

PETROLEUM HOST COMMUNITIES AND THEIR RIGHTS TO THE ENVIRONMENT IN NIGERIA: SHIFTING BETWEEN ECONOMIC INTEREST AND THE RIGHT TO CLEAN ENVIRONMENT

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ABSTRACT: One major stakeholder in the petroleum industry which is hardly accorded recognition in Nigeria is the host community. Petroleum host communities occupy a critical place in ensuring unhindered production of oil and gas as oil pipelines and other installations run through their farms, lands and streams. However, the Federal Government of Nigeria and oil producing companies have consistently explored and exploited these communities without a corresponding infrastructural development in these areas. This has occasioned large scale and systematic unrest in host communities leading to huge economic losses to the federal government and degradation of the environment. Though, the Petroleum Industry Act 2021 and the Nigeria Upstream Petroleum Host Communities Development Regulations 2022 attempt to give host communities some recognition, this recent development focuses more on the social and economic advantage of being an oil producing area. The article, therefore, seeks to interrogate the reasons for prioritising economic interests over host communities' rights to clean environment. In doing this, the study examines the concept of host community under the Petroleum Industry Act 2021 and constitutional challenges relating to the enforcement of environmental rights in Nigeria, including the right of host communities to participate in environmental decisions.

RESUMEN: Uno de los principales actores en la industria petrolera al que apenas se reconoce en Nigeria es la comunidad anfitriona. Las *comunidades anfitrionas de petróleo* ocupan un lugar fundamental para garantizar la producción sin obstáculos de petróleo y gas, ya que los oleoductos y otras instalaciones atraviesan sus granjas, tierras y arroyos. Sin embargo, el Gobierno Federal de Nigeria y las empresas productoras de petróleo han explotado constantemente estas comunidades sin el correspondiente desarrollo de infraestructura. Esto ha ocasionado disturbios sistemáticos y a gran escala en las comunidades anfitrionas, lo que ha provocado enormes pérdidas económicas para el gobierno federal y la degradación del medio ambiente. Aunque la *Petroleum Industry Act* de 2021 y las *Nigeria Upstream Petroleum Host Communities Development Regulations* de 2022 intentan otorgar cierto reconocimiento a las comunidades anfitrionas, este desarrollo reciente se centra más en la ventaja social y económica de ser un área productora de petróleo. En este sentido, el artículo busca indagar sobre las razones para priorizar los intereses económicos sobre los derechos de las comunidades anfitrionas a un medio ambiente limpio. Al hacer esto, el estudio examina el concepto de comunidad anfitriona según la *Petroleum Industry Act* y los desafíos constitucionales relacionados con la aplicación de los derechos ambientales en Nigeria, incluido el derecho de las comunidades anfitrionas a participar en las decisiones ambientales.

RESUM: Una de les principals parts interessades en la indústria del petroli que gairebé no té reconeixement a Nigèria són les les comunitats d'acollida. Aquestes ocupen un lloc crític per garantir la producció sense obstacles de petroli i gas a mesura que els oleoductes i altres instal·lacions circulen per les seves granges, terres i rierols. Tanmateix, el govern federal de Nigèria i les empreses productores de petroli han explorat i explotat constantment aquestes comunitats sense el corresponent desenvolupament d'infraestructures en aquestes àrees. Això ha provocat un malestar sistemàtic i a gran escala a les comunitats d'acollida que ha comportat grans pèrdues econòmiques per al govern federal i la degradació del medi ambient. Tot i que la Llei de la indústria del petroli de 2021 i el Reglament de desenvolupament de les comunitats d'acollida del petroli de

Nigèria, adoptat el 2022, intenten donar un cert reconeixement a aquestes comunitats, els recents desenvolupaments normatius se centren sobretot en l'avantatge social i econòmic de ser una àrea productora de petroli. L'article, per tant, pretén indagar en les raons per les quals es prioritzen els interessos econòmics per sobre dels drets de les comunitats d'acollida a un medi ambient net. A tal efecte, l'estudi examina el concepte de comunitat d'acollida segons la Llei de la indústria del petroli de 2021 i els reptes constitucionals relacionats amb l'aplicació dels drets ambientals a Nigèria, inclòs el dret de les comunitats d'acollida a participar en les decisions ambientals.

KEYWORDS: host communities — environmental rights — right to clean environment — economic interest — indigenous people.

PALABRAS CLAVE: comunidades anfitrionas — derechos ambientales — derecho a un medio ambiente limpio — interés económico — pueblos indígenas.

PARAULES CLAU: comunitats d'acollida — drets ambientals — dret a un medi ambient net — interès econòmic — pobles indígenes.

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I. INTRODUCTION

The cooperation of communities playing host to oil prospecting and mining companies is a very vital factor to the stability of the oil and gas industry and by extension, the economy of Nigeria. Since the petroleum industry became the

major driver of the Nigerian economy,¹ most oil producing communities have not only lost their peace and serenity, Nigeria as a nation, has been contending with a catalogue of concerns bothering on insecurity, vandalism of oil pipelines, oil theft, quest for ownership and control of natural resources, profit sharing formula, and so on.² The government on its part has responded to these issues through various means including political intervention by creating several interventionist agencies at federal and state levels to tackle the yearnings of the agitators, though without appreciable results.³ It has also resorted to military options by creating crack teams and task forces at different times, engaging private security/surveillance firms for the monitoring of the waterways and pipeline routes, still with little or minimal successes.⁴ While the challenge of oil theft and vandalism of oil pipelines have continued to rage on, the authorities, apart from recognising certain communities as host communities, have failed to put in place enforceable laws, particularly, to protect the right of the host communities to clean environment and to be involved in environmental decision making.⁵

¹ Research has shown that “over the past five years, oil has represented more than 80 percent of exports, 30 percent of banking-sector credit, and 50 percent of general government revenues” in Nigeria. WORLD BANK GROUP, “Nigeria in Times of COVID-19: Laying Foundations for a Strong Recovery”, (Nigeria Development Update, June 2020) <<http://documents1.worldbank.org/curated/en/695491593024516552/pdf/Nigeria-in-Times-of-COVID-19-Laying-Foundations-for-a-Strong-Recovery.pdf>> [Retrieved on 20 June 2023] and Etim, N.A., Mohammed, J. and Taremwa, N. K. “Drivers of Poverty in Oil Producing Communities of Southern Nigeria”, IJM&P, vol. 13, num. 2, 2022, p. 719.

² These have been blamed on the devastation of the oil producing areas. Influence, E., “Community Relations and Development of Oil Producing Rural Communities of the Niger-Delta, Nigeria”, International Journal of Social Sciences, Humanities and Education”, vol.1, num. 4, 2017, p. 3.

³ Some of these interventionist bodies are the defunct Oil Minerals Producing Area Development Commission (OMPADEC) and now the Niger-Delta Development Commission (NDDC). The Federal government also introduced the amnesty programme by which Niger Delta militants were required to submit their arms and be pardoned, rehabilitated and reintegrated into the society. See generally, Umukoro, B. E. “Amnesty Option as the Road Map to National Peace and Security in Nigeria: The Moral and Socio-Legal Divergences”, DELSU Law Review, vol. 3, num. 1, 2017, p. 25-46.

<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwj89gOJ5_f9AhVeh_0HHeLFDTYQFnoECAoQAQ&url=https%3A%2F%2Fwww.researchgate.net%2Fpublication%2F364082085_Amnesty_Option_as_the_Road_Map_to_National_Peace_and_Security_in_Nigeria_The_Moral_and_Socio-Legal_Divergences%2Fdownload&usq=AOvVaw2EeQb5s_3VZMljOkVWduKR> [Retrieved on 20 June 2023].

⁴ See generally, Okoli, A. and Orinya, S., “Oil Pipeline Vandalism and Nigeria’s National Security”, Global Journal of Human Social Science, vol. 13, num. 5, 2013 p. 67-75 and Okafor, A and Olaniyan, A., “Legal and Institutional Framework for Promoting Oil Pipeline Security in Nigeria”, Afe Babalola University: J. of Sust. Dev. Law & Policy, vol. 8, num. 2, 2017 p. 209-224.

⁵ Gallagher, C., *et al*, “The Role of Host Communities’ Involvement in Decision Making for the Sustainable Development of the Niger Delta”, *The International Journal of Environmental, Cultural, Economic, and Social Sustainability: Annual Review*, vol. 7 num. 2, 2011, p. 375-388.

Attempts by multinational oil companies to discharge their social corporate responsibilities in the oil producing areas in Nigeria were weak. Oil prospecting and mining companies rather leveraged on the failure of the government and the resulting poverty of their hosts by occasionally providing scholarships and employment for a handful of indigenes from oil producing areas. Though, the current regime promises to provide direct social and economic benefits to host communities, implementation of the current laws is yet to reveal whether host communities will continue to receive the usual voluntary and haphazard social provisions or actual development of the communities by giving priority to the right of host communities to clean environment.

This article, therefore, seeks to interrogate the reasons why host communities prioritise economic interests over their right to clean environment. In doing this, the study examines the concept of host community under the Petroleum Industry Act 2021 and the challenges associated with the enforcement of environmental rights in Nigeria which include the right of host communities to participate in environmental decisions. The article identifies how these constraints have encouraged the government and multinational oil companies (MNOCs) in abdicating their responsibilities towards host communities thereby leaving the vulnerable hosts with the weak option of accepting mere compensations over their right to a clean, healthy and sustainable environment.⁶

II. THE CONCEPT OF PETROLEUM HOST COMMUNITY

Before delving into the understanding of the concept of petroleum host community, it is necessary to give a brief overview of the PIA which for the first

See also Adeniyi, A. and Alaeto, C., "Can Host Community Development Trusts Resolve the Social Licence Issues in the Oil Producing Communities?" (Anderson, 30 August 2022). <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwiKx8XGwPf9AhW6h_0HHV0cCEMQFnoECAoQAQ&url=https%3A%2F%2Fwww.mondaq.com%2F nigeria%2Foil-gas--electricity%2F1225740%2Fcan-host-community-development-trusts-resolve-the-social-licence-issues-in-the-oil-producing-communities&usq=AOvVaw0-VtRiz4WUtF8b52fbBsm1> [Retrieved on 24 March 2023].

⁶ See Eghosa Ekhaton and Edward Okumagba, "Climate Change and Multinationals in Nigeria: A Case for Climate Justice" in Kim Bouwer, Uzuazo Etemire, Tracy-Lynn Field and Ademola Oluborode Jegede (eds.) Climate Litigation and Justice in Africa, Bristol University Press, 2024. It has been reported that there is "a lack of meaningful contact and consultation between the Oil Company/Companies and the Communities in which the Oil Companies operate." See HUMAN RIGHTS WATCH, Oil Companies and the Oil Producing Communities <<https://www.hrw.org/reports/1999/nigeria/Nigew991-06.htm>> [Retrieved on 20 June 2023].

time brought oil producing areas into the mainstream of the administration of the petroleum industry with regards to the distribution of social and economic benefits. The Petroleum Industry Act (PIA) which was signed into law in 2021 was on the lawmakers' table in Nigeria for over two decades. The process started in the year 2000 after the inauguration of the Oil and Gas Reform Committee in April 2000.⁷ The Bill staggered between the President's desk and the lawmakers' chambers for this long as a result of the innovations it sought to bring into the petroleum industry.⁸ Some of these innovations bothered on the percentage to be paid by settlers to host communities, profit sharing formula between the federal government and settlers and reforms touching on petroleum regulatory agencies.⁹ While these complications rage on, the PIA was enacted. The final draft of the Petroleum Industry Bill attempted to resolve some of these conundrums. The PIA eventually scrapped the regulatory bodies under the old Petroleum Act, particularly, the Directorate of Petroleum Resources (DPR), Petroleum Products Pricing Regulatory Agency (PPPRA) and the Petroleum Equalization Fund (PEF). Some of these bodies have been criticised severely as performing overlapping and conflicting roles in the Petroleum industry leading to weak implementation of environmental laws to the disadvantage of host communities in Nigeria.¹⁰ The PIA replaced these bodies with two regulatory agencies, i.e., the Nigerian Upstream Petroleum Regulatory Commission (Commission or NUPRC) and the Nigerian Midstream and Downstream Regulatory Authority (NMDRA or Authority) vesting them with the administration of the upstream and downstream activities respectively. Generally, the PIA is to provide fiscal, regulatory and legal governance as well as development of host communities for the advancement of the petroleum industry in Nigeria.¹¹

⁷ Agaptus Nwozor, *et al*, "Reform in a Limbo: The Politics and Politicization of Reforms in Nigeria's Petroleum Sector", *International Journal of Energy Economics and Policy*, vol. 10, num. 4, 2020, p. 184-193.

