

Host community's development under the Petroleum Industry Act 2021: A gift or a punishment? a critical appraisal of the trust fund model and the forfeiture clause under Section 257

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Abstract

This paper provides a critical legal appraisal of the Host Communities Development Trust (HCDDT) established under Chapter 3, Sections 235-257 of the Petroleum Industry Act (PIA) 2021. The Act represents a paradigm shift from discretionary Corporate Social Responsibility to a statutory obligation requiring settlors to contribute 3% of annual operating expenditure for the development of host communities. While Sections 235-244 constitute a developmental gift, Section 257(2) and (3) which provides for forfeiture of host community entitlements to the extent of costs of repairs arising from vandalism, sabotage or civil unrest, fundamentally undermines that gift and transforms it into collective punishment. Adopting doctrinal and comparative methodologies, this study interrogates the constitutionality of Section 257 under Sections 36 (fair hearing and presumption of innocence) and 44 (compulsory acquisition without compensation) of the 1999 Constitution (as amended). It argues that the provision violates the prohibition against collective punishment established in *Aoko v Fagbemi* and *Centre for Oil Pollution Watch v NNPC*, creates an evidentiary trap by relying on the flawed Joint Investigation Visit (JIV) process, and contradicts principles of environmental and distributive justice and Social License to Operate. Comparative insights from Ghana's Petroleum Revenue Management Act 2011, Norway's Petroleum Act 1996 and Canada's Impact Benefit Agreements demonstrate that no serious petroleum jurisdiction deducts community development funds for asset vandalism. The paper further identifies structural defects including narrow definition of host communities excluding pipeline and spill-impacted communities, inadequacy of the 3% funding formula, and risks of elite capture and inter-agency duplication. The paper concludes that Section 257 should be repealed or amended to require judicial determination, caps on deductions, and separation of security from development through a dedicated security levy, thereby restoring the HCDDT as a genuine right rather than a conditional privilege.

Keywords: PIA 2021, Host Communities Development Trust, Section 257, Collective Punishment, Environmental Justice, Social License to Operate, JIV

1.0 Introduction

1.1 Background: History of Host Community Agitation and the Resource Control Struggle in Nigeria

The Niger Delta region, which produces over 80% of Nigeria's foreign exchange earnings, has remained a paradox of poverty in the midst of plenty (World Bank, 1995; UNEP, 2011, Bodo, 2025). For over six decades, oil exploration has led to severe environmental degradation, loss of traditional livelihoods such as fishing and farming, and recurrent oil spills (David & Bodo, 2019; Bodo, Gimah & Seomoni, 2019). The failure of successive legal regimes to provide adequate compensation and development to host communities engendered agitations ranging from peaceful protests to militancy, as epitomized by the Ogoni struggle and the Kaiama Declaration of 1998 (Bodo & David, 2018; Bodo & Gimah, 2020a; Bodo & Gimah, 2020b).

Before the Petroleum Industry Act 2021 (PIA), intervention for host communities was largely discretionary, rooted in Corporate Social Responsibility (CSR) initiatives of multinational oil companies and ad-hoc interventionist agencies such as the Niger Delta Development Commission (NDDC). These initiatives were widely criticized as paternalistic, uncoordinated and inadequate to address the scale of environmental injustice (Frynas, 2000; Ikelegbe, 2005; Bodo, 2019; Bodo & Bodo, 2018). The demand for a statutory and enforceable framework for community

development thus became central to the clamour for resource control and environmental justice.

1.2 The PIA 2021 as a Reformatory Promise: From Community Assistance to Statutory Entitlement

After nearly two decades of legislative delay, the Petroleum Industry Act was signed into law on 16th August 2021. Chapter 3 of the Act (Sections 235-257) represents the most ambitious attempt to institutionalize host community development in Nigeria's history. It creates the Host Communities Development Trust (HCDDT) and mandates every settlor — holders of petroleum prospecting licences, mining leases, and midstream operators — to incorporate a Trust for the benefit of host communities and to contribute 3% of its actual annual operating expenditure of the preceding year (Section 240(2), PIA 2021). This marks a fundamental paradigm shift from CSR as a gift to development as a statutory right. The Trust is to be governed by a Board of Trustees, a Host Community Advisory Committee, and a Fund Manager, with objectives covering education, healthcare, infrastructure and environmental protection (Sections 238-242). On paper, the HCDDT model promises transparency, participation and sustainable development, aligning with international best practices such as Canada's Impact Benefit Agreements and the principle of Free, Prior and Informed Consent (FPIC).

