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Reconciling Global Standards with Local Realities

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Introduction

The Environmental, Social, and Governance (ESG) framework in Nigeria has continued to evolve owing to the role of legislation in driving behavioural change regarding ESG and climate change. The Niger Delta has been the site of some of the world's most extensively documented environmental and social harm, better termed *ecocide*, perpetrated by extractive industries. By conservative estimates, over 6,800 oil spills have been recorded in the region since 1976. Since 2014, ENI has reported 820 oil spills in the Niger Delta, amounting to around 4.1 million litres of oil lost. In 2021, Shell reported 1,010 spills, amounting to about 17.5 million litres of oil lost.

Despite decades of recurring oil spills and environmental devastation, the Niger Delta presents one of the most arresting paradoxes in modern political economy. The Niger Delta creeks and estuaries have created much of the petroleum wealth that has built modern Nigeria. For more than six decades, crude oil exports from the region have generated hundreds of billions of dollars in federation revenue, shaping the 13 per cent derivation principle and sustaining a constitutional revenue architecture organised around the proceeds of hydrocarbons. Yet, the communities that have borne the immediate burden of extraction continue to record some of the lowest human development indicators in the federation, while simultaneously experiencing some of the most severe environmental degradation in the country, including contaminated groundwater, depleted fisheries, intermittent electricity, fragile public health systems, and a youth population whose options too often narrow into unemployment or illegality.

It is into this structural problem that the contemporary discourse on ESG standards has arrived. The discourse comes laden with the vocabulary of disclosure, materiality, due diligence, and just transition; it comes carrying instruments forged in Frankfurt, Brussels, Paris, London, and the boardrooms of multilateral lenders. The question this paper poses, and seeks to answer with the candour the moment demands, is whether that imported architecture can be made to do useful work in the Delta, or whether, if transplanted into Nigeria without sufficient regard to local economic, institutional, and developmental realities, the European ESG framework will merely create another layer of polished compliance theatre over an enduring developmental wound. We cannot simply import the existing European framework lock, stock, and barrel. To address ESG issues effectively, our local peculiarities and contextual realities must be taken into account in the design and implementation of any such framework.

The core proposition advanced here is direct: ESG in the Niger Delta must evolve from abstract compliance rhetoric into a locally responsive governance framework capable of delivering environmental accountability, social legitimacy, and sustainable development. Law, in the spirit of Roscoe Pound's conception of social engineering,[1] is here understood not as an inert body of rules but as an active instrument for the ordering of competing interests and the production of measurable social outcomes. The Bar, the Bench, regulators, operators, investors, and host communities must therefore be addressed within one coherent register: governance. For the people of the Niger Delta, institutional responsibility is not experienced in compartments. The regulator, operator, investor, and development agency may occupy different legal positions, but their conduct is received as a single governance reality: one that either protects, repairs, and develops, or merely rationalises another cycle of neglect. Only through this register can ESG move in the Niger Delta from an external compliance vocabulary to a practical discipline of accountability, legitimacy, and developmental repair.

1.0 ESG and Extractive Industries

ESG is no longer a discretionary corporate adornment. It has become, by stealth or by design, an operational precondition for access to global capital, insurance, project finance, and supply chains. Yet in the extractive sector, and particularly in the upstream petroleum value chain, the ESG conversation has too often been impoverished and reduced to glossy sustainability reports, net zero pledges deferred to 2050 or 2060, and disclosure matrices that perform virtue without producing it. A polished ESG report means very little to the host communities where oil spills, reported five years ago, still bleed into the soil, unremedied, unacknowledged, and unpunished; where the gas flare burns through the night, close enough to the village school that children learn their letters by its glow; and where the clinic has one nurse, or none. These are not data points; they are lives. Any honest ESG conversation in the

[1] R Pound, *An Introduction to the Philosophy of Law* (Yale University Press, 1922); see also R Pound, 'A Survey of Social Interests' (1943) 57 Harv L Rev 1, on law as social engineering.

Niger Delta must begin here, not with metrics, not with frameworks, and not with the language of commitment and improvement, but with the plain truth that for the people living in the shadow of this industry, the distance between the report and the reality is not a gap, but an indictment.

The international ESG framework is not found in a single code. It is a layered mix of hard law, soft law, and standards that began as voluntary guidance but now influence investment, reporting, lending, and corporate governance. Its core includes the **United Nations Guiding Principles on Business and Human Rights**, the **OECD Guidelines for Multinational Enterprises**, as revised in 2023, the **IFC Performance Standards**, the **Equator Principles**, and the **IFRS Sustainability Disclosure Standards S1 and S2, issued by the ISSB**. These also include the **European Union Corporate Sustainability Reporting Directive (CSRD)** and **Corporate Sustainability Due Diligence Directive (CSDDD),** which are now affected by the **Omnibus I reforms.**[2] The first measure was Directive (EU) 2025/794, the Stop the Clock Directive, which postponed parts of the CSRD and CSDDD timetable. The wider Omnibus I Directive, Directive (EU) 2026/470, was published on 26 February 2026 and entered into force on 18 March 2026. It narrowed the CSDDD to very large undertakings, including EU companies with more than 5,000 employees and 1.5 billion Euros in net worldwide turnover, shifted transposition to 26 July 2028 and application to 26 July 2029, and removed the EU harmonised civil liability regime. Many may read this simplification as a retreat. A better reading reveals a consolidation: fewer undertakings are directly caught, but those still within scope are the largest market actors. Their suppliers, financiers, contractors, subsidiaries, and joint venture partners may still feel the discipline indirectly, and their value chain influence, including into the Niger Delta, remains substantial, despite the formal reduction in the number of captured entities.