⁸ Umukoro, B. E. "Looking Beyond the Constitution: Legislative Efforts toward Environmental Rights in Nigeria: A Review of Some Salient Legislations", *Brawijaya Law Journal: Journal of Legal Studies*, vol. 9, num. 2, 2022, p. 154-155.

⁹ *Ibid*.

¹⁰ Ladan, M. T. "Review of NESREA Act and Regulations 2007-2009: A New Dawn in Environmental Protection in Nigeria", *Law, Environment and Development Journal* vol. 8 num. 1, 2012, p 116 and Umukoro, B. E. and Omozue, M. O. "Prosecuting Environmental Pollution Cases in Nigeria: The Head of a Carmel Passing through the Eye of a Niddle", *Baltic Journal of Law & Politics*, vol.15, num. 2, 2022. p. 2022.

¹¹ See the long title of PIA.

The concept of host community is a very prominent subject under the current oil and gas legal regime. When communities were playing host to MNOCs in Nigeria without the knowledge of any derivable utility, the concept of host community was as simple as the term itself. However, things have changed. The notion of which community is a petroleum host community is now coterminous with the right to share in the oil wealth of Nigeria and as such more complex to define. Petroleum host communities for a long time were regarded as synonymous with the Niger Delta area. This is because oil was first discovered in that area in commercial quantity.¹² According to Ayotunde, though “oil has been discovered in other places, they cannot be regarded as oil producing communities”¹³ because of the small quantity being produced. Statistics show that the Niger Delta area hosts more than 90 percent of Nigeria oil fields.¹⁴ The oil producing area comprises of Abia, Akwa Ibom, Bayelsa, Cross River, Delta, Edo, Imo, Ondo and Rivers States.¹⁵ Thus, these areas are sometimes referred to as the South/South region notwithstanding that a state like Ondo is in the South West.¹⁶ The geographical delineation of the land mass referred to as oil producing areas was heavily politicised during the debates leading to the passage of the PIA. It was initially suggested that once an oil pipeline ran through a community, such became a host community.¹⁷ This proposed definition generated serious criticisms. It was argued that “by implication, host communities will now imply all states that do not even produce oil but have oil pipelines passing through them.”¹⁸ This further compounded the idea of which community should be recognised as host community as more states started claiming to have found crude oil within their territories. For instance, in 2019 the NNPC announced the discovery of crude oil

¹² Ayotunde, L. ‘Oil Production and Host Community Relations in Nigeria: The Limits of the Utilitarian Approach’, Afe Babalola University: J. of Sust. Dev. Law & Policy, vol.9, num 2, 2018, p. 127.

¹³ Ibid.

¹⁴ Iyanam, F., Ubi, O.U. and Ero, R., “Impact of Multinational Oil Companies in Oil Producing Communities in Niger Delta, Nigeria”, International Journal of Innovative Research & Development, vol. 10, num. 2, 2021 p. 134.

¹⁵ Akpotor, E., “Crude Oil Exploration and Exploitation in Niger Delta: A Christian Concern”, International Journal of Innovative Development and Policy Studies, vol. 7, num. 2, 2019, p. 41.

¹⁶ Iyanam, Ubi and Ero, “Impact of Multinational Oil Companies in Oil Producing Communities...”, cit. p. 134.

¹⁷ Bayeiwu, L., “New definition of ‘host community’ in passed PIB, a day-break robbery –Rivers Rep, Dagogo” (Punch 25 July 2021) <<https://punchng.com/new-definition-of-host-community-in-passed-pib-a-day-break-robbery-rivers-rep-dagogo/>> [Retrieved on 24 March 2023].

¹⁸ Ibid.

deposits in the Kolmani River between Bauchi and Gombe States in the North-Eastern part of Nigeria.¹⁹ Since then, the local inhabitants in these areas where the discoveries were made have been agitating for *host community rights*.²⁰

Section 318 of the PIA defines host community to mean a community *situated*²¹ in or appurtenant to the area of operation of a settlor and any other community as a settlor may determine under Chapter 3 of the Act.²² One striking component of this definition is the fact that, apart from communities which are directly in the area of operation or appurtenant to the area of operation, a settlor possesses the prerogative to determine which community, in addition, may be treated as a host community. The Act defines a settlor as “a holder of an interest in a petroleum prospecting licence or oil mining lease whose area of operation is located in or appurtenant to any community or communities.”²³ The definition of host communities in the PIA is a better reflection of the common understanding of the areas known as host communities even before there was a legal definition. First, the power of the settlor to designate areas outside operations of the settlor as host communities may not be far from the need to quell the usual tension that host community rights and benefits generate.²⁴ MNOCs have been known for dealing with one community at the expense of others in the Niger Delta area even if it is obvious that the settlor is dealing with people who have no proprietary interest in the area of operation. This is common with leases granted several decades ago by community leaders and clan heads without the consent of the direct family land owners. This has resulted in a number of land disputes in the Niger Delta Area.²⁵ This was equally the disagreement and the basis for the call to the Senate by landowners in the Niger Delta area to define the term ‘Host

¹⁹ Daily Trust, Editorial: “As Buhari kicks-off oil drilling in North: Bauchi, Gombe residents demand jobs, clean environment” Daily Trust, 22 November 2022. <<https://dailytrust.com/as-buhari-kicks-off-oil-drilling-in-north-bauchi-gombe-residents-demand-jobs-clean-environment/>> [Retrieved on 13 June 2023].

²⁰ Ibid.

²¹ This definition is well intended but inelegantly drafted. The communities are not situated in the area of operation, rather the areas of operation are situated in the communities.

²² Chapter 3 of the PIA provides for Host Communities Development and the establishment of the Host Communities Development Trust Fund. Section 234 -257 PIA.

²³ Section 318 PIA.

²⁴ The struggle by host community leaders for hosting rights and privileges in the form of entitlements to scholarship, compensation and job opportunities has torn many oil producing communities apart, creating communal wars and disruption of operation of oil production.

²⁵ Arieja & Ors, v SEPLAT Unreported suit no. S/25/2013 Judgment of Sapele High Court 1, Delta State.

Communities”²⁶ while the Bill was still pending before the House. Sometimes in 2013, while the Bill was still with the lawmakers, some land owners under the aegis of the Association of Families of Oil and Gas Producing Communities (ASFOGAPCOM) claimed that some lands are owned by families and that these actual owners of land were not protected in the Bill.²⁷ The fears of these agitators, though well founded, appear to have been taken care of by the definition of host community under the PIA.²⁸

Before now, there was no legal definition of host community in any instrument for the regulation of the oil and gas industry in Nigeria. The only time there was an attempt was when the Joint Committee on Petroleum formulated a bill titled the Petroleum Host Community Bill in 2017.²⁹ Though, this Bill did not succeed, major provisions of the Bill were incorporated into the PIA.³⁰ Host communities were generally understood as communities where crude oil was being drilled or mined and these include communities where there were petroleum facilities/installations. Some communities play host to oil production installations; others, to well heads and oil fields while some others, to gas flaring stations. Some communities in Orogun, Ughelli, Ughievwen, Agbon, etc., in Delta State of Nigeria, for instance, are hosts to gas flaring sites. Even though, pipelines crisscross the entire Niger Delta region, not all communities in the Niger Delta area, in the strict sense of the word, are entitled to the status of host community. The pipeline-standard definition was an open invitation to chaos and rivalry among communities and it was good it was not accepted in the final draft of the Bill. With the location of refinery in Kaduna, even though there is no crude oil found around that State, communities through which pipelines supply oil to

²⁶ Ochayi, C., “PIB: Landowners demand definition of ‘host communities’ from Senate” (Vanguard, Sweet Crude, 14 March 2013) <<https://www.vanguardngr.com/2013/03/pib-landowners-demand-definition-of-host-communities-from-senate/>> [Retrieved on 21 June 2023].

²⁷ Ibid

²⁸ Though, Ele holds the view that the discretion given to the settlers to determine which community is a host community is subjective and this may portend danger as a community which is unjustly disenfranchised from benefiting from the benefits may go back sabotaging the operations of the settlers. Ele, M., “Oil Spills in the Niger Delta-Does the Petroleum Industry Act 2022 Offer Guidance for Solving this Problem?”, The Journal of Sustainable Development Law and Policy, vol. 13, num. 2, 2022, p. 154.

²⁹ See the Lead debate on the Bill at <<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwi2zuKgsYH-AhUMn6QKHWuaAt8QFnoECBkQAQ&url=https%3A%2F%2Fplacng.org%2Fi%2Fwp-content%2Fuploads%2F2017%2F07%2FLead-Debate-on-Petroleum-Host-Community-Bill-2017.pdf&usq=AOvVaw3xNWDqj9ikvPMQQQasqzuB>> [Retrieved on 21 June 2023].

³⁰ Particularly, sections 234 -257 PIA which provide for host community development.

Kaduna Refinery would also claim to be host communities if that proposal were accepted.³¹

III. THE FRONTIER BASIN

As if to give other parts of Nigeria, particularly the Northern part, the opportunity to have oil exploration benefits, the PIA designate some areas as the Frontier Basins³² and creates the Frontier Exploration Fund (FEF).³³ The frontier basin includes Dahomey, Bida, Sokoto, Chad, and Benue trough.³⁴ Though, the term Frontier Basin is defined in the PIA, it is still very vague. The term includes where hydrocarbon activities have not been done or where there has not been previous commercial discovery of oil and areas that are not developed.³⁵ The FEF is an escrow account dedicated to the development of the Frontier Basin. The FEF is 30 per cent of the profit of Nigeria National Petroleum Corporation Limited (NNPCL) in the production sharing, profit sharing and risk service contract. This definition has been described as ambitious and very unsustainable as it is capable of encouraging corruption.³⁶ Very importantly too, the NUPRC has the power to designate any area as falling with the Frontier Basin.

The notion of which community is an oil producing area and which is a non-oil producing area with its economic implication is beginning to be a major distraction in the oil and gas industry. It is a subtle revolution against state ownership theory of natural resources and realisation of the benefits of individual ownership. Ololajulo is of the view that the growing agitation of ethnic minorities of the Niger Delta region for resource control, the “our oil” notion, and the bifurcation of local communities along oil producing and non-oil producing categories tend to lend

³¹ Some political scientists however do not seem to favour the theory that only oil bearing communities which are currently synonymous with the term “South-South region” are entitled to host community treatment asserting that underdevelopment “is a common coefficient shared by the Nigeria contemporary post-colonial state from the coastal states of the Niger-Delta stretching to the deserts states in the northern Nigeria.” See Musa, M. A., Liberty, S. M. and Waziri, H., “Oil, State and Minority Rights in the Oil Producing Communities of Delta State, Nigeria”, *IOSR Journal of Humanities and Social Science*, vol. 23, num. 5, 2018, p. 7.

³² Section 9(1) PIA.

³³ *Ibid.* Section 9(4).

³⁴ *Ibid.* Section 318.

³⁵ *Ibid.*

³⁶ Bayeiwu, “New definition of ‘host community ...’”, *cit.*

credence to the idea of a definitive ownership.³⁷ Apart from expanding the frontier of oil producing areas in Nigeria which appears to be the official reason behind the creation of the Frontier Basin, there is no doubt that the notion was politically motivated given the elastic definition attached to the term. The Frontier Basin is an area which is not yet playing host to any oil prospecting or mining company. The definition of Frontier Basin therefore shows that the area is not static. The article argues that it is not necessary for any particular area to be named a Frontier Basin if all the government wanted to achieve was to extend the search for oil prospecting to the northern part of Nigeria. If oil is eventually discovered in a commercial quantity in an area, the area statutorily becomes a host community. In the same vein, it is difficult to draw the line between developed and undeveloped areas for the purpose of determining a frontier basin. Almost every community in Nigeria claims to be undeveloped. The oil producing areas/host communities which are seen by other communities as more developed still agitate for more social benefits and would not accept that they are already developed.

IV. LEGAL RECOGNITION OF THE ROLE OF HOST COMMUNITIES IN NIGERIA

1. Legal Recognition under the PIA

One of the major aims of the PIA is the development of host communities. The PIA does not only define which community is a host community, it sets out the objectives³⁸ behind the development of host communities and saddles settlers with responsibility to create Host Community Development Trust (HCDDT)³⁹ in the area where they operate – for the benefit of the host communities.⁴⁰ These objectives include fostering sustainable prosperity within the host communities, providing direct social and economic benefits from petroleum operations to host communities, and enhancing peaceful and harmonious relationship between settlers and their hosts. The PIA also empowers the Commission and the

³⁷ Ololajulo, B., "The Oil Producing Community Identity in Nigeria: A Politico-economic Resource", Munich, GRIN Verlag. <<https://www.grin.com/document/174563>> [Retrieved 3 March 2023].

³⁸ Section 234 (1) PIA.

