

PETROLEUM HOST COMMUNITY DEVELOPMENT BILL, 2016.

ARRANGEMENT OF SECTIONS

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A BILL

FOR

AN ACT TO PROVIDE FOR A FRAMEWORK RELATING TO PETROLEUM PRODUCING HOST COMMUNITY'S PARTICIPATION, COST AND BENEFIT SHARING AMONGST THE GOVERNMENT, PETROLEUM EXPLORATION COMPANIES AND PETROLEUM HOST COMMUNITIES AND FOR RELATED MATTERS

Sponsored by Hon. Victor O. Nwokolo

[] Commencement

BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:

1 1.-(1) There shall be established a Petroleum Communities Trust
2 ("Trust") in every Local Government where there are upstream or facility
3 communities.

Establishment
of Petroleum
Communities
Trust

4 (2) There shall be one Trust for one Local Government.

5 (3) Each Trust shall bear the name of the Local Government, so that
6 it shall be the [name of Local Government] Petroleum Communities Trust.

7 (4) The purpose of each Petroleum Community Trust shall be to
8 decide upon, and manage the disbursement of monies paid to the Local
9 Government solely for the benefit of upstream or facility communities
10 development within that Local Government.

11 2.-(1) There is established for each Trust, a Board of Trustees (in
12 this Act referred to as "the Board") which shall be a body corporate with
13 perpetual succession and a common seal, and may sue and be sued in its
14 corporate name.

Board of Trustees

15 (2) Each Trust shall be managed by a Board of Trustees which shall
16 consist of:

17 (a) one representative of each upstream or facility community
18 within the Local Government Area, who shall not be an employee of any

1 level of Government;

2 (b) one representative of each company that is involved in petroleum
3 operations within that Local Government, or the operator of a facility within
4 the said Local Government;

5 (c) a representative chosen by the Ministry of Finance; and a
6 representative chosen by the Ministry of Petroleum Resources;

7 (3) There shall be a Chairman of the Trust who shall be selected by
8 Trustees from amongst the representatives of the communities on the Board
9 and shall hold office for two years and may be reappointed for another two
10 years and not more.

11 (4) There shall be a Secretary to the Trust who shall be a full time
12 member, and who shall be one of the representatives of the companies on the
13 Board and shall hold office for two years and may be reappointed for another
14 two years and not more.

15 (5) The trustees shall consist of a minimum 25% of women as well as
16 minimum 25% of youth who shall be below the age of 40 years at the time of
17 first appointment.

18 (6) A trustee shall be a person who is over 25 years of age, of proven
19 integrity and sound mind, who has never been declared bankrupt or convicted
20 of any crime in or outside Nigeria.

21 (7) The Secretary of the Trust shall be paid a salary commensurate
22 with that of the Chairman of the Local Government, and shall be the chief
23 administrative officer of the Trust.

24 (8) Trustees shall be paid sitting and other specified allowances, and
25 shall be entitled to reimbursement for money spent on behalf of the business of
26 the Trust.

27 (9) The proceedings of the Board of Trustees shall be as stipulated in
28 the schedule to this Act.

29 3. The Board shall employ such persons as are necessary to assist in
30 the discharge of its functions, and the salaries and allowances for these persons

1 shall be determined and paid by the Board from the monies accruing to the
2 Trust.

3 4. The Trustees shall apply the monies of the Trust solely for the Disbursements
4 purposes of:

5 (a) salaries, trustees allowances and administrative expenses,
6 which shall not exceed 10% of the total amount available to it; and

7 (b) whatever is decided by the Board, acting in consultation with
8 the community members, in accordance with a prescribed and open
9 consultation process.

10 5.-(1) Decisions as to disbursements of funds shall be made in Disbursement
11 accordance with a process that shall include input from all members of the Process
12 communities in question, including women, youth and cultural
13 organizations.

14 (2) The disbursement of funds shall be for whatever purpose each
15 community decides, provided that decisions as to disbursements are in
16 accordance with prescribed procedure.

17 (3) The disbursement procedure shall be contained in a written
18 document and be made available to the public.

19 (4) The Board shall make final decisions as to disbursement at a
20 meeting to be held for that purpose and decisions taken shall be
21 communicated to the public within forty eight hours, through a press release,
22 and by notices placed on the Trust website and on the notice board located at
23 the Trust office.

