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FOUNDATION FOR CORPORATE SOCIAL RESPONSIBILITY UNDER THE PETROLEUM INDUSTRY ACT 2021

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Abstract

The concept of corporate social responsibility (CSR) has garnered the interest of numerous management and legal researchers over time. Unfortunately, there has not been any agreement among academics about how CSR would affect corporate performances hence the relationship between the two has proven contentious. Prior to the enactment of the PIA 2021, there was an unending debate as to whether CSR should be made voluntary or mandatory. With the emergence of the Petroleum Industry Act 2021, the issue has now been settled as corporate social responsibility is now mandatory for every settlor. The authors therefore argued that corporate social responsibility being a fundamental part of the oil and gas sector has been subjected to diverse discussion, following the enactment of the Act. They maintained as a matter of fact, that the Act contained various definitions without end, which for instance, provided in S. 240 of the PIA as mandatory for every settlor to contribute 3% of her actual annual operating expenditure of the preceding financial year in the upstream petroleum operations to the host communities for the development of the host community, with sanction-provisions for noncompliance. The paper therefore concluded that the PIA 2021 as good as it sounds, did not provide for other communities that are not oil producing communities, directly affected by the activities of the settlor, that is, gas flaring, but rather focused only on oil-producing companies that operated in the upstream sector of the oil and gas industry within the host communities.

Keywords: upstream production, oil host-community, corporate social responsibility, multinational corporations, memorandum of understanding

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1. Introduction

Nigeria is the largest oil producer in Africa. Nigeria's crude oil production in the month of April, 2024 rose marginally by four per cent to 1.238 million barrels per day compared to 1.23mbpd recorded in March.¹ The Nigerian government still relies significantly on revenues from crude oil and gas till date with a significant impact on the economy. This oil significantly is gotten from oil wells cutting across different states in Nigeria, especially the Niger Delta. Though the industry contributes less than 10% to the country's gross domestic product, it contributes about 90% of the foreign exchange earnings and 60% of total income. Consequently, any adverse change in the industry will have a big and long-term impact on government finances. This is the reason successive government have remained focused on the sector despite various discussions on diversifying the economy.²

It is against this backdrop that the government conceived the idea to overhaul and transform the oil and gas industry taking into consideration, the beneficial impact of the contributions of host communities and settlers in relation to improving on societal values and concomitant make-ups. This is what is regarded as Corporate Social Responsibility which is the focus of this paper.³

Prior to the enactment of the PIA 2021, there has been an unending debate whether CSR should be made voluntary or mandatory. The emergence of the Petroleum Industry Act 2021 has now been settled the issue as corporate social responsibility is now mandatory for every settlor. This is evident by virtue of the provision of the Petroleum Industry Act 2021, which provides that:

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

¹ Obas Esiedesa 'Nigeria's oil production grows marginally by 4% to 1.28mbpd' *Vanguard Newspaper*, <https://www.google.com/amp/s/www.vanguardngr.com/2024/05/nigerias-oil-production-grows-marginally-by-4-to-1-28mbpd/amp/> accessed 5 July 2024

² Adewale Ajayi 'Petroleum Industry Act (PIA) A Game Changer?' <https://assets.kpmg.com/content/dam/kpmg/ng/pdf/tax/petroleum-industry-act-%28pia%29-2021-a-game-changer.pdf> accessed 5 July 2024

³ [Hereafter, the CSR]

communities for which the applicable host communities' development trust fund was established.⁴

The above provision of the PIA has now made CSR a mandatory requirement for settlers. It has changed the voluntary and self-regulatory element of CSR to a mandatory requirement which every settlor must comply with as there are dire consequences for noncompliance. The desire to broaden the options available to Nigerians and improve their quality of life is one of the driving forces behind the government's efforts to reform the petroleum sector by enacting the Petroleum Industry Act 2021 for the following purposes:⁵

- a) To establish efficient and effective governing institutions with distinct roles for the petroleum industry.
- b) To create a framework for the establishment of a commercially oriented and profit-driven national petroleum company;
- c) To promote transparency, good governance, and accountability in the administration of Nigeria's petroleum resources;
- d) To foster a business environment conducive to investment,
- e) To deepen local content practice in Nigeria oil and gas industry

The topic of corporate social responsibility has attracted the interest of numerous management and legal researchers over time. Most of them have developed various ideas and models about CSR notions, giving rise to alternative CSR approaches.⁶

2. NATURE AND SCOPE OF CORPORATE SOCIAL RESPONSIBILITY

In Nigeria, CSR is becoming an intriguing discourse at a fast pace, as there has been a noticeable interest and growing literature on the subject. While there is the absence of a universally accepted definition of the concept, there appears to be a consensus on its contextual meaning which is the demonstration of responsible behaviour on the part of a business owners or

