

# Host Communities Development Trust Model



# About BudgIT

BudgIT is a civic organization making the Nigerian budget and public data comprehensible and accessible across every literacy span. BudgIT's innovation within the public sphere comes with the creative use of government data by presenting these in simple tweets, interactive formats, or infographic displays. Our primary goal is to use technology to intersect civic engagement and institutional reform.

**Country Director:** Gabriel Okeowo

**Research Team:** Adejoke Akinbode

**Creative Development:** Maxwell Adetoye

**Editor:** Esther Okoloeze

Contact: [info@budgit.org](mailto:info@budgit.org) +234-803-727-6668, +234-908- 333-1633

Address: 55, Moleye Street, Sabo, Yaba, Lagos, Nigeria.

©2023

## **Disclaimer**

This document has been produced by BudgIT to provide information on budgets and public data issues. BudgIT certifies that all the views expressed in this document accurately reflect our analytical views that we believe are reliable and fact-based. Whilst reasonable care has been taken in preparing this document, no responsibility or liability is accepted for errors or for any views expressed herein by BudgIT for actions taken as a result of information provided in this report. civic engagement and institutional reform.

# Table of Contents

---

1. What does the PIA Say About the Host Community Development Trust Fund?	<b>03</b>
1.1 Background to Host Community Development Trust	<b>03</b>
1.2 Objectives of the Host Community Development Trust	<b>03</b>
1.3 The Commission and Authority	<b>04</b>
1.4 Companies	<b>04</b>
1.5 Structure and Operandi of the Trust	<b>05</b>
1.5.1 Formation and Operationalization	<b>05</b>

---

2. What is the Requirement of the Host Community Development Regulations 2022?	<b>06</b>
--	-----------

---

3. The Review of the Host Community Development Trust Implementation Template	<b>07</b>
3.1 Host Communities	<b>07</b>
3.2 Settlor	<b>07</b>
3.2.1 Delineation of Host Communities by the Companies	<b>07</b>
3.2.2 Duties of the Companies Before Establishing the Host Community Development Trust	<b>08</b>
3.3 The Host Community Development Plan	<b>08</b>
3.4 Fund Administration	<b>09</b>
3.4.1 Host Community Development Trust Fund Contributions	<b>09</b>
3.4.2 Setting up Trust Accounts	<b>09</b>
3.4.3 Matrix for Fund Distribution	<b>09</b>
3.5 Structure of the Trust	<b>09</b>
3.5.1 Board of Trustees	<b>09</b>
3.5.2 Management Committee	<b>10</b>
3.5.3 Advisory Committee	<b>10</b>

---

4. How Much Can the Communities Raise Annually?	<b>11</b>
4.1 What does the PIA provide for host communities to implement social, economic, and environmental projects?	<b>11</b>

---

5. How does the Trust Fund Interact with Other Benefit Transfer Mechanisms?	<b>14</b>
---	-----------

---

6. Critical Analysis of the Loopholes	<b>16</b>
6.1 Existence of Briefcase Trust Funds	<b>16</b>
6.2 Lessons Learnt from the Past—Contract Transparency and Beneficial Ownership Disclosures	<b>17</b>
6.2.1 Contract Transparency and Beneficial Ownership Disclosures in the HCDT	<b>17</b>

---

7. Conclusion and Recommendations	<b>21</b>
7.1 Conclusion	<b>21</b>
7.2 Recommendations	<b>22</b>

---





# 01. What does the PIA Say About the Host Community Development Trust Fund?

## 1.1 Background to Host Community

The operations of companies involved in exploring and exploiting oil and gas resources come with social and environmental downsides for the communities that host such operations. The underlying tensions between oil companies and host communities have been blamed on the perception that while the districts bear the brunt of such environmental and social consequences, they have not had a fair share of the benefits of extraction. The foregoing has necessitated an essential debate on how host communities may be compensated for the industry's impact on their lives and how they may contribute to shaping the relations between them and the companies. As such, participation, ownership, and beneficiation will be critical to peace and sustainable development in oil-producing areas.

## 1.2 Objectives of the Host Community Development Trust

1. Foster sustainable prosperity within host communities  
Provide direct social and economic benefits from


petroleum operations to host communities.

2. Enhance peaceful and harmonious co-existence between licensees or lessees and host communities.

3. Create a framework to support the development of host communities.

The PIA provides another salient introduction: the Petroleum Host Community Development, and it is expected to provide direct social and economic benefits to the communities. With the enactment of PIA, companies are required to set up a Host Community Development Trust ('HCDT' or 'Trust') for the benefit of the host communities. The Trust will be administered by the Board of Trustees, Management Committee, and Advisory Committee, most of which are citizens of the host community.

It provides timelines for the incorporation of the Trust, appointment of Management and Advisory Committees, and the payment of funds into the Trust Account. Funding for the Host Community Development

 **The underlying tensions between oil companies and host communities have been blamed on the perception that while the districts bear the brunt of such environmental and social consequences, they have not had a fair share of the benefits of extraction.**



Trust will come from annual contributions equivalent to 3% of its actual operating expenditure of the preceding financial year in the upstream petroleum operations affecting the host communities. Likewise, the Trust may also be funded by donations, gifts, and grants.

