

Review Article

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Legal Architecture of Joint Investigation Visits and Access to Justice for Oil Spill Victims in Nigeria

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ABSTRACT

Oil and gas exploration has been the backbone of Nigeria's economy for over six decades, yet it has left the Niger Delta with extensive environmental degradation, including oil spills, gas flaring, water contamination, and loss of biodiversity. In response, Nigeria has enacted a robust suite of environmental laws and regulations, including the Petroleum Act, the Environmental Impact Assessment Act, the National Oil Spill Detection and Response Agency Act, and regulations by the Nigerian Upstream Petroleum Regulatory Commission. Despite this comprehensive legal framework, pollution incidents persist and environmental remediation remains inadequate. This review article critically examines the effectiveness of environmental laws in the management of oil and gas pollution in the Niger Delta, Nigeria.

Drawing on peer-reviewed literatures, government reports, NGO publications, and legal case studies available online, the paper assesses three dimensions of effectiveness: legislative adequacy, enforcement and compliance, and environmental outcomes. The review reveals a significant implementation gap: while laws are relatively comprehensive on paper, weak institutional capacity, regulatory overlap, corruption, limited community participation, and poor funding undermine enforcement. Furthermore, multinational oil companies often exploit legal ambiguities and delayed litigation processes, while host communities bear the health and livelihood costs. The paper concludes that legal reform alone is insufficient. Achieving environmental protection requires strengthening regulatory institutions, enhancing transparency and community engagement, adopting polluter-pays principles with real penalties, and aligning national laws with international best practices. The findings provide policy recommendations for closing the gap between environmental law and environmental reality in Nigeria's oil and gas sector.

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1. Introduction

1.1 Background

Nigeria's oil and gas industry has been central to the country's economy since the discovery of commercial crude oil in Oloibiri, Bayelsa State, in 1956. For over six decades, petroleum exports have accounted for more than 90% of foreign exchange earnings and approximately 70% of government revenue [7-9].

The Niger Delta region, which spans nine states and covers an estimated 70,000 km², hosts the bulk of Nigeria's onshore and offshore oil and gas operations. It is therefore both the economic hub of the nation and the primary site of hydrocarbon-related environmental impacts. The intensity of exploration, production, and transportation activities in the region has resulted in widespread environmental degradation [1,3].

The major forms of pollution include crude oil spills from pipelines and facilities, uncontrolled gas flaring, discharge of produced water, and contamination of surface and groundwater resources [4,5].

According to data from the National Oil Spill Detection and Response Agency (NOSDRA), thousands of oil spill incidents have been recorded in Nigeria, with the majority occurring in the Niger Delta [6,7].

The 2011 UNEP Environmental Assessment of Ogoniland documented extensive soil and groundwater contamination, loss of mangrove ecosystems, and severe public health implications linked to decades of oil operations (United Nations Environment Programme [8,9].

In response to these challenges, Nigeria has developed an extensive legal and regulatory framework to govern environmental protection in the oil and gas sector. Key instruments include the Environmental Impact Assessment Act 1992, the National Environmental Standards and Regulations Enforcement Agency (NESREA) Act 2007, the NOSDRA Act 2006, and more recently, the Petroleum Industry Act (PIA) 2021 [10-13].

The PIA 2021 specifically introduced new provisions for environmental management, host community development, and remediation in the upstream sector. Nigeria is also a signatory to several international environmental conventions that emphasize

the polluter-pays principle and sustainable resource management [14,15].

Despite this seemingly robust legal architecture, environmental pollution in the Niger Delta persists, and remediation efforts remain largely inadequate. This disconnect between comprehensive legislation and poor environmental outcomes raises critical questions about the effectiveness of environmental law in Nigeria.

1.2 Problem Statement

The persistence of environmental pollution despite existing laws suggests a significant implementation gap between law and practice. NOSDRA data indicate that thousands of oil spill incidents have been recorded in Nigeria in the last decade alone, with the Niger Delta accounting for the majority [6].

