

**AN EVALUATION OF THE EFFECTIVENESS OF THE LAWS GOVERNING  
COMPENSATION FOR OIL PRODUCING REGIONS IN NIGERIA**

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BENIN CITY**

**NOVEMBER 2025.**

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**BEING A LONG ESSAY SUBMITTED TO THE FACULTY OF LAW, UNIVERSITY OF BENIN,  
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF MASTERS  
IN LAW (LL.M) DEGREE**

**NOVEMBER 2025.**

## **CERTIFICATION**

**I, Grace Ihinosen Akhiero** with Matriculation Number, PG/LAW1504267 hereby certify that apart from references to other people's work which has been duly acknowledged, the entire project is a product of my personal research and that this project has neither in whole or part been submitted for another degree elsewhere.

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## APPROVAL

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## **DEDICATION**

THIS THESIS IS DEDICATED TO GOD ALMIGHTY, THE CREATOR OF THE WHOLE UNIVERSE, HIS SON, JESUS CHRIST, MY PROTECTOR AND DEFENDER, AND THE HOLY SPIRIT, MY GUIDE AND FRIEND.

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## LIST OF ABBREVIATION

<b>AER</b>	Alberta Energy Regulator
<b>AHRLR</b>	African Human Rights Law Reports
<b>ANCSA</b>	Alaska Native Claims Settlement Act
<b>CA</b>	Court of Appeal
<b>CEPA</b>	Canadian Environmental Protection Act
<b>CLC</b>	International Convention on Civil Liability for Oil Pollution Damage
<b>CFRN</b>	Constitution of the Federal Republic of Nigeria
<b>C-NLOER</b>	Canada–Newfoundland and Labrador Offshore Energy Regulator
<b>C-NLOPB</b>	Canada–Newfoundland and Labrador Offshore Petroleum Board
<b>CSR</b>	Corporate Social Responsibility
<b>EIA</b>	Environmental Impact Assessment
<b>EIA Act</b>	Environmental Impact Assessment Act
<b>EGASPIN</b>	Environmental Guidelines and Standards for the Petroleum Industry in Nigeria
<b>EITI</b>	Extractive Industries Transparency Initiative
<b>EPEA</b>	Environmental Protection and Enhancement Act (Alberta)
<b>ESTMA</b>	Extractive Sector Transparency Measures Act (Canada)
<b>FHC</b>	Federal High Court
<b>FWLR</b>	Federation Weekly Law Reports
<b>FPSO</b>	Floating Production Storage and Offloading
<b>GPF</b>	Government Pension Fund Global (Norway)
<b>HCDT</b>	Host Communities Development Trust
<b>IBAs</b>	Impact and Benefit Agreements
<b>ICMA</b>	National Environmental Management: Integrated Coastal Management Act
<b>IOPC</b>	International Oil Pollution Compensation Fund(s)
<b>JELR</b>	Judy Electronic Law Report
<b>LFN</b>	Laws of the Federation of Nigeria
<b>LL.M</b>	Master of Laws
<b>LPELR</b>	Law Pavilion Electronic Law Report
<b>LUA</b>	Land Use Act
<b>MARPOL</b>	International Convention for the Prevention of Pollution from Ships
<b>MOSOP</b>	Movement for the Survival of the Ogoni People
<b>MPRDA</b>	Mineral and Petroleum Resources Development Act
<b>MMDPRA</b>	Nigerian Midstream and Downstream Petroleum Regulatory Authority
<b>NDDC</b>	Niger Delta Development Commission
<b>NEMA</b>	National Environmental Management Act (South Africa)
<b>NESREA</b>	National Environmental Standards and Regulations Enforcement Agency
<b>NMMA</b>	Nigerian Minerals and Mining Act
<b>NNPC</b>	Nigerian National Petroleum Corporation
<b>NNPCL</b>	Nigerian National Petroleum Company Limited
<b>NOC</b>	National Oil Company
<b>NPD</b>	Norwegian Petroleum Directorate
<b>NOSCP</b>	National Oil Spill Contingency Plan
<b>NOSDRA</b>	National Oil Spill Detection and Response Agency
<b>NUPRC</b>	Nigerian Upstream Petroleum Regulatory Commission
<b>NWLR</b>	Nigerian Weekly Law Reports
<b>OPA</b>	Oil Pipelines Act
<b>OPEC</b>	Organisation of the Petroleum Exporting Countries

<b>ONWA</b> .....	Oil in Navigable Waters Act
<b>OPRC</b> .....	International Convention on Oil Pollution Preparedness, Response and Co-operation
<b>PIA</b> .....	Petroleum Industry Act
<b>PIAC</b> .....	Public Interest and Accountability Committee (Ghana)
<b>PRMA</b> .....	Petroleum Revenue Management Act (Ghana)
<b>SC</b> .....	Supreme Court
<b>SCJN</b> .....	Supreme Court of Nigeria Law Reports
<b>SDGs</b> .....	Sustainable Development Goals
<b>SPDC</b> .....	Shell Petroleum Development Company
<b>UK</b> .....	United Kingdom
<b>UN</b> .....	United Nations
<b>UNFCCC</b> .....	United Nations Framework Convention on Climate Change
<b>USA</b> .....	United States of America

## ABSTRACT

The exploration and production of petroleum resources in Nigeria have long generated immense economic wealth but also severe environmental degradation and social dislocation, particularly in oil-producing regions such as the Niger Delta. Despite the existence of multiple legal and regulatory instruments designed to ensure compensation for affected communities, widespread grievances persist over inadequate redress, environmental pollution, and inequitable distribution of oil wealth. This study, therefore, evaluates the effectiveness of the laws governing compensation for oil-producing regions in Nigeria, with a view to identifying the structural, institutional, and procedural weaknesses that undermine justice and sustainability in the Nigerian oil sector.

Adopting a doctrinal and comparative research methodology, the study examines Nigeria's primary legal instruments which include including the Constitution of the Federal Republic of Nigeria 1999, as amended, the Petroleum Industry Act 2021, the Land Use Act 1978, the Oil Pipelines Act, the NOSDRA Act 2006, etc. It analyzes their provisions on compensation, environmental remediation, and community participation. It further compares Nigeria's compensation framework with those of other oil-producing jurisdictions, namely Norway, Canada, Ghana, Alaska, and South Africa, to extract best practices and policy lessons relevant to Nigeria's context.

This study finds that while Nigeria's legal framework is elaborate on paper, its effectiveness is hampered by legislative fragmentation, institutional overlap, poor enforcement, and limited community participation. Compensation mechanisms are often opaque, inconsistently applied, and insufficiently linked to environmental restoration or livelihood recovery. Conversely, the comparative jurisdictions demonstrate that effective compensation depends on clear statutory duties, strong institutional capacity, judicial enforceability, and public transparency. For example, South Africa's rights-based approach to environmental protection and Norway's integration of oil revenues into long-term social welfare provide instructive models for reform.

Based on these findings, the study recommends a comprehensive restructuring of Nigeria's compensation system. It concludes that true compensation extends beyond monetary payment, it encompasses environmental rehabilitation, livelihood restoration, and respect for the human and environmental rights of oil-producing communities. In achieving these reforms, Nigeria can transform its compensation framework from a reactive mechanism of damage control into a proactive instrument of social justice, environmental protection, and sustainable development, setting a continental standard for equitable resource governance.

**Keywords:** *Compensation, Legislation, Oil-Producing Regions, Environmental Law, Oil Spillage, Polluter Pays, Nigeria, Corporate Social Responsibility.*

## CHAPTER ONE.

### 1.1. MEANING AND RELEVANCE OF CRUDE OIL

Crude oil, often referred to plainly as “Oil”, is considered one of the world’s most valuable and strategic natural resource. Crude oil also known as “petroleum” has been defined by the National Geographic Society as a fossil fuel formed from the remains of ancient marine organisms, like plants, algae, and bacteria, into a carbon-rich substance humans rely on as raw materials for fuel and a wide variety of products.<sup>1</sup> It is a naturally occurring unrefined liquid petroleum product composed of hydrocarbon deposits and other organic materials formed from the remains of animals and plants that lived millions of years ago.<sup>2</sup>

Crude oil can be classified into four (4) categories, namely; *light*, *heavy*, *sweet* and *sour* crude oil. *Light crude oil* has low density and high API gravity, usually falling between 31 and 45 degrees.<sup>3</sup> It has a low viscosity, flows easily, and contains relatively low amounts of sulfur, which makes it easier and more cost-effective to refine than heavier crude oils. Well-known examples of light crude oil include Brent Crude from the North Sea and West Texas Intermediate (WTI) from the United States, both of which are esteemed for their superior quality and refining efficiency.

In the global energy market, light crude holds significant value due to its suitability for producing refined fuels like gasoline, diesel, jet fuel, and kerosene. These end products are consistently in high demand, contributing to the oil’s strong economic relevance. Nations that produce light crude often enjoy

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<sup>1</sup> National Geographic, “Petroleum” < <https://education.nationalgeographic.org/resource/petroleum/> > assessed May 12, 2025.

<sup>2</sup> Investopedia, “What Is Crude Oil, and Why Is It Important to Investors?” <<https://www.investopedia.com/terms/c/crude-oil.asp>> accessed May 21, 2025.

<sup>3</sup> API gravity is a key indicator of oil quality and its suitability for refining into different products. Crude oil with higher API gravity is generally considered more valuable because it yields a greater percentage of high-demand products like gasoline and diesel. API gravity is a measure of the density of liquid petroleum products, essentially how heavy or light it is compared to water. It’s an arbitrary scale developed by the American Petroleum Institute (API) and is expressed in degrees.

substantial financial benefits and enhanced market leverage, as these oils are typically sold at premium prices.<sup>4</sup>

**Heavy crude oil** is characterized by its high density and low API gravity, typically measuring less than 22 degrees. It is notably thick and sticky, making it harder to extract, transport, and process compared to lighter grades. This type of crude often contains a significant amount of impurities, including elevated levels of sulfur, which complicates the refining process.

Refining heavy crude oil usually requires advanced and costly methods like thermal recovery and hydrocracking to break it down into usable fuels. Additionally, because of its high sulfur content, extra steps are needed to remove harmful sulfur compounds, increasing both operational costs and environmental concerns. As a result of these challenges, especially its low quality and processing difficulties, heavy crude is generally priced lower than light crude oils on the global market.<sup>5</sup>

**Sweet crude oil** is known for having a low sulfur content, generally below 0.5%, which makes it less corrosive and more efficient to refine. These types of crude are favored in the petroleum industry because of their cleaner composition and ease of conversion into high-value products such as gasoline and diesel. Well-known examples include Brent Crude and certain Middle Eastern grades like Dubai Crude.

From an economic standpoint, sweet crude is more valuable on the global market. Refiners incur lower processing costs and face fewer environmental compliance burdens due to its cleaner profile. Environmentally, sweet crude is a better option because it releases significantly less sulfur dioxide when burned, contributing to reduced air pollution. These advantages make sweet crude highly attractive to both producers and consumers, thereby boosting its commercial appeal.<sup>6</sup>

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<sup>4</sup> Inспенet, “Understanding the types of crude oil: Classification and characteristics” < <https://inspenet.com/en/articulo/types-of-crude-oil-classification/> > accessed May 21, 2025.

<sup>5</sup> Inспенet, “Understanding the types of crude oil: Classification and characteristics” < <https://inspenet.com/en/articulo/types-of-crude-oil-classification/> > accessed May 21, 2025.

<sup>6</sup> Ibid.

*Sour crude oil* is distinguished by its relatively high sulfur content, typically exceeding 0.5%. This elevated sulfur level makes the crude more acidic and corrosive, presenting greater challenges during refining. As a result, sour crude is generally considered less desirable than sweet crude. Examples of sour crude include Basrah Crude from Iraq and several heavy crude varieties from countries like Canada and Venezuela.

Nigeria has the best grades of crude oil. The type of crude oil found in Nigeria can be classified as “light” and “sweet”.<sup>7</sup> Nigeria’s crude oil (popularly known as Bonny Light) has low sulfur content and is relatively light in density. Nigeria is reportedly the largest producer of sweet oil in OPEC. This sweet oil is similar in composition to Brent crude oil extracted from the North Sea. This is why based on pricing, Nigeria’s crude tends to be among the most expensive.<sup>8</sup>

Crude oil has many uses. It is considered one of the world’s most valuable and strategic natural resources for several reasons<sup>9</sup>;

1.1.1. **Revenue Generation:** For many oil-producing countries (e.g., Nigeria, Saudi Arabia), crude oil is a major source of government income through taxes, royalties, and exports. Oil exports earn substantial foreign currency and often form the backbone of national trade balances.

1.1.2. **Energy Source:** Crude oil is a primary source of global energy, powering industries, homes, and transportation systems. It accounts for a significant share of the world’s energy consumption and is central to modern economic activity.

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<sup>7</sup> Adeloye, O.A., Aseibichin, C., Afolayan, J.T., “Analysis and Classification of Nigerian Crude Oil Types for Modular Refinery Operations” (2022) SSRG International Journal of Chemical Engineering Research, Volume 9 Issue 2, ISSN: 2394 – 5370 / <https://doi.org/10.14445/23945370/IJCER-V9I2P104>.

<sup>8</sup> ChannelsTV, “Crude Oil in Nigeria: Interesting Facts You Need to Know” < <https://www.channelstv.com/2024/10/04/crude-oil-in-nigeria-interesting-facts-you-need-to-know/> > accessed May 21, 2025.

<sup>9</sup> Evita Veigas, “Black Gold: The Economic Importance of Crude Oil” < <https://www.learnsignal.com/blog/crude-oil/> > accessed May 21, 2025.

1.1.3. **Industrial Use:** Refined products of crude oil are used as raw materials in chemical industries to produce plastics, synthetic rubber, fertilizers, detergents, paints, and more. It supports various sectors such as manufacturing, agriculture, aviation, and logistics.

1.1.4. **Strategic and Geopolitical Importance:** Control over crude oil reserves and supply routes can influence international relations, global politics, and security. Many geopolitical conflicts and alliances have oil interests at their core.

1.1.5. **Employment and Infrastructure Development:** Oil exploration, production, and refining industries create millions of jobs worldwide and stimulate infrastructure development in roads, ports, and pipelines.

Crude oil, once extracted and refined, serves as a cornerstone of modern civilization due to its wide range of applications. Its derivatives fuel economies, support industries, and shape global energy dynamics.

## 1.2. HISTORY OF THE NIGERIAN OIL INDUSTRY

The origins of Nigeria's petroleum industry trace back to 1903 when the Nigerian Bitumen Corporation began early exploration in present-day Ondo State, though these efforts were disrupted by the First World War.<sup>10</sup> Meaningful progress resumed in the 1930s with Shell D'Arcy's nationwide exploration licence, culminating in the landmark 1956 discovery of commercial quantities of oil in Oloibiri, Bayelsa State.<sup>11</sup> Commercial production commenced in 1958 at 5,000 barrels per day and rapidly expanded throughout the 1960s as new oil fields and pipelines were established across the Niger Delta. This period saw the entry of multinational oil companies such as Mobil, Agip, Chevron, and Texaco, operating through joint ventures and concessions that shaped the structure of the sector.<sup>12</sup>

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<sup>10</sup> Steyn, Phia. (2009). Oil Exploration in Colonial Nigeria, c. 1903-58. *Journal of Imperial and Commonwealth History*. 37. 249-274. 10.1080/03086530903010376.

<sup>11</sup> Campbell, Gary A., "Oil Is Discovered in Nigeria" < <https://www.ebsco.com/research-starters/history/oil-discovered-nigeria> > accessed May 22, 2025.

<sup>12</sup> Iriabije, Alex & Ochiabuto, Providence. (2025). *Crude Oil Revenue and the Nigerian Economy: An Empirical Review*.

Growing state interest led to the creation of the Nigerian National Oil Corporation (NNOC) in 1971, later merged into the Nigerian National Petroleum Corporation (NNPC) in 1977 and now operating as the Nigerian National Petroleum Company Ltd (NNPCL).<sup>13</sup> Nigeria's admission into the Organization of Petroleum Exporting Countries (OPEC) in 1971 further strengthened its global petroleum profile. The oil boom of the 1970s dramatically increased government revenue, enabling rapid infrastructural expansion but simultaneously fostering economic distortions, overdependence on crude oil, and neglect of agriculture. These are symptoms of what is widely described as the "Dutch Disease." Corruption, mismanagement, and weak institutional accountability became entrenched features of the sector during this period.<sup>14</sup>

By the 1990s, the adverse consequences of unregulated oil exploration became especially pronounced in the Niger Delta, where communities suffered from chronic oil spills, gas flaring, and environmental degradation. The resulting grievances fuelled sustained agitation, exemplified by the Movement for the Survival of the Ogoni People (MOSOP) led by Ken Saro-Wiwa, whose demands for environmental justice, resource control, and compensation brought global attention to the region.<sup>15</sup> Government responses, often militarized, deepened mistrust and highlighted the inadequacy of Nigeria's legal and regulatory frameworks for environmental protection and compensation.

Efforts at reform gained traction in the 2000s and culminated in the enactment of the Petroleum Industry Act (PIA) 2021, designed to overhaul Nigeria's petroleum governance structure, enhance transparency, and strengthen community benefits through the creation of Host Community Development Trusts. Despite these reforms and broader national initiatives aimed at diversifying the economy, curbing oil theft, and

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<sup>13</sup> Sule, E. I. K. (1982). Oil in the Political Economy of Nigeria. *CBN Economic and Financial Review*. 20(1), 14-24.

<sup>14</sup> "Dutch disease," is an economic condition where increased natural resource wealth (like oil) leads to the neglect of other sectors, such as agriculture and manufacturing, and makes the economy overly reliant on the natural resource sector.

<sup>15</sup> Bright Oluwatomilola Olunusi & Tope Emmanuel Adeboye, 'Situating environmental degradation in Ogoniland, Niger Delta, Nigeria, within an environmental justice framework' (2025) 19(2) *African Journal of Environmental Science and Technology* 54.

promoting energy transition, persistent issues remain concerning equitable compensation, revenue distribution, environmental remediation, and the rights of oil-producing communities.

The historical evolution of Nigeria’s oil industry therefore reveals a complex interplay of economic opportunity, political power, environmental harm, and legal contestation. This background is essential to understanding the contemporary challenges surrounding compensation laws and evaluating their effectiveness in safeguarding the interests of oil-producing regions.

### **1.3. EFFECT OF OIL EXPLORATION ACTIVITIES ON HOST COMMUNITIES.**

Host community is the name ascribed to communities within the oil producing regions of Nigeria. A host community is a local population or settlement that accommodates and is directly affected by the presence and activities of an external entity, such as a company, project, or institution.<sup>16</sup> In the context of oil and gas operations, host communities are those located in or around the areas where exploration, drilling, production, or processing takes place.

In Nigeria, particularly in the Niger Delta region, host communities refer to the villages, towns, or ethnic groups that are situated near oil fields, pipelines, and other petroleum infrastructure. These communities are called “hosts” because they provide the land and environment where oil companies operate, and they are directly impacted, either positively or negatively, by such operations.

Under *Section 318 of the Petroleum Industry Act (PIA) 2021*, host communities are defined as, “Communities situated in or appurtenant to the area of operation of a settlor (*i.e., an oil company*), and any other community as a settlor may determine under Chapter 3 of the Act.”

Oil exploration in Nigeria, particularly in the Niger Delta region, has had profound and multifaceted impacts on host communities. The Nigerian Niger Delta states are nine in number: “Abia, Akwa-Ibom,

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<sup>16</sup> 'Host Community Perspective' (*Sustainability Directory*) <<https://lifestyle.sustainability-directory.com/area/host-community/>> accessed May 22, 2025.

Bayelsa, Cross Rivers, Delta, Edo, Imo, Ondo and River state'. The people in the Niger Delta Communities are minority tribes in the Nigerian Nation and are known to be resilient.<sup>17</sup> While crude oil has been the mainstay of the national economy, the local communities where exploration and production take place have borne the brunt of its negative consequences. Some of the impacts of oil exploration activities on host communities include;

### **1.3.1. Environmental Degradation**

One of the most visible and devastating consequences of oil exploration is environmental damage. Host communities in the Niger Delta have suffered from oil spills, gas flaring, deforestation, and land degradation. Frequent spills from pipelines, wells, and storage facilities have contaminated farmlands, rivers, and creeks. This has rendered vast areas unfit for agriculture and fishing, two mainstays of the local economy. Despite legal prohibitions, gas flaring remains a common practice. It contributes to air pollution, acid rain, and greenhouse gas emissions, negatively affecting climate and human health. Seismic surveys, pipeline construction, and drilling operations often lead to the destruction of forests and natural habitats. These environmental effects have disrupted the delicate ecological balance of the region, making life increasingly difficult for local residents.<sup>18</sup>

### **1.3.2. Loss of Livelihoods**

Oil exploration has significantly impacted traditional means of livelihood such as farming and fishing.<sup>19</sup> Contaminated water bodies and infertile soils have drastically reduced yields and income. For many, the

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<sup>17</sup> Abby Kalio Amabipi, 'Understanding Host Community Distrust and Violence Against Oil Companies in Nigeria' (PhD dissertation, Walden University 2016)

<<https://scholarworks.waldenu.edu/cgi/viewcontent.cgi?article=3094&context=dissertations>> accessed May 22, 2025

<sup>18</sup> S M Nazmuz Sakib, 'The Impact of Oil and Gas Development on the Landscape and Surface in Nigeria' (2021) 4(1) *Asian Pacific Journal of Environment and Cancer* 9 <<http://waocp.com/journal/index.php/apjec/article/view/748>> accessed May 25, 2025.

<sup>19</sup> Chijioko, Basil Onuoha, Ebong, Ito Bassey & Henry Ufomba, 'The Impact of Oil Exploration and Environmental Degradation in the Niger Delta Region of Nigeria: A Study of Oil Producing Communities in Akwa Ibom State' (2018) 18(3) *Global Journal of Human-Social Science: F Political Science* 9 <[https://globaljournals.org/GJHSS\\_Volume18/4-The-Impact-of-Oil-Exploration.pdf](https://globaljournals.org/GJHSS_Volume18/4-The-Impact-of-Oil-Exploration.pdf)> accessed May 25, 2025.

loss of economic independence has deepened poverty and created a sense of marginalization, especially in contrast to the wealth generated from oil for the central government and multinational corporations.

### **1.3.3. Health Impacts**

Prolonged exposure to polluted air, water, and soil has led to severe public health issues in oil-producing communities.<sup>20</sup> Common problems include, respiratory diseases from gas flaring and smoke inhalation; skin diseases and cancers linked to exposure to petroleum products and chemicals; water-borne diseases from contaminated drinking sources, etc. Health infrastructure in these communities is often inadequate, compounding the impact of environmental health hazards.

### **1.3.4. Socio-Political Unrest**

The cumulative effect of environmental injustice, economic deprivation, and lack of meaningful compensation or inclusion has given rise to militancy, vandalism, and civil unrest. Various armed groups have emerged in the Niger Delta, demanding resource control, environmental remediation, and development. Kidnappings, pipeline vandalism, and attacks on oil installations have disrupted production and drawn global attention to the plight of the region.<sup>21</sup>

### **1.3.5. Underdevelopment and Poor Infrastructure**

Despite being the source of Nigeria's oil wealth, many host communities remain underdeveloped. Basic infrastructure such as roads, schools, healthcare, electricity, and clean water is lacking. This stark disparity between oil wealth and local poverty fuels frustration and perceptions of exploitation.<sup>22</sup>

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<sup>20</sup> O E Orisakwe, 'Crude oil and public health issues in Niger Delta, Nigeria: Much ado about the inevitable' (2021) 194 *Environmental Research* 110725 <https://www.sciencedirect.com/science/article/abs/pii/S0013935121000190> accessed May 25, 2025.

<sup>21</sup> ADEDAYO Lisa Oritseshemaye, ADEGBOYE Lasisi Adejare, ISHAKU Aisha Yusuf, UNACHUKWU Ugochukwu Vitus & ADAMA Ahmed Mohammed, 'Environmental degradation and community response to eco system invasion in delta state' (2022) 16(02) *World Journal of Advanced Research and Reviews* 858-869 <<https://wjarr.com/sites/default/files/WJARR-2022-1256.pdf>> accessed May 25, 2025.

<sup>22</sup> Joseph C. Ebegbulem, Dickson Ekpe & Theophilus Oyime Adejumo, 'Oil Exploration and Poverty in the Niger Delta Region of Nigeria: A Critical Analysis' (2013) 4(3) *International Journal of Business and Social Science* 279-287 <[https://ijbssnet.com/journals/Vol\\_4\\_No\\_3\\_March\\_2013/30.pdf](https://ijbssnet.com/journals/Vol_4_No_3_March_2013/30.pdf)> accessed May 27, 2025.

### 1.3.6. Inadequate Legal Protection and Compensation

One of the most contentious issues has been the failure of the legal and regulatory framework to adequately protect host communities. Existing laws on compensation, environmental protection, and corporate social responsibility have often been poorly enforced. Litigation is typically slow, costly, and inaccessible to many affected persons. The lack of enforceable rights and transparent grievance mechanisms has led to widespread disillusionment.

Although the *Petroleum Industry Act (PIA) 2021* introduced provisions such as the *Host Communities Development Trust Fund*, it remains to be seen whether these reforms will translate into tangible improvements for the affected communities.<sup>23</sup>

The effects of oil exploration on host communities in Nigeria, particularly in the Niger Delta, are deeply entrenched and complex. While oil has enriched the nation, it has impoverished and endangered the communities from which it is extracted. Addressing these challenges requires not only stronger legal and regulatory frameworks but also political will, genuine community engagement, and environmental accountability. A more equitable and sustainable approach is essential to ensure that the benefits of oil production do not continue to come at the expense of local populations.

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<sup>23</sup> Kenneth Nwoko, Ph.D. & Alasin Captain Briggs, Ph.D, 'Petroleum Industry Act 2021 and the Prospects of Enhanced Socio-Economic Development of Host Communities of Oil Producing Areas in Nigeria' (2025) 13(2) *International Journal of Innovative Development and Policy Studies* 115-122  
<[https://www.researchgate.net/publication/392439446\\_Petroleum\\_Industry\\_Act\\_2021\\_and\\_the\\_Prospects\\_of\\_Enhanced\\_Socio-Economic\\_Development\\_of\\_Host\\_Communities\\_of\\_Oil\\_Producing\\_Areas\\_in\\_Nigeria](https://www.researchgate.net/publication/392439446_Petroleum_Industry_Act_2021_and_the_Prospects_of_Enhanced_Socio-Economic_Development_of_Host_Communities_of_Oil_Producing_Areas_in_Nigeria)> accessed May 27, 2025.

## CHAPTER TWO.

### LEGAL FRAMEWORK FOR OIL PRODUCTION COMPENSATION IN NIGERIA.

Compensation can be defined as payment or other benefits provided to individuals, communities, or regions as redress for loss, damage, or deprivation of rights, property, or resources. In legal context, it aims to restore the injured party to their original position or provide equivalent value for what was lost.<sup>24</sup> In the context of oil exploration and production, compensation primarily refers to the payment made to individuals, groups, or communities for the compulsory acquisition or use of their land and natural resources.<sup>25</sup> Oil companies require access to land for drilling, pipeline construction, flow stations, and other petroleum infrastructure, and the law recognizes that such acquisition cannot occur without the payment of adequate compensation. This establishes compensation, first and foremost, as a transactional obligation grounded in property rights and safeguarded by constitutional provisions.

Beyond payment for land use, compensation also extends to redress for harm caused by oil operations. Petroleum activities in the Niger Delta have often resulted in widespread environmental degradation, destruction of farmlands and fishing waters, loss of livelihoods, forced displacement, and health hazards linked to pollution and oil spills.<sup>26</sup> In such cases, compensation serves as a remedial mechanism, aimed at alleviating the damage suffered and helping communities to restore or adapt their means of survival.

The importance of compensation therefore lies in its dual function, that is, as consideration for land use and, as restitution for injury. For oil-producing communities, whose environments and ways of life are disrupted by petroleum operations, compensation represents not only financial relief but also formal recognition of their rights and the sacrifices they bear. It balances the interests of resource exploitation

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<sup>24</sup> Rowan T. Moyo, Ph.D., 'Compensation: Definition, Legal Context, Financial and Judicial Redress' (2024) *Juristopedia.com* <<https://juristopedia.com/compensation-definition/>> accessed June 12, 2025.

<sup>25</sup> Emmanuel Nimbe Olowokere, 'Oil Exploration in the Niger Delta: A Critique of the Legal Framework for Compensation' (2019) 49(4-5) *Environmental Policy and Law* <<https://doi.org/10.3233/EPL-190174>> accessed June 12, 2025.

<sup>26</sup> O E Orisakwe, 'Crude oil and public health issues in Niger Delta, Nigeria: Much ado about the inevitable' (2021) 194 *Environmental Research* 110725 <https://www.sciencedirect.com/science/article/abs/pii/S0013935121000190> accessed June 25, 2025.

with the welfare of affected populations and serves as a critical tool for promoting fairness, equity, and social justice in a region where poverty persists despite immense resource wealth.<sup>27</sup>

Notwithstanding, before examining the legal framework governing compensation, it is important to provide a brief overview of the Nigerian legal system.

## **2.1. OVERVIEW OF THE NIGERIAN LEGAL SYSTEM.**

The Nigerian legal system is a pluralist system shaped by its colonial history, indigenous traditions, and constitutional development. It operates as a federal system under the Constitution of the Federal Republic of Nigeria 1999 Constitution (as amended), which is the supreme law of the land. The 1999 Constitution provides the framework for the division of powers between the federal and state governments, including authority over natural resources and environmental regulation.

Nigeria's legal system draws from multiple sources: English common law, customary law, Islamic law (in some northern states), and statutory enactments at both the federal and state levels. This fusion has resulted in a complex legal landscape, particularly in sectors like oil and gas, where legal authority is concentrated at the federal level, yet the impacts of extraction are felt most deeply at the local level.

Judicial power is vested in a hierarchical system of courts, with the Supreme Court at the apex, followed by the Court of Appeal, the Federal High Court, the various State High Courts, Customary and Area Courts. In matters involving petroleum operations and compensation claims, the Federal High Court holds exclusive jurisdiction, especially where federal statutes such as the Petroleum Act and the Petroleum Industry Act are invoked.

Understanding the structure and sources of Nigeria's legal system is essential for assessing the adequacy and effectiveness of the legal and institutional framework governing compensation in oil-producing

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<sup>27</sup> Joseph C. Ebegbulem, Dickson Ekpe & Theophilus Oyime Adejumo, 'Oil Exploration and Poverty in the Niger Delta Region of Nigeria: A Critical Analysis' (2013) 4(3) *International Journal of Business and Social Science* 279-287 <[https://ijbssnet.com/journals/Vol\\_4\\_No\\_3\\_March\\_2013/30.pdf](https://ijbssnet.com/journals/Vol_4_No_3_March_2013/30.pdf)> accessed June 25, 2025.

regions. It sets the stage for a deeper examination of the statutory instruments, institutions, and judicial decisions that shape compensation practices in the country.

The sources of Nigerian law can be classified into two sources; Primary sources of law and Secondary sources. Primary sources of law are the original, authoritative sources that actually create, state, or establish the law. They are binding and enforceable in court. Secondary sources on the other hand are persuasive and not binding. Secondary sources of law help to explain, analyse and interpret the law. Secondary sources of law include textbooks and legal commentaries, legal journals and articles, dictionaries and encyclopedias, opinions of scholars, etc. The primary sources of law include the constitution, Nigerian legislation, case law or judicial precedent, the received English law, Nigerian customary law and Islamic law.<sup>28</sup>

## **2.2. THE NIGERIAN LEGAL FRAMEWORK ON OIL COMPENSATION**

There are several laws in Nigeria that govern compensation for oil exploration activities. They include;

### **2.2.1. The Constitution of the Federal Republic of Nigeria, 1999 (as amended).**

The *Constitution of the Federal Republic of Nigeria 1999 (as amended)* is the supreme legal instrument in Nigeria and the foundational source of all other laws in the country. It derives its authority from the people and serves as the ultimate expression of Nigeria's sovereignty, federal structure, and system of governance. As provided under *Section 1(1) of the Constitution*, "*This Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.*"

By virtue of *Section 1(3)*, any other law that is inconsistent with the provisions of the Constitution is void to the extent of the inconsistency. This supremacy clause elevates the Constitution above all other

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<sup>28</sup> Anyim, Wisdom Okereke, "Research Under Nigerian Legal System: Understanding the Sources of Law for Effective Research Activities in Law Libraries" (2019). Library Philosophy and Practice (e-journal). 2383. <https://digitalcommons.unl.edu/libphilprac/2383>

legislative, executive, judicial, customary, and religious norms, thereby making it the bedrock of Nigeria's legal system. It is therefore the foremost law governing compensation in Nigeria's oil producing regions.

One of the most relevant provisions of the Constitution with regards to compensation for oil production activities is **Section 43 and 44(1)**, which guarantees the right to own immovable property and protects against the compulsory acquisition of property without prompt payment of compensation. **Section 43 of the CFRN 1999** provides that "*Subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.*" In support, **section 44(1)** provides that no moveable or immoveable property can be compulsorily taken by the government unless a law allows it, and such law must do two things: it must ensure that compensation is paid to the owner promptly, and it must give the original owner the right to go to a court or tribunal to challenge the taking of the property or the amount of compensation paid by the government.

These provisions are significant for host communities in the Niger Delta and other oil-producing regions, where land is often appropriated by the government or oil companies for oil exploration, pipeline construction, and related infrastructure. When such land is compulsorily acquired, affected persons are constitutionally entitled to adequate and prompt compensation.

The Constitution of the Federal Republic of Nigeria vests the ownership and control of all minerals, mineral oils, and natural gas in, under, or upon any land in Nigeria, its territorial waters, and exclusive economic zone, in the Federal Government. **Section 44(3) of the CFRN** states that, "*Notwithstanding the foregoing provisions of this section, the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.*"

This constitutional vesting effectively strips host communities of proprietary control over the natural resources located in their environment. As a result, they do not have legal title to claim royalties or rents

from resource extraction, and must rely on statutory provisions and administrative policies for compensation and development support. This constitutional arrangement has often been cited as a root cause of tension between the Federal Government and oil-producing communities, many of which feel marginalized despite bearing the environmental and social costs of oil extraction. Although in many cases oil and gas companies acquire land directly from communities rather than through formal revocation by the government, disagreements often arise over the appropriate amount of compensation. These disagreements may be influenced by inflated valuations from landowners, sometimes driven by high expectations, and by under valuations from companies, often motivated by cost-saving considerations.<sup>29</sup>

Oil exploration and production often lead to environmental concerns within host communities. These environmental concerns have increased the agitation for adequate compensation to host communities. In relation to environmental protection, **Section 20** of the Constitution imposes a duty on the Nigerian state to protect and improve the environment and safeguard the water, air, and land, forest, and wildlife of Nigeria. **Section 20 of the CFRN** provides that “*The State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria.*” Although, this provision is contained in **Chapter II**, which is non-justiciable under **Section 6(6)(c)**, it serves as a guiding principle for state policy and provides constitutional legitimacy for environmental legislation such as the ***Environmental Impact Assessment (EIA) Act*** and the ***National Oil Spill Detection and Response Agency (NOSDRA) Act***. These laws, in turn, include provisions for environmental remediation and compensation to affected communities.

In addition, **Section 33 and Section 34**, which protect the rights to life and dignity of the human person, have been invoked in judicial decisions concerning environmental degradation and oil-related pollution. In ***Gbemre v. Shell Petroleum Development Company Nigeria Ltd. & Others***<sup>30</sup>, the Federal High Court

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<sup>29</sup> Aluko & Oyeboode, 'Between Mineral Rights and Land Tenure: Navigating Land Acquisition in Nigeria's Oil and Gas Sector' (2025) <[https://www.aluko-oyebode.com/wp-content/uploads/2025/07/Between-Mineral-Rights-and-Land-Tenure\\_Navigating-Land-Acquisition-in-Nigerias-Oil-and-Gas-Sector.pdf](https://www.aluko-oyebode.com/wp-content/uploads/2025/07/Between-Mineral-Rights-and-Land-Tenure_Navigating-Land-Acquisition-in-Nigerias-Oil-and-Gas-Sector.pdf)> accessed July 20, 2025.

