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Legal and Institutional Frameworks of the Host Communities Development Trust in Nigeria under the PIA 2021

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ABSTRACT

This article is a broad assessment of the legal and institutional framework of the transformative HCDT that that rekindled hope and promises of sustainable community development through the settlors' contribution. The article adopted the doctrinal research method to analyse relevant literatures and legal materials on the legal and institutional framework of the HCDTs, roles, responsibilities, challenges and prospects. The article discovered that the industry's activities impact negatively on the environment, health and social lives of the Host communities resulting in displacement sometimes due to gas flaring, oil spills and pollution, etcetera. The article discloses that the legal and institutional framework of the HCDT are essential for the fruitful implementation of the HCDT objectives to avert the setbacks of the defunct gMoU so as to create the desired peaceful co-existence for harmonious exploration, in the community safety and prosperity. The article concludes that a functional and active legal and institutional framework of the HCDT is essential for the industry and the community to achieve its full potentials and significantly contribute to sustainable community development and environmental safety of the oil bearing communities. It recommends, the strengthening of the regulatory frameworks by whittling down the enormous powers of the settlors through amendment, training and re-training of the governing organs of the HCDT, capacity building of the local contractor, transparency and accountability mechanisms that fosters trust and confidence in the system, periodic and transparently publicised audit report of the HCDT accounts by qualified independent auditors, among others.

KEYWORDS

Legal and Institutional Framework, HCDT, Petroleum Industry Act 2021, Petroleum Industry

I. INTRODUCTION

The period between 1956 to 1958 is an significant period in the history of the Nigeria's oil and gas industry in that it heralded the historic launching of Nigeria into the league of oil producing countries due to the discovery and production of oil in commercial quantity for the very first time at Oloibiri, Ogbia Local Government Area in Bayelsa State, in the Niger Delta by Shell D'Arcy. In 1969 the first indigenous petroleum legislation was enacted to regulate and control the activities of the oil and gas industry in Nigeria with little or no consideration for the oil bearing communities. The Oil bearing host communities felt exploited, marginalised and oppressed, as oil revenues largely advanced the federal government and multinational oil companies, while the communities suffered the incidences

of environmental degradation, injustice and underdevelopment. This scenario triggered rising tension and conflict in the Niger Delta as communities demanded compensation and overall development. As a result of this incessant struggles and conflict situation , the Oil companies began to embark on self MOU's negotiations with their respective host communities from the 1980s to 1990s to address infrastructures such as roads, schools, clinics, etcetera and induce peaceful co-existence . However, the MOUs were strongly criticized on transparency issues, poor standard, and failure to attain the expectation of the community. Between the years 2000 to 2006 the Global Memorandum of Understanding (GMOU) was launched wherein Shell and other oil companies shifted from the piecemeal MOUs to broader agreements covering multiple communities. GMOUs established Regional Development Councils with community representatives, but implementation was uneven, and conflicts persisted and call for reform by civil society. In 2010, Nigeria midwifed the Nigerian Content (NOGICD) Act, emphasized local participation and benefits but did not directly address host community development or environmental issues comprehensively. The era before 2010 was a period of prolonged conflict, continued militancy and unrest that targeted legislative reforms because it was marred by poor development and huge environmental degradation.

The circumstances triggered prolonged militancy, kidnappings, and oil pipeline vandalism in the Niger Delta. In view of these anomalies, the urge for a legally structured and sustainable approach to host community development became imperative that after several years of setback, PIA 2021 was enacted to consolidate and reform Nigeria's oil and gas laws and the industry. One of the major innovations was launching of the Host Communities Development Trust (HCDT) to channel benefits and development projects to host communities, repeal the hitherto legal and institutional regime of the oil and gas industry and established the HCDT. The HCDT is funded by 3% contribution from the petroleum operators' annual operating expenses to, stimulate socio-economic development, and address environmental degradation and remediation, foster peaceful coexistence between operators and communities.

The experimental implementation of the HCDT is on-going, with efforts to consolidate the governance structures, register host communities, familiarise with the assigned responsibilities in the Act and operationalize fund disbursement. Challenges include defining eligible host communities and beneficiaries, ensuring inclusive representation and preventing elite capture building technical capacity for project management and financial oversight, managing expectations amid slow rollout and funding delays.

The Nigerian government and regulatory bodies such as the NUPRC is working assiduously with petroleum operators and communities to launched HCDT projects in areas that it has not been launched, with initial focus on communities with active oil and gas operations. The HCDT under the PIA 2021 is Nigeria's latest attempt to address decades of underdevelopment, environmental neglect, and conflict in the Niger Delta. It built on lessons from MOUs/GMOUs, and other community engagement efforts, aimed at a more sustainable, transparent, and community-driven model. However, its success depends on the discipline and transparency of the settlors, overcoming implementation hurdles, ensuring genuine community inclusion, and aligning with broader development and environmental goals.

