



Petroleum Industry Act and the Host Communities Development Trust: Where are the Watchmen?

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Abstract

The Nigeria government has through the instrumentality of the Petroleum Industry Act enacted in 2021 changed the texture of governance and stakeholder relations in its petroleum industry. The novel inclusion of Host Communities' Development Trust in the Act sought to pacify communities which are often at the center of the negative externalities occasioned by the activities of oil exploration and exploitation. This study explores the content of the Act with special focus on the mandatory corporate social responsibility of oil companies to host communities, and the role of non-governmental organisations, state governments and other actors in the provision of qualitative interventions. The study also examined probable challenges that could emanate from the implementation of the Act and lead to goal displacement, such as the absence of specific roles for host communities and state governments' in the formulation of needs assessment plans. The study concludes that state governments and non-state actors are key stakeholders capable of empowering host communities to demand financial transparency, accountability and commitment from each Trust established by oil companies for the sustainable development of their localities.

Keywords: Petroleum Industry Act, Corporate social responsibility, Sustainability

1. Introduction

Corporate social responsibility (CSR) is easily described by its purpose which is the mobilization of financial as well as human and material resources by business organisations to help support and strengthen local communities, preferable in a manner that is aligned with their core areas of interest and competence (Nelson, 2008). CSR has also been defined as a concept that allows companies to integrate social and environmental concerns in their business activities and interact with their host communities on a voluntary basis (European Commission, 2008). Moreover, the concept is further described as an approach that allows corporations to combine business with ethics, and helps expand the focus of businesses beyond the pursuit of profit (Barauskaite & Streimikiene, 2021). Thus, the main idea behind these definitions is that businesses

should incorporate social and environmental dimensions to the profit motive of doing business.

However, the discourse on the role of businesses in society has engaged many scholars making proponents as well as opponents of CSR. For instance, some scholars argue that in line with the neo-classical shareholder view, a firm's only responsibility is to do business and make a profit (Friedman 1970; Henderson 2001). This position is aptly summarized by the argument that the proper business of business is business (Crook, 2005).

McWilliams & Siegel (2001) however suggest that CSR is in the interest of businesses, especially when stakeholders such as employees, consumers, local communities, non-governmental organisations (NGOs), and governments



demand and value their efforts (McWilliams & Siegel 2001). Nevertheless, there now seems to be a wider appeal on the need for businesses to engage in CSR across the divide.

In developing countries, an important prerequisite for CSR implementation would be the availability of legislation since the ethical nature of the concept may make businesses assume a non-obligatory concern to society and the environment. In fact, it has been argued that the conditions for a self-regulatory CSR regime were companies voluntarily implement their CSR obligations may be non-existent in most developing countries. In essence, for African countries, there appears to be a growing consensus that if sustainable corporate social responsibility is achieved, then governments, business organisations and the parliament should make constructive inputs in the formulation of CSR legislations in the continent. This equally suggests that the quest for sustainable development for Africa is indeed a matter of creating the right market mix of government and private action that optimizes people's livelihood.

Hence, on the part of the government with respect to CSR, this could mean amongst others, the deployment of a strong legal framework to regulate the commitment of oil companies to the extent that they are able to mobilise resources for the improvement of the socio-economic as well as environmental issues confronting communities hosting oil and gas activities.

This is why in Nigeria, scholars have hailed the Petroleum Industry Act (PIA) assented to by President Muhammadu Buhari which amongst others has a section that stipulates mandatory CSR remittance of 3% of annual operating expenditure by oil firms to Host Community Development Trust (HCDDT) for the development of host communities of oil operations as long overdue in resolving the issues surrounding responsible

corporate social development in the Niger Delta (Nweke, 2022; Idiong, 2022).

Although the novel inclusion of host and transit communities of oil facilities in the Act shows that they are critical to the survival of the petroleum industry and further signifies the intention of the government to allow grass-root participation in sustainable development of the country, more attention has been given to the financial commitments of oil companies to the Host Communities Development Trust (HCDDT), while relatively, little attention has been paid to the role state institutions, subnational governments and civil society organisations (CSOs) are supposed to play in the emerging CSR regime. Therefore, this paper undertakes a content analysis of the PIA Act with the objective of highlighting the roles these actors could play in ensuring the success of the new Act and therefore enshrine a robust CSR culture in Nigeria's petroleum industry. The methodology is elucidated in the next section (Section 2), while Section 3 is a review of the provisions of the host community's development trust (HCDDT) as contained in the Petroleum Industry Act. Section 4 examines why state governments' and NGO's are interested in the HCDDT and Section 5 concludes the paper.

