

Executive Summary

The Petroleum Host and Impacted Communities Development Bill 2018 (hereafter called the “Host Communities Bill”) presents an important opportunity to help the most affected communities in the Niger Delta experience much needed socio-economic development. With some amendments, e.g.:

- Allowing institutionalized Foundations and long-term Corporate Social Responsibility (CSR) construction projects continue;*
- Streamlining government resources towards continuing the financing of regional NGOs;*
- Mandating indigenous representation on the trust’s Board of Trustees;*
- Dedicating funds for technical assistance and capacity building of the Trusts that are to be created; and*
- Promoting new blood on Community Advisory Committees through tenure.*

With these changes, the Bill will be better tailored to facilitate the desired advancement within the region.

Introduction

Nigeria is planning sweeping reforms of the oil and gas sector through a series of reforms known collectively as the Petroleum Industry Bill (PIB). One of the laws that specifically targets local communities is commonly cited as the Host Communities Bill. It mandates oil operators (hereafter “Settlers”) set up a trust for the benefit of the communities in their area of operations. After an analysis was conducted by concerned NGOs, below are recommendations proposed that the Legislature should consider as the Bill continues to take shape.

1) Transfer of Existing Corporate Social Responsibility (“CSR”) Projects or Schemes **Bill terms**

Section 25 (3) states — Settlor shall be entitled to continue with any ongoing CSR Projects or Schemes. Any financial contribution made by a Settlor towards any ongoing CSR Projects or Schemes shall be taken into account and shall be deemed to form part of the contribution to be made by the Settlor pursuant to section 7 (1.a) of this Act for a period of two years from the commencement of this Act.

Concerns

This provision does not take into account ongoing CSR projects or initiatives like Chevron’s Partnership Initiatives for the Niger Delta (PIND), established in 2010, and Shell’s All On, established in 2016, which are Foundations that have been institutionalized with missions to assist the development of the region for the long-term — beyond two-years. For instance,

through its work and partnership with international organizations like the USAID and DFID, PIND Foundation has achieved significant impact in improving the livelihoods of Niger Delta indigenes, forging strong networks and partnerships, and establishing a rapidly growing movement of peace actors numbering more than 6,000 individuals. Viewed within the development sector as a key strategic partner for economic development and donor coordination, its ability to convene stakeholders and strengthen relationships has — according to a 2015 impact assessment report prepared by the Initiative for Global Development — resulted in more than \$92 million of new investment into the region. All On’s efforts on renewable energy have significant potential to contribute towards alleviating Nigeria’s well-known power (electricity) challenges.

Recommendation

For construction-related projects and Settlor Foundations, which have long-term mandates to improve the Niger Delta, deductibility should continue until completion of the project or termination of the Foundation. If a finite time is to be stipulated, we suggest that it should be 10 years from the commencement of the Act - to allow for continuing projects to be completed and Foundations to undergo the necessary administrative planning, institutional transitions, and community sustainability.

2) Funding of regional NGOs Prudent financial support and government

Section 7 (1.a) states — The constitution of the Petroleum Host and Impacted Community Development Trust shall contain provisions requiring that the Petroleum Host and Impacted Community Development Trust shall have an Endowment Fund to which the following monies shall be paid: an annual contribution of an amount equal to 2.5% (two and a half percent) of the actual operating expenditure (Opex) of the settlor for the accounting period of the preceding year relating to the settlor’s operations in the particular license or lease area for which the Petroleum Host and Impacted Community Development Trust is established.

Concerns

This legislation omits the biggest development agency within the region, the Niger Delta Development Committee (NDDC), other related institutions i.e. state versions of the NDDC, etc., while imposing additional burdens on oil and gas companies which already provide significant funding through obligatory contributions such as:

- Niger Delta Development Commission levy (3% of annual budget);*
- Nigerian Content Development Fund (1% of all contracted cost); and*
- Education Tax (2% of assessable profit)*

Omitting the NDDC and similar institutions in the region deprives the Trust’s Endowment Funds of needed contributions, and will lead to duplication of efforts/inefficient execution of projects. Also, if the additional financial burden on the oil and gas companies is not remedied, the

implications to the region could be stark as funds currently spent on CSR initiatives will cease since these institutions will have committed a majority of their funds to the Trusts alone. This will result in the discontinuation of such CSR projects, halting the work of several foundations and NGOs through which many of the CSR projects are executed, resulting in loss of jobs, disruption of key economic development, peace building, capacity building, and governance efforts among others.

Recommendation

Mainstreaming of current government funds towards this Bill will improve their use, ensure buy-in of key government stakeholders, ease the burden of the Settlers and prevent NGOs/foundations from being starved of funds, and closing shop with the resultant loss of jobs and abrupt disruption of key projects and initiatives. We recommend that the NDDC be included as a funding contributor. We also suggest that substitute financial avenues could include the annual contribution stated in Section 7 (1) being deducted from the 3% currently being contributed by companies operating in the Niger Delta area to the NDDC. Also, consider steering 50% of the ecological fund provided for the Niger Delta states to the trust funds. Consequently, Section 7 (1.a) should be replaced to incorporate one or both of the above.