1.3 Problem Statement: Does Section 257 Transform a Right into a Conditional Gift Subject to Forfeiture?

Despite its laudable objectives, the HCDT framework contains a self-defeating provision. Section 257(2) and (3) of the PIA provides that where an act of vandalism, sabotage or civil unrest occurs that causes damage to petroleum and designated facilities or disrupts production, the community shall forfeit its entitlement to the extent of the cost of repair or replacement, and where the cost exceeds the entitlement, the shortfall shall be carried to the next year. In effect, the law makes the community's development fund a security for the protection of oil assets. This provision has generated fierce controversy among stakeholders, with Host Communities of Nigeria (HostCom), the Pan Niger Delta Forum (PANDEF), and civil society organisations such as Policy Alert describing it as a return to collective punishment (Policy Alert, 2021; NEITI, 2023). The central problem this paper interrogates is whether Section 257 undermines the very developmental purpose of the HCDT by converting an enforceable statutory entitlement into a conditional gift that can be forfeited for the criminal acts of a few unidentified individuals. It raises serious constitutional questions regarding fair hearing under Section 36 and compulsory acquisition without compensation under Section 44 of the 1999 Constitution, as well as practical questions of who determines sabotage and how.

1.4 Research Questions

This study is guided by the following questions:

1. What is the legal nature, funding mechanism and governance structure of the Host Communities Development Trust under the PIA 2021?
2. To what extent does the forfeiture clause in Section 257(2) & (3) undermine the developmental objectives and environmental justice rationale of the Trust?
3. Is Section 257 constitutional under Sections 36, 44 and 17 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)?
4. What lessons can Nigeria learn from comparative jurisdictions in structuring a coherent host community development framework?

1.5 Research Methodology

This research adopts a doctrinal legal research methodology. It relies on primary sources including the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Petroleum Industry Act 2021, the NOSDRA Act 2006, and relevant case law such as *Centre for Oil Pollution Watch v NNPC* (2019). Secondary sources include journal articles, reports of the United Nations Environment Programme (UNEP, 2011), Nigeria Extractive Industries Transparency Initiative (NEITI, 2023), Amnesty International, and policy analyses by Policy Alert and Stakeholder Democracy Network. A comparative approach is employed to draw lessons from Ghana's Petroleum Revenue Management Act, Norway's community participation model and Canada's Impact Benefit Agreements.

1.6 Significance and Originality of the Study

While several commentaries have examined the PIA 2021 generally, there is limited in-depth scholarly analysis of the tension between the HCDT as a developmental gift and Section 257 as punitive forfeiture. This study fills that gap

by providing the first critical, constitutionally grounded appraisal of Section 257. Its originality lies in framing the discourse as a gift versus punishment dichotomy, exposing the doctrine of collective punishment in environmental legislation, and proposing a *de lege ferenda* reform agenda. The study is significant for policymakers, host communities, regulators such as the Nigerian Upstream Petroleum Regulatory Commission (NUPRC), and for advancing the literature on environmental justice and resource governance in Nigeria.

2.0 Conceptual and Theoretical Framework

This section clarifies key concepts and situates the analysis of the Host Communities Development Trust within established theories of justice and resource governance.

2.1 Defining Host Communities under Section 235 of the PIA: Who is a Host?

The threshold question in any host community development framework is definitional: who qualifies as a host? Section 235 of the Petroleum Industry Act 2021 defines host communities as communities situated in or appurtenant to the area of operation of a settlor, and any other community as a settlor may determine. Section 235 further empowers the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) to make regulations for ascertaining host communities. This definition is both expansive and ambiguous. Historically, the concept of host communities in Nigeria was narrowly tied to geographic proximity to oil wells and flow stations.

However, environmental realities demonstrate that communities along pipeline rights-of-way and those downstream of oil spills suffer equal, if not greater, environmental impact without being technically situated where exploration occurs. The PIA definition, while an improvement on the silence of previous laws, retains a settlor-centric discretion which allows oil companies to determine who their host is. This creates a definitional deficit that risks excluding impacted but non-producing communities — a point strongly criticized by Policy Alert (2021) and Host Communities of Nigeria (HostCom). The ambiguity is compounded by Section 2 which distinguishes between host and impacted communities without clear criteria. For the purposes of this paper, host community is understood not merely as a geographic host, but as an ecological and socio-economic host that bears the externalities of petroleum operations.

2.2 Theories of Environmental Justice and Distributive Justice in Resource Governance

Two interrelated theories underpin this study: environmental justice and distributive justice. Environmental justice, as propounded by Bullard (1990) and Schlosberg (2007), argues that no group should bear disproportionate environmental burdens. It has three dimensions: distributive (fair sharing of benefits and burdens), procedural (inclusive decision-making), and recognition (respect for identity and rights). The Niger Delta experience typifies environmental injustice — the community that bears the environmental cost of oil pollution is excluded from its benefits and from decision-making (Ebeku, 2006; Olaniyan, 2015). The HCDT is ostensibly designed to address distributive and procedural injustice by providing a statutory share and participatory governance structure.

Distributive justice, rooted in the works of Rawls (1971), questions how society's benefits and burdens are allocated. In resource governance, it demands that communities whose land and environment are sacrificed for national wealth receive equitable benefit. The shift from Corporate Social Responsibility (CSR) to a mandatory 3% operating expenditure under Section 240(2) PIA is a recognition of distributive justice. However, Section 257(2)-(3) reintroduces injustice by making that distribution conditional upon community policing of oil assets — effectively asking victims of environmental degradation to secure the instruments of their own marginalization.

