



Why Nigeria's New Petroleum Industry Act cannot resolve the Agitation for Resource Control

Kaniye S.A. Ebeku¹, Daniel U. Ebeku-Kaniye²

Abstract

The Petroleum Industry Act (PIA) 2021 provides for the establishment of host communities development trust (HCDT) in order to fast-track socio-economic and physical development in the host communities of oil operations in the Niger Delta area. This is a new strategy designed to cushion the implications of State ownership of petroleum, which is still contentious. Nigeria's multi-million-dollar petroleum wealth comes from the Niger Delta area, yet the people are poor and their area is undeveloped. This paradox of poverty in plenty led the people to agitate for 'resource control' by engaging in public and militant protests as a way of demanding for the benefits of oil operations. The protests often disrupted oil production and reduced Nigerian oil revenue, which is the mainstay of the Nigerian economy. Previous development agencies such as the Oil Mineral Producing Areas Development Commission (OMPADEC) and the Niger Delta Development Commission (NDDC) failed to develop the area and empower the indigenous people. This article seeks to examine whether the HCDT bottom-up development model can succeed where the previous agencies had failed and thereby resolve the agitation for 'resource control' – a catch-phrase used by the people to demand for equity. Drawing from primary and secondary sources, this article critically analyzed the HCDT vis-à-vis the demands of the Niger Delta people and shows why the HCDT cannot resolve the agitation for 'resource control' unless the amendments suggested herein are made.

Keywords: Petroleum Industry Act, Host Communities Development Trust, Resource Control, Nigeria, Niger Delta, Niger Delta Development Commission

Introduction

The legal ownership of petroleum/oil is still a contentious issue between the Nigerian State and the host communities of oil operations in the Niger Delta area. Under Nigerian constitutional and statutory laws, the ownership of petroleum is vested in the Federal Government of Nigeria, i.e. the Nigerian State. In other words, Nigeria adopts public/State ownership of

¹ Professor of Law and Pioneer Dean of Law, University of Port Harcourt. ORCID ID: [0000-0001-7084-3239](https://orcid.org/0000-0001-7084-3239).

² PhD candidate, School of Law, University of Exeter, UK. ORCID ID: [0009-0008-6325-9972](https://orcid.org/0009-0008-6325-9972).

Acknowledgements

We acknowledge the invaluable research assistance of Destiny C. U. Ebeku-Kaniye, an LLB candidate at the University of Greenwich, UK. We also want to thank the library staff of Cardiff University, Wales, UK, for providing us with guest facilities during the completion time of this article

petroleum. In the US, the reverse is generally still the case under the rule of capture (Westmoreland & Cambria Natural Gas Co. v. De Witt).

Crude oil is found majorly in the Niger Delta area of Nigeria peopled by minority ethnic groups/indigenous people in the country (Ebeku 2006, 58-65). While the Nigerian government earns huge petroleum revenue from the sale of crude oil, the Niger Delta host communities – the goose that lays the golden eggs – suffers oil-related environmental degradation and underdevelopment and its peoples languish in abject poverty in the midst of plenty; a typical example of the ‘paradox of plenty’ or ‘resource curse’ (Ebeku 2006, 253; Mähler 2010; Okonta and Douglas 2001).

Contrary to State ownership of petroleum, the host communities of the Niger Delta assert that ‘all land and natural resources (particularly, petroleum) within the Ijaw [Niger Delta/host communities] territory belong to Ijaw communities and are the basis of our survival’ (Kaiama Declaration, para. 1). They insist that they do not recognize all legislation that ‘rob our peoples/communities of their right to ownership and control of our lives and resources, including the Petroleum Act (PA) 1969 and the Land Use Act (LUA) Act 1978’ (Kaiama Declaration, para. 2). In furtherance of their position, they engaged in agitation for ‘resource control’ since the 1990s and even before (Frynas 2001). As would be expatiated below, ‘resource control’ is simply a slogan for equitable demands.

It is common knowledge that over the years the agitation for ‘resource control’ has disrupted oil operations through public protests and barricading of oil facilities (Frynas 2001); occasioned low oil production (Paki and Ebienu 2011, 141-142); caused international oil prices to rise, given the importance of Nigerian oil supply within the international community (Obi and Rustad 2011; BBC News 2006); and resulted in various violation of the human rights of the local people (Human Rights Watch 1999; Frynas 2001). Nevertheless, the Petroleum Industry Act (PIA) (No. 6 of 2021) – the new and latest petroleum law of Nigeria – did not change the contentious status of State ownership of petroleum. As will be elaborated below, section 1 thereof vests the ownership of petroleum in the State. To this extent, the PIA 2021 did not tackle the root cause of ‘resource control’.

The long title of the PIA states, *inter alia*, that it is ‘An Act to provide for the development of host communities and for related matters’. As indicated by this statement, one important innovation in the new law is the introduction of the host communities development trust (HCDDT) ‘for the benefit of the host communities’ (Chapter 3, section 235(1)). Without a doubt, this was a direct response to the strident and long-standing agitation of the host communities for equity in the distribution and utilization of oil revenues, development of the Niger Delta as well environmental protection. It is noteworthy that previous statutory measures, such as the establishment of the Oil Mineral Producing Areas Development Commission (OMPADEC), and the Niger Delta Development Commission (NDDC) failed to end or resolve the agitation of the people for ‘resource control’ due to many reasons, including official corruption and statutory issues (Ebeku 2020). The critical question now is whether the innovative provisions of the PIA hold the magic wand to turn things around and thus resolve the long-standing agitation for ‘resource control’. This is the critical research question which this article seeks to answer. Importantly, this

is the first time this question has been specifically interrogated; previous researches related to the PIA had dwelt on other issues (see, for example, Dokpesi and Godwin, 2024; Malami, Nwosu, and Iledare, 2024).

