



Opportunities to improve the Host Community Development Trusts under Nigeria's Petroleum Industry Act

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May 2023

Key Points

- 1.** The Petroleum Industry Act (PIA) establishes the Host Community Development Trusts (HCDTs), which will guide oil and gas company (OGC) investments into community development. While the law and regulations are a good foundation, our close reading highlights several issues related to financial and governance mechanisms that need to be addressed. Urgent changes are needed to make the most of the huge investments, reduce future risks for the oil and gas industry, and avoid tensions across the Niger Delta.
- 2.** The HCDTs will channel huge amounts of resources towards community development, effectively replacing corporate social responsibility projects. The Federal Government of Nigeria (FGN) estimates the total contribution to HCDTs will be US\$500-800 million per year (NGN200-330 billion), around ten-times the average annual social spending by OGCs (\$72 million or NGN19 billion). The estimated total allocation to HCDTs is almost as much as the Niger Delta Development Commission average annual budget (\$806 million or NGN206 billion), which will continue to be spent in parallel. This creates a huge opportunity for coordinated community development spending.
- 3.** More funding for community development is welcome, but historically, the main challenge has not been the lack funds, but the failure to manage this properly, to ensure it benefits communities. Federal and State government funding for the Niger Delta was over NGN1.4 trillion (US\$3.7 billion) in 2020. With more, it is in the interest of all parties that these are calculated, collected, and utilised in a transparent and accountable way, which is applied consistently across all companies and communities. The current regulations provide basic guidance, but to avoid future disputes, the regulator needs to specify uniform, transparent, and accountable approaches for: calculating operating expenses, clustering communities, distributing allocations among HCDTs, and establishing mechanisms to manage projects.
- 4.** The audited accounts of OGCs are generally not published, so there is no way to independently verify that companies are contributing what is due. Verification will be at the discretion of the Nigerian Upstream Petroleum Regulatory Commission (NUPRC). Several transparency initiatives have introduced positive measures for reporting payments to government. But we are concerned that similar measures are not in place for payments to HCDTs. Moreover, the FGN has claimed compliance with existing mandatory payments is poor – for example, alleging OGCs owe the NDDC billions of dollars. If OGCs fail to pay HCDTs, NUPRC will need to exercise its powers under the PIA to make warnings, issue fines and revoke licences.
- 5.** The HCDTs seek to incentivise communities to protect the industry's infrastructure from sabotage, oil theft, and artisanal refining, but do not provide any support to help them achieve this. Instead, they will be penalised under a provision in the PIA which states that deductions can be made to HCDTs for the cost of damage from 'third-party' incidents. The regulations expanded the definition to include cost of products lost and operational costs during the period of down time – if implemented, this could theoretically wipe out HCDT contributions. We maintain that this provision in the regulations is out of step with the law, and moreover, that this provision should be removed entirely. It should be the responsibility of OGCs and the FGN to ensure the integrity of infrastructure. Communities are an important stakeholder in these efforts, but would need extensive support to tackle organised criminal networks, which are often armed and working in complicity with the security agencies and government. Private pipeline surveillance contracts were recently awarded to protect the infrastructure. By extension, their success could be integral to community development under HCDTs, so synergies should be explored.

We recommend

Finance: to support improved transparency and accountability in the HCDTs, NUPRC can:

Specify uniform approaches for OGCs to calculate their operating expenses (OPEX) and depreciation, depletion and amortisation (DDA), with specific line costs to be included or excluded. While specific details may be commercially sensitive, the NUPRC can establish an acceptable level of transparency that enables communities and CSOs to verify that HCDTs are receiving what they are due. This can be tied to reporting already done by joint ventures, such as NUPRC production data or NEITI audits.

Provide guidance to OGCs on how to cluster communities into HCDTs, which includes risk management strategies, and conduct thorough checks prior to approving incorporation. This includes providing a clear process for deciding which coastal communities are due contributions from offshore operations.

Provide a funding matrix for collecting and distributing contributions under OGC joint ventures, with a robust formula for assessing the value and 'impact' of production on different communities.

Clearly outline the penalties that OGCs will face if they do not deliver contributions on time, and ensure that it has the enforcement powers to act swiftly as soon as there are delays or defaults.

In addition, the National Assembly should look at the provision to deduct funds for third-party damage, and challenge it if they agree this is an overreach of what the law permits. Moreover, they should look critically at the negative impact it will likely have on communities, and in turn the OGCs, and consider removing the provision altogether.

Governance: to ensure robust governance, improve accountability to, and the influence of, communities in the process, NUPRC can:

Extend the period for community needs assessments to take place and update regulations to require they are reviewed more regularly than every five years, since needs will change in some areas, and hopefully reduce in others, as HCDTs have positive impacts. Update regulations to ensure that host communities can participate in the design and validation of development plans, otherwise too much power is vested in the OGC to define the framework for HCDT projects and objectives. Ensure that the Advisory Committees have the financial and technical resources they require to conduct their activities, including their role to monitor and evaluate projects. Ensure there is a mechanism in place with a relevant government body to support HCDTs to select projects that are not a duplication of other government responsibilities and initiatives, such as funding schools or healthcare. This highlights the need for a coordinating body, which can possibly be filled by the Ministry of Niger Delta Affairs.

Establish a special tribunal to deal with disputes between communities and OGCs, which can deal with cases quickly and impartially, without the need to go to court, as this will provide setbacks to project spending in host communities. Work with other relevant agencies should ensure that pipeline surveillance contractors have effective strategies in place to protect OGC infrastructure, as this will be crucial for protecting contributions due to HCDTs.

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Acronyms

CAPEX	Capital expenses
CSR	Corporate social responsibility
DDA	Depreciation, depletion and amortisation
DOC	Domestic oil company
FGN	Federal Government of Nigeria
FIRS	Federal Inland Revenue Service
HCDT	Host Community Development Trust
IOC	International Oil Company
NAPIMS	National Petroleum Investment Management Services
NDDC	Niger Delta Development Commission
NEITI	Nigeria Extractive Industry Transparency Initiative
NGN	Nigerian Naira
NNPC	Nigerian National Petroleum Company
NOSDRA	National Oil Spill Detection and Response Agency
NUPRC	Nigerian Upstream Petroleum Regulatory Commission
OGC	Oil and gas companies
OML	Oil mining license
OPEX	Operating expenses
PIA	Petroleum Industry Act
SDN	Stakeholder Democracy Network
US\$	United States Dollar

Introduction

The Petroleum Industry Act (PIA) was passed in August 2021, initiating the restructuring of regulation for the oil and gas sector in Nigeria, with a significant impact on communities that host operations. One section of the Act is focused on community development and provides for the establishment of Host Community Development Trusts (HCDTs) to increase social spending by oil and gas companies (OGCs) in host communities. While SDN's view is that this section of the act should have focused on a more holistic, government-led strategy for development in host communities and protecting them from the harmful impacts of hydrocarbon exploration and production, it does at least offer the hope for vastly increased social spending by OGCs, and greater autonomy of that spending for host communities.