The real force of ESG lies in its cross-border effect. Even when Nigerian law does not directly impose these standards, Nigerian companies may still be bound by them through financing, contracts, supply chains, and litigation risk. For companies operating in the Niger Delta, especially those acquiring former IOC assets and seeking international finance, ESG is no longer merely a voluntary language. It is becoming a practical condition for capital. The better response is therefore not to reject ESG, but to insist that ESG must operate as real governance, not investor public relations.

2.0 The ESG Framework in Nigeria

2.1 The Environmental Dimensions of ESG

The Nigerian legal system has a robust ESG framework. Nigeria is a signatory to the Paris Agreement 2015, following the failed Kyoto Accord. In meeting its voluntary obligation under this Paris Agreement and following its pledge at COP 26 to achieve net-zero emissions by 2060, Nigeria enacted the Climate Change Act 2021 (CCA). The CCA streamlines the much-needed climate change actions and carbon budgeting. Under the Paris Agreement, Nigeria was required to have its own nationally determined contribution, following its commitment to reduce greenhouse gas emissions. The Act sets the roadmap for Nigeria to meet its own Nationally Determined Contributions (NDC) targets. It applies to both public and private entities within Nigeria's territorial jurisdiction and directs all ministries, departments, and agencies of the government to implement

[2] Directive (EU) 2022/2464 (CSRD); Directive (EU) 2024/1760 (CSDDD); Directive (EU) 2025/794 (Stop-the-Clock Directive), OJ L, 16 April 2025; Directive (EU) 2026/470 (Omnibus I Directive), OJ L, 26 February 2026, in force 18 March 2026.

mechanisms geared towards fostering a low-carbon emission, environmentally sustainable, and climate-resilient society. The CCA also provides an important national framework. It establishes the National Council on Climate Change, introduces the carbon budget mechanism, provides for a National Climate Change Fund, and imposes obligations on private entities with more than fifty employees.

Yet, the honest assessment is that implementation remains behind the ambition of the statute. The Council is operational, but not yet fully effective. The carbon budget is still largely aspirational, and the monitoring, reporting, and verification system remains incomplete.[3] Apart from the Climate Change Act, other laws affect ESG in Nigeria, such as the Petroleum Industry Act (PIA) 2021. The PIA has stringent provisions against gas flaring with severe fines for violations. It also provides for environmental impact analysis and environmental plans for every oil field operation. Other laws affecting ESG include the 1999 Constitution as amended, the Environmental Impact Assessment Act, the National Environmental Standards and Regulations Enforcement Agency (NESREA) Act, and the National Oil Spill Detection and Response Agency (NOSDRA) Act.

2.2 The Social Dimensions of ESG

Apart from the environmental pillar of ESG, other regulatory instruments govern the social and governance dimensions. For instance, the Nigerian Exchange (NGX) requires listed companies to disclose ESG compliance in an annual sustainability report.[4] Recent developments around the world highlight that

[3] Climate Change Act 2021, ss 3, 19, 24 and 27 ; Federal Ministry of Information and National Orientation, 'Ahead of UN COP 30 in Brazil, FG Okays National Carbon Market Framework' Federal Ministry of Information and National Orientation (30 October 2025) https://fmino.gov.ng/ahead-of-un-cop-30-in-brazil-fg-okays-national-carbon-market-framework/ accessed 21 May 2026.
[4] https://ngxgroup.com/corporate-citizenship/marketplace/

such communications could face regulatory and judicial scrutiny if not supported by reliable evidence or aligned with operational realities.

Global regulators and courts are increasingly willing to test climate-related claims against verifiable evidence, as illustrated by enforcement actions taken by the United Kingdom Advertising Standards Authority and the Competition and Markets Authority. On 23 October 2025, a French Civil Court decision found that certain climate-related communications issued by an IOC on its affiliated website were misleading and constituted unfair commercial practices, as they lacked verifiable supporting evidence. The Tribunal ordered the IOC to remove the communications from its website within one month, publish the court ruling on its homepage for 180 days, and pay a fine of 10,000 Euros for non-compliance. Additionally, the tribunal directed payment of 8,000 Euros to each claimant organisation for non-financial harm and 15,000 Euros in legal costs.