As a point of departure and in order to understand the mischief which Chapter 3 of the PIA 2021 seeks to tackle, this article will first and briefly consider two background or contextual issues, namely: the implication of State ownership of petroleum in Nigeria; and the impact of oil operations on the host communities. Thereafter, it will proceed to examine the content of 'resource control'. This will be followed by a critical analysis of the HCDT vis-à-vis the issues raised in the 'resource control' agitation. The last section will dwell on conclusion and answer the critical research question of this article.

Implications of State Ownership of Petroleum in Nigeria

In the Nigerian context, the implications of State ownership of petroleum are far-reaching and controversial. However, for the present purposes it is sufficient to discuss only two of them, namely: lack of host communities participation in petroleum operations; and their exclusion from petroleum revenue sharing. To appreciate the weight of these implications, the discussion will be preceded by an examination of the scope or content of State ownership.

Scope of State Ownership of Petroleum

The question of ownership of petroleum in Nigeria is steeped in its colonial past under British rule (Ebeku 2006, 102). Currently, the legal provision on State ownership of petroleum is summarized in section 44(3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) as well as in section 1 of the PIA 2021 (replacing section 1 of the PA 1969). The constitutional provision states that the 'entire property in and control of all minerals, mineral oils and natural gas in under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation' and that it 'shall be managed in such manner as may be prescribed by the National Assembly'. Consistent with this, section 1 of the PIA 2021 provides that:

- (1) The entire ownership and control of all petroleum in, under or upon any lands to which this section applies shall be vested in the State.
- (2) This section applies to all lands (including land covered by water) which:
 - (a) is in Nigeria; or
 - (b) is under the territorial waters of Nigeria; or
 - (c) forms part of the continental shelf.

It is thus clear that the scope of ownership is quite extensive. In summary, a community reading of section 44(3) of the Nigerian Constitution 1999 (as amended) and various statutory provisions dealing with ownership of oil in Nigeria reveals that the federal government of Nigeria owns, in absolute terms, both onshore and offshore petroleum (Ajomo 1982, 334; Exclusive Economic Zone Act 1978, section 2; *North Sea Continental Shelfcases*, 1969 ICJ Reports 3), regardless of the socio-economic and environmental impacts of petroleum exploration and exploitation on the indigenous/host communities.

Lack of Host Communities' Participation in Oil Operations

To consolidate on the constitutional and legal provisions on State ownership of petroleum, section 1 of the LUA virtually confiscates all lands comprised in the territory of a constituent state of the federation and vests it in the state governor 'in trust for all Nigerians'. In effect, this section 'nationalized' all lands in Nigeria, including the customary lands of petroleum host communities (See PIA, section 115). Although the clause 'in trust for all Nigerians' would seem to suggest that the State ownership of land is not absolute but on trust, the practical experience of the petroleum host communities after the Act came into force belies this perspective (Ebeku 2002). Hence, arguably, the LUA completes a State policy of what may be called 'total capture of petroleum resources'. This point is made clearer below.

Prior to the enactment of the LUA, the host communities participated in some way in the operations of the oil companies on their land since the Nigerian land law recognized customary land ownership (Ebeku 2002, 203); the cardinal principle of which is that 'land belongs to the community, village, or family' (Amodu Tijani v Secretary, Southern Nigeria, 404). By law, the federal government exclusively grants petroleum exploration/exploitation license or lease to the oil companies pursuant to relevant statutory provisions (Ajomo 1982). However, the licensee or lessee companies would seek access to the land covered by the license or lease by contacting the land-owning communities, village, or family. Negotiations usually end in the signing of a Memorandum of Understanding (MoU) between the companies and the host communities that own the appropriate areas of operations, and that involved the payment of 'compensation for granting access and for any damage to the land and any surface rights thereon' (Ebeku 2002, 203-204; 210 & 220) as well as commitments to provide benefits to the communities such as building of roads, schools, and hospitals and provision of secondary and university scholarships for qualified host communities children. Ebeku (2002, 220) summarized this point well when he said:

On the whole, oil-bearing communities had some sense of relief when compensation is paid to them. With regard to payment of compensation in the sense of annual rent, they additionally felt some sense of participation in the exploitation of oil resources located in their lands ... Moreover, oil companies recognized oil-bearing communities as their landlords, and this carried with it some minimal 'privileges'...

Now, the consequence of the unification of State ownership of petroleum with nationalization of land (State ownership of land) is that oil-bearing communities have lost their right to participate in oil operations on their ancestral lands, including the right to receive payment of compensation for damage to land in its intrinsic state, despite any damage that oil operations might cause to their agrarian means of livelihood. According to one study, the oil companies now contend that 'the communities own neither the surface of the land nor what is beneath' (Constitutional Rights Projects 1999, 16).

Exclusion of Host Communities from Petroleum Revenue Sharing

Another significant implication of State ownership of petroleum in Nigeria is the exclusion of the host communities from the sharing of petroleum revenue. Under the present constitutional arrangement in Nigeria, section 162(1) of the Constitution of Nigeria 1999 (as amended) provides in part that 'the Federation shall maintain a special account to be called the Federation Account into which shall be paid all revenues collected by the Government of the Federation', and this includes oil revenue. This provision was re-stated in section 258(2) of the PIA 2021, which also prescribes the scope of the collectable revenue, thus:

All money collected from the petroleum industry that are due to the Government shall be transferred to the Federation Account in a timely manner...and these payments shall include taxes, royalties, production shares, profit shares, signature bonuses, production bonuses, renewal bonuses, rents, fees, fines, and other levies due in relation to the grant, assignment, termination, and breach of licences, leases, and permits (See also PIA, sections 100 and 259).

