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THE FEDERAL ELECTRICITY SECTOR IN NIGERIA:

Legal and Commercial Considerations

for Host Community Development Trusts



Introduction

The concept of the "host community" has become an established feature of Nigerian natural resource law, which emerged in the oil and gas industry in a response to decades of environmental harm caused to the environment and recognition that project developers owe responsibilities to the communities most directly affected by oil and gas operations. The policy objective places an obligation on settlors to establish Host Community Development Trust (HCDT) to promote sustainable development and foster harmonious relationships with host communities.

A significant extension of the concept beyond the oil and gas industry was introduced by the amendment to the Electricity Act 2023 (i.e. the Electricity Act (Amendment) Act 2024). Similar provisions have been introduced in sub national legislation such as the Lagos State Electricity Law 2024.[1] While the policy rationale for protecting host communities remains compelling, the application of the HCDT framework to the electricity sector presents distinct legal and commercial challenges. Unlike oil and gas operations, electricity projects differ significantly in their operational footprint, ownership structures, regulatory framework and cost-recovery mechanisms.

This article explains how host community development instruments have developed in Nigeria, examines their adoption in the electricity sector, and considers the key legal and commercial issues that will shape their effective implementation.

[1] Electricity Act 2023 (as amended), s. 95; Electricity Act (Amendment) Act 2024; and Lagos State Electricity Law 2024

ORIGINS AND RATIONALE OF HOST COMMUNITY INSTRUMENTS

Host community legal instruments are mechanisms designed to manage the relationship between local communities and the industries that operate around them, particularly in extractive sectors with potential environmental impacts. Their value lies in channelling social and economic benefits to the community, formalising what was previously discretionary corporate social responsibility, reducing conflict, and shifting the relationship from one of extraction to one of shared and sustainable development.



Comparative examples

Ghana's Minerals Development Fund Act 2016 is a useful example. It establishes the Minerals Development Fund as a body corporate to provide financial resources for the direct benefit of mining communities, funded principally by 20% of the mineral royalties received by the Ghana Revenue Authority from holders of mining leases. The fund's monies are applied to relevant activities determined by its board, including redressing the harmful effects of mining on affected communities and promoting local economic development and alternative livelihood projects in those communities. The Act also establishes a Mining Community Development Scheme for each community, for the facilitation of the socio-economic development of communities affected by mining operations.[2]

Sierra Leone's Mines and Minerals Act 2009 is another example of host community legislation. It requires mining licensees whose operations exceed defined production or employment thresholds to enter into and implement community development agreements with their primary host communities. The Act defines the primary host community as the single community of persons mutually agreed by the holder and the local council, and, where no community resides within 30 kilometres of any boundary of the licence area, as the local council itself. The licensee must, in each year the agreement is in force, expend not less than 0.01% of its gross revenue per year to implement the agreement with the relevant community. This model is instructive because it pairs a mandatory, operator-funded community obligation with a statutory definition of the beneficiary community.[3]



[2] Minerals Development Fund Act, 2016 (Act 912) (Ghana), ss. 1-2 (establishment and object of the Fund), s. 3(a) (20% of mineral royalty), s. 5 (application of the Fund) and ss. 16-17 (Mining Community Development Scheme)

[3] Mines and Minerals Act, No. 12 of 2009 (Sierra Leone), ss. 138-140; on the primary host community and the contribution, see s. 139(2) and (4)



HOST COMMUNITY DEVELOPMENT TRUSTS IN THE NIGERIAN PETROLEUM SECTOR

Before the Petroleum Industry Act 2021 (PIA), host community relations in the oil and gas sector were managed largely through global and other memoranda of understanding, under which operators delivered corporate social responsibility projects in host communities. This was largely promoted by the NNPC in its joint ventures and became a widespread corporate social responsibility (CSR) practice in the sector especially in the onshore terrain. The PIA has formalised these arrangements into a mandatory statutory structure, the host communities' development trust.[4] [5]

The objectives of the trust include fostering sustainable prosperity within host communities, providing direct social and economic benefits from petroleum operations, and enhancing peaceful and harmonious co-existence between licensees or lessees and host communities.[6]

The responsibility to incorporate the trust rests with the settlor, which is a licensee or lessee. Before incorporation, the settlor, in consultation with the host communities, appoints and authorises a board of trustees to register the trust as a corporate body under the Companies and Allied Matters Act 2020.[7] This structure is intended to ensure community participation and a measure of transparency in the management of the fund.