3) Local Representation on the Board of Trustees

- *Section 9 (1-2) states —*
 - (1) *The constitution of the Petroleum Host and Impacted Communities Development Trust shall contain provisions requiring that the Board of Trustees shall be set up by the settlor who shall determine its membership and the criteria for their appointment*
 - (2) *The settlor shall, in the determination of membership of the Board of Trustees, include persons of high integrity and professional standing who may not necessarily be from one of its host and impacted communities.*

Concerns

As section 9 (2) points out, if the final approving authority is the trust's Board of Trustees and it is comprised of selected representatives of oil companies, then those oil companies wield the ultimate power to finance and execute projects for the benefit and sustainable development of host and impacted communities.

Recommendations

To advance inclusive governance, the Bill should explicitly provide for equitable representation of the host and impacted communities on the Board of Trustee. This will demonstrate that even at the ultimate decision-making body, the host and impacted communities are represented.

4) Allocation of Funds for Capacity Building

- Section 11 (1.a-c) states —
 - (1) Of the sum available in the Endowment Fund each year pursuant to section 7 of this Act, the Board of Trustees shall:
 - a. allocate a sum equivalent to 70% of the Endowment Fund to the Capital Fund out of which the Board of Trustees shall make disbursements for projects in each Host and Impacted Community as may be determined by the Management Committee in furtherance of the objectives set out in section 7 of this Act, provided however that any sums not so utilized in a given financial year shall be rolled over and utilized in subsequent years;
 - b. allocate a sum equivalent to 20% of the Endowment Fund to the Reserve Fund which sums shall be invested for the utilization of the Petroleum Host and Impacted Community Development Trust whenever there is a cessation in the endowment payable by the settlor.
 - c. allocate a sum equivalent to 10% of the Endowment Fund to the settlor's Special Project Fund to be utilized solely by the settlor for special projects to assist and support the host and impacted communities, provided however that at the end of each financial year, the settlor shall render a full account of the utilization of the Special Project Fund to the Board of Trustees and where any portion of the Fund it not utilized in a given year, it shall be returned to the Capital Fund.

Concerns

While this passage discusses setting aside financial resources for capital expenditures, reserves, special projects, etc., it omits a critical component: providing for technical assistance to manage funds and select projects for implementation. Development NGOs are key at federal and state levels in ensuring proper focus on key issues, and efficient design, planning and execution of projects. Leaving them out at this local community level allows for inefficiency in the operations and activities of the Trusts that can be ill-afforded at this time.

Recommendations

To ameliorate the lack of technical proficiency especially for critical human capital and economic development projects, we recommend that 5% of the Endowment Fund should go towards building the capacity of the trust fund and acquiring expert assistance to help with project implementation.

5) Tenure:

- *Section 9 (4) states — Subject to subsection (3) of this section, each member of the Board of Trustees shall serve a term of four years in the first instance and may be reappointed for another term of four years only.*
- *Section 14 (2-3) states —*
 - (2) The membership of the Management Committee shall comprise:*
 - a. a representative of each Host and Impacted Community nominated by the Host and Impacted Community who shall be a non-executive member, and*
 - b. executive members, selected by the Board of Trustees who shall be Nigerians of high integrity and professional standing, who may not necessarily be from any of the settlor’s host and impacted community.*
 - (3) Persons appointed under paragraphs (a) and (b) of subsection 2 of this section shall serve a term of four years in the first instance and may be reappointed for another term of four years only.*
- *Section 16 (1-2) states —*
 - (1) The constitution of the Petroleum Host and Impacted Communities Development Trust shall contain provisions mandating the Management Committee to require each Host and Impacted Community to set up an advisory committee (hereafter “Petroleum Host and Impacted Community Advisory Committee”).*
 - (2) Pursuant to the provisions of subsection (1) of this section, the Petroleum Host and Impacted Community Advisory Committee shall determine the selection processes; procedure for meetings, financial regulations and administrative procedures of the Host and Impacted Community Advisory Committee and the remuneration, discipline, qualification, disqualification, suspension and removal of members of the Petroleum Host and Impacted Community Advisory Committee and all other matters relating to the operations and activities of Petroleum Host and Impacted Community Advisory Committee.*
- *Section 17 (1a-e) states —*
 - (1) The Host and Impacted Community Advisory Committee shall perform the following functions:*
 - a. nominate the member to represent the Host and Impacted Community on the Management Committee;*
 - b. articulate and determine community development projects to be transmitted to the Management Committee;*
 - c. monitor and report progress of projects being executed in the community to the Management Committee;*

- d. *advise the Management Committee on activities that will lead to improvement of security of infrastructure and enhancement of peace-building within the community and entire area of operation;*
- e. *take responsibility for first line protection of facilities and ensure petroleum operations are uninterrupted by members of their communities failing which benefits from the Trust shall be disallowed.*

Concerns

The Board of Trustees and Management Committees in the Bill are given terms of four years and may be reappointed for another term of four years only, as described in Section 9 (4) and Section 14 (2-3). The stipulations for Advisory Committees are described in Section 16 (1-2) and Section 17 (1a-e). As shown above, none of the conditions of membership for the Committee mandates tenure. Rotation is good for economic and political representation, but as currently constructed this best practice does not extend to the Community Advisory Committees.

Recommendations

A system of tenure that models the stipulations set for the Board of Trustees and Management Committee of serving for four years and being allowed to serve another four years only should also extend to the Community Advisory Committees. This condition of service should be added to section 16.

Conclusion

The adoption of these recommendations will improve this legislation and help the Host Communities Bill better serve as a tool to support local populations in the region.

**From Niger Delta Development Partners
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