⁴ Section 240 of the Petroleum Industry Act, 2021

⁵ J.A. Debski, 'Corporate Social Responsibility under the Petroleum Industry Act 2021: Achieving Environmental Sustainability through Multi-Stakeholder Partnership' *African Journal of Engineering and Environment Research* Vol.3 (1) 2022; 6

⁶ P. Brin and M.N Nehme, 'Corporate Social Responsibility: Analysis of Theories and Models' https://www.researchgate.net/publication/336449852_Corporate_Social_Responsibility_Analysis_of_Theories_and_Models/link/5e83438ea6fdcca789e39b42/download accessed 10 June 2024

organisations toward the society and the environment.⁷ As an integral part of the Petroleum Industry Act (PIA) 2021, it is paramount to delve into the academic discussion with a brief overview of the subject matter. Although, there is a plethora of definitions of CSR, a few of them will be discussed.

The World Business Council for Sustainable Development (WBCSD) defines CSR as: ‘the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large.’⁸

Communities often expect that the advent of businesses in their locality automatically means development and social progress, from jobs to better transport, communications, health care provisions, and higher standard of living. They do not expect that the environment they live in will be made unusable for other primary community needs such as farming, fishing, hunting, etc. Wildly, the reverse has been the case as it relates to “improving the quality of life” in Nigeria. Most states where settlers operate in Nigeria have not only been ripped of its natural resources but also deprived of the benefits that accrued to them, due to the adverse effects of the activities of the settlers on the environment. It is imperative to consider some of the available dominant meanings of the concept.

Bowen⁹ referred to ‘CSR’ as the obligations of businessmen to pursue those policies, to make those decisions, or to follow those lines of action which are desirable in terms of the objectives and values of our society.¹⁰

⁷ I. A. Adeniyi, ‘Assessing Corporate Social Responsibility under the Petroleum Industry Act’ (2022) *UNILAG Law Review Vol. 5 No. 2* 159

⁸World Business Council for Sustainable Development ‘Corporate Social Responsibility’ <https://www.globalhand.org/system/assets/f65fb8b06bddcf2f2e5fef11ea7171049f223d85/original/Corporate_Social_Responsibility_WBCSD_2002.pdf> accessed 5th July 2024

⁹ H. R. Bowen, ‘*Social Responsibilities of the Businessman*’ (New York: Harper & Row, 1953); E. Ekhatore & I lyiola-Omiore, ‘Corporate Social Responsibility in the Oil and Gas Industry in Nigeria: The Case for a Legalised Framework’ <https://www.researchgate.net/publication/348767452_Corporate_Social_Responsibility_in_the_Oil_and_Gas_Industry_in_Nigeria_The_Case_for_a_Legalised_Framework> accessed 17 June 2024

¹⁰ Ibid

The objectives and values of the society are clearly spelt out as well as the line of action to follow, but the question remains whether or not the Settlers are indeed following these lines of action. It is a mandatory requirement and not a voluntary one under the PIA 2021.

Reza Safarzarad¹¹ defined CSR as a legal requirement for a company which includes continued commitment toward the community. He added that the main goal of a company is to increase the efficiency and productivity of its operations and to maximize its shareholders' profit. But all this must be done by integrating the community's ethical and environmental expectations into the company's economic processes.

Carroll's¹² four parts of CSR were originally stated as follows: CSR includes the economic, legal, ethical and philanthropic expectations that society has toward an organisation. Later, based on it, he designed the CSR pyramid.

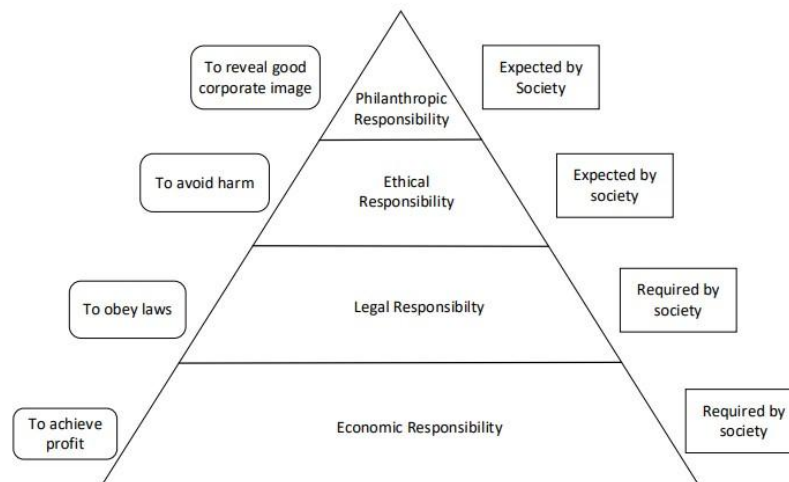


Fig. 1. Carroll Pyramid for CSR [4]