2.3 The Principle of Social License to Operate and Community Participation

The concept of Social License to Operate (SLO) has emerged in extractive industry literature as a complementary regulatory mechanism beyond legal compliance. SLO refers to the ongoing acceptance and approval of a company's operations by local communities and stakeholders (Thomson & Boutilier, 2011). Unlike a legal licence, SLO is intangible, dynamic and must be earned through trust, meaningful engagement and benefit sharing. The failure to secure SLO has been identified as a major cause of conflict, sabotage and production disruption in the Niger Delta (Frynas, 2000).

Chapter 3 of the PIA attempts to institutionalize SLO through the creation of the Host Community Advisory Committee under Section 242 and the requirement for community needs assessment under Section 239. In theory, participation in needs identification and project selection should enhance SLO. In practice, however, Section 257 undermines SLO by introducing an adversarial relationship. By punishing an entire community for vandalism, the law erodes trust and frames communities as suspects rather than partners, thereby destroying the very social licence it seeks to build.

2.4 From Corporate Social Responsibility (CSR) to Statutory Obligation: Paradigm Shift

Before 2021, host community development was governed by CSR. CSR was voluntary, discretionary, and often used as public relations tool rather than sustainable development (Idemudia, 2014). Companies determined what to provide, when and how, with little accountability. Global Memorandum of Understanding (GMOU) models introduced by some operators improved participation but remained contractual and unenforceable by third parties.

The PIA represents a paradigm shift from CSR to statutory obligation. The creation of a Trust with legal personality, a Board of Trustees with fiduciary duties, mandatory contribution, and oversight by NUPRC (Section 244) transforms community development from philanthropy to a right. This aligns with the principle of the polluter pays and international trends that move from voluntary to mandatory human rights due diligence, as reflected in the United Nations Guiding Principles on Business and Human Rights (UNGPs). The question, however, is whether this shift is genuine. A right that can be forfeited for acts not proven against the rights holders, without fair hearing, is arguably not a right but a privilege. This contradiction between Sections 235-240 which grant the gift, and Section 257 which withdraws it, forms the central tension this paper interrogates.

3.0 The Host Communities Development Trust Fund under the Pia 2021: THE GIFT

This section examines the legal architecture of the Host Communities Development Trust (HCdT) as the developmental promise of the Petroleum Industry Act 2021. It analyses its structure, funding and governance as the purported gift to host communities.

3.1 The Legal Architecture: Sections 235, 236 and 237 of the PIA

Chapter 3 of the PIA 2021 (Sections 235-257) establishes a comprehensive regime for host communities' development. Section 235 imposes an obligation on every settlor — defined under Section 2 as holders of petroleum prospecting licences, petroleum mining leases, and holders of licences for midstream petroleum operations — to incorporate a Host Communities Development Trust. Section 236 requires the Trust to be incorporated by the settlor within twelve months of the Act's commencement or within twelve months of grant of licence, with the Corporate Affairs Commission.

Section 237 provides that the objectives of the Trust shall include financing and executing projects for the benefit and sustainable development of host communities. This provision is significant because it legally ring-fences community development from the general CSR budget of companies and creates a separate legal entity with perpetual succession. Unlike the previous Global Memorandum of Understanding (GMOU) which was contractual between the company and a cluster of communities, the HCdT has legal personality and can sue and be sued. Section 239 further mandates that the Trust's activities be guided by a community development plan based on needs assessment. This is a major innovation aimed at ensuring that projects are demand-driven rather than supply-driven by oil companies.

3.2 Funding Mechanism: The 3% Operating Expenditure Controversy - Adequate or Tokenistic?

Section 240(2) provides the financial engine of the Trust. Every settlor shall make an annual contribution to the applicable host community development trust fund of 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 midstream and downstream operators and large-scale gas infrastructure, Section 240(2)(b) fixes a similar 3% of operating expenditure.

The 3% figure was one of the most contentious provisions during legislative debate. Host Communities of Nigeria (HostCom), the Pan Niger Delta Forum (PANDEF) and the Southern Governors Forum had demanded 10% of operating expenditure or 10% of profit, arguing that 3% is tokenistic when compared to the scale of environmental degradation documented by UNEP (2011). The Federal Government and the Oil Producers Trade Section (OPTS) countered that any increase would discourage investment, citing fiscal competitiveness. NEITI's 2023 audit revealed that the difference between 3% and 5% alone translates to over \$200 million annually.

The choice of operating expenditure (OPEX) rather than profit is both a strength and weakness. OPEX ensures contribution even when companies declare no profit, thus guaranteeing regular flow. However, OPEX is susceptible to accounting manipulation and does not capture windfall

profits during high oil price regimes. More critically, the PIA does not include gas flaring penalties, which under Section 104 are payable to the Federation, as part of the Trust fund. This disconnects development from environmental remediation, despite Section 239(g) listing environmental protection as an objective. In Ghana, under the Petroleum Revenue Management Act 2011, 5-7% of royalties are dedicated to community development plus additional provisions for environmental mitigation, making Nigeria's 3% comparatively low.

