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PETROLEUM INDUSTRY ACT IN NIGERIA: AN EXAMINATION OF GENERIC LOCAL CONTENTS REQUIREMENTS AND ALTERNATIVE DISPUTE RESOLUTION PROVISION.

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Abstract
The paper examined the challenges affecting the smooth implementation of the alternative dispute resolution (ADR) provision mainstreamed in the PHost Communities Development Regulations, (NUPRHCDR) 2022. The work adopted both doctrinal and qualitative research methods for the research. It relied heavily on Chapter Three (3) of the PIA, 2021, the NUPHCDR, 2022, and the Oil and Gas Industry Local Content Development Act, 2010 etc. The work found that the ADR provision and the local contents requirements (LCRs) envisioned in the PIA, 2021 and its regulations, 2022 demonstrate the laudable intention of the Federal Government of Nigeria towards disputes resolution between host communities and the settlors within their areas of operation However, the research reveals that due to administrative red-tapism, inherent operational challenges and inherent socio-legal constraints that have confronted the governance structure that is, the Board of Trustees of almost all the host community development trusts (HCDTs) in the implementation of the ADR provision in particular, the intended benefits under Chapter three (3) of the PIA and its regulations designed for the host communities cannot be seamlessly achieved. To this end, the paper, among other things, recommends that the relevant provision of the PIA 2021 and its regulations, 2022 should be amended with a view to reviewing upward, for example, the 5% administrative cost to 10% while the reserve fund account should be reviewed downward from 20% to 15% respectively. This will enable the small, medium and big trusts to effectively and efficiently handle disputes settlement within the host communities.

Keywords: Host Communities, Settlors, Administrative Cost, Petroleum Industry Act and ADR.

Introduction

Nigeria granted exploration license to Shell D'Arcy in 1938 after two years of its arrival in Nigeria. There were other oil companies that were granted licenses to explore petroleum in the Niger Delta region of Nigeria. The then Shell D'Arcy later changed its name to Shell Petroleum Development Company (SPDC) Nigeria in 1956- when it first found crude in commercial quantity at Otuabagi in the present Bayelsa State.2 The company commenced its first crude oil shipment in 1958. For more than seven decades it was erroneously held within Nigeria and the world at large, that crude oil was found first in commercial quantity in Oloibiri in Bayelsa State. This historic fallacy associating Oloibiri community as the first place where crude oil was first discovered in commercial quantity was generationally altered by the recent Bayelsa State High Court consensus judgment in suit No. CHL/10/2021 between Oloibiri Community vs AG. Fed & Ors. The instant case bordered on a dispute over the location of a Museum and a Research Centre - which the Oloibiri Community demanded that these projects be removed from Otuabagi Community and relocated to Oloibiri Community by the

Federal Government and the Nigerian Content Development Board. The matter was later adjourned by the court at the application of Oloibiri Community for an out- of -court settlement by the two communities. At the resumed hearing, the parties submitted their terms of settlement and a consensus judgment thereupon was delivered by Hon. Justice Simon Amaduoyogha of the Bayelsa State High Court, sitting in Ogbia Yenagia. In the said consensus judgment, it was held that Otuabagi was the original host community where the first oil well that produced crude oil in commercial quantity in Nigeria, in 1956 was drilled, thereby implying that it was not Oloibiri Community that owned the land where crude oil was first discovered in commercial quantity as it was, for many decades, erroneously held by all and sundry.[1]