II. HISTORICAL DEVELOPMENT

The period between 1956 to 1958 is an significant period in the history of the Nigeria's oil and gas industry in that it heralded the historic launching of Nigeria into the league of oil producing countries due to the commercial discovery and production of oil for the first time at Oloibiri, Ogbia Local Government Area in Bayelsa State, in the Niger Delta by Shell D'Arcy. In 1969 the first indigenous petroleum legislation was enacted to regulate and control the activities of the oil and gas industry in Nigeria with little or no consideration for the oil bearing communities. The Oil bearing host communities felt exploited, marginalised and oppressed, as oil revenues largely advanced the federal government and multinational oil companies, while the communities suffered the incidences of environmental degradation, injustice and underdevelopment.

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Environmental degradation. The circumstances triggered prolonged militancy, kidnappings, and oil pipeline vandalism in the Niger Delta. The year 2010, midwifed the Nigerian Content (NOGICD) Act, which emphasized local participation and benefits but did not directly address host community concerns, development or environmental issues comprehensively. In view of these persisting anomalies, the urge for a legally structured and sustainable approach to host community development became imperative after several years of setback. The PIA 2021 was enacted to consolidate and reform Nigeria's oil and gas laws and the industry and launch the great innovations of the Host Communities Development Trust (HCDT) to champion benefits and development projects to host communities, repeal the hitherto system of discretionary MOU/GMOU and ad-hoc community development programmers in the oil and gas industry and established the HCDT. The HCDT is currently funded by 3% contribution from the petroleum operators' annual operating expenses to, stimulate socio-economic development, and address environmental degradation and remediation, foster peaceful coexistence between operators and communities.

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III. CONCEPTUAL CLARIFICATIONS

A. Legal and Institutional Framework

The legal and institutional framework of the Host Communities Development Trust includes the laws, regulations, directives, policies, customs and customary laws influencing decisions and governing the activities of the organs of the HCDT structured governance and the host communities in every transaction and communications involving them. The institutional framework on the other hand includes all the organs of governance of the HCDT created by law for the full implementation of the HCDT to afford peaceful co-existence and optimum petroleum production in the Host Communities.

B. Host Communities Development Trust (HCDT)

The HCDT which stands for the host communities' development trust is managed by a Board of Trustees (BoT) whose members are appointed by the settlor, constituted by the BoT and nominated by community governance structure.

The HCDT is incorporated as corporate entity capable of suing and been sued in its own name and clothed with all other features of incorporation or registration. The governance structure of the HCDT includes the Management Committee which of two categories, the non-executives management committee members representing the host communities and the management committee executive engaged by appointment through interviews who are seasoned professionals to Mann the requisite areas of professional needs of the HCDT, and the Advisory Committee, who are representative of the Host communities, nominated by the community through their Eze-in –Council and the President-General to operationalize community projects. The major objectives of the HCDT include but limited to promoting economic, environmental, and social development; enhancing community participation; ensure transparency and accountability in managing host community funds.

C. Petroleum Industry

The petroleum industry is the most critical sector of the Nigerian economy owing to its significant contribution to the economy and foreign exchange earnings. It is unfortunately dominated by foreign firms and their surrogates with the results that Nigerians play a second fiddle and benefit less than the foreigners. This has been attributed to low science orientation, in-country incapacity, low technology and poor drivers to encourage and boost interest in science subjects and technical devotion. Nigerian's loss of job opportunities to her foreign counterparts who are better qualified for the job. The industry has undergone

several reforms and reformations, from 1969 through 2010 and 2021 respectively to address some of the perennial challenges besieging the industry more particularly, the hostility between the host communities and the oil and gas companies due largely to accumulated grievances.

By the extant reform the industry is regulated by two principal legislations being the PIA 2021 and the Nigerian Oil and Gas industry Content Development Act 2010 which aimed variously to enhance Nigerian participation in the Industry and utilisation of the Nigerian professionals, products and services, including granting Nigerians first consideration and exclusive consideration of Nigerians and their enterprises in terms of contract awards, training and re-training of Nigerian citizens. The industry is classified into three sectors; the upstream sector, the Midstream Sector and the Downstream Sector.

