



DIVESTING FROM ACCOUNTABILITY: IOC ASSET TRANSFERS AND THE LIABILITY FOR LEGACY POLLUTION IN THE NIGER DELTA

Abiodun Amuda-Kannike, Ibrahim Bello Ibrahim** & Shehulugman Sambo****

ABSTRACT

*International Oil Companies (IOCs) are strategically pulling out of Nigeria's Niger Delta, selling off billions of dollars' worth of onshore assets and shifting their focus to the comparatively safer deepwater activities. A basic environmental justice dilemma is brought up by this corporate restructuring: does the seller's obligation for decades of cumulative environmental destruction end with the sale of petroleum assets? This article reveals a hazardous regulatory gap regarding "legacy pollution," the toxic legacy of oil spills, gas flaring, and ecosystem destruction that predates current ownership, through a critical examination of the Petroleum Industry Act 2021 and the historic ruling in *Alame v. Shell Plc*. We contend that Nigeria's present "buyer beware" policy regarding asset transfers permits environmental impunity by shifting unmet remedial costs to undercapitalized indigenous businesses and preventing devastated host communities from pursuing legal action. We suggest requiring "Retention of Liability" clauses in divestment approvals, along with pre-sale environmental audits and financial guarantees, based on comparative jurisprudence from the US Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and EU environmental liability frameworks. Without such changes, divestiture turns into a complex way to externalize environmental debt onto the Nigerian government and its most vulnerable residents rather than a genuine corporate transaction.*

KEYWORDS: *Corporate Veil Piercing, Environmental Liability, Legacy Pollution, IOC divestment, Petroleum Industry Act.*

1. INTRODUCTION

Shell Nigeria announced in July 2024 that it had successfully sold its onshore assets for \$2.4 billion to Renaissance Consortium, a group of domestic oil businesses. With the deal, Shell's onshore operations in the Niger Delta, where it had been for more than 60 years, came to an end.¹ "Value optimization" and "strategic realignment" were highlighted in the news release. The estimated 10,000 oil leak sites in the Niger Delta, many of which date back decades, and their repair costs,

*SAN AG, Director, Department of Legislative Support Services (DLSS), National Institute For Legislative Democratic Studies, NILDS Abuja, AND Pioneer Dean, Faculty of Law, Kwara State University, Malete, Via Ilorin, Kwara State. Tel:08033256756 Email: amudakannikeabiodun@gmail.com; abiodun.kannike@kwasu.edu.ng He is a fellow of the Nigerian Institute of Chartered Arbitrators (NICARB). He is also an associate Member of the Nigerian Institute of Taxation and at same time Fellow of the Chartered Institute of Economics; Fellow Chartered Institute of Arts, Management Professionals.

** Ph.D, LLB (Baze, Nigeria) LLM (Dundee, UK), ACI Arb (UK), BL (Kano), Ph.D (Baze Nigeria), Principal Research Officer, Department of Legislative Support Services, National Assembly Institute for Legislative and Democratic Studies (NILDS). Email: ibrahim.Bello@bazeuniversity.edu.ng, Ibrahim.Bello@Nilds.gov.ng. Phone: 08069317372.

*** LL.B (Hons) Jos, LL.M (Ifé), Ph.D (Ilorin), MNIM, FCTI, ACI Arb, PGDE, TRCN, MBSN, Member, BOT Summit University, Offa, Kwara State. Tel: +2348038310152; Email: sbsambo2000@gmail.com.

¹Shell Nigeria, 'Shell Completes Sale of Nigerian Onshore Assets' (Shell Press Release, 16 July 2024).

which are conservatively estimated at \$12 billion, were not mentioned.² Shell is not the only company making this deliberate move. In 2024, ExxonMobil sold Seplat Energy its Qua Iboe Terminal assets. In 2024, Eni sold Oando its onshore holdings. According to reports, TotalEnergies is in advanced talks to discontinue its onshore operations.³ There is no mistaking the pattern: The very organizations whose operations caused the environmental disaster in the Niger Delta, International Oil Companies, are methodically leaving the crime scene. This is more than just a business tale about risk management and portfolio optimization. Accountability, environmental fairness, and the basic question of who is responsible when pollution outlives corporate presence are all at stake in this moral and legal crisis. For the Ogoni people, whose farmlands are still contaminated by oil spills from the 1970s and 1980s, the question is existential: who will clean up the soil their grandparents once farmed if Shell is no longer the operator?⁴

