

The Nigerian Petroleum Industry Act (PIA) 2021 and the Problems of Corruption in Host Community Development Value Chain

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ABSTRACT

A key element of the Petroleum Industry Act 2021 is the incorporation of host communities as partners in progress with the International Oil Producing Companies (IOCs) rather than perennially agitating community members. This paper observes that despite the fact that the Act makes comprehensive provision of integration of host communities in a mutually beneficial manner, there is the fundamental problem of endemic corruption that impedes the attainment of desired objectives at every level of host community engagement. The paper concludes that until the corruption element in the host community value chain is addressed, laudable objectives of the host community development aspect of the Act will be difficult to attain.

ARTICLE INFO

Keywords:

Community, Corruption, Development, Industry, Petroleum.

Article History:

Received: 11 Feb 2023

Revised: 21 Mar 2023

Available Online: 12 May 2023



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1. INTRODUCTION

The Niger-Delta region is the oil wealth deposit of Nigeria. It holds a minimum of 20 billion barrels of oil reserves. Most activities of Multinational Oil Corporations (MNCs) and their Nigerian indigenous counterparts are concentrated in the Niger-Delta region. The region represents the core area where exhaustive production and exploratory activities take place (Adeyeye and Adekeye, 2022, p.22). Activities of oil and gas companies in the Niger-Delta region include extractions, drilling, earth-moving activities, deep-sea explorations, opening of roads, bush clearing, deployment of heavy equipment, digging of borrow pits, massive construction works which include petroleum terminals. There are pipeline networks that criss-cross parts of the region for easy crude oil transportation. Some of the big players in the industry such as Shell Petroleum Development Company are also involved in deep water drilling across the adjoining sea and water in the Niger-Delta region. For a long time in the history of oil and gas business activities in Nigeria, particularly in the oil rich Niger Delta region, the issue of host communities development had been left at the discretion of the oil companies; leaving the host communities as destitute at the mercy of the stupendously wealthy oil magnates. At best, oil and gas companies attended to the development of their host communities as an extraneous and secondary programme being executed within the context of Corporate Social Responsibility (CSR) practices. The oil companies most often than not determined the “what, when, where and how” of host communities development interventions to be executed. Moreover, the CSR methods adopted by many oil companies in the region are the basic reason for their failure to achieve sustainable development and peaceful operational environment within the Niger Delta. This approach has led to gaps between the ‘convenient’ programmes of the oil companies and the real life needs of the host communities and dwellers. The approach failed to address fundamental issues of prompt response to ecological rehabilitation; adequate compensation (Adekola and Okegbule, 2013, p.29); community stakeholders’ involvement and participation (Adeyeye and Adekeye, 2022, p.23).

The peripheral projects and programmes being executed by the oil companies such as the citing of infrastructural facilities: roads, bore-holes, school blocks and laboratories; award of scholarship to some members of the host communities and employment of some of the indigenes could not reverse the animosity and anger against the oil operators due to years of degradation, oppression, broken promises, environmental abuses and economic hardship. This culminated into violent conflicts and hostage taking and other criminalities which caused profound reduction in oil production output. Simply put, the problem of loss of confidence among host communities and oil companies has precipitated unfortunate hostility against oil business, disruptions and agitations leading to insecurity, revenue loss and threats to economic survival in the oil rich Niger-Delta. Under the normal circumstance, the relationship between oil companies and host communities

is symbiotic, cordial and very beneficial such that the business see the communities as essential partners that must be taken into consideration while the oil operators are perceived by host communities as partners in progress.