The PIA puts a framework for allocating the funds to achieve its key objective. It states that 75% of available cash will be used for capital projects, 20% for reserves, and 5% for administrative expenses. In the event of vandalism, sabotage, or other civil unrest resulting in damage to petroleum facilities or disruption of production activities, a community will forfeit the cost of repairs. The settlor must give a matrix to the Board of Trustees, which will be used to distribute the funds to the host communities.

### 1.3 The Commission and Authority


The Nigerian Upstream Petroleum Regulatory Commission and the Nigerian Midstream and Downstream Petroleum Regulatory Authority will make regulations on the administration and safeguard the utilization of the host communities' development trust fund and, at the same time, maintain oversight responsibility for ensuring that projects and programs proposed by the host communities development trusts are implemented. They will promote healthy, safe,

efficient, and effective conduct of petroleum upstream, midstream, and downstream operations in an environmentally acceptable and sustainable manner and determine the guarantee of compensation to persons or communities adversely affected by petroleum operations.

### 1.4 Companies

Companies are required to incorporate, manage, and supervise the administration of host communities' development trust to achieve the following:

1. Finance and execute projects for the benefit and sustainable development of the host communities.
2. Facilitate economic empowerment opportunities in the host communities.
3. Support healthcare development for the host communities.
4. Support local initiatives within the host communities that seek to enhance security.
5. Assist in any other developmental purpose deemed beneficial to the host communities.
6. Undertake infrastructural development of the host communities within the scope of funds available for such purposes.



**It states that 75% of available cash will be used for capital projects, 20% for reserves, and 5% for administrative expenses.**

Advance and propagate educational development for the benefit of members of the host communities.

Support local initiatives within the host communities which seek to enhance the protection of the environment.

Invest part of the available fund for and on behalf of the host communities.

## 1.5 Structure and Operandi of The Trusts

### 1.5.1 Formation and Operationalization

Companies are mandated to incorporate the host communities' development trusts and determine the beneficiary littoral communities in the case of shallow and deep

offshore operations. They are to appoint and authorize the Board of Trustees to be registered under the Companies and Allied Matters Act (CAMA).

Companies will carry out needs assessments for the development of Community Development Plans. The essence of the needs assessment is to determine the specific needs of each affected host community, ascertain the effect that the proposed petroleum operations might have on them, and provide a strategy for addressing the needs and identified impacts. The needs assessment will form the basis for developing a host community development plan submitted to the Commission or Authority to enable performing oversight functions.





## 02. What is the Requirement of the Host Community Development Regulations 2022?



**Section 234 of the PIA granted powers to the Nigerian Upstream Regulatory Commission and the Nigerian Midstream and Downstream Petroleum Regulatory Authority to make regulations governing the administration of the host community's trust with respect to settlor companies within their respective coverage and jurisdiction.**

Section 234 of the PIA granted powers to the Nigerian Upstream Regulatory Commission and the Nigerian Midstream and Downstream Petroleum Regulatory Authority to make regulations governing the administration of the host community's trust with respect to settlor companies within their respective coverage and jurisdiction.<sup>1</sup> In pursuance of this, the Nigerian Upstream Regulatory Commission has now published the Nigeria Upstream Petroleum Host Communities Regulations on June 23, 2022.

The objectives of the regulations are to:

1. Provide substantive and procedural requirements for the establishment and administration of the Trust and the fund for the Nigerian upstream petroleum host communities.
2. Outline the parameters for the administration and safeguard of the fund.

3. Prescribe a grievance resolution mechanism for settlement of disputes between host communities and settlers.
4. Provide general rules for the implementation of the provisions of section 234 (1) (a)-(d) of the Act for the development of host communities.

The Commission has the power to:

1. Conduct a periodic assessment of the performance of each fund using a performance matrix published on its website.
2. Initiate action to trace and recover the funds if there is mismanagement of funds.
3. Investigate and report cases of fraud, mismanagement, and misappropriation of funds.
4. Ensure implementation of proposed projects of upstream petroleum communities at all stages





## 03. The Review of the Host Community Development Trust Implementation Template

### 3.1 Host Communities

According to the implementation template, host communities can be categorized as follows;

Communities that are situated in or appurtenant to the area of operations of a licensee or lessee of an upstream oil and gas asset (the settlor).

Any community, as the settlor may determine under Chapter 3 of the PIA.

Littoral communities to a deep-water of operations along the Gulf of Guinea of the Nigerian shoreline up to 500m inland, provided such community is gazetted by the National Boundary Commission Littoral communities to shallow water area operations within Nigeria's shallow waters identified as host communities before the enactment of the PIA, and any other community identified and determined by the settlor.

Littoral communities to shallow water and deep-water areas of

operations, which include any other community selected by the settlor pursuant to Section 235 (3) of the PIA

### 3.2 Settlor

A settlor is any holder of an interest in an oil prospecting license, oil mining lease, petroleum prospecting license, or petroleum mining lease whose area of operations is in or appurtenant to any community or communities falling within the definition of host communities.

