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PETROLEUM INDUSTRY ACT IN NIGERIA: AN ANALYSIS OF THE IMPACT OF THE NOVEL HOST COMMUNITIES DEVELOPMENT TRUSTS PROVISION

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ABSTRACT: *The repealed Petroleum Act of 1969 in Nigeria became inadequate and largely incapable of meeting the emerging best practices in the oil industry the world over. In particular, the said Act could not address, to a greater extent, the hope and aspirations of the people of the oil bearing states. Since the inception of oil exploitation in Niger Delta region, agitations by the youths of the oil bearing and impacted communities against the activities of the IOCs and subsequent establishment of intervention agencies to address environmental degradation and crisis of underdevelopment in the region failed to engender the needed peace in the region. This work adopts doctrinal research method. The work, therefore, examines and analyses the recently signed Petroleum Industry Act 2021 in Nigeria, as regards the Host Communities Development Trusts provision. The paper found that the new Petroleum Industry Act creates the host communities development trust as an interventionist body, which is remarkably different from other previous and existing intervention mechanisms in the petroleum sector and as applicable to the Niger Delta region. This work also found that the host communities' development trust is to be established, specifically, to address the developmental needs of the oil bearing and impacted communities in the region. Also, the Trust is to be established by the settlor, that is, the oil companies operating in the upstream petroleum exploration. The work recommends among other things that besides the novel provision in the new Act, there is a need for the settlor to avoid the temptation of allowing interference in the appointment of persons into the Board of Trustees of the host communities' development trust by politicians and the relevant state governments in the region.*

KEYWORDS: petroleum, host communities development trust, environmental degradation, crisis of underdevelopment. Niger Delta region.

INTRODUCTION

Until the enactment of the Petroleum Industry Act (PIA), the petroleum sector in Nigeria has been governed and regulated by the age-long and near obsolete Petroleum Act of 1969 (as amended). This Act is now repealed by PIA. The former Act became inelastic and insensitive to modern technologies, concepts, good governance and accountability in the oil sector.[1] The repealed legislation also lacked clear provisions and/or policy template for local content

[1]Ede, T. V. (2018). The fall and rise of the Nigerian Petroleum Governance Bill. opm/.co.uk. Retrieved on 5th September, 2021.

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development and training programmes for deserving Nigerians in the petroleum development and exploration.

The aforementioned lacuna audaciously prompted the enactment of the Local Content Development Act in 2011 so as to fill the gap perceived in the repealed Petroleum Act. It will be recalled that the new Petroleum Industry Act (PIA) went through two decades and suffered many setbacks dating back to 2000 before it finally came to fruition on 16th August, 2021. Prior to the enactment of the PIA, the Local Content Development Act was enacted in order to re-jig the missing link between the then Petroleum Act and government policy thrust so as to prepare Nigerians to take their destiny in their hands in the oil and gas industry.

Equally, the repealed Act did not 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 international and Nigerian oil companies. This has been against the backdrop that the littoral states paradoxically have, regularly, been collecting 13% derivation payments from the federation allocation [2] without prioritising the developmental needs of the oil bearing and impacted areas in their states.

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.

As would be expected, the oil companies find the highlighted lacuna as a safe haven to operate their business with careless abandonment under the usually poorly couched memorandum of understandings (MOUs) occasionally entered into between the international oil companies (IOCs) and the host communities. Such MOUs are usually benchmarked on the rubric of corporate social responsibility (CSR), which is another cliché like MoU, that is generally not binding in law.

In order to cascade infrastructural development to the people of the host oil bearing communities and other parts of the state, some oil bearing states to wit: Abia, Edo, Delta, Imo and Ondo, respectively, have established State Oil Producing Areas Development Commission with a view to deploying a fixed percent out of the 13% payments in providing amenities and infrastructure in the host communities. Indeed, this is in line with the philosophy behind the United Nations' General Assembly Revolution on the principle of sovereignty of states over their natural resources. The principle states among other things that:

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.[3]

[2]Cap C.23 LFN 2004, S. 162(2). See also Allocation of Revenue (Federation Account, Etc.) Act LFN 2004, S. 2.
[3]UNGA Resolution 1803 (XVII) of 14 December, 1962.