Beyond financial penalties, a decision of this kind may result in significant reputational damage, undermining investor confidence, eroding stakeholder trust, and inviting further regulatory scrutiny. This serves as a clear signal to oil and gas companies in Nigeria that climate-related communications must be consistent, substantiated, and capable of withstanding legal challenge. While the current Nigerian legal framework, including the Climate Change Act, the Petroleum Industry Act 2021, and the Federal Competition and Consumer Protection Act 2018, does not expressly address greenwashing as a distinct legal concept, *Section 125 of the FCCPA* contains a provision targeting misleading or deceptive commercial practices which are capable of application to environmental or climate sustainability-related claims.

Furthermore, under the National Code of Corporate Governance issued by the Financial Reporting Council of Nigeria (FRCN), corporate boards are required to be diversified in terms of composition. The PIA also provides for the **Host Communities Development Trust (HCDT) framework**, contained in *Sections 234 to 257*, which requires oil and gas operators to contribute 3 percent of their preceding year's operating expenditure (OPEX) to host community development.[5] The framework is a significant attempt to move beyond conventional corporate social responsibility by creating a statutory funding and governance structure for host communities. As of October 2025, the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) reported approximately 373 billion Naira in HCDT contributions, with several trusts incorporated and hundreds of community projects under implementation.[6] This is a material development. However, implementation concerns remain, particularly around transparency in trustee selection, disclosure of operating expenditure, youth and gender inclusion, and independent project audits. Several actions are currently pending before various Federal High Courts in Nigeria, in which communities in Delta State seek to enforce their statutory HCDT entitlements. These proceedings are being robustly contested by the affected International Oil Companies (IOCs).[7]

Outside codified laws, the doctrine of legitimate expectation may, in appropriate circumstances, render publicly announced ESG commitments legally significant and potentially enforceable. Litigation from the Niger Delta has forced a growing question into the open: can companies be held legally accountable for what they publish in ESG reports? In 2021, the Federal High Court, Abuja

[5] Petroleum Industry Act 2021, ss 234–257, especially ss 240, 244, 251 and 257(2)
[6] Nigerian Upstream Petroleum Regulatory Commission, 'Host Community Fund Rises to N373bn as NUPRC Oversees 536 Projects' NUPRC (13 October 2025) https://www.nuprc.gov.ng/host-community-fund-rises-to-n373bn-as-nuprc-oversees-536-projects/ accessed 21 May 2026.
[7] See EJOR v SHELL – FHC/ABJ/CS/1533/2024, EJOR v CHEVRON – FHC/ABJ/CS/500/2025, EJOR v OANDO – FHC/ABJ/CS/523/2025

Division, *coram Justice Taiwo Taiwo (Retired)*, in the case of *HRM Obong Achiaga & Others v. NNPC*[8], found, among other things at page 139 of the judgment, that Mobil failed to follow its community relations report regarding monitoring at all times the economic impact of its activities on the community, and failed to take preventive and mitigating measures before and after the spillages occurred. These are legitimate expectations created by their own disclosures.

A notable international example is *Milieudefensie et al. v. Royal Dutch Shell Plc (District Court of The Hague, 26 May 2021), ECLI:NL:RBDHA:2021:5337*. In that landmark decision, the Court held that Shell owed an unwritten duty of care under Dutch tort law to contribute to preventing dangerous climate change and relied, inter alia, on Shell's publicly stated climate ambitions, international climate norms, and human rights principles to determine the scope of that duty. The Court consequently ordered Shell to reduce its global carbon emissions by 45 per cent by 2030 relative to 2019 levels. Although the decision was grounded in Dutch civil law rather than the doctrine of legitimate expectation, it demonstrates the growing judicial willingness to scrutinise and, in appropriate cases, give legal effect to corporate sustainability commitments and ESG representations.

This jurisprudential trend is instructive in assessing the content and scope of environmental obligations under *Section 20 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)*, particularly in relation to the constitutional duty to protect and improve the environment.[9] While that provision is traditionally classified as a non-justiciable Directive Principle under Chapter II, progressive judicial interpretation reinforced by the ECOWAS Community Court of

[8] Suit No: FHC/ABJ/CS/54/12 – delivered on the 21st day of June, 2021.
[9] Milieudefensie et al. v. Royal Dutch Shell plc, ECLI:NL: RBDHA:2021:5337 (District Court of The Hague, 26 May 2021). Note, however, that the judgment was subsequently overturned on appeal by the Hague Court of Appeal in 2024, although the case remains influential in the development of climate-change and ESG litigation globally.

Justice, the African Commission on Human and Peoples' Rights, and the European Court of Human Rights increasingly treats environmental protection as inseparable from the justiciable rights to life and dignity under *Sections 33 and 34 of the Constitution*.