#### 3.2.1. Delineation of Host Communities by the Companies

The settlor is responsible for the delineation of the host communities; the settlor shall:

1. Recognize communities under the GMOU/MOU of the settlor before the enactment of the Act.
2. Communities situated in or appurtenant to the area of operations of the settlor Communities along the

deep-water area of operations along the Gulf of Guinea of the Nigerian shoreline up to 500m inland.

3. Communities along shallow water of the area operations, communities within the retained area after relinquishment, and

4. Communities recognized by a court of competent jurisdiction or by final unappealed judgment.

### 3.2.2. Duties of the Companies Before Establishing the Host Communities Development Trust

Before setting up the Trust, the settlor shall:

1. Determine host communities, structure, and number of trust clusters.

2. Call a meeting with the host communities (Communities Meeting) to deliberate on and approve the establishment of the Trust, including agreeing to the name of the Trust and the persons nominated by the community as trustees of the Trust.

3. The minutes of the meeting shall be drawn up by the settlor and shall be signed by two representatives of the host community and a representative of the settlor.

4. Contact nominated trustees to inform them of their nomination as trustees of the Trust.

5. Obtain resumes and profiles from the nominees.

6. Conduct a participatory needs assessment in collaboration with the proposed trustees.

7. Develop the host community development plan.

8. Develop the fund matrix for the Trust.

## 3.3 The Host Community Development Plan

The Host Community Development Plan shall:

1. Specify the community development initiatives required to respond to the findings and strategy identified in the host community needs assessment.

2. Determine and specify the projects to implement the defined initiatives.

3. Provide a detailed timeline for projects.

4. Determine and prepare the budget for the host community development plan.

5. Set out the reasons and objectives of each project as supported by the needs assessment.

6. Conform with the Nigerian content requirements provided in the Nigerian Oil and Gas Industry Content Development Act.

7. Provide for ongoing review and reporting to the commission or authority.

## 3.4 Fund Administration

### 3.4.1 Host Community Development Trust Fund Contributions

According to the PIA, the primary source of the Trust Fund shall be that each settlor must contribute an amount equal to 3% of upstream operating expenditure in the preceding financial year in respect of all petroleum operations affecting the host communities.

Beyond the compulsory contribution payable to the Trust, other funding sources include gifts, donations, honoraria, and grants. Profits and interest accruing to the reserve fund of the Trust are also additional sources of funding, as well as unused administrative funds from the preceding year, which will be paid into the capital fund from which the Trust may be funded.

### 3.4.2 Setting up Trust Accounts

The Board of Trustees has the responsibility of setting up a Trust Account (collection, capital fund, administrative, and reserve fund accounts) and will also appoint a fund manager, while the settlor has the responsibility for funding the account. The Board of Trustees will allocate funds from the collection account to the capital, administrative, and reserve fund accounts.


### 3.4.3 Matrix for Fund Distribution

There shall be a transparent matrix for allocating funds to the Trust projects. Factors such as production level, footprint, and land acquisition may be considered in allocating funds.

## 3.5 Structure of the Trust

### 3.5.1 Board of Trustees

The settlor must consult with the community to select the first trustees, who shall be nominated for appointment by the host communities at the community meeting organized for that purpose. The advisory committee will be consulted when selecting additional or replacement trustees, and the



**The settlor must consult with the community to select the first trustees, who shall be nominated for appointment by the host communities at the community meeting organized for that purpose.**



trustees must meet the minimum eligibility criteria specified in the PIA and the Regulations. It must be ensured that the number of trustees is odd and shall not exceed nine, with adequate representation of all community stakeholders.

### 3.5.2 Management Committee

The Board of Trustees must set up a management committee comprising one representative of each host community as a non-executive member, with other executive members of high integrity and professional qualifications. The management committee is responsible for safeguarding the fundamental

values, ethical principles, and strategic direction by which the Trust operates.

### 3.5.3 Advisory Committee

The management committee will also be responsible for setting up an advisory committee for nominating members to represent the host communities on the management committee, which is subject to the Board of Trustees' approval. The advisory committee will also be responsible for monitoring the progress of projects and advising the management committee on ways to improve community infrastructure security.





## 04. How Much Can the Communities Raise Annually?

Before the Petroleum Industry Act 2021, some upstream oil and gas companies, especially international oil companies, operated Global Memorandums of Understanding (GMOU), which they negotiated with their host communities. These upstream companies incurred payments on social expenditure to increase their social capital with the communities where they operate. Data obtained from NEITI Oil and Gas Audit Reports from 2012 to 2021 showed that upstream oil and gas companies implementing social expenditure projects paid \$692.87 million.<sup>2</sup> This reveals that the average annual social expenditure payments within the period was \$69.29 million. It is noteworthy that within this period, less than 34 companies implemented the social projects for their host communities out of over 204 oil and gas companies with licenses operating in the upstream sector.<sup>3</sup>



**Data obtained from NEITI Oil and Gas Audit Reports from 2012 to 2021 showed that upstream oil and gas companies implementing social expenditure projects paid \$692.87 million.**

### 4.1 What does the PIA Provide for Host Communities to implement Social, Economic, and Environmental Projects?

Section 24(4) of the PIA states that the settlor, the upstream oil and gas companies establishing the Trust, shall be responsible for host communities in different areas of operation, and the 3% share of the operating costs shall be determined based on the operating costs attributable to each area of operation. So, each license holder is to pay 3% of its operating expenditure of the last financial year as its contribution to the Trust.