2. EVOLUTION OF THE NIGERIAN PETROLEUM INDUSTRY ACT (PIA) 2021

In 2005, the Nigerian oil and gas industry witnessed a remarkable and game-changing introduction of the Global Memorandum of Understanding (GMOU) model. The GMOU model was first introduced by Chevron Nigeria Limited (CNL), operator of the Nigerian National Petroleum Corporation/ Chevron Nigeria Limited (NNPC/CNL) Joint Ventures (Haastrup, 2022). Shortly after the introduction and implementation of this model in 2005, Shell Petroleum Development Company (SPDC) (Adekola and Okegbule, 2013) in a joint Venture partnership with the Nigerian National Petroleum Corporation embraced and adopted the model although with slight modifications while retaining its essential principles. Owing to the favourable disposition of the Nigerian flagship oil and gas corporation- NNPC, and the regulatory organ in the industry, the Directorate of Petroleum Resources (DPR), as well as the success of the GMOU in addressing major perennial challenges within the industry, other oil and gas companies operating in the Niger Delta region quickly adopted the GMOU model. Prior to the introduction of the Global Memorandum of Understanding (GMOU), the prevailing situation in the Niger Delta was such that constrained business operations; stifled host community development; and retarded national economic growth. Therefore, the GMOU was designed to address the most fundamental of the issues affecting both the communities in operational areas, and the operating companies engaged in the Exploration and Production (sic) of oil and gas... (Haastrup, 2022, p.2) The issues which were to be resolved by the GMOU model included:

1. Shortage of sustainable social and economic development opportunities and programmes in the host communities.
2. Insecurity and violent conflict between communities (host and impacted) and oil companies and among the communities in the operating areas causing colossal loss of lives and destruction of properties.
3. Increasingly hostile and harmful environment which frustrates healthy livelihood of residents and indigenes, and sustainable development of exploration and production of oil and gas in operating areas.

According to Haastrup, the GMOU model was premised on three key findings:

1. In order for social intervention programmes to result in sustainable community development in the Niger Delta and especially in communities hosting oil exploration activities, these social investments must be appropriately funded by government and the operating companies (as well as other interested donors), and the development process must be owned, managed and driven by the host communities themselves, with appropriate support from other stakeholders.
2. In order to address the pervasive insecurity and perennial conflict between host communities and operating companies, and among host and non-host communities in the operational areas of the Niger Delta, a joint and participatory community and stakeholders' approach to peace building and conflict mitigation/management had to be adopted.
3. In order for the oil and gas business to continue to grow and yield sustainable returns on investments, the interests of stakeholders (including communities, governments at state and local levels, NGOs, and CBOs) cannot be ignored. All stakeholders must work together and be committed to both the sustainable development and growth of the oil and gas enterprise and the sustainable development and growth of host communities.

The implication of the above is that only a multi-stakeholder approach to social performance programmes could deliver the desired solutions to the various challenges that had bedeviled both the host communities and business operators. A decade after the introduction and the commission of the GMOU model, its achievements were obvious in the following:

1. A vast improvement in the capacity of host communities to plan, execute and manage development projects. This resulted in a great deal of community identity and ownership of the development process and the projects resulting from it. This in turn meant a more sustainable outcome.
2. A substantial improvement in the relationship between host communities and CNL, the operating company, as well as a significant reduction in conflicts among communities and between communities and the operating company.
3. A more secure operational area for company assets and business operations.

The gains recorded through the implementation of the GMOU model attracted those who were later charged with the responsibility of drafting a new law for the governance and administration of the Petroleum industry in Nigeria.

3. THE PETROLEUM INDUSTRY ACT (PIA) AND THE HOST COMMUNITIES DEVELOPMENT

The Act is an instrument that provides legal, governance, regulatory and fiscal framework for the Nigerian petroleum industry, the development of host communities and for related matters (PIA, 2021, p.A31). The following are the objectives that are contemplated in the Act:

1. Create efficient and effective governing institutions, with clear and separate roles for the petroleum industry;
2. Establish a framework for the creation of a commercially oriented and profit-driven national petroleum company;
3. Promote transparency, good governance and accountability in the administration of petroleum resources of

Nigeria;

4. Foster a business environment conducive for petroleum operations;
5. Deepen local content practice in Nigeria, particularly in the oil and gas industry;
6. Promote the exploration and exploitation of petroleum resources in Nigeria for the benefit of the Nigerian people;
7. Promote the efficient, effective and sustainable development of the petroleum industry;
8. Promote the safe and efficient operation of the transportation and distribution infrastructure for the petroleum industry;
9. Provide the framework for developing third party access arrangements to petroleum infrastructure;
10. Foster sustainable prosperity within host communities;
11. Provide direct social and economic benefits from petroleum operations to host communities;
12. Enhance peaceful and harmonious co-existence between licensees or lessees and host communities;
13. Create a framework to support the development of the host communities;
14. Establish a fiscal framework that encourages investment in the Nigerian petroleum industry, balancing rewards with risks and enhancing revenues to the Federal Government of Nigeria;
15. Provide a forward-looking fiscal framework that is based on core principles of clarity, dynamism and fiscal rules of general application;
16. Establish a fiscal framework that expands the revenue base of the Federal Government, while ensuring a fair returns for investors;
17. Simplify the administration of petroleum tax;
18. Promote equity and transparency in the petroleum industry fiscal regime. (PIA, 2021, pp.A31, A175, A275, A285)