<sup>30</sup> (2005) AHRLR 151

held that the constitutional rights to life and dignity were violated by the gas flaring activities of oil companies in the Niger Delta, thereby opening the door for fundamental rights litigation in the context of environmental harm and compensation.

The 1999 Constitution provides both a legal framework and a moral compass for addressing compensation in oil-producing regions. Through its provisions on property rights, state ownership of resources, and environmental protection, the Constitution both empowers and limits the avenues through which affected communities can seek redress. Its interpretation and application by the courts remain central to shaping Nigeria's evolving compensation regime in the extractive sector.

### **2.2.2. The Petroleum Industry Act, 2021**

The *Petroleum Industry Act (PIA), 2021* represents the most significant legal reform in Nigeria's oil and gas sector since independence. Enacted to replace a fragmented regime of outdated laws, including the *Petroleum Act of 1969*, the PIA seeks to overhaul the governance, fiscal, regulatory, and environmental frameworks of the oil and gas industry. Crucially, it introduces more structured and transparent mechanisms for the development of host communities and the administration of compensation, making it a landmark statute in addressing long-standing grievances of oil-producing regions.

The PIA repealed several laws and regulations governing the Nigerian oil industry. Some of these laws include the *Associated Gas Reinjection Act, 1979*<sup>31</sup>, the *Hydrocarbon Oil Refineries Act No. 17 of 1965*<sup>32</sup>, the *Nigerian National Petroleum Corporation Act (NNPC), 1977*<sup>33</sup>, the *Nigerian National Petroleum Corporation (Projects) Act No. 94 of 1993*<sup>34</sup>, etc. The Act however saves some specific laws,

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<sup>31</sup> Cap. A25, Laws of the Federation of Nigeria, 2004, and its Amendments

<sup>32</sup> Cap. H5, Laws of the Federation of Nigeria, 2004

<sup>33</sup> No. 33, Cap. N123, Laws of the Federation of Nigeria as amended

<sup>34</sup> Cap. N124, Laws of the Federation of Nigeria, 2004

allowing them to continue in effect until all existing oil prospecting licences (OPLs) and oil mining leases (OMLs)<sup>35</sup> granted under the old regime have expired or converted to PIA licences.

Some of these saved laws include the *Petroleum Act of 1969* which was the main law governing petroleum exploration and production before the PIA. *Section 311 of PIA* provides that the *Petroleum Act* continues to apply to existing licences and leases until they expire or are converted under the PIA.<sup>36</sup> The *Petroleum Profit Tax Act* also remains effective for companies still operating under the old tax framework.<sup>37</sup> The *Oil Pipelines Act* which regulates the construction and operation of oil pipelines still continues to apply as long as it does not conflict with the PIA. Any regulations made under the *Oil Pipelines Act* are deemed to have been made under the PIA.<sup>38</sup>

The PIA however strengthens the regulatory architecture of the Nigerian oil industry by establishing two new bodies: the *Nigerian Upstream Petroleum Regulatory Commission (NUPRC)* and the *Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA)*. These agencies are tasked with overseeing compliance with environmental standards, operational safety, and compensation requirements.

The PIA 2021 provides for compensation for acquisition of land. *Section 115(1) of the PIA 2021* provides that, “a licence or permit shall be issued subject to compliance by the applicant with the provisions of the *Land Use Act* in respect of compensation for acquisition of land for midstream and downstream petroleum operations.” *Section 115(2)* states that, “the Governor of a State of which land is required for carrying out operations or activities subject to a licence or permit may issue a certificate of occupancy under the *Land Use Act* in respect of the land and in accordance with existing state law.” Thus, under the PIA, the

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<sup>35</sup> Now referred to as *Petroleum Prospecting Licences (PML)* and *Petroleum Mining Leases (PML)* by virtue of the PIA 2021.

<sup>36</sup> Section 311 (9)(a), PIA 2021

<sup>37</sup> Section 311 (9)(b), PIA 2021

<sup>38</sup> Section 311 (9)(c), PIA 2021

issue of compensation for land acquisition in oil-producing regions is firmly anchored in the Land Use Act, which governs ownership, compulsory acquisition, and payment of compensation for land in Nigeria.

The incorporation of the Land Use Act into the PIA highlights the centrality of land ownership and control in petroleum operations. While the PIA regulates the petroleum industry, it does not create a new compensation regime for land acquisition but rather defers to the existing framework under the Land Use Act. This means that oil companies seeking to acquire land for midstream or downstream activities must follow the procedures for obtaining rights of occupancy through the Governor of the State, subject to the payment of compensation as provided under the Act.

**Section 101 of the PIA 2021** is another section of the Act that makes provision for fair and adequate compensation. The section provides that oil companies (licensees or lessees) are prohibited from entering or operating in certain sensitive areas such as sacred lands, burial grounds, markets, towns, or cultivated land without permission. **Section 101(1)(b) of the PIA** states that, “*the question as to whether the area is sacred or not shall be decided by the customary court of the area, where necessary.*” This provision is important because many oil-producing communities attach cultural and economic significance to land. Protecting these sites recognizes that compensation is not only about money, but also about preserving cultural identity and livelihoods.

**Section 101(1)(c)** also prohibits oil companies from using privately owned or occupied land without first notifying the **Nigerian Upstream Petroleum Regulatory Commission** (NUPRC, also referred to as the Commission) of the land they want to occupy and the purpose, and also, paying “fair and adequate compensation” to the lawful occupiers or owners. **Section 101(1)(d)** provides that if there is a dispute over ownership or compensation, companies must deposit money with the Federal High Court until the rightful owner is determined. This provision is designed to prevent companies from exploiting legal disputes as an excuse to delay payment. It reflects the constitutional principle of access to justice under **Section 44 of CFRN 1999**, ensuring that communities can contest inadequate compensation.

*Section 101(2) and (3)* also prohibits oil companies from destroying trees or objects of veneration, damaging buildings, property, or cultivated land, and disturbing other lawful rights over the land. If the companies cause damage, they must pay fair and adequate compensation directly to the affected persons or communities. This strengthens the community's right to both preventive protection and remedial compensation.

*Section 101(4) and (5)* provides that the amount of compensation is to be determined by the NUPRC with regulations guiding its assessment. It also states that if companies fail to pay within 30 days, the NUPRC can impose sanctions. This is a strong accountability measure that addresses one of the biggest challenges in Nigeria's oil industry, that is, the non-payment or delayed payment of compensation.

One of the most notable innovations of the PIA is the establishment of the *Host Communities Development Trust (HCDT)* under *Chapter 3, Sections 234–257* of the Act. *Section 234(1) of the PIA 2021* lists the objectives of Chapter 3 of the Act to include; fostering sustainable prosperity within host communities; providing direct social and economic benefits from petroleum operations to host communities; enhancing peaceful and harmonious co-existence between licensees or lessees and host communities; and creating a framework to support the development of host communities.

*Section 235(1) of the PIA 2021* provides that oil companies or persons carrying out petroleum operations are to establish a Host Communities Development Trust for the benefit of the host communities they are carrying out their operations in. This trust is funded with a percentage of the oil company's actual operating expenditure (set at 3% under *Section 240 of the PIA 2021*). The aim is to ensure that host communities directly benefit from oil and gas operations in their area.

The benefits of the Host Community Development Trusts (HCDT) are set out in *Section 239(3) of the PIA 2021*. The HCDT is a legal vehicle designed to promote the economic and social development of host communities and foster peaceful coexistence between oil companies and local populations. To fund these Trusts, *Section 240(2)* mandates that settlors contribute an annual sum equivalent to 3% of their actual

operating expenditure from the preceding year. This contribution is intended to finance infrastructure projects, human capital development, and other community-driven initiatives. **Section 238** provides that failure to incorporate this host community development trust may lead to revocation of the oil company's license or lease.

Beyond community development, the PIA includes provisions aimed at environmental protection and remediation. **Section 102-104** provides that licensees or lessees engaged in upstream petroleum operations must adopt good international petroleum industry practices, which include environmental standards and procedures. Where oil operations result in damage or pollution, operators are required to compensate affected persons and communities. This provision reinforces the principle of polluter pays, ensuring that companies bear responsibility for the environmental consequences of their operations.

The PIA also recognizes the importance of community consultation and participation. **Section 242 of the PIA** requires that the Board of Trustees of the Host Community Development Trust must include representatives of the host community, thereby giving them a role in the identification and prioritization of projects to be funded by the Trust. This participatory model is designed to reduce conflict, enhance transparency, and ensure that compensation efforts align with actual community needs.

The **Petroleum Industry Act, 2021** constitutes a transformative step toward a more equitable and accountable petroleum regime in Nigeria. Its provisions on host community development, environmental responsibility, and compensation mechanisms provide a structured legal basis for addressing the developmental deficits of oil-producing regions.

### **2.2.3. The Land Use Act, 1978**

The **Land Use Act of 1978** is a federal law that governs land tenure and administration across Nigeria. It vests all land in each state (with the exception of land vested in the Federal Government or its agencies) in the Governor of the State, who holds it in trust for the people. Therefore, it plays a central role in the

legal regime governing compensation for oil-producing communities, particularly when land is acquired or disturbed in the course of petroleum exploration and production.

The Act was enacted to centralize and simplify land ownership in Nigeria. It replaced customary and English-based land tenure with a uniform system with the aim of reducing unequal access to land, facilitating economic development, and controlling land costs. The Act outlines two main categories of land rights: "statutory right of occupancy" for urban land, granted by the governor, and "customary right of occupancy" for non-urban areas, granted by the local government. Under **Section 1 of the Act**, all land in urban areas is under the control and management of the Governor, while land in rural areas is managed by Local Government Councils. This statutory framework effectively transferred customary ownership of land to the state, limiting the proprietary rights of individuals and communities, including those in oil-producing areas.

A key provision of the Act with regard to compensation is **Section 28**, which empowers the Governor to revoke a right of occupancy for overriding public interest. **Section 28(2) and (3)** defines overriding public interest in the case of both statutory and customary right of occupancy to include "*the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith.*" As a result of this provision, the lands of host communities are frequently subject to revocation. When such revocations occur, **Section 29** mandates the payment of compensation to the holder of the right of occupancy. The compensation is assessed based on the value of unexhausted improvements on the land, such as buildings, crops, and economic trees, rather than the land itself.

**Section 29 of the LUA** provides that where land is taken for overriding public purposes, the holder and occupier of the land are entitled to compensation, primarily for the "*unexhausted improvements*" on the land (such as buildings, installations, reclamation works, and crops).<sup>39</sup> However, where revocation is connected to mining or petroleum activities, compensation is governed by the provisions of "*the Minerals*

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<sup>39</sup> See, section 29(1), Land Use Act, 1978.

*and Mining Act or the Petroleum Act or any legislation replacing the same*” (the Petroleum Act is now largely replaced by the PIA 2021).<sup>40</sup> **Section 29(3) of the Act** goes further to state that, if the affected holder or occupier is a community, the Governor may direct payment either directly to the community, through its leader under customary law, or into a designated fund for the community’s benefit.

Under **Section 29(4)** compensation for land revoked by the governor for public purpose is assessed using certain criteria. In calculating compensation for bare land, the amount equals the annual rent paid by the occupier in the year of revocation. For buildings, installations, or improvements, the amount to be paid is the replacement cost (less depreciation) of the buildings, installations or improvements, together with interest for delayed payment. Lastly for crops, compensation is determined by prescribed rates set by the appropriate officer. Under **Section 29(4)**, the land itself is not compensated for because technically, all land belongs to the state under the Land Use Act. Under **Section 29(4)**, compensation instead focuses on what the occupier has added to the land, that is, the improvements, buildings, crops, etc. Therefore, the Land Use Act does not provide for compensation for the land per se, as the land is deemed to be held by the Governor in trust. **Section 29(5) of the LUA** in addition provides that where only a portion of a larger land area is revoked, compensation is computed proportionately, considering both the affected and unaffected parts.

**Section 30 of the LUA** provides that where any dispute arises as to the amount of compensation calculated in accordance with **Section 29** of the Act, such dispute should be referred to the appropriate Land Use and Allocation Committee. The Land Use and Allocation Committee is a body established in each state by virtue of **Section 2(2) of the LUA**. The Committee is made up of a chairman and other members appointed by the Governor of each state. It usually includes professionals such as land surveyors, estate valuers,

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<sup>40</sup> See, section 29(2), Land Use Act, 1978.

legal practitioners, and other experts relevant to land administration. The primary role of the committee is to advise the Governor on matters connected with the management of land subject to the Land Use Act.<sup>41</sup>

If land is revoked and compensation is due (for buildings, crops, improvements, etc.), but there's a dispute over how much should be paid, the matter is referred to the Committee. The Committee acts like an administrative tribunal to determine a fair assessment. Although the Committee's decisions can still be challenged in court, it however provides the first point of resolution. The Land Use and Allocation Committee is meant to serve as a check against abuse of power by ensuring that landowners/occupiers are not cheated when their land is taken for public purposes.

The Land Use Act provides for the option to accept resettlement in lieu of compensation for revocation of a right of occupancy. *Section 33(1) of the LUA* provides that if a person's right of occupancy over developed residential land is revoked, the Governor or Local Government may, instead of paying monetary compensation, offer resettlement in another location as reasonable alternative accommodation. *Section 33(2)* goes further to state that if the alternative accommodation offered is worth more than the compensation that should have been paid, the extra value may be treated as a loan, which the displaced person must repay to the government. The section concludes by stating that once a person accepts resettlement, they are considered to have received full compensation, and no further claim for compensation can be made.<sup>42</sup>

*Section 39 of the LUA* gives exclusive original jurisdiction to the state high courts over cases involving statutory rights of occupancy granted by the Governor (or deemed granted under the Act). This includes disputes like declarations of title to such rights. *Section 39(1)(b)* provides that the State High Court also has exclusive jurisdiction to decide who is entitled to compensation for improvements (buildings, crops, etc.) on land acquired under the LUA. With regards to compensation for land acquired for the purpose of

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<sup>41</sup> See, Section 2(5) of the Land Use Act, 1978.

<sup>42</sup> See, Section 33(3) of the Land Use Act, 1978.

oil exploration and production activities, this provision might appear to be in conflict with *Section 251 of the Constitution* which gives exclusive jurisdiction to the Federal High Court over matters connected to mines, minerals, including oil fields, oil mining, geological surveys, and natural gas. However, the Land Use Act deals with land tenure and rights of occupancy, which is a completely different subject.

The focus of the Land Use Act is on who owns or occupies the land and entitlement to compensation when land is revoked. Thus, if a dispute is purely about title, occupancy, or compensation for land, the State High Court has jurisdiction. However, if the dispute directly concerns mining operations, mineral rights, or oil/gas exploitation, the Federal High Court has jurisdiction. For example, if an oil company acquires land and the issue is compensation for crops or buildings, that's the State High Court's jurisdiction. But if the issue is the validity of a mining lease or oil prospecting licence, it's for the Federal High Court. It is therefore left to the courts to distinguish between land ownership/compensation and mining/extractive activities.

A most disturbing provision on the right to compensation for land revoked under the Land Use Act is found in *Section 47 of the Land Use Act*. *Section 47 of the LUA* provides that no court can question the amount or adequacy of compensation paid to someone whose land or right of occupancy has been revoked under the Act. The section begins by saying that no court has the power to question or interfere with: (a) the fact that all land in a state belongs to the Governor (as provided in *Section 1 of the Act*); (b) the Governor's power to grant a statutory right of occupancy, that is, the right to allocate land to individuals or organizations, and; (c) the Local Government's power to grant a customary right of occupancy over rural land.<sup>43</sup> Put simply, the courts cannot question or challenge the authority of the Governor or Local Government to control and allocate land under the Land Use Act. *Section 47(2)* then goes further to state that, "*no court shall have jurisdiction to inquire into any question concerning or pertaining to the amount or adequacy of any compensation paid or to be paid under this Act.*" This means that if the government

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<sup>43</sup> See, Section 47(1) (a-c) of the Land Use Act, 1978

revokes land and pays compensation, the court cannot be asked to decide whether that compensation was too little or unfair.

In essence, *Section 47* tries to shield the powers of the Governor and Local Government in land matters from being challenged in court. It also aims to limit court involvement in disputes about how much compensation is paid. However, in practice, courts have oftentimes intervened where the procedures for revocation or compensation were not properly followed, or the actions violated constitutional rights (like fair hearing or due process). Thus, while *Section 47* attempts to oust the courts' jurisdiction, it cannot completely override the Constitution, especially on issues of fundamental rights or legality of government action.

The *Land Use Act, 1978* is a pivotal law governing compensation for land acquisition in Nigeria's oil-producing regions. It plays a crucial role in establishing a legal basis for compensation following revocation of land rights. Its integration with other environmental and oil-sector laws is essential for a holistic approach to compensation and sustainable development in oil producing regions.

#### **2.2.4. The Nigerian Minerals and Mining Act, 2007**

The *Nigerian Minerals and Mining Act, 2007 (herein after referred to as NMMA)* is Nigeria's principal legislation enacted for the purpose of regulating all aspects of the exploration and exploitation of solid minerals in Nigeria. Solid minerals are naturally occurring substances found in the earth that are neither liquid nor gas. They are typically extracted through mining and have economic value because they can be used in industries, construction, manufacturing, and export.<sup>44</sup>

While the Act does not directly regulate petroleum operations (which fall under the *Petroleum Industry Act, 2021*), it still remains relevant to the legal and institutional discourse on compensation for host

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<sup>44</sup> Educational Note, 'Resources from Non Living Things. (Solid Minerals)' (2016) *FCT EMIS Website* <[https://fctemis.org/notes/1680\\_RESOURCES%20FROM%20NON%20LIVING%20THINGS%20week.%203.pdf](https://fctemis.org/notes/1680_RESOURCES%20FROM%20NON%20LIVING%20THINGS%20week.%203.pdf)> accessed 13 August 2025.

communities, particularly in contexts involving land use, environmental impact, and community rights. The Land Use Act for instance makes reference to the Nigerian Minerals and Mining Act. Also, several judicial decisions have had course to refer to the NMMA in deciding cases on compensation for oil exploration and production activities. The Act reflects principles and procedures that are instructive in the broader extractive sector, including oil and gas, especially in terms of community engagement and compensation for land disturbance.

**Section 19 of the Nigerian Minerals and Mining Act 2007** establishes the State Mineral Resources and Environmental Management Committee (often referred to as MIREMCO). **Section 19(1)** provides that each state in Nigeria must have a Mineral Resources and Environmental Management Committee (MIREMCO). This committee serves as a link between the federal government (which controls mineral resources) and state/local authorities (where mining takes place). **Section 19(3)(b)**, provides that one of the functions of MIREMCO is to “*consider issues affecting compensation and make necessary recommendations to the Minister.*” This means that the Committee reviews and advises on disputes or concerns regarding compensation for landowners, occupiers, or host communities affected by mining operations. The committee is composed of representatives from relevant federal and state ministries, including a representative of the Mines Environmental Compliance Department in the Ministry who shall be the chairman of the Committee, a representative of the Ministry of Agriculture or Forestry in the State, a representative of the Federal Ministry of Environment in the State, a representative of the State Environmental Department or Agency, the Mines Officer responsible for the State, etc.

**Section 98 of the NMMA** makes provision for the payment of fair and adequate compensation from a licensee or lessee who causes injury or damage to any area, tree or thing held to be sacred or seen as an object of veneration, to the persons or communities affected by injury or damage.<sup>45</sup> This provision is

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<sup>45</sup> Section 98(3) of the Nigerian Minerals and Mining Act, 2007.

similar to *Section 101 of the PIA* that seeks to protect areas of land that are held sacred by members of the community. *Section 104 of the NMMA* however contains a unique provision regarding compensation.

*Section 104 of the NMMA* provides that where a Certificate of Occupancy is revoked as a result of a mining lease, the lessee to whom the lease was granted must reimburse the federal or state government for any compensation paid by the government to the landowner. The reimbursement would be paid to the federal government if the land is a federal land, and to the state government if the land is a state land. The implication of this section is that it is the mining company (lessee), not the government, that ultimately bears the financial responsibility for compensation. Thus, the payment procedure by virtue of this section is that the Governor or President first compensates the displaced landholder, and then the mining lessee reimburses the government the exact amount paid as compensation. The reason for this is clear, since the mining company is the beneficiary of the revocation, it is only fair that it bears the economic cost of displacing the previous occupant.

*Section 107 of the NMMA* contains explicit provisions for compensation. The section provides that the holder of a mineral title<sup>46</sup> may in addition to any other amounts payable under the Act and subject to a valuation report by a licenced valuer, pay to the occupier of land held under a state lease or the subject of a right of occupancy, *“reasonable compensation for any disturbance of the surface rights of the owner or occupier and any damage done to the surface of the land on which the exploration or mining, is being or has been carried and in addition, pay to the owner of any crop, economic tree, building or work damaged, removed or destroyed by the holder of the mining title or by any of its agents or servants, compensation for the damage, removal or destruction of the crop, economic tree, building or work.”*

How compensation is to be assessment and determined is provided for by *Section 108 of the NMMA* which states that when a land or property is affected by mining activities, the Mining Cadastre Office

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<sup>46</sup> Section 164 of the Nigerian Mineral and Mining Act 2007 defines a mineral title to mean a “Reconnaissance Permit, Exploration Licence, Small-scale Mining Lease, Mining Lease, Water Use Permit, or Quarry Lease”

(MCO) which is the federal agency that handles the administration of mining titles, is responsible for deciding the amount of compensation that should be paid. Before making this decision, the MCO must consult two key parties which are, the State Mineral Resources and Environmental Management Committee (MIREMCO) responsible for bringing local and environmental input, and a government-licensed valuer who would ensure that the compensation amount is fair and professionally assessed. This provides for a structured and collaborative process for determining compensation as it includes a combination of federal oversight (MCO), state-level input (MIREMCO), and independent valuation expertise in assessing and determining compensation for mining activities.

The penalties for failing to pay compensation to landowners or occupiers affected by mining activities is set out in *Section 109 of the NMMA*. *Section 109 of NMMA* provides that if a mining company (or title holder) does not pay compensation within six months after being granted a mining title, the Minister of Mines can suspend the company's mining title. This means the company must stop its mining operations until it pays the full compensation owed to the affected landowners, and deposit additional money with the government as security or extra payment, if the Minister demands it. If, however, the mining company still fails to pay within 30 days after the suspension, the Minister has the power to revoke the mining title altogether.<sup>47</sup> This section ensures that mining companies cannot ignore their obligation to pay compensation to affected people. If they fail to pay, they risk losing their right to mine.

*Section 110* goes even further to ensure that the payment of compensation is a mandatory condition for anyone holding a mining title. It provides that the payment of compensation is an implied condition to the grant of a mining lease or license. This means that whenever the government grants a mining lease or license (mining title), it is automatically understood even if not written in the license that the holder must pay compensation to anyone entitled to it (such as landowners or occupiers whose land or property is affected). Thus, it doesn't have to be expressly stated in the mining title document, the law itself makes it

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<sup>47</sup> Section 109(2), Nigerian Minerals and Mining Act, 2007.

part of the agreement. This prevents a mining company from arguing that compensation wasn't mentioned in its license since by virtue of *Section 110 of the NMMA*, the law of Nigeria itself implies it.

*Section 113 of the NMMA* provides for compensation for crops, economic trees, buildings, and other works or structures. The section provides that if mining activities cause damage or destruction to anything valuable on the land such as crops, economic trees (like palm trees, cocoa, or rubber), buildings, or other works or structures, then the mining company (or holder of the mineral title) must pay compensation to the owner or occupier of that land. This applies whether the damage was done directly by the company or by its workers or agents.<sup>48</sup> The mining company must also reimburse or pay compensation for any such property (like crops or buildings) that was put up after surface rent began (that is, once they officially started using the land for mining purposes). This ensures that people don't lose their investments just because mining started later.<sup>49</sup> If there's a disagreement about the compensation amount for the crops, economic trees, etc., the Minister can determine what's fair but must first consider the report of a committee that reviews such compensation matters for the Federal Government. Thus, there is an administrative process before a court intervention.<sup>50</sup> This right to compensation for crops, economic trees and other structures is further strengthened by *Section 113(4)* which provides that anyone who suffers damage, loss, or disturbance as a result of mining operations is entitled to adequate compensation and also if there's a dispute about the person's interest or the amount of compensation, they can take the matter to the Federal High Court for a final decision. *Section 113* ensures that people affected by mining, especially those who lose crops, trees, or buildings, are fairly compensated. It additionally provides a clear process for settling disputes, ending with the Federal High Court if needed. This section demonstrates the protective intent of the NMMA which is to ensure that host communities and land users are not left worse off when mining operations disrupt their livelihoods. It also complements constitutional principles and the

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<sup>48</sup> Section 113 (1), the Nigerian Minerals and Mining Act, 2007

<sup>49</sup> Section 113 (2), the Nigerian Minerals and Mining Act, 2007

<sup>50</sup> Section 113 (3), the Nigerian Minerals and Mining Act, 2007

Land Use Act by emphasizing fair and adequate compensation for all losses tied to natural resource exploitation.

**Section 125 of the NMMA** makes provision for compensation for damages and pollution. This section requires every licensee or lessee (that is, anyone or any company holding a mining license or lease) to compensate landowners or occupiers if their land or livelihood is harmed by mining operations. It covers two main situations; injurious affection of land, and pollution of water sources. **Section 125** provides that if mining activities damage or negatively affect someone's land or their interest in the land, for example by making the land less fertile, reducing its market value, or limiting how it can be used, then the mining company must pay compensation for that injury unless the harm has already been fixed ("*otherwise made good*"). Also, if mining operations pollute water used for domestic or other purposes (like drinking, cooking, farming, or fishing), the mining company must compensate those affected. This applies when the water source (like a stream, river, or well) is contaminated due to mining, and the damage has not been repaired or remedied by the company. Simply put, if mining causes water pollution that harms people or their environment, the company must pay for it. **Section 125** ensures that mining companies are financially responsible for the negative effects of their operations especially when they harm land or water sources that people depend on.

The NMMA also provides for the peculiar situation of an educational institution or government agency causing damage to host community land in the process of carrying out scientific geological studies or mapping. Government agencies, universities or other educational institutions, can with the approval of the Minister of solid minerals, carry out geological studies or mapping anywhere in Nigeria without needing a mining license, as long as the land isn't restricted by law. If the land already has a mining or exploration title, the Minister must notify the titleholder in writing before the study begins.<sup>51</sup> If the government agency or educational institution damages the land or property during these studies, they must pay compensation

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<sup>51</sup> Section 160 (1) & (2) of the Nigerian Minerals and Mining Act, 2007

to the landowner or occupier, or the holder of a mining title (if the area is already licensed).<sup>52</sup> If there's any disagreement about the compensation amount, it can be settled by arbitration. Also, if the damage was caused by a government worker or a student, the government or the institution must pay the compensation.<sup>53</sup> Therefore, even when the government or academic institutions conduct non-commercial studies, the NMMA still recognizes the rights of landowners and occupiers to be compensated for any disturbance or damage to their property.

The Mining Cadastre Office (MCO) has the power, acting upon the written approval of the Minister for solid minerals, to suspend a mineral title for a period not exceeding sixty days if the holder fails to make any payments required by or under the NMMA on the due date, or has breached any condition of the mineral title, contravened any provisions of the NMMA, or has failed to comply with any lawful order given in connection with its operations.<sup>54</sup> The Minister of solid minerals may also revoke any mineral title if the holder breaches any provision of the Act or regulations made or of any terms or conditions of his mineral title whether express or implied.<sup>55</sup>

The *Nigerian Minerals and Mining Act, 2007* serves as a model legal instrument for ensuring that host communities affected by extractive activities are consulted, protected, and fairly compensated. Although primarily targeted at the solid minerals sector, its provisions contribute to the overall discourse on environmental justice, community rights, and compensation in Nigeria's resource governance framework. It highlights the need for a unified and equitable approach to land use and compensation across all extractive industries, including petroleum. By balancing economic growth with environmental protection and community welfare, the NMMA remains a vital instrument for fostering responsible mineral development and national prosperity

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<sup>52</sup> Section 160 (4) of the Nigerian Minerals and Mining Act, 2007

<sup>53</sup> Section 160 (5) of the Nigerian Minerals and Mining Act, 2007

<sup>54</sup> See, section 149 of the Nigerian Minerals and Mining Act, 2007

<sup>55</sup> See, section 151 (1) (b) of the Nigerian Minerals and Mining Act, 2007

### 2.2.5. The Oil Pipelines Act, Cap O7, LFN 2004

The *Oil Pipelines Act of 1956 (hereinafter referred to as OPA)*<sup>56</sup> is a crucial piece of legislation regulating the construction, operation, and maintenance of oil pipelines in Nigeria. It provides the legal framework under which oil companies may acquire rights to enter land for the purpose of laying pipelines and related infrastructure, and it outlines the rights of landowners and host communities to compensation when such rights are exercised.

There are arguments as to whether or not the OPA is still in force in Nigeria. When the PIA was enacted in August 2021, the PIA repealed several laws governing petroleum activities in Nigeria. The OPA is not listed among the laws directly repealed by *Section 310 of the PIA 2021*. However, *section 311(9) of the PIA 2021* makes reference to certain legislations that “*shall be saved until the termination or expiration of all oil prospecting licences and oil mining leases.*” One of such legislations is the “*Oil Pipelines Act, Cap. 07, Laws of the Federation of Nigeria, 2004.*” The PIA provides that the Oil Pipeline Act and any other subsidiary legislation made under it shall remain in operation until it is repealed or revoked, in so far as it is consistent with the PIA, and shall be deemed for all purposes to be made under the PIA. Therefore, the Oil Pipelines Act has not been fully repealed by the PIA. It remains in force, subject to it being consistent with the PIA or until a law is passed officially repealing or replacing it. *Section 311(9)(c) of the PIA 2021* basically provides that the OPA and its regulations are still valid, but only to the extent that they don’t contradict the PIA. They will stay in force until officially repealed, and for now, they are treated as if they were made under the PIA. Thus, if there is any part of the OPA that contradicts or is inconsistent with the PIA, then the PIA’s provision overrides it. Also, for legal and administrative purposes, the old OPA and its regulations will be treated as if they were made under the PIA.

Under *Section 2 and 3 of the OPA*, the Minister of Petroleum Resources is empowered to grant oil pipeline licences to companies engaged in petroleum operations. These licences allow licensees to construct and

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<sup>56</sup> Chapter 338, Laws of the Federation of Nigeria 1990

operate pipelines over land that is not theirs, subject to the payment of compensation to landowners or occupiers affected by such operations. The Minister also has the power to issue permits to survey routes for oil pipelines.<sup>57</sup>

**Section 6 of the OPA** sets out the rules and obligations for anyone who holds a permit to survey. A permit to survey allows the holder and their agents, servants, officers, workmen, and other necessary equipments or vehicles, to enter the land specified in the permit or areas near it and survey or take measurements of the land with the aim of determining the best route for an oil pipeline. **Section 6(1) of the OPA** provides that before entering any building, enclosed area, garden, or cultivated land, the permit holder must first get prior consent from the owner or occupier, and give at least 14 days' written notice of their intention to enter. If the owner or occupier cannot be easily reached, the notice can be posted visibly on the land. **Section 6(2)** provides that there are certain special categories of land (listed later in Section 15 of the Act, such as cemeteries, sacred grounds, burial sites, etc.) that are extra sensitive. No one can enter those lands under a survey permit without first obtaining the express permission (assent) of the owners, occupiers, or persons in charge. This is to protect lands that are of special cultural, religious, or communal importance. **Section 6(3)** provides that when carrying out survey activities, the permit holder must avoid unnecessary damage to the land, crops, buildings, or trees; and pay compensation to the owners or occupiers for any damage that does occur. **Section 6(4)** provides that if there is any disagreement about the amount of compensation, whether compensation should be paid, or to whom it should be paid, then Part IV of the OPA (which deals with compensation procedures and dispute resolution) will apply.

**Section 9** gives landowners or anyone with an interest in land the right to object when an oil company applies for a pipeline licence that could negatively affect their land. **Section 9(1)** provides that if someone's land or property might be harmed or affected by a proposed oil pipeline licence, that person

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<sup>57</sup> See, section 3(a) of the Oil Pipelines Act.

can raise an objection. The objection can be made verbally or in writing. However, a person cannot object simply because of the amount of compensation being offered or expected.<sup>58</sup>

**Section 11(2)** defines what an oil pipeline is. An oil pipeline includes pipelines used to carry crude oil, natural gas, their derivatives or components, and any other substances (like steam or water) used in oil production, refining, or transport. All pipelines used in the oil and gas industry fall under this definition. The pipeline licence covers not only the pipeline itself but also its ancillary installations. A licence holder can use natural materials (like sand, clay, or gravel) found on the land to help with pipeline construction without paying for them, as long as they are not “minerals” under the *Minerals and Mining Act*.<sup>59</sup>

The company must however pay compensation for any damage or injury to land caused by its operations. Specifically, the company must pay compensation for any land or interest in land injuriously affected (damaged or devalued) by the pipeline; for negligence, if damage happens because the company or its workers failed to maintain or repair the pipeline or related structures; and for accidental damage caused by leakage or breakage, unless the person affected caused it or a third party did so maliciously. If there’s no agreement on how much compensation to pay, a court will determine the amount (under Part IV of the OPA).<sup>60</sup> **Section 11(6)** clarifies that the powers granted to licence holders are not unlimited, they must still obey the provisions of the OPA and all other laws or legal rules in force.

**Section 16 of the OPA** requires the pipeline licence holder to make and maintain access routes or crossings (like bridges, culverts, drains, or passages) for people affected by the pipeline construction. When a pipeline is laid across someone’s land or a path used by the public, the pipeline company must ensure that people can still use their land or path conveniently. These are called “accommodation works”, and they are meant to reduce inconvenience caused by the pipeline. However, there are two important exceptions. The first is, if the affected person has already been paid compensation, the company does not have to

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<sup>58</sup> Section 9(2), Oil Pipelines Act.

<sup>59</sup> Section 11(4), Oil Pipelines Act

<sup>60</sup> Section 11(5), Oil Pipelines Act

provide these access works again. The second exception is, if the landowner or anyone else later changes the land use (e.g., turns a farmland into a factory) or changes the route of a path, the company is not required to make new accommodation works for those later changes. This is to ensure fairness as the company must fix only the disruptions it caused, not future changes made by others.

**Section 16(2)** gives the licence holder the right to move or alter existing utilities like pipes, drains, water channels, electric poles, telephone, or telegraph lines or poles. However, the company must give reasonable notice to whoever controls those utilities (for instance, a power company or water board). The alteration must be done to the satisfaction of that utility owner, meaning it must not damage or inconvenience them unnecessarily. This provision is to allow successful pipeline construction while protecting the interests of public utilities.

**Section 16(3)** provides for the right to remove dangerous trees. If a tree near the pipeline poses a risk of falling and damaging the pipeline or related structures, the pipeline licence holder may cut down or deal with the tree, but only after notifying a local administrative officer (e.g., a local government official or district officer). Once the tree is removed, anyone with an interest in that tree (like the landowner) can apply for compensation. The administrative officer will then determine the appropriate compensation amount. This prevents pipeline accidents while ensuring fairness to landowners.

**Part IV of the OPA** makes provisions for the subject of compensation under the OPA. **Section 19 under Part IV of the OPA** explains how disputes over compensation should be handled. **Section 19** specifies which court has the power (jurisdiction) to decide compensation disputes. The section provides that compensation disagreements are first handled by the Magistrate Court, if the amount claimed is within its limit. However, if the Magistrate Court does not have jurisdiction to handle the monetary claim, the matter will be handled by the High Court. Appeals go up to the High Court (from a Magistrate's decision) and then to the Court of Appeal if needed. Nevertheless, the section includes a proviso that says that Magistrate

cannot decide any dispute that involves the title to land or title to any interest in land. Such claims must be made to the High Court.

**Section 20 of the OPA** is one of the most important provisions in **Part IV** because it sets out how compensation is calculated and awarded to landowners or persons affected by oil pipeline activities. **Section 20** explains how courts should determine compensation for people whose land, crops, buildings, or interests have been affected by a permit to survey (as provided for by **section 6**), or a pipeline licence (under **section 11**). **Section 20(1)** deals with damage caused while surveying the land (i.e., before the pipeline is built). If someone with a permit to survey causes damage while inspecting or testing the land (for example, by cutting trees, digging into the soil, damaging crops or buildings), the court can award compensation that it considers “just” for the damage done, and any disturbance (inconvenience or disruption) caused to the landowner.