The Host Community Development Trust Regulation 24(7) explains the 3% operating expenditure composition. “In determining operating expenditure pursuant to section 240(2) of the Act, the settlor shall take into consideration non-capital production costs, cost of sales, administrative

expenses, and any other expenses incurred for operations of the business on a day-to-day basis as included in the audited financial report, provided that such expenditure shall not include capital expenditures, impairments, depreciation.”<sup>4</sup>

Speaking in numbers, the Group Chief Executive Officer (GCEO) of the Nigerian National Petroleum Corporation Limited (NNPCL) states that the 3% from operating expenses is bigger than the 30% allocation from profit oil and gas. “For instance, when you say 30% profit of oil and gas from NNPC shares or PSC, it is a very small number. The percentages appear very outrageous, but 30% of what exactly? Nobody has sat down to look at it. When you say a profit of 30%, it probably comes down to less than \$400 million per annum,” he said. “But when you come to the host communities, you have 3% of our operating expenses. We spent about \$16 billion in the 2020 fiscal year on our operating expenses across the industry. So when you take 3%

of that number, it comes above \$500 million, far above the budget of NDDC.”<sup>5</sup>

So, the host communities expect to receive over \$500 million annually for running the Trust. This implies that the Trust Fund will have more funds for implementing social expenditure projects than oil and gas companies spent in the GMOU/MOU regime. It is also certain that as long as the oil and gas industry exists, companies must spend money on operating expenses. That way, host communities will receive their 3% operating expenditure.

Despite what Regulation 24(7) provides in determining operating expenditure, there is a need for a general formula to arrive at the actuals of what upstream oil and gas companies expend as operating expenditure annually. For instance, Section 3(4a) of the Upstream Establishment Remediation Fund Regulation 2022 has as its formulae the annual financial contribution to the Upstream Establishment Remediation Fund:

4. <https://www.nuprc.gov.ng/wp-content/uploads/2022/07/Nigeria-Upstream-Petroleum-Host-Communities-Development-Regulations-2022.pdf>

5. <https://www.thecable.ng/mele-kyari-host-communities-to-get-500m-annually-from-pia/amp>



## Financial Contribution for a Year

$$\text{Fixed Contribution} + (\text{Upstream Capital Expenditure} * \text{UCER}) + (\text{VL} + \text{LR}) + (\text{VG} * \text{GR})^6$$

**UCER:** Upstream Capital Expenditure Rate

**VL:** Volume of Crude

**LR:** The Rate or \$ Per Barrel of Crude

**VG:** The Volume of Natural Gas

**GR:** The Rate or \$ Per One Million British Thermal Unit (MMBtu) which applies to natural gas

The same should be done for calculating the operating expenditure for upstream oil and gas companies, and it should be per license. In essence, “non-capital production costs, cost of sales, administrative expenses and any other expense incurred for operations of the business on a day-to-day” within the area of operations of the license needs to be expressed and explained in a formula.

Furthermore, most upstream companies do not publish their annual reports or returns for their operations in each asset they have licenses. The implication is that host communities cannot verify the authenticity of the numbers that the settlers claim as the 3% operating expenditure. Hence, settlers need to voluntarily publish their annual reports or avail them to their host communities. Nigeria's Corporate Affairs Commission must also ensure that all companies with licenses to operate in the upstream sector publish their annual returns as

stated in the Company Allied Matters Act (CAMA) 2020. The Nigerian Upstream Petroleum Regulatory Commission (NUPRC) can set up a portal to publish all upstream oil and gas companies' reports to provide access to host community actors and other stakeholders.

To further avoid ambiguity and advance the cause of transparency, there is a need to have a specific budget line that speaks to operating expenditure per oil and gas asset. Lumped numbers for several oil and gas assets can be a source of confusion and conflict between host communities on the one hand and between the settlers and host communities on the other. To proactively address conflict situations, the operating expenditure for several assets owned by a company/partnership should be disaggregated according to each asset and clearly spelled out in a line item of the company's reports so each host community can calculate its 3% operating expenditure.



**Nigeria's Corporate Affairs Commission must also ensure that all companies with licenses to operate in the upstream sector publish their annual returns as stated in the Company Allied Matters Act (CAMA) 2020.**

6. <https://www.nuprc.gov.ng/wp-content/uploads/2022/08/Upstream-Petroleum-Environmental-Remediation-Fund-regulation.pdf>



## 05. How does the Trust Fund Interact with Other Benefit Transfer Mechanisms?

 **Over the years, stakeholders and key players in the government and extractive industry have shared their opinions on the issue of poverty, infrastructure decay, and employment shortage in the region.**

The challenges of benefit transfer to host communities in oil-producing states are not new. Over the years, stakeholders and key players in the government and extractive industry have shared their opinions on the issue of poverty, infrastructure decay, and employment shortage in the region. This is despite the various systems of benefit transfers put in place by the Nigerian Federal Government. This may be related to the failures of policies designed to transfer benefits to the people; thus, the issue is not a lack of policy but rather inefficient policy implementation.