The exclusion of host communities of petroleum operations from the sharing/distribution of oil revenue is clearly manifest under section 162(3) of the Constitution of Nigeria 1999 (as amended), which provides that 'Any amount standing to the credit of the Federation Account shall be distributed among the Federal and State Governments and the local government councils in each State on such terms and in such manner as may be prescribed by the National Assembly'. (See also Schedule II, item 39 thereof). As can be seen, the host communities are excluded from the sharing of oil revenue. Furthermore, even though the proviso to section 162(2) of the Constitution prescribes the payment of thirteen percent (13%) of the revenue 'directly from any natural resources' as derivation revenue, that goes to the so-called 'oil-producing constituent states of the federation' and not to the oil-bearing communities of such states. In fact, over the years the derivation revenue has never been used by successive state governors to benefit the oil-bearing/host communities in any significant way. This is manifest from the stark lack of physical development (such as schools, hospitals, potable water system, asphalted roads, electricity, etc.) in the communities as well as pervasive poverty amongst the community people.

Finally, there is an exclusion based on the federal government's distinction between onshore and offshore oil revenue. In the 2001 case of *Attorney-General of the Federation v Attorney-General of Abia State & 35 Others*, the federal government successfully sought to restrict the amount of revenue claimable by the oil-producing states under the 13% derivation formula to onshore oil revenue, by arguing at the Supreme Court of Nigeria that under international law offshore oil revenue belongs exclusively to the federal government. Although that judicial decision was later reversed by 'political settlement', the legal exclusion still remains and could be invoked at any time.

Impact of Petroleum Operations on Host Communities

Petroleum operations, like other industrial activities, naturally occasions economic, social, cultural, and environmental impacts on the area of

the operations and on the local inhabitants/indigenous people (O'Faircheallaigh 1991, 228). With specific regard to Nigeria, there is an extensive and increasing literature on the impacts of petroleum operations in the Niger Delta where the operations have been taking place since the late 1950s (Ebeku 2006, Chapter 4; Okonta and Douglas 2001). Apart from scholarly studies, there are also corroborative reports by non-governmental organizations (e.g. Amnesty International, 2009), and international agencies (such as the United Nations Environment Programme (UNEP) ((UNEP 2011). Moreover, even judicial decisions (Ebeku 2003) and quasi-judicial decisions (e.g. *SERAC v Nigeria*, 2001) are replete with evidence of adverse impacts. For the present purposes, it is sufficient to summarize a few of the well-known economic and environmental impacts.

Economic Impact

The main source of income and livelihood of the petroleum host communities of the Niger Delta is subsistence farming and fishing. However, over the years unsustainable petroleum operations – such as seismic activities and petroleum exploitation activities – have gravely damaged the land and water bodies in diverse ways. Frequent oil spills, due mainly to equipment failure (Saint 2022), is probably the single most important cause of environmental devastation. In this situation, farming and fishing activities are no longer possible; fishes die in large numbers, rivers become polluted, un-navigable and risky, and farmlands become infertile (Osugwu and Olaifa 2018; Ebeku 2006, 141-142).

A recent oil spill incident in some host communities in the Bonny Island in Rivers State, typically illustrates the economic impact of oil spills on host communities in the Niger Delta area of Nigeria. The incident occurred on 23 November 2024 at a host community called Iloma and 'spread quickly around surrounding communities as it was conveyed by the heavy current in the creeks and rivers' (Nwaoku 2024; Onukwugha 2024). The impacted surrounding communities include Epelema, Orupiri, Ayaminima, Minima, Oloma, and Oguede. Explaining the economic impact of the oil spill incident to journalists during an interview at the impacted site, the youth leader of Iloma community, Arnold Hart, stated:

[T]he various means of livelihood of [my] people have... been destroyed as they could no longer fish or farm due to the massive volume of crude oil on [our] land and water (Nwaoku 2024; Onukwugha 2024).

Similarly, a member of Epelema community, John Abbey, told journalists that his community is 'grounded as their various means of livelihood are all gone with the intense amount of crude oil both in the water and on their land'(Nwaokub2024; Onukwugha 2024). Similar economic situation report was recounted by other affected community members during the interview (Nwaoku 2024; Onukwugha 2024).

It is noteworthy that apart from sustaining themselves with fishing and farming, the local people also generated some income by selling some of their farm produce and fish catch. From the recent typical experience of the Bonny Island host communities, it is clear that the economic impacts of oil operations

are far-reaching, including damage on the local economy and impoverishment of the local people.

Environmental Impact

There can be no doubt that the extraction of oil is a major industrial activity that can affect the environment. This has been seen in the discussion of the economic impacts above, demonstrating that economic, environmental, and even social and cultural impacts of petroleum operations are intertwined. In the Niger Delta, decades of unsustainable petroleum operations have devastated the environment of the host communities. In specific terms, frequent oil spills greatly impact on the environment: damage to farmlands and farm crops; death of aquatic life; loss of biodiversity and habitats; loss of soil fertility; damage to flora and fauna; and pollution of water bodies, etc. (Kadafa 2012; Ite et al. 2013).