**Section 20(2)** provides for compensation for damage during construction or operation of oil pipelines. This subsection applies after a pipeline licence has been granted (under **Section 11**). If someone’s land is affected by pipeline construction or operation, the court will assess compensation considering five main things. These include: (a) damage to buildings, crops, or profitable trees; (b) disturbance caused (e.g., restriction of access to farmland); (c) damage from neglect, that is, if the company fails to maintain or repair its pipeline or installations properly; (d) damage from breakage or leakage of the pipeline; (e) loss in value of the land or any interest in it (for example, if the land becomes less valuable because of the pipeline). The court must also consider any compensation already paid under **subsection (1)** to avoid double payment.

**Section 20(3)** gives a formula for determining how much value the land has lost. The court first assesses the value of the land before the pipeline licence was granted. Then, it assesses the residual value (that is, value after the licence and construction). The difference between the two values will equal the amount of loss in value. If the land was worth five million naira (₦5,000,000) before the pipeline survey and

construction and then three million naira (₦3,000,000) after the pipeline was installed, the loss will be two million naira (₦2,000,000).

**Section 20(4)** links the OPA with the *Land Use Act (LUA)*. It says that no compensation will be paid for unoccupied land (that is, land that has no active use or occupants, as defined under the LUA) unless the *Land Use Act* specifically allows it. Thus, compensation under the OPA focuses on occupied or used land. Also, when deciding compensation, the court must apply the Land Use Act's principles, as if the land were being acquired by the government for a public purpose. This however applies only if the LUA does not conflict with the provisions of the OPA.<sup>61</sup>

**Section 20(6)** contains provisions relating to the cost of proceedings in a court of competent jurisdiction. If the court awards more compensation than what the company offered, the company (licence holder) pays the court costs. If the award is less than or equal to what the company offered, the landowner may be ordered to pay the costs of proceedings or both parties may bear their own costs. This discourages frivolous or exaggerated claims and encourages fair negotiation before a court of competent jurisdiction.

**Section 20(7)** provides for the mode and timing for payment of compensation. Compensation can be paid either in lump sum or installments, or a combination of both lump sum and installments. Additionally, the court can later award extra compensation if new or unforeseen damage occurs later due to pipeline operation. Take for example if a leakage happens years later that wasn't anticipated when the first award was made.

**Section 20** is meant to ensure that when oil companies build or operate pipelines, they must pay fair compensation for any damage or disturbance caused, whether during survey, construction, or operation, and the courts will calculate it justly, guided by the *Land Use Act*.

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<sup>61</sup> Section 20(5), Oil Pipelines Act.

**Section 21 of the OPA** ensures that when a local community suffers harm (for example, damage to communal land, water sources, or farmlands shared by everyone), the compensation is managed and distributed fairly for the benefit of all members of that community. The section applies when the injurious effect (damage, disturbance, or loss) caused by a pipeline affects communal interests rather than private individuals. In such a case, the court decides how the compensation should be paid or managed. The court may order that the compensation be paid to a chief, headman, or another community member to hold it on behalf of the community, or it may instead require the compensation to be shared according to a distribution plan (a “*scheme*”) that it has reviewed and approved. The court may also direct that the compensation be paid into a fund managed by a trusted person or body approved by the court. This fund is held “*on trust*”, meaning it must be used for the general, social, or educational benefit of the community (e.g., building schools, health centres, or community halls). **Section 21** prevents misuse of funds and ensures that compensation truly benefits the collective interest of the affected people.

**Section 22** provides for who is entitled to receive compensation when there’s a dispute or uncertainty over ownership (title) of the land affected by oil pipeline operations. It provides a temporary rule for identifying the rightful recipients of compensation, so that payment is not delayed indefinitely because of ownership disputes. The section provides that until proven otherwise, the people who are in possession of the land (i.e., currently using or occupying it), or are receiving rent from the land (i.e., acting as the landlord at the time the notice under **Section 6 or 8** was served), will be presumed to be the lawful owners and therefore entitled to receive compensation. This presumption however is not absolute. If another person later proves in court that they have a better legal right to the land, that person can challenge the payment and possibly recover the compensation. This section is meant to avoid delays in paying compensation by identifying a temporary legal recipient (the person in possession or control) while still protecting the rights of the true owner to reclaim the money later if necessary.

**Section 23 of the OPA** deals with how compensation payments are finalized and who bears responsibility for how those payments are used. The section says that once the pipeline company (or whoever is paying the compensation) pays the compensation to the rightful recipient, or pays it into court (if that's what the court ordered), the payer's legal responsibility ends. In other words, the company or government agency is not required to monitor or ensure that the compensation money is properly used by the recipient. However, there the section contains a proviso which creates exception for certain types of landowners or occupants, especially those who do not own the land absolutely or who hold the land in trust for others. The proviso says that if someone holds the land through a limited interest (for example, a tenant, lessee, or customary family head), or if someone holds the land in a fiduciary or representative capacity (like a trustee, chief, or family head on behalf of others), then the court can decide who exactly should receive the compensation, in what proportion it should be divided, whether it should be paid in instalments, and what notices or procedures should be followed before payment.

**Section 27 of the OPA** deals with what happens when a pipeline license holder (usually an oil company) breaches (violates) any of the terms or conditions of their licence. This section provides that if a pipeline licence holder (like an oil company) breaks or fails to comply with any terms or conditions of their licence (for example not maintaining the pipeline properly, operating outside the approved route, or causing environmental damage contrary to the licence conditions), the Minister of Petroleum Resources has the power to act. The Minister must issue a written notice to the licence holder telling them exactly what breach occurred, and that they must remedy it within a given time frame. The time allowed to fix the breach must be at least three months (a fair opportunity for the company to comply before a strict penalty like revocation). If the company fails to fix the breach within the time given then, the Minister can revoke the pipeline licence entirely. However, the revocation is "without prejudice to anything lawfully done thereunder", meaning that whatever the company legally did under the licence before revocation remains valid. The revocation is also "without prejudice to any claims for compensation against the holder". This

means that even though the licence is revoked, the company can still be held liable for compensation claims arising from its earlier actions under the licence. Take for example, if an oil company who is licensed to build a pipeline starts diverting oil through a different route not approved in the licence, causing environmental pollution. The Minister is to write to the company, giving it at least three months to correct this violation. If the company fails to comply, the Minister can revoke the licence. Even after revocation, the company can still be sued for damages caused during its operations.

The *Oil Pipelines Act* is a key law in Nigeria's legal framework for oil compensation, particularly with respect to land disturbance and physical damage caused by pipeline installations. However, the Act must be applied in tandem with the *Petroleum Industry Act, 2021* which is the primary legislation regulating petroleum activities in Nigeria.

#### **2.2.6. The Environmental Impact Assessment Act (EIA Act), Cap E12, LFN 2004.**

The *Environmental Impact Assessment Act, 1992 (herein after referred to as EIA Act or the Act)* is a key environmental statute in Nigeria, enacted to ensure that potential environmental consequences of major projects, particularly those involving oil and gas exploration, are identified and addressed before such projects are approved. It is a proactive law that seeks to prevent environmental degradation by making environmental considerations a central part of project planning and execution. The Act plays an indirect but important role in the legal framework for compensation in oil-producing communities, as it mandates the assessment of adverse effects that may warrant compensation or remediation.

Under *Section 2(1) of the Act*, no public or private project shall be undertaken without prior consideration of its environmental effects. It states, “*the public or private sector of the economy shall not undertake or embark on or authorise projects or activities without prior consideration, at an early stage, of their environmental effects.*” Petroleum exploration and production projects, including pipeline construction and drilling, are explicitly listed under *Category I Projects* in the *EIA Procedural Guidelines*, and therefore require mandatory environmental impact assessments before commencement. These

assessments are to be carried out by the project proponent (government or private enterprise), subject to review and approval by the *Federal Ministry of Environment*.<sup>62</sup>

One of the core principles of the EIA Act is community participation. *Section 7 of the EIA Act* requires public consultations to be held with potentially affected communities during the scoping and review stages of the EIA process. These consultations are designed to give local populations an opportunity to raise concerns about potential environmental risks, and to identify areas where mitigation or compensation may be necessary. This participatory process ensures that communities are not excluded from decision-making on projects that may affect their environment, health, or livelihoods. *Section 7* stipulates that, “before the Agency gives a decision on an activity to which an environmental assessment has been produced, the Agency shall give opportunity to government agencies, members of the public, experts in any relevant discipline and interested groups to make comment on the environmental impact assessment of the activity.”

The EIA Act does not expressly use the term "compensation" in the way other laws such as the *Oil Pipelines Act* or *Land Use Act* do. However, by requiring environmental and social impact evaluations before projects begin, it provides a framework through which the anticipated damages to land, water sources, crops, and health can be identified early and addressed, including through remedial or compensatory measures. For example, where an EIA report identifies that an oil project may lead to water pollution or loss of agricultural land, the regulatory authority may require the developer to undertake mitigation strategies, including compensation to affected persons, as a condition for project approval. *Section 61 of the EIA Act* defined “mitigation” to mean, “in respect of a project, the elimination, reduction or control of the adverse environmental effects of the project, and includes restitution for any damage to

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<sup>62</sup> Federal Environmental Protection Agency (FEPA), *Environmental Impact Assessment Procedural Guideline* (1995) <<http://admin.theguides.org/Media/Documents/EIA-Procedural-Guideline.pdf>> accessed 24 August 2025.

*the environment caused by such effects through replacement, restoration, **compensation** or any other means.”*

**Section 60** of the EIA Guidelines empowers regulatory authorities to halt or suspend projects that violate environmental conditions, including failure to implement promised compensatory or remedial actions. This provides a layer of accountability and legal recourse for communities that may suffer harm due to non-compliance with EIA terms.

The courts have occasionally intervened to uphold the importance of the EIA process. In *Gbemre v. Shell Petroleum Development Company*<sup>63</sup>, the Federal High Court held that gas flaring in the Niger Delta without environmental assessment and in breach of environmental rights was unconstitutional and a violation of the applicant's right to life and dignity. Though not a direct compensation case, this ruling underscores the legal relevance of environmental protection in petroleum operations.

In summary, the *EIA Act* serves as a preventive and procedural instrument in Nigeria’s legal framework for protecting the rights of host communities in oil-producing areas. While it does not create a direct right to compensation, it lays the foundation for environmental accountability, early community engagement, and the identification of impacts that may warrant compensation or mitigation. Its proper enforcement is essential for sustainable oil development and the protection of vulnerable communities.

### **2.2.7. The National Oil Spill Detection and Response Agency (NOSDRA) Act, 2006**

One of the leading factors necessitating payment of compensation to oil producing regions is environmental degradation caused by oil spillage. The oil producing regions of Nigeria have recorded numerous instances of environmental degradation caused by oil spillage. Several major oil spills have occurred in Nigeria’s coastal areas over the years. Notable examples include the Escravos spill of 1978, which released about 300,000 barrels of oil, and the Forcados Terminal tank failure by Shell Petroleum

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<sup>63</sup> (2005) AHRLR 151

Development Company (SPDC) in the same year, which caused another 580,000-barrel spill. In 1980, the Texaco Funiwa-5 blowout resulted in the discharge of approximately 400,000 barrels of crude oil into the sea.<sup>64</sup> Most of these spills have been linked to poor maintenance of aging pipelines and storage facilities, many of which have been in operation for decades without replacement. In addition, sabotage and vandalism have also been identified as major causes of oil spills in the country.<sup>65</sup>

*The National Oil Spill Detection and Response Agency (Establishment) Act, 2006* (herein after referred to as *the NOSDRA Act*) was enacted in response to Nigeria's long history of frequent and devastating oil spills, especially in the Niger Delta region. For decades, crude oil exploration and production activities by multinational oil companies led to widespread environmental pollution, loss of livelihoods, and damage to ecosystems, with little or no effective system for emergency response or remediation.<sup>66</sup>

Before the enactment of the *NOSDRA Act*, there was no central agency specifically responsible for coordinating oil spill detection, containment, and cleanup. Existing laws, such as the *Petroleum Act* and the *Oil Pipelines Act*, focused mainly on regulation of oil operations and compensation, but not on environmental protection or response management. The *NOSDRA Act* was therefore established to fill this gap. Its main purpose is to coordinate and implement a national oil spill contingency plan, ensure prompt detection and response to oil spill incidents, and promote environmental restoration in affected areas.

The *NOSDRA Act, 2006* establishes the *National Oil Spill Detection and Response Agency* as the primary regulatory body responsible for oil spill management and environmental protection in the Nigerian petroleum sector. The agency was created to hold oil companies accountable for spills and ensure

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<sup>64</sup> Nnedimma Ezenwa-Ohaeto, B.E. Ewulum & Ejike Okaphor, 'An Appraisal of the Impact of the National Oil Spill Detection and Response Agency on Environmental Pollution in Nigeria' *African Journal of Constitutional and Administrative Law* <<https://journals.ezenwaohaetorc.org/index.php/AJCAL/article/download/1390/1435>> accessed 15 July 2025.

<sup>65</sup> Ibid

<sup>66</sup> 'NOSDRA and the challenges of management of oil spillage in the Niger-Delta' (2012–2013) 3(2) *Commercial and Industrial Law Journal* 105–117 <[https://www.researchgate.net/publication/356789124\\_NOSDRA\\_and\\_the\\_challenges\\_of\\_management\\_of\\_oil\\_spillage\\_in\\_the\\_Niger-Delt](https://www.researchgate.net/publication/356789124_NOSDRA_and_the_challenges_of_management_of_oil_spillage_in_the_Niger-Delt)> accessed 24 August 2025.

compliance with environmental standards. The Act stipulates that its main responsibility is for “preparedness, detection and response to all oil spillages in Nigeria.” *Section 5 of the NOSDRA Act* provides for the objectives of the Agency which include:

*(e) ensure funding and appropriate and sufficient pre-positioned pollution combating equipment and materials, as well as functional communication network system required for effective response to major oil pollution;*

*(g) co-operate and provide advisory services, technical support and equipment for purposes of responding to major oil pollution incident in the West African sub-region upon request by any neighbouring country, particularly where a part of the Nigerian territory may be threatened;*

Under *Section 5* of the Act, NOSDRA is empowered to coordinate and implement the *National Oil Spill Contingency Plan (NOSCP)*, which includes measures for detecting, reporting, monitoring, and responding to oil spills. The *National Oil Spill Contingency Plan (NOSCP)* is a strategic plan established under the *NOSDRA Act* to provide a coordinated and efficient national response to oil spills in Nigeria. It outlines the procedures, responsibilities, and resources required to manage oil spill emergencies at local, regional, and national levels. The NOSCP was designed in line with Nigeria’s obligations under the *International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC), 1990*, which requires member states to have national systems for dealing with oil pollution incidents.

*Section 6(1) of the NOSDRA Act* provides for the functions of NOSDRA. *Section 6(2)* mandates oil spillers to submit a report of the oil spill to NOSDRA in writing, by fax or electronic mail not later than 24 hours after the occurrence of an oil spill in default of which the failure to report will attract a penalty in the sum of two million naira (₦2,000,000) for each day of failure to report the occurrence. Also, oil spillers are to clean up the impacted site to all practical extent, and submit an action plan for remediation within two weeks of the occurrence of the spill in accordance with the polluter pays principle. Failure to do this will constitute an offence and on conviction the oil spiller will be liable to a fine not exceeding

five million naira (₦5,000,000) or to imprisonment for a term not exceeding two years or to both fine and imprisonment.<sup>67</sup> *Section 19(1)(e) of the NOSDRA Act* also lists other functions of the Agency to include advising “*the Federal and State Governments on possible effects on the health of the people*” and ensuring that “*appropriate remedial action is taken for the restoration and compensation of the environment*”

Although the Act does not directly create a statutory right to compensation, it plays a crucial facilitating role in ensuring that oil-producing communities receive remediation and redress for environmental harm caused by petroleum operations. The environmental damage assessed and documented by NOSDRA often forms the evidentiary basis for affected individuals or communities to pursue compensation through civil litigation or administrative negotiations. In essence, NOSDRA's technical reports and site assessments serve as crucial tools in establishing the extent of environmental harm and the liability of oil companies.

*Section 31 of the Act* provides that “*the Agency may demand by requisition from any person or organization, any available equipment, facilities or personnel which may assist in a speedy and effective cleaning and rescue operation during an oil spill disaster.*” The Agency shall also ensure that “*the Polluter provides reasonable compensation for loss or damage arising from the use of any equipment, facility or personnel required under this section of this Act.*”<sup>68</sup> Compensation for oil spills however is not explicitly mandated by the Act.

Nevertheless, NOSDRA has developed regulatory instruments such as the *Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN)*, which outline industry standards for oil spill response, site assessment, and remediation. These standards further guide how environmental damage is measured and what clean-up efforts are considered adequate. Where oil companies fall short of these standards, communities may be entitled to claim compensation for residual damage, lost livelihoods (e.g., fishing and farming), and long-term ecological degradation.

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<sup>67</sup> *Section 6(3), NOSDRA Act, 2006.*

<sup>68</sup> *Section 31(3), NOSDRA Act, 2006.*

Nigerian courts have acknowledged the importance of environmental remediation and the role of regulatory oversight in oil-related compensation cases. In *Shell Petroleum Development Co. v. Farah*<sup>69</sup>, the Court of Appeal upheld the principle that oil companies are strictly liable for damages resulting from their operations, including oil spills. Similarly, in *Shell v. Isaiah & 2 Ors*<sup>70</sup>, compensation was awarded for damage to land and economic trees, with NOSDRA's assessment contributing to the court's findings.

The *NOSDRA Act, 2006* while not creating an independent right to compensation, plays a pivotal institutional role in facilitating environmental accountability, remediation, and evidence-gathering for compensation claims. Its effective enforcement is essential to ensuring that oil-producing communities are not only protected from environmental harm but are also able to obtain fair redress when such harm occurs.

#### **2.2.8. The National Environmental Standards and Regulations Enforcement Agency (NESREA) Act, 2007**

The *National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007 (herein after referred to as the NESREA Act) as amended in 2018* establishes NESREA as the lead environmental regulatory and enforcement agency in Nigeria. While the Act applies broadly to environmental protection across various sectors, its relevance to the petroleum industry especially in the context of environmental degradation and compensation for oil-producing communities is considerable.

Under the NESREA Act, the agency is empowered to enforce all environmental laws, guidelines, policies, standards, and regulations in Nigeria. Specifically, *Section 2 and 7 of the Act*<sup>71</sup> mandates NESREA to ensure compliance with environmental standards for the protection of human health and natural resources.

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<sup>69</sup> (1995) 3 NWLR (Pt. 382) 148

<sup>70</sup> (2001) 11 NWLR (Pt. 723) 168

<sup>71</sup> Section 2 provides for the NESREA's objectives, while Section 7 provides for the functions of NESREA.

This includes overseeing activities that may cause environmental pollution, such as those involved in oil exploration, production, and pipeline transport.

One of NESREA's core responsibilities is the development and enforcement of sector-specific environmental regulations. Pursuant to its powers under *Section 8 of the NESREA Act*, NESREA has issued a range of environmental regulations tailored to different activities, including effluent discharge, hazardous waste management, and noise and air quality standards. These regulations are binding on oil companies, and violations can trigger administrative sanctions, fines, or prosecution.

Although NESREA does not directly provide for monetary compensation to affected communities, its enforcement actions and compliance monitoring play a critical role in preventing and remedying environmental harm that may give rise to compensation claims. By issuing enforcement notices or initiating legal proceedings against polluters, NESREA helps establish liability and ensures that environmental degradation is addressed. In instances where environmental harm affects the health, livelihoods, or property of host communities, NESREA's findings and reports can form the foundation for legal claims for compensation under tort law or other statutory provisions.

*Sections 26 and 27 of the NESREA Act* empower the Agency to issue regulations and standards for environmental protection and impose penalties for violations. Under *Section 26*, individuals who breach such regulations commit an offence and are liable on conviction to fines of up to ₦200,000, imprisonment for up to one year, or both, with additional daily fines for continuing offences; corporate offenders face fines of up to ₦1,000,000 and further daily penalties. *Section 27* specifically prohibits the discharge of hazardous substances in harmful quantities into the air, land, or water without lawful authorization. Violators are liable to fines of up to ₦1,000,000 or imprisonment for up to five years, while corporate bodies are subject to similar fines and daily penalties, and their officers may also be held personally liable unless they prove lack of knowledge or due diligence. The section further preserves the applicability of the *Harmful Waste (Special Criminal Provisions, etc.) Act* for hazardous substances classified as harmful

waste. These provisions serve as deterrent and also provides a basis for holding oil companies accountable for environmental infractions. The agency also has the authority to seal premises, suspend activities, and mandate corrective actions where violations are detected.<sup>72</sup>

An important function of NESREA is inter-agency collaboration. It works closely with other bodies such as the Federal Ministry of Environment, NOSDRA, and state-level environmental protection agencies to create a coordinated response to environmental challenges in oil-producing regions. A practical example of NESREA's influence is seen in its environmental compliance monitoring activities in the Niger Delta. By monitoring emissions, conducting inspections, and enforcing standards, NESREA ensures that oil operations are conducted in ways that minimize harm to surrounding communities. Where companies fail to comply, enforcement actions may strengthen the evidentiary base for communities seeking compensation through other legal channels.

The NESREA Act enhances Nigeria's environmental governance framework by setting enforceable standards, monitoring compliance, and ensuring accountability for environmental damage. Although it does not create a statutory right to compensation, NESREA's enforcement activities are vital to the protection of host communities, and its regulatory efforts help ensure that oil exploration and production do not occur at the expense of environmental and public health. Its collaboration with other agencies and its regulatory authority makes it a key player in the institutional architecture supporting environmental justice and compensation in Nigeria's oil-producing regions.

#### **2.2.9. The Harmful Waste (Special Criminal Provisions, etc.) Act, 1988**

The *Harmful Waste (Special Criminal Provisions, etc.) Act, 1988* (herein after referred to as *HWSCPA*) was created during the military era led by the government of General Ibrahim Babangida. It was originally promulgated in 1988 as *Decree No. 42 of 1988* in response to international and domestic concerns about

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<sup>72</sup> See, Section 30, NESREA Act 2007.

the illegal dumping of hazardous and toxic waste in Nigeria, notably after the infamous Koko toxic waste incident of 1987.<sup>73</sup> When Nigeria returned to civilian rule, the decree was later codified as an Act.<sup>74</sup> The Act is primarily a criminal statute, aimed at deterring and penalizing individuals or corporate bodies involved in the importation, transportation, storage, or dumping of harmful waste within Nigerian territory. Though it does not directly regulate oil exploration activities, it plays a complementary role in environmental protection and community health, especially in the Niger Delta where oil waste is a significant concern.

Under **Section 1** of the Act, the importation, transportation, deposit, and storage of harmful waste in any form is absolutely prohibited, whether the waste is from within Nigeria or imported from abroad. Any person found guilty of violating this provision is liable, on conviction, to life imprisonment.<sup>75</sup> Harmful waste is broadly defined in the Act to include “*any injurious, poisonous, toxic or noxious substance*” capable of causing death, injury, or environmental degradation.<sup>76</sup> Given that oil exploration and production often generate by-products such as drilling muds, sludge, and chemical-laced wastewater, the provisions of the **HWSCPA** can be interpreted to cover petroleum waste where it constitutes hazardous material.

The HWSCPA recognizes the right of affected communities to legal recourse in cases where the illegal disposal of harmful waste results in personal injury, death, or environmental damage. While the Act itself is primarily punitive rather than compensatory, it creates statutory grounds for civil suits seeking damages from offenders. Victims can rely on the findings of criminal prosecutions under this law to strengthen their claims for monetary compensation, environmental remediation, or injunctive relief.

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<sup>73</sup> Livinus I. Nwokike, “A Legal Framework Evaluation of the Control of Oil and Gas Pollution in Nigeria, Malta and United States of America” Nnamdi Azikiwe University Journal of Commercial and Property Law (NAU.JCPL 9 (3) 202. ISSN: 2736-0342.

<sup>74</sup> Cap H1, LFN 2004

<sup>75</sup> See, Section 6 of the Act.

<sup>76</sup> See, Section 15.

The environmental importance of the *HWSCPA* is particularly relevant to host communities in oil-producing regions like the Niger Delta. Oil companies or contractors who improperly dispose of petroleum-related waste whether by dumping in rivers, farmlands, or residential areas, could be subject to investigation and prosecution under this law if the waste is proven harmful. Furthermore, the law's harsh penalties act as a deterrent against environmental misconduct and raise the stakes for compliance with safe waste management standards.

The *Harmful Waste (Special Criminal Provisions, etc.) Act, 1988* reinforces the Nigerian state's commitment to protecting its environment and citizens from hazardous waste, including those arising from oil-related activities. While not specific to the petroleum sector, its applicability in oil-producing regions is significant. It provides a legal foundation for holding polluters criminally liable, and it supports civil claims for compensation, clean-up, and environmental restoration. When used in conjunction with other sector-specific laws like the *Petroleum Industry Act*, *NOSDRA Act*, and *EIA Act*, *the HWSCPA* helps form a more robust legal framework for protecting host communities from the adverse effects of oil exploration and production.

#### **2.2.10. Oil in Navigable Waters Act, 1968 (ONWA)**

The *Oil in Navigable Waters Act, 1968 (hereinafter referred to as ONWA)* is one of Nigeria's earliest environmental protection statutes and was enacted to give effect to the *International Convention for the Prevention of Pollution of the Sea by Oil, 1954*, and subsequent amendments. The Act regulates the discharge of oil into Nigeria's territorial waters, particularly those deemed navigable, and imposes both criminal and civil liabilities for unlawful oil pollution. It plays a critical role in the legal framework governing environmental safety, especially in the context of oil exploration, production, storage, and transport.

The *ONWA* applies to ships, tankers, and vessels involved in the carriage or handling of oil products, including those operated by oil companies in the course of petroleum production. It prohibits the discharge

of oil or oily mixtures into navigable waters, which are defined to include any river, creek, canal, or sea within Nigeria used for navigation.<sup>77</sup>

Under **Section 1** of the Act, it is an offence for any Nigerian ship, or any ship within Nigerian waters, to discharge oil or an oily mixture into the sea. This provision is crucial in Nigeria's oil-producing regions, such as the Niger Delta (a coastal community located close to the sea), where oil spills from loading operations, tanker discharges, and transport barges have caused significant environmental damage.

The Act also places responsibilities on shipowners and operators to ensure that their vessels are equipped with appropriate pollution control equipment and that they maintain oil record books in which all discharges, transfers, and disposals are accurately documented.<sup>78</sup> These record-keeping requirements are important for monitoring and enforcement by regulatory agencies, and breaches can result in fines or imprisonment under the Act.

In terms of compensation and community protection, while the **ONWA** is primarily regulatory and punitive, it indirectly supports the rights of affected persons, such as fishermen, coastal communities, and environmental groups, to pursue claims against offending parties. The Act creates a statutory basis for assigning liability to oil polluters, which can be further pursued under tort law (such as in actions for nuisance, negligence, or trespass) to claim damages or restoration.

The ONWA imposes fines as the primary penalty for offences under its key provisions. **Section 6** stipulates that a person convicted of an offence under sections 1, 3, or 5 may be fined by a High Court or inferior court, with lower courts limited to a maximum fine of ₦2,000. To ensure enforcement, **Section 13** empowers courts to order the seizure and sale of a vessel and its equipment where fines remain unpaid,

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<sup>77</sup> See, *National Inland Waterways Authority & 3 ORS v Lagos State Waterways Authority & 5 ORS (2024) 14 NWLR (Pt.1959) 435*

<sup>78</sup> Section 5 and 7.

and authorises courts to direct that all or part of the fine be used to offset the costs of pollution cleanup or damage remediation.

Prosecution under the Act is tightly controlled. *Section 12* provides that no proceedings may be initiated without the consent of the Attorney-General of the Federation, except in respect of harbour-related offences under *sections 9 and 10*, where only the harbour authority may prosecute. These two sections deal with oil transfer operations within harbours and the mandatory reporting of spills, justifying the harbour authority's exclusive oversight due to its operational responsibility for port safety and environmental protection.

The *Oil in Navigable Waters Act, 1968* is a foundational environmental law that regulates oil discharges into Nigeria's coastal and inland waters. While it does not contain direct provisions for compensation, it provides an essential legal tool for holding polluters accountable, preserving marine and freshwater environments, and supporting community claims for environmental harm resulting from oil-related maritime activities. When used alongside newer environmental and petroleum statutes, the *ONWA* strengthens Nigeria's legal framework for environmental protection and justice in oil-producing regions.

#### **2.2.11. Gas Flaring and Venting (Prevention of Waste and Pollution) Regulations, 2022.**

The *Gas Flaring and Venting (Prevention of Waste and Pollution) Regulations, 2022* was issued by the *Nigerian Upstream Petroleum Regulatory Commission (NUPRC)* pursuant to the *Petroleum Industry Act, 2021 (PIA)*. This Regulation is one of the most significant legal instruments aimed at curbing gas flaring and venting in upstream petroleum operations, with a focus on protecting the environment, promoting energy efficiency, and safeguarding the health and livelihoods of host communities. The regulation was further expanded later in 2022 to include methane emissions with the release of the *Gas Flaring, Venting & Methane Emissions (Prevention of Waste and Pollution) Regulations, 2022*. This new version explicitly incorporates methane emissions, thereby broadening its environmental scope. It also introduces additional provisions such as the Safety Flaring Threshold Permit, the Natural Gas Flare

Elimination and Monetisation Plan, and Fugitive Methane Emissions Management. It reflects Nigeria's commitment to global climate initiatives and its effort to align domestic petroleum operations with international standards on methane reduction and sustainable resource management. Still, the new version is officially cited as the *Gas Flaring and Venting (Prevention of Waste and Pollution) Regulations 2022*. Both versions aim to curb the waste and environmental impact of gas flaring and venting in Nigeria's petroleum sector.

Gas flaring and gas venting are practices used in the oil and gas industry to manage natural gas that cannot be captured or processed during production. Gas flaring means burning off natural gas that is released during oil extraction. Gas venting, on the other hand, means releasing natural gas directly into the atmosphere without burning it. Both practices are often used when there are no facilities to capture, store, or transport the gas, but they contribute significantly to air pollution, global warming, and environmental degradation, especially in oil-producing regions

Gas flaring has been a long-standing environmental problem in Nigeria, particularly in the oil-rich Niger Delta region. Despite several decades of government pledges to end gas flaring, the practice has persisted, contributing to air pollution, acid rain, global warming, and widespread health and environmental degradation in affected communities. The 2022 Regulations therefore mark a renewed and more enforceable effort to tackle this challenge within the context of the comprehensive reforms introduced by the PIA.

The objectives of the Regulations are listed to include: reduction of the environmental and social impact caused by the flaring and venting of natural gas and fugitive methane emissions; protection of the environment; prevention of waste of natural resources; enhance energy transition in Nigeria; and; creation of social and economic benefits from gas flaring and venting capture.<sup>79</sup>

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<sup>79</sup> Section 1.

The Gas Flaring Regulations under *Section 2* gives the Federal Government (through the Nigerian Upstream Petroleum Regulatory Commission) the legal right to take and use any gas that would otherwise be flared or vented, without paying royalties to oil companies. This ensures that instead of wasting gas through flaring, the government can capture and sell or use it for public benefit, potentially funding environmental restoration or community development projects in oil-producing areas. The Commission can also grant permits to qualified companies (after a transparent bidding process) to access and use the gas that would otherwise be flared. Oil producers can apply to use flare gas for their own operations, provided they follow the rules, and no royalties are payable for flare gas.<sup>80</sup> By turning waste gas into an economic resource, this system encourages investment in local gas capture and processing projects. It creates jobs, infrastructure, and energy access in oil-producing communities.

*Section 4* requires all oil producers to submit accurate data about how much gas they flare, vent, or release as methane emissions. This allows the Commission to monitor and regulate emissions effectively. Reliable data helps identify pollution hotspots and enforce accountability. This supports environmental protection and community health in regions affected by oil production. Producers that fail to provide accurate gas data face strict fines (\$10,000 for the first day and \$500 per day until they comply).<sup>81</sup> These penalties discourage oil companies from concealing the true extent of flaring or pollution. They are meant to ensure transparency and justice which in turn assists communities in holding companies accountable for environmental harm. The 2022 Regulations apply to all licensees and lessees engaged in upstream petroleum activities under the PIA, including operators of marginal fields and joint venture assets.

Another central provision of the Regulations is the prohibition of routine gas flaring or venting, except in circumstances where it is technically unavoidable or authorised under an approved flare or vent

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<sup>80</sup> Section 3

<sup>81</sup> Section 5

management plan.<sup>82</sup> All flaring or venting must now be pre-approved by the NUPRC and must be for a specified volume and duration, failing which the operator may be subject to penalties.<sup>83</sup>

Operators are also mandated to submit Flare Elimination and Monetisation Plans, detailing how they intend to capture and commercialise associated gas instead of flaring it.<sup>84</sup> This provision supports government efforts to grow the domestic gas market, attract investment in gas infrastructure, and reduce Nigeria's carbon footprint.

Importantly, the Regulations impose stiff penalties for non-compliance.<sup>85</sup> Under the PIA, gas flaring attracts a monetary penalty per standard cubic foot of gas flared, and the 2022 Regulations operationalize this by setting out the formula for calculating and collecting these penalties. These penalties are not a license to flare; they are punitive in nature and are designed to discourage non-compliance. The funds generated from such penalties are to be paid into the *Midstream and Downstream Gas Infrastructure Fund* and the *Host Communities Development Fund*, thus ensuring that affected communities receive some benefit from enforcement actions against polluters.

The Regulations also require operators to install metering equipment to measure flared and vented gas accurately and submit monthly reports to the NUPRC. *Sections 18–25* place a strong obligation on oil producers and permit holders to keep daily logs of all gas flared, vented, and emitted;<sup>86</sup> record total gas produced, used, or wasted and submit monthly and annual reports;<sup>87</sup> use Commission-approved metering equipment to ensure accuracy;<sup>88</sup> submit accurate reports or face fines, suspension, or revocation of

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<sup>82</sup> Section 13

<sup>83</sup> Section 16

<sup>84</sup> Section 14

<sup>85</sup> Section 13

<sup>86</sup> Section 18

<sup>87</sup> Sections 19-21

<sup>88</sup> Section 23

licenses.<sup>89</sup> These transparency and reporting obligations enhance regulatory oversight and provide data for environmental impact assessments and compensation claims.

For host communities in the Niger Delta and other oil-producing regions, the 2022 Regulations represent a major milestone in the struggle for environmental justice. Gas flaring has long been associated with respiratory diseases, contaminated crops and water, and economic disruption, particularly for farmers and fishermen. By creating enforceable obligations to reduce and eventually eliminate flaring, the Regulations provide a legal basis for holding operators accountable and seeking redress for violations. Moreover, the link between the flare penalties and the Host Communities Development Trust under the PIA ensures that some of the resources generated from enforcement actions are channeled back into the communities most affected by gas flaring and venting.

#### **2.2.12. Midstream Gas Flare Regulations, 2023**

The *Midstream Gas Flare Regulations, 2023*, issued by the *Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA)*, are part of the implementation framework under the *Petroleum Industry Act (PIA) 2021*, targeting the regulation of gas flaring and venting within midstream petroleum operations in Nigeria. While earlier regulations such as the *Gas Flaring and Venting (Prevention of Waste and Pollution) Regulations, 2022* focused primarily on upstream activities, this *2023 Regulations* extends government oversight to the midstream sector, thus ensuring a more holistic and integrated approach to gas flaring reduction.

This regulatory development is significant because midstream activities such as gas processing, storage, transportation, and distribution can also be sources of gas flaring and venting, particularly during system malfunctions, routine maintenance, or emergency events. The *2023 Regulations* aim to minimise waste, reduce greenhouse gas emissions, and promote environmental safety and sustainability in these operations.