Mismanagement and diversion of funds have plagued oil-producing communities for years, altering the natural benefits accrued to these communities. Corruption has permeated every aspect of the administration of such benefits as it has become evident that corruption levels are either the same or even higher in virtually all the government's intervention mechanisms.

Over the years, the government

has attempted to develop various methods by which oil-producing communities will benefit from revenues generated by resources in their region. However, it is important that the government ensures that these existing benefit transfer mechanisms and the Trust Fund do not overlap.

Some of these benefit transfer mechanisms are listed below:

1. Oil Mineral Producing Areas Development Commission.
2. Niger Delta Development Commission (NDDC).
3. 13% Derivation Fund.
4. Ministry of Niger Delta Affairs.
5. Nigeria Content Development and Monitoring Board (NCDMB).
6. The Presidential Amnesty Programme.
7. Obligatory and CSR Benefits from Oil Companies.

Furthermore, there is no provision for an adequate

monitoring and evaluation framework to determine whether benefits from the oil sector have impacted local communities. This can be attributed to the government and oil community officials' lack of accountability and process ownership. As a result, citizens often believe that what little benefits they receive from the government are gifted when it is a right.

First, for host communities to receive the development outcomes they seek from the Trust and the above-mentioned benefit transfer mechanism, it is important that the Board of the HCDT understands the mandates of these benefit transfer mechanisms. This avoids mandate overlap and policy incoherence between the HCDT and these benefit transfer mechanisms. Before programs and projects are implemented by the HCDT, there is a need for coordination and harmonization of all community development plans with the MDAs' blueprints.

Since the 2023/2024 financial year will be the first year of the Trust's implementation of its Community Development Plans (CDA) and annual budgets,

there is a need for the Board of Trustees of the HCDT to consult widely with their respective state governments, the relevant MDAs implementing similar projects both at the federal and states levels, including the NDDC and the NCDMB and agree on which projects to implement alone and which projects to implement jointly.

It is imperative that the Board of the Trust ensures no duplication of projects already executed by any of these benefit transfer mechanisms. Hence, there is a need for the Board of the Trust to work with these transfer mechanisms to build upon existing projects, expand where necessary, and/or furnish them to serve the immediate needs of host communities. Salient but abandoned or uncompleted projects due to lack of funds allow these benefit transfer mechanisms to become relevant in coordinating and harmonizing efforts.

Lastly, the Board of the Trust should occasionally review or evaluate its programs, projects, and activities with other benefit transfer mechanisms to strengthen identified weaknesses and enhance their effectiveness.



## 06. Critical Analysis of the Loopholes

### 6.1 Existence of Briefcase Trust Funds

The oil and gas industry has featured prominently in reported cases of money laundering.<sup>7</sup> The Nuhu Ribadu-led Petroleum Revenue Special Task Force Report revealed that Nigeria loses billions of dollars every year through the use of “briefcase traders” in exporting crude oil and importing refined petroleum products.<sup>8</sup> The Major Oil Marketers Association of Nigeria (MOMAN) had already alleged that briefcase companies with no asset base or accountability hijacked fuel importation into the country.<sup>9</sup> A briefcase company refers to companies that only exist on paper or are using a front company to siphon money.<sup>10</sup> They are usually small in size and do not do business honestly, neither do they have assets, only a briefcase.<sup>11</sup>

There is the possibility that some oil and gas companies establishing briefcase trusts leverage the opportunities of the PIA to launder funds to offshore havens at the expense of host communities' development. Regulators like the NUPRC and the CAC need to audit the books and activities of every Trust (HCDT) established under the PIA regime annually to prevent the emergence of briefcase trusts. Every Trust

established must serve the needs of host communities appurtenant to it or within its area of operations or as assigned to it by NUPRC with real persons nominated by their host communities. This implies that for every Trust established according to the PIA, host community members must take ownership of it and participate in every process of the Trust activities.

There is also a possibility that trustees of the Trust can set up briefcase companies that would be favored by the Board or the Management Committee in the bidding of Trust contracts or procurement process. The contracting process needs to be closely monitored to identify companies mostly favored or companies that received mega contracts of Trust projects. This implies that host community actors must have copies of their Community Development Plans and HCDT annual budgets. That way, they can track projects and activities of the Trust open for public bidding and contracting to prevent contract racketeering by interested persons.

To prevent the existence of Briefcase Trust Funds or briefcase companies that can be established side-by-side with the main Trust to divert Trust



**The Nuhu Ribadu-led Petroleum Revenue Special Task Force Report revealed that Nigeria loses billions of dollars every year through the use of “briefcase traders” in exporting crude oil and importing refined petroleum products.**

Funds, there should be an introduction of beneficial ownership and contract transparency principles in the system of the HCDT, especially in the contracting process.