The head of the Nigerian National Petroleum Company (NNPC) has stated that under the new legislation, huge sums of money - over US\$500 million per year – are due communities. This is a significant opportunity for investments into widespread community development. However, it is also the latest in a long line of initiatives which are meant to direct funding to communities impacted by the oil and gas industry (for example, the creation of the Niger Delta Development Commission (NDDC) and the 13% derivation provided to states). These have seen large amount of revenue from the oil and gas industry flow to the region, but with limited results, for example, due to misuse of funds and benefit capture by certain groups. It is therefore of paramount importance that these pitfalls are avoided, and it is in the interest of all parties that the funds are calculated, collected, and utilised in a transparent and accountable way, and that they are directed to initiatives which are in the widespread public interest.

To manage the investments locally, Host Community Development Trusts (HCDTs) are being established. To guide implementation, accompanying regulations were issued by gazette in June 2022. Our close reading highlights that the PIA and HCDT regulations lay the foundation for managing these funds, but there are many opportunities to build on this to ensure best practice is followed in finance and governance mechanisms.

This report outlines some of the key concerns under these two areas – finance and governance – and provides specific recommendations for the legislature and regulator to consider, in their efforts to improve implementation of the HCDTs, and wider PIA. We have structured our discussion around some key questions we believe need to be answered, providing answers where we can, and highlighted when more information and work is needed where we cannot. It is based on a close reading of the PIA, HCDT regulations, and from analysing the audited accounts of an OGC.

This is a major, complex new policy initiative, with many potential risks and benefits for communities. From our discussions with OGCs, the FGN, communities and wider civil society, it is clear that work is being done to try to navigate this complexity. However, the speed at which this is happening, and the focus on the business side of the reforms, may gloss over several critical issues related to host communities, which this report seeks to highlight.

Research and analysis findings

Finances

When it comes to the Niger Delta and host communities, the first challenge is not lack of funds¹, but the failure to use funds which have flowed to the region to the benefit of all citizens. For example, in 2020 alone, Federal and State Ministries, Departments and Agencies were allocated NGN1.4 trillion (US\$3.7 billion) (see *Annex 1*). Our later section on governance focuses on some of these issues. However, firstly there is a need to understand the scale of funds involved with HCDDTs, and to understand the risks if information on this is not transparent, in a context where mistrust between communities, companies and government is prevalent, and where the allocation of significant amount of funds is overlaid with locations where they are existing risks of intra- and inter-communal conflict.

How much funding are we expecting?

The PIA states that OGCs shall pay an annual contribution, *“in an amount equal to 3% of its actual annual operating expenditure of the preceding financial year in the upstream petroleum operations affecting the host communities for which the fund was established”*.² The Federal Government of Nigeria (FGN) claims the total will be huge, with the Nigerian National Petroleum Company (NNPC) Group Managing Director, Mele Kyari, quoted as saying:

*“The operating expense in the industry is up to \$16 billion in a year. That means that 3% of that operating expenses is clearly somewhere around \$500 to \$600 million, it can even be as high as \$800 million. So, when you look at this, that value is almost bigger than the size of the budget of the NDDC (Niger Delta Development Commission). So, it is a really huge investment.”*³

The NDDC budget was on average US\$806 million (NGN206 billion) per year between 2012-2020 (see *Annex 2*). However, the total amount contributed to HCDDTs is expected to be far lower than the NDDC levy, which is equal to 3% of the *operating budget* of the preceding financial year, and supplemented with a contribution from the FGN.⁴ This is because the operating budget includes operating expenses (OPEX), as well as capital expenditure (CAPEX), plus other costs. On this point, the FGN ought to exercise caution in its communications, to avoid false expectations. The best way would be to publish total OPEX figures.

The definition of OPEX is itself open to interpretation. The HCDDT regulations provide a fairly detailed definition of operating expenditure, which should take into account, *“non-capital production costs, cost of sales, administrative expenses and any other expense incurred for the operations of the business on a day-to-day basis as included in the audited financial report, provided that such expenditures shall not include capital expenditures, impairment, depreciation or amortisation.”*⁵ However, it is understood that the industry definition of OPEX is different to the FGN definition – as the latter typically does not include maintenance.⁶ This definition therefore leaves a lot of room for interpretation, and without a specific definition, companies may calculate their contributions differently. Therefore, we recommend that the regulator provides a specific definition, with the line costs to be included in financial accounting.

One thing is clear, the HCDDT allocations will far surpass the existing non-mandatory social spending (CSR) of OGCs. The total of non-mandatory social spending reported for all OGCs between 2012-2020 was US\$655 million, which is an average total of US\$72 million per year.⁷ The expected contributions to HCDDTs are therefore expected to be many times higher than what is currently spent (see *Annex 3*).

How will communities be able to tell if they are receiving the funds they are due?

At present, there appears to be a large transparency and accountability gap, what funds should be due to their HCDT and whether they have been received. Communities will not be able to validate what they are owed, because almost all companies do not publish their detailed annual audited accounts or budgets. These details are reported to the upstream industry regulator (Nigerian Upstream Petroleum Regulatory Commission, NUPRC), the manager of FGN interests in the industry (National Petroleum Investment Management Services, NAPIMS), and the Federal Inland Revenue Service (FIRS). But without publishing this information, the amount the companies should be remitting to the HCDT cannot be independently verified.

Moreover, compliance with provisions to fund NDDC has reportedly been poor. The FGN claims that several OGCs fail to submit their allocations, and that the deficit was US\$4billion in 2021.⁸ This is exacerbated by the fact that NDDC has no statutory powers to compel the release of funds, or impose penalties for non-compliance. The NUPRC does have powers it can exercise if payments are not forthcoming – including issuing penalties up to US\$250,000, and making recommendations to the Minister of Petroleum Resources to revoke a lease.⁹ This is positive, although it remains to be seen whether the NUPRC will follow through to compel the timely release of funds due.

How will the funds be calculated and split among Trusts?

Dividing the contributions among HCDTs will be complicated for a number of reasons. Firstly, there is no guidance in the regulations on how to form a HCDT cluster. It is therefore left to the OGCs to decide which communities are hosts to their facilities, group them into HCDTs, and calculate how much they are due.¹⁰ The regulator will have

to approve the grouping of communities under HCDTs, but this may be done without ample risk assessments. This has the potential to cause conflict in areas where there are existing community-level disputes, for example, over territorial borders, and existing revenues and opportunities from the oil and gas industry. While HCDT structures have a range of positions that should ensure broad-based community representation, there could still be disputes when selecting representatives and projects.

Moreover, the OGC contributions will need to be split among different HCDTs, and there is no guidance in the regulations on how this will happen. The *ad hoc* approach to grouping communities will make it more difficult to calculate how much each HCDT is due, and for communities to verify this. If, for the sake of argument, HCDTs were based on existing oil mining licence (OML) boundaries, then production is already calculated and published at that level. However, in an *ad hoc* approach, the OGCs must calculate their production within the territory of each HCDT, assess how 'impacted' each area is, and then apportion contributions.¹¹ The regulations specify that the settlor should design a funding matrix for the proposed allocation of funds to host communities "*based on equitable and economic principles*".¹² But it also outlines that "*the commission may issue a template of fund distribution matrix to serve as a guide to settlors.*" We recommend that the NUPRC exercises this right, and issues a uniform template, if it has not done so already, so all companies follow the same principles. Otherwise, there will inevitably be disputes with communities.