Nigerian environmental law is based on the fundamental idea that "the polluter pays," which is derived from both common law and international standards.⁵ When it comes to corporate reorganisation, this idea seems simple. Does liability follow ownership when Company A pollutes land for more than 50 years and then sells it to Company B? Does Company A's legal obligation end with its departure? Crucially, what happens if Company B doesn't have the money to deal with legacy contamination? Such problems were intended to be clarified by Nigeria's most extensive oil and gas legislation change in decades, the Petroleum Industry Act (PIA) 2021.⁶ Rather, it has produced fresh ambiguities. The Act requires environmental management plans and decommissioning funds however these requirements only apply to operations in the future.⁷ The more troubling question of what legal mechanism requires IOCs to correct pollution accumulated prior to divestment is noticeably left unanswered by the Act. Deeper strains in Nigeria's political economy are reflected in this stillness, which is not coincidental. The federal government is reluctant to implement restrictions that could deter investment or cause delays in transactions because it is eager for ongoing oil revenue. In talks, indigenous businesses limit their environmental liabilities since they are keen to purchase generating assets. Additionally, IOCs saw Nigerian divestment as an easy way to avoid financial and reputational risk due to climate activism and energy transition concerns in their home countries.⁸ The Ijaw, Ogoni, Itsekiri, and other Niger Delta communities, whose rivers run black with crude oil and whose children suffer from respiratory ailments due to decades of gas flaring are caught between these conflicting interests.

²United Nations Environment Programme, *Environmental Assessment of Ogoniland* (UNEP 2011) 9–12.

³A Raval and F Onuah, *Big Oil's Great Escape: The Divestment Wave from Nigeria's Oil Fields* (Financial Times, London, 8 March 2024).

⁴Amnesty International, *Clean It Up: Shell's False Claims About Oil Spill Response in the Niger Delta* (Amnesty International 2015) 18–24.

⁵D Oronto and I Okonta, *Where Vultures Feast: Shell, Human Rights, and Oil in the Niger Delta* (Sierra Club Books 2001) 78–92.

⁶Petroleum Industry Act 2021, Preamble.

⁷PI Act 2021, s 232.

⁸J G Frynas, 'Corporate and State Responses to Anti-Oil Protests in the Niger Delta' [2001] 100 *African Affairs* 27, 54.



2. THE NIGER DELTA

Understanding the environmental realities is a prerequisite to comprehending the legal stakes. One of the largest wetland ecosystems in the world is found in the Niger Delta, which provides resources for farming, forestry, and fishing to more than 30 million people.⁹ Environmental scientists characterize this habitat as one of the planet's most petroleum-impacted areas due to fifty years of oil extraction.¹⁰ The 2011 Environmental Assessment of Ogoni land by the United Nations Environment Programme revealed hydrocarbon-saturated mangrove forests, oil contamination in soil samples at five-meter depths, and benzene concentrations in drinking water 900 times higher than WHO recommendations.¹¹ Ogoni land is only a small portion of the impacted Niger Delta, and the research predicted that restoration would cost \$1 billion and take 25 to 30 years.¹² Over 1,010 oil spills occurred between 2015 and 2022, discharging an estimated 110,000 barrels into the Delta's marshes and waterways, according to Amnesty International's 2023 report.¹³ Many of these leaks were caused by corroded pipelines that were built in the 1960s and 1970s. These pipelines are currently being transferred to indigenous businesses, who inherit not only productive wells but also environmental time bombs.¹⁴

Another aspect of legacy pollution is gas flaring. Nigeria fires more associated gas annually, roughly 7.4 billion cubic meters, than any other country in Africa, despite a government rule that forbids routine flaring since 1984.¹⁵ Numerous epidemiological studies have documented the localized climate consequences, acid rain, and respiratory health problems caused by this flaring, which is centered in the Niger Delta.¹⁶ Do IOCs transfer responsibility for decades of illicit flaring and its health effects when they divest? Communities whose interactions with their surroundings have been permanently changed lie behind these figures. Two significant spills in 2008 and 2009 damaged mangrove trees that have supported indigenous livelihoods for generations in Bodo, an Ogoniland fishing town.¹⁷ Shell agreed to pay £55 million in compensation in 2015 following years of litigation, but the settlement did not call for a thorough cleanup, and ten years later, the waterways are still highly contaminated.¹⁸ Take into consideration the testimony of Rivers State community leader Celestine Akpobari from Kpor, which was recorded in the 2022 Environmental

⁹ C B Powell, 'The Ecology and Environmental Management of the Niger Delta' in EJ Alagoa (ed), *The Niger Delta in History* (Onyoma Publications 1989) 143, 168.