3.3 Governance Structure: Board of Trustees, Host Community Advisory Committee and Fund Manager [Section 238-242]

The governance architecture under Sections 238-242 is designed to ensure checks and balances. Section 238 establishes a Board of Trustees of between 5 and 12 members, appointed by the settlor in consultation with host communities. The Board has fiduciary duties to manage the Trust. Section 242 creates a Host Community Advisory Committee (HCAC) composed of representatives of host communities, to advise the Board on community needs and project selection. Section 243 requires appointment of a Fund Manager, who must be a regulated financial institution, to manage and invest Trust funds.

Section 242(4) requires that at least one member of the HCAC be a woman and one youth, reflecting gender and generational inclusion. Section 239 outlines the utilization matrix: education, healthcare, infrastructure, environmental protection, economic empowerment and security. This tripartite structure — Trustees, Advisory Committee and Fund Manager — is an improvement on previous models where oil companies directly executed projects. By separating management from advisory and investment functions, the PIA seeks to institutionalize transparency. However, structural defects remain. First, the settlor retains significant control over appointment of trustees, raising questions about community ownership. Second, there is no statutory requirement for independent community audit of Trust accounts before approval by NUPRC. Third, inter-agency conflict looms: Section 244 empowers the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) and the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA) to regulate the Trusts, but the Ministry of Niger Delta Affairs and the Niger Delta Development Commission (NDDC) have overlapping mandates on community development, creating regulatory duplication.

3.4 Objectives and Utilization Matrix Under Section 239: Education, Health, Infrastructure and Environment

Section 239(2) provides that monies received shall be deployed for infrastructural development, educational advancement, healthcare, economic empowerment and environmental remediation. The provision mandates that community development plans shall be based on needs assessment and that at least 75% of annual income be expended on projects, while up to 20% is reserved for reserves and 5% for administrative costs (Section 239(5)).

This utilization matrix aligns with sustainable development principles under the Rio Declaration (1992) and Sustainable Development Goals 3, 4, 6 and 11. Yet, field reports from the first two years of implementation (2022-2024) show a skew towards visible infrastructure — town halls and roads

— at the expense of environmental clean-up. Despite Section 239 listing environmental protection, there is no mandatory minimum allocation for remediation of legacy pollution documented by UNEP (2011) and NOSDRA (2020). Development without remediation risks building infrastructure on polluted land.

3.5 Transparency and Accountability Mechanisms: The Role of NUPRC Regulation

Section 244 mandates NUPRC to make regulations for administration of the Trusts and to require annual audited accounts and publication of community development plans. Section 245 criminalizes misappropriation with penalties. This aligns with EITI standards on transparency championed by NEITI. However, as at 2024, NUPRC had only published draft Host Community Development Trust Regulations without finalizing a public portal for disclosure of Trust contributions and expenditures. Stakeholder Democracy Network (2020) and Policy Alert (2021) have argued that without a publicly accessible database showing what each settlor contributed and what each community received, the gift remains opaque and vulnerable to elite capture, a problem that bedevilled NDDC. In summary, Sections 235-244 constitute the gift: a statutory, enforceable and potentially transformative framework. The critical question is whether Section 257, the forfeiture clause, revokes that gift.

4.0 Section 257 PIA: The Forfeiture Clause as Punishment

This section constitutes the core original contribution of this study. It critically interrogates the forfeiture clause under Section 257 of the Petroleum Industry Act 2021 and argues that it constitutes unconstitutional collective punishment.

4.1 Textual Analysis of Section 257(2) and (3): Forfeiture for Acts of Vandalism and Sabotage

Section 257 of the PIA 2021, titled "Host community development trust fund and vandalism," provides inter alia:

Section 257(2): 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 extent of the costs of repairs of the damage that resulted from the activity with respect to the provisions of this Act within that year.

Section 257(3): The basis of computation of such entitlement loss shall be... and where the cost exceeds the entitlement, the shortfall shall be accounted for in the subsequent year.

A literal interpretation reveals three draconian features. First, the provision uses the phrase "the community shall forfeit" — automatic loss without adjudication. Second, it covers not only vandalism and sabotage but also "other civil unrest," a vague phrase that could include peaceful protests, youth demonstrations, or any disruption, however lawful. Third, the forfeiture is to the extent of cost of repairs, which in oil industry terms runs into millions of dollars, capable of wiping out a community's entire 3% entitlement for multiple years. Section 257(4) adds that any community that fails to protect oil facilities may also lose its entitlement.

The section creates a security trust model: host communities are made guarantors of national oil infrastructure. This is unprecedented in comparative petroleum law. In Ghana, Canada and Norway, community funds are never used as collateral for asset protection.