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<sup>89</sup> Sections 24-25

*Section 4 and 5 of the Regulations* empower the NMDPRA to take flare gas free of charge from midstream operators or grant permits to repurpose such gas for commercial use. Every operator must keep daily flare logs and submit quarterly and annual reports. This creates a paper trail for the government to track exactly how much gas is being flared or repurposed. It also helps the NMDPRA (and by extension, the Federal Government) to calculate flare penalties accurately and to identify persistent offenders. Each operator must install approved and calibrated meters. These meters record the exact volume of gas flared, reducing the chance of underreporting. Since meters are inspected by the NMDPRA, it allows the government to independently verify the data.<sup>90</sup>

*Section 13* stipulates the penalties for flaring or venting of flare gas. This section creates a tiered penalty system where the more gas a company flares or vents above what the Authority (NMDPRA) allows, the higher the fine per unit of gas. It provides that companies flaring slightly above the limit (up to 1 million standard cubic feet) will pay a fine of \$0.50 per 1,000 standard cubic feet, while those flaring between 1 and 10 million standard cubic feet will pay \$1.00 per 1,000 standard cubic feet, and those exceeding 10 million standard cubic feet will pay \$1.50 per 1,000 standard cubic feet. All the money collected from these fines does not go directly to the federal government's general revenue. Instead, it goes into the *Midstream and Downstream Gas Infrastructure Fund*, which is meant to finance gas infrastructure projects, and ensure that these investments benefit the host communities where the flaring occurred.<sup>91</sup>

Thus, while the Midstream Gas Flare Regulations do not provide for direct compensation to oil-producing communities, they mandate that all flare penalties be channeled into the *Midstream and Downstream Gas Infrastructure Fund* for development projects within host communities. This represents an indirect form of compensation aimed at converting environmental penalties into community benefits. Also, by

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<sup>90</sup> Section 9-10

<sup>91</sup> Section 13(4)

promoting transparency and accurate reporting oil producing communities can hold companies accountable for pollution caused by gas flaring.

Although the midstream sector is less directly associated with host community displacement or land degradation compared to upstream operations, it still poses significant environmental risks like air pollution, accidental releases, and noise disturbances. The *Midstream Gas Flare Regulations, 2023*, help reduce these risks by mandating environmentally responsible practices, thereby offering indirect protection for nearby communities.

Moreover, the Regulations are part of the legal ecosystem supported by the PIA, which mandates that certain financial contributions from oil and gas operations be channeled to *Host Communities Development Trusts*. Therefore, penalties imposed under these regulations may ultimately feed into broader funding streams that support community development, remediation, and infrastructure projects in affected areas.

In summary, it could be said that although these regulations do not provide for a reactive compensation model (where communities are paid after damage occurs), it does provide for a preventive and developmental approach where penalty funds could be invested in sustainable projects.

### **2.2.13. Niger-Delta Development Commission (Establishment, etc.) Act, 2000**

The *Niger Delta Development Commission (Establishment, etc.) Act (herein after referred to as the NDDC Act)* was enacted in 2000 to address the persistent underdevelopment, environmental degradation, and socio-economic marginalization of communities in Nigeria's oil-rich Niger Delta region.<sup>92</sup>

The *NDDC Act* established the *Niger Delta Development Commission (NDDC)* as a special federal agency tasked with formulating and implementing policies and programmes to foster the sustainable

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<sup>92</sup> The NDDC Act was later amended in 2017 by the *Niger Delta Development Commission (Establishment, Etc.) (Amendment) Act, 2017*.

development of the region, which had suffered disproportionately from decades of oil exploration and production activities. Although the NDDC Act is not a compensation statute in the strict legal sense, it plays a critical compensatory and remedial role through its development-focused mandate, providing infrastructure, human development, and environmental remediation efforts for the benefit of host communities adversely impacted by oil operations. Thus, although *NDDC Act* does not use the word “compensation” in the strict legal sense, the Act compensates communities indirectly through development projects, financial allocations, and environmental remediation programs.

*Section 7 of the NDDC Act* provides for the functions and powers of the NDDC. This is the heart of the compensation framework. *Section 7(1)(b)* provides that the Commission is empowered to plan and implement projects and programmes for the sustainable development of the Niger Delta in critical areas like health, education, employment, housing, water supply, and electricity. This could be seen as a form of socio-economic compensation, addressing decades of neglect and environmental degradation. *Section 7(1)(h)* provides that the Commission shall tackle ecological and environmental problems arising from oil exploration, and advise the government on the prevention and control of oil spillages, gas flaring, and pollution. This provision is compensatory in the environmental sense as it is aimed at restoration and prevention of further harm. *Section 7(1)(i)* provides that the NDDC shall liaise with oil and gas companies on pollution prevention and control. This creates a collaborative responsibility for environmental redress.

*Section 14 of the NDDC Act* provides the financial backbone for compensation in the Niger Delta. *Section 14(2)(a)* provides that the Federal Government must contribute 15% of the total monthly statutory allocations due to member States. *Section 14(2)(b)* provides that oil companies operating in the Niger Delta must contribute 3% of their total annual budget. This section was later amended by the *Niger Delta Development Commission (Establishment, Etc.) (Amendment) Act, 2017* to expand the scope of contributors by including gas processing companies operating within the Niger Delta region, thereby requiring them alongside oil-producing companies to remit 3% of their total annual budgets (excluding

the cost of feed gas) to the Commission. **Section 14(2)(b)** provides that, “*there shall be paid and credited to the fund established pursuant to subsection (1) of this section 3 percent of the total annual budget of any oil producing company operating, on shore and off shore, in the Niger-Delta Area; and the total annual budget of any gas processing company in the Niger Delta area, excluding the cost of feed gas.*”

**Section 14(2)(c)** states that 50% of the Ecological Fund due to member States must be credited to the Commission. These mandatory contributions are not random, they represent restitutionary funding to redress the adverse effects of oil production. Hence, the fund itself is a structured compensation mechanism pooling resources from the major beneficiaries of oil (that is, the Federal Government and oil companies) for the benefit of the impacted communities.

**Section 15** directs how the NDDC’s funds should be used. The section says that the funds should be used for administration<sup>93</sup>, salaries<sup>94</sup>, payment for contracts, legal costs, project costs<sup>95</sup>, purchases<sup>96</sup>, and undertaking activities connected with the NDDC’s functions under the Act<sup>97</sup>. Since the functions under **Section 7** include environmental remediation, economic empowerment, and infrastructure, **Section 15** legally ensures that the money is used for compensatory development projects. **Section 21** provides for a Monitoring Committee which shall monitor how the NDDC’s funds are managed and whether projects are actually implemented. This provision guarantees accountability in the delivery of compensatory benefits to the communities.

The **NDDC Act** represents an important recognition by the Nigerian government of the need to compensate oil-producing communities not just monetarily, but through long-term development projects. In this way, it supports the broader legal and institutional framework for redressing the impact of extractive activities in the Niger Delta.

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<sup>93</sup> Section 15(a)

<sup>94</sup> Section 15(b)

<sup>95</sup> Section 15(c)

<sup>96</sup> Section 15(d)

<sup>97</sup> Section 15(e)

Though not a legal instrument for direct cash compensation for land acquisition or environmental damage (like the *Land Use Act* or *Oil Pipelines Act*), the *NDDC Act* operates as a framework for regional and restorative compensation designed to bridge the development gap caused by decades of oil exploitation. It also reinforces the principle that corporate entities extracting natural resources must contribute meaningfully to community welfare, especially in affected regions.

### **2.3. JUDICIAL APPROACHES TO OIL COMPENSATION IN NIGERIA.**

The Nigerian judiciary has played a significant role in resolving disputes related to compensation for environmental damage, land acquisition, and community displacement resulting from oil and gas activities. Although legislation such as the *Land Use Act*, *Petroleum Industry Act*, *Oil Pipelines Act*, and *Environmental Impact Assessment Act* provide frameworks for compensation, their implementation has often led to litigation due to disputes over adequacy, delay, or outright denial of compensation. The courts therefore have, in numerous instances, stepped in to interpret the law, award damages, or compel responsible parties to fulfill their obligations.

An analysis of judicial approaches to compensation for oil exploration activities is important because it is the Courts that are left to determine who qualifies for compensation, what constitutes damage, and how liability is established. Thus, an analysis of judicial precedents is important to know whether the courts' interpretations promote fairness and environmental justice or restrict access to remedies. Even the best compensation laws are ineffective if enforcement is weak. Judicial precedents help us measure this by showing how long litigation takes, whether judgements are obeyed or remain unenforced, how damages are quantified and whether compensation amounts are realistic or symbolic.

As discussed in Chapter 2, judicial precedents are part of Nigerian law. In fact, court judgements and rulings are among the primary sources of Nigerian law. Therefore, they are indispensable in analyzing and evaluating the laws governing compensation for oil producing communities in Nigeria.

Courts in Nigeria have often given judgements affording victims the right to compensation spite of procedural hurdles like the issue of jurisdiction or limitation periods. In the case of *Effiong v. Mobil Producing Nigeria Unlimited*,<sup>98</sup> the Court of Appeal affirmed that in oil spill cases involving continuous environmental harm, victims' rights to compensation remain enforceable as long as the damage continues, and limitation laws do not bar such claims. The facts of this case was that, the appellants (fishermen and women from Ibeno, Akwa Ibom State) sued Mobil for negligence following an oil spill from its Qua Iboe terminal that devastated their fishing environment and livelihood. The Federal High Court dismissed the suit as statute-barred, holding that it was filed outside the five-year limitation period under the Akwa Ibom State Limitation Law. On appeal, the Court of Appeal, per Balkisu Bello Aliyu, JCA, held that the appellants had pleaded facts showing a continuing injury and damage resulting from the oil spill, including the persistent pollution of their waters and loss of livelihood. The Court emphasized that under Nigerian law, where environmental damage is continuous, a fresh cause of action arises as long as the damage persists, and such cases fall within the exception to limitation laws. Furthermore, because the appellants sought declaratory reliefs relating to their right to compensation under *Section 44(2)(j) of the 1999 Constitution (as amended)* and the *Oil Pipelines Act*, the limitation statute did not apply. Consequently, the Court of Appeal set aside the lower court's ruling, held that the fishermen's right to seek compensation was valid, and ordered that the case be heard on its merits before another judge of the Federal High Court.

In *Amachere & Anor v. The Shell Petroleum Development Company of Nigeria Ltd.*<sup>99</sup>, the appellants who were residents of communities affected by a 1995 crude oil spill from Shell's Buguma manifold, alleged that the spill continued to pollute their mangrove swamps, fish ponds, and drinking water for years, and they sought compensation for the ongoing damage. Shell argued that the claim was statute-barred under the Rivers State Limitation Law, and the Federal High Court dismissed the suit on that basis. On appeal, however, the Court of Appeal held that the alleged pollution constituted a continuing tort, meaning

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<sup>98</sup> (2024) JELR 112922 (CA)

<sup>99</sup> (2011) JELR 33418 (CA)

a fresh cause of action arose for as long as the environmental harm persisted. The Court also found that Shell's previous acknowledgment of liability in agreeing to compensate affected communities, was capable of extending or reviving the limitation period. It therefore set aside the dismissal and ordered a full trial, emphasizing that compensation claims involving ongoing pollution cannot be defeated by limitation objections without proper factual inquiry, thus reinforcing judicial protection for oil-producing communities suffering prolonged environmental harm..

Also, in *Mobil Producing (Nig.) Unlimited v. Ayeni & Ors.*<sup>100</sup>, the respondents sued Mobil at the Federal High Court for ₦850 million in damages arising from an oil spill caused by a ruptured pipeline connecting Mobil's Idoho Production Platform to its Qua Iboe Terminal in Akwa Ibom State, which polluted several coastal communities. Mobil sought to strike out the suit as statute-barred under *Section 18 of the Admiralty Jurisdiction Act (AJA), 1991*, arguing that the claim was a maritime claim related to a "vessel." The Court of Appeal dismissed the appeal, holding that an oil pipeline does not qualify as a "ship" or "vessel" under section 26 of the AJA and, therefore, the claim was not a maritime claim subject to the Act's limitation period. The court affirmed that the respondents' action was properly founded on the tort of negligence and environmental damage, and thus, within the jurisdiction of the Federal High Court. This case also underscores the court's recognition of the right of oil-producing communities to seek compensation for environmental harm caused by oil spills.

Nigerian courts have consistently affirmed the accountability of oil companies and the application of the "polluter pays" principle, often in the face of jurisdictional and technical arguments aimed at evading liability. The case of *Mobil Producing (Nigeria) Unlimited v. Lagos State Environmental Protection Agency (LASEPA)*<sup>101</sup> is a landmark decision that illustrates the Nigerian judiciary's approach to environmental liability, compensation, and the enforcement of environmental rights in oil-producing

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<sup>100</sup> (2009) JELR 56334 (CA)

<sup>101</sup> (2000) JELR 57000 (CA)

regions. The dispute arose from the massive 1998 Idoho–QIT oil spill, which polluted several coastal communities and led LASEPA and affected residents to seek compensation and remedial action. Mobil challenged these actions, arguing that only federal authorities could regulate environmental issues arising from offshore petroleum operations and that state agencies lacked jurisdiction to demand compensation for the pollution. The Court of Appeal rejected this argument, holding that environmental protection is a shared responsibility between federal and state governments, particularly where pollution harms land, livelihoods, and residents within a state’s territory. The Court affirmed that affected individuals and communities have a constitutional right of access to the courts to seek redress and that oil companies cannot use jurisdictional or technical objections to evade liability for environmental harm. By upholding the legitimacy of state-level intervention and emphasizing the “polluter pays” principle, the Court reinforced corporate accountability and strengthened the legal foundation for compensation and environmental justice in oil-producing regions of Nigeria.

A recurring and fundamental threshold issue in oil compensation litigation is determining the appropriate court with jurisdiction. The Nigerian judiciary has consistently affirmed that matters connected to oil mining and operations fall within the exclusive jurisdiction of the Federal High Court. The case of *Shell Petroleum Development Company Ltd v. Isaiah*<sup>102</sup> arose from an appeal against the decision of the Court of Appeal, Port Harcourt Division, which had affirmed the judgment of the High Court of Rivers State. The respondents, as plaintiffs, sued SPDC at the Rivers State High Court seeking ₦22 million as compensation for permanent damage to their land, waterways, and marine resources caused by an oil spill allegedly resulting from negligence during repairs on Shell’s pipeline. The High Court found in their favour, and the Court of Appeal affirmed the award, prompting SPDC to appeal to the Supreme Court on the critical issue of jurisdiction. The Supreme Court held that the construction, operation, and maintenance of an oil pipeline are integral components of petroleum mining operations and therefore fall within the

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<sup>102</sup> (2001) 1 NWLR (Part 723) 168

exclusive jurisdiction of the Federal High Court under Decree No. 107 of 1993, even though the cause of action arose before the decree's enactment. Once the decree came into force during the pendency of the case, the State High Court's jurisdiction was automatically ousted, rendering its proceedings and judgment a nullity. The Supreme Court accordingly set aside the lower court decisions and struck out the claim, reaffirming that disputes involving oil spills, petroleum operations, and compensation for related environmental damage are matters connected with mines and minerals and must be heard only by the Federal High Court. This ruling cemented the jurisdictional framework governing oil pollution compensation claims in Nigeria and emphasized that any award issued by a court lacking jurisdiction is void ab initio. The judgment in *SPDC v. Isaiah* underscores the fundamental importance of jurisdiction in adjudication and affirms that any proceedings conducted by a court without jurisdiction, no matter how well-intentioned, are null and void.

In the case of *Shell Petroleum Development Company (SPDC) Nigeria Ltd v. Ezeukwu & Ors*<sup>103</sup> the respondents sued SPDC before the Imo State High Court claiming ₦100 million as compensation for the destruction of economic crops, loss of farmland, and interruption of livelihood allegedly caused by the appellant's oil mining operations in Obihi, Imo State. SPDC challenged the suit by preliminary objection, arguing that the State High Court lacked jurisdiction because disputes arising from oil mining operations fall within the exclusive competence of the Federal High Court under Section 251(1)(n) of the 1999 Constitution and the Federal High Court (Amendment) Decrees Nos. 60 of 1991 and 107 of 1993. The trial court dismissed the objection, declaring portions of the Decrees inconsistent with the 1999 Constitution and therefore void. On appeal, however, the Court of Appeal held that the trial court was wrong: Decrees 60 and 107 were preserved by Section 315(1) of the Constitution and remained consistent with Section 251(1)(n), which was intended to centralize jurisdiction over mines and minerals (including oil fields and oil mining) in the Federal High Court. Emphasizing the effect of the word "notwithstanding"

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<sup>103</sup> (2010) JELR 41391 (CA)

in Section 251(1), and relying on the Supreme Court's interpretation in *NDIC v. Okem*<sup>104</sup>, the court ruled that no other constitutional provision could diminish the Federal High Court's exclusive authority over such matters. Since the respondents' claim clearly arose from oil mining operations, the Court of Appeal set aside the High Court's decision and struck out the suit for want of jurisdiction. The judgment reaffirmed that compensation claims and disputes connected to petroleum exploration or mining activities belong exclusively before the Federal High Court.

Also in *Allison & Ors. v. SPDC Nigeria Ltd*<sup>105</sup>, judicial recognition was given to the fact that oil-producing communities have enforceable rights to compensation for environmental and economic losses caused by oil operations. This case also reinforced the Federal High Court's exclusive role in adjudicating such compensation disputes connected with oil and gas activities. The facts leading to this were that the appellants, representing the Allison family of Oloma Town in Bonny, Rivers State, sued Shell Petroleum Development Company (SPDC) for trespass and environmental damage, alleging that SPDC entered their land without consent, cleared it, dredged, drilled, and installed oil well heads and gas pipelines, activities which destroyed their economic trees and means of livelihood. They claimed ₦50,000,000 as compensation for the damage and loss of use of their land.

SPDC argued that it had lawful authority to enter the land, having obtained consent and paid compensation in 1981 to the same family, and therefore denied any act of trespass. The Federal High Court struck out the case for lack of jurisdiction, holding that it was a simple claim in trespass not connected with oil operations.

However on appeal, the Court of Appeal allowed the appeal, holding that the claim for trespass was intrinsically connected to oil exploration and production activities. Therefore, under *Section 251(1)(n) of the 1999 Constitution*, the Federal High Court had exclusive jurisdiction to hear the matter. The court

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<sup>104</sup> (2004) 10 NWLR (Pt. 880) 107.

<sup>105</sup> (2011) JELR 33920 (CA)

emphasized that the activities complained of which included drilling, dredging, and pipeline installation, were directly related to oil operations, and the appellants' claim for compensation fell within the category of "matters connected with or pertaining to oil mining."

Laws regulating payment of compensation often contain indiscernible words such as "fair" or "adequate" compensation. It is often left to the courts to decide what amounts to "fair or adequate compensation". The judgment in *Shell Petroleum Development Company Limited v. Farah & Others*<sup>106</sup> represents a seminal moment in Nigerian jurisprudence, particularly in the realm of environmental law and the rights of oil-producing communities. The case originated from a catastrophic oil blow-out at SPDC's Bomu Well II in 1970, which deposited crude oil and toxic substances over a substantial area of farmland belonging to the K-Dere community in Rivers State. While Shell admitted initial liability and compensated the community for immediately destroyed crops and economic trees, it also undertook to rehabilitate the polluted land. The core of the dispute arose years later when Shell asserted that the land had been successfully rehabilitated and returned, a claim vehemently contested by the community, which subsequently initiated legal action seeking comprehensive compensation.

Before the Court of Appeal, Shell mounted a multi-faceted challenge against the High Court's decision, which had awarded the community a total of ₦4,621,307.00. A central contention was that the action was statute-barred, having been filed nearly two decades after the blow-out. The Court of Appeal soundly rejected this argument, establishing a pivotal legal principle. It held that the cause of action was a continuing one, and the limitation period only began to run in 1988 when Shell, via a formal communication, resiled from its ongoing obligation by asserting that rehabilitation was complete. This finding ensured that communities are not time-barred from seeking redress when a polluter abandons its long-term remedial promises.

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<sup>106</sup> (1991) 3 NWLR (Pt. 382) 148

Furthermore, the court dismissed Shell's argument that the initial payment for crops constituted "full and adequate compensation" as mandated by the Petroleum Act. It drew a critical distinction between compensation for ephemeral items like crops and compensation for the profound and lasting disturbance of surface rights, which encompasses the long-term loss of use and productivity of the land itself. The Court affirmed that the statutory requirement for "fair and adequate compensation" necessitates a holistic assessment of all damages, far exceeding the value of immediately destroyed vegetation.

In addition to interpreting vague legislations and legalese, the judiciary has also been instrumental in expanding the legal frontiers for claiming compensation, notably by linking environmental degradation to human rights violations and liberalising the rules on who can sue and be sued in an action for compensation. The case of *Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation*<sup>107</sup> represents a pivotal moment in Nigerian environmental law, fundamentally addressing the critical question of whether non-governmental organizations possess the legal standing, or locus standi, to sue for environmental degradation on behalf of the public. The appellant, an NGO, had initiated legal action against the NNPC, seeking remediation for an oil spill that had contaminated the Ineh and Aku streams in Acha community, which were the primary water source for the area. Although the Federal High Court and Court of Appeal had dismissed the NGO's suit on the ground that it lacked personal injury, the Supreme Court rejected this narrow, common-law approach, holding that environmental damage constitutes a public injury that requires broader access to justice. Reading Section 20 of the Constitution together with statutory duties such as those under the Oil Pipelines Act, the Court emphasized that protecting the environment is a collective obligation and that public-interest bodies must be able to hold authorities accountable. Consequently, the Court established that NGOs, as representatives of public interest, have the requisite locus standi to institute actions aimed at vindicating environmental rights and ensuring compliance with the law.

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<sup>107</sup> (2019) 5 NWLR (Pt. 1666) 518

The case of *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria*<sup>108</sup> was brought before the African Commission on Human and Peoples' Rights by two non-governmental organizations alleging widespread human rights violations resulting from oil exploration in the Ogoni region of Nigeria. The petitioners claimed that the Nigerian government had permitted the Nigerian National Petroleum Corporation (NNPC) and Shell Petroleum Development Company (SPDC) to engage in oil activities that led to severe environmental degradation, contamination of farmlands and rivers, and destruction of the means of livelihood of the Ogoni people. The government was also accused of failing to regulate these corporations or provide redress for the harm caused.

The African Commission found that Nigeria had violated several provisions of the African Charter on Human and Peoples' Rights, including the rights to health, a satisfactory environment, family life, and the right of peoples to freely dispose of their natural resources. The Commission held that the Nigerian government failed in its duty to protect the Ogoni people from environmental harm, failed to prevent private actors from committing human rights abuses, and neglected to provide effective remedies and compensation for the damage suffered.

In its decision, the Commission emphasized that compensation is an essential aspect of remedying environmental and human rights violations. It recommended that the Nigerian government provide adequate compensation to the Ogoni people for the destruction of their environment, health, and sources of livelihood, as well as take measures to rehabilitate the affected areas and prevent further degradation. The ruling underscored the responsibility of States not only to refrain from harmful acts but also to protect citizens from the harmful activities of corporations operating within their territory.

The case of *Jonah Gbemre v. Shell Petroleum Development Company of Nigeria Ltd & Ors*<sup>109</sup> decided by the Federal High Court of Nigeria in 2005, is a seminal judgment in Nigerian environmental law and

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<sup>108</sup> [2001] ACHPR 35

<sup>109</sup> (2005) 6 AHRLR 152

human rights jurisprudence. The plaintiff, Mr. Jonah Gbemre, sued on behalf of the Iwherekan community in Delta State against Shell Petroleum Development Company (SPDC), the Nigerian National Petroleum Corporation (NNPC), and the Attorney General of the Federation. The core of the suit was the harmful practice of gas flaring by the oil companies within the community.

The plaintiff's argument was groundbreaking. He contended that the continuous gas flaring violated the community's fundamental rights to life and human dignity as guaranteed by Sections 33 and 34 of the 1999 Nigerian Constitution. Crucially, he argued that these constitutional rights inherently include the right to a clean, healthy, and pollution-free environment. This claim was further bolstered by invoking the African Charter on Human and Peoples' Rights, which explicitly provides for the right to health (Article 16) and the right to a satisfactory environment (Article 24). The suit also highlighted the defendants' failure to conduct a mandatory Environmental Impact Assessment (EIA) and challenged the constitutionality of the laws that permitted continued gas flaring.

In its defense, Shell and the NNPC denied flaring gas in the specific Iwherekan community, claiming their operations were at a nearby gas plant and were conducted in accordance with Nigerian laws and international standards. They argued that the suit was incompetent and that the court lacked jurisdiction, asserting that gas flaring did not constitute a violation of the fundamental rights chapters of the Constitution.

In a historic and courageous judgment, Justice C.V. Nwokorie ruled resoundingly in favor of the plaintiff and the Iwherekan community. The court made several profound declarations. First, it held that the constitutional rights to life and dignity indeed encompass the right to a healthy environment. Second, it found that the actions of Shell and NNPC in flaring gas constituted a gross violation of these fundamental rights. Third, it declared their failure to conduct an EIA a breach of statutory duty. Most significantly, the court declared the provisions of the Associated Gas Re-injection Act and its accompanying regulations, which provided a legal framework for continued flaring, unconstitutional, null, and void for being

inconsistent with the supreme fundamental rights provisions of the Constitution. This judgment stands as a powerful precedent, directly linking environmental degradation to human rights violations and asserting the supremacy of constitutional rights over statutory provisions that enable ecological harm.

However, notwithstanding the commendable efforts by the Nigerian judiciary to uphold justice against powerful companies and governmental agencies, access to justice through the courts are often met with some procedural barriers. For example, in *Garenkeme & Ors v. Mobil Producing (Nigeria) Unlimited*<sup>110</sup>, 3,000 affected community members sued Mobil for exclusion from compensation following a 1998 spill, but the Federal High Court struck out the suit as statute-barred under the Limitation Law. On appeal, the Court of Appeal held that the ruling was interlocutory and that the appeal, filed outside the 14-day statutory period without leave of court, was incompetent and must be struck out. Although the claimants arguably had a substantive right to compensation, their failure to comply with limitation timelines extinguished the claim. The case illustrates that even meritorious environmental cases may fail where procedural requirements, especially limitation periods, are not strictly observed.

In addition, the judiciary often times shy away from enforcing certain compensatory rights of host communities. For example, the *Petroleum Industry Act, Minerals and Mining Act*, and *Oil Pipelines Act* makes provisions for damages not just for the land, trees, crops and buildings destroyed by oil exploration activities but also protection of sacred lands, burial sites and other properties held as sacred by host communities. It is the court's duty to ensure enforcement of these provisions. However sometimes the court would award damages that would ignore the non-material losses suffered by members of host communities. In the case of *Elf Nigeria Ltd v. Sillo*<sup>111</sup> the Sillo family successfully proved that Elf's operations caused the siltation of the Esiesi River, depriving them of fishing income and rental earnings; the courts awarded compensation for these quantifiable economic losses. However, all three courts, that

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<sup>110</sup> (2014) JELR 39958 (CA)

<sup>111</sup> (1994) 6 NWLR (Pt. 350) 258

is, the High Court, Court of Appeal, and Supreme Court, refused to award damages for the destruction of the family's river goddess, shrine, and associated cultural rites, despite evidence of profound spiritual and cultural harm. The decision reveals a judicial tendency to prioritise measurable economic injuries over intangible cultural or spiritual losses, thereby limiting full redress for oil-producing communities whose identities and livelihoods are deeply tied to sacred lands and traditions.

Notwithstanding all the challenges to enforcement, the judiciary still remains the bastion of hope and the only means of interpreting the confusing and conflicting provisions in Nigerian legislations.

## **CHAPTER THREE.**

### **ASSESSING THE EFFECTIVENESS OF OIL COMPENSATION LAWS IN NIGERIA**

Having considered the different laws and institutions governing compensation for the use of land gotten for oil exploration and exploitation, it is important to assess the effectiveness of these oil compensation laws.

#### **3.1. EVALUATION OF NIGERIAN LEGISLATIONS ON OIL COMPENSATION**

The legislative framework governing compensation for environmental damage and community harm in oil-producing regions of Nigeria is both extensive and multi-layered. It draws from constitutional principles, petroleum laws, environmental statutes, and land use legislation. However, the true test of effectiveness lies not merely in the existence of these laws but in how well they function to ensure timely, adequate, and just compensation for affected communities. Chapter 2 contains a list of some key Nigerian laws on oil compensation. It is important to critically evaluate these legislatures in order to determine how effective they've been in governing compensation for oil producing regions in Nigeria. This can be done by identifying both their strengths and implementation gaps.

##### **3.1.1. The Constitution of the Federal Republic of Nigeria, 1999 (As Amended)**

The Constitution, being the supreme legal instrument in Nigeria, provides the foundational framework for rights protection, governance, and the regulation of property, environment, and resource ownership. Although it does not contain an explicit or comprehensive regime for compensation in oil-producing regions, several provisions have indirect but important implications for compensation, particularly in the context of compulsory acquisition of land, property rights, and fundamental human rights. However, the practical effectiveness of these provisions in addressing the peculiar challenges of oil-producing communities remains limited and requires critical evaluation.

*Section 44(1) of the Constitution* provides the most direct legal basis for compensation in cases of compulsory acquisition. It guarantees the right to prompt payment of compensation and access to court for any person whose property is compulsorily acquired. In principle, this provision serves as a safeguard for oil-producing communities affected by land acquisition for exploration, pipelines, or related infrastructure. However, in reality, the operation of *Section 44(1)* has been constrained by systemic weaknesses. Many communities in the Niger Delta hold land under customary tenure, often without formal documentation or Certificates of Occupancy. As a result, their ownership interests are either disregarded or under-recognized in compensation processes, with payments sometimes made to the state or traditional authorities rather than to the actual land users.<sup>112</sup> This gap between constitutional theory and practical implementation undermines the equitable realization of compensation rights and contributes to persistent grievances in host communities.

Another challenge lies in the lack of uniformity and transparency in compensation valuation. Although *Section 44(1)* mandates “prompt payment,” there are no constitutional standards for determining what constitutes adequacy or fairness of compensation. Consequently, compensation awards vary widely, and many oil companies adopt unilateral valuation systems with little or no oversight. This lack of accountability not only weakens the protective intent of *Section 44(1)* but also fosters disputes, delays, and community discontent. Access to court, while constitutionally guaranteed, is equally constrained by poverty, lack of legal representation, and procedural obstacles, which make enforcement of compensation rights largely theoretical for rural and marginalized populations.

The ownership clause under *Section 44(3)* further complicates the constitutional landscape for oil compensation. By vesting ownership and control of all minerals, mineral oils, and natural gas in the federal government, this provision effectively excludes host communities from direct participation in, or benefit

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<sup>112</sup> Adeogun Richard Adeniyi and Simeon Ola Oni, 'Ownership and Compulsory Acquisition Under Customary Land Tenure in South-West Nigeria: A Legal and Socio-Cultural Analysis' (2025) 8(1) *African Journal of Law, Political Research and Administration* 1–12 <<https://doi.org/10.52589/AJLPRA-TF7UHHFJ>> accessed 18 September 2025

from, the resources extracted from their lands. While it provides a legal foundation for federal management of natural resources, it also institutionalizes a structural imbalance whereby the burdens of extraction are localized while the benefits are centralized. This centralization has weakened the bargaining power of host communities and fueled agitations for resource control and equitable compensation. In this sense, *Section 44(3)* serves more as a political instrument for control than as a legal mechanism for distributive justice.<sup>113</sup>

In addition, *Section 20* of the Constitution imposes a duty on the state to protect and improve the environment and safeguard natural resources. Although it is symbolically significant, its inclusion under *Chapter II* renders it non-justiciable under *Section 6(6)(c)*. Consequently, it cannot be directly invoked to claim compensation or compel environmental protection. Its impact has therefore been limited to guiding legislative and policy development, such as the enactment of environmental statutes like the EIA Act and NOSDRA Act. The non-justiciable nature of *Section 20* remains a major constitutional weakness in Nigeria's environmental governance framework.

Nevertheless, Nigerian courts have occasionally relied on the justiciable provisions of *Sections 33 and 34* which guarantee the rights to life and human dignity, to expand the constitutional protection available to communities affected by environmental degradation.<sup>114</sup> In *Gbemre v. Shell Petroleum Development Company Nigeria Ltd. & Others*, the Federal High Court recognized that continuous gas flaring violated these fundamental rights, thus linking environmental harm to constitutionally protected human rights. Although this judicial innovation has opened a potential pathway for environmental justice, it remains

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<sup>113</sup> Ogbomo, Osamuade, *The Legal Regime for Mineral Resource Ownership in Nigeria: An In-Depth Analysis of Oil Discovery and Its Implications* (26 December 2023) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4742403](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4742403) accessed 18 September 2025.

<sup>114</sup> Olisa Agbakoba Legal, 'Environmental Litigation in Nigeria: Trends, Challenges, and Judicial Activism' (12 Aug. 2025) <https://oal.law/environmental-litigation-in-nigeria-trends-challenges-and-judicial-activism/#:~:text=The%20Supreme%20Court%20in%20this,directly%20enforceable%20in%20Nigerian%20courts.> accessed 19 September 2025

dependent on judicial activism and does not establish a systematic or enforceable compensation framework.

Finally, the constitutional derivation principle under *Section 162(2)*, which allocates 13% of oil revenue to producing states, is sometimes portrayed as a form of economic compensation. However, this mechanism operates at the intergovernmental level and rarely translates into direct benefits for affected communities. Its impact on individual or communal compensation for environmental damage or land deprivation is therefore negligible.<sup>115</sup>

In summary, while the *1999 Constitution* provides a legal foundation for property protection, environmental stewardship, and compensation in cases of compulsory acquisition, it remains largely ineffective in ensuring equitable compensation for oil-producing communities. Its centralization of mineral ownership, weak enforcement of compensation rights, and the non-justiciable nature of environmental duties have collectively limited its responsiveness to the lived realities of host communities. For the Constitution to effectively serve as a tool for oil compensation justice, reforms are necessary to expand recognition of customary land rights, embed a justiciable right to a healthy environment, and strengthen mechanisms for direct community participation and access to justice in compensation matters.

### **3.1.2. The Petroleum Industry Act, 2021 (PIA)**

The *Petroleum Industry Act (PIA) 2021* represents a bold and far-reaching reform in Nigeria's oil and gas sector. It seeks to consolidate and modernize a previously fragmented legal regime that had governed petroleum operations for decades. In relation to compensation and host community welfare, the PIA introduces innovative mechanisms aimed at promoting fairness, accountability, and inclusivity. However,

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<sup>115</sup> ACIOE Associates, 'The Impact of 13% Derivation Funds in the Niger Delta Region' (ACIOE Associates, 16 March 2021) [https://acioe.com/the-impact-of-13-derivation-funds-in-the-niger-delta-region/#:~:text=Highlighted%20Issues:,who%20are%20barely%20oil%2Dproducing](https://acioe.com/the-impact-of-13-derivation-funds-in-the-niger-delta-region/#:~:text=Highlighted%20Issues:,who%20are%20barely%20oil%2Dproducing;); accessed 19 September 2025

despite its comprehensive provisions, the extent to which these reforms translate into tangible benefits for oil-producing communities remains a subject of practical and legal concern.

