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CORRUPTION RISKS

IN THE HOST COMMUNITIES DEVELOPMENT TRUST MODEL

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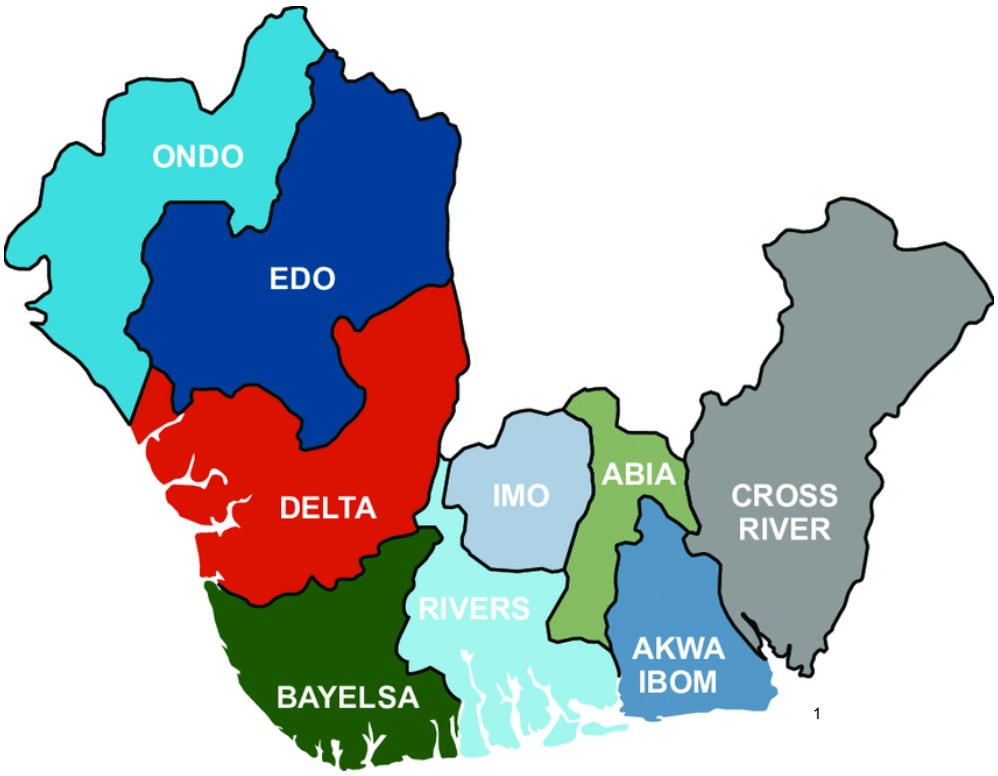
The Federal Government of Nigeria established nine (9) benefit transfer mechanisms from the late 1950s to the first decade of the 21st century, foremost of which were OMPADEC and the NDDC. These benefit transfer mechanisms were agencies of government and precursors of the host community development trust (HCDT) model established by the Petroleum Industry Act 2021 and the Nigerian Upstream Petroleum Host Community Development Trust Regulation 2022. The previous benefit transfer mechanisms established to benefit host communities failed to fulfil their established mandates due to corruption, political elite capture and gross mismanagement and misappropriation of funds. The HCDT Model under the PIA regime, was established not only to benefit oil and gas host communities and make them equity owners of the trust, but to prevent the recurrence of the factors that made previous transfer mechanisms to fail by putting in place anti-corruption legislations and sanction acts of corruption by the regulator and anti-corruption agencies.



Map of the Niger Delta where the HCDTs are established

This case study reports on corruption risks in HCDT Model by Policy Alert with support from BudgIT Foundation and Oxfam Nigeria, takes a closer look at anti-corruption provisions in the PIA and NUPRC HCDT Regulation vis-a-vis the actual practice of host community participation, transparency, accountability, reportage of fraud in the governance process of the HCDTs in Akwa Ibom State, Nigeria.

1. https://www.researchgate.net/figure/Map-of-the-Niger-Delta-region_fig5_320450251

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EXECUTIVE SUMMARY

The Host Community Development Trust was a significant innovation introduced the Petroleum Industry Act 2021, making it the first time where host community actors and stakeholders were given the opportunity to be at the driver's seat to drive the socio-economic and environmental development of their communities, with the 3% operating expenditures paid by the settlors to the respective HCDT accounts. However, just at the early stage implementing the HCDT model, some corruption red flags were observed and there was the need to validate the concerns in the field.

Four HCDTs in Akwa Ibom State -namely Ibeno HCDT of MPNU/NNPC JV, EMOIMMEE HCDT of MPNU/NNPC JV, Mbo/Esit Eket HCDT of Universal Energy Resource Limited/Sinopec, and Ekid HCDT of Frontier Oil Limited/Savannah Petroleum Limited. -were selected for this study. Based on a qualitative research design that emphasized literature review, interviews, group discussions and project tracking from the HCDTs, the researcher captured diverse perspectives on the risk of corruption in the HCDT Model being implemented in Nigeria. Stakeholders engaged include Board Members, Management and Advisory Committee Members of the HCDTs, Traditional Rulers, Community Youths and women, HCDT project beneficiaries, and civil society actors

Key Findings from the Research

Ten (10) benefit transfers mechanisms were pre-cursors of the HCDT Models: NDDB, NDBDA, 1.5% Presidential Task Force, OMPADEC, 13% Derivation, NDDC, Presidential Amnesty Programme, MNDA, NCDMB, and the GMOU/MOU. Nine (9) of which were established by the Federal Government, and one (1) by the oil and gas companies (especially the IOCs). The nine benefit transfers established by the government were affected by under-funding, tribalism, mismanagement and misappropriation of funds, political capture and compensation, and the exclusion of the host communities in establishment. The GMOU/MOU was the shining example that brought some direct impact to host communities, even though some projects implemented were overexaggerated in their books and the role of benefit captors denied host communities of their benefits. HCDT Model largely model the GMOU model, but with some improvement, host communities to own and run the trust, consistent funding through oil and gas operation of 3% OPEC, buffers of accountability and prevention of corruption. However, the law did not provide for the participation of host communities in the governing process of the trust system. No provision for transparency to host communities, accountability targeted to the settlors and regulators, and no basis to report fraud because host communities are already made outcast and spectators of the trust, hence no grounds to report fraud.

Having examined the provisions of the law speaking to citizens participation, transparency, accountability and anti-corruption in the HCDT Model, we shall look at corruption risk as inherent in the current implementation of the HCDT and the gaps in the legal framework.

Host Communities Exclusion in the Governance Process of the HCDT

United Nations Convention Against Corruption Article 13(1) requires States parties to “take appropriate measures to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organisations and community-

based organisations, in the prevention of and the fight against corruption.[2] In the context of the HCDT Model, the legal frameworks only made room for host community participation in the constitution of the BOT, and appointment of non-executive members of the Management Committee and advisory committee of the HCDT as well as during the community needs assessment. Settlors' politics with political and traditional elites and other benefit captors in previous benefit transfers mechanism influenced the selection and appointment process into many trusts' leadership. The Community needs assessment in most communities was not participatorily done as provided for in the law as in many cases influential persons within the trust areas of operations nominated community needs for the communities within the trust clusters. In other cases, the settlor imposed a generic needs assessment on the communities.

Even with the minimal participation of many members of host communities at the initial stage of trust formation, the law clearly foreclosed and excluded host community participation in the actual implementation of the HCDP plans. There is no provision for a feedback mechanism or townhall meetings for continued engagement with the host community people or even an annual event for the BOT to give account of their stewardship to host community people. Though, in practice some of the trusts in Akwa Ibom State have held their AGMs, and that is the only opportunity most host community people tend to know what is happening in their trusts. Of commendable practice is the placing of notice for each activity in the community development plans and annual budget that is about to be implemented, for host community people awareness and engagement, but this is at the discretion of the trust leaders. The legal framework did not provide for regular interface between the trust leaders and the community. Stakeholders have argued that the administrative fund is too inadequate for that engagement and the settlor is in full control of the administrative fund, if the settlor doesn't approve for such interface and meetings with the host communities there is little or nothing the leadership of the trust can do. This again shows that the trust belongs to the settlors, while the host communities who should be equity owners are largely at the mercy of the settlor. This is a ground for the hijack of the trust and at the exclusion of the host communities, who were the reason for the establishment of the HCDT Model in the first instance.

Non-Disclosure of Information and Documents in the Governance Process of the HCDTs

On transparency in the HCDT Model to check the risk of corruption, only the NUPHCDT Implementation Template made a scanty mention of transparency to members of the host communities. The template provides that the Advisory Committee should be responsible for ensuring accountability and transparency to the full assembly of all host communities on all issues. But there is no provision of the law that mandates that the settlor and BOT to use a small percentage of their administrative fund for such engagement. Stakeholders are worried that the silence of the PIA 2021 and NUPHCDT Regulation 2022 on transparency and disclosure of information to members of the host communities and other stakeholders could be a deliberate attempt to run the HCDT Model at the exclusion of members of the host communities. They hold the opinion that when members of the host communities are not informed and have no information about their trust, they cannot take ownership of the trust, and by extension they can hardly hold their trust leaders to account. They cannot report fraud without adequate information. The lack of transparency in the trust system is

2. https://www.unodc.org/e4j/zh/anti-corruption/module-10/key-issues/government-obligations-to-ensure-citizen-participation-in-anti-corruption-efforts.html

the greatest risk and foundation for corruption to thrive.

All the trusts we have engaged, none have established a website or portal where they proactively upload their fiscal documents for the members of their trust to access. Key information and documents are not easily accessible for host communities actors. However, stakeholders agreed that with the use of Freedom of Information Act 2011 to make a request, trust could furnish accountability actors information about the trust.

Trust Leaders only Accountable to Settlors and Regulators

Accountability measures have been put in place in the HCDT Model. The law has made it mandatory that there must be a detailed budget taken from the HCDP, stating places, year, amount and kinds of project that is to be implemented. The BOT have been mandated by the law to keep the books of accounts of the Trust. Settlors are to manage the administrative fund accounts and give account to BOT, while the regulator must receive quarterly returns of the HCDT from the settlors. This is a strong accountability system in the legal framework.

The risk of corruption is that the trust leadership only makes accountability to institutional stakeholders, while members of the host community for whom the trust was established are completely sidelined. With the provisions of the law analysed, the BOT, Management Committee and Advisory Committee do not owe the host communities any explanation of how the funds of the trust are utilized; instead, they are only responsible to their settlors and regulator. Host communities are treated as spectators, mere beneficiaries, outsiders and outcasts, not owners of the Trust. This is another risk of corruption with the HCDT Model as there are no bases to hold the trust leaders accountable.

No Bases for Host Communities to Check Compliance and Report Fraud

There are anti-corruption measures instituted in the legal framework of the HCDT to prevent the risk of corruption. First, only persons of high integrity and professional standings are to be appointed and recruited in the BOT and Executive Members of the Management Committee respectively. There are clear provisions for a competitive, transparent and fair contracting process in the law and practice and implementation must be based on the HCDP and annual budgets of the HCDT. There are limits to the number of accounts the trust can operate: a collection account (naira and dollar), the administrative fund account, capital fund accounts and reserve fund account, they are to be distinct and operated according to the provisions for the law; all accounts must be domiciled with and operated from a commercial bank that meets BBB rating of the Security and Exchange Commission. There are withdrawal provisions to institute the culture of sound financial practice, as a check the settlor's representative must be a signatory to the accounts of the trust to prevent arbitrary withdrawals. Lastly, the regulator is empowered by the law to prevent, investigate and prosecute fraud, as well as set up mechanisms where members of the Host communities can report fraud.

The bases to observe compliance of these anti-corruption provisions of the law and report fraud by members of the host communities have been taken away from the host communities, since there are no feedback mechanisms, no disclosure for information. Technically, host communities are disempowered to report fraud, because they have no

inkling of key decisions the leadership of their trust make; there are no provisions of the law that allows members of the host community to regularly interface engage with their BOT, there are no provisions of the law that mandates the trust to proactively disclose documents and information that could stimulate engagement. These are the bases to observe compliance and report fraud. The trust is designed to operate in secret, and this is a big risk for corruption.

No sanction for regulatory failure

Even though the law has empowered the regulator to enforce compliance on settlors and the BOT of the HCDTs, the law did not provide sanctions when the regulator failed to play its regulatory function, even in the establishment of the trust and the implementation of HCDP. For instance, the law mandates the regulator to assign littoral host communities to deep offshore companies, the regulator is to rely on the information from the National Boundary Commission, this is three and half years after the PIA was enacted, no littoral community have been assigned to deep offshore settlors, due to the failure of the regulator. The regulator has the powers to impose fines to settlors who failed to establish the trust within 12 months of the PIA enactment, but the regulator has failed to assign littoral host communities to settlors 42 months after. Who will sanction the regulator for this negligence. This is a corruption risk and a pointer that since the regulator have failed to implement provisions of its own regulation and failed to imposed sanctions on erring settlors and BOT of HCDTs it may become business as usual and will give greenlight for certain actors to act with impunity and disregard of the law.

CONCLUSION

Most host communities members are spectators of the ongoing implementation of the HCDT Model. The settlor has enormous powers on the trust. Chances are that the trust have been captured by political elites and settlors' benefit captors, with the connivance of the regulators. Ibeno HCDT is an exception to this rule, because it engaged the people, rejected the generic CDP, and thoroughly engaged the settlor as the Trust leaders pushed for community interest, with quality project implementation. Other trust, we noticed that there are some pockets of projects implementation at the onset, but with the lack of host community participation, transparent disclosure of activities and trust documents, and no accountability to the host communities, the corruption of previous benefit transfer mechanisms may happen to the HCDT Model.

