

An Analysis of the Impact of Oil Pollution on Public Health: A Case the Nigeria's Niger Delta Region

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Abstract

Oil production in Nigeria's Niger Delta has produced prolonged ecological degradation and public health harms despite a dense legal framework. Utilizing the doctrinal approach, this article analyses the Petroleum Industry Act 2021, the NESREA Act, the Environmental Impact Assessment Act, and the NOSDRA regime, read with constitutional directives, the African Charter, UNCLOS, and UNEP's Ogoniland guidance. It synthesises empirical evidence on exposure pathways including contaminated drinking water, soil to crop and fish bioaccumulation, and air pollution from routine gas flaring, and links these to respiratory disease, hepatorenal injury, and adverse birth outcomes. The analysis reveals enforcement deficits, fragmented mandates, weak sanctions, methodological flaws in Joint Investigation Visits, and a pay to pollute equilibrium under pecuniary penalties. It concludes by proposing revenue-based penalties and strict liability triggers, codified parent company duties, an independently governed remediation fund, specialised environmental benches, mandatory Health Impact Assessments.

Keywords: *Environmental justice, Niger Delta; Petroleum Industry Act 2021; Public health.*

1. INTRODUCTION

Nigeria's discovery of oil in commercial quantity at Oloibiri in 1956 transformed the Niger Delta region into the nation's economic engine, but this boon came at a high cost.¹ Over six decades of oil exploration and production have left a legacy of environmental pollution consisting of oil spills on land and in rivers, gas flaring in the air that has devastated the fragile delta ecosystem and endangered the health and livelihoods of its inhabitants. The Niger Delta, a vast wetlands region spanning over 70,000 square kilometres and home to one of the world's most extensive mangrove forests, accounts for the bulk of Nigeria's crude oil reserves and production.² Oil

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¹Theodore Okonkwo and Uzuazo Etemire, "Oil Injustice" in Nigeria's Niger Delta Region: A Call for Responsive Governance' (2017) 08 *Journal of Environmental Protection* 42.

²ibid.

wealth from this region provides about 75% of Nigeria's government revenue and 90% of foreign exchange earnings,³ yet paradoxically the communities on whose lands this "black gold" is extracted have suffered gross neglect and environmental injustice. For decades, residents have faced polluted drinking water, oil-fouled farmlands, dying fish stocks, and a litany of health problems from respiratory illnesses to cancers all linked to hydrocarbon exposure.

The scale of oil pollution in the Niger Delta is staggering. Between 1976 and 1991, more than 2,976 oil spill incidents released over two million barrels of oil into the environment.⁴ More recently, Nigeria's National Oil Spill Detection and Response Agency (NOSDRA) recorded 822 oil spills in 2020–2021 alone, amounting to 28,003 barrels of oil lost.⁵ Chronic operational spills and occasional blowouts have become a "slow poison," gradually contaminating soil, water, and air. The region's emblematic case, Ogoniland, was the subject of a landmark UN Environment Programme report in 2011 that revealed "shocking levels of pollution" including benzene in drinking water at 900 times WHO guidelines and warned that some clean-up could take 25 to 30 years.⁶ UNEP recommended an initial \$1 billion for a comprehensive environmental restoration of Ogoniland.⁷ Yet progress has been lethargic: as of 2020, only 11% of planned clean-up sites in Ogoniland had even commenced remediation, leaving vast swathes still contaminated.⁸

Oil pollution's impact on public health in the Niger Delta has been devastating. Multiple studies have found that crude oil constituents and their by-products permeate the air, water, and food chain in affected communities at levels that pose serious health risks. For example, carcinogenic polycyclic aromatic hydrocarbons (PAHs) and benzo(a)pyrene have been detected in surface waters and soils of spill sites at unsafe concentrations.⁹ Soil and crops in polluted areas contain elevated heavy metals (like lead, cadmium, and nickel) far above permissible limits.¹⁰ Residents exposed via drinking water, dermal contact, or inhalation suffer both acute and long-term effects: irritation and respiratory problems in the short term, and increased rates of cancer, organ damage (such as kidney failure), and other chronic illnesses over time. A medical survey in the Niger Delta found significantly higher prevalence of symptoms like skin lesions, gastrointestinal issues, and respiratory ailments in oil-impacted communities than in unaffected areas. Alarming, a 45% increase in background radiation levels was recorded after a major spill, suggesting

³ibid.

⁴Augusta C Nkem and others, "Economic Exclusion and the Health and Wellbeing Impacts of the Oil Industry in the Niger Delta Region: A Qualitative Study of Ogoni Experiences" (2024) 23 *International Journal for Equity in Health* 183.

⁵Omosehin Gbedi Godday and Anya Kingsley Anya, 'LEGAL AND INSTITUTIONAL ASPECTS OF THE CONTROL OF OIL POLLUTION IN NIGERIA' (2024) 1 *KB Law Scholars Journal UK* 72.

⁶'Cleaning up Nigerian Oil Pollution Could Take 30 Years, Cost Billions' (*UN News*, 4 August 2011) <<https://news.un.org/en/story/2011/08/383512>> accessed 2 September 2025.

⁷ibid.

⁸'The Ogoni People Are Sick of Dirty Drinking Water' (*Amnesty International*, 18 June 2020) <<https://www.amnesty.org/en/latest/news/2020/06/no-clean-up-no-justice-shell-oil-pollution-in-the-niger-delta/>> accessed 2 September 2025.

⁹Joana Teixeira and others, 'Environmental Contamination with Polycyclic Aromatic Hydrocarbons and Contribution from Biomonitoring Studies to the Surveillance of Global Health' (2024) 31 *Environmental Science and Pollution Research* 54339.

¹⁰Yousef Alhaj Hamoud and others, 'Cadmium and Lead Accumulation in Important Food Crops Due to Wastewater Irrigation: Pollution Index and Health Risks Assessment' (2024) 10 *Heliyon* e24712.

potential long-term cancer hazards.¹¹ Gas flaring which is the continual burning of associated gas from oil wells emits a toxic cocktail of pollutants (particulate matter, SO₂, NO_x, volatile organics) and acid rain, leading to respiratory diseases, acidified water sources, and corroded roofs in host communities. The Federal High Court of Nigeria in the *Gbemre v Shell Petroleum Development Company of Nigeria Ltd and others*¹² case poignantly noted that gas flaring has “gravely impaired health” and contributed to the “premature deaths” of community members, as well as undermining food security by diminishing crop yields.

Against this backdrop, this article analyses the legal and institutional frameworks governing oil pollution and public health in Nigeria, and assesses their effectiveness in addressing the Niger Delta crisis. Part II of the article reviews the domestic environmental laws and regulations that seek to prevent or mitigate oil-related pollution, as well as the key public health statutes and institutions. Part III examines relevant international legal instruments and standards that frame Nigeria’s obligations, such as UNCLOS and UNEP guidelines, and how these interface with domestic law. Part IV provides the Niger Delta case study in detail, linking empirical findings on environmental contamination and health impacts to regulatory (in)action. Part V offers a critical legal analysis, exploring issues of enforcement, regulatory oversight, and corporate accountability through the lens of Nigerian case law and judicial decisions. Notable court cases and their implications for environmental justice are discussed, from early compensation claims against oil companies to recent judgments expanding the right to a healthy environment and allowing public interest litigation. Part VI concludes with recommendations for legal and policy reforms.