So soon after the discovery of crude oil in commercial quantity in Nigeria, the then Federal Government of Nigeria, like other crude oil endowed countries on the continent of Africa, opened her doors to other international oil companies (IOCs) for purposes of petroleum exploration and exploitation. Some of the IOCs, however, came on the heels of colonialism in search of crude oil, particularly in the Niger Delta region. The IOCs were required to pay just royalties on the basis of oil concessions agreements to the Federal Government and the accruals were meant to be used in growing the Nigeria's national economy and with not so much of the royalties deployed towards the development of the host communities in the Niger Delta region. Rather, the IOCs were expected to execute social and economic projects and /or programmes under various self-regulated memoranda of understanding (MoU) between the 10Cs and the various negatively impacted host communities in the region. These species of memoranda capture usually the evident corporate social responsibility (CSR) which is traditionally or tendentiously appropriated annually by 10Cs. Curiously, the associated or endemic oil spills and gas flaring from the operations of the 10Cs do not constitute a part of the MOUs and its arbitration mechanism. Usually, the result is that the 10Cs would decide or determine the contracting process and the persons capable of handling hi-tech projects or programmes as encapsulated in the MoUs. The requirements under the industry based contracting process are usually way above the capacity and capability of the locals. Yet, these locals are the people who face the daily burdens of environmental degradation-which deteriorates the human and natural environments.

Also, the global and continental collective actions for the enforcement of the United Nations and the Oil Producing Exporting Countries (OPEC) principles of permanent sovereignty of states over their natural resources in relation to the termination of oil concessions arrangements or policy and payment of just royalties to these member states and indeed, the Federal Government of Nigeria, by the various 10Cs, in favour of state participation policy. The state participation policy gave birth to joint venture agreements (JVAs) and later, the production sharing contracts (PSCs) policy in Nigeria. State participation in the oil industry also led to the establishment of a regulatory and various intervention agencies such as: the first Niger Delta Development Board (NDDB)3 under the 1960 Constitution. On the heels of that came the establishment of the first intervention agency courtesy of the Willink's Commission report in 1958[2]. The subject agency had a 9-year life- span but its life-span was disrupted and whittled down due to the out-break of the Nigerian Civil War in 1966. The second body of its kind was the Nigerian National Oil Corporation (NNOC)-established as a State oil regulatory body.4 Subsequently, other intervention agencies to tackle and address environmental

[1] Igoni, D. (2024) First Commercial Quantity Crude not found in Oloibiri – Court. Retrieved from https://punching.com on 2 Nov. 2024

3.See Hansard, 16 July 1959 of UK parliament. Retrieved from https://api.parliament.uk > jul>ni

degradations and socio-economic inequities in the Niger Delta region were established. These bodies were: the Presidential Task Force (PTF);5 Oil Mineral Producing Areas Development Commission (OMPADEC);6 the 13 percent oil revenue derivation;7 Niger Delta Development Commission (NDDC);8 the recently scrapped Ministry of Niger Delta Affairs; National Oil Spills Detection and Response Agency (NOSDRA)9 etc. Equally, the federal government enacted a number of legal frameworks -including the domestication of international conventions and treaties and the constitutionally created state policy towards the provision and promotion of environmental protection and conservation practices and objectives.10

The existing legal and regulatory frameworks on the Nigerian environment – made up of national, regional and international frameworks regarding the effective, efficient and equitable utilization of the environment have failed to bring about a healthy and clean environment in Nigeria considering the federal government quest in the oil and gas sector in particular, towards the mitigation of the oil curse and/or cost that has continuously brought un-natural substances on the land and on the people in the Niger Delta region with negative impact on the residents' lives and livelihoods. These negative environmental occurrences are equally experienced in the frequency of policy summersaults, hydra-headed corruption, misapplication of funds and manpower, nepotism and dearth of inclusivity or buttom-up approach on the parts of the 10Cs and the federal and state governments-through the various intervention agencies. Policy uncertainties and sectorial socio-economic failures regrettably and continuously affect and distort programmes and projects conceptualization and implementation thereby cumulatively leading to projects and programmes abandonment and/or in many instances, of such programmes and projects not resonating with or addressing the peculiar needs of the state governments and/ or the host communities in particular, in the Nigeria.

For instance, in order to address such identified lacuna or gaps in the operational activities of the interventionist bodies, several initiatives, plans and actions of government at all levels were made with a view to institutionalizing or mainstreaming environmental principles and objectives as envisioned in the permanent sovereignty of states over their natural resources-11 because, hitherto, the benefits accruable from the intervention mechanisms were channeled to the state governments only in the region to the exclusion of the host communities..

