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### The Nigerian Petroleum Industry Act (PIA), 2021: Environmental and Host Communities Challenges and Way Forward in the Niger Delta Region, Nigeria

<sup>1</sup> Christabel Brakemi Jenakumo Naeyor, <sup>2</sup> Ebikapade Amasuomo, <sup>3</sup> Okoko James Esau

<sup>1, 2, 3</sup> Department of Environmental Management, Faculty of Environmental Sciences, Niger Delta University, Wilberforce Island, Bayelsa State, Nigeria

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Corresponding Author: Christabel Brakemi Jenakumo Naeyor

#### Abstract

The study has revealed that the Petroleum Industry Act 2021 was a huge opportunity to the Nigerian state to provide adequate solutions to significance challenges in the Nigerian oil and gas industry and usher in a just energy transition for the Nigerian state. The Niger Delta is faced with degraded land, climate change problems, polluted water resources and contaminated air with resultant debilitating health crisis on people living in affected and impacted oil producing communities. There have been intra-and-inter community conflicts as results of oil explorations and violence conflicts between host communities and multinational oil companies operating in the region. In this paper we reviewed and analyzed the Nigerian Petroleum Industry Act, 2021 which is the current legislative framework for the oil and gas industry in Nigeria taking into cognizance the realities of environmental challenges and concerns of host communities in the Niger Delta region. Additionally, we analyzed 21 scholarly publications on the context and concept of

historical and reoccurring environmental, social and political challenges posed by the oil industry in relation to the implementation of the PIA 2021. Continuous gas flaring, frontier exploration fund, oil field development plan and environmental remediation funds exclude climate change where identified as key environmental challenges the PIA fails to address. While lack of community awareness of PIA content, host community development trust and fund, PIA criminalized host communities and lack of framework for divestment in PIA were identified and examined as missed opportunities in the PIA against host communities' agitations over the years for fair share of the benefits derived from the oil and gas sector. The PIA should be reviewed, create a unit responsible for low carbon emission in NNPC Ltd, human health and livelihood component should be integrated in the PIA and increase host communities' development trust and fund from 3% to 10% were recommended as way forward.

**Keywords:** PIA, Environment, Host Communities and Multinational Oil Companies

#### 1. Introduction

Since 1990s till date the Niger Delta region has been overwhelmed by intra-and-intercommunity conflicts and violence, youth protests and activism as direct consequences of endemic poverty in host communities producing oil and gas <sup>[1]</sup>. The situation is exasperated by unemployment, underdevelopment, militarization and depletion and pollution of ecological assets including soil, water resources and loss of biodiversity from frequent oil spillages and gas flaring undermines ecosystem services and hampered livelihoods from environmental pollution as a result of commercial oil exploration and production by multinational oil companies <sup>[2]</sup>. Following continuous demand and agitation for basic infrastructural development and environmental justice, resource control and fair share of the oil wealth from the Nigerian state and multinational oil companies by oil producing communities in the early 1990s, many community activists and youths in the Niger Delta jostled for contracts from the oil companies who capitalized on the situation to exploit communities with divide and rule strategies, while others engaged in outright illegal oil bunkering, crude oil thefts and artisanal oil refining as an alternative to livelihoods <sup>[3, 4]</sup>. The situation deteriorated to violence attack on oil company workers, destruction of oil facilities and as well as hostage taking and kidnapping of oil company staff in host communities in the region <sup>[5]</sup>. The revenue lost resulting from incessant shutdowns of oil company operations and pipeline vandalism provoked brutal responds from the Nigerian state leading to incessant deployment of the military on principal assignment to engage militants on fire exchange and shoot on sight in communities <sup>[6]</sup>. Thousands of lives have been lost as a result of militarization of host communities including human rights abuses and sexual

violence against women by the Nigerian military [7]. Many youths have also lost their lives as a result of accidents associated with dangerous explosion of oil pipelines and infernos from illegal oil bunkering and artisanal oil refining sites [8].