Each of these sectors is statutorily obliged to ensure effective and efficient coordination of the institutional and legal framework of this industry to assure environmental harmony, peaceful co-existence, host community prosperity and sustainable development. The resent innovations of the PIA 2021 was the replacement of DPR with two new institutions for the responsibilities which h only DPR was carrying out including commercialisation of NNPC and transformation of NNPC to NNPCL after its incorporation and the creation of the HCDT to address the persistent problems of the oil bearing communities.

IV. LEGAL FRAMEWORK OF THE HCDT

A. The Constitution

The Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended) is the most basic Nigerian law that gives validity to other laws in Nigeria, such that any law that is inconsistent with the provisions of the Constitution is void to the extent of its inconsistency

The Constitution stipulates that the resources of Nigeria will be explored and exploited to promote the welfare and national prosperity of the people of Nigeria and the exploitation of the resources that is not purposed for the good of the people shall be prevented. However, section 6(6) (c) of the Constitution renders the above mentioned provisions non justiciable and unenforceable. Nevertheless, a similar provision in India was held enforceable as fundamental human right, in UPSE Board v Harri Shankar, the court remarked that though courts cannot enforce the observance of the principles, but are bound to evolve, affirm and adjust principles of interpretation which will further and not hinder the directive principles. For instance, holding that the 'right to education is an integral part of the right to life'.

The Nigerian Constitution is a key legislation in the governance and administration of the Nigerian oil and gas industry; it vests the exclusive ownership and control of oil and gas resources in Nigeria in the Federal Government of Nigeria. By virtue of section 44(3) of the Constitution, the Nigerian Federal government controls and manages the oil and gas resources in trust for Nigerian and for the benefits of the citizens.

Equally, the Constitution provides the original framework of the concept of prompt compensation though the provision has been criticised as expropriator as it takes away propriety of what naturally belongs to the people and must be construed fortissimo contra preferences.

B. Petroleum Industry Act 2021

The Petroleum Industry Act 2021 contains five chapters, 319 Sections and, eight Schedules dealing with Rights of Pre-emption, Incorporated Joint Ventures, Domestic Base Price and Pricing Framework, Pricing Formula for Gas Based Industries, Capital Allowances, Production Allowances and Cost Price Ratio Limit, Petroleum Fees, Rents and Royalty and Creation of the Ministry of Petroleum Incorporated. The Petroleum Industry Act 2021 is the extant law and most basic and principal legislation regulating and governing the management and administration of the oil and gas industry in Nigeria.

The Act was enacted to provide legal, governance, regulatory and fiscal framework for the Nigerian Petroleum Industry, the development of host communities and other related matters. It repealed the hitherto Petroleum Act 1969 which governed the management and administration of the oil and gas industry in Nigeria for a period of 56 years without achieving takeover, succession and transfer of technology which was targeted to be achieved within 10 years of its inauguration.

The extant Act repealed hitherto laws and regulations that governed the Nigerian oil and gas industry. The PIA 2021 vests the property and ownership of petroleum within Nigeria's territorial waters, continental shelf and exclusive economic zone in the government of the Federation of Nigeria. It created two formidable regulatory bodies and incorporated a commercial and profit focused NNPC Ltd and retained the position of the Minister of petroleum with the powers to formulate, monitor and administer government policy in the petroleum industry. Among others, it imposed levy up to 1% on the whole price of petroleum products sold in the country, 0.5% each for the Authority Fund and Midstream Gas Infrastructure Fund.

It equally established the host communities' development trust aimed at fostering sustainable prosperity, direct social and economic benefits and enhanced harmonious co-existence between licensees and the host communities through the settlor's mandatory contribution of 3% of its actual annual operating expenditure of the preceding financial year in the Upstream petroleum operation affecting the host communities to the Host Communities Development Trust Fund. The Act also provides for the petroleum industry fiscal framework, as a key and crucial tool in the management and administration of the oil and gas industry's revenue. By this Act, the FIRS collects hydrocarbon Tax of 15% - 30% on profit from crude oil production, Companies Income Tax at 30%, the payment of royalties at the rate of 15% for onshore areas, 12.5% for shallow water and 7.5% for deep offshore, frontier basins and 2.5%-5% for natural gas. Every aspect of the Act is relevant for the governance and regulation of the oil and gas Industry in Nigeria.

C. Nigerian Oil and Gas Industry Content Development Act (NOGICDA) 2010

The Nigerian Content Act 2010, enacted to provide for the development of Nigerian content in the Nigerian oil and gas industry, the Nigerian content plan, supervision, coordination, monitoring and implementation of Nigerian content. The Act has 107 sections and a Schedule. It made valuable provision to ensure that all regulatory authorities, operators, contractors, subcontractors, alliance partners and other entities involved in any project, operation, activity or transaction in the Nigerian oil and gas industry considers the Nigerian content as a crucial component in their project execution.