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It is against the foregoing principle that the 1979 and 1999 constitutions of the Federal Republic of Nigeria provide for the payment of the 13% derivation funds to the oil bearing states from the federation account. It is on record that some states in the Niger Delta region have, regrettably, failed, refused and/or neglected to establish such state oil and gas producing areas development commissions, so as to tackle the socio-economic and environmental challenges of the people in the oil impacted host communities. As a result, the state's failure or neglect in this direction, has created recipe for violence, criminalities and continued agitations against the Nigerian State as well as cause incessant disruption of oil and gas exploration in the Niger Delta. The situation has equally affected the revenue receipts by the three tiers of governments in Nigeria.

The state oil producing areas development commission,[4] in the aggregate, and as intervention agencies in the oil sector, have engendered much positive impact on the lives of the people in the host communities. Since the establishment of the state oil producing areas development commission there has been relative high level of funding, less corruption and undue executive interference in the performance of the functions saddled with the boards of such commissions.[5] Also, the states' oil producing areas development commissions usually concentrate their development compass mostly on the host communities and the cities and as well as thereby creating sense of equity and confidence between the people of host communities and the other parts of the State.[6]

Historical records of the oil and gas exploration in Nigeria are rift with crisis management experience. These experiences date back to the late 50s and cover up to the period of the establishment of intervention agencies to include the Niger Delta Development Commission (NDDC)[7] . These agencies are aimed at tackling the socio-economic needs and environmental challenges in the Niger Delta region. Such agencies have been created for nine littoral states,[8] until the loss of oil wells and oil status by the Cross River State. This arose from the Green Tree decision of the International Court of Justice (ICJ). in the case between the Federal Government of Nigeria and the Cameroons and the result of which the natural oil and gas rich Baka Peninsula in the Cross River State was ceded to the Cameroon on 12 June, 2006. Also, 76 oil wells which allegedly belonged to Cross River State were ceded to Akwa Ibom State as a result of the Supreme Court of Nigeria's decision of 2012. Nevertheless, the NDDC is still carrying out projects as part of special status policy in the Cross River State.

The commission no doubt is groaning and is financially constrained due to low funding. The NDDC statutorily has tripartite funding sources, namely: the federal contribution, ecological funds and oil companies' contribution, etc. In the nutshell, the commission however has not fared well due to a number of internal and external factors as revealed in the recently submitted

[4]Adebowale, A. (2021). Analysis: How State Governments Cheat Oil-producing Communities in use of 13% Derivation Fund. premiumtimesng.com. Retrieved on 6th September, 2021.
[5]*Ibid*.
[6]*Ibid*.
[7]Establishment Act No. 6, 2000.
[8]*Ibid*, Sections 7(1)(a – j) and 2(1)(b)(i – x).

Forensic Audit report, which came from the audit committee instituted by the Federal Government under the current administration of President Mohammadu Buhari.[9]

Clearly, interventionist agencies set up prior to the establishment of the NDDC commenced with the Niger Delta Development Board (NDDB).[10] Hereinafter referred to "the board" This Board was to last for ten year period but became ineffective and its operation was disrupted by the civil war which took place from 1967 to 1970.[11] The second of such agencies was the Presidential Task Force (PTF), which was set up by President Alhaji Shehu Shagari, to handle the problem of the Niger Delta region[12] and the third body was the Oil Mineral Producing Areas Development Commission (OMPADEC)[13] respectively.

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 envisioned 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 as well as to grow Nigeria's economy. This fueled the need to repeal the extant Petroleum Act of 1969 and thereby exterminate its inadequate and obsolete provisions.

The efforts at fashioning out a comprehensive legislation to regulate the oil industry met with cacophony of resistance by stakeholders in the oil industry allegedly have been designed to scuttle the initiative both at the National Executive and NASS levels. Such under-current accounted largely for the delay and/or militated against the passage of the PIB by successive administrations. The antics of such stakeholders rather orchestrated series and vociferous agitations by the youths in the Niger Delta due to crisis of underdevelopment. As a consequence, the FGN decided to set up the Amnesty Programme[14] and the Ministry of Niger Delta Affairs,[15] so as to capacitate and assuage the youths of the Niger Delta region. The Presidential Amnesty Programme was initiated to discourage militant behaviours, douse off the mounting tensions in the region and to train the militanc youths who have elected to denounce militant activities, in skills and education, so as to enable them to become employable and/or employers of labour.