In *Gbemre v. Shell Petroleum Development Company of Nigeria Ltd*[10] and *SERAC v. Nigeria*,[11] environmental harm was approached through the language of fundamental rights, particularly the rights to life, dignity, and property. These decisions show that even where *Section 20* cannot be enforced directly, the environmental imperative can still be vindicated through enforceable constitutional and human rights provisions.[12] Every ESG commitment that exists on paper but goes unenforced represents a power deficit, not a shortage of law or regulatory oversight. What communities have historically lacked is enforceable leverage, and Public Interest Litigation is among the most potent instruments available to close that leverage gap.

2.3 The Governance Dimension of ESG

Governance is the central issue when addressing ESG standards. The Niger Delta has many institutions: the NDDC, the Ministry of Niger Delta Development, oil-producing state agencies, the 13 per cent derivation framework, and the Host Communities Development Trusts under the Petroleum Industry Act. Yet, the region still suffers from weak coordination, duplication, and poor accountability. The NDDC forensic audit covered 13,777 projects and raised concerns about 362 bank accounts.[13] For any ESG framework to be credible in the Niger Delta, it must confront this institutional problem directly.

The recent wave of IOC divestments adds urgency. Seplat's acquisition of MPNU, Renaissance's acquisition of SPDC, Oando's acquisition of NAOC, and the Equinor/Odinmim transaction all show a major shift from international to indigenous operators. This may create an opportunity, but it also carries risk. New operators may inherit old environmental liabilities without the same financial depth as the outgoing IOCs. That is why ESG in the Niger Delta cannot be reduced to branding or reporting. It must become a practical governance tool for managing environmental repair, social trust, and responsible investment.[14]

The Niger Delta Reality

The facts on the ground must be stated plainly. Nigeria still flares large volumes of gas. In 2025, NOSDRA's gas flare data showed that about 323 billion standard cubic feet of gas were flared, with an estimated value of about 1.1 billion US dollars. Every flared cubic foot is wasted energy, lost

[10] *Gbemre v Shell Petroleum Development Company of Nigeria Ltd & Others* (Suit No FHC/B/CS/53/05), unreported judgment of the Federal High Court of Nigeria, Benin Division, delivered 14 November 2005, per Nwokorie J

[11] *The Social and Economic Rights Action Center (SERAC) and the Center for Economic and Social Rights (CESR) v Nigeria*, Communication No 155/96, African Commission on Human and Peoples' Rights, decision of 27 October 2001.(2001) AHRLR 60 (ACHPR 2001)

[12] Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 6(6)(c), 20, 33, 34, 44(3) and 162; Jonah Gbemre v Shell Petroleum Development Company Nigeria Ltd and Others Suit No FHC/B/CS/53/05, Federal High Court, Benin Judicial Division, 14 November 2005 https://www.informea.org/sites/default/files/court-decisions/COU-156302.pdf accessed 21 May 2026;

[13] Federal Ministry of Information and National Orientation, 'Buhari Receives Forensic Audit Report of NDDC' Federal Ministry of Information and National Orientation (3 September 2021) https://fmino.gov.ng/buhari-receives-forensic-audit-report-of-nddc/ accessed 21 May 2026

[14] Seplat Energy Plc, 'Acquisition of MPNU' Seplat Energy https://www.seplatenergy.com/investors/acquisition-of-mpnu/ accessed 21 May 2026

revenue, and a development opportunity that never came.[15] The Nigerian government has not been silent on the issue. The Flare Gas Regulations of 2018, the latter, Gas Flaring, Venting and Methane Emissions Regulations of 2023, and the Nigeria Gas Flare Commercialization Programme all show a clear policy direction. Under that programme, 49 flare sites were awarded to 42 successful bidders to convert wasted gas into power, LPG, jobs, and investment.[16] The difficulty is not the absence of policy; the difficulty is delivery. The 2030 routine flare-out target will only be meaningful if it is backed by stronger enforcement, better monitoring, and real consequences for non-compliance.

The same point arises in relation to oil spills and remediation. The 2011 UNEP report on Ogoniland remains Nigeria's most important environmental diagnosis of pollution in the Niger Delta. For many years, implementation was slow. Recently, the Hydrocarbon Pollution Remediation Project (HYPREP) recorded measurable progress. Phase One shoreline remediation has reached about 72.7 per cent; mangrove restoration is at about 99 per cent of its pilot scope; soil and groundwater (waters)[17] remediation at medium-risk sites has reached about 39 per cent; and 16 water facilities are now supplying 42 Ogoni communities. HYPREP has also reported thousands of direct and indirect jobs across its project sites.[18] These are gains worth acknowledging. But UNEP recognised that cleaning up Ogoniland alone would take decades. Ogoniland is one community; the Niger Delta is an entire region. The social side is even more sensitive. Youth restiveness, illegal refining, oil theft, and pipeline vandalism have created a difficult operating environment. NUPRC has reported that crude oil losses fell sharply from about 102,900 barrels per day in 2021 to about 9,600 barrels per day in July 2025.[19] That progress is real. But the scale of security, surveillance, and metering infrastructure needed to protect a national asset tells its own story about how completely trust has broken down. In the Niger Delta, the social element in ESG is not a theory. It is the difference between a young person finding a future in legitimate work and being pulled toward illegal refining, theft, and violence.