In order to bring about relative peace and stability in oil producing communities so that the multinational oil firms will continue oil production and increased revenue generation and maximized profits for the Nigerian state, the international oil companies (IOCs) started the process of host community engagement in the Niger Delta in form of administering Corporate Social Responsibility (CSR) using Memorandum of Understanding (MoU) agreement in late 1990s and later change to Global Memorandum of Understanding (GMOU) in 2006 [9]. Furthermore, in late 1992 the Federal Government established the Oil Mineral Producing Commission (OMPADEC) for the purpose of rehabilitation and development of oil producing communities and later change to Niger Delta Development Commission (NDDC) in year 2000 as government agency to receive funding from IOCs to development the Niger Delta [10]. It is worthy of note that both the GMOU and NDDC failed to satisfy the needs and demands of host communities for basic infrastructural provisions and community development, resource control, fair share of the oil wealth and environmental justice. Rather, the GMOU arrangement and NDDC exacerbated conflicts, under development, corruption, mistrust and abuse of resources by state actors and gave undue advantages to the multinational oil companies.

## 2. The Study Area

The Niger Delta region has about 606 oilfields (355 onshore and 251 offshore) is the oil and gas producing hub of Nigeria that sustain the Nigeria economy with over 95% foreign exchange earnings of the country. The region is a tropical rain forest zone comprised of 9 states in no particular order of significance, namely: Abia, Delta, Ondo, Edo, Akwa-Ibom, Cross river, Bayelsa, Imo and Rivers state (Fig 1). It has a population of over 30 million people in about 3000 major communities and over 2500 satellite communities and hamlets [11]. Geographically, the region is delta of the Niger River sitting on the gulf of Guinea along the Atlantic Coast of Southern Nigeria with a coastline of over 450 kilometres where River Niger splits into numerous tributaries. Over 2,370 square kilometers of the Niger Delta are consist of creeks, rivers, natural ponds, estuaries and swamps covering over 8600 square kilometers [12]. The region has been described as the largest wetland in Africa with over 70,000 square kilometers and third largest wetland in the world. The Niger Delta has about 1900 square kilometers of mangrove forest which consist of more than 60% of mangroves in Nigeria. The Niger Delta has four distinct ecological zones which are mangrove swamp zone, coastal inland zone, lowland rain forest zone and freshwater zone with rich ecosystem of diverse species of aquatic and terrestrial flora and fauna and fertile alluvial soil for agriculture where over half of the population depends on the ecosystem services provided by the ecology [13].

