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A CRITIQUE OF THE HOST COMMUNITIES' DEVELOPMENT TRUST FUND STRUCTURE UNDER THE PETROLEUM INDUSTRY ACT, 2021

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ABSTRACT

For well over 50 years, the Petroleum Act, 1969 principally regulated the Nigerian upstream petroleum industry even though it never made any specific provisions for the development of the host communities. All that existed were just some random provisions that required that some Nigerians should be employed in certain managerial cadres in the industry. It never had any provision that specifically aimed at the development of the host communities as the Petroleum Industry Act, 2021 (PIA) does. As a result, the International Oil Companies (IOCs) did not pay any serious attention to the Act more so as it did not have any punitive provisions to compel compliance. The greatest achievement of the PIA, 2021 therefore, is the intentional recognition of the need to develop the host communities and strategic provisions to enforce compliance. In effect, the PIA elevated

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the traditional issues of corporate social responsibility to statutory obligations. Given that the PIA is still a nascent legislation and less than two years since it came into effect, the doctrinal methodology of research was extensively adopted in which a number of other literatures in the upstream industry were examined to highlight the fact that the current structure of the host communities' development fund as constituted under the PIA, 2021 is such that it will not achieve its lofty objectives. A good number of the lacuna have been identified in this paper, the major one being the insignificant amount of the sum the IOCs are obligated to contribute into the fund as well as the IOCs' overbearing control of the Board of Trustees of the Trust Fund. This paper makes a number of recommendations on how best to improve the effectiveness of the Fund in order to position it to achieve its goals. One of such suggestions is the need for an upward review of the amount of the IOCs' contribution into the Fund and the need for a more efficient management structure for improved service delivery to the host communities.

1. INTRODUCTION

For several decades, the principal legislation that regulated the petroleum industry in Nigeria was the Petroleum Act, which took effect on 27th November, 1969. The defunct Petroleum Act had one major weakness which is that it did not make specific provisions for the development of the oil-bearing Communities. This distinctive omission in the Petroleum Act was effectively addressed on 16th August, 2021, when the Nigerian President assented to the Petroleum Industry Act, 2021[1] thus introducing a new legal regime for the petroleum industry in Nigeria. Perhaps, as expected, the new Petroleum Industry Act (the PIA), was greeted with mixed feelings. Many hailed it as a welcome development while many others dismissed it as nothing better than the previous legislation such as the Oil Pipelines Act[2](OPA), the Petroleum Act[3] (PA), Deep Offshore and Inland Basin Production Sharing Contracts Act[4], Petroleum Profits Tax Act[5], the Nigerian

[1]Petroleum Industry Act, 2021.
[2] CAP O7, LFN., 2004.
[3] CAP P10, LFN., 2004.
[4] Cap D3, LFN 2004.
[5]Cap C13, LFN 2004

National Petroleum Corporation Act[6] (NNPC) amongst other legislation that the PIA sought to repeal or replace.[7]

One of the most debated aspects of the PIA is the provision establishing the Host Communities Trust Fund. The reason for this is not far-fetched. It is common knowledge that oil is the mainstay of the Nigerian economy[8], and the issue of developing the region where the oil is largely produced has been a subject of intense debate over the years. In the past, the issue of host communities' development had been mostly inserted in the various production sharing contracts between the NNPC and the international oil companies and Group Memorandum of Understanding (GMoUs) between the international oil companies and the host communities[9] without any statutory provision. The closest statutory provision for this was Paragraph 38 of the First Schedule to the Petroleum Act which stipulated that the holder of an oil mining lease shall ensure within 10 years from the grant of the lease, a certain percentage of Nigerians should be employed in managerial, professional and supervisory grades.[10] Clearly, the former regime spoke to the employment of Nigerians in certain cadres only but it did not specifically target the development of the host communities as the PIA, 2021 does. This, predictably, made them toothless and the IOCs observed more of such stipulations in breach leading to the obvious underdevelopment of the region as we have it today.

Before now, it had been argued and indeed correctly, that it is imperative that not only should corporate social responsibility be left only to stipulations in oil production contracts or to undertakings in the MoUs between IOCs and the host communities, but it should be statutory stipulations as this would make the responsibility stronger and the host

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[6]Cap N. 123, LFN 2004.

[7]Sections 310-311 of the PIA, 2021.

[8]Ipaye, A. (2014) *Nigerian Tax Law & Administration: A Critical Review*. SCO Prime Publishers. London, p. 337; Omorogbe, Y., Fiscal Regimes. A paper presented at the Civil Society Capacity Building Workshop Organized

by Nigeria Extractive Industries Transparency Initiative (NEITI), held at Presidential Hotel, Port Harcourt,

Rivers State, from July 27 -28, 2005, p. 2.

[9] Clause 12 of the 1993 PSC series particularly that between the NNPC & Statoil Nig. Ltd & BP Exploration Nig. Ltd dated 18th May, 1993; Clause 13.3(b) (i) of the 2005 PSC series.

[10]Paragraph 38, 1st Schedule, Petroleum Act, Cap. P.10, LFN, 2004.

communities better off.[11] It does appear that the PIA, 2021 is a direct response to this argument. This is the reason this paper concedes that the provision for host Communities Trust Fund in the present PIA, 2021 is a commendable step in the right direction.

The first problem of this research is that the stipulated sum of 3% of the actual annual operating expenditure of the preceding financial year in the upstream petroleum operations as contribution by the IOCs[12] is ridiculously too low to make any meaningful impact in the lives of the host communities and it represents a marked departure from the initial proposals in the Petroleum Industry Bill, 2012.[13] Secondly, this paper further argues that the management structure of the host Communities Development Trust Fund places excessive powers on the IOCs otherwise known as the Settlor. The power imbalance is such that the IOCs could do whatever they like leaving the host communities at their mercy just as was the case in the previous regime. The third problem is that the layers of governance/decision making levels in the management structure of the Trust Fund introduce avoidable bureaucratic bottlenecks capable of limiting its effectiveness. The fourth problem is that the provisions inadvertently cede the protection of petroleum installations to the host communities by imposing a punishment on the host communities in the event of any acts of vandalism, sabotage or any other civil unrest that leads to the disruption of upstream petroleum operations.

The fundamental question in this research is this: granted that the provision for host Communities Trust Fund in the present PIA, 2021 is a commendable step in the right direction, but can it be said that the step is a bold one having regard to the many limitations that bedevil the management structure of the Fund? Another question is whether the structure is such that can substantially achieve its stated objective of fostering sustainable prosperity within the host communities.