The Host Communities Development Trust framework, contained in *Sections 234 to 257 of the PIA*, requires oil and gas operators to contribute 3 per cent of their preceding year's operating

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[15] National Oil Spill Detection and Response Agency, 'Nigerian Gas Flare Tracker' https://nosdra.gasflaretracker.ng/ accessed 21 May 2026; SweetCrude Reports, 'Nigeria Lost $1.5trn to Gas Flaring in 2025' SweetCrude Reports (5 May 2026) https://sweetcrudereports.com/nigeria-lost-1-5trn-to-gas-flaring-in-2025/ accessed 21 May 2026.

[16] Gas Flaring, Venting and Methane Emissions (Prevention of Waste and Pollution) Regulations 2023 https://www.nuprc.gov.ng/wp-content/uploads/2023/07/GAS-FLARING-REGULATIONS.pdf accessed 21 May 2026; Reuters, 'Nigeria Issues Permits for Gas-Flaring Project, Targets $2 Billion Investment and 3 GW Power Potential' Reuters (12 December 2025) https://www.reuters.com/sustainability/climate-energy/nigeria-issues-permits-gas-flaring-project-targets-2-billion-investment-3-gw-2025-12-12/ accessed 21 May 2026.

[17] Groundwater is water hidden beneath the soil, though it is still affected; using waterbody best generalizes all water.

[18] United Nations Environment Programme, Environmental Assessment of Ogoniland (UNEP 2011) https://wedocs.unep.org/handle/20.500.11822/7947 accessed 21 May 2026; Hydrocarbon Pollution Remediation Project, 'Ogoni Clean-Up Programme: HYPREP to Create Over 1500 Jobs' HYPREP (22 December 2025) https://hyprep.gov.ng/ogoni-clean-up-programme-hyprep-to-create-over-1500-jobs-skills-training-to-benefit-over-2000-ogonis-as-project-receives-stakeholders-commendation/ accessed 21 May 2026; Hydrocarbon Pollution Remediation Project, 'HYPREP PC Presents Performance Scorecard to Ogoni Stakeholders' HYPREP (20 June 2025) https://hyprep.gov.ng/hyprep-pc-presents-performance-scorescard-to-ogoni-stakeholders/ accessed 21 May 2026.

[19] Nigerian Upstream Petroleum Regulatory Commission, 'Crude Oil Losses Drop to 16-Year-Low as NUPRC Releases Latest Report' NUPRC (11 September 2025) https://www.nuprc.gov.ng/crude-oil-losses-drop-to-16-year-low-as-nuprc-releases-latest-report/ accessed 21 May 2026.

expenditure to host community development.[20] The framework is a significant attempt to move beyond corporate social responsibility by creating a statutory funding and governance structure for host communities. One provision requiring closer scrutiny is *section 257(2) of the PIA*, which provides for the forfeiture of trust benefits where a host community is deemed to have engaged in the sabotage of petroleum facilities. The provision is understandable from an operator security perspective, but it is troubling from a constitutional and policy standpoint. Collective punishment sits uneasily with the principle of individual responsibility and with *Section 14(2)(b) of the Constitution*, which makes the security and welfare of the people the primary purpose of government. This is one area where legislative clarification or amendment may become necessary.[21] Beyond the PIA, Nigeria's environmental framework remains fragmented. Relevant statutes include the NESREA Act, the Environmental Impact Assessment Act, the NOSDRA Act, the Oil Pipelines Act, and the Associated Gas Re-Injection Act. The most obvious weakness is the continued exclusion of upstream petroleum operations from NESREA's enforcement jurisdiction. Given that upstream petroleum activity produces some of Nigeria's most serious environmental impacts, this carve-out is increasingly difficult to justify.[22]

On sustainability disclosure, Nigeria has taken more deliberate steps. The Financial Reporting Council's Roadmap for the Adoption of IFRS Sustainability Disclosure Standards creates a phased transition from early adoption to mandatory reporting for Significant Public Interest Entities from 1 January 2028, with SMEs expected to follow from 1 January 2030. This is reinforced by the Central Bank's Sustainable Banking Principles, the SEC's Sustainable Finance Principles, the Nigerian Exchange's Sustainability Disclosure Guidelines, and *Section 305(3) of CAMA 2020*, which now gives environmental considerations a place within directors' duties.[23] The courts are also moving in the same direction. *Centre for Oil Pollution Watch v. NNPC*[24] is now the leading Nigerian authority on environmental public interest litigation, particularly because of the Supreme Court's wider approach to locus standi. The Ejama Ebubu litigation against SPDC further demonstrates the scale of environmental damage that Nigerian courts are prepared to recognise. Outside Nigeria, *Okpabi v. Royal Dutch Shell*, the *Bille and Ogale proceedings*[25] and *Milieudefensie v. Shell*[26] have strengthened the idea that parent companies may bear responsibility for environmental harm connected to their subsidiaries. For Nigerian operators with foreign investors, lenders, parent companies, or listings,

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[20] Petroleum Industry Act 2021, ss 234–257, especially ss 240, 244, 251 and 257(2)

[21] Petroleum Industry Act 2021, s 257(2); Constitution of the Federal Republic of Nigeria 1999 (as amended), s 14(2)(b).