Section 2 of the Nigerian Content Act is legal basis for the compulsory requirement of the Nigerian Content compelling any company or entity doing business in the Nigerian oil and gas industry to compulsorily utilize Nigerian human, material and services resources in all activities involved in the search, production, storage, transportation and haulage of hydro carbon products in the sector in Nigeria to ensure value addition in the Nigerian economy through a planned process provided in the Act. Section 10 (1) (a) of the Act is a laudable provision for compelling any company intending to participate in the oil and gas sector industry in Nigeria to submit its content plan that assures first consideration of Nigerian's in-country goods and services. This commendable provision necessitates value addition to our made-in-Nigeria good and services which has boosted utility and participation of Nigerians, but implausible before the enactment of the Act. In that regard, Nigerian services and made in Nigeria goods are given first and foremost priority considerations and preference over services and goods of other nationalities. The Act was intended to enable Nigerian participation and involvement in the value chain of the Nigerian Oil and Gas Industry. It desires to build and utilize indigenous capacity, product and services, avert the dominance of expatriates in the industry as well as generate revenue from multinationals who still engage expatriates for whatever reasons.

D. Environmental Impact Assessment Act 1992

The Environmental Impact Assessment Act 1992 is a bedrock on the Nigeria's environmental protection legal framework requiring both public and private projects likely to have significant impact on the environment to undergo environmental impact assessment before approval for execution. The EIA requires that every oil and gas production project must undergo a mandatory impact assessment on the environment where the project is to be carried to assess the likely negative effect of the project irrespective of the intending benefits of the project to the inhabitants, the country, state, community or industry which may be the immediate beneficiary of the project so as to assuage the hardship before commencing the project. The laudable objectives of the Act include but not limited to decisions by any person, entity, corporate body, government at the federal, state, local to embark on any project that will impact the environment.

E. Arbitration and Mediation Act 2023

The Arbitration and Mediation Act 2023 was enacted to repeal the Arbitration and Conciliation Act and legislate the Arbitration and Mediation Act 2023 to provide a uniform legal framework for the just settlement of disputes arising from commercial transactions by mediation and arbitration and to make the convention on the recognition and enforcement of foreign arbitral awards (New York Convention) applicable to any award made in Nigeria or in any contracting state arising out of international commercial transaction to settle international commercial arbitration. The Arbitration and Mediation Act 2023 is constituted in three parts and expressed in ninety (92) sections with three schedules.

First Schedule has six sections, 51 articles dealing with the various procedures for arbitration and an annex. Second Schedule made pursuant to section of the Act contains sixteen articles numbered in roman numerals providing for the application of the New York Convention. The Third Schedule is predicated on sections 19 and 64(2) of the Arbitration and Mediation Act 2023 to provide arbitration proceedings Rules 2020 which contains seventeen (17)

paragraphs expressing the various expectations and rules of arbitration. The Act is a relevant legal framework for the HCDT in the event that arbitration is resorted to as a means of resolving potential grievance amongst the communities, settlors and the host communities or the organs of HCDT governance since arbitration has been variously canvassed as a very convenient means of settling business grievances to avert waste of time and cost.

An arbitral award can be adopted by the trial court as its own judgement subject to the provision of the Rules of Court which guide the practice and procedure of the courts. When the court adopts the terms of judgement and makes it its judgement, the settlement assumes the status of a consent judgement of the court, it is binding on all the parties and the point so decided becomes res judicata. A high court is not mandated in our laws to adopt then arbitral award as its own judgement but performs the role of enforcement of the arbitral award where the award is not challenged.

F. Nigerian Upstream HCDT Regulations 2022

The Nigeria Upstream Petroleum Host Communities Development Regulations was made by the Commission pursuant to the powers conferred to it by sections 10(f), 234(20), 235(6)(a) and all other powers enabling it by the Petroleum Industry Act 2021 to provide for substantive and procedural requirement for the establishment and administration of the trust and the Fund for the Nigeria Upstream Petroleum Host Communities Development, outline the parameters for the administration and safeguard of the Fund, prescribe the grievance resolution mechanism for settlement of disputes between host communities and settlors and provide general rules for the implementation of the provision of section 234(1)(a)to (d) of the Act for the development of host communities.