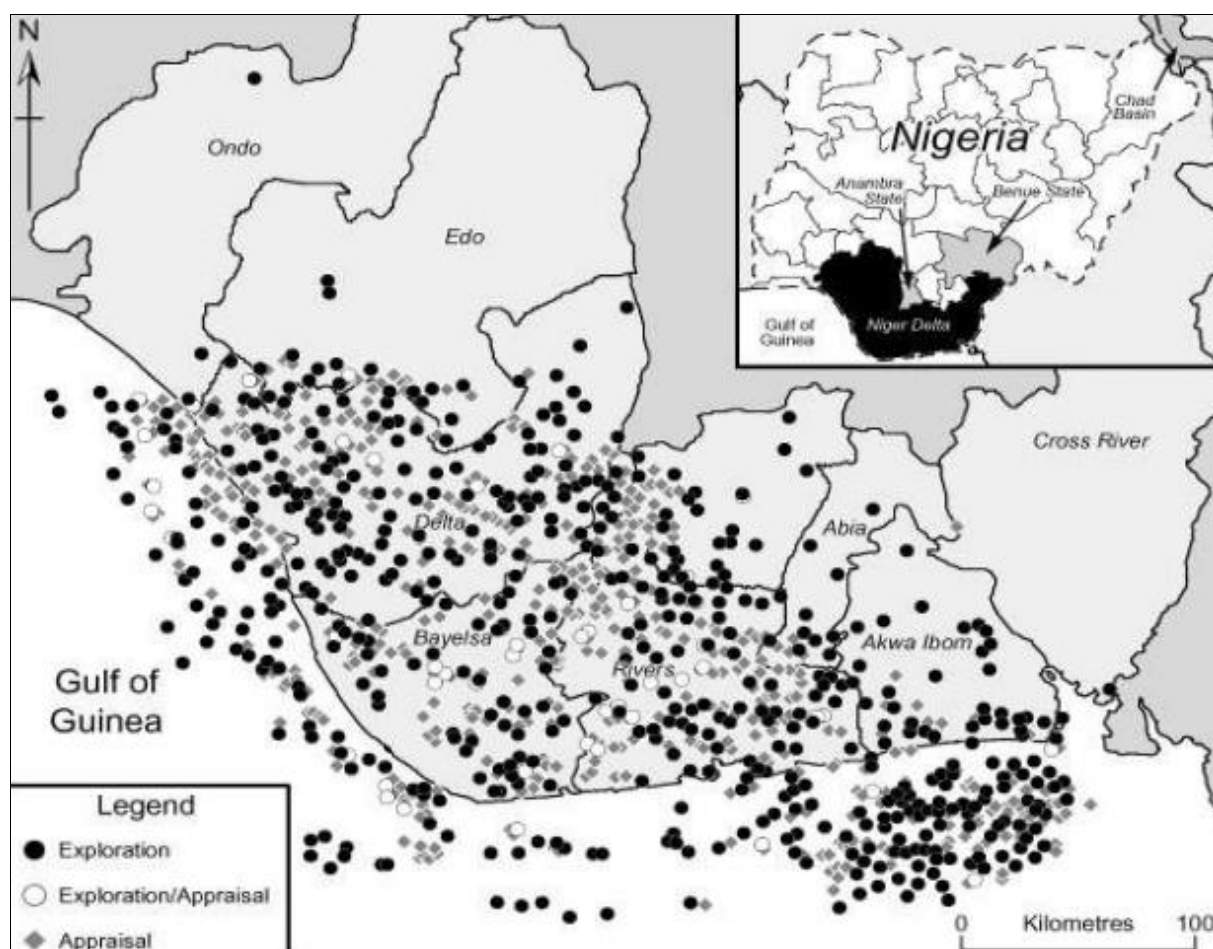


Fig 1: Map of the Niger Delta showing the different oil producing states and categories of oil wells

Apart from oil and gas, alternative resource exploration and land use in the Niger Delta is strongly constrained by lack of development, lack of government interest in technology development, uncontrolled population growth, unplanned urbanization, stagnant agriculture, tenuous property rights, limited access to health care, corruption in the public sector and prolonged conflicts between oil host communities and multinationals. Some environmental issues of high priority that requires immediate intervention in the Niger Delta include agricultural and land degradation, deforestation, biodiversity loss, water hyacinth proliferation, climate change, flooding, fisheries depletion, sewage, vehicle emission, gas flaring, coastal erosion, municipal solid waste, mangrove degradation, sea level rise, coastal erosion and *Nypa palm* expansion.

### 3. The Petroleum Industry ACT 2021

The Petroleum Industry Bill (PIB) which was passed into Law as Petroleum Industry Act (PIA) last year 2021 by the Nigerian National Assemblies have overshadow the GMoU arrangement and consequently become the principal legislative framework for the Oil and Gas Industry operations in Nigeria. The long awaited Petroleum Industry Act (PIA) which was signed into Law in August 2021 by the President of the Federal Republic of Nigeria; Muhammadu Buhari was debated as a bill by the Nigerian National Assembly for over 20 years <sup>[14]</sup>. The delay in the passage of the bill was caused by selfish, parochial and corrupt vested interests of the Nigerian political elites and heads of foreign multinational oil firms operating in Nigeria with colonial mentality without regards to human rights and global best standards and practices in the oil and gas industry <sup>[15]</sup>. The pass of the bill into law sparked mixed reactions of both criticism and commendations among critical stakeholders including host communities, oil operators and regulators. The aim of the PIA 2021 was to create a conducive environment for the growth and development of the sector and strategically address all major legitimate demands and grievances of host communities impacted by the activities of the oil industry in the Niger Delta. Among others, the key sections of the PIA that are extreme relevant to the Nigerian oil industry, host communities and the environment are: the PIA overhauls the governance and regulatory standard of the oil and gas industry in Nigeria. For instance, the PIA provide for two new regulatory agencies which are the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) and Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA) that are charged with technical and commercial regulation of petroleum operations in upstream, midstream and downstream sector with powers to hold, acquire and disposed properties, sue and be sued (Section, 4 and 29). The act commercialized and privatized the overpowered and corrupt state owned enterprise; the Nigerian National Petroleum Company (NNPC) and turned into NNPC Ltd which shares is owned by government and the Nigerian Ministry of Petroleum and Finance Shall hold its shares on behalf of government. The President of Nigeria shall appoint the head of NNPC while the Minister of Petroleum shall have the power to manage the entire oil industry through the NNPC (Section 55).