The objective of this work, therefore, is to critique the provisions of the Host Communities Development Trust Fund in the light of the PIA with

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[11]Usman, A.K. (2014-2015) "Corporate Social Responsibility vs. Protection of Foreign Investment: The Experience of Niger Delta Communities and International Oil Corporation in Nigeria." Ahmadu Bello University Journal of Commercial Law (ABUJCL).Vol.7, No.1. pp. 38-55.

[12]Section 240(2) Petroleum Industry Act, 2021.

[13]CF: section 118 of the Petroleum Industry Bill, 2012.Kachikwu, I.E. (2016) *The Petroleum Industry Bill: Getting to the Yes*. LPCS Limited, Lagos. Pp. 208-209.

the aim of drawing attention to the fact that the PIA ought to have done better for the host communities than as it is now. This work is divided into different segments beginning with the introduction. The first part looks at the objectives and incorporation of Host Communities Development Trust Fund under the Petroleum Industry Act. Part two considers the sources of funding for Host Communities Development Trust Fund. Part three examines the host communities' obligation to protect petroleum assets and not to cause disruptions, while part four focuses on the management structure of the Host Communities Development Trust Fund. Part five highlights the dispute resolution mechanism, and the last part is the conclusion.

2. THE OBJECTIVES AND INCORPORATION OF HOST COMMUNITIES' DEVELOPMENT TRUSTS UNDER THE PETROLEUM ACT, 2021

Chapter three of the Petroleum Industry Act, 2021 commences with a clear layout of the objectives of the Act as it relates to the development of host communities as follows:

> The objectives of this chapter are 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 licensees or leasees and host communities; and
> (d) Create a framework to support the development of host communities.[14]

Looking at the above objectives of the PIA in that regard, one will rate the initiative highly, particularly if it is remembered that they speak directly to the age-long yearnings of the host communities. Since the first discovery of crude oil in commercial quantity[15] in 1956 at Oloibiri in present day

[14] Section 234(1), Petroleum Industry Act, 2021

[15] Section 318 of the PIA, 2021, Commercial discovery means a discovery of crude oil, natural gas or condensates, within a petroleum prospecting license or petroleum mining lease which can be economically developed in the opinion of the licensee or lessee after consideration of all relevant economic factors normally applied for the evaluation and development of crude oil, natural gas and condensate.

Bayelsa State[16], the Nigerian state has consistently grappled with the challenge of assuaging the legitimate demands of the host communities to benefit from the proceeds of petroleum production in their domains. One can safely say that, for the very first time, the Nigerian state has come up with a legislation that recognizes the need to foster sustainable prosperity of the host communities, ensures direct economic and social benefit to the people and enhances peaceful and harmonious co-existence between the host communities and the International Oil Companies (IOCs). In effect, the PIA is a statutory recognition on the part of the Nigerian government that providing direct social and economic benefits to the host communities will engender a peaceful atmosphere for petroleum production in the Niger Delta area.

The PIA further provides that the Commission[17] and Authority[18] may make regulations[19] with respect to this chapter on areas within their competence and jurisdiction as specified in this Act, and such regulations shall include a grievance mechanism to resolve disputes, between settlors[20] and host communities.[21]It is submitted that this is a winsome provision. This is because such dispute resolution mechanism will facilitate the speedy and prompt resolution of disputes that may predictably arise between the settlors (IOCs) and the host communities. This will certainly reduce the length of time it takes to resolve similar disputes before the formal Courts. Furthermore, this will promote mutual peace and harmonious co-existence having regard to the fact that parties are more willing to abide by the settlement reached by themselves rather than the ones handed down to them by the courts. In effect, this will make for hitch-free petroleum

[16]Oni, A. (2021) Understanding Petroleum (Oil & Gas) Transactions and the Nigerian Market. CIPLUS Limited, Lagos. pp. 30-31.

[17] Nigerian Upstream Petroleum Regulatory Commission (NUPRC); Nigeria Upstream Petroleum Host Communities Development Regulation, 2022, Official Gazette of the Federal Republic of Nigeria, No. 114, Vol. 109, Lagos, 24th June, 2022.

[18] Nigerian Midstream and Downstream Petroleum Regulatory Authority

[19]The NUPRC issued its Regulation in this regard on 23/6/2022.Nnodim, O. Federal Government Gazettes Petroleum Host Community Development Regulations. Punch online Newspaper. www.punchng.com, Accesses on 20/9/2022 at 9:53am.

[20]Settlor means a holder of an interest in Petroleum prospecting licence or mining lease who are of operation is located in or appurtenant to any community or communities. Section 318, PIA, 2021.

[21]Section 234(2) & (3), Petroleum Industry Act, 2021

operations and minimize incidents of shut-ins arising from communities' unrest and disruptions.

Regarding the establishment of Host Communities Development Trust, the PIA provides that the Settlor shall incorporate Host Communities Development Trust (the Trust) for the benefit of the host communities which the settlor is responsible.[22] Where there is a collectivity of settlors operating under a joint venture agreement with respect to upstream petroleum operations, the operator appointed under the agreement shall be responsible for incorporating the Host Communities Development Trust on behalf of his co-joint venture partners.[23] For settlors operating in shallow waters and deep offshore, the littoral communities and any other community determined by the settlors shall be host communities for this purpose.[24] This is also very commendable as it ensures that no community is left out notwithstanding the location of the upstream petroleum operation.

The Act further provides that the "settlor shall for the purpose of setting up the Trust, in consultation with the host communities, appoint and authorize a board of trustees (the Board), which shall apply to be registered by the Corporate Affairs Commission as a corporate body under the Companies and Allied Matters Act in the manner provided under this Chapter."[25] The provision introduces a bit of concern as it confers the settlor with the powers to appoint and authorize the Board of Trustees of the Host Communities Development Trust while the beneficiaries are to be merely consulted. This predictably leaves the host communities with little or no voice in the setting up and administration of the Board of Trustees. This skewed structure in the composition of the Board of Trustees is clearly not in the interest of the host communities. The Act ought to be reviewed to state the number of the members of the Board of Trustees and for the settlor and the host communities to nominate the members in equal proportion.

