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# Appraising the Role of Host Community Development Trust in the Development of Oil and Gas Bearing Communities in Nigeria Under the Petroleum Industry Act (PIA) 2021

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## Abstract

The Petroleum Industry Act 2021 radically introduced the Host Communities Development Trust (HCDT) to activate community sustainable development, empower citizens and mitigate ravaging perennial conflicts between the settlors and the host communities. This article thoroughly appraised the structured framework of the HCDT, to evaluate its content, scope, composition and effectiveness in addressing community concerns within and among the host communities, by assessing the governing organs of the HCDT; the settlor, management committee, advisory committees in fostering and promoting peaceful coexistence in their various domains. Using the doctrinal methodology to appraise chapter three of the PIA 2021, the Regulations and other existing relevant literatures, to discover the strengths and weaknesses of the HCDT's governance structure, the article reveals that the HCDT framework provided a much better structured arrangement for more coordinated community development programs through the regular and streamlined contribution of the settlors. The article concludes that the HCDT is a great innovation to resolve the perennial problems of the communities and correct the anomalies of the ad-hoc community development programs, CSR and the gMoU of the multi-national oil and gas companies to enhance host communities prosperity through a new initiative on trial. The article recommends the amendment of the enabling Act and Regulation to whittle down the overbearing powers of the settlors, prioritize transparency through regular and well published audit reports carried out by independent and qualified auditors. It further recommends capacity building of the organs of the HCDT, the settlors as to functions, powers and authority of the organs, technical capacity building for the local contractors so effective and seamless execution and delivery of HCDT jobs to enhance sustainable development and peaceful relationships between the settlor and host communities.

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**Keywords:** Host Communities, Host Communities Development Trust, The Commission, Board of Trustee

## 1. INTRODUCTION

The failure and inadequacies of the moral corporate social responsibilities (CSR) of multinational oil companies, their voluntarily established ad-hoc host communities' development projects and their self-negotiated and determined global Memorandum of Understanding (gMoU) between the multinational Oil Companies[1], Host Communities[2], the driving host state governments, the civil society persistent calls for reform[3] triggered the establishment of the legally structured HCDT[4]. This was amplified by the failure of the Nigerian Content Act 2010 to address the consistent and perennial problems of agitations of the oil-bearing communities that occasions restiveness and untoward criminality as the result of deliberate neglect, intentional exclusion and denial from participation in the operation and benefits from the oil and gas exploration which are located in its various domains. The proof of these depravities includes spikes of denials, abject poverty, incidence of pollution, gas flaring, absence of basic amenities and the unfortunate reality of infrastructural decadence. This tragedy resulted in the hand-twisted innovation called host communities development trust in the extant petroleum industry Act 2021 aimed at directly affecting and addressing the unaddressed attentions in the host communities of the oil and gas region by the erstwhile petroleum legislations[5].

## 2. CONCEPTUAL CLARIFICATIONS

### Host Communities

Host community has enjoyed various articulated renditions from varying perspectives influenced by the writer and the purpose of the literature. It has been described generally as the center for habitation of mentally unstable persons, asylum for displaced persons and a Vermont village where green renewable projects are located[6]. Host Community in the ordinary context of the article means a municipality or community, town or union of municipalities, regions, incorporated cities or towns of a state, region or national authority empowered by their governing bodies to host or assist in the execution of an oil and industry project. It can also be defined as the community where the development of multinational oil and gas project is physically located and may include communities adjacent to it that may be adversely affected or impacted by the activities of the project[7]. The Petroleum Industry Act[8] defined it as any community

[1]The multi-national oil companies are International Oil Companies (IOCs) referred to as settlors in the extant Petroleum Industry Act. They are the foreign oil and gas companies that have dominated the arena of the industry from the colonial and post-colonial administration of Nigerian oil and gas industry until now due to lack of in-country capacity of Nigerians which still prevails against Nigerians after 54 years of operation and in spite of the myriad of legislative reforms in the industry that aimed at eradicating it.

[2]Host community in the context of this work is considered as the nearest unit of government situated along major facility access road and highways exercising authority covered within a twelve-mile range of the site of the oil and gas exploration and production site. It can be used in this context also to refer to a community, local, regional, country or its national government using its social and economic structure to give accommodation or place of settlement to the multinational oil companies in use as its operational area for search, prospect or exploration of natural mineral resources.

[3]Friedrich-Ebert-Stiftung Foundation, 'A Nationwide Survey on the Expectations and Participation of the Youth in Nigeria's Oil and Gas Industry [2011] *Youth Network for Human Rights & Democracy*, *Youth and Oil Gas Governance in Nigeria,* 21; In 2011, a nationwide survey by the Youth Network for Human Rights and Democracy and Friedrich-Ebert-Shifting, showed that non-Nigerians profit more from the sector than Nigerians do

[4]HCDT established pursuant to section 234 to 239 of the PIA 2021 and Reg. 7 and 9 of the Nigeria Upstream Petroleum Host Communities Regulations 2022

[5]Petroleum Act 1969

[6]Lawinsider.com

[7] ibid

[8]Section 318 of the PIA 2021

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situated in or appurtenant to the area of operation of a settlor, and any other community, as a settlor may determine[9]. The host community is described in the Petroleum Industry Act 2021 as the communities hosting the operational sites and zones of the extractive industries including communities appurtenant to the host communities and any other community that the settlors may designate. They are communities that suffer the negative impact of the operations of the multinational oil companies in the exploration and production of oil and gas products.

The summary is that a host community in the present context means the community within or related to the area of operation of the settlor that is to say holders of any of the interest in PPLs[10], PMLs[11] and other existing interests in OPLs[12], PPLs, PMLs and licensees of designated facilities located in or near the community. The Host Community[13] is the occupational owner of the area for which a license or a lease relates and any area which hosts a licensee or lessee's facilities for upstream petroleum operations in accordance with the provisions of section 318 of the Act[14]

**Host Communities Development Trust[15]**

The Host Communities Development Trust is statutory agency initiatives or legal frameworks of the Petroleum Industry Act 2021 established to house and manage the Host Communities development Trust Fund for the benefit of host communities impacted by petroleum operations in Nigeria, free from any taxation[16]. The HCDT is responsible for receiving and managing a percentage of the operating expenditure of petroleum companies[17], which is then utilized to finance projects and programs[18] that promote sustainable development, social welfare, and environmental protection in host communities.The primary purpose of the HCDT is to; manage funds contributed by petroleum operators for the benefit of host communities, implement community development projects and programs, and promote sustainable development and prosperity of host communities. Funding of the HCDT is generated from the 3% of the actual annual operating expenditure of petroleum operators[19] and subsequent profits benefited from the reserve fund investment.