To further complicate this, all operations in Nigeria are under a Joint Venture (JV) or Production Sharing Contract (PSC). In this arrangement, various companies have a different equity share, contribute different levels of investment, and take different profits. Therefore, it is not clear how HCDTs will manage this issue, since it could become

confusing to calculate the contributions due on a company-by-company basis, when the allocation of HCDTs to companies is different to the JVs. In addition, offshore oil blocks are set to make contributions to 'littoral communities' "*located along the Gulf of Guinea of the Nigeria shoreline up to about 500 metres inland*", who will be "*assigned to a settlor by the Commission (NUPRC)*".¹³ In terms of contributions from offshore operations, they will be "*pooled and distributed amongst beneficiary*

trusts equitably considering annual operating expenditure of the preceding financial year, asset value size, and any other criteria as may be determined by the Commission."¹⁴ This is another grey area where the regulator should intervene, to create a uniform approach to allocating funds from offshore production, to communities along the coastal areas.

Case study: Calculating contributions

From an outside perspective, calculating the contributions due to HCDTs is currently not possible. We attempted to do this and ran into several challenges, which others will face when attempting to verify what HCDTs are due, and whether OGCs are making the payments required of them. More will need to be done to by the FGN and OGCs to align HCDTs with commitments to transparency and accountability. We sought to analyse the audited accounts of several OGCs, but could only find published reports for one domestic oil and gas company. In this process, we observed the following:

- The majority of OGCs do not publish their annual audited accounts so there is no transparency on OPEX. International oil companies publish their annual audited accounts, but these cover the entire company, and they do not show the figures for their subsidiaries in Nigeria.
- Most companies are involved in upstream (production) and downstream (distribution) activities, and the OPEX for each is not separated in reports. Some companies are only involved in upstream activities, but they also have operations that are not directly impacting host communities, such as international offices, and sole cost projects, such as shares in power plants. Their reported OPEX totals cover all these activities, and it is not possible to separate for onshore oil and gas operations.
- All companies operate in Nigeria under joint ventures (JVs), where they have a share in the producing asset (e.g. NNPC 55%, SPDC 30%, Total 10%, Agip 5%), and OPEX is not reported on a JV basis. It is therefore not clear how contributions to HCDTs will be calculated under JVs.
- When we used the definition of OPEX provided in the HCDT regulations, we found that 3% of a company's total OPEX was far higher than the amount they reportedly remit to NDDC. This should not be the case, as the NDDC levy is based on 3% of the operating budget, which includes OPEX, CAPEX, and other costs. Therefore, this implies that the OGC either uses a different definition to calculate their OPEX, have not fulfilled their mandatory NDDC payments, or NNPC has not contributed their share.
- In the industry, the definition of depreciation, depletion and amortisation (DDA) is subjective, meaning companies will calculate the costs to be deducted from their OPEX in different ways. Furthermore, DDA applies to CAPEX more than it does to OPEX, so it is not clear how much should be deducted from the contribution.

How much can be deducted for damage to infrastructure and what are the implications for host communities?

The Petroleum Industry Act (PIA) states that deductions can be made to HCDDT funds to cover “the cost of repairs of the damage” that result from “third-party damage”, when “an act of vandalism, sabotage, or other civil unrest occurs that causes damage to petroleum and designated facilities or disrupts production activities”.¹⁵ However, the Host Community Development regulations appear to significantly broaden what is stated in the PIA, to allow deductions for not only for the cost of repairs and replacements, but also:

- the value of products lost as a result of the action (crude oil, gas, or products);
- the operating expenditure incurred during the period that production was shut down.¹⁶

On the face of it, it appears the regulations are a significant overreach on what the legislation permits. If implemented, this could lead to huge deductions to HCDDTs, but it is challenging to establish exactly how much. During 2022, FGN sources publicly estimated as much as 200,000 to 400,000 barrels of oil a day were being stolen, so the deduction could be *US\$365-730 million per year* (at US\$50 per barrel, a price well below the current oil price).

The total deductions rise sharply when other permitted deductions are included, such as pipeline repairs, which according to NNPC statistics, costs on average US\$370 million (NGN110 billion) per year.¹⁷ Assuming 80% of damage is due to third-party sabotage as OGCs claim (and this equated to 80% of the cost of damage), this equals *US\$296 million (NGN88 billion)*.

Based on the cost of oil lost and pipeline repairs alone, under the new definition in the regulations, HCDDTs could theoretically have US\$661 million to US\$1 billion (NGN303 – 458 billion) deducted every year. This exceeds the amount they are estimated to receive. The total could be even higher, as this does not include the value of other products, and operating expenditure during down time.

Furthermore, this provision will be controversial under the current system of recording and reporting oil spills, which is highly contested by communities and civil society organisations (CSOs), who claim that the regulator and OGCs often underreport the total volume of spills, and regularly misattribute the cause as third-party, instead of operational failure, to avoid paying fines and compensation. Under the PIA, if OGCs can charge communities the associated costs, this is a potential incentive to report more spills as third-party damage, and to increase their estimates of total spill volumes.

Furthermore, single extreme incidents could exhaust funds allocated to HCDDTs. As an illustrative example, it has been claimed that third-party damage was the cause of a spill at OML 29 in Nembe in November 2021. No official joint investigation visit report has been made public, but an independent expert estimated that at least 500,000 barrels of oil were lost.¹⁸ At \$50 per barrel, this would amount to US\$25 million alone (NGN10 billion), on top of the other permitted deductions. Taking a more modest estimate of 50,000 barrels, this would still cost US\$2.5 million (NGN1 billion) – which is still likely to be more than the total contributions to the local HCDDT.

This highlights a broader question SDN has previously asked surrounding third-party damage - why should whole communities be held accountable? The situation is undoubtedly complex: the lack of jobs and access to energy in communities in the Niger Delta are among the drivers for the artisanal oil industry. These drivers have in part been created by the oil and gas industry, for example, through historic oil spill pollution which has destroyed local livelihoods. In turn, this situation has created a level of reluctant acceptance in communities for the existence of the artisanal oil industry, and the further environmental damage this creates on top of the damage already caused by OGCs

On the other hand, for this illicit industry to exist in the way and scale that it does, there is a failure of all actors. For example, a failure of oil companies to protect their infrastructure, of security agencies to perform their role effectively, and of the FGN to provide an effective and holistic policy response to tackle the underlying causes of the problem.

Finally, the reality of the artisanal oil industry is that it is controlled by organised, often heavily armed

groups – and as is now publicly acknowledged, even in the National Assembly, with the collusion and active participation of a range of groups and influential individuals.