With particular regard to pollution of land by oil spill, a source cited in Ebeku (2006, 141), explained scientifically that oil spill affects the top soil, rendering it 'unsuitable for plant growth by reducing the availability of essential nutrients (such as nitrogen), or by increasing toxic contents in the soil'. Moreover, 'heavily contaminated soil may remain unusable for months or years until the oil has degraded...' In the case of pollution of water bodies, oil pollution kills fishes and also affects the communities' sources of drinking water, since they rely on the water bodies and ground water aquifers for drinking water supply (Ebeku 2006, 142).

The environmental devastation of Ogoni communities by oil pollution is well-known nationally and internationally because of the activism of their leaders such as Ken Saro-Wiwa. The Ogoni case and similar situations in other communities in the Niger Delta were the subject of several protests against the petroleum companies operating in the area and the federal government of Nigeria (Ebeku 2006, 312). The protests often resulted in the violation of the human rights of the people by Nigerian security forces – the most egregious being the unlawful trial and execution of Ken Saro-Wiwa in 1995 (Human Rights Watch 1999; Frynas 2001; Okonta and Douglas 2001). Some host communities have also challenged petroleum-related environmental damage by litigation nationally and internationally (Usaini 2025; BBC News 2021). As of February 2025, the High Court in London began trial of a case of environmental devastation brought by the Ogale and Bille communities of the Niger Delta against Shell Petroleum Company. They are seeking to hold Shell accountable for decades of 'devastating environmental pollution that has wrecked their land and livelihoods' (LSE 2025).

Another major environmental impact is occasioned by the constant flaring of associated gas during oil exploitation. The long-standing unwholesome practice of gas flaring by oil companies operating in the Niger Delta has not ended, despite statutory provisions to reduce economic waste and eventually end it. Some host communities still complain that gas flaring destroys their plants and wildlife and cause them various health challenges because of the noxious gases emitted into the atmosphere (Obi 2022). Undoubtedly, the high intensity of gas flare stacks affects vegetation and soil

fertility, and also scare wildlife, which is an important source of protein for the local people (Robinson 1996, 28).

Explaining the content of resource control: A nutshell

The expression 'resource control' is well-known within the Nigerian society and often used by many people. However, not many people actually understand the content of the expression. At the Nigerian constitutional conference held in 1994 – 1995, a representative of the Niger Delta people/host communities articulated the concept of 'resource control' thus:

I wish to [give] you a message from Rivers State [Niger Delta], which is that the people want their rights to the ownership of property and control over their resources recognized; and nothing short of that would appease them.... There are peaceful matches in Rivers State at the moment; people are asking for their rights (Nigerian Constitutional Conference Debates 1994-1995, para 1804).

This demand was restated in the South-South/Niger Delta memorandum submitted to the Human Rights Violations Investigations Commission (HRVIC) (also known as Oputa Panel), headed by a retired Supreme Court Justice, Chukwudifu Oputa, and inaugurated as a transitional justice forum by President Obasanjo on 4 June 1999. Specifically, they demanded *inter alia* (Oputa Panel 2002, 276):

- 1) That the Niger Delta should be allowed to control its resources;
- 2) The payment of reparation to the tune of 50% of the resources exploited from the Niger Delta from 1967 to date [1999];
- 3) The inclusion of the continental shelves to the states where they relate in computing their derivation entitlements; and
- 4) Payment of compensation of 20 billion naira for the damages and deprivations done to the area over the years.

The demands listed in paragraphs 2-4 are in reality an elaboration of the demand for 'resource control' listed in paragraph 1 above. The same content can also be found in various declarations of the Niger Delta people, including the Kaiama Declaration of the Ijaw Youth Congress (IYC) 1998, and the Ogoni Bill of Rights of the Movement for the Survival of the Ogoni People (MOSOP) 1990 (with a 1991 addendum).

In summary, 'resource control' is essentially a catch-phrase for a host of demands for equity which can be found in various charters of demands, including the above: participation in oil operations and recognition as land owners; payment of adequate compensation for petroleum operations damage; provision of financial benefits from petroleum operations; employment in oil companies; environmental protection; and physical development of the host communities and provision of social amenities, etc.

Resource Control and the HCDT: An Analysis

In order to determine whether Chapter 3 of the PIA 2021 can resolve or end the agitation for 'resource control', it is expedient to analyze its provisions vis-à-vis the demands of the host communities as listed above as well as the impacts of oil operations in the Niger Delta region. However, for want of space this article cannot accommodate a consideration of the demand

for environmental protection. This demand is at the core of protests by the oil operations host communities and the PIA and subsidiary legislation made thereunder devoted much provisions to it. Hence, this should properly be the subject of another article. For the remaining demands, it is proposed to consider them in separate sub-headings.

Demand to participate in oil operations as land owners

Statutory deprivation of land rights and consequent lack of participation in oil operations was one of the major complaints of the Niger Delta host communities before the enactment of the PIA 2021. To redress this situation, the people of the host communities demanded the repeal of the PA 1969 and the LUA 1978, which are the main statutes that cause the deprivation (Kaiama Declaration, para. 2). While the PA is progressively being repealed by the PIA 2021, its impugned section 1 which vests ownership of oil in the federal government was re-enacted by the PIA as has been seen above. In other words, the offensive provision of the PA is retained under the new regime. Furthermore, the PIA did not repeal the LUA; in fact, the LUA was inserted into the Constitution of Nigeria 1999 (as amended) as an existing law (Section 315(5) (d)). Hence, post- PIA 2021 the State retains ownership of petroleum and ownership of land. So, the question is what is new in the new petroleum law with particular regard to the demand of the host communities to participate in oil operations as land owners?

