

Mechanisms for Transferring the Social and Economic Benefits of Mining Investments to Host Communities in Nigeria's Extractive Sector: A Comparative Analysis of CDAs and Incorporated Communities Development Trusts

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# Rationale for Transfer of Benefits of Mining Investment to Mining Host Communities

- Mining of natural resources (hard rock or oil & gas) portend significant potential impacts for host communities (HCs).
- The impacts manifest in form of environmental degradation, health and safety issues, and a host of social and community issues and security concerns.
- Mining business is capital intensive with long gestation period needing a conducive operating environment for successful and profitable operations.
- Mining companies (MCs) therefore traditionally seek the 'social licence to operate' from their host communities by executing various CSR projects/programmes.



# Voluntary CSR- Nigerian Context

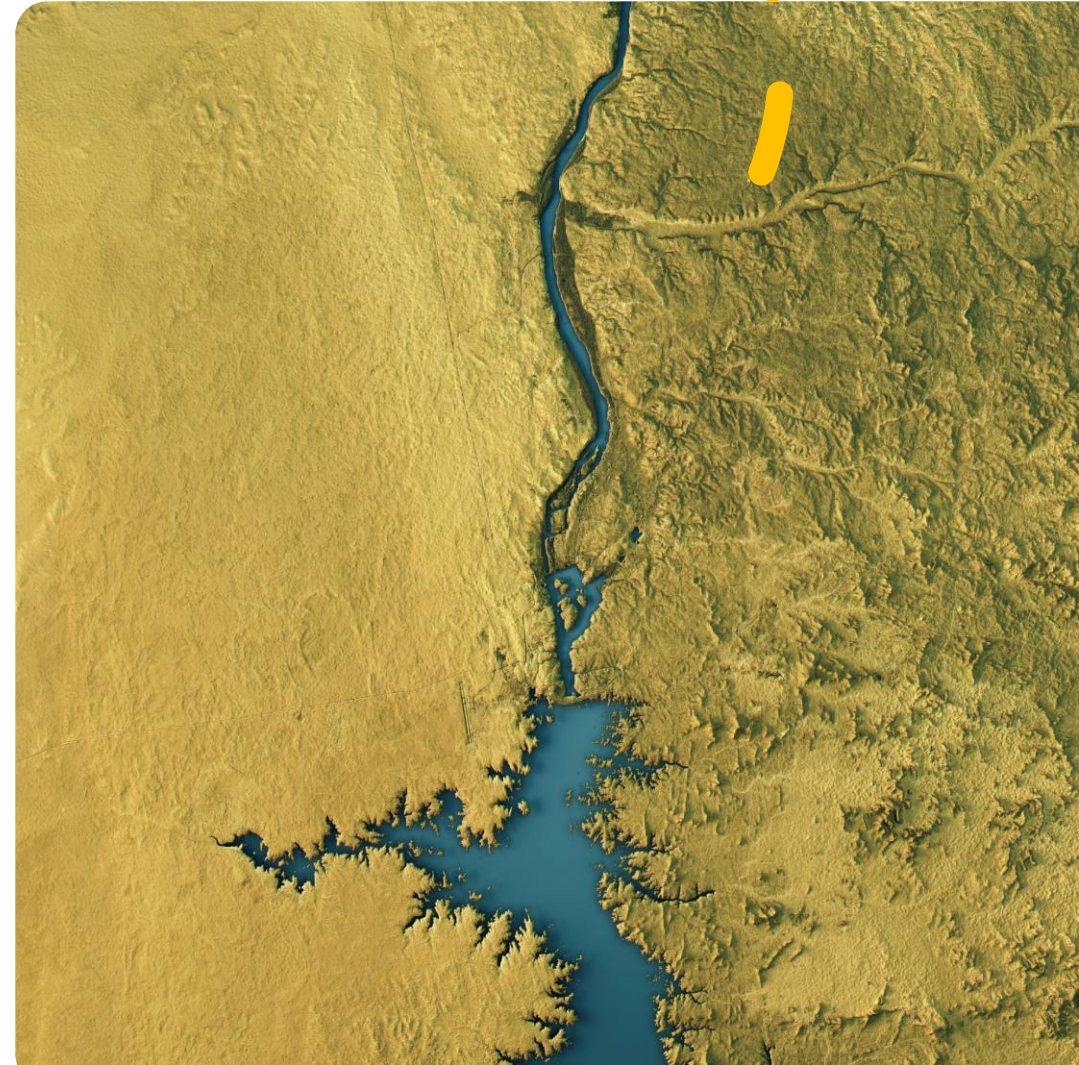
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- Historically, the mining industry's CSR programmes have been voluntary, but not satisfactory.
- In Nigeria, Mining host communities (HCs) are unable to point to significant projects executed by MCs that operated in their communities.
- Lack of awareness, education and empowerment militated against the efforts of Mining host communities to challenge the status quo.
- The International Oil Companies (IOCs) that began operations in the late 1960s generally followed the trajectory of the early miners and did not prioritise the welfare of their host communities.
- By the late 1980s when the impacts of oil extraction on the HCS began to manifest in form of environmental degradation and threat to the health and safety of HCs, IOCs began to articulate voluntary schemes like MOUs with HCs to address the gap.