## 6.2 Lessons Learnt from the Past— Contract Transparency and Beneficial Ownership Disclosures

The State Fiscal Transparency Accountability and Sustainability (SFTAS) intervention implemented by the federal government with support from the World Bank presents an ongoing opportunity for stakeholders to collaborate with subnational entities for implementing sustainable contract transparency processes. States get financial incentives through grants for publishing their contracts online. The benefits of making contracts open cannot be over-emphasized; disclosure of details of contract awards online allows citizens to understand the agreed terms for ongoing projects in their communities and also have an idea of how revenue from natural resources and taxes flows to their national, regional or local governments.<sup>12</sup>

Global Open contracting principles promoted by the Open Contracting Partnership (OCP) also provide an opportunity and technical guidance for improving Participation, Monitoring, and

Oversight of the public procurement process at the federal and subnational levels. This is critical, especially considering evidence from the Federal Government 2019 Auditor General report, which indicated that N6.28 billion was disbursed to contractors for services not rendered, N18.2 billion was misappropriated or misapplied, and another N6.57 billion in payments were made without vouchers.<sup>13</sup>

### 6.2.1 Contract Transparency and Beneficial Ownership Disclosures in the HCDT

Contract transparency refers to the public disclosure of the contracts signed between extractive companies and their host governments.<sup>14</sup> It is enshrined in Section 83(3) of the PIA 2021, which states that “The text of any existing contract, license or lease and any amendment or side letter with the NNPC shall (a) not be confidential (b) shall be published on the websites of the commission within one year of the effective date and (c) shall be provided to the Commission by a contractor or amendment of NNPC license or lease within one year of the effective date.”<sup>15</sup>

Contract transparency has come to stay in Nigeria, starting with the oil and gas industry. With contract transparency, governments can operate effectively by providing

12. <https://guardian.ng/opinion/contract-transparency-in-nigerias-extractive-sector/>

13. <https://plsinitiative.org/2019-audit-report-of-the-federation-cross-cutting-issues/>

14. <https://www.icmm.com/en-gb/our-work/governance-and-transparency/mineral-resource-governance/contract-transparency#:~:text=Contract%20transparency%20refers%20to%20the,a%20contract%20and%20the%20government.>

15. <http://www.petroleumindustrybill.com/wp-content/uploads/2021/09/Official-Gazette-of-the-Petroleum-Industry-Act-2021.pdf>

agencies with the same information on companies' monetary and non-monetary obligations. It also helps anti-corruption agencies raise red flags early to prevent mismanagement of public revenue through the public procurement process. Transparency and accountability remain the basis of a sound corporate governance regime.

The NUPRC has been empowered by the Act to publish the text of any contract, license, etc, in the industry on its website. The HCDDT is under the regulation of the NUPRC. The principles of contract transparency can be applied in the running of the Trust. In implementing Trust projects and contracts, contract disclosure will enable host communities to know the companies implementing specific HCDDT contracts or projects and what to expect from the implemented projects.

With the principles of contract transparency introduced in the Trust system, key contract documents will be provided and accessible to major stakeholders, especially the host community citizens, to enable them to track and ensure that implemented projects meet the terms and conditions stated in all contract documents.

1. The main agreement/contract.
2. The particular conditions of the contract.
3. The general conditions of the contract.
4. The project specification.
5. The drawings—i.e., architectural or engineering designs.
6. The bills of quantities.
7. Any other documents.<sup>16</sup>

The Board of the HCDDTs must understand that open, informed, and participatory debates around Trust contracts are essential to increase the host communities' members' trust in it and are necessary to achieve any support for such projects. The rules for bidding on Trust projects must be simple and clear for the host community and companies to understand and must be followed through in selecting bid winners.

Conflict of interest principles must be adhered to as provided for in Regulation 28(2g) of the HCDDT Regulation 2022, which provides that “the Board of Trustees and settlor administering the capital fund and administrative fund shall refuse to participate in any business relationship or accept any gift that can reasonably be

16. <https://www.projectcubicle.com/contract-documents/>





expected to affect its independence or objectivity.”<sup>17</sup> In essence, the Board of Trustees is not expected to influence or be influenced to favor persons in granting Trust contracts or projects.

Beyond knowing the details of the contracts, there is a need to know the real persons who own the companies implementing contracts and projects of the Trust, where the principles of beneficial ownership come in. A beneficial owner is the natural person(s) who directly or indirectly owns or controls a corporate entity.<sup>18</sup> Beneficial ownership disclosures, used effectively, enable the Board of the HCDDT and Commission to expose and proactively stop corruption and favoritism in the contracting and procurement process of the Trust.

Information required in the disclosure of beneficial ownership includes identifying details about a company, about its beneficial owners (the individuals who directly or indirectly own or control 5% or more of the “ownership interests” of the reporting company or who directly or indirectly exercise “substantial control” over the reporting company) and, in some cases, about the company management or applicants.<sup>19</sup>

Section 119 to 123 of the

Corporate and Allied Matters Act (CAMA) 2020 applies to companies implementing HCDDTs projects. Any shareholder with 5% interest, control, or voting rights in a company must disclose its beneficial ownership to the Corporate Affairs Commission when it files its annual returns.<sup>20</sup> The board and management committee of the Trust should require the details of all the beneficial owners of the companies implementing Trust projects and activities.