³⁹ Ibid. Section 235 (1) PIA and Umukoro, "Looking Beyond the Constitution ..." cit.

⁴⁰ Ibid. Section 235 (1).

Authority to make regulations for the realisation of the Trust Fund. It was on the basis of this that the Nigeria Upstream Petroleum Host Communities Development Regulation 2022 (NUPHCDR) was made.⁴¹ The settlers are under obligation to make contribution of 3% of their actual annual operating expenditure of the preceding financial year in the upstream petroleum operation. It has been observed that the upstream operation is currently dominated by indigenous companies which may not likely feel bound to respect the provisions of the law relating to contributions to the HCDF.⁴² Sometimes in October 2023, the National Assembly observed that two years after the enactment of the PIA, some oil producing companies are yet to contribute to the HCDF. Accordingly, the lawmakers moved that the affected companies be penalised.⁴³ The Commission has awarded a penalty of \$1,825 million against the defaulting companies at the rate of N52,500 per day of the default in line with PIA. Judging from the past, it is likely that the list of defaulters comprises more local companies. Under the Nigerian Oil and Gas Industry Content Development Act 2010, the usual complaint was that “international oil companies were complying reasonably in remitting one per cent of the value of their contracts but some service companies and indigenous operating firms defaulted in their payment.”⁴⁴

The article contends that the obligation to contribute by the settlers should be implemented strictly and interpreted broadly by the courts when the occasion arises. For instance, contribution to the HCDF is predicated on the annual operating expenditure of the previous year. A company can simply refuse to contribute on the basis that it did not have *operating expenditure* in the previous year. A similar obligation on oil companies to make contribution to the fund of the Niger Delta Development Commission (NDDC) was frustrated by an oil prospecting company, NLNG Ltd. when it refused to make contribution to the

⁴¹ Section 234 (2) PIA.

⁴² Nwuke, K., Nigeria’s Petroleum Industry Act: Addressing old problems, creating new ones” (Brookings, 24 November 2021) <<https://www.brookings.edu/blog/africa-in-focus/2021/11/24/nigerias-petroleum-industry-act-addressing-old-problems-creating-new-ones/>> [Retrieved on 23 March 2023].

⁴³ Amaize, E. and Iheamnachor, D., “PIA 3% OPEX: Confusion as oil firms seize host communities (Vanguard 21 October 2023) <<https://www.vanguardngr.com/2023/10/pia-3-opex-confusion-as-oil-firms-seize-host-communities/>> [Retrieved on 4 December 2023]

⁴⁴ Ojoye, T., “Indigenous oil firms default on local content payment,” <<https://punchng.com/indigenous-oil-firms-default-on-local-content-payment/>> [Retrieved on 4 March 2024].

NDDC fund because it had no annual budget for the previous year. This was the case of *NDDC v. NLNG LTD*.⁴⁵ In this case, the issue was the interpretation of section 14 (1) and (2) of the Niger Delta Development Commission Act⁴⁶ which provides as follows:

- (1) The Commission shall establish and maintain a fund from which shall be defrayed all expenditure incurred by the Commission.
- (2) There shall be paid and credited to the fund established pursuant to Subsection (1) of this section- (...) three percent of the total annual budget of any oil-producing company operating onshore and offshore in the Niger-Delta area; including gas processing companies.

The Court of Appeal in giving its opinion held that while NDDC was able to satisfy that NLNG Ltd. was an oil producing and gas processing company and that the company operated within the Niger Delta Area on shore and offshore, it could not establish that it had an annual budget. According to the Court, these three pre-conditions must be met before the appellant could rightly make the claim of 3 per cent from such company under section 14 (2) (b) of the Act. The appeal was dismissed as unmeritorious and the company was let off the obligation to contribute for that year because the appellant could not prove that it had annual budget the previous year.

This article argues that the above decision amounts to a travesty of justice as it is absurd to accept that a major company as NLNG Ltd had no annual budget and as such was not entitled to contribute to a statutory fund meant for the development of oil producing communities. The company did not deny making profits or incurring expenditures in the previous years. The study contends that even if the statute stipulates that computation of the 3 per cent would be based on the annual budget of the company, the payment of the 3 per cent ought not to be predicated upon the existence of a budget. The company ought to have been ordered to draw up a budget of the previous year for this purpose. Other financial documents like financial statements, annual returns, balance sheet or profit and loss account of the oil producing company submitted to the Corporate Affairs Commission (CAC) would have been enough to form a basis of computation of

⁴⁵ (2010) LPELR-4596(CA).

⁴⁶ Cap. N86 Laws of the Federation of Nigeria 2004.

the value of the 3 per cent. The purpose of the budget is to serve as a basis of computation. The aim of the law was therefore truncated in putting the burden on NDDC, an outsider which is not part of the running of the contributing company to prove that the contributing company had a budget. Even though the phrase “annual operating expenditure” is not defined in the PIA, it should not be limited to a particular document so titled. Where an oil producing company claims not to have an “annual operating expenditure,” it can be ordered to provide a true reflection of the annual expenditure of the company for the previous year for the purpose of compliance with the law. The fears that local companies may not be committed to the obligation to contribute to the HCDTF are heightened by the weakness of the judiciary and unwillingness of the government to enforce court decisions some of the time.⁴⁷ Indigenous companies are more likely to disregard obligations protective of host communities as a result of the general weakness in the enforcement of environmental laws in Nigeria by regulatory agencies and the courts.⁴⁸

Most foreign companies operating in Nigeria have their parent bodies abroad. This exposes foreign companies more to foreign direct liability claims which to some extent act as a check on their conduct in their host countries. Host communities at some points have decided to boycott the foreign subsidiaries in Nigeria to sue the parent companies in their home countries for better results.⁴⁹ Host communities do not have this advantage over local companies. It is urged, particularly, upon the judiciary to purposefully interpret fiscal obligations on oil producing companies in line with the intendment of the lawmakers, especially where the companies are attempting to sabotage the law.

⁴⁷ Nwuke, “Nigeria’s Petroleum Industry Act: Addressing old problems ...”, cit. See Borha, D. O. E. and Olujobi, O. J. An Examination of the Petroleum Industry Act 2021: Prospects, Challenges, and the Way Forward [version 2; peer review: 2 approved]. *F1000Research* 2023, vol. 12 num. 551, 2023, p. 8.

⁴⁸ Ochei, N. O., Ezeani, E. C. and Anderson, C. “Mechanisms Used by Multinational Oil Companies to Derail Human Rights and Environmental Litigations Arising from the Niger Delta”, *African Journal of Legal Studies*, vol. 15, 2023, p. 185-214.

⁴⁹ See *Akpan v Royal Dutch Shell, PLC; Dooh v Royal Dutch Shell, PLC and Oguru v Royal Dutch Shell PLC*; (Court of Appeal of the Hague) December 18, 2015. <<https://elaw.org/af-akpan-v-royal-dutch-shell-plc-0>> [Retrieved 15 November 2023] and more recently, *Okpabi v Shell* [2021] UKSC 3 of February 2021. <<https://www.supremecourt.uk/cases/docs/uksc-2018-0068-judgment.pdf>> [Retrieved on 15 November 2023].

2. Oil Pipelines Act (OPA) and the Nigerian Mineral and Mining Act

These two pieces of legislation are very important statutory instruments on the rights of landowners where pipelines are laid or where mining operation is taking place. These two enactments, however, relate to the owners of land in different ways. The Oil Pipelines Act⁵⁰ provides no special status for communities playing host to oil pipelines even though it contains provisions for the granting of exclusive prospecting and exploration licences and mining rights⁵¹ to applicants.⁵² The OPA is more concerned with the land owners as individuals than as a community. It provides a compensatory scheme for individual land owners whose lands have been acquired for oil mining or for oil prospecting. It does not have a scheme for the social development of the communities once compensation has been paid to the actual land owners. However, where the interest of a local community will be affected, payment of compensation is to be made to any chief, headman or member of that community on behalf of such community. It may also be paid in line with any scheme of distribution approved by the Court. The Court may appoint a trustee to administer the fund on trust for the benefit and advancement of the community. These payments are a one-off imbursement. The OPA does not provide a contributory scheme for the benefit of the host communities in spite of the fact that the handling of pipelines is a major contributor to oil pollution in Nigeria.⁵³ Thus, compensation or damages are not payable under the OPA for harm caused to the environment as a result of the use of the pipelines but for the compulsory acquisition of the land on which the pipelines are installed, for specific damage to the land of the owner as a result of breakage or leakages of pipelines,⁵⁴ and for damage done to the improvement made by the owner.⁵⁵ All these are individual-based without references to the effect of the operations on the communities.

⁵⁰ Cap. O7 Laws of the Federation of Nigeria 2004.

⁵¹ The Nigerian Mineral and Mining Act, like the OPA, does not also deal with land owners on a community basis. Land owners are equally entitled to compensation in their individual capacity. Section 107 NMMA.

⁵² See sections 7, 8 and 11 and the preamble to OPA.

⁵³ Dike, S. C., "Revisiting the Oil Pipeline Act Cap O7 LFN 2004 through some Legal, Social and environmental Perspective", Port Harcourt Journal of Business Law, vol. 2, num. 2, 2016, p.313.

⁵⁴ Section 11(5) (c) OPA

⁵⁵ Example is damage done to buildings, crops or profitable trees. See section 20 (1) OPA.

The article argues that the OPA does not provide an effective mechanism for the security of the oil pipelines for failing to show commitment to the social and economic well-being of the communities where the pipelines are laid.⁵⁶ However, Anyogu and Nyekwere are of the view that if the OPA is effectively implemented it could be a major protective instrument for the protection of the Nigerian environment against the impacts of oil and gas exploration especially because of its regulation of mining leases and oil exploration licences and the control on transportation.⁵⁷ The authors equally acknowledge that implementation of the Act is weak.⁵⁸ This article argues that this is why environmental protection legislation should vest more powers in the hands of those who bear the physical burdens of the exploration activities in the environment. The OPA is in dire need of review to bring it into harmony with the PIA especially in terms of synergy among stakeholders and improved involvement of host communities in environmental decisions relating to the socio-economic interests and the right to clean environment of the host communities.⁵⁹ It is of interest to note that though section 6 (3) of the OPA places on a holder of a permit the duty to take reasonable steps to prevent *unnecessary damage* to any land in the course of the mining or exploration activities, there is no provision vesting any right on the land owners and/or the community, on the other hand, to compel a permit holder to take reasonable steps or stop any *unnecessary damage* on the basis of the impact of such harm on the streams, rivers, or entire environment or the health, safety and livelihood of the members of the host communities. The implication and the reality of this provision is that a permit holder can cause *unnecessary damage* provided he pays compensation to the victims. The right of the land owners is only to demand for compensation which is due to them under the Act but which has not been paid. It is a common knowledge that exploration activities have adverse

⁵⁶ Okafor, A., and Olaniyan, A., "Legal and Institutional Framework for Promoting Oil Pipeline Security in Nigeria", Afe Babalola University: J. of Sust. Dev. Law & Policy, vol. 8, num. 2, 2017, p. 201. On the security of oil pipelines see generally, Okoli, A. C. and Orinya, S., "Oil Pipeline Vandalism and Nigeria's National Security", Global Journal of Human Social Science, vol. 12, num. 5, 2013, p.67-75.

⁵⁷ Anyogu, F. A. and Nyekwere, E. H. "Appraisal of the Legal and Institutional Framework for Sustainable Environmental Management in Nigeria", The Nigerian Juridical Review, vol/ 16, 2020-2021, p 155-176.

⁵⁸ Ibid.

⁵⁹ Olujobi, O. J., *et al*, "Oil Spillage in Nigeria's Upstream Petroleum Sector: Beyond the Legal Frameworks", International Journal of Energy Economics and Policy, vol.8, num.1, 2018 p. 220-226.

effects on the “socio-economic and *nutritional status*”⁶⁰ of oil producing communities in Nigeria. This makes it more imperative for modern environmental legislation and policies especially in Nigeria to reflect the role of those affected by oil exploration activities in the decisions relating to their welfare and their environment.

The Nigerian Minerals and Mining Act (NMMA) is another important piece of legislation touching on the socio-economic interests of host communities in Nigeria. The NMMA is the current principal enactment regulating the mining sector. It was enacted in 2007 repealing the Minerals and Mining Decree No. 34 of 1999.⁶¹ Section 21 of the NMMA vests on the Minister of Mines and Steel Development power to make Regulations for the purpose of giving full effect to the implementation of the NMMA. Arising from this power, the Nigerian Minerals and Mining Regulations (NMMR) of 2011 were made.