The Fund is managed by a Board of Trustees[20], Management Committee[21], and Advisory Committee, for the benefit of the host communities impacted by petroleum operations.

The HCDT aims to ensure that host communities benefit directly from petroleum operations to alleviate the deficiencies, depravities, poverty and suffering so as to promote peaceful coexistence between communities and peaceful petroleum operations. Host Community development trusts are quintessential to promoting advancement and development within host communities. It is a truce to peaceful and harmonious co-existence in the troubled host communities. The trust assembles together varieties of individuals to work towards common goals to improve the quality of life for all members of the community. This will energize a paradigm shift from personal, selfish benefits to mutual development aggregating into massive community development.

[9]Reg. 6(2) (a-d) Nigerian Upstream Host Communities Development Regulations, 2022
[10]Petroleum Prospecting Licence
[11]Petroleum Mining Lease
[12]Oil Prospection Licence
[13]Regs. 5 and 6 of the Nigerian Upstream Host Communities Development Regulations, 2022
[14]Petroleum Industry Act 2021
[15]Section 235 to 238, n 8, ibid and Reg. 7, n 13, ibid
[16]Section 256, n 8, ibid
[17]Section 240(2), n 8, ibid and Reg. 24(1)and (4), n 13, ibid
[18]Section 244, n 8, ibid
[19]Sections 240 (2) and 244, n 8, ibid and Reg. 24(1)and (4), n 13, ibid

[20]Sections 243 and 244, n 8, ibid
[21]Section 248(a) to (f), n 8, ibid

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The Host community development trust arrangement if propelled well with transparent leadership and selflessness, eschewing favoritism, manipulation, and hijacking of the elitist class characterized by the pursuit of personal gains will enhance enormous overall development of the communities within a given time line. If these and many more can be achieved by the Host community development trust, divisiveness and factionalism that erodes unity and enthrones unnecessary opposition must be intentionally avoided.

The players and the participant observers must be encouraged to build the bridge of trust and confidence between the led and the leaders. This will destroy every spirit of mistrust, internal conflicts and breakdown of unity. This is because infighting, maneuvering and manipulation of feeble minded persons can cause stagnation, delay in making valuable decisions, waste of valuable time and resources, obstruction and delays in the execution of community development projects and mis-allocation of community development based resources to individuals on grounds of loyalty. These imperatives will serve a wider justice if the leaders of the Host Community Development trust will promote transparency and accountability by enthroning open and transparent decision-making processes that ensures the employment of sure and clear criteria in all processes. This erodes the potency of favoritism, apathy, disillusionment, reduced patriotism, loss of credibility, reputation with the resultant community confidence and focus.

To be able to build, establish and project transparency and accountability, there must be a running of accurate regular audit reporting system of the activities of the trust effortlessly and seamlessly. There should also be inclusiveness and broad participation and representation of all community stakeholders in decision making and execution. There should equally be active engagements and needful consultation to breed a sense of ownership and collective responsibility.

Resulting from the promotion of transparency, broad-based inclusiveness, representative participation, oneness, common purpose, effective mechanism for conflict resolution, the trust can avert and maneuver the dangers of schism and community factionalization that can endanger community development and transformation. The spirit of cooperation and mutual support must remain at the heart of community development efforts, ensuring that the trust activities always reflect the best interests of the trust and the community as a whole.

**The Commission**

Commission means the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) established under Section 4 of the Petroleum Industry Act 2021, responsible for regulating the upstream petroleum operations in Nigeria under the present legal regime of the industry which is the major hub that connects the host communities with the exploration companies who suffers several manners of environmental hazards, deprecations and contaminations. The Commission regulates the settlors which is the principal regulator of the HCDT by virtue of the luxury of powers at its disposal.Board of Trustees

Board of Trustees is deemed the governing body of the Host Communities Development Trust (HCDT) established under Sections 234 and 235 of the Petroleum Industry Act 2021[22], responsible for overseeing the management of the Trust and ensuring that its objectives are achieved. The Board of Trustees is composed of representatives from the host communities[23] and settlors[24].

## 3. HISTORICAL EVOLUTION OF HOST COMMUNITIES IN NIGERIA

The development of host communities' in the Nigerian petroleum reflects the ugly circumstances of abandonment, the state of neglect and common distrust of the oil and gas industry to an intentional

[22]Reg. 7, n 13, ibid
[23]Section 242, n 8, ibid
[24]Section 242 (5), n 8, ibid

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legislative framework legally regulated, systematically and structurally designed to involve and engage communities[25], principally focused to achieve stable optimum oil and gas production amidst harmonious co-existence[26]. The concept of host community was mutually birthed at the discovery of oil in commercial quantity at Oloibiri Ogbia Local Government Area of Bayelsa State, Nigeria by Shell BP in 1956 and the consequent production of crude oil in 1958, as community hosting the exploration industry and suffering the negative incidences of oil and gas production[27]. The exploration of petroleum in the country ironically placed the oil bearing communities as a negative recipient of the undesirable ecological, infrastructural, social and economic effects[28].

