

## **UNIFORM COMMUNITY ADMINISTRATION IN A HETEROGENEOUS CULTURAL SETTING: AN ASSESSMENT OF THE BAYELSA STATE COMMUNITY ADMINISTRATION BILL, 2024**

### **Abstract**

*The Community Administration Bill, 2024 which is currently before the Bayelsa State House of Assembly seeks to create a uniform community administration structure for all communities in Bayelsa State. The Bill proposes to streamline community administration in a preset format, using standard form institutions vested with certain powers. Against the backdrop of the lack of constitutional recognition for traditional institutions, government recognition of these institutions in a statute may be regarded as a welcome development. However, the imposition of uniform structures on the diverse cultural settings within Bayelsa State may do more harm than good, by destroying long standing customs, norms, ethos and traditional structures which have existed for centuries, and this may be counterproductive. This paper critically assesses the implications of the proposed Community Administration bill with a view to suggesting solutions. Drawing examples from Ghana's practice of protecting cultural institutions, the study finds that maintaining the existing rich and culturally diverse traditional institutions while putting in place certain general standards for community administration would be more effective than uniform prescriptions as intended by the Bill under consideration.*

**Keywords:** Community Administration, Uniformity, Heterogeneous Culture, Bayelsa State Community Administration Bill 2024

### **1. Introduction**

The Bayelsa State House of Assembly has proposed, and is in the process of passing the Community Administration Bill, 2024. The bill proposes a single-style community administration structure for communities within Bayelsa State and prescribes uniform institutions and functions for community administration in communities within the State.<sup>1</sup> The current bill makes a further attempt at State intervention and government regulation of communities, as it contains provisions prescribing the structure of institutions within communities. While State intervention and recognition of community and traditional administration itself is a welcome development, the implications of prescribing and mandating a uniform institutional arrangement for all communities remains to be assessed. This paper undertakes said assessment, against the backdrop of the heterogeneous nature of traditions, and community administration structures within communities in Bayelsa State.

### **2. Brief Historical Background on Traditional Administration in Nigeria**

In precolonial times, traditional institutions were in control of their individual territories, and were the government known by the people. The territory known today as Nigeria was inhabited by different groups of peoples with different languages and customs, and each was ruled independently by natural rulers who had authority over the different people groups. The basis of administration was custom and norms and ethos of the particular people group, and the traditional rulers were the symbol of the customs and traditions of the people.<sup>2</sup>

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<sup>1</sup> Hitherto, the only legislation that related to community administration was the Chieftaincy Law, Cap C4, Laws of Bayelsa State, 2006 which provides for the classification and recognition of traditional rulers; and the Community Relations Committee Law, Cap C9 Laws of Bayelsa State, 2006. The latter law creates the community relations committee which is given the responsibility of interfacing between oil communities and oil companies with a view to fostering peaceful coexistence and resolution of disputes.

<sup>2</sup> S. B. Amusa and M. O. Ofuafor, 'Resilience of Traditions in Contemporary Politics: A Historical Study of the Political Influence of Traditional Rulers in Nigeria', (2012) 4(6) *Current Research Journal of Social Sciences*, 407-414, pp. 408.

With the advent of colonial administration came the first major interference with traditional administration. Nigeria was amalgamated in 1914, bringing together all the people groups with previous independent existence into one entity called Nigeria, primarily for the purpose of convenient colonial administration.<sup>3</sup> Incidentally, the British chose a style of administration which allowed it to rule over the peoples of Nigeria through the existing traditional authorities, and this was the system of indirect rule.<sup>4</sup> Traditional rulers were also given a place in both the central governance structure, and under the regional arrangements. At the center the Senate, which is the upper house of the National Assembly, had seats reserved for traditional rulers.<sup>5</sup> In the regions, the legislature was bicameral, having the house of chiefs as one of its chambers.<sup>6</sup> Thus, the colonial administration successfully incorporated a role for traditional institutions in the governance of the nation.

However, this position did not remain for long after independence. The military coup of 1966 which truncated the first republic also brought to an abrupt end the role of traditional institutions in governance.<sup>7</sup> Thus, centralization which was the philosophy of military rule extinguished the chances of participation of traditional institutions in any significant manner in the civic public. Unfortunately, the transition to civilian rule in 1979 did not tow the constitutional path of the 1960 and 1963 constitutions, both of which provided a role for traditional institutions in the administration of the central and regional governments. The 1999 Constitution as amended is essentially a replication of the 1979 Constitution, and maintains its structure and fundamental ideals, and this accounts for why traditional institutions lack any role or recognition within the present constitutional framework.