# Fallouts of the Voluntary Mechanisms

- The environmental degradation experienced in HCs such as loss of farm lands, contamination of rivers began to fuel agitations.
- The Petroleum sector witnessed violent agitations/protests against IOCs in form of shutting of operations, vandalism of pipelines, attack on facilities, etc, because the IOCs had lost their social licence to operate.
- The mining sector learnt from the agitations of HCs in the Petroleum Sector and attempted to address the problem by changing the trajectory from voluntary CSR schemes to mandatory regulatory mechanisms in form of the CDAs provided under the Nigerian Minerals and Mining Act, 2007.(NMMA, Act)
- The petroleum sector also learnt from the NMMA 2007 and imposed a regulatory mechanism in form of incorporated Communities Development Trusts (ICDTs) provided under the Petroleum Industry Act, 2021.(PIA)



# Weaknesses of the CDA Mechanism

- Although, the mandatory mechanism of the CDAs is a significant improvement in the effort to transfer social and economic benefits of mining investments to host communities, it has its drawbacks:
- First, CDAs are contractual arrangements which depend on the negotiating capacities of the Parties (MCs & HCs) but, the inequality of arms between the parties does not promote arms length negotiations.
- Secondly, there is a lack of institutional support in the CDA process to strengthen the capacity of HCs to negotiate, monitor and ensure implementation of the CDAs.
- Thirdly, the CDA process is not inclusive as community leaders often hijack the process for personal gains;



**WEAKNESS**



# Weaknesses of CDAs-contd

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- Fourthly, the CDA process does not have a dedicated funding mechanism to ensure that projects are implemented as a lot depends on successful operations and profits of the MCs.
- Fifthly, CDAs have a 5-year duration beyond which parties must meet to review. This timeframe may be inadequate to execute capital projects.
- Finally, sanctions are not provided for non-implementation of CDAs as HCs are left with the option of mediation, relying on ministerial intervention or asserting their contractual remedies before the court to resolve disputes which is capital intensive and time consuming.
- **NB:** The Revised Guidelines for the Production of the Community Development Agreement in the Solid Minerals Sector, 2023 was issued to further streamline the process with a view to engender improvement in the CDA process.



# Similarities Between CDAs & ICDTs

- Both are legal frameworks for community engagement and benefits sharing in the extractive sector;
- CDAs and ICDTs are mandatory regulatory mechanisms imposed by law-section 116 NMMA, 2007 and section 234 PIA, 2021 respectively;
- Both mechanism require agreement or trust formation between the extractive company and the host community.