The constitution of each trust establishes a host communities development trust fund to finance community development projects. The fund is supported principally by the settlor, which must contribute 3% of its actual annual operating expenditure for the preceding financial year in the upstream petroleum operations affecting the relevant host community.[8] Trusts may also receive donations, gifts, grants and honoraria. Every year, the board of trustees must divide the fund into three parts: 75% to a capital fund, from which projects are funded; 20% to a reserve fund, which is invested to sustain the trust if the settlor's contributions cease; and not more than 5% for the administrative cost of running the trust.[9]

The governance design retains significant control for the settlor. Although the board of trustees appears independent and community-inclusive, it does not conduct the needs assessment that determines which projects the capital fund will support. That assessment is carried out by the settlor, after which the board of trustees determines the projects to be funded and allocation of funds.[10] The PIA further provides that, where vandalism, sabotage or civil unrest damages petroleum facilities or disrupts production, the host community forfeits its entitlement to the extent of the cost of repairs.[11] The model therefore couples benefit with responsibility for the security of the asset.

As in Ghana and Sierra Leone, the petroleum framework reflects community-inclusive governance structures, and the instruments share a common origin because they respond to the community damage and disruption caused by extractive activities.

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[4] PIA, Chapter 3 (Host Communities Development)
[5] D O Haastrup "Understanding the host community aspects of the Nigerian Petroleum Industry Act (PIA) and its GMOU nexus" (Good Governance Africa, 2022) available at https://gga.org/understanding-the-nigerian-petrol-industrys-new-legal-landscape/ (accessed 23 June 2026).
[6] PIA, s. 234.
[7] PIA, s. 235(1) and (4)
[8] PIA, s. 240(2)
[9] PIA, s. 244
[10] PIA, ss. 235(7), 243(f) and 245
[11] PIA, s. 257(2)



THE TRANSPLANT INTO THE ELECTRICITY SECTOR

Host community arrangements are being adopted in the electricity sector at both the federal and state levels. At the federal level, the Electricity Act 2023 established the National Hydroelectric Power Producing Areas Development Commission (N-HYPPADEC), with Benue, Gombe, Kaduna, Kebbi, Kogi, Kwara, Nasarawa, Niger, Plateau and Taraba States as members, together with any other state affected by hydroelectric power generated on the Rivers Niger and Benue or any inland waterway.[12] The Act required N-HYPPADEC to establish and maintain a fund to defray its expenditure.[13]

As originally enacted, 5% of all revenue accruing from power generated by the power generating companies (GENCOs) in the member states was to be set aside for the development of the respective host communities, and the fund was to be administered by N-HYPPADEC.[14] The Electricity Act (Amendment) Act 2024 changed this in two important respects. It deleted the foregoing provisions and substituted new ones for the funding and administration of the N-HYPPADEC fund.[15] The contribution base was changed from 5% of revenue to 5% of the actual annual operating expenditure for the preceding financial year by GENCOs in the member states. Responsibility of administering the fund was removed from N-HYPPADEC and given to a reputable trustee jointly appointed by the GENCOs and representatives of the host communities. The amendments appear to mirror the operating-expenditure model for calculating contributions and administering funds used in the PIA.

At the state level, the Lagos State Electricity Law 2024 establishes a Host Communities Development Trust Fund for Lagos State.[16] The Lagos law mandates the contribution of 2% of the annual operating expenditure for the preceding financial year by power generating companies licensed by the Lagos State Electricity Regulatory Commission to be set aside for the development of host communities. Significantly, and in contrast to the amended Electricity Act, the Lagos law defines host communities[17] as communities situate or appurtenant to the area of operation of the power generating companies.[18]

The policy rationale is understandable as the electricity sector provisions appear intended to avoid the experience of the oil industry, where host communities suffered environmental degradation without sharing in the wealth generated in their areas. However, the difficulty lies in whether a framework built to address impacts of extractive activities can be imported into an industry with a different impact profile.