According to historical records between 1956 and 1970, there were indication of exclusion, inconsequential participation and involvement of indigenous communities, ecological deficiency, and absence of reparation for terrestrial resentment, etcetera whereas the era between 1970 and 1990 chronicled struggles, chaotic responses and tension heightened by poor settlement of community victims for foremost oil pollution and damage[29].This neglect generated consequential criminal behaviours such as pipeline destruction, belligerency, abduction, illegal fuel or oil refueling and other crimes till date[30]. Due to continued restiveness the multi-national oil companies[31] embarked on well-thought-out interim palliative measures of ad-hoc community projects to lessen pressure and security tension in the concerned region. The inadequacy of the quick response community measures to placate the escalated community turmoil compelled the Multi-national oil and gas companies[32] to evolve and fund voluntary gMoU[33] agreements to mitigate the troubling perennial deprivation and denials, the oil host communities have suffered, with the resultant restiveness and community unrests, which generated community-based resolutions on the accomplishment of community development projects and concerns.

The gMoU framework applied between years 2000 to 2020 and substituted the failed corporation's individual community assistance projects that allowed community involvement in the selection of sustainable community development projects[34]. The gMoU suffered the challenges of mistrust, corruption and lack of transparency to manage the gMoU development project funds[35]. In 2021, the Petroleum Industry Act 2021 birthed and legally established the Host Community Development Trust[36] statutorily mandating the oil and gas operators to contribute 3% of their actual annual operating expenditure[37] to the

[25]Transition from the ad-hoc palliative community development projects to the gMoU and to the current PIA 2021 regime that is legally structured

[26]Section 234(1)(a-d) and 239 (3)(a-i), n 8, ibid

[27]J-K.C., Onyemere, An Appraisal of the Legal Framework of the Nigerian Oil and Gas Industry (2023) 14(1&2) *EBSU LJ*, 91-109; K.C. Njoku, J. I. Ndifon, et al "Petroleum Industry and the Nigerian Economy", *Scholarly Journal of Social Sciences Research* (2025), Vol. 4(1), 1-15; C.S. Ayonmike, Technical and Vocational Education and Training (Tvet): Model for Addressing Skill Shortage in the Nigerian Oil and Gas Industry", *American Journal of Educational Research* (2015) 3(1), 62:66

[28]ibid, n. 27

[29]A.T. Umar, M.S.H., Othman, M. Wang, 'Cause and Consequences of Crude Oil Pipeline Vandalism in the Niger Delta Region of Nigeria: A Confirmatory Factor Analysis Approach', (2017) 5(1) 1-31; H.H. Christensen, D.R. Johnson and M. Brookes, 'Vandalism: Research , Prevention and Social Policy, Portland, or: US Department of Agriculture Forest Service', (1992) 293

[30]A.D. Mengesha, S.Y. Seid, G. Tessema, 'Indigenous Conflict Resolution Mechanisms among the Kembata Society', *American Journal of Educational Research* (2015) 3(2) 225-242

[31]The Settlors in accordance with the provisions of the Petroleum Industry Act 2021, n 2, ibid

[32]n. 1, ibid

[33]Global Memorandum of Understanding

[34]Section 234 and 239 of the Petroleum Industry Act 2021

[35]Y. Omorogbe, 'Law and Investor Protection in the Nigerian Natural Gas', *Journal of Energy and Natural Resources Law* (1996) 12(2) 179; P. Okojie, M. Momoh, 'Corruption and the Crises of Development in Nigeria', Paper Presented at the Conference on Redesigning the State? Political Corruption in Development Policy and Practice held at Manchester Metropolitan University (2005) 3; A. Gillies, 'Reforming Corruption out of Nigerian Oil? Part One: Mapping Corruption Risk in Oil Sector Governance,'*U4 Brief Anti-Corruption Resource Center* (2009)1-14; P.C. Donwa, C.O. Mgbame and O.M. Julius, ' Corruption in the Oil and Gas Industry: Implication for Economic Growth', *European Scientific Journal* (2015) 11(22)212-230

[36]Section 235, 236 to 238 n 8,ibid and Reg. 7, n 13, ibid

[37]Section 240(2), n 8,ibid and Reg. 24(1) and (4), n 13, ibid

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HCDT to foster local sustainable prosperity within the host community[38].The framework now requires trustees, executive committee members made of professionals engaged on ad-hoc basis to support the Trust on issues bothering on their respective professions, non-executive management committees[39] and the advisory committee[40] who are basically indigenes to assuage the pains of non-participation in the governance structure of the HCDT.

## 4. DETERMINATION OF HOST COMMUNITY

The concept of host community has become an ongoing phenomenon, which was scantly defined in the Petroleum Industry Act 2021 to mean communities situated in or appurtenant to the area of operation of a settlor and any other community as a settlor may determine under chapter three of this Act[41]. The definition of host communities rendered under section 318 of the Petroleum Industry Act 2021 precluded host communities' situated in or appurtenant to shallow and deep water areas of operation. In determining these host communities under these operational baselines, Regulation 6 of Regulations 2022[42], must be called in aid and it provides the following determinant criteria, namely;

i. A littoral community to a deep water area of operation located along the Gulf of Guinea of the Nigerian shoreline up to about 500 meters inland, provided that such community is gazette by the National Boundary Commission,
ii. Littoral communities to shallow water areas of operations within Nigeria's shallow waters identified as a host community by a settlor prior to the enactment of the Act, and any other community identified and determined by the settlor;
iii. Littoral communities to shallow water and deep-water areas of operations which include any other community selected by the settlor pursuant to section 235(3) of the Act and littoral communities to deep-water area of operations shall be categorized by their respective state coastlines and shall be assigned to a settlor by the Commission for the purpose of setting up the trust and other responsibilities provided under Chapter 3 of the Act[43].

A host that has benefited from the trust shall not be excluded subsequently by the settlor or Commission from the trust except in the following situations, namely; where the boundary of the area of operation changes as a result of relinquishment, such that a community previously selected as a beneficiary is no longer within the area of operation of the retained area of lease or where a court of competent jurisdiction has by a final un-appealed judgment determined that a community previously selected as a beneficiary as a host community does not qualify as a host community under the Act or any other law.