Another provision of the Act that is manifestly adverse to the interest of the host communities is section 235(7)[26] which stipulates that the

[22]ibid. S. 235(1).
[23]ibid. S. 235(2)
[24]Section 235 (3) Petroleum Industry Act, 2021
[25]ibid. S. 235(4)
[26]ibid. Petroleum Industry Act, 2021

"settlor shall undertake needs assessment that will metamorphose into the community development plan for the purpose of determining the projects to be undertaken by the Host Communities Development Trust." This demeaning stipulation suggests that the host communities themselves are not aware of their own needs such that it will have to require the settlors to identify same. It is submitted that this position cannot foster sustainable prosperity within host communities as envisaged. This clearly opens a floodgate for the IOCs to only nominate such needs that, in their own view, are affordable and achievable notwithstanding the actual needs of the communities from the perspectives of the communities themselves. It is therefore, suggested that this provision should be amended to give the host communities the opportunity to do the need assessment themselves and recommend same to the settlors. This will accurately capture the actual needs of the communities at every given time and best achieve the objectives of the host communities' development policy.

What is more, a situation where the host communities are not allowed to make any input in the assessment of their needs reduces them to mere beggars with no choice, which ought not to be the case. The host communities are not beggars but critical stakeholders in petroleum operations and therefore, no provision in the Act suggesting or depicting them as beggars ought to be retained in the Act. This is simply because the host communities bear the immediate brunt of the environmental and ecological hazards of petroleum operations. It is only fair that they have a share in the proceeds of the operations as of right and not as of the mercy or sympathy of the settlors (the IOCs). To suggest otherwise will be reminiscent of the colonial past with its absurdities.

There is also another commendable provision of the Act, which sets a clear timeline when these trusts are to be set up. The Act provides that the Host Communities Development Trust shall be incorporated –

a. Within 12 months from effective date for existing oil mining leases;
b. Within 12 months from the effective date for existing designated facilities,
c. Within 12 months from the effective date for new designated facilities under construction on the effective date;
d. Prior to the application for field development plan for existing oil prospecting licences;

e. Prior to the application for any field development plan under a petroleum prospecting license or petroleum mining lease granted under the Act; and
f. Prior to commencement of commercial operations for licenses of designated facilities granted under the Act.[27]

The Act further provides that unless as otherwise provided, the failure by any holder of a licence or lease "governed by this Act to comply with its obligations under this Chapter, after having been informed of such failure in writing by the Commission or Authority as the case may be, may be grounds for revocation of the applicable license or lease."[28] This provision is a veritable tool to compel the IOCs to set up the Host Communities Development Trusts as envisaged under the Act. This paper takes the view that, but for this provision, the IOCs would have observed this policy more in breach as is the case with the gas faring regulations in which the IOCs prefer to pay fines rather than develop the gas into productive use which is considered to be more expensive.[29] Elevating the failure to set up the Trust as a condition that could ground the revocation of the license or lease as the case may be is good. In addition, it is submitted, that fines and custodial punishments upon conviction should also be added to boost the efficacy of the provision. The reason for this is that, considering the several years of disruption of oil production arising from host communities' hostilities, nothing should be done or left undone to prevent any relapse to that ugly past. It remains to be added that the respective IOCs will do well to pay heed to this provision in order to avoid the consequences.

3. THE SOURCES OF FUNDING OF THE HOST COMMUNITIES' DEVELOPMENT TRUSTS UNDER THE PETROLEUM ACT, 2021

Setting up the Trust is one thing but funding it is another, and perhaps, the most important aspect of it. To this end, section 240(1) & (2) of the Petroleum Industry Act, 2021 provides as follows:

(1) The constitution of each Host Communities Development Trust shall establish a fund comprising of

[27]Section 236, Petroleum Industry Act, 2021.
[28]ibid. S. 238.
[29] Ibekwe, R.; "*A Critical Appraisal of the Legal Regime for the Control of Gas Flaring in Nigeria*." https://nairametrics.com/Nigeria-gas-flaring/.Accessed on 25/7/2018 at 9:40am.

> one or more accounts (Host Communities Development Trust Fund) to be funded under this section.
>
> (2) Each settlor, where applicable, through the operator, shall make an annual contribution to the applicable Host Communities' Development Trust Fund of 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 applicable Host Communities Development Trust Fund was established.

The Act also identifies other sources of funding for the Host Communities Development Trust Fund to include donations, gifts, grants or honoraria that are provided to such Host Communities Development Trust for the attainment of its objectives.[30] The fund could also be sourced from profits and interest accruing to the reserve fund of Host Communities Development Trust.[31] In effect, other than the statutory contribution of 3% of actual operating cost of the particular upstream operator within the select area of the particular host community, the Host Communities Development Trust Fund could also be populated from alternative sources and this is very commendable.

The foregoing notwithstanding, it is submitted that a critical look at the major source of the funding of the Host Communities Development Trust Funds, as contained under section 240(1) & (2), shows that the sum of "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 applicable development trust fund was established" is patently and relatively so small that it can hardly achieve the lofty objectives of fostering sustainable prosperity and providing direct social and economic benefits from petroleum operations to host communities as contemplated under section 234(1) of the Act. The reason for this is not far-fetched. The bulk of the funding is sourced from 3% of

[30]Section 240(3), PIA, 2021.
[31]ibid. Section 240(4).

actual annual Operating Expenditure (OpEx) of the previous financial year of the settlor[32] and not the Capital Expenditure (CapEx) of the settlor. In upstream petroleum operations, generally, there is an inherent difference in the way management may approach Operating Expenditure and Capital Expenditure (CapEx). This is because CapEx is often more expensive and labour intensive and often requires greater patience to reap rewards. OpEx, on the other hand, is cheaper and often more flexible to incur.[33]

The difference between 'an amount equal to 3% of actual CapEx of the preceding financial year' and an amount equal to 3% of actual OpEx of the preceding year becomes palpable if it is remembered that CapEx are major expenses that the settlor makes which are used over a long-term period. They include the acquisition of significant goods or fixed assets such as property, plant, equipment such as a new drilling rig, vehicles and trucks, machinery, computers and such other purchases that benefit the settlor for a longer term. OpEx, on the other hand, refers to the costs that the settlor incurs for running its day-to-day operations in the select host community. These expenses are ordinary and routine costs and therefore, far lesser in size or volume than CapEx.[34]

In upstream operations, the bulk of the expenses arise from CapEx associated with the acquisition of the rig, the drilling of the oil well and installation of the well-head (or the Christmas tree, as it is technically referred to), the acquisition/installation of pipelines that will transport the crude oil produced from the well-head down to the export terminal whereat the oil is eventually exported to the international market. Typically, after the drilling and installation of the well-head, there is no tangible cost incurred any more in the maintenance of the well-head. In practice, all that the IOCs do is routine visits to the well-head just to be sure that the oil is flowing and there is no disruptions or breach anywhere on the flow lines. Operationally, these routine checks or visits are typically done once or twice in a week. In effect, the OpEx of upstream operations is manifestly very small compared to the CapEx incurred in upstream operations.