[22] National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007, ss 7(g) and 7(h)

[23] Central Bank of Nigeria, Nigerian Sustainable Banking Principles and Guidance Notes (CBN 2012) https://www.cbn.gov.ng/Out/2012/CCD/Circular.PDF accessed 21 May 2026; Securities and Exchange Commission, Guidelines on Sustainable Financial Principles for the Nigerian Capital Market https://sec.gov.ng/documents/5/SEC-Guidelines-on-Sustainable-Financial-Principles-for-the-Capital-Market_Final.pdf accessed 21 May 2026;

[24] *Okpabi and others v Royal Dutch Shell Plc and another* [2021] UKSC 3, [2021] 1 WLR 1294.

[25] The substantive *Bille* and *Ogale* community claims continue in the English High Court following the Supreme Court's jurisdictional ruling in *Okpabi* (n 20). See *His Royal Highness Emere Godwin Bebe Okpabi and others v Royal Dutch Shell Plc and another* and *The Bille Chiefs Council and others v Royal Dutch Shell Plc and another* (Group Litigation, English High Court, Technology and Construction Court). The proceedings remain ongoing as at the date of writing.

[26] *Milieudefensie v Royal Dutch Shell Plc* ECLI:NL:RBDHA:2021:5337, partially reversed in ECLI:NL:GHDHA:2024:2099 (12 November 2024).

these cases are not remote developments; they are part of the legal and commercial environment in which modern energy projects now operate.

4.0 Public Interest Litigation as a Means of ESG Enforcement

The landmark decision of the *Supreme Court of Nigeria in Centre for Oil Pollution Watch v. NNPC* not only provided the required clarity for maintaining environmental-related cases, but it also expanded the scope of locus standi to maintain such actions. Public Interest Litigation (PIL) is the primary mechanism by which communities convert that jurisprudential trajectory into enforceable remedies.

4.1 Challenges in Public Interest Litigation for ESG Disputes

One of the challenges faced by PIL practitioners is the lack of access to vital information to prosecute ESG-related disputes. International Oil Companies regulate the entire process: they commission their own environmental audits, design their own community impact assessments, select their own disclosure metrics, and publish their own ESG reports. Corporations routinely invoke commercial confidentiality to resist disclosure. It is respectfully submitted that where the information in question goes directly to the health, livelihoods, environmental safety, and legal rights of an entire community, confidentiality cannot be permitted to function as a veil over corporate impunity.

Courts adjudicating disclosure claims must weigh the constitutional weight of community rights against commercial interests, and in that proportionality analysis, community survival must prevail. In other words, the prejudicial effect of this disclosure does not, in my opinion, outweigh its probative value. To successfully prosecute these claims, ESG disclosure should not be seen as a mere good governance practice, but as a constitutional and international law right. *Section 39(1)* of the Nigerian Constitution provides, among other rights, that every person is entitled to receive

and impart ideas and information without interference. This aligns with Principle 10 of the Rio Declaration on access to environmental information. The landmark decision by the *African Commission in Social and Economic Rights Action Center v. Nigeria (Communication 155/96)* established that the Nigerian State's failure to prevent corporate environmental harm in Ogoniland violated multiple provisions of the African Charter on Human and Peoples' Rights, a precedent directly applicable to contemporary ESG enforcement disclosure claims.

4.1.1 Locus Standi Issues

Case law jurisprudence has advanced and addressed the challenges of locus standi. The *Inter-American Court of Human Rights in Saramaka People v. Suriname* (2007) recognised indigenous communities as collective rights holders with standing to challenge extractive activities affecting their territories. The African Commission, in *Centre for Minority Rights Development (Kenya) v. Kenya* (Endorois case, 2009), affirmed that communities possess justiciable collective rights to land, development, and participation in resource decisions. Indian courts have developed an extensive standing doctrine in PIL matters, allowing representative bodies to bring claims on behalf of affected communities without requiring individual victims as named plaintiffs. In *Centre for Oil Pollution Watch v. NNPC*, the Nigerian Supreme Court allowed an NGO to maintain public interest litigation on behalf of a community.

4.1.2 Third-Party Funding in Public Interest Litigation and Associated Challenges

Third Party Funding (TPF) is a significant development towards expanding access to justice, owing to the impoverished nature of most communities to effectively prosecute ESG litigation. This is especially critical given the enormous resources available to IOCs, who hire the finest lawyers to defend these claims, as well as the protracted nature of this litigation and the significant assets required to maintain them. Historically, the IOCs have hired the best lawyers in Nigeria to defend their spillage cases; hence, there is a clear need to match that energy with an equally competent legal team. The late Lucius Nwosu, SAN, was a champion in this regard. He prosecuted some of the most widely celebrated, high-profile, and contentious public interest litigations, including the enforcement of the Deep Offshore Production Sharing Contracts on behalf of certain Niger Delta States, which he successfully pulled off at the Supreme Court, leading the Federal Government to issue a white paper as a roadmap for implementation.