One important ramification of the right to participate in oil operations is the 'right to receive royalties' (Ebeku 2008, 403; Osaghae 1995; Sagay 2001). Although the PIA did not grant the host communities the right to receive royalties from oil operations, there are some provisions in the Act which appear to recognize the rights of the host communities to their land by restricting access to the land by oil operators. Yet, the provisions are not new, as they were virtually copied from the Petroleum (Drilling and Production) Regulations 1969 (1969 Regulations) made pursuant to the PA 1969. A few examples will suffice to illustrate this point.

Section 101(1) (a) forbids a licensee or lessee from entering, occupying or exercising his rights under the licence or lease in relation to any area held to be sacred and where there is a dispute as to whether or not the land is sacred, that question will be decided by the customary court of the area. In the same vein, section 101(2) (b) (ii) provides that a person shall not, in the course of petroleum operations injure or destroy any tree or object which is the object of veneration to the host communities. (See also section 101(2) (c): no damage to the surface of land of an owner or lawful occupier). These provisions are substantially the same as in Regulations 17, 21 and 22 of the 1969 Regulations. Importantly, they recognize that many people in the host communities are traditional worshippers and had protested in the past against the destruction or desecration of their gods and shrines (See *Shell v Tiebo VII* [1996] 4 NWLR (Pt. 445) 657). Moreover, the PIA forbids oil operators from entering, occupying or exercising any right in any land situate within a township, town, village, market, burial ground or cemetery (Section 101(1) (iii)) or a land under cultivation (Section 101(1) (b) (v)), except with the permission of the

regulatory authority. The same provisions can be found in Regulation 17(1) (b) of the 1969 Regulations but were respected more in breach than in compliance.

If the present provisions are well enforced in light of the past complaints of the host communities, they can provide some sense of respect and satisfaction to the host communities in regard to their land rights and help to curtail future protests. Even so, this does not equate to participation as land owners in oil operations. As has been seen, prior to the enactment of the LUA, the oil companies were required to approach the customary land-owning host communities for access to land after obtaining an oil prospecting licence or oil mining lease (Ebeku 2002). As previously stated, this was a sort of recognition as stakeholders in oil operations. The PIA did not return to this pre-1978 position.

Demand for payment of prompt and adequate compensation for oil-related damage

Oil-related damage was a major contentious issue between host communities and oil companies. The companies often deny liability and the courts insist on the proof of causality, which frequently resulted in the failure of claims (Ebeku 2003). Even when compensation was paid, the host communities often alleged that they were unduly delayed and inadequate. These complaints seem to have been addressed to some extent by the PIA 2021. Section 101(2) provides that ‘a person shall not, in the course of petroleum operations –

- (a) injure or destroy any tree or object which is –
 - (i) of commercial value; or
 - (ii) the object of veneration to the people resident within the licence or lease area.
- (b) damage or destroy any building or property; or
- (c) disturb or damage the surface of the land or any other rights to any person who owns or is in lawful occupation of the surface area covered by the licence or lease.

Section 101(3) of the PIA provides that ‘a licensee or lessee who causes damage under subsection (2) shall pay fair and adequate compensation to the persons or communities directly affected by the damage or injury’, and section 101(4) provides in part that ‘the amount of compensation payable under subsections (3) shall be determined by the Commission and prescribed by regulation made under this Act’. Importantly, the law gives power to the regulatory agency to apply sanctions against the licensee or lessee in accordance with the regulations made under the Act if there is default in payment within 30 days (Section 101(5)). This is an important provision that will ensure prompt payment of compensation and represents a new hope for potential victims of oil operations damage.

However, it can be observed that the damage stipulated under section 101(2) (c) refers to ‘the surface of the land or any other rights to any person who owns or is in lawful occupation of the surface area covered by the licence or lease’. The emphasis here is on ‘the surface of the land’ or ‘surface area’, thus suggesting that damage on water bodies is not covered. Yet, most extensive oil-related damages occur on water bodies due to oil spill. As yet, there is no specific regulation under the PIA to regulate payment of compensation to

victims of oil spill, though damage to the surface of the land can be caused by oil spill. Moreover, it is not certain whether under the PIA compensation for damage related to oil operations has become purely an administrative matter without the need for judicial determination which is fraught with difficulties of proof (Ebeku 2003). Even so, it would appear that the new petroleum law has provided some hope for the host communities in regard to the demand for payment of fair, prompt, and adequate compensation for oil operations damage.

Demand for financial benefits from oil operations

It has been stated that in terms of priority, one of the most critical demands of the host communities of oil operations is the right to participate as stakeholders in oil exploitation, 'especially the right to receive royalties' or direct financial benefits (Ebeku 2008, 403; Osaghae 1995; Sagay 2001). Implicit in this demand is the recognition of the land rights of the host communities and the need to put money directly into the hands of the local people. Study after study has found that the people of host communities of oil operations, from whose land billions of US dollars are generated monthly, are poor and impoverished by the adverse impacts of oil operations. This paradox of plenty is one of the long-standing complaints of the people. Yet, the HCDDT deals majorly with physical infrastructural development of the host communities and not with 'stomach infrastructure' – money, food and food security (Anowai, Desmond, and Casmir 2022, 71).

Specifically, the PIA has no provision whereby the host communities can receive some royalty from oil operations nor is there any specific provision for the allocation of oil blocs to the indigenous people of the Niger Delta. Section 252(f) of the PIA requires that host communities development plan shall conform with the Nigerian Oil and Gas Industry Content Development Act (Local Content Act) 2010. Under section 3 of this Act, it is provided that the:

- (1) Nigerian independent operators shall be given first consideration in the award of oil blocks, oil field licences, oil lifting licences and in all projects for which contract is to be awarded in the Nigerian oil and gas industry subject to the fulfillment of such conditions as may be specified by the Minister.
- (2) There shall be exclusive consideration to Nigerian indigenous service companies which demonstrate ownership of equipment, Nigerian personnel and capacity to execute such work to bid on land and swamp operating areas of the Nigerian oil and gas industry for contracts and services contained in the Schedule to this Act.