2. LEGAL AND INSTITUTIONAL FRAMEWORK IN NIGERIA

2.1 Petroleum Industry Act 2021 (PIA): The Petroleum Industry Act is Nigeria’s newest and most comprehensive oil and gas sector law, overhauling a patchwork of older petroleum laws. Enacted after decades of debate, the PIA consolidates governance, fiscal, and regulatory provisions for the industry, including significant environmental management requirements. The Act establishes new regulatory bodies namely the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) and the Nigerian Midstream and Downstream Petroleum Regulatory Authority with mandates to ensure safe and environmentally sustainable operations.¹³ For instance, the NUPRC is tasked with “promoting healthy, safe, efficient and effective conduct of upstream petroleum operations in an environmentally acceptable and sustainable manner.”¹⁴ In line with this, the PIA expressly prohibits oil and gas operators from engaging in any practices harmful to the environment.¹⁵ Violation of environmental obligations or failure to adhere to “good international petroleum industry practices” can theoretically trigger the revocation of oil licenses or leases by the Minister.¹⁶

¹¹Best Ordinioha and Seiyefa Brisibe, ‘The Human Health Implications of Crude Oil Spills in the Niger Delta, Nigeria: An Interpretation of Published Studies’ (2013) 54 *Nigerian Medical Journal* 10.

¹² (2005) AHRLR 151 (NgHC).

¹³Uche Sam Okoro and Carol Arinze-Umobi, ‘THE PETROLEUM INDUSTRY ACT 2021 AND QUEST FOR STRICTER ENVIRONMENTAL REGULATION IN NIGERIA’S ENERGY SECTOR’ (2023) 3 *LAW AND SOCIAL JUSTICE REVIEW* 59.

¹⁴*ibid.*

¹⁵*ibid.*

¹⁶ Petroleum Industry Act 2021 (Nigeria) ss. 96(1)(a), 96(1)(i), 120(1)(h) and s 104(1).

Notably, these provisions mirror similar clauses in the old Petroleum Act and regulations that required “good oil field practice,” which were rarely enforced.

The PIA introduces some new mechanisms aimed at environmental protection. One innovation is the requirement that all oil companies must prepare and submit an Environmental Management Plan (EMP) for their operations.¹⁷ Within one year of the Act’s commencement (or within 6 months of receiving a new license), each operator in the upstream or midstream sector must present an EMP to the regulator, demonstrating its capacity to “rehabilitate and manage negative impacts on the environment.”¹⁸ This provision is intended to ensure operators take a proactive approach to environmental risks and have remediation strategies ready. However, the Act does not specify any fine or direct penalty for failure to submit or implement an EMP, other than the general threat of license revocation.¹⁹ Given that license revocation is a drastic step rarely used in practice (governments have been reluctant to shut down major producers), experts have suggested that intermediate penalties, such as substantial fines for non-compliance, would strengthen this EMP requirement.²⁰

Another major environmental aspect of the PIA is its treatment of gas flaring. Gas flaring is the burning off excess natural gas during oil production and has long plagued the Niger Delta with toxic air pollution and wasted energy resources. The Associated Gas Reinjection Act of 1979 nominally prohibited flaring except with ministerial permission, even threatening operators with forfeiture of concessions for violations, yet flaring continued unabated under successive one-year exemptions.²¹ The PIA 2021 explicitly outlaws routine gas flaring, permitting it only in emergencies or if the regulator grants a temporary exemption for safety reasons.²² Companies that flare gas in violation of the law are made “liable to a fine as prescribed by the Commission”. This ostensibly signals a stricter stance, but in practice the PIA’s approach may be more lenient than the old law.²³ Under the PIA, the punishment for illegal flaring is a monetary fine (the Act leaves it to the regulator to set the amount), whereas the 1979 law threatened loss of operating licenses. In effect, the PIA reduces the sanction to fines instead of license forfeiture, perhaps reflecting realism that government was never willing to revoke licenses for flaring. The concern, however, is that unless fines are made truly punitive (far higher than the economic benefit of flaring), companies may simply treat them as a cost of business. Indeed, Nigeria has had gas flare penalty fees for years, yet flaring remained rampant as in 2020 Nigeria still ranked among the top ten gas flaring countries globally.²⁴ The PIA does create a new funding scheme (the “Midstream Gas Infrastructure Fund”) and encourages flare commercialization programs, which might in time reduce flaring by

¹⁷Okoro and Arinze-Umobi (n 13).

¹⁸ Petroleum Industry Act 2021 (Nigeria) s 102(1)(a)–(b) and s 102(3)(b).

¹⁹Okoro and Arinze-Umobi (n 13).

²⁰*ibid.*

²¹ Associated Gas Re-Injection Act 1979 (Nigeria) (Cap A25, LFN 2004) ss 3(1), 3(2), 4(1); Associated Gas Re-Injection (Continued Flaring of Gas) Regulations 1985 (Nigeria).

²² Petroleum Industry Act 2021 (Nigeria) ss 104(1)–(4), 107; see also s 105.

²³ *ibid* ss 106, 108.

²⁴ World Bank, Global Gas Flaring Tracker Report 2021 (World Bank 2021) 32–33.

directing gas to productive use.²⁵ Ultimately, the PIA's success in curbing flaring and pollution will depend on vigorous enforcement by NUPRC and willingness to impose meaningful fines or other consequences on errant operators areas where past regimes have fallen short.

2.2 National Environmental Standards and Regulations Enforcement Agency (NESREA) Act 2007: This Act established NESREA as the federal agency charged with enforcing environmental laws and regulations across Nigeria. NESREA replaced the old Federal Environmental Protection Agency (FEPA) and was envisioned as a stronger watchdog for environmental compliance. Sections 7 and 8 of the NESREA Act grants the Agency broad powers to set and enforce standards for water and air quality, effluent limitations, and the control of harmful substances and pollution. For example, Section 27 of the NESREA Act prohibits, without lawful authority, the discharge of hazardous substances into the environment whether solid, liquid, or gaseous in quantities or concentrations harmful to humans or the ecosystem. A violation of Section 27 is a criminal offense: upon conviction, an individual is liable to a fine up to ₦1,000,000 or 5 years imprisonment, and a corporate entity can be fined up to ₦1,000,000 (with an additional fine for every day the offense continues). Thus, while NESREA has the legal authority to sanction polluters, the sanctions under its Act may lack deterrent force.