¹⁰ A A Kadafa, 'Environmental Impacts of Oil Exploration and Exploitation in the Niger Delta of Nigeria' [2012] 6 *Global Journal of Science Frontier Research Environment & Earth Sciences* 19.

¹¹ UNEP (n 2) 14–16.

¹² UNEP (n 2) 204.

¹³ Amnesty International, *A Criminal Enterprise? Shell's Involvement in Human Rights Violations in Nigeria in the 1990s* (Amnesty International 2023) 42–48.

¹⁴ P C Nwilo and OT Badejo, 'Oil Spill Problems and Management in the Niger Delta' [2005] (1) *International Oil Spill Conference Proceedings* 567, 570.

¹⁵ World Bank, 'Global Gas Flaring Reduction Partnership: Nigeria' (World Bank 2022).

¹⁶ GREE Ana, 'Air Pollution in the Niger Delta Area: Scope, Challenges and Remedies' in S I Omofonmwan and G I Osa-Edoh (eds), *The Political Ecology of Oil and Gas Activities in the Nigerian Aquatic Ecosystem* (Academic Publishing 2008) 34, 46.

¹⁷ J Vidal, 'Shell Announces £55m Payout for Nigeria Oil Spills' *The Guardian* (London, 7 January 2015).

¹⁸ ClientEarth, 'Bodo Community v Shell: The Settlement' (ClientEarth 2015).

Rights Action report: "My dad worked as a fisherman. I worked as a fisherman. There are no fish, therefore my son is unable to fish. For forty years, Shell has operations here. They have now sold to Belema Oil. According to Belema, the pollution occurred prior to their purchase of the property. Who is going to purify our water?"¹⁹ This is the human reality of legacy pollution: damage to future generations that endures despite changes in corporate control. Whether Nigerian law acknowledges and deals with this temporal aspect of environmental injustice is the legal question.

3. THE PETROLEUM INDUSTRY ACT 2021: PROMISE AND GAPS

Decommissioning and abandonment are the most pertinent environmental elements of the PIA. According to Section 232(1), licensees must create a "Decommissioning and Abandonment Fund" by making regular contributions based on asset value and anticipated decommissioning expenses.²⁰ This is a big step forward because there was no systematic way to finance the elimination of end-of-life facilities under previous legislation. The decommissioning fund, however, functions prospectively. It answers the question of who will pay to plug wells and disassemble platforms when production stops. The historical topic of who cleans up pollution generated during operational years is not addressed.²¹ When applied to divestment scenarios, this temporal constraint produces a major gap. An IOC operates a field from 1980 to 2024, divests to an indigenous firm, and the new operator creates a decommissioning fund for future closure. This is an example of a common transaction structure. In the meantime, the 1985, 1993, 2007, and 2016 oil leaks have not been cleaned up. There is no clear procedure in the Act to guarantee that these legacy sites are taken care of either before or after ownership transfer.²²

The Nigerian Upstream Petroleum Regulatory Commission (NUPRC) is authorised to approve asset transfers under Section 95 of the PIA, which requires parties to show "technical and financial capability" to perform commitments under petroleum licenses.²³ In theory, this clause enables NUPRC to evaluate potential purchasers' ability to handle environmental obligations. Implementation has proven difficult in practice. The primary focus of NUPRC's approval process is not remedial capability but rather financial capacity to sustain production.²⁴ The Commission does not require sellers to correct known contamination prior to divestiture completion, nor does it often demand environmental audits documenting legacy pollution as a condition of transfer approval.²⁵ Issues with institutional capability are reflected in this regulatory gap. Since its creation under the PIA in 2021, NUPRC has been working on its regulatory frameworks and enforcement

¹⁹Environmental Rights Action/Friends of the Earth Nigeria, *Divesting from Accountability: How International Oil Companies are Exiting the Niger Delta* (ERA/FoEN 2022) 67.

²⁰ Petroleum Industry Act 2021, s 232(1).

²¹ T Okonkwo, 'Decommissioning Provisions in the Petroleum Industry Act 2021: Prospects and Challenges' [2022] 19 *Nigerian Journal of Petroleum and Energy Law* 103, 124.

²² C Nwapi, 'A Legislative Proposal for Public Participation in Oil and Gas Decision-Making in Nigeria' [2015] 5 *Journal of Energy & Natural Resources Law* 21, 38.

