the upstream sector. This becomes even more confusing when the provisions concerning host

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<sup>33</sup> *Ibid.*

<sup>34</sup> *John v. Igbo-Etiti LGA* (2013) 7 NWLR (Pt. 1352) 1 CA.

<sup>35</sup> See the PIA, s238. Although section 238 uses the expression "may be the ground for revocation," to all intent and purpose of the PIA, "may" in this section connotes mandatoriness. Failure to form HCDT is grounds for revocation. See *Friday Charles v. The State of Lagos* [2023] 13 NWLR (Pt. 1901) 213 SC.

<sup>36</sup> PIA 2021, s 251.

<sup>37</sup> PIA 2021, s 252.

<sup>38</sup> The BoT after appointment shall apply to CAC for Registration.

communities are read alongside references to the involvement of the Midstream and Downstream Petroleum Regulatory Authority, which oversees the midstream and downstream sectors.<sup>39</sup> To ensure financial accountability, the HCDDT must submit regular reports to the BoT and the relevant regulatory authority.<sup>40</sup> These reports include a mid-year report, an annual report, and audited accounts. The Board is also obliged to submit an annual report to the regulatory authority. The PIA delineates the allocation and spending formula for the funds: 75% of the funds received is earmarked for capital projects that benefit the participating communities, 20% is to be placed into a reserve fund to be managed by the BoT through a Fund Manager, with the interest and profits earned allocated accordingly, and the remaining 5% is designated for administrative costs and special projects.<sup>41</sup> Any portion of the funds allocated to capital or reserve funds that is not utilised in a given financial year must be rolled over to the following year and returned to the capital fund.<sup>42</sup>

In the event of a licence/lease transfer/assignment, the oil companies' interests, rights, and obligations shall be transferred to the new oil company taking over.<sup>43</sup> The HCDDT is attached to the licence/lease. Thus, the new entrant steps into the previous oil company's position and continues with the CSR obligation. This is also the case in the event of surrender, revocation, termination, or expiration of the licence/lease.<sup>44</sup> The HCDDT is responsible for managing the HCDDT Fund.<sup>45</sup>

The extent of rights granted to host communities under PIA came for judicial interpretation in two recent cases in respect of *Prince Barrister Opunabo Bourdillon Ekine & 5 Ors (For themselves & on behalf of members of OML 25 Host/Impacted Communities) v. The Shell Petroleum Development Company of Nigeria Limited (SPDC) & 2 Ors (OML 25 case)*,<sup>46</sup> and *Chief Biokpomabo C.J.O. Ndewari & 3 Ors (For themselves & on behalf of members of OML 23 Host/Impacted Communities) v. The Shell Petroleum Development Company (SPDC) & 2 Ors*,<sup>47</sup> which are found on similar sets of fact. The Plaintiffs approached the Federal High Court (FHC), Port Harcourt Division, via originating summons seeking interpretation of the provisions of the PIA on the rights

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<sup>39</sup> Ibid, s234(2)-(4).

<sup>40</sup> PIA 2021, s 255.

<sup>41</sup> PIA 2021, s 244.

<sup>42</sup> Ibid.

<sup>43</sup> PIA 2021, s 237(1).

<sup>44</sup> Ibid, s237(2)&(3).

<sup>45</sup> Ibid, s240(1)

<sup>46</sup> *Prince Barrister Opunabo Bourdillon Ekine & 5 Ors (For themselves & on behalf of members of OML 25 Host/Impacted Communities) v. The Shell Petroleum Development Company of Nigeria Limited & 2 Ors* (Unreported: Suit No: FHC/PH/CS/123/2022)

<sup>47</sup> *Chief Biokpomabo C.J.O. Ndewari & 3 Ors (For themselves & on behalf of members of OML 23 Host/Impacted Communities) v. The Shell Petroleum Development Company (SPDC) & 2 Ors* (Unreported: Suit No. FHC/PH/CS/124/2022) (*OML 23 Case*)

of the host communities and several declarative reliefs and ancillary reliefs. The plaintiffs believe that SPDC, the holder of the OML 25 and OML 23, intended to divest their interest in those oil blocks and transfer the same to the 2<sup>nd</sup> Defendant, Belema Oil Producing Ltd. Consequently, the Plaintiffs contended that pursuant to the PIA, the host communities are stakeholders in OML 25 and OML 23 because of the rights granted host communities under the PIA. They contended that SPDC could not divest or transfer ownership without obtaining the consent/approval of the host communities. The Plaintiffs also claimed that it was entitled to 35% of the divestment/transfer proceeds. Finally, the plaintiff claimed that the HC has to approve the company to which SPDC intends to divest its interest (2<sup>nd</sup> Defendant).

