



# Understanding the host community aspects of the Nigerian Petroleum Industry Act (PIA) & its GMOU nexus

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The following article traces the history of the new Nigerian Law on Social Performance in Nigeria's Petroleum Industry. It discusses the Objectives, Operational Principles, Administrative Structure and Guidelines for implementing the requirements of the law.

By Deji O. Hastrup

## Antecedent of the Petroleum Industry Act (PIA): A History and Background of the Global Memorandum of Understanding (GMOU) Model

The GMOU Model was first introduced by Chevron Nigeria Limited (CNL), Operator of the NNPC/CNL Joint Venture in 2005. Shell Petroleum Development Company (SPDC), in a Joint Venture partnership with the Nigerian National Petroleum Corporation (NNPC), quickly followed with a slightly different version of the Chevron GMOU, but based essentially on the same principles. Encouraged by the NNPC and the regulatory agency, the Directorate of Petroleum Resources (DPR), other oil and gas companies operating in the Niger Delta area soon adopted the GMOU model.

Chevron developed the GMOU model in response to the prevailing circumstances in the Niger Delta at the time. It was designed to address the most fundamental of the issues affecting both the communities in the operational areas, and the operating companies engaged in the Exploration and Production of oil and gas, including Chevron. These factors were responsible for the fragile context of the operating areas in particular, and the Niger Delta as a whole.

The most significant symptoms of these issues were:

- (1) An absence or a shortage of Sustainable Development (social and economic) opportunities and programmes within the Host Communities,
- (2) Endemic insecurity and persistent conflict between communities and operating companies and among the communities (intercommunal conflicts) in the operating areas leading to loss of life and destruction of properties, and
- (3) An increasingly deleterious environment, and a high level of risks posed by 1 & 2 to sustainable business operations and the growth and development of exploration and production of oil and gas and the extractive enterprise as a whole.

Following 18 months of rigorous consultations and stakeholder engagement, social impact, and risk assessments, and based on the analysis of some other research findings and the practical experience of those involved in community engagement in the Niger Delta area, a new approach to stakeholder engagement and community development (social performance) was designed and unveiled in 2005. The new model was based on three key findings:

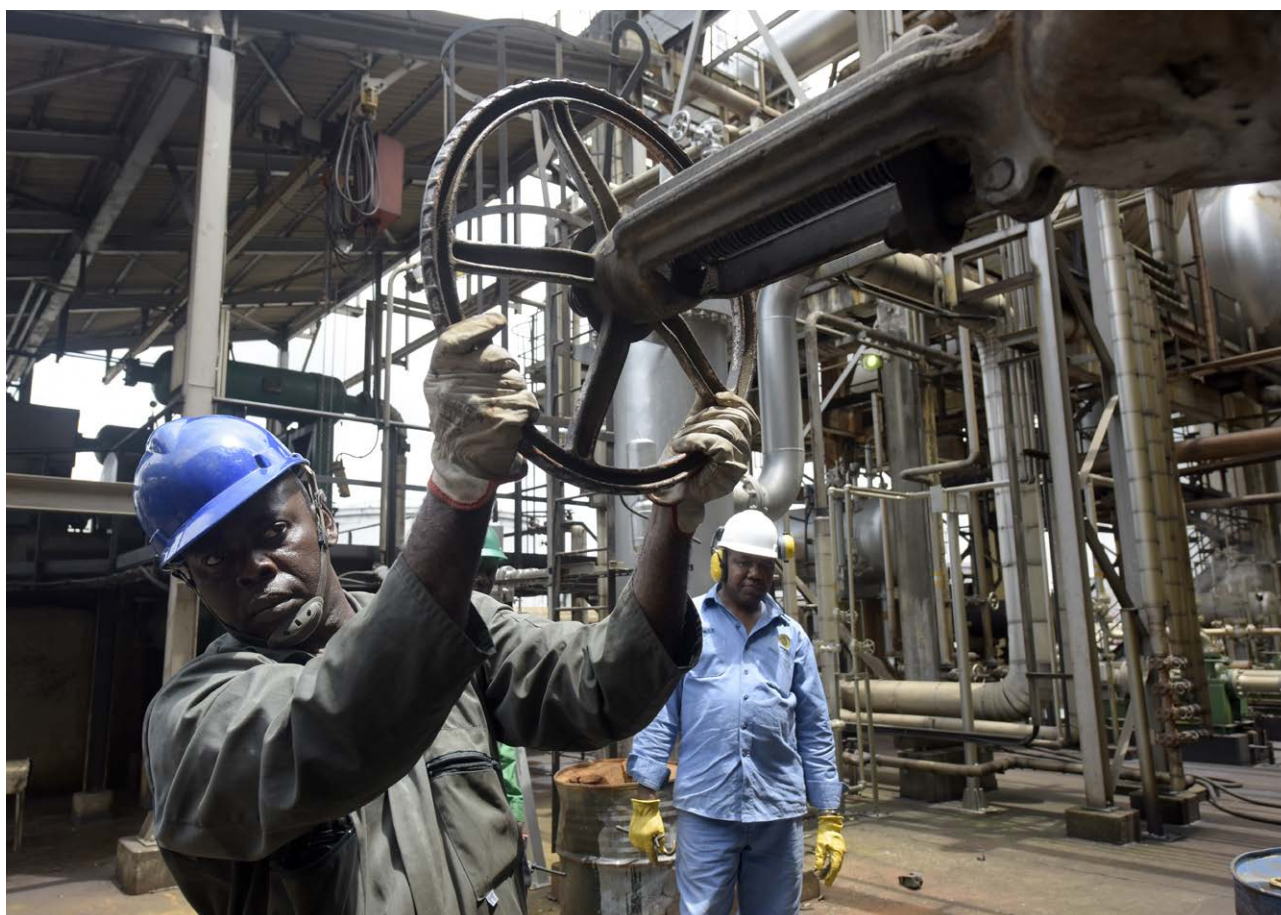
- (1) In order for social intervention programmes to result in sustainable community development in the