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[32]ibid. Section 240(1) & (2).

[33] Ross, S. *CapEx vs. OpEx: What's the difference*? www.investopedia.com/ask/answers/112814/whats-diferrence-between-capital-expenditure-capex-and-operating-expenditure-opex.asp. Accessed on 15/11/2022 @ 3:50pm.

[34]ibid.

The implication of this is that the PIA, 2021 delineated 3% of the minutest portion of the expenses (OpEx) incurred in upstream operations for the ostensible Host Communities Development Trust Fund. This work takes the view that this is both unfair and clearly too little to be able to achieve the lofty objectives of the Act in this regard.[35]Another, perhaps, unintended effect of limiting the source of the Funds to 3% of actual OpEx in upstream operations in the select host community is that in the event of a successful petroleum exploration in a given host community, the host community stands to benefit nothing at all from the huge investment that would be incurred in the drilling process as these costs are categorized as CapEx and not OpEx. This will clearly impact on the size of the funds that otherwise, would have been available for the Host Communities Development Trust Fund.

The meagreness of the source of funding of the Host Communities Development Trust Fund under the PIA, 2021 becomes far more glaring when same is juxtaposed with what was initially proposed under the Petroleum Industry Bill, 2012 that was eventually, not passed into law. The defunct 2012[36] Bill provided that every "upstream petroleum producing company shall remit on a monthly basis ten percent (10%) of its net profit" directly into the Petroleum Host Communities Fund.[37]

A cursory comparison of a monthly contribution of "ten percent" of the net profit of an upstream petroleum company as was proposed under the defunct Petroleum Industry Bill, 2012 with a contribution of "an amount equal to 3% of actual operating expenditure of the preceding financial year' of the same upstream petroleum company as enacted in the Petroleum Industry Act, 2021 reveals a wide gap that can hardly be glossed over by any discerning eye. It is, therefore, submitted that the Petroleum Industry Act, 2021 should be quickly amended to cure this manifest defect. The reason is simply that the discrepancy is so heavily weighted against the interest or development of the host communities that it can evoke the wrong feelings from the host communities who have for so long, suffered the grave consequences of oil and gas exploration in their domains. In fact, the provisions of the PIA, 2021 in this regard can at best, be described as an unpardonable misunderstanding of the difference between Profit, OpEx and

[35]Section 234(1), PIA, 2022.
[36]Sections 116, 117 & 118 (1) & (2), Petroleum Industry Bill, 2012.
[37]Section 118(1) & (2), Petroleum Industry Bill, 2012.

CapEx of an upstream petroleum company on the part of the draftsman of the PIA, 2021 or at worst, a deliberate attempt on the part of the draftsman to continue to deprive the host communities of the much-needed reprieve they deserve. This paper submits that none of these is good enough and, therefore, the PIA, 2021 should be amended in this regard to enable it attain the set objectives under section 234(1) of the Act.

It remains to be emphasized that the funds of the host communities' development trust created under the PIA shall be exempted from taxation. In other words, any payment made by the settlor into the host communities' development fund shall be deductible for the purposes of hydrocarbon tax and companies income tax as applicable.[38] These provisions exempting contributions into the host communities' development fund from taxation is commendable. It is a robust incentive to the IOCs to contribute into the funds seeing that same would reduce their tax liabilities and at the same time provide a safer and less hostile operating environment for them. It is only fair to do so because one cannot be expected to be taxed for monies spent on a 'legislated' corporate social responsibility as it were.

4. **THE HOST COMMUNITIES OBLIGATION TO PROTECT THE PETROLEUM FACILITIES AND NOT TO DISRUPT PRODUCTION ACTIVITIES**

The PIA, 2021 also has another novel provision that places certain responsibilities on the host communities in order to entitle them to the host communities' development fund. In this regard, sections 257(2) and (3) provides as follows:

> Where in any year, an act of vandalism, sabotage or other civil unrest occurs that causes damage to petroleum and designated facilities or disrupts production activities within the host communities, the community shall forfeit its entitlement to the extent of the cost of repairs of the damage that resulted from the activity with respect to the provisions of this Act within that financial year. Provided the interruption is not caused by technical or natural cause.

[38]Sections 256 & 257(1) of the Petroleum Industry Act, 2021.

> 257(3) The basis for computation of the trust fund in any year shall always exclude the cost of repairs of damaged facilities attributable to any act of vandalism, sabotage or other civil unrest.

The provisions of the Act as above are predictably fraught with many challenges. First, neither the Act nor the Regulation made thereto defines some of the key words used therein such as "vandalism," "sabotage" or "other civil unrest" nor does it define the words "technical or natural cause." It, therefore, follows that the court may be constrained to rely on the dictionary meanings of each of these words should that section of the PIA fall for the interpretation of the court. This paper takes the view that this is not good enough. The PIA ought to have attempted to define or streamline the exact meaning of each of the words: vandalism, sabotage and other civil unrest to make for clarity and not to leave them to the interpretative vagaries of the courts. Second, the Act does not state who in particular will be responsible for determining whether the cause of the damage or disruption to production activities is because of vandalism, sabotage or civil unrest and not necessarily "caused by technical or natural cause." In other words, would it be the IOC, the host communities or the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) or a combination of all the parties that would determine this vital factor of whether or not a damage to the upstream petroleum operation is attributable to sabotage or natural cause. Unfortunately, the PIA is loudly silent on this important question. This paper takes the view that this is unacceptable.