Through Carroll's point of view, CSR obligations should be taken in order from bottom to top, from economic responsibility to legal to ethical to philanthropic. If a corporation achieves the first responsibility efficiently, then it can move to the next one.¹³

¹¹ R. Safarzarad, 'Corporate Social Responsibility Theories and Models, Applied mathematics in engineering' [2017] *Management and Technology Journal*, 5, 38

¹² A. B. Carroll, 'Carroll's pyramid of CSR: taking another look' *International Journal of Corporate Social Responsibility Int J Corporate Soc Responsibility* **1**, 3 (2016). <<https://doi.org/10.1186/s40991-016-0004-6>> Accessed 10 June 2024

Corporate social responsibility is the idea that companies should balance the interests of all parties involved, including shareholders, employees, host communities, regulatory bodies, and vendors, in addition to making profits for their shareholders. The obligation of an organisation to consider the interests of all parties involved in its operations and decisions, including shareholders, host communities, employees, customers, regulatory authorities, and the environment, is known as corporate social responsibility

3. THE INTER-RELATIONSHIP OF CORPORATE SOCIAL RESPONSIBILITY ON SETTLOR, HOST COMMUNITY, AND TRUSTEES UNDER THE PETROLEUM INDUSTRY ACT 2021

The Petroleum Industry Act (PIA) that was enacted in 2021¹⁴, marked a significant milestone in Nigeria's history, signifying a concerted effort to address a myriad of challenges and promote equitable development in the regions endowed with abundant natural resources.

The Petroleum Industry Act (PIA) 2021 (hereinafter referred to as the Act), is divided into four major parts. It provides for a legal, regulatory and fiscal governance framework for the oil and gas sector through a commercialization approach. Furthermore, noncompliance with provisions of the Act can be a ground for revocation of any license granted under this Act by the Minister of Petroleum on the recommendation of the Nigeria Upstream Regulatory Commission, which is saddled with the responsibility for overseeing the upstream segment of the oil and gas industry.¹⁵ The enactment of the PIA 2021 put an end to the GMOU/MOU regime while giving birth to the HCDDT regime. Precisely, section 316 of the Act provides thus;

1. Every Settlor shall transfer any existing host communities development project or scheme under its corporate social responsibility or memorandum of understanding or any other agreement to a host communities development trust established under this Act.
2. Every applicable Settlor shall notify the Commission or Authority, as the case may be, upon completion of any transfer under subsection (1) to any one or

¹³ Ibid

¹⁴ President Muhammadu Buhari signed the Petroleum Industry Bill into law as the Petroleum Industry Act, 2021 on 16th August 2021.

¹⁵ Section 96 of the Petroleum Industry Act 2021

more host communities' development trusts of any of its existing host communities development projects or schemes.

3. Any financial contribution made by a settlor from the effective date until the date falling 12 months after the effective date to any on-going host communities development project or scheme in accordance with their terms, shall be deemed to constitute a contribution made by such holder or holder nominee under section 240 (2) of this Act.¹⁶

The effect of the above provisions is that every settlor is to transfer the existing MOU or other agreement to the Host Communities Development Trust. Although GMOU is not expressly stated in the section, GMOU can be interpreted to be a MOU, or at best, 'other agreement.' In the case of *Vincent Amile & 4 Ors v SEEPCO & 13 Ors*,¹⁷ the court in considering the effect of section 316 of the Act, interpreted GMOU as MOU. However, the court did not grant the transfer of the MOU to the HCDT as applicable, because at the time, the MOU, which was the subject of the claim, had expired. Then, the question arises as to whether the Act intends to cause a transfer of only existing agreements contingent on the operation of CSR community development projects of host communities, and not on agreements or GMOUs/MOUs that may be executed thereafter.