RECOMMENDATIONS

In view of the observed gaps and weaknesses noticed in the PIA 2021 and NUPRC HCDT Regulation 2022 in checking the risk of corruption and strengthen the implementation of the HCDTs, we are proposing the following recommendations for quick implementation.

1. BOTs of HCDTs should be mandated to hold annual town hall meeting with their host communities to render account of their activities for the year either through inclusion in the NUPHCDT Implementation template Guidelines or amend the NUPHCDT Regulation 2022. This is necessary since there is no provision of the law

mandating the BOT to render accounts to members of their host communities.

2. NUPRC should mandate all HCDTs to establish a web portal where members of their host communities can access information about their trust, engage the trust authorities and download all necessary documents that will enable them to tract the implementation of the HCDP.

3. NUPRC through its HOSTCOMPLY should upload all HCDPs, Budgets, Annual Reports, Quarterly Returns, Audited Financial Statements of all incorporated HCDTs implementing trust projects and activities for access and downloads by host communities and other accountability stakeholders. This will aid transparency, accountability and active engagements with trust leadership and the regulator.

4. Settlors that have incorporated HCDTs should create a desk or department that will receive complains and feedbacks from members of their host communities, since the law has provided that when there are issues between and among host communities and/or between the HCDTs leadership, dispute notice should be forwarded to the Board of Directors and the BOT of the Trust.

5. That the law has empowered the regulator's representative to sign the check for every withdrawal of funds in the capital fund account. But this anti-corruption check has become a yardstick for red-tapes, unnecessary checks and delays and even denial for approval of projects that is in the approved budget and community development plans. This is frustrating and delaying the implementation of trust projects and activities, and making the leadership of the trust completely helpless. We recommend that the regulator should include a regulation to set a time limit for the regulator's representative to append their signature on the check for withdrawal of funds to implement fund projects and activities. Or better still, the law should be amended to take such powers from the settlor's representatives and allow the trust to operate independently of the settlor, but accountable to the settlors. Accountability to the settlor is not necessary since the settlor's representative is the most powerful person in the trust, and has the power of the purse and can single handedly decide that the trust cannot proceed with the implementation of projects and activities in the approved annual budgets and community development plans.

6. The PIA and NUPHCDT Regulation must be amended to set deadlines for regulators to implement and enforce provisions of the law assigned to them and to enforce compliance within a time limit for failure of settlors and BOT of HCDTs to adhere to the provisions of the law.

7. The National Assembly Committee on Host Communities must step up their oversight duties to ensure that the regulator follow and implement all provisions of the laws to strengths the HCDTs model and prevent the risk of corruption.

WHY CORRUPTION RISK ANALYSIS IN THE HOST COMMUNITIES DEVELOPMENT TRUST MODEL?

The mixed reaction that greets the assent on the Petroleum Industry Act (PIA) 2021, especially with the inclusion of a special chapter for host community development, for the first time since the exploration and extraction of petroleum resources in Nigeria, was to be expected following the engaging debates in the legislative process in 2020. For the protagonists, host community development provisions in the PIA will douse host community agitations as it will mark the beginning of peaceful relations between oil and gas companies and government on the one hand and oil and gas host communities on the other hand. For the skeptics, the host community development provisions still remain suspect as it fails to include most host communities demands during the legislative process in the final draft of the Act, grossly disempowering them in favor of the oil and gas companies and likely to pitch host communities against themselves. The Act is doomed to fail. For the 'possibilists', nothing is perfect, PIA is still a work in progress, it should be accepted, tested, and the observed gaps could demand for amendments. In any case, no piece of legislation is perfect. So, the PIA is another school of learning for practitioners and concerned stakeholders.

As an organization with grassroots presence in the Niger Delta, it was never an easy task convincing many host communities to accept the PIA in our engagements after the Act was granted assent, as they were already comfortable with the Global Memorandum of Understanding (GMOU) -an agreement for compensation between the companies and the host communities -regime when they compare it with previous benefit transfer mechanisms established by government. This is one of the main reasons for the reservation and cold feet by host communities in accepting the host community development trust (HCDT) of the PIA. Engaging the process with several host communities, civil society organisations, regulator and settlors several emerging issues have risen which the law did not envisage, in spite of the innovations and corruption buffers introduced for the HCDT Model to succeed. Settlors, erstwhile benefit captors and politicians have found intelligent means to understand and apply the HCDT provisions of the PIA. For instance, bona fide host communities are exempted in the composition of trust clusters, regulator and agencies of government fail to comply with its own laws; timelines are undermined by settlors; trust are established at the back of host community people with representatives coming from their communities; host community development plans lacks host community input and in most cases imposed on them by the company's consultants; many deep offshore companies yet to establish their trust for littoral host communities, fund matrix short changes some host communities, 3% OPEX is what the companies pay not what the law prescribes; several oil assets are merged to establish just a trust, sanctions are never imposed and the list goes on and on.

We fear that the corruption that undermined previous benefit transfer mechanism could happen to the HCDT Model; therefore, we found it necessarily timeous to do a political economy analysis of previous benefit transfer mechanisms, draw some lessons; analyse the HCDT provisions of the PIA from a participation, transparency, accountability and anti-corruption perspectives; then review the actual and ongoing implementation process of the HCDT Model from a participation, transparency, accountability and anti-corruption perspectives. Draw key insights and conclusion and proffer workable solutions that strengthen the trust systems with the aim of preventing the risk of corruption in the HCDT Model and enhance the compliance of the law from the citizens and regulatory perspectives.

CHAPTER 1

THE POLITICAL ECONOMY OF OIL AND GAS HOST COMMUNITY BENEFICIATION EFFORTS IN NIGERIA

INTRODUCTION

The Niger Delta is the heart of the political economy of oil, dominated by the "oil complex": an institutional configuration of firms, state apparatuses and oil communities (Watts, 2004). There are intersecting elite coalitions with common interests, comprising top-level state executives, members of their political networks, politically connected military and security officials, government officials, traditional rulers and top-level private sector executives" (Obi 2014).[3]

These coalitions over the years have undermined the rights and benefits of oil and gas host communities while receiving lesser share of resource revenue with the accompanying devastating effects of natural resource extraction impacting on their natural ecosystem, economic livelihood, social fabrics and their physical and mental health. These are the objective reasons why the Nigerian state established several benefit transfer mechanisms to ameliorate the conditions of host communities. The political economy of oil and gas community beneficiation efforts in Nigeria seeks to examine the role oil and gas host communities play in the socio-economic sustenance of Nigeria, and the benefit transfer mechanisms put in place by the state for the benefit of oil and gas host communities so as to obtain the social license to operate, maintain the peace of the area of operations, security for oil and gas assets and installations for the continuous exploitation of natural resources and for the steady flow of resource revenue to the state.

CONTEXT

The Nigerian State is an intrinsic part of the petroleum industry as the legal owner of the petroleum Section 44(3) the 1999 Constitution of the Federal Republic of Nigeria (FRN), Section 1 (1) of the Petroleum Industry Act (PIA) 2021 and Section 2 (1) of the Exclusive Economic Zone Act 2004 vest ownership and control of oil and gas in the Federal Government of Nigeria. Section 1(1) of the PIA 2021 speaks for the complete ownership of the petroleum industry in Nigeria, amplifying the extant provisions of the 1999 Constitution of the Federal Republic of Nigeria (FRN) and the Exclusive Economic Zone (EEZ) Act of 2004. It states that: "The property and ownership of petroleum within Nigeria and territorial waters, continental shelf and exclusive economic zones is vested in the Government of the Federation."[4] This provision of the law clearly knocks off any claim of ownership of petroleum resources by subnational entities and oil and gas host communities in Nigeria.

All oil and gas upstream assets belonging to the state were held and managed by the Nigerian National Petroleum Company Limited (NNPCL) through the National Petroleum Investment and Management Services (NNPC Upstream Investment and Management Services) and from which a few assets are assigned to Nigerian Petroleum Company (NPDC) Limited (NNPC E&P Limited (NEPL) Limited operator for capacity.[5]

3. https://www.cairn.info/revue-tiers-monde-2015-4-page-25.htm
4. http://www.petroleumindustrybill.com/wp-content/uploads/2021/09/Official-Gazette-of-the-Petroleum-Industry-Act-2021.pdf
5. NEITI Oil and Gas Audit Report 2021

The oil and gas producing region of Nigeria -the Niger Delta region consist of nine subnational states with "185 local government areas"[6]. Of these 185 local government areas, the region is home to over 30 million people divided into over 40 ethnic groups spread over nine states. There are about 1,500 "host communities" with oil production facilities on their land (Akpan, 2008).[7]

These communities are both onshore and along the shores of shallow waters assets where upstream oil and gas companies operates from, and this includes island communities. For the deep offshore assets, the Petroleum Industry Act 2021 mandates deep offshore companies to establish a host community development trust for littoral host communities that their operations impact.

These host communities are sitting on an estimated reserve of 38billion barrels of crude oil and 160 trillion cubic meters of gas reserves. Between 1999 to 2020 17.5 billion barrels of crude were extracted from the waters and lands of these host communities and US741.48 billion was generated as oil and gas revenue within the period.[8] In 2021 alone, 54 companies produced crude oil resulting in a total metered production of 634 million barrels (fiscalised production 566.13 million barrels), generating total revenue earnings to government of US$741.48 billion.[9]

While these communities are rich in natural resources and generating huge revenue for the Nigerian State, they face environmental degradation -oil and gas companies pollute the air of their environment through gas flaring, and pollute their soil and water through oil spills, which adversely impact on their health and livelihoods. Many host communities, especially in remote or underdeveloped areas, lack access to basic services such as healthcare education, clean water and proper sanitation.

Economically, the impact of resource curse on host communities are real. With their traditional economic system -fishing and farming -destroyed by oil and gas operations most host community people hope in vain to work in the oil and gas companies. Most host community citizens are hardly employed in the industry because the skill sets are not available. However, economic downturns in the industry usually lead to job losses and reduced income for the very few who find their way working with the companies, impacting the entire community.

Socially, the influx of external workers and changing demographics due to industrial activities disrupts the social fabric of host communities. Traditional culture and ways of life are threatened, sometimes leading to cultural erosion and loss of identity.[10]

Land acquisition of oil and gas projects many a time led to the displacement of local communities, depriving them of their ancestral lands and livelihoods, sometimes without adequate consultation, compensation and respects for land rights.

Since exploration and production licences are procured from the Federal Government, there is little or no consent extracted from oil and gas host communities. The rights of oil and gas host communities as enshrined in the principle of Free, Prior and Informed Consent (FPIC) have been violated in the past decades of oil and gas extraction in Nigeria by oil and gas companies and the Nigerian State. Due to these "structural deformities of the Nigerian state, which have constantly negated the aspirations of the oil-producing minority states in terms of sustainable development of the region (Ojakarotu, 2009, p. 6). The perception of

6. https://budgit.org/optimizing-extractive-resource-benefits-for-communities-in-nigeria-and-ghana/#:~:text=Nine%20states%20with%20185%20local,from%20the%20wealth%20generated%20there.
7. https://www.cairn.info/revue-tiers-monde-2015-4-page-25.htm
8. https://neiti.gov.ng/
9. https://neiti.gov.ng/cms/wp-content/uploads/2023/09/NEITI-OGA-2021-Report.pdf
10. https://www.linkedin.com/pulse/challenges-facing-host-communities-development?utm_source=share&utm_medium=member_android&utm_campaign=share_via

the people within the host communities of the Niger Delta is that, rather than achieve development, oil production activities in the region has bedevilled the communities with environmental degradation, mass poverty, oppression, coupled with cases of human rights violations by government security agents in the region."[11]

To compensate oil and gas host communities for the negative impacts of oil and gas operations in the Niger Delta and to give them a sense of (natural) ownership, the Federal Government established nine benefit transfer mechanisms while oil and gas companies established one, all preceding the Host Community Development Trust (HCDT) of the PIA:

1. Niger Delta Development Board [NDDB]
2. Niger Delta Basin Development Authority (NDBDA)
3. 1.5% Presidential Task Force
4. Oil Mineral Producing Area Development Commission (OMPADEC)
5. Niger Delta Development Commission (NDDC)
6. 13% Derivation Fund
7. Ministry of Niger Delta Affairs (MNDA)
8. Nigerian Content Development Management Board (NCDMB) Fund
9. Presidential Amnesty Programme
10. Oil and Gas Corporate Social Responsibility Fund for Host Communities

Precursors to the Host Community Development Trust

1. Niger Delta Development Board [NDDB]

The glaring needs to develop the Niger Delta region was earlier recognized by the colonial government in Nigeria in 1957, and this translates to over six decades ago. The colonial office in London had then set up the Sir Henry Willinks intervention commission, to study the concerns and fears expressed by the communities of the region, referred to as minorities. The Commission Report [1958] detailed the peculiar problems of this region, associated with the natural geomorphological difficulties of the terrain, which necessitated a government decision to classify the region as a special area. The initial effort to accomplish this developmental goal culminated in the setting up of a federal board known as the Niger Delta Development Board [NDDB], which was eventually inserted into the Nigerian Constitution [1963].[12] The NDDB could not solve the problems of the Niger Delta enunciated in the Willink's Report.[13] The Board did not create any impact until the 30-month fratricidal civil war.[14]

2. Niger Delta Basin Development Authority (NDBDA)

The Niger Delta Basin Development Authority came into effect following the promulgation of Decree No 37 of 3 August 1976. However, modification was made regarding the boundaries of the Authority through the readjusted Decree No 35 of 1987 which increased the boundaries of the Authority to include eighteen (18) Local Areas in Delta State. In 1988, the Federal Government of Nigeria, through Decree No 25 of 1988, partially commercialized the authority and narrowed the activities of the authority to include the development of the Water Resources potentials of its catchment areas.[15]

