

Addressing Historical Environmental Injustices under Nigeria's Petroleum Industry Legal Regime

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Abstract

The petroleum industry is widely regarded as one of the most polluting industries globally. In Nigeria, it is notorious for degrading the environment in the Niger Delta. This has led to criticism of the inefficient legal framework, which fails to hold multinational oil companies accountable for the negative impact of their operations on host communities and the natural environment. Consequently, the calls for reform culminated in the establishment of the **Petroleum Industry Act, 2021**. The Act is credited with restructuring the industry's governance, legal, and financial framework, ushering in a new petroleum industry regime. It is hoped that this legislation is well-positioned to address inefficiencies that prior industry legislation failed to address, including the need to hold operators accountable for decades of environmental degradation that also led to the loss of traditional livelihoods in host communities. With the enactment of the **Petroleum Industry Act, 2021**, the question arises whether the current petroleum industry regime is robust enough to address the environmental harms that have persisted since the industry's inception. The article concludes that, although the Act mandates corporate social responsibility and covers remediation for future harms, these measures fall short of adequately addressing past environmental pollution and thus fail to address historical ecological justice issues. It therefore advocates leveraging the PIA to hypothecate funds for the cleanup of the Niger Delta, thereby enabling sustainable petroleum operations that are responsive to environmental protection.

Keywords

Environmental Degradation, Corrective Justice, Historical Injustice, Environmental Justice, Polluter Pays Principle, Petroleum Industry Act

1. Introduction

Nigeria's petroleum industry, which predates the country's independence, remains a crucial component of its economy (Obi, 2024). As a major oil-producing nation in Africa, Nigeria has experienced profound environmental and social impacts from oil extraction, particularly in the Niger Delta region. The Niger Delta, home to diverse flora and fauna, including rare species of flowers, birds, ants, aquatic and terrestrial animals, has been severely affected by oil exploration and exploitation. These complex processes include aerial surveys, drilling, production, and accidental spills (Worika & Amechi, 2023). The effects include soil degradation, water contamination and pollution, deforestation resulting from damage to oil infrastructure, air and noise pollution, ecological distortion and loss of biodiversity, and general environmental degradation. They also include soil infertility and pollution of rivers, creeks, and rivulets, which stifle the farming and fishing activities of local communities, a primary source of livelihood (Worika & Amechi, 2023).

Consequently, environmental pollution from oil companies' activities in Nigeria's Niger Delta region has acquired worldwide notoriety¹. In recent years, there has been growing concern about the environmental responsibilities of international oil corporations operating in Nigeria. Similarly, the concept of corporate responsibility, particularly with respect to environmental stewardship, has gained significant prominence worldwide and in Nigeria, as the world grapples with pressing ecological challenges such as climate change. The petroleum industry's operations have given rise to concerns and protests, including those related to environmental degradation. Historically, oil spills, gas flaring, and inadequate remediation have harmed ecosystems and local communities. In response, the PIA was designed to embed sustainability and environmental accountability into the legal and operational framework for the petroleum sector. Consequently, the roles and responsibilities of the International Oil Companies (IOCs) operating within Nigeria's vast hydrocarbon landscape have also come under intense scrutiny. This has prompted calls for integrating principles of justice into the energy sector.

The concept of justice is a universal principle that applies across industries and phenomena (Obi, 2024). For Fotros and Torkamani (2019), justice, one of the most important concerns, is understood as the creation of a special relationship between the highest humanitarian ideals and the way people live, including prosperity and the enjoyment of social benefits such as wealth and dignity. Before the emergence of a distinct literature, climate justice and environmental justice were two broadly based and globally oriented justice movements within the energy research literature. The concept of environmental justice is historically associated

¹See Environmental Rights Action/Friends of the Earth Nigeria and Climate Justice Programme, (2005) *Gas Flaring in Nigeria: A Human Rights, Environmental and Economic Monstrosity* Amsterdam: ERA; Human Rights Watch, (1995) *THE OGONI CRISIS: A Case-Study of Military Repression in South Eastern Nigeria*, 7(5), Amsterdam: HRW, available at <http://www.hrw.org/legacy/reports/1995/Nigeria.htm>.

with community activism across the USA, which has highlighted ecological degradation in localities resulting from polluting industrial activities since the 1970s. Energy justice, similar in philosophy to environmental justice, however, aims to provide all individuals, across all areas, with safe, affordable, and sustainable energy. Across both literatures, justice appears to be a unifying concept, albeit from an anthropocentric sense. On the contrary, the convergence of both should be centred on the provision of affordable, sustainable energy with minimal adverse effects on the natural environment and on the overall ecosystem health.

Overall, the foundation of the concept of justice is premised on the recognition of the ‘inherent dignity, equal and inalienable rights of all members of the human family’ at all times². Therefore, justice can be viewed as conduct or action conforming to a legal regime that protects the rights and obligations of people. Various forms of justice, including procedural, substantive, distributive, restorative, and retributive, offer distinct remedies with differing implications and assumptions. Restorative justice, for instance, implies that something has been broken and requires fixing or restoration, highlighting the need for redress and reparation in cases of environmental harm.