Now, apart from the provision for the recognition of chiefs under the different Chieftaincy Laws, State governments hardly make room for traditional institutions within the context of civic government in the State. Against this backdrop, an attempt at legislation on community institutions would ordinarily be a welcome development, especially if same proposes a role for the traditional institutions. This is because although traditional institutions are not recognized by the Constitution, and are scarcely acknowledged by State laws, they remain a very real and efficient system of government, with considerable influence over the lives of the people groups in Nigeria.<sup>8</sup>

It has been postulated that the coming of the colonial administration into Nigeria created two publics: the civic public and the primordial, traditional public.<sup>9</sup> The civic public is represented by the arms of government, the public and civil service, government institutions, and all apparatus of the State as created and recognized by the Constitution and relevant laws, and their interrelationship with the individual. The primordial public on the other hand refers to the traditional setting of the individual, which is usually his place of origin, and the traditional institutions within that context. Ekeh expressed the view that people are more loyal to their primordial public than the civic public, and that while high morals are upheld in the former, the latter is viewed as amoral, with no sense of responsibility required. This underscores the fact that people are more loyal to traditional institutions than even elected governments in the civic public. Traditional institutions have enormous influence over the people, and could be a veritable means for effective governance. Hence, the proposal for the inclusion of a role for

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<sup>3</sup> P Eric, 'The Amalgamation of Nigeria: Revisiting 1914 and the Centenary Celebrations' (2016) 12(12) *Canadian Social Science*, 66-68.

<sup>4</sup> E W Smith, 'Indirect Rule in Nigeria: Miss Perham's Great Book' (1937) 36(144) *African Affairs*, 371-378

<sup>5</sup> Section 37(2)(a) of the 1960 Constitution

<sup>6</sup> Section 5 of the Constitution of Northern Nigeria provided for the House of Chiefs composed of all first-class chiefs, and 95 other chiefs selected in a manner prescribed by the legislature of the region. Similar provisions are contained in section 5 of the Constitution of Western Nigeria, and section 5 of the Constitution of Eastern Nigeria. All three regional constitutions, i.e. Northern, Western and Eastern regional constitutions are included in the Nigeria (Constitution) Order in Council, 1960, as the third, fourth and fifth schedules respectively.

<sup>7</sup> Decree No. 34 of 1966 converted the Federation into a unitary State, and renamed the regions as provinces.

<sup>8</sup> P. J. Fawei and E. A. Mannie, 'The Place of Traditional Institutions in Constitutional Democracy in Nigeria: A Comparative Examination' (unpublished).

<sup>9</sup> P Ekeh, 'Colonialism and the Two Publics in Africa: A Theoretical Statement,' (1975) 17(1) *Comparative Studies in Society and History*, 91-92.

traditional institutions in the Constitution.<sup>10</sup> The position therefore is that traditional institutions administer customs and exercise effective governance over the lives of the people, and the people themselves consider these institutions as legitimate, preferring them over government institutions in the civic public.

From the above, it is clear that the Constitution makes no reference to traditional institutions or customary law. However, the Evidence Act recognizes customs as part of the law governing a particular set of circumstances, therefore capable of being enforced under certain conditions.<sup>11</sup>

### **3. Overview of the Community Administration Bill 2024**

As earlier noted, the Community Administration Bill, 2024 seeks to streamline community administration in the State by producing a uniform format for institutions involved in local governance within communities in Bayelsa State. The Bill provides for the recognition of a community on the fulfillment of certain criteria.<sup>12</sup> The same section mandates every community to have a Constitution. It also provides for the ministry in charge of community development to recommend to the Governor to approve recognition of communities. Thus, any settlement which meets the above stated criteria can apply for recognition as a community. The implication of this possibility for age long customs and institutions will be examined under the assessment heading of this paper.

The bill provides for the following institutions in every community: traditional ruler, council of chiefs, community development committee, youth development council and women affairs council. The functions of each of these offices are prescribed by the Bill, and these functions deserve some scrutiny. The traditional ruler for instance is to preside over the council of chiefs, be the custodian of the customs and traditions, supervise chieftaincy matters, confer chieftaincy titles and perform such functions as may be directed by the Governor.<sup>13</sup> The council of chiefs has the responsibility to guide, protect and control the traditional institutions; advise the traditional ruler and others on customs and traditions. It is also to serve as the highest body for the settlement of land disputes, matrimonial causes, traditional matters and intra-community disputes and serve as the appellate body over matters from the community development committee, and other duties incidental to the above functions.<sup>14</sup>

A very vital institution created by the bill is the Community Development Committee.<sup>15</sup> Consisting of a chairman, vice chairman, secretary and any other necessary office deemed necessary, the CDC is saddled with the responsibility of the day to day administration of the community.<sup>16</sup> The bill vests the CDC with quasi-judicial powers by enabling it to arbitrate over '*civil disputes and minor infractions voluntarily referred to it by the parties...in accordance with prevailing customs.*'<sup>17</sup> The CDC also shoulders community mobilization and protecting government facilities. It also presides as appellate