Flowing from the above, it could be possible to have all future arrangements to be executed under the new regime; arguably, the transfer of the settlor marks the end of the GMOUs/MOUs regime and the commencement of the Host Community Development Trust regime. More importantly, the Act establishes the Host Communities' Development Trust. Under the Act, this is to be administered by a Board of Trustees appointed and constituted by the settlor as required by the Companies and Allied Matters Act, 2020. The Board of Trustees, as constituted, shall then be required to appoint a management committee on such terms as it may deem fit for the general administration of the trust.¹⁸ In other words, every settlor or the operator of an asset in a joint venture arrangement shall incorporate a Trust for the benefit of the host community for which the settlor is responsible. Thus, where there are many or group of Settlers operating under a Joint

¹⁶ Section 316 of the Petroleum Industry Act, 2021

¹⁷ A judgement of the Delta State High Court Effurun (unrepd) Suit No.: EHC/7/2019

¹⁸ I. A. Adeniyi, *supra*, at note 7

Operating Agreement¹⁹ concerning upstream petroleum operations, the operator of that JOA shall have the responsibility of incorporating a Trust for the benefit of the relevant community on behalf of the JOA parties. Individual members of the JOA are not required to incorporate a Trust in this case. What this means is that a company operating the Joint Venture Agreement, will appoint an operator for the implementation of the CSR. The obligation attaches to holders of Petroleum Prospective License (PPL) or Petroleum Mining Lease (PML) assets and not to a corporate entity or entities.²⁰

The salient point here is that, the responsibility to incorporate a trust attaches to a holder of Petroleum Licenses. Thus, it is not the prescription of the Act that every holder of a Petroleum Prospecting License or a Petroleum Mining Lease must incorporate a Trust in favour of the host community or communities for which they are responsible. This means that if a community hosts two or more PPLs or PMLs, each of these assets must incorporate a Trust for the benefit of the same host community.²¹

The Petroleum Industry Act 2021 demands that the settlor shall make an annual contribution equivalent to 3% of the preceding year's operating expenditure to the development trust fund of the relevant host communities, thereby making it mandatory for settlers to adhere to this provision. The Board of Trustees is duty-bound under the instruction or directives of the settlor to utilise the trust fund for the benefit of the host communities.

Reflecting its CSR inclination, the Act outlines the objectives of the Trust to include:

- i. the undertaking of infrastructural development of the host communities;
- ii. the facilitation of economic empowerment opportunities for the host communities;
- iii. the advancement and propagation of educational development for the host communities; supporting healthcare development for the host communities;
- iv. the supporting local initiatives within the host communities while enhancing environmental protection;

¹⁹ [Hereafter, JOA]

²⁰ O.C. Dike, 'The PIA, settlers and the host community development trust fund: A review of settlers' duties (1)' *Business Day Newspaper* <<https://businessday.ng/opinion/article/the-pia-settlers-and-the-host-community-development-trust-fund-a-review-of-settlers-duties-1/>> accessed 6 July 2024

²¹ Ibid

- v. supporting local initiatives within the host communities which enhance security;
- vi. investment of excesses from the Trust fund on behalf of the host communities;
- vii. Assisting in any other beneficial development purpose for the host communities as may be determined by the board of trustees.²²

Furthermore, the Act provides that the Board of Trustees shall annually allocate funds received under the trust in streamlined proportions.²³ 75% of the Trust fund shall be allocated to the capital fund for capital projects. 20% shall be allocated to the reserve of the Trust fund to be invested for use in case the settlor ceases contributions. An amount not exceeding 5% shall be allocated for the costs of administration of the fund.

It is noteworthy that the trust funds are to be exempted from taxation. However, payments made by settlors to the fund are taxable. The penalty for non-compliance by a settlor with the provisions in the foregoing, that is, upon failure to incorporate a trust or comply with its obligations with respect to host communities, the Minister may revoke the settlor's operating license or lease upon recommendation by the Nigerian Upstream Regulatory Commission.²⁴

The settlor equally has the duty to supervise the budget and development plan the Board of Trustees shall present before it with regards to the host communities and the Trust fund. By implication, the Trust is aimed at formalizing a binding memorandum of understanding to further legitimize the traditional CSR obligations between international oil companies and the host communities.²⁵

This activity seeks to foster sustainable socio-economic development and infrastructure developments in accordance with the needs of the community hosts, and other affiliated communities that are also impacted by the activities of the settlor, even though they are not key hosts. Section 240 of the PIA 2021 requires each settlor to contribute 3% of its actual operating expenditure in the upstream petroleum operations in the preceding calendar year to a fund established by the Trust. The HCDDT may also be funded by donations, gifts, grants or honoraria (received to achieve its objectives) and interests accruing to the Trust's reserve fund.

²² Section 239 of PIA, 2021

²³ Ibid, at S. 244

²⁴ Ibid, at S. 238

²⁵ The PIA, 2021

4. CHALLENGES AND PROSPECTS OF THE PETROLEUM INDUSTRY ACT ON MANDATORY CORPORATE SOCIAL RESPONSIBILITY IN NIGERIA

There is need to examine the integrated challenges and prospects flowing from the provisions of the PIA appertaining to the mandatory requirements of corporate social responsibility. The first arm of the discuss focuses on the challenges, while the other arm dwells on the associated prospects.