Unlike the OPA, the NMMA and NMMR recognise the importance of the welfare of host communities in mining operations. The Act puts an obligation on a holder of mining lease to conclude with the host community a Community Development Agreement (CDA) which shall, among other things, ensure the transfer of social and economic benefits to the communities. The NMMR compels the holder of mining lease to identify the leaders of the host communities, meet and hold discussions with them and their people. The Regulations provide that full settlement with all compensation obligations under the NMMA is a precondition for interacting with host communities.⁶² Where parties are unable to agree on terms of the CDA after several attempts and the lessee is ready to commence development work, the matter is referred to the Minister.⁶³ Some of the issues the CDA must address include educational scholarship, apprenticeship, technical

⁶⁰ Naiho, A. O., “Comparism of Socio-economic and Nutritional Status between Oil Producing and Non Oil Producing Communities of Delta State”, *International Journal of Nutrition and Metabolism*, vol. 2, num. 2, 2010, p. 1-10. The authors in their study on socio-economic status and the state of nutrition of some members of some oil producing areas in Delta State find that there is a fall in serum protein levels and hemoglobin which suggests poorer nutritional status of oil producing communities due to oil exploration activities. *Ibid.*

⁶¹ Section 161 NMMA.

⁶² Section 13(1) Nigerian Minerals and Mining Regulations 2011.

⁶³ *Ibid.* Section 116 (4). Section 164 defines minister to mean the minister responsible for solid minerals development.

training and employment opportunities for indigenes of the communities.⁶⁴ Even though not all features of a mutual contract are present,⁶⁵ the CDA creates a civil obligation which must be discharged by the mining companies.⁶⁶ The NMMA ascribes to the CDA an enforceable status. This can be gathered from a number of provisions. The CDA is a product of voluntary negotiation between the community people and the mining company. Negotiation is expected to be concluded before the commencement of development activities.⁶⁷

Furthermore, by section 116 of the NMMA, the CDA is an instrument of transfer of social and economic benefits from the holder of the mining lease to the host communities. It is therefore a control document for monitoring development activities in the host communities. A mining company cannot decide to execute any development project of its choice outside the CDA. Unfortunately, in spite of this elaborate provision on the legal importance of the CDA to the sustainable development of host communities, CDAs are hardly relied on by host communities for the judicial enforcement of the obligations contained in them. This may be as a result of lack of awareness⁶⁸ and the challenges associated with proving environment claims in Nigeria.⁶⁹ Before the advent of the PIA some MNOs engaged host communities on the strength of Memorandum of Understanding (MoU) instead of entering into a binding CDA. MoU are not enforceable and are not binding on the parties as they are mere intentions to enter into an agreement.⁷⁰ It has been suggested that the Ministry of Mines and Steel Development in Nigeria should organize a forum in order to bring

⁶⁴ Section 116 (3) of NMMA. See 117 for the objectives of the CDA, section 118 for environmental obligation under the CDA and section 119 for the requirement of environmental impact assessment before the commencement of mining operation.

⁶⁵ For instance, it is difficult to identify the offer, acceptance and consideration in this relationship as to cloth it with the toga of a contract agreement especially as the joint venture is always between the government and the companies, while the communities are merely beneficiaries of development projects.

⁶⁶ Ogwu, P. "Protecting Community Development Agreement in Nigeria", Goxi Blog, 2017. <<https://goxi.org/blog/protecting-community-development-agreement-in-nigeria>> [Retrieved on 4 March 2024].

⁶⁷ Section 116 NMMA.

⁶⁸ Norris, E. I. "Actualizing the Goals of Environmental Education in Nigeria", Journal of Education and Practice, vol. 7 num. 8, 2016, p.1-5.

⁶⁹ See Umukoro and Omozue, "Prosecuting Environmental Pollution Cases in Nigeria...", cit.

⁷⁰ BPS Construction & Engineering CO. LTD v. FCDA (2017) LPELR-42516(SC. See also ALABI, T. H. "The Legal Status of a Memorandum of Understanding", (Blog, Lawpavilion, 2022). <<https://lawpavilion.com/blog/the-legal-status-of-a-memorandum-of-understanding/#:~:text=The%20court%20held%20in%20ORAKA,binding%20force%20of%20a%20contract>> [Retrieved on 27 November 2023].

stakeholders, especially the host communities, into the awareness of the importance of negotiation and formulation of agreements which accommodate the interest of all parties and which are enforceable.⁷¹

The CDA is subject to review every 5 years.⁷² The Act forbids mining operations on land held to be sacred. This includes lands where there are consecrated trees and other object of worship.⁷³ The holder of mining lease are to pay for reasonable compensation for disturbance of surface right of the owner or occupier and compensation for destruction or damaged trees, building, and so on.⁷⁴ They are also under obligation to pay compensation for interference with right of way, work building or plants.⁷⁵ Like the OPA, the NMMA states that the affected company must take step to prevent pollution of the environment as a result of mining operation.⁷⁶ The owner of land also has the right to restore his land⁷⁷ or reclaim it where it has been exploited or mined out.⁷⁸ The NMMA and the Regulations are very useful instruments and effective tools for the sustainable development of host communities in Nigeria. A proper implementation of these instruments alongside with the PIA and the NUPHCDR would give host communities a sense of belonging and responsibility to ensuring a peaceful coexistence among all players in the oil and gas industry.

3. Nigeria Upstream Petroleum Host Communities Development Regulation 2022 (NUPHCDR)

This is the first direct legal instrument bearing on the importance of petroleum host communities in Nigeria. The Regulation is a fall out of the provisions of the PIA.⁷⁹ It is a legislative attempt to provide substantive and procedural requirement for the administration of the HCDTF. The NUPHCDR⁸⁰ provides a parameter for

⁷¹ Obinna, D. "Legal Regime for Community Development Agreement under the Minerals and Mining Act 2007". (SCDP Consulting Ltd, 2017), <<https://scdpconsulting.com/legal-regime-for-community-development-agreement/>> [Retrieved on 27 November 2023].

⁷² Section 116 (5) of NMMA.

⁷³ Ibid. Section 98.

⁷⁴ Ibid. Section 99.

⁷⁵ Ibid. Section 112.

⁷⁶ Ibid. Section 111.

⁷⁷ Ibid. Section 114.

⁷⁸ Ibid. Section 115.

⁷⁹ Section 234 (2) PIA.

⁸⁰ Federal Republic of Nigeria Official Gazette No. 114, Vol 109 of 24th June 2022 (Government Notice no. 74).

determining communities appurtenant to shallow water and deep –water areas of operation.⁸¹ Under the NUPHCDR, there is a provision for dispute resolution between the host communities and the settlers.⁸² This is majorly where there is allegation of sabotage or vandalism by third parties leading to the disruption of facilities and company's operation. The NUPHCDR lays down a comprehensive procedure for determining whether the disruption is an act of sabotage or technical failure. The process starts by lodging a report by the settlor to the Commission and the Board of Trustees of the HCDF within 30 days of the act,⁸³ and the Commission is expected on the basis of the report of the joint investigation team to come up with a report whether the disruptive act complained of is a technical or natural cause or third party intervention.⁸⁴ The implication of these provisions is that the host communities are under obligation to secure oil facilities and installations within their areas or lose their benefits under the PIA. The PIA and the NUPHCDR have been criticised for placing such enormous responsibility on the communities which have no means and facilities to mount modern pipeline surveillance,⁸⁵ a responsibility which the government itself has not been able to discharge effectively.

Apart from this sabotage clause, the NUPHCDR provides a robust platform for the development of the host communities. By section 20 (3) of the NUPHCDR, every settlor, from the first 6 months of its operation, is under obligation to carry out the needs assessment of the community playing host to its facilities. The settlor must carry out this exercise every 5 years. The Host Community Needs Assessment (HCNA) is to determine the current needs of the community. The HCNA involves an evaluation of the state of primary, secondary and tertiary education as well as the availability of basic utilities like water, shelter and road. Other concerns which the HCNA must address is access to healthcare, infrastructure development like roads, telecommunications as well as the social,

⁸¹ Ibid. Section 6.

⁸² Ibid. Section 39.

⁸³ Ibid. Section 37(1).

⁸⁴ Ibid. Section 37(6).

⁸⁵ Umukoro, "Looking Beyond the Constitution ...", cit., p. 155. It was described as robbing Peter to pay Paul. See Mazzi, P., The Prejudice and Justice in the Petroleum Industry Act (17 August 2021), <<https://saction.org/the-prejudice-and-injustice-in-the-pia/>> [Retrieved on 22 March 2023].

environmental and economic needs of the community.⁸⁶ The HCNA is the basis of the host community development plan.⁸⁷

The high point of the Regulation is the HCDTF and its management. Upon the establishment of the HCDTF, the settlors are obliged to identify the communities under any of its memorandum of understanding or any agreement. This includes communities under such schemes as community development programme and corporate social responsibility project.⁸⁸ The settlors are to transfer all monies payable as their annual contributions, invested and investable instrument and any development project, scheme, liabilities, assets, etc., under any memorandum of understanding or agreement and ensure that there is continuity of execution of all the development projects. Failure to carry out the HCNA, or prepare the HCDP and Fund Distribution Matrix (FDM) under sections 20, 21 and 22 of the Regulations respectively, renders the settlors liable to administrative penalty of \$20,000 or its naira equivalent for the first day of default and \$1,000 or its naira equivalent for every other day.⁸⁹ The NUPHCDR provides for a number of penalties for non-compliance in order to ease implementation of the Regulation. The idea of stipulating the fines in dollars is very commendable given the ever-rising inflationary pressure on the Nigerian economy and the consistent dwindling value of the naira in the global market.⁹⁰ This may have also been informed by the fact that most of the companies in the upstream sector transact in foreign exchange.⁹¹

Following section 240 of the PIA, the NUPHCDR equally stipulates that the settlors shall contribute 3 per cent of the *actual operating expenditure* to the HCDTF. However, the NUPHCDR defines the term operating expenditure in a manner not favourable to host communities. The Regulation in section 24 (7) states that operating expenditure shall not include capital expenditure,

⁸⁶ Section 20 (6) NUPHCDR.

⁸⁷ Ibid. Section 20 (6).

⁸⁸ Ibid. section 40(2).

⁸⁹ Ibid. section 36(1).

⁹⁰ See Consumer Price Index, January 2023 (Bureau of Statistics) <<https://nigerianstat.gov.ng/download/1241285>> [Retrieved 4 December 2023].

⁹¹ Crude Oil Price (Central Bank of Nigeria) <<https://www.cbn.gov.ng/rates/dailycrude.asp>> [Retrieved on 4 December 2023]. Cf. Donatus Anichukwueze, "Crude Oil Buyers should Pay Nigeria in Naira, not Dollar – Falana (Channels, 8 May 2023) <<https://www.channelstv.com/2023/05/08/crude-oil-buyers-should-pay-nigeria-in-naira-not-dollar-falana/>> [Retrieved on 4 December 2023].

impairment, depreciation or amortisation. It includes non-capital production cost, cost of sales, administrative expenses and any other expenses incurred in the course of running of the business. Given that the NUPHCDR applies only to the upstream sector, this definition may be of concern to host communities as the 3 per cent contribution by settlers to the HCDF has been trimmed down by this definition. It has been estimated, however, that the HCDF may receive between US\$500 and US\$800 per annum (which is between NGN200 and NGN330 billion) if the 3 per cent contribution, even as restrictively defined by the Regulations, is paid fully. This amount is about ten times the size of the average annual Corporate Social Responsibility (CSR) expenditures by oil and gas companies before the introduction of the HCDF in Nigeria.⁹² To ensure commitment to the 3 per cent financial obligation it is incumbent on the upstream companies to provide a comprehensive statement of expenditure divided into capital and non-capital expenditure for the purpose of determining the value of the 3 per cent payable to the HCDF. It is expected that the Regulation would stipulate a template for preparation of the yearly expenditure in the same way it proposes for HCDF in section 21(2) of the NUPHCDR. This is to avoid the ugly occurrence in *NDDC v NLNG Ltd*.

Contribution to the HCDF is a form of compulsory Corporate Social Responsibility (CSR) for the sustainable development of host communities.⁹³ Thus, its effective implementation is of utmost paramountcy.⁹⁴ The NUPHCDR and the PIA are unequivocal about the protection of the environment and the development of the communities where the oil is produced.⁹⁵ Before now, in Nigeria, CSR was a voluntary obligation on MNOs.⁹⁶ This approach did not

⁹² SDN, Press Release, "How the Petroleum Industry Act could backfire for host communities" <<https://www.stakeholderdemocracy.org/how-the-petroleum-industry-act-could-backfire-for-host-communities%E2%82%AC>> [Retrieved 24 November 2023]; and PIA contribution to host communities bigger than NDDC's annual budget – Kyari (The Nation, 22 August, 2021). <<https://www.vanguardngr.com/2023/07/pia-fg-gazettes-5-signs-7-laws-others-on-oil-gas-operations-investigation/>> [Retrieved 24 November 2023].