Furthermore, the PIA provides that as much as 30% of the profit realized by the NNPC Ltd, will be use to finance oil explorations in other parts of the country away from the

Niger Delta region (New basins) Frontier Exploration Fund. The PIA also provides for significance transparency of oil related contracts, leases and Licenses (Section 81). It provides for consideration and compensation of lands, destruction or damage to protected/venerated places or objects and compels oil companies to provide reserve funds for environmental remediation (Section 101, 102 and 115). The PIA also attempts for the first time in the history of Nigeria oil industry to create legal framework and governance system for community benefits of fair share of the oil wealth through the provision of Host Communities Development Trust Fund (HCDTF) aimed to address the historical poor relationship between host communities and oil multinational (Section....). Specifically, this section states that every host community project is to be transferred to the HCDTF and every settlor/oil license holder must make an annual contribution equal to 3% of its annual operational cost for the previous year with penalties for defaulters and the funds shall be use to address host community needs.

### 4. Environmental Challenges

PIA 2021 was signed into law during a period of global, regional and local changes in the oil and gas industry. For instance, the number of indigenous oil firm increased in Nigeria and Africa, so the number of oil producing countries in Africa expanded, oil prices was unstable globally, militancy in the Niger Delta diminished and global concerns for climate change led to reduction in consumption of fossil fuel energy and promoted divestment of oil firms.

#### 4.1 Continuous Gas flaring

Section 33 in the PIA creates Midstream Gas Infrastructure fund which promotes continuous payment of gas flare penalties associated with development of gas infrastructures in front line oil bearing communities and thus directly promote gas flaring as a business to the Nigerian state. Despite the established consequences of gas flaring on the environment in relation to climate change, human health and loss of biodiversity in the Niger Delta region, the PIA reinforces gas flaring with negligence. Main while, the practice of gas flaring in Nigeria has contributed more greenhouse emissions to climate change and the environment than all other sources in Sub-Sahara African combine. Gas flaring is also responsible for poisoning local people in oil producing communities with toxic cancerous and genetic alteration chemicals <sup>[16]</sup>. Additionally, gas flaring cost Nigeria over 2 billion U.S Dollars annually while about 50% of Nigerian population lives on less than 1 Dollar a day. The permission of gas flaring and mere payment of penalties by the PIA is contradictory to a subsisting Court Judgment in Nigeria far back 2005 by Justice J. Nwokorie of a Federal High Court in Benin, Edo state that ruled against gas flaring in Iwkekan community at Delta state in a case filed by Mr. Jonah Gbemre for the community with support from Environmental Rights Action Friends of the Earth International (ERA) against Shell, SPDC, Nigerian National Petroleum Corporation, the then NNPC and Attorney General of the Nigeria Federation, AFG, as first, second and third defendant respective (Suit No. FHC/B/C5/53/05 <sup>[17]</sup>). This shows that the Nigerian state does not keep to the very laws it makes for environmental, economic and human protections. Therefore, the PIA is faulty on environmental justice and climate change justice in



Nigeria, Africa and even globally as it permits gas flaring which was declared illegal by competent court of law.

## 4.2 Frontier Exploration Fund (FEF)

The FEF provided by the PIA (Section....) to be funded by 10% of its rent of Petroleum Prospecting Licenses, 10% rent of Petroleum Mining Leases and 30% of NNPC Ltd profit oil and gas production. This provision encourages continuous oil and gas exploration and production in an era that fossil fuel energy is highly discouraged against renewable energy. Sadly, the Nigerian state has not learned lessons from its inability to effectively manage oil explorations in the Niger Delta which has results to limited life span of people in oil producing communities, biodiversity loss, air pollution, soil contaminations and land degradations <sup>[18]</sup>. This provision in the PIA undermines environmental risks associated with continuous oil production in Nigeria and Africa. As a matter of fact, implementation of this PIA provision would lead to a complete reversal of little progress that Nigeria has recorded on environmental protection. The exploration of oil in the new basins will lead to more deforestation, destruction and pollution of wetlands and more lost of flora and fauna which negates the Paris agreement of de-carbonization in 2060 that Nigeria is a signatory to it.