Notwithstanding the novel provisions of the Act as it relates to CSR legal framework in the petroleum industry, some of its provisions are fraught with lacunae and potential challenges. Incontestably, the Act advances the goals and objectives of CSR and environmental sustainability which were previously highly disputed in political spheres and in scholarly discourses over the years.

By virtue of section 257 (2) of the Act, a host community is liable to forfeit its entitlement in the event of vandalism, sabotage or other forms of civil unrest which result in damage to facilities used in oil production or other designated equipment within the vicinage of the host community. The intention of the drafters of the Act in this provision is to stimulate the host communities to regard these facilities as their own or as jointly owned properties, and forbid any act of infraction or malfeasance against the settlor. It is however of importance to examine the damage caused by the Settlers, as oftentimes, there are usually damages to the lives and properties of host communities without the intervention of the host communities. The Act makes no provision of who bears the cost.

More so, it is an open secret that in most cases the MNCs are notorious for renegeing on their MOUs and CSR to the host communities. Ordinarily, the creation of the trust increases the administrative responsibilities of settlors. However, the Act is in reality riddled with bottleneck bureaucracy. As a matter of fact, the host community development plan is subject to the approval of the commission.²⁶ The commission also superintends the administration, management, and utilization of the Trust fund.²⁷

²⁶ Section 251 PIA 2021

²⁷ Ibid, section 235 (6)

The settlor is saddled with determining the selection process, meeting procedure, financial regulations, administrative procedures, remuneration, discipline, qualification, suspension, removal, and other allied matters relating to the activities of the Board of Trustees.²⁸ The Board of Trustees also has to set up a management committee as provided by the Act. In the same vein, the management committees shall also set up an Advisory Committee, which has similar functions to the Management Committee. This excessive chain of bureaucracy may eventually defeat the purpose of achieving CSR in the sector, as bureaucratic elements impede efficiency.

Corruption is endemic in the Nigerian petroleum industry. Execution of CSR initiatives have more often than not been subterfuges of corrupt exploits by MNCs. It is not new that community developmental project across Niger Delta has been abandoned due to countless corrupt practices. For instance, development projects in the oil-producing communities in the Niger Delta region have either been diverted or abandoned, often as a result of corruption.²⁹ Despite being a new law, one cannot state categorically that the law will or will not be subject to the corrupt practices and maladministration that have dogged the Nigerian oil industry and other facet of the society. Godswill Akpabio claimed that the international oil companies working in Nigeria have an outstanding debt of over \$4 billion to the Niger Delta Development Commission (NDDC).³⁰ He mentioned that the NDDC law requires IOCs to allocate three per cent of their revenue to the agency, but these oil companies have been neglecting this obligation for many years. In his words;

I happened to supervise the NDDC and unfortunately, after twenty years of existence I have not seen 5km of dualised road done by NDDC I have seen 2 to 3 trillion spent by NDDC but I haven't seen the trillion the projects on the ground and I have also not seen major-major things that have touched the lives of the people so far, but we are still searching, I'm sure we will find where those monies went to and where those projects are hiding.³¹

²⁸ Ibid, S. 242 (3)

²⁹ B. Naanen and P. Tolani, *Private gain, public disaster: Social context of illegal bunkering and artisanal refining in the Niger Delta* (Port Harcourt: Panam Nigeria, 2014) p. 16

³⁰ G. Akpabio, 'Oil companies owe NDDC over \$4 billion', *Premium Times*, (Lagos, [August 19 2021](https://www.premiumtimesng.com)) *Oil companies owe NDDC over \$4 billion - Minister* < <https://www.premiumtimesng.com> > accessed 12 July 2024

³¹ G. Akpabio, 'NDDC spent trillions of naira without projects on the ground' *Premium Times* < ["NDDC spent trillions of naira without projects on the ground" - Akpabio \(youtube.com\)](https://www.premiumtimesng.com)> accessed 12 July 2024

Despite the motive behind the creation of this law, it is still to be operated by various regulators and administered by different settlors. Notwithstanding the efficacy of the Act, it remains to be tested. The enforcing authorities in most cases lack the will power to fully implement the provision of the PIA 2021.

Section 240(2) of the Act provides that the settlor makes an annual contribution to the applicable host communities development trust fund of an amount equal to 3% of its annual operating expenditure of the preceding financial year. This may pose as a cover for graft and corruption. Due to the ambiguity of this subsection, the subsection is vague with regard to the applicable operator through which a settlor is to make its annual contribution. The settlor themselves appoint the trustee, and as such grants them an easy access to use this section as a guise for laundering funds.

