Compensation and Punishment of Victims and Offenders of Environmental Pollution in Nigeria: Preponderance of Evidence or the Provisions of Extant Laws

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ABSTRACT

Environmental pollution in Nigeria has become a consistent reality for individuals and communities, particularly in the prone area of Niger-Delta. The cost of environmental pollution is carried by ordinary citizens whose water, farms and health are constantly destroyed. From oil spillage to gas flaring to industrial waste and pipeline sabotage. Compensation is often grossly incommensurate, delayed or denied, and polluters or offenders rarely face adequate punishment for their actions especially on the scale of damage done. This study therefore examines the various extant Nigerian laws on compensation and punishment of victims and offenders through the lens of environmental pollution theories applicable. While Nigeria has robust legal frameworks such as the NESREA Act, NOSDRA Act, PIA, Harmful Waste (Special Criminal Provision) Act, 1999 Constitution among other laws enacted to address environmental pollution, the reality has proven to be different. As such, the study will consider the adequacy or otherwise of these laws with respect to compensation of victims and punishment of offenders in the light of preponderance of evidence. The study concludes with a clarion call that evidential proofs need to be pivotal while granting compensatory reliefs for damage done, over and above provision of extant laws. Hence, specialized tribunals created and penalties aligned with actual harm or Nigerian laws will only remain a paper tiger with all fangs and no fight. The study therefore, recommends several reforms to aid proper penalties, compensation and enforcement of environmental laws.

Keywords: Environmental Pollution, Victims, Offenders, Compensation, Punishment, Evidence

1.0. INTRODUCTION

Nigeria, with a land area of 923,768 square kilometers (356,669 sq.miles) and an estimated population of over 240 million people[1], has experienced rapid industrialization and civilization since the discovery of crude oil in Oloibiri, Rivers State in 1956. Before the oil boom of the 1970s, agriculture was the pillar of the economy.[2] However, with the increase of oil revenue, coupled with the absence of a clear development and environmental policy, it led to unguided industrial growth, indiscriminate siting of industries, deforestation, and improper waste management. The consequence has been widespread environmental degradation that continues to threaten livelihoods, human health, and sustainable development in Nigeria.[3]

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[1] Worldometer, 'Nigeria Population Live' (2026) <https://worldometers.info> accessed 08 July, 2026; S.O. Ogunleye and A.O. Jegede, 'Environmental Problems in Nigeria' in C.T. Oluwadare and I.A. Ajayi and L.B. Ajayi (eds) *Nigerian People and Culture* (1st edn, Directorate of General Studies 2017) 204-219

[2].K.F. Akeju and T. Owoeye, 'Economic Self-Reliance' in C.T. Oluwadare and I.A. Ajayi and L.B. Ajayi (eds) *Nigerian People and Culture* (1st edn, Directorate of General Studies 2017) 181-193

[3] S.O. Ogunleye and A.O. Jegede, (n1) Ibid.

Environmental pollution in Nigeria is revealed in various forms, with oil exploration and production being the major source. In the Niger-Delta region, several activities such as oil spillage, gas flaring, illegal bunkering, and operation of illegal refineries have caused severe damage to land, air, and water resources. Between 1997 and 2001 alone, the Department of Petroleum Resources recorded 2,097 oil spill incidents involving 1,947,600 barrels of crude oil. The Idoho spill of 1997 and the Bonga offshore spill of 2011 are examples of disasters that affected the entire coastal ecosystems. Gas flaring, which emits approximately 70 million metric tons of carbon dioxide annually, has been linked to a lot of premature deaths, respiratory illnesses, and increased cancer risks among host communities whose primary occupations of fishing and farming have been destroyed.[4]

Beyond the oil area, water pollution from industrial companies in petroleum, mining, pharmaceuticals, and textiles has increased the concentration of sulfates, nitrates, and heavy metals in the water bodies. Deforestation and poor soil practices have also increased sediment loads. Domestic and municipal waste accumulation in urban centers has also created aesthetic and health hazards, with waste incineration releasing toxic gases into the atmosphere. These conditions place millions of Nigerians at risk of water-borne diseases such as cholera, typhoid, and dysentery.[5]

Although Nigeria has enacted several environmental laws including the National Environmental Standard and Regulation Enforcement Agency Act (NESREA), National Oil Spill Detection and Response Agency Act (NOSDRA), Petroleum Industry Act (PIA), and the Harmful Waste (Special Criminal Provisions) Act, enforcement of these laws and regulations remains weak and victims of environmental pollution continue to face significant difficulties with regards to compensation, despite the relevant provisions of the extant laws. The central challenge lies majorly in the fact that the Court is restricted to extant provisions of existing laws on compensation and punishment of victims and offenders which in most cases are incommensurate to the quantum of damage done, as against compensation of victims based on preponderance of evidence that could be overwhelming. Also, the classification of environmental pollution as either a tortious act or criminal act or both may affect the quantum of compensation and punishment melted out to victims and offenders. Pollution could be private or public. Where an individual seeks compensation for damage done, it is regarded as tortious liability and standard of prove of evidence is on balance of probability however, where the general public seeks compensation or punishment or both it is referred to as criminal liability and the standard of prove of evidence is usually beyond reasonable doubt.

Civil and criminal claims for environmental pollution is determined on preponderance of evidence, yet establishing causation of claim and evidence in complex environmental cases is difficult due to scientific, financial, and corporate barriers.[6] This paper will therefore examine the extant legal frameworks on compensation and punishment of environmental pollution victims and offenders in Nigeria, with particular focus on how preponderance of evidence should impact compensation, punishment and the access to justice.

2.0. CONCEPTUAL CLARIFICATIONS

To properly analyze compensation and punishment for environmental pollution in Nigeria, three key concepts must be clarified; Environmental Pollution, Compensation of Victims in Environmental Law and Punishment for Environmental Offences.

2.1. Environmental Pollution

Environmental Pollution in the National Environmental Standards and Regulations Enforcement Agency Act (NESREA) is defined Pollution as the man-made or man-aided alteration of the chemical, physical or biological quality of the environment beyond acceptable limits.[7] In Nigerian context, pollution shows principally in three interconnected forms: air, water and land, all of which have reached crisis levels. Air

[4]Research Clue, 'Environmental Pollution in Nigeria: Issues and Solutions' <https://nairaproject.com/m/projects/907.html> accessed 08 July, 2026.

[5] S.O. Ogunleye and A.O. Jegede, (n1) Ibid.

[6] Research Clue, (n4) Ibid.

[7] NESREA Act 2007, s. 37

pollution is a major threat, particularly in urban or industrialized areas.[8] Data shows that Nigeria's average annual level of PM2.5 is almost 10 times higher than the WHO recommended value of 5µg/m3. In Lagos alone, air pollution caused an estimated economic loss of $2.1 billion in 2018, representing 2.1% of the state's GDP. There were 11,200 premature deaths, the highest in West Africa, with children under five accounting for 60% of the casualties.[9] In addition, almost 130,000 deaths per year are linked to household air pollution from indoor burning of cooking fuel. Gas flaring further compound this burden.[10]

Water pollution is equally severe and poses a direct risk to public health. Nigeria's water bodies are contaminated with untreated sewage, plastics, and solid waste. About 91% of the national water supply is affected by contamination. The problem is more in densely populated coastal informal settlements such as Makoko and Iwaya in Lagos, and Bundu and Marine Base in Port Harcourt, where drinking water sources are directly exposed to waste.[11]

Waste generation and solid waste mismanagement complete this cycle. In 2019, Nigeria generated an estimated 36 million tonnes of domestic waste at 0.50kg per capital per day. As of 2016, only 6.2% was collected and managed in controlled facilities. The rest is dumped indiscriminately, creating sites that leach into soil and water, emit greenhouse gases, and become sources of air pollution. Hence, environmental pollution in Nigeria is not a single event but a general problem involving air, water, and land, with direct implications for the rights to life, health, and dignity of people and host communities. It forms the factual basis for claims of compensation and the imposition of punishment under extant laws.[12]

2.2 Compensation of Victims in Environmental Pollution in Nigeria

Compensation serves as a common and general remedy for victims of environmental degradation in Nigeria, where water, land, and air and all living organisms within them are constantly under threat from human urbanization. In Nigeria, water pollution from oil spills, pipeline vandalism, and disposal of domestic and industrial waste, alongside air pollution from gas flaring and vehicle emissions, directly affects the health, livelihood, and property of individuals and host communities. Under Nigerian law, victims can seek compensation through both common law and statutory laws. At common law, actions in nuisance, negligence, and the rule in *Rylands v Fletcher*[13] allow victims to claim damages for loss, injury, and property damage caused by pollution. Statutorily, the NESREA Act 2007 empowers the Agency to order remediation and recover clean-up costs. The NOSDRA Act 2006 mandates oil companies to pay compensation for oil spills and undertake immediate clean-up. Recently, the Petroleum Industry Act, 2021 provides for environmental remediation funds and a structured procedure for compensating host communities affected by oil and gas operations.[14] This compensation structured procedure by the Act relies on the 'Polluter Pay Theory' for environmental pollutions in Nigeria.

The legal regime for compensation in Nigeria evolved to balance economic interests in oil and gas with the rights of pollution victims. While the government cannot suspend petroleum operations that generate revenue,

[8] Kunak, 'Urban Air Pollution: Causes, Impacts and Solutions' (2026) <https://kunakair.com> accessed 29 July, 2026; Royal Belgium Institute, 'Air Pollution, Major Concern in Urban Industrialized Areas' (2026) <https://aeronomie.be> accessed 29 July, 2026

[9] K. Kemper and S. Chadudhuri, 'Air Pollution: A Silent Killer in Lagos' (2020) <https://blogs.worldbank.org > accessed 29 July, 2026; L. Croitoru and J.C. Chang, 'The Cost of Air Pollution in Lagos (2020) <https://openknowledge.worldbank.org> accessed 29 July, 2026

[10] World Bank Group, 'Climate Risk Country Profile: Nigeria' (2021) <https://climateknowledgeportal.worldbank.org> accessed 29 July, 2026; WHO, 'Health Effect of Air Pollution: Evidence and Implications: Technical Brief' (2026) <https://who.int> accessed 29 July, 2026

[11] United Nations (Nigeria), 'Common Country Analysis (2022) <https://nigeria.un.org> accessed 29 July, 2026; Interactive Country Fiches, 'Pollution' (UNEP) <https://dicf.unepgrid.ch/nigeria/pollution#section-states> accessed 29 July 2026.

[12] Ibid.

[13] [1866] LR1 Ex 265

[14] F. I. Allagoa, 'Compensation as a Remedy Available to Victims of Environmental Degradation in Nigeria' (2019) https://www.academia.edu> accessed 30 July 2026

the law provides several means for victims to claim redress for harm to their life, livelihood, and property. There is, however, no single general statute on oil spill compensation. Rather, claims rest on constitutional, statutory, and common law provisions.[15] Section 20 of the 1999 Constitution imposes a duty on the State to protect and improve the environment, and to safeguard water, air, land, forest and wildlife thereby forming the constitutional basis for environmental claims.[16] Despite these provisions, victims often face delays, inadequate quantum of damages, and difficulty in proving causation. Compensation therefore has to go beyond token payments to cover health impacts, loss of livelihood, and long-term damage. For compensation to be effective, Nigerian law must prioritize prompt, adequate, and restorative remedies that reflect the Polluter Pays Principle and deter future degradation.[17]

2.3. Punishment for Environmental Pollution Offenders in Nigeria

Punishment is an important tool for deterring environmental offenders and ensuring that polluters are held liable. In Nigeria, environmental protection laws and statutes provide three main forms of punishment: fines, restitution, and imprisonment. The aim is not merely to secure convictions, but to stop offending behavior, remediate damage, and prevent future violations as theorized by the 'Deterrence Theory of Punishment'.

Fines are the most commonly imposed penalty. Various laws including the NESREA Act 2007, NOSDRA Act 2006, and EIA Act provide for monetary penalties payable upon conviction. A fine serves to punish the offender, compensate the state, and deter recurrence. However, the amounts of fines prescribed are often very inadequate in regards to the scale of environmental damage, and thus it fails to achieve true deterrence. Restitution involves the court ordering the offender to restore the victim to the position they were in before the harm. Although it is not expressly labeled "restitution" in most environmental laws, courts have applied it through civil awards.[18] A notable example is the N45.9 Billion awarded to Ogoni communities in the case of *SPDC Nig. Ltd & Ors v. Agbara*[19] for decades of oil pollution.

Imprisonment is provided for under laws like the Harmful Waste Act and Criminal Code, and may be with or without hard labor. Even with these provisions, it is the least used sanction in Nigeria. There are basically no records of corporate or individual offenders imprisoned for environmental crimes, partly because laws rarely lift the corporate veil to punish decision-makers. For punishment to be effective, penalties must reflect the gravity of harm and prioritize retribution, deterrence, and restoration. [20]

3.0. THEORETICAL ANALYSIS

As earlier mentioned, the compensation and punishment of victims and offenders of environmental pollution in Nigeria is founded on two basic theoretical principles namely, the Polluter Pay Principle or theory (PPP) and Deterrence Theory of Punishment. The Polluters Pay Principle is domesticated in Nigeria through the NESREA Act 2007 and PIA 2021, it places the cost of prevention, control, and remediation of pollution on the polluter, not the victim or state. It ensures that environmental damage is confined to those who profit from polluting activities. The Deterrence Theory on the other hand argues that punishment must be severe and certain enough to prevent future offences. Fines, imprisonment, and restitution under the Harmful Waste (Special Criminal Provision) Act and Criminal Code should discourage corporations and individuals from degrading the environment.

[15] P. E. Oamen, and M.I. Anushiem, 'An Appraisal of the Legal Regime on the Human Right to Compensation for Environmental Pollution in Nigeria' *Energy Law Review,* (2014) 1 (4), 34-61 <https://www.open-access.bcu.ac.uk> accessed 16 July 2026.
[16]Constitution of the Federal Republic of Nigeria 1999, s.20
[17] F. I. Allagoa, (n13) Ibid.
[18]C. J. Aleru, 'Ten Sentencing in Environmental Offences in Nigeria: An Overview' *African Journal* (2025) 6, 106-121 <https://ajeel.com> accessed 16 July 2026.
[19] [2015] 11 NWLR (Pt. 1481) 1
[20] Ibid.

3.1. Polluters Pay Principle (PPP)

The Polluter Pays Principle (PPP) is a foundational theory underpinning compensation and punishment for environmental pollution in Nigeria. PPP provides that the party that caused the pollution will cover costs of pollution prevention, control, and remediation rather than by the victims and the state. It insists that those who profit from polluting activities must internalize the social and ecological costs of their operations. Internationally, PPP was codified in the 1992 Rio Declaration and is rapidly applied in climate policy through mechanisms like carbon taxes and emissions trading schemes. Domestically in Nigeria, PPP has been incorporated through the NESREA Act 2007 and the Petroleum Industry Act 2021.[21] Section 20 of the 1999 Constitution further supports PPP by imposing a duty on the State to protect and improve the environment, and safeguard water, air, land, forest and wildlife.[22]

In practice, PPP materializes in Nigerian environmental law in three ways. Firstly, statutory liability, the NOSDRA Act, 2006 mandates oil companies to undertake immediate clean-up and pay compensation to victims of oil spills. The Harmful Waste (Special Criminal Provision) Act imposes strict liability and severe penalties for illegal dumping. Secondly, for the purpose of Remediation Funds, the PIA, 2021 establishes an environmental remediation fund and host community development obligations, ensuring polluters contribute to restoration of victims to their initial positions. Furthermore, concerning judicial enforcement, Nigerian courts have awarded damages based on PPP in cases like *SPDC Nig. Ltd & Ors v. Agbara,* where ₦45.9 billion was awarded to Ogoni communities for oil pollution. This case remained the first instance where the court would grant such an amount based on preponderance of evidence and in line with the PPP. However, PPP faces implementation issues. Fines under NESREA and NOSDRA are often too low to deter multinational companies from further polluting the environment. Proving causation under both criminal and civil standard based on preponderance of evidence remains difficult for victims who lack access to scientific data held by polluters. Without adequate penalties and evidentiary support, PPP risks becoming theoretical rather than practical.

For PPP to work in Nigeria, penalties must reflect the true cost of damage, and the constriction of courts to extant provisions of various Acts on environmental pollution should be relaxed through discretions and expert tribunals. Thus, only then can PPP ensure that polluters, not communities, pay for environmental harm.[23] Aside from statutory inclusion, the Polluter Pays Principle (PPP) in Nigeria has gained leverage through policy documents, regulations, and judicial affirmation. The principle first entered Nigerian policy space through the National Policy on the Environment 1989, revised in 1999 and 2016, which expressly mandated compliance with PPP as a tool for environmental management. This policy direction was operationalized in sector-specific regulations, showing that PPP is not limited to oil and gas alone.[24]

The PPP is reinforced by judicial recognition. In *Agip Oil Co Ltd v Akpati & Others*,[25] the Court of Appeal held the appellant liable for an oil spill that damaged fish ponds and awarded N35,000,000 in general damages. Similar outcomes appear in the case of *Shell Petroleum Dev Co. (Nig) Ltd v Amaro* [26] and *Centre for Oil Pollution Watch v NNPC*[27], where the courts imposed liability on polluters without needing victims to prove fault, reflecting the approach of strict liability and the *res-ipsa-loquitor* (the fact speaks for itself) principle. However, key limitation are noted, as Nigerian application of PPP prioritizes payment for damage over actual environmental repair. The focus is often on compensating victims after harm has been done, rather than compelling proactive prevention or restoration by the polluter. To align with PPP's original intent under the OECD 1971 seminar and Rio Convention Principle 16, Nigerian law must shift from reactive damages to

[21] K. Ruhland, 'Pollution Crisis: What Is the Polluter Pays Principle and How Can It Be Used in Climate Policy?' (2024) <https://earth.org> accessed 17 July 2026.
[22]CFRN 1999, s. 20
[23] K. Ruhland, (n21) Ibid.
[24] A. Njoku, 'The Polluter Pay Principle in the Context of the Nigerian Legal System' (2021) <https://coraxfoundation.org> accessed 17 July 2026.
[25]LPELR 45145 (CA)
[26][2000]10 NWLR (Pt 675) 248
[27]LPELR 20075 (CA)

mandatory remediation, financial assurance, and internalization of environmental costs before pollution occurs.[28]

3.2. Deterrence Theory of Punishment:

The Deterrence Theory of Punishment holds that criminal penalties is justified because it discourages the commission of offences. It operates under two core assumptions. First, the Capacity Assumption, possible offenders are rational agents capable of weighing the consequences of their actions. Second, is the Deterrence Assumption, punishment must impose a cost or negative experience severe enough to give rational actors a reason not to offend. The goal is to reduce future harm, not merely to exact retribution. Applied to environmental law, deterrence theory demands that punishment for pollution make environmental degradation unprofitable and possibly injurious to the offender.

In Nigeria, the Harmful Waste Act, NESREA Act 2007, NOSDRA Act 2006, and Criminal Code prescribe fines, imprisonment, and administrative sanctions for polluters. The reason behind this is that if a company knows that illegal dumping, gas flaring, or oil spillage will likely result in heavy fines, clean-up costs, or jail time, it will reduce those risks and adopt preventive measures. However, deterrence in Nigeria's environmental context is undermined by two realities. First, Severity, most statutory fines are grossly inadequate compared to the profits from the operations of oil and gas. When penalties are treated as a "cost of doing business," rational corporate actors may choose to pollute and pay later.[29] Second, Certainty, enforcement is weak, prosecutions are rare, and there are virtually no records of corporate officials imprisoned for environmental crimes. Without a credible and notable threat of detection and punishment, the deterrent effect collapses.

Deterrence theory also requires that punishment be timely and visible to have certain deterrence on the offender and general deterrence on others. Delayed litigation, settlements, and reliance on civil compensation instead of criminal sanctions cripples this effect. For deterrence to function in Nigeria, penalties must be indexed to the scale of ecological and economic damage, corporate liability must extend to directors through veil-lifting, and regulatory agencies must pursue consistent prosecution. Only then will environmental law shift from reactive compensation to proactive prevention, making pollution a choice that rational actors avoid.[30]

4.0. LEGAL AND REGULATORY FRAMEWORKS

Nigeria's legal regime for environmental pollution is spread across constitutional, statutory, and common law sources. The 1999 Constitution imposing a state duty to protect the environment,[31] and guaranteeing right to life and dignity[32], which is linked to environmental claims by the courts. Statutorily, the NESREA Act, 2007 is the general statute with powers to impose sanctions and order remediation. The Harmful Waste (Special Criminal Provision) Act sees toxic dumping as a criminal matter with strict liability. For oil and gas, the NOSDRA Act, 2006 made it compulsory to report oil spill, clean-up, and victim compensation, while the Oil in Navigable Waters Act, 2004 prohibits discharges. The Petroleum Industry Act, 2021 introduces host community funds and an environmental remediation fund.[33] The Environmental Impact Assessment Act requires pre-project assessment, while the Criminal Code[34]and Penal Code address public nuisance and water pollution. Nigeria has also ratified several international conventions such as the Bamako Convention and the Stockholm Declaration, which inform domestic enforcement.

[28]A. Njoku, (n24) Ibid.
[29]J. Parimala, 'Deterrent Theory of Punishment Explained' (2017) <https://www.scribd.com/document/366814509/Penology> accessed 20 July 2026.
[30] Ibid.
[31] CFRN 1999, s. 20
[32]Ibid, ss. 33-34
[33]Petroleum Industry Act, 2021 ss. 234-236
[34] Criminal Code, 1992, s. 245

4.1. Constitution of the Federal Republic of Nigeria CFRN (1999)

The Constitution of the Federal Republic of Nigeria 1999, provides the constitutional foundation for the protection of the environment, though it does so indirectly. Unlike several modern constitutions, Chapter IV on Fundamental Rights, does not directly guarantee a right to a safe and healthy environment. This omission has created various arguments, as victims often cannot directly enforce environmental rights because the right is not constitutionally guaranteed. However, there are two provisions under the Constitution that Nigerian courts have inferred and implied that the right to life[35] includes the right to live in an environment free from pollution, since life cannot be freely enjoyed in a degraded environment.

Also, Section 20 under Chapter II Fundamental Objectives and Directive Principles of State Policy mandates the States to "protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria for its citizens. The challenge of this provision lies in its enforceability and implementation. Although not enforceable, the courts have interpreted the provision to suggest that the environment should be protected and sustained for the benefit of all citizens. However, the powers of the court do not extend to issues on the conformity of any act with Chapter II.[36] As interpreted in the case of *Okogie v Attorney-General, Lagos State*[37], the provisions of Section 20 is non-justiciable. Thus, although section 20 sets a policy goal and justifies subsequent environmental legislation, individuals cannot directly sue to enforce it. Consequently, the Constitution serves more as a policy directive than a direct source of compensation or punishment, leaving other statutory laws and the African Charter to fill the gaps on enforcement.[38]

4.2. National Environmental Standards and Regulations Enforcement Agency Act (2007)

The NESREA Act, 2007 replaced the FEPA Act, 1988 and serves as Nigeria's principal statute for environmental protection. It is administered by the Federal Ministry of Environment, it is to ensure compliance with local and international environmental laws through monitoring and regulatory measures. For compensation and punishment, NESREA is empowered to enforce standards on air and water quality, effluent limits, and control of hazardous substances. It prohibits and prevent the unlawful discharge of pollutants and can impose sanctions and order remediation. Important regulations include the National Effluent Limitation Regulation and Pollution Abatement Regulations, which compel industries to install anti-pollution equipment and manage hazardous waste. Section 27 of the Act provides for the destruction of flora and fauna. It is illegal to destroy or pollute the natural habitats of plants and animals.[39] Punishments include, fines or jail time. Section 28 also states that where a company breaks the law, the directors or officers can be held personally responsible[40] and imprisoned, unless they prove they did not know about the crime. Furthermore, section 30 provides for the duty to restore, as such, polluters must pay the costs of clean up and restore the damaged environment. In the area of compensation for victims, section 20(2) states that the courts can order offenders to pay the costs of removing the pollution. They must also be asked to pay for the costs of restoring the polluted site to its natural state.[41]

The NESREA Act does not have a specific section where victims apply to the agency for personal cash payouts. Instead, victims of pollution must institute an action against the offender in a regular court under civil laws for strict liability, negligence or nuisance to get compensation for their losses. How the Agency enforces the law is provided in Section 7, which gives NESREA the power to shut down polluting facilities, ban the use

[35] CFRN, 1999, s. 33(1)
[36] Ibid, s. 66(6((c)
[37] 2 NCLR 337
[38] M. Idachaba, et.al, 'The Legal Framework for the Protection of Environmental Rights in Nigeria' (2022) <https://www.researchgate.net> accessed 20 July 2026.
[39] NESREA, 2007 s.27
[40] Ibid, s. 28
[41] Ibid, s. 20

of harmful equipment, and issue 'Compliance Notice' to force companies to clean up.[42] Section 32 also allows NESREA to bring offenders to court to face criminal charges.[43]

4.3. Harmful Waste (Special Criminal Provisions) Act (2004)

The Harmful Waste Act, 2004 is Nigeria's strict liability statute aimed at deterring and reducing the dumping of toxic and hazardous waste. It criminalizes the carrying, depositing, dumping, transporting, importing, and dealing in harmful waste in Nigeria's land, territorial waters and inland waterways without lawful authority. In relation to compensation and punishment, the Act imposes severe criminal penalties, including life imprisonment and forfeiture, to reflect the gravity of environmental harm. It operates on the basis of retribution and deterrence rather than a compensation model, placing the burden on offenders to face prosecution.[44] Although the Act does not provide direct victim compensation, it supports environmental justice by punishing conduct that threatens public health and ecosystems. In section 6, the Act provides for punishment and forfeiture, it states that any person convicted under sections 1-5 faces life imprisonment and forfeiture of any carrier used and any land where the waste was dumped. This is to ensure that offenders lose both liberty and property. Companies are mandated not to hide behind the "it was the company" flag.[45] The section states that where a crime is committed by a corporate body with the consent, connivance or neglect of a director, manager or similar officer then both the company and that officer are guilty and can be sued.[46]

The enforcement provision of the Act provides that any police officer may act without a warrant if they suspect an offence they can enter and search land, buildings, carriers, take samples and conduct tests, arrest suspect and seize items used in the crime. It basically gives law enforcement quick powers because hazardous waste cases are urgent and evidence can be moved or destroyed.[47] Section 12 gives provision beyond criminal punishment, it also creates civil liability. It provides that anyone who deposits or imports harmful waste is liable for any damage caused, including death, injury, disease or impairment. This section enabled victims to sue for damages directly aside from criminal prosecution.[48] The Harmful Waste Act combined harsh criminal sanctions under sections 6-7, string enforcement powers under sections 10-11 and direct civil liability under section 12 to punish offenders, deter dumping and provide a basis for victims to claim compensation.

4.4. National Oil Spill Detection and Response Agency Act (2006)

The National Oil Spill Detection and Response Agency (NOSDRA) was established by Act No. 15 of 18 October, 2006 under the Federal Ministry of Environment. It is Nigeria's lead agency for oil spill management. NOSDRA coordinates the National Oil Spill Contingency Plan (NOSCP) and the National Oil Spill Contingency System (NOSCS), harmonizing regulations, personnel, equipment and procedures for spill response. The framework aligns with the International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC) to which Nigeria is a signatory, with the aim to minimize environmental damage and manage compensation for victims.

The NOSDRA Act, 2006 makes provisions for managing oil spills. The core objectives of NOSDRA to monitor, implement and coordinate the National Oil Spill Contingency Plan (NOSCP).[49] Section 6(1)(a)-(c) empowers the agency to conduct surveillance, ensure compliance with environmental laws and receive oil spill reports.[50] It mandates oil spillers or oil operators to report any spill in writing within 24 hours of occurrence and failure to report is penalized with a fine of ₦500,000.[51] The Act further provides for punishment and

[42] Ibid, s. 7
[43] Ibid, s.32
[44] Harmful Waste (Special Criminal Provisions, etc.) Act Cap H1 LFN, 2004
[45] Ibid, s. 7
[46] Ibid.
[47] Ibid, s.10
[48] Ibid, s. 12
[49] NOSDRA Act, 2006 s.5
[50] Ibid, s. 6(1)
[51] Ibid, s. 6(2)

penalties for offenders, it imposes a fine of ₦1,000,000 on any environmental polluter who refuses or fails to clean up and remediate the impacted site or communities. Inadequate or failed clean-up operations attract statutory administrative penalties enforced by the agency.[52]

The NOSDRA Act and the supporting NOSCP framework reference environmental restoration and compensation, it authorizes the agency to mediate joint investigation visits between operators and impacted communities. Basically, the Act in itself does not have a specific compensation calculation matrix for individual victims and this means that private claims for third party property damage or loss of livelihood rely on general civil litigation, the Oil Pipelines Act or the common law principles of negligence and strict liability.

4.5. Oil Pipelines Act (2004)

The Act focuses majorly on the compensation of environmental pollution victims. Under the Act, compensation is a remedial approach employed to compensate victims of environmental pollution in the course of exploration, exploitation and refining by oil companies. For protecting the environment, section 6 of the Act provides that the holder of a permit to survey acting under the authority of the provisions of section 5 shall take all reasonable steps to avoid unnecessary damage to any land or buildings entered into, crops or profitable trees thereon, and shall make compensation to the owners or occupiers of such land and buildings for any damage done under such authority.[53]

Section 14 further provides that a license for the establishment and maintenance of an oil pipeline shall not, unless expressly permitted, be exercised in such a manner to affect the flow of water required for domestic, industrial or irrigational use or make such deposition in a waterway that would cause flooding or erosion. The Act also made it clear that the holder of such license shall pay compensation to any person suffering damage as a consequence of any leakage from a pipeline.[54] In case of dispute, the Act empowers the State High Court or Magistrate court to exercise civil and criminal jurisdictions to determine disputes regarding whether compensation is payable or the amount payable.[55] Section 20 of the Act sets out how the court calculates justifiable and adequate compensation for economic trees and surface rights disturbance.[56] From the provisions of the Oil Pipelines Act, the Act has failed to make sufficient provisions on the ways of preventing pollution by the holder of an oil exploration licensee or an oil prospecting licensee. The Act only imposes compensation on licensees and lessees without mentioning the liability of those engaged in pipeline vandalisation and oil bunkering.[57]

4.6. Petroleum Industry Act (2021)

The Petroleum Industry Act introduces a dimensional shift in how compensation for Oil pollution is conceptualized in Nigeria. Chapter 3 of the PIA made it a necessity for companies operating in host communities to establish a Host Communities Development Trust (HCDT). 3% of the company's yearly expenditures in the preceding financial year is to be contributed to the trust. The funds are basically to be used for healthcare, education, skills, employees and environmental protection projects targeted at increasing the standard of living of oil producing communities who are most impacted by operations. For persons not covered by the trust, traditional avenues remains relevant.[58]

The PIA impose obligations on operators to carry out remediation, decommissioning and environmental management and failure to comply attracts administrative sanctions, fines and revocation of licenses by the

[52] Ibid, s. 6(3)
[53] Oil Pipelines Act Cap 07 LFN, 2004 s. 6
[54] Ibid, s. 14
[55] Ibid, s.19
[56] Ibid, s. 20
[57] Motun, 'The Legal Framework for the Control of Pollution in the Oil and Gas Sector' (2020) <https://motun911.wordpress.com> accessed 25 July, 2026.
[58] T. A. Majekodunmi, 'Nigeria's Oil Pollution Compensation Framework: Assessing the Impact of the Petroleum Industry Act 2021' *Light Bearers Bar Journal* (2026) 2 <https://www.nigerianjournalsonline.org> assessed 25 July, 2026

Nigerian Upstream Petroleum Regulatory Commission. Basically, the PIA strengthens funding of community development but it brings up questions of whether it dilutes direct victim compensation while relying on administrative penalties for deterrence.[59]

4.7. The Nigerian Criminal Code (1992) and Penal Code (1960)

The Criminal Code and the Penal Code serve as a foundation la law in general criminal legislation in Nigeria to address the issues of public health nuisance and environmental pollution through penal sanctions like short term imprisonment and fines although they lack direct provisions for compensation of environmental victims or victims as a whole. Section 245 of the Criminal Code Act makes it a misdemeanor to corrupt or foul water springs, streams or reservoirs and it is punishable by up to 6 months in prisonment.[60] Section 247 penalizes vitiating the atmosphere or making it noxious to health for neighbors or the public.[61] The Northern part of Nigeria states equivalent sections under the Penal Code to punish nuisances and acts endangering public health and safety through noxious waste or trades disposal. These codes are designed to penalize offences via the state rather than restore or compensate the victims.[62]

4.8. Oil in Navigable Waters Act (2004)

This Act regulates marine oil pollution in Nigeria through provisions targeting prohibited discharges, ship equipment standards and offender penalties. The Act, provides for distinct operational duties and legal defence for maritime operations. Sections 1 and 3 prohibits the discharge of crude oil, fuel, lubricating oil or heavy diesel mixtures into sea areas and Nigerian waters. Sections 5 and 6 mandates anti-pollution equipment on ships and sets fines and penalties sanctions for violations. Section 6 states that;

'A person guilty of an offence under section I, 3 or 5 of this Act shall, on conviction By a High Court or a superior court or on summary conviction by any court of inferior Jurisdiction, be liable to a fine: Provided that an offence shall not by virtue of this section be punishable on summary conviction by a court having jurisdiction inferior to that of a High Court by a fine exceeding N2,000'[63]

The Act focuses primarily on penalizing offenders with fines paid to the state rather than establishing a clear compensation method for environmental pollution victims and host communities.

4.9. Relevant International Conventions

Nigeria has ratified a certain number of international environmental treaties that modifies how the country approaches compensation and punishment for pollution, but these treaties are only enforceable in Nigerian courts once the National Assembly enacts them into domestic law under Section 12(1) of the 1999 Constitution. The international system for compensating oil pollution victims is built on strict liability and layered financial protection. Under the 1992 Civil Liability Convention (CLC), is ship-owners are strictly liable for oil pollution damage from maritime incidents, so victims do not need to prove fault to recover losses. Insurance is made compulsory for ship-owners and it means that claimants can look directly to an insurer where necessary.[64]

Where CLC leave losses unpaid, the International Oil Pollution Compensation Fund (FUND) provides an extra safety net, widening the pool of resources available to affected communities. Other instruments like the African Charter of Human and People's Rights (ACHPR) domesticated in Nigeria in 1986, enshrines the right

[59]Petroleum Industry Act, 2021, ss. 234-236
[60]Nigeria Criminal Code, 1992, s. 245
[61]Ibid, s. 247
[62] Penal Code 1960.
[63] Oil in Navigable Waters Act Cap 06 LFN, 2004
[64] Civil Liability Convention (CLC), 1992

to a satisfactory environment and have been used to frame environmental harm as a violation of rights, offering an alternative pathway for claims beyond ordinary tort actions.[65]

Despite a robust international framework, reality is different for Nigerians as protection for individuals and host communities are uneven. Ratification matters only if domestic laws accurately reflect treaty obligations. Victims frequently confront procedural and evidentiary hurdles when seeking compensation, and gaps between international standards and local implementation reduce the practical reach of these conventions.

Other International Conventions ratified by Nigeria are International Convention for the Prevention of Pollution of the Sea by Oil 1954, as amended in 1962, the International Convention on Civil Liability for Oil Pollution Damage 1969, (Civil Liability Convention), the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971, (Fund Convention), the International Convention on the Prevention of Marine Pollution by the Dumping of Wastes and Other Matters 1972, (London Convention), the Convention on Co-operation in the Protection and Development of the Marine and Coastal Environment of the West and Central Africa Region 1981, Basel Convention on the Control of Trans boundary Movements of Hazardous Wastes and their Disposal 1989 and the International Convention on Oil Pollution Preparedness, Response and Co-operation 1990.[66]

These international agreements regulate different aspects of oil pollution damage by prohibiting certain conduct, imposing liability, setting up compensation schemes, pollution control and establishing reporting and response systems. Some conventions require implementation by the contracting state by enacting domestic legislation or establishing national systems.[67]

5.0. COMPENSATION OF VICTIMS OF ENVIRONMENTAL POLLUTION

The Nigeria legal framework such as, NESREA, NOSDRA, PIA and HWA allow for both punishment and compensation for environmental harm, however victims struggle to get adequate redress. As a result, penalties often fail to deter, and compensation is frequently slow or inadequate. In relation to compensation of pollution victims, compensation is employed to restore environmental pollution victims to their original state. It is mostly monetary payment of damages ordered by the court to be paid by the offender who has caused injury to the victim. Although, it is not limited to monetary payment alone, an offender can make reparation for the loss suffered by the victims. There are two main ways in which oil pollution victims can be compensated, in cash or specific performance. In Nigeria, monetary sums are generally preferred by pollution victims, since the environment may not be fully restored to its original state for it to be useful for all intent and purposes. Another reason is that in most cases of enormous environmental pollution, like oil spillage, the government usually acquire polluted lands in the interest of the general public, thereby taking over interest and full control of such land. The principles of common law were once relied upon for compensation such as trespass, negligence and nuisance.[68] However, they caused unnecessary problems as regards choice of law and still did not provide an adequate system for a claim for compensation. This is a major gap, hence the need for a better system to compensate victims adequately.

Internationally, the 1992 Rio Declaration states that countries should establish national laws regarding liability and compensation for pollution victims. In Nigeria, the 1999 Constitution provides for the payment of adequate compensation over compulsorily acquired properties in Nigeria. This provision is a constitutional guarantee to victims whose lands have been contaminated by oil spills and which the government intends to compulsorily acquire the land in order to contain oil spillage or clean up the contamination. The Oil Pipelines Act, makes provision for compensation to land owners or occupiers as regards surveys carried out on their land. It also recognizes that the payment of compensation to communities where oil pollution has injuriously

[65] ACHPR, 1986, s. 24

[66] J. Kola-Balogun, 'Legal Aspects of International Environmental Protection, The Nigerian Oil Spill' (1997) <https://www.mondaq.com> assessed 25 July, 2026

[67] Ibid.

[68] F. I. Allagoa, 'Compensation as a Remedy Available to Victims of Environmental Degradation in Nigeria' (2019) <https://www.academia.edu> accessed 27 July 2026.

affected them.[69] The question then is, how adequate is the compensation of victims of environmental pollution? Should the compensation be based on the monetary scale provided by the extant laws or based on preponderance of evidence? This questions will be discussed and later answered in this study.

5.1. Punishment of Offenders of Environmental Pollutions

The NESREA Act and its regulations makes provisions for the punishment of offenders of environmental pollution, such as unlawful emissions, environmental degradation, improper waste handling and failure to comply with environmental standards. The Act provides that person who violates the provisions of subsection (1) of this Section, commits an offence and is liable on conviction, to a fine, not exceeding N1,000,000 or to imprisonment for a term not exceeding five (5) years. Where an offence under subsection (1) of this section is committed by a body corporate, it shall on conviction, be liable to a fine not exceeding N1,000,000 and an additional fine of N50,000 for every day the offence subsists.[70]

The Act further provides for a person who violates the provisions of the regulations made pursuant to subsection (1) of this section, commits an offence and shall on conviction, be liable to a fine not exceeding N200,000 or to imprisonment for a term not exceeding one year or to both such fine and imprisonment and an additional fine of N10,000 for every day the offence subsists. Where an offence under subsection (1) of this section is committed by a body corporate, it shall on conviction, be liable to a fine not exceeding N1,000,000 and an additional fine of N50,000 for every day the offence subsists.[71] The Act, crowns it all by providing that a person who obstructs an officer of the Agency in the performance of his duties under section 3 of this Act commits an offence and is liable on conviction to a fine of not less than N200,000 for an individual or to imprisonment for a term not exceeding one year or to both such fine and imprisonment, and an additional fine of N20,000 for each day the offence subsist, and in the case of a body corporate, it shall be liable for a fine of N2,000,000, on conviction and an additional fine of N200,000 for every day the offence subsist.[72] In essence, Section 31 of the NESREA Act 2007 is the major provision detailing general offences and penalties, while Section 27 specifically penalizes the discharge of hazardous substances

Under NOSDRA, offences are generally related to Oil spill prevention, reporting, cleanup and remediation. Failure to comply can lead to criminal liability, including fines and imprisonment especially where a spill is not promptly reported or properly addressed. Penalties often depend on whether the offender is an individual or a company, and whether the breach continues overtime. The Act provides that an oil spiller is expected to report an oil spill to the Agency in writing, by fax or electronic mail not later than 24 hours after the occurrence of an oil spill in default ‘of which the failure to report shall attract penalty in the sum of N500,000 for each day of failure to report the occurrence.[73]

Also, concerning cleaning up of the environment, the Act provides for its penalties, it states that the failure to clean up the impacted site, to all practical extent including action plan for remediation within two weeks of the occurrence of the spill in accordance with the polluter pays principle shall constitute an offence and on conviction, the oil spiller shall be liable to a fine not exceeding N5,000,000 or to imprisonment for a term not exceeding 2 years or both.[74]

Additionally, the Petroleum Industry Act (PIA) 2021, basically strengthens environmental and operational compliance in the petroleum sector. Environmental pollution related breaches are usually penalized under the Act, and related downstream or upstream regulations.[75] Sanctions may include administrative fines, criminal prosecution and imprisonment for serious breaches particularly where pollution causes harm or breach license

[69] Ibid.
[70] NESREA Act, 2007 s. 27(3)
[71] Ibid, s. 27(4)
[72] Ibid, s. 31
[73] Ibid, s. 6(2)
[74] NOSDRA, 2006 s. 6(3)(4)
[75] PIA 2021 s. 282

conditions. However, the exact penalty depends usually on the specific section breached and the applicable subsidiary regulations.[76]

5.2. Factors affecting the Quantum of Compensation and Punishment

The problems of compensation that arises from environmental pollution in Nigeria are majorly the assessment of compensation, basis of liability, sabotage and monetary jurisdiction of courts. Firstly, on assessment of compensation, the essence of impact assessment is to determine monetary payment that would reasonably restore the victim to the position he ought to be before the pollution. The assessor must have prepared a holistic and encompassing report, ensuring that none of the essential steps are compromised. There are three models that have been used over time in assessing compensation for environmental damage especially in cases of oil spills. They include the cost method where the reproduction cost of an asset is obtained, the comparative approach and the income capitalization method. These methods have several shortcomings, and one of them is the peculiarity of every environmental damage done.[77] For instance in a case of oil spillage, applying the model in cases of dumping of industrial waste to assess the impact of oil spillage in order to award compensation, would obviously affect the quantum of compensation. Another shortcoming of these methods is determining the extent of public damage done. In cases of private environmental violation, it is much easier to determine the level of damage done to individuals involved compared to a situation where the entire public is involved (Ogoni land). In public environmental violation, the level of collateral damage to individuals maybe unascertainable and thus, compensation based on the assessment of the damage done to the general public may not be adequate to cater for individual's collateral damage.

Secondly, regarding basis of liability, the 1999 Constitution provides that prompt payment of compensation is to be made to both owners of moveable and immoveable properties where compulsorily acquired. However, the Constitution did not provide the quantum of compensation to owners of either properties. This section also guarantees the right of these persons to approach the court to determine the compensation fit. However, in this same constitution, the jurisdiction of the court to entertain and determine questions concerning or about the amount or adequacy of compensation is ousted thereby making it impossible to seek redress regarding compensation for environmental pollution. Although section 29(1) of the Land Use Act provides for unexhausted improvements, it is irrelevant to any consideration of compensation.[78] The Oil Pipelines Act also provides for damages for building, crops and profitable trees but did not fully resolve post-compensation problems. It did not provide time frame for payment of compensation among others.

Third, the defence of sabotage, this simply means malicious or deliberate destruction of machinery by discontented workers and discounted members of oil producing communities. The willful destruction of oil infrastructure and pipelines by third party affects compensation. Under the Oil Pipelines Act, an oil company is excluded from liability for pollution caused by leakage or breakage of a pipeline unless negligence is proved against the owner. The inconsistent application of this defence creates uncertainty, and where the defence of sabotage succeeds, the victims get nothing.[79]

Fourth, jurisdiction of Courts is another factor that affects the quantum of compensation. There are some jurisdictional challenges regarding which court has exclusive jurisdiction in environmental pollution matters. The power of courts to inquire into environmental claims is vested in the High Courts of States or the Federal High Court where claim involves a Federal Agency, like Nigerian National Petroleum Commission (NNPC).[80] However, this does not mean that inferior courts like the Magistrate Court lacks jurisdiction in environmental issues. On issues relating to illegal dumping or disposal of waste which attracts lesser compensation and or punishment, the Magistrate Court is empowered to assume jurisdiction by virtue of the Constitution. In some

[76] Ibid, s. 104

[77] B. A. Osigwe, 'Evaluating Environmental Pollution and the Problems of Compensation in Nigeria' *African Journal of International Energy and Environmental Law* (2023) 7 (1) 140-152 <https://ajieel.com/index.php/a/article/view/55> accessed 28 July 2026.

[78] Land Use Act 1978 s. 29(1)

[79] Oil Pipelines Act Cap O7 LFN 2004 s. 11(5)(c)

[80] CFRN, 1999 s. 251

States in Nigeria, the jurisdiction for monetary claims in the Magistrate Court is ₦5,000,000 or less, and considering the quantum of compensation payable to victims of environmental pollution by the provisions of relevant Acts , it is evident that the Federal High Court, States High Courts and the Magistrate Courts are empowered to assume civil jurisdiction to entertain issues of compensation of victims and punishment of offenders of environmental pollution. Where a Magistrate Court assumes civil jurisdiction in environmental pollution, the court's jurisdiction regarding compensation payable is subject to the monetary jurisdiction of the court. Therefore, litigants should be careful when filing actions for environmental claims to avoid jurisdiction becoming a hindrance to environmental justice. The judicial attitude to environmental matters in Nigeria has been adhering strictly to the Constitution and other technical issues, like jurisdiction that can defeat a claim to environmental pollution. The delay in Nigeria's judicial system also affects environmental litigation. This factor on its own discourages individuals and communities from placing their environmental claims before the Nigerian courts.[81]

Fifth, the corporate personalty of a company is also a factor that affects the punishment of pollution offenders. In Nigeria, the corporate personalty of a company bestows on the company a legal entity separating the company from its Managing Directors. This legal separation has been the major challenge when the issue of punishment is raised. Being a legal entity, a company can be sue and be sued and even imprisoned like every other human being. However, where a company is found guilty and convicted by the court for environmental pollution, who in actual sense is expected to serve the term? On most occasions rather than convict a company to a term of imprisonment, the court would rather give an option of fine which in most cases are ridiculously small compared to the offence committed and to avoid technical issues being raised. In rare cases where option of fine is not granted by the court, the challenge of who serves the jail term arise. To resolve this, the doctrine of 'Lifting the Vail' maybe applied by the court to see who are actually behind the operation of the company and where discovered, but it is usually difficult to sentence an officer of the company for an offence committed by the company as a corporate entity, unless there is consent, connivance or neglect of a director, manager or similar officer. Hence, the resolve to grant compensatory relief rather than imprisonment.

Sixth, lack of strong evidence is also another factor affecting quantum of compensation. Evidentiary frameworks require claimants in civil litigation to demonstrate on a balance of probabilities that the defendant or offender's conduct caused the complaint of harm.[82] In environmental cases, this requirement is often not suited to the realities of pollution, waste mismanagement and ecological degradation. To solve the unsuitability challenge, the courts have largely adhered to conventional causation doctrines thereby demanding precise scientific attribution where environmental harm is diffuse or mediated through complex processes beyond the control of litigants. Expert evidence is often employed to fill this evidential gap. However, access to credible experts' testimony remains unevenly distributed, victims and affected communities often lack the institutional and financial capacity to commission scientific studies capable of meeting the expectations of the judiciary. It is until courts adopt a flexible causation standard that justice will remain elusive. Nigeria must institutionalize expert support and recognize cumulative harm to ensure that evidentiary barriers do not shield polluters and deny victims adequate compensation.[83] In *Atunbi v. Shell Petroleum Development Company of Nigeria Limited,*[84] the plaintiff's claim for compensation failed due to his inability to establish the negligence of the defendant which required expert scientific evidence.

6.0. COMPENSATION AND PUNISHMENT FOR ENVIRONMENTAL POLLUTION: PREPONDERANCE OF EVIDENCE OR PROVISIONS OF EXTANT LAWS?

In Nigeria, environmental pollution can either be civil or criminal in nature, subject to the action and intention of the erring party. It is a civil matter, where pollution occurs as a result of the negligence of the erring party

[81] B. A. Osigwe, (n77) 146

[82] E. N. Umezuruike, 'Evidentiary Inequality and the Proof of Environmental Harm: Lessons from Nigeria' (SSRN, 09 February 2026) <https://papers.ssrn.com> assessed 28 July 2026.

[83] Ibid.

[84] Unreported Suit No. UCH 48/73 referred to in B. Abegunde et.al., (eds) in *Environmental Law and Development* (1st edn, Petoa Publishers, 2007)

devoid of any criminal intention, thereby resulting into private or public nuisance. However, where there is a deliberate act by a person or group of persons to disrupt the serenity of the environment and cause grievous harm to the inhabitants (flora and fauna), it may be regarded as criminal offence. For the purpose of this study, compensation and punishment of victims and offenders will be considered within the realm of criminal liability.

In Nigeria criminal litigation, the burden of proving criminal liability is usually on he who assert[85] that is the prosecution and must be proved beyond every reasonable doubt.[86] Although, relevant criminal legislations in Nigeria provides penalties for environmental offences, where the standard of prove is met, the question which beg for answer is, does the provisions of the extant laws on compensation and punishment of environmental victims and offenders meet the demand of justice in the face of preponderance of evidence? Environmental laws no doubt are established to regulate certain issues and determine the judicial extent at which Courts in Nigeria can adjudicate on these matters. Despite these legislative provisions, the Courts are however empowered to exercise rational discretion based on preponderance of evidence tendered before it where it deems fit. This sounds fair on paper but in real environmental claims, the provisions of extant laws have been found to be the biggest obstacle to achieving deserved justice.

Compensation of victims and punishment of offenders of environmental pollution in Nigeria is primarily anchored in statutory provisions. The NESREA 2007[87], NOSDRA 2006 ONWA 2004[88] and PIA[89] are specific environmental laws which provide for the compensation and punishment of victims and offenders of environmental pollution in Nigeria. However, by examining these laws, it obvious that the compensation or fines provided are not commensurate with the offence committed based on preponderance of evidence.

The most prominent environmental pollution in Nigeria today is oil pollution, particularly in the Niger-Delta region. The NOSDRA is promulgated to prevent and manage issues of oil spillage, and it provides that an oil spiller is expected to report an oil spill to the Agency in writing, by fax or electronic mail not later than 24 hours after the occurrence of an oil spill in default of which the failure to report shall attract penalty in the sum of N2,000,000 for each day of failure to report the occurrence,[90] and for failure to clean up within two weeks of the occurrence of the spill, the oil spiller shall be liable to a fine not exceeding N5,000,000 or to imprisonment for a term not exceeding 2 years or both.[91] Noticeable, is the fact that this Act did not provide compensation for victims of oil spillage despite evidence of it, all it provided for is the punishment for not reporting oil spillage incidence. The punishment in this regard maybe adequate but the compensation of victims who bear the burden of such spillage are totally neglected.

Also, the NESREA Act makes provisions for the punishment of offenders of environmental pollution. The Act provides that person who violates the provisions of subsection (1) of this Section, commits an offence and is liable on conviction, to a fine, not exceeding N1,000,000 or to imprisonment for a term not exceeding five (5) years and where an offence under subsection (1) of this section is committed by a body corporate, it shall on conviction, be liable to a fine not exceeding N1,000,000 and an additional fine of N50,000 for every day the offence subsists.[92] The Act further provides that a person who violates the provisions of the regulations made pursuant to subsection (1) of this section, commits an offence and shall on conviction, be liable to a fine not exceeding N200,000 or to imprisonment for a term not exceeding one year or to both such fine and imprisonment and an additional fine of N10,000 for every day the offence subsists. Where an offence under subsection (1) of this section is committed by a body corporate, it shall on conviction, be liable to a fine not exceeding N1,000,000 and an additional fine of N50,000 for every day the offence subsists.[93] Although, the

[85] Evidence Act, 2011 s 131(1)(2)
[86] *Adisa v. State* [2023] LPELR-59765 (SC)
[87] NESREA 2007, s. 23(1)
[88] ONWA, 2004, s 6
[89] PIA 2021 s. 282
[90] Ibid, s. 6(2)
[91] NOSDRA, 2006 s. 6(3)(4)
[92] NESREA Act, 2007 s. 27(3)
[93] Ibid, s. 27(4)

provisions of the Act maybe appropriate in terms in punishment for individuals and corporate entities, the monetary compensation for act done is not adequate to restore victims bac to their original state before the pollution.

From the provisions of the Act, it is discovered that the fines provided does not exceed N1, 000,000 and in some cases N5,000,000 for all offences relating to pollution of the environment. It then implies that offences such as, oil spillage, dumping of hazardous waste (like the Koko incidence of 1988) and other forms of pollution attracts a fine not exceeding N5, 000,000. It should be noted that offence of dumping of refuse and oil spillage are totally different considering the severity of one over the other. Oil spillage, discharge of obnoxious gases and dumping of hazardous waste, for example, are more grievous offences that may affect an entire community compared to minor offence such as, littering the environment. Assuming without conceding that the punishment provisions of various environmental laws may be adequate, it is however posited that, every offence should be allowed to stand alone, so as to ensure compensations are awarded based on the severity of the offence, what is fair and adequate and the evidence of the colossal damage to the victim presented before the court.

In *Shell Petroleum Development Company (Nig) Limited v. Farah,*[94] the court exercised its discretionary power in the absence of guideline for assessment of compensation in favour of the Plaintiff/Respondent, by relying on the provision of the Petroleum Act to distinguish the concept of 'fair and adequate' between the Oil Company and the Plaintiff/Respondent. While the company considered the extant provision of the Act on compensation of N2,000 as fair and adequate, the court felt otherwise base on preponderance of evidence and the state of the victim before the incidence and awarded N4.6 Million as compensation. Also in a closely related issue, the Supreme Court in *Shell Petroleum Development Company (Nig) Limited & 2 Ors v. Isaac Osaro Ogbara & Ors*[95] deviated from the existing restrictive compensatory legal regimes through validating the compensation awarded in sum of N45 Billion in favour of Ejama-Ebubu (Ogoni) Community in Tai Eleme Local Government Area of River State. It should be noted that this award was validated not on the provisions of extant laws but based on overwhelming evidence and assessment of immense destruction done to the community as a result of the activities of the Appellant.

It is evident from these recent judicial decisions that, there has been a paradigm shift from the reliance on the provisions of extant laws on environmental pollution to a more liberal compensatory approach which ensures that justice should not only be done but manifestly seen as done, particularly where the aim of compensatory relief is to restore a victim of environmental pollution to his/her original state before the act. Thus, restorative justice can only be achieved in environmental issues where issues are dealt with based on facts and preponderance of evidence, and not on the restrictive provisions of extant laws. Apart from courts ensuring that adequate compensation is awarded to victims of pollution through judicial decisions, regulatory agencies like NOSDRA has tilted towards a more pragmatic approach through Administrative and Extra-judicial Settlement to occasionally impose multi-billion dollar fines on environmental pollution offenders through direct disbursement as cash compensation to grassroots victims involved in complex inter-agency and corporate negotiations.[96]

7.0. CONCLUSION AND RECOMMENDATIONS

The assurance of environmental justice in Nigeria remains solely on paper. The legal frameworks remain robust such as the constitution which imposes a duty on the state to protect the environment, statutes like NESREA, NOSDRA, PIA and the Harmful Waste Act gives provision for compensation, punishment and clean up. The Polluters Pay Principle and Deterrence Theory offer a clear legal and moral justification for holding offenders liable but in practice, pollution victims often suffer more victimization by the pollution and the Legal system that makes it hard to obtain redress. This paper reveals that the preponderance of evidence is

[94] [1995] 3 NWLR (pt. 382) 145

[95] [2020] LCN/4941

[96] CETIM, 'Cases of Environmental Human Rights Violations by Shell in Nigeria's Niger-Delta' 26th Session of Human Right Council, 10 June-27 June, 2024 <https://cetim.ch> assessed 23rd September, 2026

the requirement for proving environmental. Environmental damage is nothing like a car accident, it is more incremental and often hidden. Requesting that a farmer prove with scientific precision that oil spill caused his crop failure 3 years later is to ask for the impossible. The law must move to meet the realities of environmental damage. Nigeria's attitude towards compensation for environmental pollution needs to shift from one that is purely based on provisions of the laws to one that is centered in victims and precautionary. It must review the penalties under NESREA, NOSDRA and other related environmental legislations to ensure that they are truly deterrent, enforce the Polluters Pay Principle by making polluters pay adequate remediation to restore pollution victims without unnecessary prolonged litigation battle. For the most part, protecting the environment is protecting human life, dignity and livelihood. Unless our laws make it easy for victims to bring and prove their case, and harder for offenders to escape liability, compensation will continue as an imagination and punishment a slap on the palm. The reformative moment is now.

The study has highlighted and discussed the factors affecting the quantum of compensation of victims and punishment of offenders of environmental pollution, hence, the need to make recommendations for a possible way forward.

The study recommends that the existing legal framework on the compensation and punishment of victims and offender of environmental pollution should be reviewed, particularly provisions relating to compensations of pollution victims. The essence of redress is to ensure that parties get justice in line with the provisions of the extant laws. Where individuals seek redress and are restricted by the provisions of the law, then justice cannot be seen as done. Environmental Statutes should be the bases of fair compensation as against what is obtainable at the moment.

Also, it is suggested that environmental law awareness should be made all around Nigeria, in every state and local government areas about the hazards and the effects of the pollution of the environment. The Government should continuously educate people on the importance of keeping a positive and conducive environment and the positive effects on the development of the Nigerian economy. Re-orientation can also be made through the media to inform people about the environmental problems common in the country and ways to mitigate or prevent most of the problems. Individuals and communities should be encouraged to participate in environmental improvements systems. Acceptable standards of operation and compliance should be enacted and published online for the interest of the public and for easy accessibility. National environmental policies should also be coordinated at the community level for effective implementation, monitoring, evaluation and improvement.

Furthermore, the study recommend that stiffer sanctions for environmental offences should be implemented. The attitude of the court and the liabilities of those that violate environmental laws are also important in the enforcement of environmental laws. The attitude of courts in their various judgments towards environmental justice should lean towards fair and just compensatory orders based on preponderance of evidence to remedy the damages done to the physical environment of private individuals or communities who seek redress in the law court. This would promote the enforcement of the set rules and regulations due to the fact that people would be subjected to obey the regulations and guidelines of environmental laws as a result of huge compensations and stiffer penalties for those found guilty of environmental offences.

Additionally, the establishment of environmental courts is necessary to avoid issues relating to the exclusive jurisdiction. Just like the National Industrial Courts in Nigeria, environmental courts should be established to entertain matters on environmental pollution. This will ensure quick response to the needs of the environment by administrative bodies specialized in resolving environmental problems, natural resources and related disputes. In essence, effective environmental justice mandates that law move beyond promises. By strengthening penalties, reducing evidential burdens, Nigeria can align the Polluters Pay Principle and Deterrence with reality. With that, punishment will be deterrent, compensation will be adequate and environmental rights of individuals and communities will be properly protected.

REFERENCES

1. A. Njoku, 'The Polluter Pay Principle in the Context of the Nigerian Legal System' (2021) <https://coraxfoundation.org>
2. B. A. Osigwe, 'Evaluating Environmental Pollution and the Problems of Compensation in Nigeria' *African Journal of International Energy and Environmental Law* (2023) 7 (1) 140-152 <https://ajieel.com/index.php/a/article/view/55>
3. C. J. Aleru, 'Ten Sentencing in Environmental Offences in Nigeria: An Overview' *African Journal* (2025) 6, 106-121 <https://ajeel.com>
4. CETIM, 'Cases of Environmental Human Rights Violations by Shell in Nigeria's Niger-Delta' 26th Session of Human Right Council, 10 June-27 June, 2024 <https://cetim.ch>
5. E. N. Umezuruike, 'Evidentiary Inequality and the Proof of Environmental Harm: Lessons from Nigeria' (SSRN, 09 February 2026) <https://papers.ssrn.com>
6. E. Oamen, and M.I. Anushiem, 'An Appraisal of the Legal Regime on the Human Right to Compensation for Environmental Pollution in Nigeria' *Energy Law Review,* (2014) 1 (4), 34-61 <https://www.open-access.bcu.ac.uk>
7. F. I. Allagoa, 'Compensation as a Remedy Available to Victims of Environmental Degradation in Nigeria' (2019) https://www.academia.edu>
8. F. I. Allagoa, 'Compensation as a Remedy Available to Victims of Environmental Degradation in Nigeria' (2019) <https://www.academia.edu>
9. J. Kola-Balogun, 'Legal Aspects of International Environmental Protection, The Nigerian Oil Spill' (1997) <https://www.mondaq.com>
10. J. Parimala, 'Deterrent Theory of Punishment Explained' (2017) <https://www.scribd.com/document/366814509/Penology>
11. K. Kemper and S. Chadudhuri, 'Air Pollution: A Silent Killer in Lagos' (2020) <https://blogs.worldbank.org > accessed 29 July, 2026; L. Croitoru and J.C. Chang, 'The Cost of Air Pollution in Lagos (2020) <https://openknowledge.worldbank.org>
12. K. Ruhland, 'Pollution Crisis: What Is the Polluter Pays Principle and How Can It Be Used in Climate Policy?' (2024) <https://earth.org>
13. K.F. Akeju and T. Owoeye, 'Economic Self-Reliance' in C.T. Oluwadare and I.A. Ajayi and L.B. Ajayi (eds) *Nigerian People and Culture* (1st edn, Directorate of General Studies 2017)
14. Kunak,Urban Air Pollution: Causes, Impacts and Solutions' (2026) <https://kunakair.com> accessed 29 July, 2026; Royal Belgium Institute, 'Air Pollution, Major Concern in Urban Industrialized Areas' (2026) <https://aeronomie.be>
15. M. Idachaba, et.al, 'The Legal Framework for the Protection of Environmental Rights in Nigeria' (2022) <https://www.researchgate.net>
16. Motun, 'The Legal Framework for the Control of Pollution in the Oil and Gas Sector' (2020) <https://motun911.wordpress.com>
17. Research Clue, 'Environmental Pollution in Nigeria: Issues and Solutions' <https://nairaproject.com/m/projects/907.html>
18. S.O. Ogunleye and A.O. Jegede, 'Environmental Problems in Nigeria' in C.T. Oluwadare and I.A. Ajayi and L.B. Ajayi (eds) *Nigerian People and Culture* (1st edn, Directorate of General Studies 2017)
19. T. A. Majekodunmi, 'Nigeria's Oil Pollution Compensation Framework: Assessing the Impact of the Petroleum Industry Act 2021' *Light Bearers Bar Journal* (2026) 2 <https://www.nigerianjournalsonline.org> assessed 25 July, 2026
20. United Nations (Nigeria), 'Common Country Analysis (2022) <https://nigeria.un.org> accessed 29 July, 2026; Interactive Country Fiches, 'Pollution' (UNEP) <https://dicf.unepgrid.ch/nigeria/pollution#section-states>
21. WHO, 'Health Effect of Air Pollution: Evidence and Implications: Technical Brief' (2026) <https://who.int>
22. World Bank Group,'Climate Risk Country Profile: Nigeria' (2021) <https://climateknowledgeportal.worldbank.org>
23. Worldometer, 'Nigeria Population Live' (2026) <https://worldometers.info>