Similarities



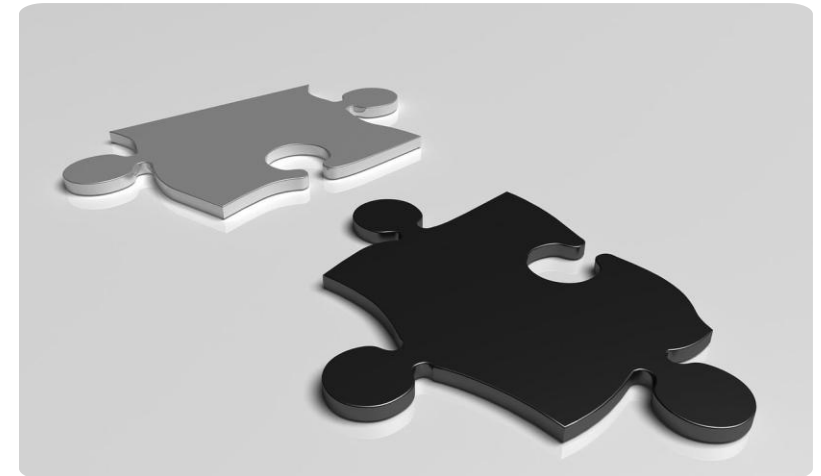
# Differences between CDAs and ICDTs

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- Despite the similarities between CDAs and ICDTs, there are some unique differences:
- **Scope of Application-** ICDTs under the PIA, 2021 apply on the petroleum industry, while CDAs under the NNMA, 2007 apply to the mining sector.
- **Structure-** ICDTs are separate legal entities established by law as provided by s.235 (1) of PIA, 2021, whereas CDAs under s.116 of the NNMA, 2007 are contractual agreements registered with the Ministry of Solid Minerals Development.
- **Parties-** ICDTs have specific membership requirements, including qualifications of representatives from the community, while CDAs typically involve the mining company and the representatives of the host community with no defined criteria.

# Differences-contd (II)

- **Funding** –ICDTS have a dedicated funding mechanism which include: 3 % of the actual annual operating expenditure of the preceding financial year of the settlor company, gifts and donations and interests and profits from the reserve fund as provided by s.240 (2) –(4) of PIA, whereas CDAs do not have a dedicated funding mechanism and often rely on the mining company’s corporate social responsibility initiatives and profits to execute projects/programmes.
- **Objectives**-while both aim to benefit local communities, ICDTS prioritises sustainable development and social welfare as provided under s. 239 (3) of PIA, whereas CDAs focus on providing community with appropriate consultative and monitoring framework between the MRHs and HCs and means of participation in the planning, implementation, management and monitoring of activities carried out under the agreement to transfer social and economic benefits of mining investment as provided by s. 117, NMMA, 2007.
- **Regulatory oversight**- ICDTs are regulated by Nigerian Upstream Petroleum Regulatory Commission (NUPRIC) and Nigerian Mid and Downstream Petroleum Regulatory Authority (NMDPRA) which are the sector regulators as provided by s.235 (6), whereas CDAs are regulated by the Committees constituted by the HCs under the CDA and **passively** supervised by the Mines Environmental Compliance Department (MECD) of the Ministry of Solid Minerals Development .



# Differences-contd (III)

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**Sanctions**-under s.238 of PIA and Regulation 9 of 2022, failure to incorporate ICDTs attracts sanctions including fines of up to \$2500 per day and revocation of licenses or leases, whereas the failure to conclude CDAs may not attract any sanction, but may ground a revocation of leases where the Minister so decides under s. 151 (b) of NNMA, 2007

**Regulatory Framework**- ICDTs are regulated by **Regulations** made pursuant to s.234 (2) of the PIA (Nigerian Upstream Petroleum Host Communities Development Regulations, 2022) while CDAs are regulated by **Guidelines** (Guidelines for the Production of Community development Agreement in the Solid Minerals Sector) made by the Minister of Solid Minerals. On the hierarchy of laws, Regulations rank higher than Guidelines. Regulations have force of law while Guidelines are recommended practices.

**Disruption of operations by Host Community**- where the operations of MCs are disrupted by vandalism, sabotage or civil unrests, the community shall forfeit its entitlements to the extent of the cost of repairs of the damage that resulted from the activity as provided by s. 257 (2) of PIA, whereas under CDAs, no such statutory obligations exist.

**Dispute Resolution**- ICDTs have built-in dispute resolution mechanism provided by s.234 (3), whereas CDAs often rely on external dispute resolution processes such as Ministerial Intervention, Arbitral Tribunals and the Courts as provided by s.116(4) NNMA and Regulation 193 (4) of NMMR, 2011.

# Conclusion

- It is necessary to reiterate that while both frameworks share similar goals; their differences in scope, membership, structure, membership, funding, objectives, regulatory oversight, and dispute resolution mechanism reflect the milieu, unique requirements and challenges of each extractive industry.
- It should be appreciated that the CDAs have been in operation since 2007, providing a 17 year period to assess its implementation and challenges.
- The ICDTS which commenced in 2021 has yet to enjoy long use for a proper assessment of its implementation challenges. Time will tell how effective ICDTs have been in the attainment of the goal of transferring benefits to HCs.
- However, its structure, funding and oversight provisions offer great prospect of success that commends its use in the mining sector.



Thank  
you!