

COMMUNITY TRUST, THE CONCEPT OF COMMUNITY SUSTAINABILITY UNDER THE PETROLEUM INDUSTRY ACT 2021: A CONCEPTUAL FRAMEWORK

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Abstract

The 2021 Nigeria's Petroleum Industry Act (PIA) established a new structure for community benefaction in the petroleum industry. The chapter three of the PIA contains one of the structural introductions which created a uniform mechanism for socio-economic investments in host communities as well as espoused the idea of fostering sustainable prosperity in communities. The idea of fostering sustainable prosperity and the imposition of a uniform community benefit management system referred to as the 'Host Community Development Trust' (HCDT) are potentially valuable measures that can transform the host communities if strategically engaged. The Act mandates every holder of an upstream petroleum license to incorporate a Host Community Development Trust for their host community within twelve months. This paper examines the concept of fostering sustainable prosperity in the host communities within the context of upstream petroleum development in Nigeria. It concludes that the idea of fostering sustainable prosperity in host communities is achievable if the paradigm for environmental accountability is more rigorously enforced, the concept of community sustainability is mainstreamed into socio-economic investment decisions, and deliberate steps are taken to leverage other development opportunities to deepen and expand the scope of benefaction within spatial areas.

Introduction

In August 2021, the Nigerian President, Muhammadu Buhari, signed the Nigerian Petroleum Industry Act (PIA) (The National Assembly, 2021). The said presidential assent marked the end of a protracted attempt to re-engineer the petroleum industry by introducing modern, relevant, and forward-looking legislations. The Act abolished the old order and created a new governance framework, institutions, and innovative approaches to managing the complex petroleum industry challenges, laying the foundation for a petroleum industry that will be able to meet the present and future challenges. Chapter three of the Act regulates host community development-related matters and contains some innovations or new approaches to how the industry engages with its host communities. It established the Host Community Development Trust and introduced the concept of sustainable development as the philosophical or conceptual framework to guide the implementation of the objectives stipulated in section 234, particularly regarding petroleum industry-induced social investments in host communities in Nigeria.

Following the enactment of the PIA, HCDTs will be the sole host community development vehicle. It will be responsible for articulating a sustainable development trajectory for the relevant communities, identifying, and implementing suitable community projects. In discharging its responsibilities, the HCDT will adopt the concept, idea, or notion of fostering sustainable prosperity as the guiding framework for community development. In other words, by this provision contained in sections 234 and 235, the notion of 'fostering sustainable prosperity' becomes the ideal host community development paradigm or the governing community development philosophy (The National Assembly, 2021). Thus, every HCDT must ensure that the conception of development, selection of projects, actual development activities, and implementation must be made to foster sustainable prosperity.

What then is the meaning of 'fostering sustainable prosperity?' In other words, what does it mean to foster sustainable prosperity in petroleum host communities in Nigeria? The PIA did not define the phrase. However, it suffices to state that an understanding of and the

contextualization of sustainable development will be critical to the activities of the HCDDT. Thus, this paper examines the concept of fostering sustainable prosperity, sustainable development, or community sustainability within the context of the mandate of the HCDDTs.

Community Sustainability in Upstream Petroleum Development

Before the commencement of this Act, there was no overarching industry-wide policy expectation in this area, particularly relating to the nature, scope, extent, or level of engagement between the host communities and project proponents. According to Dike (2010), the self-interest of the individual proponent and the exigency of the local environment determined or guided the relationship between oil and gas companies and their host communities. In the absence of a coherent and consistent normative framework for community development, oil and gas companies determined the projects to be executed and the methodology for their execution. This approach created widespread mistrust, allegations of breaches, resentment, rampant conflicts, destructions, militancy, and environmental degradation (Dike, 2010).

Although the National Petroleum Investment Management Services (NAPIMS) gave approvals to annual community development plans, oil and gas companies determined the direction in terms of the scope, nature of engagement, and methodology for engaging with the host communities, having regard to the unique circumstances of the operating environment and expediency (SPDCN, 2022). In other words, every proponent was free to design and implement their Corporate Social Responsibility (CSR) objectives based on the individual proponent's policy, perspective, and methodology (SPDCN, 2021). This voluntary approach witnessed the use of non-binding community agreements, otherwise known as the Memorandum of Understanding (MoU) (Egbon, Idemudia, & Amaeshi, 2018). The agreements contained promises of projects or amenities that each proponent would deliver to their host community as a voluntary gesture of goodwill.