²³ Petroleum Industry Act 2021, s 95.

²⁴ Y Omorogbe and A O Ordo, 'Ending Africa's Energy Deficit and the Law: A Nigerian Case Study' [2016] 9 *Journal of World Energy Law and Business* 194, 210.

²⁵ D Ayine, 'Governance and the Political Economy of Natural Resource Management in Africa: A Legal Perspective' [2019] 12 *Law, Environment and Development Journal* 1.



strategies.²⁶ The Commission lacks the staff and funding necessary to perform thorough environmental due diligence on intricate asset packages that include thousands of km of pipelines and hundreds of aged wells.²⁷ Because of this handicap, clever corporate actors are able to structure transactions in a way that minimizes environmental monitoring.

3.2 Environmental Management Plans

Operators must submit Environmental Management Plans (EMPs) outlining how they will prevent, minimize and manage environmental consequences in order to comply with the PIA.²⁸ EMPs need to cover community involvement, waste management, emissions control, and biodiversity preservation.²⁹ On paper, these standards seem strong. EMPs, however, have the same potential drawback as decommissioning funds. They control current activities rather than past pollution.³⁰ When an indigenous company purchases a field, it can file an EMP that promises excellent future environmental practices while keeping quiet about the 30-year buildup of unresolved spills, seeps, and flare damage.³¹ Furthermore, there has historically been a lack of enforcement of EMP agreements. Nigeria's state environmental protection agencies, NUPRC, and the National Oil Spill Detection and Response Agency (NOSDRA) all struggle with persistent underfunding, political meddling, and limitations in their technical capabilities.³² As a result, rather than serving as legally binding environmental protection measures, EMPs frequently serve as compliance documentation.

4. THE ALAME DECISION AND ITS IMPLICATIONS

The most recent development in decades of Niger Delta litigation in English courts is the ruling in *Alame & Ors v Shell Plc* in 2025.³³ The plaintiffs, who lived in the Rivers State settlements of Ogale and Bille, claimed compensation for alleged oil pollution that Shell's Nigerian subsidiary, Shell Petroleum Development Company (SPDC), had caused between 1989 and 2015.³⁴ Shell argued that claims pertaining to spills from the 1990s and early 2000s were time-barred under both Nigerian and English limitation statutes, citing a number of defences, including restriction of proceedings.³⁵ The UK High Court determined that the six-year statute of limitations under the relevant Limitation Law of Rivers State applied to negligence and nuisance claims resulting from oil pollution, using Nigerian law as the appropriate substantive law.³⁶ Crucially, the Court dismissed

²⁶ Nigerian Upstream Petroleum Regulatory Commission, 'Annual Report 2022' (NUPRC 2023) 45–52.

²⁷ B R Konne, 'Inadequate Monitoring and Enforcement in the Nigerian Oil Industry: The Case of Shell and Ogoniland' [2014] 47 *Cornell International Law Journal* 181, 204.

²⁸ Petroleum Industry Act 2021, s 104.

²⁹ PIA 2021, s 105.

³⁰ A O Ajugwo, 'Negative Effects of Gas Flaring: The Nigerian Experience' [2013] 1 *Journal of Environment Pollution and Human Health* 6.

³¹ A E Ite and others, 'Petroleum Exploration and Production: Past and Present Environmental Issues in the Nigeria's Niger Delta' [2013] 1 *American Journal of Environmental Protection* 78, 90.

³² KK Aaron, 'Governance and Legal Barriers to Effective Environmental Law Enforcement in Nigeria' in BA Badejo and OJ Taiwo (eds), *Environmental Law and Policy in Nigeria* (Faculty of Law University of Lagos 2016) 89, 112.

³³ *Alame & Ors v Shell Plc* [2025] EWHC 1539 (KB).

³⁴ *Alame* (n 33) [3]–[12].

³⁵ *Alame* (n 33) [45]–[58].