A significant limitation of NESREA's mandate is that the Agency's jurisdiction in the oil and gas sector is constrained. Section 7(c) and section 8(g) of the NESREA Act exempts oil and gas exploration and production activities from NESREA's purview, on the premise that those are to be regulated by the petroleum authorities.²⁶ This jurisdictional carve-out meant that for many years, NESREA could not fully oversee or penalize environmental infractions by oil companies, as the task fell to the petroleum ministry's inspectorate, which often prioritized oil production over strict environmental enforcement. Indeed, Section 7(c) of the Act enjoins NESREA to "enforce compliance with laws, guidelines, and regulations on sustainable management of the environment" generally, and harmful discharges from any industry would fall within this remit. In practice, however, a turf war long existed: the petroleum regulators issued their own environmental guidelines and were reluctant to cede authority. Only recently, with the PIA's reforms, is there potential for clearer collaboration.

2.3 Environmental Impact Assessment (EIA) Act 1992: Recognizing that prevention is better than cure, Nigeria enacted the EIA Act²⁷ to ensure that major projects undergo environmental scrutiny before commencement. The EIA Act requires that any proposed project or activity that may significantly affect the environment including oil and gas field development, pipelines, refineries, etc. must undergo an Environmental Impact Assessment and obtain approval. The assessment process involves evaluating the potential environmental (and health) impacts, consulting with affected communities, and devising mitigation measures. Under the Act, no industrial development in Nigeria should proceed without a

²⁵ Petroleum Industry Act 2021 (n 2) s 52(7)(d), (10)(c); see also Flare Gas (Prevention of Waste and Pollution) Regulations 2018 (Nigeria) regs 13–15; Gas Flaring, Venting and Methane Emissions (Prevention of Waste and Pollution) Regulations 2023 (Nigeria) regs 7, 13.

²⁶ Formerly the Department of Petroleum Resources, now NUPRC/NMDPRA under the PIA.

²⁷ Decree No. 86 of 1992.

completed EIA report that is reviewed and approved by the Federal Ministry of Environment (formerly FEPA).²⁸ For oil and gas operations in the Niger Delta, this means that things like seismic surveys, drilling new wells, laying pipelines, building flow stations or export terminals all legally require EIAs. In reality, compliance has been patchy. Many projects either conducted perfunctory EIAs or obtained belated approvals after projects were already underway. Enforcement was weak in the early decades, as some companies took advantage of regulatory laxity. However, there have been instances of legal challenge using the EIA Act.

One famous case is *Oronto Douglas v. Shell Petroleum Dev. Co.*,²⁹ where an environmental activist sued to halt a large natural gas project on the ground that no proper EIA was carried out. The initial trial court struck out the case, citing the activist's lack of *locus standi* (legal standing) since he was not personally affected. On appeal, the Nigerian Court of Appeal agreed that the suit should not have been thrown out so hastily and ordered a retrial. Although the substantive issue (enforcing the EIA Act) never reached final judgment in that case, it signalled that citizens could invoke the Act to hold projects accountable. Another instance was folded into the Gbemre case where the plaintiffs argued that continuous gas flaring without an EIA of its effects violated both the EIA Act and their fundamental rights.³⁰ The Federal High Court in 2005 agreed, declaring that failure to carry out an EIA for gas flaring operations was a breach of the communities' right to life and dignity. The court ordered the oil companies to comply with the EIA Act forthwith and for the government to amend any laws (like the Associated Gas Regulations) that permitted flaring without environmental assessment. These decisions underscore that the EIA Act is not a mere formality but a legal obligation, and non-compliance can have constitutional implications.

2.4 Other Relevant Laws and Agencies: In addition to the above, several other Nigerian laws touch on oil pollution and health, though they may not be as central. The National Oil Spill Detection and Response Agency (NOSDRA) Act 2006 established NOSDRA as the agency to coordinate oil-spill management and emergency response. NOSDRA is meant to ensure prompt containment and cleanup of spills, maintain a database of spill incidents, and impose administrative fines on operators for oil spills.³¹ Another law, the Harmful Waste (Special Criminal Provisions etc.) Act 1988,³² criminalizes the dumping of hazardous wastes in Nigeria (a law prompted by the infamous Koko toxic waste dump incident). While aimed more at imported waste, it has provisions broad enough to cover hazardous oil industry waste; indeed, the NESREA Act explicitly preserves the Harmful Waste Act's application to any "hazardous substance" defined as harmful waste.³³ Nigeria's public health statutes, such as the Public Health Act and state public health laws, generally empower authorities to address environmental health threats, but they have rarely been invoked in the context of oil pollution, perhaps due to the

²⁸Altine Ofokansi & Professor Chi Johnny Okongwu, 'A Critical Review of Sustainable Environmental Impact Assessment Processes in Energy Projects in Nigeria' (2025) 5 *DE JURISCOPE LAW JOURNAL* 74.

²⁹ (1999) 2 NWLR (Pt 591) 466 (CA).

³⁰(2005) AHRLR 151 (NgHC).

³¹ NOSDRA Act 2006, ss 6(1)(a)–(d), 6(2)–(3), 18(1)(a)–(c).

³² Cap H1 LFN 2004.

³³ Ibid, ss 1, 6, 12; see generally DSG Ogbodo, 'Two Decades After the Koko Incident' (2009) 15 *Annual Survey of International & Comparative Law* 1.

expectation that specialized environmental agencies will handle such matters. Lastly, Nigeria's Constitution includes a Fundamental Objective directing the State to "protect and improve the environment" and safeguard water, air and land.³⁴ While this directive is not justiciable in court (being in the non-enforceable Chapter II), it signals the importance of environmental protection as a state policy goal.³⁵

3. INTERNATIONAL AND COMPARATIVE LEGAL INSTRUMENTS

Nigeria's environmental obligations and approaches to oil pollution are also framed by various international legal instruments and guidelines. These provide both benchmarks for best practices and, in some cases, binding obligations that complement domestic law.

3.1 United Nations Convention on the Law of the Sea (UNCLOS) 1982: Nigeria is a party to UNCLOS,³⁶ which contains a comprehensive regime for protection of the marine environment. Part XII of UNCLOS obliges coastal states to prevent, reduce, and control pollution of the marine environment from various sources, including land-based sources and activities in the seabed under national jurisdiction. Article 192 of UNCLOS imposes a general obligation on states to "protect and preserve the marine environment." In the context of the Niger Delta, this means Nigeria must take measures to prevent oil spills and pollution that could affect its territorial waters, rivers, and the Gulf of Guinea. UNCLOS Article 194 further specifies that states must use "best practicable means" to minimize pollution from installations and devices used in exploration or exploitation of natural resources.³⁷ Notably, Article 235 of UNCLOS addresses responsibility and liability: it provides that States are responsible for fulfilling their international obligations to protect the marine environment and "shall ensure that recourse is available in accordance with their legal systems for prompt and adequate compensation" for damage caused by pollution by persons under their jurisdiction.³⁸ This essentially mandates that Nigeria's legal system must offer remedies to victims of oil pollution which is a standard Nigeria arguably struggles to meet, given the protracted battles Niger Delta communities face to get compensation.