[9]NDDC Audit Report submitted 13,000 projects abandoned in Niger Delta. *Premium Times* of 2nd September, 2021.
[10]The Nigerian (Constitution) in Council 1960, S. 14(6) and Act No. 19 of 1961 respectively.
[11]Francis, P. Lapin, D. & Rossiasco (2011). Securing Development and Peace in the Niger Delta – A Social and Conflict Analysis for Change. www.wilsoncenter.org. Retrieved on 19th September, 2021.
[12]In 1980. See also Ojameruye, E. (2004). Deploying Oil Wealth to Reduce Poverty in the Niger Delta Region of Nigeria: Lesson from Chadian Model. www.nigerdelta.congress.com. Retrieved on 19th September, 2021.
[13]Decree No. 23 of 1992.
[14]On 20 July, 2009.
[15]2008.

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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[16] of the NASS. It is, however, 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, be that as it may, that the said legislation is relatively more comprehensive and it's a work-in-progress or an amendable legislative experiment. As a case in point, the FGN has just submitted a proposal for its amendment. In the light of the foregoing and due to the novelty nature of the PIA, with regards to the Host Communities Development Trusts [17] provision therein – as a new intervention mechanism in the oil sector, this work, therefore, seeks to examine, analyse and make recommendations towards effective and efficient implementation of the said Host Communities Development Trusts and its Trust Funds[18] created in the Act under reference.[19]

Brief Examination of the Concept of Host Communities Development Trusts (HCDTs)

The drafters of the Petroleum Industry Act (PIA) [20] appear to have attach and adopted outlandish meanings to some established and known terms and meanings in legal lexicon generally. It is, therefore, hoped that it would make much academic and contextual sense first, to look up some of the terms and meanings attached and/or adopted in the interpretation section of the PIA.[21] First, the word or term "Host Communities" means communities situated in or appurtenant to the area of operation of a settlor and any other community as the settlor may determine under Chapter 3 of the PIA.

Second, the term "settlor" is defined to mean, "a holder of an interest in a petroleum prospecting license or petroleum mining lease, whose area of operation is located in or appurtenant to any community or communities." What this signifies is that a holder of a petroleum prospecting license or petroleum mining lease in a particular location, by necessary legal implication, could/or have an obligation towards any neighbouring community in which its operations either criss-cross and/or impact upon.

Third, the term "appurtenant", which is usually used in tenancy agreement to cloth the tenant with the right to use the outer parts of land space in the rented estate or building, is as defined in the Black's Law Dictionary, "anything corporeal or incorporeal to land." In this context, the term is employed to vest in the holder(s) the adjourning community in which the operations of the settlor either criss-cross or impact upon community the land to take benefits under the HCDT, which is to be established and to which such community shall be made part of the said host communities development trust.

Fourth, the term "Host Communities Development Trusts" hereinafter referred to as "the Trust", is to be incorporated by the Board of Trustees pursuant to the Companies and Allied

[16]2021.
[17]*Ibid*, S. 235(1).
[18]*Ibid*, S. 240(1).
[19]*Ibid*.
[20]*Ibid*.
[21]*Ibid*, S. 318.

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Matters Act (CAMA) 2020.[22] Here, the PIA expects that the name of the trust must include "host communities development trust."[23]

The PIA requires that the settlor shall make an annual contribution of an amount equal to 3% of its actual annual operating expanse of the preceding financial year into the applicable host communities' development trust Fund. The Fund is to be established by the Board of Trustees. The funds in the Fund can only be utilised by the Board of Trustees and by extension, the Management Committee, which is to be appointed by the Board of Trustees in line with the direction of the settlor. The budget and development plan of HCDTs are to be drawn up by the Board of Trustees in line with the direction of the settlor. Other funding sources available to the Trust include: donations, gifts, grants, profits, interests accruing to the reserve fund and honoraria.[24]

Examination of Established Intervention Agencies for the Niger Delta Region

S/N	Name	Objectives	Source of Funding	Appointing Body	Period	Financial Source
1	Niger Delta Development Board (NDDB) created by statute pursuant to the Constitution	To handle environ-mental problems in the Niger Delta.	As determined by the national government and the then parliament under regional governments in Nigeria	National Government	1961 – it was to last for 10 years. It ended in 1966.	20%
Comment: The Board failed because it became ineffective and interrupted by civil war Which from 1967 to 1970.[25]						
2	Presidential Task Force set up by President Shehu Shagari	To handle environmental problems in the Niger Delta region.	Federal Government Allocations	FGN	1980	1.5%
Comment: PTF also failed to deliver on its objectives due to poor and irregular funding and mal-administration by public officials.[26]						
3	Oil Mineral Producing Area Development	To handle environmental problem in the	Federal and state allocations	Federal Military Government	1992	Unspecified in the Decree but 3% of federal and

[22]Act No. 3.
[23]*Supra* Note 16, S. 235(1), (4) and (5).
[24]*Ibid*, S. 240(1), (2), (3) and (4).
[25]*Supra* Note 16, S. 235(1), (4) and (5).
[26]*Supra* Notes 11 and 12.