The MoU approach was largely unsuccessful for many reasons. The reasons include the lack of or limited community input in the decision-making process regarding project selections, allegations of non-compliance or implementation of expected projects, and conflicts (Dike, 2010). As a result, in 2006, Shell and Chevron transitioned from the use of MoU to the Global Memorandum of Understanding (GMOU) to facilitate better outcomes, improve their relations with their host communities, and engender peace (SPDCN, 2021). Also, the GMOUs were non-binding agreements. The GMOUs had a better governance structure, increased community participation in the decision-making process, and had relevant support systems for project selection, execution, monitoring, and evaluation. Despite the modest achievements of the GMOU process, the CSR-based relationship process was unable to achieve the stakeholders' expectations. As a result, the proponents could not secure the much-needed social license to operate, leading to regular conflicts and disruptive actions by communities that continue to undermine upstream and midstream petroleum operations in Nigeria (Dike, 2010).

Conversely, the communities seemed largely unsatisfied with the process. Many communities had complaints regarding alleged poor or non-implementation of agreements and the inadequate community participation in decision-making essential for their development (Amabipi, 2016). More so, the now abolished process did not appreciate the significance of community engagement (a situation not designated under the PIA) as essential and the minimum requirement for a meaningful and productive community-industry relationship in the extractive industry.

Because of the gaps inherent in the CSR-based approaches, the regime established under Chapter Three of the PIA has been received with reasonable optimism that the Nigerian petroleum industry may be on the path to community sustainability and a conflict-free operating environment. If the stakeholder's expectation that the PIA framework will establish a more stable relationship between leaseholders and host communities is achieved, the right atmosphere would have been created for community sustainability.

Host communities must quickly realize the need and be adequately supported to seize the opportunity presented by the new framework for their social and economic transition to a more sustainable future. That is to say, communities should be supported to leverage the HCDDT process to prepare themselves for sustainable livelihood now that the world is moving away from fossil fuels toward cleaner energy sources. As a result, the Nigerian Upstream Regulatory Commission must ensure that issues such as the responsibility for community engagement, the procedure for structured engagement, expeditious and context-relevant dispute resolution mechanism are provided for in its regulations.

Framing the Concept of Sustainable Prosperity

Oil and gas resources are inherently finite. They are depleted through the process of resource extraction. Because of this, the concept of sustainable development cannot be validly discussed concerning petroleum. The sustainability here relates to the need to make the process of natural resource development less harmful to the ecosystem and other support systems upon which the livelihood of local communities depends. Thus, while finite petroleum resources cannot be mined sustainably, externalities or the social, economic, and environmental harm associated with its development need to be stringently regulated and managed.

In other words, there is an urgent need to ensure that the process of petroleum extraction is prudently executed so that the externalities associated with its development do not impose an onerous social, economic or environmental burden on the current and future generations beyond that which is necessary. This implies that any host community sustainability programme that relies solely or principally on the execution of projects in the communities or the promotion of scholarships would be limited, inchoate, and incapable of fostering the affected communities' long-term future. So, fostering sustainable prosperity in line with the intentions of the PIA would require the prevention or management of all avoidable externalities of petroleum operation while ensuring that community benefaction programmes are planned and implemented to achieve community sustainability (Barry, 1997).

Meaning of Community Sustainability

Asheim (1994) defines 'sustainability' as the "requirement of our generation to manage the resource base such that the average quality of life that we ensure ourselves can potentially be shared by all future generations." Similarly, Bosselmann (2008) opined that 'sustainability' refers to "an idea that relates to the continuity of human societies and nature," while 'development' may be described as the progressive social and economic advancement in human activities that affects nature and the environment. These definitions equally contemplate a notion of distributive justice, trust, accountability, and prudence in the administration of nature's best resource base, by the present generation for their benefit and that of future generations (Asheim, 1994).

Construing the PIA's notion of fostering sustainable prosperity, it suggests that stakeholders should leverage both the petroleum industry accountability mechanisms and the community benefaction and management systems to facilitate or create stable social and economic foundations upon which the legitimate aspirations of future generations of these communities may be anchored. Therefore, there cannot be any valid claim to sustainability if the biophysical environment, being nature's best resource base, is sacrificed through avoidable and unmitigated environmental degradation. The idea of fostering sustainable prosperity draws from the principle of sustainable development as articulated in the famous Brundtland Commission of 1987. The Brundtland Commission defined sustainable development as the "development that meets the needs of the present without compromising the ability of future generations to meet their own needs" (Asheim, 1994).