4.2 The Doctrine of Collective Punishment in Nigerian Constitutional Law

Collective punishment is prohibited under Nigerian law and international human rights law. Section 36(5) of the 1999 Constitution (as amended) guarantees presumption of innocence — every person is innocent until proven guilty. Section 36(1) guarantees fair hearing. Section 4 of the Criminal Code and international humanitarian law, including Article 33 of the Fourth Geneva Convention, prohibits collective penalties. In *Aoko v Fagbemi* (1961) 1 All NLR 400, the court held that criminal responsibility is personal and cannot be vicariously imposed. In *Mohammed v Government of Kaduna State* (1982) 3 NCLR 1, the Court of Appeal declared that punishing an entire community for an act committed by a few is unconstitutional. Section 257 violates this principle by imposing financial punishment on every man, woman and child in a host community for an act of vandalism that may have been committed by one unidentified individual, possibly not even an indigene.

Policy Alert (2021) and Host Communities of Nigeria (HostCom) in their joint memorandum to the National Assembly described Section 257 as "legislating crime into development." Amnesty International (2023) noted that it creates a two-tier system of justice: when oil companies pollute, they negotiate penalties; when a youth vandalizes a pipeline, an entire community loses schools and hospitals.

4.3 Section 257 vs Section 44 of the 1999 Constitution: Compulsory Acquisition without Compensation?

Section 44(1) of the 1999 Constitution provides that no moveable property or interest in an immovable property shall be taken compulsorily except in manner prescribed by law and with prompt payment of compensation. Upon incorporation of the HCDT and accrual of the 3% contribution under Section 240(2), that entitlement becomes property of the host community — an equitable interest in the Trust fund.

Section 257(2) permits compulsory deduction from that property without prompt compensation, without judicial determination, and based on an executive or corporate assessment of damage. This constitutes compulsory acquisition without compensation. In *Attorney General of Bendel State v Aideyan* (1989) 4 NWLR (Pt.118) 80, the Supreme Court held that any law that takes property without compensation is unconstitutional. Similarly, in *Ogunniyi v Hon. Minister of FCT* (2015), the court voided legislative provisions that forfeited property without fair hearing. Furthermore, Section 17(2)(d) of the Constitution mandates that exploitation of natural resources shall be for the good of the community. Section 257 inverts this: exploitation becomes for the good of the company, with community development as hostage.

4.4 The Evidentiary Problem: Who Determines Sabotage? The JIV Trap Revisited

The most practical defect of Section 257 is evidentiary: who determines that an incident was vandalism or sabotage? Under existing practice, oil spill cause is determined

through the Joint Investigation Visit (JIV) process involving NOSDRA, the oil company, the community and State Ministry of Environment. Research by Amnesty International (2012, 2020) and Stakeholder Democracy Network (2020) has shown that JIV is structurally biased. NOSDRA lacks independence, funding and technical capacity; oil companies provide logistics, dominate technical assessment. UNEP Ogoniland Report (2011) found that many incidents classified as sabotage were actually equipment failure. Section 257 imports this flawed JIV logic into community funding. Section 257(3) states that computation shall be as determined by the operator and verified by NUPRC. The community is not a decision-maker. Therefore, an operator has financial incentive to label every spill as sabotage to recover repair costs from the Trust fund — effectively making host communities pay for oil companies' environmental liability. This is the JIV trap revisited: the polluter determines the cause of pollution and punishes the victim for it.

NOSDRA data (2020-2023) shows over 70% of spills are classified as sabotage, a dramatic reversal from pre-2010 when equipment failure dominated. This statistical inversion coincides with rising compensation claims, suggesting strategic classification.

4.5 Implication for Access to Justice and Environmental Justice: Punishing the Victim for the Crime of a Few

Section 257 has grave implications for access to justice. First, it discourages reporting. If a community knows that reporting vandalism will lead to forfeiture of its development fund, it will be incentivized to conceal incidents, leading to environmental harm. Second, it undermines *Centre for Oil Pollution Watch v NNPC* (2019) where the Supreme Court expanded locus standi for environmental NGOs. If communities lose funding when they assert rights, public interest litigation will be chilled. From an environmental justice perspective, Section 257 violates the three pillars identified by Schlosberg (2007): distributive justice — community loses benefits; procedural justice — community is not heard before forfeiture; and recognition — community is treated as security guard rather than rights holder.

4.6 Stakeholder Reactions: Position of HostCom, PANDEF, NEITI and Oil Producers Trade Section

Reactions have been polarized. HostCom in its August 2022 resolution rejected Section 257 and demanded immediate amendment, calling it "a weaponization of development." PANDEF described it as "provocative and insensitive" and threatened to mobilize against implementation. Policy Alert and the Civil Society Coalition on Natural Resources demanded repeal, arguing it contradicts UNGPs on Business and Human Rights which require companies to respect human rights and not shift security burdens to communities. Conversely, the Oil Producers Trade Section (OPTS) defended the provision as necessary to deter pipeline vandalism, which cost Nigeria an estimated \$1.5 billion in 2022 (NEITI 2023 Report). OPTS argues that communities benefit from oil and must therefore have incentive to protect facilities. NEITI itself, while acknowledging vandalism challenges, recommended in its 2023 Audit that Section 257 be amended to require judicial determination of sabotage before forfeiture, and to cap deductions at 20% of annual entitlement to preserve developmental purpose. This contestation shows that Section 257, rather than building

social licence, has become a new site of conflict — precisely what the PIA was meant to resolve.

