



**The Chairman,  
Adhoc Committee on PIB  
Senate  
&  
House of Representative, Abuja**

**Public Hearing on Petroleum Industry Bill:  
Submission/Presentation on the PIB 2020**

**The National Assembly Complex, Three Arms Zone, Abuja, Nigeria**

**January 2021**

**By**

**We the People  
(Centre For Social Studies and Development)**

**On Behalf of Coalition of Civil Society Organizations & Communities in the Niger Delta**

# Introduction

Chapter III of the PIB makes elaborate provisions for the establishment and management of a petroleum host community development trust, and other frameworks for the transfer of development benefits to petroleum host communities. According to Chapter III of the Bill, the objectives includes to foster sustainable prosperity within host communities, provide direct social and economic benefits from petroleum operations to host communities, enhance peaceful and harmonious co-existence between licensees or lessees and host communities and to create a framework to support the development of host communities. As well intentioned as the provisions of the Chapter are, this Memo raises key concerns that require addressing in order to ensure maximum delivery of the objectives.

Below, we have documented various sections of the Chapter which require attention, as well as made suggestions for changes or inclusions.

Among the key issues are the governance structures of the Host Communities Development Trust which seems to overtly emphasize the control of the settlor, the determination of the needs of host communities which seems to make it the exclusive responsibility of the settlor, the determination and definition of host communities which leaves it at the discretions of the settlor, the passing of the responsibility of protecting oil installations to the communities, the absence of dispute resolution mechanisms, etc.

We are confident that addressing these concerns will results in a host communities development framework which lives up to the loft objectives of the Bill.

	<b>Chapter and Section in PIB</b>	<b>Remarks</b>	<b>Recommendation</b>
1	Chapter 3: Section 235: Incorporation of host communities development trusts	<p>While not explicitly stating it, it seems the Bill eaves the responsibility of defining a host community to the settlor, without any defined role for the state, federal government or even the communities in determining this.</p> <p>This has been rated as a possible conflict trigger. Related to this is the ambiguity and possible conflict that could arise from the definition of a host community, especially with reference to the commonality of extractive sector impacts across several communities, including those without active oil wells.</p>	<p>It is recommended that the government at the federal and state levels be made to participate in defining host communities.</p> <p>Communities should also be allowed a role in determining this.</p> <p>It is also recommended that in defining host communities, adequate consideration should be given to communities that host oil installations, those that are affected by the often negative impacts of extraction and those whose land, rivers and creeks provide access for oil installations.</p>
2	<p>Chapter 3: Section 235: Incorporation of host communities development trusts</p> <p>Subsection 1. (1) Settlor shall incorporate a trust for the benefit of the host communities for which the settlor is responsible</p>	<p>The provisions for the establishment and governance of the Host Communities Trust downgrades the participation of communities, while overtly promoting the role of companies. The PIB makes the Trust the exclusive property of companies operating in the area, with unlimited control. In the first instance, the PIB gives the companies power to nominate all</p>	<p>The composition of the Board of Trustees should include members of the host communities who should be at least 50% of the members.</p> <p>Provision should also be made for the inclusion of women and youths in the BoT.</p>

	<p>(“host community development trust”).</p> <p>Subsection 4. (4)</p> <p>The settlor shall for the purposes of setting up the trust, appoint and authorize a body trustees (the “ Board of Trustees”), which shall apply to be registered by the Corporate Affairs Commission as a corporate body under the Companies and Allied Matters Act in the manner provided under this Chapter.</p>	<p>members of the Board of Trustees without any obligation to include any member of any host community. Simply put, the highest governance structure of the Trust which the PIB provides for can be established without the participation, consultation or even membership of a host community member or even any member of an oil producing state. Weighed against the enormous role the BoT plays in the functioning and performance of the Trust, this neglect is not only alarming but also dangerous.</p>	
3	<p>Sub section (7)</p> <p>The Settlor shall undertake needs assessment that the metamorphose into the Community Development Plan for the purpose of determining the projects to be undertaken by the Host Communities Development Trust.</p>	<p>This sub section makes it the responsibility of the Settlor to spearhead a needs assessment. While the Bill requires that critical members of the community are consulted in carrying out the needs assessment, the role of communities are passive. In reality, a good number of oil</p> <p>Also, the provisions define no role for the government in this regard and tends to allow government at all levels abdicate all responsibility.</p> <p>Additionally the way the subsection is crafted may inadvertently create opportunity for pitching communities against oil companies.</p>	<p>Sub section 7 should be adjusted to include the active participation of communities as well as the government.</p>