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	Commission (OMPADEC) created by the Federal Military Government.	Niger Delta region.				state govern-ments allocation was touted as a matter of policy.
Comments: The Commission equally failed and left much abandoned and poorly executed projects in the Niger Delta. Poor and irregular funding crippled the Commission. Corruption impaired the activities of the Commission. The Commission's operation was subjected to the direction of the President and Commander In-Chief of the Armed Forces of Nigeria – whereby most of its projects were allegedly awarded to cronies or persons in the presidency.[27]						

S/N	Name	Objectives	Source of Funding	Appointing Body	Period	Financial Source
4	Niger Delta Development Commission (NDDC)	Same as other previous intervene-tion agencies .	Contribu-tions from FG, state, ecological fund and oil companies	FG	2000	15%, 50% and 3% totaled 68%. That is, the federal government is expected to contribute 15% equivalent of the statutory allocation of the hitterto 9 oil producing states in the Niger Delta region, 3% of the budget of oil and gas companies and 50% of ecological funds due to the states in the Niger Delta

[27]*Supra* Note 10 and Act of 1961, S. 720 and 28. See also Omene, O. & Obaebor, S. (2021). "Towards peace and security in the Niger Delta: The Orhobo National Association of North America's Portion. www.waaada.org/organisation.unana. Retrieved on 12th September, 2021.

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						region excluding other sources of funding.

Comments: Like other interventionist bodies such as PTF and OMPADEC, the NDDC follows the direction and control of the President and Commander In-Chief of the Armed Forces of Nigeria in the performance of its functions. Appointments into the Board of the Commission are done by the President and Commander In-Chief of the Armed Forces of Nigeria. The only distinction between the NDDC and other commissions earlier established is that the Commission has tripartite sources of financial funding clearly stated in the establishment Act. However, like other bodies, the Commission suffers low and irregular funding. The Commission also suffers from internal and external manipulations which have created serious incidents of corruption and mal-administration in the Commission's activities over the years.[28]

S/N	Name	Objectives	Source of Funding	Appointing Body	Period	Financial Source
5	13% Derivation Fund	To the oil bearing states	Constitu-tion of the FRN and the Allocation of Revenue (Federa-tion Account, etc.) Act LFN 2004	Constitu-tion of Nigeria	1999 till date	13% derivation fund

Comments: Since the inception of the present civilian rule in 1999, the oil producing states in Nigeria have been collecting 13% derivation payments as enshrined in the 1999 Constitution. Only five states of the now 8 oil producing states have deemed it fit to establish state oil producing areas development commissions, with the objectives of cascading to the host communities and other parts of the states concerned development projects. The other remaining three states, that is, Akwa Ibom, Rivers and Bayelsa do not appear to follow suit other than deploying the entire 13% derivation payments towards providing projects mainly in the cities and towns, leaving the fate of the host communities in the hands of the multinational oil companies.[29] For instance, in an event of oil spillage

[28]See NDDC Act Cap N. 86 LFN 2004.
[29]OMPADEC Decree No. 23 of 1992, Sections 2, 3 and 8.

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or gas flaring affecting any host community arising from the actions or inactions of the international and local oil companies, the people of such host communities are the ones to pursue or initiate CSR and/or sue the IOCs for a redress in court. There is no citizens-aid litigation scheme whereby the state institutes legal action against any oil company which negligent conduct in its oil prospecting or oil mining activity causes oil spill or gas flare to the extent that extensive damage is done to the lives and property as well as means of livelihood such as farmlands, ponds, oceans and sources of drinking water in the host communities.						
6	State Oil Producing Areas Development Commissions established by Law to wit: Abia State Oil Producing Areas Development Commission (ASOPADEC), Edo State Oil Producing Area Development Commission (EDOPADEC), Delta State Oil Producing Areas Development Commission (DESOPADEC), Imo State Oil Producing Areas Development Commission (IMSOPADEC) and Ondo State Oil Producing Areas Development Commission (ONSOPADEC).	Same as NDDC	State Governments 13% derivation payment	State governments	Between 2001 and 2009	Between 30%, 40% and 50% of the states' 13% derivation payments, per month.
Comments: Each of the Commissions is supervised by a Board, which carries out its mandates in line with the direction of the Governor of each State. Each state's Commission carries out projects in the host communities and the entire state concerned.						