This has enabled the informal sector to grow in scale over the past two decades, with the FGN and OGCs unable to stop it, despite spending billions of dollars on military operations and hardware. This is a major problem across the Niger Delta and simply passing the costs that oil companies incur onto community members without adequate support is not an effective solution.

SDN campaigned for this provision to be removed entirely, as it abdicates OGCs from their responsibility to protect their own infrastructure, places an unfair onus on communities to ensure the security of oil and gas infrastructure, and punishes entire communities for the actions of a few, which may be completely outside of their control.¹⁹ At the very least, based on the fact that this provision in the regulations appears to be out of line with the PIA, we expect this can be challenged and hopefully the regulations can be reviewed to bring them back in line with the PIA.



The Nembe oil spill in 2021 (Source Ovieteme George)

Governance

With larger amounts of money allocated to communities, it is important that the correct governance structure is in place to coordinate planning, spending, and ensure accountability. New structures are being established for this purpose, but there is a lack of guidance, several grey areas open to interpretation, and several issues arising from the regulations.

Who will be involved in the Trusts and what will they do?

There were some welcome changes made in the final version of the PIA, for example clearly stating that community representation is required in certain parts of the structures, yet we fear they do not go far enough to ensure that communities have a significant and meaningful say on how HCDDTs operate. On paper, the settlor (i.e. the OGC) retains a disproportionate level of control over management and direction of the HCDDT – although in our discussions with OGCs, a number suggest that once the HCDDT is set up, they will have very limited control and involvement beyond providing the funds. Regardless, the top-down structure provides layers of administration and upwards reporting and accountability (e.g. to the OGC and government), but very little provision is made for ensuring accountability to communities and ensuring regular communication, reporting, consultation and participation.

The structure of the HCDDTs is outlined below, with their roles unpacked, as specified in the PIA and regulations. This is what the regulations require to be established in every group of communities that 'host' the operations of OGCs. The vast bureaucracy could become highly burdensome, and without guidance, risk causing disputes over control of the different structures. This could be improved, for example, by creating guidelines, and rolling these out across the industry. It could be produced in a multi-stakeholder process between OGCs, communities, and the FGN.

Another positive change in the final version of the PIA was to ensure the Board of Trustees (BOT) for every HCDDT is composed of members of the host community, and that there must be consultation with communities on their selection²⁰. However, the settlor retains the right to determine the criteria for appointments, without any requirements to consider gender or age, and it has powers to remove members²¹. This could lead to a situation where a handful of representatives - i.e. those who are already influential in the oil and gas sector, typically middle-aged and elderly men - will decide what projects are implemented, who is awarded contracts, and could scheme to create a cartel to capture these funds. Furthermore, the maximum number of BoT members is nine – so HCDDTs that cover more than nine communities will force them to compete for representation.

The Management Committee is responsible for the general administration of the HCDDTs, so it is positive that executive members must have experience in relevant professions, and that appointments must *"give due consideration to diversity as it relates to age, gender, and physical disability"*.²² However, it is not clear how the roles of these executive members - who will not necessarily be members of host communities - differs from the roles of the community representatives, who will serve as non-executive members. In corporate governance, non-executive directors typically provide oversight and insights to challenge executive directors. But that is at the director or board level, and the management committee is at the level below this, so they will not have usual powers to challenge executive members and remove them if performance is sub-standard. The structure therefore risks concentrating power with executive members, who are not from host communities, and appointed by the BoT, while non-executive members from the host communities could be accommodated for the sake of representation, without any formal role in day-to-day management.

Administrative structure for Host Community Development Trusts

Body	Composition	Project roles	Administrative roles
Regulator – Nigerian Upstream Petroleum Regulatory Commission (NUPRC)	Civil servants appointed by the FGN	Review and approve community development plans.	<ul style="list-style-type: none"> Approve Board of Trustee nominees. Manage dispute resolution mechanisms. Make regulations on the administration, guidance, and utilisation of funds. Oversee contracting and project implementation by BoTs. Investigate fraud and mismanagement.
Settlor – Oil and gas companies	Oil and gas company staff	Undertake a needs assessment to define the issues that need to be addressed, then design the community development plan.	<ul style="list-style-type: none"> Incorporate HCDTs with the Corporate Affairs Commission, after completing the needs assessment. Make annual contributions to HCDTs. Appoint BoTs in consultation with host communities. Determine procedures and regulations for BoTs. Submit an annual report on projects and finances to the Regulator.
Board of Trustees (BoT)	Members of the host communities, appointed by the Settlor, in consultation with host communities. Odd number of trustees (<9) serving a maximum of two four-year terms. Plus a Secretary appointed by the Settlor.	Approve and oversee projects under the development plan.	<ul style="list-style-type: none"> Responsible for general administration of HCDTs. Set up management committees and appoint members. Determine procedures and regulations for management committees. Determine the process for allocating funds to specific development programmes. Keep account of finances. Submit an annual report on projects and finances to the Settlor.
Management committee	<p>Executive members: Individuals with experience in accountancy, finance, law, or project management. Selected by the BoT, not necessarily from host communities.</p> <p>Non-executive members: One representative of each host community, nominated by the community. Unspecified number of members, serving a maximum of two four-year terms.</p>	Prepare budgets, run contracting processes, and supervise project implementation under the development plan.	<ul style="list-style-type: none"> Responsible for the general administration of HCDTs. Prepare budgets and submit to BoT Manage the procurement and contract award process. Report on activities of management committee, contractors, and other service providers Set up advisory committees and appoint members. Determine procedures and regulations for advisory committees. Submit a mid-year and annual report on projects and finances to the BoT.
Advisory committee	One representative of each host community, unspecified number or term limit.	Articulate and advise on community development projects to the management committee, and monitor and report progress of projects being executed.	<ul style="list-style-type: none"> Monitor and report progress of projects to Management Committees. Nominate members to represent host communities on management committees.

The Advisory Committee has been given the responsibility for monitoring project implementation, and reporting to the Management Committee. Yet there is no guidance on what or how to monitor the impact and outcomes. This will likely be a significant undertaking, and it is not clear what proportion of the 5% of HCDDT funds allocated to administrative purposes will be allocated to the advisory committee. There is a significant opportunity to develop an enhanced approach, which involves regular community consultation, monitoring and evaluation, and iterative updates of development plans, in line with best practice from the development sector.

Who decides what gets funded?

A needs assessment will be carried out in each HCDDT at the outset. One positive change in the regulations is that the settlor has to show evidence it has engaged with each affected community to understand the issues and needs; consulted with and considered the concerns of women, youth and community leaders, and; engaged with each affected host community in developing a strategy to address the needs and effects identified in the applicable needs assessment.²³ However, this will only happen at the outset, and be reviewed every five years, which could be improved by creating regular opportunities for community feedback, to make updates based on changes in issues and context.²⁴ NUPRC reportedly has a template for needs assessments, but this does not appear to be enforced. In observed HCDDTs, the approach used was not comprehensive – e.g. one settlor sent 50 forms for community members to fill their needs.