## 4.3 Oil Field Development Plan

“On declaration of commercial discovery, a licensee is expected to submit a field development plan which includes plans for local recruitment and training, decommissioning and abandonment, Environmental Management Plan and local content in accordance with other sections of the Act” Section 79 PIA 2021. This section of the PIA promote continuous skills acquisition and training on fossil fuel assets development and security rather than skills required for a just energy transitions for renewable energy in the country. In effects, this provision fails to recognize that fossil fuel energy assets will soon become obsolete and useless globally. Energy demand has shifted to renewable energy investment in solar, wind, hydrogen and hydro. Therefore, this provision is a missed opportunity for the Nigerian state to upgrade its energy infrastructure of national asset from notorious environmentally polluting fossil fuel to environmentally friendly assets for long term sustainable development and national energy security in the country.

## 4.4 Environmental Remediation Funds Exclude Climate Change

Section 103 of the PIA established Environmental remediation fund and demand provision of environmental management plan for projects that require Environmental Impact Assessment (EIA) to be conducted. The section also prohibits the application of harmful chemicals in all upstream operations unless permitted with a license by the Nigerian Petroleum Regulation Upstream Commission (NPRUC). Nonetheless, the process, standard and methods for environmental remediation are not explicit, nor recommended in the PIA. Moreover, there is no linkage between the purpose of the remediation and climate change solutions. The exclusion of the funds to addressed impacts of climate change is an open door to unplanned expenditure as climate change emergencies would affect the cost of environmental remediation and consequently lead to

inadequate fund for actual remediation of oil and gas impacted and affected sites.

## 5. Host Communities Challenges

It is worthy of note that prior to signing of the PIA many critical stakeholders in oil producing communities in the Niger Delta including Traditional rulers, Youths and Women groups publicly protested vigorously against the bill and demanded for adequate host communities consultations and inputs and as well as increased benefits sharing of the oil wealth by host communities, opportunities for youth employment, provision for quick oil spill clean ups and compensations of affected communities and an end to gas flaring. Moreover, after the passage of the bill into law in 2021 stakeholders in host communities still protested against the bill using various media platforms and have continue to demand for amendment till date <sup>[19]</sup>. The following are some key challenges of host communities in respect of the PIA 2021.

### 5.1 Lack of Community Awareness of PIA Content

Evidence from opinion surveys carried out by a civil society organization (Sustainable Environment & Peace Building Foundation) “on host community concerns on PIA 2021 implementation in the Niger Delta” through direct interviews of community leaders including paramount rulers, women and youth leaders in oil producing communities in Bayelsa, Delta, Rivers state and Akwa Ibom state indicates sheer ignorance of community leadership and members of oil producing communities on the overall content of the PIA, implication on host communities and the implementation processes <sup>[20]</sup>. For instance, most community leaders lack awareness and understanding of community roles in host community development provisions (Chapter 3, section 235-257) including the process of composition, administration and management of the Host Community Trust Funds. Others lack understanding of how to access environmental justice including the process of compensation to host community through the PIA when there is oil spillage (Chapter 2, section 68-110). Equally, most community leaders are not aware of the implication of the PIA implementation on host communities where there are incidents of pipeline vandalism, kidnapping of oil company staff, illegal oil bunkering and artisanal oil refining/kpo fire are being perpetrated. Equally, many communities do not have a copy of the PIA and does not know where to get a copy.

Moreover, most community leadership lack the ability to comprehend and assimilate the technical provisions and language of the PIA and many communities lack well educated persons or Lawyers that have the capacity to interpret the provisions in the PIA for them. Furthermore, there are also issues of high political interests from state actors and Militant leaders/Freedom fighters that are passionate to take advantage of the ignorance of host community leaders on the PIA and collude with the multinational oil companies to undermine host communities benefits and interests.

### 5.2 Host Community Development Trust and Fund

This provision gives responsibility of determining host communities to the multinational oil companies. Section 242 (1) of the PIA 2021 gives multinational oil corporations overriding powers to establish and set up members of the