³⁶ *Alame* (n 33) [89]–[94]; Limitation Law of Rivers State, Cap L64, s 8.

the plaintiffs' claims that the statute of limitations should not apply while the consequences of pollution continued or that every day of ongoing contamination constituted a new cause of action.³⁷ This ruling creates what environmental attorneys have called "temporal immunity through transaction timing," thus barring many legacy contamination claims once IOCs divest and enough time passes.³⁸

Jurisdiction is another aspect of the divestment-liability issue that Alame highlights. Affected communities might file claims in English courts using parent company duty of care theories as long as Shell plc continued to operate in Nigeria through SPDC.³⁹ This jurisdictional hook vanishes after divestment. Because the indigenous buyer solely conducts business in Nigeria, they are unable to utilize English courts, which have better procedural safeguards, discovery procedures, and enforcement opportunities.⁴⁰ This change in jurisdiction is not coincidental. Strategic litigation avoidance is frequently achieved through corporate reorganization. IOCs construct corporate veils that make it more difficult for claimants to contact ultimate beneficial owners by placing indigenous firms between parent corporations and operational assets.⁴¹ Although they are technically accessible, Nigerian courts have a backlog of cases, problems with corruption, and little experience handling complicated environmental cases.⁴² The question of whether Nigerian law should acknowledge a non-transferable responsibility scheme for legacy pollution is maybe more important than what Alame decided. Without considering whether the PIA or other recent legislation had altered conventional principles in the divestiture scenario, the Court applied the existing restriction and liability standards mechanically.⁴³ This is a squandered chance for judicial creativity. Courts have historically filled in the gaps left by legislation that is insufficient for new situations, especially under common law systems.⁴⁴ The Court could have investigated whether the interpretation of unclear statutory provisions is influenced by growing international environmental law norms, constitutional rights to a healthy environment under section 20 of the Nigerian Constitution, or environmental justice principles.⁴⁵ Rather, the ruling upholds a legal system that shields wealthy IOCs from responsibility through corporate structures, procedural obstacles, and time constraints, leaving host communities with progressively insufficient legal recourse.⁴⁶

³⁷ Alame (n 33) [102]–[115].

³⁸ A O Enabulele, 'Limitation of Actions in Environmental Rights Litigation in Nigeria: Towards a Progressive Interpretation' [2024] 15 *Journal of Sustainable Development Law and Policy* 34, 56.

³⁹ *Okpabi v Royal Dutch Shell Plc* [2021] UKSC 3; R Meeran, 'Tort Litigation against Multinational Corporations for Violation of Human Rights: An Overview of the Position Outside the United States' [2011] 3 *City University of Hong Kong Law Review* 1.

⁴⁰ L Enneking, *Foreign Direct Liability and Beyond: Exploring the Role of Tort Law in Promoting International Corporate Social Responsibility and Accountability* (Eleven International Publishing 2012) 234–267.

⁴¹ P Muchlinski, 'Corporations in International Litigation: Problems of Jurisdiction and the United Kingdom Asbestos Cases' [2001] 50 *International and Comparative Law Quarterly* 1.

⁴² O Agbakoba and H Ogbonna, 'Access to Justice and Human Rights Protection in Nigeria: Problems and Prospects' [2004] 1 *SUR International Journal on Human Rights* 95, 110.

⁴³ L K McAllister, 'Judging GMOs: Judicial Application of the Precautionary Principle in Brazil' [2015] 44 *Ecology Law Quarterly* 1.

⁴⁴ WN Eskridge and PP Frickey, 'Statutory Interpretation as Practical Reasoning' [1990] 42 *Stanford Law Review* 321, 384.

⁴⁵ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 20, 33, 34.

⁴⁶ E J C Duru, 'Right to Healthy Environment: The Nigerian Perspective' [2013] 7 *African Journal of Legal Studies* 23, 45.



5. COMPARATIVE FRAMEWORKS

5.1 United States

Similar legacy contamination issues arose in the United States in the late 20th century when industrial operations shuttered, leaving contaminated areas without responsible owners. In response, Congress passed the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also referred to as Superfund, in 1980.⁴⁷ The rigorous, joint and several, and retroactive liability framework of CERCLA is both its genius and its source of dispute.⁴⁸ Regardless of when contamination occurred or who now owns the property, current owners, previous owners, hazardous waste producers, and transporters may all be held accountable for cleanup expenses.⁴⁹ Even if the disposal was lawful at the time and the parties took reasonable precautions, liability nevertheless exists.⁵⁰ The "seller escapes liability" approach is expressly rejected by this framework. A business that sold a chemical factory after operating it from 1960 to 1990 might still be held accountable for damage found in 2024.⁵¹ The Act does not allow wholesale escape through asset sales, but it does grant contribution rights that enable culpable parties to pursue cost recovery from other responsible parties.⁵² CERCLA has drawn criticism for being both economically inefficient and possibly unjust to parties that followed the rules.⁵³ Nonetheless, it has effectively enabled the cleanup of thousands of contaminated sites and produced strong incentives for businesses to deal with environmental concerns prior to divesting rather than shifting issues to buyers with insufficient funding.⁵⁴