[12] Electricity Act 2023, s. 82(1) and 84(1)
[13] Electricity Act 2023, s. 95(1)
[14] Electricity Act 2023, s. 95(2)(c) and (d)
[15] Electricity Act (Amendment) Act 2024, s. 2
[16] Lagos State Electricity Law 2024, s. 174
[17] Lagos State Electricity Law 2024, s. 174(2)
[18] Lagos State Electricity Law 2024, s. 174(9)

LEGAL, STRUCTURAL AND COMMERCIAL CONCERNS

The transplantation of the petroleum host community framework into the electricity sector raises structural, legal and commercial questions. Unlike upstream petroleum operations, electricity generation has a more complex and less uniform impact profile.

No clear beneficiary and no demonstrated harm

The first question is who a host community is in the electricity sector. Under the PIA, host communities are defined as communities situated in or appurtenant to the area of operation of a settlor. That definition works in petroleum because extraction is concentrated, and its effects are felt locally. Electricity generation is different, because its impact varies sharply with the technology and is not always local. A thermal plant produces localised air pollution as well as greenhouse gases that affect the wider atmosphere; a hydro plant floods land and alters river systems, and can disrupt water flow, farming and fisheries far downstream of the site; and a solar or wind farm produces almost no operational emissions at all. The harm is therefore neither uniform across generation types nor confined to the immediate area.[19] Yet the Electricity Act does not adequately define which communities qualify, leaving generation companies unable to confidently identify the communities to which they owe the obligation.

A related concern is that, unlike the PIA, the electricity sector provisions do not require any proof of damage or a needs assessment before the obligation is triggered. Under the PIA, the settlor must conduct a needs assessment from a social, environmental and economic perspective to determine the specific needs of each host community and ascertain the effect that petroleum operations might have on that community. No equivalent requirement exists in the Electricity Act (as amended) or the Lagos State Electricity Law. The obligation arises from the status of being a host community, not from demonstrated harm. The electricity provisions are therefore development levies rather than remediation instruments, and the question is whether the cost should fall on GENCOs, which already pay corporate taxes and carry out voluntary CSR activities, or should be borne by the state as a development obligation.



[19] PIA, s. 318

This distinction is important as the petroleum framework arose from decades of actual environmental damage caused by extractive activities, whereas the electricity provisions are anticipatory and are intended to prevent future unrest rather than to remedy harm that has already occurred. Electricity generation, taken as a whole, does not cause the same ecological devastation as oil and gas or mining operations, and power generation is principally an infrastructure service. Importing an extractive-style remediation model into the power sector may therefore be misaligned and given the relative infancy of commercial power generation in Nigeria, the sector's liquidity challenges and its revenue profile, the obligation adds regulatory risk in an evolving market.

Governance, oversight and enforcement gaps

Under the amended Electricity Act, the fund is managed by a trustee jointly appointed by the GENCOs and the host communities. As with any legal trust, powers of decision and enforcement rest with the trustee. Unlike the petroleum trusts, however, the amended Electricity Act does not contain a detailed statutory governance framework. There is no prescribed needs assessment, no capital and reserve fund allocation and no express project approval process as with petroleum trusts in the PIA. This creates room for disagreement over projects, concerns about misuse, and uncertainty about how funds are applied, particularly where the beneficiaries have not been defined. The Lagos State Electricity Law 2024 is more developed in some respects, because it routes disputes between the generating companies and the host communities to the Lagos State Electricity Regulatory Commission and requires the trustee to keep audited accounts, but it too requires clarity on needs assessment, fund allocation and project approval.[20]



[20] Lagos State Electricity Law 2024, s. 174(5)-(8) and s. 175

Tariff constraints and the cost of capital

The most significant commercial concern is that the host community contribution is a fixed levy on operating expenditure in a sector that faces severe liquidity challenges and collections shortfalls. A generation company's income is largely fixed by the tariff that the Nigerian Electricity Regulatory Commission, or the relevant state regulator, allows it to charge under the Electricity Act 2023. Under the Multi-Year Tariff Order methodology, the generation tariff is built from defined cost components, namely fuel, operations and maintenance, capital cost, tax and return on investment, and the periodic reviews adjust only pass-through indices such as inflation, the exchange rate and the gas price.[21] The host community contribution is not among the recognised cost components, so it cannot at present be passed through in the tariff and must be absorbed from the company's own margin.[22]