Moreover, the settlor in declaring annual expenditure is uncertain. In other words, the total profit of which the settlor makes in a year is doubtful as there is no means of checkmating the certainty of their previous operating expenses. This grossly affects the 3% mandatory requirement given to host communities. In this case, the host community is on the losing end.

However, the Act makes no provision for the host community to specifically use whatever accrued to them for the specific purpose for which it was created. Irrespective of the fact that the Act has provided that 3% be given to the host community, the purpose for which that line of action is drawn up may be defeated due to greed and mismanagement. Today, certain states where there is a large petroleum production still remain underdeveloped due to the above-stated reasons. The implementation of the PIA's provisions on CSR and taxation requires adequate routine monitoring and strategic enforcement for deep stakeholders' compliance to be attained. While tax allowances and incentives can promote CSR participation, if no mechanisms for monitoring and enforcement are put in place, then noncompliance with the provisions may be evitable

The PIA 2021 actually provided for oil production activities with the absence of strong sanctions on gas flaring, energy transition, economic & environmental concerns of host communities. Settlor may have challenges in understanding, interpreting, and implementation without extensive awareness across the oil and gas sector with regards to the provisions of the PIA

making it difficult to comply with the said requirements for CSR and taxation practices compliance. Proper information disclosures may affect the efficiency of their operations, considering that such information has a timeframe for disclosures, according to the Act - 12 months.

The PIA has mandated implementation of CSR initiatives, which entails effective community involvement that can pose likely challenges to companies: owing to the communities' communication and language barriers, historical antecedents, and cultural issues.³² It should also, be noted that the different expectations of the different people in Nigeria, may be hard to understand and address and are likely to affect the implementation of the PIA.³³ Communities' stakeholders should be involved in CSR projects to promote cooperative existence and the implementation of the Act.

The Act does not make provisions for disputes resolutions between two or more communities under a trust. If there is a joint operating agreement between one community and another under a Trust and conflict arises between them, the mode of settlement is not expressly explained under the Act. This may lead to communal crisis in terms of management of funds. Notwithstanding the Government's efforts towards meeting international best practices in the oil and gas sector as well as at the same time protecting the sustainability of host communities, it will be a water down the drain if the PIA 2021 has not triggered significant transformation within the nation's oil and gas sector.

The PIA in its comprehensive restructuring has created channels through which the Community Development Trust fund will be monitored. These bodies are saddled with the responsibility of regulating the framework governing Nigeria's oil and gas industry. The first pivotal regulatory body is the Nigerian Upstream Petroleum Regulatory Commission³⁴ in Section 4 of PIA, 2021. The powers of the commission are stipulated in section 9 of the Act and its special powers in section 26. Basic information about the commission is outlined in sections 4 to 28 of the Act.

³² H. Isallah, *The Impact of the Petroleum Industry Act on Corporate Social Responsibility and Taxation in Nigeria's Upstream Oil and Gas Sector: A Path towards Sustainable Development. Sustainability*, (2022) <<https://doi.org/10.3390/su152115538>> accessed 7 July 2024

³³ Ibid

³⁴ [Hereafter, The NUPRC]

The second regulatory body is the Nigerian Midstream and Downstream Petroleum Regulatory Authority³⁵ established in section 29 of the Act. It has the objective of regulating midstream and downstream petroleum operations, including technical, operational and commercial activities, ensuring sustainable infrastructural development, ensure compliance with applicable laws and regulations, amongst others outlined in section 31 of the Act.³⁶ Its functions and regulations are stipulated in sections 32 and 33 consecutively. Further provisions regarding the authority are specified till section 52 of the ACT.

More specifically, NUPRC is responsible for the technical and commercial regulation of Upstream business and the Nigerian Midstream Downstream Petroleum Regulatory Authority (NMDPRA) responsible for Downstream and Midstream business in the Nigerian oil and gas industry.³⁷ As the Act continues to unfold, stakeholders must remain vigilant in ensuring the effective implementation of these regulatory changes to uphold industry standards.³⁸

The second regulatory body, the Nigerian Midstream and Downstream Petroleum Regulatory Authority is established in section 29 of the Act. It has the objective of regulating midstream and downstream petroleum operations, including technical, operational and commercial activities, ensure sustainable infrastructural development, ensure compliance with applicable laws and regulations, amongst others outlined in section 31 of the Act. Its functions and regulations are stipulated in sections 32 and 33 consecutively. Further provisions regarding the authority are specified till section 52.