5.2 European Union

Although less strict than CERCLA, the EU's Environmental Liability Directive (2004/35/EC) creates operator liability for environmental damage based on the "polluter pays" principle.⁵⁵ Importantly, the operator who causes harm is liable rather than the present owner.⁵⁶ The Directive makes a distinction between certain occupational activities that need proof of fault and those mentioned in Annex III, which are subject to strict responsibility.⁵⁷ Oil firms are strictly liable for harm to protected species, natural habitats, water resources, and land contamination that poses health risks because petroleum operations are covered by Annex III.⁵⁸ Different member states have applied the Directive in different ways, although some, like Germany and the Netherlands, have

⁴⁷ Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC §§ 9601–9675 (1980).

⁴⁸ *United States v Chem-Dyne Corp*, 572 F Supp 802 (SD Ohio 1983).

⁴⁹ 42 USC § 9607(a).

⁵⁰ *New York v Shore Realty Corp*, 759 F2d 1032 (2d Cir 1985).

⁵¹ W J Lynott and LP Williams, 'CERCLA Settlements: Effective Use of Covenants Not to Sue and Releases' (1990) 21 *Environmental Law Reporter* 10278, 10285.

⁵² 42 USC § 9613(f).

⁵³ R L Revesz and R B Stewart, 'The Superfund Debate' in RL Revesz and RB Stewart (eds), *Analyzing Superfund: Economics, Science and Law* (Resources for the Future 1995) 3, 15.

⁵⁴ K N Probst and others, *Footing the Bill for Superfund Cleanups: Who Pays and How?* (Brookings Institution 1995) 87–103.

⁵⁵ Directive 2004/35/EC of the European Parliament and of the Council on Environmental Liability [2004] OJ L143/56.

⁵⁶ Directive 2004/35/EC, art 2(6).

⁵⁷ Directive 2004/35/EC, art 3.

⁵⁸ Directive 2004/35/EC, annex III.

developed mechanisms to pursue former operators for remedial expenses as well as registers of contaminated sites.⁵⁹ These systems acknowledge that business reorganization should not eliminate the temporal depth of environmental impact.

5.3 Lessons for Nigeria

These comparable instances show that there are established legal processes to handle legacy pollution in divestment contexts and that Nigeria's problem is not unique. The following fundamental ideas apply to the Nigerian context: First, just because ownership shifts or time goes by doesn't mean that environmental responsibilities should stop. Regardless of later asset transfers, parties whose activity resulted in contamination should continue to be theoretically accountable for remediation. Second, authorities should demand proof of financial capability to resolve known and reasonably foreseeable environmental risks through bonds, insurance, or parent company guarantees before sanctioning divestiture. Third, environmental audits that detail the extent and expense of legacy contamination should be required before divestment clearance is granted. The findings should be made public and included in the conditions of the deal. Fourth, if several people contributed to the contamination, they should all be held accountable and have the ability to divide up the costs. This avoids the "empty shell" issue, in which there are insufficient resources for the sole remaining responsible party. Fifth, limitation periods should only be extended or started when contamination is found, not when pollution really happened, because environmental harm is latent.

6. THE REGULATORY FAILURE

The PIA's Section 95 gives NUPRC the authority to accept or reject petroleum asset transfers based on whether potential assignees have "technical and financial capability to perform all the obligations... under the relevant petroleum prospecting licence or petroleum mining lease."⁶⁰ Environmental cleanup responsibilities might possibly fall under this clause. NUPRC has not, however, interpreted its mandate broadly. Production capacity, safety management systems, and financial stability for continuing operations are the main topics of the Commission's publicly accessible asset transfer rules.⁶¹ Other than broad remarks regarding adherence to environmental regulations, environmental liabilities receive little attention.⁶² This limited understanding is an example of institutional route dependence or, more charitably, regulatory capture. The Department of Petroleum Resources and the Petroleum Inspectorate, NUPRC's predecessor organizations, prioritized government income and production maximization over environmental preservation.⁶³ Despite the PIA's purported improvements, this mindset has been passed down to the Commission.

⁵⁹ L Bergkamp and B Goldsmith, *The EU Environmental Liability Directive: A Commentary* (Oxford University Press 2013) 156–189.