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However, like other intervention agencies, the state oil producing areas development commissions suffer relative low and irregular funding. They also wallow in cases of corruption and incidents of abandoned and/or poorly executed projects. In any case, these commissions evidently help to cascade development down to the oil bearing and impacted communities. This is contrary to what is obtainable in other states in the Niger Delta region which do not pay deserving attention to the well being and welfare of the people in oil producing communities of their states.[30]						
7	Host Communities Development Trusts	Established to specifically handle economic development and ecological challenges in the host communities in the Niger Delta region	From the Settlor's Annual Expense	Settlor(s) pursuant to the provisions of the PIA	2021 (PIA)	3% of the Settler(s) Annual Expense
Comments: Each host communities development trust is established by a settlor, that is, a holder of interest in petroleum prospecting or petroleum mining lease in a location as well as to cover an appurtenant community. The Board of Trustees for each host community's development trust is appointed by the settlor. The Board of Trustees, in turn, appoints the Management Committee. The Management Committee carries out the day-to-day functions of the trust on an ad-hoc basis. Its members are drawn from the host communities. Also, membership of the Board of Trustees is drawn from the host communities and outside. Indeed, the composition of the Board of Trustees is similar to that of the NDDC. The budget and projects development and execution are initiated by the settlor in consultation with the Board of Trustees. There is an Advisory Committee with members taken from each host community that makes up the host communities development trust and has the function of giving advice to the Board of Trustees and the settlor in respect of projects needed in the host communities involved. The committee also serves as a watchdog for the stakeholders.[31]						

General Analysis of the Impact of the Various Intervention Agencies

The first interventionist body, that is, the NDDB was a creation of the Central Government under a statute pursuant to the Independence Constitution of Nigeria.[32] The Board was set-up

[30]*Supra* Note 4.
[31]*Supra* Note 16 – Chapter 3 of PIA.
[32]*Supra* Note 25.

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based on Willink's Commission report and subsequently put in the 1960 Independent Constitution. The NDDB was thereafter established by a statute to tackle environmental problems in the Niger Delta region. However, it was meant to last for ten years but it became ineffective and was disrupted by the civil war that took from 1967 – 1970. The fund available to the Board came from appropriated sums by the central parliament. The Board failed and subsequently went into extinction. This gave birth to unrelented agitations and subsequent declaration of the Niger Delta Republic by the likes of Isaac Boro and others in the region.[33] Flowing from such violent agitations, the then Federal Military Government had to nationalize petroleum and land resources and thereby vested petroleum rights or title in the FGN in 1979 and lands in the state governor of each state in 1978, respectively.[34] This development clearly marked the beginning of the payment or application of petroleum proceeds to all other federating units of Nigeria but with special attention being paid to the oil bearing states in terms of the provision of fund for special infrastructural development through the instrumentality of the intervention agencies.[35]

In 1980, President Shehu Shagari had to set up the "Presidential Task Force" (PTF) and saddled it with the duty of tackling environmental challenges and developmental needs in the Niger Delta region. The body was managed and run in line with the direction of the President and Commander in-Chief of the Armed Forces of Nigeria. Members of the Task Force were appointed by the president. The funding of the body was put at 1.5% and from the FGN's share of its allocations from the federation account. However, the body suffered low and irregular funding and also became highly corrupt. At the end, the PTF could not deliver on its functions in the region.[36]

Again, following the military coup in 1983 in Nigeria and subsequent counter coups, another interventionist agency called the "Oil Mineral Producing Areas Development Commission" (OMPADEC) was established by the then Federal Military Government. OMPADEC was created to execute similar functions that PTF was set up to discharge in the Niger Delta region. Members of the OMPADEC Board were appointed by the President and Commander In-Chief of the Armed Forces and under whose direction the Commission carried out its statutory functions and powers. The Decree which established OMPADEC did not specify the amount with which to run the commission. The much touted 3% for the Commission's activities was a declaratory statement or an executive approval or order better still. This lacuna, therefore, gave room for the operations of OMPADEC to have been allegedly stage-managed to the detriment of the people of the region it was established to serve.[37]

Once again, in the year 2000 soon after the birth of another democratic rule in 1999, in Nigeria, the FGN decided to establish the NDDC as intervention agency[38] in the Niger Delta region to

[33]*Ibid* – Omene and *Supra* Note 11.
[34]*Supra* Notes 1 and 25.
[35]*Ibid*.
[36]*Supra* Notes 16 and 25.
[37]*Ibid*.
[38]*Ibid*.