However, when funders receive 20 to 30 per cent of damages awards, the incentive architecture pushes relentlessly toward maximum monetary recovery, rather than toward the structural injunctions, community governance participation rights, and ongoing monitoring mechanisms that communities actually need to secure durable power. A community that recovers fifty million Naira in damages but has no enforceable right of participation in future ESG decisions, no independent monitoring mechanism, and no court-supervised compliance obligation has won a legal battle while losing the governance war.

Thankfully, in the *Achiaga v. NNPC* decision involving a Mobil spill in Akwa Ibom State, Justice Taiwo Taiwo (Retired) at the Federal High Court, apart from awarding monetary damages, equally made far-reaching pronouncements mandating the IOC to implement specific environmental remedial actions. The IBA Guidelines on Third-Party Funding in International Arbitration (2021) provide a useful starting framework, but they require adaptation to the community rights context.

The non-negotiable principles for Niger Delta PIL TPF arrangements should include:

Community veto over settlement terms regardless of funder return implications;
Explicit contractual permission to prioritize non-monetary structural remedies over monetary damages;
Full transparency of funder returns to the host community; and
Formal community participation in all case strategy decisions.

Any TPF agreement that does not meet these standards compromises community autonomy and should be declined or renegotiated. A monetary award that does not alter that asymmetry merely purchases continued impunity at a price the IOC's Chief Financial Officer will treat as a cost of doing business. This is because the harm is ongoing, structural, multigenerational, and inseparable from an enduring governance asymmetry.

The *Bodo Community v. Shell Petroleum Development Company* litigation, resulting in a landmark 2015 settlement, demonstrated both the achievability and the limitations of purely compensatory approaches. The settlement provided remediation funding but failed to establish lasting community governance over ESG compliance, as the spills did not abate. That gap must be the target of the next generation of PIL. Litigation is a tactic, not a strategy, and practitioners should not treat it as the primary instrument of change.

The communities that have achieved durable ESG accountability gains in the South African mining sector, in Peruvian and Colombian oil regions, and in Brazilian environmental litigation did so because legal action was embedded in a broader movement that simultaneously pursued community organizing, independent technical capacity, sustained media engagement, and legislative reform advocacy. Litigation without this groundwork wins cases; it rarely wins power. A community will probably get a monetary award as compensation, but it does not stop the ecocide. The work of this generation of PIL practitioners in the Niger Delta is to convert ESG from the language of corporate sustainability reports into the enforceable currency of community rights. That requires strategic litigation and

demands institutional imagination of a higher order: building community monitoring bodies that can conduct credible independent audits; demanding transparency as a constitutional entitlement; designing settlements that create governance power rather than one-time payments; and using each legal victory as a building block for the next legislative reform. That is why I commend the NDDC for this initiative; the Commission can commence legal actions on behalf of communities to enforce compliance with these entitlements.

The Petroleum Industry Act 2021, the ECOWAS Court's expanding environmental and human rights jurisdiction, and the global momentum behind mandatory ESG disclosure frameworks, the EU Corporate Sustainability Reporting Directive, the ISSB Sustainability Disclosure Standards, and emerging mandatory supply chain due diligence regimes collectively create a convergence of opportunity that did not exist a decade ago. The question is whether the Nigerian PIL ecosystem is sufficiently resourced, coordinated, and community accountable to capitalise on it. The Niger Delta is not a compliance problem; it is a justice problem. And justice, durable, institutional, community-held justice requires power, not merely process. The role of PIL in this moment is to be the instrument by which communities seize that power: through courts, through legislatures, through international advocacy, and through the painstaking work of building the institutions that will outlast any individual case or any individual lawyer.

5.0 Reconciling Global Standards with Local Realities

The reconciliation must begin with a balanced admission. Global ESG frameworks were largely designed for mature regulatory economies with deeper capital markets, stronger institutions, reliable emissions data, and clearer systems of political accountability. They cannot simply be transplanted into the Niger Delta and expected to work without adaptation. But it does not follow that ESG should be dismissed as a foreign or neo-colonial project. That response is unhelpful and strategically costly. In a context where domestic enforcement is often weak, externally generated standards can serve a useful purpose. Through finance covenants, listing requirements, lender expectations, and parent company litigation, they can provide a minimum discipline where local regulation has failed to do so. The required shift, therefore, is from compliance to governance. The Niger Delta crisis is not merely an environmental problem; it is a governance problem with environmental consequences. Even the best emissions disclosure regime will not deliver clean water, credible remediation, or community trust if the institutions responsible for implementation are opaque, underfunded, captured, or ineffective. The point, then, is not whether Nigeria should adopt global standards such as the ISSB framework, the CSDDD, or the UNGPs, but how those standards can be adapted to strengthen local governance.