⁶⁰ Petroleum Industry Act 2021, s 95(1).

⁶¹ Nigerian Upstream Petroleum Regulatory Commission, 'Guidelines for Asset Transfer' (NUPRC 2022) 12–18.

⁶² B Nwete, 'Institutional Frameworks for Oil and Gas Administration: Lessons for Nigeria' [2007] 6 *Journal of Energy & Natural Resources Law* 527, 550.

⁶³ A Ikelegbe, 'The Economy of Conflict in the Oil Rich Niger Delta Region of Nigeria' [2005] 5 *Nordic Journal of African Studies* 23, 55.



Nigeria should require that the divesting party obtain a "Clean State Certificate" from the appropriate environmental regulators, the Federal Ministry of Environment for general environmental compliance, NOSDRA for oil spills, and state environmental agencies for general pollution, before the NUPRC approves asset transfers.⁶⁴ Independent environmental specialists would be required to record all contamination at sites being transferred, including soil and groundwater tests, pipeline integrity testing, and air quality monitoring, in order to get the Clean State Certificate. If pollution is found, sellers must either create escrow accounts big enough to pay for third-party cleanup or finish remediation before divesting. Until one of these requirements is met, the certificate will not be granted. To enable informed participation in regulatory processes, assessment results and remediation plans must be made public and given to host communities. Sellers are required to pay for continuing environmental monitoring for a predetermined amount of time after divestment for locations where contamination cannot be cleaned up right away. With this paradigm, NUPRC becomes an active environmental gatekeeper instead of a passive transaction approver. Additionally, it gives localities the ability to contest the issue of a Clean State Certificate if they have proof of unreported contamination.⁶⁵

7. THE MORAL DIMENSION

What do we owe to people whose lands have been exploited for national and international advantage but who incur disproportionate environmental costs? This is a fundamental moral concern that goes beyond legal doctrine and economic analysis. For more than 60 years, the oil of the Niger Delta has powered Nigerian prosperity and benefited multinational multinationals. It has brought in trillions of dollars.⁶⁶ However, the Ogoni, Ijaw, Itsekiri, and Urhobo producing communities continue to be among Nigeria's poorest, their traditional means of subsistence ruined by pollution, their health jeopardized by pollutants, and their children's futures mortgaged to environmental destruction they did not cause and are unable to reverse.⁶⁷ IOCs take accrued earnings and leave accumulated losses when they divest. Indigenous buyers inherit hazardous landscapes along with new sources of income. Only ongoing exposure to pollutants that will last for generations is provided to host populations; neither revenues nor cleanup are received.⁶⁸ This is a lived reality rather than an abstract form of injustice. This suffering was encapsulated in testimony at the Ocale Community hearing before the African Commission on Human and Peoples' Rights in 2021: "They took our oil." Our water was contaminated by them. They are now departing. The law says we cannot stop them, and we are slowly dying. Is this fair?⁶⁹ In addition to facilitating trade, law serves to uphold justice, safeguard the weak, and hold the powerful responsible.

⁶⁴ National Oil Spill Detection and Response Agency Act 2006.

⁶⁵ J G Frynas, 'Legal Change in Africa: Evidence from Oil-Related Litigation in Nigeria' [1999] 43 *African Affairs* 121, 150.

⁶⁶ Central Bank of Nigeria, 'Oil Revenue Data 1970–2023' (CBN Statistical Bulletin 2024) Table 6.2.

⁶⁷ U Idemudia and UE Ite, 'Demystifying the Niger Delta Conflict: Towards an Integrated Explanation' [2006] 13 *Review of African Political Economy* 391, 406.

⁶⁸ C Obi, 'Oil Extraction, Dispossession, Resistance, and Conflict in Nigeria's Oil-Rich Niger Delta' [2010] 30 *Canadian Journal of Development Studies* 219, 236.

⁶⁹ African Commission on Human and Peoples' Rights, 'Community Hearing on Environmental Pollution in Ogoniland' (ACHPR 2021) Transcript, 23.

Retaining environmental culpability is a prerequisite for legal systems that claim to serve justice rather than just economic efficiency; it is not a radical innovation.