The Act also establishes a profit-driven, commercially-inclined National Petroleum Corporation.³⁹ This contributes to the codification of accountability, good governance, and transparency in Nigeria's petroleum resources management.⁴⁰

³⁵ [Hereafter, The NMDPRA]

³⁶ Section 31 of the PIA 2021 provides thus; The objectives of the Authority shall be to— (a) regulate midstream and downstream petroleum operations, including technical, operational and commercial activities; (b) ensure efficient, safe, effective and sustainable infrastructural development of midstream and downstream petroleum operations; (c) promote healthy, safe, efficient and effective conduct of midstream and downstream petroleum operations in an environmentally acceptable and sustainable manner...

³⁷ Nigerian Upstream Petroleum Regulatory Commission in a press release on 9 December 2021 <<https://www.nuprc.gov.ng/press-release-7/>> accessed 7 July 2024.

³⁹ [Hereafter, The NNPC]

Adewale Ajayi⁴¹ highlighted some of the key provisions of the PIA to include:

- a. Voluntary conversion of existing oil prospecting or mining contracts in exchange for significant relinquishment of up to 60% of acreages.
- b. Effective acreage management through relinquishment, deep rights and drill or drop concepts.
- c. PIA Funds – Frontier Exploration Fund (30% of Profit oil and gas of NNPC Ltd), Midstream and Downstream Gas Infrastructure Fund (0.5% of wholesale price of petroleum products sold in Nigeria and natural gas produced and sold in Nigeria), Environmental Remediation Fund (will be based on size of operations), Decommissioning/Abandonment Fund (as determined in the field development plan and periodic appraisal of the costs required) and Host Community Trust Fund (3% of annual operating expenditure in prior year).
- d. Incorporation of NNPC Limited with Ministry of Finance Incorporated and Ministry of Petroleum Incorporated as shareholders.
- e. Voluntary conversion to incorporated Joint ventures, subject to the guiding principles defined in the second schedule to the PIA.
- f. Ministerial approval of lease or controlment on assignment subject to the recommendation of the Commission and must be given within the specified period; otherwise, it is deemed as given. •
- g. Acquisition cost of interest in a lease to be broken into value of rights and value of assets.
- h. Establishment of New Licences and Leases under the Act, namely: Petroleum Exploration Licence (equivalent to the current Oil Exploration Licence), Petroleum Prospecting Licence (equivalent to the current Oil Prospecting Licence) and Petroleum Mining Lease (equivalent to the current Oil Mining Lease).
- i. Development of Model Licence and Model Lease, which shall be incorporated into contracts before approval of Licence or Lease by the Minister.
- j. Oil producing companies to pay HT and CIT. HT will be at 15% for PPLs and 30% for PMLs. However, deep offshore operations are NOT subject to HT while only

⁴⁰ J. Ndwaru, “Nigeria: the transformative effects of the Petroleum Industry Act (PIA) on the oil and gas industry” <<https://theexchange.africa/oilgas/nigeria-the-transformative-effects-of-the-petroleum-industry-act-pia-on-the-oil-and-gas-industry/>> accessed 7 July 2024

⁴¹ A. Ajayi, “Petroleum Industry Act, 2021- A Game Changer?” <<https://assets.kpmg.com/content/dam/kpmg/ng/pdf/tax/petroleum-industry-act-%28pia%29-2021-a-game-changer.pdf>> accessed 25 September 2024

- costs directly related to production are allowable in calculating HT. The non-direct costs will, however, be deductible under CIT.
- k. Costs allowable for HT (i.e., capital allowances and operating costs but excluding rentals on PPLs and PMLs, royalties and contributions made in respect of Host Community Fund, Environmental remediation, NDDC and similar funds) limited to 65% of gross revenues.
 - l. Operators are entitled to production allowances rather than investment allowances and investment tax credits.
 - m. Additional Chargeable Tax may become payable by an Operator in an accounting year based on the fiscal price advised by the Commission.
 - n. Requirement to submit revised HT returns whenever prices, costs and volumes change, and strict penalty for non-compliance.

Section 234 of the Act requires the Commission to make regulations that will govern the implementation of the HCDT. The regulations should include the following:

- i) Grievance mechanism to resolve disputes between the settlor and host communities
- ii) The ability of the settlor to make the adjustments to reduce expenditures where the available funds for the administration of HCDT are insufficient by doing the following:
 - a) Reduce the number of members of the BoT and frequency of their meetings
 - b) Not fund the reserve fund nor hire fund manager
 - c) Reduce the number of members of the management committee and the frequency of their meetings
 - d) Reduce the frequency of meetings of the host community advisory committee.