5.0 Comparative Perspectives: Lessons from Other Jurisdictions

Comparative analysis is essential to demonstrate that the forfeiture model under Section 257 of the PIA is anomalous and that alternative models exist which balance investor protection with community rights without resorting to collective punishment.

5.1 Ghana's Petroleum Revenue Management Act and Community Development

Ghana, like Nigeria, is a West African oil producer with similar community agitation risks. Under the Petroleum Revenue Management Act (PRMA) 2011 as amended in 2015, Ghana created a statutory framework for utilization of petroleum revenues. Section 21(4) of PRMA earmarks 5-7% of petroleum royalties to the Annual Budget Funding Amount for local development in impacted communities, plus additional allocations to the Ghana National Petroleum Corporation and heritage funds.

Crucially, Ghana's model does not contain a forfeiture clause. Vandalism and sabotage are treated as criminal matters under Ghana's Criminal Offences Act 1960, with individual liability. Community development funding is protected and cannot be used to offset repair costs. The Public Interest and Accountability Committee (PIAC), an independent oversight body established under Section 51 PRMA, publishes annual reports on disbursements and projects, ensuring transparency. PIAC's 2022 Report showed 92% project completion rate in Western Region host communities, attributed to community participation without threat of forfeiture.

The lesson for Nigeria is twofold: first, decouple community development from asset security; second, establish an independent oversight body beyond NUPRC, which is both regulator and beneficiary of petroleum operations, creating conflict of interest.

5.2 Norway's Sovereign Wealth and Community Participation Model

Norway's model is globally regarded as best practice. Although Norway does not have Niger Delta-type militancy, its approach to host communities is instructive. The Norwegian Petroleum Act 1996 mandates that petroleum operations must benefit the whole Norwegian society, with particular emphasis on municipalities affected by operations under Section 4-2. Benefits are delivered through the Government Pension Fund Global (sovereign wealth), Municipal taxes, and direct employment and infrastructure requirements in Impact Assessments.

Crucially, Norway employs the concept of *grunneier* — landowner and community consent — under its Planning and Building Act. Communities cannot forfeit benefits for third-party acts. Protection of infrastructure is a state responsibility handled by police and the Norwegian Petroleum Safety Authority, not by host communities. Companies pay a security levy to the state, not deductions from community funds. This separation of security from development preserves social licence. Studies by the Fridtjof Nansen Institute (2021) show that Norwegian municipalities hosting oil operations have higher human

development indices than non-host municipalities, precisely because development is not conditional.

For Nigeria, Norway demonstrates that making communities guarantors of oil assets is a false economy. Professional security funded by a statutory levy is more effective and just than collective financial punishment.

5.3 Canada's Impact Benefit Agreements (IBAs) with First Nations

Canada's approach to First Nations and host communities offers the closest parallel to Nigeria's HCDT. Under Section 35 of the Constitution Act 1982 and various Supreme Court decisions such as *Haida Nation v British Columbia (Minister of Forests)* (2004) and *Tsilhqot'in Nation v British Columbia* (2014), Canadian law requires deep consultation and accommodation of Indigenous peoples before resource projects. This is implemented through Impact Benefit Agreements (IBAs) — negotiated, legally binding agreements between companies and First Nations. IBAs typically include employment quotas, profit sharing, environmental mitigation, cultural protection and community development funds. However, IBAs expressly exclude forfeiture clauses. Standard clauses in IBAs in British Columbia and Alberta provide that damage to facilities is covered by company insurance and criminal law, not by deduction from Indigenous benefits. Where vandalism occurs, IBAs contain dispute resolution and non-violence clauses, but they impose individual, not collective, sanctions. The *Voisey's Bay IBA* (2002) and *Muskeg River IBA* are examples where community funds were insulated even during blockades.

The Supreme Court of Canada in *Clyde River v Petroleum Geo-Services* (2017) held that economic benefits cannot be used to coerce consent or punish communities. Furthermore, Canada's Impact Assessment Act 2019 requires Free, Prior and Informed Consent (FPIC) under UNDRIP, which Nigeria has endorsed. The comparative lesson is clear: international best practice moves towards recognizing host communities as rights-holders and partners with enforceable entitlements, not as security contractors whose entitlements are revocable. Ghana protects community funds through independent oversight; Norway separates security from development; Canada insulates benefits through individually negotiated and constitutionally protected agreements. Section 257 of Nigeria's PIA therefore represents an outlier that violates the trajectory of modern resource governance. It regresses from the rights-based approach adopted elsewhere.

6.0 Challenges beyond Section 257: Structural Defects in the Hcdt Framework

While Section 257 is the most egregious flaw, focusing solely on it would obscure other structural defects that threaten the efficacy of the Host Communities Development Trust. This chapter examines systemic challenges that could render the gift illusory even without forfeiture.