Board of Trustees of the host community development Trust and determine qualification of members and recruitment processes. While the PIA creates the Petroleum Host Community Development Trust as a framework for transferring development benefits to host communities producing oil and gas. The PIA merely direct multinational oil companies to consult host community leadership during formation of board members and include one member/a representative from each host community to be a Non-Executive member and the settlor are at liberty to select who become executive member or not. The oil multinationals have rights to admit anyone from any part of the country into the Board of Trustees as executive member. This provision does not recognize community voices as it undermined community inputs, influence and benefits from the fund given that it deny community members to be executive members of the Trust. Hence, it is injustice to host communities and a direct invitation to violent conflicts between settlers and host communities in the future. Also, the definition of the word “host community” is ambiguous in the PIA which is a source of conflicts to oil producing communities. Furthermore, the PIA provide for 3% OPEX to be contributed annually by multinationals to the Host Community Development Trust Fund from their annual budgetary operational cost (Section 240 (2). How much is the 3% really? Can this fund address the age long community agitations for ecological and economic justice and struggle for resource control in the Niger Delta region? The answer is NO.

### 5.3 PIA Criminalized Host Communities

The PIA section 257 (2) provides for host communities to be punished by multinational oil companies for any damage to oil company facility, civil unrest or damage to company properties provided it was not caused by natural disaster. The community will pay from their Trust Fund which shortchanges them from their inadequate funds. This means the PIA placed the responsibility of Policing oil company infrastructure on host communities. With multinational oil companies often claiming sabotage of their facilities even when the evidence shows is equipment failure. This provision in the PIA is another invitation to conflicts between host communities and settlers and as well as a source for both inter-and- intra-community conflicts in the Niger Delta region.

### 5.4 Lack of Framework for Divestment in PIA

After over 60 years of oil extraction in the Niger Delta region with severe environmental pollution and health impacts on people living in oil producing communities. Most oil companies that committed the havoc are leaving onshore oil fields to offshore deep-sea environment to continue oil exploration and cause similar wreckages on marine resources and coastal communities. Yet, the PIA 2021 has no provision to solve this problem; this has left host communities to have more conflicts with local contractors that have taken over assets and denying responsibility for historical damages. Multinational oil companies are running away from taking responsibility from the mess they caused in oil producing and impacted communities.

## 6. Policy recommendations on Way Forward

Though the Act has closed a little gap in the oil and gas

industry, it gives advantage to the multinational oil companies to further impoverished host communities. The Act is generally ambiguous and does not stop gas flaring but rather prescribed that companies can continue to flare gases and pay fine to the Federal Government and the money will be use to build more gas gather plants which will continue to pollute the environment. The PIA ultimate fails to account for climate change, a just energy transition and consequently fails to overhaul the Nigerian Petroleum industry. Therefore, the following measures were recommended as wayford.

### 6.1 Review the PIA

The PIA should be thoroughly review with elaborate host communities’ participations and inputs to accommodation just energy transition, out rightly ban of gas flaring, including responsibility of multinational oil companies for divestment, payment of compensations for oil spillages, expunge the provision that criminalize host communities and place the interest of human and the ecosystem beyond making money from oil wealth by the Nigerian state and multinational oil companies.

### 6.2 Create a Unit Responsible for Low Carbon Emission in NNPC Ltd

A separate unit responsible for monitoring carbon emission and setting reduction performance metric/target for multination oil companies should be created or established within the NNPC Ltd. Therefore, a clear provision for climate change adaptation by host communities and strategy for mitigation should be conspicuously elaborate and backed with reliable funding provision in the PIA.

### 6.3 Integrate Human health and livelihood

The PIA 2021 has no provisions that address health crisis caused by oil and gas exploration in host communities. Furthermore, the issues of oil spillages which affect the agricultural lands and fishing waters of host communities are absence in the PIA. Therefore, the current PIA should be amended or review to include standard for data gathering, empirical, theoretical assessment and analysis of health indicators and treatment of various diseases associated with oil exploration and production as were identified by in the UNEP 2011 Ogoni EIA report <sup>[21]</sup>. Additionally, the organic livelihood of host communities which is mainly fishing and farming have been destroyed by oil spillages and gas flaring in the Niger Delta region due to oil company exploration by the multinationals.

### 6.4 Increase Host Communities Development Trust and Fund from 3% to 10%

The composition of Board of Trustees of Host Community Development Trust should be reviewed to include 50% composition from host communities against the current situation that only one person from host community is nominated and accepted at the discretion of the settlers. In fact, the power to manage the Trust should be shifted from the settlers to voting powers by the entire member of the board. The present 3% allocated to host communities is injustice and undermines the historical consequences of harms caused by oil exploration to host communities in the Niger Delta region.

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