Moreover, the requirements for consultation do not extend to the subsequent community development plan, which is the key document guiding the strategy and project selection under the HCDDT.²⁵ The settlor is only required to consult with the proposed BoT members, and submit the development plan to the NUPRC for approval, after 30 days of completing the needs assessment.

This does not provide adequate time for thorough consultations to occur with the affected communities, even if this was required of the settlor, which it is not. As a result, OGCs may use existing needs assessments that were conducted for previous CSR projects, which will be outdated and geared towards OGC priorities. Anecdotally, in our informal discussions with OGCs, they have expressed concerns about the short timeframes given for needs assessments, and the complexities they will face in developing robust community development plans.

Because development of the plan rests with the settlor, it is ultimately within their power to define the issues to be addressed; set the objectives and strategy of the fund; determine and specify the community development projects to implement; and set the budget and timeframe for implementation.²⁶ Therefore, community members may be consulted on their needs at the outset, but there is no guarantee that they will have a say in the design of the overall strategy of the development plan, or the projects that are implemented, nor will they be part of validating or approving the final plan, as this is left to the regulator. The process could even be open to elite capture of the benefits, potentially creating further fault lines along which conflict can emerge within and between communities, as we have seen with other initiatives in the Niger Delta.

While there of course needs to be a decision-making structure which prioritises initiatives from community consultations, we are concerned that the current process is not open enough and too much power rests with the settlor, which could be prone to capture by individuals or interest groups. Even if a settlor were to behave in completely responsible way, they will be open to accusations of bias, thus creating further risks of conflict. Without mechanisms to ensure consultation and feedback from community members, the only way they can have a say in the project selection will be by lobbying members of the Board of Trustees, Management Committee, and Advisory

Committee. If these channels are not productive, disgruntled community members may turn to protest or sabotaging infrastructure, as has become common during lingering disputes with OGCs across the region.

What will the Trusts do to support development in communities?

The regulations require OGCs to assess needs in relation to basic services – such as education, water provision and healthcare – prescribing these as areas to be prioritised.²⁷ Yet basic services should be the responsibility of the government, and so this could force HCDTs to continue to make up for the poor performance of government in host communities, replicating the unhealthy dependence previously placed on non-mandatory social spending (CSR) to meet basic needs in communities. The HCDTs should be based on community priorities, but they should avoid reinforcing poor government service delivery and there is an opportunity to increase impact, by complementing existing and ongoing efforts.

It would be wise to provide more specific guidance on the types of projects that should be covered by HCDTs. This will require strategic planning with the government, such as with the NDDC, to develop complementary strategies for host community development. Instead of delivering basic services, a sensible focus for HCDT funds could be projects that develop and diversify the local economy, and strengthen renewable electricity supplies, which can be sustained well beyond the lifespan of trusts and without further government support.

This highlights another gap in the HCDT approach - there is no coordinating body or mechanism to ensure the work of HCDTs is aligned with government programmes and strategies, as well as wider private sector and other development initiatives. At the very least, this role should include an advisory role for the Ministry of Niger Delta Affairs, which works closely with the NDDC, and has the mandate to guide policy for the region.

The Ministry has an internal digital platform for coordinating all government interventions across the region – the Strategic Implementation Work Plan (SIWP) – which could be the ideal tool for mapping projects in this process.

Can and should communities be expected to protect oil and gas infrastructure?

The HCDTs seek to incentivise communities to protect the industry's infrastructure from oil theft, sabotage, and artisanal refining, but do not provide any support to help them achieve this. We maintain it should be the responsibility of OGCs and the FGN to ensure the integrity of infrastructure and to develop strategies to reduce oil theft and artisanal oil refining. Communities are an important stakeholder in these efforts, but would need extensive support to address the organised criminal networks, which are often armed and working in complicity with the security agencies and government.

With this in view, the pipeline surveillance contracts that have been awarded across the Niger Delta to dismantle the artisanal oil industry and protect official industry infrastructure, come at a timely moment. By extension, they are now connected to HCDT allocations, and their success could be integral to community development. A close advisor to the influential ex-agitator Government Ekpemupolo, aka Tompolo, made this connection in a recent interview with SDN:

*“The question we asked then was that, okay, you people are not integrating us into the pipeline security contract, forget the fact that you guys have given us 3%, that we are not contracted to protect this pipe, so how can we protect this pipe without any government backing, this is what nobody has talked about.... Now giving this contract to Tompolo is like helping the oil producing communities to get their 3% operational cost in full”.*²⁸

Tompolo reiterated this point in an interview with SDN, *"It is only when the asset is protected that we can get our fair share, especially now that they are working on the PIA. If there's no production, how do we get our 3%?"*²⁹ Therefore, pipeline surveillance contractors become an important factor in protecting funds due to HCDTs.

In turn, pipeline surveillance contractors could leverage this to achieve their objectives, by encouraging communities to change their mindset from allowing oil theft and refining to happen, into, *"The oil you are going to steal doesn't benefit me, it doesn't my community, it is only when there is 3% of operational cost and my community is developed that's when I benefit, so you cannot use your private business to go and disrupt our collective progress."*³⁰

There is therefore an emerging opportunity to coordinate and target HCDT contributions and projects to support the efforts of pipeline surveillance contractors, and vice versa. For example, as pipeline surveillance contractors will end lucrative livelihoods associated with oil theft and refining, HCDT funds could be targeted towards developing alternative livelihoods to prevent re-entry and new entrants. Another smart investment option would be renewable energy, to reduce the dependence on the fuels produced by artisanal refineries.

How will disputes be settled?

With several areas where disputes could emerge, it is important that there are clear and effective resolution mechanisms in place. While the regulations contain provisions to address grievances, we are concerned that they once again give the settlor too much influence over this process. Host communities can write to the settlor and BoT to convey their grievances. The settlor and BoT then has 30 days to "attempt in good faith to resolve the dispute".³¹

If any party is not satisfied, they can refer the case to the Alternative Dispute Resolution Centre of the Nigerian Oil and Gas Centre for mediation. This Lagos-based Centre does not have a strong track record of resolving such matters, since it was established in 2021. It is therefore not possible to evaluate whether it is capable of resolving disputes that emerge from HCDTs, which could potentially arise in their hundreds in the first few years. Communities need more information on dispute resolution processes, and legal assurances that cases will be dealt with quickly and equitably.

Conclusion

The changes to the petroleum sector create opportunities and challenges for host community development, so more effective mechanisms need to be adopted to ensure that funds are utilised productively, and do not cause additional harm and conflict. There is currently too much responsibility placed on OGCs and communities to figure out how to make HCDTs work, and this will lead to different approaches across the Niger Delta. Therefore, NUPRC needs to provide more specific guidance across the entire process.

Money flowing to HCDTs could be around ten-times higher than what is currently allocated to social spending (CSR). This will not flow via a government institution, but will be distributed directly to communities for utilisation. This cuts out several layers of government bureaucracy, but transfers the burden to communities and OGCs, who must establish new structures, and prepare to handle the huge revenues responsibilities. Currently, OGCs and communities are busy working out how to manage this, but more guidance is needed from the NUPRC to ensure this is done in a transparent and consistent way across all communities.