While UNCLOS does not directly enforce penalties on companies, it created impetus for national laws and regional cooperation. Under UNCLOS Article 208, Nigeria must enforce pollution standards for seabed activities (like offshore drilling) and cooperate regionally. Nigeria has indeed participated in regional agreements.³⁹ Domestically, Nigeria implemented some UNCLOS mandates through the now-repealed Oil in Navigable Waters Act⁴⁰ and through the NOSDRA Act for oil spill response. Despite these, the frequent occurrences of oil slicks and dead marine life after spills indicate

³⁴ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 20.

³⁵ **ibid s 6(6)(c)**; *Archbishop Olubunmi Okogie v Attorney-General of Lagos State* (1981) 2 NCLR 337; *Abacha v Fawehinmi* [2000] 6 NWLR (Pt 660) 228 (SC).

³⁶ Adopted 10 December 1982, entered into force 16 November 1994 1833 UNTS 3.

³⁷ This covers offshore oil platforms and even onshore facilities insofar as pollution reaches the sea.

³⁸ IT Grgić and Z Peplowska-Dąbrowska, 'Article 235 of LOSC and the International Liability Regime for Oil Pollution Damage: Cracks in the System as Shown by Recent Case Law', *40 Years of the United Nations Convention on the Law of the Sea* (Routledge 2025).

³⁹ Within the West and Central African region under UNEP's Regional Seas Programme, there's the Abidjan Convention 1981 for marine pollution which Nigeria ratified.

⁴⁰ Inherited from British law, regulating ship-source pollution.

gaps in meeting UNCLOS commitments. It could be argued that Nigeria's failure to effectively prevent and respond to Niger Delta oil pollution is a breach of UNCLOS Article 192, and its lack of timely compensation for affected fishermen and coastal villages sits uneasily with Article 235's spirit. However, enforcement of UNCLOS obligations occurs through diplomatic and reputational channels, not direct court action by individuals.

3.2 UNEP Guidelines and Environmental Standards: The United Nations Environment Programme (UNEP) has been actively involved in assessing and guiding environmental management in the Niger Delta. The most significant contribution is the UNEP Environmental Assessment of Ogoniland (2011) which is a report that has effectively set guidelines for remediation in oil-polluted areas. The UNEP report documented extensive soil and groundwater contamination, some of it dating back decades, and made detailed recommendations: from emergency measures like providing clean drinking water to communities with benzene-contaminated wells, to longer-term steps like creating a specialized agency to oversee cleanup and establishing a \$1 billion Environmental Restoration Fund for Ogoniland.⁴¹ The Nigerian government accepted the report and in 2016 launched the Hydrocarbon Pollution Remediation Project (HYPREP) under the Federal Ministry of Environment to implement UNEP's recommendations. HYPREP's efforts have been slow, as noted, only a small fraction of contaminated sites have seen cleanup begin.⁴² UNEP continues to issue guidelines and best practice documents globally on oil spill preparedness, environmental impact assessment, and cleanup techniques (such as bioremediation). While not legally binding, these guidelines influence Nigerian policy.

3.3 Lugano Convention 1993: In terms of international liability for environmental damage, one instrument often referenced is the draft (and regionally adopted, but not globally in force) Convention on Civil Liability for Environmental Damage.⁴³ This convention, though not ratified by Nigeria, illustrates the kind of regime that could hold polluters strictly liable for environmental harm. Notably, the 1993 Lugano Convention defines "environment" broadly to include natural resources both biotic and abiotic (living organisms, water, air, etc.).⁴⁴ It imposes strict liability on operators of dangerous activities (like oil operations) for damage caused, and requires them to have financial security (insurance) to cover potential claims. Nigeria has not acceded to this convention, but its principles influenced the development of Nigerian law. For example, the definition of "pollution" in Nigeria's now-repealed FEPA Act and current laws echoes international definitions. The FEPA Act (replaced by NESREA Act) defined pollution as any man-made alteration of the environment beyond acceptable limits, aligning with global concepts.⁴⁵ Additionally, Nigeria is a party to specific

⁴¹ United Nations Environment Programme, *Environmental Assessment of Ogoniland* (UNEP 2011) Executive Summary 4, 8–9.

⁴² Kabari Sam, Nenibarini Zabbey and Amarachi Paschaline Onyena, 'Implementing Contaminated Land Remediation in Nigeria: Insights from the Ogoni Remediation Project' (2022) 115 *Land Use Policy* 106051.

⁴³ Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment (adopted 21 June 1993, not yet in force) ETS No 150 (also CETS No 150) (*Lugano Convention 1993*).

⁴⁴ Lugano Convention 1993, art 2(10).

⁴⁵ Federal Environmental Protection Agency Act (Cap F10 LFN 2004) s 38 (definition of 'pollution') (repealed and replaced by National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007).

liability conventions in the oil realm, such as the International Convention on Civil Liability for Oil Pollution Damage 1969⁴⁶ and the Fund Convention 1971/1992,⁴⁷ but those apply to oil tanker spills (marine shipping incidents) rather than operational spills in oilfields. Under those conventions, Nigeria has legislation capping ship-owner liability and providing for compensation via an international fund for oil spills at sea.⁴⁸ This has limited relevance to Niger Delta onshore spills, but it shows Nigeria's acceptance of the principle that polluters should be financially liable for cleanup and damages.

3.4 African Charter on Human and Peoples' Rights: Nigeria has since incorporated the African Charter on Human and Peoples' Rights (ACHPR)⁴⁹ into its domestic law.⁵⁰ The African Charter, in Article 24, guarantees "the right of all peoples to a general satisfactory environment favorable to their development."⁵¹ This right to a healthy environment has been given concrete meaning by the African Commission in the landmark case *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v Nigeria*,⁵² which dealt with the Niger Delta situation. The African Commission found Nigeria in violation of Article 24 as well as the right to health under Article 16 for grievously failing to protect the Ogoni people from oil pollution and even directly contributing to environmental harm through its NNPC joint venture with Shell. The Commission held that governments must not only refrain from pollution themselves but have a duty to prevent pollution by private companies, inform communities of risks, and ensure participation in decisions. Nigeria was found to have "facilitated the destruction" of Ogoni environment, thereby violating the peoples' rights.⁵³ As Nigeria has domesticated the African Charter, Nigerian courts can (and do) directly apply its provisions. Indeed, the plaintiffs in *Gbemre v. Shell*⁵⁴ invoked the African Charter's Article 24 alongside constitutional rights, and the Federal High Court reaffirmed that a "clean, poison-free, pollution-free and healthy environment" is a fundamental right under the Charter and Constitution.⁵⁵ Thus, international human rights law reinforces Nigeria's legal framework by elevating environmental harm to a human rights violation when it jeopardizes health and life. This has provided a powerful advocacy and litigation tool for communities: framing their struggle as one of human rights and environmental justice, not just tort or regulatory violation.

⁴⁶ (adopted 29 November 1969, entered into force 19 June 1975) 973 UNTS 3 (CLC 1969)

⁴⁷ International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (adopted 18 December 1971, entered into force 16 October 1978) 1110 UNTS 57 (*Fund Convention 1971*); Protocol of 1992 to Amend the 1971 Fund Convention (adopted 27 November 1992, entered into force 30 May 1996) 1953 UNTS 330 (*Fund Convention 1992*).