The UNEP assessment of Ogoniland further revealed that hydrocarbon pollution had penetrated up to 5 meters below the surface in some areas, with drinking water contaminated at levels exceeding WHO standards, and that full remediation could take up to 30 years [8].

Scholars and NGO reports attribute weak environmental outcomes to limited institutional capacity and funding of regulatory agencies such as NOSDRA, NUPRC, NESREA and the State Ministry of Environment; regulatory overlap and poor inter-agency coordination; corruption; delayed access to justice; and limited participation of host communities in decision-making processes. Furthermore, multinational oil companies operating in the region have been accused of exploiting legal ambiguities and protracted litigation to delay remediation and compensation [2-4].

Landmark cases such as *Jonah Gbemre v. Shell Petroleum Development Company Nigeria Ltd & Others* and *Bodo Community v. Shell Petroleum Development Company of Nigeria Ltd* demonstrate that while the courts have recognized environmental rights, the implementation of judgments remains a challenge. Consequently, the central problem this review addresses is: Why has Nigeria's robust environmental legal framework failed to produce commensurate improvements in environmental quality in the Niger Delta [16,17].

1.3 Aim and Objectives

Aim: To critically examine the effectiveness of environmental laws in the management of oil and gas pollution in the Niger Delta, Nigeria.

Specific Objectives

- a. To review the adequacy of existing legislative and regulatory frameworks governing oil and gas pollution in Nigeria.
- b. To assess the level of enforcement and compliance with environmental laws by regulatory institutions and oil companies.
- c. To evaluate environmental outcomes and remediation efforts in the Niger Delta over the last two decades.
- d. To identify key challenges undermining the effectiveness of environmental laws and propose policy recommendations for bridging the gap between law and practice.

1.4 Scope and Significance of the Study

This review focuses on oil and gas-related environmental pollution in the Niger Delta region of Nigeria from 2000 to 2025. It examines federal environmental laws, regulations, and policies applicable to the upstream petroleum sector, with emphasis on oil spills

and gas flaring. The study draws on peer-reviewed literature, government reports, NGO publications, legal case studies, and NOSDRA and UNEP data available online. The significance of this study lies in its timing and relevance. With the enactment of the PIA and ongoing divestments by International Oil Companies (IOCs), there is an urgent need to assess whether Nigeria's legal framework is capable of delivering environmental protection. The findings will be relevant to policymakers, regulatory agencies, civil society, and host communities seeking to improve environmental governance. By identifying the gaps between legal provisions and environmental reality, this review contributes to ongoing debates on sustainable development, environmental justice, and regulatory reform in resource-dependent economies [13].

2. Overview Of Oil And Gas Pollution in the Niger Delta

Oil and gas operations in the Niger Delta generate complex and interlinked pollution that cuts across air, land, and water systems. This pollution stems from four major sources. The first is oil spills, which occur during exploration, production, transportation and storage. These spills result from pipeline corrosion, equipment failure, operational accidents, as well as sabotage and vandalism. According to NOSDRA, Nigeria recorded over 14,000 spill incidents between 2014 and 2024, releasing millions of barrels of crude, with the bulk occurring in Rivers, Bayelsa and Delta States. Because of the swampy and fragile terrain of the Delta, spilled crude persists for decades, contaminating farmlands, creeks and sources of drinking water [6-4].

The second source is gas flaring, which Nigeria has consistently ranked among the top gas flaring countries globally, as associated gas produced with crude oil is routinely burned in open flares. The World Bank estimated that about 7.4 billion cubic metres of gas was flared in Nigeria in 2022 alone, releasing carbon dioxide, methane, black carbon, sulphur dioxide, benzene and polycyclic aromatic hydrocarbons [18].

Communities situated within 2 to 4 kilometres of flare sites report higher prevalence of respiratory illnesses. The third is produced water and chemical discharges. Large volumes of produced water containing salts, heavy metals and hydrocarbons are generated during extraction, while drilling muds, lubricants and other operational chemicals enter waterways where waste management is inadequate [4].