The Regulation is generally applicable to Nigerian Upstream Petroleum Host Communities and holder of a licence or lease engaged in upstream petroleum operations as defined by section 318 of the Petroleum Industry Act 2021. It consists of seven parts, expressed in 42 sections. Part 1 made up of Regs. 1 and 2 contains the objectives and application of the regulations, part 2 made up Regs. 3-6 which provides for the general powers of the commission, while Part 3 made up of Regs 7-17 contains the host communities' development trust and Trust Fund. Part 4 made up of Regs. 18-22 contains the Host Communities Development Trust Committees, Part 5 made up of Regs. 23-33 contains the establishment and Management of the Host Communities Development Trust Fund, Part 6 made up of Regs. 34-35 which contains the investment of the reserve fund and Reporting Obligations and Part 7 made up of Regs. 36 to 42 contains the miscellaneous provisions ranging from offences, vandalism, Cessation of settlor's interest, grievance mechanism and conflict resolution procedure, transfer of existing host community development projects and schemes, interpretation and citation.

G. Contractual Guidelines

The contractual guidelines without much ado are the guiding rules and regulations that spells out the process and procedure for the award of any contract awarded to any organisation. It outlines the pre-qualification requirements and modalities to be fulfilled and followed by any potential awardee to be considered for the award of contract. Its essence is to guide a potential contractor of the minimum requirement or expectation of the company from it to

qualify for the award and save the potential contractor from avoidable mistakes of not taking cognisance of the fundamental requirements.

H. Companies and Allied Matters Act 2020

The Companies and Allied Matters Act 2020 is the principal legal framework regulating the registration of companies, business names, partnerships and trust organisation, Religious and social organisations. It is the machinery through which the HCDT was incorporated to become a legal entity with perpetual succession, capable to sue and be sued in its own name. Permitted by law to do business of low risks, own property for the beneficiaries and with other benefits of registration. The Companies and Allied Matters Act is relevant as the instrument through which the HCDT was born and cease to exist when it can no longer do business.

I. Lawful Customs and Customary Laws

Customs and customary laws are recognised by the Constitution as an existing law and has been given legal backing in Nigeria. It is the long existing normative rules and ways of conducting customary activities that has lived with the people and recognised by them as rules of behaviour. It varies from place to place and applicable to all whether indigene or not as far you have something to do with the community where the custom is applicable. It is apposite to include the custom and customary laws of the host community as a prevailing legal framework because from the discovery of oil in any community to the extinction of oil from the well, the settlors will always observe the custom and tradition or customary laws of the host community. In the vein any contractor carrying out any project in the host are subject to the lawful custom and traditions or customary laws.

J. African Charter on Human and Peoples Rights (Ratification and Enforcement) Act Cap. A9, Vol.1 Laws of the Federation of Nigeria, 2004

The African charter being a regional legislation has become applicable in Nigeria as a domestic law having been domesticated by virtue of section 12 of the Constitution of the Federal Republic of Nigeria as amended. The African Charter made copious provisions regarding the rights of the community and the host communities as it regards self-determination and the determination of the resources in their domain. Most of the decisions establishing the rights of the host communities have been predicated in the Charter as a tool to strengthen the chapter two of the Constitution of the Federal Republic of Nigeria, 1999 as amended.

K. Case Laws/Judicial Precedent

The case laws or precedent forms a significant source of legal authority in determining the legal framework of the Host communities, in that the law properly so called is the law as interpreted by the court, what the court will do and nothing pretentious is the law. The precedent is the judicial authority rendering by the superior court of record for other court to apply where applicable in the determination of the rights of the host communities. The

case of Center for Oil Pollution Watch (COPW) v Nigeria National Petroleum Corporation in this case the court held inter alia, established two basic things, that NGO's like the plaintiff has locus standi to institute public interest Suit for environmental nuisance and the chapter 2 which ordinarily is no justiciable becomes justiciable when read together with the provisions of chapter 4 of fundamental rights. This creates basis for justifiability of the constitutional provision for environmental protection and safety.

V. INSTITUTIONAL FRAMEWORK

A. 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 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.

B. Settlors

Upstream Licensees/ Lessees have the statutory obligation to make regulations on host Communities issues and the approval of members of the Board of Trustees.

C. Board of Trustee (BoT)

Board of Trustees means the governing body of the Host Communities Development Trust (HCDT) established under Section 235 of the Petroleum Industry Act 2021, 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 and settlors.

D. Management Committee (MaCom)

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. 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 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. Under the Host Community Development Trust (HCDT) established by the Act, the management committee refers to the body responsible for the day-to-day management and decision-making of the Trust.

The Act defines the management committee as the committee obligated for the general administration of the Trust, and includes the Secretary, and other members appointed by the Trustee. 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; nomination of fund managers for appointment by the BoT for approval to manage the reserve fund; 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. 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 and the Trust Deed.