⁴⁸ Merchant Shipping (Liability and Compensation) Regulations 2012 (Nigeria) S.I. No 29 of 2012, regs 1(a), 3, 16–20, 23–25 (giving effect in Nigeria to the 1992 Civil Liability and Fund Conventions; capping shipowner liability under the CLC and providing compensation via the International Oil Pollution Compensation Fund).

⁴⁹ (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217.

⁵⁰ African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (Cap A9 LFN 2004).

⁵¹ Ufuoma Veronica Awhefeada, Patrick Chukwunonso Aloamaka and Ejio T Kore-Okiti, 'A Realistic Approach Towards Attaining Sustainable Environment Through Improved Public Participation in Nigeria' (2023) 8 *International Journal of Professional Business Review* e0844.

⁵² (2001) AHRLR 60 (ACHPR).

⁵³ *Ibid.*

⁵⁴ (2005) AHRLR 151 (NgHC).

⁵⁵ *Ibid.*

3.5 Other International Instruments: Nigeria is also party to various multilateral environmental agreements that indirectly relate to oil pollution. For instance, the Basel Convention on Transboundary Movement of Hazardous Wastes⁵⁶ might apply to the dumping of oily waste or contaminated soil if moved across borders (e.g., for treatment).⁵⁷ The Paris Agreement on Climate Change,⁵⁸ which Nigeria ratified,⁵⁹ puts pressure on Nigeria to reduce gas flaring as part of lowering greenhouse gas emissions.⁶⁰ The United Nations Sustainable Development Goals (SDGs) also include Goal 3 (Good Health and Well-being) and Goal 6 (Clean Water and Sanitation) and Goal 15 (Life on Land), all of which are relevant to tackling oil pollution impacts on health and environment.⁶¹ While these are soft law or policy commitments, they influence national priorities and funding. Furthermore, Nigeria often looks to comparative law from other jurisdictions for guidance. For example, Nigeria has studied the United States' Oil Pollution Act 1990 (which created a robust liability and compensation scheme after the Exxon Valdez spill) and the Environmental Protection Agency's practices, as well as the approach of countries like Norway which has very strict offshore environmental regulation.⁶²

4. CASE STUDY OF OIL POLLUTION AND PUBLIC HEALTH IN THE NIGER DELTA

The Niger Delta region exemplifies the catastrophic convergence of environmental devastation and public health crises resulting from oil pollution. This case study outlines the real-world impacts in the Delta, linking them to the regulatory lapses discussed above. It draws on empirical data from environmental assessments, epidemiological studies, and community reports to illustrate how law on the books often failed to translate into protection on the ground.

4.1 Extent and Nature of Oil Pollution: The Niger Delta has been described as one of the most oil-polluted places on earth.⁶³ Thousands of spills both large and small have occurred over the decades. Causes range from operational accidents (blowouts, equipment failure, corrosion of pipelines) to sabotage and oil theft (vandalism of pipelines, illegal bunkering, artisanal refining). According to Nigeria's NOSDRA, the majority of recent spills by volume are often attributed to third-party interference (sabotage), which oil companies cite to avoid liability.⁶⁴ However, even

⁵⁶ Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (adopted 22 March 1989, entered into force 5 May 1992) 1673 UNTS 57.

⁵⁷ Patrick Chukwunonso Aloamaka, 'Navigating the Climate Crisis: Exploring International Law's Evolution and Application' (2024) 6 *GLS Law Journal* 48.

⁵⁸ Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) (UNFCCC).

⁵⁹ Federal Republic of Nigeria, Long-Term Low-Emissions Development Strategy (LT-LEDS) (2024) 1 ('The revised NDC commits to end flaring by 2030 and to reduce fugitive methane emissions...').

⁶⁰ Nigeria's nationally determined contribution pledges to end routine flaring by 2030.

⁶¹ UNGA Res 70/1, 'Transforming our world: the 2030 Agenda for Sustainable Development' (21 October 2015) A/RES/70/1 (SDGs, including Goals 3, 6, 15).

⁶² Jenigho Philip Esavwede and UG Oyibodoro, 'Gas Flaring in Nigeria's Niger Delta: Legal Challenges and Lessons from Norway's Regulatory Framework' (2025) 05 *Journal of Environmental Law & Policy* 148.

⁶³ Abonyi Nichodemus Nnaemeka, 'Environmental Pollution and Associated Health Hazards to Host Communities (Case Study: Niger Delta Region of Nigeria)' (2020) 1 *Central Asian Journal of Environmental Science and Technology Innovation* 30.

⁶⁴ *ibid.*

spills officially blamed on “sabotage” reveal underlying negligence by companies in securing their infrastructure and responding promptly to leaks. In the UK case brought by Bille and Ogale communities,⁶⁵ the High Court pointed out in 2025 that Shell could be liable for damage from pipeline bunkering or illegal refining if it failed to take reasonable steps to protect its pipelines and clean up promptly, rejecting Shell’s attempt to entirely disavow responsibility for such spills. This mirrors the situation on the ground where villages are often caught in the blame game between oil firms and oil thieves, while the oil continues to gush into their creeks.

Major incidents underscore the scale: the Bomu Well 11 blowout of 1970 in Ogoniland coated the land with crude, rendering over 600 hectares uncultivable.⁶⁶ Decades later, families from K-Dere in Ogoni still pursued compensation, leading to the case *Shell v. Farah*⁶⁷ where evidence showed the well blowout caused near-permanent soil damage despite partial remediation. In 1998, a massive spill from a Shell pipeline into the Ebubu community’s rivers and farmland sparked litigation that only concluded in 2021 with Shell agreeing to pay ₦45.9 billion (USD 111 million) in compensation.⁶⁸ Another infamous case was the Bodo oil spills of 2008-2009,⁶⁹ where tens of thousands of barrels spilled into mangroves; after protracted legal battles in UK courts, Shell settled with the community for £55 million in 2015 and agreed (separately) to participate in cleanup, which is ongoing.⁷⁰ Remediation and revegetation of roughly 1,000 ha of oiled mangroves has been underway since 2015, but remains ongoing.⁷¹ These are but a few examples as there are countless smaller spills (of say 50–500 barrels) go unreported or barely noted, yet their cumulative impact is severe.⁷² A review by Amnesty International found that even “minor” spills in sensitive environments can ruin fisheries and drinking water for years, and that Shell and other operators often under-report spill volumes and response effectiveness.⁷³ The “Joint Investigation Visit” reports (JIVs) meant to document spills

⁶⁵ *Alame&Ors v Shell plc and Renaissance Africa Energy Company Ltd* [2025] EWHC 1539 (KB).