Recognizing the palpable impacts of not carrying the people of the host communities along -in terms of equitable projects design and distribution and of course, the fact that the local content development legislation12 in the oil and gas sector is specifically designed to cater for all Nigerians without exception, the federal government felt the acute need to unbundle the defunct Petroleum Act-[3] dating back to about 2010, in order to evolve a special purpose or a new variant and strategic local content requirements (LCRs) policy so as to create and deepen sustainable prosperity on the one hand and on the other hand, to promote a cordial and peaceful co-existence between the host communities and the IOCs, as well as Nigerian oil companies. To this end, the former Petroleum Act was repealed and re-enacted as the Petroleum Industry Act[4] and the making of the regulations thereto by the regulatory agency established under the new Act.[5]

This paper seeks to examine the provisions of Chapter Three(3) of the new Act with particular reference to dispute resolution between the host communities and the settlor(s) and dispute between

7.Supra Note 13
8.16th Sept. 2024
9.23rd June, 2022 and Section 234 (2)

one community or more communities. The work also intends to examine or interrogate drawbacks identified in the modus operandi deployed in the implementation of the salient provisions of the Chapter Three (3) of the Act with a view to making recommendations for legislative intervention and/or administrative measures to be developed and deployed by the settlor(s) in ensuring that the intendments of the Act are achieved in a seamless and mutual manner.

This research adopts both doctrinal and qualitative research methods with a view to eliciting relevant data for the writing of this paper as well as making necessary recommendations for reforms.

This work dwells on the provisions of Chapter Three (3) of the Petroleum Industry Act 2021, the Nigerian Upstream Petroleum Communities Development Regulations, 2022 and other related legal frameworks and materials in the oil and gas sector. The work, however, is limited by data material relevant to the impacts of the Act on the activities and operations of most of the host communities development trusts (HCDTs) in the Niger Delta region in particular, and the challenge associated with of funds with which to conduct a face to face interview with selected Board of Trustees members of HCDTs in the Niger Delta region with a view to comparing notes between them on the operational challenges and prospects faced in their day to day operations.

Examination Of the Provision on Arbitration Mainstreamed in the Act and Its Regulations

Clearly, the philosophy behind the enactment of the Nigerian Oil and Gas Industry Content Development Act[6] shows that the seeks to create, promote and deepen Nigerian content[7] as encapsulated thus:

> That the quantum of composite value added to or created in the Nigerian economy by a systematic development of capacity and capabilities through the deliberate utilization of Nigerian human, material resources and services in the Nigerian Oil and Gas Industry.

However, relatively, the philosophy or objective of the Petroleum Industry Act[8] is "to foster sustainable prosperity within the host communities, provide direct social and economic benefits from petroleum operations in host communities and to enhance peaceful and harmonious co-existence between the licenses or lessees and host communities".

The two legal frameworks undoubtedly lpurport to create local content requirements (LCRs) which are what most countries in the world have already created and enthroned in their climes, so as to hedge their citizens and/or their relevant businesses and companies against foreign domination in line with the principle of the United Nations' General Assembly (UNGA) Resolutions on permanent sovereignty of states over their natural resources. Be that as it mayo, the former legislation or legal framework that is, the Oil and Gas Local Content Act, is a general law to the extent of its application to all Nigerian persons both natural and artificial - that is, Nigerians and /or the "Nigerian companies"[9]as defined as follows:

> a company or companies found and registered in Nigeria in accordance with the provisions of the Companies And Allied

[6] Supra Note 15
[7] Ibid 106
[8] Supra Note 17 S. 234 (1) (cre)
[9] Supra Note 14

> Matters Act (CAMA) with not less than 51% equity shares by Nigerians.