Like its predecessor agency, the NDBDA was under-funded in such a manner as not create any meaningful impact. Besides, the Federal Government created ten (10) other Basin Authorities and funded the others to the detriment the original one. The NDBDA was also emasculated by the Nigerian experience.[16]

11. https://pubs.sciepub.com/education/3/4/1/#:~:text=The%20perception%20of%20the%20people,rights%20violations%20by%20government%20security
12. https://www.thisdaylive.com/index.php/2020/08/24/tragedy-of-niger-delta-region
13. https://ndbda.blogspot.com/p/about-ndbda.html
14. https://www.nigerdeltabudget.org/the-niger-delta/
15. https://en.wikipedia.org/wiki/Niger_Delta_River_Basin_Development_Authority
16. https://www.nigerdeltabudget.org/the-niger-delta/

3. 1.5% Presidential Task Force

Following growing agitation for a renewed focus on the development of the region, the 1979/83 Administration set up a Presidential Task Force (popularly known as the 1.5% Committee) in 1980 and 1.5% of the Federation Account was allocated to the Committee to tackle the developmental problems of the region. Although the Committee existed until early years of the 1985/93 regime, it was largely ineffective. There were only a few projects to show for the funding received from the Federation Account and very little visible beneficial impacts on the welfare of the people of the oil producing communities.[17]

Between 1988 and 1992, the Committee executed a total of 112 road/drainage projects, 214 electricity and 209 water projects. The use of public office for the pursuit of sectional interests is seen as the most likely reason for the inequity in the allocation of projects, given the coincidence of the state/ group that benefited more with the state of origin/ethnic affiliation of the head of the Committee. The large share of projects (59.7 percent) given to Delta State is thus explained on the basis that the chairman of the committee that disbursed the 1.5 percent fund, Brigadier Paul Omu (retired) hails from the upland part of the State. Evidence also points to the fact that even within the state's, some sections were neglected or marginalized. Before its creation in 1996, Bayelsa State was part of Rivers State, and produced about 30 percent of the 54 percent of oil produced by the old state. But Bayelsa State received a meager share of projects allocated to the old Rivers State. Bayelsa State received one out of 16 road/drainages projects, two out of 54 electricity projects and 20 out of 93 water projects.[18]

4. Oil Mineral Producing Areas Development Commission (OMPADEC)

The Oil Mineral Producing Areas Development Commission, OMPADEC was established by degree number 23 of 1992 with the aim of translating role of the Federal Government in the administration of the 1.5 percentage (later 3 percent) revenue to the Oil Producing Communities as envisioned by the Revenue Act of1981. OMPADEC was established partly in recognition or appreciation of the strategic importance of the Oil Producing Communities and as an institution to address and redress the devastating effect of oil produced in the oil-bearing communities, such as, environmental degradation and drastic changes in the traditional socio-economic life of the people, oil spillage, irreversible ecological damage to the flora and fauna etc. Consequently, OMPADEC is to provide the 'gap; or 'missing' attempts and economic activities in the oil-bearing communities. In order to achieve its objective OMPADEC set out by promoting and generating the growth of physical and human resources among others as part of the overall developmental needs of the oil producing communities, The oil Producing Communities also known as the OMPADEC zone are found in the following oil-bearing states: Abia, Akwa Ibom, Cross River, Delta, Edo, Imo, Ondo, Rivers and Bayelsa. They are located in the rain forest/mangrove belt of Nigeria, which is synonymous with the Niger-Delta sub-region.[19]

In the first three years of its establishment, OMPADEC commenced projects worth $500 million but the bulk of the money was said to have been paid to contractors whose addresses could not be traced or verified.[20]

21. https://nesgroup.org/download_policy_drafts/Niger%20Delta%20Regional%20Development%20Master%20Plan_Chapter%202_1661780626.pdf
22. https://www.researchgate.net/publication/340983281_Ijaws_and_the_Militianisation_of_Conflict_in_the_Niger_Delta_Exploring_the_role_of_Upland_Bias_in_Resource_Allocation/download?_tp=eyJjb250ZXh0Ijp7ImZpcnN0UGFnZSI6Il9kaXJlY3QiLCJwYWdlIjoiX2RpcmVjdCJ9fQ
23. https://www.researchgate.net/publication/274079502_OMPADEC_AND_EDUCATIONAL_DEVELOPMENT_IN_NIGERIA_1992_-_1997
24. https://www.thecable.ng/nddc-time-for-a-new-development-agency-for-the-niger-delta

For many years this (1.5% of oil revenue) money was regarded as a money sucking tit for all ministers whenever they needed money, ministries such as Works, Transport, Housing, Communications, Science and Technology, etc. The money had been accruing in the CBN and no one was responsible for its disbursement. When the first DG was appointed, he had to rush to the CBN to put a stop to the raids on this account and he met a stone wall which he overcame by writing a letter to the President to secure the balance with the CBN. OMPADEC started small development projects in the oil producing areas. The job was daunting because up till then there had been little or no development. The main achievement of OMPADEC was that for the first time, the people of the oil producing areas saw that the government was doing something for them even if that something was a shit house and a cement wharf for people to disembark from canoes and boats without wading or thrashing, treading water. Clean water from numerous boreholes, limited electricity through generators, many towns had their one main road pave.

But there was a, toxic allegedly, fraudulent atmosphere with OMPADEC, e.g. the Director-General was believed to own or to chatter a helicopter to land at the heliport the DG built in his property in Delta; he established a concrete cement factory for manufacturing electricity poles and paving stones, he ordered large quantities of transformers stored mainly in Lagos, but through an elaborate round-tripping scheme -use the same documents to pay again for transformers and other goods that already belonged to OMPADEC.[21] OMPADEC was killed by the conspiracy of official highhandedness, under funding and lack of accountability.[22]

5. The Niger Delta Development Commission (NDDC)

NDDC was established in 2000 with the mandate of facilitating the rapid even and sustainable development of the Niger Delta into a region that is economically prosperous, socially stable, ecologically regenerative and politically peaceful. Pursuant to Section 14 (b) of the NDDC Act, the Commission collect 3% of the total annual budget of any oil producing company operating onshore and offshore in the Niger Delta area, including gas processing companies.[23]

Section 7(1a and b) of the NDDC Act of 2000 states that: "the Commission shall formulate policies and guidelines for the development of the Niger Delta and conceive, plan and implement projects capable of fostering sustainable development of the area in line with set rules and regulations." In doing these things, it would have access to contributions of each of its member states, and it would submit to the direction, control, or supervision of the President in performing its functions." Section 14 of the NDDC Act provides that all stakeholders in the Niger Delta States and oil companies should help finance the NDDC. The Act mandates the Federal Government to contribute 15% of the total statutory allocations due to the Niger Delta States from the Federation Account. 3% of total annual budget of any budget of any oil producing company operating, onshore and off shore, in the Niger Delta, including gas processing companies; 50% of monies due to member states of the Commission from the ecological fund.[24]

21. https://guardian.ng/opinion/niger-delta-development-commission-a-vision-degraded/
22. https://www.nigerdeltabudget.org/the-niger-delta/
23. http://www.nddc.gov.ng/about%20us.html,
24. https://www.chr.up.ac.za/images/researchunits/bhr/files/extractive_industries_database/nigeria/lawa/Niger-Delta%20Development%20Commission.pdf

These sources of funds appear to give NDDC a potentially strong capital base. However, as we have seen in the past twenty years, without effective and efficient regulatory mechanisms, the re-emergence of corruption and executive malfeasance have posed a great danger to the effectiveness of the Commission.[25]

An analysis on the NDDC revealed that the Commission operates over 362 accounts, oil companies owe the commission $4Billion, it received over N6 trillion in 19 years over 13,000 projects that were analysed.[26] Stories of 'white elephants' projects abound in the Niger Delta, including schools without desks, hospitals without medicine and road projects uncompleted or completely abandoned. There are cases where contractors did not even mobilize to site even after receiving initial payments. There are also cases where projects that were claimed to have been completed reportedly began to fail even before they were commissioned and handed over to communities and stakeholders. The fundamental challenges facing the NDDC which include political influences, corruption and underlying structural problems which make the smooth running of the Commission nearly impossible and makes project implementation difficult will be a thing of the past if there is a dedicated Presidential Action Plan for the development of the Niger Delta.[27]

6. 13% Derivation Fund

Section 162(2) of the 1999 Constitution of the FRN (as amended) states that: "The President, upon the receipts of advice from the Revenue Mobilisation Allocation and Fiscal Commission, shall table before the National Assembly proposals for revenue allocation from the Federation Account, and in determining the formular, the National Assembly shall take into account, the allocation principles especially those of population, equality of states, internal revenue generation, land mass, terrain as well as population density. Provided that the principle of derivation shall be constantly reflected in any approved formula as being not less than thirteen percent of the revenue accruing to the Federation Account directly from any natural resources".

The Nigerian Extractive Industry Transparency Initiative (NEITI) also defines the fund as a financial incentive enshrined in the Constitution for oil producing communities, based on their production input, to serve as benefits and encourage the community to create an enabling environment for more production of crude oil and gas.[28]

Since Nigeria's Fourth Republic began in 1999, the eight oil and gas producing states have received over N9 trillion under the derivation principles sanctioned by the nation's constitution. The derivation fund is paid to the states monthly to assist their oil producing communities in tackling environmental pollution and degradation, provision of basic amenities like healthcare, potable water and paved roads, and economic empowerment of the community people.[29] Between 2000-2021 the 8 oil producing states -Akwa Ibom, Rivers, Delta, Cross River (Until 2005), Edo, Bayelsa, Abia, Ondo, and Imo have received over N9.52 trillion from the 13% derivation funds.

- Akwa Ibom State 2000-2021 =N2.94trillion
- Rivers State 2000-2021 =N2.88trillion
- Delta State 2000-2021 =N2.70trillion
- Bayelsa State 2000-2021 =N2.16trillion

25. https://www.thecable.ng/nddc-time-for-a-new-development-agency-for-the-niger-delta
26. https://www.linkedin.com/posts/taiwoyedele_the-nddc-was-established-in-the-year-2000-activity-6839493585562284032-cLJE/
27. https://www.thecable.ng/nddc-time-for-a-new-development-agency-for-the-niger-delta
28. https://neiti.gov.ng/cms/wp-content/uploads/2021/08/FASD-2012-2016-States-Consolidated-Report.pdf
29. https://www.premiumtimesng.com/news/headlines/456847-analysis-how-state-governments-cheat-oil-producing-communities-in-use-of-13-derivation-fund.html?tztc=1

- Ondo State 2018-2021 =N53.93bn
- Edo State 2018-2021 =N74.43bn
- Imo State 2018-2021=N34.02bn
- Abia State 2018-2021 =N24.71bn

Five of these States have created oil-producing area development commission to execute development projects in their oil producing and impacted areas, in exception of Akwa Ibom, Bayelsa and Rivers States.

- Abia State Oil Producing Areas Development Commission (ASOPADEC)
- Delta State Oil Producing Area Development Commission (DESOPADEC)
- Edo State Oil and Gas Producing Areas Development Commission (EDSOGPADEC)
- Imo State Oil Producing Areas Development Commission, ISOPADEC
- Ondo State Oil Producing Areas Development Commission, OSOPADEC

But many of the communities have not felt the impact of the Commissions for a number of reasons. One of the reasons is that the state governments commit only small parts of the fund to the intended interventions in the oil producing communities. As a result of the underfunding of the development commissions, mismanagement of funds and fraud, many oil-producing communities continue to suffer from the negative impact of oil exploration and production. Most of the oil-producing areas development commissions are not transparent with their finances and appointments into them are treated as political compensation.

A challenge that has been observed with the utilization and implementation of the fund is that: "The derivation is given to the states and not the oil-producing communities. Basically, the states are spending the money meant for the oil-producing communities. This lacuna is caused by the 1999 Constitution of the FRN, as it did not state how the fund should be deployed and what it should be used for – meaning it gives the states government power over the 13 per cent derivation fund, making the host community underdeveloped despite the monthly allocations".[30]

7. Presidential Amnesty Programme (PAP)

The Presidential Amnesty Programme was initiated in June 2009, the Presidential Amnesty Programme (PAP). Initially it was conceived as a short-term mechanism for de-escalating and defusing the militant insurgency that destabilised the oil-rich Niger Delta over the preceding decade, and was also designed to achieve broader socioeconomic and stabilisation objectives. Its approach is to reintegrate agitators via trainings, further education, job placements, and business start-up support, and pay a monthly social support stipend until they graduate from the PAP.[31]

The initiative was aimed at transforming "ex-agitators into entrepreneurs and/or employable citizens who will become net contributors to the economy of the region and the country through effective collaboration with relevant public and private institutions and state governments in the region." [32]

30. https://www.premiumtimesng.com/news/headlines/456847-analysis-how-state-governments-cheat-oil-producing-communities-in-use-of-13-derivation-fund.html?tztc=1
31. https://www.stakeholderdemocracy.org/wp-content/uploads/2021/08/PAP.-Issue-brief.-2021.-DIGITAL-12.07.21-DT.pdf
32. https://www.osapnd.gov.ng/about/

Ex-agitators—the intended beneficiaries—receive a monthly stipend worth more than double the national minimum wage. But without effective training, post-training support, or employment opportunities, they have not been reintegrated into society or weaned off payments—and many are now dependent on the PAP. Senior ex-agitators are generally allocated the same stipend, but in many cases continue to receive a cut of the stipends paid to their subordinates, despite efforts to stop this. Furthermore, it is commonly alleged that thousands of non-agitators or non-existent 'ghost agitators' were fraudulently inserted so senior ex-agitators or political elites can receive their pay. Without robust record-keeping this is easy to institute, and is difficult to prove, but interviews confirmed a common perception that these practices are widespread.[33] The PAP has been bedeviled by the maladministration and allegations of corruption, thereby failing to a large extent, to fulfill some of its core mandates of manpower development of the Niger Delta, thus dousing agitations and unrest in the region.