⁶⁶ Amnesty International, *Petroleum, Pollution and Poverty in the Niger Delta* (June 2009) AFR 44/017/2009, 76; FBG Tanee and E Albert, ‘Post-Remediation Assessment of Crude Oil Polluted Site at Kegbara-Dere Community, Gokana LGA of Rivers State, Nigeria’ 2 *Journal of Bioremediation & Biodegradation* 122; Uzoma Darlington Chima and Giobari Vure, ‘Crude-Oil-Spill-Induced Spatial Variation in Woody Species Populations of an Oil-Rich Community in Rivers State, Nigeria’ (2013) 4 *Journal of Environment and Ecology* 7.

⁶⁷ [1995] 3 NWLR (Pt 382) 148 (CA).

⁶⁸ William Clowes, ‘Shell to Pay \$111 Million to Resolve Long-Running Oil-Spill Dispute in Nigeria’ (*Insurance Journal*, 17 August 2021)

<<https://www.insurancejournal.com/news/international/2021/08/17/627485.htm>> accessed 3 September 2025.

⁶⁹ *The Bodo Community & Ors v Shell Petroleum Development Company of Nigeria Ltd* [2014] EWHC 1973 (TCC) (Akenhead J).

⁷⁰ John Vidal, ‘Shell Announces £55m Payout for Nigeria Oil Spills’ *The Guardian* (7 January 2015) <<https://www.theguardian.com/environment/2015/jan/07/shell-announces-55m-payout-for-nigeria-oil-spills>> accessed 3 September 2025.

⁷¹ ‘UPDATE: Large-Scale Mangrove Cleanup and ... Bodo Remediation and Revegetation Project’ (International Oil Spill Conference, 2024); ‘Multi-Constituent Management of the Largest Spill Clean-up in a Mangrove Habitat—Bodo’ (International Oil Spill Conference, 2024).

⁷² Amarachi Paschaline Onyena and Kabari Sam, ‘A Review of the Threat of Oil Exploitation to Mangrove Ecosystem: Insights from Niger Delta, Nigeria’ (2020) 22 *Global Ecology and Conservation* e00961.

⁷³ Nigeria: Bad Information: Oil Spill Investigations in the Niger Delta’ (*Amnesty International*, 7 November 2013) <<https://www.amnesty.org/en/documents/afr44/028/2013/en/>> accessed 3 September 2025; ‘Nigeria: Clean It up: Shell’s False Claims about Oil Spill Response in the Niger Delta’ (*Amnesty International*, 3 November 2015)

have been criticized for inaccuracies and downplaying the extent of contamination.⁷⁴ The lack of transparency and community trust in these investigations often leads to disputes and sometimes violent protest.

4.2 Environmental Pathways to Public Health: Oil pollution affects health through multiple pathways. Contaminated water is a primary concern, many Niger Delta communities rely on shallow wells, streams, and rainwater. Oil spills frequently contaminate these sources with benzene and other hydrocarbons. UNEP's Ogoniland study famously found benzene (a known carcinogen) at levels 900 times above the World Health Organization guideline in a well, used for drinking in Nisiosiken Ogale community.⁷⁵ Such chronic exposure dramatically raises risks of leukemia and other cancers. Likewise, the presence of heavy metals like lead and cadmium in water and soil can lead to neurological damage, especially in children, and kidney disease.⁷⁶ Crops grown in polluted soil can uptake toxins in cassava, yams, and vegetables from impacted farms in the Delta have been found with heavy metal concentrations above food safety limits.⁷⁷ This threatens food security and adds to malnutrition; Amnesty International noted that pollution has reduced the quantity and quality of crops and fish available, contributing to hunger and child malnutrition in some communities.⁷⁸ Fishing communities, once self-sufficient, have seen fish stocks decline or become unsafe to eat due to bioaccumulation of toxins. A dire feedback loop emerges as pollution destroys livelihoods (farming, fishing), leading to poverty and poorer nutrition, which in turn exacerbates health vulnerabilities. The African Commission in *SERAC v. Nigeria*⁷⁹ highlighted how oil pollution led to food insecurity and health crises, violating the Ogoni people's right to food, health, and life.

4.3 Air pollution from Gas Flaring and Soot: Beyond oil spills, gas flaring has been a constant assault on air quality in the Niger Delta. Flares burn 24/7 in some locations, producing sooty particulates and noxious gases. Communities living near flare sites (sometimes within a few hundred meters) have reported respiratory problems, asthma, blood pressure issues, and bad obstetric outcomes.⁸⁰ Acid rain from flares damages crops and acidifies water, compounding the contamination from spills. In Port Harcourt and its environs, a recent phenomenon of "black soot" blanketed the city starting around 2016, traced to incomplete combustion from illegal

<<https://www.amnesty.org/en/documents/afr44/2746/2015/en/>> accessed 3 September 2025; 'Nigeria: Negligence in the Niger Delta: Decoding Shell and Eni's Poor Record on Oil Spills' (*Amnesty International*, 16 March 2018) <<https://www.amnesty.org/en/documents/afr44/7970/2018/en/>> accessed 3 September 2025.

⁷⁴ Nigeria: Negligence in the Niger Delta: Decoding Shell and Eni's Poor Record on Oil Spills' (n 73).

⁷⁵ United Nations Environment Programme, *Environmental Assessment of Ogoniland* (UNEP 2011) Executive Summary 4.

⁷⁶ Hamoud and others (n 10).

⁷⁷ Irene Ogbogu and Ima Bright Nwoke, 'Distribution of Heavy Metals and Total Petroleum Hydrocarbons in Soil and Cassava (*Manihot Esculenta*) around Omoku, Rivers State, Nigeria' (2024) 1 *Faculty of Natural and Applied Sciences Journal of Applied Chemical Science Research* 14.

⁷⁸ Amnesty International, *Petroleum, Pollution and Poverty in the Niger Delta* (June 2009) AFR 44/017/2009.

⁷⁹ (2001) AHRLR 60 (ACHPR).

⁸⁰ Some studies linked flaring to higher incidence of preterm births and neonatal deaths.

refining of stolen oil and perhaps also burning of oil waste.⁸¹ This black soot (essentially fine particulate matter) led to a spike in hospital visits for breathing difficulties. A 2017 health assessment concluded that the soot pollution “worsened the public health situation” in Port Harcourt, correlating with increases in bronchitis and other lung ailments.⁸² The government’s sluggish response to stop illegal refining and mitigate the soot problem again underscores governance gaps. It was only after public outcry that task forces were set up, which have only partly curbed the issue.

4.4 Health Outcomes and Statistics: While comprehensive health data in the Niger Delta is hard to obtain because health surveillance systems are weak, localized studies provide snapshots. A 2013 analysis by Ordinioha and Brisibe⁸³ reviewed published health surveys and found consistent evidence of elevated health risks in oil-polluted areas. For instance, they found higher prevalence of skin rashes, eye irritation, and neuro-toxic symptoms in communities after oil spills. Rates of certain cancers (such as gastrointestinal cancers) were reportedly higher in Delta communities with long-term exposure to oil contamination, although nationwide cancer registries are incomplete.⁸⁴ Kidney dysfunction and chronic liver conditions have also been reported at higher rates plausibly linked to heavy metal and hydrocarbon exposure.⁸⁵ Another study in 2020 examining birth outcomes in the Delta found that communities in proximity to frequent oil spills had higher rates of miscarriage and stillbirth, though more research is needed to establish causation.⁸⁶ In terms of mental health, the trauma of environmental loss and economic despair has led to psychosocial stresses. The Niger Delta has seen unrest, militancy, and community protests, partly fuelled by frustration over pollution and its unaddressed impacts, a term some scholars call the “psycho-social health” burden of environmental injustice.⁸⁷ The term “environmental genocide” has even been used by local activists to describe the slow death inflicted on communities by oil pollution.⁸⁸ While that is rhetoric, it underlines the perceived severity: people feel their entire way of life (fishing, farming, drinking from the river, living off the land) is being slowly wiped out, with consequent loss of physical and cultural health.