And, the latter legal framework that is, the PIA, 2021, Chapter three (3), is a specific and special purpose law. Indeed, it is by extension another variant of the Nigerian LCRs and an equivalent of the European Union version, which seeks to bring development to certain segments or local areas or community of people -whose resources utilization or exploration has negatively impacted their lives and collective livelihood relative to other citizens residenced in other regions. Again, thepp latter legal framework has mainstreamed alternative disputes resolution of grievance mechanism with which to resolve dispute between certain parties that is, the settlors and host communities within the area of operations of each settlor.[10]

It is instructive to note that the Petroleum Industry Act[11]is made up of five chapters and the Act dedicates Chapter three (3) out of the five chapters of the Act to host communities' development. It can also be gathered from the Act the drafters of this piece of legislation seek to create and promote mechanism for preventing or reducing incidents of vandalism, sabotage or other civil unrest which that often cause damage to petroleum facilities and designated activities or cause outright disruption of petroleum production activities within the host communities. The Act stipulates the consequences will befall erring host[12]community involved in any of the above listed incidents to include the host community concerned forfeiting its entitlement to the extent of the cost of repairs of the damage that resulted from the aforementioned negative and criminal acts proven against such a community.

The Nigerian Upstream Petroleum Regulatory Commission (NUPRC) however, is empowered under the Act to make regulations with regards to Chapter three)3) of the Act with particular attention to grievance mechanism.[13] Flowing from this power, the NUPRC made the Nigerian Upstream Petroleum Host Communities Development Regulations, 2022 to which this work examines and interrogates the relevant provisions on grievance mechanism.

Prior to the repeal and re-enactment of the present Act, the settlors and the host communities usually related with each other on the basis of memorandum of understandings (MOUs) within the host communities – being the area of operations of each settlor[14]. Notably, the defunct Petroleum Act of 1969 was the extant law that regulated the grant of the various exploration licenses by the former Nigerian National Petroleum Company (NNPC) (now the Nigerian National Petroleum Company Limited (NNPCL)). The NNPCL is supposed to be run as a full-fledged commercial entity after the expiration of the transition period provided for under its establishment Act.

It is to be recalled that the daily activities or operations of the settlors are carried out within the host communities in the Niger Delta region. The activities or operations of the settlors occasion negative environmental impacts on the lives and livelihoods of the host communities. Hence, in order create, promote and sustain peaceful and harmonious co-existence, the settlors and the host communities usually entered into MOUs. The MOUs attempted to catalogue the settlors agreed corporate social

[10]Kaziboni, L. and Stem, M. (2020). The Impact of Local Content Policies on EU Exports and Investment and Economic Transformations in South Africa. Retrieved from https://www/euchamber.co.za on 4 Nov. 2024
[11] Supra Note 17 s. 234 (3)
[12] Ibid
[13] Ibid
[14] Graham, N. and Ibezim, R. A. (2021) Global MOU initiatives of Shell Petroleum development Company and Conflict Mitigation in the Niger Delta Area of Nigeria Journal of Accounting and Management Science Vol.2, No. I pp. 105 - 251

responsibility (CSR) for implementation in the respective host communities. Often time, the contents of such MOUs were either not dispassionately couched or were not ultimately carried out faithfully thereby leading to litigations.[15] Also, in some instances needs assessments were crafted by the settlors single handed and the people of the host communities were induced to become parties to such MOUs. Another failure or drawback of the majority of the MOUs is the fact that in the general character of MOU, the instrument does not have the character of enforceability but only binding in honour. On a large scale, the cause of conflict between the people of the host communities and the settlors usually revolved round oil spills and /or gas flaring. In this particular instance, the MOUs usually lacked the capacity with which determine and regulate the rights and obligations of the impacted host communities. The boundaries of the enforceability of the basic contents of MOUs and incidents or occurrence of oil spills and gas flaring were clearly unknown to most people in the host communities. The dearth of such knowledge created a void and engendered therefore,0 persistent agitations, deep-seated conflicts, mistrusts and civil unrest in the relationship between the settlors and host communities in the region.