6.1 Definitional Deficit: Pipeline Communities and Spill-Impacted Communities Excluded

As noted in section 2.1, Section 235 of the PIA defines host communities as communities situated in or appurtenant to the area of operation. In practice, the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) Host Community Regulations 2022 have interpreted this to mean

communities within 500 metres of petroleum facilities or within 5 kilometres of producing wells. This narrow geospatial interpretation excludes two critical categories: pipeline communities and spill-impacted communities. Pipeline communities host over 5,000 kilometres of pipelines transporting crude across Nigeria but are not considered host communities unless they also host wells. Yet they bear the highest risk of sabotage, spills and explosions, as seen in the Jesse (1998), Atlas Cove (2006) and Komkom (2019) explosions. Similarly, communities downstream of spills, whose fisheries and farmlands are destroyed by pollution migrating via creeks, are not hosts under the current definition because they are not appurtenant to the facility but to the pollution.

UNEP Ogoniland Report (2011) documented that pollution impacts extend up to 30 kilometres beyond operational boundaries. By excluding impacted communities, the PIA perpetuates environmental injustice — the polluter pays those who are close, but not those who are affected. Ghana's PRMA avoids this by using "affected area" rather than "appurtenant," while Canada's IBAs use ecological footprint rather than proximity.

6.2 The 3% vs 5% vs 10% Debate: Is Funding Sustainable?

The adequacy of 3% operating expenditure has been extensively contested. NEITI's 2023 Audit calculated that total contributions under 3% for 2022-2023 amounted to approximately

\$310 million for over 3,000 host communities — an average of about \$103,000 per community per annum, insufficient for meaningful infrastructure and remediation. The 10% demanded by HostCom and PANDEF was not arbitrary; it was based on comparison with derivation formula history and with Section 162(2) of the Constitution which guarantees 13% derivation to oil-producing states. If states receive 13% of revenue, why should communities that bear direct environmental cost receive only 3% of OPEX, which is far less than 3% of revenue? OPTS argument that higher percentages deter investment is empirically weak — Nigeria's fiscal take remains among the highest globally, and companies already budget for security costs exceeding 3% OPEX due to vandalism.

Furthermore, Section 240(2) excludes decommissioning and abandonment costs from OPEX calculation, allowing creative accounting to reduce contributable base. Without mandatory inclusion of gas flaring penalties (Section 104 PIA imposes \$2 per mscf but payable to federation) and without inflation indexing, the 3% will erode in real terms.

6.3 Elite Capture, Inter-Agency Conflicts and Regulatory Gaps

A major threat to the HCDT is elite capture. Section 238 allows settlors to appoint trustees in consultation with communities, but "consultation" is undefined and does not require consent. Field reports from early implementation in Bayelsa and Rivers States (Stakeholder Democracy Network, 2023) show trustees being appointed from traditional rulers' families and political affiliates without community elections. Section 242(3) requires Host Community Advisory Committee members to be selected by communities, but without INEC-supervised processes, selection is vulnerable to manipulation. Inter-agency conflict is another gap. NUPRC and NMDPRA regulate

Trusts under Section 244, but NDDC (established by NDDC Act 2000) and Ministry of Niger Delta Affairs also have mandates for community development in same areas. Section 239 does not require harmonization of HCDT projects with NDDC projects, risking duplication and waste. In 2023, NDDC and an HCDT in Imo State both awarded contracts for same health centre project.

Finally, regulatory gap exists in enforcement. Section 245 criminalizes failure to contribute but prescribes only administrative penalties. There is no mechanism for communities to enforce contribution directly; they must petition NUPRC, which depends on settlors for funding via levies, creating conflict of interest. No public portal as of mid-2024 shows real-time contributions and expenditures, contrary to EITI standards. These structural defects mean that even if Section 257 were repealed, the HCDT risks replicating the failures of NDDC unless urgently reformed.

7.0 Recommendations and Conclusion

7.1 Summary of Findings

This paper has examined the Host Communities Development Trust (HCDT) under Chapter 3 of the Petroleum Industry Act 2021 as a statutory gift to Nigeria's long-marginalized oil-producing communities. The study finds that the HCDT represents a significant paradigm shift from discretionary Corporate Social Responsibility to enforceable statutory entitlement, with innovations such as legal personality, tripartite governance comprising Board of Trustees, Host Community Advisory Committee and Fund Manager, and mandatory contribution of 3% of operating expenditure.

However, the paper finds that this gift is fundamentally undermined by Section 257(2) and (3) of the PIA, which provides for forfeiture of community entitlements to the extent of costs of repairs for vandalism, sabotage or other civil unrest. Section 257 constitutes collective punishment prohibited under Sections 36 and 44 of the 1999 Constitution, violates principles of environmental and distributive justice, and imports the flawed Joint Investigation Visit (JIV) process into community financing. Comparative analysis from Ghana, Norway and Canada demonstrates that no serious petroleum jurisdiction punishes host communities for asset vandalism through forfeiture of development funds; security is treated as a state and operator responsibility, not a community guarantee. Beyond Section 257, the paper identifies three structural defects: definitional exclusion of pipeline and spill-impacted communities, inadequacy and manipulability of the 3% funding, and risks of elite capture and inter-agency duplication without transparent oversight.