⁹³ Kasimba, S. A. and Päivi Lujala, P. "Examining Host Communities' Perceptions on Trust Funds as Corporate Strategies for Community Development in Ghana", *Journal of Asian and African Studies*, vol. 56, num. 6, 2021, p. 1386-1402.

⁹⁴ Omoisi, S. E. "Corporate Social Responsibility by Nigerian Oil Multinationals to Host Communities in the Niger Delta Region: A Right or A Privilege?", *London Journal of Research in Humanities and Social Sciences*, vol. 22, num 21, 2022 p. 27-44.

⁹⁵ Sections 238 and 240 (2) PIA.

⁹⁶ Ekhaton, E. O., and Iyiola-Omisore, I., "Corporate Social Responsibility in the Oil and Gas Industry in Nigeria: The Case for a Legalised Framework", *Sovereign Wealth Funds, Local Content Policies and CSR*, 2021, p.439-458.

contribute much to the social and economic development of the host communities. Oil companies, more often than not, evaded this responsibility.⁹⁷ At best, they built some blocks of classrooms and primary healthcare centres, sometimes, as full and final benefits.⁹⁸ This led to the establishment of interventionist bodies at different times by the Federal Government to address the social economic needs of host communities. Examples of these are the defunct Oil Minerals Producing Area Development Commission (OMPADEC) and the present NDDC. Under the current legal regime, CSR is a compulsory legal obligation followed by sanctions.⁹⁹ However, the obligatory financial contribution has been described as capable of encouraging lack of initiatives by the companies and the apportionment of CSR resources for personal gains instead of the development of the communities.¹⁰⁰ Another has argued that if the present CSR initiative is not properly managed, it could promote corruption.¹⁰¹

The article contends that though these observations are correct they do not override the purpose for which the law has made CSR compulsory under the new host community development agenda. The proponents of voluntary CSR do not seem to have put into consideration how environmental policy makers arrived at the point of obligatory CSR in Nigeria. As was rightly observed, there was failures and weaknesses in the “voluntary-styled CSR initiatives”¹⁰² in Nigeria. Oil producing companies, more often than not, shelved their CSR while contending that it was government’s responsibility to provide social and economic benefits for its citizens.¹⁰³ This makes the compulsory CSR regime under the PIA very apt

⁹⁷ Muoboghare, N and Guanah, N J, “Misconception of Corporate Social Responsibility of Oil Companies on their Host Communities: A Study of Shell Petroleum Development Company and Communities In Delta State, Nigeria International Journal of Applied Research in Social Sciences vol 5, num 3, 2023, p 51-67.

⁹⁸ Odogwu, E. C. “The Environment and Community Relations: The Shell Petroleum Development Co. of Nigeria Experience Paper presented at the SPE Health, Safety and Environment in Oil and Gas Exploration and Production Conference, The Hague, Netherlands, November 1991.

⁹⁹ Section 252 PIA.

¹⁰⁰ Debski, J. A., and Ezeani, E. C. “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, num. 1, 2022, p. 10.

¹⁰¹ Uhumuavbi, I., “An Adaptive Approach to Reconceptualizing Corporate Social Responsibility and Corruption in Nigeria’s Oil-Rich Niger Delta” in Msosa, S. K., Mugova, S., and Mlambo, C. (eds.) Corporate Social Responsibility in Developing Countries: Challenges in the Extractive Industry: CSR, Sustainability, Ethics and Governance (Springer, 2023), p. 205-222.

¹⁰² Ekhatior and Iyiola-Omisore, “Corporate Social Responsibility in the Oil and Gas Industry in Nigeria ...”, cit p. 440.

¹⁰³ Umukoro, “Right to Clean Environment ...”, cit.

and promising. With the enormous powers vested in the Commission and the Authority to oversee the implementation of the PIA including social and economic obligations on oil producing companies towards host communities, this current CSR initiative could impact positively on oil producing areas if properly harnessed as instrument for sustainable development.

4. Public Participation by Host Communities

It has long been recognised that “[E]nvironmental issues are best handled with the participation of all concerned citizens, at the relevant level.”¹⁰⁴ This principle is the foundation of public participation in environmental decision-making process at international law.¹⁰⁵ Over three decades after the Rio Declaration, participatory environmental rights have remained weak at national level especially in Nigeria. This position has started changing gradually. There is a new legal regime of environmental democracy in Nigeria. There exists in Nigeria a number of legal instruments which promote public participation in environmental decisions. Some of them are the Nigerian Oil and Gas Industry Content Development Act 2010,¹⁰⁶ Freedom of Information Act, 2011,¹⁰⁷ PIA 2021 and the NUPHCDR 2022. However, this discussion shall be limited to the PIA and NUPHCDR being the latest and the most direct instruments on the issue of the right to participate in environmental decision-making process in Nigeria at the moment.

One of the components of environmental rights is the right to participate in environmental decisions. This concept has been described as participatory democracy in environmental governance.¹⁰⁸ It is a procedural right which includes the right to information, participation and access to justice.¹⁰⁹ It is about the meaningful involvement or participation in the decisions relating to the

¹⁰⁴ Report of the United Nations Conference on Environment and Development, (Rio de Janeiro, 3-14 June 1992 UN Doc. A/CONF.151/26 (Vol.I) (Rio Declaration) <https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf> [Retrieved 20 November 2023].

¹⁰⁵ Principle 10, Rio Declaration.

¹⁰⁶ Abe, O., “Local Content Requirements in Nigeria's Extractive Sector and the Implications for Sustainable Development”, *Journal of African Law*, vol.66, num. 1, 2022, p. 75.

¹⁰⁷ Etemire, U., “Public Access to Environmental Information: A Comparative Analysis of Nigerian Legislation with International Best Practice”, *Transnational Environmental Law*, vol.3, num. 1, 2014 p. 149-172.

¹⁰⁸ *Ibid.*

¹⁰⁹ May, J. R., “Constitutional Directions in Procedural Environmental Rights”, *J. of Env'tl Law & Litigation*, vol. 28, num 27, 2013, p. 27-51.

management of the environment by key stakeholders including local communities that bear the greatest impact of resource projects.¹¹⁰ The purpose is for local communities to benefit from the proceeds of the exploitation of the natural resources in a way that satisfactorily serves the economic, social, and cultural needs of the communities.¹¹¹ Chapter III of PIA which contains sections 235-357 and the entire NUPHCDR are devoted to host community development. This is the first-time petroleum host communities are receiving such level of legal recognition and involvement in the oil and gas industry in Nigeria. The PIA does not only set out the objectives of host community development, it stipulates that the companies which prospect and explore oil must incorporate a HCDD to which 3 per cent operating cost is paid. The role of the host communities in the appointment of the Board of Trustees is also clearly spelt out in the PIA and the NUPHCDR.¹¹² The Board of Trustees is to be constituted in consultation with the host communities and the members of the board are drawn from the communities.¹¹³ This suggests that host communities are not only involved but constitute the Board. The Board of trustees is responsible, among other things, for the appointment of a committee known as Host Community Management Committee (HCMC). The members of the HCMC include one representative each from the host communities.¹¹⁴ These representatives are to be nominated by their respective communities for appointment by the Board.¹¹⁵ The NUPHCDR and the PIA state that a community representative shall be a non-executive member of the HCMC. This implies that members representing communities in the HCMC cannot hold executive positions. Beyond this, it is not clear from the PIA and the NUPHCDR if this sets other limitations on the office of a community nominee to the HCMC. All members of the Committee are expected to have full participatory right in the decisions relating to the general management of the objectives.

The role of the HCMC is very crucial to the host community development agenda. The Committee is responsible for the general administration of the HCDD on *ad*

¹¹⁰ Abe, "Local Content Requirements in Nigeria's Extractive Sector ...", cit.

¹¹¹ Ibiam, A. E., and Faga, H. P., "Indigenous Peoples' Rights over Natural Resources: An Analysis of Host Communities Rights in Nigeria", *Lampung Journal of International Law*, vol. 2, num. 3, 2021, p. 132.

¹¹² Section 235 (4) PIA and section 7 of the NUPHCDR.

¹¹³ Sections 234 (4) and 242(2) PIA.

¹¹⁴ *Ibid.* Section 247 (2) (a).

¹¹⁵ Section 8 NUPHCDR.

hoc basis.¹¹⁶ The HCMC prepares the budget, develop and manage project awards on behalf of HCDT. It also monitors execution of projects and other specified functions or role which may be assigned to it by the Board. Very significantly, the HCMC is vested with power to set up an advisory committee which is known as Host Communities Advisory Committee (HCAC).¹¹⁷ The HCAC comprises of at least one nominee from each host community.¹¹⁸ The HCAC advises the HCMC on matters touching on the enhancement of peace-building and how the security of infrastructure can be improved upon within the host communities and areas of operation.¹¹⁹ The HCAC is also responsible for the nomination of members and communication of development projects to the HCMC as well as monitoring of the progress of community projects and security of project facilities. Unlike the HCMC, the HCAC comprises of only host community members and thus closer to the people. The HCAC is expected to act as a liaison body between the Board of Trustees and the HCMC. It is worthy of note that all three organs responsible for realising the host community development agenda, i.e., the Board of Trustees, the HCMC and the HCAC revolve around the host communities. This is a huge milestone in the advancement of procedural environmental rights in Nigeria.

Unfortunately, the selection of nominees to the various bodies has been a challenge as the communities are reported to be complaining of imposition of nominees on them by settlers in collaboration with political leaders while disregarding their community leaders.¹²⁰ Some communities in Egi-Obagi in Rivers State of Nigeria are already involved in legal battle with the oil producing company in their communities over who is to be nominated to the HCDT in their area.¹²¹ Politics and self-serving interest of settlers are a major factor against the incorporation of HCDT under the PIA. As at 28 of October 2023, it was reported

¹¹⁶ Section 248 PIA.

¹¹⁷ *Ibid.* Section 249.

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.* Section 250(d).

¹²⁰ Idio, E. "PIA: We'll reject imposition of members of Host Communities Trust Fund Commission — HOSCON" <<https://www.vanguardngr.com/2022/05/pia-well-reject-imposition-of-members-of-host-communities-trust-fund-commission-hoscon/>> [Retrieved on 20 November 2023].

¹²¹ Ibe, C. "Totalenergies, Oil Disruption Threats, and the Petroleum Industry Act's Blueprint for Host Communities" LinkedIn, 28 September 2023. <https://www.linkedin.com/pulse/totalenergies-oil-disruption-threats-petroleum-industry-ibeh-1f?utm_source=rss&utm_campaign=articles_sitemaps> [Retrieved on 4 December 2023].

that two years after the passing of PIA only 76 HCDTs have been registered, 45 accounts created and only 38 funded with over 100 HCDTs yet to be incorporated.¹²² This suggests the need for the NUPRC, Civil Society Organisations and relevant NGOs to place oil producing companies and their alliances under close watch to ensure maximum compliance with the PIA and the NUPHCDR as far as the objectives of the HCDT are concerned.

V. BETWEEN ECONOMIC INTEREST AND THE RIGHT TO CLEAN ENVIRONMENT

In spite of the serious effects of environmental degradation, environmental protection policies in Nigeria are yet to migrate from pecuniary gain (the payment of compensations, provision of social amenities and award of fines) to a human rights based approach.¹²³ The government still finds it difficult to halt the operations of oil prospecting companies when they flout the law or when their activities portend serious health and human rights challenges.¹²⁴ The usual remedy when multinationals companies breach environmental laws in Nigeria was the imposition of humongous monetary sanctions and payment of paltry compensations to the victims.¹²⁵ The laws were skewed to respect this

¹²² Development Trusts Funds: Host Communities Decry Deprivations, Desecrations By Oil Operators" (Independent Agency Report, 28 October 2023 <<https://independent.ng/development-trusts-funds-host-communities-decry-deprivations-desecrations-by-oil-operators/>> [Retrieved on 28 October 2023].

¹²³ The human rights approach to environmental protection also known as the anthropocentric approach places human rights of the host communities above the economic gains the companies are willing to offer and would rather prevent the wrong than giving the room for compensatory remedies. The African Charter on Human and Peoples' Rights which has been domesticated in Nigeria has been described as anthropocentric when it stipulates in article 24 that the people shall have the right to a satisfactory environment. See Buys E., and Lewis, B., "Environmental Protection Through European and African Human Rights Frameworks", *The International Journal of Human Rights*, vol. 26, num. 6, 2022, p. 949-977. Unfortunately, this law has not been recognised as entrenching environmental rights because of the limitation in section 6 (6) (c) of the Constitution. See generally Anaebo, O. K., and Ekhaton, E. O., "Realising Substantive Right to Healthy Environment in Nigeria: A Case for Constitutionalisation", *Environmental Law Review*, vol. 17, num. 2, 2015, p. 85-99.