## 5. THE ESTABLISHMENT OF THE HOST COMMUNITIES DEVELOPMENT TRUST

The Host Communities Development Trust (HCDT) was created to resolve the age-long problems and collision-course between the oil-bearing communities and the multinational oil and gas companies operating within their domain basically due to perennial neglects, infrastructural decays and obvious exclusions. It was established as an innovation for the first time in the History of the Nigerian oil and gas industry, that the host communities' could earn a chapter of attention in the Petroleum Industry Act 2021 to attend to these peculiarities. The host community development trust created the maiden opportunity to obligate host communities development on the oil and gas companies operating within their communities, rather than the age long gMoU, ad-hoc community development project initiative and uncoordinated

[38]Section 234(1) n 8,ibid
[39]Sections 247 and 248 n 8,ibid and Reg. 18, n 13, ibid
[40]Sections 249 and 250 n 8,ibid and Reg. 19, n 13, ibid
[41]Section 318, n 8,ibid
[42]Nigerian Upstream Petroleum Host Communities Development Regulation 2022 made pursuant to sections 10(f), 234(2) and 235(6)(a) of the petroleum industry Act 2021 and all other powers enabling it in that behalf.
[43]n 8, ibid

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corporate social responsibility unrelated to the needs of the communities by companies operating within the communities which was operated on grounds of pity and morality, allowing the companies to embark on programmes and projects that do not have direct impact on the development of the host communities.

The need to placate the effect of the negative impact of the exploration operations of the multinational oil companies on the host communities cannot be overemphasized[44]. It is noted that previous efforts at finding a mitigating ground to appease the host communities through the provision of gMoU and the local content measure failed to yield the expected dividend. The last failed expectation was the failure of the Nigerian Oil and Gas Industry Content Development 2010 to cater for the locality where exploration and production of hydrocarbon crude is carried out and the change of the local content concept from local content to the Nigerian Content raised the woes of the extant Nigerian Content Act 2010.

This heralded the evolutionary innovation of the HCDT that loosely through the structural in-balance of the power arrangement whittled down the applauding benefits of the entire chapter three of the Act by the threat or caution that the host communities will lose its entitlement to any contribution of the settlor to the extent of the expenses incurred to repair any damage to petroleum designated facilities and infrastructures or disruptions of production of petroleum activities within the host communities caused by an act of vandalism[45], sabotage or civil unrest and the conscription and determination of the running of the HCDT) and cowardly addressed in Chapter Three, the complaint of exclusion and injustices meted to the Host communities in the Petroleum Industry Act 2021 by according principal powers and authority to the settlors who are the members of multinational Oil Companies in such a manner that the host communities are to play the second fiddle.

The major objectives[46] of the Host Communities Development Trust is among other things to foster sustainable development within the host communities, deliver direct economic and social benefits from the operations of the settlors to the host communities, promote peaceful and harmonious co-existence between the operators and the host communities, generate a structure that stimulates host community development, to finance the execution of projects for the sustainable development of the host communities and facilitate economic empowerment opportunities in the host communities among other things. The establishment of the Host Communities Development Trust was declared effective within a designated timeline[47]. The PIA[48] mandated holders of interest in PPL or PML that is the settlors and the owners of designated facilities as defined by the Act[49], whose areas of operations are located in or appurtenant to any community or communities to incorporate and operate HCDT[50] within 12 months from the effective date of PIA[51].

[44]A.T. Umar; M.S.H. Othman, et al, "Causes and Consequences of Crude Oil Pipeline Vandalism in the Niger Delta Region of Nigeria: A Confirmatory Factor Analysis Approach" *Cogent Economics and Finance* (2017), Vol. 5 (1), 3; J.S. Omotosho, "Liberation Movement and Rising Violence in the Niger Delta: The New Contentious Site of Oil and Environmental Politics, Studies in Conflict and Terrorism", (2009) 33-36; A. Raji and T.S. Abejide, "As Assessment of Environmental Problems Associated with Oil Pollution and Gas Flaring in the Niger Delta Region, Nigeria, C. 1960-2000", *Oman Chapter of Arabian Journal of Business S and Management Review* (2013) 3, 48-62; C.O. Mgbame, P.A. Donwa and E.O. Osunbor," Nigerian Oil and Gas Background, Reform Efforts and Implication for Economic Growth", *International Journal of Multidisciplinary Research and Development*, (2015) Vol 2 (9) 508-515

[45]Section 257 (2) n 8,ibid and Reg. 37, n 13, ibid

[46]Section 234(1) and 239(3)(a-i) n 8,ibid

[47]Section 236 to 238 n 8,ibid and Reg. 7, n 13, ibid

[48]n 8, ibid

[49]ibid

[50]Host Community Development Trust incorporated pursuant to section 235 of the PIA 2021

[51]n 8,ibid

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For existing OPL[52], PPL[53]s, PML[54]s to incorporate and operate HCDT prior to the application for the field development plan and the licensees of designated facilities granted under PIA[55] to incorporate and operate HCDT prior to the commencement of commercial operations. The failure of the settlors to establish the HCDT may be a ground for revocation of the approval of the applicable licence or lease after warning and directives to do so and the settlors remained recalcitrant[56]. The PIA[57] requires the holders of any of the interest in PPLs, PMLs and other existing interests in OPLs, PPLs, PMLs and licensees of designated facilities to allocate 3% of their actual annual operating expenditure of the preceding financial years in upstream petroleum operations to the host communities through the Host Communities Development Trust scheme.

## 6. ORGANS OF HOST COMMUNITIES DEVELOPMENT TRUST AND FUNCTIONS

There are six strategic organs that interplay in the scheme of the Host Communities Development Trust to give effect to the object of the host communities' development trust and to establish sustainable development and facilitate economic empowerment opportunities in the host communities among other things.

**a. Upstream Commission (NUPRC)**

The Upstream Commission has the statutory duty to make regulations on host communities' issues and the approval of the members of the Board of Trustees. The Commission is the regulator of the settlors and indirect regulator of the HCDT.

**b. Upstream Licensees/ Lessees (Settlors)**

The settlors are the Upstream Licensees/ Lessees. They have the statutory obligation to manage, administer, regulate and carry our oversight functions on host Communities issues. They resolve concerns of the HCDT, appoint the BoT members, incorporate[58] and establish the HCDT and the approval of members of the Board of Trustees.