The country’s socio-economic landscape is closely linked to its oil industry, making the environmental impact of IOCs a matter of paramount concern. Historically, oil spills, gas flaring, and inadequate remediation have harmed ecosystems and local communities (Shehu et al., 2025). The adverse effects of oil exploration in the Niger Delta are well documented, as exemplified by the United Nations Environmental Programme (UNEP) 2011³—report on Ogoniland, which revealed widespread environmental pollution and degradation. The report also stated the restoration efforts in Ogoniland could take between 25 and 30 years. Thus, communities residing in oil-rich regions have long raised grievances ranging from polluted waterways to degraded farmlands (Ekot, 2023). This reputational damage prompted IOCs to engage in Corporate Social Responsibility (CSR) activities, including the provision of social amenities to host communities. However, these CSR efforts, which culminate in the provision of social amenities, have been criticized for failing to address the underlying environmental degradation in the Niger Delta⁴.

This highlights the need for a robust legal framework grounded in principles of accountability and justice. In response, the PIA was designed to embed sustainability and environmental accountability into the legal and operational framework

²See the Preamble to the Universal Declaration of human rights at:

<https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

³United Nations Environmental Programme, Environmental Assessment of Ogoniland, January 17, 2011, available at <https://www.unep.org/resources/report/environmental-assessment-ogoniland>. The Ogoniland clean-up is implemented by Hydrocarbon Pollution Remediation Project (HYPREP) under the Ministry of Environment. The fund also aims to promote local capacity building and environmental awareness. It also seeks to ensure sustainable livelihoods and development while fostering security and peacebuilding efforts.

⁴Some of these social amenities include: construction of roads, religious, health and community centres, providing educational scholarships, social infrastructures among others.

for the petroleum sector (Shehu et al., 2025). This has prompted an assessment of whether the current petroleum exploration regime addresses past injustices related to environmental degradation associated with oil exploration. The enactment of the Petroleum Industry Act (PIA, 2021) is perceived to have largely entrenched the concept of justice into petroleum resource management in Nigeria, thereby allegedly addressing the concerns of various stakeholders (Obi, 2024). From an environmental standpoint, this raises pertinent questions about the efficacy of the PIA in addressing contentious issues that precipitated regional agitations, notably environmental degradation.

Furthermore, compliance with the PIA's provisions raises questions about its capacity to rectify the circumstances, particularly with respect to corrective justice. The adequacy of the current petroleum resource management framework in addressing historical environmental injustices is uncertain. Consequently, a critical evaluation of the PIA's provisions on the environmental responsibilities of IOCs is necessary to assess their potential to address these injustices. This study examines the PIA 2021 through the lens of corrective justice, assessing the extent to which it addresses the environmental responsibilities of International Oil Companies in Nigeria. Specifically, it investigates whether the new petroleum exploration regime adequately addresses the historical environmental injustices perpetrated by oil exploration activities in the region. Corrective justice is a foundational legal principle that aims to rectify injustices or harms suffered by individuals or entities. Fundamentally, it centers on addressing and remedying imbalances or harms caused by wrongful actions. Nigeria's status as one of Africa's leading oil-producing countries (Nhede, 2023) provides an ideal context for further exploring these issues.

2. Principle of Corrective Justice

The principle of corrective justice has far-reaching implications across disciplines, including economics, philosophy, and law. Tort law provides a framework for addressing civil wrongs and liability to do justice. Corrective justice is a foundational legal principle that aims to rectify injustices or harms suffered by individuals or entities. Scholars construe corrective justice differently. For Weinrib (2012), the upshot of the principle of corrective justice is to restore the starting point between two parties—that is, the state that existed before one of them acted wrongfully toward the other. In that case, the principle of corrective justice requires restoration of the original situation. Restoration corrects both the wrongdoer's injustice and the victim's harm in a single operation. Injustice and restoration are therefore correlatively structured. From Coleman's (1992) perspective, corrective justice is a moral principle that provides reasons for the wrongdoer's restoration. This corresponds to the victim's right to restoration. Corrective justice, then, consists of two elements: wrongfulness and responsibility. The latter corresponds to the legal maxim that where there is a right, there is a remedy, and aligns with the purpose of tort law, which aims to compensate the victim for harm suffered. This can take

the form of equivalent compensation, such as restoration to the pre-pollution state, or substitute compensation, offering alternative benefits or loss of expectations in terms of specific earnings capacity (Loth, 2015).

However, both Weinrib and Coleman agree that corrective justice does not provide standards to justify and limit liability. According to Loth, this limitation can be addressed by applying both corrective and distributive justice. Applying corrective justice to environmental degradation raises questions about the justification and limits of liability for historical ecological harm. Corrective justice seeks to restore the status quo ante bellum by compensating victims of harm, in this instance the state that preceded the acts of degradation. This can take the form of equivalent compensation, such as restoration to the pre-pollution state, or substitute compensation, offering alternative benefits. In the context of environmental degradation, restoration to the status quo is the primary form of compensation applicable to the natural environment.