Much as intervention agencies in the Niger Delta are headed by indigenes of the zone, many stakeholders contend that the agencies are actually run from Abuja by some powerful officials in the presidency. Such appointees are mere stooges, being remote-controlled from inside the top echelon of government, it is alleged.[34]

8. The Ministry of Niger Delta Affairs (MNDA)

The Ministry of Niger Delta Affairs (MNDA) was created on September 10, 2008 to promote and coordinate policies for the development, peace and security of the Niger Delta Region. The MNDA is to serve as the primary vehicle for the execution of Government's plans and programmes for rapid socio-economic development of the Region. It is also expected to formulate and execute plans, programmes and other initiatives as well as coordinate the activities of Agencies, Communities, Donors and other relevant Stakeholders involved in the development of the Niger Delta Region.[35]

The MNDA is grossly underfunded. For instance, "A total of 14.5 billion was the estimate including capital, recurrent, and overheads but what came to the ministry was just N4.2 billion out of the N11 billion that was approved. The 2023 budget performance is put at 37 percent.[36]

This explains why in recent times, the Minister(s) of MNDA have hijacked and pocketed the NDDC, especially Under Godswill Obot Akpabio and Obong Umana Okon Umana administration. Stakeholders lamented how painful and disgusting it is for a regional interventionist agency saddled with crucial responsibilities of intervening in critical infrastructural provision can be singlehandedly taken over by an appointee of government (Chief Godswill Akpabio) for close to two years running.[37] Chief Godswill Akpabio imposed a sole administrator, and controlled the NDDC through him until it was time to contest the 2023 General Elections. Umana Umana was dragged to Court from further acting as NDDC's MD or interfering with the NDDC's operations since he has no power under any law to do so.[38]

The Ministry has no website to help stakeholders track its activities. The current Minister says the Ministry "have a lot of abandoned projects. We have a lot of completed projects. Those that have been awarded and have not been paid are worth over N50 billion,"

33. https://www.stakeholderdemocracy.org/wp-content/uploads/2021/08/PAP.-Issue-brief.-2021.-DIGITAL-12.07.21-DT.pdf
34. https://guardian.ng/politics/niger-delta-amnesty-management-instability-failed-mandate-and-future-of-programme/#:~:text=Ndiomu-,The%20Presidential%20Amnesty%20Programme%20(PAP)%20has%20been%20bedeviled%20by%20maladministration,and%20unrest%20in%20the%20region.
35. https://www.mepbondostate.org/federal-ministry-of-niger-delta-and-affair/
36. https://leadership.ng/we-owe-contractors-n50bn-says-niger-delta-minister/
37. https://independent.ng/its-very-painful-for-akpabio-to-hijack-nddc-to-the-detriment-of-niger-deltans-monarch/
38. https://punchng.com/lawyer-sues-buhari-others-over-nddc-management/

9. Nigerian Content Development and Monitoring Board

The Nigerian Oil and Gas Industry Content Development Act 2010 (the "Local Content Act") governs Nigerian content matters in the Nigerian oil and gas industry (the "Industry"). The Local Content Act provides that Nigerian content must be mandatorily considered as a key element of project development in the industry. Essentially, Nigerian content should permeate all phases and aspects of project execution in the industry. The implementing authority saddled with the responsibility of ensuring the actualization of this objective is the Nigerian Content Development and Monitoring Board ("NDCMB"). In practical terms, this means that a foreign entity looking to provide services in Nigeria must plan to domesticate and domiciliate its operations and the services provided through trainings, technology transfer and building indigenous capacity and capabilities.[39]

Section 104 of the Nigerian Oil & Gas Industry Content Development (NOGICD) Act of 2010 provides that 1% of every contract in the upstream sector of the Nigerian oil and gas industry shall be deducted at source and paid into the Fund. The NCDF is NCDMB's only source of funding sequel to the exit of the Board from federal allocation in 2017/2018. The NCDF is applied towards funding the implementation of Nigerian content development in the Nigerian oil and gas industry, notably projects, programmes and activities directed at increasing Nigerian content in the oil and gas industry.[40]

There is a set of ground rules distilled from the Nigerian Oil and Gas Industry Content Development (NOGICD) Act, 2010, which specifies, among other things, benefits host communities could legitimately expect from oil and gas companies. There are Guidelines that have structured engagement of youths in host communities in productive endeavours including employment, training, services, supplies and the establishment of critical infrastructure and to stimulate development in host communities. "All unskilled job roles are for indigenes, while at least 50 per cent of semi-skilled job roles and 10 per cent of skilled job roles are also for them," it stated.[41]

The training of host communities' citizens to participate as work force in the oil and gas industry is the responsibility of this Agency. Technical capacity building and funding support to indigenous oil and gas companies is also another benefit host communities are entitled to from NCDMB so that they can participate in the subsidiary contracts from the industry. But most host communities are not even aware of the existence of the NCDMB, let alone to benefit from its programmes.

10. Oil and Gas CSR (MOU/GMOUs)

A MOU/GMoU is an agreement between oil and gas companies and a group (or cluster) of several communities. Memorandum of Understanding (MOU) or Global Memorandum of Understanding (GMOUs) are Corporate Social Responsibility (CSR) of oil and gas companies to their host communities. GMOUs/MOUs are signed between companies and host communities where they operate, projects embarked upon by companies to get their annual work plans signed-off by the (then) Directorate of Petroleum Resources (DPR). These projects are designed to foster a better partnership between companies and their host communities. This is a form of social capital.[42]

39. https://www.dentonsacaslaw.com/en/insights/articles/2022/april/20/implementation-of-the-nigerian-oil-and-gas-industry-content-development-act-2010
40. https://www.premiumtimesng.com/promoted/597865-court-affirms-ncdmbs-mandate-to-collect-1-ncdf-levy.html
41. https://punchng.com/group-lauds-ncdmb-over-empowerment-programmes/
42. NEITI Oil and Gas Audit Report 2017

The GMoU Model was first introduced by Chevron Nigeria Limited (CNL), Operator of the NNPC/CNL Joint Venture in 2005. Shell Petroleum Development Company (SPDC), in a Joint Venture partnership with the Nigerian National Petroleum Corporation (NNPC), quickly followed with a slightly different version of the Chevron GMoU, but based essentially on the same principles. Encouraged by the NNPC and the regulatory agency, the DPR, other oil and gas companies operating in the Niger Delta area soon adopted the GMoU model.[43]

The new model was based on three key findings:

(1) In order for social intervention programmes to result in sustainable community development in the Niger Delta and especially in communities hosting oil exploration activities, these social investments must be appropriately funded by government and the operating companies (as well as other interested donors), and the development process must be owned, managed and driven by the host communities themselves, with appropriate support from other stakeholders.

(2) In order to address the pervasive insecurity and perennial conflict between host communities and operating companies, and among host and non-host communities in the operational areas of the Niger Delta, a joint and participatory community and stakeholders' approach to peacebuilding and conflict mitigation/management had to be adopted.

(3) In order for the oil and gas business to continue to grow and yield sustainable returns on investments, the interests of stakeholders (including communities, governments at state and local levels, NGOs, and CBOs) cannot be ignored. All stakeholders must work together and be committed to both the sustainable development and growth of the oil and gas enterprise and the sustainable development and growth of host communities.[44]

Aggregated data obtained from NEITI Oil and Gas Audit Reports 2012-2021 revealed that upstream oil and gas companies implementing social expenditure projects paid US$692.87 Million and only less than 34 companies implemented the social projects out of a total of 206 upstream oil and gas assets in the country. Some stakeholders hold the view that there is apparent success with the GMOU model. The gains are obvious and measurable with few drawbacks. They are argued within the first decade of GMOU model:

(1) A vast improvement in the capacity of host communities to plan, execute and manage development projects has resulted in a great deal of community pride and ownership of the development process and the projects resulting from it. This in turn meant a more sustainable outcome.

(2) A substantial improvement in the relationship between host communities and CNL, the operating company, as well as a significant reduction in conflicts among communities and between communities and the operating company. And finally,

(3) A more secure operational area for company assets and business operations.[45]

However, we have also observed in our work with several host communities, most host community citizens are not aware of the GMOU/MOU their leaders and representatives have signed with the companies they host. Most of the projects reported in companies'

43. https://digitalmallblobstorage.blob.core.windows.net/wp-content/2022/09/Understanding-the-GMOU-model59-HG.pdf
44. https://digitalmallblobstorage.blob.core.windows.net/wp-content/2022/09/Understanding-the-GMOU-model59-HG.pdf
45. https://digitalmallblobstorage.blob.core.windows.net/wp-content/2022/09/Understanding-the-GMOU-model59-HG.pdf

books are not actually implemented or grossly exaggerated. On most occasion, companies do deals with leaders and influential persons from the host communities at the expense of the host communities, these persons enjoy the benefits that should go to their communities.

Nevertheless, the GMoU created a fourth layer of governance (separate from the federal, state, and local governments) in the administration and development infrastructure of the communities in the areas of the Niger delta where oil exploration was ongoing. The new model birthed a layer of governance that would be even closer to the people at the grassroots than the local (or municipal) government.[46]

Lessons Learnt from Benefit Transfer Mechanism Preceding the HCDT Model

I. Managers of government agencies saddled with the task of implementing development initiatives to oil and gas host communities are usually politicians and stooges of those in government.

II. All the benefit transfer agencies established by government experienced mismanagement of funds or underfunding. They hardly fulfill their established mandates.

III. Citizens of oil and gas host communities were excluded in the actual design and implementation of the initiatives and creation of the agencies.

IV. There was a general lack of transparency and accountability in the operation style of these agencies and initiatives.

V. There was no internal system to report corruption issues.

VI. There were too many uncompleted and abandoned projects.

VII. Heads of these agencies or initiatives were never prosecuted from the corruption issues their agencies were indicted of.

VIII. Tribalism and sectionalism were involved in the implementation of projects in host communities of the Niger Delta by appointees of these agencies or initiatives. Projects went to the communities, local government areas and states of the heads of the agencies more, compared to communities without representatives in the agencies, that is if they were fortunate to have a project.

IX. There were gaps in the legal framework that established the agencies or initiatives.

X. Subnational governments also interfered with and even hijack funds meant for oil and gas host communities, like the 13% derivation fund.

XI. Most oil and gas host communities were not aware of the existence of some of these agencies or initiatives.

XII. The MOU/GMOU Model was the most effective and efficient in terms of devolving powers to host community people and conducting needs assessment to meet the actual needs of the people. But it also brought the divide and rule system as it introduces middlemen -benefit captors – who cornered most of the benefits that should go to their host communities, and the companies enjoyed dealing with them than other recognized leaders of the communities.

46. https://digitalmallblobstorage.blob.core.windows.net/wp-content/2022/09/Understanding-the-GMOU-model59-HG.pdf

CHAPTER 2

PIA HOST COMMUNITY DEVELOPMENT TRUST MODEL

Due to the failures and lessons learnt from the previous benefit transfer mechanisms, the host community development trust (HCDT) model was established to address the gaps of the past and directly impact on the lives and livelihood of oil and gas host communities. Oil and gas companies were mandated to round up with their MOUs/GMOUs and other CSR initiatives and establish a trust for their host communities, while devolving the operations and administration of the HCDT to the host communities to prevent state and political capture inherent in past initiatives.

We shall share some insight into this new model as provided in the laws and what is currently obtainable in the early stage of HCDT implementation.

Definition of Oil and Gas Host Community

A oil and gas host community is defined as a community that is situated within the boundary of an area of operation to which a licence or lease relates and any area which hosts a licence or lessee's facilities used in upstream petroleum operations. They are also littoral communities situated in or appurtenant to shallow water and deep-water areas of operations. (Section 318 of the PIA 2021; NUPHCDT Regulations 5 and 6). This definition relates to the upstream oil and gas operations, where most of the trusts are established.

Host Community Development Trust

Oil and gas Host Community Development Trust (HCDT) is an incorporated trustee established by section 234 of the PIA 2021, registered with the Nigerian Corporate Affairs Commission (CAC) by mostly upstream oil and gas companies known by law as settlors, regulated by the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) and administered and managed by the Board of Trustees who are appointed from the respective host communities to implement social, economic and environmental projects and programmes for the benefit of oil and gas host communities.

Legal Framework Regulating the HCDT

I. **Petroleum Industry Act 2021:**[47] is an act of the National Assembly that provides legal governance, regulatory and fiscal framework for the Nigerian Petroleum Industry, and the development of oil and gas host communities by oil and gas companies.

II. **Nigeria Upstream Petroleum Host Community Development Trust Regulations 2022:**[48] is a subsidiary law to the PIA 2021, enacted and gazette on 23rd June 2022 by the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) to; provide

47. http://www.petroleumindustrybill.com/wp-content/uploads/2021/09/Official-Gazette-of-the-Petroleum-Industry-Act-2021.pdf
48. https://www.nuprc.gov.ng/wp-content/uploads/2022/07/Nigeria-Upstream-Petroleum-Host-Communities-Development-Regulations-2022.pdf

general rules for the implementation of section 234(1)(a-d) of the PIA for the development of host communities; provide substantive and procedural requirements for the establishment and administration of the trusts and the fund for host communities; outline the parameters for the administration and safeguard of the Fund; and prescribe a grievance resolution mechanism for settlement of disputes between host communities and settlors. This regulation has a force of law.

III. **NUPRC Host Community Development Trust Implementation Template 2022:**[49] is a document that prescribes the template and procedures for the registration and administration of HCDT in accordance with Chapter 3 of the PIA and the NUPHCDT Regulation 2022.