The management committee plays a crucial role in ensuring the effective management and administration of the HCDT, and is responsible for implementing the decisions of the Trustee and ensuring that the Trust is operated in a transparent and accountable manner. The role of management and administration are mostly interwoven. It is obligated on the management committee to recommend the fund manager to the 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.

E. Advisory Committee (AdCom)

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 advice on specific issues such as providing guidance and advice on particular matters. The key characteristics of an advisory committee is to give expert advice relating to their relevant fields of endeavour, they do not possess decision making powers but obliged to address specific issues or matters mandated in its terms of reference. 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 decision.

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 upon the management committee’s set up by the Board of Trustee of the HCDT. The Advisory Committee of the Host Communities Development Trust has the statutory obligation pursuant to the Act to monitor and make reports on the progress of projects being executed in the community to the management committee and equally advice 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 of to offer advisory services if in a professional respect has a fiduciary duty to act in the best interest of the beneficiary and must be done with reasonable skill and care not misleading in any way as any negligent advice or negligent misstatement may lead to harm and consequential liabilities where there exists a special relationship between the advisor and the beneficiary.

The importance of providing reliable advice by the person or body of persons reposed with the confidence to doing so and the potential legal consequences of defaulting cannot be over emphasized. 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 as he owes his beneficiary a fiduciary duty to act in the best interest of such beneficiary, knowing quite well that he may be liable for negligence if he fails to exercise reasonable care in providing his services.

F. Alternative Dispute Resolution Centre of the Oil and Gas Excellence Centre for Mediation

Where a dispute arises between one or more communities in relation to the trust or the trust fund or a host community and a settlor in connection with upstream petroleum operation or a trust, the aggrieved host communities will give a dispute notice to the settlor and the Board of trustees, support the notice with relevant documents and after service of the dispute notice the settlor and the Board of trustees shall attempt in good faith to resolve the dispute between the host communities.

In the case of dispute between host communities and the settlor, the Board of trustees shall give a dispute notice to the chairman of the Directors of the Settlor with supporting documents and after service of the dispute notice, the Board of Directors of the settlor and the Board of trustees shall attempt in good faith to resolve the dispute. A copy of the dispute notice shall be sent to the Commission. 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 Oil and Gas Excellence Centre for Mediation. Where the ADR Centre of 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 Mediation Act 2023.

G. Community Eze

The Chieftaincy and traditional institution laws of Imo State are basically regulated by the Traditional Rulers, Autonomous Communities and Allied Matters Law. This legislation is the framework for the creation of autonomous communities, the choosing and recognition of traditional rulers (Ezes), and the structure of the State Council of Traditional Rulers. Factually, traditional ruler-ship in many communities is highly decentralized. Under Imo State law, the state is divided into gazetted autonomous communities. Each autonomous community identifies, selects, and appoints its traditional ruler (the Eze) in accordance with its applicable constitution, customs, and traditions. The autonomous community presents the chosen candidate to be their Eze to their respective Local Government Council, which sends the name of the potential Eze to the state government.

The Eze cannot officially ascend to the stool until he is issued a Certificate of Recognition and a Staff of Office by the Executive Governor of the respective State. The governor has the right in law to authenticate the cogency of the choice and deny recognition if proper procedure was not followed or in the interest of public peace. The Imo State Council of Traditional Rulers is the apex regulatory body for traditional monarchs in the state. Pursuant to recent statutory amendments, the State Governor is conferred with the power to appoint the Chairman and Deputy Chairman of the Council. This adjustment was made to remove monarchs from political activism, thereby uplifting the dignity and detachment of the

esteemed Ezeship stool. Traditional rulers serve as guardians of culture, tradition, and norms. The law requires Ezes to preserve peace, order, and good governance in their domains.

They work closely with local security agencies and government stakeholders. Only government-recognized traditional rulers have the lawful and customary power to confer chieftaincy titles on individuals. Legislation and state directives demand that traditional rulers remain strictly non-partisan and above serving as political actors. The Eze is a significant figure in the nomination and appointment of the non-management executives and the advisory committee because he determines who is nominated or otherwise.

H. Community President General

The President General of the host community constitutes an institution in community governance and though not mentioned in the PIA or the Regulations plays a vital role in the determination and keeping of peace in the community. He also plays of the traditional ruler where the traditional is late and none has been selected/nominated to replace him. Under the HCDT, the Eze is required to jointly select the mender of the management committee member with the exception of the management executives and the advisory committee member from the community.

I. Court with requisite Jurisdiction

The Court with requisite jurisdiction is a significant institution because of its traditional role of adjudication of cares in spite of the grievance mechanisms which must be observe to settle disputations between host community against host community and host community against the settlor or the alternative dispute resolution established by the Commission. The role of the court cannot be neglected particularly when every arm of grievance mechanism fails. The last resort is the court of law.