The principles of corrective and distributive justice offer distinct approaches to addressing environmental harm. Corrective justice focuses on restoring the existing equilibrium, while distributive justice emphasizes the fair distribution of benefits and burdens. In the Nigerian Delta, allegations of culpability on both IOCs and host communities complicate the application of distributive justice. While these allegations may justify sharing burdens between the IOCs and host communities, culpability does not extend to the natural environment. In this context, a framework based on distributive justice is insufficient to justify the wrong of historical environmental degradation.

By contrast, corrective justice is considered a key feature of environmental justice (Donnelly, 2023) and complements distributive and procedural justice. Distributive and procedural forms of justice are inadequate to address the varied concerns of environmental protection. For Bryant (1995), procedural actions intended to remedy maldistribution and environmental exposure are insufficient. Instead, the remedy lies in ‘changes in the structural underpinnings of society that give birth to environmental and social degradation’. In this context, corrective justice is understood as a remedy for environmental injustice. This involves fairness in the assignment of punishments for lawbreaking, in the compensation awarded, and attempts to restore the victim to the condition they were in before the unjust activity occurred (Kuehn, 2000). In doing so, corrective justice has the potential to prioritize the rectification of past wrongs, aiming to restore the victim to their pre-pollution state. While the aforementioned perspective is valid, it is anthropocentric, implying that environmental protection is contingent on its utility to humans rather than being an end in itself.

The principle of corrective justice can be operationalized through the polluter-pays principle (PPP), a prominent backward-looking (García-Portela, 2023) principle rooted in the broader legal philosophy of corrective justice. It has also emerged as a fundamental concept in environmental law, advocating that those responsible for pollution bear the costs of preventing, reducing, or rectifying it.

Originating in the 1972 Organisation for Economic Co-operation and Development (OECD) report, the PPP has since become a core component of international environmental governance, shaping policies and regulations that protect ecosystems and human health (Radhakrishnan, 2024). The principle aligns with sustainability, ensuring that the costs of pollution are not externalized onto society but absorbed by the polluters themselves. It is therefore a foundational legal principle, grounded in fairness and justice, that holds individuals, whether private or corporate, liable for their activities (Radhakrishnan, 2024). The elements of PPP (Radhakrishnan, 2024) can be viewed from different standpoints. As an economic principle, it allocates pollution-control costs to polluters, thereby avoiding overproduction of goods and services that could disrupt the market. From a legal perspective, a polluter should be responsible for the full cost of environmental liability, thereby limiting the extent of likely injury. From an environmentalist perspective, it incorporates environmental use, including waste management competencies, into the company's economic plan through economic mechanisms such as pollution charges and permits.

Despite its widespread acceptance, the legal interpretation and enforcement of the PPP, particularly in the petroleum sector, are fraught with complexities and political, economic, and legal barriers. In Nigeria, the petroleum industry has historically been structured through Joint Venture Agreements (JVAs) between the IOCs and the Nigerian government, through the Nigerian National Petroleum Corporation Limited (NNPC), to exploit Nigeria's hydrocarbon resources (Chukwuemeka et al., 2025). Typically, the NNPC holds a majority equity stake (between 55% - 60%), while the IOCs contribute technical expertise, capital, and management capabilities (Uche, 2023). Prior to the enactment of the PIA, the Department of Petroleum Resources, the regulatory arm of the Ministry of Petroleum Resources, oversaw the petroleum industry and ensured compliance with health, safety, and environmental standards. Under the PIA, the significant reforms have resulted in the establishment of two new regulatory agencies for both upstream and downstream to wit: Nigerian Midstream and Downstream Petroleum Regulatory Authority and the Nigerian Upstream Petroleum Regulatory Commission⁵.

The enforcement of the PPP within Nigeria's oil and gas legal framework has posed several challenges and complexities. For one, the JVA arrangements involved a government agency serving as the regulator while overseeing the government's commercial interest in oil exploration, creating a precarious situation in which it was required to regulate itself. Consequently, the historical environmental pollution and degradation in the Delta are jointly shared by the IOCs and the Nigerian government. This had complicated the implementation and enforcement of the PPP, meaning that the polluter also serves as the regulator.

⁵The PIA introduced a comprehensive overhaul of the petroleum regulatory landscape, dissolving the DPR, the Petroleum Products Pricing Regulatory Agency (PPPRA), and the Petroleum Equalisation Fund (PEF).

Consequently, any reference to IOCs and liability implicates the Federal government, particularly with respect to the historical environmental injustices. Enforcement faces significant challenges (Kuehn, 2000) due to weak monitoring, limited capacity, and insufficient resources. Despite legal incorporation, enforcement remains ineffective because of high costs, political interference, and a lack of public awareness. These issues hinder accountability for polluters. Enforcement challenges are further compounded by the need for robust monitoring systems, adequate legal mechanisms, and effective sanctions that ensure accountability. Legal systems struggle with inadequate enforcement capacity, weak penalties, and insufficient public awareness, making it difficult to hold polluters accountable in practice. Nevertheless, in the Nigerian environmental law context, this principle requires polluters to take responsibility for environmental damage and to work toward restoring the environment to its original state (Omoriegie, 2016). This justifies compensation claims across various aspects of environmental pollution and provides the impetus for holding polluters accountable for environmental harm.