From the set objectives, it could be deduced that the PIA contemplates the complementary roles and responsibilities of the major stakeholders in the Nigerian oil and gas industry; the government, host communities and business operators. The three major issues that the PIA addresses are fiscal regime, the ownership of the businesses involved in the industry, and the sustainable development of the host communities. The objectives 10, 11, 12 and 13 apply specifically to the aspiration of the Act to provide a legal framework for the realization and fast tracking sustainable development of all the host communities across the oil producing regions.

The administrative structure outlined in the PIA underscores the significance and centrality of host communities in the process of delivering sustainable community development and peaceful operational environment for business to thrive. Development projects should not be introduced into host communities using the top-down approach. There should be full participation of the people. They determine their own priority projects. If there is full participation, a sense of ownership would be inculcated (Adekola and Okegbule, 2013, p.30). To this effect, a chapter (Chapter 3) of the Act has been dedicated to the involvement of members of host communities in ensuring that the precarious socio-economic conundrum which was hitherto the experience of communities in operational areas is adequately and rapidly transformed. The highest governing body, as provided in the PIA, is the Host Community Development Board of Trustees (HCDBT). This body would oversee the implementation of the development activities of the host communities and coordinate the relationship with the operating companies. It is the duty of the Board to ensure judicious management of the funds entrusted for community development and make policies to prevent conflict between host communities and operating companies. The HCDBT is mandated by the PIA to report to the industry regulatory body, the Nigerian Upstream Regulatory Commission (The Commission).

Next in rank on the administrative ladder is the Host Community Development Management Committee (HCDMC). This organ functions in an executive and management role and reports to the Board of Trustees (HCBDT). This Committee takes responsibility and ownership for the design, planning and implementation of development projects on behalf of the host communities. The PIA provides for sub-committees known as the Host Communities Advisory Committees (HCACs). The HCACs are comprised of representatives of all the communities making up a regional cluster. Members of HCACs are responsible for day-to-day interactions with the communities. They act as the mouthpieces of all the various community interests (including those of youth, women, the physically challenged, the elderly, etc) within the various communities. The duties of HCACs include nominating community members to serve on the HCDMC, presenting community development projects on behalf of the host communities to the HCDMC, ensuring peace and security within and around the host communities, and preventing conflict between communities and the operating companies. The commitment of the Federal Republic of Nigeria to host communities development in oil producing regions is so profound to the extent that no stakeholder is absolved from the obligations of previous laws and regulations with respect to the entitlement of the host communities. This provision is contained in Chapter 3, section 239, sub-section 4 of the PIA which states that “Notwithstanding the provisions of this Act relating to funding of the trust fund, nothing shall preclude the host communities from their entitlements under any other law.”

4. THE HOST COMMUNITIES DEVELOPMENT AND THE PROBLEM OF CORRUPTION

As much as the intension of Petroleum Industry Act (PIA) and the governance structure of the host communities development strategy provided by the same Act remain undoubtedly laudable, the fundamental issue of corruption must be addressed in order to maximally appropriate the potential benefits of the provisions of the Petroleum Industry Act (PIA) in favour of the host communities. The critical areas where corruption is perpetrated as being observed in many of the previous programmes are discussed below. Corruption in the constitution of membership of the various organs and committees for the administration and management of host communities development. Central to the success of different levels of administrative and management organs that are saddled with diverse roles of ensuring sustainable development (social performance) within the host communities is the capacity as well as the integrity capital of persons that constitute each organ of the governance structure. The quality of representation, the performance level as well as the overall community development deliverables largely depend on the personalities that will operate the institutions established by the PIA. The Petroleum Industry Act has made the governance of the host communities development programmes democratic, ‘grassrooted’, and inclusive. It is a bottoms-up model that fosters a sense of community participation and ownership. Therefore, the process of the emergence of the members of each organ of the structure by either election or appointment becomes very critical to the realization of the much desired sustainable development of host communities in the Niger Delta region.