The Nigerian Upstream Petroleum Host Communities Development Regulation[39] made a fickle attempt to address this problem as it provides that "Where an act of vandalism, sabotage or civil unrest is suspected to have occurred that causes damage to the facility used in upstream petroleum operations of the settlor within the host communities or disrupts production activities, the settlor shall notify the Commission within 24 hours of the disruptive activity".[40] The Regulation further requires the

[39]Paragraph 37, Nigeria Upstream Petroleum Host Communities Development Regulation, 2022, Official Gazette of the Federal Republic of Nigeria, No. 114, Vol. 109, Lagos, 24th June, 2022.
[40]ibid.

settlor to, within 30 days of the disruptive act, submit a report of same to the Commission and the Board of Trustees and the report shall contain a description of the disruptive act; the area of the settlor's operation affected; the extent of the damage to the settlor's facilities used for upstream petroleum operations; the value of the crude oil, condensate, natural gas liquids or natural gas that was spilled or lost as a result of the act; the estimated cost of repairs of the damage and where the damage requires a replacement of the facility, the estimated cost of the replacement; in the case of a shut-down of the settlor's operations, the operating expenditures incurred during the period the production was shut down; and the reductions that may be obtained in taxation as a result of additional costs that may be charged for tax purposes and the recovery pursuant to section 257(2) of the PIA, 2021, that is the recovery of the cost of repairs from the host communities development fund.[41]

Upon receipt of the report from the settlor, the Commission will review the report and in the event of a spill, the Commission shall deal with it in accordance with environmental and remediation regulation issued by the Commission.[42] The procedure is usually to set up a joint investigation team made up of representatives from the Commission, NESREA, the IOC, Ministry of Environment and the representatives of the host communities who normally lead the team into the bush/swamp as the case may be where the spill occurred.

The provisions of Regulations 37(6) & (7) are very instructive:

> The Commission shall on the basis of the report of the joint investigation team, determine whether the disruptive act was due to technical or natural cause or third-party interference and establish the costs and tax recover under regulation 37(3) of these Regulations and any adjustment required in the case–flow pursuant to regulation 37(3)(g) of these Regulations.

The decision of the Commission shall be binding on the settlor and the host Communities."

[41]Ibid. Regulation 37(2), (3) (a), (b), (c), (e), (f) & (g).
[42]Ibid. Regulation 37(5)

The effect of the foregoing is simply that, under the Regulation, 2022, where there is a disruptive act, the settlor will send a report of same with the relevant information to the Commission. The Commission will in turn set up a joint investigation team to inquire whether or not the disruption was caused by natural or technical cause or caused by acts of vandalism, sabotage of civil unrest and issue its report in that regard to the Commission. On the strength of the report from the Joint Investigation Team, the Commission will determine whether the disruptive act was due to technical or natural cause or third-party interference and also establish the cost of the repairs of the disruptive act and the decision of the Commission in this regard is binding on the parties. As observed earlier in this paper, this procedure is missing in the PIA, 2021. Unfortunately, the attempt by the Regulations to fix the issue is still not good enough and this is because, the Board of Trustees which represents the host Communities' interest is under the firm control of the settlor as highlighted above. It is therefore, predictable that the opinion of the joint investigation team and even the Commission will usually lean in favour of the settlor to the detriment of the host communities. What is more? The decision of the Commission is said to be binding on the settlor and the host communities. In other words, the host communities are obligated to abide by the decision of the Commission as it relates to the cause of a disruption of upstream petroleum production in their domain and the cost of effecting the repairs. This can be better.

The third question that quickly arises is, in the event that the IOC, or the Commission (NUPRC) decides that a particular damage is as a result of an act of sabotage or vandalism does the host communities have a right to challenge such decision in court? Even though the PIA is regrettably silent on the right of the host communities to challenge such decision in court, it is submitted that the host communities reserve such right by virtue of the provisions of the Constitution.[43]This paper takes the view that these likely litigations could have been avoided if the PIA or the Regulation had made clear and satisfactory provisions for a joint consideration of the damage and determination of the cause of same by the IOC, the host communities and

[43]Section 6(6) (b), Constitution of the Federal Republic of Nigeria, 1999, Cap C23, L.F.N., 2004.

the NUPRC. This is simply because a consensus decision reached by the parties involved normally takes away the recourse to litigation.

The fourth question that both the Regulation and the provisions of section 257(2) & (3) of the PIA fail to address is whether the host community will still be liable where the act of vandalism, sabotage or civil unrest are traceable to the acts of a total stranger or a none indigene of the particular community? For instance, where a person from Community A (*where there is no upstream operation or designated facility*) travels to Community B (*where there is upstream petroleum installations*) and vandalizes same, would Community B (*the host community*) be held liable by the act of that stranger who strayed into *Community B* to cause the damage on the upstream petroleum operations at *Community B*? From a strict interpretation of the provisions of the PIA, it would seem that *Community B* would still be liable to forfeit its entitlement to the extent of the cost of repairs of the damage because the qualification is simply where any act of vandalism, sabotage that leads to a disruption in production occurs within the host community. The only exception appears to be where such act can be attributable to technical glitch or natural cause.[44]

The implication of the foregoing is that the host communities are required or expected to protect the upstream petroleum assets and designated facilities within their communities. If this is the intention of the draftsman of the PIA, 2021, can it also be said that the draftsman of the PIA intends that the host communities are required or permitted, where necessary, to bear firearms and other weapons for the purpose of protecting the upstream petroleum assets within their domains from vandalism or sabotage since, the law seems to impose a strict liability on the community? This paper believes that this is clearly unfair to the host communities who do not possess the instrument of state powers to be able to effectively protect upstream petroleum assets from potential criminal vandals who, perhaps may be armed. What is more? Under international economic law, it is the host state or nation that receives foreign investment into it that has the responsibility to protect it from loss or some other harm. All investments by IOCs in operation in Nigeria, particularly in the upstream sector of the oil industry, are foreign investments that under international

[44]Section 257(2), Petroleum Industry Act, 2021.

economic law deserve protection by the Nigerian government.[45] That being the case, it, therefore, amounts to a legislative inelegance for the PIA to shift the responsibility of the protection of upstream petroleum assets to the host communities by imposing a strict liability on the community in the event of any damage thereto that disrupts petroleum production.

The fifth issue that arises from the PIA in this regard relates to whether, in determining a civil unrest leading to disruptions in petroleum production, will the reason for the civil unrest be factored into consideration? What happens in a situation where the IOC refuses or deliberately fails to pay over the funds to the host community for a particular year and the community decides to engage in a peaceful protest against the IOC by blockading them from accessing the petroleum operations facility leading to a disruption of petroleum operations? Would such lawful and legitimate protest count against the host community as intended or would such be waived? Or, is this intended to muscle up the host communities such that they will become docile in the face of any treatment meted to them by the IOCs just for them to be entitled to the development funds? These scenarios amplify the need for a clear definition of the words "other civil unrest" as used under the PIA to exempt normal protests to press home a demand which is a legitimate right from criminal civil unrest intended to deliberately disrupt petroleum operations.