24 (5) Within seventy two hours of the decisions in subsection (4) of
25 this section, the Secretary of the Trust shall make a demand to the Chairman
26 of the Local Government for the exact amount decided, and the Chairman
27 shall cause the full amount to be paid into the designated account of the Trust
28 within seven days from the date of demand.

29 (6) The Local Government is not an approving authority and shall
30 have no power to disallow or alter the request for disbursement in any way.

Community
Funds

1 (7) The Local Government shall be entitled to 0.5% of the total
2 monies held by it on behalf of the communities, as administrative expenses.

3 6.-(1) The Federal Government shall pay directly to a Local
4 Government the following amounts for the benefit of the upstream petroleum
5 communities within a Local Government Area:

6 (a) 10% of the total amount payable to a State Government by the
7 Federal Government in accordance with the derivation formula as contained in
8 the Constitution of the Federal Republic of Nigeria; and

9 (b) 30% of royalties paid by a company from petroleum production on
10 land within the territory of an upstream petroleum community.

11 (2) 20% of an aggregate of the total royalties accruing to the Federal
12 Government of Nigeria for petroleum production, evenly divided by the
13 number of Local Governments with facility communities in Nigeria, shall be
14 paid directly by the Federal Government to the Local Government in question
15 for the benefit of facility petroleum communities within that local government
16 area.

17 (3) 50% of amounts payable to the Government for pipeline rights of
18 way shall be paid to the Local Government within which pipeline communities
19 are located, solely for the benefit of these communities.

20 Where there is no petroleum community within a Local Government, it shall
21 not be entitled to any part of the amount specified in subsection (1) of this
22 section.

23 (4) The amount payable in accordance with subsection (1) of this
24 section shall be evenly distributed by the Federal Government to a" the Local
25 Governments within which upstream and facility communities are located, and
26 these Local Governments shall evenly distribute the money to the communities
27 within their locations in accordance with the procedure referred to in section 6
28 of this Act.

29 (5) A Local Government shall keep the money for the communities
30 until a request for disbursement is made by the Trust, in accordance with the

1 process duly prescribed in section 7 of this Act.

2 7. Any person, whether or not the person is a member of the
3 community within that Local Government, may request from the Local
4 Government or the Trust in writing and on payment of a sum not exceeding
5 N2, 000 any information relating to amounts received and disbursed, and the
6 request must be granted in writing by the Local Government or the Trust, as
7 the case may be, within seven days from the date the request was made.

Freedom of
Information

8 8.-(1) Every company:

9 (a) conducting petroleum operations,

10 (b) operating an upstream, midstream or downstream facility such
11 as but not limited to a gas gathering plant, gas processing plant or a refinery,

12 (c) the owner of pipelines for the conveyance of petroleum or its
13 derivatives, shall, from the date of commencement of this Act, enter into
14 community development agreements with the petroleum communities upon
15 or within the land where the petroleum operations are being conducted, or
16 where the facility or pipelines are situated.

Community
Development
Agreements

17 (2) Community Development Agreements are for the purpose of
18 transferring mutually agreed social and economic benefits from the
19 company to the community, and shall contain specific undertakings by both
20 the company and the community.

21 (3) The Community Development Agreement shall provide for
22 such matters which include:

23 (a) Educational scholarships, apprenticeships, technical training
24 and employment opportunities for members of the communities;

25 (b) Financial or other agreed forms of support for infrastructural
26 development and maintenance such as education, health or other
27 community development services including but not limited to roads, water
28 and power;

29 (c) Assistance with the creation, development and support to small
30 scale and micro enterprises;

1 (d) Agricultural product marketing and support services; and

2 (e) Methods and protection of environment and socio-economic
3 management to enhance the community.

4 (4) The Community Development Agreement shall specify
5 appropriate consultative and monitoring frameworks between the company
6 and the host community, and the means by which the community may
7 participate in the planning, implementation, management and monitoring of
8 activities carried out under the agreement.

9 (5) Where there is deadlock in concluding a Community
10 Development Agreement between a company and a host community before the
11 commencement of development work in the area by the company, the matter
12 shall be referred to the Minister for resolution.

13 (6) The Community Development Agreement shall be subject to
14 review every 5 years and shall, until reviewed by the parties, have binding
15 effect on the parties.

Tax Deduction

16 9. All monies expended by a company in fulfilment of its obligations
17 under Community Development Agreements shall be subject to tax deduction.

Register of
Communities

18 10.-(1) Every community shall be such as are gazetted by the state
19 government before the commencement of this Act and shall register in its Local
20 Government, and the register shall be available to the public at the Local
21 Government head office during work hours, and on its website.