One of the major strengths of the PIA lies in its recognition of host communities as critical stakeholders in the oil and gas value chain. The creation of the Host Communities Development Trust (HCDDT) under Chapter 3 is a remarkable innovation that moves beyond the ad hoc and corporate social responsibility models of the past. By mandating each oil company (settlor) to establish a Trust for its host communities, the PIA institutionalizes community development as a legal obligation rather than a voluntary gesture. The annual contribution of 3% of the company's operating expenditure ensures a predictable funding base for projects that address infrastructural, social, and economic deficits in oil-bearing areas. Moreover, the inclusion of host community representatives in the Trust's governance framework introduces an element of participatory decision-making that aligns with principles of self-determination and community ownership.<sup>116</sup>

Nevertheless, the implementation of the HCDDT has encountered challenges that question the full effectiveness of the PIA's compensation framework. First, the 3% funding allocation has been widely criticized as inadequate when compared to the scale of environmental degradation and socio-economic deprivation suffered by oil-producing communities.<sup>117</sup> Many stakeholders had advocated for a higher percentage (initially proposed at 10%) to better reflect the extent of resource extraction and damage in the Niger Delta. Additionally, the ambiguity surrounding the term "host community" has raised concerns over which communities qualify as beneficiaries, particularly in cases of trans-boundary pipelines or offshore

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<sup>116</sup> Nzube Akunne, 'From Fragmentation to Reform: A Robust Analysis and Understanding of the PIA 2021's Impact on Upstream Petroleum Operations in Nigeria (Part 1)' (Olisa Agbakoba Legal, 19 June 2025) <https://oal.law/from-fragmentation-to-reform-a-robust-analysis-and-understanding-of-the-pia-2021s-impact-on-upstream-petroleum-operations-in-nigeria-part-1/#:~:text=Chapter%201%20of%20the%20Petroleum.enhancement%20of%20local%20content%20development>. accessed 19 September 2025

<sup>117</sup> Blessing Anolaba, 'Urgent Action Needed for the Optimal Implementation of the Petroleum Industry Act (PIA) in Oil-Producing Communities in the Niger-Delta' (Accountability Lab Nigeria, 3 April 2025) <https://nigeria.accountabilitylab.org/urgent-action-needed-for-the-optimal-implementation-of-the-petroleum-industry-act-pia-in-oil-producing-communities-in-the-niger-delta/#:~:text=Inadequate%20Needs%20Assessments%20and%20Community,which%20the%20fines%20are%20levied>. accessed 19 September 2025

operations that affect multiple areas. These issues have, in some cases, generated tension between oil companies and local groups, undermining the PIA's goal of fostering peaceful coexistence.<sup>118</sup>

Another area of effectiveness relates to the compensation provisions under **Section 101**, which establish standards for “*fair and adequate compensation*” in cases of land use, damage, or disturbance of cultural and economic assets. This section reinforces respect for community rights and traditional values by protecting sacred lands, farmlands, and privately owned property. The mechanism for depositing disputed compensation funds with the Federal High Court enhances access to justice and prevents arbitrary dispossession. However, a critical weakness of the PIA is its failure to define what actually constitutes “fair” and “adequate” compensation. By leaving these terms undefined, the Act introduces a level of subjectivity that allows operators and regulators wide discretion in determining payment amounts. In practice, what one company or government official considers “adequate” may fall far short of what affected communities regard as just compensation for loss of livelihood, environmental degradation, or cultural displacement. This vagueness undermines legal certainty and leaves room for inconsistent or inequitable compensation outcomes across different cases.

The success of **Section 101** also depends not only on the letter of the law but also on the responsiveness of the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) and the efficiency of judicial processes. Given the chronic delays and bureaucratic hurdles in Nigeria's court system, communities may still face difficulties in securing timely redress, thereby diminishing the Act's practical impact.

The PIA's incorporation of the Land Use Act in its compensation regime demonstrates legal consistency but also perpetuates some of the structural weaknesses of Nigeria's land tenure system. Because the Land Use Act vests all land in the State Governor, communities often have limited control or bargaining power

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<sup>118</sup> Abbiyesuku T.A., ‘A Examination of the Petroleum Industry Act with the Issues Relating to Host Communities’ (2023) [https://www.researchgate.net/publication/375592890\\_A\\_Examination\\_of\\_the\\_Petroleum\\_Industry\\_Act\\_with\\_the\\_Issues\\_Relating\\_to\\_Host\\_Communities#:~:text=the%20Petroleum%20Industry%20Act%202021,development%20trust%20is%20to%20be](https://www.researchgate.net/publication/375592890_A_Examination_of_the_Petroleum_Industry_Act_with_the_Issues_Relating_to_Host_Communities#:~:text=the%20Petroleum%20Industry%20Act%202021,development%20trust%20is%20to%20be) accessed 19 September 2025.

in compensation negotiations. This centralized structure has historically marginalized local interests and facilitated the appropriation of community lands for petroleum operations with minimal consultation.<sup>119</sup> While the PIA reinforces compliance with the Land Use Act, it does not provide a mechanism to ensure that compensation assessments are fair, transparent, or reflective of actual market values. This is a shortcoming compounded by the undefined nature of “fair and adequate” compensation.

From an environmental standpoint, the PIA aligns with international best practices by embedding the polluter pays principle and requiring adherence to good petroleum industry standards. *Sections 102–104* mandate operators to mitigate pollution, remediate damages, and compensate affected persons. This marks a step forward from older laws that provided limited environmental accountability. However, the enforcement capacity of the new regulatory bodies that is, the NUPRC and the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA), remains a concern. Without adequate funding, technical expertise, and political independence, these agencies may struggle to monitor compliance and impose sanctions effectively. The historical pattern of weak institutional enforcement in Nigeria’s oil sector poses a continuing challenge to the PIA’s transformative potential.

In summary, while the *Petroleum Industry Act, 2021* provides a comprehensive and modernized framework for compensation and host community development, its effectiveness depends heavily on implementation fidelity, institutional capacity, and community inclusion. The Act’s structural innovations, particularly the HCDT, represent progress toward restorative justice for oil-producing regions. Yet, limitations in funding adequacy, definitional clarity, and enforcement mechanisms risk diluting these gains. The absence of a clear legal definition for “fair and adequate compensation” is especially problematic, as it leaves communities vulnerable to undervaluation and inconsistent application. Therefore, the PIA stands as a promising but still evolving legal instrument, a statute whose success will

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<sup>119</sup> Oworji C.C., *A Critical Overview of the Legal Framework of Land Acquisition and Compensation by Oil and Gas Licensee Companies in Nigeria* (Benjamin Solicitors, October 2023) <https://benjaminsolicitors.com/wp-content/uploads/2023/10/A-CRITICAL-OVERVIEW-OF-THE-LEGAL-FRAMEWORK-OF-LAND-ACQUISITION-AND-COMPENSATION-BY-OIL-AND-GAS-LICENSEE-COMPANIES-IN-NIGERIA.pdf> accessed 3 November 2025.

ultimately be determined not by its legislative sophistication, but by its ability to deliver justice, equity, and sustainable development to the communities at the heart of Nigeria's oil wealth.

### 3.3.3. The Land Use Act Act

The *Land Use Act (LUA) of 1978* remains one of the most consequential yet controversial pieces of legislation in Nigeria's legal history. Its enactment was intended to simplify and unify land tenure across the country, ensuring equitable access and facilitating development. However, in practice, the Act has had far-reaching implications for compensation and land ownership in oil-producing regions. While it establishes the legal foundation for compensation when land is compulsorily acquired for petroleum operations, its effectiveness in protecting the rights and livelihoods of affected communities has been the subject of extensive criticism.

A major strength of the Land Use Act lies in its attempt to bring clarity and uniformity to Nigeria's complex land tenure system. By vesting all land in the Governor of each state to be held in trust for the people, the Act sought to eliminate the uncertainty and multiplicity of ownership claims that had characterized customary landholding systems.<sup>120</sup> *Sections 28 and 29 of the Act* provide a legal basis for revocation of rights of occupancy and compensation to affected landholders or occupiers. In theory, this ensures that persons whose land is taken for public purposes, such as oil exploration or pipeline construction, are not left uncompensated. Furthermore, the provisions of *Section 30*, which establish the Land Use and Allocation Committee to assess and determine compensation disputes, were designed to introduce a measure of administrative oversight and expert evaluation in the compensation process.

Despite these theoretical safeguards, the practical effect of the Land Use Act has been to weaken the proprietary and bargaining rights of oil-producing communities. By vesting absolute control of land in the

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<sup>120</sup> Trusted Advisors, 'Understanding The Land Use Act In Nigeria: A Comprehensive Guide' (Mondaq, 27 September 2024) <https://www.mondaq.com/nigeria/land-law-agriculture/1523196/understanding-the-land-use-act-in-nigeria-a-comprehensive-guide> accessed 20 September 2025.

State Governor, the Act effectively disempowers communities and individuals from directly negotiating with oil companies regarding compensation or access to land. The Governor’s discretionary authority to revoke rights of occupancy “for overriding public interest” has often been exercised in favour of the state and oil companies, rather than the communities whose land and environment are affected. In most cases, oil exploration and pipeline construction have been deemed to serve such overriding public interest, thereby legitimizing widespread revocations in the Niger Delta without sufficient regard for social or environmental consequences.<sup>121</sup>

Moreover, the basis for assessing compensation under *Section 29* significantly limits the scope of redress available to affected persons. Compensation under the Act is restricted to “unexhausted improvements” on the land such as buildings, installations, and crops, while excluding payment for the land itself.<sup>122</sup> This approach assumes that since all land belongs to the state, individuals and communities cannot have a proprietary claim to its value. However, in oil-producing regions, land is not merely a physical asset; it embodies economic sustenance, cultural heritage, and social identity. The refusal to compensate for the land itself fails to recognize the totality of loss suffered by these communities when their ancestral lands are taken over or polluted by petroleum operations.<sup>123</sup> In effect, the LUA’s compensation model undervalues community interests and perpetuates economic marginalization.

The provisions of *Section 47* further compound this problem by attempting to shield governmental decisions on compensation from judicial scrutiny. By ousting the jurisdiction of courts to question the

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<sup>121</sup> Owhorji C.C., *A Critical Overview of the Legal Framework of Land Acquisition and Compensation by Oil and Gas Licensee Companies in Nigeria* (Benjamin Solicitors, October 2023) <https://benjaminsolicitors.com/wp-content/uploads/2023/10/A-CRITICAL-OVERVIEW-OF-THE-LEGAL-FRAMEWORK-OF-LAND-ACQUISITION-AND-COMPENSATION-BY-OIL-AND-GAS-LICENSEE-COMPANIES-IN-NIGERIA.pdf> accessed 20 September 2025.

<sup>122</sup> Udenna Chukwulobe, ‘The Legality of Government Restrictive Compensation under the Land Use Act (LUA)’ (Olisa Agbakoba Legal, date unpublished) [https://oal.law/the-legality-of-government-restrictive-compensation-under-the-land-use-act-lua/#:~:text=Section%2029%20subsection%20\(1\)%20and,of%20determined%20by%20appropriate%20officer.](https://oal.law/the-legality-of-government-restrictive-compensation-under-the-land-use-act-lua/#:~:text=Section%2029%20subsection%20(1)%20and,of%20determined%20by%20appropriate%20officer.) accessed 20 September 2025.

<sup>123</sup> S.P.A. Ajibade & Co., ‘Unexhausted Improvements Vis-À-Vis Unexhausted Economic Interest in Land Subject of Compulsory Acquisition: A Case of Deliberate Legislative Discrimination’ (Mondaq, 9 May 2016) [https://www.mondaq.com/nigeria/landlord-tenant-leases/489478/unexhausted-improvements-vis-%C3%80-vis-unexhausted-economic-interest-in-land-subject-of-compulsory-acquisition-a-case-of-deliberate-legislative-discrimination#:~:text=Under%20section%2029\(4\),\(of%20such%20right%20of%20occupancy.](https://www.mondaq.com/nigeria/landlord-tenant-leases/489478/unexhausted-improvements-vis-%C3%80-vis-unexhausted-economic-interest-in-land-subject-of-compulsory-acquisition-a-case-of-deliberate-legislative-discrimination#:~:text=Under%20section%2029(4),(of%20such%20right%20of%20occupancy.) accessed 20 September 2025.

amount or adequacy of compensation paid under the Act, this section undermines the constitutional right of access to justice and the rule of law.<sup>124</sup> Although the courts have, in several instances, resisted this ouster clause, especially where revocation procedures violate due process or constitutional rights, the mere existence of such a provision reflects an imbalance of power between the state and affected landholders. It also emboldens arbitrary decision-making by public officials, reducing transparency and accountability in compensation processes.

The Land Use and Allocation Committees established under *Sections 2 and 30* were intended to act as technical and impartial bodies for resolving compensation disputes. However, in practice, these committees have been largely ineffective due to political interference, inadequate funding, and lack of independence. Their composition and operations are often controlled by state governments, which are themselves parties in compensation disputes. As a result, affected communities frequently distrust these committees and resort to prolonged litigation, which delays or frustrates the payment of compensation altogether.<sup>125</sup> This administrative inefficiency has contributed to the persistent grievances and conflict in oil-producing areas.

Another notable shortcoming of the LUA is its limited recognition of resettlement as an alternative form of compensation. While *Section 33* allows for resettlement in lieu of monetary payment, this option is rarely implemented effectively. In many cases, resettled communities are relocated to areas lacking basic amenities or fertile land, leading to further economic displacement. Moreover, the provision that excess value in resettlement may be treated as a loan repayable to the government is inequitable and inconsistent

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<sup>124</sup> Udenna Chukwulobe, 'The Legality of Government Restrictive Compensation under the Land Use Act (LUA)' (Olisa Agbakoba Legal, date unpublished) [https://oal.law/the-legality-of-government-restrictive-compensation-under-the-land-use-act-lua/#:~:text=Section%2029%20subsection%20\(1\)%20and.and%20determined%20by%20appropriate%20officer.](https://oal.law/the-legality-of-government-restrictive-compensation-under-the-land-use-act-lua/#:~:text=Section%2029%20subsection%20(1)%20and.and%20determined%20by%20appropriate%20officer.) accessed 20 September 2025.

<sup>125</sup> Ibid

with the principle of restorative justice. True compensation should restore affected persons to their original or an improved condition, not burden them with new financial obligations.<sup>126</sup>

The jurisdictional overlap between *Section 39 of the Land Use Act* and *Section 251 of the 1999 Constitution* also creates uncertainty. While the LUA confers jurisdiction on the State High Court to determine compensation disputes, the Constitution vests exclusive jurisdiction over mineral and petroleum matters in the Federal High Court. This duality often leads to jurisdictional contestation and delays in adjudication. The ambiguity reflects a broader institutional weakness in the coordination between land administration and petroleum regulation in Nigeria, ultimately affecting the timely resolution of compensation claims.

In assessing the Land Use Act within the broader context of oil compensation, it becomes clear that while the Act provides the procedural foundation for compensation, it does not adequately safeguard the substantive rights of oil-producing communities. The statutory exclusion of land value from compensation, the centralization of land control in state governments, and the ouster of judicial review collectively undermine the principles of fairness and accountability. Consequently, the LUA functions more as a tool for state facilitation of resource extraction than as a mechanism for protecting community rights. Its integration with the Petroleum Industry Act and other environmental laws has not substantially remedied these deficiencies, as the fundamental issue lies in the structure of land ownership itself.

The *Land Use Act of 1978*, though pivotal to Nigeria's land and compensation framework, is deeply flawed in its practical application to oil-producing regions. Its top-down approach to land management, restrictive definition of compensable interests, and weak accountability mechanisms have perpetuated systemic injustices in the Niger Delta and other oil-bearing areas. For the Act to serve as an effective

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<sup>126</sup> Abbiyesuku T.A., 'Adequacy of Resettlement Scheme: A Post-Resettlement Review of Apo Resettlement Scheme, Abuja, Nigeria' (2020) <[https://www.researchgate.net/publication/353314439\\_Adequacy\\_of\\_Resettlement\\_Scheme\\_A\\_Post-Resettlement\\_Review\\_of\\_Apo\\_Resettlement\\_Scheme\\_Abuja\\_Nigeria#:~:text=Abstract%20and%20Figures,research%20employed%20a%20survey%20approach.>](https://www.researchgate.net/publication/353314439_Adequacy_of_Resettlement_Scheme_A_Post-Resettlement_Review_of_Apo_Resettlement_Scheme_Abuja_Nigeria#:~:text=Abstract%20and%20Figures,research%20employed%20a%20survey%20approach.>) accessed 20 September 2025.

instrument of compensation, substantial reforms are necessary, particularly those that recognize community land rights, guarantee full compensation for both land and improvements, and restore judicial oversight over compensation assessments. Only through such reforms can the Land Use Act evolve from a bureaucratic instrument of dispossession into a genuine vehicle for equity and restorative justice in Nigeria's oil-producing regions.

### **3.3.4. The Oil Pipelines Act**

The *Oil Pipelines Act (OPA) of 1956*, codified as *Cap O7 Laws of the Federation of Nigeria 2004*, remains one of the most significant yet controversial pieces of legislation regulating oil infrastructure and compensation in Nigeria. Enacted during the colonial era, the Act provides the legal foundation for the construction, operation, and maintenance of oil pipelines and establishes the rights of oil companies to acquire access to land for petroleum activities. It also prescribes the rights of landowners and occupiers to compensation for damages or disturbances arising from such operations. Despite its enduring importance, the OPA has long been criticized for its inadequacy in protecting host communities and for granting excessive powers to oil companies under the guise of national economic development.<sup>127</sup> Although the enactment of the *Petroleum Industry Act (PIA) 2021* appeared to signal a legislative overhaul of the petroleum sector, the OPA has not been expressly repealed. *Section 311(9)(c) of the PIA* preserves the continued operation of the OPA and its subsidiary legislation to the extent that they are consistent with the PIA. In practice, this means that the OPA remains in force, but its provisions are now subordinated to the PIA, raising questions about the coherence and modern relevance of its compensation framework.

The OPA grants the Minister of Petroleum Resources wide discretionary powers to issue permits and licences for the construction and operation of pipelines across lands belonging to private individuals and communities. *Sections 2 and 3* empower the Minister to grant oil pipeline licences and permits to survey,

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<sup>127</sup> Mendie, A. J., 'Evaluation of Constitutional and Statutory Frameworks for Compensation for Oil Pollution Damage in Nigeria' (2020) 19 *African Scholar Journal of Humanities and Social Sciences* 6 [https://www.africanscholarpublications.com/wp-content/uploads/2021/04/AJHSS\\_VOL19\\_NO6\\_DEC2020-13.pdf](https://www.africanscholarpublications.com/wp-content/uploads/2021/04/AJHSS_VOL19_NO6_DEC2020-13.pdf) accessed 21 September 2025.

thereby giving oil companies access to lands they do not own. While these provisions establish a formal process for compensation, the underlying structure privileges administrative discretion over participatory decision-making. The requirement of obtaining ministerial consent for route surveys and pipeline construction was initially designed to ensure regulatory oversight, but in practice, it has often facilitated state-backed corporate encroachment on communal lands.<sup>128</sup> The law's colonial-era design reflects a top-down approach that prioritises national economic interest over the proprietary and livelihood rights of local landholders.

*Section 6 of the OPA* attempts to balance the interests of licensees with those of affected landowners by mandating prior notice, consent, and payment of compensation for damage or disturbance during survey activities. However, this protection is more theoretical than practical. The Act provides no clear enforcement mechanism to ensure compliance, and compensation disputes are often left unresolved for years. The requirement that prior consent be obtained before entering cultivated or enclosed land has been routinely disregarded in practice, particularly in the Niger Delta, where oil companies have historically relied on state-backed authorisations rather than community approval. Moreover, the OPA's failure to define what constitutes "adequate" or "just" compensation leaves a wide interpretive gap that favours operators.<sup>129</sup>

*Section 11 of the OPA* provides the principal operational rights for pipeline licensees and outlines the scope of activities permissible under a licence. It allows companies to enter, occupy, and use strips of land up to 200 feet wide for pipeline construction and associated infrastructure. The provision further authorises the use of natural materials from the land without additional payment, except for minerals under the Minerals and Mining Act. This statutory privilege effectively diminishes the property rights of landowners, reducing them to passive beneficiaries of compensation rather than active stakeholders in

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<sup>128</sup> Ibid

<sup>129</sup> Ibid

resource governance. Although the OPA imposes a duty to pay compensation for damage or injury to land, crops, and buildings, it fails to address long-term environmental degradation, pollution, and loss of livelihood, issues that are intrinsic to oil operations. The Act's remedial approach is reactive and transactional, treating compensation as a one-off payment rather than as an ongoing obligation tied to environmental sustainability and social equity.

The provisions of *Part IV of the OPA*, particularly *Sections 19 and 20*, are devoted to the determination and award of compensation. While *Section 20* provides detailed criteria for assessing compensation covering damage to crops, buildings, disturbance, negligence, leakage, and diminution in land value, its framework remains rooted in a narrow conception of property loss. The Act does not contemplate ecological damage, biodiversity loss, or long-term environmental health impacts as compensable injuries.<sup>130</sup> Furthermore, the incorporation of the Land Use Act's provisions under *Section 20(4)* creates further complexity. The OPA's deference to the Land Use Act excludes compensation for unoccupied land, effectively denying communities whose lands are communally held or rotationally used the right to compensation. This provision perpetuates historical injustices against customary landholders, particularly in the Niger Delta, where most land tenure is customary rather than statutory.<sup>131</sup> The result is a dual legal system that marginalises indigenous ownership patterns and privileges formal titleholders, thereby undermining equitable compensation.

*Section 21 of the Act* addresses communal compensation and provides for judicial management or trust-based administration of funds for affected communities. While the intention behind this section is laudable, its implementation has been fraught with mismanagement, elite capture, and lack of transparency. The law does not provide any statutory guidelines for accountability in the administration

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<sup>130</sup> Ekhaesomhi, D., 'Appraisals of Selected Oil and Gas Laws and Governance in Nigeria' (2021) 9 *International Journal of Business & Law Research* 4 153 <https://www.seahipublications.org/wp-content/uploads/2024/05/IJBLR-D-14-2021.pdf> accessed 21 September 2025.

<sup>131</sup> Gogo, K. and Nweke, P., 'A Critical Evaluation of the Legal Framework of Oil Spills and Compensation in Nigeria' (2018) <[https://www.researchgate.net/publication/338867290\\_A\\_CRITICAL\\_EVALUATION\\_OF\\_THE\\_LEGAL\\_FRAMEWORK\\_OF\\_OIL\\_SPILLS\\_AND\\_COMPENSATION\\_IN\\_NIGERIA](https://www.researchgate.net/publication/338867290_A_CRITICAL_EVALUATION_OF_THE_LEGAL_FRAMEWORK_OF_OIL_SPILLS_AND_COMPENSATION_IN_NIGERIA)> accessed 21 September 2025.

of such communal compensation, allowing traditional leaders or trustees to appropriate funds meant for collective benefit. Similarly, *Section 22*'s presumption that the person in possession or receiving rent is the rightful owner oversimplifies complex customary land relations, leading to frequent disputes and litigation. These provisions reveal an inherent structural weakness in the OPA, it assumes a homogenous, individualistic system of land ownership that does not reflect Nigeria's plural legal and customary realities.

Although *Section 27 of the Act* grants the Minister the power to revoke a pipeline licence for breach of conditions, the provision lacks clarity on environmental responsibility after revocation. The section protects lawful acts done before revocation but fails to impose continuing liability for pollution or ecological damage caused during the licence's tenure. Consequently, companies may escape long-term responsibility once a licence is revoked, even if environmental restoration remains incomplete.<sup>132</sup> This legislative gap is inconsistent with contemporary principles of environmental accountability embedded in the PIA and international instruments such as the Rio Declaration and the African Charter on Human and Peoples' Rights.

In evaluating the effectiveness of the OPA, it becomes evident that while the Act was progressive at the time of its enactment, it has become largely outdated and inadequate in addressing modern environmental and human rights concerns associated with oil pipeline operations. Its compensation framework is limited, procedural, and property-based, with little attention to ecological justice or sustainable development. The law's silence on environmental remediation, community participation, and corporate accountability makes it an imperfect instrument for achieving equitable compensation. Furthermore, its continued coexistence with the PIA creates potential conflicts and uncertainties, particularly regarding the interpretation of compensation and environmental obligations.

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<sup>132</sup> Ekhaesomhi, D., 'Appraisals of Selected Oil and Gas Laws and Governance in Nigeria' (2021) 9 *International Journal of Business & Law Research* 4 153 <https://www.seahipublications.org/wp-content/uploads/2024/05/IJBLR-D-14-2021.pdf> accessed 21 September 2025

In summary, the OPA remains a relic of Nigeria's colonial legal order, one that prioritises the interests of the state and oil companies over the rights of host communities. While it continues to operate under the saving clause of the PIA, its effectiveness as a modern compensation framework is doubtful. A comprehensive reform or repeal is necessary to harmonise it with the PIA's objectives of transparency, sustainability, and community development. Such reform should incorporate explicit provisions on environmental restoration, community consultation, and long-term compensation for loss of livelihood, ensuring that the law reflects both constitutional guarantees and contemporary standards of environmental justice.

### **3.3.5. The Environmental Impact Assessment Act (EIA Act)**

The *Environmental Impact Assessment Act (EIA Act)* represents one of the most important environmental statutes in Nigeria's legal regime for sustainable development. Enacted in 1992, the Act was designed to ensure that environmental consequences are duly considered before the commencement of any major project, particularly those in the oil and gas sector. The law adopts a preventive approach to environmental management by mandating that environmental implications be assessed, mitigated, or compensated for before the implementation of any project likely to have significant ecological or social effects. Within the broader framework of oil compensation in Nigeria, the EIA Act occupies a critical though indirect position, it does not provide a specific compensation mechanism, but it functions as an anticipatory safeguard against the environmental degradation that typically gives rise to compensation claims.

*Section 2(1) of the Act* sets the legal foundation for this preventive mechanism by prohibiting both public and private entities from embarking on projects without prior environmental assessment. Petroleum exploration, production, and infrastructure development activities such as drilling and pipeline construction fall under Category I Projects as identified by the *EIA Procedural Guidelines*, requiring mandatory assessment and regulatory approval from the Federal Ministry of Environment. This provision

ensures that oil companies cannot legally commence operations without evaluating potential harm to host communities and their environments. In this way, the EIA process becomes an early-stage accountability tool, compelling project proponents to address environmental risks and potential compensatory obligations before damage occurs.

A key strength of the EIA Act lies in its emphasis on community participation.<sup>133</sup> **Section 7** of the Act mandates public consultation with potentially affected communities, experts, and stakeholders at the scoping and review stages of the EIA process. This participatory approach allows oil-producing communities to express their concerns regarding environmental risks, cultural displacement, and livelihood disruptions. It also ensures transparency and inclusiveness in the decision-making process. The Act thereby recognizes that affected communities should not merely be passive recipients of environmental decisions but active participants whose perspectives can shape mitigation and compensation outcomes. However, the effectiveness of this participatory right depends largely on its enforcement by the Ministry of Environment, which has sometimes been criticized for inadequate public engagement and perfunctory project approvals.

Although the Act does not explicitly mention “compensation” as a statutory entitlement, its definition of “mitigation” in **Section 61** includes “restitution for any damage to the environment caused by such effects through replacement, restoration, compensation or any other means.” This broad conception of mitigation introduces a compensatory dimension, enabling regulatory authorities to require project proponents to undertake remedial actions, restoration efforts, or financial compensation as part of project approval conditions. For instance, where an EIA identifies risks of water pollution, soil degradation, or displacement of agricultural activities, the approval authority may impose compensatory obligations to restore affected livelihoods. In this sense, the EIA process provides a preventive and preemptive form of

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<sup>133</sup> B. Taofeek, ‘The Efficacy of the Environmental Impact Assessment Act in Nigeria’ (Metalex Legal, 29 August 2024) <https://www.metalexlegal.com/publication/article/the-efficacy-of-the-environmental-impact-assessment-act-in-nigeria.105#:~:text=It%20is%20worthy%20to%20note.enforce%20penalties%20for%20non-compliance>, accessed 22 September 2025.

compensation, one that addresses potential harm before it materializes rather than responding reactively after damage has occurred.

Judicial interpretation has also reinforced the legal importance of environmental assessment as a safeguard for community rights. In *Gbemre v. Shell Petroleum Development Company*<sup>134</sup>, the Federal High Court held that gas flaring in the Niger Delta without due environmental consideration violated the constitutional rights to life and dignity of the human person under *Sections 33 and 34 of the 1999 Constitution*. Although the case did not specifically order compensation, it affirmed the principle that environmental protection is intrinsically linked to human rights and that failure to comply with the EIA process constitutes a breach of constitutional and environmental obligations. This case underscores the judiciary's recognition that environmental harm caused by oil operations can translate into compensable injuries within Nigeria's human rights and environmental justice framework.

Despite its conceptual strength, the EIA Act suffers from notable implementation weaknesses. The absence of clear enforcement mechanisms, coupled with bureaucratic inefficiencies and political interference, has led to instances where EIAs are either not conducted or are superficially prepared and approved. Moreover, monitoring and post-approval compliance remain weak, leaving affected communities with little recourse when operators fail to implement mitigation or compensation measures outlined in approved EIA reports. These enforcement challenges undermine the Act's preventive intent and allow environmental degradation to persist in oil-producing regions, often leading to the very harms it was designed to prevent.<sup>135</sup>

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<sup>134</sup> Supra

<sup>135</sup> Moriah, D.J., 'Assessing the Effectiveness of Environmental Impact Assessments (EIAs) in Developing Countries' (2025) *Asian Journal of Social Science and Management Technology*  
<[89](https://www.researchgate.net/publication/393163879_Assessing_the_Effectiveness_of_Environmental_Impact_Assessments_EIAs_in_Developing_Countries#:~:text=The%20findings%20reveal%20that%20while,sustainable%20development%20in%20developing%20countries.&text=Content%20may%20be%20subject%20to%20copyright.&text=engagement.-The%20findings%20reveal&text=accountability%2C%20and%20increasing%20pub,the%20effectiveness%20of%20EIAs.&text=countries.-%2D%2D%2D%2D%2D&text=in%20these%20contexts%20is%20critical,is%20sustainable%20and%20environmentally%20responsible.&text=prioritize%20economic%20gains%20over%20environmental%20protection.> accessed 22 September 2025.</a></p></div><div data-bbox=)

In conclusion, the EIA Act plays a foundational role in Nigeria's oil compensation framework by institutionalizing environmental accountability, public participation, and preventive justice. It establishes a legal and procedural pathway for identifying and mitigating the impacts of petroleum projects before they escalate into compensable harm. However, its effectiveness depends on robust enforcement, transparency, and sustained political will to ensure that EIAs serve as genuine tools for environmental protection rather than mere administrative formalities. When properly implemented, the Act not only minimizes the need for compensation but also strengthens the broader framework of environmental justice and sustainable oil development in Nigeria.

### **3.3.6. National Oil Spill Detection and Response Agency (NOSDRA) Act, 2006**

The *National Oil Spill Detection and Response Agency (NOSDRA) Act, 2006* represents one of the most important institutional developments in Nigeria's environmental and petroleum governance framework, particularly in the context of compensation for oil-producing regions affected by oil pollution. At its core, the NOSDRA Act seeks to ensure preparedness, timely detection, and effective response to oil spills across the country. *Section 5 of the Act* establishes the Agency's broad mandate, which includes identifying high-risk areas, mobilizing resources for rapid response, and promoting research into oil spill detection and clean-up technology. Through the National Oil Spill Contingency Plan (NOSCP), the Act introduces a structured and coordinated national framework for managing oil spill incidents, consistent with Nigeria's obligations under the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC), 1990. Under this plan, NOSDRA coordinates the responsibilities of operators, government agencies, and local communities to ensure that oil spill response efforts are swift and effective. *Section 6* further empowers the Agency to monitor compliance with environmental laws, enforce international conventions on oil spill response, and ensure that operators join cooperative response initiatives such as the Clean Nigeria Associates (CNA)<sup>136</sup>.

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<sup>136</sup> See, section 5(d) and Section 6(1)(f)

A critical component of the NOSDRA Act is its integration of the “polluter pays principle”, which mandates oil companies to bear full responsibility for environmental harm resulting from their operations.<sup>137</sup> Under **Section 6(2)**, oil companies are required to report any spill within 24 hours of occurrence and commence clean-up within two weeks. Failure to report attracts a daily fine of ₦2,000,000, while failure to clean up can lead to fines up to ₦5,000,000 or imprisonment. These provisions serve both punitive and deterrent purposes, ensuring that polluters internalize the costs of environmental damage rather than externalizing them to host communities. Although the Act does not expressly confer a statutory right to compensation, it implicitly supports compensation mechanisms by ensuring that environmental damage is properly assessed, documented, and remediated. The post-spill impact assessments and ecological monitoring conducted by NOSDRA form the evidentiary foundation for compensation claims pursued by affected individuals or communities, either through litigation or administrative negotiations.

The legal relevance of NOSDRA’s work has been recognized by Nigerian courts, particularly in cases where oil companies have been held liable for environmental harm. For instance, in *Shell Petroleum Development Co. v. Farah*<sup>138</sup>, the Court of Appeal affirmed that oil companies are strictly liable for damages resulting from oil spills, while in *Shell v. Isaiah & Ors*<sup>139</sup>, the courts relied on environmental assessments in awarding compensation for destroyed farmland and economic trees. Although these judgments were not rendered directly under the NOSDRA Act, they demonstrate the growing influence of environmental accountability mechanisms in Nigerian jurisprudence. NOSDRA’s environmental monitoring and technical assessments often serve as authoritative evidence in these cases, bridging the gap between regulatory enforcement and judicial redress.

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<sup>137</sup> Enyia, J.O. & Adams, A-I.J., ‘Polluter Pays Principle under the Nigerian Oil and Gas Industry: Legal and Institutional Challenges’ (2022) 25(3) *Journal of Management Information and Decision Sciences* 1–6  
<https://www.abacademies.org/articles/polluter-pays-principle-under-the-nigerian-oil-and-gas-industry-legal-and-institutional-challenges-14629.html#:~:text=Abstract,the%20polluter%20liable%20to%20pay>, accessed 23 September 2025

<sup>138</sup> Supra

<sup>139</sup> Supra

From a critical perspective, however, the effectiveness of the NOSDRA Act in facilitating compensation and environmental justice remains limited by weak enforcement and institutional constraints. Despite its robust statutory mandate, the Agency has faced persistent challenges such as inadequate funding, bureaucratic interference, and lack of technical capacity. Oil spill incidents continue to occur at alarming rates, with delayed response times and incomplete remediation in many cases. Furthermore, penalties prescribed under the Act are outdated and insufficient to deter large multinational corporations whose financial capacities far exceed the statutory fines. These weaknesses undermine NOSDRA's credibility and hinder its ability to provide meaningful protection for host communities.<sup>140</sup>

The *Petroleum Industry Act (PIA), 2021*, introduces new institutional reforms that intersect with NOSDRA's functions, offering an opportunity for improved coordination in environmental governance. Under the PIA, environmental management in the petroleum sector is now more explicitly tied to host community development and sustainability obligations, including the establishment of Host Community Development Trusts (HCDTs). These provisions align with NOSDRA's environmental remediation objectives and reinforce the principle that operators must take responsibility for the social and environmental consequences of oil production. However, for this synergy to be effective, there must be clearer delineation of roles between NOSDRA, the Nigerian Upstream Petroleum Regulatory Commission (NUPRC), and other regulatory agencies to prevent overlap and administrative conflict.

In summary, the *NOSDRA Act, 2006*, is a cornerstone of Nigeria's environmental governance system, bridging the gap between pollution control and community redress. While it does not create a direct right to compensation, it performs an indispensable role in the identification, assessment, and documentation of environmental harm, thereby supporting claims for remediation and damages. The Act's potential as a compensation-facilitating mechanism remains largely unrealized due to implementation deficiencies and

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<sup>140</sup> Odoeme, C.V., 'NOSDRA and the Challenges of Management of Oil Spillage in the Niger-Delta' (2012) *Commercial & Industrial Law Journal* 3(2) 105–117  
[https://www.researchgate.net/publication/356789124\\_NOSDRA\\_and\\_the\\_challenges\\_of\\_management\\_of\\_oil\\_spillage\\_in\\_the\\_Niger-Delta](https://www.researchgate.net/publication/356789124_NOSDRA_and_the_challenges_of_management_of_oil_spillage_in_the_Niger-Delta) accessed 23 September 2025.

weak enforcement, but with stronger institutional capacity, updated penalties, and alignment with the PIA's sustainability framework, NOSDRA can evolve into a more effective instrument for ensuring environmental accountability and justice in oil-producing communities.

### **3.3.7. National Environmental Standards and Regulations Enforcement Agency Act, 2007**

The *National Environmental Standards and Regulations Enforcement Agency (NESREA) Act, 2007*, represents a cornerstone in Nigeria's environmental regulatory framework, providing a comprehensive legal foundation for the enforcement of environmental standards across multiple sectors, including the petroleum industry. The establishment of NESREA marked a deliberate effort by the Federal Government to centralize environmental governance and strengthen compliance mechanisms that had previously been fragmented under various ministries and agencies.<sup>141</sup> While the Act's scope extends beyond the oil and gas sector, its relevance to the petroleum industry, particularly in the context of environmental degradation and the resulting compensation issues in oil-producing communities is profound. NESREA plays a pivotal role in ensuring environmental accountability, monitoring industrial activities, and enforcing remediation measures that indirectly facilitate compensation and justice for affected communities.