8. CONCLUSION

Although controversial, the description of IOC disengagement as a "crime scene exit" is accurate. For many years, oil extraction brought great expenditures along with enormous revenues. Communities suffered, pipelines burst, infrastructure decayed, and gas flared. The businesses most accountable for this deterioration are now leaving, leaving cleanup responsibilities to organizations that lack the resources or will to perform them, as economic calculations and climatic pressures change. Although the Petroleum Industry Act 2021 is a major step toward modernizing Nigerian petroleum administration, it has a serious flaw: it does not adequately address legacy contamination liabilities in divestiture situations. This problem is exacerbated by the Alame ruling, which applies statute of limitations in a mechanical manner without taking into account whether the law should change to accommodate new issues brought about by corporate restructuring. Nigeria must make a decision. As IOCs divest to undercapitalized indigenous businesses, environmental liabilities mount up unfulfilled, and host communities exhaust all available legal remedies, it may let existing tendencies to continue. This route results in increased environmental injustice, government-funded cleanup, and widespread desertion. As an alternative, Nigeria could implement the reforms outlined in this article: financial guarantees guaranteeing remediation funding, NUPRC Clean State Certificates, mandatory environmental audits prior to divestment approval, ten-year retention of seller liability for legacy contamination, and extended statute of limitations protecting community rights. These systems work well elsewhere and can be modified to fit Nigerian conditions. In order to ensure that accountability for legacy pollution is non-transferable regardless of asset ownership changes, the National Assembly should immediately alter the PIA to implement the "Polluter Remains" principle. In order to mandate environmental due diligence prior to transfer approval, NUPRC should interpret its current statutory power broadly. Furthermore, Nigerian courts ought to acknowledge that environmental justice necessitates changing legal theory to align with changing business tactics. Oil is still Nigeria's past and present, but green energy might be its future. Whether Nigeria's judicial system defends the weak or serves the strong will depend on how we handle that history and whether we demand accountability or allow avoidance. The Niger Delta has endured enough hardship. Its communities ought to have laws that benefit them as well as those who made money off of their exploitation. Divestment cannot be used as a means of impunity. The big escape must be stopped at the courthouse door and not let to go via corporate barriers intended to avoid punishment. Nigerian environmental law faces this dilemma, and the time to address it is now, before future generations inherit pollution that cannot be cleaned up and injuries that cannot be compensated.



9. RECOMMENDATIONS

1. Amend the Petroleum Industry Act 2021 to Preserve Legacy Environmental Liability

The National Assembly should amend the Petroleum Industry Act (PIA) 2021 to expressly provide that divestment of petroleum assets does not extinguish or transfer liability for pre-existing environmental pollution. The Act should adopt the “Polluter Remains” principle, under which the original polluting company remains jointly and severally liable with the acquiring company for all environmental damage that occurred before the transfer of assets. Such an amendment would prevent International Oil Companies (IOCs) from escaping accountability through corporate restructuring and ensure that host communities retain effective legal remedies against financially capable entities.

2. Introduce Mandatory Environmental Due Diligence and Financial Assurance Before Divestment

The Nigerian Upstream Petroleum Regulatory Commission (NUPRC) should make comprehensive environmental audits and remediation plans mandatory before approving any divestment. Every proposed asset transfer should be accompanied by an independently verified environmental assessment, a remediation programme, and sufficient financial guarantees such as environmental bonds, escrow accounts, or cleanup trust funds to cover the cost of restoring contaminated sites. Divestment approval should only be granted after the issuance of a Clean State Certificate confirming that legacy environmental obligations have been adequately addressed.

3. Reform Limitation Laws to Protect Victims of Environmental Harm

Nigeria should reform its limitation laws by introducing special statutory provisions for environmental pollution claims. Since oil contamination often produces latent and continuing damage, the limitation period should begin to run from the date the injury is discovered or reasonably ought to have been discovered, rather than from the date of the original spill. In addition, environmental pollution should be recognised as a continuing wrong where contamination persists. This reform would prevent technical limitation rules from defeating legitimate claims and would promote substantive environmental justice for affected communities.

4. Strengthen Judicial and Regulatory Enforcement of Environmental Accountability

Nigerian courts and regulatory institutions should adopt a more purposive approach to environmental justice by prioritizing the constitutional rights to life, dignity, and a healthy environment when determining disputes arising from petroleum divestments. Courts should interpret environmental obligations in a manner that prevents corporate entities from using restructuring or asset transfers to evade responsibility for legacy pollution. At the same time, regulatory agencies should intensify post-divestment monitoring, enforce compliance with remediation obligations, and impose substantial administrative and financial sanctions on companies that fail to remediate environmental damage before or after divestment. This would reinforce corporate accountability and restore public confidence in Nigeria’s environmental governance framework.