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<sup>10</sup> Fawei and Mannie (n.8)

<sup>11</sup> Section 16(1) of the Evidence Act, 2011 (as amended) states as follows: "a custom may be adopted as part of the law governing a particular set of circumstances if it can be judicially noticed or can be proved to exist by evidence." The implication is that custom will be applied as law over a situation where it ought to be applicable if it can be proved as a fact. This brings us to the difference between law and fact in the course of trial. A law need not be proved, as the courts are directed to take judicial notice of all laws and enactments and any subsidiary legislation made under them: See Section 122 of the Evidence Act, 2011.

<sup>12</sup> The criteria listed for recognition of communities in section 1 of the Bill are as follows: having a common language and cultural ties; a population size of not less than 500 persons; at least 50 residential buildings; being geographically contiguous and haven been in existence for not less than 25 years.

<sup>13</sup> See section 5 of the Bayelsa State Community Administration Bill, 2024

<sup>14</sup> Section 3 of the Bayelsa State Community Administration Bill, 2024.

<sup>15</sup> Hereinafter referred to as the CDC.

<sup>16</sup> Section 7, Community Administration Bill. This is a cardinal feature of the bill, and comments will be made of this model of community administration in the course of its assessment.

<sup>17</sup> Bayelsa State Community Administration Bill, 2024. The section contains a curious definition of "minor infractions" to exclude allegations of rape, violation of minors and vulnerable persons, and offences involving sexual violence.

body over matters from the youth and women bodies.<sup>18</sup> The core and traditional function of the CDC which is the planning and execution of developmental projects in the community is also included.<sup>19</sup> Other responsibilities include town planning, enforcement of law and order and performing other functions assigned to it by the State government.<sup>20</sup>

The bill also seeks to create the youth and women affair councils to coordinate the affairs of youth and women in every community of the State.<sup>21</sup> The bill contains the composition of both councils and states that they shall be accountable to the CDC. It provides that the youth council shall assist the CDC in the protection of government and community facilities, assist in enforcement of law and order, coordinate youth activities, undertake sanitation and perform other tasks that may be assigned it by the CDC, traditional ruler and the council of chiefs.<sup>22</sup> The women affairs council shall promote the interest, welfare and ensure good representation of women. It is also billed to sensitize the women on anti-social and harmful cultural practices, and perform any other duties assigned by the CDC, traditional ruler or chiefs' council.<sup>23</sup>

Some specific provisions in the bill that are worthy of note is the provision which provides that the negotiation and signing of agreements on behalf of the community shall be by the traditional ruler and the CDC Chairman.<sup>24</sup> Similarly, section 9 of the bill states that community identification letters shall be issued by the traditional ruler, or in his absence the CDC Chairman, and said letters shall be the condition precedent for the issuance of local government letters of identification.<sup>25</sup>

#### **4. Assessment of the Community Administration Bill**

While the idea of government interest in the administration of communities, and in traditional institutions itself is welcome, the contents of the bill need to be further scrutinized. A few issues stand out to be addressed, and will be considered in this section of the paper. The said assessment is undertaken with a view to streamline the intended legislation with more viable policy preferences, and situate same properly within the already existing and thriving systems of customary law and traditional authority. This is to ensure that the bill, when passed, actually adds value, and does not deplete the rich, effective and working resource already available in cultural and traditional administration.

Section 7(1) of the Bill states that the CDC shall be responsible for the day to administration of the community. This makes the CDC the most effective governance structure in the community, responsible for making everyday decisions in the community on all matters. There are certainly no restrictions on the kind of day-to-day decisions the CDC can make. This system is run in some Bayelsa State communities and works well for these communities. One major feature of these communities is that most of them do not have advanced and established leadership structures and institutions which date back to centuries before the formation of Nigeria. They are mostly settlements without established, time-old stools and structures, and are sometimes settlements which were under the control of some other clan authority, and are in the process of developing their own identity.

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<sup>18</sup> Bayelsa State Community Administration Bill, 2024.

<sup>19</sup> Section 7(6) of the Bayelsa State Community Administration Bill, 2024. This core function of the CDC will be assessed against the provisions of the Petroleum Industry Act, 2021 which creates the Host Community Development Trust framework

<sup>20</sup> Bayelsa State Community Administration Bill, 2024.

<sup>21</sup> Section 10 of the Bill.

<sup>22</sup> Section 12 of the Bill.

<sup>23</sup> Section 14 of the Bill.

<sup>24</sup> The section 8 of the Bill also states that all such agreements shall be registered and deposited with the Ministry approved by the State government.