Under *Sections 2 and 7 of the NESREA Act*, the Agency is mandated to enforce all environmental laws, guidelines, policies, standards, and regulations in Nigeria. These provisions empower NESREA to ensure compliance with environmental quality standards for the protection of human health, ecosystems, and natural resources. The Act grants the Agency broad oversight over activities capable of causing environmental pollution, such as oil exploration, refining, pipeline transportation, and waste disposal. In exercising this mandate, NESREA acts as both a preventive and corrective regulatory authority, capable

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<sup>141</sup> Agbazue V.E., Anih E.K. & Ngang B.U., 'The Role of NESREA Act 2007 in Ensuring Environmental Awareness and Compliance in Nigeria' (2017) 10(9) *IOSR Journal of Applied Chemistry (IOSR-JAC)* 32–37  
<https://www.iosrjournals.org/iosr-jac/papers/vol10-issue9/Version-3/G1009033237.pdf> accessed 23 September 2025.

of issuing enforcement notices, suspending operations, and initiating prosecutions against violators.<sup>142</sup> Through these powers, NESREA provides an institutional mechanism for ensuring that environmental degradation does not go unchecked and that operators internalize the costs of pollution consistent with the polluter pays principle.

One of NESREA's most significant contributions lies in its authority under *Section 8* to issue sector-specific environmental regulations. The Agency has developed a suite of enforceable environmental standards, including the National Environmental (Sanitation and Wastes Control) Regulations, the National Environmental (Surface and Groundwater Quality Control) Regulations, and the National Environmental (Oil and Gas Sector) Regulations. These instruments set legally binding thresholds for effluent discharge, air quality, hazardous waste management, and environmental remediation. Within the oil and gas sector, these standards help determine acceptable operational practices and delineate the legal basis for enforcement when environmental harm occurs. Violations of these standards not only attract administrative penalties but also establish factual and evidentiary grounds upon which affected communities can pursue civil compensation claims under tort or statutory law.<sup>143</sup>

*Sections 26 and 27 of the NESREA Act* provide explicit enforcement provisions and penalties for environmental infractions. *Section 26* empowers NESREA to make regulations to safeguard land resources, watersheds, and coastal zones from pollution, while *Section 27* prohibits the discharge of hazardous substances into the environment without lawful authorization. The penalties for non-compliance include fines, imprisonment, and additional daily sanctions for continuing violations. For instance, individuals may face fines up to ₦200,000 or imprisonment for one year, while corporate entities may be fined up to ₦1,000,000 and additional ₦50,000 per day for ongoing offences. In cases involving

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<sup>142</sup> Alagoa, Okuboere, 'An Examination of the Criminal Provisions for Environmental Protection in Nigeria: A Bird's Eye View of the NESREA Act 2007' (2021) 6 *African Journal* 95–105 <https://ajjeel.com/index.php/a/article/download/33/36/149> accessed 23 September 2025.

<sup>143</sup> Monsurat, S.R., Olalekan, R.M. & Olawale, S.H., 'A Deep Dive into the Review of National Environmental Standards and Regulations Enforcement Agency (NESREA) Act' (2019) 1(4) *International Research Journal of Applied Sciences* <https://ssrn.com/abstract=3498797> accessed 24 September 2025.

the unlawful discharge of hazardous substances, fines can reach ₦1,000,000 with imprisonment terms of up to five years. Although these monetary sanctions are relatively modest compared to the financial capacities of multinational oil corporations, their existence reinforces the principle of legal liability and provides a statutory platform for holding polluters accountable. NESREA's ability to seal premises, halt polluting activities, and require remediation further enhances its enforcement authority.

However, despite its robust statutory powers, NESREA's jurisdiction within the oil and gas sector has historically been the subject of controversy, particularly due to perceived overlaps with the National Oil Spill Detection and Response Agency (NOSDRA). While NOSDRA is the primary agency responsible for oil spill management and response, NESREA is empowered to enforce general environmental standards across all industries, including oil and gas operations. This overlap has occasionally led to jurisdictional conflicts and enforcement inefficiencies. Nonetheless, both agencies play complementary roles, NOSDRA focusing on spill response and remediation, while NESREA ensures compliance with broader environmental standards and regulations. Their inter-agency collaboration, when effectively managed, enhances the overall institutional capacity for environmental protection and strengthens the framework within which compensation and environmental justice are pursued.

Although the NESREA Act does not explicitly provide for monetary compensation to victims of environmental degradation, its enforcement actions have substantial indirect implications for compensatory justice. NESREA's environmental audits, inspection reports, and compliance data often serve as credible evidence in court proceedings where affected individuals or communities seek damages for pollution-induced harm. For instance, NESREA's findings on effluent discharges, air contamination, or ecosystem disruption can substantiate claims of negligence, nuisance, or strict liability against oil companies. This evidentiary role situates NESREA as a critical facilitator in the broader process of environmental accountability and compensation.

In practice, NESREA's regulatory influence has been evident in its operations across the Niger Delta, where it conducts environmental monitoring, compliance inspections, and enforcement interventions aimed at mitigating the adverse impacts of oil exploration. By compelling oil operators to adhere to environmental standards and undertake corrective actions, the Agency contributes to the protection of the environment and the livelihoods of host communities. Moreover, its deterrent role ensures that environmental degradation is less likely to occur in the first place, thereby reducing the frequency and scale of compensable harm.<sup>144</sup>

In conclusion, the NESREA Act, 2007, strengthens Nigeria's environmental governance architecture by embedding enforceable standards, regulatory oversight, and punitive mechanisms to ensure compliance. Although it does not confer a direct statutory right to compensation, its implementation plays a crucial supportive role in achieving environmental justice for oil-producing communities. Through monitoring, enforcement, and inter-agency collaboration, NESREA serves as a key institutional actor in ensuring that oil exploration and production are conducted sustainably and in accordance with environmental best practices. To enhance its effectiveness, there is a need for clearer jurisdictional delineation with NOSDRA, increased funding, and updated penalty provisions that reflect the economic realities of the oil and gas industry. With these improvements, NESREA can more effectively safeguard Nigeria's environment while indirectly promoting compensation and remediation for communities impacted by petroleum operations.

### **3.3.8. Harmful Waste (Special Criminal Provisions, etc.) Act, 1988**

The *Harmful Waste (Special Criminal Provisions, etc.) Act, 1988 (HWSCPA)* occupies a distinctive position within Nigeria's environmental legal framework. Enacted in response to the Koko toxic waste

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<sup>144</sup> Okechukwu N., '(NESREA) and the Challenges of Environmental Regulation in Nigeria' (2024) 4(1) *British Journal of Mass Communication and Media Research* 1-11  
<[https://www.researchgate.net/publication/377410510\\_NESREA\\_and\\_the\\_Challenges\\_of\\_Environmental\\_Regulation\\_in\\_Nigeria](https://www.researchgate.net/publication/377410510_NESREA_and_the_Challenges_of_Environmental_Regulation_in_Nigeria)> accessed 24 September 2025.

incident of 1987, the Act was primarily designed to criminalize the illegal importation and disposal of hazardous substances. Although not originally targeted at the petroleum industry, its broad provisions extend to activities within the oil and gas sector where harmful or toxic by-products are generated. Nevertheless, its effectiveness in ensuring compensation for affected oil-producing communities remains limited and largely incidental rather than deliberate.

The HWSCPA is fundamentally a criminal statute, primarily focused on deterrence through stringent penalties, including life imprisonment for offenders under *Section 1*.<sup>145</sup> This design underscores the preventive orientation of the Act rather than the establishment of a compensation mechanism. The law seeks to safeguard public health and environmental integrity by criminalizing harmful waste activities, but it does not create an institutional framework for the assessment, enforcement, or disbursement of compensation to victims of environmental degradation.

The Act's broad definition of "*harmful waste*" encompassing "any injurious, poisonous, toxic or noxious substance", creates interpretive room for its application to oil-related waste, such as drilling fluids and chemical discharges. However, its legislative history and operational design suggest that it was primarily a response to external toxic waste dumping rather than internal industrial pollution. Consequently, its application to the oil sector has been largely peripheral and reactive, surfacing mainly in contexts of egregious contamination or human harm.

Despite its narrow focus, the HWSCPA contributes significantly to the environmental governance architecture in Nigeria. Its criminal sanctions including life imprisonment and asset forfeiture serve as strong deterrents against environmental misconduct. The Act also indirectly supports civil compensation claims, as victims may rely on the outcome of criminal prosecutions to establish liability in tort actions

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<sup>145</sup> Nnamani, M. N. & Amari-Omaka C., 'Knowledge, Practice and Enforcement of Environmental Laws Provisions among Household Heads and Enforcement Officers in Enugu State, Nigeria' (2023) 6(1) ESUT Journal of Education 306-322 <<https://www.esutjoe.org/index.php/esutjoe/article/download/33/31/61#:~:text=On%20the%20other%20hand%2C%20the,will%20also%20suffer%20civil%20liability.>> accessed 24 September 2025.

for damages, environmental remediation, or injunctions. This creates an evidentiary bridge between criminal culpability and civil accountability.<sup>146</sup>

Furthermore, the Act reinforces Nigeria's compliance with international environmental norms, particularly those prohibiting transboundary movement of hazardous wastes, such as the *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (1989)*. In this respect, the HWSCPA affirms the Nigerian state's sovereignty over its environmental space and its duty to protect citizens from toxic exposure, a principle consistent with the constitutional right to a healthy environment implied under *Section 20 of the 1999 Constitution (as amended)*.

In practical terms, the effectiveness of the HWSCPA in facilitating compensation for oil-producing communities has been minimal. The Act lacks explicit provisions for restitution or compensation, and no institutional mechanism exists under it to assess damages or manage environmental restoration funds. Victims of harmful waste exposure must therefore resort to civil litigation, which is often costly, protracted, and procedurally complex.<sup>147</sup>

Moreover, the absence of an enforcement agency specifically dedicated to implementing the HWSCPA has hindered its operational impact. Enforcement responsibility is diffuse, often falling between the Federal Ministry of Environment, NESREA, and NOSDRA, leading to jurisdictional confusion. In the oil-producing regions, this institutional fragmentation weakens the capacity to identify offenders, prosecute environmental crimes, and secure compensation for victims.

Another significant limitation is the lack of integration between the HWSCPA and other sectoral laws such as the *Petroleum Industry Act (PIA), 2021* and the NOSDRA Act, 2006, both of which have clearer

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<sup>146</sup> Sani, M., 'Liability and Compensation for Environmental Damage' (2020) 18(6) *African Journal of Humanities and Social Sciences* 27-40 <[https://www.africanscholarpublications.com/wp-content/uploads/2021/01/AJHSS\\_Vol18\\_No6\\_Sept\\_2020-27.pdf](https://www.africanscholarpublications.com/wp-content/uploads/2021/01/AJHSS_Vol18_No6_Sept_2020-27.pdf)> accessed 25 September 2025.

<sup>147</sup> Gogo, K. & Nweke, P., 'A Critical Evaluation of the Legal Framework of Oil Spills and Compensation in Nigeria' (2018) <[https://www.researchgate.net/publication/338867290\\_A\\_CRITICAL\\_EVALUATION\\_OF\\_THE\\_LEGAL\\_FRAMEWORK\\_OF\\_OIL\\_SPILLS\\_AND\\_COMPENSATION\\_IN\\_NIGERIA#:~:text=Accordingly%2C%20there%20are,more%20compensations%20of%20oil%20spill](https://www.researchgate.net/publication/338867290_A_CRITICAL_EVALUATION_OF_THE_LEGAL_FRAMEWORK_OF_OIL_SPILLS_AND_COMPENSATION_IN_NIGERIA#:~:text=Accordingly%2C%20there%20are,more%20compensations%20of%20oil%20spill)> accessed 25 September 2025.

compensation provisions. While these newer laws impose obligations on oil operators to remediate and compensate for pollution, the HWSCPA remains largely punitive and disconnected from the evolving compensation framework. Consequently, its contribution to restorative justice in oil-impacted communities remains indirect and underdeveloped.

There is also a paucity of judicial precedent applying the HWSCPA in the context of oil pollution. Prosecutions under the Act have been rare, reflecting the broader challenge of weak environmental enforcement in Nigeria. The high evidentiary threshold for criminal liability, coupled with limited technical capacity to monitor and prove harmful waste violations, has discouraged active use of the Act. Furthermore, its penalties, while severe, have limited remedial value to affected communities since fines and forfeitures accrue to the state, not to victims.

Although the Harmful Waste (Special Criminal Provisions) Act reflects Nigeria's early commitment to environmental protection, its role in compensating oil-producing communities remains largely symbolic, as it focuses on criminal deterrence rather than direct restitution. Any compensatory effect arises only indirectly through civil litigation. To make the Act more effective, reforms are needed, such as expressly providing for compensation, remediation, and community restoration; harmonizing the Act with the Petroleum Industry Act and NOSDRA framework; establishing a dedicated enforcement or inter-agency body for harmful-waste offences; and creating a victims' compensation fund funded by fines and forfeitures to provide timely support for affected communities.

In summary, the Harmful Waste (Special Criminal Provisions, etc.) Act, 1988 remains a significant environmental statute in Nigeria's legal history, embodying the principle of deterrence against toxic pollution. However, its effectiveness as a framework for compensation in oil-producing regions is limited by its criminal orientation, enforcement weaknesses, and institutional gaps. To achieve meaningful environmental justice for host communities, the Act must evolve beyond punishment to embrace

restoration, compensation, and participatory environmental governance consistent with contemporary standards of sustainable development and human rights protection.

### 3.3.9. Oil in Navigable Waters Act, 1968

The *Oil in Navigable Waters Act, 1968 (ONWA)* remains one of Nigeria's earliest attempts at codifying environmental protection in the petroleum sector. Enacted to give domestic effect to the *International Convention for the Prevention of Pollution of the Sea by Oil (1954)*, it primarily sought to curb marine pollution arising from oil discharges by ships and other vessels. However, its core structure reflects the environmental priorities of its era which are pollution control and criminal deterrence, rather than restorative justice or community compensation. This orientation limits its relevance as a direct compensation mechanism in Nigeria's oil-producing regions today, although its provisions still influence broader environmental accountability within the maritime aspects of the petroleum industry.

From a regulatory perspective, the ONWA imposes strict obligations on vessel owners and operators to prevent the discharge of oil or oily mixtures into Nigeria's navigable waters.<sup>148</sup> By criminalizing oil discharges and mandating record-keeping, the Act aligns with international maritime pollution standards and provides a legal foundation for attributing liability to offenders. This statutory attribution of liability is particularly significant in a context like the Niger Delta, where oil-related pollution often occurs during offshore loading operations or marine transport. The Act's framework allows courts to identify responsible parties and, under Section 13(2), to channel part of fines towards the defrayment of cleanup or remediation expenses. This provision introduces a rudimentary compensatory element, marking one of the earliest recognitions of the "*polluter pays principle*" in Nigerian environmental law.

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<sup>148</sup> Gogo, K. & Nweke, P., 'A Critical Evaluation of the Legal Framework of Oil Spills and Compensation in Nigeria' (2018) *African Journal of Social Sciences* 8(2) 72-92  
<[https://www.researchgate.net/publication/338867290\\_A\\_CRITICAL\\_EVALUATION\\_OF\\_THE\\_LEGAL\\_FRAMEWORK\\_OF\\_OIL\\_SPILLS\\_AND\\_COMPENSATION\\_IN\\_NIGERIA](https://www.researchgate.net/publication/338867290_A_CRITICAL_EVALUATION_OF_THE_LEGAL_FRAMEWORK_OF_OIL_SPILLS_AND_COMPENSATION_IN_NIGERIA)> accessed 26 September 2025.

Nevertheless, the effectiveness of the ONWA as a compensatory framework is constrained by several structural and practical deficiencies. Firstly, the Act's primary focus is criminal enforcement, with compensation treated as an incidental outcome of fines rather than a substantive legal right of affected persons. *Section 13* allows courts to direct part of fines to cover cleanup costs, but this is discretionary and limited to the amount of the fine, which under *Section 6* is capped at a mere ₦2,000 for inferior courts, an amount that is manifestly obsolete and grossly inadequate to reflect the magnitude of modern oil pollution damage. The absence of inflation-adjusted penalties or a mandatory compensation formula significantly undermines the law's deterrent and restorative capacity.

Moreover, the prosecutorial framework under *Section 12* centralizes enforcement power in the Attorney-General of the Federation or, in specific cases, the harbour authority. While this was intended to ensure regulatory control and prevent frivolous prosecutions, it has inadvertently created bureaucratic bottlenecks and political interference in enforcement. In practice, few prosecutions have been initiated under the ONWA, despite persistent oil discharges from shipping and offshore operations. The restriction on locus standi means affected communities, such as coastal populations in Bayelsa or Delta States, cannot independently institute proceedings for violations under the Act. This structural limitation effectively excludes local victims from the enforcement process and weakens the law's relevance as a vehicle for environmental justice or compensation.

The Ministerial exemption power under *Section 15* further dilutes the effectiveness of the Act. By granting the Minister of Transport the authority to exempt any vessel from compliance either absolutely or conditionally, the provision introduces a discretionary loophole that could undermine environmental protection. Such exemptions, if exercised arbitrarily, could nullify the preventive intent of the law and enable non-compliance by politically connected operators. In modern environmental governance, this level of ministerial discretion is inconsistent with global best practices, which emphasize transparency, accountability, and community participation.

From a compensatory and restorative standpoint, the ONWA lacks an institutional mechanism to assess environmental damage or oversee restitution to affected communities. Its enforcement design presumes a state-centric model where fines and penalties are paid to government coffers, rather than a victim-centric model focused on environmental restoration. Consequently, victims of oil discharge, such as fishermen, farmers, and coastal dwellers, must rely on common law actions in nuisance, negligence, or trespass to recover damages, often facing lengthy, expensive, and uncertain litigation processes. This disconnect between statutory liability and civil redress exposes the Act's inadequacy in achieving substantive justice for affected populations.<sup>149</sup>

Furthermore, the ONWA's provisions have become obsolete in light of technological advancements and contemporary environmental standards. The law was enacted before the development of modern offshore exploration technologies, subsea pipelines, and floating production storage and offloading (FPSO) systems, all core features of Nigeria's current oil operations. As a result, its application is confined mainly to shipping-related pollution, leaving broader oil spill incidents from production and transportation largely outside its reach. The *Petroleum Industry Act (PIA) 2021*, *NOSDRA Act 2006*, and *Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN)* now provide more comprehensive frameworks for oil spill management, compensation, and remediation. Yet, the ONWA remains formally in force, creating regulatory overlap and occasional jurisdictional ambiguity between maritime and petroleum regulators.

Despite these weaknesses, the ONWA has enduring symbolic and legal value as the precursor to Nigeria's environmental accountability regime. Its establishment of liability for oil pollution laid the groundwork for the polluter pays principle, which subsequent legislation, including the *PIA 2021 (Sections 103–107)*, now operationalizes through structured compensation mechanisms like the Host Communities

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<sup>149</sup> Oyende, K.B., *An Appraisal of the Law Relating to Oil Pollution in the Inland, Territorial and Maritime Waters of Nigeria* (PhD thesis, University of KwaZulu-Natal 2012)  
<<https://researchspace.ukzn.ac.za/items/7603e7c2-e181-44b3-9264-5da65a2bb826#?c=0&m=0&s=0&cv=0>> accessed 26 September 2025.

Development Trust Fund. However, without substantive amendment, the ONWA cannot effectively respond to modern environmental and socio-economic realities in Nigeria's oil-producing regions.

A critical reassessment of the ONWA should therefore focus on updating its sanctions, decentralizing enforcement powers to environmental agencies such as NOSDRA and the Federal Ministry of Environment, and explicitly providing for community compensation and participation in enforcement processes. The fines should be indexed to the scale of pollution and inflation, and part of such penalties should mandatorily be directed towards a Marine Pollution Compensation Fund for immediate cleanup and community support. Additionally, integrating ONWA enforcement within the PIA's environmental compliance architecture would ensure harmonization and strengthen Nigeria's overall oil pollution governance framework.<sup>150</sup>

In summary, while the *Oil in Navigable Waters Act, 1968* represents a historic milestone in Nigeria's environmental law development, its compensatory relevance to oil-producing communities is largely indirect and outdated. It offers a legal foundation for holding marine polluters accountable but lacks the institutional and procedural mechanisms necessary to guarantee fair and effective compensation. For the Act to serve as a meaningful tool for environmental justice in the petroleum context, it must evolve from a punitive and state-centered statute to a restorative, community-oriented legal instrument consistent with the modern principles of environmental governance, human rights, and sustainable development embedded in the Petroleum Industry Act and related frameworks.

### **3.3.10. Gas Flaring and Venting (Prevention of Waste and Pollution) Regulations, 2022**

The *Gas Flaring and Venting (Prevention of Waste and Pollution) Regulations, 2022*, issued under the Petroleum Industry Act (PIA), represent one of Nigeria's most comprehensive attempts to control routine gas flaring and venting in upstream petroleum operations. The Regulations replaced the 2018 Flare Gas

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<sup>150</sup> Ibid

(Prevention of Waste and Pollution) Regulations and introduced stricter rules aimed at promoting environmental protection, resource conservation, and revenue accountability. They were developed to ensure that operators treat gas not as waste but as a valuable national asset, reflecting the PIA's goal of maximising the economic and environmental value of Nigeria's hydrocarbon resources.<sup>151</sup>

The Regulations prohibit routine flaring or venting of natural gas except in specific circumstances, such as emergency releases necessary for safety. They also require that every producer submit flare and venting data, keep detailed logs, and install metering systems approved by the Nigerian Upstream Petroleum Regulatory Commission (NUPRC). These provisions seek to ensure transparency and data integrity in the management of flare gas volumes, as accurate measurement is the foundation for enforcing penalties and monitoring compliance. The NUPRC is further empowered to grant permits for flare gas utilisation projects, allowing licensed third parties to commercialise gas that would otherwise be wasted. This aligns with Nigeria's commitment to reducing greenhouse gas emissions and promoting cleaner energy use under international agreements such as the Paris Agreement.

From an environmental compensation perspective, the Regulations are significant because they seek to prevent harm before it occurs rather than provide compensation after the fact. However, the effectiveness of this preventive model depends heavily on rigorous enforcement. The Regulations impose monetary penalties for gas flaring and venting beyond approved limits, which are to be paid into the Federal Government's account. The logic is that these fines serve as both deterrence and indirect compensation by funding infrastructure and environmental initiatives that ultimately benefit host communities. Yet, while theoretically sound, this approach faces several practical risks that could undermine its effectiveness and the Federal Government's financial interests.

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<sup>151</sup> Emejuru, D., 'From Waste to Wealth: Evaluating Nigeria's Legal Framework for Flare Gas Commercialisation' (May 23 2025) <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=5265747](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5265747)> accessed 26 September 2025.

Another challenge is that despite mandatory metering and reporting requirements, the initial data on flare volumes still originates from the operators themselves. If metering devices are tampered with, improperly calibrated, or not inspected regularly, underreporting can occur. Such manipulation leads to understated emission data, thereby reducing the amount of flare penalties paid to the government and concealing the true extent of environmental pollution.

The NUPRC also faces logistical and technical challenges in monitoring compliance, particularly in remote onshore and offshore installations. In such areas, physical inspection is infrequent and often reliant on company cooperation. This enforcement gap allows operators to flare more gas than officially reported, depriving the government of potential revenue and undermining the integrity of Nigeria's environmental accountability system.

There is also the problem of companies preferring to pay penalties than discontinuing gas flaring. The penalty amounts which are typically between \$2.00 and \$10.00 per 1,000 standard cubic feet of gas, depending on the nature of the flaring, are still relatively modest compared to the high cost of installing and maintaining gas capture and processing infrastructure. Consequently, some companies may find it more economically rational to continue flaring and simply pay the fines. This dynamic results in a dual loss where the Federal Government forfeits potential economic value from unutilised gas, and host communities continue to suffer from pollution-related degradation.

Notwithstanding, if properly enforced, the *Gas Flaring and Venting Regulations, 2022*, can significantly strengthen Nigeria's environmental governance framework.<sup>152</sup> The NUPRC's powers to verify data, conduct independent audits, and publish annual gas flaring reports under Section 22 are crucial safeguards. If these are rigorously implemented through real-time satellite monitoring, third-party verification of flare meters, and transparent public disclosure of data, the Regulations could ensure

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<sup>152</sup> Emejuru, D., 'From Waste to Wealth: Evaluating Nigeria's Legal Framework for Flare Gas Commercialisation' (May 23 2025) <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=5265747](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5265747)> accessed 26 September 2025.

accurate penalty collection, credible emission tracking, and enhanced accountability in the petroleum sector.

In essence, while the 2022 Regulations embody strong legal intent and align with global best practices, their success depends entirely on institutional capacity, transparency, and sustained enforcement. Without these, the system risks becoming a paper tiger, robust on paper but weak in practice, thereby failing to deliver both environmental protection and compensatory justice to oil-producing communities.

### **3.3.11. Midstream Gas Flare Regulations, 2023**

The *Midstream Gas Flare Regulations, 2023*, issued by the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA), represent an essential expansion of the post-PIA regulatory landscape. Unlike the 2022 Regulations which focus on the upstream sector, these 2023 Regulations extend environmental accountability to midstream petroleum operations, including gas processing, transportation, storage, and distribution. This expansion is crucial because midstream activities can also be significant sources of flaring and venting, particularly during maintenance, malfunction, or emergency shutdowns. The Regulations therefore promote a more holistic and integrated approach to pollution control, environmental safety, and sustainability across the oil and gas value chain.

A major strength of the Regulations is their insistence on accurate data collection and transparent reporting. Operators are required to maintain daily flare logs, install calibrated meters, and submit quarterly and annual reports to the NMDPRA. This framework aims to minimise underreporting and ensures that the Authority, and also by extension the Federal Government, has verifiable data on flared and vented gas volumes. The NMDPRA's power to take custody of flare gas without compensation to the operator, or to grant permits for its repurposing, underscores a clear policy stance that flaring constitutes waste and environmental harm. This approach not only promotes emission reduction but also encourages

commercial utilisation of otherwise wasted gas, aligning environmental protection with economic incentives.<sup>153</sup>

The introduction of a tiered penalty system under *Section 13* is another commendable innovation. By linking penalty amounts to the volume of gas flared ranging from \$0.50 to \$1.50 per 1,000 standard cubic feet, the Regulations establish a scalable deterrence mechanism. Moreover, all penalties are directed into the Midstream and Downstream Gas Infrastructure Fund, designed to finance gas infrastructure and community development projects, especially in host regions where flaring occurs. Although this model does not provide direct financial compensation to affected communities, it functions as an indirect restitution mechanism by converting environmental penalties into developmental benefits.<sup>154</sup>

However, as with the 2022 Regulations, the effectiveness of the Midstream Gas Flare Regulations depends critically on the robustness of their enforcement mechanisms. Dependence on self-reporting remains a major vulnerability. While the use of meters is mandatory, the primary data still originates from the operators. If the meters are poorly maintained, tampered with, or not frequently inspected, flare volumes may be underreported, resulting in reduced penalty collection and an inaccurate national emissions profile.

Limited enforcement capacity compounds this problem. The NMDPRA's monitoring and inspection resources are limited, particularly for facilities located offshore or in difficult terrains. This gap enables companies to potentially flare or vent more gas than reported, thereby undermining the government's environmental oversight and leading to substantial revenue losses.

Profit incentive misalignment is another concern. The relatively low penalty rates though tiered, may not be sufficient to discourage flaring when compared to the higher cost of installing gas capture or re-

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<sup>153</sup> Lawyers in Energy Network, 'Gas Flaring in Nigeria Post-PIA: A Review of the Midstream Gas Flare Regulations, 2023' (LIEN Newsletter Issue 3, September 2023) <https://lawyersinenergynetwork.com/wp-content/uploads/2023/09/LIEN-NEWSLETTER-3.pdf> accessed 27 September 2025.

<sup>154</sup> Awonuga, Y. & Mosanya, A., 'Flaring, Venting and Monetisation: A Focus on Nigeria's Midstream Gas Sector' (TEMPLARS ThoughtLab, 10 September 2024) <<https://www.templars-law.com/app/uploads/2024/09/Flaring-Venting-and-Monetisation-A-Focus-on-Nigeria's-Midstream-Gas-Sector.pdf>> accessed 27 September 2025.

injection systems. For some operators, paying the fines remains a cheaper option than investing in sustainable infrastructure. This undermines the deterrent intent of the law and diminishes the government's opportunity to monetise flare gas for national economic benefit.<sup>155</sup>

Nevertheless, if effectively enforced, the Midstream Gas Flare Regulations could become a cornerstone of Nigeria's environmental accountability framework. If the NMDPRA conducts independent verification of metering data, audits flare logs regularly, and publishes transparent annual reports on emissions and penalties, the Regulations would strengthen the government's position by ensuring accurate penalty collection, credible emission monitoring, and improved compliance. Proper enforcement would not only bolster Nigeria's environmental reputation but also enhance fiscal responsibility and promote fairer compensation outcomes for affected communities.<sup>156</sup>

In conclusion, the *Midstream Gas Flare Regulations, 2023*, complement the PIA by filling an important regulatory gap in the midstream sector. They embody a preventive and developmental approach to compensation by reinvesting penalties into community-oriented infrastructure. Yet, their effectiveness remains conditional on enforcement capacity, transparency, and accountability mechanisms. Without rigorous oversight, the same weaknesses that plague upstream flare regulation (self-reporting bias, weak monitoring, low penalties, etc.) may resurface. Hence, the Regulations mark a commendable step forward in policy design, but their long-term value in ensuring environmental justice and compensatory fairness will depend on whether Nigeria can translate strong legal frameworks into sustained and verifiable implementation.

### **3.3.12. Niger Delta Development Commission (Establishment, etc.) Act, 2000**

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<sup>155</sup> Ibid

<sup>156</sup> Olaniwun Ajayi LP, 'An Overview of the Extant Gas Flare Regulations in the Nigerian Petroleum Industry' (Olaniwun Ajayi LP Blog, 2023) <<https://www.olaniwunajayi.net/blog/an-overview-of-the-extant-gas-flare-regulations-in-the-nigerian-petroleum-industry/#:~:text=To%20address%20these%20concerns%20posed,find%20it%20an%20insightful%20read.>> accessed 27 September 2025.

The *Niger Delta Development Commission (Establishment, etc.) Act, 2000 (NDDC Act)* stands as one of Nigeria's most significant legislative responses to the long history of neglect, environmental degradation, and socio-economic inequality in the oil-rich Niger Delta. Enacted at the turn of the millennium, the Act was not merely a development policy, it was a legal acknowledgment of the state's obligation to redress the historical and continuing harm caused by oil exploitation in the region. Although the NDDC Act does not establish a compensation framework in the traditional legal sense of paying damages for specific losses, it embodies a broader concept of restorative justice through socio-economic and environmental development programmes aimed at improving the welfare of affected communities. The NDDC Act thus embodies a form of institutionalised socio-economic compensation, channelled through development planning rather than direct payments for loss or injury.

At the heart of this framework is *Section 7* of the Act, which outlines the functions of the NDDC. *Subsections 7(1)(b), (h), and (i)* collectively provide a functional blueprint for environmental and socio-economic compensation. By mandating the Commission to implement development projects in health, education, housing, employment, and infrastructure, the Act transforms development itself into a compensatory mechanism, a structural redress for decades of environmental and economic deprivation. The inclusion of ecological and pollution-control functions under *Section 7(1)(h)* further strengthens its environmental relevance, allowing the NDDC to engage directly in remediation and prevention of oil-related pollution. The Commission's role in liaising with oil companies under *Section 7(1)(i)* also creates a shared responsibility between the state and extractive corporations for environmental protection and community welfare. In this respect, the NDDC Act operationalizes the principle that those who benefit from resource extraction must bear the cost of its social and ecological consequences.

*Section 14* provides the financial structure that sustains this compensatory role. It requires the Federal Government to contribute 15% of statutory allocations due to member states, and mandates oil-producing and gas-processing companies to remit 3% of their annual budgets to the Commission. This provision,

amended in 2017 to include gas processing companies, represents a direct legal mechanism through which corporate beneficiaries of petroleum production are required to contribute to regional restoration. It reflects the compensatory logic that environmental degradation and underdevelopment in the Niger Delta are externalities of oil production that must be addressed collectively through mandatory fiscal contributions. Moreover, the requirement that 50% of the Ecological Fund due to member states be credited to the Commission reinforces the ecological focus of the NDDC, aligning its operations with national environmental restoration objectives.<sup>157</sup>

The fund created under *Section 14* and managed under *Section 15* effectively serves as a restitutionary instrument. The Act legally binds the Commission to use its resources for implementing projects that fall within its development and environmental mandate. While the NDDC is not tasked with providing monetary compensation to individual victims, the collective nature of its interventions, that is, schools, hospitals, roads, water supply, environmental cleanup, constitutes a form of community-level compensation.<sup>158</sup> This approach aligns with the idea of distributive justice, wherein affected communities receive shared developmental benefits rather than individualized financial payouts.

Nevertheless, the effectiveness of the NDDC Act as a compensatory mechanism is undermined by persistent governance and implementation challenges. The inclusion of *Section 21*, which establishes a Monitoring Committee to oversee the management of funds and project execution, was designed to ensure transparency and accountability. However, in practice, weak oversight, mismanagement, and corruption have significantly eroded the Commission's credibility. The Commission's developmental interventions, though numerous in design, have often lacked transparency and sustainability, with many projects either uncompleted or poorly executed. Numerous reports and audits have documented instances of incomplete

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<sup>157</sup> TEMPLARS, NDDC Amendment Act: Was There an Amendment? (TEMPLARS Newsletter, February 2018) <https://www.templars-law.com/app/uploads/2018/02/Templars-Newsletter-NDDC-Amendment-Act-.pdf#:~:text=To%20curb%20the%20violence%20and%20tackle%20the,applicable%20laws%20and%20regulations%20and%20prevent%20pollution.> accessed 28 September 2025.

<sup>158</sup> Ibid

or abandoned projects, politicisation of appointments, and diversion of funds. These governance failures have meant that, despite the NDDC's substantial legal powers and financial inflows, the lived reality of many Niger Delta communities remains one of deprivation and environmental decay. The disconnect between statutory intent and implementation outcomes highlights the gap between *law on paper* and *law in practice* in Nigeria's compensation framework.<sup>159</sup>

From a compensatory justice perspective, the NDDC Act is therefore both innovative and flawed. Its innovative aspect lies in its structural approach: it shifts the idea of compensation from reactive payment to proactive development. Its flaw lies in the institutional weaknesses that hinder effective delivery. The NDDC's model of pooling mandatory contributions from the Federal Government and oil companies has the potential to create a sustainable source of restitutionary funding. Yet, without robust oversight, transparent project tracking, and community participation, these resources risk being absorbed by bureaucratic inefficiency rather than translating into tangible improvements for the intended beneficiaries.<sup>160</sup>

In relation to the *Petroleum Industry Act (PIA) 2021*, the NDDC Act remains relevant but somewhat diminished in prominence. The PIA introduced the Host Communities Development Trust (HCDT) mechanism, requiring oil companies to contribute 3% of their operating expenditure directly to host community trusts. This newer framework decentralises compensation, giving host communities greater control over project design and implementation. The PIA builds upon the NDDC's compensatory philosophy but attempts to localise it by mandating direct benefit-sharing through trusts managed at the community level. In this sense, the PIA's HCDT framework represents a decentralised evolution of the

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<sup>159</sup> Odusanya, O. S. E., Augoye, O. J., & Ndubuisi, O. J. (2025). An in-depth analysis of the role and effectiveness of the Niger Delta Development Commission. *International Journal of Innovative Development and Policy Studies*, 13(2), 55–61. SEAHI Publications. <https://doi.org/10.5281/zenodo.15378748>

<sup>160</sup> Ojukwu, M. I., "Challenges Facing Niger Delta Development Commission (NDDC) Projects in Imo State and the Niger Delta Region in Nigeria" (2015) 5(6) *International Journal of Humanities and Social Science* <[https://www.researchgate.net/publication/281295248\\_Challenges\\_Facing\\_Niger\\_Delta\\_Development\\_Commission\\_NDDC\\_Projects\\_in\\_Imo\\_State\\_and\\_Niger\\_Delta\\_Region\\_in\\_Nigeria#:~:text=The%20qualitative%20data%20used%20for.of%20funds%20has%20been%20prominent.>](https://www.researchgate.net/publication/281295248_Challenges_Facing_Niger_Delta_Development_Commission_NDDC_Projects_in_Imo_State_and_Niger_Delta_Region_in_Nigeria#:~:text=The%20qualitative%20data%20used%20for.of%20funds%20has%20been%20prominent.>) accessed 28 September 2025.