The sixth concern from the PIA relates to who determines the cost of the repairs of the ensuing damage from the sabotage that will be deducted from the host community's funds? This question is fundamental because the basis for computation of the trust fund in any year shall always exclude the cost of repairs of damaged facility attributable to any act of vandalism, sabotage or other civil unrest.[46]This could dovetail into a situation where the IOCs would be reckless or extravagant in negotiating for the cost of the repairs with their nominated vendor knowing that same will be deducted from the host community's fund.

The seventh challenge is, what happens where the cost of the repairs of the damage attributable to sabotage or vandalism or other civil unrest for a particular year is more that the contribution of the IOC into the host communities development fund for that particular year? Would the

[45]Usman, A.K. Op. Cit, P. 44.
[46]Section 257(3), Petroleum Industry Act, 2021.

outstanding cost of the repairs be carried over into the next year and be deducted from the development fund until the cost is totally liquidated? Sadly, the PIA has no answer to this very important question.

Finally on these questions, may be the eight of them is, who negotiates with the contractor (vendor) that would fix the damage arising from the vandalism or sabotage such that the cost of repairs would be minimal enough to reduce the impact on the overall funds available to the host community for the given year? Will the negotiation be done unilaterally by the IOCs or is the negotiation subject to the supervision of the host community and the NUPRC? This is not a question that can be dismissed with just a wave of the hand. The reason is simply that it could open a loophole for the IOCs who are naturally ready to leverage on any opportunity to maximize profit to hide under deductions of cost of repairs to evade taxes. This is more so if it is remembered that contributions into the host communities' development fund are exempted from hydrocarbon and companies income taxes.[47]This paper takes the view that the ideal thing should have been for the PIA to make provision for a collaboration of the host community with the IOC for the purpose of effecting the repairs to the damage. This will afford the host community the opportunity to minimize the cost and to allow for money in the funds for the development of the community. It is in view of these that this paper suggests a total amendment of the Act to address these multiple lacunas in the law.

5. MANAGEMENT STRUCTURE OF THE HOST COMMUNITIES' DEVELOPMENT FUND

The Petroleum Industry Act makes extensive provisions for effective management of the Host Communities Development Fund. The PIA requires that the constitution of the Host Communities Development Trust shall contain provisions requiring the Board of Trustees to be set up by the settlor, who shall determine its membership and the criteria for their appointment, provided that the membership of the Board of Trustees of the Host Communities Development Trust shall be subject to the approval of the Commission or Authority, as the case may be.[48]The IOC which is the settlor is also required to, in consultation with the host communities,

[47]Ibid. S. 256 & 257(1), PIA, 2021.
[48]Section 242(1), Petroleum Industry Act, 2021.

determine the membership of the Board of Trustees to include persons of high integrity and professional standing, who shall come from the host communities and the members of the Board of Trustees shall elect a chairman from amongst themselves.[49]In effect, in constituting the membership of the Board of Trustees, the IOC is required to do so in consultation with the host communities. This is commendable because the host communities are in a better position to determine whom amongst them, is in a better position to represent their interest on the Board. This also engenders a sense of belonging on the part of the host communities as their voices are heard and factored into consideration in the determination of the membership of the Board.

5.1 *Control and Tenure of Members of the Board of Trustees of the Host Communities Trust Fund*

The PIA exclusively vests the control of the Board of Trustees of the Host Communities Trust Fund on the Settlor, that is, the IOCs. Under the Act, the settlor is charged with the responsibility to determine the selection process, procedure for the meeting, financial regulations and administrative procedures of the Board of Trustees as well as the remuneration, discipline, qualification, disqualification, suspension and removal of members of the Board of Trustees and other matters relating to the operation and activities of the Board of Trustees.[50] This paper takes the view that vesting the powers of control and regulation of the Board exclusively on the IOCs (who are not saints themselves) is potentially dangerous.

This danger is foreseeable because all that the IOCs need to do to continue to keep the host communities under their subjugation is to influence the selection process such that only their minions would become members of the Board. Furthermore, the saying that he who pays the piper dictates the tune readily comes to mind here. The IOC that has the exclusive preserve to determine the remuneration of the members of the Board would naturally wield a significant degree of influence over the Board that the Board will predictably lean in favour of such IOC. The same IOC retains the powers to discipline, disqualify, suspend and even remove a member of the Board. It cannot be gainsaid that members of such Board will be very

[49]ibid. S. 242(2)
[50]ibid. S. 242(3) (a); (b) & (c).

wary to disagree with the IOC particularly in matters relating to whether or not a particular damage to the upstream petroleum asset was caused by an act of vandalism or sabotage.

It is in view of the foregoing that we advocate that the IOCs' powers of control of the Board of Trustees of the Host Communities Trust Fund should be whittled-down to insulate the Board from the overbearing tendencies of the IOCs. It is our view that the Board's ability to administer the Fund will be better strengthened if, at least, the powers to discipline, disqualify, suspend and remove members of the Board are subject to the recommendation of the NUPRC. This will prevent the tyranny of the IOCs over the Board and give the Board a sense of independence and job security in the discharge of their responsibilities.

Each member of the Board of Trustees shall serve a term of four years in the first instance and may be re-appointed for another term of four years and no more.[51] The tenured limit of not more than two terms of four years each is very important. This will prevent a situation where a member of the Board may deploy certain skirmishes to convert himself to a life member of the Board to the detriment of the development of the host community.

5.2 *Duties and Functions of the Board of Trustees of the Host Communities Development Fund*

The Board of Trustees is responsible for the general management of the Host Communities Development Trust Fund. The Board is responsible for determining the criteria, the process and proportion of the host Communities Development Trust Fund to be allotted to specific development programs; approving the projects for which the Host Communities Development Trust Fund shall be utilized; provide general oversight of the projects for which the Host Communities Development Trust Fund shall be utilized; approve the appointment of fund managers for purposes of managing the reserve fund; set up the management committee of the Fund and appoint its members and determine the allocation of funds to host communities based on the matrix provided by the settlor.[52]

[51]Section 242(4), Petroleum Industry Act, 2021.
[52]Section 243, Petroleum Industry Act, 2021.