**c. Board of Trustees of HCDT[59]**

The Board of Trustees is the appointees of the settlors and subject to the approval of the Commission[60]. It is loaded with the onerous task of approving the projects for which the host communities' development fund will be utilized[61]. It equally has the responsibility to set up the Management Committee of the HCDT and the appointment of its members[62]. The Board of Trustees is obligated by the provision of the PIA[63] to receive and undertake an annual allocation of funds received from the settlors in the following ratios and proportions[64]; 75% of the 3% fund contributed by the settlors be allocated to capital fund for capital project, 20% of the 3% to be allocated to the reserve fund to be invested by the managers of the fund for use where there is

[52]Oil Prospecting Licence now Petroleum Prospecting Licence
[53]Petroleum Prospecting Licence
[54]Petroleum Mining Lease
[55]n 8,ibid
[56]Section 238, n 8,ibid and Reg. 9, n 13, ibid
[57]n 8,ibid
[58]Section 235(1) to (5), n 8, ibid
[59]Host Communities Development Trust
[60]Section 242 (1) to (5) , n 8, ibid
[61]Section 243(a) to (f), n 8, ibid
[62]Section 247, n 8, ibid
[63]Section 244, n 8, ibid and Reg. 23, n 13, ibid
[64]ibid

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cessation in the contributions from the settlors and 5% of the 3% to be allocated to administrative cost for running the trust[65].

**d. Management Committee**

The non-executive members of the management committee of the Host Communities Development Trust is nominated as representative of the host community to be constituted and inaugurated by the Board of Trustees of the host Communities Development trust[66]. The executive members of the management committee of the Host Communities Development Trust are selected by the BoT in an intentional interview process. The Management committee is mandated by the Act[67] to prepare and submit the budget of the host communities' development trust to the Board of Trustees for approval. It also has the duty to develop and manage the contracting process for awarding project contracts on behalf of the host communities' development trust, subject to the approval of the Board of trustees[68]. Under the Host Community Development Trust (HCDT) established by the Act[69], the management committee refers to the body responsible for the day-to-day administration of the Trust[70]. The Act[71] defines the management committee as the committee obligated for the general administration[72] of the Trust, and includes the Secretary[73], and other members appointed by the Trustee[74]. The management committee is responsible for the general administration of the host community development trust on ad-hoc basis and responsible for the preparation of the annual budget of the host community trust and submit it to the Board of trustees for approval, development and management of the contracting process for project award on behalf of the host community development trust subject to the approval of the Board of trustee; determination of the project award winner and contractors to execute projects on behalf of the host community development trust through a transparent process subject to the approval of the BoT, supervision of project execution, reporting on the activities of the management committee, contractors and other service providers to the BoT, undertaking any other function and duty that may be assigned to it by the BoT to enhance the performance of the HCDT[75]. It also includes implementing the decisions of the Trustee, overseeing the administration of the Fund, making recommendations to the Trustee on matters related to the management of the Trust and ensuring compliance with the provisions of the Act[76] and the Trust Deed[77]. The management committee plays a crucial role in ensuring the effective management and administration of the HCDT, and ensuring that the Trust is operated in a transparent and accountable manner. The role of management and administration are mostly interwoven[78]. It is obligated on the management committee to recommend the fund manager to the

[65]ibid
[66]Section 248 (a), n 8, ibid
[67]Section 248(a), n 8, ibid
[68]Section 248(b)(c), n 8, ibid
[69]Section 235, n 8, ibid
[70]Section 248, n 8, ibid
[71]n 8, ibid
[72]Administration focuses on establishing policies, guidelines, and procedures to ensure the smooth operation of the organization.
[73]Section 247(5), n 8, ibid
[74]Section 43(1), n 8, ibid
[75]Section 248, n 8, ibid
[76]n 8, ibid
[77]The Trust is a legal document created by the Settlor in which he appoints the Trustee(s) and names the Beneficiary (ies) as the person(s) who would take benefit of the Trust. A Trust Deed is a document through which a Trustee declares the terms and conditions upon which it would hold the Trust Property, any outgoings and interests relating to the Trust for the Beneficial Owner. Anyone who has legal capacity to make a contract may create a trust, the creator is known as the settlor/grantor; the one that creates a trust, or grantor.
[78]Management and administration are closely related concepts within a body but play distinct and separate roles and functions. Administration involves overseeing an organization's day-to-day operations, ensuring they run smoothly by implementing policies and decisions set by management which entails managing of schedules, facilitating communication, optimizing resource allocation, and resolving arising issues. Administrators play vital role in policy implementation, making sure certain guidelines are followed and organisational goals are pursued and achieved. Their coordination efforts harmonize different teams and individuals, while their

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board for appointment from among the fund managers licenced to do the business of fund management that complied with requirements of the Petroleum Industry Act 2021[79].

**e. Advisory Committee**

Under Nigerian law, an advisory committee is a body established to provide expert advice and guidance on specific matters. The courts have defined advisory committees as a body set up to advise on specific issues such as providing guidance and advice on particular matters.

The advisory committee of the HCDT is to give experiential advice relating to the community peace mechanism, they do not possess decision making powers but are obliged to address activities or matters mandated it to perform. The advice of the committee is not binding in law except otherwise specified. These definitions and characteristics highlight the importance of advisory committees in providing expert guidance to support informed decisions. The Advisory Committee of the Host Communities Development Trust is appointed by their respective communities and set up by the Management Committee of the Trust[80] upon the management committee's being set up by the Board of Trustee[81] of the HCDT. The Advisory Committee of the Host Communities Development Trust has the statutory obligation pursuant to the Act[82] to monitor and make reports on the progress of projects being executed in the community to the management committee and equally advise the management committee on activities that will improve the security infrastructure and promotion of peace building within the community and the entire area of operation.