NDDC model, shifting from regional-scale development intervention to community-based participatory compensation. In contrast, the NDDC operates as a centralised federal institution, often criticised for being distant from grassroots realities. Nevertheless, both frameworks share a common purpose: to ensure that the economic benefits of petroleum extraction translate into tangible welfare improvements for host populations. The coexistence of these two regimes raises important questions about coordination, duplication, and resource overlap. Without effective harmonisation, there is a risk that the NDDC's broad regional role and the HCDDT's community-specific model could operate in silos, thereby diminishing the overall efficiency of Nigeria's compensation architecture. However, although the coexistence of both systems create the potential for duplication or conflict, they also provide an opportunity for synergy where the NDDC can coordinate broader regional development while the HCDDTs handle localised compensation initiatives.<sup>161</sup>

In spite of these challenges, the NDDC Act remains a landmark in the evolution of Nigeria's environmental justice framework. It represents the first comprehensive legislative acknowledgment that the Niger Delta's underdevelopment and ecological damage are direct consequences of oil extraction and therefore require special intervention. The NDDC's mandate has facilitated numerous infrastructural and human-capacity development projects across the region and provided a legal platform for continuous government investment in environmental rehabilitation. However, its performance illustrates that legislative intent alone is insufficient; without strong institutions, transparent management, and community participation, even the best-crafted compensatory frameworks risk being rendered ineffective.

In conclusion, the *Niger Delta Development Commission Act, 2000*, remains a cornerstone of Nigeria's legislative response to the socio-environmental consequences of petroleum production. It serves as a macro-compensatory mechanism designed to redress decades of exploitation and neglect through

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<sup>161</sup> W. Ajayi, 'Is the Nigerian Petroleum Industry Act 2021 A Game Changer?' (KPMG Nigeria, 22 September 2021) <<https://www.mondaq.com/nigeria/oil-gas-electricity/1113090/is-the-nigerian-petroleum-industry-act-2021-a-game-changer#:~:text=Any%20cost%20of%20repair%20of,for%20gas%20produced%20in-country.>> accessed 28 September 2025.

development and environmental restoration. Nevertheless, its success has been hindered by endemic governance failures, inadequate monitoring, and weak synergy with newer instruments under the PIA. For the NDDC to fulfil its original compensatory mission, it must undergo institutional reforms that prioritise transparency, fiscal discipline, and genuine community involvement. Only then can the Act achieve its intended role as a sustainable vehicle for justice, equity, and development in Nigeria's oil-producing regions.

### **3.4. EVALUATION OF JUDICIAL DECISIONS.**

Litigation in Nigeria has developed into a significant mechanism for achieving environmental justice, ensuring corporate responsibility, and protecting communities affected by pollution, resource depletion, and climate-related harm. Although Nigeria possesses an extensive array of environmental statutes and international obligations, the practical enforcement of these norms through the judiciary reflects a complex mix of progress, inconsistencies, and shifting judicial perspectives. From the early constitutional limitations to more recent trends in transnational accountability, Nigeria's legal landscape continues to evolve, balancing domestic enforcement challenges with a growing quest for justice across borders.

Although Nigeria possesses numerous legal frameworks to enable adequate compensation for oil exploration activities, judicial interpretations have often been inconsistent. A landmark decision came in *Gbemre v. Shell Petroleum Development Company & Ors*<sup>162</sup>, where the Federal High Court held that gas flaring violated the constitutional rights to life and dignity. The court recognised that environmental rights are inseparable from human rights, and that severe environmental pollution undermines the very essence of human existence. This case marked a watershed moment, laying the groundwork for the constitutionalisation of environmental protection in Nigeria. However, subsequent judicial attitudes were not uniformly progressive. In *Opara v. Shell (2014)*<sup>163</sup> and *Ajanaku v. Shell (2019)*<sup>164</sup>, the Court of Appeal

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<sup>162</sup> (2005) AHRLR 151

<sup>163</sup> Unreported

<sup>164</sup> Unreported

adopted a restrictive stance, holding that environmental degradation could not be litigated under fundamental rights unless the claimant demonstrated direct personal injury. These decisions curtailed the expansive reasoning in *Gbemre's case* and reflected a more conservative judicial posture.

A major shift occurred in *Centre for Oil Pollution Watch v. NNPC*<sup>165</sup>, where the Supreme Court significantly broadened the scope of environmental litigation. The court recognised that public interest organisations have standing (*locus standi*) to institute environmental actions, and it affirmed that the right to life under *Section 33 of the 1999 Constitution* extends to a clean and healthy environment. The apex court further held that *Section 20 of the Constitution*, though ordinarily non-justiciable, becomes enforceable when read alongside fundamental rights provisions. Moreover, it confirmed that *Article 24 of the African Charter* is directly enforceable in Nigerian courts. This ruling was transformative, solidifying the connection between environmental integrity and human rights.

The Court of Appeal reinforced this jurisprudence in *Mobil Producing Nigeria Unlimited v. Ajanaku & Anor*<sup>166</sup>. While setting aside the lower court's ruling on procedural grounds, the court nonetheless emphasised that the right to life encompasses the right to a clean and safe environment. Justice Ogbuinya, delivering the lead judgment, observed that human life cannot be meaningfully enjoyed without access to clean air, safe water, and a balanced ecosystem. Relying on *Centre for Oil Pollution Watch v. NNPC*, the court linked socio-economic and environmental rights as mutually reinforcing dimensions of the right to life.

This trajectory of progressive judicial thinking culminated in *Chief Isaac Obor-Ntito Torchi & Ors v. Shell Petroleum Development Company & Ors*<sup>167</sup>, where the Federal High Court recognised that environmental degradation violates Sections 20 and 33 of the Constitution and Article 24 of the African Charter. The court awarded an unprecedented ₦800 billion in damages to affected communities (Nigeria's

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<sup>165</sup> (2019) 5 NWLR (Pt.1666) 518

<sup>166</sup> [2021] LPELR-52566 (CA)

<sup>167</sup> Unreported Suit No. FHC/OW/CS/05/2020

largest environmental compensation to date) acknowledging the severe health, economic, and social harm caused by oil pollution. The decision reflects a growing judicial resolve to treat environmental harm as both a constitutional and human rights violation.

Nevertheless, these advances coexist with persistent challenges. While decisions such as *Gbemre, Centre for Oil Pollution Watch, Ajanaku*, and *Torchi's case* reveal judicial willingness to protect environmental rights, other rulings remain hindered by technicalities and evidentiary burdens. Many courts still demand strict proof of causation and personal injury, a requirement that often exceeds the capacity of under-resourced claimants. The need for scientific evidence in pollution cases, coupled with high litigation costs and procedural delays, has made access to environmental justice difficult for many communities.<sup>168</sup>

In light of these domestic constraints, affected communities have increasingly sought redress in foreign jurisdictions. In *Okpabi v. Royal Dutch Shell*<sup>169</sup>, the UK court allowed Nigerian claimants to sue Shell's parent company in the United Kingdom. It held that the parent company arguably owed a duty of care to communities harmed by the actions of its Nigerian subsidiary, given the degree of control it exercised over its operations. This case is monumental, not only in expanding the reach of environmental litigation but also in signaling that multinational corporations can be held accountable in their home jurisdictions for environmental harm caused abroad. Similarly, the Dutch case of *Milieudefensie (Friends of the Earth Netherlands) v. Royal Dutch Shell (2021)*<sup>170</sup> compelled Shell to cut global CO<sub>2</sub> emissions by 45% by 2030. While not limited to Nigeria, this ruling underscored the expanding international accountability of multinational corporations for environmental harm in developing regions.

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<sup>168</sup> Olisa Agbakoba Legal, 'Environmental Litigation in Nigeria: Trends, Challenges, and Judicial Activism' (12 Aug. 2025) <<https://oal.law/environmental-litigation-in-nigeria-trends-challenges-and-judicial-activism/#:~:text=The%20Supreme%20Court%20in%20this,directly%20enforceable%20in%20Nigerian%20courts.>> accessed 29 September 2025.

<sup>169</sup> [2021] UKSC 3

<sup>170</sup> ECLI:NL: RBDHA: 2021:5337

Despite such global advances, systemic obstacles persist within Nigeria. Weak regulatory enforcement, underfunded agencies like NESREA and NOSDRA, and limited institutional independence continue to undermine effective implementation of court judgments. Even when communities win in court, enforcement remains inconsistent, leaving victims without full remedy. Regulatory agencies such as NESREA and the Department of Petroleum Resources often lack the capacity, resources, or political will to ensure compliance with court decisions, particularly against influential corporations. Government bodies similarly demonstrate limited commitment to implementing judgments that require policy adjustments or stricter regulation of corporate actors. The influence of powerful companies further complicates enforcement, as appeals and legal maneuvers frequently delay the execution of rulings, diminishing their deterrent effect. Compounding these issues, penalties for environmental violations are typically minimal, offering little motivation for compliance and reducing the overall effectiveness of judicial interventions in protecting communities and the environment.<sup>171</sup>

Notwithstanding all these, a promising judicial trend toward environmental activism is emerging. Courts increasingly adopt purposive interpretations of constitutional rights and incorporate international environmental norms. The Nigerian *Fundamental Rights (Enforcement Procedure) Rules 2009* have also liberalised standing, thereby encouraging public interest environmental litigation. To sustain these gains, several reforms are essential. First, constitutional amendments should render the right to a clean and healthy environment justiciable. Second, specialised environmental courts or tribunals should be established to provide expert adjudication. Third, regulatory agencies must be strengthened legally, financially, and institutionally, to ensure compliance with environmental standards. Finally, public interest

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<sup>171</sup> Dafiell, G.P., 'Navigating the Legal Hurdles: A Jurisprudential Analysis of Environmental Protection in Nigerian Courts' (2025) 9(1) *African Journal of Law and Human Rights* 56-78 <https://doi.org/10.13140/RG.2.2.37741.0510> accessed 29 September 2025.

litigation should be supported through legal aid, environmental justice funds, and community legal education initiatives.<sup>172</sup>

This chapter has examined the statutory framework governing compensation for oil-producing regions in Nigeria, highlighting how a range of constitutional, environmental, and petroleum-sector laws collectively seek to address the socio-economic and ecological consequences of oil exploration. From the *Constitution of the Federal Republic of Nigeria 1999 (as amended)*, which guarantees fundamental rights to property and environmental protection, to specific enactments such as the *Land Use Act, Petroleum Industry Act (PIA) 2021, Oil Pipelines Act, Environmental Impact Assessment Act*, and the *Niger-Delta Development Commission (NDDC) Act*, the Nigerian legal landscape demonstrates a clear recognition of the need for remedial and compensatory mechanisms for host communities.

Despite this extensive legislative architecture, the practical impact of these laws has remained limited. Recurrent challenges such as overlapping institutional mandates, weak enforcement capacity, poor coordination among agencies, and minimal community involvement, continue to undermine the realization of equitable compensation. Furthermore, the persistence of outdated provisions in older statutes and the uneven enforcement of newer reforms like the PIA expose a deep gap between law and implementation.

While the PIA introduces an important paradigm shift through the Host Communities Development Trust Fund and clearer fiscal responsibility obligations, its long-term impact will depend on consistent enforcement, transparency in fund management, and genuine inclusion of host communities in governance structures. Similarly, the NDDC Act, though conceived as a vehicle for regional development and

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<sup>172</sup> Olisa Agbakoba Legal, 'Environmental Litigation in Nigeria: Trends, Challenges, and Judicial Activism' (12 Aug. 2025) <<https://oal.law/environmental-litigation-in-nigeria-trends-challenges-and-judicial-activism/#:~:text=The%20Supreme%20Court%20in%20this,directly%20enforceable%20in%20Nigerian%20courts.>> accessed 29 September 2024.

compensation, has struggled to achieve its objectives due to persistent governance challenges, political interference, and poor project delivery outcomes.

In essence, the legislative framework for oil-related compensation in Nigeria is conceptually robust but practically fragile. The challenge is not the absence of law, but the gap between legal prescription and operational reality. Strengthening institutional coordination, ensuring strict compliance by oil companies, and enhancing judicial and administrative oversight are critical steps toward bridging this gap. A comparative analysis of compensation frameworks in other oil-producing countries could help identify global best practices and lessons that could introduce some reformation in Nigeria's compensation regime.

## CHAPTER FOUR

### COMPARATIVE ANALYSIS OF OTHER OIL PRODUCING COUNTRIES.

The regulation of compensation for oil-producing communities is a global challenge that reflects the broader tension between natural resource exploitation and social justice. While Nigeria's legislative framework anchored in the Petroleum Industry Act 2021 and related environmental and land laws, has made significant strides toward reform, the effectiveness of these measures can be better understood through comparative analysis. Examining how other oil-producing countries structure and implement their compensation regimes offers valuable insights into best practices, institutional innovations, and pitfalls to avoid.

This chapter, therefore, undertakes a comparative study of selected oil-producing jurisdictions; Norway, Canada (particularly the provinces of Alberta and Newfoundland & Labrador), Ghana, the United States (specifically Alaska), and South Africa to evaluate their compensation frameworks and extract relevant lessons for Nigeria.

#### 1.1. NORWAY.

Norway represents one of the most successful examples of how an oil-producing state can balance natural resource exploitation with environmental protection, social welfare, and intergenerational equity. It is the largest oil-producing country in Europe and ranks 7th globally among the top oil exporters.<sup>173</sup> Since the discovery of oil in the North Sea in the late 1960s, Norway has developed a highly transparent and accountable petroleum governance framework that integrates compensation, revenue management, and community welfare within a coherent national development strategy. The foundation of this framework

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<sup>173</sup> Rouse, M., 'The World's Top 10 Oil Exporters' (Investopedia, 16 August 2016) <<https://www.investopedia.com/articles/company-insights/082316/worlds-top-10-oil-exporters.asp#:~:text=1.,The%20Bottom%20Line>> accessed 15 October 2025.

lies in strong institutional design, the rule of law, and a deliberate policy choice to treat petroleum resources as a common national asset rather than the property of private corporations or specific regions.<sup>174</sup>

The central legal instrument governing petroleum operations in Norway is the *Norwegian Petroleum Act of 1996 (as amended)*, which regulates the exploration, production, and decommissioning of petroleum activities on the Norwegian Continental Shelf.<sup>175</sup> The Act is implemented by the *Ministry of Petroleum and Energy* and supervised by regulatory agencies such as the *Norwegian Petroleum Directorate (NPD)* and the *Norwegian Environment Agency*. Compensation and environmental liability are explicitly integrated into the law, ensuring that operators bear full responsibility for damages caused by their activities. Under Chapter 7 of the Norwegian Petroleum Act, the licensee, that is, the company or companies holding the license for the petroleum activity, is held strictly and unlimitedly liable for all pollution damage caused by petroleum spills from offshore installations, regardless of fault. This means that the injured party does not need to prove negligence.<sup>176</sup> This strict liability principle ensures prompt compensation without the procedural hurdles of proving negligence or intent, thereby protecting affected communities and ecosystems.

Furthermore, the *Pollution Control Act 1981* complements this framework by requiring environmental impact assessments (EIAs) before any petroleum project is approved. Operators are obligated to prevent, reduce, and remediate pollution, while affected persons or communities are entitled to claim compensation for losses directly linked to petroleum activities. These provisions have been effectively enforced due to Norway's robust environmental monitoring system and its culture of regulatory transparency. The synergy

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<sup>174</sup> Norwegian Agency for Development Cooperation (Norad), *Facing the Resource Curse: Norway's Oil for Development Program* (January 2013) <<https://www.norad.no/contentassets/86f7ddfed2604e1f8241b01b2c2e16b4/facing-the-resource-curse-norways-oil-for-development-program.pdf>> accessed 15 October 2025.

<sup>175</sup> Thommessen, 'Legal Framework of Petroleum Activity on the Norwegian Continental Shelf' (*Thommessen*, 25 November 2022) <<https://www.thommessen.no/en/news/legal-framework-of-petroleum-activity-on-the-norwegian-continental-shelf>> accessed 15 October 2025.

<sup>176</sup> Section 7-3, Norwegian Petroleum Act, No. 72

between petroleum and environmental legislation thus establishes a comprehensive compensatory regime that prioritizes environmental integrity and social accountability.

In practice, Norway's compensation framework extends beyond the payment of damages to encompass long-term social and economic compensation through redistributive mechanisms. The creation of the Government Pension Fund Global (GPF), popularly known as the "Norwegian Oil Fund", is one of the most transformative elements of this system. Established in 1990 under the Government Pension Fund Act, the GPF channels surplus oil revenues into a sovereign wealth fund managed for the collective benefit of present and future generations. By law, petroleum revenues must be invested abroad to prevent domestic inflation and economic volatility, while returns from the fund are used to support national welfare, healthcare, and education. This model effectively transforms oil wealth into a sustainable social asset, thereby constituting an indirect but far-reaching form of national compensation for resource extraction.

Another key strength of Norway's framework is its emphasis on public participation and transparency. All petroleum licensing rounds, environmental impact reports, and revenue disclosures are publicly accessible, ensuring that citizens can monitor how petroleum wealth is generated and utilized. The country's adherence to the Extractive Industries Transparency Initiative (EITI) further reinforces public trust and accountability. The Extractive Industries Transparency Initiative (EITI) is the global standard to promote the open and accountable management of oil, gas and mineral resources. The EITI Standard requires the disclosure of information along the extractive industry value chain from the point of extraction, to how revenues make their way through the government, and how they benefit the public. By doing so, the EITI seeks to strengthen public and corporate governance, promote understanding of natural resource management, and provide the data to inform reforms for greater transparency and accountability

in the extractives sector.<sup>177</sup> It was launched in 2003 following growing international concern over the “resource curse”, a phrase used to describe a situation where countries rich in natural resources experience poverty, corruption, and conflict because revenues from those resources are mismanaged or hidden from public scrutiny.<sup>178</sup> Over 50 countries have integrated this initiative into their legal system. Norway is one of the founding members and a model of compliance, ensuring openness in all stages of its petroleum value chain.<sup>179</sup> Unlike in many developing oil economies, where compensation disputes often stem from opacity and exclusion, Norway’s participatory governance minimizes social tension and reinforces the legitimacy of its resource management system.

However, the Norwegian model is not without limitations. Critics have argued that local communities directly affected by oil operations, particularly in coastal areas, do not receive direct compensation beyond national redistribution. Compensation for localized environmental impacts is handled administratively and judicially, but broader community development projects are managed at the national level, potentially diluting the sense of local ownership over petroleum benefits. Nevertheless, the system’s overall fairness, efficiency, and predictability make it one of the most effective compensation frameworks globally.

Norway’s approach to compensation exemplifies a state-centric but socially equitable model that integrates environmental responsibility, fiscal prudence, and long-term national welfare. Its success rests on the principles of strict liability for environmental damage, transparency in governance, and the reinvestment of oil wealth into public goods. For Nigeria, the Norwegian experience underscores the importance of institutional integrity, enforcement efficiency, and the strategic use of petroleum revenues for sustainable development.<sup>180</sup> While Nigeria’s Petroleum Industry Act shares similar aspirations, the

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<sup>177</sup> U.S. Department of State, ‘Extractive Industries Transparency Initiative (EITI)’ (*U.S. Department of State*, 2025) <<https://2021-2025.state.gov/extractive-industries-transparency-initiative-eiti/>> accessed 16 October 2025.

<sup>178</sup> Norwegian Agency for Development Cooperation (Norad), *Facing the Resource Curse: Norway’s Oil for Development Program* (January 2013) [https://www.norad.no/contentassets/86f7ddfed2604e1f8241b01b2c2e16b4/facing-the-resource-curse\\_norways-oil-for-development-program.pdf](https://www.norad.no/contentassets/86f7ddfed2604e1f8241b01b2c2e16b4/facing-the-resource-curse_norways-oil-for-development-program.pdf) accessed 16 October 2025.

<sup>179</sup> In fact the EITI Secretariat is based in Norway where it operates as an independent global organization.

<sup>180</sup> Chioma, E.E., ‘Sustainable Petroleum Development in Norway and Nigeria: A Legal and Policy Comparison’ (2022) 9(1) *Rivers State University Journal of Public Law* 1-20 <https://www.rsubliclawjournal.com.ng/wp->

Norwegian case illustrates that the true measure of compensation effectiveness lies in implementation consistency, community inclusion, and a governance culture rooted in accountability and equity.

## 1.2. CANADA (ALBERTA AND NEWFOUNDLAND & LABRADOR)

Canada represents one of the world's leading models for managing petroleum resources through a federal system that balances national oversight with significant provincial control. Canada is home to ten provinces and three territories. Alberta is the largest oil-producing province in Canada accounting for about 84% of the total in 2023. While Newfoundland & Labrador is the largest oil producer in Eastern Canada and third-largest oil-producing province in Canada. The constitutional framework established under the *Constitution Acts, 1867 to 1982*<sup>181</sup> grants provinces ownership of natural resources located within their territories, including oil and gas. This constitutional autonomy gives oil-producing provinces like Alberta and Newfoundland & Labrador the freedom to design distinct regulatory and compensation regimes that address the environmental and socio-economic consequences of petroleum extraction.

In Alberta, the regulatory landscape is governed primarily by the *Oil and Gas Conservation Act*<sup>182</sup>, the *Environmental Protection and Enhancement Act (EPEA)*<sup>183</sup>, and the *Surface Rights Act*<sup>184</sup>.<sup>185</sup> Oversight is provided by the Alberta Energy Regulator (AER), which functions as a single, quasi-judicial body with authority over licensing, environmental compliance, and landowner compensation. The AER's integrated mandate ensures that environmental protection and landowner rights are embedded within the same institutional process that regulates production.

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[content/uploads/2022/09/sustainable-petroleum-development-in-norway-and-nigeria-vol9-issue1-2002.pdf](https://www.prowsebarrette.com/content/uploads/2022/09/sustainable-petroleum-development-in-norway-and-nigeria-vol9-issue1-2002.pdf) accessed 17 October 2025.

<sup>181</sup> The Constitution of Canada includes the *Constitution Act, 1867*, and the *Constitution Act, 1982*.

<sup>182</sup> RSA 2000, c. O-6

<sup>183</sup> R.S.A. 2000, c. E-12

<sup>184</sup> RSA 2000, c. S-24

<sup>185</sup> Prowse Barrette, '8 Acts and Regulations Affecting Oil Sands Industry in Alberta' (*Prowse Barrette*, 7 August 2023) <<https://prowsebarrette.com/8-acts-and-regulations-affecting-oil-sands-industry-in-alberta/>> accessed 17 October 2025.

In Newfoundland & Labrador, offshore petroleum activities are jointly managed by the Canada–Newfoundland & Labrador Offshore Petroleum Board (C-NLOPB) (now the Canada-Newfoundland and Labrador Offshore Energy Regulator or C-NLOER as of June 2, 2025). The C-NLOPB was established by the federal and provincial governments through the *Canada–Newfoundland & Labrador Atlantic Accord Implementation Acts (federal and provincial)* to regulate the offshore oil and gas industry. These twin statutes operationalize the 1985 Atlantic Accord, which guarantees provincial participation in resource management and revenue sharing. They also establish mechanisms for environmental protection and compensation to affected fisheries, coastal communities, and indigenous populations.<sup>186</sup> The C-NLOPB was renamed the Canada-Newfoundland and Labrador Offshore Energy Regulator (C-NLOER) in June 2025, and its mandate expanded to include renewable energy development.<sup>187</sup>

With regards to compensation for land and environmental damage, compensation in Alberta is both statutory and negotiated. Under the *Surface Rights Act*, when an operator requires access to private land, it must secure a surface lease or right-of-entry order and pay compensation for land value, loss of use, adverse effects, and potential future damages.<sup>188</sup> If disputes arise, the Surface Rights Board determines compensation based on fair market value, productivity loss, and environmental impact. This ensures that landowners are not uncompensated for the ongoing presence of oil infrastructure. Importantly, compensation can be reviewed periodically to reflect inflation or worsening environmental degradation.<sup>189</sup> The *Environmental Protection and Enhancement Act* supplements this by imposing a statutory polluter-pays principle. Operators must remediate contaminated sites and may be ordered to compensate affected

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<sup>186</sup> Natural Resources Canada, ‘Renewable Energy Legislation’ (*Government of Canada*, 27 June 2024) <https://natural-resources.canada.ca/energy-sources/renewable-energy/legislation> accessed 17 October 2025.

<sup>187</sup> Canada-Nova Scotia Offshore Energy Regulator, ‘About CNSOER’ (*CNSOER*, 2024) <https://www.cnloer.ca/about/cnsoer/> accessed 17 October 2025.

<sup>188</sup> Government of Alberta, ‘Surface Right of Entry Overview’ (*Alberta.ca*, 12 March 2024) <https://www.alberta.ca/surface-right-of-entry-overview> accessed 17 October 2025

<sup>189</sup> Government of Alberta, ‘Surface Right of Entry Compensation’ (*Alberta.ca*, 12 March 2024) <https://www.alberta.ca/surface-right-of-entry-compensation> accessed 17 October 2025

parties for environmental harm.<sup>190</sup> This dual protection, economic and environmental, illustrates Alberta's integrated approach to compensation.

In Newfoundland & Labrador, compensation mechanisms are largely sector-specific. The *Atlantic Accord Acts* and associated *Compensation Guidelines Respecting Damages Relating to Offshore Petroleum Activities (2011)* require petroleum operators to compensate for “actual loss or damage” caused by spills, blowouts, or other incidents. Claims may be made directly to the operator or, if unresolved, adjudicated through the C-NLOER or the Federal Court. The regime is underpinned by absolute liability for offshore operators up to CAD 1 billion, ensuring prompt compensation without the need to prove fault. This aligns with the global best practice of strict liability for high-risk industries.<sup>191</sup>

A notable dimension of Canada's compensation framework is its recognition of indigenous rights under *Section 35 of the Constitution Act, 1982*, which affirms existing aboriginal and treaty rights.<sup>192</sup> In both Alberta and Newfoundland & Labrador, project proponents must engage in consultation and accommodation with affected indigenous communities before approvals are granted. Compensation often takes the form of Impact and Benefit Agreements (IBAs). These are private contracts negotiated between resource companies and indigenous nations. IBAs typically include employment quotas, royalty sharing, land-use compensation, and environmental monitoring roles.<sup>193</sup> Although not legislated, they function as quasi-compensatory instruments ensuring socio-economic participation of Indigenous peoples in the resource economy.

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<sup>190</sup> Environmental Law Centre, 'Paying for Pollution: Who Should Be on the Hook for Environmental Harm?' (*Environmental Law Centre Alberta*, 14 May 2024) <https://elc.ab.ca/post-library/paying-for-pollution-who-should-be-on-the-hook-for-environmental-harm/> accessed 17 October 2025

<sup>191</sup> Mark Turner, *Review of Offshore Oil-spill Prevention and Remediation Requirements and Practices in Newfoundland and Labrador* (Government of Newfoundland and Labrador, December 2010) <https://www.cnlopb.ca/wp-content/uploads/sr/turnerrep.pdf> accessed 17 October 2025

<sup>192</sup> First Nations & Indigenous Studies, 'Constitution Act, 1982 Section 35' (*Indigenous Foundations*, 2009) [https://indigenousfoundations.arts.ubc.ca/constitution\\_act\\_1982\\_section\\_35/](https://indigenousfoundations.arts.ubc.ca/constitution_act_1982_section_35/) accessed 17 October 2025

<sup>193</sup> Crown-Indigenous Relations and Northern Affairs Canada, *The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government* <https://www.rcaanc-cirnac.gc.ca/eng/1100100031843/1539869205136> accessed 17 October 2025

Canada's adherence to the Extractive Industries Transparency Initiative (EITI) principles, though not as a formal member, is mirrored through domestic transparency measures such as the *Extractive Sector Transparency Measures Act (ESTMA)*, which requires companies to disclose payments to governments and indigenous entities.<sup>194</sup> In Alberta, the AER publishes annual reports on remediation, orphan well liability, and environmental compensation. In Newfoundland & Labrador, the C-NLOER maintains a public registry of compensation claims and environmental assessments, fostering accountability and public trust.

The compensation frameworks in both provinces exhibit high degrees of legal clarity, administrative efficiency, and enforcement capacity, largely due to institutional independence and financial autonomy. However, disparities remain. In Alberta, surface compensation focuses heavily on private landowners, with limited direct benefits to broader communities affected by cumulative impacts such as air pollution or water contamination. In Newfoundland & Labrador, while offshore liability rules are stringent, the quantum of compensation for long-term ecological harm remains difficult to quantify, and Indigenous participation in offshore projects is still evolving.<sup>195</sup>

Nonetheless, Canada's model is widely regarded as one of the most advanced globally, combining legal enforceability, environmental accountability, and social inclusion. Its dual-track compensation system, that is, statutory for private rights and negotiated for community and indigenous interests, offers valuable lessons for Nigeria's oil compensation regime, particularly regarding institutional independence, transparency, and the integration of local participation into regulatory decision-making.

### **1.3. THE REPUBLIC OF GHANA**

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<sup>194</sup> Natural Resources Canada, 'Extractive Sector Transparency' <https://natural-resources.canada.ca/minerals-mining/services-mining-industry/extractive-sector-transparency-measures-act> accessed 17 October 2025

<sup>195</sup> Goodday, Victoria and Larson, Braeden, The Surface Owner's Burden: Landowner Rights and Alberta's Oil and Gas Well Liabilities Crisis (May 20, 2021). The School of Public Policy Publications, Volume 14:16 May 2021, <<https://ssrn.com/abstract=3850218>> assessed 17 October 2025

The Republic of Ghana offers a compelling case in the African context for analysing how oil-producing countries attempt to translate resource wealth into community benefit and compensation for host communities. The country’s legal architecture includes significant statutes such as the *Petroleum Revenue Management Act, 2011 (Act 815) (PRMA)* and the *Petroleum (Exploration and Production) Act, 2016 (Act 919)*, which together seek to regulate petroleum operations, revenue management, and community impact. For example, *Section 24(3) of the PRMA* states that where petroleum operations adversely affect a community, “appropriate compensation shall be paid for the benefit of the community in accordance with the relevant laws.”<sup>196</sup>

Legally, Ghana’s framework also includes the requirement in the *Act 919* under *Section 72* that where petroleum activities are likely to affect any lawful economic or social interest of inhabitants, the licensee must pay agreed compensation to interested persons.<sup>197</sup> These provisions establish a statutory recognition of compensation obligations, thereby providing a foundation for host-community redress in Ghana’s oil sector.

In practice, however, the efficacy of the compensation regime raises significant concerns. While the law mandates compensation where petroleum operations adversely affect communities, empirical studies indicate that many coastal and land-owning communities feel excluded from meaningful benefit. For instance, the Western Region’s coastal fishing communities have reported that they “receive ‘zero’ oil benefits despite known adverse impact of offshore oil operations.”<sup>198</sup> The ambiguous phrasing in *Section 24(3) of the PRMA* which provides that, “*where petroleum operations adversely affect a community appropriate compensation should be paid for the benefit of the community in accordance with the relevant*

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<sup>196</sup> Anaman, P., *Petroleum Revenue Management in Ghana: Is the Petroleum Revenue Management Act (PRMA) 2011 (Act 815) an Effective Public Financial-Management Tool for Public Investment and Consumption Smoothing?* (Blavatnik School of Government, University of Oxford, 2018) <[https://www.bsg.ox.ac.uk/sites/default/files/2018-12/Anaman\\_Petroleum%20Revenue%20Management.pdf](https://www.bsg.ox.ac.uk/sites/default/files/2018-12/Anaman_Petroleum%20Revenue%20Management.pdf)> accessed 18 October 2025.

<sup>197</sup> Petroleum (Exploration and Production) Act, 2016 (Act 919)

<sup>198</sup> VRA News (2022), ‘Ghana: Coastal Communities Receive “Zero” Oil Revenues Despite Known Adverse Impact of Offshore Oil Operations’ (The Vaultz News, 7 February 2022) <<https://thevaultznews.com/2022/02/07/ghana-coastal-communities-receive-zero-oil-revenues-despite-known-adverse-impact-of-offshore-oil-operations/?>> accessed 18 October 2025.

*laws*”, lacks clear definition of what constitutes “appropriate” or how affected communities are to be identified, valued or paid. This ambiguity undermines both transparency and enforceability.

Institutionally, Ghana has taken steps to enhance accountability through the Public Interest and Accountability Committee (PIAC) established under the *Petroleum Revenue Management Act*. The Public Interest and Accountability Committee monitors how petroleum revenues and associated compensation obligations are managed and published.<sup>199</sup> Nevertheless, the link between revenue transparency and actual compensation to host communities remains weak. Most community complaints focus on delays in payment, low compensation offers relative to loss of livelihoods, and insufficient community participation in valuation and decision-making processes.

Moreover, recent high-profile land acquisition cases for large petroleum infrastructure have spotlighted compensation deficits. For example, in the Jomoro District of Ghana’s Western Region, where 20,000 acres were acquired for a planned Petroleum Hub, affected landowners and communities continue to push for an allocation of GH¢300 million (~USD 30 M) in compensation, emphasising how delayed settlements can stall development projects.<sup>200</sup> Such delay underscores the gap between legal obligation and implementation.

On the positive side, Ghana has progressively developed a regulatory environment that promotes local participation and local content. The *Petroleum (Local Content and Local Participation) Regulations, 2013* have increased opportunities for Ghanaian firms to participate in the petroleum value chain, which indirectly supports the broader notion of compensation by enhancing local economic inclusion.<sup>201</sup> This

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<sup>199</sup> Anaman, P.K., *Petroleum Revenue Management in Ghana: Is the Petroleum Revenue Management Act (PRMA) 2011 (Act 815) an Effective Public Financial-Management Tool for Public Investment and Consumption Smoothing?* (Blavatnik School of Government, University of Oxford, 2018) <[https://www.bsg.ox.ac.uk/sites/default/files/2018-12/Anaman\\_Petroleum%20Revenue%20Management.pdf?>](https://www.bsg.ox.ac.uk/sites/default/files/2018-12/Anaman_Petroleum%20Revenue%20Management.pdf?>) accessed 18 October 2025.

<sup>200</sup> Petroleum Hub Seeks GHS 300 million for Land Compensation, Warns of Project Delays’ (AdomOnline, 23 June 2025) <<https://www.adomonline.com/petroleum-hub-seeks-ghs-300-million-for-land-compensation-warns-of-project-delays/?>> accessed 18 October 2025.

<sup>201</sup> Annim, A.A., ‘Petroleum Contracts for Locals Surge Ten Years After Implementation of Local Content Law’ (Citi Newsroom, 22 November 2023) <<https://citinewsroom.com/2023/11/petroleum-contracts-for-locals-surge-ten-years-after-implementation-of->>

broader socio-economic compensation complements direct cash payments or land acquisitions and reflects a more holistic view of host community benefit.

In evaluating effectiveness, Ghana's compensation framework has the advantage of statutory recognition, transparency vehicles (such as the Public Interest and Accountability Committee), and local content policies that augment host-community benefit. However, the framework is undermined by definitional ambiguity (for example, what is "appropriate compensation"), weak enforcement of timelines, inadequate benefit flows to offshore-affected communities, and poor community engagement in valuation and process. The disjunction between legal promise and lived reality suggests that Ghana's regime remains evolving rather than fully effective in delivering compensation outcomes.

From Nigeria's perspective, Ghana illustrates key lessons. First, legal provisions for compensation must include clear definitions and criteria for what constitutes compensation and who qualifies. Second, transparency alone is insufficient without mechanisms to convert obligations into verified payments to affected communities. Third, community participation in valuation and monitoring strengthens legitimacy and reduces conflict. Incorporating these lessons could enhance the implementation of Nigeria's compensation regime under the PIA and other statutes.