Furthermore, opportunities exist to leverage the global attention to financial secrecy scandals like those revealed in the Pandora and Panama Papers to build local momentum to close down possibilities for politically exposed persons to hide money in financial havens. Data leaks like those in Pandora and Panama Papers alone would not end corruption. Those efforts must be matched with better rules and enforcement in countries where the money is generated, so compliance with all Open Ownership best practices for beneficial ownership transparency is vital more than ever. Masking the ultimate beneficial owners of extractive companies and all other corporate entities can make it harder to curb corruption, a cankerworm ravaging the fabric of Nigerian society.

17. <https://www.nuprc.gov.ng/wp-content/uploads/2022/07/Nigeria-Upstream-Petroleum-Host-Communities-Development-Regulations-2022.pdf>

18. [https://star.worldbank.org/sites/default/files/bo\\_country\\_guide\\_nigeria.pdf](https://star.worldbank.org/sites/default/files/bo_country_guide_nigeria.pdf)

19. <https://www.wolterskluwer.com/en/expert-insights/beneficial-ownership-information-reporting-what-information-is-required>

20. <https://www.placng.org/lawsofnigeria/laws/C20.pdf>

Grants and donations to the Trust should be closely watched so individuals, especially politically exposed persons, do not use the Trust's account to launder and hide funds. Therefore, due diligence must be applied when accepting funds from companies or individuals to the Trust.

### Potential Opportunities

The HCDDT has a unique opportunity to compensate host communities for losing decades of oil and gas extraction in the Niger Delta region. It has the opportunity to do things differently compared to other benefit mechanisms that have existed before it. This is the first time legislation was made in the name of host communities to cause them to partake in the wealth extracted from their lands and waters. They are in the driver's seat to decide the pace and type of development they want, as the law provides. It is important for host communities to take ownership of the Trust and the entire process and prevent the role of benefit captors as experienced in previous benefit transfer mechanisms. The Boards of the HCDDT must learn from the failure of other benefit

mechanisms before it.

Another potential opportunity for the Trust is the power to raise funds aside from the 3% OPEX of the companies into the Trust Account. Funds through grants and donations can complement in increasing the revenue base of the Trust, and that way, it can help with meeting the target in their community plans.

Furthermore, establishing the HCDDT provides the Board of the Trust an important opportunity to prepare host communities for 'life after oil and gas exploration.' First, the 20% investment saving fund from the overall 3% OPEX is an opportunity for the host communities to save for unborn generations. After oil and gas extraction, the future generation will have systems put in place for their advancement. Second, the 75% capital budget of the Trust should address the human capital development of host community members. Skillsets useful for now and the future should be an investment priority for the board. Third, most host communities depend on firewood to meet their energy and cooking needs. Investment in renewable energy will allow micro and small businesses to thrive.



**Grants and donations to the Trust should be closely watched so individuals, especially politically exposed persons, do not use the Trust's account to launder and hide funds.**



## 07. Conclusion and Recommendations

### 7.1 Conclusion

The PIA 2021, for the first time, provides legislation for establishing the Host Community Development Trust, bringing about social, economic, and environmental developments to oil and gas host communities. All upstream oil and gas companies are empowered to establish this Trust within one year of the law's enactment. The HCDTs have replaced previous benefit transfer mechanisms like the GMOU/MOU and voluntary social expenditure payments and projects oil and gas companies implemented as their corporate social responsibilities.

The companies are to provide a statutory 3% of their annual operating expenditure of the preceding financial year to the Trust's Account annually. The Board of Trustees, the Management Committee, and the Advisory Committee have been assigned specific roles to manage the funds for the development of host communities through community development plans as agreed upon by all segments of host communities. The NUPRC has also been empowered by the Act to regulate the activities of the Trust, address conflict issues, and impose sanctions on erring companies and individuals in the Trust.



**The companies are to provide a statutory 3% of their annual operating expenditure of the preceding financial year to the Trust's Account annually.**



## 7.2 Recommendations

### 01. Determination of Board of Trustees Members:



Host communities should determine who becomes the Board of Trust members. It should never impose persons without the approval of host communities to represent them in the Trust to avoid hijacking the Trust at the expense and exclusion of host communities.

### 02. Clear Timelines and Milestones:



The timelines and milestones clearly provided by the Act should be respected and worked toward by every upstream oil and gas company. The Trust ought to be established within 12 months after the enactment of the PIA. Thirty days after the incorporation of the Trust, the companies are to pay into the Trust Account the first year's 3% OPEX of the previous financial year. The Management Committee should be appointed 30 days after the incorporation of the Trust. The Advisory Committee should be inaugurated 30 days after the management committee has been constituted. These timelines should be respected.