From the preceding discussion, the concept of fostering sustainable prosperity requires that the petroleum industry stakeholders carefully and intentionally manage the process of resource extraction. First, the best oilfield practice should be consistently upheld throughout the various stages of their operations. Thus, the culture of imprudence or negligence epitomized by frequent incidences of oil pollution or gas flares has to end under the PIA. Community benefit schemes need to be implemented to create a net social, economic, and environmental edge and place the benefiting communities in a favourable or superior position at the end of a project's life cycle.

In other words, the PIA's idea of fostering sustainable prosperity demands every stakeholder to ensure that, individually and collectively, petroleum resource development is conducted with minimal adverse impacts on the natural environment and the stock of nature relied upon by the communities for sustenance and wellbeing. In particular, communities need to embrace this process and be prepared to explore and pursue constructive engagement with the other stakeholders to resolve disputes or disagreements. The goal is to ensure that petroleum extraction activities do not unnecessarily interfere with the right of the communities to leverage the bio-physical environment for social and economic sustenance at decommissioning or the end of a project's life cycle.

Furthermore, public or private sector social investment programmes should be structured to address current needs and facilitate a sustainable pathway for future generations. Conversely, having submitted to this new regime by establishing HCDT as required by law, oil and gas companies must enjoy the right to operate responsibly as envisaged by the Act. A combination of these measures will be essential to realising the laudable policy objective of promoting sustainable development in host communities (Dernbach, 1998). In addition, the HCDTs established by upstream oil and gas companies under section 235 of the PIA will play significant roles in fostering sustainable prosperity in the host communities.

Fostering Sustainable Prosperity: Way Forward

The PIA makes the HCDTs responsible for implementing the host community sustainability policy established in Chapter Three of the Act. HCDTs have been chosen as the community benefit management vehicle for fostering sustainable prosperity in host communities. Section 235 of the PIA stipulates that every settlor (upstream oil and gas companies) shall incorporate HCDT to benefit the host communities for which the settlor is responsible. Every settlor must pay annually an amount equal to 3 percent of its annual operating expenses of the preceding

financial year to the HCDD established by it. Each HCDD will apply 75 percent of the income received for infrastructure and other social and economic development projects, 20 percent will be invested for the benefit of future generations, while the remaining 5 percent will be utilized towards salaries and other administrative expenses.

Thus, to foster sustainable prosperity in host communities, industry regulators, settlers, and the host community must ensure process-level sustainability by eliminating, reducing, or mitigating the adverse impacts of resource development. Similarly, the administrators of the HCDDs have to be carefully recruited and trained to equip them to act as catalysts for sustainable community development as envisaged by the PIA.

Recommendations

To achieve the goal of fostering sustainable prosperity in host communities, the following needs to be prioritized:

- The government must enforce environmental regulations. The rigorous enforcement of the relevant environmental laws and regulations will be an essential component of fostering community sustainability. This is because erecting social and economic development projects alone cannot foster sustainable prosperity without aggressively reducing the unsustainable level of environmental pollution in some of these communities;
- The companies need to operate in a more environmentally responsible manner. This will reduce the level of avoidable damage done to the environment through human errors, operational accidents, and delayed responses to pollution incidences;
- Stakeholders should organize community development summits for information sharing, strategic engagement, and interactions on community-related issues relevant to the implementation of the PIA. Communities would require structured engagement concerning the demands of sustainable development and their responsibilities under the new framework;
- Clarification of the role of state governments in community sustainability. The PIA did not articulate any role for the state governments and how they could contribute to the policy of community sustainability; and
- Clarification of the stakeholder responsible for (post-PIA) community engagement. The Act did not allocate responsibility for community engagement. Should oil and gas companies continue to engage directly with their host communities, or will that role now devolve to the HCDDs? This needs to be clarified.

Conclusion

In summary, to foster sustainable prosperity in host communities through petroleum industry-induced socio-economic investment, the following must occur:

- (i) Resource extraction activities must, as much as possible, avoid, reduce or minimize the degradation of the vital support systems upon which the social, economic, and environmental wellbeing depend. As a result, resource development should occur without damaging or destroying the ecosystem.
- (ii) The benefaction process must be designed and implemented to cater to both the present and the future needs of the beneficiaries.

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