Even when the ADR set by the Commission renders an arbitral award, the court of requisite jurisdiction will be required enforce the award as its judgement being recognised by the court as consent judgement. In this Act no court was directly named as court of requisite jurisdiction, it is only by intuition and necessary implication that one can assume the court of jurisdiction when any grievance goes beyond the resolution of the Board, settlor and the Commission ADR.

J. Government Agencies

Government agencies also constitutes a significant institution in the administration and management of the HCDT because where the operators of the HCDT go contrary to the laws and regulations, the agencies of government, be it the Nigerian Police or the EFCC or IPCC may be called into action pursuant to the relevant law.

VI. APPRAISAL OF THE LEGAL AND INSTITUTIONAL FRAMEWORKS

A. Appraisal

The framework is a laudable innovation with the legal framework establishing the HCDT which created a legislative certainty that changed the voluntary MOU/GMOU to structured process of community development which conferred to the community has a right of action for non-compliance and obligation on the settlors. The 3% funding established a certainty

of an expectable revenue source for community development and prosperity instead of the ad-hoc community development programmes and the moral CSR which were unrelated to the needs of the community and were carried out without the community's need assessment and development plan. The governing structure created by the PIA in the HCDT established multi-tier organs of government which introduced separation of power and functions that vitiates the risk of elite capture by community elements. The PIA and the Regulations encouraged the inclusivity of the representation of women, youths, PWDs on Management/Advisory Committees.

The NUPRC's approval and monitoring powers create accountability and checks and balances beyond the settlor. The concept of sustainable development was equally engraved in the structuring of the HCDT through the investment of the reserve fund by the fund managers for long term community development.

B. Challenges

1. The PIA is plagued by evasiveness and ambiguity that trailed the definition clause of the Act particularly the definition of 'host community' which is considered too wide yet wanting in the actual content expected of the concept. The ambiguity may trigger confusion, agitation or concern regarding the communities that qualifies as host community, community hosting settlors' pipeline or community where the actual extraction and production of oil is taking place, that is the producing communities, or the impacted communities or both. This is likely to create settlor-community conflict particularly where there is disparity in fund distribution matrix on this basis.
2. Another undeniable challenge of the HCDT initiated orchestrated by PIA 2021 is the inadequacy of the 3% actual annual operating expenditure of the settlors. There is no transparency for the determination of what amounts the actual annual operating expenditure of the settlors, there is also no transparency mechanism to verify if the settlors pay this 3% accurately and timely. Again, the 3% paid to a mass number of communities gathered together into one HCDT to share the 3% is considered too low and inconsequential. The result has been that host communities do no longer apply their fund according to the community development plan and need assessment but according to the fund allocated to the community, due to the fact that the sum becomes a paltry when distributed among several communities under the same hub. The argument that it is high on them since the 30% frontier basin fund is still on them, this means then a typical case of robbing peter to pay Paul. More so, section 240 failed to clarify if actual annual operating expenditure includes Joint Venture (JV) costs. Obviously this will lead to computation disputes.
3. There is jurisdictional conflict owing to the overlapping of the HCDT provisions with the provisions of existing Laws, the NDDC, Ministry of Niger Delta, and States' 13% derivation. Host Communities complain that settlors are not doing to the fullest what they are supposed to do due to double taxation on operators resulting in little coordination in project delivery.
4. The vandalism penalty threat clause threatening that where vandalism/sabotage occurs in a host community, the community forfeits its entitlement to the extent of repair costs. This clause is harsh and anachronistic and judgement in itself. This is because, the clause has prejudged and determined that the entire community is guilty without any verification and proceed to roll out punishment when the host community is not in charge of the Nigerian security architecture and is not holding any security contract with the settlors to secure their facility. This indirectly implies

that the settlors feel the 3% is a favour but failed to realise that it is a paltry for the continued wrongdoing on the host communities who are continually impoverished by the day while the settlors and the government of Nigeria are enjoying the largess. It is unconstitutional to hold someone or entire community guilty without hearing them and for one to be a judge in his own case. It has also tacitly amended our criminal jurisprudence of concurrence of actus reus and mens rea and that assumption has also become a reality in law which invariable means that there is no need of finding the perpetrator(s) and the state of his mind in addition to the fact that mere presumption gives credence to a proof.