As can be seen from the above provisions, the emphasis is on Nigerians without a positive discrimination in favour of the Niger Delta people. Moreover, how can impoverished people demonstrate capacity as required? Dissatisfied with the situation, Niger Delta youths wrote a fiery letter in January 2025 to the President of the Nigerian Senate demanding 40% stake in new oil block licences. They argued that the exclusion of Niger Delta indigenous investors in the recent allocation of oil block licences is 'against the spirit and intent of the Petroleum Industry Act' and that 'it is unacceptable that

our ancestral lands, ravaged and degraded by oil activities, are being handed over to outsiders [Nigerians from areas outside the Niger Delta] while our people continue to suffer the consequences' (Appolos 2025). Clearly, the petition poignantly shows that the demand of the host communities for direct financial benefits from oil operations has not been resolved by the setting up of HCDT.

Employment in oil companies operating in the Niger Delta is another area to deal with the demand for financial benefit. However, there is no guarantee of employment to the people of the host communities in the oil companies operating in the Niger Delta.

In conclusion, it is fair to say that no amount of 'physical infrastructure' will satisfy the longing for 'stomach infrastructure' as a direct financial benefit without some form of statutory or social arrangement that directly puts money into the hands of the host communities. Commenting on a conceptually similar arrangement in Australia, Young (1995, 184) rightly stated:

The GNP [Good Neighbour Programme] communities have received new housing, new school, and new clinic buildings, fencing and yards, water tanks and vehicles. All of these have been extremely useful. But these were not the only things that people needed. Measures designed to promote employment and training [or dispense cash and grant oil blocs] might well have been preferred. Furthermore, all these infrastructure, paid for through the GNP, has to be maintained, and there may well be problems with the funds for that in future.

Demand for employment in oil companies

Employment of the indigenes of host communities in oil companies is another critically important demand of the host communities (Ebeku 2008, 403; Osaghae 1995; Sagay 2001). They maintain that over the years the Nigerian State and the oil companies deny employment to the indigenes of the host communities by different tactics, while employing some Nigerians from other areas outside the Niger Delta. When confronted, the oil companies claim that they have fulfilled the provisions of Regulation 26 of the 1969 Regulations which enjoins them to 'recruit and train Nigerians in all phases of petroleum operations'. As can be seen, there is no special provision or quota for the employment of the people of the host communities, as can be found in other sectors in Nigeria – such as the education sector where university admission is arranged to favour what is called 'catchment area' (where the university is located), among others. The truth is that every Niger Delta indigene is a Nigerian but not every Nigerian is a Niger Delta indigene.

Similar provision can be found in sections 1 to 3 and section 30 of the Local Content Act 2010 (Nigerian content/training of "Nigerians"). However, when the Regulation for Training in the Nigerian Oil and Gas Industry, 2021 (2021 Regulations) was made pursuant to the Local Content Act 2010, it avoided the use of the word 'Nigerians'. Instead, it used the neutral word 'personnel'. Among others, it prescribes 'minimum standards, facilities and technology for the training and development of personnel in the oil and gas industry' (Regulation 1(a)). Arguably, this is a way to avoid the criticism of the 1969 Regulations. Yet, the result is the same. In other words, it is quite possible

to fulfill the Regulations by involving, recruiting and training only Nigerian oil industry personnel who are not from the Niger Delta area. Consequently, the PIA has not addressed the demand for employment of indigenes of host communities in oil companies, especially as the PIA requires compliance with the Local Content Act (for example, see section 252(f)).

The award of 'oil facilities/pipelines security/surveillance contract' to erstwhile militant agitators for 'resource control', particularly 'General' Tompolo, is not employment within the context of the demand for employment of the Niger Delta people in the oil companies. Undoubtedly, it lifts the militants from poverty, but does not carry the obligation to recruit the youths of the host communities.

Demand for infrastructural development

It is a notorious fact that despite its huge contribution to Nigeria's wealth in the past 50 years, the Niger Delta area suffers a huge infrastructural deficit. Compared with other areas of Nigeria, the Niger Delta hosts inadequate and poorly furnished schools; lacks standard functional hospitals; lacks regular rural electricity supply; lacks modern houses; and, generally lacks asphalted roads. Moreover, the area lacks potable/pipe-borne water supply as well as other social facilities (Kaiama Declaration, para. 11; Ogoni Bill of Rights, para. 17). Although there has been a marginal improvement in the Niger Delta in recent years, that development has been concentrated in big towns and do not get to the villages and remote areas where the oil operations actually and mainly take place. Hence, the 'resource control' demand for infrastructural development is still potent.

What is more, even when development projects are undertaken in those remote areas the Niger Delta people/host communities often complained of the failure of oil companies and the NDDC to consult them in order to ascertain their needs when embarking on corporate social responsibility projects or development projects, and that that often resulted in the construction of projects which were not needed by the communities. Noteworthy, it appears that this complaint has been dealt with under section 251 of the PIA which provides in part as follows (See also the Nigerian Upstream Host Communities Development Regulations, 2022 (2022 Regulations), Regulations 20-22):

251.-(1) The settlor shall after the grant of any licence or lease issued under this Act, conduct a needs assessment ("host communities needs assessment") in accordance with this Act and regulations made under this Act.