The chequered relationship and the associated negative impact between the parties under the rubrics of the MoUs on the oil production activities with attendance shortfalls in oil-driven budgetary revenue forecasts against the deteriorating lives and livelihoods of the residents and people of the host communities largely contributed to the decision by the Federal Government to unbundle the repealed former Petroleum Act and to re-enact PIA and the regulations under review to wit: to include the provision for needs assessment[16] and communities development plan[17] as well as disputes resolution mechanism thereto. The needs assessment and host communities' development plan (CDP) have come to replace the traditional CSR under MOU regime- which hitherto[18] defined and regulated the relationship between the settlors and host communities. However, under the present Act, near clear procedure and extant governance structures have been established over for the enforcement or implementation of the host communities development plan. Therefore, the governance structures are empowered to deal with any grievances that may arise from or touch on the implementation of the CDP, which is now governed and regulated under the NUPHCDR, 2022.

Nevertheless, in spite of the laudable intendments of the Act and the regulations thereto, this work observes certain un-intended drawbacks in the extant regulations, which calls for re-examination of the usefulness of the innovative dispute resolution mechanism provision, which is supposed to be hinged upon best practices.

A glimpse at section 257(2) of the Act states:

> Where in any year, an act of vandalism, sabotage or other civil unrest occurs that causes damage to petroleum and designated facilities or disrupts production activities within the host communities, the community shall forfeit its entitlement to the

[15] Supra Note 23
[16] Supra Note 17 S. 251
[17] Ibid S. 252 – see also the Stakeholder Democracy Network. (Sdny 2023 publication tilted "Opportunities to improve the Host Community Development Trusts under Nigeria's petroleum Industry Act. Retrieved from https://www.stakeholderdemocracy.org. on 3 Nov. 2024)
[18] Supra Note 3

> extent of cost of repairs of the damage that resulted from the activity…

The above cited provision in the enabling Act to the NUPHCDR, 2022 criminalizes the above listed unlawful acts by people of host communities against the facilities or activities or operations of the settlors within their communities. The Act, however, empowers the NUPRC to make regulations for the establishment of grievance mechanism for disputes resolution arising from any allegation of vandalism, sabotage or civil unrest against the facilities or activities or operations of the settlors.

Clearly, regulation 37 which is the extant provision sets out the template for reporting of cases of vandalism, sabotage or civil unrest which allegedly occurred within any host community. For completeness, the regulation provides that:

1. Where an act of vandalism, sabotage or civil unrest is suspected to have occurred that causes damage to the petroleum operations of the settlors within the host communities or disrupts production activities, the settlor shall notify the Commission within 24 hours of the disruptive act.
2. A settlor within 30 days of the disruptive act submit a report on the disruptive act to the Commission g and the Board of Trustee.

In the above cited disruptive act and the incident reporting procedure under the regulation referred to and the sub-regulations 3 and 4 of the same regulation, the NUPRC that is, the Commission, on the basis of the report of the joint investigation team of the settlor, or Board of Trustees of the relevant host community development trust (HCDT) and the Commission determine the culpability of the host community involved and make its decision and such decision becomes binding on the parties herein. This aspect of the process of disputes resolution is straight forward and does not require much financial obligation on the host communities -which are often financially impecunious to be able to foot the bill at any stage of the investigation. And, the Board of Trustees of the HCDT or the settlor will be in a position to fund the bills for the members from the administrative fund -which is under the custody of the settlor. It is to be noted that the settlor by the Act, is empowered to take charge of 5%- as administration fund, out of the 3% OPEX fund annually payable to the HCDT from each of the settlors' preceding annual financial expenditure within each settlor's area of operation. The said 5% administration fund is meant for the running of the 3 tiers, that is, the Board of Trustees (BoT), Management Committee and Host Communities Advisory Committee of each HCDT.

The main focus and area of concern of this research is the regulation 39 sub-regulations 1 to 11 respectively and which is titled “Grievance Mechanism and Conflict Resolution Procedure!” This section of the regulations divides or classifies disputes into two to wit: dispute between:

(a) One or more host communities in relation to the trust or fund and
(b) A host community and a settlor in connection with upstream petroleum operation or a trust.