#### **1.4. UNITED STATES OF AMERICA (THE STATE OF ALASKA)**

The state of Alaska presents a distinctive approach to compensation and benefits in its petroleum sector, one that blends universal citizen dividends, community-level benefit sharing, and environmental liability mechanisms. Its regulatory architecture is less focused on "host community compensation for land acquisition" in the conventional sense, and more oriented towards distributing the economic wealth from oil production broadly while also providing environmental remediation frameworks. This dual-track model offers useful insights and caveats for oil-producing states such as Nigeria.

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[local-content-law/#:~:text=Any%20cost%20of%20repair%20of,for%20gas%20produced%20in-country.>](#) accessed 18 October 2025.

Alaska's foundational mechanism is the *Alaska Native Claims Settlement Act (1971) (ANCSA)*, which resolved aboriginal land claims and led to the creation of Alaska Native regional and village corporations as shareholders in natural-resource development.<sup>202</sup> Through this structure, indigenous communities gained shares, dividend entitlements and participation in oil and natural-resource projects. Thus creating a form of compensation and benefit-sharing embedded in the corporate-community nexus. Beyond this, the iconic Alaska Permanent Fund, established by way of the Alaska Constitution and statutes, channels a portion of oil revenue into a trust fund whose earnings are paid annually as dividends to every eligible Alaskan resident.<sup>203</sup> This form of universal dividend shifts the compensation paradigm from discrete payments to affected landowners or communities towards broad resident benefit-sharing.

On the environmental side, Alaska has specific legislation addressing oil-spill liability and community remediation. For example, the statute creating the *Exxon Valdez Oil Spill Unincorporated Rural Community Grant Fund* (§ 44.33.115 Alaska Statutes) allows grants for “*capital projects for purposes of restoring, replacing, or enhancing subsistence resources or services damaged or lost as the result of the Exxon Valdez oil spill.*”<sup>204</sup> This statute shows how environmental damage from oil operations triggers mechanisms for restoration and community benefit, albeit stripped from direct “compensation” for land acquisition or commercial disturbance.

Nevertheless, the Alaska model is not without limitations. The broad dividend mechanism does not automatically translate into targeted remediation of environmental and livelihood harms suffered by specific host communities exposed to petroleum operations, particularly indigenous or remote rural settlements. Empirical research indicates that while the shareholder and dividend models enhance

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<sup>202</sup> Tysiachniouk, M. (2020), ‘Disentangling Benefit-Sharing Complexities of Oil Production: An Analysis of Indigenous Affairs in the Alaska North Slope’ (2020) 12(13) Sustainability 5432 <<https://www.mdpi.com/2071-1050/12/13/5432>> accessed 20 October 2025.

<sup>203</sup> ‘Alaska: Oil Dividend May End, With Dramatic Consequences for Rural Communities’ (21 October 2002) Cultural Survival <<https://www.culturalsurvival.org/news/alaska-oil-dividend-may-end-dramatic-consequences-rural-communities>> accessed 20 October 2025.

<sup>204</sup> Alaska Statutes § 44.33.115 (Title 44, State Government, Chapter 33, Article 1) (2023) <<https://law.justia.com/codes/alaska/title-44/chapter-33/article-1/section-44-33-115/>> accessed 20 October 2025.

distributive equity, they may fail to address localized negative externalities such as subsistence-resource loss, land disturbance or cultural dislocation.<sup>205</sup> Furthermore, Alaska's revenue-sharing from offshore oil remains contested; as of recent legislative initiatives the state continues to push for equitably sharing royalties from Outer Continental Shelf development.<sup>206</sup> Thus, while residents receive dividends, the link between oil operations, community-specific compensation, and environmental accountability remains somewhat diffuse.

From the perspective of effectiveness in the context of compensation in oil-producing regions, Alaska offers some strong lessons. Firstly, the value of broad resident benefit-sharing that reduces expectations of narrow, project-by-project compensation. Secondly, the institutional anchoring of resources (Permanent Fund) and shareholder-structures (Native corporations) that create long-term community incentives; and thirdly, the presence of environmental liability mechanisms that make polluters responsible for remediation. On the flip side, Alaska's model warns that universal benefits may obscure localized harms, and that without targeted measures for communities actually bearing the brunt of oil operations, even generous revenue-sharing can leave gaps in justice.

For Nigeria, the Alaska example suggests that embedding community benefit into national-level frameworks (as in the *Petroleum Industry Act, 2021*'s Host Communities Development Trust) may be effective, but must be complemented by distinct mechanisms for communities closely impacted by land acquisition, pollution, and disruption. Ensuring that compensation is not merely distributive, but also corrective (that is, targeted to harm) and participatory (involving affected communities) will be key in translating frameworks into tangible outcomes.

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<sup>205</sup> Tysiachniouk, M. (2020), 'Disentangling Benefit-Sharing Complexities of Oil Production: An Analysis of Indigenous Affairs in the Alaska North Slope' (2020) 12(13) Sustainability 5432 <<https://www.mdpi.com/2071-1050/12/13/5432>> accessed 20 October 2025.

<sup>206</sup> Lisa Murkowski & Dan Sullivan, 'Murkowski, Sullivan Introduce Bill to Establish Offshore Revenue Sharing for Alaska' (Press Release, 27 October 2021) <<https://www.sullivan.senate.gov/newsroom/press-releases/murkowski-sullivan-introduce-bill-to-establish-offshore-revenue-sharing-for-alaska>> accessed 20 October 2025.

## 1.5. THE REPUBLIC OF SOUTH AFRICA

The Republic of South Africa, although not a major oil producing nation, presents a distinctive and progressive framework for addressing compensation for oil pollution and environmental harm, anchored in constitutional, legislative, and judicial mechanisms that emphasize environmental justice and sustainable development. Unlike many African countries where compensation for pollution is treated primarily as a matter of tort or administrative discretion, South Africa's approach integrates environmental rights directly into its supreme legal instrument, the *Constitution of the Republic of South Africa, 1996*.<sup>207</sup> **Section 24** of the Constitution provides that everyone has the right to an environment that is not harmful to their health or well-being and to have the environment protected for the benefit of present and future generations through reasonable legislative and other measures that prevent pollution and ecological degradation. This constitutional entrenchment of environmental rights elevates environmental protection and compensation from a discretionary policy issue to an enforceable legal obligation.

Complementing the Constitution is the *National Environmental Management Act (NEMA) 107 of 1998*, which serves as the cornerstone of South Africa's environmental governance regime. NEMA operationalizes the constitutional environmental right by establishing principles that apply to all actions which may significantly affect the environment. One of its most significant provisions is **Section 28**, which codifies the "duty of care" principle. This provision imposes a legal obligation on every person who causes, has caused, or may cause significant pollution or environmental degradation to take reasonable measures to prevent such pollution or, where it cannot be avoided, to minimize and rectify the harm. Failure to fulfil this duty attracts civil and criminal liability, including orders for compensation, clean-up, or restoration. This statutory duty of care has been judicially recognized as creating both preventive and

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<sup>207</sup> Kotze, L.J., "The Constitutional Court's Contribution to Sustainable Development in South Africa" (2003) 6(2) *PER/PELJ* 81-95 <<https://perjournal.co.za/article/download/2868/2785/10428>> accessed 23 October 2025.

compensatory responsibilities for polluters, providing a strong legal foundation for holding oil companies accountable for environmental damage.<sup>208</sup>

Another crucial statute is the *National Environmental Management: Integrated Coastal Management Act (ICMA) 24 of 2008*, which governs coastal and marine pollution. *Section 69 of the ICMA* specifically provides that a person who discharges oil or harmful substances into coastal waters is liable for all costs incurred in preventing, containing, or removing such pollution, as well as any loss or damage caused. The Act also empowers the Minister to recover from the polluter all reasonable expenses incurred by the State in mitigating pollution. This provision mirrors the “polluter pays” principle recognized under international environmental law and ensures that compensation extends beyond private victims to include reimbursement of governmental response costs. In addition, the *Marine Pollution (Control and Civil Liability) Act 6 of 1981, as amended*, aligns South African law with the international liability regime under the *International Convention on Civil Liability for Oil Pollution Damage (CLC) 1992*, to which South Africa is a party. This ensures that victims of ship-source oil pollution have access to international compensation mechanisms through the International Oil Pollution Compensation (IOPC) Funds. Under this regime, shipowners are strictly liable for pollution damage caused by the escape or discharge of persistent oil, subject to limited defences and liability caps, while the IOPC Fund provides supplementary compensation when the shipowner’s liability is insufficient or unavailable. Claims for compensation may be brought before the courts of any State-party within the jurisdiction of which damage has been suffered.<sup>209</sup>

In the context of land-based petroleum and mining operations, the *Mineral and Petroleum Resources Development Act (MPRDA) 28 of 2002* also plays a pivotal role. The Act vests all mineral and petroleum

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<sup>208</sup> Gilder, A.; Rumble, O.; Dhladhla, B., ‘Environment - South Africa’ (Mondaq, 21 December 2021) <<https://www.mondaq.com/southafrica/environmental-law/208604/environment-south-africa#:~:text=Imposes%20a%20general%20duty%20of%20care%20for,on%20this%20duty%20when%20enforcing%20environmental%20obligations.>> accessed 23 October 2025.

<sup>209</sup> Bhanu, R.B.K., ‘Liability and Compensation for Oil Pollution’ (2010) 3 *NUJS Law Review* 399-424 <<https://nujlawreview.org/wp-content/uploads/2016/12/bhanu.pdf>> accessed 23 October 2025.

resources in the State as the custodian of the people of South Africa, creating a framework of stewardship rather than ownership. *Sections 54 and 55 of the MPRDA* require that when petroleum operations cause loss or damage to landowners, lawful occupiers, or affected communities, the holder of the exploration or production right must pay compensation as agreed or determined by the Minister. Compensation may cover loss of land use, damage to property, loss of livelihood, and environmental harm. The MPRDA thus links compensation to the principle of equitable access to resources and seeks to balance industrial development with social justice for affected persons.<sup>210</sup>

The enforcement of environmental compensation in South Africa is further strengthened by a dynamic and rights-conscious judiciary. The courts have consistently interpreted environmental legislation purposively, emphasizing the interconnectedness of human rights and environmental protection. In *Fuel Retailers Association of Southern Africa v. Director-General Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province*<sup>211</sup>, the Constitutional Court held that sustainable development requires an integrated approach to environmental, social, and economic considerations, and that decision-makers must ensure that development does not compromise the environment or public welfare. Similarly, in *HTF Developers (Pty) Ltd v. Minister of Environmental Affairs and Tourism*<sup>212</sup>, the High Court reinforced the applicability of the duty of care under Section 28 of NEMA, emphasizing that failure to take reasonable measures to prevent pollution or environmental degradation gives rise to liability for remediation and compensation. These decisions demonstrate the judiciary's willingness to impose strict accountability on polluters and to compel restorative justice for affected communities and ecosystems.

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<sup>210</sup> Hermanus, M.A., Walker, J., Watson, I. & Barker, O., 'Impact of the South African Minerals and Petroleum Resources Development Act on Levels of Mining, Land Utility and People' (2015) 48(1-2) *Labour, Capital and Society* <[https://www.researchgate.net/publication/314374683\\_Impact\\_of\\_the\\_South\\_African\\_Minerals\\_and\\_Petroleum\\_Resources\\_Development\\_Act\\_on\\_levels\\_of\\_mining\\_land\\_utility\\_and\\_people#:~:text=Accordingly%2C%20there%20are.more%20compensation%20of%20oil%20spill](https://www.researchgate.net/publication/314374683_Impact_of_the_South_African_Minerals_and_Petroleum_Resources_Development_Act_on_levels_of_mining_land_utility_and_people#:~:text=Accordingly%2C%20there%20are.more%20compensation%20of%20oil%20spill)> accessed 23 October 2025.

<sup>211</sup> 2007 (10) BCLR 1059 (CC)

<sup>212</sup> [2007] 4 All SA 1108 (SCA)

An important feature of the South African system is the accessibility of remedies. Under NEMA, any person or group may institute a legal action to enforce environmental rights in the public interest, regardless of whether they have suffered personal harm. This liberal standing provision, known as “locus standi in the public interest,” has empowered communities and non-governmental organizations to bring suits against polluters and government agencies. This approach ensures that compensation for oil pollution is not restricted to private settlements between corporations and victims but may also encompass broader environmental restoration measures benefiting entire ecosystems and communities.<sup>213</sup>

The institutional architecture for environmental compensation in South Africa is relatively coherent. The Department of Forestry, Fisheries and the Environment serves as the central authority for environmental management, supported by provincial environmental departments and specialized agencies. Coordination between these institutions is reinforced through integrated environmental management frameworks that ensure uniform application of environmental principles across sectors. Financially, NEMA establishes the Environmental Management Inspectorate and allows for the creation of environmental management funds, which can be utilized for remediation and compensation when polluters fail to act. The combination of constitutional rights, clear statutory duties, administrative coordination, and judicial enforcement has created a robust system that not only addresses oil pollution but also ensures preventive accountability and restorative compensation.<sup>214</sup>

In comparative perspective, South Africa’s framework differs from Nigeria’s in both legal structure and effectiveness. While Nigeria’s Constitution contains an environmental protection provision in *Section 20*, it is located in the non-justiciable chapter on *Fundamental Objectives and Directive Principles of State*

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<sup>213</sup> Toxopeüs, M. & Kotzé, L.J., ‘Promoting Environmental Justice through Civil-Based Instruments in South Africa’ (2017) 13(1) *Law, Environment and Development Journal* 47-72 <<https://www.lead-journal.org/content/17047.pdf>> accessed 23 October 2025.

<sup>214</sup> Blackmore, A.C., ‘The Relationship between the NEMA and the Public Trust Doctrine: The Importance of the NEMA Principles in Safeguarding South Africa’s Biodiversity’ (2015) 20(2) *South African Journal of Environmental Law and Policy* 89-118 <[https://www.researchgate.net/publication/273767034\\_The\\_Relationship\\_between\\_the\\_NEMA\\_and\\_the\\_Public\\_Trust\\_Doctrine\\_The\\_Importance\\_of\\_the\\_NEMA\\_Principles\\_in\\_Safeguarding\\_South\\_Africa's\\_Biodiversity](https://www.researchgate.net/publication/273767034_The_Relationship_between_the_NEMA_and_the_Public_Trust_Doctrine_The_Importance_of_the_NEMA_Principles_in_Safeguarding_South_Africa's_Biodiversity)> accessed 23 October 2025.

*Policy*, rendering it unenforceable in court. In contrast, *South Africa's Section 24* is justiciable and has been extensively enforced by the courts. Furthermore, whereas Nigeria's compensation laws are fragmented across statutes such as the Petroleum Industry Act 2021, the Land Use Act 1978, and the NOSDRA Act 2006, South Africa's environmental legislation operates as an integrated whole under the umbrella of NEMA. The South African model also places stronger emphasis on public participation and access to justice, enabling affected communities to play a direct role in monitoring and seeking compensation. Additionally, the alignment of South African law with international conventions like the *International Convention on Civil Liability for Oil Pollution Damage*, ensures that victims of maritime oil pollution have access to internationally recognized compensation mechanisms, a level of international integration that Nigeria's domestic compensation system has yet to fully operationalize.

In conclusion, South Africa's compensation framework for oil pollution exemplifies a rights-based and institutionally integrated model that aligns with global best practices in environmental governance. It is characterized by enforceable environmental rights, statutory duties of care, judicial activism, and access to both national and international remedies. The system's strength lies in its preventive orientation, legal clarity, and accessibility of justice to affected communities. For Nigeria, the South African model offers compelling lessons in constitutional entrenchment of environmental rights, coherent statutory coordination, and the establishment of an enforceable duty of care for all polluters. By adopting these principles, Nigeria can strengthen the effectiveness of its compensation framework, transform its environmental governance system, and better protect the interests of oil-producing communities and the ecosystems upon which they depend.

## **1.6. Lessons For Nigeria.**

The comparative analysis presented in this chapter reveals that the effectiveness of compensation frameworks in oil-producing countries depends not only on the existence of comprehensive laws but, more importantly, on the integrity of their implementation and the inclusiveness of their governance structures.

The experiences of Norway, Canada, Ghana, Alaska, and South Africa provide valuable lessons for Nigeria as it continues to refine its approach to compensating host communities affected by petroleum operations under the Petroleum Industry Act, 2021.

A key lesson from Norway is that institutional transparency, strict liability for environmental harm, and the strategic reinvestment of petroleum revenues can transform oil wealth into a sustainable source of national welfare. The Norwegian system demonstrates that when compensation is understood as both environmental redress and social equity, petroleum wealth becomes a tool for long-term national development rather than a source of conflict. Canada's federal and provincial models further illustrate the benefits of decentralizing authority, ensuring that subnational governments and affected communities have meaningful control over resource management and compensation processes. The use of surface rights laws, environmental protection statutes, and Indigenous benefit agreements in provinces such as Alberta and Newfoundland & Labrador demonstrates how negotiated and statutory compensation mechanisms can coexist within a coherent framework.

Ghana's experience, though rooted in similar socio-economic realities as Nigeria, highlights the danger of having well-drafted laws without corresponding administrative efficiency. Its challenges in defining "appropriate compensation" and in ensuring timely payments to host communities underscore the need for Nigeria to strengthen its enforcement institutions and clarify compensation valuation criteria. Alaska, meanwhile, offers a broader distributive lesson: by institutionalizing universal benefit-sharing through the Alaska Permanent Fund and community-based Native corporations, it shows how petroleum revenues can promote social inclusion. However, it also warns that universal benefits must not replace targeted compensation for communities directly affected by oil operations.

Perhaps the most instructive example for Nigeria comes from South Africa, where environmental rights are constitutionally guaranteed and judicially enforceable. The integration of compensation within a rights-based framework, supported by the National Environmental Management Act and other sectoral

laws, ensures that polluters bear not only financial responsibility but also a duty to restore damaged environments. The accessibility of remedies, strong judicial oversight, and liberal standing rules provide a model of accountability that Nigeria could emulate.

From these comparative perspectives, several overarching lessons emerge. First, effective compensation requires a clear and enforceable legal foundation that recognizes environmental and community rights as justiciable obligations rather than policy aspirations. Second, institutional independence and transparency are indispensable for ensuring that compensation reaches affected communities promptly and fairly. Third, community participation must be embedded in every stage of the compensation process, from valuation and monitoring to implementation, to ensure legitimacy and prevent conflict. Finally, compensation should be conceived not only as a response to harm but also as a proactive mechanism for achieving environmental sustainability, social equity, and national stability.

In sum, the comparative experiences of the countries studied in this chapter reaffirm that compensation for oil-producing regions cannot be effective without the triad of legal clarity, institutional integrity, and participatory governance. For Nigeria, these lessons point to the need for deeper constitutional reform, stronger enforcement of environmental liability, transparent revenue management, and meaningful inclusion of host communities in decision-making. Only by adopting these principles can Nigeria transform its compensation regime from a reactive system of damage payment into a proactive instrument of justice, development, and environmental stewardship.

## **CHAPTER FIVE**

### **SUMMARY, FINDINGS AND RECOMMENDATIONS**

This final chapter brings together the main insights of this postgraduate thesis by summarizing its purpose, methods, and key findings, and by offering concrete recommendations for improving the effectiveness of Nigeria's legal framework governing compensation for oil-producing regions. The preceding chapters examined the evolution of Nigeria's petroleum industry, the nature and implications of compensation mechanisms within its legal framework, and the extent to which these mechanisms achieve environmental justice and socio-economic equity. Chapter Four, through a comparative analysis of other oil-producing jurisdictions revealed alternative models and best practices that shed light on the strengths and weaknesses of Nigeria's existing regime.

The purpose of this thesis was to evaluate whether the laws governing compensation for oil-producing regions in Nigeria effectively protect the interests of host communities and ensure adequate redress for environmental and socio-economic harm. This thesis further sought to identify institutional and legal gaps that hinder effective implementation and to propose reforms that could enhance transparency, fairness, and accountability in compensation administration.

Throughout the research, it became evident that while Nigeria possesses a broad array of laws and regulatory institutions intended to govern compensation, the overlapping mandates, weak enforcement, and limited community involvement have severely constrained their impact. The following sections therefore present a summary of the research, the key findings derived from the analysis, and the policy and legal recommendations necessary to enhance the effectiveness of compensation laws in Nigeria.

#### **5.1. SUMMARY OF THE STUDY**

This research set out to evaluate the effectiveness of the laws governing compensation for oil-producing regions in Nigeria, with particular emphasis on how these laws address environmental degradation, social

disruption, and the equitable distribution of petroleum wealth. The study was motivated by the persistent socio-environmental challenges faced by oil-producing communities in the Niger Delta despite the existence of numerous legal and institutional frameworks intended to regulate the petroleum industry and protect affected populations. The central question guiding the research was whether the current legal framework, anchored primarily in the Constitution of the Federal Republic of Nigeria 1999 as amended, and the Petroleum Industry Act 2021, adequately ensures compensation, remediation, and justice for communities impacted by petroleum operations.

The study adopted a doctrinal and comparative research methodology, relying on statutory analysis, judicial decisions, and secondary literature to examine the substance and application of Nigeria's compensation laws. The doctrinal component involved a critical examination of constitutional provisions, petroleum legislation, and environmental regulations to assess their scope, coherence, and enforceability. The comparative analysis, on the other hand, drew from the experiences of selected oil-producing jurisdictions such as Norway, Canada, Ghana, Alaska, and South Africa, to identify alternative approaches and best practices that could guide legal reform in Nigeria. This combination of domestic evaluation and international comparison provided a holistic understanding of both the structural and operational dimensions of compensation in petroleum governance.

Chapter One introduced the research study, providing the background, statement of the problem, research questions, objectives, significance, and scope of the inquiry. It emphasized that despite Nigeria's long history of oil production, host communities have remained impoverished and environmentally degraded, raising questions about the adequacy of the compensation mechanisms enshrined in Nigerian law. Chapter Two reviewed the legal framework for compensation for the oil producing regions of Nigeria.

Chapter Three examined Nigeria's domestic legal framework governing compensation in detail. It analyzed the provisions of key statutes such as the Petroleum Industry Act 2021, which introduced the Host Communities Development Trust; the Land Use Act 1978, which vests land ownership in the State;

and the NOSDRA Act 2006, which establishes mechanisms for oil spill detection, response, and remediation. The chapter further evaluated the judicial approach to compensation claims, noting that courts have often been constrained by procedural limitations, lack of technical expertise, and the non-justiciable nature of environmental rights under the Constitution. It concluded that while Nigeria's legal instruments provide a formal structure for compensation, their implementation remains ineffective due to institutional overlap, lack of community engagement, and limited enforcement capacity.

Chapter Four expanded the analysis through a comparative lens, examining how other oil-producing countries manage compensation and environmental accountability. Norway's strict liability regime and transparent management of petroleum revenues through the Government Pension Fund Global demonstrated how strong institutions and fiscal discipline can ensure long-term national benefit. Canada's dual-level system, particularly in Alberta and Newfoundland & Labrador, illustrated the advantages of decentralization, clear compensation standards, and Indigenous participation through Impact and Benefit Agreements. Ghana's emerging legal structure showcased the role of transparency mechanisms such as the Public Interest and Accountability Committee, but also exposed persistent weaknesses in compensation implementation. Alaska's model provided insights into universal benefit-sharing and community-based wealth redistribution through the Alaska Permanent Fund. South Africa's rights-based environmental regime stood out for integrating compensation within constitutional and judicially enforceable frameworks, emphasizing the interdependence of environmental protection, social justice, and sustainable development. Collectively, these comparative experiences provided valuable benchmarks for Nigeria, revealing the necessity of legal enforceability, institutional accountability, and participatory governance.

Across all chapters, a common theme emerged. The common theme is that compensation in oil-producing regions cannot be effective without a coherent, transparent, and enforceable legal structure that prioritizes the rights and welfare of host communities. This study therefore concludes that Nigeria's existing laws,

though comprehensive in scope, are hindered by practical and systemic deficiencies that prevent them from achieving their intended purpose. These deficiencies include inadequate compensation assessment mechanisms, weak monitoring and enforcement, limited access to justice, and the absence of constitutional guarantees for environmental rights. In contrast, the countries examined have demonstrated that compensation can function not merely as a financial response to damage, but as a central component of environmental governance and national equity.

## **5.2. FINDINGS OF THE STUDY**

The findings of this study reveal that while Nigeria has a broad array of laws and policies designed to govern compensation for oil-producing regions, the overall framework remains fragmented, weakly enforced, and largely ineffective in achieving environmental justice or equitable development. The research established that the legal and institutional mechanisms intended to protect host communities from the adverse effects of petroleum operations have been undermined by administrative inefficiency, overlapping jurisdictional mandates, and insufficient community participation. The study's doctrinal and comparative analyses led to the following key findings.

### **5.2.1. Constitutional Centralization of Resource Ownership.**

It was found that the constitutional structure of resource ownership in Nigeria contributes significantly to inequities in compensation and resource distribution. Section 44(3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), vests the ownership and control of all minerals, oil, and natural gas in the Federal Government. This centralization effectively excludes host communities and subnational governments from direct participation in resource management and decision-making. Consequently, the beneficiaries of compensation mechanisms are often determined by federal administrative agencies rather than the affected communities themselves. The study found that this centralized ownership model contrasts sharply with the approaches of Canada and Norway, where subnational entities or communities play an active role in determining compensation and managing resource revenues.

### **5.2.2. Reactive and Non-Integrated Compensation Laws.**

Nigeria's compensation laws are largely reactive and insufficiently integrated with environmental protection and sustainable development goals. Compensation is typically paid after harm has occurred, rather than being part of a preventive or precautionary regulatory framework. Although the Petroleum Industry Act 2021 introduces the Host Communities Development Trust as a means of providing long-term socio-economic benefits to oil-bearing areas, its focus on corporate funding rather than enforceable community rights limits its potential to serve as a true compensatory mechanism. The study revealed that, unlike South Africa's National Environmental Management Act, which imposes a proactive "duty of care" on all polluters, Nigeria's legal framework lacks a corresponding obligation that prioritizes prevention, remediation, and restoration.

### **5.2.3. Opaque and Inconsistent Compensation Procedures.**

The procedures for assessing and paying compensation in Nigeria are often opaque, inconsistent, and lacking in technical precision. The absence of standardized valuation methods and the limited involvement of independent environmental experts lead to wide discrepancies in compensation awards. Many claims are settled through administrative discretion or political negotiation rather than through transparent, evidence-based assessment. This has eroded public confidence in the system and perpetuated disputes between oil companies, government agencies, and affected communities. In contrast, jurisdictions such as Alberta and Newfoundland & Labrador in Canada have well-defined statutory criteria for compensation assessment and established independent boards to determine fair value, ensuring objectivity and accountability.

### **5.2.4. Weak and Uncoordinated Institutional Enforcement Capacity.**

The enforcement capacity of Nigerian institutions remains weak and uncoordinated. Agencies such as NOSDRA, the NUPRC, and the Ministry of Environment often operate in isolation, leading to duplication

of functions and regulatory inertia. The study observed that even when compensation orders or environmental fines are issued, compliance is slow and enforcement is inconsistent. This institutional weakness contrasts with the robust and autonomous regulatory bodies seen in countries like Norway and Canada, where agencies are insulated from political interference and possess clear mandates, adequate funding, and professional independence.

#### **5.2.5. Minimal and Tokenistic Community Participation.**

Community participation in compensation processes in Nigeria is minimal and largely tokenistic. Affected communities are seldom consulted meaningfully during environmental assessments, damage valuation, or disbursement of compensation funds. The Host Communities Development Trust introduced by the Petroleum Industry Act offers some level of representation, but in practice, the power imbalance between corporations and communities persists. By contrast, Ghana's Public Interest and Accountability Committee (PIAC) and South Africa's provisions for public-interest litigation demonstrate how institutionalized community participation and legal empowerment can promote transparency and social inclusion in compensation governance.

#### **5.2.6. Limited Judicial Enforcement of Compensation Rights.**

The judicial mechanisms for enforcing compensation rights in Nigeria are constrained by procedural and constitutional barriers. The non-justiciability of environmental rights under Chapter II of the Constitution limits the ability of victims to seek redress for ecological damage or government inaction. Furthermore, the cost and duration of litigation discourage many affected persons from pursuing claims in court. The judiciary also faces challenges in technical expertise, particularly in the assessment of complex environmental damages. In contrast, South Africa's judiciary has demonstrated strong environmental activism, interpreting Section 24 of its Constitution as a substantive and enforceable right, thereby enhancing accountability and deterrence.

### **5.2.7. Lack of Transparency and Accountability in Compensation Management.**

Transparency and accountability in the management of compensation and petroleum revenues remain inadequate in Nigeria. There is limited public disclosure regarding compensation payments, remediation funds, and the utilization of community development trust resources. This opacity fuels mistrust between stakeholders and enables corruption and mismanagement. Comparatively, Norway's and Canada's adherence to open data and transparency standards, including participation in the Extractive Industries Transparency Initiative (EITI) and similar domestic mechanisms, underscores the role of information disclosure in promoting effective compensation governance.

### **5.2.8. Fragmented and Non-Participatory Policy Framework.**

The comparative analysis demonstrated that effective compensation systems are those that integrate legal enforceability, institutional accountability, and participatory governance within a coherent policy framework. Countries that have succeeded in mitigating the adverse consequences of oil production, such as Norway and South Africa, view compensation not merely as an afterthought or a corporate obligation, but as a central component of environmental stewardship, social justice, and intergenerational equity. These experiences highlight that Nigeria's compensation framework must evolve from a fragmented, government-controlled model into a participatory, rights-based system that guarantees timely redress, environmental restoration, and sustainable development for its oil-producing regions.

In summary, the findings of this study reveal that Nigeria's challenge is not the absence of laws but the weakness of implementation and enforcement. The next section therefore sets out detailed recommendations for reforming Nigeria's compensation framework.

## **5.3. RECOMMENDATIONS**

The findings of this study have demonstrated that while Nigeria possesses an extensive legal framework for regulating compensation in the oil and gas sector, the effectiveness of these laws is undermined by

structural, institutional, and procedural weaknesses. The following recommendations are therefore proposed to enhance the efficiency, equity, and sustainability of Nigeria’s compensation framework for oil-producing regions.

### **5.3.1. Constitutional Reform of Environmental and Resource Governance.**

*Section 44(3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)*, which vests ownership and control of all petroleum resources in the Federal Government, should be further amended to reflect a more equitable distribution of rights and responsibilities among federal, state, and community stakeholders. A revised constitutional arrangement should recognize host communities as legitimate stakeholders in petroleum development, entitled not merely to corporate benevolence but to enforceable legal and economic rights. In addition, *Section 20 of the 1999 Constitution*, which currently provides for environmental protection as a non-justiciable directive principle of state policy, should be elevated to the status of a fundamental right. Making the right to a clean and healthy environment justiciable, as seen in South Africa, would allow affected communities to seek judicial redress for pollution, degradation, or inadequate compensation.

### **5.3.2. Strengthening the Petroleum Industry Act, 2021 (PIA).**

The Host Communities Development Trust established under the PIA represents an important innovation but requires amendments to guarantee greater autonomy, transparency, and community control. The current provision mandating that 3% of an operator’s annual operating expenditure be contributed to the Trust should be reviewed upward to reflect both the scale of environmental risk and the socio-economic burden borne by oil-producing communities. Furthermore, the Act should mandate periodic independent audits of the Trust Fund, with findings made publicly available, to ensure accountability and prevent mismanagement. Community representatives should also have voting rights in the management of the Trust, and their selection process should be conducted transparently to prevent elite capture.

### **5.3.3. Establishment of a Unified Compensation and Environmental Restoration Authority.**

Nigeria should establish a specialized statutory body to centralize functions currently scattered among multiple agencies such as NOSDRA, NUPRC, and the Federal Ministry of Environment. The Body should maintain a national compensation registry, set uniform valuation standards for environmental and economic losses, and coordinate with state and community institutions to ensure fair and prompt payments. Its independence should be guaranteed through statutory funding and transparent, merit-based appointment of commissioners.

### **5.3.4. Development of Standardized Compensation Assessment Guidelines.**

Nigeria should codify comprehensive compensation guidelines, similar to the Compensation Guidelines Respecting Damages Relating to Offshore Petroleum Activities used in Canada, to ensure uniformity and fairness across regions. Such guidelines should define compensation for direct economic losses, long-term environmental degradation, cultural disruption, and loss of livelihood. Independent environmental assessors accredited by the proposed Commission should conduct damage assessments, enhancing objectivity and technical credibility.

### **5.3.5. Enhancement of Institutional Enforcement Capacity.**

The success of any compensation framework depends on the strength and independence of its institutions. Regulatory agencies should therefore be adequately funded, professionally staffed, and insulated from political interference. Sanctions for non-compliance should include suspension of licenses, higher fines, and mandatory remediation orders. In particular, NOSDRA's enforcement powers should be expanded to include authority to compel operators to deposit environmental performance bonds, which can be used to finance immediate cleanup and compensation in the event of pollution.

### **5.3.6. Promotion of Transparency and Public Participation.**

Transparency and public participation are vital to legitimacy in the administration of compensation. Nigeria should institutionalize mechanisms for periodic public disclosure of all compensation and remediation payments made by oil companies. This can be achieved through annual public reports and online data portals modeled after the Extractive Industries Transparency Initiative (EITI). Host communities and civil society organizations should also have access to real-time environmental monitoring data and disbursements from the Host Communities Development Trust. Moreover, community consultation should be made a statutory requirement at every stage of petroleum operations, from licensing and environmental impact assessment to compensation valuation and project monitoring.

#### **5.3.7. Strengthening the Role of the Judiciary.**

The judiciary must play a more active and specialized role in environmental compensation enforcement. Nigeria should establish environmental courts or dedicated divisions within existing courts to handle oil pollution and compensation disputes efficiently. Judges should receive continuous training in environmental and petroleum law, while procedural barriers such as high filing fees and restrictive standing rules should be eased. Empowering the judiciary in this manner would ensure consistent interpretation of environmental laws and promote accountability.

#### **5.3.8. Integration of Compensation into Sustainable Development Strategies.**

Finally, compensation should be viewed not only as financial redress but as an instrument for long-term sustainability and climate resilience. A proportion of compensation funds should be invested in livelihood diversification, renewable energy, reforestation, and public health initiatives within oil-producing areas. Nigeria can draw inspiration from Norway's sovereign wealth model, channeling petroleum revenues toward projects that support intergenerational equity. Aligning compensation mechanisms with the Sustainable Development Goals (SDGs) particularly Goals 13 (Climate Action), 14 (Life Below Water),

and 15 (Life on Land), would ensure that compensation contributes to lasting social and environmental progress.<sup>215</sup>

In conclusion, the reforms proposed above are both practical and attainable if supported by political will, institutional integrity, and community participation. A restructured and transparent compensation framework would not only restore the rights and dignity of oil-producing communities but also foster peace, stability, and environmental sustainability in Nigeria's petroleum sector.

#### **5.4. CONCLUSION**

This postgraduate thesis set out to evaluate the effectiveness of the laws governing compensation for oil-producing regions in Nigeria and has shown that, despite an extensive legal framework, fragmented legislation, overlapping institutional mandates, weak enforcement, and the non-justiciability of environmental rights prevent host communities from receiving timely, transparent, and equitable compensation. These systemic flaws have deepened community grievances and contributed to ongoing instability in petroleum-producing areas. Comparative insights show that effective compensation systems require strong institutions, enforceable rights, judicial accessibility, transparency, and meaningful community participation. These elements are still underdeveloped in Nigeria. The study concludes that genuine reform must prioritize constitutional protection of environmental rights, stronger institutional oversight, standardized compensation procedures, and active involvement of host communities. Only by adopting these measures and aligning compensation with sustainable development principles can Nigeria shift from a reactive and fragmented system to one that delivers real remediation, fairness, and long-term stability for affected communities.

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<sup>215</sup> Chioma, E.E., 'Sustainable Petroleum Development in Norway and Nigeria: A Legal and Policy Comparison' (2022) 9(1) *Rivers State University Journal of Public Law* 1-21 <https://www.rsubliclawjournal.com.ng/wp-content/uploads/2022/09/sustainable-petroleum-development-in-norway-and-nigeria-vol9-issue1-2002.pdf> accessed 1 November 2025.

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