At a broader level, there are fundamental issues that require political attention. Revising the provision to make deductions from HCDT funds for third-party damage should be a priority. The regulations appear to overstep what is provided for in the legislation, and the premise of the provision is flawed, as ensuring the integrity of infrastructure should be the responsibility of the OGCs and government, not host communities. Private pipeline surveillance contractors are now a key factor, and should be geared towards protecting community allocations.

Another fundamental issue is the coordination of HCDT projects alongside other government initiatives. The predicted US\$500-800 million for HCDTs will be spent alongside roughly US\$800 million by the NDDC, and other projects from the FGN. There is a huge opportunity to coordinate these investments to accelerate economic and social development across host communities.

From our discussions with a range of stakeholders, it is clear that at present, OGCs have been given the responsibility to work out large aspects of how HCDTs should work, and more guidance from NUPRC in the form of regulations and templates on the issues above would be welcomed from all stakeholders involved in this process.

We recommend

Finance: to support improved transparency and accountability in the HCDDTs, NUPRC can:

Specify uniform approaches for OGCs to calculate their OPEX and DDA, with specific line costs to be included or excluded. While specific details may be commercially sensitive, the NUPRC can establish an acceptable level of transparency that enables communities and CSOs to verify that HCDDTs are receiving what they are due. This can be tied to reporting already done by joint ventures, such as NUPRC production data or NEITI audits.

Provide guidance to OGCs on how to cluster communities into HCDDTs, which includes risk management strategies, and conduct thorough checks prior to approving incorporation. This includes providing a clear process for deciding which coastal communities are due contributions from offshore operations.

Provide a funding matrix for collecting and distributing contributions under OGC joint ventures, with a robust formula for assessing the value and 'impact' of production on different communities.

Clearly outline the penalties that OGCs will face if they do not deliver contributions on time, and ensure that it has the enforcement powers to act swiftly as soon as there are delays or defaults.

In addition, the National Assembly should look at the provision to deduct funds for third-party damage, and challenge it if they agree this is an overreach of what the law permits. Moreover, they should look critically at the negative impact it will likely have on communities, and in turn the OGCs, and consider removing the provision altogether.

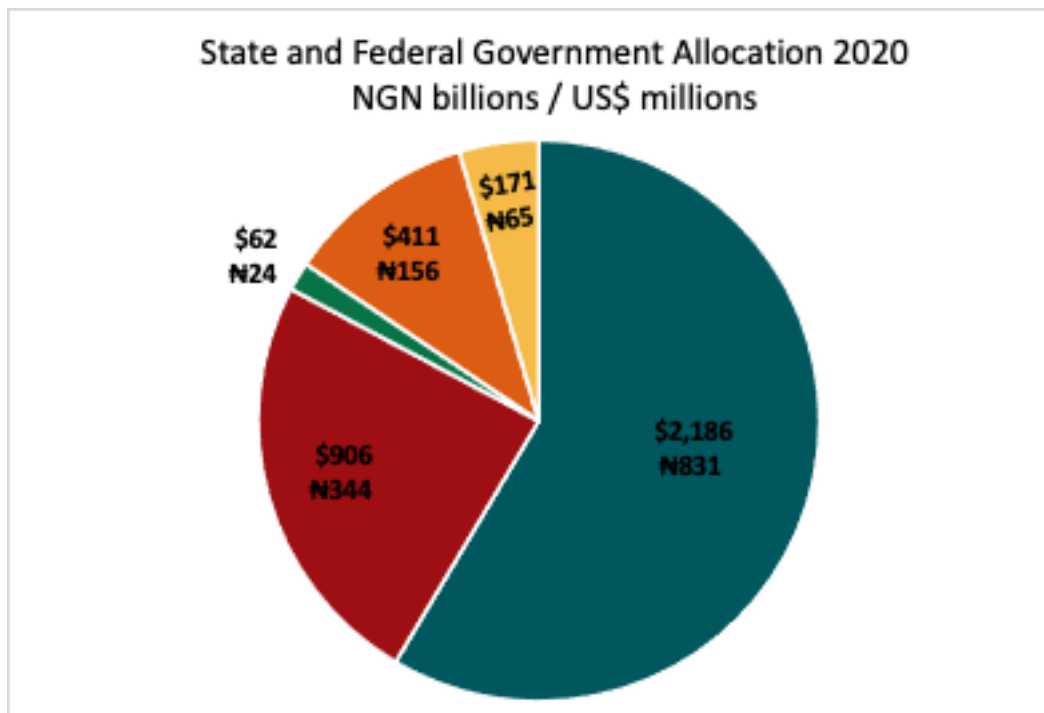
Governance: to ensure robust governance, improve accountability to, and the influence of, communities in the process, NUPRC can:

Extend the period for community needs assessments to take place and update regulations to require they are reviewed more regularly than every five years, since needs will change in some areas, and hopefully reduce in others, as HCDDTs have positive impacts. Update regulations to ensure that host communities can participate in the design and validation of development plans, otherwise too much power is vested in the OGC to define the framework for HCDDT projects and objectives. Ensure that the Advisory Committees have the financial and technical resources they require to conduct their activities, including their role to monitor and evaluate projects. Ensure there is a mechanism in place with a relevant government body to support HCDDTs to select projects that are not a duplication of other government responsibilities and initiatives, such as funding schools or healthcare. This highlights the need for a coordinating body, which can possibly be filled by the Ministry of Niger Delta Affairs.

Establish a special tribunal to deal with disputes between communities and OGCs, which can deal with cases quickly and impartially, without the need to go to court, as this will provide setbacks to project spending in host communities. Work with other relevant agencies should ensure that pipeline surveillance contractors have effective strategies in place to protect OGC infrastructure, as this will be crucial for protecting contributions due to HCDDTs.

Annexes:

Annex 1: Federal and State Government allocations in 2020



		Total allocation (US\$)	Total allocation (NGN)
States	Federal Allocation	\$ 2,185,631,603	₦831,086,416,910
	Internally generated revenue	\$ 905,527,188	₦344,326,713,229
Federal	Ministry of Niger Delta Affairs	\$ 61,685,758	₦23,456,009,417
	Niger Delta Development Commission	\$ 410,510,708	₦156,096,696,566
	Presidential Amnesty Programme	\$ 170,940,171	₦65,000,000,000
Total	Total States	\$ 3,091,158,791	₦1,175,413,130,138
	Total Federal	\$ 643,136,636	₦244,552,705,983
	Grand total	\$ 3,734,295,427	₦1,419,965,836,121

Sources: State federal allocations from FAAC reports, NBS website. IGR figures from NBS. States include all in the South-South region, known as the Niger Delta: Abia, Akwa Ibom, Bayelsa, Cross River, Delta, Edo, Imo, Ondo, Rivers. Allocations to Federal Ministry of Niger Delta Affairs, Niger Delta Development Commission, and Presidential Amnesty Programme are based on the Financial Appropriation Act passed that year, and any ancillary budgets provided later in the same year. These MDAs are solely focused on the Niger Delta – but other spending from Ministries such as Health, Environment, and Power are not captured.