22 (2) The register in the Local Government shall, amongst others, list
23 the name of the community, and whether it is an upstream, facility or pipeline
24 community.

25 (3) Every Local Government shall submit a list of the number of
26 communities and their designation to the Ministries of Finance and Petroleum
27 Resources, and the Ministry shall ensure that the information is contained in a
28 registry in the Ministry and be accessible to the general public.

Restoration
Fund

29 11. There is established a Restoration Fund (in this Act referred to as
30 "the Fund") to ameliorate the effects of pollution and environmental hazards in

1 the host communities.

2 12.--(1) As from the commencement of this Act, there shall be
3 charged and payable an annual restoration tax which shall be assessed,
4 collected and administered in accordance with the provisions of this Act.

Imposition of
Restoration Tax

5 (2) The tax at the rate of 1.5% shall be charged on the assessable
6 profit of a company referred to under section 10 (1) of this Act.

7 (3) The assessable profit of the company to which subsection (2) of
8 this section refers shall be ascertained in the manner specified in the
9 Companies Income Tax Act or the Petroleum Profits Tax Act.

10 (4) Without prejudice to the provision of subsection (3) of this
11 section, section 60 of the Petroleum Profits Tax Act shall not apply to the
12 assessment, collection and payment of restoration tax and all companies
13 chargeable to tax under the Petroleum Profits tax Act shall be liable to pay
14 the full extent of the tax imposed under this Act.

15 13.--(1) The Federal Inland Revenue Service (in this Act referred to
16 as "the Service") shall assess and collect from a company referred to under
17 section 14 (2) of this Act the tax imposed by this Act and accordingly:

Assessment and
collection of
Restoration Tax

18 (a) Shall, when assessing a company for companies income tax or
19 petroleum profit tax for an accounting period of the company, also proceed
20 to assess the company for the tax due under this Act; and

21 (b) The provisions of the Act relating to the collection of
22 companies income tax or petroleum profit tax shall, subject to this Act, apply
23 to the tax due under this Act.

24 (2) The tax imposed by this Act shall be due and payable within 60
25 days after the Service has served notice of the assessment on a company.

26 (3) The Service may, for the purposes of assessment and collection
27 of the tax imposed by this Act, devise such forms as it may deem necessary.

28 (4) The Service shall pay the tax collected under this Act into the
29 Restoration Fund created under section 13 of this Act and shall, when doing
30 so, submit to the Fund, in such form as the Board of Trustees shall approve, a

1 return showing:

2 (a) the name of the company making the payment;

3 (b) the amount collected;

4 (c) the assessable profit of the company for the accounting period; and

5 (d) such other information as may be required by the Fund for the
6 proper administration of the tax.

7 (5) The Restoration Fund shall be held by the Local Government and
8 disbursed by the Board of Trustees of the Trust created under this Act in line
9 with the disbursement process set out under section 6 of this Act to ameliorate
10 the effects of pollution and environmental hazards in affected communities.

Regulations 11 14. The Minister may, on the recommendation of the Board of
12 Trustees and subject to the approval of the President, make regulations
13 generally for the purposes of this Act and the due administration thereof.

Offences 14 15. -(1) Any reduction by a Local Government in the amounts due to a
15 Trust and Restoration Fund created pursuant to the provisions of this Act
16 constitutes an offence and every officer of the Local Government found guilty
17 of the offence shall on conviction be liable to 12 months imprisonment without
18 option of fine.

19 (2) Any person who contravenes or fails to comply with the provisions
20 of this Act is guilty of an offence under this Act and shall on conviction, be
21 liable:

22 (a) For a first offence, to imprisonment for a term of 6 months or to a
23 fine of up to N1,000,000 or both.

24 (b) For a second and subsequent offence to imprisonment for a term of
25 12 months or to a fine of up to N2,000,000 or both.

26 (3) The institution of proceedings or imposition of a penalty under
27 this Act shall not relieve a company from liability to pay to the Service a tax
28 which is or may become due under this Act.

29 (4) Notwithstanding subsection 2 (a) and (b) of this section, where
30 any company or corporate body liable to file a restoration tax return under this

1 Act fails in any year to file such return, the Service, if it is of the opinion that
2 such a company or corporate body is liable to pay restoration tax, may,
3 according to the best of its judgment, determine the amount of assessable
4 profit of such company and make an assessment of restoration tax in
5 accordance with the provisions of this Act.