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replace the OMPADEC. The NDDC has a Board with its members appointed by the President and Commander In-Chief of the Armed Forces. The Board follows the direction of the president in the performance of its functions. NDDC has similar mandates with other preceding intervention agencies. However, unlike its predecessors,[39] the NDDC has tripartite sources of funding and about three levels of organic structures to wit: the Board, Management Committee and Advisory Committee, respectively.

Notably, the NDDC's total funding trajectory is put at 68% but in reality the commission is alleged not to have received anything close to half of its statutory financial thresholds of 68% from the federal and state governments in the littoral states, and the various oil companies since its creation. Paradoxically, the little or paltry budgetary funds usually approved annually and released to the agency have been corruptly utilised courtesy of independent civil societies' reports and the recently submitted Forensic Audit Report.[40]

The 13% derivation payments to oil bearing states under the provision of the Nigerian Constitution 1999 (as amended) and the Allocation of Revenue (Federation Account, Etc.) Act LFN 2004 can be seen as a well thought out device by the then Federal Military Government. Arguably, this fund could be seen as a buffer for the oil bearing states to enable them to frontally handle the resulting environmental challenges and crisis of underdevelopment in the Niger Delta region. This fund without prejudice is to play the same role bestowed on the interventionist agencies in the region. Nevertheless, the constitution has failed to state or specify how the affected states should deploy the 13% derivation payments. Perhaps, it is because Nigeria is assumed to be a federation whereby her component units should enjoy semi-autonomy, hence the states concerned should feel free to apply such 13% derivation payment in their states.

Paradoxically, the Nigerian grundnorm, that is, the constitution is replete with contradictions to the extent that the notion that Nigeria is a federation is evidently arguable. For instance, by the various provisions of the constitution of Nigeria, for all intents and purposes, the system of government is both federal and unitary. This could then explain why the constitution is silent on the way and manner the 13% derivation fund should be used by the various states concerned. This view underpins the powers of the NASS to only make an Act as to how all moneys paid into the Federation Account should be distributed among the three tiers of governments in Nigeria, pursuant to the mandates of Federation Account Allocation Committee (FAAC).

States' oil producing areas development commissions hereinafter referred to as "the commissions", have been created by each of the following states, that is, Abia, Edo, Delta, Imo and Ondo respectively. Each of the commissions is established by law made by the respective State House of Assembly. The commission is established to enable the state government to deployment a given percentage of the 13% derivation money as stated or provided in each commission's establishment law under reference, in the provision of infrastructure in the oil bearing host communities.

[39]*Supra* Notes 25, 27 and 28.
[40]*Ibid.*

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Each Commission is headed by a Board whose membership is drawn from the host communities and the other parts of the state concerned. In the performance of its functions and powers, the Board acts in the direction of the governor. This model of organizational control is similar to the other interventionist bodies established by the federal government for the development of the Niger Delta region.

The commission is funded from the 13% derivation fund which is fixed at 30% or 40% or 50% depending on the stipulated percentage under the extant state's law. Funding level to the commission is usually irregular. Equally, officials of each commission generally have been accused of corruption and cases of execution of poor and substandard projects in the different states involved. There are also cases of abandoned projects which litter the states concerned by successive Boards.

The Petroleum Industry Act of 2021 provides for the establishment of the Host Communities Development Trusts (HCDTs). Each trust is to be established by the settlor or a group of settlors operating in the upstream petroleum over licensed area(s) and inclusive of any oil and gas impacted community appurtenant to the licensed area(s).

This pattern of interventionist (trusteeship) in the oil sector is quite legendry and novel in Nigeria. The HCDT by necessary implication seeks, to formally create a binding memorandum of understanding (MoU) and to legalise the traditional corporate social responsibility (CSR) obligation between the international oil companies on the one hand and the host communities on the other hand. The sum total effect of this model, therefore, is the provision of sustained infrastructure and socio-economic development in line with the core needs of the people in host communities of the Niger Delta region. Also, the model under reference could impact positively on the people in the appurtenant communities where the activities of the settlor directly touch on their lands.