The fourth is pipeline vandalism and artisanal refining. Since the 2000s, illegal bunkering and artisanal crude refining have expanded significantly, resulting in uncontrolled spills and open burning of crude, which cause severe localized contamination of soil and air [14].

The environmental consequences are well documented. Hydrocarbons degrade soil by reducing fertility and microbial activity. In Ogoniland, the United Nations Environment Programme found that contamination had penetrated up to 5 metres below the surface, rendering agricultural land unusable for generations. Surface water, groundwater and sediments are similarly contaminated with benzene, toluene and total petroleum hydrocarbons. UNEP reported that drinking water in ten Ogoni communities contained hydrocarbon levels were many times far above WHO guidelines, undermining fishing and domestic use. The region's mangrove forests, which are highly sensitive to oil, have suffered defoliation, die-back and habitat loss, with an estimated 5 to 10 percent of mangrove cover lost to oil-related damage. Gas flaring further contributes to acid rain, climate change and poor

local air quality, with continuous exposure linked to respiratory and skin conditions [8].

This environmental degradation directly undermines the livelihoods of Niger Delta communities who depend largely on fishing and farming. Fish stocks have declined due to water contamination and destruction of breeding habitats, while farmlands have become infertile, forcing migration and deepening poverty. The World Bank has identified environmental degradation as a key driver of conflict and insecurity in the region. From a public health perspective, epidemiological studies associate prolonged exposure to oil pollution with increased incidence of skin disorders, respiratory diseases, cancers and reproductive health problems, with women and children disproportionately affected because of their roles in farming and water collection [19].

The perception of environmental injustice and inadequate compensation has also fuelled protests, litigation and militancy, as illustrated in landmark cases such as Jonah Gbemre v. Shell and Bodo Community which underscore the nexus between environmental damage and human rights [16].

The above data analysis shows that oil and gas pollution in the Niger Delta is not an occasional accident but a chronic, systemic problem. The scale of spills, the persistence of contaminants, and the cumulative health and livelihood impacts demonstrate that current pollution control measures are inadequate. This sets the context for evaluating whether Nigeria's legal framework is structurally capable of addressing these realities, which is the focus of Section 3.

3. Legal And Regulatory Framework Governing Oil And Gas Pollution in Nigeria

3.1 Overview

Nigeria has a multi-layered environmental governance system comprising the Constitution, statutes, regulations, policies, and international treaties. In the oil and gas sector, responsibility is shared among federal ministries, and agencies, with the Nigerian Upstream Petroleum Regulatory Commission [NUPRC], Nigerian Midstream and Downstream Petroleum Regulatory Authority [NMDPRA], NOSDRA, NESREA, and the State Ministry of Environment as key institutions. Despite the volume of laws emanating from these institutions, scholars describe the whole set up as "comprehensive on paper but weak in practice" due to enforcement deficits.

3.2 Key Statutes and Regulations

i. The 1999 Constitution of the Federal Republic of Nigeria [as amended]

Section 20 provides that "the State shall protect and improve the environment". However, the right to a clean environment is in Chapter II, which is non-justiciable. Environmental protection is on the Concurrent Legislative List, meaning both federal and state governments can legislate, but federal law prevails in conflicts [21].

ii. Environmental Impact Assessment Act, Cap E12, LFN 1992

This Act mandates that any project likely to have significant environmental impact must undergo EIA and receive approval before commencement. For oil and gas projects, operators must

submit an EIA report to the Federal Ministry of Environment.

Strength: Institutionalizes prevention principle.

Gap: Poor monitoring of EIA implementation, and exemptions have been granted for "strategic" projects [10].

iii. National Oil Spill Detection and Response Agency Act, 2006

Established NOSDRA to coordinate oil spill response, maintain the oil spill database, and ensure remediation. The Act requires operators to report spills within 24 hours and mandates site remediation to "pre-spill" condition.

Strength: Centralized spill data and response protocol.

Gap: NOSDRA is underfunded and lacks enforcement equipment. The "joint investigation visit" process is often characterized by disputes over cause of spill — operational vs sabotage [11-6].

iv. National Environmental Standards and Regulations Enforcement Agency Act, 2007

Established NESREA as the apex environmental enforcement agency. NESREA has issued sectoral regulations including the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria [EGASPIN] 2018.