6 16. The High Court of a State shall have jurisdiction to try offences
7 under this Act.

8 17. The Board shall keep proper accounts of its income and
9 expenditure in respect of each year and shall cause its accounts to be audited
10 within six months after the end of each year by auditors appointed in
11 accordance with guidelines published by the Auditor-General of the
12 Federation.

13 (1) The Board shall submit to the Minister, an annual report of its
14 operations, performance and audited financial report of the preceding year
15 not later than 31 st July of the following year.

16 (2) A summary of the annual report and audited financial report of
17 the Board shall be published in the website of the Board not later than 31st
18 July of each year.

19 18. (1) Any suit or proceedings against the Board, a member of the
20 Board, Secretary or any employee of the Board for any act, omission or
21 default in respect of its functions and powers under this Act or any other
22 enactment shall be brought within twelve months after the act, neglect or
23 default complained of, or in the case of a continuance of damage or injury,
24 within twelve months after such damage or injury may have ceased.

25 (2) No suit shall commence against the Board before the expiration
26 of a period of one month after written notice of intention to commence the
27 suit shall have been served upon the Board by the intending plaintiff or his
28 agent.

29 (3) The notice shall clearly and explicitly state the:

30 (a) cause of action;

Jurisdiction

Accounts and
Audit

Restrictions on
Legal Proceedings

- 1 (b) particulars of the claim;
- 2 (c) name, place of abode and address for service of the intending
- 3 plaintiff; and
- 4 (d) relief which is being claimed.

Service of Documents

5 **19.** The notice referred to under section 20 of this Act and any other
 6 process required or authorized to be served upon the Board under the
 7 provisions of this Act or any other enactment may be served by:
 8 (a) delivering the same to the Chairman of the Board or Secretary; or
 9 (b) sending it by registered post addressed to the Chairman or
 10 Secretary at the head office of the Board.

Indemnity of the members of the Board, Secretary and Employees

11 **20.-(1)** Every member of the Board, Secretary and every employee of
 12 the Board shall be indemnified out of the funds of the Board against any
 13 liability incurred in defending any proceeding against the Board, whether civil
 14 or criminal, if such proceedings are brought against the person in his or her
 15 capacity as a member or employee of the Board.

16 (2) Notwithstanding the provisions of subsection (1) of this section,
 17 the Board shall not indemnify any member or employee of the Board for any
 18 liability incurred as a result of the wilful negligence of the member or
 19 employee, as the case may be.

Interpretation

20 **21.** In this Act, unless the context otherwise requires:
 21 "Board" means the Board of Trustees established under section 4 of this Act.
 22 "Community" include:
 23 (a) a group of persons that are resident within an area where:
 24 (i) petroleum operations are being conducted by a licensee or lessee
 25 ("otherwise known as "upstream communities");
 26 (ii) an upstream, midstream or downstream facility such as a gas
 27 gathering plant, a gas processing plant or a refinery is located (" otherwise
 28 known as "facility communities"); and
 29 (iii) petroleum pipelines have been laid, whether over or under the
 30 ground (" otherwise known as "pipeline communities").

- 1 (b) all persons of Nigerian nationality that fall within the definition
- 2 of item (a) hereof, irrespective of ethnic group, religion, age or gender;
- 3 (c) Where a petroleum reservoir straddles one or more
- 4 communities, with a smaller portion of the reservoir lying under one
- 5 community, all resident of that community, whether or not they reside in the
- 6 area directly over the said reservoir, are part of the upstream community and
- 7 are entitled to partake of the benefits due to that upstream community;
- 8 "Company" means anybody incorporated under any law in force in Nigeria
- 9 or elsewhere;
- 10 "Local Government" means any Local Government recognized by the
- 11 Constitution of the Federal Republic of Nigeria;
- 12 "Minister" means Minister in charge of petroleum resources;
- 13 "Ministry" means Ministry of Petroleum Resources;
- 14 "Petroleum" means hydrocarbons and associated substances as exist in its
- 15 natural state in strata, and includes crude oil, natural gas, condensate, and
- 16 mixtures of any of them, but does not include coal, bitumen and tar sands;
- 17 "Village" means the smallest unit in a community.

18 22. This Bill may be cited as Petroleum Host Community
 19 Development Bill, 2016.