Corrective justice plays a crucial role in ensuring IOCs are held accountable for their environmental responsibilities, including adherence to national and international laws, voluntary codes and principles adopted by companies (Vanderheiden, 2011), disclosure of environmental performance, and provision of adequate compensation to affected communities. This includes conducting regular impact assessments, offering effective remedies for ecological damage, rehabilitating damaged areas (Asmelash & Gorini, 2021), and contributing to environmental protection projects and funds. The current petroleum exploration regime is being scrutinized for its efficacy in addressing historical ecological injustices associated with oil exploration activities. Corrective justice provides a framework for addressing these concerns, emphasizing accountability, liability, and remediation. Numerous instances illustrate the practical application of the principle in the oil and gas sector. A notable example is Shell's agreement to pay \$83.5 million to 15,600 Nigerian fishermen as compensation for two oil spills in 2008-09, which devastated their livelihoods and environments⁶. This settlement demonstrates the principle of corrective justice, where the polluter is held accountable for the harm caused.

Furthermore, the Supreme Court of the Netherlands' 2021⁷ ruling that Shell could be held liable for human rights violations committed by its Nigerian subsidiary underscores the expanding scope of corporate accountability. This decision allowed four Nigerian widows, who lost their husbands during a military forces' killing spree in 1995, to sue Shell⁸, exemplifying the retroactive application

⁶Human Rights Watch; Oil, Mining, and Natural Resources, available at <https://www.hrw.org/topic/economic-justice-and-rights/oil-mining-and-natural-resources>.

⁷Kiobel v. Royal Dutch Petroleum Co., 569 U.S. 108 (2013) available at <https://supreme.justia.com/cases/federal/us/569/108/>.

⁸National Whistleblower Center; Bribery in the Oil and Gas Industry. Available at <https://www.whistleblowers.org/oil-gas-case-studies/>.

of corrective justice. The ECOWAS Court's⁹ 2012 order directing Nigeria's government to punish those responsible for environmental damage and human rights abuses, while providing adequate remedies to victims, reinforces the importance of corrective justice in addressing ecological harm.

Additionally, the establishment of the Ogoniland Environmental Restoration Fund¹⁰, following the UNEP's report on widespread contamination in Ogoniland, the \$1 billion fund, contributed by IOCs and the Federal government, demonstrates a commitment to corrective justice. It aims to address historical environmental degradation and restore the affected areas. These examples illustrate the evolving application of corrective justice in the oil and gas sector, emphasizing the importance of accountability and remediation.

Corrective justice has been applied in various contexts to address environmental harm and compensate affected communities. A notable example is the US Flint Water crisis¹¹, where the state of Michigan implemented corrective measures to restore the water infrastructure and compensate affected residents, primarily African American communities, who were exposed to lead-contaminated water. This instance demonstrates the application of corrective justice in addressing environmental injustices. It provides a framework for addressing historical environmental wrongs and preventing future injustices through accountability. However, it has limitations, as it does not provide clear standards for justification and limitation of liability.

From an ecocentric perspective, distributive justice is inadequate to address historical wrongs, as it focuses on the equitable distribution of benefits and burdens, rather than rectifying past harm. A hybrid approach that combines corrective and distributive justice is preferable, as each plays a distinct role in addressing environmental damage holistically. Corrective justice aims to redress historical wrongs and prevent future harm, while distributive justice aims to avoid harm and to improve the natural environment. Given the limitations of corrective justice, collective responsibility of the entire industry can help share the burden of historical environmental damage, reducing the weight on individual companies. This approach aligns with the Petroleum Industry Act's structure, under which companies contribute to the Environmental Remediation Fund, thereby promoting a shared responsibility for environmental restoration.

3. Legal Framework for Environmental Protection under the PIA in Nigeria

The legal framework governing environmental protection in Nigeria is predicated

⁹Amnesty International, Groundbreaking ECOWAS court judgment orders government to punish oil companies for pollution, December 16 2012. Available at:

<https://www.amnesty.org/en/latest/press-release/2012/12/ground-breaking-ecowas-court-judgment-orders-government-punish-oil-companies/>.

¹⁰United Nations Environmental Programme, Nigeria launches \$1billion Ogoniland Clean up and Restoration Programme, June 2 2026, available at

<https://www.unep.org/news-and-stories/press-release/nigeria-launches-1-billion-ogoniland-clean-and-restoration-programme>.

¹¹Flint water crisis: \$636m settlement reached for lead poisoning victims, <https://www.bbc.com/news/world-us-canada-59243426>.

upon several key statutes. The Nigerian Constitution of 1999 (as amended) provides the foundational basis for environmental policy, with Section 20 explicitly empowering the state to protect and enhance the environment, safeguarding Nigeria's water, air, land, forest, and wildlife. This constitutional provision provides the basis for developing policies and regulations to ensure a secure and healthy environment for all citizens¹².