Strength: Provides technical standards for effluent discharge, air emissions, and waste management.

Gap: Section 7(7) of NESREA Act exempts oil and gas from NESREA enforcement, leaving it to NUPRC/NMDPRA. This creates regulatory fragmentation [12].

v. Petroleum Industry Act, 2021

The PIA is the most comprehensive reform in 50 years. Key environmental provisions include:

- a. Section 102: Requires decommissioning and abandonment plans with financial security.
- b. Section 234-237: Establishes Host Communities Development Trust Fund of 3% of operating expenditure.
- c. Section 316: Empowers NUPRC to set environmental guidelines and impose penalties up to 4. \$5 million for gas flaring violations.
- d. Section 319: Introduces polluter-pays principle and stricter liability for spills.

Strength: Codifies environmental management, transparency, and community participation. *Gap:* Implementation is slow. Regulations under the PIA are still being rolled out as of 2025, and penalties remain low compared to clean-up costs [13].

vi. Associated Gas Re-injection Act, 1979 & Flare Gas [Prevention of Waste and Pollution] Regulations, 2018

These laws prohibit gas flaring except with ministerial permission. The 2018 Regulations introduced a "flare payment" of \$2.00 per 28.317 m³ of gas flared.

Strength: Creates economic disincentive for flaring.

Gap: Flaring continues due to lack of gas infrastructure and weak enforcement. Nigeria still flared ~7.4 billion m³ in 2022 [18].

Table 1: Regulatory Institutions and Their Mandates

INSTITUTION	MANDATE	KEY CHALLENGES
NUPRC	Upstream regulations, environmental guidelines, Spill oversight.	Capacity gaps, overlapping roles with NOSDRA and other regulatory bodies.
NMDPRA	Midstream/Downstream regulations.	Newly created Post-PIA, still building capacity. Overlapping roles with NUPRC that are recently being resolved. Capacity gaps.
NOSDRA	Oil Spill detention, response, database and spill oversight.	Funding, Overlapping roles with other regulatory bodies.
NESREA	General environmental standards, except Oil and Gas.	Jurisdictional exclusion under section 7(7)
Federal Ministry of Environment	EIA approval, coordinate environmental protection, manage natural resources and enforce sustainable development policies across the country.	Bureaucracy, limited field present.
State Ministry of Environment	Adopt all the functions of the Federal Ministry of Environment and implement them at the state level. Partners with every other regulatory bodies within the state to ensure environmental protection, natural resource conservation and sustainable development.	Weak law enforcement, inadequate funding, poor infrastructure, shortage of personnel.

3.4 International Law and Soft Law Instruments

Nigeria is party to several treaties relevant to oil pollution

- UNCLOS 1982 - marine pollution control
- African Charter on Human and Peoples' Rights, 1981 - Article 24 recognizes right to satisfactory environment. Applied in *SERAC v. Nigeria* at the African Commission [20].
- Paris Agreement, 2015 - commitments to reduce methane and flaring emissions.

Domestication is weak, and direct enforcement of treaties requires an Act of the National Assembly under Section 12(1) of the Constitution.

3.5 Judicial Response

Nigerian courts have begun to recognize environmental rights. In *Jonah Gbemre v. Shell* (2005), the Federal High Court declared gas flaring unconstitutional as it violated the right to life and dignity. Also in *Bodo Community v. Shell*, the UK High Court approved a £55m settlement for oil spills, showing transnational litigation as an alternative route [17].

Gap: Implementation of judgments is slow and compensation often does not fund environmental restoration.

3.6 Summary of Legal Gaps

From the review, four systemic gaps emerge:

- Institutional Fragmentation:** Overlapping mandates between NUPRC, NOSDRA, NESREA, and Ministry of Environment cause delays and blame-shifting.
- Weak Enforcement:** Penalties are not deterrent, and regulators lack logistics and independence.
- Limited Community Participation:** Despite PIA provisions, host communities have little power in monitoring and remediation.
- Implementation Deficit:** Good laws exist but funding, political will, and technical capacity are lacking.