<sup>25</sup> Section 15 of the bill proposes to make it an offence to issue a community identification letter to a non-indigene, or to issue a local government identification letter in the absence of a community identification letter. These provisions are laudable in so far that they will help to verify and ascertain the status of indigenes of the state, since falsification carries a penal consequence.

The CDC structure is an innovation made to fill in the absence of age-long traditional authority in a community. For example, Section 128 of the Local Government Reform Act of Ireland, 2014<sup>26</sup> makes reference to the Community Development Committee as a structure of local administration within the local government structure, which is part of the civic public. The point made here is that the State government may create such bodies within the local government structure, or even recognize those that exists in communities, but cannot and should not destroy existing traditional structures or replace long-standing and working institutions with the CDC ruler-ship model as it seeks to do via this piece of legislation under consideration. To illustrate this, the leadership structure in Nembe Kingdom is taken as a case study.

### **5. Case Study: Nembe Kingdom**

The Nembe Kingdom has a rich cultural heritage dating back many centuries before the creation of the Nigerian State. It is a monarchy whose stool has lasted since 1450 AD<sup>27</sup> with an established House Rule system. The House rule system itself has thrived for centuries, and by it the Kingdom is made up of groups of chieftaincy houses, and each of them are at least more than a century old.<sup>28</sup> The House is the social structure on the basis of which the kingdom is organized and administered, and every person from Nembe Kingdom must trace his or her origin to at least one of these groups of houses. Each of these houses is headed by a head chief, and has a host of other chiefs which come together to form the administration of the house.<sup>29</sup>

Most houses in Nembe have satellite communities under their suzerainty, as these satellite communities were formed by the house a long time ago.<sup>30</sup> These satellite communities are by custom, subject to the traditional authority of the houses that formed them, and are part of the territory of the Amanyanabo of Nembe Kingdom. The custom and traditional structure that has existed for centuries therefore is that the Amanyanabo of Nembe rules over the Houses, which in turn rule over the satellite communities. This is the chain of traditional command which is the fabric that has held the people of Nembe Kingdom together for centuries.

However, the provisions of the Chieftaincy Law of Bayelsa State<sup>31</sup> recognizes the satellite communities as classified stools of traditional authority, but does not recognize the Chiefs of the houses which supervise them. This gives the satellite community a sense of false independence due to government recognition, and encourages it sometimes to disregard its traditional roots. The policy of the law therefore has the potential of harming and extinguishing cherished age long traditions, if uniform rules are developed without consideration of peculiar circumstances, and where the impact of the proposed legislation is not considered thoroughly.

Looking at the case study above, it is obvious that there is need to consider the effect of legislation meant to affect communities on the customs and norms of the people. Laws should be tailored in such a manner that will preserve, and not extinguish age long customs. The Community Administration Bill, just like the Chieftaincy Law examined above, will have unintended consequences for age long customs, and may lead to the destruction of established traditional and customary structures. For instance, by custom, the day-to-day administration of Nembe Kingdom is the prerogative of the Amanyanabo of Nembe-in-Council, and is delegated to the Nembe Chiefs Council headed by the Mingi, natural ruler of the Nembe people, and co-chaired by the Alternate Chairman of the Chiefs Council. The role of the

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<sup>26</sup> Available at <https://www.irishstatutebook.ie/eli/2014/act/1/enacted/en/pdf> accessed 8 September, 2025

<sup>27</sup> E. J. Alagoa, *The Small Brave City State* (2009) Onyoma Research Publications, 50.

<sup>28</sup> There are currently 14 Groups of Chieftaincy Houses in Nembe Kingdom, and were formed as trading units, during the era of trade with the Europeans: *ibid*, 11

<sup>29</sup> Section 13 of the Bill.

<sup>30</sup> For example, Igbeta Ewoama is under the Igbeta Chieftaincy Group of Houses. Ockiya Iwokiri is supervised and owned by the King Ockiya Group of Houses.

<sup>31</sup> The First Schedule of the Chieftaincy Law contains the list of chieftaincy stools recognized by the government. This list has been updated by the addition of more stools recognized by the Bayelsa State Government.

CDC has been to articulate development projects under the direction of the ruler-ship of the kingdom. The bill proposes to upturn the entire system and vest day to day administration in the CDC, which is a situation unknown to the Nembe people, and contrary to their cherished and age long customs and traditions. The above illustrates how the adoption and imposition of a uniform structured Community Administration Bill may actually do more harm than good, destroying customs and usages which have worked well for centuries before the creation and amalgamation of Nigeria.