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Niger Delta and especially in communities hosting oil exploration activities, these social investments must be **appropriately funded** by government and the operating companies (as well as other interested donors), and **the development process must be owned, managed and driven by the host communities** themselves, with appropriate support from other stakeholders.

- (2) In order to address the pervasive insecurity and perennial conflict between host communities and operating companies, and among host and non-host communities in the operational areas of the Niger Delta, a **joint and participatory community and stakeholders' approach to peacebuilding and conflict mitigation/management** had to be adopted.
- (3) In order for the oil and gas business to continue to grow and yield sustainable returns on investments, **the interests of stakeholders** (including communities, governments at state and local levels, NGOs, and CBOs) **cannot be ignored. All stakeholders must work together and be committed to both the sustainable development and growth of the oil and gas enterprise and the sustainable development and growth of host communities.**

From the research and consultations carried out, it was certain that only **a multi-stakeholder approach would lead to sustainable solutions.** Working in a silo, as had been the norm up until then, would no longer cut it. Only joint efforts and collaborative approaches would yield lasting results. The proposed model for improving social performance and giving it the same attention as was accorded to business outcomes would be the new path forward. It would be based on **mutual trust and understanding**, an approach to business in which **the interests of all stakeholders are considered and addressed in a transparent and accountable manner.** This proposal was a radical departure and most people were sceptical of its practicality.

For this new approach to become operational, the underlying principles must first be agreed upon by the affected parties. The roles, responsibilities, and obligations of each party must be outlined and codified in the form of a formal agreement that would be signed by representatives of the communities and the operating company, with the concurrence and support of government and non-governmental stakeholders.

Thus, a formal instrument of commitment to a new model for community development, peacebuilding, and support for the oil and gas enterprise was born. It is based on the recognition of the mutuality of stakeholders' interests, and was named the Global Memorandum of Understanding, or GMoU for short.

In 2015, 10 years after the introduction of the GMoU model, an independent and inclusive review of the model was commissioned by CNL. It revealed the apparent success of the GMoU model. The gains were obvious and measurable. But so were a few drawbacks.