(2) Each host communities needs assessment shall, from a social, environmental, and economic perspective –

(a) determine the specific needs of each affected host communities;

(b) ... and

(c) provide a strategy for addressing the needs... identified.

Moreover, 'each host communities needs assessment shall show that the settlor has: (a) engaged with each affected host communities to understand the issues and needs of such host communities; (b) consulted with and

considered the reasonable concerns of women, youth and community leaders; and (c) engaged with each affected host communities in developing a strategy to address the needs ... identified in the applicable host communities needs assessment' (PIA, section 251(3)). In more specific terms, Regulation 20(4) of the 2022 Regulations provides that the host communities needs assessment shall require the evaluation of the following:

- (a) level of primary, secondary and tertiary education in the community;
- (b) availability of basic utilities including water, electricity and shelter;
- (c) access to healthcare;
- (d) level of infrastructure development in the community including roads and telecommunications infrastructure;
- (e) social, environmental and economic needs of the community;
- and
- (f) such other needs of the host communities as the settlor may determine.

It is further provided that 'the host communities needs assessment shall form the basis for the host communities development plan (2022 Regulations, Regulation 20(6)). Moreover, a settlor is required to carry out host communities needs assessment 'every five years, in order to determine the current needs of the host communities' (2022 Regulations, Regulation 20(3)). Thus, it is arguable that the PIA and the 2022 Regulations made under it have demonstrated a clear intention to resolve the complaints of the host communities with specific regard to the demand for infrastructural development. Even so, oral interviews conducted by the present authors in some host communities located in Bayelsa State and Rivers State in March 2025 revealed that four years after the establishment of the HCDT most host communities still lack basic social facilities they actually need. For example, there is no asphalted roads, no reliable electricity supply, no well-equipped hospital, and no potable water supply facility. Moreover, there was no evidence of award of scholarships to the youths nor employment in the petroleum companies. Chief Okwuchukwu Obili, Hon. Silas Williams, and Mr. Gentle N. Naaluba were among those interviewed by the authors during their field work in various host communities.

Conclusion

The HCDT established under Chapter 3 of the PIA 2021 was conceived as a bottom-up development approach to speed up socio-economic development in the host communities of petroleum operations in the Niger Delta and as a new strategy for resolving the long-standing agitation for 'resource control'. The region has witnessed many years of oil operations which have earned huge revenue for the Nigerian State as the absolute owner of petroleum resources but destroyed the local economy of the host communities and devastated their environment without giving them commensurate benefits. In a few areas, the new law instituted new approaches in order to engage the long-standing complaints of the host communities and meet their demands as encapsulated in the buzz-word 'resource control'. For instance, the requirement for the conduct of community needs assessment

before embarking on development projects is an important innovation. Furthermore, the provisions for the payment of fair and prompt compensation are commendable, though inadequate.

However, the key demands of the people/host communities were not granted under the new law. These include the right to participate in oil operations, at least as was the case before the enactment of the LUA 1998; right to receive royalties or direct financial cash benefits; employment in the oil companies; and payment of compensation for oil-related environmental damage. There are also inherent loopholes in the new law such as granting wide and unchecked powers to the settlers to reduce the number of trustees (PIA, section 234(4)), curtail meetings of the BoT/management committee and even decide whether or not to pay the paltry 3% contribution.

In the end, the critical question is whether the HCDT strategy instituted by the PIA 2021 can resolve the agitation for 'resource control'. On the whole, after a penetrating and holistic analysis of Chapter 3 of the PIA and other relevant PIA provisions and regulations made pursuant thereto, it can safely be concluded without trepidation that although the HCDT raises a new hope for some equity for the Niger Delta people (petroleum host communities), it cannot resolve the agitation for 'resource control', except appropriate amendments are made towards addressing the problems revealed in various places in this article. Specifically, the authors recommend, *inter alia*, that the PIA should be amended to guarantee the participation of the host communities in oil operations by requiring the oil operators to seek access to land from host communities after obtaining an oil mining license or lease, as was the case prior to the enactment of the LUA 1978. Also, the people of the host communities should be given some direct cash at hand benefits (the scheme can be worked out). On the issue of training and employment in the petroleum companies, there should be a specific provision for positive discrimination in favour of the Niger Delta people, giving them a specified percentage or quota. This should also apply to the allocation of oil blocks.

Furthermore, all provisions capable of reducing the fund available for the execution of a host communities development plan should be revisited and revised to ensure that substantial funds exist yearly for project execution. Otherwise, the objective of rapid socio-economic development of the Niger Delta will remain a pipe-dream. Allied to this is the need to increase the present 3% contribution by the oil companies to 10% as the people had demanded during the making of the PIA. This will increase the possibility of sustainable and rapid socio-economic development in line with the objectives of Chapter 3 of the PIA. It is further recommended that a specialized regulation should be made to deal with the issue of compensation for damage caused by oil spill. Such claim should be submitted to arbitration in the first instance in order to obviate the difficulties and cost of litigation. Above all, effective implementation of the new regime after the suggested amendments have been made is strongly recommended.

In closing, it must be noted that although the agitation for 'resource control' is presently not loud, this does not mean that it has ended; and it cannot end unless the host communities receive justice in accordance with their demands.