IV. Constitution of the Host Community Development Trust: The HCDT, as a corporate organization, a non-business and not for profit organization must have a constitution for its incorporation to be successful. The constitution of the HCDT is a set of rules and regulation regulating the affairs of each specific HCDT and established in line with section 827 of the Corporate and Allied Matters Act (CAMA) 2020 and Sections 239(1)(2), 240(1), 241, 242(1), 247(1), 249(1), 254 and 255 of the PIA 2021.

The host community development trust (HCDT) will be governed and regulated by these set of laws.

Objective of the HCDT

Section 234(1) of the PIA 2021 states the objectives of the HCDT Model, to:

a. Foster sustainable prosperity within host communities
b. Provide direct social and economic benefits from petroleum operations to host communities
c. Enhance peaceful and harmonious co-existence between licenses or lessees and host communities; and
d. Create a framework to support the development of host communities.

Stakeholders of the Trust

a. Host Communities people: children, youths, women, men, people with disabilities (PwDs) and community leaders, indigenes and residents of communities recognized as host communities by either the settlors, regulator or a court of competent jurisdiction.

b. Settlors: is an/are holder(s) of an interest in a petroleum prospecting license (PPL) or petroleum mining lease (PML) whose area of operations is located in or appurtenant to any community or communities. (Section 318 of the PIA)

c. Regulators: there are two regulators for the petroleum sector in Nigeria: The Nigerian Upstream Petroleum Regulatory Commission (NUPRC), regulating the petroleum operations and activities in the upstream sector, including HCDTs established by upstream oil and gas companies; and the Nigerian Midstream Downstream Petroleum Regulatory Authority, regulating the midstream and downstream oil and

49. https://www.nuprc.gov.ng/wp-content/uploads/2022/07/NUPRC-HOST-COMMUNITIES-DEVELOPMENT-TRUST-IMPLEMENTATION-TEMPLATE.pdf

gas operations, including HCDTs established by Midstream oil and gas companies.

d. Civil Society Actors: Non-Governmental organisations, media and intellectuals working on extractive sector issues with history and relations with oil and gas host communities.

e. HCDT Leadership: the Board of Trustees of the HCDT who are people from the host communities, but appointed to administer a trust and manage the fund.

f. Anti-corruption Agencies: the Nigerian Police Force, Economic and Financial Crimes Commission and the Corporate Affairs Commission, they are recognized by the regulation to take action where cases of fraud, mismanagement, misappropriation or misapplication of fund have been reported to them.

Structures of the Host Community Development Trust

a. Board of Trustees of the Host Community Development Trust: appointed by settlor in consultation with host communities, empowered to establish and administer the HCDT, and render accounts to their settlor. After the tenure of the first trustees, they will be appointed by the members of the advisory committee of their trust. They have a tenure of 4 years subject to a term renewal.

b. Management Committee of the Host Community Development Trust

    i. Executive Member of the Management Committee: professional Nigerians with high integrity, lawyers, project managers and accountants with at least 10 years working experience. They could be from the host communities, but open to all Nigerians with the qualifications, experience and the qualities to work in a trust.

    ii. Non-Executive Member of the Management Committee: host communities persons appointed to represent their communities in Management Committee. Each community in the trust is entitled to have a representative in the Committee.

c. Advisory Committee of the Host Community Development Trust: host communities persons appointed by the Management Committee in consultation with the host communities, to represent their respective communities in the trust. Each Community is entitled to have a representative in this committee.

Other Innovations in the HCDT Model

Host community development plans: The host community development plans (HCDP) is drawn from the community needs assessment conducted by the settlor and the BOT, and they must reflect the actual needs for the host community people. The plans must capture education, health, water, electricity, housing project; including roads, telecommunication; and other social, economic and environmental projects that host community must have nominated. The HCDP will run for five (5) years and subject to amendment with approval

from the regulator. Capital Fund expenditure must be based on the content of the HCDP.

Sources of Funding: the main source of funding for the HCDT is the actual annual 3% operating expenditure (OPEX) of the preceding financial year in settlor's operations affecting the host communities for which the fund is established. Other sources of funding for the HCDT are grants, gifts, honoraria, interests and profits from their reserve fund, and unused funds from their administrative fund. First year's 3% OPEX should cover the period August 16, 2021 to August 15, 2022. (NUPHCDT Regulation 2022 24 (1)(2))

Conflict Resolution Mechanism: where there are disputes between and amongst host communities, the disputing parties shall follow this procedure: give notice to the settlor and the BOT with relevant documents and evidence, the settlor and BOT shall attempt to resolve the dispute in good faith. Where resolution fails after 30 days, a copy of the dispute notice shall be sent to the regulator (NUPRC), the regulator will attempt a resolution in good faith. Where it fails after 45 days, the disputing party shall refer the dispute notice to the Alternative Dispute Resolution Centre of Nigeria Oil and Gas Excellence Centre for Mediation.

If it is a dispute between the settlor and a host community or host communities, the BOT of the trust shall give a dispute notice to the chairman of the Board of Directors (BOD) of the settlor, with relevant documents and evidence, and the BOD shall attempt to resolve the matter in good faith. Where resolution fails, it will follow the same procedures like the disputes between host communities, and it will end at the Alternative Dispute Resolution Centre of Nigeria Oil and Gas Excellence Centre for Mediation.

Any settlement reached by the parties are binding.

Mediation seems to be the only route to resolve disputes between parties in the HCDT Model, there are fears that this could be foreclosing other options open to aggrieved parties.

CHAPTER 3

HOST COMMUNITY PARTICIPATION IN THE PIA FOR THE HCDT

Participation refers to the opportunity for active involvement by all sectors of society in the decision-making process regarding all issues of interest. Participation is fostered by enabling environments where pertinent information is appropriately disseminated in a timely fashion so that all concerned people can voice their opinion in an unconstrained manner.[50]

1. Host Communities Participation in the Constitution of the Board of Trustees

As far as host community issues are concerned, host community people have the right to participate in the decisions that will affect their communities and their lives. Section 235(1) of the PIA 2021 mandated oil and gas companies to "incorporate host communities development trust for the benefit of the host communities for which the settlor is responsible". Even though it is the responsible of the settlor to incorporate host communities development trust for the host communities, the law still recognizes the participation of host communities in this process. That is why Section 235(4) provides that "the settlor for the purpose of setting up the trust, in consultation with the host communities, appoint and authorize a board of trustees, which shall apply to be registered by the Corporate Affairs Commission as a corporate body under the Companies and Allied Matters Act". NUPHCDT Regulation 12(1a) re-emphasize this point "a settlor shall – prior to the incorporation of a trust, appoint in consultation with the host communities, the first trustees". The Settlor is not to establish the trust alone, the settlor must consult with the host communities, first to appoint a board of trustees for the proposed trust it intends to incorporate, and authorize the board of trustees to apply for the registration of the Trust.

Nigerian Upstream Petroleum Host Communities Development Trust (NUPHCDT) Implementation Template 4.2b, provides that "Prior to setting up the Trust, the settlor shall call a meeting with the host communities (Communities Meeting) to deliberate on, and approve the establishment of the Trust, including agreeing the name of the Trust and the persons nominated by the Community as trustees of the Trust. 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." This template clearly shows that there should be a town hall meeting where the host communities will deliberate and approve the establishment of the trust. Invariably, the settlor will seek the consent of the host communities to establish the trust, the host communities will give consent to establish the trust. The host communities will decide who amongst their indigenes will represent them in the Board of Trustees of the proposed. There will be evidence that the meeting was held with the minutes of the meeting signed by two host community persons and a representative of the settlor. The PIA and its subsidiary legislation places the participation of host communities at the heart of establishing the trust.

50. https://www.unodc.org/e4j/zh/anticorruption/module-2/key-issues/what-is-good-governance.html

As a condition for approval by the regulator, NUPHCDT Regulation 13(1 and 2b) stipulates that "Prior to the appointment of a trustee, the settlor shall submit an application to the Commission in the prescribed form for approval. The application referred to under sub-regulation (1) of this regulation shall be accompanied with the following information and documents – The minutes of the meeting with host communities or advisory committee as applicable where the proposed trustee was nominated for appointment." Similarly, NUPHCDT Regulation 7c adds "Prior to a registration of a trust at the Corporate Affairs Commission ...a settlor or through the operator, where applicable shall submit to the Commission for approval, the following documents in relation to the trust to be registered: the criteria for the selection of the trustees, subject to the regulation 13(2) of these Regulations". Whatever that has been deliberated and concluded at the community meeting with the settlor, the minutes of the meeting must be submitted to the regulator, and it must be detailed enough showing the criteria that was used in nominating the nominees for the Board. Upon approval by the regulator, the settlor can proceed to appoint the nominated trustees and registration with the CAC.

The PIA clearly recognizes the participation of host communities in the very first decision of the Trust.

In our engagement -town hall meetings with several host community stakeholders in Akwa Ibom State 3/4 said this community meeting was never held to discuss the establishment of the trust. Host community stakeholders -women, youths, people with disabilities and community leaders were never consulted by their settlors. Instead, the political and traditional elites of the local government areas where settlors operate and, in some cases, retired staff of the settlors participated in the process and have themselves nominated as Board of Trustees of the Trusts. Many host communities were not even aware of their Board of Trustees, this is to show how excluded they were in the process. In Onna LGA of Akwa Ibom State, host community actors were asking the research team the names of Board of Trustees of their Trust for NNPCL/MPNU EMOIMEE HCDT.

The NUPRC zonal and state offices have little or no say in the process, as matters concerning host community development trust are decided from the headquarters. Community and civil society actors engaging regulators have complained that the regulator seems to be in compromise with the settlors. As extant provisions of the law were sidelined in establishing many HCDTs.

However, it has been argued that the settlor cannot meet all community actor, only representatives of the community and enlightened stakeholders. This too is another reason for the current exclusion of host community actors in the governance process of the trust model.

2. Host Communities Participation in Community Needs Assessment

To gain a deeper understanding of community needs it is necessary to conduct a participatory community needs assessment. Section 251(3a-c) of the PIA 2021 provides that: "Each host communities needs assessment shall show that the settlor has –

a. Engaged with each affected host communities to understand the issues and needs of such host communities;

b. Consulted with and considered the reasonable concerns of women, youth and community leaders; and

c. Engaged with each affected host communities in developing a strategy to address the needs and effects identified in the applicable host communities needs assessment".

This implies that the settlor should not assume to know the needs of the communities or impose projects and programmes on the host communities. Instead, what will inform the final community development plans should reflect the actual needs, concerns and aspirations of the host community people. The law was very specific and clear, that the settlor must consult with women, youth and community leaders.

In our engagement with community actors and settlors, we observed that most settlors engaged consultants to conduct the needs assessment on their behalf. But most of the consultants did not get to the actual communities that falls within the area of operation of the settlors. Needs Assessment were generic in all communities we engaged. Hence, needs assessment process were not usually direct and participatory, as a community needs assessment form were only given to influential persons from the community, expecting that the person will engage with their community to populate the needs of their community, but in most cases only the village heads and council of chiefs would populate the template. Women, youths and persons with disabilities are not engaged. Hence, decisions are taken without popular consent and input.

In some unfortunate settings, the elites of the local government areas where the settlor operates, will decide the needs of all the cluster of communities within the trust. The host communities only get to know about the community development plans that is already approved and currently being implemented. This shows exclusion and imposition of needs that doesn't reflect the concerns and immediate needs of the people.

Mbo/Esit Eket Host Community Trust of Universal Energy Resources Limited and Sinopec, the needs assessment and host community development plans were imposed on the communities in the trust clusters. Community actors argued that the regulator got the community development plans approved.

In EMOIMMEE HCDT of Seplat/NNPC JV, host community stakeholders in Eket and Esit Eket LGAs of Akwa Ibom State, complained so bitterly why the Board of Trustees will have the procurement of motorcycles and tricycles as items in their community development plans. At this stage the entire purpose of needs assessment is defeated, because the community development plan was already approved and is going to run for five years, and with bureaucratic bottlenecks to amend it after it has been approved.

Ibeno HCDT of Seplat/NNPC JV rejected the generic needs assessment imposed on them, and independently have to conduct another needs assessment for all the communities in Ibeno LGAs of Akwa Ibom State.

3. Host community Participation in the appointment of Non-Executive Members of the Management Committee

Another element of participation in the PIA for HCDT is participation of host communities in the composition of the non-executive members of the Management Committee. NUPHCDT

Implementation Template 11.1b provides that "In selecting the members of the management committee of a Trust, the BOT shall (b) consult with the host communities to get a representative from each community as non-executive member." We have observed in all the HCDT we engaged, not all communities within the cluster of communities are represented in the HCDT.

And aside from having the host communities nominating persons to represent them in the Board of Trustees, the law still creates opportunities for community actors to be the eyes and ears of the community within the Management Committee. These host community persons are in a better position to know how the executive members of the management committee operate.

In the actual implementation of this provision, it has gone political. It is either shared to ruling political party members as we observed in some of the communities we have engaged. Sometimes, loyalists to the powers that be in the local government areas of the host communities are rewarded and compensated or influential persons within the Board can influence the appointment of someone they trust and control.

Many host community actors are not even aware of this provision and opportunities, so it gives room for the well positioned elites to quietly graft-in their own. The Host Community people are excluded.

4. Host community Participation in the appointment of Advisory Committee

Implementation Template 12.1

In selection of the members of the Advisory Committee, the management Committee shall consult with host communities to get a representative from each community subject to the approval of the BOT.

Our experience, the Management Committee rarely has a say on this matter. Positions have already been shared by the power brokers (traditional and political elites) within the local government areas where the settlor operates, they are just appointed not on the basis of nomination by their communities, but how close and loyal they are to the power brokers and which political bloc one belongs to. This is what was observed in all the trust we understudied.