This explains why pollution persists despite "robust" legislation and sets up the analysis in Section 4 on effectiveness.

4. Assessment of Effectiveness and Enforcement Challenges of Environmental Laws in the Niger Delta

4.1 Effectiveness in Law vs. Effectiveness in Practice

On paper, Nigeria's environmental legal regime appears robust. The PIA 2021, NOSDRA Act, EIA Act, and EGASPIN provide detailed standards for pollution prevention, reporting, and remediation. However, effectiveness must be measured by environmental outcomes. Data show a mismatch: despite more than 30 years of environmental regulation, oil spills and gas flaring continue, and remediation is slow. Between 2014 and 2024, NOSDRA recorded over 14,000 spill incidents, with less than 35% certified as fully remediated (National Oil Spill Detection and Response Agency [6]. The UNEP report 14 years after its 2011 assessment found that the Ogoni cleanup under HYPREP had only remediated 4 out of 21 lots as of 2024, far behind schedule (United Nations Environment Programme This suggests the laws are effective at creating procedures, but ineffective at delivering environmental recovery [8]

4.2 Key Enforcement and Implementation Challenges

i. Institutional Fragmentation and Overlap

Multiple agencies have mandates in the oil sector: NUPRC for upstream operations, NOSDRA for spill response, NMDPRA for downstream, NESREA for general standards, and the Ministry of Environment for policy. Section 7(7) of the NESREA Act excludes oil and gas from NESREA's jurisdiction, creating a regulatory vacuum that NUPRC is still building capacity to fill This leads to delays in Joint Investigation Visits, conflicting directives, and accountability gaps [JIVs] [12].

ii. Weak Capacity and Underfunding

Regulatory agencies lack personnel, laboratories, boats, and monitoring technology to cover the 70,000 km² Niger Delta. NOSDRA's 2023 budget was less than ₦5 billion, inadequate for rapid response across 9 states. As a result, spill response often takes weeks, allowing wider contamination [6].

iii. Problem of "Cause of Spill" Determination

The law differentiates between "operational spills" and "sabotage spills". Under NOSDRA guidelines, operators are only liable to remediate and pay compensation for operational spills. Over

70% of spills are classified as sabotage by JIV reports, which communities dispute. This legal loophole allows operators to avoid liability and fuels conflict [11].

infrastructure is much higher. Companies therefore find it cheaper to pay fines than to invest in flare capture. Additionally, regulatory capture occurs where agency [13].

iv. Weak Penalties and Political Interference

Penalties under the PIA for gas flaring are set at \$2 per 1000 scf, while the cost of gas gathering officials are influenced by IOCs and NNPC due to revenue dependence.

v. Poor Access to Justice and Delayed Remediation

Litigation is slow and expensive. The Bodo Community v. Shell case took 6 years to [17].

Even after judgments, enforcement is weak. HYPREP, the body for Ogoni cleanup, has been criticized for lack of transparency and slow procurement [8].

vi. Limited Community Participation

Although the PIA 2021 mandates 3% of operating expenditure to Host Community Development Trusts, many communities report exclusion from monitoring and decision-making. Without local surveillance, pipeline vandalism and illegal refining persist, worsening pollution [13].

4.3 Impact of the Petroleum Industry Act 2021: Early Assessment

The PIA is too new for full impact assessment, but early indicators show mixed results:

Positive: Decommissioning funds are now mandatory. Gas flare commercialization under the Nigeria Gas Flare Commercialization Programme [NGFCP] has attracted investors.

Negative: Implementation regulations are still pending. The 3% HCDT has sparked protests in some communities who wanted 10%. NUPRC is overwhelmed with new licensing and regulatory duties.

4.4 Comparative Perspective

Compared to Norway and Canada, Nigeria's laws are similar in content but differ in enforcement. Norway's Petroleum Safety Authority has independent funding and conducts unannounced audits. In Nigeria, regulators depend on budgetary allocations from the same government that owns NNPC, creating a conflict of interest [19].