*Quasi-Judicial Function:* As part of the duties of the CDC, the bill proposes a quasi-judicial function to ‘*arbitrate in civil disputes and minor infractions voluntarily referred to it by parties.*’ This is problematic mainly because of the phrase ‘minor infractions’. An infraction is an [occasion](#) when someone [breaks a rule or law](#).<sup>32</sup> An infraction is essentially and usually the breach of a criminal law with penal consequences.<sup>33</sup> The bill seems to vest criminal jurisdiction in the CDC over said minor infractions. This is corroborated by a provision of the bill which states as follows: ‘*provided that no CDC shall claim or exercise power or jurisdiction over allegations of rape, violation of minors and other vulnerable persons or any other offences involving sexual violence*’.<sup>34</sup> The implication of the above cited provision is that the CDC may handle what the bill describes as minor infractions, which may actually be violations of criminal law, except the offences of rape, violation of minors and vulnerable persons, and sexual offences.<sup>35</sup>

There are quite a number of problems with this provision. The said provision brazenly is inconsistent with the relevant provisions of Constitution of Nigeria which requires that a person charged with a criminal offence shall be entitled to a fair hearing within a reasonable time by a Court or tribunal.<sup>36</sup> By constitutional precepts, it is only the courts created by and permitted by the Constitution of Nigeria that can exercise jurisdiction over criminal matters and not any other institution or entity.<sup>37</sup> The courts vested with the requisite judicial powers both at the Federation and the State to entertain and determine criminal cases have been expressly provided in the Constitution of Nigeria.<sup>38</sup> While the Constitution enables the State Houses of Assembly to create other courts with jurisdiction in matters over which the House of Assembly may make laws,<sup>39</sup> bodies like the CDC were not envisaged by this section, as it is neither a court of law, nor a tribunal within the contemplation of the Constitution.<sup>40</sup>

Looking beyond the constitutional issues, the CDC style leadership, together with the quasi-judicial authority which the bill seeks to vest in it may have been practiced in some communities without established customary law systems. However, for communities with age long systems for administration of local justice, this provision is disruptive. For instance, Nembe Kingdom which has been chosen as our case study has an advanced system of local arbitration and adjudication that applies customary law to disputes submitted to it for determination.<sup>41</sup> Some of these bodies in communities have existed for centuries, and their existence predate Nigeria in some cases.

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<sup>32</sup> Cambridge Dictionary, ‘Infraction’ available at <<https://dictionary.cambridge.org/dictionary/english/infraction>> accessed 10 September, 2025. Encyclopedia Britannica describes it as “an act that breaks a rule or law”: available at <<https://www.britannica.com/dictionary/infraction>> accessed 10 September, 2025.

<sup>33</sup> In this sense another name for infraction is a crime or offence.

<sup>34</sup> The proviso to section 7 of the Uniform Community Administration Bill.

<sup>35</sup> The rule of interpretation encapsulated in the Latin maxim “*expressio unius est exclusio alterius*,” which means the express mention of an item excludes the others not mention, applies here. See: *Buhari & anor v Yusuf & anor* (2003) LPELR-812(SC).

<sup>36</sup> Section 36(4) of the 1999 Constitution of the Federal Republic of Nigeria 1999 (as amended).

<sup>37</sup> See the case of *Okike v LPDC* (2005) LPELR-2450(SC) at page 28, paras. D - F.

<sup>38</sup> The Courts listed as courts of record by the community reading of section 6(1), (2), (3) & (5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) are the courts with jurisdiction.

<sup>39</sup> Section 6(5)(k) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

<sup>40</sup> See section 6(5) of the 1999 Constitution which lists the courts in which the judicial powers of State are vested.

<sup>41</sup> It is called the “*Mingi Native Court*,” and is backed by the traditional authority of the stool of the Amanyanabo of Nembe Kingdom. Natives have from time immemorial submitted disputes to resolution in this court, and the decision of the court is accepted as representing the Mingi, hence the general respect and deference for the decisions of the Court.

It must be noted that the CDC was not conceived or set up to discharge judicial or quasi-judicial functions. The name itself, i.e. ‘community development committee’ is both definitive and indicative of the purpose of setting up the body, and is solely for the purpose of pursuing development of communities, by attracting external funding and conducting activities which will lead to the development of the community.<sup>42</sup> To add quasi-judicial functions to the CDC’s list of activities and powers as this bill seeks to do would be to over-stretch the purpose of the CDC and make it ineffective. Also, judicial and quasi-judicial functions within local communities are conducted in accordance with the customs and traditions of the people. The traditional rulers and chiefs are the custodians and symbols of the customs of the people, and that is why natives ordinarily submit to these bodies to determine their disputes in accordance with the norms, traditions and customs of the people. The CDC on the other hand is a committee, which is not traditional, and is not set up for traditional or customary purposes, but as an agency of the community to drive development.<sup>43</sup> Elevating the CDC to the position of a quasi-judicial body or a native court will take the customary jurisdiction of determining disputes according to custom from the traditional institutions, and place same in a committee without customary basis. This will destroy the customs, norms and ethos of the people concerned and will be counterproductive.