Much as the HCDT model appears relatively better than other intervention agencies, it is, however, doubtful if this model would not create another round of inequity between the sub-nationals or parts of the states thereof vis-à-vis payment for land already acquired under the principle of overriding public interest pursuant to the Land Use Act.[41] For instance, under the Land Use Act, any land where petroleum or mineral deposit is found, such land area and the oil or mineral deposit beneath or thereupon, automatically falls within the constitutional purview of the federal government.[42] In this case, the community already affected is usually paid compensation by the settlor(s). Therefore, it becomes arguable for a settlor who has paid such compensation for the unexhausted improvements brought on the already acquired lands to be made to subsequently include such appurtenant community in the HCDT. The arrangement or model to this extent appears to produce inequities and inequitable result both to the settlor and the people of the oil bearing host community.

[41]Cap L6 LFN 2004.
[42]*Supra* Note 2, Section 44(3).

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The members of the Board of Trustees of the HCDT are appointed by the settlor from the host communities and other parts of the oil bearing state concerned. The HCDT is to be incorporated pursuant to the Companies and Allied Matters Act.[43] The Board of Trustees is to carry out its functions in line with the direction of the settlor. Equally, the Board of Trustees is empowered in the Petroleum Industry Act (PIA) to appoint a Management Committee, which shall be saddled with the day-to-day running of the functions, programmes and plans of the HCDT on an ad-hoc basis.[44] The settlor is required to fund the HCDT with 3% of its annual expense. The Board of Trustees, therefore, is expected to create a Fund into which the 3% annual expense fund is paid for the execution of projects, programmes and activities of the HCDT in each of the host communities involved.

Each member of the Board of Trustees serves for a term of four years in the first place and such a member could be reappointed for another period of four years and no more.[45] Aside the Board of Trustees and the Management Committee, the PIA requires that the HCDT constitution shall make provision for the appointment of Host Communities Advisory Committee whose membership shall be constituted from each host community by the Management Committee subject to the approval of the Board of Trustees. The Host Communities Advisory Committee shall be saddled with the functions of serving as a watchdog and as intermediary between the host communities, Board of Trustees and the settlor as it affects the developmental needs of the host communities.[46]

Indeed, the HCDT is modelled closely after the NDDC organizational structure except that the mode of appointment, control, supervision, funding and target beneficiaries as relating to the HCDTs model are legendry, plausible and capable of meeting the needs of the Niger Deltans.

Be that as it may, the intendment of the drafters of the PIA as it affects the HCDTs in respect of the appointment of persons into the Board of Trustees of each HCDT by the settlor could be marred or influenced by some external factors. Such external factors include over-bearing nature of the Nigerian politics and weak institutions (both public and private). For instance, the regulatory agency in the petroleum industry established under the PIA could dictate to the settlor who it should appoint into the Board of Trustees, the Management and Advisory Committees respectively in each of the HCDT. The same thing could apply where the state governments in the oil bearing communities are allowed to appoint persons into the Board of Trustees of the HCDT. If this trend is allowed, then there is the possibility of repeating the same old method of appointing persons into previous and existing Boards of of the federal intervention agencies in the Niger Delta region. In sum, there is the inherent danger that the adoption of such crude and outdated method could threaten the fragile peace and arrest development in the various host communities, in particular and Niger Delta region, in general.

[43]No. 3 of 2020 (as amended).
[44]*Supra* Note 16. See Sections 24(e), 247(1) and 248(a – g).
[45]*Ibid*, S. 242(4).
[46]*Ibid*.

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Also, the PIA has made 70% provision for capital fund out of the HCDT funds for execution of projects in each of the host communities and as may be determined by the Management Committee in line with the disbursement pattern to be made by the Board of Trustees.[47] Also, the Act provides an investible fund of 20%, that is, a reserve fund for the HCDTs in event of the cessation of contribution by the settlor. Equally, the Act provides for an administrative cost of a sum not more than 5% to be deployed in running the trust and for special projects. The said sum is to be entrusted by the Board of Trustees to the settlor.

Clearly, the settlor is the one to expend the 5% sum on special projects and for running of the trust itself. There is, however, a proviso that requires the settlor to render account of how the 5% is utilised at the end of every financial year to the Board of Trustees. Where there is any unspent sum out of this 5% fund, such amount must be transferred to the capital fund.[48] It is doubtful, however, if the Board of Trustees which is appointed by the settlor could logically be expected to query the settlor where it fails to render account of the 5% administrative cost to the Board of Trustees.