2. Methodology

This paper employed relevant provisions of the Petroleum Industry Act (PIA) enacted in 2021. The specific focus was however on the provisions of the host community's development trust (HCDDT) encapsulated in Chapter 3 of the Act. The focus on this chapter of the Act is based on the contents' direct relevance to the subject matter of discourse in this paper. Those sections of the Act that were not directly relevant to the subject were discarded. Consequently, a content analytical process was employed to derive significant insights from the PIA in line with the objective of the study.

3. Literature Review

Review of the Host Communities Development Trust (HCDT)

The Petroleum Industry Act expresses the legal, governance, regulatory and fiscal framework of the Nigerian petroleum industry (PIA, 2021). The Act also provides the framework for multinational oil companies to commit to a socially responsible engagement with local communities hosting oil and gas operations. The content of the Act with specific reference to the Host Communities Development Trust (HCDT) are briefly enunciated below:

Host Communities Development Trust (HCDT)

PIA (2021) throws the weight of setting up and incorporating HCDT's on a holder of a petroleum prospecting licence or mining lease whose area of operation is located in /or appurtenant to any community or communities in Nigeria as the case may be (PIA, 2021). Specifically, the Act stipulates that oil companies are to ensure the setting-up of HCDT for the benefit of host communities in their areas of operation. Chapter three of the Act outlines the objectives of the HCDT as based on the need to foster sustainable prosperity within host communities, provide direct social and economic benefits from petroleum operations to host communities, enhance peaceful and harmonious co-existence between licensees or lessors and host communities, and create a framework that supports the development of host communities. Furthermore, the Act highlights three layers of responsibilities in the Trust that should be respectively managed by the Board of Trustees (BoT), Management Committee and Host Communities Advisory Committee (HCAC) to ensure the fulfilment of the objectives of the HCDT. The membership and duties of the different layers in the HCDT are enunciated as follows:

a. Membership and Duties of the BoT

Membership of the board of trustees are to be selected from persons of high integrity and professional standing in each of the host communities forming a Trust. Section 242(3) of the Act empowers the concerned oil firm to determine the criteria for membership of the board of trustees, qualification, financial regulations and other matters that relates to the operation of the board. Moreover, the BoT is saddled with the responsibility of ensuring the disbursement of finance for CSR projects among host communities in a Trust. Accordingly, the BoT is to ensure that 75% of the monies received by a Trust are devoted to capital projects, 20% set aside and invested with a fund manager and not more than 5% of monies received by the Trust should be utilised for administrative cost and special projects. In addition, the Act stipulates that in the event that portions of the funds allocated to capital and/ or reserve fund is un-utilised in a particular financial year, it should be rolled over to the succeeding year and returned to the capital fund (PIA, 2021). The BoT is also mandated to setup a management committee for the HCDT.

It is pertinent to note that the Act does not clearly specify the attributes that make for high integrity and therefore leaves it to the caprices of the oil company and host communities. This, in addition to the powers given to the former in the determination of the qualification of board members may create a situation where the criteria for qualification, discipline, remuneration and disqualification of community indigenes selected into the Board of Trustees of a particular Trust may not be the same across the oil companies operating in local communities; and thus, create a breeding ground for conflicts and legal tussles between communities and oil companies.

b. Membership and Functions of the Management Committee

The Act stipulates that membership of the Management Committee shall comprise of one representative from each of the host communities in a particular HCDDT. The PIA Act specifies that community representatives in the Management Committee are to assume non-executive roles in the HCDDT, whereas, the BoT is to appoint people of high integrity as executive members of the management committee. Moreover, these executive members may not necessarily be selected from the host communities but must be Nigerians. Section 247(4) of the Act bestows the role of determining the selection process, remuneration, qualification, discipline and other matters pertaining to the formation and administration of the Management Committee on the Board of Trustees.

Furthermore, the Management Committee is expected to function in an ad hoc capacity and undertake actions such as the preparation of the budget of the host communities development trust, development and management of the contract awarding process, determination of the winners of the contract bidding process, supervision of projects and the nomination of fund managers to manager the reserve fund. Nevertheless, the Act envisages that functions of the management are subject to the powers of approval conferred on the Board of Trustees by Section 243 of the PIA (2021).

Uzorika & Henshaw (2022) however opined that the non-executive capacity of nominees from host communities in the Management Committee of each Trust may reduce their ability to effectively galvanise and heighten their demand for sustainable development of their local communities and therefore potentially lead to intra-rivalry and conflict among Committee members.

c. Advisory Committee of the HCDDT

PIA (2021) also articulates an advisory committee for the HCDDT. In fact, Section 249(1) of the Act specified that the HCDDT Management Committee is to oversee the set-up of an advisory committee in each Trust, which should be composed of at least one member from each of the host communities of the operating company. The advisory committee members are expected to articulate community development projects, as well as monitor and report the progress of projects executed in their various communities. Furthermore, the advisory committee is expected to advise the management committee on such issues that may lead to improvement in peace in communities in the Trust and is to nominate a representative to the Management Committee. It could therefore be argued that the role of the advisory committee is designed to assist the Management Committee perform its duties efficiently.