The Act also speculates the timeline for Setting up the Trust. The Act provides the following timelines for incorporating the Trust:

- a. For existing OMLs, within 12 months from the effective date of the Act

- b. For existing designated facilities, within 12 months from the effective date of the Act
- c. For existing new designated facilities under construction on the effective date, within 12 months from the effective date
- d. For existing oil prospecting licences, prior to the application for the field development plan.
- e. For petroleum prospecting licences and petroleum mining leases granted under this Act, prior to the application for the field development plan
- f. For licences of designated facilities granted under this Act, prior to commencement of commercial operations Failure to adhere to the stipulated timeline may result in grounds for revocation of any license or lease governed by the Act.

5. RECOMMENDATIONS

Notwithstanding the preceding challenges associated with the provisions of the Act in response to the requirement of the CSR, the following recommendations is believed to command the efficacy to collectively, properly, and effectively address the implementation challenges of the provisions of the Act as it relates to CSR in promoting sustainable development in Nigeria's upstream oil and gas sector. They include:

- A. The National Assembly should enact a law that will extend the CSR that attach only to holders of Petroleum Prospective License (PPL) or Petroleum Mining Lease (PML) to include every legal entity whose activities have an adverse effect on any host community.
- B. There is need to establish a specialized court to handle matters arising from implementation of CSR.
- C. The trust fund should be closely monitored by the NUPRC so as to ensure approved budgets are implemented within the specified timeline. This makes it necessary for a specified CSR planned budget to be put in place and other streamlined use of trust funds.
- D. Also, the PIA emphasis that companies should transparently report CSR activities executed, by presenting details of the scopes, types, and outcomes of such activities on

the environmental, social, and economic conditions of the host communities, thus promoting accountability and transparency which can enable the stakeholders to assess the companies' efforts and efficiency of their CSR initiatives towards sustainable development in Nigeria. The Act should be amended to make the members of the BoT to be accountable to the people of the host community.

The regulatory bodies as provided for under the Act should endeavour to embark on routine audits to monitor compliance with provisions of the Act with regards to CSR. If possible, independent auditors can be engaged to enhance audit reliability.

The oil and gas sector's stakeholders should be sensitized mainly on the requirements of the PIA concerning CSR. As a result, such awareness should emphasise the relevance of ethical business practices and the impact of CSR on those host communities and the general society for sustainable development in Nigeria.

The Act should be amended to include provisions for stakeholders, regulatory bodies, and industry practitioners in the oil and gas sector to embrace initiatives for capacity building through seminars, forums, workshops, and training or short-course sessions regarding CSR practices. A robust monitoring and strategic enforcement system should be created that can help in tracking CSR practices of the settlers. It will be interesting to initiate some incentives as rewards for compliance with the PIA provisions and forms of mechanisms to encourage companies' participation in effective CSR activities and compliance with their taxation obligations for sustainable development. Incentives including tax holidays, tax awards or credits, and forms of recognitions for unique performance and compliance can help the companies to show commitment to the success of the PIA.

Intensify stakeholder involvement: The stakeholders should be adequately involved in the general process of the PIA mandatory CSR and its implementation. Creating different platforms that can support discussions between stakeholders such as local communities, government and company officials, and civil society organizations can be helpful, as the platforms can provide greater insights into the workability of the Act, its problem areas, and how improved strategies can be devised for effective implementation. This will promote cordial relationship and accountability, more like a direct access. The PIA encourages constant discussion and cooperation between stakeholders, civil society organizations, oil host communities, larger

communities, and sector experts, should be sustained. This can help in obtaining finer insights, building trust, and aligning CSR practices with sustainable development.

There should be continuous review of the Act every 5 years: A review process by the National Assembly should not only be established but should be done continuously so as to improve on areas that did not adequately address the intent of the Act. This can be done through periodic amendment of the provisions of the Act, in the light of the changes in the oil and gas sector, while incorporating best or global practice.

6. CONCLUSION

The implantation of CSR as a hard law has been used in a few regimes; however, the mandatory nature of CSR under the PIA remains to be tested. We have demonstrated that the mandatory role of government can be expanded to include facilitating, partnering, and endorsing as it engages with other stakeholders.

We maintain that an enabling environment is essential for attaining environmental sustainability while also ensuring that host communities and enterprises collaborate for the Nation's greater good. Ultimately, the facilitating role of the government can see our proposal for a multi-stakeholder approach function effectively. This is best done as has been proposed here in partnership with the host communities, and oil and gas corporations. In advancing CSR with environmental sustainability as an objective in Nigeria, such partnership between stakeholders needs to have the right balance for an enabling environment. The proposed roles and guidelines in the multi-stakeholder strategy for government, host communities, and oil and gas companies, respectively, offer an opportunity for Nigeria to make the most of the codification of CSR for environmental sustainability under the PIA, an achievable objective.



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