### 03. Establishment of Formula and Portal:



NUPRC should establish a formula for calculating 3% OPEX of the preceding financial year to serve as a general guide to all upstream oil and gas companies. NUPRC should establish a portal for publishing oil and gas annual reports so host community actors can access it. It should mandate all upstream companies to have in their annual report a line item that speaks to their operating expenditure, which will provide clarity to host community actors and enable them to calculate their 3% OPEX from the line item.

The boards of HCDTs should set up Trust portals, the same way subnational governments establish portals, to allow citizens to access, engage, and interrogate the fiscal documents of the Trust. This will enhance transparency, portray the board as proactively accountable, increase citizen participation, and build trust in the Board. The portal will warehouse key documents, activities, programs, and ongoing Trust projects, including the contractors, the beneficial owners' information, and all contract documents. The portal will serve as a communication tool beyond the traditional communication channel.

### 04. Due Diligence:



Due diligence should be applied by all the Boards and Management Committees of the Trust in selecting an Investment Fund Manager, as the fund managers will keep custody and invest 20% of the Trust money received as 3% OPEX annually. To prevent the diversion and disappearance of Trust money, the Fund Managers' history, financial standings, ratings, boards, and management need to be known and verified.

### 05. Security of Facilities:



The security of oil and gas facilities is still the responsibility of the State and the Federal Government. Hence, such responsibility should not be shifted to host communities under any guise. The Navy, Nigeria Civil Defense Security Corps, and even the police must live up to their responsibility of protecting the country's assets from vandals and oil thieves. However, the host community should provide intelligence where and when they are aware.

### 06. Gender and Social Inclusion:



Gender and social inclusion should be mandatory in the composition of the Board, Management Committee, and Advisory Committee, and all segments of the host community population should have projects and activities speaking to their needs and concerns in the development plans. NUPRC should look at every Community Development Plan through the lens of gender and social inclusion. Where Community Development Plans fail to meet the GESI standards, they should be returned for adjustments.

## 07. Beneficial Ownership and Contract Transparency:



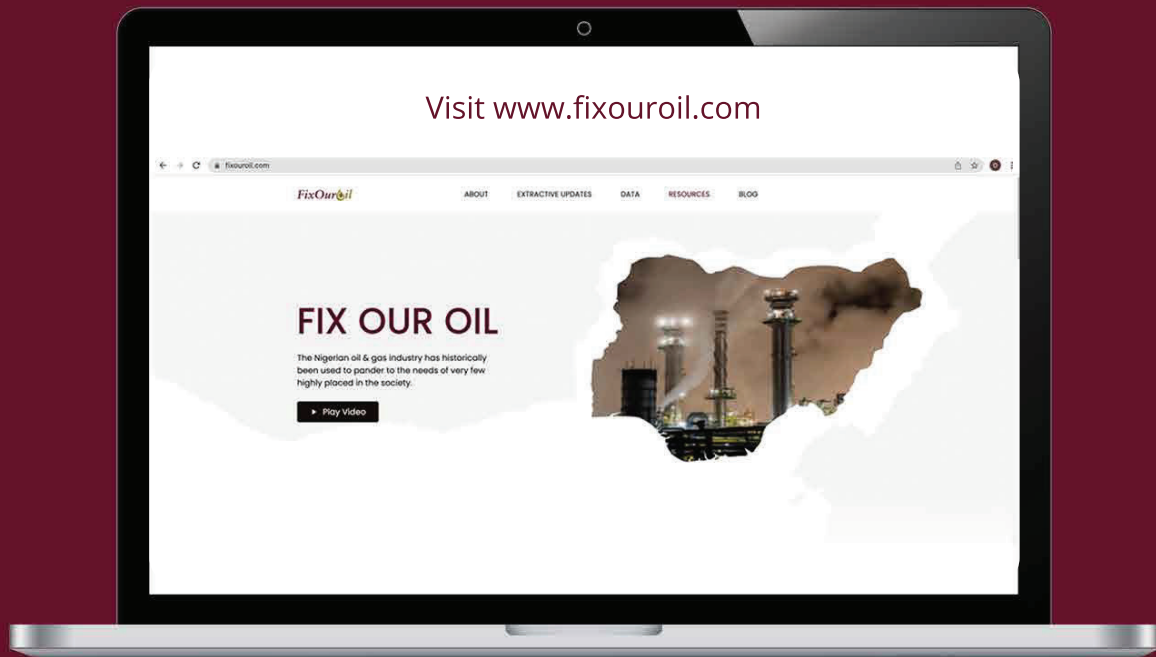
The principles of beneficial ownership and contract transparency should be enshrined in the contracting and procurement processes of the Trust. This will aid transparency, accountability, and actual value for money for projects and activities implemented.

## 08. Sanctions and Penalties:



Sanctions for the delays in incorporating the Trust should be imposed on erring upstream oil and gas companies by NUPRC as provided for in the Act.





**Get to know more about the extractive industry,** Budgit's advocacy in the Extractive Sector spotlights issues and recommendations on extractive transparency and fiscal governance in Nigeria, including Beneficial Ownership, NNPC Reforms, Industry Legislation and Revenue Accountability.

**#FixOurOil**