In addition, the Act requires operators of oil licenses in Nigeria to make an annual contribution to the applicable HCDDT of an amount equal to 3% of its actual operating expenditure of the preceding financial year in the upstream petroleum operations affecting the host communities for which the applicable host communities' development trust fund was established (PIA, 2021). And further provides unfettered right for the host communities development trust to receive donations, gifts and grants in line with its objectives.

Also important, is the requirement that such holder of an oil license must undertake a needs assessment of host communities in consultation with women, youth groups and community leaders as a prelude to the formulation of a development plan for communities in the Trust. The needs assessment plan is expected to cover three dimensions, namely, the social, environmental and economic dimensions of



corporate social responsibility; and should highlight specific needs of affected communities, ascertain the effect of oil exploration and exploitation activities as well as provide a strategy for re-addressing the needs and effects on the socio-economic of the people (PIA, 2021).

However, while the requirement of a need's assessment plan is a worthy addition in the PIA, it is nonetheless pertinent to note that the actual role of communities in the process of drafting of these development plans are not clearly spelt-out, which therefore gives an unclear picture of the extent of their involvement in the needs assessment of their localities. In fact, it could be argued that the profit motive of most oil companies may make the task of conducting needs assessment for their host communities a mockery and place them at knife-edge with communities rearing for meaningful development, without a strong regulatory monitoring mechanism.

d. Regulatory Institution for HCDDT

PIA (2021) in Section 234(2) empowers the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) and the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA) to make regulations with respect to the HCDDT within their area of competence and jurisdiction for the efficient administration of the Trust. Consequently, the Act envisages a situation where NUPRC superintends on issues involving host communities of upstream oil and gas operations, while the NMDPRA ensures that the objectives of the Act are achieved in host communities of midstream and downstream petroleum operations in the Nigeria oil and gas industry. Furthermore, Section 234(4) specifies that as part of the regulations, the regulatory institutions should make provisions for a grievance mechanism in the resolution of conflicts between oil companies and host communities in the HCDDT.

Curiously, it is observed that these regulatory institutions by their statutory functions may not be effective in the management of grievances and conflicts that may arise between settlers and host communities in the management of a Trust. This is because there are clear differences in the competencies required for effective performance of regulatory functions in midstream and downstream oil operations, and upstream oil activities, and mediating in disputes. Furthermore, the Act is silent on the role of State governments and civil rights organisations in building a robust HCDDT that meets the social, environmental and economic needs of people. It is therefore argued that their non-inclusion nevertheless should encourage a new paradigm of engagement and collaboration that leads to the exploitation of the positive social benefit that partnerships could bring to communities.

State Governments and Civil Right Organisations in CSR

The interest of state governments in corporate social responsibility is founded on two grounds: first, the support given by socially responsive businesses to host communities enhances governments' objective of sustainable socio-economic and environmental development. In essence, it is viewed as the contribution of corporate entities to the sustainable development of the areas of operation. Secondly, it coincides with the broader transition of public governance, which departs from the classical hierarchical sole governance regulation framework to a relationship based flexible governance system that emphasises collaboration and partnership with the private sector for the good of the society.

Hence, it could be understood why some scholars (Idiong, 2022; Uzorka & Henshaw, 2022) have expressed dismay that no specific role was apportioned to



state governments' in the Trust established by national government for host communities of oil and mining operations in Nigeria. Aside the fact that, state governments are responsible for the implementation of development programmes for the benefit of local communities and provide enabling environment for doing business, they could potentially play several roles in the emerging CSR environment in Nigeria.

First, State governments are well placed to raise the awareness of local communities about the HCDDT. The issue of awareness is important when viewed against the backdrop that local communities may not be well-informed about the provisions of the Act, and this may impact on the performance of the Trust. Moreover, since state governments' have structures in place that inform, relate with and educate local communities, they could deploy such channels as a means of raising the awareness for CSR and building the capacities of host communities of oil companies in their quest for sustainable development.

Secondly, state governments could also monitor the implementation of the Act as it concerns host communities. This role of the state government is important in the improvement of disclosure and transparency in the business of the HCDDT. Reliable information on the social, economic and environmental development plans of communities and transparent financial disclosure in each Trust would prevent inter-community and intra-community conflicts that may arise in situations where information and financial transactions are opaque and community members are misinformed. Moreover, State governments can play a key role in improving the quality of and access to information disseminated by each Trust, and this would help in the tracking of the progress in CSR made by oil corporations

through their respective host communities development trust (HCDDT).