Three of the most important accomplishments of the GMoU in its first decade were:

- (1) A vast improvement in the capacity of host communities to plan, execute and manage development projects. This resulted in a great deal of community pride and ownership of the development process and the projects resulting from it. This in turn meant a more sustainable outcome.
- (2) A substantial improvement in the relationship between host communities and CNL, the operating company, as well as a significant reduction in conflicts among communities and between communities and the operating company. And finally,
- (3) A more secure operational area for company assets and business operations.

The success of the GMoU model recommended it to those charged with drafting a new law for the governance and administration of the Petroleum industry in Nigeria.

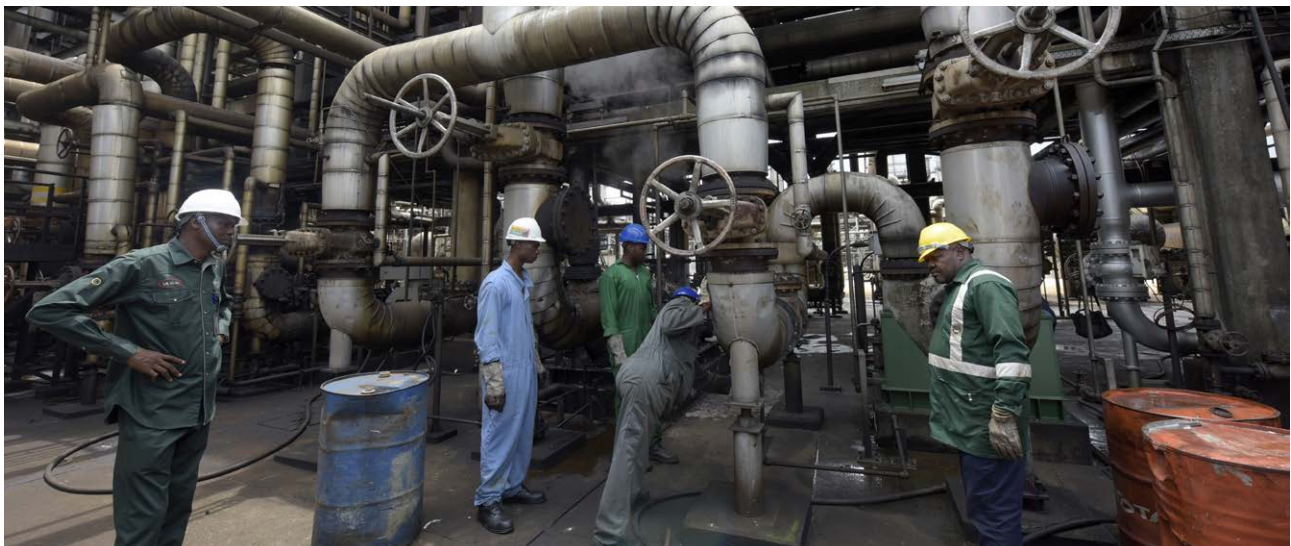
### **The GMoU and the PIA:**

The GMoU agreement entered into by CNL and host communities is a rich document. It contains the roles and responsibilities of the stakeholders under the new agreement. But more importantly, it also outlines the principles that underlie the accord, and the structure that administers it. The GMoU administrative structure underscores the significant involvement and central role of host communities in the development and peacebuilding processes. In effect, the GMoU created a fourth layer of governance (separate from the federal, state, and local governments) in the administration and development infrastructure of the communities in the areas of the Niger delta where oil exploration was ongoing. The new model birthed a layer of governance that would be even closer to the people at the grassroots than the local (or municipal) government.

### **The Host Community Aspects of the Petroleum Industry Act (PIA)**

The PIA had been long in the making. The idea was to consolidate various laws and regulations pertaining to the Nigerian petroleum extractive business into a single omnibus law to regulate the industry. But this endeavour proved more difficult and controversial than was initially thought. It has taken more than 20 years and several versions to achieve consensus. The Bill was finally signed into law in 2021.

The three most debated aspects of the proposed law had to do with the fiscal regime (or financial aspects of the enterprise), the ownership of the businesses involved in



the industry (public and private sector options), and the sustainable development of the communities hosting the exploration and production activities.