The PIA constitutes the primary legislation regulating the energy sector¹³. It vested ownership and control of oil and gas resources in Nigeria's federal government while regulating licensing requirements, taxation, and environmental standards for IOCs. Given the sector's notorious ecological degradation, such legislation should address both historical and prospective harm. The PIA contains several environmental protection provisions intended to safeguard the environment from damage caused by petroleum operations. One of which is the requirement for Environmental Impact Assessment (EIA). Section 2 of the Environmental Impact Assessment Act of 1992 mandates that both the public and private sectors consider and identify potential environmental risks before embarking on any project or activity, and implement mitigation measures. The PIA requires IOCs to conduct EIAs, consult with stakeholders, and implement measures to mitigate environmental harm arising from petroleum operations, which are often compromised by oil spillages resulting from pipeline explosions, sabotage, oil well blow-outs, oil blast discharges, and improper disposal of petroleum-derived hazardous hydrocarbons.

Section 103 of the PIA stipulates the establishment of an environmental remediation fund (EMF), as follows:

103. (1) As a condition for the grant of a licence or lease and prior to the approval of the environmental management plan by the Commission or Authority, a licensee or lessee shall pay a prescribed financial contribution to an environmental remediation fund established by the Commission or Authority, as the case may be, for the rehabilitation or management of adverse environmental impacts with respect to the licence or lease.

Operators are required to contribute to the EMF aimed at restoring areas affected by petroleum operations and to develop and implement Environmental Management Plans (EMPs) as a prerequisite for licensure for petroleum exploration activities, encompassing environmental restoration, rehabilitation, and oil spill cleanup. The fund's sources include a percentage of petroleum companies' operational expenses, commensurate with ecological risk and operational scale. The Act does not explicitly state that the fund may be used retroactively to address environmental pollution before its establishment. However, section 103 (4) states:

¹²However, this provision falls under Chapter 2 of the 1999 Nigerian Constitution, which is non-justiciable and as such, the provision lacks judicial enforcement in Nigeria.

¹³The Act is a radical piece of legislation which effectively repealed over 15 pre-existing oil sector laws; PIA 2021, ss 310 and 311 (9).

Section 103 (4): Where licensee or lessee fails to rehabilitate or manage or is unable to undertake the rehabilitation or management of any negative impact on the environment, the Commission or Authority, as the case may be, may, upon written notice to the holder, apply the fund under subsection (1) to rehabilitate or manage the negative environmental impact.

A combined reading of sections 103(1) and (4) of the Petroleum Industry Act (PIA) suggests that the Environmental Remediation Fund is not intended to be applied retroactively. The provisions imply that the fund is to be used to address environmental damage arising from petroleum operations conducted after the fund's establishment, as a prerequisite for approval, and in cases where operators fail to remediate pollution.

This interpretation is consistent with Nigerian case law jurisprudence on the retroactive application of legislation. The Supreme Court of Nigeria's decision in *Aremo II v Adekanye*¹⁴ establishes that legislation, including the Constitution, operates prospectively rather than retrospectively unless explicitly provided otherwise. The court held that the rights of parties are determined by the substantive law in force at the time of the act in question. Applying this principle, it is arguable that the PIA's provisions regarding the EMF do not apply retroactively to address historical environmental pollution. The legislation contains no explicit language indicating retroactive application. Therefore, it is likely that the EMF will be limited to addressing ecological damage arising from petroleum operations occurring after the enactment of the PIA.

Furthermore, section 104(4) requires that fines collected for environmental regulatory violations be allocated to environmental remediation and host community relief, including gas flaring penalties, subject to exemptions for emergencies, acceptable practices, and commission-granted exemptions¹⁵. The PIA also mandates the HCDT to support local environmental protection initiatives¹⁶.

Notwithstanding these provisions, concerns remain about the efficacy of these measures in addressing decades-long environmental degradation. Environmental responsibility comprises three levels, each with a distinct purpose: repair, maintain, and improve. Similarly, the purposes of these levels are restoration, prevention, and improvement, respectively. Drawing on these levels of environmental responsibility (Brisibe, 2022), environmental protection objectives should encompass restoration, prevention, and improvement to minimize the adverse impacts of petroleum operations. This tripartite framework is predicated on the notion that restoration or corrective action constitutes a fundamental responsibility of petroleum businesses and represents the minimum standard of accountability. A degraded environment cannot be protected and improved; it must first undergo clean-up and restoration.

The Host Community Development Trust, established in section 239 (1), states

¹⁴(2004) 13 NWLR (Pt.891) 572.

¹⁵Section 104 (1)(b).