¹²⁴ See generally, Umukoro, B. E. "The Ogidigben EPZ Gas Project and the Environment: Health and Human Rights Implications", *Ajayi Crowther University Law Journal*, vol. 1, num. 1, p.1-38 <<https://aculj.acu.edu.ng/index.php/ij/article/download/14/16>> [Retrieved on 23 June 2023] and Umukoro, B. E., "Gas Flaring, Environmental Corporate Responsibility and the Right to a Healthy Environment", in Emiri, F. & Deinduomo, G. (eds.), *Law and Petroleum Industry in Nigeria- Current Challenges* (Malthouse Press Ltd., Lagos: 2008) p. 49-64.

¹²⁵ Recently the Federal Government announced plans to impose the sum of 49 million dollars (22 billion naira) fine on oil and gas firms over gas flaring across the country without any clear plan to stop the flaring of gas. See Magbei, T., "FG Fines Shell, AGIP, Chevron, Mobil, Others

behaviour.¹²⁶ The courts,¹²⁷ on the other hand, find it more convenient to follow these laws as laid down by parliament in spite of the hue and cry from environmentalists, NGOs human rights advocates and the United Nations for the adoption of an approach that will guarantee “a quality, adequate and satisfactorily safe environment for human living.”¹²⁸ Unfortunately, host communities were contented with the pecuniary benefits derived from payment of compensation which enabled them to partially assuage the losses to their farmlands, fishing nets, ponds, and so on even if the environment lied in waste without remediation.¹²⁹ Host Communities occasionally disagreed over compensation for oil spills and even prevented the offending company from having access to the spill site for clean up until adequate compensations were paid.¹³⁰ Some withdrew environmental pollution cases from court in expectation of, or as a condition for, the payment of compensation without agreed terms of settlement filed in court or remediation of the environment.¹³¹ It is expected that this trend will come to an end with the enactment of the PIA and the coming to effect of the NUHPCDR.

N22bn for Gas Flaring”, (Nigerian New, 12 April 2023) <<https://dailyreport.ng/fq-fines-shell-agip-chevron-mobil-others-n22bn-for-gas-flaring/>> [Retrieved on 30 May 2023].

¹²⁶ Section 104 of the PIA, for instance, provides exceptional cases in which gas flaring may be allowed while some other legislation like the National Environmental Standards and Regulations Enforcement Agency Act, Federal Republic of Nigeria Official Gazette No. 92, vol 94 of 21 July 2007 (Government Notice no. 61) (NESREA Act) and the National Oil Spill Detection Response Agency Act (No. 15 of 2006) (NOSDRA Act) are more concerned on the imposition of fines as their major regulatory measures.

¹²⁷ The courts in Nigeria and advocates have had to shift the blame on why environmental pollution cases hardly succeed in Nigeria. See the observation of the Court in *Compagne Generale de Geophysique (Nig) Ltd v. Anozie* (2018) LPELR-46185(CA). See also Umukoro and Omozue, “Prosecuting Environmental Pollution ...”, cit.

¹²⁸ See Umukoro, B. E. and Ituru, O., “Conceptual Challenges to the Recognition and Enforcement of the Right to Clean, Safe and Healthy Environment”, *Journal of Environmental Law and Policy*, vol. 2, num. 2, 2022, p.3.

¹²⁹ This has been largely blamed on the level of poverty of the local people. See Amabipi, A. K., “Understanding Host Community Distrust and Violence Against Oil Companies in Nigeria (Walden Dissertations and Doctoral Studies Collection, Warden University, 2006) 214 <<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjnrxmar-AhVliv0HHQ7LAgkQFnoECBYQAQ&url=https%3A%2F%2Fscholarworks.waldenu.edu%2Fcgi%2Fviewcontent.cgi%3Freferer%3D%26httpsredir%3D1%26article%3D3094%26context%3Ddissertations&usq=AOvVaw2mlAWkFx-hjH-HkpVZ6Bxa>> [Retrieved on 2 June 2023].

¹³⁰ Eziukwu, A., “Oil spill: Agip, host community bicker over compensation, clean-up”, (Premium Times, 10 April 2018) <<https://www.premiumtimesng.com/regional/south-south-regional/264551-oil-spill-agip-host-community-bicker-over-compensation-clean-up.html?tztc=1>> [Retrieved on 14 April 2023].

¹³¹ Udegbunam, O., “Fishermen say ExxonMobil yet to pay compensation years after oil spills”, (Premium Times, 27 December 2021) <<https://www.premiumtimesng.com/news/top-news/502751-fishermen-say-exxonmobil-yet-to-pay-compensation-years-after-oil-spills.html?tztc=1>> [Retrieved on 14 April 2023].

The article observes that as long as environmental protection strategy in Nigeria remains in the realm of economic solution, host communities and the Nigerian environment in general may, for a very long time, remain degraded and unsustainable.¹³² Though, some developed countries have used economic incentives¹³³ and other market-based strategies as the key to effective environmental protection as against punitive laws otherwise known as command and control approach,¹³⁴ both strategies are not effective in developing world. Many European countries implement economic instruments such as taxes on fertilizer, gasoline, and other polluting inputs, all to prevent environmental damage in the long term.¹³⁵ The situation is different in Nigeria largely because the entire economy is heavily depended on the oil and gas industry. The right to clean environment is more immediate to the host communities than the Nigerian government,¹³⁶ yet most host communities are willing to allow paltry economic returns prevail over their rights to clean environment as a result of distrust in the federal government and the MNOCs. The government has politicised community needs. There is also the wide allegation of corruption among government officials in the handling of fund meant for development of oil producing communities.¹³⁷ Politicians have introduced membership of political party or party affiliation and

¹³² Adelegan, A. E. and Itesi, N. S., "Economic Instruments for Environmental Sustainability in the Nigerian Oil and Gas Sector", *Saudi J Econ Fin*, vol. 3, num. 12, 2019, p. 611 recommend economic instruments approach over the command and control approach to environmental protection. According to the authors the command and control approach is not an effective measure for environmental rights regime. The command and control theory is about setting environmental standards. Nigeria has set a number of standards without the political will to enforce them. The economic instruments on the other hand are "incentive based policies that encourage conservation practices or pollution reduction strategies." They are in the form of taxes, levies, fines, subsidies, charges, compensation and so on. Adelegan and Itesi, "Economic Instruments for Environmental Sustainability ...", cit. The Nigerian situation has equally shown that economic instrument has not been able to influence the decision-making behaviour of the multinational companies in favour of upholding sound environmental best practices, especially as some of the levies or fines are deliberately so low, thereby encouraging breaches.

¹³³ Until the introduction of the Deep Offshore and Inland Basin Production Sharing Contracts (Amendment) Act 2019, Nigeria exempted multinational oil companies in the upstream sector operating in deep offshore water depths of more than 1,000 metres from royalty payments to encourage activities in that area.

¹³⁴ Russell, C. and Bell, R. G., "Environmental Policy for Developing Countries", in *The Theory and Practice of Command and Control in Environmental Policy* (Routledge, 2018).

¹³⁵ Ibid. For example, Germany, France, and the Netherlands have effluent charge systems.

¹³⁶ The Federal and State governments continue to received huge profit for oil exploration without attending to the social welfare of the people. See Ebiri, K., "Oil-producing communities reek of poverty despite over N10t 13% derivation", (*The Guardian*, 17 November 2018) <<https://guardian.ng/saturday-magazine/cover/oil-producing-communities-reek-of-poverty-despite-over-n10t-13-derivation/>> [Retrieved on 20 April 2023].

¹³⁷ Umukoro, B. E. and Omozue, M. O., "Environmental Protection and the Role of National Policy and Guidelines in Nigeria", *Baltic Journal of Law & Politics*, vol. 15, num. 1, 2022, p. 2023.

loyalty into the issue of host community entitlements. This now defines how the government responds to the needs of host communities most times.¹³⁸

1. The Right to Clean Environment

What then is the right to clean environment? The right to clean environment is also referred to as environmental right.¹³⁹ The right to clean, healthy and sustainable environment was recently proclaimed by the United Nations General Assembly as a universal human right.¹⁴⁰ This is the right that gives human beings a primary right to a sustainable environment.¹⁴¹ It is the “right of individuals and peoples to an ecologically sound environment and sustainable management of natural resources conducive to sustainable development.”¹⁴² Part of the challenges of the right to clean environment at international law is as to the meaning of the right. The right to clean environment has been a subject of contextual debate especially as to its precise meaning.¹⁴³ However, it is generally understood that the right relates to the relationship which exists between the environment and human beings.¹⁴⁴ The right to clean environment or environmental right has been described in various forms including the description

¹³⁸ Ikuomola, A. D. “Initiatives of Oil Producing Communities and the Dynamics of Conflict and Peace Building in the Niger Delta”, *Journal of Conflictology*, vol.4, num. 1, 2013, p. 41.

¹³⁹ Umukoro and Ituru, “Conceptual Challenges to the Recognition and Enforcement of the Right ...”, cit., p. 1-28.

¹⁴⁰ United Nations General Assembly, The Human Right to a Clean, Healthy and Sustainable Environment, A/RES/76/300 adopted 28 July 2022. <<https://undocs.org/A/RES/76/300>> [Retrieved on 23 September 2022].

¹⁴¹ Otubu, A., “Environment and Human Rights: An Overview of Current Trends in Nigeria”. *The Nigerian Journal of Public Law*, vol. 2, 2013, p. 211.

¹⁴² Razzaque, J., “Human Rights and the Environment: Developments at the National Level South Asia and Africa’ (2002) Joint UNEP-OHCHR Expert Seminar on Human Rights and the Environment p. 14-16 January 2002 Geneva, <https://www.researchgate.net/profile/Jona-Razzaque/publication/255967177_Human_Rights_and_the_Environment_The_National_Experience_InSouth_Asia_an_Africa/links/5771017808ae842225abfdb9/Human-Rights-and-the-Environment-The-National-Experience-InSouth-Asia-and-Africa.pdf> [Retrieved on 15 August 2022].

¹⁴³ Umukoro and Ituru, “Conceptual Challenges to the Recognition and Enforcement of the Right...”, cit., p. 1-28

¹⁴⁴ Ibid.

as a right to healthy environment,¹⁴⁵ the right to decent environment¹⁴⁶ and the right to sustainable environment.¹⁴⁷

Under the African Charter on Human and Peoples' Rights¹⁴⁸ (African Charter), the right is referred to as the right to satisfactory environment.¹⁴⁹ This was interpreted by the African Commission in *SERAC v Federal Republic of Nigeria*¹⁵⁰ as imposing "clear obligations upon a government... to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources."¹⁵¹ The right contemplates that while a State is free to exercise its right to harness its natural resources and advance its economy, it must exercise care and adopt reasonable measures to protect its citizens and lands from environmental harm.¹⁵²

The import of this right was more recently demonstrated by the African Court in the case of *Ligue Ivoirienne des Droits de L'homme [LIDHO] & Ors v Republic of Cote d'Ivoire*.¹⁵³ In this case, the applicant's complaint was predicated, among others, on the violation of the right to satisfactory environment. This was as a result of the dumping of toxic waste on the 19 August 2006 in Abidjan and its

¹⁴⁵ See Hervey, G., 'The Right to a Healthy Environment in West Africa: How a Progressive Ruling Should be Expanded upon and Implemented', *International Law & Politics*, vol. 55, num. 51, 2023, p. 51-53. <<https://www.nyujilp.org/wp-content/uploads/2023/04/Hervey.pdf>> [Retrieved on 4 December 2023].

¹⁴⁶ Robert, E. F., "The Right to Decent Environment: A Premature Construct" *Environmental Policy & Law*, 1975/76, p.185.

¹⁴⁷ United Nations General Assembly, Resolution (UNGA) A/76/L.75 (2022).

¹⁴⁸ See article 24 of the *African Charter on Human and Peoples' Rights ("Banjul Charter")*, 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982). <<https://www.refworld.org/docid/3ae6b3630.html>> [Retrieved on 15 November 2023].

¹⁴⁹ Some scholars have complained that the right as it is phrased is vague and imprecise. See Morne' von der Linde, "Considering the interpretation and implementation of article 24 of the African Charter on Human and Peoples' Rights in light of the SERAC communication", *AHRLJ*, vol. 3, 2003, p. 173-176; and Amechi, E. P. "Enhancing Environmental Protection and Socio-Economic Development in Africa: A Fresh Look at the Right to a General Satisfactory Environment under the African Charter on Human and Peoples' Rights", *Law, Environment and Development Journal* vol. 5, num. 1, 2009, p. 63-68. <<http://www.lead-journal.org/content/09058.pdf>> [Retrieved on 4 December 2023].