In response, SPDC filed Preliminary Objections, arguing that the host communities lacked the *locus standi* to seek the reliefs requested in the suits under any law in Nigeria. SPDC contended that the host communities could not dictate which company it chooses to sell its interests in the two leases, nor could the host communities claim a share in the proceeds of the divestment. The court accepted the submissions of SPDC and struck out the suits for lack of disclosure of any reasonable justifiable cause of action against the SPDC. Admittedly, the court recognized that the PIA conferred several benefits on host communities; however, the benefits do not extend to the host communities dictating the terms of divestment arrangement of any licensee/lessee, nor do host communities entitled to participatory interests from the proceeds of the divestment proceeds. The court reasoned that if the draftsman of the PIA intended to confer such wide powers/rights on the host communities, it would be expressed.

The decision in those two cases illustrates that while the PIA grants host communities the right to developmental, economic, and environmental benefits under the HCDT, it does not provide them operational rights over activities and operations. Although some claims from the host communities in these two cases seem extremely absurd and stretch their rights far beyond sensible limits, it remains appropriate for a licensee or lessee to engage its HC in an assignment or divestment arrangement, as this will ensure the continuity of existing programmes while also making certain that the objectives of section 234 of the Act are met attained.<sup>48</sup>

### **Critique of the Host Communities' Development**

With the enactment of the PIA 2021, the practice of CSR in the Nigerian oil and gas sector became compulsory. This notoriously changed the previous voluntary notion,

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<sup>48</sup> See section 347 of the PIA.

and rightly so. However, like any innovation, the new regime raises a number of concerns:

**Settlor Autonomy over the Trust Fund:** The PIA 2021 vests enormous power and authority in the settlor over the Trust, which may allow for corruption, insincerity, and non-compliance by the oil companies. The settlor, who is primarily responsible for creating or establishing the Trust, ought ordinarily not to influence the Trust Fund intended for the host communities. Supervision should squarely rest with the government through NDMPRA and NUPRA. Regrettably, this is not the case. A critical examination of Chapter Three (3) of the Petroleum Industry Act 2021 uncovers the quite insignificant role the Commission plays in the establishment of the Board of Trustees, Management Committee, and Advisory Committee; rather, it grants the settlor excessive leverage over a Trust that encroaches upon their earnings, allowing for corruption, false reporting, or accounting and embezzlement.<sup>49</sup>

According to the PIA 2021, the settlor is entitled to set up the BoT, which shall have the authority to manage and control the HCDT Fund. Setting up this board entails that the settlor shall be entitled to determine the criteria or qualifications for who shall constitute the board and appoint persons to the board.<sup>50</sup> The Act further empowers the settlor to determine the selection process, procedure for meeting, financial regulation and administrative procedures of the BoT; the remuneration, discipline, qualification, disqualification, suspension and removal of members of the BoT; and any other matters other than the above relating to the operations and activities of the Board of Trustees.<sup>51</sup>

These provisions reveal the vulnerability of the BoT to the influence of the settlor in that members who successfully join the board would be at the mercy of the oil companies. Consequently, financial figures and project assessments or accountability becomes flawed. It is important to note that the powers of the settlor over the Host Communities Development Trust and the Board also extend to other subcommittees, leaving no room for independence within the corporation. For instance, the settlor has the power to handpick the secretary of the BoT, take possession of the 5% administrative fund intended for the payment of salaries of Trust members, and dictate how funds are distributed through the provision of a matrix, etc. It seems absurd that a donor would be seen actively participating in managing and controlling the donated fund to a donee. Thus, there is a need to promote the independence of the Host Communities Development Trust. The

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<sup>49</sup> Ibid.

<sup>50</sup> PIA 2021, s. 242(1).

<sup>51</sup> PIA 2021, s. 242(3)(a-c).

settlers should relinquish all their controlling powers over the HCDDT, and shared with the HC and an independent oversight agency.