	<p>238. Failure to incorporate host communities development trust</p> <p>Failure by any holder of a licence or lease governed by this Act to comply with its obligations under this Chapter may be grounds for revocation of the applicable licence or lease.</p>	<p>Provisions for penalty in respect of failure to comply with the provisions of the Bill for setting up the Host Communities Development Trusts are weak and imprecise. The use of the word ‘may’ creates openings that could affect the enforcement of penalties.</p>	<p>We recommend that the language in section 238 be changed to ensure definite penalty if a Settlor fails to follow the provisions of Chapter 3 of the Bill.</p>
4	<p>Section 240. Sources of funding for petroleum host communities development trust</p> <p>Sub section 2: (2)</p> <p>Each settlor, where applicable through the operator, shall make an annual contribution to the applicable host community development trust fund of an amount equal to 2.5% of its actual operating expenditure in the immediately preceding calendar year in respect of all petroleum operations affecting the host communities for which the applicable host community development trust was established.</p>	<p>The actual value of operational cost is subject to sharp fluctuations that would create volatilities in the amount of money which the Host Communities Development Trusts receive. This will impact on budgets and development plans which could lead to conflict.</p> <p>Similarly, there should be additional sources of funding for the Trusts which may include a part of funds currently being deployed through other oil host community development interventions like the NDDC and 13% derivation principle.</p> <p>Also, to ensure community buy-in and management of expectation, there should be a mandatory contribution by communities to projects.</p>	<p>It is recommended that additional sources of funding for the Trusts be explored.</p> <p>It is suggested that in order to ensure that HCs have proprietary interests in projects executed by the Trust and also address issues related to entitlement rights among community members, HCs should contribute 2% of the total cost of project cited/located in their domain or joint projects it is expected to benefit from. This contribution could take the form of materials resources or labour.</p>

5	<p>242. The Board of trustees, composition, management, etc.</p> <p>Sub section: (1)</p> <p>The constitution of the host communities development trust shall contain provisions requiring the Board of Trustees to be set up by the settlor, who shall determine its membership and the criteria for their appointment, provided that the membership of the Board of Trustees of the host communities development trust shall be subject to the approval of the Commission or the Authority, as the case may be.</p>	<p>This provision gives absolute powers to the Settlor to establish the Board of Trustees, including determining remuneration, discipline, qualification, disqualification, suspension and removal of members of the Board of Trustees, etc. The role of the government in this regard is limited only to passive approval or disapproval.</p> <p>Not only does this enormous power given to the Settlor open to abuses, it is also a potential driver of conflict. The fact that the Settlor is not obliged to include any member of the host community in the BoT will result in a breakdown of trust which could lead to conflict.</p>	<p>The composition of the Board of Trustees should include members of the host communities who should be at least 50% of the members.</p> <p>Provision should also be made for the inclusion of women and youths in the BoT.</p>
6	<p>Sub section (4)</p> <p>Each member of the Board of Trustees shall serve a term of 4 years in the first instance and may be reappointed for another term of 4 years and no more.</p>	<p>While ordinarily the provision for reappointment could serve to ensure the retaining of experience and credible performance, it also has the potential of leading to a contestation for reappointment which could deflect from the job of the BoT.</p> <p>A common occurrence in Nigeria around second tenures is that they become a source of often bitter and stiff conflict.</p>	<p>It is recommended that member of the BoT are appointed for singles tenures of 4 or 5 years. While they can be reappointed, such reappointments should not be in the tenure immediately succeeding.</p>
7	<p>247. Management committee, composition, powers, etc.</p>	<p>The same Board of Trustees established without any host community or government input or serious oversight is</p>	<p>It is recommended that the Bill should be adjusted to ensure that members of host</p>