Over the years, as communities in the Niger Delta struggled and agitated against marginalization, deprivations and exploitations and called for public attention in respect of fair treatment of their people and environment, some political nuances have emerged; thereby creating diverse loyalties and primordial interests among the people. Some of these groups within the communities have entrenched their political, economic and ideological dominance for a long period. The champions or leaders of such dominating groups hold the control of the militant squads, economic resources and other privileges to silence or undermine any form of resistance against their unbridled appetites and claims to group assets within the communities. They have succeeded in institutionalizing their personal monopolies of violence. This scenario has become so entrenched to the extent that politicians and governments at all levels often patronize these groups for various reasons via their leaders. The generals, warlords and leaders as they are often called are major influencers and determinants of public affairs in their communities/territories. They are mainly driven by personal benefits at the expense of public good.

In such a socio-political circumstance, one could quickly reason and conclude that having a governance organ that will adequately represent the peoples’ interests within the host communities as contemplated by the Act, may be very difficult or outrightly impossible. This sort of ‘closed’ community easily breeds and accommodates corrupt tendencies in all its affairs because of the apparent lack of accountability and institutional checks and balances. The host communities development governance will soon be compromised and the objectives unrealizable as the various levels of administrative structure are occupied by individuals who are representatives of clandestine and selfish interests. Corruption in the process of awarding and executing contracts for communities development. The provision of the Petroleum Industry Act, Chapter 3, Section 239, sub-section 1, which states that “The constitution of the host communities development trust shall allow the host communities development trust to manage and supervise the administration of the annual contribution of the settlor contemplated under this Chapter and any other sources of funding” (PIA, 2021, p.A278), confers a sweeping power on the host communities to take charge of the funds and assume responsibilities for success and failure of its operations. The implication is that in the absence of credible individuals who are genuine representatives of their communities as well as strict compliance with extant financial laws and regulations, the funds will majorly serve the purpose of enriching the gladiators and their cronies at the cost of impoverishing the communities and littering the space with ‘white elephant’ projects and unsustainable programmes.

The reality of corruption is the major reason that previous government and corporate interventions in community development in the Niger Delta region have failed to yield much results as being contemplated by their constitutions. The Nigerian federal government established the Niger Delta Development Board (NDDDB) in 1961, but, the institution failed due to corruption. The Oil and Mineral Producing Area Development Commission (OMPADEC) was established in 1993, Niger Delta Development Commission (NDDC) in 2000 and Ministry of Niger Delta in 2009, but, they all failed or were ineffective due to corruption (Abbykalio, 2016). The funds committed to the Niger Delta Development Commission (NDDC) have not been justified in terms of human capital development, infrastructural development and sustainable environmental improvement in the catchment areas of the Commission. The abysmal social performance rating of NDDC could best be explained and blamed on endemic corruption and official improprieties; leaving the communities with various “paper-executed but on-site abandoned” projects on the one hand and excessively inflated but poorly executed projects on the other hand (Tribune, 2022; Thisday, 2020). In September, 2021, at the submission of the report of the forensic audit of the NDDC ordered by President Muhammadu Buhari, the President of the Federal Republic of Nigeria, Mr. Abubakar Malami, the Attorney-General of the Federation noted that the NDDC has over 13,000 poorly executed and unverified projects despite N6trillion allocation it received from 2001 to 2019 (Premium Times, 2021).

The wanton corruption in the industry is perpetrated by internal and external actors. For instance, The NDDC Board is made up of representatives of the Niger Delta states, non-oil producing states, oil companies, and government agencies selected from different states. NDDC is managed by a group headed by a chairman appointed by the federal government. The NDDC Act requires the federal government to donate 15 percent of oil income to the board, while oil companies are to donate 3 percent of the annual expenditure to the board. In addition, oil producing states are to donate 50 percent of the federal government allocated ecological fund. In practice however, the individual oil companies give only the balance of 3 percent after deducting cost of their self acclaimed social responsibility to their respective communities, the federal government contribute only a fraction of the required 15 percent, and the state government continually give well below the expected amount (Idemudia, 2007). The Presidential Amnesty Programme Office of the federal government is among the litany of government agencies commissioned to raise human capital development of youths of the Niger Delta origin. It has had its fair share of corruption cases. There are cases of unreported racketeering and sales of slots aided by community leaders and officials of the agency. Children and wards of the privileged (politicians, group leaders, high ranking public servants, etc) and their associates are major beneficiaries of the youth development and scholarship programmes while the indigents of the communities struggle to get their children and wards educated. The former Interim Administrator of the Presidential Amnesty Programme (PAP), Col. Milland Dixon Dikio (rtd) revealed that he met an entrenched system of inducements, kickbacks and other illegal practices and was unwilling to continue with them (Sahara Reporters, 2021).