**Political Dualism in Host Communities:** The political atmosphere in Nigeria has been a thing of concern when it comes to the administration of public corporations or funds. This is true because most appointments and roles are not necessarily assigned based on competence and credibility but largely on political affiliation and membership. This poses a sincere loophole where there are multiple political fronts in various HCs involved. This is because the settlor is expected to make certain appointments and delegation of authority to members of HCs; where there exist political differences between the Local Government and the traditional council, then there may be friction, which would hinder the smooth running of the HCDDT in that state. According to the Act, the Settlor shall, in consultation with the HCs, determine the membership of the Board of Trustee to include persons of high integrity and professional standing.<sup>52</sup>

Though the Petroleum Industry Act 2021 clearly defined what would constitute an HC (in terms of its operations and identification),<sup>53</sup> however, it remains unclear who would actually be consulted on behalf of the HC, for instance, a Local Government Chairman or the actual community head or council, etc.<sup>54</sup> Such particular identification would save the Settlor from falling into an unanticipated political tussle with members or leaders of the community.<sup>55</sup>

**Timeline and Non-inclusion Deficiency:** The issue of the absence of specific timelines or the issuance of a prolonged interval for the execution of some pivotal activities in the PIA 2021 with regard to the Host Communities Development Trust Fund poses certain challenges to its operationality. HCDDT, as set up by the Petroleum Industry Act, has a lot of holes as regards timelines which may be taken advantage of by oil companies who want to shirk away from responsibilities. For instance, the Act provides for the submission of a Needs Assessment Plan by the Settlor to the commission.<sup>56</sup> This Assessment is expected to unravel the basic and most imperative needs and demands of the Host Communities in the area.

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<sup>52</sup> PIA 2021, s. 242(2).

<sup>53</sup> PIA 2021, s. 318.

<sup>54</sup> Agboola Mobolaji Johnson, 'Petroleum Host Communities Fund: Seen through the lens of charitable Trust' (2015) 1(1) *Journal of Asian and African Social Science and Humanities*, 99-112.

<sup>55</sup> H Agbarakwe Ugochukwu, and M Bredino Samson, 'Nigerian Petroleum Industry Act 2021 & Host Communities Development: Issues & Challenges' (2024) 9(2) *Saudi J. Humanities Soc Sci*, 38-44.

<sup>56</sup> PIA 2021, s. 251(1)&(2).

However, the Act does not provide a timeframe for which this assessment is required to be taken. To make matters worse, the Act allows for the execution of this assessment after the lease or license for exploration has been given to the settlor. This is counterproductive, the Settlor may have commenced operations and worsen the state of living i.e environmentally, before this assessment is done, complete and submitted for approval.<sup>57</sup> Moreover, there is no provision for the inclusion of a representative of the oil companies on the Board of Trustees. This is problematic, as it would be assumed that such representation is necessary for the effective and timely flow of information from the Board of Trustees to the oil companies who set them up.<sup>58</sup> These non-inclusion challenges have to be addressed, as there must be free and easy flow of communication or information from the settlor, the members of the Trust, and then the commission or authority.<sup>59</sup>

**Vagueness of the Breach of Peace Clause:** The drafters of the Petroleum Industry Act 2021 thought it wise to insert a Breach of Peace clause in the application of the Trust Fund. The intention is to deter members of host communities from indulging in violent actions that are capable of vandalising or destroying the property of the Settlor, which would, in so many ways, hinder them from carrying out their businesses efficiently. The Act provides thus:

Where in any year, an act of vandalism, sabotage or other civil unrest occurs that causes damage to the petroleum and designated facilities or disrupts production activities within the Host Communities, the communities shall forfeit its entitlements to the extent of the costs for repairs of the damage, that resulted from the activity with respect to the provisions of this Act within that financial year. Provided the interruption is not caused by technical or natural cause.<sup>60</sup>

Though the intent of this provision is genuine, it appears to give leverage to the Settlor for exemptions from participating in the annual contribution under the PIA 2021. This is because, in most cases, more than one host communities are involved in the Trust, and when vandalization occurs, it would be absurd to reduce the required amount that applies to them collectively, on the account of one community.

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<sup>57</sup> Ondotimi Songi, 'Defining a path for benefit sharing arrangements for local communities in resource development in Nigeria: the foundations, trusts and funds (FTFs) model' (2015) 33(2) *Journal of Energy & Natural Resources Law*, 147-170.

<sup>58</sup> Uwafiokun Idemudia, 'Corporate partnerships and community development in the Nigerian oil industry' (2007) *United Nations Research Institute for Social Development*. <<https://scholar.google.com/scholar?hl>> Accessed 12 November 2024.

<sup>59</sup> Ondotimi (n 86).