	<p>(1) The constitution of the host communities development trust shall contain provisions requiring the Board of Trustees to set up a management committee for the host communities development trust.</p> <p>(2) The membership of the management committee shall comprise -</p> <p>(a) one representative of each host community, who shall be nominated by the host community as a non-executive member; and</p> <p>(b) executive members, selected by the board of trustees, who shall be Nigerians of high integrity and professional standing, who may not necessarily be from any of the host communities and the number of executive members shall be determined by the settlor.</p>	<p>empowered in the Bill to appoint members into the Management Committee. Again, the BoT is not obligated to appoint any member of the host community or even the state except one representative of the host community as a ‘non-executive member’.</p> <p>This provision again reinforces the control and domination of the Host Communities Development Trust by the Settlor. Weighed against the responsibilities of the management committee which include preparation of budgets of the Trust, management of contracting processes, supervision of project execution, etc., the absence of community participation is a potential conflict trigger.</p>	<p>communities are appointed into the management committee. More specifically, it is recommended that at least 70% of the membership of the Committees be from the respective host communities.</p>
8	<p>249. Host community advisory committee, composition, etc</p> <p>Sub section (1)</p> <p>The constitution of the host communities development trust shall contain provisions</p>	<p>Most petroleum host communities already have well established Community Development Committees which oversee non-government development efforts in those communities, and interface with companies operating in their areas. Establishing new advisory</p>	<p>It is recommended that the third tier of governance of the host communities development trust be assigned to existing community development structures in each community.</p>

	mandating the management committee to require each host community to set up an advisory committee (“Host Community Advisory Committee”).	committees in those areas could result in duplication of roles and may result in conflict.	
9	251. Host community needs assessment Sub section (1) The settlor shall after the grant of any licence or lease issued pursuant to this Act, conduct a needs assessment (“Host Community Needs Assessment”) in accordance with this Act and regulations made pursuant to this Act.	<p>This sub section makes it the responsibility of the Settlor to spearhead a needs assessment. While the Bill requires that critical members of the community are consulted in carrying out the needs assessment, the role of communities are passive. In reality, a good number of oil producing communities already have their development plans, reflecting an ability to conduct their own needs assessment.</p> <p>Also, the provisions define no role for the government in this regard and tends to allow government at all levels abdicate all responsibility in this regard.</p> <p>Additionally the way the subsection is crafted may inadvertently create opportunity for pitching communities against oil companies.</p>	Section 251 should be adjusted to include the active participation of communities as well as the government.
10	252. Contents of host community development plans	Through the instrumentality of memorandum of understandings currently existing in several host communities, a good number of communities already have development plans. To avoid	Needs assessment should also be carried out in a manner that reflect the fact that several petroleum host communities already

		duplications, these should be incorporated in any new plans.	have long standing development plans.
11	<p>257. Deduction of payment for petroleum host community development</p> <p>Sub sections (2)</p> <p>Where in any year, an act of vandalism, sabotage or other civil unrest occurs that causes damage to petroleum and designated facilities or disrupts production activities within the host community, the community shall forfeit its entitlement to the extent of the cost of repairs of the damage that resulted from the activity with respect to the provisions of this Act within that financial year.</p> <p>(3) The basis for computation of the trust fund in any year shall always exclude the cost of repairs of damaged facilities attributable to any act of vandalism, sabotage or other civil unrest.</p>	<p>A key source of contention in the PIB, at least from the point of view of host communities is the fact that it places responsibility for the protection of pipeline and other oil infrastructures with the communities. According to the Bill, the host community advisory committee ‘take responsibility for first line protection of facilities and ensure that petroleum operations are uninterrupted by members of their community failing which, benefits from the trust to the host community shall be disallowed’.</p> <p>Previous researches reveals that oil theft which is one of the major reasons for puncturing oil pipelines, is carried out mainly by armed cartels who are sometimes not even members of the community. Placing the responsibility of protecting oil installations from armed gang members on unarmed communities is simply an unrealistic expectation. If this provision is followed keenly, it could result in consistent denial of benefits which could in turn engender conflicts.</p>	We recommend that section 257 be completely expunged from the Bill.

		Also, there are already existing Nigerian laws that deal with oil theft. This provision duplicates it.	We recommend that section 257 be completely expunged from the Bill.
12	Other Concerns:  No Provision for dispute resolution.	One key limitation which often leads to the escalation of conflicts between oil companies and host communities is the absence of adequate and trusted dispute resolution mechanisms. The conflict potential of this absence is reinforced by the fact that communities have little confidence in the ability, impartiality and willingness of regular judicial processes in Nigeria to efficiently resolve dispute between and oil companies. Unfortunately, the PIB does not take this into consideration and makes no provisions for dispute resolution structures and modalities.	We recommend that the Bill creates an additional section that establishes mechanisms for dispute resolution.

**We the People**