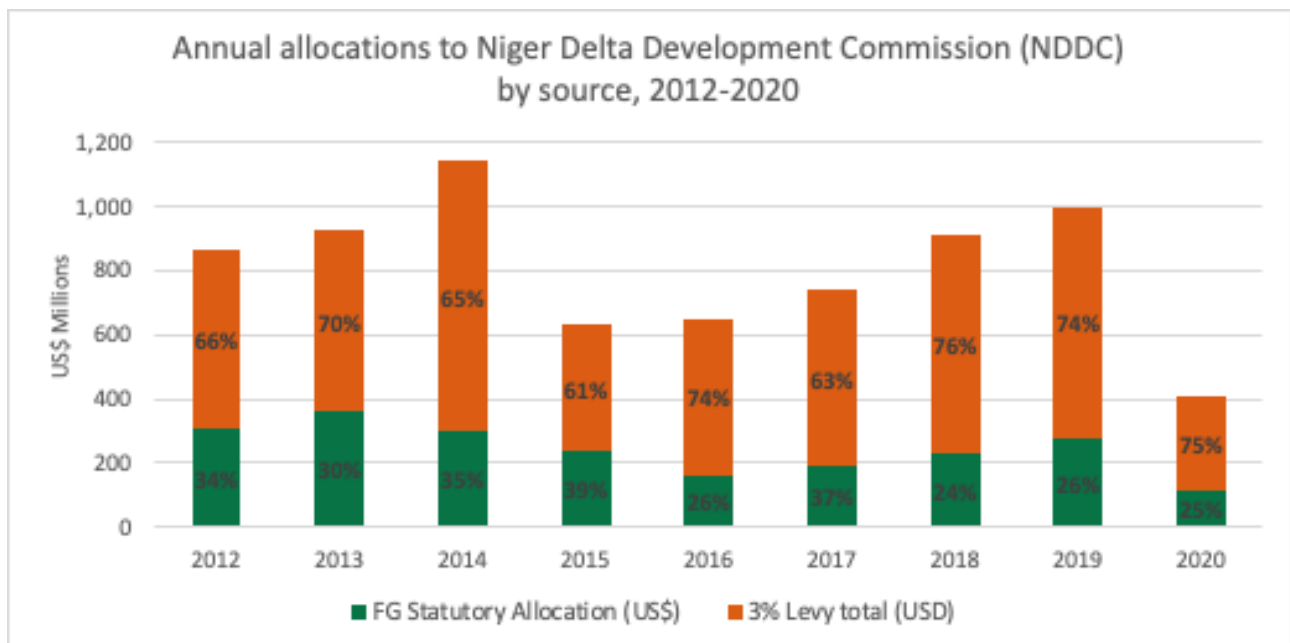
2020 is used because it is the most recent year with available data for all MDAs. The only figure that is not updated annually is the contribution of oil and gas companies to NDDC – which has to be gathered from the NEITI annual oil and gas audit.

Annex 2: NDDC allocations

OGCs contribute a mandatory 3% levy on their operating budget for the year, which is remitted to the Niger Delta Development Commission (NDDC).³² This is supplemented by a statutory allocation from the FGN, which is equivalent to 15% of the total statutory allocation to NDDC member states from the Federal Account. The NDDC will continue to be funded and managed separately to the HCDDTs, and that the PIA does not affect this. This is reinforced in the PIA, which states “nothing shall preclude the host communities from their entitlements under any other law”.³³

The NDDC was established in 2000, and has since invested in thousands of projects across the Niger Delta, from infrastructure like roads, to services like hospitals and schools. The NDDC is notoriously opaque, does not publish budgets or annual reports, and is constantly accused of corrupt practices.³⁴ Between 2012-2020, the NDDC was allocated a total of US\$7.3 billion (NGN1.9 trillion). As the graph below shows, OGCs contributed the majority of funding, an average of 70% over the past ten years, compared to the FGN's 30%.

As NDDC contributions will continue alongside the PIA, the key question will be how NDDC projects are going to be coordinated alongside HCDDT projects, since they have broadly the same objectives. It is also important that the new funds due to HCDDTs do not distract policy-makers from the task of reducing corruption and increasing the impact of NDDC projects.