With regards to the host community aspects, the conversations and earlier iteration of the Bill under consideration focused on the quantum of funds to be set aside and disbursed specifically for the development of host communities. However, in later years - especially after the GMoU had become successful and had acquired the status of industry best practice - the focus of the host community aspects of the PIA legislation shifted from merely allocating funds to communities to incorporating the new GMoU model into the law. In the final Bill that was passed into law, the host community features are, essentially, modelled after the GMoU. The governance and administrative structure legislated by the PIA is similar in principle and application to that of the GMoU model, and could almost pass for a replica but for the different names given to similar administrative organs of governance and a few other tweaks here and there.

### Objectives of the Host Community Aspects of the PIA

With regards to the host communities, the PIA lists four clear objectives (Chapter 3):

These are:

- (a) Foster sustainable prosperity within host communities
- (b) Provide direct social and economic benefits from petroleum operations to host communities
- (c) Enhance peaceful and harmonious co-existence between licensees or lessees and host communities; and
- (d) Create a framework to support the development of host communities.

These stated objectives are not different from what the GMoU model had sought to accomplish (see history and background to the GMoU model above).

### The Administrative Structure and Operational Principles of the GMoU and PIA

The administrative structure proposed by the new PIA to address its fourth objective i.e., creating a framework to support the development of host communities, is similar to that established through the GMoU.

The highest governing organ of the GMoU model is the **Community Engagement Management Board (CEMB)**. In the case of the PIA, the law recommends that the body is to be called the **Host Community Development Board of Trustees (HCDBT)**. The names differ, but both of these organs serve virtually the same functions. They would oversee the implementation of the development of the host communities and coordinate the relationship with the operating companies. The two Boards (CEMB & HCDBT) are to ensure judicious management of the funds entrusted for community development and make policies to prevent conflict between communities and operating companies.

However, nomination into the HCDBT and the background of its constituent members differ from those of the GMoU. While the Operating Company (CNL) has a seat on the GMoU Board (CEMB), none of the trustees of the HCDBT mandated in the PIA is expected to be from the operating company or the regulatory commission. Also, while the CEMB is answerable to the management of CNL, the HCDBT would report to the industry regulatory body, the Nigerian Upstream Regulatory Commission (The Commission).

At the next lower rung of the Chevron GMoU's administrative structure, and supervised by the CEMB (the Board), is a **Regional Development Committee (RDC)**. The RDC is made up of representatives nominated from several host communities. These communities have pulled together to make up a regional cluster of communities. The RDC has both executive authority and management functions. The RDC is responsible for the design, planning, and implementation of community development initiatives or social intervention programmes in all the host communities making up a regional cluster. The RDC submits the community development plans to the CEMB (The Board) every year for approval and allocation of funds.

In the case of the new PIA legislation, an equivalent body to the GMoU's RDC is also legislated. It is to be named the **Host Community Development Management Committee** (or the **HCDMC** for short). It will function in an executive and management role and report to the Board of Trustees (HCDBT). Like the RDCs of the GMoU, the HCDMC of the PIA will be the engine room of community development efforts. The HCDMC will take responsibility and ownership for the design, planning and implementation of development projects on behalf of the host communities.

In the GMoU model, the RDC is comprised of certain special interest committees with specific areas of focus. Members of these sub-committees of the RDC are nominated by the different host communities that make up a regional cluster. These special interest sub-committees are responsible for advising the RDC, and promoting and implementing specific initiatives such as security, peacebuilding, and conflict management; project development and implementation, budget and finance, communication, etc.

The new PIA has a separate layer of governance from the HCDMC, but with a similar function to the special interest sub-committees of the GMoU's RDCs. These PIA-mandated committees are to be known as the **Host Communities Advisory Committees** (or **HCAC** for short). The HCACs are to be made up of representatives of all the communities making up a regional cluster. Members of **HCAC** are the ones closest to the people in the various communities. They are responsible for day-to-day interactions with the communities. They act as the voice and interlocutor on behalf of all the various community interests (including those of youth, women, the physically challenged, the elderly, etc) within the various communities. The roles of HCACs include nominating community members to serve on the HCDMC, articulating community development projects on behalf of the communities to the HCDMC, ensuring peace and security within the communities, and preventing conflict between communities and the operating company.