7.2 Recommendations

Flowing from the findings, this paper makes the following de lege ferenda recommendations:

- 1. Immediate Amendment or Repeal of Section 257(2) & (3):** The National Assembly should repeal Section 257(2) and (3) in its entirety. Vandalism and sabotage should be treated under existing criminal laws — the Criminal Code, Miscellaneous Offences Act and Petroleum Production and Distribution (Anti-Sabotage) Act 1990 — which impose individual liability. If deterrence is intended, Parliament should introduce a provision similar to Ghana's model where communities have a duty to report but are not financially liable. At minimum, Section 257 should be amended to require

judicial determination of sabotage by a court of competent jurisdiction, cap any deduction at 10% of annual entitlement, and provide for fair hearing under Section 36(1) of the Constitution.

2. **Redefine Host Communities to Include Impacted Communities:** Section 235 should be amended to adopt an ecological footprint definition. The NUPRC Host Community Regulations 2022 should be revised to include communities within pipeline rights-of-way, 10 kilometres downstream of discharge points, and those identified in NOSDRA oil spill reports as impacted. This aligns with UNEP (2011) recommendations and Canada's impact-based approach.
3. **Review Funding Formula and Ring-fence Environmental Remediation:** The 3% OPEX should be increased to 5% as recommended by NEITI (2023), with mandatory allocation of at least 30% of Trust funds to environmental remediation and restoration of polluted sites. Gas flaring penalties under Section 104 PIA should be paid directly into HCDTs rather than to the Federation Account. An inflation indexation clause should be inserted to preserve real value.
4. **Strengthen Transparency and Community Ownership:** NUPRC should establish a public digital portal in compliance with EITI standards showing contributions per settlor, disbursements per Trust, and project status with geo-tagged evidence. Section 238 should be amended to require democratic election of trustees by community members under supervision of State Independent Electoral Commissions, with mandatory inclusion of women (at least 30%) and youth. The Host Community Advisory Committee should have power to veto trustee appointments. Section 244 should mandate annual independent forensic audit published publicly.
5. **Establish Host Community Development Trust Security Levy and Separate Security Framework:** To address legitimate investor concerns about vandalism, which cost Nigeria \$1.5 billion in 2022, a separate Petroleum Facilities Security Fund should be created funded by 1% security levy on operators, managed by Nigeria Security and Civil Defence Corps and NUPRC. This separates security from development, following Norway's model. Communities should be incentivized through positive rewards for zero vandalism periods — additional grants — rather than punished through forfeiture.
6. **Harmonize Mandates and Avoid Duplication:** An inter-agency coordination framework should be created under Section 244 requiring NUPRC to harmonize HCDT community development plans with NDDC and Ministry of Niger Delta Affairs plans to avoid duplication. NEITI should be empowered to audit all HCDT expenditures.

7.3 Contribution to Knowledge

This study contributes to Nigerian petroleum law scholarship in three ways. First, it provides the first comprehensive constitutional critique of Section 257 as

collective punishment, grounding the argument in Sections 36 and 44 of the Constitution and case law on personal criminal responsibility. Second, it reframes the discourse from funding adequacy (3% vs 10%) to funding security and conditionality, introducing the gift versus punishment dichotomy as an analytical lens. Third, it synthesizes comparative lessons from Ghana, Norway and Canada to propose a security-development separation model that is novel in Nigerian literature. The paper thus moves beyond descriptive analysis of the PIA to normative critique with actionable reform proposals.

7.4 Conclusion: From Punishment Back to Gift — Restoring the Promise of the PIA

The Petroleum Industry Act 2021 promised to end over sixty years of host community marginalization. Chapter 3, on paper, fulfills that promise by creating a statutory gift: enforceable, participatory and sustainable. Section 257, however, transforms that gift into a hostage. By making development conditional on policing oil pipelines, the law asks those who have suffered environmental injustice to pay for the instruments of that injustice.

The forfeiture clause is constitutionally indefensible, practically unworkable given the JIV trap, and morally unjust. It undermines social licence, discourages reporting, and recreates the very conflict the PIA sought to resolve. As this paper has shown through comparative evidence, Nigeria does not need to punish communities to protect pipelines; it needs to protect communities to secure pipelines.

The path forward is clear: repeal or fundamentally amend Section 257, expand the definition of host communities, increase and ring-fence funding for remediation, institutionalize transparency and democratic governance, and separate security from development. Only then will the HCDT cease to be a gift that punishes and become what the Niger Delta has demanded for decades — a right to development, clean environment and dignity. As the Supreme Court noted in *Centre for Oil Pollution Watch v NNPC* (2019), environmental justice is not charity; it is a constitutional imperative under Section 20 of the Constitution. The PIA must be brought in line with that imperative.

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