Short Title

SCHEDULE

Section 4 (9)

- 22 SUPPLEMENTARY PROVISIONS RELATING TO THE BOARD OF
- 23 TRUSTEES OF THE TRUST
- 24 *Proceeding of the Board of Trustees*
- 25 1. Subject to this Act and section 27 of the Interpretation Act, the
- 26 Board shall have the power to regulate its proceedings and may make
- 27 standing orders with respect to the holding of its meetings, and those of its
- 28 committees, the notice to be given, the keeping of minutes of its
- 29 proceedings, the custody and production for inspection of such minutes and
- 30 such other matters as the Board may, from time to time, determine.

1 2-(a) There shall be at least one ordinary meeting of the Board in
2 every quarter of the year and subject thereto, the Board shall meet whenever it
3 is summoned by the Chairman and if the Chairman is requested to do so by
4 notice given to him by not less than three other members, he or she shall
5 summon a meeting of the Board to be held within fourteen days from the date
6 on which the notice is given;

7 (b) Every meeting of the Board shall be presided over by the
8 Chairman and if the Chairman is unable to attend a particular meeting, the
9 members present at the meeting shall elect one of their numbers to preside at
10 the meeting.

11 3. The quorum at the meeting of the Board shall consist of the
12 Chairman (or in an appropriate case, the person presiding at the meeting
13 pursuant to paragraph 2 of this Schedule) and the one-third of the other
14 members present.

15 4. The Board shall meet for the conduct of its business at the head
16 office of the Local Government or such other places and on such days as the
17 Chairman may appoint.

18 5. A question put before the Board at a meeting shall be decided by
19 consensus, and where this is not possible, by a majority of the votes of the
20 members present and voting.

21 6. The chairman shall, in the case of an equality of votes, have the
22 casting vote in addition to his deliberative vote.

23 7. Where the Board desires to seek the advice of any person on a
24 particular matter, the Board may co-opt a person as a member for such period it
25 thinks fit, but a person who is a member by virtue of this paragraph shall not be
26 entitled to vote at any meeting of the Board and shall not count towards the
27 quorum.

28 *Committees*

29 8. The Board may appoint one or more committees to carry out on
30 behalf of the Board such of its functions as the Board may determine and report

1 on any matter with which the Board is concerned.

2 9. A committee appointed under this Schedule shall be presided
3 over by a member of the Board and consist of such number of persons (not
4 necessarily all members of the Board) as may be determined by the Board,
5 and a person other than a member of the Board shall hold office on the
6 committee in accordance with the terms of his appointment.

7 10. A decision of a committee of the Board shall be of no effect
8 until it is confirmed by the Board.

9 *Miscellaneous*

10 11. The fixing of the seal of the Board shall be authenticated by the
11 signature of the Secretary or some other person authorized generally by the
12 Board to act for that purpose.

13 12. A contract or an instrument which, if made or executed by any
14 person not being a body corporate, would not be required to be under seal,
15 may be made or executed on behalf of the Board or any person generally or
16 specially authorized to act for that purpose by the Board.

17 13. A document purporting to be a contract, an instrument or other
18 document signed or sealed on behalf of the Board shall be received in
19 evidence and, unless the contrary is proved, be presumed without further
20 proof to have been signed and sealed.

21 14. The validity of any proceedings of the Board or its committees
22 shall not be affected by:

23 (a) any vacancy in the membership of the Board or its committees;

24 (b) reason that a person not entitled to do so took part in the
25 proceedings; or

26 (c) any defect in the appointment of a member.

27 15. Any member of the Board and any person holding office on a
28 committee of the Board, who has a personal interest in any contract or
29 arrangement entered into or proposed to be considered by the Board or a
30 committee thereof:

1 (a) shall forthwith disclose his interest to the Board or committee, as
 2 the case may be; and
 3 (b) shall not vote on any question relating to the contract or
 4 arrangement.

EXPLANATORY MEMORANDUM

This Bill seeks to provide for a framework relating to Petroleum Producing
 Host Community's participation, cost and benefit sharing amongst the
 Government, Petroleum Exploration Companies and Petroleum Host
 Communities.

11. The fixing of the seal of the Board shall be authenticated by the
 signature of the Secretary or some other person authorized generally by the
 Board to act for that purpose.

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 (b) reason that a person not entitled to do so took part in the
 proceedings or
 (c) any defect in the appointment of a member.

15. Any member of the Board and any person holding office on a
 committee of the Board, who has a personal interest in any contract or
 arrangement entered into or proposed to be considered by the Board or a
 committee thereof: