MYRIADS OF UNDER-ENFORCED LEGISLATION: THE GAP BETWEEN ENVIRONMENTAL LAWS ENFORCEMENT AND REGULATIONS IN THE OIL AND GAS SECTOR IN NIGERIA*

Abstract

Despite having a robust framework of environmental laws and regulations, Nigeria's oil and gas industry continues to grapple with its practice and regulation. This study examines the gap between environmental laws and regulations and their enforcement in the oil and gas industry in Nigeria, particularly in the Niger Delta. Using doctrinal research methodology, and a critical analysis of existing literature, texts, academic writings, journals, laws, and policies, this research identifies the historical, institutional, and socio-political factors that contributes to the ineffective enforcement of environmental legislations. Findings reveal that while Nigeria has several legislations meant for the regulation of the oil and gas industry and the protection of the environment, a complex snare of challenges, including weak enforcement, institutional challenges, inadequate funding, multiplicity and duplicity of the duties and functions of these laws and the non-justiciability of environmental rights under the 1999 constitution hinders their effectiveness. This paper contributes to the understanding of the dynamics of environmental governance in Nigeria's oil and gas industry and highlights the need for a more effective and inclusive approach to environmental regulations and enforcement, and advances recommendations on policy reforms including amendment of the constitution, strengthening the requisite existing institutions, community engagement and integration to bridge the gap between environmental laws and regulations and their enforcement in the drive to strike a balance in environmental protection and ultimately promoting sustainable development and environmental harmony and justice in Nigeria.

Keywords: Environmental Laws and Regulations, Oil and Gas Sector, Unenforced, Gap, Nigeria

1. Introduction.

This study focuses on the examination of the gap between environmental laws and regulations and their enforcement in Nigeria. It concentrates on key federal laws and regulations that govern the oil and gas industry with particular emphasis on those related to oil spills, gas flaring, environmental impact assessments, and regulatory oversight in addition to some international regulation. The study focuses on five major laws that highlight the issue of over-legislation and under-enforcement. Additionally, other relevant laws will be made reference to, as a way of illustrating the broader regulatory landscape.

This study also analysed the roles of critical regulatory bodies in enforcing these laws. In doing so, it included both statutory regulatory agencies and complementary institutions such as the Nigeria Police Force, Legal Aid Council, and Nigerian Red Cross Society, the Nigerian Security and Civil Defence Corp, which contribute to enforcement support, legal redress, and humanitarian response in addressing the plight of pollution-affected communities, which geographical scope is limited to Nigeria with particular emphasis on Niger Delta where most of Nigeria's oil and gas issues are prominent.

The paper provides a comprehensive examination of the current state of environmental regulations and enforcement in the oil and gas industry in Nigeria. By identifying the lacuna in the existing enforcement of the framework which is intended to contribute to a better understanding of the environmental governance and practices in the oil and gas industry and lead to the development of more effective environmental regulation and enforcement strategies in the oil and gas industry in Nigeria, in order to achieve a positive impact on Oil and Gas operations, as well as in the conservation and protection of the environment in Nigeria; in particular, and the world in general.

2. Conceptual Clarifications

The study of the gaps between environmental laws and regulations and their enforcement in the oil and gas industry in Nigeria, requires an understanding of certain key terms. However, the definitions and descriptions being provided herein are limited to this paper. Law, by its nature, does not accepts to a universally accepted definition; so does any concepts that assumes the flavour of law, therefore, any subject, issue or discourse within its scope inherently lacks a universally accepted definition.

Petroleum

The word petroleum is derived from the Greek word Petra (rock) and Oleum (oil), meaning oil from rock. According to the *Petroleum Act*[1], petroleum means 'mineral oil (or any other related hydrocarbons) as it exists in its natural state in strata, and it does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation'. Petroleum includes Crude oil and Natural Gas, condensate and any mixture of them[2]; the *Act*[3] also defines

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[1] Petroleum Act, Cap. P10 Laws of the Federation of Nigeria, 2004.

[2] Petroleum Industry Act 2021, Section 318.

[3] Petroleum Act, Cap. P10 Laws of the Federation of Nigeria, 2004.

crude oil as 'oil in its natural state before it has been refined or treated'. Natural gas means 'gas obtained from boreholes and wells and consisting primarily of hydrocarbons'.[4]

Environment

The term environment is one with numerous definitions, reflecting its multifaceted nature across legal, societal and scientific contexts. According to Black's Law Dictionary[5], it is 'the totality of physical economic, cultural, aesthetic, and, social circumstances and factors which surround and affect the desirability and value of property and which also affect the quality of peoples' lives.' Similarly, Section 20 of the Constitution[6] provides that: 'The State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria'. This can be translated to mean that the environment includes the water, air and land, forest and wildlife. The Cambridge Dictionary[7] defines the environment as the air, water, and land that people, animals, and plants live on. It can also refer to the conditions in which people live or work. This broadens the scope to include human interactions and living conditions. Environment can also mean 'the components of the earth,' and includes: '(a) land, water and air, including all layers of the atmosphere, (b) all organic and inorganic matter and living organisms; and (c) the interacting natural systems that include components referred to in paragraphs (a) and (b)[8].

Rau and Wooten[9] also defines the environment as 'the whole complex of physical, social, cultural, economic and aesthetic factors which affect individuals and communities and ultimately determine their form, character, relationship and survival.' They further categorize the environment into four interrelated components, namely:

a) The physical environment (natural and constructed) which includes land and climate, vegetation, wildlife, the surrounding land uses and the physical character of an area, infrastructure/public services, air, noise and water pollutions.
b) The social environment which includes community facilities and services and the character of community facilities and services.
c) The aesthetic environment scenic areas, vistas, views including architectural character of building.
d) The economic environment which includes employment, land ownership pattern and land values.

Degradation

Degradation is the deterioration of the environment through depletion of resources which includes all the biotic and abiotic element that form our surrounding that is air, water, soil, plant, animals, and all other living and non-living element; visible and invincible, on earth. The major factor of environmental degradation is human (modern urbanization, industrialization, overpopulation growth, deforestation, etc.) and natural (flood, typhoons, droughts, rising temperatures, fires, etc.) cause. The United Nations International Strategy for Disaster Reduction[10]defines environmental degradation as the decline in the Earth's ability to meet social and environmental needs[11].

Regulations

Regulations are rules or directives issued by governmental or authorized bodies to control activities and ensure compliance with established standards. In the context of environmental governance, regulations in Nigeria's oil and gas industry sets the standards for pollution control, resource management, and environmental protection, and sustenance.

Enforcement

Enforcement in this context refers to the implementation and execution of environmental laws and regulations by designated agencies. It involves monitoring, inspection, penalties, and corrective actions aimed at ensuring compliance. With extant laws and regulations. In Nigeria's oil and gas sector, which enforcement is often confronted by weak institutional capacity, lack of political will, and limited accountability, resulting in under-enforcement of existing environmental rules.

Pollution

An understanding of environmental pollution requires the explanation of what pollution is. Generally, pollution can be defined as a man-made or man achieved alteration of the chemical, physical or biological quality of the environment exceeding reasonably acceptable limits. In the Nigerian National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 'pollution' is defined as 'the man-made or man-aided alteration of the chemical, physical or biological quality of the environment beyond acceptable limits'[12]. Building on this concept, environmental pollution can be specifically defined as the unwarranted disposal of mass or energy into earth's natural resource pool such as water, land, or air that result in a long- or short-term detriment to the atmosphere and its ecological health. Its effects negatively impact on

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[4] *Ibid.*
[5] Henry Campbell Black, *Black's Law Dictionary* (6th edn, West Publishing Company 1990).
[6] *Constitution of the Federal Republic of Nigeria 1999 (as amended).*
[7] *Cambridge Dictionary* (4th edn, Cambridge University Press 2013), <https://dictionary.cambridge.org/dictionary/english/environment > accessed 3 March 2025.
[8] *Environmental Impact Assessment Act Cap* E12 LFN 2004, *Section* 61.
[9] J. C, Rau and D. C, Wooten, *Environmental Impact Analysis Handbook.* McGraw-Hill (1980)5-8.
[10] UNISDR. (2009)
[11] United Nations International Strategy for Disaster Reduction. Terminology on Disaster Risk Reduction (2009) 6.
[12] The National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007, *Section* 37.

living beings and their lives, both quantitatively and qualitatively[13]. Recognizing the inextricable connection between human existence and the environment, the 1999 Constitution of the Federal Republic of Nigeria assigned the federal government the duty of protecting, enhancing and preserving Nigeria's water, air, land, forest, and wildlife.[14] Ironically, the majority of environmental pollution in Nigeria is anthropogenic or caused by human activities, with the oil and gas industry as seemingly the country's highest source of environmental pollution.

Environmental Laws and Regulations

These focuses primarily on the federal legislative framework of the environment. They are rules that protect the environment, human health, and natural resources. It is a complex web of regulations, policies, and statutes designed to address issues such as air and water quality, waste management, and pollution control. In this context, environmental laws and regulations refers to the legislative framework related to the oil and gas industry in Nigeria such as Environmental Impact Assessment Act[15], The Petroleum Industry Act, 2021, and the National Oil Spill Detection and Response Agency, amongst others[16].

Gas flaring

Gas flaring herein refers to the burning of natural gas which comes with oil extraction. The practice has persisted from the very beginning of oil production over 160 years ago. It takes place due to a range of issues, ranging from market and economic constraints, to a lack of appropriate regulation and political will. According to the World Bank, the amount of gas currently flared each year, which amounts to about 148 billion cubic meters, could power the whole of sub-Saharan Africa.[17] In 2023, global gas flaring at upstream oil and gas facilities increased by 9 billion cubic meters from 139 billion cubic meters in 2022 to 148 billion cubic meters in 2023, a 7 percent increase.[18] At the same time, oil production rose by just 1 percent, leading to a 5 percent increase in global average flaring intensity, the amount of gas flared per barrel of oil produced.[19]as at now 2026, it stands at 167 billion cubic meters (169bcm).[20] Satellite data estimates shows that the Russian Federation, the Islamic Republic of Iran, Iraq, the United States, Venezuela, Algeria, Libya, Nigeria, and Mexico remain the top nine flaring countries in 2024. Together, these nine countries are responsible for 75 percent of global gas flaring, but just 46 percent of global oil production[21]. In Nigeria, gas flaring has severe environmental, potential economic, and health consequences. The release of methane and carbon dioxide contributes significantly to climate change, while toxic pollutants like sulphur dioxide lead to acid rain, respiratory diseases, and environmental degradation. Despite regulations aimed at curbing gas flaring, enforcement challenges persist, allowing the practice to continue, even at high levels.

Oil spillage

Oil spills can be defined as the release of liquid raw/natural petroleum hydrocarbons into the environment, especially into the land and sea. Oil spills threaten land, millions of miles of coastline, river systems, lakes, and terrestrial habitat daily, particularly where extensive oil drilling, refining, and transport take place. The challenge of managing oil spills around the world is increasing in complexity and magnitude. Oil spills from tankers and reservoirs provide examples of the adverse impacts of large amounts of oil on aquatic and coastline ecosystems. Those spills closest to shore generally have the greatest adverse effects on the environment since the oil would not have time to disperse before reaching shore and can significantly impact the sensitive habitats of a variety of organisms[22].

3. Legal Framework on Environmental Protection in the Oil and Gas Industry

The oil and gas industry in Nigeria has not only been a major driver of economic growth, but also a significant source of environmental degradation, particularly in the Niger Delta. Erstwhile to 1988, Nigeria had no national environmental policy or comprehensive legislative framework to address environmental protection and related issues. However, a turning point came with the 1988 Koko toxic waste dumping incident, in which hazardous waste was illegally imported into Nigeria from Italy and dumped in Koko, a sub hub of Delta State. This unfortunate incident exposed the country's regulatory weaknesses and led to the enactment of the Harmful Wastes (Special Criminal Provisions) Act, 1988[23], which criminalized the transportation, deposit, and dumping of harmful waste in Nigeria. Additionally, the government established the Federal Environmental Protection Agency[24] through Decree No. 58 of 1988, marking Nigeria's first formal institutional response

[13] I. M, Nwawuike and Others, 'Spatial Distribution of Cadmium and Lead (Cd and Pb) Along Owerri – Orlu Road Highway in Imo State, 7(4) Nigeria *African Journal of Environment and Natural Science Research (2024)* 20-29.
[14] *CFRN* 1999(as amended), *Section* 20.
[15] EIAA. E12 Laws of the Federation of Nigeria 2004.
[16] NOSDRA. Act N15, 2006.
[17] World Bank, 'What is Gas flaring?' (World Bank, 2024) < https://www.energy.gov/sites/default/files/2024-12/13-Exh.%20L%20Global%20Flaring%20%28World%20Bank%29.pdf> accessed 23 February 2025.
[18] World Bank, Global Gas Flaring Tracker Report (June 2024) <https://www.worldbank.org/en/programs/gasflaringreduction/publication/2024-global-gas-flaring-tracker-report> accessed 23 February 2025.
[19] *Ibid*.
[20] World Bank Group, <http://www.worlfbank.org.> accessed January 2026.
[21] *Ibid*.
[22] S Othumpangat and V. Castranova, 'Oil Spills' in Philip Wexler, 3rd Edn, Vol 3, *Encyclopedia of Toxicology,* Academic Press (2014) 677–681.
[23] Harmful Waste (Special Criminal Provisions, etc.) Act 1998.
[24] Also known as FEPA.

to environmental issues. The establishment of the agency[25] and the enactment of the Harmful Wastes Act laid the groundwork for Nigeria's broader environmental legal framework. Over time, this led to the development of various laws and regulatory agencies addressing different aspects of environmental protection, including pollution control, oil spill management, gas flaring regulation, and overall environmental sustainability. Despite this extensive legal framework, enforcement remains a major challenge, with significant gaps between the extant laws and their practical implementation.

Apart from the afore-stated laws other laws regulating Nigeria's oil and gas industry and the protection of the environment include: The Constitution of the Federal Republic of Nigeria 1999 (as amended), The Land Use Act, 1978, The Petroleum Industry Act, 2021. Environmental Impact Assessment Act (EIA) 1992, National Oil Spill Detection and Response Agency National Environmental amongst others.

Constitution of the Federal Republic of Nigeria 1999 (as amended)

The 1999 Constitution is the supreme law of Nigeria, as established by Section 1(1), which states that 'This Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.' It provides the foundational legal framework for governance, including environmental protection. The primary constitutional provision regarding the environment in Nigeria is found in Section 20, which provides that 'The State shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria.'[26] However, this provision is contained in Chapter II (Fundamental Objectives and Directive Principles of State Policy), which unfortunately under Section 6(6) (c) of the constitution, is non-justiciable. This means that citizens and affected communities cannot sue the government for failing to uphold and enforce environmental protection duties.

Section 6(6) (c) provides that:

> The judicial powers vested in accordance with the foregoing provisions of this section shall not, except as otherwise provided by this constitution, extend to any issue or question as to whether any act or omission by any judicial decision is in conformity with the fundamental objectives and directive principles of state policy set out in chapter II of this constitution.

This provision of section 6(6)(c) can be interpreted as denying the court the power to adjudicate on any issue related to the enforceability of the provision of section 20 of the constitution. The courts have consistently upheld the non-justiciability of the provisions of chapter II of the constitution. In *Archbishop Okogie v Attorney-General of Lagos State*[27], the court ruled that *Chapter* II provisions are not legally enforceable unless backed by specific legislation. Which hints that *Chapter* II can be made justifiable by legislation[28]. The Supreme court in *Attorney General of Lagos State v. Attorney General of the Federation*[29] held that the National Assembly acted within its constitutional powers under Section 20 of the CFRN (also in Chapter II) when it enacted the Federal Environmental Protection Agency Act.

Similarly, the Supreme Court in *Federal Republic of Nigeria v Alhaji Mika Anache & Others*[30] held that:

> The non-Justiciability of section 6(6) (c) of the Constitution is neither total nor sacrosanct as the subsection provides a leeway by the use of the words 'except as otherwise provided by this Constitution. This means that if the Constitution otherwise provides in another section, which makes a section or sections of Chapter II justiciable, it will be so interpreted by the courts.[31]

Environmental Impact Assessment Act[32]

Environmental Impact Assessment is the process of effecting an evaluation of the likely environmental impacts of a proposed project or development, taking into account inter-related socio-economic, cultural and human-health impacts, both beneficial and adverse.[33] Recognizing these risks, the Nigerian government legislated the Environmental Impact Assessment Act in 1992 to ensure that all major projects undergo thorough environmental evaluation before approval. The Act is one of Nigeria's key environmental laws aimed at ensuring sustainable development by assessing the environmental consequences of projects before their execution and during their pendency. According to the schedule of the Environmental Assessment Act, it is 'An Act to set out the general principles, procedure and methods to enable the prior consideration of environmental impact assessment on certain public or private projects.'[34] Under section 1 of the Act, the objectives of the Environmental Assessment Act are as follows:

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[25] *Ibid*.

[26] *CFRN* 1999 (as amended) *Section* 20.

[27] (1981) 1 NCLR 218 HC

[28] *Gani Fawehinmi v Sani Abacha* (2002) 6 NWLR [Pt 660] 228; *Gbemre v Shell Petroleum Development Company of Nigeria Ltd* (FHC/B/CS/53/05, Federal High Court, Benin, 14 November 2005).

[29] (2003) 15 NWLR [Pt 842] 175.

[30] (2004) 14 WRN 1.

[31] H. P. Faga, F. Aloh, and Anor, 'Is the Non-Justiciability of Economic and Socio-Cultural Rights in the Nigerian Constitution Unassailable? Re-Examining Judicial Bypass from the Lens of South African and Indian Experiences' 14(3) *Fiat Justitia: Jurnal Ilmu Hukum,* (2020) 203.

[32] CAP E12 LFN 2004.

[33] O. O, Ikubanni and Others, 'Protecting the One Earth: An Examination of the Legal and Institutional Frameworks on Environmental Protection in Nigeria' 14(1) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* (2023), 141.

[34] Environmental Impact Assessment Act (EIA) Cap E12 LFN 2004.

(a) To establish, before a decision is taken by any person, authority, corporate body or unincorporated body, including the Government of the Federation, State or local government intending to undertake or authorize the undertaking of any activity, those matters that may likely or to a significant extent affect the environment or have an environmental effect on those activities and which shall first be taken into account.
(b) To promote the implementation of appropriate policy in all Federal Lands (however acquired) States and local government areas, consistent with all laws and decision-making processes through which the goal and objective in paragraph (a) of this section may be realized. (c) To encourage the development of procedures for information exchange, notification and consultation between organs and persons when proposed activities are likely to have significant environmental effects on boundary or trans-State or on the environment of bordering town and villages.[35]

Section 2 of the Act prohibits the public or private sector of the economy from embarking on or authorizing projects or activities without prior consideration, at an early stage, of their environmental effects. It provides that no public or private entity may initiate, approve, or carry out any project or activity without first evaluating its environmental impact. If a proposed project is expected to have a significant effect on the environment due to its scale, nature, or location, an environmental impact assessment must be conducted in line with the provisions of the Act. [36] Section 12 mandates that certain projects, due to their potential significant environmental impacts, must undergo a comprehensive environmental assessment before commencement. The section specifies that projects listed in the Mandatory Study List cannot proceed without the Agency's report.[37] Oil and Gas is explicitly listed under the mandatory study activities and thus, by virtue of Section 13 no oil exploration, drilling, refining, or pipeline construction can proceed without an approved environmental impact assessment.[38] Failure to comply with the provision of the *Act* is an offence punishable on conviction to the tune of # 100, 000 fine or 5years imprisonment and for a firm or a corporation, a fine not less than # 50,000 but not more than #100,000.[39]

However, despite these legal provisions, enforcement remains a challenge due to regulatory inefficiency, corruption, and political interference, among others, allowing many violators to escape punishment. In practice, these penalties are rarely enforced, undermining the effectiveness of the *Act*.

Petroleum Industry Act[40]

The *Petroleum Industry Act* 2021 is the strategic law regulating the oil and gas sector in Nigeria. It was enacted to reform the industry, promote transparency, and improve environmental protection. It consolidates previous petroleum laws and introduces stronger environmental safeguards, particularly addressing issues like gas flaring, oil spills, pollution, and community development. The Petroleum Industry Act is comprised of 5 chapters. Chapter 1(Governance and Institutions) establishes regulatory bodies such as the Nigerian Upstream Petroleum Regulatory Commission [41] which oversees upstream petroleum activities and the Nigerian Midstream and Downstream Petroleum Regulatory Authority[42] which regulates midstream and downstream operations. It also sets out the powers of the Minister of Petroleum regarding licensing, regulations, and policy direction.[43] Chapter 2 (Administration) defines licensing and leasing procedures for oil and gas exploration, production, and transportation. It outlines the rules for acquiring, renewing, or revoking oil and gas licenses. Key sections under it includes: Sections 102 and 103 dealing with environmental management and Remediation. Section 104 provides for gas flaring penalties. It focuses on the effective management of the industry's upstream, midstream and downstream sectors. Chapter 3 (Host Communities Development) establishes the Host Communities Development Trust[44]which aims to provide sustainable development for host communities through infrastructure development, education, healthcare, economic empowerment, and environmental protection initiatives[45] . The legislation requires oil companies to contribute 3% of their operating expenses to the fund, aiming to mitigate the environmental and social impacts of petroleum activities and fund local development projects.[46] It aims to reduce conflicts between oil companies and host communities affected by environmental damage. Chapter 4 (The Petroleum Industry Fiscal Framework) completely renovated the fiscal regime, introducing new structures. It aims at attracting investments while at the same time, ensuring adequate government revenue. *Chapter* 5 (Miscellaneous Provisions) contains provisions dealing with legal proceedings, consequential amendments, repeals, savings, transfer of assets & liabilities, transfer of employees & condition of service and interpretations and citation.

[35] *Ibid*, s 1.
[36] *Ibid*, *s* 2.
[37] *Ibid*, *s* 12.
[38] Ibid, *s* 13.
[39]*Ibid*, *s* 60.
[40] 2021.
[41] Petroleum Industry Act (2021), Section 4.
[42] *Ibid*, *s* 29.
[43] *Ibid*, *s* 3.
[44] Also known as HCDT.
[45] *Ibid*, *s* 235.
[46] *Ibid*, *s* 240(2).

National Oil Spill Detection and Response Agency (Establishment) Act[47]

The National Oil Spill Detection and Response Agency (Establishment) Act also known as Act No. 15 of October 18, 2006 provides the legal framework for managing oil spills, their Detection, prevention and response. The Act established the National oil Spill Detection and Response Agency in accordance with the International Convention on Oil Pollution Preparedness, Response and Cooperation[48], to coordinate Nigeria's oil spill Response.[49] The Act gives the National Oil Spill Detection and Response Agency the authority to coordinate and monitor the implementation of the Federal Government's policies on the National Oil Spill Contingency Plan through the establishment of an effective response system to major and disastrous oil pollution, recognizing regions most vulnerable to oil pollution and prioritizing them for protection and clean-up efforts, establishment of a system to supervise, assist, or lead oil spill responses when necessary, including mobilizing resources to protect lives, safeguard the environment, and clean up affected areas, and ensuring that the existing resources are used in the best possible way. A criticism of the National Oil Spill Detection and Response Agency (Establishment) Act is that it enjoins the Agency to ensure that oil spill clean-up is done to a practicable extent without defining what practicable extent means.[50] The Agency is also not well funded and has to rely on funding from the oil companies and as a result become subject to regulatory capture. This makes the Agency ineffective in carrying out its functions against polluters/ spillers.[51]

Oil in Navigable Waters Act[52]

The Oil in Navigable Waters Act is an act enacted to implement the terms of the International Convention for the Prevention of Pollution of the Sea by Oil 1954 to 1962 and to make provisions for such prevention in the navigable waters of Nigeria. Section 1 prohibits the discharge of certain oils into prohibited sea areas from Nigerian ships.[53] Failure to abide by the section will make the owner or the master of the ship guilty of an offence. The oil referred to includes Crude oil, fuel and lubricating oil, heavy diesel oil as well as other oils which may be added to the list by the Minister of petroleum resources in so far as it relates to the pollution of the sea by oil. Section 3 prohibits the discharge of oil into Nigerian waters. Anyone found guilty of an offense under Sections 1, 3, or 5 of this Act, upon conviction by a High Court or a superior court, or through summary conviction by a lower court, shall be subject to a fine. However, if convicted by a court with jurisdiction lower than that of a High Court, the fine shall not exceed ₦2,000.[54] Some lacunae have been identified under the Act, such as the provision of statutory defenses for polluters like; act of trespasser (a third party) and that the discharge of oil was contained in a container although it escaped accidentally as a result of damage to the owners vessel or as a result of leakage therefrom and that all urgent and reasonable steps were taken to prevent the discharge and reduce its impact on the environment.[55]

National Environmental Standards and Regulations Enforcement Agency (NESREA) Act[56]

Nigeria's environmental regulatory framework can be traced back to the Koko toxic waste incident of 1987, when hazardous waste was illegally dumped in Koko village, Delta State, by an Italian company. At the time, Nigeria lacked a structured legal and institutional framework to address serious environmental crises. In response, the Federal Government of Nigeria enacted the Harmful Waste (Special Criminal Provisions) Decree No. 42 of 1988, which criminalized the dumping of toxic waste and imposed strict penalties on offenders. This led to the establishment of the Federal Environmental Protection Agency through Decree 58 of 1988, later amended by Decree 59 of 1992. To further strengthen environmental enforcement, the government established the National Environmental Standards and Regulations Enforcement Agency under the Federal Ministry of Environment, through the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007. This Act repealed the Federal Environmental Protection Agency Act, replacing the Federal Environmental Protection Agency with the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act as Nigeria's primary environmental enforcement agency.[57]

Oil Spill Recovery, Clean-Up, Remediation and Damage Assessment Regulations[58]

The Oil Spill Recovery, Clean-Up, Remediation, and Damage Assessment Regulations, 2011 were enacted by the National Oil Spill Detection and Response Agency (NOSDRA) under Section 26 of the Act[i], 2006. These regulations establish a legal framework for oil spill management in Nigeria, outlining the obligations of oil operators regarding spill response, clean-up, damage assessment and remediation. The regulations apply oil spills that occur onshore and offshore, affecting

[47] 2006.
[48] OPRC 90.
[49] National Oil Spill Detection and Response Agency(Establishment) Act 2006, Section 1(1).
[50] *Ibid*, *s* 6(3).
[51] A.O Abigail, 'An Appraisal of the Strands of Environmental Litigation in Nigeria', 9 *African journal of International Energy &Environmental Law*, (2024)35-36.
[52] CAP O6 LFN, 2004.
[53] Oil in Navigable Waters Act Cap O6 Laws of the Federation of Nigeria, 2004, Section 1.
[54] *Ibid*, *s* 6.
[55] S.C, Dike and S. C, Wondikom 'Situating Health and Safety in the Petroleum Industry: The Nigerian Experience and the Need for Review' 8(1) *Rivers State University Journal of Public Law,* (2021) 89-114.
[56] 2007.
[57] National Environmental Standards and Regulations Enforcement Agency (NESREA), NESREA <www.nesrea.gov.ng> accessed 10 March 2025.
[58] 2011.

land, navigable waters, and shorelines.[59] Additionally, section 6 of the National Oil Spill Detection and Response Agency, (Establishment) Act empowers the Agency to ensure compliance with environmental legislation and oversee the detection and management of oil spills in the petroleum sector. The primary objectives of these regulations are to ensure that all oil spills are promptly detected, contained, and cleaned up in an environmentally sustainable manner, thereby minimizing environmental impacts.[60]

Criminal Code Act[61]
The Criminal Code Act, contains provisions that can be applied to environmental violations in the oil and gas industry, particularly concerning pollution and damage to property.[62]

Associated Gas Re-Injection Act[63]
The Associated Gas Re-Injection Act imposed a duty on all oil and gas producing in Nigeria to submit their preliminary programmes for the re-injection of gas and detailed plans for implementation of gas re-injection. It provides for a restriction and regulation of the volume of gas flared in Nigeria. [64] However, it has been criticized for its weak enforcement and limited impact, leading to its repeal by the Petroleum Industry Act 2021.[65]

Flare Gas (Prevention of Waste and Pollution) Regulations[66]
On July 5, 2018, the President of Nigeria,[67] in his capacity as the Minister of Petroleum Resources, issued the Flare Gas (Prevention of Waste and Pollution) Regulations, 2018. These regulations were made pursuant to Section 9(1) and Paragraph 35(b) of the First Schedule to the Petroleum Act,[68]which empower the Minister to impose special terms and conditions on licensees and lessees. This includes the Federal Government of Nigeria's right to take natural gas produced alongside crude oil, free of cost at the flare, or at an agreed cost, and without payment of royalty. The regulations aim to prevent the waste of natural gas resources, reduce the environmental and social impact of gas flaring, and encourage third party investors to commercialize flare gas. The Flare Regulations provided the framework for the implementation of the Nigerian Gas Flare Commercialisation Programme[69] launched by the Ministry of Petroleum Resources in December 2016. The programme[70] was designed as a strategy to implement the Federal Government of Nigeria's policy objectives for the elimination of gas flaring, with potentially significant economic and developmental benefits for the country.[71] Regulation 12 prohibits the flaring and venting of natural gas, while Regulation 13 provides for payment for gas flared. However, the Flare Gas (Prevention of Waste and Pollution) Regulations, 2018, were repealed and replaced by the Gas Flaring, Venting, and Methane Emissions (Prevention of Waste and Pollution) Regulations, 2023

Petroleum (Drilling and Production) Regulations[72]
The Petroleum (Drilling and Production) Regulations, 1969 were made under the Petroleum Act 1969 to regulate oil exploration, drilling, and production activities in Nigeria. The regulations outline the rights, obligations, and environmental responsibilities of oil operators.

Harmful Wastes (Special Criminal Provisions) Act[73]
This Act was made in response to the incident of dumping of toxic waste at Koko Village in Delta State by an Italian company. It prohibits and criminalized the carrying, depositing, dumping or being in possession of any harmful waste on Nigerian soil, inland water or seas, without any lawful authority. It also prescribes term of imprisonment for life for any person found guilty of the crime under the act any property (including aircraft, vehicle, container and any other thing) used in the transportation or importation of the harmful waste or any land in which it is deposited or dumped shall be forfeited to and vested in the Federal Government of Nigeria.[74] For the purpose of enforcing the provisions of this act police officers are giving the power to search, seize and arrest any offender. Any such offender can also have civil liability for his offending act.[75]

[59] Oil Spill Recovery, Clean-Up, Remediation, and Damage Assessment Regulations, 2011, Section 1.
[60] National Oil Spill Detection and Response Agency, (Establishment) Act 2006, Section 5.
[61] Cap C38 LFN 2004.
[62] Criminal Code Act, Cap C38, Laws of the Federation of Nigeria 2004, Sections 234,245,247 and 451.
[63] Cap A25 LFN 2004.
[64] Associated Gas Re-Injection Act Cap A25 LFN 2004, Section 3.
[65]Aluko & Oyebode, 'An Overview of the Petroleum Industry Act 2021'< https://www.aluko-oyebode.com/insights/an-overview-of-the-petroleum-industry-act-2021/ > accessed 11 March 2025.
[66] 2018.
[67] President Muhammadu Buhari.
[68] 1969.
[69] Also known as NGFCP.
[70] *Ibid*.
[71] A, Oni, 'Understanding Petroleum (Oil & Gas) Transactions and the Nigerian Market' (CIPLUS Ltd) 2021.
[72] 1969.
[73] Cap H1 LFN 2004.
[74] *Ibid*, *s* 6.
[75] *Ibid*, *s* 10.

Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN)[76]

The Department of Petroleum Resources[77] first issued the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria in 1991 to regulate environmental management in the oil and gas sector. These guidelines were revised in 2002 and further updated in 2018.The Act was enacted to issue regulations, guidelines, licenses and permits, and to establish standards and procedures for environmental control in the petroleum industry. Environmental Guidelines and Standards for the Petroleum Industry in Nigeria establishes environmental regulatory standards for the various stages of petroleum operations including exploration, drilling and development, production, terminal operations, hydrocarbon processing, hydrocarbon transportation and marketing operations. It should be noted however that the Department of Petroleum Resources has been replaced by two new agencies: Nigerian Upstream Petroleum Regulatory Commission and the Nigerian Midstream and Downstream Petroleum Regulatory Authority[78].

Nigeria Upstream Petroleum Host Communities Development Regulations [79]

The Nigeria Upstream Petroleum Host Communities Development Regulations were established to operationalize the Host Communities Development Trust provisions of the Petroleum Industry Act 2021. These regulations provide a framework to ensure that petroleum operations contribute directly to the social and economic development of host communities.

Penal Code Act[80]

The Penal Code Act does not explicitly address environmental offenses, but certain provisions can be applied to issues like gas flaring, oil spillage, wastewater discharge, and pipeline vandalism. However, enforcement remains weak due to lack of political will, corruption, and legal loopholes.

Niger-Delta Development Commission (Establishment, etc.) Act[81]

The Niger-Delta Development Commission (Establishment, etc.) Act establishes the Niger-Delta Development Commission[82] to, amongst others, formulate policies and guidelines, and implement measures, for the development of the Niger-Delta area and tackle ecological and environmental problems arising from the exploration of oil mineral in the area. The Act requires oil producing companies operating in Nigeria to pay an annual contribution of three per cent (3%) of their total annual budget to the commission.[83]

Kyoto Protocol (1997/2005)

The Kyoto Protocol was the first international treaty to set legally binding targets for reducing greenhouse gas[84] emissions. It was adopted on the 11th of December, 1997, at the meeting of the third Conference of the Parties[85] in Kyoto, Japan and came into force in February 2005. The Kyoto Protocol is an international instrument that requires industrialized nations (Annex I countries) to reduce their greenhouse gas emission significantly.[86] It aims to promote sustainable development by eliminating global warming through the reduction of greenhouse gases emissions. To facilitate implementation, the Marrakesh Accords, which set detailed rules on implementation of the Kyoto Protocol were adopted in 2001, Marrakesh. The Protocol sets specific emission reduction targets for developed countries, placing a heavier responsibility on them, as they are historically the largest contributors to global Greenhouse Gas Emissions. However, developing countries, including Nigeria, were not given binding targets but were encouraged to participate in emission reduction efforts through market-based mechanisms such as the Clean Development Mechanism.[87] Under the mechanism, developing nations could earn emission reduction credits by implementing sustainable projects, which could be sold to industrialized nations to help them meet their reduction targets.[88]

Paris Agreement (2016)

The Paris Agreement was adopted under the United Nations Framework Convention on Climate Change,[89] at the United Nations Climate Change Conference[90] in Paris, France, on 12 December 2015. It was adopted by 196 parties and entered into force on 4 November 2016.[91] It aims to limit global warming to well below 2°C, with efforts to keep it at 1.5°C above pre- industrial levels. Nigeria ratified the agreement in 2017, committing to reducing greenhouse gas emissions through

[76] 2018.
[77] Also known as the DPR.
[78] *NUPRC* and *NMDPRA*.
[79] 2022.
[80] CAP P3 LFN 2004.
[81] 2000.
[82] NDDC.
[83] A. Oni, *Understanding Petroleum (Oil & Gas) Transactions and the Nigerian Market* 2021 (CIPLUS Ltd) 72.
[84] GHG.
[85] Also known as COP3.
[86] Kyoto Protocol to the United Nations Framework Convention on Climate Change (1997/2005), Article 2.
[87] Kyoto Protocol to the United Nations Framework Convention on Climate Change (1997/2005), Article 12.
[88] O. J, Olujobi, *Nigerian Petroleum, Energy and Gas Resources Law (Legal Theories, Cases & Practice): Petroleum Industry Act, 2021 and Climate Change Act, 2021*,'Princeton & Associates Publishing Co Ltd, 232-233.
[89] *Ibid*.
[90] Also known as COP21.
[91] United Nations Climate Change, *The Paris Agreement* (2016) https://unfccc.int/process-and-meetings/the-paris-agreement accessed 17 march 2025.

Nationally Determined Contributions.[92] Nigeria submitted its first Nationally Determined Contribution in 2015 and a revised one in July 2021, committing to reduce emissions by 20% unconditionally and up to 47% conditionally (dependent on international support) below Business-as-Usual[93] by 2030.[94]This commitment is particularly relevant given Nigeria's status as one of the top gas-flaring nations globally.[95] Despite these commitments, enforcement gaps remain a significant challenge, hindering Nigeria's ability to meet its international obligations under the Paris Agreement.

International Convention on Oil Pollution Preparedness, Response and Co-operation[96]

In July 1989, a conference of leading industrial countries called on the International Maritime Organization[97] to develop better and stronger measures of curbing oil pollution. This led to the drafting of the International Convention on Oil Pollution Preparedness, Response and Co-operation[98] which was adopted on the 30th of November, 1990 and came into force on the 13th of May, 1995. The convention requires state parties to establish measures for addressing oil pollution incidents, either nationally or through international cooperation.[99] As a signatory, Nigeria has taken steps to fulfill its obligations under the Convention[100] by incorporating its principles into domestic law. This can be seen in the establishment of the National Oil Spill Detection and Response Agency under the National Oil Spill Detection and Response Agency Act, 2006, which is responsible for oil spill detection, response, and management. However, despite these legal frameworks, enforcement remains weak due to institutional inefficiencies, regulatory overlaps, and resource constraints, raising concerns about Nigeria's compliance with the convention[101]'s objectives.

United Nations Convention on the Law of the Sea[102]

The United Nations Convention on the Law of the Sea, adopted in 1982 and in force since 1994, provides a comprehensive legal framework governing the use of the world's oceans and their resources.[103] Nigeria became a signatory to the Convention on December 10, 1982, and ratified it on August 14, 1986. Several provisions of the United Nations Convention on the Law of the Sea impose obligations on Nigeria concerning pollution control and environmental management. Article 2 of the United Nations Convention on the Law of the Sea recognizes the sovereignty of coastal states and their exclusive rights to explore and exploit their oil and gas resources without an express act or occupation of the area.[104] However this sovereignty over the territorial sea is subject to the Convention and other Rules of International law. Article 192 makes it a general obligation on member States to protect the marine environment, while Article 194 requires member States to prevent, reduce and control the pollution of the marine environment. The Convention also extends its environmental obligations to land-based pollution sources. Article 207 imposes an obligation on member States to take measures to prevent, reduce and control pollution of the marine environment from land based sources such as oil spills from refineries, pipeline leaks, chemical discharges and waste water. Article 208 provides for the regulation of seabed activities to prevent pollution. Furthermore, Article 235 imposes liability on states for environmental damage resulting from pollution.

Despite these commitments, enforcement remains weak. While Nigeria has enacted domestic laws such as the Petroleum Industry Act 2021, the National Environmental Standards Regulations Enforcement Agency Act 2007, and the Oil Spill Recovery, Clean-Up, Remediation, and Damage Assessment Regulations 2011, persistent oil spills, uncontrolled gas flaring, and ineffective liability enforcement highlight a significant gap between Nigeria's legal obligations and their implementation.

4. Institutional Framework on Environmental Protection in the Oil and Gas Industry

The regulatory frameworks to be discussed under this heading are.

Federal Ministry of Environment (FME)

The Federal Ministry of Environment is responsible for environmental protection, natural resource conservation, and sustainable development in Nigeria. Since its establishment, it has played a role in raising environmental consciousness and aligning Nigeria with global environmental best practices. The Ministry is tasked with implementing policies that promote

[92] NDCs.
[93]BAU.
[94] National Council on Climate Change (NCCC), Nigeria's Long-Term Low-Emission Development Strategy –2060 (2023) < http://www.fao.org > accessed 17 March 2025.
[95]World Bank, Global Gas Flaring Tracker Report (June 2024) <https://www.worldbank.org/en/programs/gasflaringreduction/publication/2024-global-gas-flaring-tracker-report > accessed 17 March 2025.
[96] OPRC.
[97] Also known as IMO.
[98] OPRC.
[99] International Maritime Organization, *International Convention on Oil Pollution Preparedness, Response and Co-operation* (OPRC) 1990 https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-Oil-Pollution-Preparedness,-Response-and-Co-operation-(OPRC).aspx accessed 17th March 2025.
[100] International Convention on Oil Pollution Preparedness, Response and Co-operation.
[101] *Ibid*.
[102] UNCLOS.
[103] International Maritime Organization, *United Nations Convention on the Law of the Sea (UNCLOS)* 1982 https://www.imo.org/en/ourwork/legal/pages/unitednationsconventiononthelawofthesea.aspx accessed 17th March 2025.
[104] O. J, Olujobi, *Nigerian Petroleum, Energy and Gas Resources Law (Legal Theories, Cases & Practice): Petroleum Industry Act, 2021 and Climate Change Act, 2021*. (Princeton & Associates publishing Co Ltd) 63-64.

environmental sustainability, including regulating industrial activities, ensuring compliance with environmental laws, and coordinating enforcement efforts in collaboration with other regulatory bodies. However, despite its mandate, enforcement challenges persist, particularly in the oil and gas sector, where environmental degradation remains a major concern.[105]

National Environmental Standards and Regulations Enforcement Agency (NESREA)
The National Environmental Standards and Regulations Enforcement Agency was established under the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007 to enforce environmental laws, regulations, and standards in Nigeria. The Act empowers the agency to enforce all environmental laws, guidelines, policies, and standards in Nigeria. It is also responsible for ensuring compliance with international agreements, protocols, and treaties on environmental protection to which Nigeria is a signatory. The agency is responsible for environmental protection, biodiversity conservation, and sustainable development of Nigeria's natural resources. It also coordinates and liaises with relevant stakeholders within and outside Nigeria on enforcement of environmental standards, regulations, laws, and policies. However, Sections 7(g), 7(h), 7(j), 7(k), 7(l), 8(g), 8 (m) and section 29 of the Act excludes it from regulating environmental issues related to the oil and gas sector.[106]

National Oil Spill Detection and Response Agency (NOSDRA)
The National Oil Spill Detection and Response Agency was established under Act No. 15 of October 18, 2006, as an agency under the Federal Ministry of Environment. Its primary mandate is to coordinate the implementation of the National Oil Spill Contingency Plan,[107] which aligns with Nigeria's commitment to the International Convention on Oil Pollution Preparedness, Response, and Cooperation.

As part of its responsibilities, the agency oversees the National Oil Spill Contingency System,[108] which integrates all relevant regulations, organizations, personnel, procedures, facilities, equipment, and logistical support required for an effective response to oil spills. The agency's goal is to minimize environmental damage, manage oil spill-related incidents, and ensure compliance with international best practices in oil pollution response and preparedness.[109]

Nigerian Upstream Petroleum Regulatory Commission
The Nigerian Upstream Petroleum Regulatory Commission was established under the Petroleum Industry Act 2021 as the regulatory body responsible for the technical and commercial regulation of upstream petroleum operations in Nigeria.[110] It replaced the Department of Petroleum Resources and is tasked with ensuring compliance with environmental, technical, and safety regulations in the upstream sector.[111] A governing board referred to as the 'Board of the Commission' is responsible for the administration of the commission.

Nigerian Midstream and Downstream Petroleum Regulatory Authority. The Nigerian Midstream and Downstream Petroleum Regulatory Authority was established under the Petroleum Industry Act 2021 to regulate midstream and downstream petroleum operations in Nigeria.[112] The responsibilities of the authority[113] includes petroleum liquid, domestic natural gas, and export natural gas activities. The authority[114] is administered by the Board of the Authority, structured similarly to the Nigerian Upstream Petroleum Regulatory Commission.[115]

Nigeria Police Force (NPF)
The Nigeria Police Force plays a supportive yet crucial role in the enforcement of environmental laws and regulations in the oil and gas industry. Under Section 214(1) of the 1999 Constitution (as amended), the Police is established as a federal force charged with the maintenance of law and order.[116] Section 4 of the Police Act mandates the Police to enforce all laws and regulations, prevent crimes, and protect lives and property.[117] These responsibilities extend to environmental offences such as illegal oil bunkering, pipeline vandalism, and the obstruction of regulatory agencies like NESREA and NOSDRA during field inspections.

Legal Aid Council of Nigeria (LACON)
The Legal Aid Council of Nigeria is a government agency first established by the Legal Aid Decree No. 56 of 1976. It is tasked with providing legal aid to indigent citizens, particularly in criminal matters and cases involving fundamental human rights violations. While its core mandate is not directly focused on environmental law, the Council can assist in cases where

[105] Federal Ministry of Environment, *'Mandate'* <https://environment.gov.ng/> accessed 13 march 2025.
[106] National Environmental Standards and Regulations Enforcement Agency (NESREA) Act, 2007.
[107] NOSCP.
[108] NOSCS.
[109] National Environmental Standards and Regulations Enforcement Agency (NESREA), '*NESREA'* <https://nesrea.gov.ng> accessed 13 March 2025.
[110] *Petroleum Industry Act* 2021, *Section* 4.
[111] *Ibid*, *s* 6.
[112] *Ibid*, *s* 29.
[113] Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA).
[114] Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA).
[115] Petroleum Industry Act 2021, Section 34.
[116] Constitution of the Federal Republic of Nigeria 1999 (as amended), s 214(1).
[117] Nigeria Police Force (Establishment) Act, 2020

environmental harm leads to human rights violations, such as health impacts or displacement. In accordance with Sections 8, 9, and 17 of the Legal Aid Act, 2011, the Council offers free legal representation in civil matters including those related to fundamental human rights, which are often central in environmental litigation. Section 17[118] empowers the Council to collaborate with Non-governmental organizations and law clinics which can play a significant role in advocating for environmental justice. Additionally, the establishment of a Civil Litigation Service under Section 8(3) provides a framework for assisting individuals in civil matters, including those concerning environmental issues.[119] In the context of Nigeria's oil and gas industry, where victims of pollution often lack the financial capacity to seek redress, the Legal Aid Council plays a key role in ensuring legal remedies for environmental harm. This helps in promoting environmental justice and accountability particularly for vulnerable communities in the Niger Delta and other affected areas.

Nigerian Red Cross Society

Although primarily a humanitarian organization, the Nigerian Red Cross Society[120] plays a vital supplementary role in Nigeria's environmental regulatory landscape, particularly in the oil and gas sector. It is empowered by the Nigerian Red Cross Act,[121] and is officially recognized as a Voluntary Aid Society auxiliary to public authorities under Section 4 of the Act.[122] The society[123] was originally established under the Nigerian Red Cross Act of 1960, Cap 324, which granted it legal status and aligned its operations with Nigeria's obligations under the Geneva Conventions.[124] These legal instruments provide the mandate for the society to intervene in emergencies, including those resulting from environmental degradation. The Nigerian Red Cross Society provides critical relief during disasters such as oil spills, gas explosions, and chemical leaks. These interventions mitigate the adverse consequences of under-enforced environmental laws by offering emergency medical assistance, clean water, food, temporary shelter, and psychosocial support to affected communities. Its extensive volunteer base, spread across all 774 Local Government Areas, ensures rapid response, particularly in regions where state agencies are slow to act.[125] In addition, the Nigerian Red Cross Society conducts community sensitization on the health implications of environmental pollution and supports first aid and emergency response training, thereby strengthening grassroots resilience. In recent years, it has expanded its role to include climate change adaptation initiatives, helping communities build long-term resilience to environmental shocks through sustainable practices, education, and early-warning systems.[126] By addressing both immediate and structural challenges, the NRCS highlights the intersection of environmental enforcement, humanitarian intervention, and public health governance in Nigeria**.**

5. Gap between Environmental Law and Regulations and their Enforcement

Environmental Violations and Remedies

Environmental violations in Nigeria with particular reference to the oil and gas industry as stated earlier includes, oil spills, gas flaring, wastewater discharge, and pipeline vandalisation, all of which have attendant and far reaching consequences on the ecosystem including climate change, pollution, land degradation, destruction of aquatic animals as well as human health related issues. These violations occur at different stages of the oil and gas industrial activities, from the point of exploration, production, processing, to storage, marketing and distribution. Data from the National Oil Spill Detection and Response Agency's Oil Spill Monitor reveal that, in 2024, at least 589 oil spills were documented, with an approximate 19,000 barrels (equivalent of 95 oil tanker trucks) of oil spilled into inland waters, land, swamp and shorelines.[127] More often than not, multinational corporations operating the oil and gas facilities deny responsibility for oil spills, attributing a large number of onshore spillages to sabotage and vandalism of oil pipelines by militant groups or members of the host communities.[128]

Proving pollution in Nigeria remains difficult despite the various statutory provisions aimed at preventing pollution and environmental harm arising from oil and gas exploration activities. Litigants often face difficulties in establishing liability in pollution cases due to the inadequacies of legal framework and the failure of the law to provide adequate compensation for damages resulting from pollution among others. This difficulty is compounded when pollution occurs offshore, beyond the immediate observation of coastal communities that ultimately suffer the consequences. The difficulty in establishing liability is a potent hindrance to the enforcement of environmental laws and regulations. In Nigeria, in an action in tort; be it negligence, nuisance or trespass, the plaintiff is required to establish the proof of his claim in order to recover damages for loss suffered.[129] In line with this, a plaintiff who anchors his claim (in connection with an alleged pollution from an offshore vehicle) on nuisance or trespass would among other things be faced with a seemingly formidable defense of legislative authority or that the pollution resulted from action taken in order to save life or prevent damage, and that prompt steps were taken by the defendant to contain the resultant pollution.

[118] Legal Aid Act, 2011.
[119] Ibid.
[120] NRCS.
[121] Cap N130, Laws of the Federation of Nigeria 2004.
[122] *Ibid*.
[123] Nigerian Red Cross Society.
[124] Nigerian Red Cross Act, Cap N130, Laws of the Federation of Nigeria 2004, *s* 4.
[125] Nigerian Red Cross Society, *About Us* <https://redcrossnigeria.org> accessed 9th April 2025.
[126] *Ibid*.
[127] A, Jimoh, *Nigeria Recorded over 589 Oil Spills in 2024, Largely Due to Theft and Sabotage* (News Central) 19th January 2025.
[128] Hereinafter referred to as HOSTCOM.
[129] *Odiete v Okotie (1973) 1 NMLR 175.*

A good deal of case law exists on the issue of oil spill and gas flaring, especially in the Niger Delta Region which is the major hub of Nigeria's oil and gas exploration. In *Gbemre v. Shell Petroleum Development Company of Nigeria Ltd*[130], The plaintiff, Jonah Gbemre, representing himself and the Iwhrekan community in Delta State, filed a lawsuit against the Nigerian government (for failure to stop Shell's gas flaring for years), Shell Petroleum Development Company and the Nigerian National Petroleum Corporation[131] for gas flaring in the Niger Delta, causing severe environmental degradation and health problems for local communities as well as impact on their means of livelihood. All of which violates their fundamental rights to life and human dignity under the Nigerian Constitution.[132] The court held in favor of the plaintiff. Significantly, the court found Section 3(2) (a) and (b) of the Associated Gas Re-Injection Act[133] and Section 1 of the Associated Gas Re-Injection (Continued Flaring of Gas) Regulations 1984, under which gas flaring in Nigeria may be allowed to be inconsistent with the applicant's rights to life and the dignity of human persons. It therefore declared them to be unconstitutional, null and void by virtue of section 1 (3) of the same Constitution. The court ordered Shell and the Nigerian National Petroleum Corporation to stop gas flaring activities in the community.[134] However, enforcement of the judgment has remained unsuccessful. Faturoti[135] rightly argued that the failure to enforce the judgement of the court was a missed opportunity to strengthen the Nigerian environmental regulatory framework. Despite the decision in *Gbemre v Shell*,[136] gas flaring persists across Nigeria. It is submitted that one of the major factors contributing to the persistent gas flaring is the weakness of policy measures, given the fact that fifty percent of oil fields are exempted from gas flaring ban.[137]

Beyond gas flaring and oil spillage, pollution also results from wastewater/chemical discharges in large volumes in the process of gas extraction, production, and other commercial activities, constituting a significant catalyst of severe environmental hazards and degradation. A perfect illustration of this hazard is the case of *SERAC & CESR v Nigeria.*[138] In this case, the Ogoni people brought a claim for the severe damage done to their land, water and air resulting from oil spills, toxic waste and disposal and neglect of oil facilities. Consequently, they have faced significant health and environmental problems. Despite several efforts at remedying the situation with little progress made, the people still grapple with the impact of such chemical waste caused by the oil and gas industry with the clean up having no positive turn.

Pipeline vandalism which is the deliberate and intentional rupturing of pipelines often intended for the theft of crude oil and petroleum products constitutes is also another major environmental pollution violation. This act is more often than not attributed to the expression of frustration and anger by natives of host communities over the deplorable environmental condition of the Niger Delta region, the deliberate circumvention of proper environmental protection mechanisms, and the lack of affording them the adequate economic benefits that ought to accrue to them. Okumagba[139] highlighted the reports by NNPC and Shell regarding vandalism: in February 2021 alone, losses amounted to 200 barrels of oil per day, and between 2006 and 2016, more than 16,000 incidents of vandalism were recorded. In recent years, oil bunkering and sabotage have become more lucrative for the restive youth, further bringing to the fore, the failing efforts of institutions tasked with environmental protection.

In addition to the above, judicial decisions have also highlighted the challenges surrounding environmental violations and the limited effectiveness of remedies available to affected communities. In *Alphonsus Nkuma v Joseph Otunuya Odili & Ors*,[140] the plaintiffs sought damages for environmental degradation resulting from oil spillage allegedly caused by the defendants' oil exploration activities. The Court recognised the plaintiffs' claims and awarded damages. This case; like the of *Gbemre,* underscores that although judicial remedies exist for environmental damage, enforcement and compensation often remain insufficient or delayed, further seemingly discouraging affected communities from seeking redress.

Similarly, in *Shell Petroleum Development Company Ltd v Prince Ogan*,[141] the court found Shell liable for the environmental harm caused by oil spillage that devastated the plaintiff's land. Notably, Shell's defence that third parties had vandalized their pipelines did not absolve them from liability. The court affirmed that operators of pipelines owe a duty of care to prevent foreseeable harm, including harm resulting from sabotage. This case reinforces the principle that oil companies cannot easily escape liability by blaming acts of vandalism, though enforcement challenges persist.

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[130] (2005) AHRLR 151.
[131131] NNPC.
[132] Constitution of the Federal Republic of Nigeria 1999, Sections 33 and 34 (reinforced by Articles 4, 16 and 24 of the African Charter on Human and Peoples Rights).
[133] Cap A25 LFN 2004.
[134] *See also, SERAP v. Federal Republic of Nigeria (ECW/CCJ/JUD/18/12); Centre for Oil Pollution Watch v. NNPC (2019) 5 NWLR (pt 1666) 518.*
[135] B. Faturoti, & Ors, 'Environmental protection in the Nigerian oil and gas industry and *Jonah Gbemre v Shell PDC Nigeria Limited*: let the plunder continue? 27(2) *African Journal of international and comparative law,* (2019), 225-245.
[136] *Ibid*.
[137]. *Ibid*.
[138] (2001) ACHPR 35.
[139] E.O, Okumagba, 'Critical Analysis of Laws and Policies for the Prevention of Petroleum Pipeline Vandalization in Nigeria' 23 (4) *Environmental Law Review*, (2021) 306-307.
[140] (2006) 6 NWLR (Pt 977) 587.
[141] (2010) JELR 47546 (CA)

In *H.R.H. Abraham Nabhon Thomas & Ors v Shell Petroleum Development Company (Nig) Ltd,*[142] the plaintiffs sued for damages resulting from environmental degradation caused by Shell's oil exploration activities. The Court awarded substantial compensation to the plaintiffs for the losses suffered. Despite the judgment, reports indicate that compensation payments and full environmental remediation were either delayed or inadequately executed, further illustrating the enforcement gap in environmental protection in Nigeria in spite of judicial intervention by pronouncements.

Furthermore, in *Friday Alfred Akpan v Royal Dutch Shell Plc & Anor*,[143] a landmark decision from a Dutch court (which had jurisdiction because Shell's headquarters is based in the Netherlands), the court held Shell liable for oil pollution in the Niger Delta and ordered compensation. This case is particularly significant because it demonstrates that where Nigerian courts have failed or been slow to deliver justice, international courts have sometimes provided remedies. Nevertheless, enforcement within Nigeria itself remains fraught with systemic challenges, including weak regulatory oversight and corporate resistance.

A summation of the outcome of the cases demonstrates that while Nigerian environmental laws theoretically provide remedies for environmental harm, practical enforcement remains inadequate. Court victories are often hollow when judgments are either not enforced, poorly implemented, or when damages awarded fail to reflect the extent of environmental and human suffering endured, or when damage is not paid.

Insufficient Remedies

Environmental laws and regulations in Nigeria, particularly those governing the oil and gas industry, mandate compensation for the occupants of land used for oil exploration and related activities.[144] The problem however is that most of these compensations are not based on professional and technical assessment of the impact of the violations on the ecosystem, health and livelihood of the natives of the host communities.[145] A key issue is the absence of clear definitions of what constitutes 'fair' and 'adequate' compensation, leaving room for arbitrary self-imposed determinations.[146] As a result, the compensations awarded to communities in the Niger Delta where oil spills and gas flaring are prevalent are typically insufficient and do not align with the quantum of the environmental and socio-economic damage resulting therefrom. Without a clear, standardized process for evaluating the full impact of such violations, affected communities are left without proper redress, thereby perpetuating a cycle of injustice and under compensation.[147]

Weak/Insufficient Penalty

Suggestions have been advanced in favour of *Section* 234 of the *Criminal code* as a veritable tool to tackling incidence of gas flaring. Under the *section*, it is provided that, any person engaged in inconvenience or damage to the public becomes liable for a two-year imprisonment. The issues that arises will include whether oil companies or their officials can be held liable in this regard given the fact that the said section did not mention gas flaring specifically, therefore sanctioning the companies in a manner that will halt their activities may seem to produce adverse economic effect which is another bane in the enforcement of these laws. Assuming the penalties are implemented in this regard, it is doubtful that it will serve as a deterrent. Section 60 of the Environmental Impact Assessment Act provides that

> any person who fails to comply with the provisions of the Act shall be guilty of an offence under the Act and on conviction in the case of an individual to #100,000 fine or to five years imprisonment and in the case of a firm or corporation to a fine of not less than #50,000 and not more than #1,000,000.[148]

Also, a fine of fifty thousand naira or a term of not more than six months imprisonment for any person who, acting on behalf of a producer, supplies inaccurate or incomplete Flare Gas Data to the Department of Petroleum Resources or any other duly empowered lawful authority.[149] These fines are easily affordable by the companies which will there prefer to pay the fines than obstruct their activities.

The Associated Gas Reinjection (Continued Flaring of Gas) Regulations of 1984, imposed a paltry penalty on violators. Omorogbe[150] argued that the existing policy lacks incentives to encourage gas utilization and at present, the economics favor continuous gas flaring by oil Multinational Corporations.

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142 (2010) 11 NWLR (Pt. 1206) 589.

143 (2013) District Court of The Hague (Netherlands), Case No. C/09/337050/HA ZA 09-1580.

144 *PIA* 2021, *S.* 101(1)(c)(ii) & (d) and *S.* 101(3). Petroleum (Drilling and Production) Regulation 1969, S.23; Oil Pipelines Act, SS. 6(3) & 11(5).

145 Stakeholder Democracy Network (SDN), ‚Towards a new compensation process for oil spills in Nigeria' (SDN 1 July 2014) < http://www.sta keholderdemocracy.org/towards-a-new-compensation-process-for-oil-spills-in Nigeria/ accessed 19 April 2025.

146 M. Ele, 'Oil Spills in the Niger Delta-Does the *Petroleum Industry Act* 2022 Offer Guidance for Solving this Problem?' (2022) 13(1) *The Journal of Sustainable Development Law and Policy* 130-161.

147 *SPDC v Chief G.B.A Tiebor & Ors* (2005) LLJR-SC where the Supreme Court awarded five million naira general damages, one million naira cost of litigation against up to sixty-four million sought by the claimants.;

O. Oluduro, Oil exploration and ecological damage: The compensation policy in Nigeria' 32(2) *Canadian Journal of Development Studies* (2012) 164-179.

148 Environmental Impact Assessment (EIA) Act Cap. E12, LFN 2004.

149 The Flare Gas (Prevention of Waste and Pollution) Regulations 2018, section 5.

150 Y. Omorogbe, 'Law and Investor Protection in Nigerian Natural Gas Industry', (1996) *J.E.N.L.R* 181.

Also, Section 7 of the Oil in Navigable Waters Act[151], provides another hiccup as it allows as a defence, the discharge of oil or mixture to ensure the safety of any vessel or cargo or to save a life, or that the oil or mixture escaped owing to vessel damage or accidental spill. A defence which is also accorded to a landowner or persons in charge of an oil facility from which oil or an oily combination is claimed to have escaped. Demonstrating that the oil was contained in waste produced by oil refining operations or that it was not reasonably possible to dispose of the waste by any means other than dumping it into waterway is also a defence. These are ridiculous provisions whittling down the penalties which ought to be expunged.

Furthermore, the discharge of oil or gas either by way of spill or flaring respectively, or by any other means does qualify as discharge of hazardous substances under section 27 of the National Environmental Standards and Regulations Enforcement Agency Act[152]. It is however a disappointment that the prohibition in *Section* 27 is not absolute as it is subject to other laws which permit the discharge of any hazardous waste consequently weakening the power of the agency and defeating the purpose of the legislation.[153]

6. Institutional Challenges

Inadequate Enforcement Mechanisms

One of the most critical weaknesses in Nigeria's environmental regulatory regime is the lack of effective enforcement mechanisms. While several legal and institutional frameworks exist to regulate environmental activities in the oil and gas sector, their impact is undermined by poor implementation and weak enforcement practices. Agencies such as the National Oil Spill Detection and Response Agency[154], the National Environmental Standards and Regulations Enforcement Agency[155], and the Federal Ministry of Environment[156]face significant limitations that prevent them from fulfilling their statutory mandates effectively. Several of the enforcement tactics and mechanisms in place are ineffective and underutilized. For example, no comprehensive system exists for data collection and management of statistical records regarding environmental protection facilities and service providers, such as waste transporters, carbon footprint vendors, effluent emission data from companies, sewage treatment plants, refuse dumps, landfills and recycling companies. Without these vital statistics, regulatory bodies are severely hindered in monitoring and managing compliance with environmental laws.[157]

Also, several operational barriers exacerbate these challenges. The lack of proper tools, inadequate staff, outdated equipment, and a lack of professionalism contribute to the ineffective enforcement of pollution-control legislation in Nigeria. The National Oil Spill Detection and Response Agency [158]also faces significant limitations. For instance, Section 6(2) of the National Oil Spill Detection and Response Agency Act requires oil spillers to report an incident within 24 hours of its occurrence, with penalties for non-compliance. However, this provision unrealistically assumes a level of voluntary compliance from oil companies, which is unlikely in practice. The over-reliance on self-reporting leaves room for offenders to evade accountability, claiming ignorance of spills to avoid fines and remediation obligations. Rather than depending solely on self-reporting, a more proactive system involving independent detection, surveillance, and real-time monitoring through the use of technology is necessary. Ideally, the Agency should maintain well-equipped patrol teams and technical staff capable of detecting and responding to spills without relying on oil companies to report incidents. Unfortunately, the Agency currently lacks the capacity to independently fulfil this role. A report in 2011 by the United Nations Environment Programme[159] highlighted the absence of qualified technical experts and resources within Nigerian government agencies tasked with oil spill management.[160] The report noted that even five years after the Agency's establishment, it lacked proactive capacity for spill detection, relying entirely on the oil industry for logistics during spill inspections. This dependence compromises the Agency's independence, exposing it to regulatory capture, same seem to persist till date. Section 15 of the National Oil Spill Detection and Response Agency Act permits the agency to accept gifts of land, money, or other property from donors, raising ethical concerns about potential conflicts of interest and undermining its oversight role. These vulnerabilities further weaken the Agency's capacity to enforce regulations effectively.

Other significant challenges include insufficient penalties for environmental infractions and delayed responses to spill incidents. These issues have led to criticism, with some observers likening the Agency to a 'toothless bulldog.'[161] Despite its broad mandate to safeguard the environment and oversee spill remediation, the National Oil Spill Detection and Response

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[151] LFN, 2004.
[152] National Environmental Standards and Regulations Enforcement Agency Act, 2007.
[153]B Faturoti, & Ors, 'Environmental protection in the Nigerian oil and gas industry and *Jonah Gbemre v Shell PDC Nigeria Limited*: let the plunder continue? (2019) 27(2), *African Journal of International and Comparative Law* 225-245. <http://hdl.handle.net/10059/3189> accessed 19th April 2025.
[154] NOSDRA.
[155] NESREA.
[156] FME.
[157] O. M. Atoyebi, 'An Appraisal of the Effectiveness of Regulatory Compliance and Enforcement Mechanisms in Environmental Law', https://omaplex.com.ng/an-appraisal-of-the-effectiveness-of-regulatory-compliance-and-enforcement-mechanisms-in-environmental-law/ accessed 19th April, 2025.
[158] *NOSDRA*.
[159] UNEP.
[160] United Nations Environment Programme, *Environmental Assessment of Ogoniland* (2011).
[161] A. R, Bukola and U, Afinotan, 'A Review of Laws for Sustainable Environmental Management in the Nigerian Oil and Gas Sector' 4 *University of Ibadan Journal of Public and International Law* (2014) 131-133.

Agency remains largely unknown among many oil-producing communities in the Niger Delta.[162] The Environmental Rights Action/Friends of the Earth[163] has highlighted the National Oil Spill Detection and Response Agency's failure to hold oil companies accountable, noting the near-constant occurrence of spills and the lack of field officers to monitor violations or impose sanctions. It further observed that the Agency lacks essential infrastructure such as helicopters for aerial surveillance. As a result, the Agency is forced to rely on oil companies for transportation to inspection sites, undermining both its authority and objectivity.[164] These combined enforcement failures contribute to the persistence of environmental degradation in oil-producing regions. Polluters continue to operate with impunity, and timely remediation and compensation for victims are rare. Until these structural and institutional deficiencies are addressed, Nigeria's environmental laws will remain ineffectively and incomprehensibly enforced, regardless of how comprehensive they may appear on paper.

Vague/Multiplicity of legislation

The oil and gas industry in Nigeria is bedevilled by not just vague provisions in some laws such as the lack of definition of what amounts to a 'fair' and 'adequate' compensation but also multiplicity of laws. Subjecting the oil and gas industries to multiple laws on same issues only leads to conflict in the implementation. For example, the Federal Competition and Consumer Protection Act 2018, [165] National Oil Spill Detection and Response Agency Act and the Petroleum Industries Act are conflicting on several matters.[166]

Corruption and Bad Governance

Standing tall among the many bottlenecks in the enforcement of environmental laws in the oil and gas industry is the entrenched issue of corruption. The cankerworms of corruption manifests in various forms, including the bribery of government officials for engineering, procurement, and construction contracts and illicit payments for preferential treatment during customs processes[167] as well as organised oil theft in the high seas. The situation is so rotten that even the government award pipeline surveillance contracts to the very same perceived perpetrators of pipeline vandalism and oil bunkering. Despite the introduction of the Nigeria Extractive Industries Transparency Initiative Act[168] to promote transparency, corruption still eats deep through the rubrics of the oil and gas industry in Nigeria.[169] There are also situations where some officers of institutions armed with enforcement powers may prefer to collect bribe from violators of environmental legislation in order to play down their primary duties. These practices collectively erode institutional integrity, weaken enforcement capabilities, and perpetuate the environmental degradation and socio-economic instability that characterize the oil-producing regions of Nigeria.[170]

Lack of Political Will

Lack of political will by successive Nigerian Governments to show any form of commitment to the plight of the inhabitants of the Niger Delta Region has also led to the birth of several militant groups and court actions instituted by those who could afford to go to court against the oil multinational corporations. Most of the court actions against the oil multinational corporations have been pursued with the intention of obtaining financial compensation for loss suffered by the claimants while the problem persists as seen in *Peter Onyoh v Shell Petroleum Development Company of Nigeria Limited*[171]. Unlike previous cases, the intention of plaintiffs in *Jonah Gbemre v. Shell Petroleum Development Company of Nigeria Ltd*[172] the *case* was to initiate a momentum which would address the relegation or outright neglect of environmental protection through development of a robust regulatory framework. In other words, *Gbemre* presented the Nigerian government with an opportunity to address the problem of environmental degradation and possibly the reduction of militant activities in the region. Whereas *section* 8(f) of the National Environmental Standards and Regulations Enforcement Agency Act empowers the National Environmental Standards and Regulations Enforcement Agency to, subject to the provisions of the Constitution of the Federal Republic of Nigeria[173], and in collaboration with relevant judicial authorities, establish mobile courts for the purposes of expeditiously dispensing cases of violation of environmental regulations, none has been established due to lack of political will to do so.[174]

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[162] *Ibid*.
[163] ERA and FOE.
[164] *Ibid*.
[165] FCCPA.
[166] Such conflicts as to pricing and market access, investigating monopoly concerns which are also within the NUPRC roles.
[167] L, Moller, The governance of oil and gas operations in hostile but attractive regions: West Africa. (2010) 4 *International Energy Law Review*, 110-122.
[168] *NEITI*, 2007.
[169] P. A, Donwa *et al*,' Corruption in the Nigerian Oil and gas Industry and Implication for Economic Growth '(2015) 14 *International Journal of African and Asian Studies*, 38-39.
[170] Sunny-Hart, 'Legal and Institutional Framework of the Oil and Gas Industry in Nigeria: A Critical Overview' (2024) 9 *African Journal of International Energy and Environmental Law* 201.
[171] (1982) 12 C.A at p. 144.
[172] *Ibid*
[173] 1999 (as amended).
[174] C.A, Omaka and O. B, Okorie, 'Appraising the Challenges to Effective Enforcement of Legislation on Control of Environmental Pollution in Nigeria' 11 (3) *NAU.JCPL*, (2024) 15-32.

Ineffective Judicial enforcement

It is submitted that the mere existence of a law seeking to protect the environment does not ipso facto morph into environmental protection. Some laws seem to be observed more in the breach than in their compliance. Thus, laws seeking the protection of the environment in order to be effective must enjoy enforcement in the law courts through the instrumentality of litigation. Where such mechanism is lacking, the law, however comprehensive and well-written, is nothing but a toothless lion. In the case of *Chinda v Shell-BP*[175] the complainant bemoaned the adverse effects of gas flare on their buildings, crops and other plants. Consequently, he sought for an order by the court to restrain Shell-BP from operating a flare stack within five miles of the plaintiffs' village. This, the court refused to do and described the relief sought as an absurd and needlessly wide demand. The issues enunciated above also raise the question of the effectiveness of the courts in ensuring that their judgments are enforced and adhered to.

Delay in Justice Delivery, Issue of *Locus Standi* and Expert witnesses

One of the hindrances that have plagued enforcement of environmental laws is delayed justice occasioned by the snail-like judicial procedures. This is evident in the case of *Ogale v. Shell*[176] which has lingered for years and is still currently undergoing a trial phase at the UK courts with preliminary issues recently concluded in February 2025 to determine the scope of the legal issues to be decided at full trial. In some other instances, technicalities in the applicable laws culminate in denial of compensation for the injured communities in the Niger Delta region of Nigeria.[177] Closely related to delay in and denial of justice is the hurdle of *locus standi.* Which for long has plagued the road to justice in environmental litigations in Nigeria. The issue of *locus standi* which usually is a preliminary matter in civil litigations is a situation where individuals or group of individuals (including non-governmental organizations) sue to enforce their environmental rights. They may as a result of inability to show a direct interest other than that of their special environmental consciousness and common interest in the environment with other citizens be faced with a barrier of standing to sue.[178] This requirement on eligibility regarded as the 'civil rights' test was derived from the case of *Adesanya v. President of Nigeria*,[179] that 'standing will only be accorded to a plaintiff who shows that his civil rights and obligations have been or is in danger of being violated or adversely affected by the act complained of.' This was what happened in *Shell Petroleum Development Company Nig. Ltd v Chief Otoko and Others,*[180] where the court rejected representative action on the ground that the plaintiffs failed to show common interest and grievance in the cause of the matter. However, in *Centre for Oil Pollution Watch v. Nigeria National Petroleum Corporation*[181] the court departed from this unnecessary roadblock of *locus standi* by abolishing the requirement that the plaintiff must by his claim, show sufficient interest in the subject matter of the suit, which interest would be affected by the action of the defendant against whom the action is instituted. Besides the doctrine of *locus standi* is the insistence and application of strict proof, another challenging judicial attitude in environmental matters. In *Seismogragh Service v Ogbeni*,[182] where the plaintiff sought compensation for environmental damage which resulted from the defendant's oil exploratory exercise of exploding oil testing chemicals around the region of the plaintiff's building which wrongfully caused or permitted excessive noise and vibrations damaging the plaintiff's building. The Supreme Court dismissed his claim on the basis of lack of expert witness' evidence.

Inadequate NGO Engagement (NGOs)

Prior to the decision in *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation.*[183] Non-governmental organisations[184] just like the road block of *locus standi* could do little or nothing. However, the roadblock of *locus standi* having been removed paved the way not just for the direct claimants but also for non-governmental organizations to maintain actions in respect of public nuisance injurious to human lives, public health and environment.

Political interference

While this paper commends the existence of a plethora of legislative frameworks aimed at addressing environmental issues, especially in the oil and gas industry, political interference seems to make the implementation and enforcement of the laws like a mirage. For instance, section 59 of the Petroleum Industry Act[185], empowers the President to appoint members of the NNPC limited board. This of course is an open access for political meddling and influence. The former President of the Federal Republic of Nigeria, Buhari[186] for long doubled up as the Minister of Petroleum Resources. Akerele[187] therefore

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[175] (1974) RSLR 1).
[176] (2023) EWHC 2961 (KB).
[177] B. Aduloju, The Shell Bonga oil spill case was struck off by the UK Supreme under statute of limitation.; 'Shell Wins 2011 Bonga oil spill case in UK Supreme Court' (The Cable, May 10, 2023).
[178] I. L Worika, and E. P Amechi, 'Access to Justice for Victims of Oil Pollution in the Niger Delta Region of Nigeria: Exploring Contemporary Judicial Trends and Implications for Sustainable Development' 134, *Journal of Law, Policy and Globalization*, (2023) 1-11.
[179] 1981.
[180] (1990)6 NWLR (Pt. 159) 693.
[181](2019) 5 NWLR (Pt 1666) 518.
[182] (1976) 4 SC 86.
[183] *Ibid*
[184] NGOs.
[185] 2021.
[186] His Excellency Mohammadu Buhari
[187] O.N, Akerele, *Enforcement of Environmental Laws in the Oil and Gas Industry: Quo Vadis Nigeria?* 2024(PhD thesis, Robert Gordon University).

argues that mere existence of such a route where the President can function in the two most powerful positions in a country amount to economic hijacking and hinders transparency. It does not look likely that the commercialization of NNPC will resolve the issue of political interference, seeing the tussle between the Federal government and Dangote on issue of purchase of crude oil and supply of premium motor spirit.[188] According to Jamison and Castaneda, the recognition of political involvement in regulation *ab initio* may be either proper or improper.[189] The situation in Nigeria is one that is however considered improper governmental influence. The fundamental standpoint of this study is that enforcement agencies not having independence to exist and carry out their functions without involvement from the government in power renders the performance ineffective.

Ineffectiveness of Law Enforcement Agencies (Police, Navy and Army)

Reports of crackdowns on oil bunkering syndicates appear regularly on the news often accompanied by accounts of destroyed illegal refineries and seized equipment.[190] However, oil thievery continues to thrive in the Niger Delta region, raising serious doubts about the effectiveness of these operations. Despite major interventions, including *Operation Delta Sanity*, which deployed gunboats, drones, and helicopters, Nigeria's crude oil capacity remains far below its capacity.[191] This discrepancy between efforts and results points to deeper institutional failures. One major factor is the lack of adequate equipment and logistical support for security forces tasked with enforcement. However, more disturbing is the rampant corruption within law enforcement agencies. Investigative reports have revealed that personnel of the Nigerian Navy, Army, and Police are not just passive observers but active participants in the oil theft ecosystem. Some security officers reportedly collect bribes, provide protection, and even escort illegal crude shipments, effectively undermining enforcement from within.[192] Moreover, Niger Delta stakeholders have alleged that high-ranking officers and officials of multinational oil companies often collude with bunkerers, granting them access to infrastructure and intelligence to evade detection.[193] These unholy alliances ensure that even when illegal operations are discovered and refineries are dismantled, they are quickly rebuilt and resumed within days. To complement state efforts, the Nigerian government contracted private security firms like Tantita Security Services, founded by ex-militant leader Tompolo. While this partnership has led to the discovery and destruction of several illegal refineries, oil bunkering remains widespread. This shows that even private intervention, though commendable, cannot fill the gap left by a compromised and under-resourced law enforcement architecture.[194] Ultimately, the ineffectiveness of both public and private security responses to oil theft reflects a systemic enforcement crisis, one that cannot be solved without transparency, accountability, and an overhaul of the environmental enforcement and security governance system.

Regulatory Inhibitions

As this study has shown so far, despite the seeming abundance of environmental laws and regulatory frameworks in Nigeria's oil and gas sector, the regulatory regime remains riddled with deep-rooted structural, jurisdictional, and operational challenges. These regulatory inefficiencies undermine the enforcement of environmental standards, leading to persistent degradation, especially in the Niger Delta region. This section critically examines the core regulatory flaws contributing to the enforcement gap.

Exclusion of National Environmental Standards and Regulations Enforcement Agency from Regulating Oil and Gas

A particularly significant flaw in Nigeria's regulatory framework is the National Environmental Standards and Regulations Enforcement Agency, Nigeria's foremost environmental enforcement agency, from regulating environmental matters in the oil and gas sector. Although the Agency was established under the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007 to enforce all environmental laws and standards, *Sections* 7(g), 7(h), 7(j), 7(k), 8(g), 8(m), and 29 of the Act expressly prohibit the agency from exercising jurisdiction over oil and gas activities.
This legislative exclusion creates a gaping regulatory vacuum, especially since the National Environmental Standards and Regulations Enforcement Agency, has the technical capacity and mandate to ensure compliance with environmental

[188] PMS.
[189] M Jamison and A Castaneda, 'Addressing Improper Political Interference – How can persons performing regulatory functions or developing regulatory instruments protect their work from improper political interference while, at the same time, maintaining accountability to the political wishes of the population?' < http: //regulationbodyofknowledge.org/faq/low-income-fragile-and-low-capacity-countries/how-can-persons-performing-regulatory-functions-or-developing-regulatory-instruments-protect-their-work-from-improper-political-interference-while-at-the-same-time-maintaining-accountability-to-the/ > accessed 25 April 2025.
[190] Idowu Isamotu, Oil Bunkering Thrives Despite Crackdowns, *Daily Trust* (3rd February, 2025). Available at: https://dailytrust.com/oil-bunkering-thrives-despite-crackdowns/ accessed 27 April, 2025.
[191] Camillus Eboh, 'Nigeria steps up crackdown on oil theft as it targets 3 million bpd production', *Reuters* (London, 31 December 2024) https://www.reuters.com/business/energy/nigeria-steps-up-crackdown-oil-theft-it-targets-3-million-bpd-production-2024-12-31/ accessed 27th April, 2025.
[192] Emma Amaize et al 'Oil Theft in the Creek: Security Operatives Coordinate Our Business – Oil Bunkerers Squeal', *Vanguard* (Lagos, February 2025) https://www.vanguardngr.com/2025/02/oil-theft-in-the-creek-security-operatives-coordinate-our-business-oil-bunkerers-squeal accessed 27th April, 2025.
[193] Godwin Ijediogor et al 'How Security Agencies Frustrate Battle Against Oil Theft– Nogeria Delta Stakeholders Allege' *The Guardian* (26 September 2022) https://guardian.ng/politics/how-security-agencies-frustrate-battle-against-oil-theft-niger-delta-stakeholders-allege accessed 27 April 2025.
[194] Chinagorom Ugwu, 'Why We're Finding It Difficult to End Oil Theft in Niger Delta – Nigerian Military', *Premium Times* (Abuja, 20 December 2023) https://www.premiumtimesng.com/news/headlines/652862-why-were-finding-it-difficult-to-end-oil-theft-in-niger-delta-nigerian-military.html accessed 27th April 2025.

standards. The effect is that oil and gas operations, which are among the most environmentally hazardous, are left to be regulated by industry-specific bodies like the National Oil Spill Detection and Response Agency or the Nigerian Upstream Petroleum Regulatory Commission, whose independence and neutrality are often questioned. This raises concern over regulatory capture, where agencies become subservient to the interests of the industry they are meant to regulate.

7. Economic Factors

Over-reliance on Oil and Gas in the Nigerian Economy.

In the unreported case of *Allar Irou v. Shell-BP Development Company (Nig) Ltd* [195], the plaintiff who was successful at the suit was denied an injunctive relief on grounds of national economic interest. The plaintiff sued Shell-BP for damages suffered which were as a result of oil spillage form its facilities. Evidence before the court revealed that the oil installations from which the oil spill occurred was under the control and management of the defendant company, which could not explain what caused the spill. The court nevertheless, refused granting an order for injunction to forestall such occurrences in the future. The ratio decidendi for the court's conclusion and refusal to order the injunctive relief as prayed was that it would amount to asking the defendant to stop operations in the area leading to loss of revenue from oil being the main source of Nigeria's revenue accounting for over 90 percent of the country's foreign exchange and constituting 80 percent of government revenue.

Economic Interests

It will be right to submit that most of the plaintiffs in environmental violations cases have consistently demonstrated a priority of interest on the monetary compensation rather than seeking the needed remedial actions as well as prohibiting injunctions. It is also argued that both the Nigerian Government and the oil Multinational corporations have just like some of the litigants ranked first, the pursuit of economic gains (profit and revenue from the oil and gas industry) to the detriment of inhabitants' well-being and environmental protection. It is appalling that the consequent of such disposition is the blatant disregard for the enforcement of the decision in *Gbemre's case.* Yet another aspect to the issue of economic challenge in enforcing environmental laws in Nigeria is inadequate funding for the institutions to carry out the functions and responsibilities they are saddled with.[196] Section 13(1) of the National Environmental Standards and Regulations Enforcement Agency Act[197] provides for the funds of the National Environmental Standards and Regulations Enforcement Agency when it states that the Agency shall establish a Fund from which shall be defrayed all expenditure incurred by the Agency for the purposes of this *Act*. However, the situation is different. The Director General of the Agency in 2022 lamented the paucity of funds in the agency.[198]

8. Conclusion and Recommendations

This paper investigated the disconnect between environmental laws and regulations, and their enforcement in Nigeria. It established that Nigeria has an abundance of environmental laws and regulations that are theoretically sufficient to protect the environment but actually not being enforced. While Nigeria is not lacking legislations on environmental protection, it is certainly not having the proper capacity of enforcement. Bridging this enforcement gap is imperative to achieving environmental protection and sustainable development. The following measures are necessary:

Constitutional Reform for Justiciable Environmental Rights: Section 20 of the 1999 Constitution should be amended to make environmental violation rights justiciable. This reform will empower citizens to seek judicial redress when their environmental rights are violated and enhance governmental accountability for environmental harm.

Reform and Empowerment of Regulatory Agencies (NESREA, NOSDRA, NUPRC): The National Environmental Standards and Regulations Enforcement Agency (NESREA) should be granted jurisdiction to regulate environmental matters within the oil and gas sector. Clearer statutory boundaries should be drawn among NESREA, the National Oil Spill Detection and Response Agency (NOSDRA), and the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) to prevent regulatory overlaps and conflict of mandates. This will improve institutional efficiency and foster a coherent enforcement structure.

Review and Harmonization of Environmental Laws and Penalties: Environmental legislation in Nigeria should be harmonized to eliminate duplication and contradictions. Existing laws must be reviewed to update outdated penalties and replace them with stringent, deterrent sanctions. Fines and imprisonment terms should be commensurate with the severity of environmental offenses, particularly for multinational corporations whose current disregard for weak penalties continues to undermine environmental safeguards.

Establishment of Environmental Courts: Specialised environmental courts or divisions within existing courts should be established, with judges trained in environmental law. These courts should expedite environmental claims, order

[195] Suit No. W/89/71 (Unreported).

[196] CA Omaka and OB Okorie, 'Appraising the Challenges to Effective Enforcement of Legislation on Control of Environmental Pollution in Nigeria' (2024) 11 (3) *NAU.JCPL*, 15-32.

[197] 2007.

[198] <www.thisdaylive.com>2021/12/27. Accessed 20 April 2025.

remediation and restitution without economic bias, operate under clear procedural rules similar to those used for election tribunals to ensure speed and justice.

Funding, Training, and Equipping of Enforcement Agencies: Environmental enforcement agencies, including security bodies like the Nigerian Navy and military, should be adequately funded, trained, and equipped to combat environmental crimes such as oil theft, bunkering, and pipeline vandalism. Borrowing a leaf from Norway, Canada, and the United States, compulsory environmental training for relevant personnel should be institutionalized. The current state where oil thieves possess superior arms than state agents is unacceptable and must be addressed urgently.

Community Participation and Decentralized Enforcement: Local communities, especially host communities in the Niger Delta, should be directly involved in the monitoring and enforcement of environmental laws. The government must revoke politically-motivated surveillance contracts awarded to non-state actors such as ex-militants. Instead, community-based environmental watch groups should be institutionalized and supported to carry out grassroots oversight.

Combat Corruption and Promote Transparency: Independent oversight mechanisms must be introduced across enforcement agencies to combat corruption and political interference. Regular performance audits, whistleblower protections, and civil society partnerships should be embraced to improve transparency and rebuild public trust in the enforcement regime.

Diversification of the Nigerian Economy: To reduce the over-reliance on oil as the backbone of the economy, which has led to regulatory compromises and weak enforcement, Nigeria must earnestly pursue economic diversification. This will reduce resistance to enforcing gas flaring laws and prevent economic justifications for environmental injustice, such as the denial of justice in cases like *Gbemre v. Shell* and *Allar Irou v. Shell.*

Carbon Taxation and Global Collaboration: Beyond existing gas flaring regulations, Nigeria should consider enacting carbon taxation policies, drawing from Norway's model. Collaboration with international environmental bodies should be strengthened to improve Nigeria's compliance with global best practices and obtain technical assistance where needed.

Adoption of International Best Practices: Nigeria should adopt successful environmental enforcement models from developed jurisdictions. These include: Transparent environmental reporting, Mandatory independent audits, Strong civil society oversight, Real-time public data on pollution, Legal empowerment of affected communities.

Empower the Judiciary to Proactively Enforce Environmental Justice: The judiciary should be empowered to *suo motu* (on its own motion) address issues relating to environmental remediation, rectification, and the issuance of necessary injunctions, particularly in cases where economic interests have historically overridden environmental protection. Courts should prioritize environmental justice by imposing strict and deterrent penalties, as observed in the enforcement practices of jurisdictions like Canada and Norway.

Reform Security and Surveillance Models: The government must stop awarding surveillance contracts to non-state actors, such as ex-militants. Instead, pipeline and facility protection should be handled by professionally trained and constitutionally empowered forces such as the Nigerian Navy and other formal security outfits.