References

- Ajomo, M.A. (1982). *Oil Law in Nigeria*, in Elias, T.O. (ed.), *Law and Social Change in Nigeria*, Chapter 8: 151-180. Lagos.
- Amnesty International (2009). *Nigeria: Petroleum, pollution and poverty in the Niger Delta*. London, UK.
- Amnesty International. (2017). *Nigeria: Shell complicit in the arbitrary executions of Ogoni Nine as writ served in Dutch court*. London, UK.
- Amodu Tijani v Secretary, Southern Nigeria (1921) 2 AC 399.
- Anowai, E., Desmond, N., and Casmir, M. (2022). The politics of stomach and physical infrastructure: A variable for measuring good governance in Nigeria. *International Journal of Contemporary Applied Research*, 9(11): 70-87.
- Appolos, C. (2025, January 16). *Niger Delta youths demand 40% stake in new oil block licenses*. Nigerian Tribune.
- Constitution of the Federal Republic of Nigeria 1999 (as amended).
- Constitutional Rights Project (CRP) (1999). *Land, oil, and human rights in Nigeria's Delta region*. Lagos, Nigeria.
- Dokpesi, A.O. and Godwin, G. O. (2024). Implementation of the Petroleum Industry Act, 2021: Available Prospects for a better Oil and Gas Industry in Nigeria. *Journal of Social Theory and Research*, 4 (1): 183-197.
- Ebeku, K. S. A. (2002). Oil and the Niger Delta people: The injustice of the Land Use Act. *Verfassung in Recht und Übersee*, 35(2): 201-231.
- K. S. A. (2003). Judicial attitudes to redress for oil-related environmental damage in Nigeria. *Review of European Community and International Environmental Law*, 12(2): 199-208.
- K. S. A. (2006). *Oil and the Niger Delta people in international law: Resource rights, environmental and equity issues*. Köln, Germany.
- K. S. A. (2008). Niger Delta oil, development of the Niger Delta and the new development initiative: Some reflections from a socio-legal perspective. *Journal of Asian and African Studies*, 43(4): 399-425.
- K. S. A. (2020). Assessing the performance of the Niger Delta Development Commission (NDDC) 2001-2020: Another failed dream. *International Journal of Law and Society*, 3(3): 78-90.
- Federal Republic of Nigeria (1995). *Constitutional Conference Debates, 1994 - 1995*, Vol. III. Abuja.
- Federal Republic of Nigeria (1978). *Exclusive Economic Zone (EEZ) Act 1978 (Act No. 28)*.
- Frynas, J. G. (2001). Corporate and state responses to anti-oil protests in the Niger Delta. *African Affairs*, 100(398): 27-54.
- Human Rights Violations Investigations Commission (HRVIC) (Oputa Panel) 1999-2002.
- Human Rights Watch (1999). *The price of oil: Corporate responsibility and human rights violations in Nigeria's oil producing communities*. New York.
- International Court of Justice. (1969). *North Sea continental shelf cases (ICJ Reports 3)*.
- Ijaw Youths of the Niger Delta (11 December, 1998). Being Communique issued at the end of the All Ijaw Youths Conference which held in the town Of Kaiama this 11th Day of December 1998 (Kaiama Declaration).

- Kadafa, A. A. (2012). Environmental impacts of oil exploration and exploitation in the Niger Delta of Nigeria. *Global Journal of Science Frontier Research*, 12(3): 18–28.
- Mähler, A. (2010). *Nigeria: A Prime Example of the Resource Curse? Revisiting the Oil-Violence Link in the Niger Delta*. GIGA Working Paper No 120.
- Malami, M, Nwosu, A. S., and Iledare, O. (2024). Petroleum Industry Act 2021 and Natural Gas Development in Nigeria: Matters Arising – Paper presented at the SPE Nigeria Annual International Conference and Exhibition, Lagos, Nigeria, August 2024.
- Movement for the Survival of Ogoni People (MOSOP) (1990). *Ogoni Bill of Rights Presented to the Government and People of Nigeria*, October, 1990 with an Appeal to the International Community
- Nigerian Oil and Gas Industry Content Development Act 2010
- Nigerian Upstream Host Communities Development Regulations, 2022
- Nwaoku, O. (2024). *Massive oil spill wreaks havoc in Rivers*. The Guardian.
- Oil Mineral Producing Areas Development Commission (OMPADEC) Decree, 1992.
- Okonta, I. and Douglas, O. (2003). *Where vultures feast: Shell, human rights, and oil*. New York, NY.
- Onukwugha, A. (2024). *Oil Spill from Ruptured NNPC Pipeline Devastates Rivers Communities*. Leadership.
- Orford, A. (2001). *Globalization and the right to development*. In P. Alston (Ed.), *Peoples' rights* (pp. 127–184). Oxford University Press.
- Osuagwu E.S. and Olaifa E.(2018). *Effects of oil spills on fish production in the Niger Delta*. doi: [10.1371/journal.pone.0205114](https://doi.org/10.1371/journal.pone.0205114).
- Paki, F. A. E. and Ebienfa, K. I. (2011). Militant oil agitations in Nigeria's Niger Delta and the economy. *International Journal of Humanities and Social Science*, 1(5): 140–145.
- Petroleum (Drilling and Production) Regulations 1969
- Petroleum Act 1969.
- Petroleum Industry Act, 2021.
- Regulation for Training in the Nigerian Oil and Gas Industry, 2021.
- Robinson, D. (1996). *Ogoni: The struggle continues*. Geneva, Switzerland: World Council of Churches.
- Westmoreland & Cambria Natural Gas Co. v. De Witt, 130 Pa. 235 (1889). See also *FPL Farming Ltd. v. Environmental. Processing System, L.C.*, [351 S.W.3d 306, 314 \(Tex. 2011\)](#)
- Young, E. (1995). *Third world in the first: Development and Indigenous Peoples*. London.