*Planning and Execution of Development Projects:* This is by usage a core and essential function of the CDC. As the name implies, the community development committee is usually responsible for the conception and implementation of development projects in the community. However, this usage has been overtaken by legislation in communities whose development funds is sourced from petroleum. The Petroleum Industry Act (PIA) specifically addresses Host Community Development, and provides a statutory development template for all development sourced from petroleum.<sup>44</sup> Firstly, it creates the Host Community Development Trust (HCDDT) which is saddled with the development of oil producing communities.<sup>45</sup> The PIA provides that 3% of the operating expense incurred by the Settlor will be utilized by the HCDDT structure for the development of the community, or cluster of communities making up a particular trust.<sup>46</sup>

Chapter 3 of the PIA creates a three-tier organization with the following structures: the board of trustees, the management committee and the advisory committee. Each arm has defined responsibilities under the Act covering the full gamut of community development activity.<sup>47</sup> The three arms of the HCDDT cooperate to carry out a needs assessment based system of development of the communities covered by the Trust, by the utilization of funds accruing to the community from the exploration of petroleum. By the provisions of the PIA therefore, the CDC functions of planning and executing development projects has been taken over by the HCDDT, in so far as the funds to be utilized for development are derived from petroleum exploration. This situation has significant impact for communities in Bayelsa State, as most communities in the State are oil producing communities, and funds for community development in the State are usually sourced from oil and gas operations within their territories. To the extent that the funds for the development of these communities are accessed via the HCDDT structure created by the PIA, the

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<sup>42</sup> Section 2(g) of the Community Relations Committee Law, Cap C9, 2006 provides that the Community Relations Committee is to assist CDCs of communities to “*channel their requests to oil companies.*” This request will ordinarily be by way of community development projects to be funded by said Oil Companies. This of course has been overtaken by the provisions of the Petroleum Industry Act, 2022, whose effect on the CDC structure will be examined shortly.

<sup>43</sup> The CDC established by the Local Government Reform Act of Ireland (see n.26) is illustrative of the purposes for setting up such a body. It is a pilot body, and think-tank to drive development. It is ordinarily not created to be in charge of administration of entire communities. The use of CDCs for general administration as obtainable in some communities in Bayelsa State is an anomaly, and is indicative of the absence of a long standing and established customary authority to cater for the many duties foisted on the CDC. In this sense, the CDC is used as a “*stop-gap*” measure to cater for and supplement the need for community leadership in several areas.

<sup>44</sup> The entirety of chapter 3 of the Petroleum Industry Act deals with the subject of community development.

<sup>45</sup> Section 235 Petroleum Industry Act, 2022 (hereinafter referred to as the PIA)

<sup>46</sup> Section 240(2) of PIA.

<sup>47</sup> Sections 242, 247 & 249 of the PIA. For instance, the management committee has the duty of designing and executing development projects, a function which was before the PIA, carried out in some communities by the CDC. See section 248 PIA.

CDC is rendered redundant in its functionality, in the context of petroleum extraction funded development of their communities. The CDC can only be relevant when the funds to be utilized for development are not sourced from petroleum activities under the PIA, for instance, community contributions and levies raised from members of the community.

*Town Planning in the Community:* One of the intendments of the bill under consideration is to vest the power of town planning of communities, in the CDC.<sup>48</sup> On the face of it, the CDC has a development mandate, and an essential part of the process of development is development control, and planning. However, this raises issues for development control where the particular community concerned is part of the areas designated as urban centers or areas by law. For instance, the capital city of Bayelsa State is hosted by a number of communities which are the original aborigines and landlords of the land comprising Yenagoa.<sup>49</sup> The exercise of the power of town planning by the CDC in any of these communities, as sought to be vested by the Bill will conflict with the powers and competences of other constitutionally established tiers of government like the Yenagoa Local Government Area Council<sup>50</sup> as well as statutorily established bodies like the Bayelsa State Physical Planning and Development Board.<sup>51</sup>

This issue is replicated in every area or community which has been earmarked and delineated as forming part of the capital city. This appears to be focally applicable to the capital city of Yenagoa, but its implications are far reaching to the extent that all other communities that host the headquarters of a Local Government Area Council are prone to same challenges. There is thus the real possibility of conflict between the government agency established by law and responsible for the central planning and development control in the State, and the CDC, going by the provisions of the bill under focus. This lack of harmony in operationalization may pose as significant challenge to physical development across the State.