This structure is a very inclusive and democratic one that gives the host communities a central role in their development. It is a grassroots, bottoms-up model that fosters a sense of community participation and ownership.

### **The Principles Underlying the Success of the GMoU Model.**

The GMoU document detailing how it is to be implemented does not merely contain the roles, responsibilities, and obligations of the parties to the agreement, it does more than merely emphasise the governance structure for administering the agreement, it also calls attention to the key principles that are at the core of the new model and which should provide the guidelines for implementing it. These principles can be regarded as the spirit of the letters of the agreement. Without them as the guide for implementing the agreement and acting as guardrails against abuse, the model would not be as effective as it has been.

Following are the key principles of the GMoU model:

- (1) Multi-Stakeholder Engagement
- (2) Participatory Partnerships
- (3) Transparency and Accountability
- (4) Capacity Building
- (5) Sustainability of Community Development
- (6) Conflict sensitivity, Mitigation and Management
- (7) Continuous Monitoring and Evaluation

A close examination of these guiding principles shows the motivation and objectives underlying the GMoU model.

- The first two principles are **Multi-Stakeholder Engagement and Participatory Partnerships**. These two emphasise the need for and importance of inclusivity, communication, and engagement among various stakeholders. The focus is on promoting mutuality of interests and collaboration among the parties to the agreement. These are key to the success of the model. Continuous stakeholder engagement and building partnerships in which everyone participates and feels valued help to facilitate mutual understanding, promote an alignment of interests and ensure unity of purpose.
- The third principle is **Transparency and Accountability**. The success of a model that involves the participation of multiple stakeholders rests on the willingness of the parties involved to adopt and adhere to universal ethics and standards of openness, integrity, and probity, especially in financial matters. This will normally include the funding, budgeting, and contracting processes, as well as the supervision of development projects and reporting mechanisms. The inclusion of this guideline as a key principle of the model recognises the fact that the history of the relationship between host communities and the operating company had been marked by an absence of trust and a lack of confidence in each other's motives and intentions. By making transparency and accountability a key principle, the stakeholders stand a greater chance of building trust and confidence in each other, virtues that had been absent between and among the parties in the past. With a new orientation, they were able to reverse a history of suspicion and distrust and build one in which all are held accountable.
- The fourth principle is **Capacity Building**. This was included as a guiding principle in recognition of the key role that the host communities would be assuming in the sustainable development of their communities.



Taking on the planning, designing, and implementation of development programmes and social intervention initiatives is a role that many of the community representatives and local leaders were unfamiliar with. Many of them lacked the skills and experience required to effectively take on these new responsibilities. By building the capacity of various cadres in the communities, the model sought, not only to elevate the level of competence in community development but to ensure the sustainability of the process.

- The next principle is **Sustainability of Community Development** projects. The GMoU highlights the need not just to implement social intervention programmes but to ensure the sustainability of those programmes. This requires that the process involves the participation of the entire community and that it follows a procedure that includes comprehensive needs assessment, social and environmental impact assessments and sustainability tests.
- Principle number six deals with **Conflict Sensitivity and Management**. It emphasises the need to be sensitive to the root causes of conflicts in all that is undertaken by the stakeholders. Plans should be in place to mitigate potential conflicts and where they are not preventable, they ought to be appropriately managed in an inclusive fashion and in a timely manner.
- The seventh and final principle is **Continuous Monitoring and Evaluation**. This guideline recognises the importance of continuously engaging the stakeholders and closely following developments within the ecosystem. Situations inside the communities and in the extractives business can be dynamic. Both business

and society are prone to changes. By being in constant touch with what is happening through continuously monitoring the challenges and changes that occur both within society and in the extractives industry, stakeholders are able to adjust their plans and processes to adapt to new realities. They will be in a good position to accommodate new requirements resulting from these changes and mitigate any untoward consequences that can potentially occur as a result.

These guiding principles, documented in the GMoU agreement and guiding the implementation of the GMoU model, would also appear to be embedded in the new PIA. The law pays a great deal of attention, particularly to the issues of financial accountability, inclusiveness, conflict management, capacity building, and sustainability of the community development process, all of which support a successful social performance process.

### **Deji Haastrup, June, 2022**

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