Any person in the position to offer advisory services if in a professional respect[83] has a fiduciary duty to act in the best interest of the beneficiary[84] and must be done with reasonable skill and care[85] not misleading[86] in any way as any negligent advice[87] or negligent misstatement[88] may lead to harm[89] and consequential liabilities[90] where there exists a special relationship between the advisor and the beneficiary. The importance of providing accurate and reliable advice[91] by the person or body of persons reposed with the confidence to do so and the potential legal consequences of defaulting cannot be over emphasized. Under Nigerian laws, "advisory" typically refers to the provision of expert guidance or opinion on a particular matter. In a legal context, advisory roles are often associated with professionals such as lawyers, accountants, and financial advisors, for example a lawyer is expected to provide an honest and informed legal advice[92] as he owes his

adaptability enables them to respond effectively to changing circumstances. While management focuses on strategic direction, administration handles the practical and operational aspects, jointly contributing to an organisation's overall functionality and achievement. In smaller settings, these roles may merge, whereas larger organisations might have separate departments or individuals dedicated to each function. Management covers the process of purposefully scheduling, organizing resources, coordinating efforts, directing activities, and maintaining control within an association to achieve its intended goals and objectives. This complex task involves making informed decisions, optimizing resource allocation, fostering collaboration among teams, providing leadership, and monitoring progress to ensure alliance with established standards. Whether in the context of businesses, nonprofits, or government entities, effective management is pivotal for resource efficiency, goal attainment, and adaptability in a dynamic environment. A range of management theories and models, from classical to contemporary, contribute to shaping management practices, with approaches tailored to factors such as organisational culture, industry dynamics, and leadership preferences.

[79] Section 248(e), n 8, ibid
[80] Section 249, n 8, ibid
[81] Section 247, n 8, ibid
[82] Section 249 and 250, n 8, ibid
[83] *Hedley Byrne & Co. Ltd v Heller D Partners Ltd* (1964) A.C. 456
[84] *Williams v Central Bank* (2014)UKSC 10; *Boardman v Phipps* (1967) 2 A.C. 46 HL
[85] *Bolam v Friern Hospital Management Committee* (1957) 1 WLR 583
[86] *Derry v Peek* [1889] 14 App Cas 337; [1889] 5 TLR 625 (House of Lords)
[87] *Hedley Byrne v Heller & Partners* (Supra)
[88] *Chief Edmund I. Akaniwon & Ors v Chief O.N. Nsirim & Ors* (2008) 1 SCNJ 275; (2008) JELR 4008 SC LLJR-SC
[89] *Donoghue v Stevenson* (1932) AC 562
[90] *Afolabi v Ibrahim* [2002] 18 NWLR (Pt. 786) 332; *Peek v Gurney* (1873) LR 16 Eq 463
[91] *Derry v Peek* (Supra) n 64
[92] ibid

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beneficiary a fiduciary duty to act in the best interest[93] of such beneficiary, knowing quite well that he may be liable for negligence if he fails to exercise reasonable care in providing his services[94]

**f. The Funds and Accounts**

The HCDT funds are principally generated[95] by the payment of the statutory 3% payable into the collection dollars account which is converted to Naira and payable and distributed into the various other accounts, namely the naira collection account, the Project account which houses the 75% of the statutory 3% contribution, is the reserve fund, payable into the reserve account which is 20% of the statutory 3% and the administrative account which consists of the remaining 5% of the statutory 3% of fund payable by the settlor. Unfortunately, the settlors stall the application of the Act on these funds and accounts. First of all, the settlors may choose to delay the appointment and funding of the fund manager indefinitely without any justification, irrespective of the approval and resolution of the BoT and other organs of the trust, with the resultant consequence of the host communities losing the accruable interest/profit from the 20% reserve fund investment which proceeds enters into the project account of the communities. Similarly, they may also choose to override the resolution and appointment of the Auditor contrary to the provisions of the Act and required process and procedure of appointment of the auditors[96].

**g. Fund Managers**

The fund managers are engaged to manage and invest the reserve fund into viable business ventures with low volatility. They are appointed by the Board of Trustees on the recommendation of the management committee after a prudent interview and screening of the applicant-fund manager[97].

## 7. THE ROLES OF HCDT IN THE OIL-BEARING COMMUNITIES

Considering the apt wordings of the chapter objectives[98] and the objectives of the HCDT[99], the host community development trust is intended to perform several strategic roles to foster sustainable prosperity for the host communities. These functions include but not limited to the following under-listed functions, namely:

### 1. Fostering of Sustainable Community Prosperity and Development within the Host Communities

Host Community development trusts are quintessential to promoting advancement and development within host communities. The trust assembles together varieties of individuals to work towards common goals to improve the quality of life for all members of the community. This will energize a paradigm shift from personal, selfish benefits to mutual development aggregating into massive community development. The Host community development trust arrangement if propelled well with every sense of selflessness eschewing favoritism, manipulation, and the pursuit of personal gains with transparent leadership, the host communities will soar high in the development of infrastructures and overall development. If these and many more can be achieved by the Host community development trust, divisiveness and factionalism that erodes unity and enthrones unnecessary opposition will be abated.

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[93] *Hedley Byrne & Co. Ltd v Heller D Partners Ltd* (Supra) 534

[94] *Abgonmagbe Bank Ltd. v C.F.A.O.* (1966) 1 All NLR 140; *Benson v Otuber* (1975) 3 S.C.9; *Okoli v Nwagu* (1960) NLR 48; *Duclaud v Ginoux* (1969)1 All NLR 26; *Nigeria Airways Ltd v Abe* (1988) 4 NWLR (Pt. 90) 524; *Strabag Construction (Nig.) Ltd. v Ogarekpe* (1991) 1 NWLR (Pt. 170) 733 *(Pp. 246-247, Paras. F-B)*; see also Section 217 Anambra State Tort Law 1989.

[95] Section 240(2), n 8, ibid and Reg. 23, n 13, ibid

[96] Section 254 (b), n 8, ibid

[97] Section 254(b), n 8, ibid and Reg. 34, n 13, ibid

[98] Section 234, n 8, ibid

[99] Section 239, n 8, ibid

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**2. Delivering of Direct Economic and Social Benefits**

HCDT[100] is proposed to deliver direct economic and social benefit to the Host communities directly from the operations of the settlors to the host communities. This is in line with the principle of pleasure and pain principle of the hedonist, that he who suffers pains should be positioned to enjoy the associated benefit. It means that through the operation of the HCDT[101] and the stable and fixed annual regular financing of the Trust by the settlors' economic and social wellbeing of the oil bearing communities will be enhanced[102]. Poverty and other social vices associated with deprivation will be reduced to the barest minimum because a good number of the members of the oil bearing communities will be profitably engaged and will no longer be available for non-profitable use.