¹⁶Section 239(f).

that the constitution of the HCDT shall allow the Trust “to manage and supervise the administration of the annual contribution of the settlor contemplated under this Chapter and any other sources of funding”. Section 239(3) of the Petroleum Industry Act (PIA) delineates the objectives of the Host Communities Development Trust, which are multifaceted and intended to promote sustainable development in host communities. The provisions outline a comprehensive framework for the trust’s activities, including:

- Financing and executing projects for the benefit and sustainable development of host communities¹⁷;
- Undertaking infrastructural development within the scope of available funds¹⁸;
- Facilitating economic empowerment opportunities¹⁹;
- Promoting educational development²⁰;
- Supporting healthcare development²¹;
- Enhancing environmental protection through local initiatives²²;
- Supporting security initiatives²³;
- Investing available funds on behalf of host communities²⁴;
- Assisting in other developmental purposes deemed beneficial to host communities²⁵.

These objectives collectively aim to address economic, social, environmental, and infrastructural dimensions of community development, to enhance the overall well-being of host communities. However, these initiatives relating to environmental protection do not explicitly relate to environmental pollution; instead, they suggest measures that may ‘enhance environmental protection through local initiatives’, which, to all intents and purposes, is inadequate in addressing the decades of environmental pollution that predate the Act.

Given that the PIA neglects to establish explicit environmental obligations for IOCs or the HCDT (Brisibe, 2024), its focus on prospective ecological protection and remediation is insufficient to address decades of environmental degradation. This suggests that the HCDT is primarily designed to appease host communities and facilitate petroleum exploration, rather than to prioritize environmental protection. A paradigm shift is necessary to prioritize corrective measures and ecological restoration to achieve meaningful environmental improvement.

The PIA 2021 consolidates the petroleum legal framework, aiming to create efficient governing institutions, promote transparency, and establish a commercially oriented national petroleum company. However, its focus on economic and commercial imperatives overshadows environmental concerns, rendering the lat-

¹⁷Section 239(3)(a) of PIA.

¹⁸Section 239(3)(b) of PIA.

¹⁹Section 239(3)(c) of PIA.

²⁰Section 239(3)(d) of PIA.

²¹Section 239(3)(e) of PIA.

²²Section 239(3)(f) of PIA.

²³Section 239(3)(g) of PIA.

²⁴Section 239(3)(h) of PIA.

²⁵Section 239(3)(i) of PIA.

ter vulnerable to being overridden. The PIA's objectives, as outlined in Sections 2 (a)-(e)²⁶, prioritize economic goals, failing to strike a balance with environmental protection. This undermines the industry's sustainability outlook, global viability, and fails to address historical environmental degradation in the Niger Delta. The PIA falls short of providing a framework for corrective justice, which is essential for addressing past wrongs and advancing more equitable justice arrangements.

In the same vein, the Oil Pipeline Act (OPA)²⁷, preserved by the PIA 2021, which regulates pipeline construction and maintenance, constitutes the primary legislation governing compensation for oil-related environmental damages resulting from pipeline operations. In accordance with the principle of corrective justice, the OPA assigns responsibility to the polluter to compensate victims of oil pollution and imposes strict liability on operators for neglecting to protect, maintain, or repair pipelines, except where a third party causes damage²⁸. This framework establishes a mechanism to limit environmental liability, whereby IOCs are exempt from responsibility for spills caused by third-party activities. However, this principle contravenes public policy considerations that advocate holding a more financially capable party liable for another's wrongs to provide a remedy, as exemplified by the doctrine of vicarious liability. This situation potentially leaves innocent victims, including the natural environment, without recourse. An equitable, fair, and balanced remedy would require protecting the natural environment from damage arising from IOCs' neglect and pollution, including instances of local community vandalism. A more nuanced approach, prioritizing environmental protection and victim compensation, is warranted to address these concerns.

4. Environmental Responsibilities of IOCs and Corrective Justice

The exploration, production, and development of oil resources by oil companies have significant environmental implications, posing human health risks, disrupting socio-cultural systems, and generating economic problems within host communities, both onshore and offshore (Ite et al., 2013). The Niger Delta region exemplifies this phenomenon, where anthropogenic activities have precipitated widespread environmental degradation. The primary sources of environmental pollution in the Niger Delta region include: oil spillage, pipeline explosion, gas

²⁶Section 2 (a)-(e) of PIA states its objectives as: to create efficient and effective governing institutions, with clear and separate roles for the petroleum industry; to establish a framework for the creation of a commercially oriented and profit-driven national petroleum company; promote transparency, good governance and accountability in the administration of petroleum resources of Nigeria; foster a business environment conducive for petroleum operations; and deepen local content practice in Nigeria oil and gas industry.

²⁷Oil Pipelines Act, 1956, Cap 07, Laws of the Federation of Nigeria, 2004. This Act, along with other legal frameworks, incorporates international treaties and conventions, such as the African Charter on Human and Peoples' Rights and the United Nations Framework Convention on Climate Change, to apply corrective justice principles to IOC operations in Nigeria.