Moreover, state and local governments are closer to host communities of oil companies and should be more knowledgeable about the processes for formulation of socially responsible development plans in rural areas in their domain. Therefore, they could assist in the formulation of robust needs assessment plans for communities that caters for the economic and socio-environmental concerns of host communities of oil and gas exploration activities. In addition, since state governments are also interested in the goal of fostering sustainable development in communities, their involvement could lead to the development of sustainable development plans for host communities of oil operations.

Fourthly, most state governments have established ministries of community development and conflict resolution that have been working with communities within their respective states. Hence, the involvement of the government may help whittle down grievances and hasten the pace of resolution of intra and inter disputes between communities in a Trust.

Non-Governmental Organisations (NGOs)

The United Nations Charter of 1945 conceptualised non-governmental organisations as groups working for neither government nor member states, but are actively interested in the promotion of the good of the society. Non-governmental organisations (NGOs) could be defined as formal (professionalized) independent societal organizations whose primary aim is to promote common goals at the national or the international level (Martens, 2002).

The need for non-governmental organisations and other civil society organisations to be involved in the



implementation of corporate social responsibility projects is predicated on the successes of their involvement in various advocacies for the environment, climate change, health, human right and education through the use of various strategies such as active lobbying and mobilizing of grass-root support (Carr & Outwaite, 2011). NGO's could be helpful in averting market failure that may arise in the implementation of the CSR. For instance, in the event of a moral hazard problem which could be related to an inappropriate behavior on the part of the oil company, involvement of NGOs could improve the monitoring and access to information on such issues by members of the HCDT and the general public.

Additionally, NGOs can assist communities with advice on issues that could lead to sustainable development of their localities. In this regard, NGO's and local advocacy groups could be helpful in the assessment of the needs of host communities and the formulation of socio-economic and environmentally sustainable development plans for local communities. Moreover, the incorporation of NGOs could enhance collaborations to the benefit of communities, this is because a strong partnership between civil society organisations and host communities, may arouse a sense of confidence in the latter and empower them with the required capability to confront oil companies for the sustainable development of their localities.

Moreover, the involvement of NGOs could deter corrupt company executives and other agents of government, including members of the various committees of the HCDT from engaging in practices that are unethical; and hence influence the policies of the Trust to the benefit of local communities.

4. Conclusion

There are three main issues that arise from the content analysis of the Petroleum Industry Act enacted in 2021. The first is that provisions of the PIA pertaining to the host communities development trust (HCDT) are still limited with several gaps. Hence, the objective of this section of the Act which is meant to accelerate the corporate social development of host communities of oil operations may not be actualized. Why is this so?

The forgoing discussion suggest that the provisions of the PIA empower oil companies to make important decisions regarding the criteria for qualification, discipline, remuneration and disqualification of indigenes of host communities selected into the Board of Trustees of a particular Trust. However, this could lead to non-uniformity in the criterion used by the different oil companies operating in the Niger delta region if not checked, and consequently create conflict between oil companies and communities.

Secondly, the overlapping role of the management and advisory committees leaves room for conflict and grievances. This, in addition to the fact that the actual role of host communities in the needs assessment process is not clearly spelt-out gives an unclear picture of the extent of their involvement in the needs assessment of their localities and may make a mockery of the entire process. Moreover, the Act does not make room for institutions that could resolve conflicts and grievances among host communities and oil companies, except the regulatory institutions for the oil industry. However, these regulatory institutions are not set-up as alternative dispute resolution channels given their statutory responsibilities as enshrined in the PIA.



Thirdly, the role of state governments, nongovernmental organisations and civil right societies were not captured in the formulation of the host communities development trust. However, state governments are interested in corporate social responsibilities and this interest stems from the fact that CSR help governments meet the goal of development in their respective states. Hence, they are a critical component of the value chain that makes for successful implementation of CSR. In addition, NGO's are helpful non-state organisations that promote and build the capacities of local communities through activities such as advocacy and lobbying. Consequently, states in the Niger Delta region as well as non-governmental organisations are encourage to get involve in the monitoring of the process to ensure optimum results are achieved by host communities of oil companies.

In conclusion, it is noted that the inclusion of host communities in the PIA is novel and could lead to the sustainable development of local communities hosting oil operations. However, we argue that though the provisions of Section 3 do not provide statutory functions for state governments and non-governmental organisations in the implementation of the host communities development trust, they are nevertheless invaluable in the monitoring of the process for successful implementation. We therefore recommend that state governments should put in place machinery to inform, educate and help host communities of oil operations get optimum benefits from the Act that could lead to the sustainable development of their localities, and NGOs should be encouraged to collaborate and form partnership with host communities so as to engender transparency and accountability in the emerging CSR environment.

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