**3. Promotion of Peaceful and Harmonious Co-existence of the Operators and their Host.**

The full and effective operation of the HCDT amidst transparent and accountable leadership will structurally promote peaceful and harmonious co-existence between the feuding host communities and the multi-national oil companies whose operations exposed the host communities to grave dangers and environmental degradation and other hazardous inconveniences. In these circumstances, social solidarity and common collaborations among the players and the participant observers must be encouraged by building the bridge of trust and confidence between the led and the leaders. This will destroy every spirit's mistrust and internal conflicts and breakdown of unity. This is because infighting, maneuvering and manipulation of feeble minded persons can cause stagnation, delay in making valuable decisions, waste of valuable time and resources, obstruction, delays in the execution of community development projects and misapplication of community development based resources to individuals on grounds of loyalty. These imperatives will serve a wider justice if the leaders of the Host Community Development trust will lead to fairness, inclusivity, transparency, unity and accountability.

**4. Generating Structure that Stimulates Host Community Development**

The HCDT[103] functioning effectively is capable of establishing a working reliable structure that will stimulate the culture of gradual and consistent vast development of the host communities, annually. This is because the consistent funding of the Trust and the steady distribution of the Funds through the structured matrix of the funds distribution[104] in accordance with the host communities profitability in the settlors operations and the application of the distributed community funds in line with the community's need assessment[105] and priority community projects, based on the available funds. This annual routine of application of the steady fixed non-government funding will do a great intervention in the development of the community, and basically transform the communities to cities with abundance of facilities and infrastructures.

It will simultaneously produce elite trained and certificated on the areas of the oil and gas industry needs to drive the agenda of transfer of technology and succession by Nigerians[106], where the communities focus of social capital investment[107]. It is imperative that to develop a structure that will stimulate the culture of annual routine community development, the drives of the leadership seat must promote transparency and accountability by enthroning open and transparent decision-making processes that ensures the employment of sure and clear criteria in all processes. This erodes the potency of favoritism, apathy, disillusionment,

[100]Host Communities Development Trust
[101]Sections 234 and 239, ibid
[102]Section 240(2), n 8, ibid and Reg. 24(1) and (4), n 13, ibid
[103]ibid
[104]Section 245, n 8, ibid and Reg. 20, n 13, ibid
[105]Section 251, n 8, ibid and Reg. 21, n 13, ibid
[106]Sections 30 to 31 and 46 to 46 of the Nigerian Content Act 2010
[107]Sections 27,28, 30 and 41, ibid, n 106

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reduced patriotism, loss of credibility, reputation and builds community confidence and focus. To be able to build, establish and project transparency and accountability there must be a running of a regular reporting system of the activities of the trust effortlessly and seamlessly. There should also be inclusiveness and broad participation and representation of all community stakeholders in decision making and execution. There should equally be active engagements and needful consultation to breed a sense of ownership and collective responsibility.

Through the promotion of transparency, broad-based inclusiveness, representative participation, oneness, common purpose, effective mechanism for conflict resolution, the trust can avert and maneuver the dangers of schism and community factionalization that can endanger community development and transformation. The spirit of cooperation and mutual support must remain at the heart of community development efforts, ensuring that the trust activities always reflect the best interests of the trust and the community as a whole.

**5. Financing Project Execution for the Sustainable Development of the Host Communities**

The foremost challenges of community development is funding of community projects[108], elitist hijack of projects, opinions and creation of avoidable schisms of opinions on a proposed project if they are not in charge. The unique feature of the HCDT[109] Statutory creation is the fact that beneficiaries do not have a final say in the determination of the contractors, the handling of the funds, or the nature of projects. These classic troubling issues that stager and hinder community development projects are now handled by a well-structured process and procedure, such that what the beneficiary community can do in the circumstance is to nominate the reliable contractors who will compete in a competitive bid process and fulfill the prequalification technical and commercial requirements. The funds are given to the contractors directly with the work specification, bill of quantity (BOQ) and Bill of Engineering, Measurement and Evaluation (BEME) and the requisite contract document duly executed between the contractor and the Settlors and HCDT[110] such that any misfeasance will tantamount to a criminal offence of fraud and/or failed contract amongst other defaulting provisions of the PIA 2021 pursuant to the Regulation[111]. The implication of the above analysis is that there is certainty of funding and consequently possibility of consistent and steady community development.

**6. Facilitating Economic Empowerment Opportunities of the Host Communities Members**

The operational model of the HCDT[112] is that it will among other things facilitate economic empowerment opportunities to HCDT[113] members. This is possible because the initiative is structured in such a manner that will encourage the indigenous contractors of the HCDT[114] communities, this is necessary to avert the absurd behaviours and menacing demands of certain unlawful and criminal levies[115] from non-indigenous contractors at work which impede work and escalate tension in the community.

The consequent use of indigenous contractors gives them the opportunity of skill acquisition and good training ground for bigger global contracts. This opportunity equally elevates the economic status and wellbeing of the rural dwellers and gives them the aura that recognizes the usefulness of the settlors' investment in their community as a source of livelihood and hope of greater tomorrow.

[108]Section 251(4), n 8, ibid and Reg. 20(1)(2), 23(3)(b), n 13, ibid
[109]Host Communities Development Trust
[110]ibid
[111]Regulation 36(1), n 13, ibid
[112]Section 234, ibid
[113]ibid
[114]ibid
[115]Marching ground, Community Access/Right of Way fees, Settlement/Community Consent Ley, Youth development/empowerment, Security/ Surveillance Fees, Development Levies, Loading/offloading and Equipment Landing Fees, Festival/Traditional Rites Levies

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### 7. Preferential Treatment of Local Social Capitals, Products and Services

There is preferential treatment in favour of the local social capitals, products and services in the Host Communities' contract drawn from the community needs assessment[116] and development plan[117] commensurate to the available fund[118]. The evolution of the HCDT further strengthen the application of the local content requirement of utilization of the Nigerians[119] in the activities in the oil and gas industry as the HCDT is the offshoot of the oil and Gas Industry and the community development preferentially engages community contractors only.