²⁸Section 11(5)(c) of OPA.

flaring and venting, improper disposal of large volumes of petroleum-derived hazardous waste streams, such as drilling mud, oily and toxic sludge, equipment failure/oil spills associated with ageing facilities, sabotage of petroleum facilities (including illegal oil bunkering and artisanal refining), oil well blowout, oil blast discharges and other operational discharges (Ite & Ibok, 2013). Therefore, it could be argued that poor management of petroleum resources, ineffective government policies, and unsustainable operational practices by oil companies have contributed to complex economic, political, and environmental problems in the Niger Delta region (Ite et al., 2016).

Consequently, IOCs bear significant environmental responsibility due to the ecological impact of their operations. In Nigeria, IOCs have been implicated in extensive environmental damage, including oil spills, gas flaring, land degradation, water and air pollution, biodiversity loss, and health problems affecting local communities, without adequate compensation, remediation, or accountability. The principle of corrective justice can be applied to hold IOCs accountable for past, present, and future environmental harms, ensuring that polluters restore the environment to its original state and provide adequate compensation to affected communities. As a result, these companies must ensure that their operations comply with environmental regulations and implement sustainable practices to mitigate their environmental impact. Additionally, they should be held accountable for any environmental damage they have caused and provide adequate compensation and corrective measures to affected communities, particularly by addressing the environmental degradation that has persisted for almost seventy years since oil was first discovered in Nigeria.

To ensure that corrective justice is effective, some measures need to be taken to address the situation, and these include:

- 1) Establishing clear and consistent standards and criteria for determining the liability, responsibility, and accountability of the parties involved in the environmental harm or wrongdoing (Parchomovsky, 1997). Most environmental legislation do not establish minimum standards for benchmarking the various media of pollution in the natural environment.

- 2) Requirement of IOCs to disclose and report their environmental and human rights impacts and performance, and to conduct regular environmental and social impact assessments and audits as required by the Nigerian laws. This may provide incentives for their compliance with environmental standards and obligations, as well as with international norms and treaties ratified or adopted by Nigeria (Gbali et al., 2021).

- 3) Mandating the IOCs not only to pay adequate compensation and restitution to the affected communities and individuals, but to provide effective remedies for rehabilitation for the environmental damage, and also human rights violations where there is sufficient evidence to show fault on the part of the IOCs. In such situations, the Nigerian government monitors and enforces the environmental and human rights compliance of the IOCs, sanctioning and prosecuting any vio-

lations or breaches where necessary.

4) Ensuring the participation and consultation of the local communities and civil society in the decision-making and governance of the oil and gas sector, and to respect and protect their rights and interests (Ite et al., 2016). This includes promoting the reconciliation and restoration of relationships between the parties to prevent the recurrence of harm or wrongdoing and to enhance dialogue for dispute resolution.

5) Providing accessible and affordable mechanisms and procedures for the victims to seek and obtain redress, such as courts, tribunals, arbitration panels, and other ADR related mechanisms. Within such mechanisms, there is a need to ensure the independence, impartiality, and competence of the adjudicators to handle cases and disputes. The proceedings for the resolution of conflicts should be transparent, where sanctions and awards are being enforced. There should be effective remedies for the rehabilitation of environmental damage. The Nigerian government monitors and enforces the environmental and human rights compliance of the IOCs, sanctioning and prosecuting any violations or breaches where necessary.

6) Hypothecating funds for the systematic and holistic environmental clean-up and restoration of the Niger Delta, from the highly polluted areas to the least contaminated areas. This includes funds obtained from fines and levies imposed for environmental pollution. For effectiveness, the Ogoni clean-up funds should act as a pilot for integrating other parts of the Delta. It should also establish baseline figures to estimate the cost of cleaning up the entire region and to determine the basis for IOCs' contributions to the fund over time, using the PIA to mandate such contributions.

It is posited that the PIA be leveraged to hypothecate funds, mandating specific contributions from oil companies and the Federal Government toward the remediation and restoration of the Niger Delta, given the historical environmental degradation resulting from decades of oil exploration. Consonant with this objective, the ongoing cleanup efforts in Ogoniland should be replicated across the Niger Delta, acknowledging the contemporaneous nature of oil spills throughout the Delta. A structure analogous to the existing HCDDT should be established for the environmental restoration fund, earmarked for the comprehensive cleanup and restoration of the Niger Delta. By discharging their responsibilities for corrective justice and the environment, IOCs can contribute to sustainable development, regional well-being, and global climate change mitigation efforts. In doing so, IOCs can redress environmental imbalances, mitigate conflicts, and address grievances arising from oil and gas operations, thereby fostering a more harmonious and sustainable relationship with host communities and the environment.

Accordingly, a framework addressing historical environmental injustices ought to incorporate the corrective justice principle, operationalized through the Polluter Pays Principle (PPP). The PPP posits that entities responsible for pollution-

generating activities should bear the attendant burdens and assume responsibility for the resultant adverse effects, encapsulated in the maxim ‘you broke it, you fix it’ (Caney, 2006)²⁹ or ‘clean up your own mess’ (Shue, 1999)³⁰. One critique of the PPP is the Excusable Ignorance Objection, which holds that culpability is mitigated when the consequences of an action are unforeseen. In the context of climate change, this refers to emissions before the 1990 Intergovernmental Panel on Climate Change (IPCC) Report. This makes the objection’s applicability temporally limited, given that historical emissions account for approximately half of global emissions (Ritchie et al., 2023)³¹. Crucially, the magnitude of historical pollution from oil exploration activities is substantial, warranting remediation and cleanup efforts. Discounting these impacts would undermine environmental accountability and the imperatives of corrective justice.