⁸¹Past Dr Abomaye-Nimenibo and Williams Aminadokiari Samuel, ‘An Aerial View of a Black Man Suffering From the Menace of Crude Oil (The Black Gold) Soot’ (2020) 20 *Global Journal of Management and Business Research* 1.

⁸²Osazuwa Clinton Ekhaton and others, ‘Impact of Black Soot Emissions on Public Health in Niger Delta, Nigeria: Understanding the Severity of the Problem’ (2024) 36 *Inhalation Toxicology* 314.

⁸³Ordinioha and Brisibe (n 11).

⁸⁴*ibid.*

⁸⁵Caroline C Thomas and others, ‘Hepato-Renal Toxicities Associated with Heavy Metal Contamination of Water Sources among Residents of an Oil Contaminated Area in Nigeria’ (2021) 212 *Ecotoxicology and Environmental Safety* 111988.

⁸⁶Onome B Oghenetega and others, ‘Miscarriage, Stillbirth, and Infant Death in an Oil polluted Region of the Niger Delta, Nigeria: A Retrospective Cohort Study’ (2020) 150 *International Journal of Gynecology & Obstetrics* 361.

⁸⁷Nkem and others (n 4).

⁸⁸Bayelsa State Oil & Environmental Commission, *An Environmental Genocide: Counting the Human and Environmental Cost of Oil in Bayelsa, Nigeria* (May 2023).

5. LEGAL ANALYSIS: Enforcement, Judicial Decisions, and Corporate Accountability

The Niger Delta's plight raises pressing questions about the effectiveness of Nigeria's environmental and public health laws. Three areas are examined namely: (i) regulatory enforcement, (ii) judicial responses, and (iii) corporate accountability, both domestic and transnational.

5.1 Regulatory Enforcement Gaps and Governance Challenges

Despite a wide array of laws and agencies, enforcement has been weak. The Department of Petroleum Resources (DPR), now replaced by the Nigerian Upstream Petroleum Regulatory Commission (NUPRC), historically prioritized revenue generation over compliance. Oil spills often went undetected for days, with companies left to lead cleanup efforts, creating conflicts of interest.

NOSDRA, established in 2006, introduced the Oil Spill Monitor and a national incident-reporting system, but chronic capacity constraints, limited manpower and equipment, and practical dependence on operators during Joint Investigation Visits sssshave blunted its effectiveness.⁸⁹ Although empowered under its Act to sanction non-compliance, fines and levies have been difficult to collect in practice.⁹⁰ For example, following the 2011 Bonga offshore spill, NOSDRA's sanctions totalling about US\$3.6 billion (₦1.3 trillion) were upheld by the Federal High Court in 2018, yet Shell has continued to contest liability and no payment has been made, with affected communities still pressing for enforcement.⁹¹ Regulatory effectiveness is hamstrung by corruption and political interference, while overlapping mandates among NUPRC, NOSDRA, NESREA and state ministries produce fragmentation and enable regulatory arbitrage/forum-shopping; excluded from credible enforcement, affected communities often turn to protest, litigation and other forms of self-help which further erodes trust in institutions.⁹²

Gas flaring exemplifies chronic enforcement failure. Nigeria set and repeatedly missed deadlines to end flaring since 1984.⁹³ Although the Petroleum Industry Act 2021 formally prohibits routine flaring and requires Gas Flaring Elimination Plans, it replaced license revocation with monetary fines.⁹⁴ Unless fines are high enough to deter flaring, the "pay-to-pollute" cycle may continue.

⁸⁹ Amnesty International, *Bad Information: Oil Spill Investigations in the Niger Delta* (2013) AFR 44/028/2013 (on systemic flaws and JIV weaknesses).

⁹⁰ See NOSDRA Act 2006, especially ss 6(2)–(3).

⁹¹ Shell Says Judgment On \$3.6b Bonga Oil Spill Fine Not Binding' (*Majorwaves Energy Report*, 27 November 2018) <<https://www.majorwavesenergyreport.com/shell-says-judgment-on-3-6b-bonga-oil-spill-fine-not-binding/>> accessed 3 September 2025.

⁹² Godwin O Aigbe, Lindsay C Stringer and Matthew Cotton, 'Gas Flaring in Nigeria: A Multi-Level Governance and Policy Coherence Analysis' (2023) 2 *Anthropocene Science* 31.

⁹³ Esavwede and Oyibodoro (n 62).

⁹⁴ Petroleum Industry Act 2021 (Nigeria) ss 104(1)–(4), 105–108 (fines; prohibition; metering; plan requirement)

5.2 Judicial Responses

Nigeria's courts have become a critical venue for communities seeking redress. Judicial responses have evolved from narrow compensation awards to recognition of environmental rights and public interest litigation.

Early cases pursued claims in tort, like negligence, nuisance, and trespass seeking damages for destroyed farmland and fisheries. In *Shell v. Farah*,⁹⁵ families successfully sued over a 1970 blowout, obtaining damages despite Shell's statute of limitation defense. Similarly, in *Shell Petroleum Development Company of Nigeria Ltd v Chief GBA Tiebo VII and others*,⁹⁶ the Supreme Court upheld a community's damages award for an oil spill, but only after 18 years of litigation. Such delays illustrate how "justice delayed is justice denied." Damages were often eroded by inflation and limited to economic losses, with little recognition of long-term health costs.

Recent cases, however, show a shift. In 2021, Shell agreed to pay ₦45.9 billion to the Ejama-Ebubu community in full and final settlement of long-running litigation over a 1970 spill, following a Federal High Court order.⁹⁷ The unprecedented payout suggests courts and companies are more willing to confront legacy pollution.

For decades, restrictive standing rules insulated major polluters from suit: Nigerian courts demanded proof of individualized injury, which frequently barred NGOs and activists from challenging environmental harm. *Oronto Douglas v Shell Petroleum Development Co Ltd and ors*⁹⁸ illustrates the point—an environmental advocate was denied standing for lack of "personal injury," despite alleging non-compliance with the EIA regime.