## 6. Lessons from other Jurisdictions

Traditional administration and structures have been featured in governance systems, and roles provided for them in many modern States by means of their Constitutions. Ghana for instance stands out as a nation in which the republican and modern governmental structures have made concerted efforts to preserve the role of traditional institutions in governance. The Ghanaian Constitution for instance provides that *'the institution of chieftaincy, together with its traditional councils as established by customary law and usage, is hereby guaranteed'*<sup>52</sup> This provision affords a constitutional guarantee for traditional authority and developed traditional systems on the basis of which peoples and cultures have been administered before the coming of the Europeans, and thus the introduction of modern government.

The said protection and guarantees for maintenance of traditional systems is re-echoed in section 270(2) of the Constitution of Ghana which prohibits parliament from passing any law which purports to give any person or authority the right to accord or withdraw recognition to or from a chief for any purpose whatsoever. The constitution also forbids any law which derogates from the dignity and honour of the chieftaincy institution.<sup>53</sup>

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<sup>48</sup> This can be found in section 7(8) of the Bayelsa State Community Administration Bill, 2024.

<sup>49</sup> Examples are Yenagoa town, Ovom, Onopa, Amarata, Ekeki, Okaka, Kpansia Epie, Yenezue-Epie, Yenezue-gene Epie, Biogbolo-Epie, Opolo, Okutukutu, Etegwe, Edepie, Agudama-Epie, Akenpai, Akenfa, Azikoro-Epie, Swali, Agbura, Igbogene and other adjoining communities.

<sup>50</sup> As provided for in sections 3(6), 7(3) and Part 1 of the First Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

<sup>51</sup> See the Bayelsa State Physical Planning and Development Board Regulations, 2015.

<sup>52</sup> Section 270(1) of the Constitution of Ghana, 1992 (as amended).

<sup>53</sup> Most traditional stools are ancient institutions which have administered the people under their domain for centuries. Before the advent of colonialism, all the powers of governance in such institutions, and most of the old and ancient stools still have that influence and control over the persons under their domains. To remove the power of governance from said time-honoured institutions in a bid to create a uniform system, as the Bill under consideration seeks to do, would qualify as a derogation from the reverential position enjoyed by said chieftaincy

Traditional institutions are recognized at every tier of governance: the National House of Chiefs at the national level; Regional House of Chiefs at the regional level and the traditional council at the municipal level.<sup>54</sup> The functions of these traditional bodies are copiously stated in the Constitution, ranging from an advisory role on matters pertaining to custom and chieftaincy, to the progressive study, interpretation and codification of customary law, with a view to achieving a unified system of rules of customary law. They are also charged with the elimination of outdated and socially harmful customary practices and laws, making the development of customary law progressive and in tandem with modern day realities and values.<sup>55</sup> By the codification of customary law and the evolving of a unified system as intended by the constitution, traditional authority performs the function of law making within the context of customs.

Also very importantly, the traditional bodies described above perform judicial functions, as customary matters are decided by their judicial committees, forming a full appellate court system. Appeals lie from the traditional council to the regional, and then to the National House of Chiefs. The Supreme Court exercises appellate jurisdiction over the National House of Chiefs.<sup>56</sup> In addition to customary matters, parties may by consent, submit to local arbitration under a chief and this is binding.<sup>57</sup> The vesting of jurisdiction over customary matters in the aforementioned structures of traditional authority, and the possibility of submission to binding traditional arbitration in any other matter makes the chieftaincy institution a significant player in the exercise of judicial power, and significantly reduces the workload of the regular courts, as their dockets are free of customary matters. This leads invariably to a more effective system of justice delivery.

The system of governmental and constitutional recognition for traditional institutions in Ghana and Nigeria, particularly in Bayelsa State as proposed by the bill under focus can be contrasted. On one hand, i.e. under the Ghanaian system, there is constitutional recognition of traditional systems in a manner that maintains and preserves the local institutions which predate modern government in the West African State. This recognition proceeds from an understanding of the value of time-honoured traditions and the fact that customary practices and institutions are diverse and unique to the particular area which practices that tradition.

The Ghanaian system thus does not seek to collapse the different pre-existing institutional systems into a single, monotone community administration system. Rather, it recognizes the differences, and provides constitutional guarantees to maintain existing structures which have worked from time immemorial. In contrast, the bill under consideration seeks to create a single system of community administration by cloning from the CDC model that has been examined in this work. This will have a couple of negative effects.