In accordance with PPP, as a mechanism for realizing the objectives of corrective justice, the scope of remedial measures should be twofold, aiming to mitigate harm to both local communities and the natural environment. Specifically, corrective interventions ought to be designed to restore communities’ traditional livelihoods and facilitate environmental regeneration. The extant regulatory framework, as enshrined in the PIA regime, falls short of this standard, as it primarily addresses future pollution incidents, neglecting historical environmental degradation. Provisions relating to the HCDT funds and Environmental remediation funds, while laudable, are inherently prospective and fail to provide an adequate framework for addressing past environmental harm. Consequently, a paradigm shift is required, predicated upon the petroleum industry’s collective acknowledgment of its responsibility to redress the environmental impacts of its operations. By internalizing the tenets of corrective justice, it is possible to cultivate harmonious relationships among IOCs, host communities, and the environment, thereby establishing a framework for redressing historical injustices and safeguarding the interests of future generations.

In the final analysis, the key features of the framework for addressing the historical environmental injustices through corrective justice should emphasize accountability, liability, and remediation. Therefore, such a framework should be based on both corrective justice and distributive justice principles, where the former addresses past injustices through regional restoration efforts, and the latter tackles pollution to prevent harm and enhance the natural environment. Consequently, some of the earlier proposed measures to address historical environmental degradation should align with either component of the framework.

²⁹See also Caney, Simon. 2010. Climate change and the duties of the advantaged. [2010] (13)(1) *Critical Review of International Social and Political Philosophy*, 203–228; A. Gosseries, Historical emissions and free riding [2004] (11) (1) *Ethical Perspectives*, 36–60.

³⁰See also Gardiner, Stephen M., and David A. Weisbach. 2016. *Debating climate ethics*. Debating Ethics. (New York: Oxford University Press) Laura Garcia-Portela, (n 14).

³¹If we take 1990 as the cut-off date, historical emissions from 1750 to 1990 represent 48.6% of overall emissions. If we take 1995, historical emissions represent 55.6% of overall emissions. These refer only to CO₂ emissions. Earlier emissions, until roughly 1960, are rough estimates.

5. Challenges in Achieving Corrective Justice in Nigeria

The application of corrective justice principles in addressing historical environmental injustices in Nigeria's petroleum industry is fraught with complexities. Beyond pervasive issues of inadequate funding, a lack of political will, and corruption, significant hurdles persist due to limited access to legal information and resources for affected communities. Affected individuals and societies often lack the requisite knowledge and resources to effectively pursue compensation and justice for environmental damage inflicted by multinational oil corporations. The Nigerian legal system's intricacy and inaccessibility exacerbate this issue, necessitating specialized legal expertise that marginalized groups often cannot afford. Furthermore, the lack of transparency and the reluctance of international oil companies to share information hinder affected communities' ability to gather evidence and build robust cases against these powerful entities.

To address these challenges, initiatives should focus on enhancing access to legal information and resources for harmed communities, including community paralegal training programs, the provision of relevant data in local languages, and legal aid services. Incorporating corrective justice principles into the petroleum industry's legal framework may pose practical implementation challenges. A systematic, data-driven approach can help identify and support the mapping and prioritization of the most polluted areas, facilitating targeted interventions. By adopting a multifaceted approach, Nigeria can work toward rectifying historical environmental injustices and promoting corrective justice for the natural environment and host communities.

6. Conclusion

In today's world, international oil corporations operating in Nigeria must acknowledge their environmental responsibilities, particularly in light of decades of environmental degradation and the crucial role of corrective justice. The petroleum industry's significant environmental footprint has led to widespread contamination and depletion of natural resources, necessitating that international oil companies accept responsibility for their actions and acknowledge their culpability in the ecological degradation. The goal of any framework for sustainable environmental protection must rectify past harm and prevent future damage to both the natural environment and host communities. As such, measures such as compensating affected communities, enforcing stricter regulations, and implementing remediation plans to clean up the entire Niger Delta are crucial.

By holding international oil corporations accountable for their actions and promoting sustainable practices, Nigeria can mitigate the environmental devastation caused by decades of petroleum exploitation. These efforts are vital not only for the present but also for future generations, as Nigeria's ecosystems must be safeguarded for posterity. The starting point is to address past injustices and work towards improving the Delta's ecosystem. The gravity of oil corporations' environmental obligations and the indispensable nature of corrective justice in Nigeria cannot be over-

stated. Concerted efforts among stakeholders are necessary to address this pressing issue. By taking decisive action, Nigeria can restore the natural environment to its full productive capacity with significant benefits for present and future generations.

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Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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