## 7. APPRAISAL AND CHALLENGES OF THE HOST COMMUNITY DEVELOPMENT TRUST

The HCDT[120] is a good initiative and innovation; it portends a bright future for the host community's sustainable overall development with the constancy and steady supply of the fixed funding by the Settlors. It provides dedicated funding for sustainable development in the Host Communities which aligns with global community sustainability of host communities and the corporate social responsibility. The HCDT[121] structure is a significant improvement from the gMoU[122], the ad-hoc community development initiatives and the uncoordinated and unrelated corporate social responsibility due to the current legal framework and protection of the fund from hijack and embezzlement. The trust if effectively governed with expected transparency will re-write the primordial and perennial ugly story associated with the host communities, boast indigenous desire to stakeholder-ship by safe guarding the facilities of the settlor within its domain. It will enable continuous and sustainable community development through projects execution with resultant peaceful existences and harmonious operation of the settlors. It will trigger social, economic empowerment, employment opportunities and a training ground for future indigenous multi-million dollar contractors. The challenges of this trust is its newness which poses a great challenge as the settlors are abusing the circumstance of this novelty being conferred with overriding and excessive powers by the Act[123] , lack of clarity in the definition of functions of the organs and wordings in the Act[124].

## 8. CONCLUSION

The HCDT[125] is barely new and on trial. There is no manual except the PIA[126] 2021 and the Regulation which are drawn in the language of the law requiring the independent interpretation of the court to really appreciate the law, the roles and powers of the relevant organs of the Trust, the powers and authority of the settlors, when powers are excessively utilized. The language of the Act[127] itself is without clarity. The Act[128] granted excessive powers to the settlors that the organs of the HCDT[129] operate at the mercy of the settlors who may without just cause overrule a necessity of the Trust even after the approval of the BoT[130] and other organs have been secured. There is lack of transparency in the payment and determination of the payment of the 3% by the Settlors of the actual annual production expenditure, the clustering together of

[116]Section 251, n 8, ibid and Reg. 20, n 13, ibid
[117]Section 252, n 8, ibid and Regulation 21, n 13, ibid
[118]Section 245, n 8, ibid and Reg. 22, n 13, ibid
[119]Sections 3, 10, 49, 50, 51 and 52, n 8, ibid and Section 3 of the Nigerian Content Act 2010
[120]Host Communities Development Trust established and objectives streamlined by sections 234 and 239, n 8, ibid respectively.
[121]ibid
[122]Global Memorandum of Understanding (GMOU)
[123]Sections 235(1), 235(7)-237, 239-243, 245, 251, 252, n 8, ibid
[124]Section 318, n 8, ibid on host community, settlors; sections 243, 248 n 8, ibid on the administration and management of the HCDT and Regulation 28(1) Nigeria Upstream Petroleum Host Communities Development Regulations 2022
[125]Ibid, n 83
[126]Ibid, n 97
[127]ibid
[128]Ibid, n 97
[129]Ibid, n 83
[130]Board of Trustee of the Host Communities Development Trust, the supposed apex organ of the of the Trust created under section 235(5) with duties outlined in section 242 of the Petroleum Industry Act 2021 whose functions are rendered ineffective most times by the Settlors

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the host communities that ought to be in separate HCDT[131] into one single HCDT[132] and one single 3% with the resultant implication that the distributed project funds based on the Matrix of fund distribution[133] cannot adequately fund the priority projects of the community such that the communities now resort to projects that the available fund can finance.

There is a seeming divide and rule policy strategy adopted by the settlors that caused friction and suspicion of the organs believing that one organ or the other is working in favour of the settlor. Equally, there is no clear cut definition with clarity of the functions of the organs of the HCDT[134] instigated by unclear definition of the use of administration and management for the various organs without clarity on the scope of the words used.

There are pockets of non-compliance of the payment of the 3%, the non-inauguration of the HCDT[135] as provided by the PIA[136] 2021 by some settlors, poverty and lack of confidence to approach the court or NUPRC[137] on the misfeasance of most Settlors and finally the threat-caution clause of resulting damage of the settlors' facility to be borne and forfeiture of the community's trust fund of 3% even without proof of culpability. The Settlors seem to be governing the HCDT[138] solely and the absolute power needs to be curbed by legislative amendment. Appointment and funding of the auditors of the accounts and fund managers to be effective once conducted with due process and the approval by the resolution of the Board.

In view of the foregoing findings, it recommended that the Act need to be amended to enable the organs of the HCDT to be actually people oriented and to avert the hijack of the HCDT governance by the settlors owing to the enormous powers given to it by the Act[139]. The amendment should take away the overriding powers of the settlor against the resolutions of the structured organs of the HCDT, the appointment of the auditors should be automatic upon the application of due process and approval by the resolution of the BoT, auditors should be appointed to audit all accounts including the collection account to enable the regularity of the payment of the 3% and whether in full or in part. The BoT should be appointed by the community rather than the settlors. The settlors should be compelled to establish separate HCDT in the area of operation rather than lobbying them together with the resultant insufficiency of funding for projects due many communities' involvement. There should be clear cut distinction between the functions of the Management committee, the management executives and the BoT in clear manner particularly a clear definition of administration and management of the Trust when used interchangeably in describing the functions of the BoT, The Management Committee and the Settlors.

The Act[140] should clearly state the court that has jurisdiction to hear and determine any cause arising from the operation of the HCDT such that unnecessary controversies arising from jurisdictional conflict will be averted

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[131]Host Communities Development Trust established by section 234 of the Petroleum Industry Act 2021
[132]ibid
[133]Section 245 of the Petroleum Industry Act 2021
[134]Ibid, n 83
[135]ibid
[136]Section 238, ibid
[137]Nigerian Upstream Petroleum Regulatory Commission, created by section 4, n 8, ibid
[138]Ibid, n 83
[139]Ibid, n 97
[140] n 8, ibid