This regulation makes it mandatory for the above parties in any of the above listed classifications to fellow the laid down procedure under the regulation under review to resolve the dispute. In the first research limbs of the classifications, the necessary parties in the grievance mechanism are the aggrieved host community, Board of Trustees and settlor.

In the first limb, the regulation 39(2) provides:

(a) Dispute arising between host communities, the aggrieved dispute notice to the settlor and the Board of Trustees, support the notice with relevant documents and after service of the dispute notice, the settlor and the Board of Trustees shall attempt in good faith to resolve the dispute between the host communities and

(b) Dispute between the settlor and a host community or communities, the Board of Trustees shall give a dispute notice to the Chairman of the Board of Director of the settlor, support the notice, the Board of Directors of the settlor and the Board of Trustees shall attempt in good faith to resolve the dispute

In respect of regulation 39(2) (a) above that is, dispute arising between host communities. That is one or more host communities in relation to the HCDT or the fund could arise in the following situations:

i. Where one host community feels, it is entitled to the enabling laws which constitute there are of operation of the settlor as opposed to the other host community which hosts the facilities such as the administrative office of the settlor. To this end, the host community that directly owns the land being direct or immediate area of operation of the settlor should have more objects than the other host community.

ii. Where one host community alleges that the Board of Trust of the HCDT does not distribute projects and programmes equitably or the host community involved is not represented in the management committee or Host Communities Advisory committee of the HCDT concerned. A clear example of this scenario is the dispute between Oloibiri and Otuabagi both host communities to Shell Petroleum Development Nigeria over the relocation of museum and the setting of projects in Otuabagi community which dispute led to decision of the Bayelsa State High Court that Oloibiri is not the community where crude oil in commercial quantity.

In respect of the above dispute, it is observed that the cause of action arises from alleged mal-administration or dearth of inclusivity in the leadership of HCDT or its fund.

In this case, it is much easier for the settlor and the Board of Trustees of the HCDT concerned to resolve, in good faith, the dispute. It is also easier for the settlor to grant any request for funds from the administrative fund, with which to engage the host community or communities involved with a view to resolving the dispute.

However, in respect of the same regulation 39(2) (b), that is, where the dispute is between the settlor and a host community or communities, the probable cause of disputes includes:

i. Insecurity over the settlor's facilities in the upstream petroleum operations
ii. Incidents of vandalism, sabotage or civil unrest
iii. Incidents of all spills or gas flaring.
iv. In the above class of dispute, the procedure for its resolution requires that the Board of Trustees of the HCDT should issue a dispute notice to:

(a) Chairman of the Board of Directors of the settlor.
(b) Support the notice with relevant documents.
(c) The Board of Directors of the settlor and Board of Trustee of the HCDT after serving the dispute notice on the former, shall attempt to resolve the dispute in good faith.

The regulation under review is silent about how the Board of Trustees will generate the relevant information about the cause of action leading to the dispute so as to enable the BoT to give the statutorily stipulated dispute notice to the Chairman, Board of Directors of the settlor. Curiously, the Board of Trustees is, theoretically, answerable to the host communities, the settlor and the NUPRC – which is the regulator. However, in practice, the Board of Trustees is bound to lean more towards the settlor in the daily discharge of its functions. For instance, the day to day running of the trust is funded from the administrative fund account. This account by the Act is managed by the settlor. In the determination of dispute between a host community or communities and the settlor, the Board of