On the whole, most host communities' actors have largely been excluded in the appointment of the BOT, non-executive members of the Management Committee (MC) and the Advisory Committee (AC). Positions have been influenced and hijack by the high and mighty from the local government area where the settlors operate. And the community needs assessment, were largely populated with less input of most of the critical stakeholders.

Outside this initial process, the inclusion of host community in the actual implementation of the HCDP plans, a feedback mechanism or townhall meetings for continued engagement with the host community people or even an annual event for the BOT to give account of their stewardship to host community people, is not provided in the law. But as a matter of good, all the trust we understudied had their Annual General Meetings (AGM) with all host communities in their clusters participating.

CHAPTER 4

TRANSPARENCY PROVISIONS FOR THE HCDT IN THE PIA

The UNODC says "transparency is a situation in which information about a decision-making process is made publicly available and can easily be verified both in terms of the rules and the identities of the decision-makers. Transparency increases the probability of detection of corruption (and reduces the likelihood of corrupt behaviour) because it lowers the information barrier, allowing for scrutiny and monitoring. Transparency also deters corruption by increasing the chances of getting caught. Transparency facilitates public involvement by increasing the opportunity for citizens to influence government spending, policies, and decision-making.[51]

In all the legal framework for the HCDTs, there is no provision for the proactive disclosure of HCDT spending, policies, decisioning making and even accounts and reports of the activities of HCDT for host communities' citizens, civil society actors and the media to be aware of and engage with.

The only provision for transparency there is the NUPHCDT Implementation Template 12.2f, which provides that:

"The advisory committee shall be responsible for (f) ensure(ing) accountability and transparency in all dealings and give full, complete and timely information to the full assembly of all host communities on all issues of common interest regarding the various benefits coming to the host communities through the Trust from the settlor."

The law only mandates the advisory committee of the HCDT to be transparent and accountable to their constituent host communities who are actually far from the day-to-day happenings in the Trust. So whenever host community people need information concerning their HCDT they should look for the members of the advisory committee. This creates the impression that the Board of Trustees are not easily accessible, there is a big divide between the Board of Trustees and the Host Communities they are serving. The BOT that takes the major decisions of the Trust, and the Executive Members of the Management Committee that implements trust activities on a daily basis are not to be reached for information. The problem with this guide is that only when they advisory committee member is seen that information can be shared, and that is on the condition that he has the current information to share.

What happens when the advisory committee members are starved of information as is the case is most trust? The assumption that the advisory committee will always be informed of trust activities and operations is not always a guarantee. In Ibeno HCDT of NNPCL/MNPU a member of the advisory committee, a person-with-disability, a blind man, newly appointed, claimed he is not even aware of trust meeting and trust activities, he only hears about the

51. https://www.unodc.org/e4j/en/anti-corruption/module-6/key-issues/transparency-as-a-precondition.html

activities of their trust on radio when radio guests come to speak on issues about the HCDTs. In such a situation, how can he inform his constituents within the PWD constituency and the larger communities who are aware that he is a member of the advisory committee?

The lack of transparency provisions in all the laws governing the HCDT is a serious lacuna in the fight against corruption in the HCDT model. To date, many host communities' citizens do not have their trust constitution, the HCDP and the first year's budget of the HCDP to engage the current process of project and programmes implementation. The books are closed. The system is closed. In all the HCDTs we have engaged none had a functional website, not to mention a a trust with a website that hoist key fiscal documents and other information about the trust.

Recently, the regulator launched an online platform -HostComply. The Commission Chief Executive, NUPRC said "The HostComply portal is a comprehensive solution designed to facilitate compliance with the Host Communities Development Provisions of the Act, which functions include the incorporation application process, request for approvals, submission of reports and project monitoring... the key objective of the vital scheme was transparent implementation using digital approach."[52] The portal could have been the perfect solution to proactively disclose the activities and books of the HCDTs across the country, but clearly it is not for such purpose. A visit to Host Comply https://hostcomply.nuprc.gov.ng/ reveals the purpose, which is the "ideal tool for Settlors, Regulators and other stakeholders operating in host communities and responsible for ensuring compliance with regulatory requirements...[53]" The portal serves the need for ensuring compliance with all the accountability demands provided for in the law. But the portal has no place where visitors can access and download HCDTs Annual reports and Financial Statements, HCDT Quarterly Returns, HCDP, HCDTs' constitutions. All of the compliance checks that the settlors and the BOT of the HCDTs submits to regulators, are only for the custody of the regulator not for disclosure, engagement and interrogation by active citizens, civil society actors and media.

Also, how can citizens ascertain that the regulator is complying with the law, ensuring that the settlors and BOTs of the HCDT are complying with the law if there is no transparency of the activities of the regulator as regards HCDT? This is a big gap that poses a corruption risk and has the potential to make the law and the systems to be compromised.

The law targets compliance to regulatory demands than the active engagement of the citizens and disclosure of information to citizens to prevent the risk of corruption. Members of the host communities not having access to information -trust constitution, HCDP, Budget, Project specification, information on funds allocation and other information that trust leaders make, – can lead to corruption and cronyism, lack of citizens oversight and accountability.

52. https://mediatracnet.com/2024/02/why_the_host_community-trust_board_became_imperative-says_nuprc_chief/
53. https://hostcomply.nuprc.gov.ng/

CHAPTER 5

ACCOUNTABILITY PROVISIONS FOR THE HCDT IN THE PIA

Accountability is based on the principle that every person or group is responsible for their actions, especially when their acts affect the public interest. It refers to the answerability or responsibility for one's action so that systems exist for decision makers in government, the private sector and civil society ...to answer to the public as well as to institutional stakeholders.[54] Accountability is a core value of public business. It is the guiding policy for the development and growth of any system that must succeed. The host community development trust is of public interest; hence the policy and principles of accountability must be institutionalized. The PIA 2021 has set the standard to judge and hold host community trust leaders, settlors and vendors accountable, by making copious accountability provisions.

1. Make Detailed Budgets for the Community Development Plans of the HCDT

Section 252(a-d) provides that: "The host communities development plan shall be based on the matrix provided for in section 245 and such single plan shall

a. Specify the community development initiatives required to respond to the findings and strategy identified in the host community needs assessment;
b. Determine and specify the projects to implement the specified initiatives
c. Provide a detailed timeline for projects
d. Determine and prepare the budget of the host communities development plans
e. Set out the reasons and objectives of each project as supported by the host communities needs assessment"

The HCDT must have a budget that stems from the community development plans. And the community development plans draw its essence from the community needs assessment that was conducted. There must be a clearly defined purpose for every project the trust will embark on and it should be targeted in solving problems. The Community Development Plans must have a budget, with a detailed timeline to execute the project. So, the implication for this is that the Trust cannot implement any project outside the HCDP.

A number of HCDP that we have seen have met this high standard set by the PIA. The community development plans feed from the "project bank" or "Project Bible" as some settlors call it. Community development plans that we have seen all have five years development plans, with clear details of the project, places and community/locality where the project will be implemented, timelines for the projects and brief reasons. What we have not been able to see is the budget for the community development plans and the detailed reasons for each project. It is our position that they exist.

54. https://www.unodc.org/e4j/zh/anticorruption/module-2/key-issues/what-is-good-governance.html

2. BOT to Keep the Books of Accounts of the Trusts

Unlike, the previous benefit transfer mechanisms, the HCDT Model have robust provision to strengthen accountability within its system and operations. First, section 254 (a and b) states that: "The constitution of the host communities development trust shall contain provisions requiring the Board of Trustees to –

a. Keep account of the financial activities of the host communities development trust;
b. Appoint auditors to audit the accounts of the host community development trust annually

The law requires the Board of Trustees to keep the proper records of account for the HCDT. Every transaction should be recorded, and audited annually. In essence, we are to expect the HCDT Annual Report which must be in line with the implementation of the community development plans and the HCDTs Audited Financial Statements at the end of every financial year.

Section 255 (a-d) added with details: "The constitution of the host communities development trust shall contain provisions requiring the –

a. Management committee to submit a mid-year report of its activities to the Board of Trustees not later than 31st August of the particular year
b. Management committee to submit an annual report accompanied by its audited account to the Board of Trustees not later than 28th February of the succeeding year;
c. Board of Trustees to submit an annual report of the activities of the host communities development trust accompanied by its audited account to the settlor not later than 31st March of the particular year; and
d. Settlor to submit an annual report of the activities of the host communities development trust accompanied by its audited account to the Commission or Authority, as the case may be, not later than 31st May of the particular year."

The law has the intention for the Trust to work. That is why there is a chain of command and responsibility. The Management Committee are answerable to the Board of Trustees and they are to submit the Mid-Year Report, Annual Report and Audited Account to the BOT August 31st of the particular year and February 28 of the new year respectively. The BOT are answerable to the settlors, they are to submit the Annual Report and the Audited Account of the HCDT to their settlor March 31st of the new year. The settlors are responsible to the regulator, they are also to submit the Annual Report and Audited Account to the Regulator at May 31st of the new financial year. These are timelines of accountability put in place in the law.

Regulation 35(4-5) further added: "The Commission may where it deems fit review of the report, require the settlor to provide additional documents to clarify any item contained in the report. The documents or information referred to under sub-regulation (4) of this regulation may include receipts of purchase, contracts with third parties, bank statements, title documents or any other documents the Commission may require based on the content of the annual return filed." This is a watertight accountability system. The regulator has empowered itself to obtain more information that will speak to the reports and accounts submitted to it.

As far as testing the implementation of these provisions is concerned, we could not access any of the Year 1 of HCDP implementation. even at their AGMs the Audited Accounts were not shared to community stakeholders and actors.

3. Settlor rendering full accounts of the Administrative Fund

It is of interest to know that BOT are not in full control of the administrative fund for running the operations of HCDT, the settlors are largely in control of this fund as provided for by the law. Section 244(c) establishes that "An amount not exceeding 5% to be utilized solely for administrative cost of running the trust and special projects, which shall be entrusted by the Board of Trustees to the settlor, provided that at the end of each financial year, the settlor shall render a full account of the utilization of the fund to the Board of Trustees and where any portion of the Fund is not utilized in a given year, it shall be returned to the capital fund." The responsibility to account for the utilization of the administrative fund rest on the settlors. Regulation 25(4 and 5) gives us an idea why the settlor controls the administrative fund. It reads: "Money in the administrative expense fund account shall be utilized solely for administrative costs pursuant to section 244 (c) of the Act. Administrative costs shall consist of –

a. Remuneration in form of sitting allowances for the Board of Trustees pursuant to section 242(3) of the Act
b. Remuneration for the management committee pursuant to section 247(4)(b) of the Act;
c. Remuneration in form of stipends for the advisory committee pursuant to section 249(2)(b) of the Act
d. Fees to the fund manager;
e. Fees payable to auditors appointed; ad
f. Such other cost wholly reasonably and necessary for the administration of the trust and the Fund

The control of the administrative fund by the settlor and the payment of the remuneration to the BOT, Management Committees and the Advisory Committee by the settlor, clearly shows that the HCDTs are owned by the settlors, and the leadership of the HCDTs are employees of the settlors. The operations of HCDT are actually managed by the trust leaders. But the settlors are to "render a full account of the utilization of the administrative fund to the Board of Trustees" and where any portion of the Fund is not utilized in a given year, it shall be returned to the capital fund." The advantage is that it will prevent all the appointees of the trust from mismanaging the administrative fund and owe other employees and professionals rendering services to the Trust, especially in the present context where politicians have already hijacked the trust leadership in many places. The disadvantage is that the settlors is micro-managing the operations of the trust and frustrating the BOT and Management Committee from meeting up their obligations in their CDP and annual budgets. Trust leaders have complained bitterly, how their settlor's representatives, the company secretary would travel for studies, leave or other official assignments and the trust will be on the standstill until she/he returns back to sign the check before activities in the trust will resume. This provision has clearly made the settlor too powerful and places the host communities at the mercy of the settlors.

It also creates the idea that the administrative expense should always end in credit balance

such that there could be saving for the capital fund account. But trust leaders have complained how inadequate the administrative fund is to meet up their operational needs. Sitting allowance is nothing to write home about for BOT members, Non-Executive Members of the Management Committee as well as the Advisory Committee. Most of the trust leaders claimed that they are being owed arrears of the previous meetings; that they are working out of sacrifice and hoping that the HCDT succeeds for their communities; that the settlors are micro-managing the process, frustrating and bringing unnecessary delays and bureaucratic bottlenecks even after the board have agreed on certain actions in the approved budget is due for implementation. This is a corruption risk, as it will serve as incentive for conflict of interest in the contracting process of trust activities.

4. Settlor rendering Full Accounts of its Quarterly Activities

To give the regulator a snapshot of the fiscal health of every incorporated and funded HCDTs, Regulation 30(1) provides that: "The settlor shall render quarterly returns to the Commission in relation to the Fund, which shall include –

a. The statement of each bank account and sub-accounts constituting the Fund;
b. An audited report of the Fund detailing amongst others, payments into and out of the funds and the purpose for which such payments were made;
c. Any approved withdrawals outside of the approved host communities development plan and the basis for such withdrawals; and
d. Any other information as may be prescribed by the Commission from time to time

The quarterly return is a 3-month financial report that the HCDTs must submit to the regulator every 3 months, detailing its earnings, expenses and net income. This regulation has made it mandatory for the settlors to provide to the regulator a quarterly financial report -including the financial statement of the collecting account both the dollar and naira account, the financial statement of the capital fund accounts, reserve fund account and administrative fund account. A detailed audited report of Fund, where monies came from - 3% OPEX, honoraria, gifts, grants and profits and interest from the reserve funds – and where they fund money is going to -remunerations, charges from professionals, and vendors implementing trust projects with explanations why the payments were made or received. Every withdrawal from the capital fund account must be in line with the host community development plans (HCDP), and withdrawals are not in line with the HCDP, explanation must be offered. The regulator can demand for any information or document as far as the utilization of the trust fund is concern. This is a corruption-proof regulation that makes it almost impossible for corruption to by-pass the eyes of the regulator.