First, is the destruction and obliteration of existing and time-honoured institutions which have been the basis of administration in some communities for centuries by the instrumentality of the law. These institutions, haven survived colonialism and lack of constitutional recognition; are now sought to be obliterated and replaced with institutions whose functionality as intended by the bill is, in many instances, alien to the customs, norms and ethos of the people.<sup>58</sup>

Secondly, such an imposition of a uniform community administration in areas where such custom is not applicable will only succeed in alienating community administration from governance, and may create

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institutions, and would run foul of this provision, if same occurred in Ghana. This is indicative of the regard for traditional institutions in that country.

<sup>54</sup> See sections 271 and 274 of the Ghanaian Constitution. See also, the Chieftaincy Act (No. 759) of 2008.

<sup>55</sup> Section 272 of the Ghanaian Constitution.

<sup>56</sup> Section 273 of the Ghanaian Constitution.

<sup>57</sup> Section 30 Chieftaincy Act.

<sup>58</sup> For instance, the CDC mode of governance, and submission of disputes to this institution is alien to the customs an ethos of the Nembe speaking people which constitutes two, out of the eight local government areas in Bayelsa State. This is because the culture in these areas is predicated on the House Rule system, which has been the basis of social and political organization amongst the Nembe speaking people since time immemorial.

a situation of conflict between existing traditional institutions and those proposed by the bill. This kind of conflict will definitely not augur well for sound community management, and may hamper the peace, stability and progress of said communities. A situation where a peaceful and perfectly functional society is thrown into confusion by means of legislation will be counterproductive, and is certainly not the intention of the law as an instrument of social engineering.

## 7. Conclusion and Recommendations

An attempt has been made to examine the Bayelsa State Community Administration Bill, 2024 and this has been done against the backdrop of accepted usages and the role and importance of traditional institutions in community administration. It was observed that traditional institutions in most cases are ancient structures that have survived different epochs and are still standing, despite pressures exerted by modern day government.

It was also noted in the course of this work that the Nigerian Constitution has no role or recognition for traditional institutions. Despite the lack of constitutional recognition, traditional institutions continue to thrive as undeniable realities which exercise government and authority over the people within their domain, and enjoy even more recognition and support than modern civic governments. In this vein, government recognition of community administration by legislation is a welcome development.

However, the said proposed piece of legislation ought to recognize and strengthen the existing traditional structures which differ from one community to another within Bayelsa State, while exploring ways to improve its functionality and utilitarian value, rather than seeking to impose a uniform community administration as the bill under consideration seeks to do. This attempt, it has been noted, will be counterproductive and will not enhance the effectiveness of traditional institutional arrangements in a multi-cultural society like Bayelsa State.

Rather than destroying existing customs and long-standing institutions, studies should be conducted to understand why traditional institutions are so resilient, and continue to exist and thrive, and be recognized by the people as legitimate, in spite of the lack of constitutional recognition of said traditional structures. Modern governments stand to gain a lot more from the co-optation and strengthening of existing traditional structures, than from the destruction of these institutions and customary authority, as this will hamper the stability, peace and progress of local communities.

In the light of the above, some recommendations are hereby made. Firstly, attempts to regulate community administration should recognize the diversity and differences in customary practices and traditional institutions varying from one community to another. This way, a system which acknowledges and co-opts such diversity will allow the local communities function as they have from time immemorial, while setting standards for community administration. This basically suggests the use of the existing and clearly resilient local structures to administer the people in the cultural and local setting, without destroying the institutions.

This is akin to the colonial policy of Indirect Rule which was adopted by the British in Nigeria and other countries, and which worked satisfactorily. Now, in addition to civic governmental structures, governments are invited to co-opt the existing traditional institutions which have the ability to rally the people behind government policies, rather than destroy the said institutions. This is surely a better alternative to imposing uniform and alien structures on a good section of communal populations, which may lead to the utter rejection by the people, leading to instability. Traditional institutions function effectively in community administration, and as the old adage goes *'if it isn't broken, don't fix it'*. This style of preservation and co-optation is illustrated in the Ghanaian example examined in this work.

Other lessons can also be learned from the Ghanaian experience. Traditional institutions are utilized as customary arbitration and play a judicial function when the issues in a dispute are customary in nature. For instance, it was observed that the National House of Chiefs possesses appellate jurisdiction over matters emanating from the Regional House of Chiefs or the Traditional Authorities. It is only after the National House that appeal lies to the Supreme Court. In this way, traditional institutions utilize their

centuries' aged wealth of wisdom in determination of cultural disputes, and saves the regular courts a lot of time and resources in such matters. Parties can also voluntarily submit themselves to local arbitration, and the law recognizes and enforces said decisions. It is suggested that a leaf be borrowed from the Ghanaian example, and traditional authorities be engaged in the process of adjudication. This is a much better alternative to the proposal of the CDC exercising quasi-judicial functions. Such an arrangement will require the revisiting the laws establishing customary courts, to further streamline the administration of justice within the cultural context.