4.5 Summary

The evidence shows that Nigeria's environmental laws have failed to achieve their core objective: preventing and remedying oil and gas pollution. The problem is not absence of law, but absence of effective governance. The four main deficits are: capacity, independence, coordination, and accountability. Until these are addressed, legal reforms alone will not improve environmental quality in the Niger Delta.

5. Conclusion And Recommendations

5.1 Conclusion

This review set out to examine why Nigeria's extensive environmental legal framework has not translated into improved environmental quality in the Niger Delta. The findings show that while Nigeria has developed one of Africa's most comprehensive sets of oil and gas environmental laws from the EIA Act 1992

to the PIA 2021 — the implementation deficit remains severe. Over 60 years of oil and gas operations have left a legacy of soil contamination, water pollution, biodiversity loss, and public health risks. NOSDRA data confirm that thousands of oil spills occur annually, and the UNEP assessment of Ogoni land shows that remediation of even one community could take 30 years United Nations Environment Programme [6-8].

The core problem is not the absence of law, but the failure of governance. Four interlocking factors undermine effectiveness:

- i. Institutional fragmentation that creates overlap between NUPRC, NOSDRA, NESREA, and the Ministry of Environment;
- ii. Weak capacity and funding that limit monitoring, enforcement, and rapid response;
- iii. Legal loopholes such as the "sabotage clause" and low penalties that reduce operator liability; and
- iv. Poor community participation that excludes those most affected from monitoring and remediation decisions.

5.2 Recommendations

To bridge the gap between legal frameworks and environmental reality, the following recommendations are proposed:

i. Strengthen Institutional Coordination and Independence

Merge overlapping mandates or establish a single "Niger Delta Environmental Regulatory Commission" with clear jurisdiction over oil and gas. Repeal Section 7(7) of the NESREA Act to allow NESREA to enforce standards in the oil sector. Regulatory agencies should be funded through an independent Environmental Trust Fund, not annual budgetary allocation, to reduce political interference.

ii. Increase Funding, Technology and Capacity for Enforcement

NOSDRA, NUPRC, and HYPREP should be equipped with real-time monitoring tools: satellite surveillance, drones, and digital spill reporting apps. Annual budgetary allocation to environmental agencies should be increased to at least 1% of oil revenue. Staff training and modern laboratories are needed for credible JIVs and remediation certification.

iii. Reform Liability and Penalty Regimes

Amend the NOSDRA Act to remove the blanket exemption for "sabotage" spills where operators failed to maintain pipeline integrity. Increase gas flare penalties to reflect the true social cost of carbon and health damage. Adopt a strict liability regime where operators are responsible for remediation regardless of cause, with right of recourse against vandals.

iv. Ensure Genuine Community Participation and Access to Justice

Operationalize the Host Communities Development Trust under the PIA with mandatory inclusion of women, youth, and civil society in governance boards. Establish Environmental Tribunals in each Niger Delta state for fast-track resolution of pollution cases. Legal aid should be provided to communities to reduce cost barriers to litigation.

v. Accelerate and Audit Remediation Programs

HYPREP and other remediation programs should be subjected to independent annual audits published publicly. Adopt UNEP's recommendations fully, including the \$1 billion Ogoni Restoration Fund and 5-year emergency measures for drinking water Set binding timelines for clean-up of all pre-PIA legacy sites [8].

vi. Promote Gas Utilization and Energy Transition

Fast-track the Nigeria Gas Flare Commercialization Programme to convert flared gas to power and LPG. Align the PIA with Nigeria's Nationally Determined Contributions under the Paris Agreement by setting a binding "Zero Routine Flaring by 2028" target.

5.3 Final Remark

Environmental law in Nigeria has reached maturity in terms of content. The next decade must focus on implementation. Without political will, adequate funding, and community ownership, the Niger Delta will continue to pay the cost of the nation's oil wealth. The PIA 2021 can be a turning point — but only if these recommendations are acted upon.

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