5. The non-incorporation of the HCDT by the settlors within the time line is not treated as a serious default by the NUPRC, this will enable default since there is no serious punishment such as withdrawal of licence or lease.
6. There does still seem elite capture and politicization as despite this overbearing structure, the traditional rulers and local elites often dominate the nomination of BoT, MC and AD with little opportunity for grass root participation in the nomination and determination of the CDP, Needs Assessment etcetera.
7. In-country capacity gaps amongst management committee members in areas of project management, procurement, or financial literacy. Though the NUPRC Regulations mandate training and re-training, but the rollout of such training programmes is uneven.
8. The problem of delayed incorporation and still operating under the defunct gMoU. Section 236 requires incorporation within 12 months of license effective date but many settlors missed the deadline due to disputes over community identification, causing regulatory fines and distrust. Some deliberately flouted the law and the host communities have been unable to escalate the menace due to divide and rule policy of the settlors in the community.
9. The NUPRC is overburdening with workload, it has the statutory responsibility to approve the 155 registered Trusts with CAC, CDPs to approve and monitor compliance, presently, 79 funded with mandatory 3% OPEX, 663 on-going projects but besieged by the plague of understaffing and insufficient resulting in ineffective oversight.
10. There poor synergy in the seeming duplicated role of the Local Government Areas by the HCDT. This ought to be a good one that will yield rapid community development owing to duplication of projects by both HCDT and The Local Government. The LGs are now seeing that HCDT is exposing their ineffectiveness in projects delivery.
11. The issue of transparency and accountability under the PIA is a striking concern in that though PIA mandates annual reports/audits to NUPRC, public disclosure to host communities is not certain. The Fund Manager arrangement isn’t fully operational for many Trusts yet not operation and those operational their terms are clothed with uncertainty, devoid of transparency and public. The auditors will unravel the mystery of transparency if not independent and not captured by the elites that may be interested in their report.

VII. CONCLUSION

The HCDT framework under PIA 2021 is a remarkable modification from optional CSR to a rights-based, legal model for host community development. It provides statutory certainty,

Regulated governance, and committed contribution. However, the success of the framework is weakened by definitional ambiguities, the contentious 3% rate, and penalty threat clauses, capacity deficits of the HCDT management organs, and the community contractors, and feeble institutional management. If these issues are not unresolved, it may occasion replication of the challenges and underdevelopment the PIA target to resolve. The HCDT is consequently potentially on landmark innovation but institutionally fragile. Its effectiveness will be contingent on regulatory enforcement, judicial interpretation, and genuine community ownership.
In the light of the scrutiny of the legal and Institutional framework of the HCDT, it is recommended that:

1. Firstly, sections 318 should be amended to enable the NUPRC issue detailed guidelines on the identification of host community by means of GIS mapping, impact assessments, and/or tiered classification such as core, pipeline, impacted, buffer communities, etcetera. Secondly, section 257(2) should equally be amended substitute communal unverified punishment with a due-process mechanism that identifies the perpetrator and penalize only proven perpetrators after investigation not entire communities, where the settlors will not be the prosecutor and the complainant in breach of the rule of fair hearing. Thirdly, Reg. 9 should be amended to be in accord with section 238 of the Act and should be able to prescribe a punishment that will serve as a deterrent to the defaulting settlor. Fourthly, the idle section 250(1) of the Act which in conflict with section 249(1) of the Act which requires the Management Committee to set up the advisory committee, the said advisory committee is not required again by section 250(1) to nominate member to represent the host communities on the management committee should be deleted from the Act. Fifthly, there should a legislative coordination through amendment to align and clarify HCDT, NDDC, and 13% derivation to avoid duplication, unnecessary overlapping and conflict. Finally, amend the Act and the Regulations to provide minimum percentage of women and youth representation in Management Committees, and advisory Committees with enforceable sanctions.
2. The fact of capacity building should be prioritized to strengthen the primary regulator and the primary HCDT organs of governance. A common synergy between the NUPRC, NMDPRA with NEITI, NGOs to run mandatory certification programs for BoT/MC members on governance, procurement, and conflict resolution.
3. The NUPRC should properly fund NUPRC's HCDT Unit for monitoring and dispute resolution.
4. The HCDT should be mandated to install a digital transparency portal, where the HCDT should mandatorily upload CDPs, budgets, contracts, and audit reports to a public portal. This will enhance instantaneous community monitoring.
5. It is further recommended that the OPEX computation should be standardized by requiring the NUPRC and the NIRS to produce joint guidelines on the computation of annual OPEX" to end disputes and suspicions.
6. There is need for independent third-party NGOs or consultants to conduct baseline needs assessments for CDPs, reducing elite manipulation and resentment.
7. Finally, is the need to establish HCDT Mediation Panels as Alternative Dispute Resolution centres in oil-producing states to resolve settlor-community disputes quickly, before they escalate to NUPRC or court?

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