A decisive shift came with *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation*.⁹⁹ The Supreme Court held that bona fide public-spirited litigants and NGOs **may** bring environmental public-interest actions without proving direct, personal injury, provided they demonstrate a genuine concern for the subject matter and a reasonable nexus to the alleged breach. This recalibration aligns Nigeria with progressive comparative jurisprudence (e.g., India and South Africa) and materially widens the courthouse door for systemic challenges such as suits targeting routine gas flaring, legacy contamination, and structural enforcement failures.¹⁰⁰

5.3 Corporate Accountability and Transnational Litigation

Domestic courts are not the only battleground. Communities have increasingly pursued remedies abroad, particularly against parent companies, producing landmark rulings with global implications.

⁹⁵ [1995] 3 NWLR (Pt 382) 148 (CA).

⁹⁶ (2005) 9 NWLR (Pt 931) 439 (SC).

⁹⁷ Agence-France Presse, 'Shell to Pay \$111m over Decades-Old Oil Spills in Nigeria' *The Guardian* (11 August 2021) <<https://www.theguardian.com/business/2021/aug/12/shell-to-pay-111m-over-decades-old-oil-spills-in-nigeria>> accessed 3 September 2025.

⁹⁸ (1999) 2 NWLR (Pt 591) 466 (CA).

⁹⁹ [2019] 5 NWLR (Pt 1666) 518 (SC).

¹⁰⁰ See generally *Adesanya v President of the Federal Republic of Nigeria* (1981) 5 SC 112 (foundational locus standi doctrine, now read more liberally in environmental matters after *COPW*).

In *Okpabi v. Royal Dutch Shell*,¹⁰¹ the UK Supreme Court confirmed that a parent company may owe a duty of care for environmental harm caused by its Nigerian subsidiary, paving the way for claims against Shell's UK parent to proceed. Building on that trajectory, the June 2025 High Court judgment in *Alame&Orsv Shell*¹⁰² addressed preliminary issues and confirmed that claims concerning historic spills and continuing contamination can proceed under Nigerian law principles underscoring potential accountability for legacy pollution. Meanwhile in the Netherlands, Nigerian farmers supported by Milieudefensie won on appeal in January 2021, with orders for compensation and installation of leak-detection systems on the Oruma pipeline; Shell paid €15 million in December 2022, illustrating that foreign courts can deliver enforceable remedies when domestic avenues falter.¹⁰³

These transnational victories heighten pressure on operators to improve environmental practice in Nigeria and demonstrate the utility of holding parent companies to account for subsidiary misconduct. Nigerian law could adapt by codifying parent-company duties for example, through targeted amendments to the Companies and Allied Matters Act or by regulations under the PIA and by entrenching a dedicated environmental remediation fund financed by industry. Proposals for stricter liability including a CERCLA-style "superfund" model and the criminal prosecution of corporate officers in egregious cases would align Nigeria with international best practice.¹⁰⁴ Notably, the NESREA Act¹⁰⁵ already permits imprisonment of company officials for certain environmental offences, but enforcement is rare; raising penalties in proportion to company revenues and activating criminal sanctions would materially change incentives.

6. CONCLUSION AND RECOMMENDATIONS

The Niger Delta exemplifies the paradox of vast oil wealth alongside grave environmental and public health crises, where decades of spills, gas flaring, and weak enforcement have poisoned ecosystems and communities despite a seemingly comprehensive legal framework. While Nigerian statutes and international obligations provide strong foundations, enforcement gaps, institutional weakness, and corporate impunity have allowed pollution to persist, leaving residents with contaminated water, ruined livelihoods, and heightened disease burdens. Recent judicial advances recognizing environmental rights and widening public interest standing together with transnational rulings holding parent companies accountable, show that change is possible, but litigation alone cannot suffice. Real progress requires strict enforcement of environmental laws, deterrent penalties, independent remediation and health funds, accelerated implementation of UNEP's cleanup recommendations, and integration of healthcare into remediation plans. Only by aligning legal commitments with decisive action and meaningful community

¹⁰¹ [2021] UKSC 3, [2021] 1 WLR 1294.

¹⁰² [2025] EWHC 1539 (KB) (20 June 2025).

¹⁰³ Hague Court of Appeal (The Netherlands), 29 January 2021: ECLI:NL:GHDHA:2021:132 (Oruma); ECLI:NL:GHDHA:2021:133 (Goi); ECLI:NL:GHDHA:2021:134 (Ikot Ada Udo) (ordering compensation and leak-detection measures)

¹⁰⁴ Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 USC §§ 9601–9675.

¹⁰⁵ Section 27(1)–(2) (criminal liability, including imprisonment, for unlawful discharge of hazardous substances).

participation can Nigeria transform the Niger Delta from a site of environmental injustice to one of restored health, dignity, and sustainable development.

The following recommendations are proposed to align Nigeria's legal framework with ground reality and ensure that the Niger Delta's people receive justice and restoration:

- i. **Strengthen Enforcement of Environmental Laws:** The government must fund and empower regulators like NUPRC, NOSDRA, and NESREA to monitor compliance in real time (using satellite/drone surveillance), impose and collect meaningful fines, and publish enforcement actions. Clear accountability metrics such as annual targets for spill reduction and flare elimination should guide performance and enhance transparency.
- ii. **Amend and Update Penalties to Deter Polluters:** Nigeria must update outdated fines under laws like the NESREA Act to match the scale of harm and oil companies' revenues. Penalties should be indexed per barrel spilled, accrue daily until cleanup, and rise to billions of naira for major incidents. Persistent offenders should also face license suspension or revocation, as provided under the PIA.
- iii. **Enhance Corporate Accountability Mechanisms:** Nigeria should firmly apply the polluter-pays principle by creating an independent environmental remediation fund, financed through mandatory oil company levies, to ensure swift cleanup and victim compensation. Beyond the PIA's Host Communities Fund, laws should enable parent-company liability and impose clear environmental duties on corporations and directors, ensuring accountability for both ongoing and legacy pollution.
- iv. **Fast-Track Environmental Adjudication and Strengthen the Judiciary:** Nigeria should establish special environmental courts or tribunals within the Federal High Court to resolve oil pollution cases swiftly, allow class actions, and apply innovative remedies like supervision orders or punitive damages. Judicial capacity should be strengthened through training in environmental law and science, while the Supreme Court's recognition of public interest standing in *COPW v. NNPC* should be codified to secure NGOs' and communities' right to sue.
- v. **Implement UNEP Recommendations and Broaden Remediation Efforts:** Nigeria should fully operationalize the \$1 billion Ogoniland Restoration Fund, strengthen HYPREP (or a reformed body) to accelerate cleanup, and establish independent oversight with civil society input. UNEP's approach should be extended across the Niger Delta through a regional environmental audit and master plan, prioritizing high-risk communities with contaminated water. Cleanup efforts must also include health interventions, such as medical screening and treatment for pollution-related illnesses.
- vi. **Address Public Health Needs and Healthcare Infrastructure:** Oil pollution must be treated as a public health crisis. Government should conduct Health Impact Assessments in affected communities and provide free medical care

through clinics or mobile units, funded by polluters where possible. Long-term monitoring (cancer registries, kidney tests) and improved infrastructure for safe drinking water and clean energy are essential. These measures uphold Nigeria's legal duty under the African Charter to protect the right to health.