The 5% operating expenditure obligation under the amended Electricity Act, and the 2% obligation under the Lagos State Electricity Law 2024, are mandatory and payable regardless of liquidity stress, and, unlike discretionary corporate social responsibility, cannot be scaled back when revenue falls short. The contribution is also not expressly made tax deductible under the Electricity Act or the Lagos State Electricity Law 2024, unlike the petroleum host community contribution under the PIA. Thus, a generation company may be unable to offset it against its taxable profits.[23]

Despite recent moves toward cost-reflective pricing, including the increase in the Band A tariff from about ₦66 to ₦225 per kilowatt-hour in April 2024,[24] many projects still face liquidity pressure from high operating costs, inflation and currency depreciation, which depress collection rates. For investors and lenders, an additional fixed, expenditure-linked obligation that cannot be recovered through the tariff may affect bankability and makes electricity projects unattractive.



[21] Nigerian Electricity Regulatory Commission, April 2024 Supplementary Order to the Multi-Year Tariff Order 2024
[22] Electricity Act 2023, ss. 34 and 116-117
[23] Nigeria Tax Act 2025, ss. 20(1) and 82(1)(b)(ii).
[24] Nigerian Electricity Regulatory Commission, April 2024 Supplementary Order to the Multi-Year Tariff Order 2024; see also "Bands classification, approved FX rate, inside NERC's electricity tariff review" available at https://www.thecable.ng/bands-classification-approved-fx-rate-inside-nercs-electricity-tariff-review/ (accessed 22 June 2026)

POLICY AND INVESTMENT RECOMMENDATIONS

The inclusion of host community development trusts in the electricity sector is well intentioned, but the present framework is incomplete. The objective of fairness to communities is legitimate, and there is a strong case for ensuring that those affected by power infrastructure share in its benefits. The difficulty is that the model has been borrowed from a sector with a different impact profile and a different revenue structure, and the borrowing has not been accompanied by the scope, governance and cost-recovery provisions that make the petroleum model workable.

First, the law should clearly define the scope of the host community development trust obligation. It should specify the categories of electricity projects to which the regime applies and adopt an impact-based definition of "host community" tied to demonstrable environmental or socio-economic harm. A workable definition will need to be more nuanced than the petroleum and mining definitions, because the impact of generation is not always localised and varies with the mode of generation. It should identify the affected community by reference to the harm the project actually causes, so that the obligation falls on projects that cause harm and not on those that do not. A solar or wind farm on private land that causes no material environmental harm should not attract a mandatory host community obligation. This also keeps the obligation within its proper purpose, because generation companies should not be required to fund general development that is the responsibility of the state.

Second, a statutory governance framework should be put in place for the trust. The gaps in the amended Electricity Act can be filled by regulations and guidelines made under the Act, and the NERC or the Minister should issue subsidiary legislation providing the implementation rules, including the needs assessment process, the allocation of funds, project approval, reporting and audit, and a grievance mechanism. The same applies to state electricity laws and regulatory commissions who can provide equivalent rules. While the governance architecture in Chapter 3 of the Petroleum Industry Act 2021 offers a useful starting point, any implementing framework for the electricity sector should be adapted to reflect the distinct characteristics of electricity infrastructure, its different environmental footprint, and the commercial realities of electricity markets.

Third, the cost burden should be addressed. The most direct route is to reduce the contribution or to tie it to generation activities that cause harm, so that it does not fall as a flat levy on every generation company. Where the obligation remains, the contribution should also be expressly made tax deductible in the law. Pending legislative clarification, project sponsors, lenders and investors should incorporate host community obligations into legal, regulatory and financial due diligence, including assessing whether federal or state legislation applies, estimating the potential financial impact of contributions, and allocating responsibility for compliance in project and financing documentation.

Finally, regulatory consistency should be promoted across the federal and state electricity markets. As more states enact electricity legislation containing host community provisions, there is a risk of divergent obligations applying to similar projects. Coordination between NERC and state electricity regulatory commissions, supported by model regulations or minimum national standards, would help reduce regulatory fragmentation and provide greater certainty for investors operating across multiple jurisdictions.

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