¹⁵⁰ *Social and Economic Rights Action Centre (SERAC) and another v. Nigeria* (2001) *AHRLR* 60 (ACHPR 2001), §§ 52-53.

¹⁵¹ Ebeku, K.S.A., "The Right to a Satisfactory Environment and the African Commission", *AHRLJ* vol. 3, 2020, p. 149-166.

¹⁵² Derso, S. A., "The Jurisprudence of the African Commission on Human and Peoples' Rights", *AHRLJ*, vol. 6, 2006, 371. See generally Oder, J., "The African Court on Human and Peoples' Rights' Order in Respect of the Situation in Libya: A Watershed in the Regional Protection of Human Rights?", *AHRLJ* vol. 11, 2011, P. 495-510.

¹⁵³ Application 041/2016 [2023] *AfCHPR* 21 (5 September 2023) <<https://africanlii.org/akn/aa-au/judgment/afchpr/2023/21/eng@2023-09-05>> [Retrieved on 15 November 2023].

surroundings when a ship hired by TRAFIGURA Limited, carrying 528 cubic metres of toxic waste was docked at the port of Abidjan, Côte d'Ivoire. It was revealed that the sites where these wastes were dumped had no chemical facilities for waste treatment. The dumping resulted in a serious air pollution from the stench which spread throughout the district of Abidjan. As a result of this, thousands of people visited health centres with complaints of vomiting, nausea, headaches, nose-bleeding and cases of rashes. The Applicant stated that 17 persons died from inhalation of the toxic gas while hundreds of thousands of others suffered diverse health challenges. The Ivorian authorities prosecuted some persons who were found culpable of the offence of dumping poisonous waste. The government also entered into a memorandum of understanding with the company for the payment of compensation to victims, however, a large number of victims were not considered and never received compensations. In 2016, the applicant, a Non-Governmental Organisation (NGO), on behalf of the victims, filed this application for the enforcement of the victims' human rights at the African Court.

The allegation of the applicant at the African Court is the violation of the right of the victims to a general satisfactory environment favourable to their development under Article 24 of the African Charter, the right to information and the right to effective remedy and to seek redress for harm under articles 9 (1) and 7(1) of the African Charter respectively. The African Court in holding the Ivorian Government accountable for violation of the right of the victims to satisfactory environment placed reliance on the General Comment No. 14 of the United Nations Committee on Economic, Social and Cultural Rights¹⁵⁴ which describes the right to a healthy environment as including, *inter alia*, the prevention and reduction of the population's exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health. The African Court in *LIDHO v Republic of Cote d'Ivoire*¹⁵⁵ observed that state's obligations under international law included the duty to respect, protect, promote and implement the rights enshrined in

¹⁵⁴ United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)*, 11 August 2000, E/C.12/2000/4. <<https://www.refworld.org/docid/4538838d0.html>> [Retrieved on 16 November 2023].

¹⁵⁵ *LIDHO & Ors v Republic of Cote d'Ivoire...*, cit p. 46.

instruments to which it is a party and that this applied to obligations towards the right to a satisfactory environment under the African Charter. The Court found that the Ivorian Government had a “duty to act not only to prevent the dumping of the waste without putting in place the necessary conditions, but also to ensure full and effective decontamination once the waste had been dumped.”¹⁵⁶

The right to clean environment is the mother of a number of other rights which include access to clean water and adequate sanitation, healthy and sustainable food, safe climate, healthy biodiversity and ecosystems.¹⁵⁷ According to Boyd, “clean air is one of the basic elements of the right to live in a clean, healthy and sustainable environment.”¹⁵⁸ The relationship between the right to clean environment and a number of other human rights informed the basis for the recognition by the United Nations that everyone has a right to live in a clean, healthy and sustainable environment and that such right is a universal human right.¹⁵⁹ The Human Rights Council in 2021¹⁶⁰ and the UN General Assembly in 2022¹⁶¹ also affirmed that the right to clean environment is a universal human right which is closely related to the enjoyment of other human rights.

The right to clean environment at international law puts States under a duty, first of all, to prevent activities which are capable of causing harm to the environment and undermining the health of the people.¹⁶² It ranks beyond economic interest. It places the health and wellbeing of man above any economic advantage which

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

¹⁵⁸ United Nations Special Rapporteur, Report: Issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/HRC/40/55, 8 January 2019. <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/002/54/PDF/G1900254.pdf?OpenElement>> [Retrieved on 4 December 2023]. See also, United Nations Special Rapporteur on Human Rights and the Environment, Statement at the conclusion of country visit to Portugal, September 27, 2022, <<https://www.ohchr.org/sites/default/files/documents/issues/fassociation/2022-09-26/20220927-stm-sr-environment-en.docx>> [Retrieved on 4 December 2023].

¹⁵⁹ United Nations General Assembly Resolution, A/RES/76/300..., cit.

¹⁶⁰ Human Rights Council, The Human Right to a Clean, Healthy and Sustainable Environment, A/HRC/RES/48/13, 18 October 2021. <<https://undocs.org/A/HRC/RES/48/13>> [Retrieved on 6 January 2024].

¹⁶¹ United Nations General Assembly Resolution, A/RES/76/300..., cit.

¹⁶² Examples are article 38, League of Arab States, *Arab Charter on Human Rights*, 2004, <<https://www.refworld.org/docid/60a28b534.html>> [Retrieved on 19 November 2023], article 11 of the *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights* (“Protocol of San Salvador”), 16 November 1999, A-52, <<https://www.refworld.org/docid/3ae6b3b90.html>> [Retrieved on 19 November 2023] and article 24 of the African Charter.

the state or MNOCs may want to offer in lieu of a clean environment. Other human rights like the right to life, right to the dignity of the human person, right to health, etc., cannot be fully realised in the absence of the right to clean environment. Thus, prioritising the right to clean environment includes stopping the activities of polluters in the interest of the right of those who live in the environment.

In South Africa, for instance, environmental rights are recognised in the Constitution as an enforceable right. A South African court has interpreted section 24 of the South African Constitution to the effect that environmental rights should be accorded recognition and respect even in administrative processes.¹⁶³ A South African court has equally upheld a request to seek an order requiring a saw mill to cease emission of noxious gases.¹⁶⁴ In granting the reliefs, the court held that the defendant's unlicensed emission illegally interfered with the neighbours' right to a healthy environment.¹⁶⁵ The major benefit of environmental right is that its enforcement can lead to the prevention or stoppage of the breach of the right. The right enables the holders to seek protection against activities of state and non-state actors which are capable of causing injury to their health and threat to their lives as against the claim for mere compensations which if awarded, most times, are inadequate. The express recognition of the right to clean environment in a constitution or the purposeful interpretation by the courts encourages the direct enforcement of environmental rights and helps in prioritising human life above the payment of compensations to victims of environmental degradation. It also enables the holders of the right to hold the government and the drivers of environmental pollution accountable through the

¹⁶³ See the South African case of *The Director: Mineral Development, Gauteng Region and Sasol Mining (Pty) Ltd v Save the Vaal Environment and Ors* (1999) 2 SA 709 (SCA) cited in the Report on Human Rights and the Environment: Regional Consultation on the Relationship between Human Rights Obligations and Environmental Protection, with a Focus on Constitutional Environmental Rights 23-24 January 2014, Johannesburg, South Africa, <<http://ieenvironment.org/wp-content/uploads/2014/11/Johannesburg-consultation-report-final1.pdf>> [Retrieved on 2 April 2023].

¹⁶⁴ See *Minister of Health and Welfare v. Woodcarb (Pty) Ltd*. 3 S.A. 155 (N) (1996) cited in Environmental Law Institute Research Report: Constitutional Environmental Law: Giving Force to Fundamental Principles in Africa, May 2000, Washington, D.C at 16. <https://pdf.usaid.gov/pdf_docs/Pnac615.pdf> [Retrieved on 3 June 2023].

¹⁶⁵ Meanwhile in Nigeria, some courts are of the view that to grant such an order would amount to asking the defendant multinational oil prospecting company to stop its operations which is the main source of the country's revenue. See the Nigerian case of *Allar Irou v. Shell B.P Development Company (Nigeria) Limited* (Unreported Suit No. W/89/71, Warri High Court 26/11/73).

strict enforcement of environmental laws which protect against environmental harms.¹⁶⁶ Though the recognition by the UN General Assembly of the right to clean environment as a universal human right is a great development, it is merely an appeal to national governments to be guided by the Resolution. In a country like Nigeria where there is no explicit environmental right, the Resolution is not a binding legal instrument until enacted as domestic law.¹⁶⁷ This is one major reason why environmental protection laws in Nigeria are not as vibrant as those in South Africa and some other countries where the right is self-executing.

Section of the Constitution provides for State's responsibility towards the environment. This section falls under Chapter II of the Nigerian Constitution.¹⁶⁸ The section provides that the State "shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria." This section would have been a potent instrument in the hands of host communities for calling on the government to account for activities which violate their right to clean environment. Unfortunately, this provision falls within the bracket of Fundamental Objectives and Directive Principles of State Policy (FODPSP).¹⁶⁹ By section 6(6)(c) of the Constitution FODPSP are non-justiciable. Thus, the literal interpretation of FODPSP under the Nigerian Constitution is that Chapter II of the Constitution including the right to clean environment is not enforceable in Nigeria.¹⁷⁰ In *Okogie v Attorney General of Lagos State*,¹⁷¹ the Supreme Court of Nigeria relying on the strict provisions of section 6 (6) (c) of the Constitution held that the provisions of Chapter II of the Constitution were not enforceable on the

¹⁶⁶ The only clear case where a Nigerian court was bold enough to make a similar pronouncement was the case of *Gbemre & Ors v SPDC* (Unreported) Suit No. FHC/CS/B/153/2005 (14 November 2005).

¹⁶⁷ Section 12 of the Constitution. See also *Abacha v Fawehinmi* (2000) 6 NWLR (Pt. 660) p. 228 and *Okeke, C. E, and Anushiem, M. I. "Implementation of Treaties in Nigeria: Issues, Challenges and the Way Forward"*, *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, vol. 9, num 2, 2010, p. 216-229. <<https://www.ajol.info/index.php/naujili/article/view/168850/158317>> [Retrieved on 4 December 2023]

¹⁶⁸ See section 20 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) (hereafter the Constitution).

¹⁶⁹ Sections 13-24 of the Constitution.

¹⁷⁰ See section 6 6 (c) of the Constitution. See also *Mmadu, R. A., "The Search for Environmental Justice in the Niger Delta and Corporate Accountability for Tort: How Kiobel Added Salt to Injury"*, *Afe Babalola University Journal of Sustainable Development Law and Policy*, vol. 1, num. 1, 2013, p. 79. See also *Ehighelua, I., Environmental Protection Law* (New Pages Law Publ. Co., Effurun: 2007), p. 26.

¹⁷¹ [1981] 2NCLR 350.

basis that Directive Principles have to conform to and run subsidiary to the fundamental rights under Chapter IV of the Constitution.¹⁷² In other words, directive principles are merely aspirational and not binding. They merely provide a guide to the government in power.¹⁷³ The decision in *Okogie v Attorney - General of Lagos State* has been criticised as promoting one category of human rights over the other. To this extent, the usefulness of directive principles of state policy in a constitution has been questioned since they are not capable of being enforced.¹⁷⁴ It has been argued that in Nigeria, they are rather being used for perpetuating corruption.¹⁷⁵

The non-justiciability clause in the Constitution is a direct affront on the right of host communities to clean environment in Nigeria. The fact that the duty on the State to protect and improve on the environment is not a binding obligation has been identified as a major drawback in the effective implementation of environmental laws in Nigeria.¹⁷⁶ This has affected the texture of environmental litigation. Thus, there have been agitations for the courts to braze up and breathe into the existing human rights provisions in the Constitution, the right to clean environment using the Indian judiciary as a yardstick.¹⁷⁷ The Indian Supreme Court in *Minerva Mills Ltd. v The Union of Indian*¹⁷⁸ blazed the trail by holding that the provisions of human rights and FODPSP in the Indian Constitution constituted “the core of commitment to social revolution.” The Court described both categories of rights as twin formula holding that making one superior to the other

¹⁷² See also *Morebishe v Lagos State House of Assembly* (2000)3 WRN 134; *Ukaegbu v Attorney General of Imo State* (1984) 1 SCNLR 212 and *Attorney-General of Ondo State v Attorney-General of the Federation* (2002) 9 NWLR (Pt.772) 222.

¹⁷³ Okeke, G. N., “Fundamental Objectives and Directives Principles of State Policy: A Viable Anti-Corruption Tool in Nigeria”, *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, vol. 2, 2011, p. 177-184.