The Board also has the responsibility to allocate the funds for each year in line with the matrix provided by the settlor: 75% to capital projects, 20% to the reserve fund and 5% to be utilized solely for the management of the Trust.[53] The PIA requires that the 20% reserve fund shall be invested for the utilization of the Host Community Development Trust whenever there is cessation in the contribution payable by the settlor. For efficient management of the reserve funds, the PIA provides that the Board of Trustees shall engage a fund manager to invest the reserve fund as the fund accrues and the Board shall also manage the interest and profits accruing from the investment of the reserve funds and allocate same for the benefit of the host communities.[54] The idea of a reserve fund is highly commendable. It is a way of saving for the rainy day for the host communities. In effect, where in any particular year, the IOC is not able to contribute to the fund, the host communities will still have something to fall back on to sustain its development.

5.3 *Management Committee of the Host Communities Development Fund*

Apart from the Board of Trustees, the PIA also provides that the constitution of the Host Communities Development Trust shall contain provisions requiring the Board of Trustees to set up a management committee for the Fund. The membership of the management committee shall consist of one representative of each host community, who shall be nominated by the host community as a non-executive member and an executive member selected by the Board of Trustees who shall be a Nigerian of high integrity and professional standing, and may not necessarily be members of the host communities.[55]

The provision of section 247(2) (a) & (b) of the PIA is one of the many provisions of the PIA that are arguably not fair to the host communities. In forming the membership of the management committee, the host community can only nominate a non-executive member but when it comes to the nomination of an executive member, the Board is required to do so and such executive member shall be a Nigerian of high integrity and professional standing and may not be a member of the host community. The question begging for answer here is: is the PIA implying that 'Nigerians

[53]ibid. S. 244.
[54]ibid. S. 245(1) & (2).
[55]ibid. S. 247(1), (2) (a) & (b).

of high integrity and professional standing' cannot be found in any of the host communities to be appointed as an executive member of the management committee? On what parameter is the assumption based that when it comes to looking for 'Nigerians of high integrity and professional standing' such cannot be found anywhere within the host communities. This paper takes the well-considered view that this provision is discriminatory against the host communities and therefore, inconsistent with the Constitution of the Federal Republic of Nigeria.[56]

Furthermore, this provision opens a floodgate of infiltrating the management committee with non-indigenes of the host communities who will in turn continue to undermine and subjugate the people leading to resistance from the people and ultimately leading to disruptions in petroleum production operations. The mere fact that an indigene of the host community is nominated as a non-executive member while his non-indigene counterpart is nominated as an executive member creates a class structure and superiority complex within the management committee. The natural outcome of such imbalance in the membership of the management committee is the propensity for dominance and concomitant resistance leading to disagreements, disputations and disorder. Given this scenario, it is literally predictable that the structure of the composition of the membership of the management committee is primed to fail *ab initio* and this ought not to be so at all.

A person appointed as a member of the management committee shall serve for a term of four years in the first instance and may be reappointed for another four years and no more. The management committee is subject to the control of the Board of Trustees who also appoints its secretary for the purpose of keeping the books of the Committee.[57]

5.4 *Duties and Functions of the Management Committee of the Host Communities Development Fund*

The PIA stipulates that the management committee shall be responsible for the general administration of the Host Communities Development Trust on an *ad hoc* basis such as preparation of the budget of the Fund and submit

[56]Section 42 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), Cap C23, LFN., 2004.
[57]Section 247(3), (4), & (5) of the Petroleum Industry Act, 2021.

same to the Board of Trustees for approval; development and management of the contracting process for project award on behalf of the Fund subject to the approval of the Board of Trustees; determination of project award winners and contractors to execute project on behalf of the Fund through transparent process. Other functions of the management committee include supervision of projects execution; nomination of fund managers for appointment by the Board of Trustees for approval to manage the reserve fund amongst others.[58]

What is clear from the provisions of the Act regarding the functions of the management committee is that it is an arm of the Board of Trustees. In other words, the management committee is the enforcement organ of the Board of Trustees. It does the day-to-day work of administering the Fund on behalf of the Board of Trustees who directs and supervises its operations.

5.5 ***Host Communities Development Fund Advisory Committee***

The PIA also provides that the constitution of the Host Communities Development Trust shall contain provisions mandating the management committee to set up an advisory committee known as the Host Community Advisory Committee which contains at least, one member of each host community.[59]The management committee determines the selection process, procedure for meetings, financial regulations and administrative procedures of the Advisory Committee. The management committee also determines the remuneration, discipline, qualification, disqualification, suspension and removal of members of the Advisory Committee and any other matter relating to the operations and activities of host communities Advisory Committee. The role of the management committee in this regard is however, subject to the approval of the Board of Trustees.[60]

The Advisory Committee performs sundry functions amongst which is to nominate members to represent the host communities on the management committee; articulate community development projects to be transmitted to the management committee; monitor and report progress of projects being executed in the community, amongst others.[61]

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[58]Section 248, Petroleum Industry Act, 2021.
[59]ibid. S. 249(1).
[60]ibid. S. 249(3).
[61]Section 250, Petroleum Industry Act, 2021.

Looking at the management structure of the Host Communities Development Fund as chronicled above, one cannot miss the fact that there are about five layers of decision-making levels namely: the Settlor, the Board of Trustees; the Management Committee, the Advisory Committee and the NUPRC that exercise the oversight control. These five layers of decision-making authorities are clearly too many and will predictably introduce bureaucratic bottlenecks that will negatively impact on the effective administration of the Host Communities Development Fund. This paper opines that just three levels of decision making is enough and that will guaranty speedy decision-making and implementation in the administration of the Fund.

6. CONFLICT RESOLUTION PROCEDURE OF THE HOST COMMUNITIES' DEVELOPMENT TRUST FUND

The PIA, 2021 itself did not make provisions for dispute resolution in the event of a dispute between the settlor and the host communities or between one or more host communities. This vacuum is filled by the Nigerian Upstream Petroleum Host Communities Development Regulations, 2022.[62] The Regulations makes provision for a multi-tiered dispute resolution mechanism with specific timelines within which same may be commenced and concluded. Where a dispute arises between one or more host communities in relation to the Trust or the Fund; and a host community and a settlor in connection with upstream petroleum operations or a trust, the disputing parties shall follow a laid down procedure.[63] In the case of a dispute between host communities, the aggrieved host community shall give a dispute notice with supporting documents to the settlor and Board of Trustees and the settlor and the Board of Trustees shall attempt in good faith to resolve the dispute between the host communities.[64] This is commendable as it affords the settlor and the Board the opportunity to nip the conflict in the bud before it escalates or snowballs into crises.