Trustees in conjunction with the Host Communities Advisory Committee – whose duties include: the giving of advice on the improvement of security of infrastructure and management of peace building within the communities and the entire area of operation of the settlor,[19] will require funds from the same settlor that is a party to the dispute. It is curiously doubtful how the Board of trustees will undertake the dispute settlement and expending money in from the administrative fund in the custody of the settlor to cover expenditure such as transport fare, refreshments, sitting allowance and general secretariat administration. It is also to be noted that the members of the Board of Trustees cannot incur out-of-pocket expenses in the course of resolving such a dispute without due approval by the settlor. There is also the likelihood that the settlor might be reluctant to approve money as and when due towards to make for a smooth and timely resolution of dispute because doing so will amount to empowering one's enemy and/ or encouraging more disputes in future. The view expressed herein however, does not support or encourage any settlors to not make fund available to the Board of Trustees towards the determination of dispute whether between one or more communities or between one or more communities on the one hand and the settlor on the other hand. However, the caveat is that effort should be made to discourage or disincentivies factors that could serve as recipe for insecurity so as to create and enthrone peaceful co-existence between the host communities and the settlor.[20]

Nevertheless, the regulation under review further provides room for appeal by the disputed parties in either of the two dispute classifications, that is, the Alternative Dispute Resolution Centre of the Nigerian Oil and Gas Excellence Centre for mediation.[21] In this case, any aggrieved party will be expected to serve the requisite notice in writing on the other party or parties to the dispute. The party is also required to serve a copy of the notice to the NUPRC.[22] The regulation, however, imposes a 45 days timeframe for conclusion of mediation. The venue for the determination of the dispute shall be as decided by the parties failing which, the state capital of the host community involved shall be that venue for the mediation.[23] Equally, it is stipulated in the regulation that the settlement reached at the end of the mediation and signed by the parties or their representatives shall be final and binding on them.[24] However, where the dispute is not resolved within 30 days after the parties commenced mediation due to the following circumstances:

(a) Where an aggrieved party fails to the participate in the mediation or
(b) Party ceases to take part thereafter before the expiration of 30 days period contemplated under this regulation or
(c) Where the mediation terminates before 30 days –

an aggrieved party shall be entitled to refer the dispute to the NUPRC to resolve the dispute in good faith.[25] But where the NUPRC is also unable to resolve the dispute being brought before it, the disputing parties are expected to engage the services of an Arbitrator, for the purpose of resolving the dispute pursuant to the provisions of the Arbitration and Conciliation Act.[26] Here, the said Act requires

[19] Supra Note 17 S. 250 (d)
[20] Ibid S. 318 and note 18 regulation 5
[21] Supra Note 8 regulation 39 (4)
[22] Ibid Sub-regulation 6
[23] Ibid sub-regulations 7 & 8
[24] Ibid Sub-regulation 9
[25] Ibid Sub-regulation 10
[26] Ibid Sub-regulation 11: See, however, the new Nigerian Arbitration and Mediation Act of 26 May 2023 – which repealed the Arbitratory and Conciliation Act, 2024

an arbitrator to be fair to both parties, follows rules of the arbitration and mediation[27] procedure as well as the rule of law generally.

Analysis of the Arbitration Provision

The Petroleum Industry Act and its Regulations provide for and mainstream dispute resolution mechanism of the Arbitration and Conciliation Act 2004 (Now Arbitration and Mediation Act 2023). The mainstreaming of the ADR principles is reflected in the Nigerian Upstream Petroleum Host Communities Development Regulations and the Act itself. The essence of mainstreaming the alternative dispute resolution principles in the two legal frameworks is to enable parties involved in the administration and management of the HCDTs and the Fund, to deploy seamless and cost-effective approach towards resolving disputes which may arise between the host community or communities and the Settlors in their areas of operation without necessarily resorting to the court with its peculiarities, for the determination of their civil rights and obligations. The court, therefore, considering the surrounding financial circumstances of the host communities, should be the last resort- because litigation much as it has its own measurable benefits, it equally has numerous inherent drawbacks relatively above arbitration and mediation, especially so, in our lime where the litigations last in courts for decades and are sometime survived by representatives of the estates of the original litigants.