Equally, the drafters of the Acts seem to have imported the compensation exemption clause in the Oil Pipeline Act[49] into the PIA to the effect that the law stipulates that wherein any year an act of vandalism, sabotage or other civil unrest occurs that causes damage to petroleum and designated facilities or disruption in production activities within the host communities, the communities shall forfeit its entitlements to the extent of the disruption and the damage that resulted … provided the interruption is not caused by technical or natural cause.[50]

The cited provision is a policy framework which seeks to encourage people in the host communities to see the oil companies facilities as their own or as co-owners and therefore to eschew any act of undue militancy or criminality against the settlor. The caveat comes on the heels and series of violence activities usually meted out on the facilities of the international oil companies (IOCs) in the Niger Delta region. However, while one does not purport to support acts of vandalism on oil facilities by youths in the region, it is important for one to reiterate some of the causes of violence acts, which are usually directly related and/or proportional to crisis of underdevelopment and disproportional utilisation of the lean resources usually approved and released to the intervention agencies. Also, often time than not, the IOCs have been known to renege on their MoUs and CSR to the people of the host communities. With the HCDTs in place, and the bottom-up approach it envisions, there is every likelihood that incidents of vandalism would be a thing of the past, provided that political interference in the composition of the organs of HCDTs is reduced to the bearest minimum.

[47]*Ibid*, Sections 349(1), (2) and (5)(a – c) & (3), 250(a – d) and 251(1)(a – c), 2(a – c) & (3).
[48]*Ibid*, S. 244(9).
[49]*Ibid* (b). See also Oil Pipeline Act by 338 LFN 1990 S. 11(5)(c)..
[50]*Ibid*, SS. 251(2) and 11(5)(c).

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CONCLUSION

The agitations of the people and indeed, the youths of the Niger Delta region relating to the continued environmental degradation and crisis of underdevelopment in the Niger Delta region date back to the late 50s. However, the knowledge that crude oil was discovered in Nigeria was allegedly revealed to the Nigerian State in 1956 and the subsequent production of the hydrocarbon in 1958. With the manifestation of the impact of oil exploration in the Niger Delta region, the federal government timeously delveloped approaches to douse off such agitations by the Niger Deltans through the establishment of intervention agencies which unintentionally turned out to be seen as a fair-weather friend relationship, wherein the state never gets serious about funding such intervention agencies as they ought to be in the region. Besides, the focus of the intervention bodies was not geared towards the development of the host communities but cities and towns in the oil bearing states. This gap as yearning as it has kept resonating until the recent enactment of the PIA, with necessary emphasis on the establishment of the Host Communities Development Trusts, with which body to frontally address the needs of the core oil bearing and impacted host communities. The larger picture discernible from this new interventionist legislation in the Nigerian oil sector is that there is going to be a win-win partnership and peaceful operating environment, in the tripartite relationships between the Nigerian state, the IOCs and the people of the host communities in the Niger Delta region in Nigeria.

Recommendations

1. The existing states oil producing areas development commissions in the states that have established such mechanisms should be allowed to co-exist with the new HCDTs in order to increase the economy of scale in the provision of infrastructural development.
2. The Board of Trustees to be appointed by the settlor(s) should be insolated from political interference in terms of appointment or composition.
3. The persons to be appointed by the settlor into the Board of Trustees and the Management Committee of the HCDTs should be professionals and credible indigenes of the host communities and state.
4. The 20% Reserve Fund should be increased to 30%. In this case, the 3% annual expense contribution by the settlor should be increased to 5%. This calls for an amendment to the relevant sections of the PIA.

References

Adebowale, A. (2021). Analysis: How State Governments Cheat Oil-producing Communities in use of 13% Derivation Fund. *premiumtimesng.com*. Retrieved on 6th September, 2021.

Ede, T. V. (2018). The fall and rise of the Nigerian Petroleum Governance Bill. *opm/.co.uk.* Retrieved on 5th September, 2021.

Francis, P. Lapin, D. & Rossiasco (2011). Securing Development and Peace in the Niger Delta – A Social and Conflict Analysis for Change. *www.wilsoncenter.org*. Retrieved on 19th September, 2021.

NDDC Audit Report submitted 13,000 projects abandoned in Niger Delta. *Premium Times* of 2nd September, 2021.

Ojameruye, E. (2004). Deploying Oil Wealth to Reduce Poverty in the Niger Delta Region of Nigeria: Lesson from Chadian Model. *www.nigerdelta.congress.com*. Retrieved on 19th September, 2021.

Omene, O. & Obaebor, S. (2021). "Towards peace and security in the Niger Delta: The Orhobo National Association of North America's Portion. *www.waaada.org/ organisation.unana*. Retrieved on 12th September, 2021.