The Nigerian government officials often turned blind eyes when companies violate the law of the land, this is done for personal gains and the people of the Niger Delta suffer for the corruption and institutional decay. It is interesting to site the case of Halliburton, an American oil servicing company that accepted to have paid bribes worth \$2.4 billion to corrupt officials of the Nigerian government for tax evasion relating to its operation in Nigeria (Idemudia & Ite, 2006). These cases of official improprieties and grafts are direct consequence of the endemic corruption that characterises the Nigerian system of appointment into public offices. More often than not, the system is conditioned to screen out the most competent and honest candidates. Persons are ‘sponsored’ into public offices by powerful interests who are always waiting for returns. Competence, credibility and character have long been sacrificed at the altar of kick-backs and patronage of godfathers. In essence, it is the position of this paper that corruption with its corollary portends a significant threat to the attainment of the general objectives of the PIA and specific objectives of the host communities development aspect of the Act. The huge amount of funds and other financial resources that would be committed into the Host Communities Development Trust would only serve its intended purpose of ensuring sustainable development, economic growth and human capital development of the region if corrupt elements and tendencies are discouraged or removed in the formation of the various agencies or organs and the operations of their mandates.

5. CONCLUSION

The Petroleum Industry Act (PIA) 2021 is a legal instrument of empowerment for the members of the host communities to take ownership of the process, direction, pace and governance of the development of people and environment within their territorial boundaries. The PIA envisages or assumes that members of the host communities would be in the best position to lead in driving the process of achieving significant and remarkable development through well-thought development projects and programmes. Members of the host communities would be most appropriate in determining people oriented and most impactful projects and programmes as well as prioritizing the options that maximize the benefits of the host communities development trust to deliver unprecedented sustainable socio-economic development across the oil producing host communities. However, as it was discussed in the earlier sections of this paper, these objectives would only remain a set of unrealized dreams if the fundamental problem of corruption is not tackled.

6. RECOMMENDATIONS

With respect to the positions and arguments discussed in this paper, the following recommendations are hereby suggested to address the menace of corruption and to position the host communities on the path of sustainable development and economic growth as intended by the Petroleum Industry Act, 2021.

1. Establish a transparent procedure of constituting membership of various administrative organs in each host community. The process of appointment or election into the various organs of the host communities development governance structure should be open and accessible to all members of the host communities. The requirements for qualification should apply equally to everyone without prejudice and bias. This is necessary for socio-political stability and to aid the peace building process of the host communities.
2. Institute a democratic and popular process of emergence of representatives in each host community. The importance of democracy cannot be overemphasised in the process of legitimizing community leadership as the process gives the members of the communities the sense of ownership and involvement in the critical areas of governance. People tend to cooperate and support their legitimate representatives. Democratic process would ensure the path to getting the most competent representatives in the various organs of the host communities development governance.

3. Ensure a fair representation of all interest groups in each host communities. To ensure inclusive participation of all groups within the communities, it is expedient and prudent to accommodate all interest groups in order to bring about diversity in development programmes. It is another way of entrenching accountability and sustainable peace within the host communities.
4. Establish a Community Feedback and Anti-Corruption mechanism with adequate power to prosecute offenders. It is pertinent to hold representatives accountable for their actions at every point in time. The mechanism for accountability involves a robust channel and method of communication. It is the obligation of the representatives to provide avenue for the communities to communicate their perception of the performance of their representatives. It is equally important for members within the host communities to assess and communicate their scorecard with their representatives. It is in the collective interest of the communities to mainstream and formalize public complaints through established statutory organs. The roles of the anti-corruption mechanism would include receiving and investigating complaints from members of the communities on allegations of corrupt practices and with due diligence, prosecute the offenders. This will significantly improve accountability and probity in handling public funds.
5. Establish a Community Conflict Management body. In order to achieve enduring peace within and among the host communities, such a body should be constituted to settle civil grievances relating to constitution of membership of the various organs included in governance structure of the host communities development and any other related matter.

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