However, it has been observed that in disputes between one host community or more host communities and the settlor, the Board of Trustees which is saddled with the responsibility to initiate dispute notice is also to serve the said dispute notice on the Chairman Board of Directors of the settlor. And, thereafter, both the Board of Trustees and the Board of Directors of the settlor are required to resolve the dispute in good faith. Arquably, this procedure is opened to a number of tendentious interests such as conflict of interest on the part of the Board of Trustees because the BoT runs its daily administration on budgeted funds drawn from Administration Fund account which is administered by the settlor.[28] In this circumstance, the settlor who is a necessary party in the dispute might act impulsively and/or unduly delay the process for the investigation and /or determination of the dispute. Also, most HCDTs do not have adequate administrative funds because of the small size of the 3% OPEX from their settlors, with which to take care of their running costs, such HCDTs can ill-afford to utilize their meager funds in dispute resolution without impoverishing the trust or its fund. This precarious situation, therefore, calls for an upward review of the 5% administrative fund to 10%, while the Reserve Fund of 20 percent should be reduced to 15%. It is worthy of note that the administration fund depreciates daily while the reserve funds appreciate each time the 3% OPEX is released to the Fund of the HCDTs by their settlors and placements are made with the approved Fund Managers on the heels of the principles of generational equity. With envisioned upward review of the 5% administrative fund the small HCDTs can effectively handle such disputes and with less dictates from the settlors. The big, medium and small HCDTS will equally have adequate funds with which to, effortlessly, handle any disputes brought before them and the settlors will, therefore, desist from act indifferently towards application for the release of funds for the determination of disputes involving the host communities and the settlors.

[27] Adeioju T. (2023). The Nigerian Arbitration and Mediation Act 2023: A comparison with the Arbitration and Conciliation Act 2004 and global practices International Barr. Association Retrieved from https://www.ibanet.org>the Nigeria. on 8 Nov. 2024.

[28] Supra Note17 S. 244 (c)

Conclusion

The Chapter 3 of the Petroleum Industry Act (PIA) 2021 and its Regulations, 2022 are designed to douse off tensions, mitigate strident agitations and recurring civil unrests in the upstream petroleum areas of operation in the Niger Delta region-between the settlors and the host communities. This is with a view to creating and fostering sustainable prosperity, harmonious and peaceful co-existence within the host communities. It will also affect smooth and increase oil and gas production in Nigeria. It will be recalled the hitherto frosty relationship between the settlors and the host communities and which relationship was defined and bench-marked by hostilities and the tools for mitigation of such altercation were MoUs. These tools were only capable of providing unsustainable solution frequent impasse between the people and the IOCs. Both the combined federal and state intervention agencies could not deliver on their mandates due to endemic corruption and general mal-administration in the running of such agencies.

Paradoxically, the existence of the MOUs which evidenced or embedded the CSR of the settlors designed for host communities neither possess the contents nor legality of mitigating the daily hardship experienced in the region. These frosty relationship often fuelled agitations at the slightest oil spills or gas flare by the youths against the settlors. In other instances, these frosty relationships often snowballed into wanton vandalization of oil facilities, thereby resulting in the declaration of force majeure by the settlors with attendant face-off between the security agencies and the youth groups in the region.

But the enactment of the new Petroleum Industry Act with a new variant of LCRs and ADR provision, aimed at bringing sustainable prosperity and peaceful co-existence within the host communities, it is hoped that all the stakeholders in the oil and gas industry would collaborate and work towards removing the rough edges of the new PIA and its regulation through legislative reforms for the realization of the lofty and laudable internments of the new legal and institutional frameworks.

Recommendations

- There is a need to review upwards the 5% Administrative Cost to 10% and thereby reduce the Reserve Fund from 20% to 15% through legislative reforms.
- There is the need for the settlors to always strive to make condition for peaceful settlement or disputes resolution possible rather than often considering the use of security operatives as the option to intimidate and /or arrest and detain the aggrieved youth leaders and stakeholders holding opposing views within the host communities.
- There is a need to constantly make provision for routine engagements by the Board of Trustees and/or the settlors with host communities, to identify their challenges with a view to addressing them before such challenges dovetail into or become recipe for violent agitations.

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