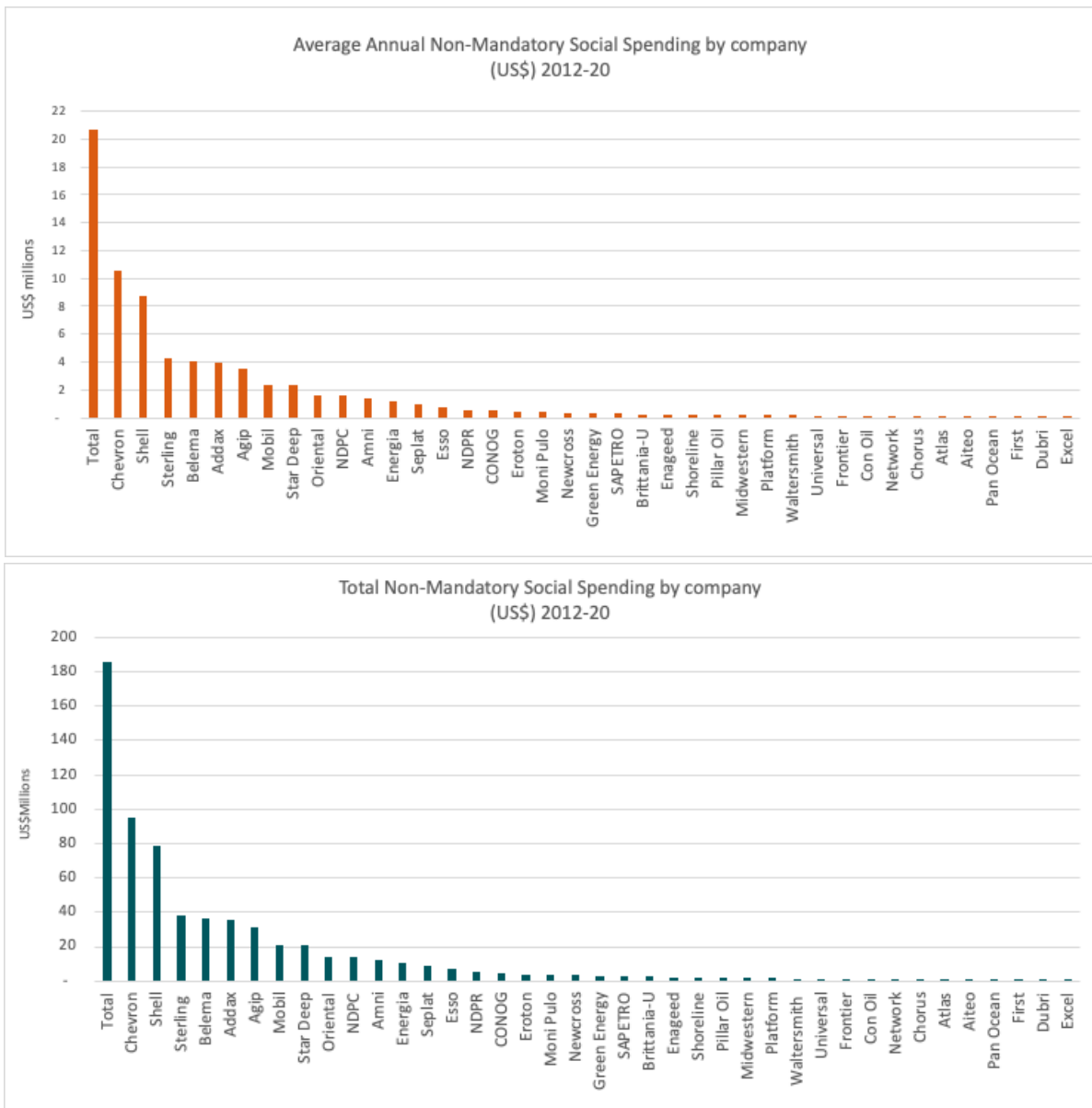


Data Source: Nigeria Extractive Industry Transparency Initiative (NEITI) Oil and Gas Annual Audits

Annex 3: Non-mandatory social spending

Another existing contribution by OGCs is the allocation to corporate social responsibility projects, typically in the communities hosting their operations. This is non-mandatory (voluntary) and not enforced by any legislation, but widespread to respond to host community demands and to buy OGCs the social licence to operate. Our understanding is that the HCDDT provisions in the PIA will effectively make these contributions mandatory, and therefore the contribution to the HCDDTs will replace the non-mandatory social spending. Any non-mandatory spending by the settlor between August 2021 - August 2022, “shall be deemed to constitute a contribution made by the settlor” provided the settlor “pay the difference where the financial contribution is less than three percent of their operating expenditure of the preceding financial year”.³⁵

The total of non-mandatory social spending reported by OGCs was US\$655 million, for the same eight-year period 2012-2020, which is an average total of US\$72 million per year.³⁶ On an annual basis, there are just three companies that paid more than US\$5 million per year on average – Total E&P Nigeria, Chevron Nigeria, and Shell Petroleum Development Company (SPDC).



Data source: NEITI Oil and Gas Audits

References

- 1 For example, the Niger Delta Development Commissions' budget tends to be in the region of \$500m and \$1bn a year. SDN research conducted with six communities in 2019, found that 50% of projects in the NDDC 2016 budget could not be found or had been abandoned.
- 2 PIA. s240(2). Federal Republic of Nigeria. (2021). Official Gazette. Government Notice No.134. Petroleum Industry Act, 2021. Online at: <http://www.petroleumindustrybill.com/wp-content/uploads/2021/09/Official-Gazette-of-the-Petroleum-Industry-Act-2021.pdf>
- 3 The Nation. (2021). PIA contribution to host communities bigger than NDDC's annual budget – Kyari. Online: <https://thenationonlineng.net/pia-contribution-to-host-communities-bigger-than-nddcs-annual-budget-kyari/>
- 4 NDDC (Establishment, ETC) (Amendment) Act 2017 section 14.2
- 5 HCDR. (2022). s24(7). Federal Republic of Nigeria. (2022). Official Gazette. Government Notice No. 74. Nigeria Upstream Petroleum Host Communities Development Regulations, 2022. Online at: <https://www.nuprc.gov.ng/nigeria-upstream-petroleum-host-communities-development-regulations-2022-2/>
- 6 Interview with industry insider 06/12/2022
- 7 US\$654,543,372 and US\$81,817,921 respectively. Source: NEITI OGA reports.
- 8 Premium Times. (2021). Oil companies owe NDDC over \$4 billion – Minister. Online: <https://www.premiumtimesng.com/news/top-news/480136-oil-companies-owe-nddc-over-4-billion-minister.html>
- 9 HCDR. (2022). S36.
- 10 PIA (2021). s318. Host communities are defined as “communities situated in or appurtenant to the area of operation of a settlor, and any other community as a settlor may determine”. HCDR (2022) s5 states “An area of operation shall be a territory within the boundary of the area to which a licence or a lease relates and any area which hosts a licensee or lessee's facilities used in upstream petroleum operations”.
- 11 HCDR (2022) 24(4) “Where the settlor is responsible for host communities in different areas of operation, the 3% share of the operating costs shall be determined based on the operating costs that are attributable to each area of operation”.
- 12 HCDR. (2022). S22
- 13 HCDR. (2022). s6(2).
- 14 HCDR. (2022). s24(6)
- 15 PIA. (2021). s257(2)
- 16 HCDR. (2022). s37
- 17 Note this may include costs for downstream pipelines too. The figure provided is the average over six years 2015-2020. 2020 =NGN53.36 billion; 2019 = N127bn; 2018 = N137.44bn; 2017 = N129.87bn; 2016 = N112bn; 2015 = N103bn. Source: Fact Check Hub. (2021). INSIGHT: How much does Nigeria spend yearly to maintain, repair pipelines? Online: <https://factcheckhub.com/insight-how-much-does-nigeria-spend-yearly-to-maintain-repair-pipelines/>
- 18 Professor Rick Steiner. In: Adesanya, A. (2021). Nembe Oil Spill: Expert wants preservation of failed wellhead for analysis. *Business Post*. Online: <https://businesspost.ng/economy/nembe-oil-spill-expert-wants-preservation-of-failed-wellhead-for-analysis/>
- 19 PIA (2021) s250 notes that the Community Advisory Committee must ‘take responsibility for the first line protection of facilities and ensure that petroleum operations are uninterrupted by members of their community - failing which, benefits from to the host community shall be disallowed’.
- 20 PIA. (2021). s242
- 21 PIA. (2021). s242(1), s235(1) and (4); and HCDR (2022) s16
- 22 HCDR. (2022). s12(4)
- 23 PIA. (2021). s251(3)
- 24 HCDR. (2022), s20(3)
- 25 PIA. (2021). s235(7).
- 26 PIA. (2021). s251(4)
- 27 HCDR. (2022). s20(4)
- 28 Interview with Tompolo's close advisor. 03/09/2022.
- 29 Interview with Tompolo 30/09/2022.
- 30 Interview with Tompolo's close advisor. 03/09/2022.
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- 33 PIA. (2021). s239(4)
- 34 For more background on NDDC, see: SDN (2020). Oil money for development in Nigeria: How can financial transparency initiatives help ensure a fair deal for communities in the Niger Delta? Online: <https://www.stakeholderdemocracy.org/report-oil-money-for-development-in-nigeria/>
- 35 HCDR. (2022). s24(2)
- 36 US\$654,543,372 and US\$81,817,921 respectively. Source: NEITI OGA reports.



Published April 2023

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