Regulation 30(2) also adds: "A settlor which fails, neglects or refuses to file the quarterly returns shall be liable to –

a. Administrative penalty of $10,000 or its equivalent in Naira, and
b. In case of a continuous offence, to an additional administrative penalty of $1,000 or its equivalent in Naira for each day during which the offence continues."

There is no escape for settlor and trust leadership. Filing of HCDT Quarterly Returns is mandatory for the settlors. Failure to file HCDT Quarterly Returns comes with a sanction of US$10,000 or its naira equivalent according to the prevailing exchange rates. And delays come with an administrative penalty of US$1,000 for each day that the HCDT Quarterly

Returns is not filed.

An in case the faults for failing to file the HCDT Quarterly Returns is not from settlor, Regulation 30(3) provides "Where the settlor provides evidence that the inability to provide annual returns as at and when due arises from the refusal of the Board of Trustees to provide same promptly, the administrative penalty imposed pursuant to sub-regulation (2) of this regulation shall not apply and the Commission shall give the settlor extension of time to provide the annual returns following its liaison with the Board of Trustees. Where the settlor provides evidence that it is unable to provide the annual returns after the expiration of the extension of time given to the settlor, the Commission may exercise its powers to issue enforcement orders pursuant to section 217 of the Act to compel the settlor to deal with erring Board of Trustees." The settlor can buy time for the BOT to provide it with the HCDT Quarterly Report, where it fails if the sanction falls on erring BOT. The BOT will have to give a satisfactory account directly to the Regulator, proving that it has not contravened the provisions of the law, which at this point is difficult. The Commission has the powers to impose penalty it deems fit according to section 217(5) and even take the BOT to court base on the powers accorded it in section 217(8) of the PIA

The legal framework for the HCDT has made a watertight system of accountability that the settlor, HCDT leaders or any third party cannot escape rendering accounts of trust money. Annual Reports and Audited Financial Statements of the trusts we engaged in Akwa Ibom State are being submitted to the NUPRC, but 98% of community actors we engaged including some non-executive members of the management committee and advisory committee of all trusts, have the ad

The law only makes accountability to the regulator, not to the host communities, who are the reason for the establishment of the host community development trust. With the provisions of the law analysed, the BOT, Management Committee and Advisory do not owe the host communities people an explanation of how the funds of the trust are utilized, but to the settlors and regulator. Host communities are treated as outsiders and outcasts, not as equity owners of the trusts.

CHAPTER 6

Anti-corruption Provisions for HCDTs in the PIA

As noted in previous chapter, corruption is one of the most pervasive types of crime that has prevented previous benefit transfer mechanisms established for the people of the Niger Delta from delivering on their mandates. To prevent corruption in the HCDT, anti-corruption regime - the legal frameworks, institutions, and capacities that (government) enact and sustain to prevent, detect, and prosecute corruption[55] – must be put in place to combat corruption. It is on this note, we shall look at the PIA 2021 and NUPHCDT Regulation 2021 from the anti-corruption lens, to see what provisions of the law have been enacted to prevents and detect acts of corruption in the HCDTs, and what power the regulator has been given to enforce them.

1. Appointment of Persons of Integrity in BOT and Management Committee

Regulation 14 (a and e) provides that: "Without prejudice to the provisions of the Act, a person shall not be qualified to be appointed as a trustee of a trust, where the person –Is not of high integrity and professional standing; and has been convicted of an offence involving fraud or dishonesty within ten years of the proposed appointment"

Section 247(2b) of the PIA provides for the Management Committee: "The membership of the management committee shall comprise (b) executive members, selected by the Board of Trustees shall be Nigerians of high integrity and professional standing and may not necessarily be members of the host communities. Regulation 18(3d) added "a person shall not be qualified to act as a member of the management committee, where the person has been convicted of an offence relating to fraud, dishonesty or vandalism of any oil installation and gas assets in Nigeria"

Integrity is a character trait of an individual and not generally applied across society. "Integrity is exemplified by honesty and consistency in doing the "right" thing according to one's values, beliefs, and principles, even when no one is watching."[56] Integrity is a cornerstone of a system of sound public governance. It assures citizens that the government is working in their interest, not just for the select few and is vital for the economic prosperity and well-being of society as a whole.[57]

The law says only persons of "high integrity" should be appointed as a member of the Board of Trustee of a trust or executive member of the Management Committee. For the Board of Trustee such a person must not be convicted of an offence involving fraud or dishonesty within the past ten (10) years of his appointment; while for the Management Committee, the person should not have any history of conviction on the offence of fraud, dishonesty or vandalism of any oil installation and gas assets in Nigeria, irrespective of the time.

The lack of integrity among leaders of previous benefit transfer mechanisms was the root

55. https://www.state.gov/combating-corruption-and-promoting-good-governance/
56. https://chemonics.com/blog/how-can-we-reduce-corruption-if-integrity-is-a-personal-choice/
57. https://www.oecd.org/corruption-integrity/explore/topics/public-integrity.html

cause of corruption, which impinge on their performance. The drafters of the PIA 2021 have proactively and compulsorily made only persons of high integrity to be appointed and recruited in the BOT and Executive Members of the Management Committee. With the persons integrity as leaders of the Trust, the culture of integrity can be instituted in the HCDTs and objectives of establishing the HCDT could be achieved. Where dishonest people are appointed and recruited as BOT and Executive Member of Management Committee, corruption will be rife, and the law will be abused and the trust will be hijacked as it was with previous benefit transfer mechanisms.

We cannot tell for sure whether due diligence was conducted in the appointment of BOT of all the HCDTs that have been incorporated by the settlors and even their approval by the regulators. Because as we have observed politics and connection dominated this process and most host community citizens were not aware of their nomination and final appointment. Only time will tell, whether BOT and Management Committee filed in persons of integrity to lead and manage the trusts.

2. Clear Guidelines for Contracting and Procurement Process

Because of the scale of procurement and contracts in the HCDTs across the Niger Delta, the principles of procurement must be put in place to mitigating the risk of corruption in procurement and contracting process. Section 248 (a-c) of the PIA provides that "The Management Committee shall be responsible for the general administration of the host communities development trust on an ad hoc basis and be responsible for the

a. Preparation of the budget of the host communities development trust and submit it to the Board of Trustees for approval
b. Development and management of the contracting process for project award on behalf of the host communities development trust subject to the approval of the Board of Trustees
c. Determination of project award winners and contractors to execute projects on behalf of the host communities development trust through a transparent process subject of the Board of Trustees

The law has captured the three central goals of the procurement process which are: competition, transparency and integrity. The Management Committee as well as the BOT are to be persons with persons of integrity, as established in Section 247 and Regulation 14 and they are to manage the contracting process. The contracting process must be transparent in determining project winners and contractors. The determination of project award winners and contractors shows there should be competition. Not forgetting that all project that must be bidded for, must have been budgeted for, and that implies the projects must be captured in the community development plans. Hence, the law has accommodated Article 9 of UNCAC which requires (a) the establishment of a sound procurement system; (b) transparency in procurement; (c) objective decision-making in procurement; (d) domestic review (or bid challenge) systems; (e) integrity of public officials; and (f) soundness of public records and finance.[58] The procurement process falls under the administration of the capital fund of the Trust, and the BOT have been charged by Regulation 28(2) to be independent, objective, honest, fair and to act in the interest of the host communities in administering this fund. 2f and g says the BOT and settlor shall "refuse to participate in any business relationship or accept any gift that could reasonably be expected to affect its independence or objectivity; and keep proper account and accurate

58. https://www.unodc.org/documents/corruption/publications/Major_Public_Events_Training_Materials/PPT-Lesson11_Mitigating_the_risk_of_corruption_in_the_procurement_processs.pdf

records" This provision only consolidates the good practice from the officials that will manage and conduct the contracting process.

In this first year of implementation of the community development plans, we have seen several trust advertising calls for public tender for its projects in national and local tabloids. And vendors are directed to submit their bids to the respective HCDTs offices. Most Host community people are very aware of this process and also taking steps to participate in the process.

Even the NUPRC Host comply platform has provided vendors the opportunity to participate in procurement and contracting process, as there is a list of tender opportunities that they are to take advantage of. This is a good practice that we hope will be sustained and institutionalized.

3. Specified Number of Accounts to be created for each Trust

It is a corruption red flag for a public institution to have multiple bank accounts, as we have earlier observed with the NDDC. CILEx Regulation Red Flag Indicators mentioned "client using multiple bank accounts or foreign accounts without good reason"[59] as a red flag. In applying a risk-based approach to the management and administration of HCDT funds, the law states the number of bank accounts that each trust must have, for what purpose and what type of banks.

Section 240(1) established that "the constitution of each host communities development trust shall establish a fund comprising of one or more accounts ("host communities development trust fund") to be funded under this section".

The "more accounts" are the capital fund account, reserve fund account and administrative fund accounts (Section 244).

The Board of Trustees of the Fund shall maintain in the same commercial Bank, the following accounts –

a. Collection (Fund) Account: is the trust fund account. It is the collection account into which the settlor shall pay its annual contribution in an amount equal to 3% of its actual annual operating expenditure of the preceding financial year in the Upstream Petroleum Operations affecting the host communities for which the fund was established (Regulation 23(3a)).
b. The capital fund account, into which the 75% of the amount standing to the credit of the collection account shall be paid and utilized in accordance with regulation 20(2) of these Regulations;
c. The reserve fund account, into which 20% of any amount standing to the credit of the collection account shall be paid and utilized in accordance with Regulation 20(3) of the Regulation; and
d. The administrative cost account to be entrusted to the settlors, into which an amount not exceeding 5% of any amount standing to the credit of the collection account shall be paid and utilized in accordance with regulation 20(4) of these Regulations." (Regulation 23(3b-d)).

The fund shall be deposited in a designated account. In a commercial bank duly licensed by the Central Bank of Nigeria with a minimum credit rating of 'BBB' issued by at least, two

59. https://cilexregulation.org.uk/wp-content/uploads/2018/12/AML-Red-Flag-Indicators.pdf

rating agencies, one of which shall be a rating agency incorporated in Nigeria and registered with the Securities and Exchange Commission. (Regulation 23(2)). The money in each of the accounts comprising the Fund shall remain distinct and shall not be co-mingled (Regulation 23(4)).

Implementation Template 8.2 states who is responsible for setting up the accounts, funding and allocating funds to other accounts:

a. The Board of Trustees (BOT) will be responsible for setting up as trust account, (collection account, capital fund account, administrative fund account and reserve fund account) and appointing a fund manager.
b. The Settlor shall be responsible for funding the collection account.
c. The BOT shall allocate funds from the collection account to the capital fund account, administrative fund account and the reserve fund account.

As prescribed, these accounts have been set up by the HCDTs that are currently funded and HCDPs are being implemented from the capital fund, the administrative fund account is being administered by the settlors, and fund managers have been assigned to all the trust we engaged for the keeping of their reserve fund. The collection accounts are both in dollars and in naira for all the trust we engaged, where the 3% OPEX is paid. This is expected because it is a regulatory demand and accounts must be rendered only on these accounts and according to the sharing formular of the 3% OPEX to the 3 subsidiary accounts. Any deviation in implementation against this prescription is a red flag and act of corruption.

4. Withdrawal Control from the Fund Accounts

There should be internal policies and guidelines for withdrawal of funds from an organisation's account. It is good financial practice to have sound financial procedures when it comes to withdrawal of funds in an organization's bank account to prevent any risk of misappropriation or misuse of funds. The PIA 2021 through its subsidiary legislation has captured this minute detail to prevent the risk of corruption. Regulation 26 provides that, "Withdrawals shall not be made from the Fund unless –

a. At least one signatory to the account authorizing the withdrawal is the representative of the settlor;
b. The withdrawal complies with the annual host community development plan submitted to the Commission in accordance with regulation 21 of these Regulation; or
c. Withdrawal shall not result in the account being overdrawn or being put into negative balances.

Regulation 30(5)

Where the Commission discovers that a withdrawal was made from the Fund in contravention of the approved host communities development plan or the Act without the approved host community development plan or the Act without the approval of the Commission by the settlor, the fund manager or any other person, such person shall –

a. Immediately refund such monies into the Fund, provided that such refund shall not serve as a defence to any criminal liability; and

b. Be liable to administrative penalty of $1,000 per day from the date on which the

withdrawals were made until the date that such funds are refunded into the Fund.

These are safeguards to determine sound financial practice in the HCDT. All withdrawals must align with the budget of HCDP, and must have the signature of the settlor's representatives. In our engagements with some BOT members, we have heard that withdrawals of funds from some HCDT accounts for implementation of projects have been made impossible because the settlor's representative was not around. As frustrating as this could be, it has helped in checking arbitrary withdrawal of funds or over-withdrawal from the trust account. But, generally it has delayed the implementation of the Annua Budget, so much so that most trust could not implement all the activities and projects in their approved budget. This was the case with EMOIMMEE trust, where over N25Billion was in the capital fund account unspent for 2024, with a budget of N35billion. Only N10billion was expended for the implemented of some projects.