<sup>60</sup> PIA 2021, s. 257.

Additionally, where a person or group of persons acts without the directive or support of the Host Communities in vandalizing a Settlor's equipment it would be unjustifiable to hold these communities vicariously liable.<sup>61</sup> Also, the Act is silent as to how liability would be determined. Is the Commission responsible for making or approving this reduction? Or are the companies at liberty to do so indiscriminately?

The exception of technical disruptions and natural catastrophic events is a welcome development. However, more needs to be done with regards to this provision to hinder Settlers from exploiting it to their own advantage in Nigeria.

### **Recommendations**

Firstly, the PIA should be amended to clearly show beyond all doubts that the CSR obligation extends to companies in the downstream and midstream sectors by amending deleting the word "upstream" in line 4 immediately after "the" and before "petroleum" in section 40(2). This way, the Act makes it clear that CSR is mandatory for all companies in the petroleum business, irrespective of the stream. Secondly, there is an urgent need to revise the stipulations of the PIA with regards to the determination of the BoT by the Settlers under section 242(3) of the Act to vest the Commission or Authority with the power and authority to appoint, disqualify and constitute the BoT, with the constitution drawn from a list of recommended appointees from the various Host Communities. Additionally, a settlor(s) member should be given a seat on the board to foster speedy communication and transparency regarding the disbursement of the Fund and payments for administrative functions.

Thirdly, the PIA 2021 should be amended to reflect the actual HC authority that would be in direct communication or collaboration with the government agency - the Commission/Authority and the settlor. This is to prevent unnecessary friction that would be triggered by political dichotomy and dualism in the State or local government area. Hence, section 242(2) of the PIA should be more specific, i.e., the section should read, "The Settlor shall in consultation with the Leaders of each HC determine the membership of the Board of Trustee..." Fourthly, the PIA should be amended to clearly stipulate the timeline for the submission of all Assessments by the settlor. Fifthly, the concept of breach of peace clauses in the PIA 2021 should be eradicated, and measures should be adopted to promote trust, cooperation, and partnership between the HCs and the settlor so that the protection and preservation of the Settlor's facilities shall be the HCs' primary interest or purpose.

Finally, there is a need to ensure strict compliance on the part of the settlor to the HCDDT in terms of disbursement of funds. The Commission/Authority should ensure

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<sup>61</sup> Gabriel Eweje, 'Multinational oil companies' CSR initiatives in Nigeria: The scepticism of stakeholders in host communities' (2007) 49(5%) *Managerial Law*, 218-235.

that the generated revenue is properly invested into these communities, and evidence of the investments a. That way, these communities would have more confidence in the process and allow for the continuous peaceful co-existence between the Settlor and themselves.

### **Conclusion**

According to Schwartz and Gibbs,

Corporations have real power in this world, more than they think they have but less than many citizens think they have. Sound business sense would suggest that any organisation with power can benefit themselves and others in the long term by identifying and acting on opportunities to improve the societies in which they operate.<sup>62</sup>

The Petroleum Industry Act of 2021 marked a major milestone in Nigeria's oil and gas sector. By introducing HCDTs and mandating CSR initiatives, the Act aims to resolve the longstanding issues of environmental degradation, poverty and inequality in oil-producing regions through the lenses of CSR of the oil companies in host communities.

While the HCDTs offer a promising structure for distributing benefits to host communities, several challenges abound. As x-rayed above, the enormous power vested in the Settlor is dangerous and may turn counterproductive. This is because there is a higher possibility of bias, corruption and mismanagement with such unchecked power. Also, the political atmosphere in Nigeria makes it difficult for the settlor to collaborate effectively with the Host Communities, and the absence of a clear-cut guide on how the 3% Annual Operating Expenditure of the settlor shall be determined also raises concerns etc.

There is an urgent need to amend the PIA to curtail the powers of the settlor of the incorporated HCDT if the aim of the Act in this regard is to be achieved. Corporate Social Responsibility plays a huge role in developing countries like Nigeria and cannot be ignored. With the government struggling to meet up with providing infrastructural development for some of these communities, oil companies operating in these areas have a key role to play by stepping into the governmental position through CSR. Consequently, the codification of CSR obligations under the PIA and in relation to the Upstream Petroleum Industry is a step in the right direction, but more can be done. Nigeria as a whole.

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<sup>62</sup> P Schwartz and B Gibbs, (1999) *When Good Companies Do Bad Things*: London, Wiley.