Where the dispute is between the settlor and a host community or communities, the Board of Trustees shall give a dispute notice with supporting documents to the Chairman of the Board of Directors of the

[62]Paragraph 39 of the Regulation.
[63]ibid. paragraph 39(1) (a) & (b).
[64]ibid. paragraph 39(2) (a).

settlor and the Board of Directors of the settler, and the Board of Trustees shall attempt in good faith to resolve the dispute.[65] It remains to be seen how this will ever be effective in practice. However, in any of the cases, a copy of the dispute notice is required to be sent to the Commission, perhaps for the Commission's perusal and records. Furthermore, where the settlor and the Board of Trustees, in the case of a dispute between host communities, or the Board of Directors of the settlor and the Board of Trustees, in the case of a dispute between a settlor and a host community, are unable to resolve the dispute within 30 days after service of the dispute notice, any of the disputing parties may refer the dispute to the Alternative Dispute Resolution Centre of the National Oil and Gas Excellence Centre for Mediation.[66]This is also laudable as it affords the parties a second opportunity to resolve their differences within 30 days via the Alternative Dispute Resolution (ADR) mediation process at a Centre dedicated for that purpose. In the event that the dispute is not resolved within 30 days after the commencement of mediation or an aggrieved party fails or ceases to participate in the mediation before the 30 days expiry period, or the mediation terminates before 30 days, an aggrieved party may refer the dispute to the Commission, who shall attempt in good faith to resolve the dispute. Where the Commission is unable to resolve the dispute within 45 days of the dispute being referred to it, the disputing parties may refer the dispute to an Arbitrator under the Arbitration and Conciliation Act.[67]To protect the settlor from arbitrary increase of the funds for the Trust on the part of the Commission, the Regulations provides that the final resolution by the Commission shall not increase the budget of the Trust unless the dispute relates to inaccurate calculation of the budget.[68]This is a very strategic provision that prevents gazumping on the part of the Commission, ensures a healthy balance and is such that will boost the settlor's confidence in the industry.

7. CONCLUSION

The foregoing discussions reveal that the Petroleum Industry Act, 2021 is a historic legislation that, for the very first time in Nigeria takes into account

[65]ibid. paragraph 39(2) (b).
[66]ibid. paragraph 39(3) & (4).
[67]ibid. para 39(9) & (10)
[68]Paragraph 39(12) Nigeria Upstream Host Communities Development Regulations, 2022

the fact that it is important to foster the socio-economic development of the host communities. The PIA elevates the customary corporate social responsibility activities that hitherto had remained a matter of the benevolence of the IOCs to a matter of statutory provision. In effect, corporate social responsibility in the petroleum industry in Nigeria is no longer open to the preference or vagaries of the IOCs but now a matter of law with the compulsion and the pain of non-compliance that comes with it.

Regardless of the winsome provisions in the PIA, the following findings reveal that the Act fails in very important aspects. First, the stipulated contribution into the host communities' development trust fund of an amount equal to 3% of the settlor's actual annual operating expenditure of the preceding financial year in the upstream petroleum operations is predictably too low to be of any significant value in the socio-economic development of the host communities as envisaged under the Act.

Another finding is that the PIA vests excessive powers on the settlor (the IOC) which allows it to, more or less exclusively control the Board of the Trustees of the Host Communities Development Trust Fund. A situation where the settlor determines the selection process, financial regulations, administrative procedures, the remuneration, discipline, qualification, disqualification, suspension and removal of the members of the Board of Trustees will clearly emasculate the Board and expose them to the manipulation and cajoling of the settlor.

Another snag in the PIA, 2021 in this regard is the five layers of decision making in the management of the Host Communities Development Fund. A situation where you have the Commission, the Settlor, the Board of Trustees, the Management Committee and the Advisory Committee, all together making decisions on the same subject will naturally breed role conflict amongst the management layers leading to avoidable bureaucratic bottle-necks and the concomitant delays and ineffectiveness in the management of the Trust Fund. This is not in the best interest of the host communities.

Another finding is that the PIA cedes the responsibility for the protection of upstream petroleum installations to the hapless host communities at the pain of losing their entitlement to the Fund in the event of any sabotage, vandalism or other civil unrest. This is both unfair and unacceptable.

8. **RECOMMENDATIONS**

Arising from the foregoing, this paper recommends as follows:

1. The PIA, 2021 should be amended to increase the contributory amount to 40% of the actual operating cost or in the alternative, an amount equal to 5% of the actual profit of the settlor in the preceding financial year;
2. A Board that has the enormous responsibility to manage the Host Communities' Development Funds ought to have some level of independence to enable them discharge their duties without fear or favour. It is, therefore, important for the Act to be amended to divest the settlor of some of these powers and to subject the exercise of such powers to the recommendation of the Commission or subject to the ratification of the Commission;
3. It is further recommended that the Act should be amended to remove or reduce the five layers of decision-making structure to just three, namely, the Commission, the settlor and the Board of Trustees only. This will ensure quicker decision-making process and promote efficiency in the management of the Host Communities Development Fund;
4. it is also crucial for the Act to be amended to take away the government's apparent ceding of the responsibility to protect the upstream petroleum facilities to the host communities who are not State actors, and therefore do not have the coercive powers of State to effectively do so. Further, the established principles of international economic law vest the Nigerian state with the responsibility to protect all international investments within her territory. The Nigerian government should not be seen to have passed the buck in this regard to the hapless host communities.

Finally, pending when the suggested amendments are effected to the PIA, it is hoped that the Commission and the settlor would administer the PIA fairly, humanely and with active consultation and collaboration with the host communities. The settlors must resist the temptation of using the PIA to continue to oppress or suppress the legitimate yearnings of the host communities. The settlor should also be transparent and ensure that the actual contribution is made into the fund and timely too and to continue to build consensus in areas where there are tensions or fragile peace in their various host communities. This paper believes that this would ensure the

requisite enabling environment for a hitch-free upstream petroleum operations in the various host communities in Nigeria.