5. Role of the Regulator to Address Fraud in the Trust

The goal of regulation is to prevent and investigate fraud. How has the law empowered the regulator to prevent, investigate and prosecute fraud in the HCDTs? Regulation 3 establishes that: "Pursuant to section 235(6) of the Act, the Commission shall have powers to

a. Conduct a periodic assessment of the performance of each fund using a performance matrix published on its website;
b. Investigate and report pursuant to section 26 of the Act, cases of fraud, mismanagement, misappropriation or misapplication of the Fund to relevant authorities, including Nigeria Police Force, Economic and Financial Crimes Commission and the Corporate Affairs Commission;
c. Initiate action to trace and recover the funds of the trust, where funds are mismanaged and misappropriated.
d. Set up mechanism for members of the upstream petroleum communities under a trust to report any incidents of fraud, mismanagement, misappropriation or misapplication of Fund; and
e. Ensure implementation of proposed projects of upstream petroleum communities at all stages, which includes project initiation, contract award, project execution and project completion

Regulation 10(5) added further "where it appears to the Commission that there is, there has been or likely to be a contravention of the Act, these Regulations or the constitution of the trust, or there has been any misconduct or mismanagement in the administration of the Fund, the Commission shall give notice to the settlor, Board of Trustees or the operator where applicable, and require it to take remedial actions specified by the Commission."

The regulators, NUPRC and NMDPRA have been empowered to prevent, investigate, prosecute corruption, trace and recover the funds of the trust where funds are mismanaged and misappropriated, set up means for host communities and other stakeholders to report fraud and ensure that HCDP are implemented as approved.

In the first year of HCDT implementation, there were corruption issues recorded in EMOIMMEE trust, especially with irregularity in the grant empowerment, bursary and scholarship given out to persons that were not students, and the quality of mini buses as empowerment did show value for many. Community actors said the buses were sprayed and were not in very good condition.

The regulator has "set up mechanism for members of the upstream petroleum communities under a trust to report any incidents of fraud, mismanagement, misappropriation, and misapplication of fraud" NUPHCDT (Regulation 3d) and that is the HostComply. The HostComply has provided a platform for host communities and other concern stakeholders to report and submit complaints and conflict directly to the regulator. Host communities could test this platform to see whether the regulator could act when fraud or complaints are reported.

The challenge inhibiting this at the moment is that the HCDTs are not transparent and not many host communities' citizens are participating in this process. The budget of the HCDPs is still not in the public domain to enable citizens to access, engage and track how funds are applied. None of the HCDTs have established their online portal yet and the HostComply is not publishing key documents like the HCDPs and their accompanied budgets to give life to the provision of this law. For now, it will be difficult for citizens and other stakeholders to raise the alarm of fraud.

CHAPTER 7

CORRUPTION RISKS IN THE HCDT MODEL

Having examined the provisions of the law speaking to citizens participation, transparency, accountability and anti-corruption in the HCDT Model, we shall look at corruption risk as inherent in the current implementation of the HCDT and the gaps in the legal framework.

Host Communities Exclusion in the Governance Process of the HCDT

United Nations Convention Against Corruption Article 13(1) requires States parties to "take appropriate measures to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organisations and community-based organisations, in the prevention of and the fight against corruption.[60] In the context of the HCDT Model, the legal frameworks only made room for host community participation in the constitution of the BOT, and appointment of non-executive members of the Management Committee and advisory committee of the HCDT as well as during the community needs assessment. Settlors' politics with political and traditional elites and other benefit captors in previous benefit transfers mechanism influenced the selection and appointment process into many trusts' leadership. The Community needs assessment in most communities was not participatorily done as provided for in the law as in many cases influential persons within the trust areas of operations nominated community needs for the communities within the trust clusters. In other cases, the settlor imposed a generic needs assessment on the communities.

Even with the minimal participation of many members of host communities at the initial stage of trust formation, the law clearly foreclosed and excluded host community participation in the actual implementation of the HCDP plans. There is no provision for a feedback mechanism or townhall meetings for continued engagement with the host community people or even an annual event for the BOT to give account of their stewardship to host community people. Though, in practice some of the trusts in Akwa Ibom State have held their AGMs, and that is the only opportunity most host community people tend to know what is happening in their trusts. Of commendable practice is the placing of notice for each activity in the community development plans and annual budget that is about to be implemented, for host community people awareness and engagement, but this is at the discretion of the trust leaders. The legal framework did not provide for regular interface between the trust leaders and the community. Stakeholders have argued that the administrative fund is too inadequate for that engagement and the settlor is in full control of the administrative fund, if the settlor doesn't approve for such interface and meetings with the host communities there is little or nothing the leadership of the trust can do. This again shows that the trust belongs to the settlors, while the host communities who should be equity owners are largely at the mercy of the settlor. This is a ground for the hijack of the trust and at the exclusion of the host communities, who were the reason for the establishment of the HCDT Model in the first instance.

60. https://www.unodc.org/e4j/zh/anti-corruption/module-10/key-issues/government-obligations-to-ensure-citizen-participation-in-anti-corruption-efforts.html

Non-Disclosure of Information and Documents in the Governance Process of the HCDTs

On transparency in the HCDT Model to check the risk of corruption, only the NUPHCDT Implementation Template made a scanty mention of transparency to members of the host communities. The template provides that the Advisory Committee should be responsible for ensuring accountability and transparency to the full assembly of all host communities on all issues. But there is no provision of the law that mandates that the settlor and BOT to use a small percentage of their administrative fund for such engagement. Stakeholders are worried that the silence of the PIA 2021 and NUPHCDT Regulation 2022 on transparency and disclosure of information to members of the host communities and other stakeholders could be a deliberate attempt to run the HCDT Model at the exclusion of members of the host communities. They hold the opinion that when members of the host communities are not informed and have no information about their trust, they cannot take ownership of the trust, and by extension they can hardly hold their trust leaders to account. They cannot report fraud without adequate information. The lack of transparency in the trust system is the greatest risk and foundation for corruption to thrive.

All the trusts we have engaged, none have established a website or portal where they proactively upload their fiscal documents for the members of their trust to access. Key information and documents are not easily accessible for host communities actors. However, stakeholders agreed that with the use of Freedom of Information Act 2011 to make a request, trust could furnish accountability actors information about the trust.

Trust Leaders only Accountable to Settlors and Regulators

Accountability measures have been put in place in the HCDT Model. The law has made it mandatory that there must be a detailed budget taken from the HCDP, stating places, year, amount and kinds of project that is to be implemented. The BOT have been mandated by the law to keep the books of accounts of the Trust. Settlors are to manage the administrative fund accounts and give account to BOT, while the regulator must receive quarterly returns of the HCDT from the settlors. This is a strong accountability system in the legal framework.

The risk of corruption is that the trust leadership only makes accountability to institutional stakeholders, while members of the host community for whom the trust was established are completely sidelined. With the provisions of the law analysed, the BOT, Management Committee and Advisory Committee do not owe the host communities any explanation of how the funds of the trust are utilized; instead, they are only responsible to their settlors and regulator. Host communities are treated as spectators, mere beneficiaries, outsiders and outcasts, not owners of the Trust. This is another risk of corruption with the HCDT Model as there are no bases to hold the trust leaders accountable.

No Bases for Host Communities to Check Compliance and Report Fraud

There are anti-corruption measures instituted in the legal framework of the HCDT to prevent the risk of corruption. First, only persons of high integrity and professional standings are to be appointed and recruited in the BOT and Executive Members of the Management Committee respectively. There are clear provisions for a competitive, transparent and fair contracting process in the law and practice and implementation must be based on the HCDP and annual budgets of the HCDT. There are limits to the number of

accounts the trust can operate: a collection account (naira and dollar), the administrative fund account, capital fund accounts and reserve fund account, they are to be distinct and operated according to the provisions for the law; all accounts must be domiciled with and operated from a commercial bank that meets BBB rating of the Security and Exchange Commission. There are withdrawal provisions to institute the culture of sound financial practice, as a check the settlor's representative must be a signatory to the accounts of the trust to prevent arbitrary withdrawals. Lastly, the regulator is empowered by the law to prevent, investigate and prosecute fraud, as well as set up mechanisms where members of the Host communities can report fraud.

The bases to observe compliance of these anti-corruption provisions of the law and report fraud by members of the host communities have been taken away from the host communities, since there are no feedback mechanisms, no disclosure for information. Technically, host communities are disempowered to report fraud, because they have no inkling of key decisions the leadership of their trust make; there are no provisions of the law that allows members of the host community to regularly interface engage with their BOT, there are no provisions of the law that mandates the trust to proactively disclose documents and information that could stimulate engagement. These are the bases to observe compliance and report fraud. The trust is designed to operate in secret, and this is a big risk for corruption.

No sanction for regulatory failure

Even though the law has empowered the regulator to enforce compliance on settlors and the BOT of the HCDTs, the law did not provide sanctions when the regulator failed to play its regulatory function, even in the establishment of the trust and the implementation of HCDP. For instance, the law mandates the regulator to assign littoral host communities to deep offshore companies, the regulator is to rely on the information from the National Boundary Commission, this is three and half years after the PIA was enacted, no littoral community have been assigned to deep offshore settlors, due to the failure of the regulator. The regulator has the powers to impose fines to settlors who failed to establish the trust within 12 months of the PIA enactment, but the regulator has failed to assign littoral host communities to settlors 42 months after. Who will sanction the regulator for this negligence. This is a corruption risk and a pointer that since the regulator have failed to implement provisions of its own regulation and failed to imposed sanctions on erring settlors and BOT of HCDTs it may become business as usual and will give greenlight for certain actors to act with impunity and disregard of the law.

CHAPTER 8

SUMMARY, CONCLUSION AND RECOMMENDATIONS

SUMMARY

Ten (10) benefit transfers mechanisms were pre-cursors of the HCDT Models: NDDB, NDBDA, 1.5% Presidential Task Force, OMPADEC, 13% Derivation, NDDC, Presidential Amnesty Programme, MNDA, NCDMB, and the GMOU/MOU. Nine (9) of which were established by the Federal Government, and one (1) by the oil and gas companies (especially the IOCs). The nine benefit transfers established by the government were affected by under-funding, tribalism, mismanagement and misappropriation of funds, political capture and compensation, and the exclusion of the host communities in establishment. The GMOU/MOU was the shining example that brought some direct impact to host communities, even though some projects implemented were overexaggerated in their books and the role of benefit captors denied host communities of their benefits. HCDT Model largely model the GMOU model, but with some improvement, host communities to own and run the trust, consistent funding through oil and gas operation of 3% OPEC, buffers of accountability and prevention of corruption. However, the law did not provide for the participation of host communities in the governing process of the trust system. No provision for transparency to host communities, accountability targeted to the settlors and regulators, and no basis to report fraud because host communities are already made outcast and spectators of the trust, hence no grounds to report fraud.

CONCLUSION

In the two years of HCDT implementation, it is clearly observed that the settlors are micro-managing, remote controlling and dictating the day-to-day activities of the trust which is in conflict with the objectives of establishing the HCDT Model. Most host communities members are spectators of the ongoing implementation of the HCDT Model. The settlor has enormous powers on the trust. Chances are that the trust model been captured by political elites and settlors' benefit captors, with the connivance of the regulators. Ibeno HCDT is an exception to this rule, because it engaged the people, rejected the generic CDP, and thoroughly engaged the settlor as the Trust leaders pushed for community interest, with quality project implementation. Other trust, we noticed that there are some pockets of project implementation at the onset, but with the lack of host community participation, transparent disclosure of activities and trust documents, and no accountability to the host communities, the corruption of previous benefit transfer mechanisms may happen to the HCDT Model.

RECOMMENDATIONS

In view of the observed gaps and weaknesses noticed in the PIA 2021 and NUPHCDT Regulation 2022 in checking the risk of corruption and strengthen the implementation of the HCDTs, we are proposing the following recommendations for quick implementation.

1. BOTs of HCDTs should be mandated to hold annual town hall meeting with their host communities to render account of their activities for the year either through inclusion in the NUPHCDT Implementation template Guidelines or amend the NUPHCDT Regulation 2022. This is necessary since there is no provision of the law mandating the BOT to render accounts to members of their host communities.

2. NUPRC should mandate all HCDTs to establish a web portal where members of their host communities can access information about their trust, engage the trust authorities and download all necessary documents that will enable them to tract the implementation of the HCDP.

3. NUPRC through its HOSTCOMPLY should upload all HCDPs, Budgets, Annual Reports, Quarterly Returns, Audited Financial Statements of all incorporated HCDTs implementing trust projects and activities for access and downloads by host communities and other accountability stakeholders. This will aid transparency, accountability and active engagements with trust leadership and the regulator.

4. Settlors that have incorporated HCDTs should create a desk or department that will receive complains and feedbacks from members of their host communities, since the law has provided that when there are issues between and among host communities and/or between the HCDTs leadership, dispute notice should be forwarded to the Board of Directors and the BOT of the Trust.

5. That the law has empowered the regulator's representative to sign the check for every withdrawal of funds in the capital fund account. But this anti-corruption check has become a yardstick for red-tapes, unnecessary checks and delays and even denial for approval of projects that is in the approved budget and community development plans. This is frustrating and delaying the implementation of trust projects and activities, and making the leadership of the trust completely helpless. We recommend that the regulator should include a regulation to set a time limit for the regulator's representative to append their signature on the check for withdrawal of funds to implement fund projects and activities. Or better still, the law should be amended to take such powers from the settlor's representatives and allow the trust to operate independently of the settlor, but accountable to the settlors. Accountability to the settlor is not necessary since the settlor's representative is the most powerful person in the trust, and has the power of the purse and can single handedly decide that the trust cannot proceed with the implementation of projects and activities in the approved annual budgets and community development plans.

6. The PIA and NUPHCDT Regulation must be amended to set deadlines for regulators to implement and enforce provisions of the law assigned to them and to enforce compliance within a time limit for failure of settlors and BOT of HCDTs to adhere to the provisions of the law.

7. The National Assembly Committee on Host Communities must step up their oversight duties to ensure that the regulator follow and implement all provisions of the laws to strengthen the HCDTs model and prevent the risk of corruption.