¹⁷⁴ Umukoro, B. E., “Revisiting the Non-justiciability Issue in Environmental Rights Dialogue in Nigeria”, *Environmental Law Review*, vol. 25, num. 2, 2023, p.113.

¹⁷⁵ Odike, E., Faga, H. and Nwakpu, I. “Incorporation of Fundamental Objectives and Directive Principles of State Policy in the Constitutions of Emerging Democracies: A Beneficial Wrongdoing or a Democratic Demagoguery?”, *Beijing Law Review*, vol. 7, num. 4, 2016, p. 267-277.

¹⁷⁶ Akinleye, O. T., “Realization of Rights of Host Community under Nigerian Mineral And Mining Act 2007 to Foster Sustainable Community Development”, *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, vol. 14, num. 1, 2023, p.12.

¹⁷⁷ Atsegbua, L., “A Critical Appraisal of Environmental Rights under the Nigerian Constitution”, *University of Benin Journal of Public Law*, vol. 2, num. 1, 2004, p. 43 and Ako, R., Stewart, N and Ekhatior, E. O. “Overcoming the (Non) Justiciable Conundrum: The Doctrine of Harmonious Construction and the Interpretation of the Right to a Healthy Environment in Nigeria’ in Diver A and Miller J (eds) *Justiciability of Human Rights Law in Domestic Jurisdiction*, Springers Int. Publishing, 2016), p. 130.

¹⁷⁸ 1980 AIR 1789, 208.

would amount to disturbing “the harmony of the Constitution.”¹⁷⁹ This obviously is a case of judicial activism as the Indian Constitution, like the Nigerian Constitution, does not have enforceable or explicit environmental right provisions.

This revolution also seems to have started in Nigeria. In *Gbemre v Shell Petroleum Development Company Ltd.*,¹⁸⁰ the Iwhrekan Community in Delta State of Nigeria, a host community to Shell SPDC, sued the company under the Fundamental Rights (Enforcement Procedure) Rules claiming that the activities of Shell SPDC and the Nigerian National Petroleum Corporation (NNPC) in continuing to flare gas in the course of their oil exploration and production activities in the host community amounted to a breach of their right to a healthy environment and that the activities constituted threat to their lives and the dignity of the human person guaranteed under the Constitution and reinforced by Article 24 of the African Charter. The claims of the applicants were granted and SPDC was ordered to develop a plan to stop gas flaring in Nigeria. Though, the Federal High Court (FHC) recognised that the right to clean environment is a fundamental right and can be enforced as such, the decision is not a strong authority yet for contending that there is right to clean environment in Nigeria. The decision, apart from being a decision of a FHC, is a lone decision in the jurisprudence of environmental rights in Nigeria as there is no explicit constitutional environmental right in Nigeria. Thus, in spite of the subsistence of the judgment, Shell SPDC and other MNOCs are still flaring gas unabated in Nigeria.¹⁸¹ Shell SPDC decided to appeal against the judgment only in 2017 after 22 years of acting in disobedience to the order of the FHC. This long-awaited appeal is still pending at the Court of Appeal.¹⁸² It is hoped that whatever the decision of the Court of Appeal may be, the Supreme Court will have the opportunity to make the final pronouncement on the issue of justiciability of environmental rights in Nigeria.

¹⁷⁹ Ibid.

¹⁸⁰ Unreported Suit No. FHC/B/CS/53/2005 delivered on the 14th of November 2005.

¹⁸¹ May, James and Dayo, Tiwajopelo, “Dignity and Environmental Justice in Nigeria: The Case of *Gbemre v. Shell*”, *Widener Law Review*, vol. 25, 2019, p. 272. <<https://ssrn.com/abstract=3555431>> [Retrieved on 4 March 2024].

¹⁸² Emmanuel Addeh, ‘Shell Challenges Judgement Ordering Halt to Gas Flaring in N’Delta Community’ (Thisday, 26 December 2021) <<https://www.thisdaylive.com/index.php/2021/12/29/shell-challenges-judgement-ordering-halt-to-gas-flaring-in-ndelta-community>> [Retrieved on 16 November 2023].

While the appeal in Shell SPDC's case was pending, the Supreme Court of Nigeria made a historic decision in another case thereby opening the door of public interest litigation in environmental protection cases in Nigeria. This is the case of *Centre for Oil Pollution Watch v Nigeria NNPC*.¹⁸³ In this case, it was held that the requirements of *locus standi* was unnecessary in environmental litigation and that it is in liberalising the rule of *locus standi* the courts can effectively monitor "the corridors of powers and prevent violations of law."¹⁸⁴ This decision was well celebrated by scholars as giving some hope to the advancement of environmental justice in Nigeria.¹⁸⁵ This decision, no doubt, presents some advantages to host communities in their struggle for the recognition of their right to clean environment.

It is also hoped that as the state of the law on environmental litigation in Nigeria has started shifting in favour of host communities, victims of environmental degradation may one day be able to seek a human right- based claim against the government or MNOCs whose activities are the root causes of environmental abuses.¹⁸⁶ This may either come through constitutional amendment recognising the right to clean environment as a fundamental right in Nigeria¹⁸⁷ or by the courts reading such context into the existing fundamental rights' provisions in the Constitution.¹⁸⁸

VI. RESPONSIBILITIES OF HOST COMMUNITIES UNDER THE LAW

Host communities are not all about entitlements, they also have responsibilities under Nigerian laws. The first responsibility of a host community is to provide a peaceful and harmonious environment for the oil prospecting and mining companies to operate. Most companies prospecting for oil have an internal

¹⁸³ (2019) 5 NWLR (Pt 1666) 518. See Mbadugha, J. N. "Environmental Public Interest Litigation in Nigeria: A Case Comment on *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation*", *Unizik Journal of Public and Private Law*, vol. 11, 2021, p. 53-66.

¹⁸⁴ *Ibid.*

¹⁸⁵ Amechi, E. P. and Ihua-Maduenyi, A. "Greening the Judiciary" in Nigeria: -*Centre for Oil Pollution Watch v. NNPC in Perspectives*", *African Journal of Law and Justice System*, vol. 1, num. 2, 2022, p. 42; and Mbadugha, "Environmental Public Interest Litigation in Nigeria...", *cit.*

¹⁸⁶ Oluduro, O., "Oil Exploitation and Human Rights Violations in Nigeria's Oil Producing Communities", *Afrika Focus*, vol. 25, num. 2, 2012, p.161.

¹⁸⁷ Anaebo, K. A. and Ekhatior, E. O. "Realising Substantive Right to Healthy Environment in Nigeria: A Case for Constitutionalisation," *Environmental Law Review*, vol. 17, num. 2, 2015, p. 95.

¹⁸⁸ Umukoro, "Revisiting the Non-justiciability Issue...", *cit.*

agreement, memorandum of understanding, community development programme or corporate social responsibility scheme, etc., by which responsibilities of both the companies and the host communities are defined. Section 40 (2) of the NUPHCDR recognises the existence of these agreements, programmes or schemes. This is the basis for selecting beneficiaries to the HCDTF by the settlors in the first place. Besides, section 257(2) of the PIA saddles host communities with the responsibility to protect oil installations located in their areas or risk being liable to forfeit their entitlements under the PIA if they fail in this duty.¹⁸⁹ Thus, in the event of vandalism, sabotage or other civil unrest causing damage to installations or disruption of oil production within a community, the community stands to lose its entitlement under the NUPHCDR and PIA except the damage or disruption is as a result of technical fault.¹⁹⁰ Though, the section does not directly place this burden on the host communities, the consequences of disruption to oil facilities through third party interference is enough insinuation that the obligation to protect oil installations against third party interference is that of the host communities. It is immaterial that such act was caused by persons alien to the host community. The law does not also consider whether the sabotage is not a community-based crime or caused by a gang of criminals who are perpetuating their own criminal interest.¹⁹¹ It is therefore akin to a strict liability as well as vicarious liability offence. It is enough that there is a sabotage, who committed the offence is not important under the PIA. In the same manner, by section 11 (5) (c) of the Oil Pipelines Act,¹⁹² compensation for oil leakages is not equally payable to persons who by their default or malicious acts cause any breakage of, or leakage from pipelines.

These laws have rather encouraged the oil prospecting and mining companies to abdicate their responsibilities in remediating impacted oil communities on the pretence that the oil spills were caused by the host community members. Oil spills

¹⁸⁹ Umukoro, "Looking Beyond the Constitution...", cit. p.154.

¹⁹⁰ It was contended though unsuccessfully in Hon. George U. Timinimi & Ors. v Attorney-General of the Federation & Ors. (Unreported Suit No. FHC/ABJ/CS/9/2022) (delivered 27 June 2022) that the said provisions of section 257(2) and (3) of PIA amounted to denial of right of access to court. Umukoro, "Looking Beyond the Constitution ..." cit.) p. 155 for a brief review of this case.

¹⁹¹ Ibaba.B. S. and Olumati, J, C. "Sabotage Induced Oil Spillages and Human Rights Violation in Nigeria's Niger Delta", Journal of Sustainable Development in Africa, vol. 11, num.4, 2009, p. 53.

¹⁹² Cap. O7 Laws of the Federation of Nigeria 2004.

and pipeline leakages are often followed by accusations and counter-accusations levied by oil companies and host communities in Nigeria. The oil companies are quick to accuse host communities of sabotage and as a ground for refusing to remediate the spills even when the communities are adversely affected and suffering extensively.¹⁹³ It is suggested that oil producing companies should insist more on collaboration with host communities for the protection of oil installations, for example, by providing incentives, training and materials for the local community members for pipeline monitoring than the reliance on fault liability rule.

Aside from creating a peaceful working environment, host communities are expected to meaningfully engage oil companies in line with the law in the event of disagreement. Sections 37 and 39 of the NUPHCDR provide for grievance mechanism and conflict resolution procedure. Under section 39, where there is a disagreement between two or more host communities with respect to the trust or the fund, the aggrieved host community is under obligation to give a dispute notice to the settlor and the Board of Trustee of the HCDTF and follow the procedure for mediation set out under the said section. The era of protest and blockade of access road to oil facilities by host communities over failure to respect conditions and term of memorandum of understanding as it is commonly witnessed especially in the Niger Delta area of Nigeria ought to be over under this new petroleum industry legal regime.

VII. CONCLUSION

Host communities in the petroleum industry ought to be major stakeholders in the decision-making process relating to the sustainability of their environment. The current oil and gas legal regime in Nigeria acknowledges the importance of the socio-economic wellbeing of the communities which play host to oil producing companies. This recognition has already awakened the consciousness of members of oil producing communities in the Niger Delta area. Host Communities are already tactically demanding for a meaningful participatory role in the management and distribution of their entitlements under the PIA on the basis of

¹⁹³ Effiong, J., "Oil and Gas Industry in Nigeria: The Paradox of the Black Gold", in Taylor, D.E. (ed), *Environment and Social Justice: An International Perspective (Research in Social Problems and Public Policy*, vol. 18, Emerald Group Publishing Limited: Bingley, 2010, p. 331.

the effects of the activities of oil producing companies on their environment. This article reiterates that those saddled with the responsibility to appoint members into the administrative organs of the host community development should be allowed to do so freely without the influence of political leaders. The PIA and the NUPHCDR proposes direct social and economic benefits to host communities, however, the right to clean environment is still under the constitutional constraints of non-justiciability. In the light of the recognition of the right to clean, healthy and sustainable environment as a universal human right at the global level, it is urged upon the Nigerian judiciary to follow the jurisprudence in other jurisdictions like India. The legislatures are also urged to follow the path of South Africa by constitutionalising environmental rights.

To this end, it is suggested that implementation of environmental laws and policies in Nigeria should start shifting priority from the momentary satisfaction offered via economic benefits by way of compensations, damages, fines, etc., to a human right's-based approach which should recognise environmental rights as enforceable rights and compel MNOCs to observe these rights or lose their licenses in the interest of the health and safety of the people. The right which only entitles the communities to compensations and social benefits upon damage to the environment is an affront to the right to clean environment which cannot be quantified in terms of economic and social benefits alone. The Federal Government of Nigeria should discourage oil prospecting companies from taking advantage of the poor and vulnerable state of their hosts, particularly, by preventing the exploration companies from continuing to dangle paltry sum of money as compensation and satisfaction for the havoc done to the host environment. The current host community development regime frowns at this style of CSR. It is expected that the requirement of the compulsory establishment of HCDTF and its effective implementation will restore the dignity and pride of host communities as people who are entitled to the benefits, and not only the burden, of being host communities. The government should hold settlers responsible to their obligations under the law to contribute to the HCDTF. Host communities should, on the other hand, reject any form of commercialisation of their environmental rights, engage settlers within the confines of the law to

perform their obligations and hold the government accountable for failure to effectively implement the laws especially as they affect the communities.

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