Several reforms are immediately necessary. The Host Communities Development Trust mechanism under the PIA must move beyond formal compliance. Operators should be required to disclose the OPEX figures on which their 3 per cent contributions are calculated. Trust accounts should be independently audited annually, with the results published on a centralised NUPRC dashboard. There should also be minimum requirements for women and youth representation on trustee boards, while trust projects should be tied more deliberately to environmental remediation, livelihood restoration, and long-term community resilience, rather than symbolic civic projects.

In litigation, the parent company's duty of care principles developed in Okpabi and reinforced in the Bille and Ogale proceedings should be pleaded before Nigerian courts as persuasive authority, especially where foreign parent companies exercise real control over Nigerian operations. Nigeria's

early adoption pathway under the FRC Roadmap should also be treated as an opportunity rather than a burden. Indigenous operators that produce credible IFRS S1 and S2 disclosures before the 2028 mandatory date may enjoy stronger access to capital and more favourable debt pricing, particularly as they refinance recent divestment acquisitions.

The just transition should likewise be framed as a Nigerian development opportunity, not as an externally imposed decarbonization timetable. Gas to power, gas flare commercialisation, methane reduction, and carbon market development can support climate responsibility while addressing Nigeria's continuing energy poverty. At the institutional level, the harder questions remain unavoidable. The NDDC cannot credibly carry the developmental burden assigned to it unless serious reforms are undertaken. *Section 257(2)* of the PIA, which permits forfeiture of host community benefits where sabotage occurs, should be amended to avoid collective punishment. Finally, NESREA, NOSDRA, NUPRC, NMDPRA, and the FRC require personnel, technology, funding, and political insulation. Without that, ESG will remain a language of aspiration rather than a working system of environmental and corporate accountability.

6.0 Recommendations and Conclusion

The next phase of ESG reform in the Niger Delta should begin from a practical premise: the Niger Delta Development Commission should not be bypassed; it should be strengthened. The Commission already sits at the center of the region's development architecture, with a statutory mandate that speaks directly to planning, infrastructure, ecological concerns, and regional coordination. The task, therefore, is not to create a parallel ESG structure, but to modernise the NDDC's mandate for the sustainability era. The four recommendations that follow are directed at that objective and are organised around the three institutional levers through which law operates in Nigeria: the legislature, the executive, and the judiciary.

6.1 Legislative Reform

The National Assembly should amend the Niger Delta Development Commission Act to expressly incorporate ESG coordination, sustainability monitoring, and climate-resilient development into the statutory mandate of the NDDC. This amendment should position the Commission as the regional coordinating institution for ESG-linked development in the Niger Delta, without displacing the statutory functions of petroleum, environmental, financial, or climate regulators. The amended mandate should require the NDDC to maintain an integrated ESG and Sustainable Development Coordination Framework aligned with its Regional Development Master Plan, the Host Communities Development Trusts under the Petroleum Industry Act 2021, the 13 per cent derivation framework, state-level oil-producing area development commissions, and relevant federal environmental and climate obligations. The objective should be coordination, not institutional rivalry: a single regional project map, common reporting standards, transparent disclosure of interventions, avoidance of duplication, and measurable outcomes for host communities.

Section 257(2) of the Petroleum Industry Act 2021 should be amended to remove the risk of collective forfeiture of host community benefits for sabotage. Community development funds should not be lost because of acts attributable to unidentified individuals. A better approach would preserve the security objective of the provision while requiring proper investigation, individual culpability, and due process before any sanction is imposed. The same legislative reform agenda should also elevate the Financial Reporting Council's Sustainability Roadmap from administrative guidance into a firmer

statutory reporting obligation for upstream licensees, lessees, and joint venture parties, beginning with limited assurance and moving gradually towards reasonable assurance.

6.2 Institutional and Regulatory Reform

Nigeria's environmental and climate governance institutions should be strengthened and better coordinated. Sections 7(g) and 7(h) of the NESREA Act should be revisited so that the principal federal environmental regulator is not permanently excluded from the upstream petroleum sector. This should be done through clear coordination protocols among NESREA, NOSDRA, NUPRC, NMDPRA, the FRC, the National Council on Climate Change, and the NDDC, so that environmental protection, petroleum regulation, spill response, climate governance, and regional development function as connected parts of the same system. The National Council on Climate Change should also be fully operationalised, and Nigeria's first Carbon Budget should be treated as an urgent governance priority. ESG will not be delivered by legislation alone. The relevant institutions require ring-fenced funding, credible data systems, technical capacity, modern monitoring infrastructure, and political insulation.

6.3 Judicial and Procedural Reform

Nigeria should strengthen its judicial infrastructure for environmental accountability. A specialised Environmental Division of the Federal High Court should be established for major oil spills, gas flaring, decommissioning, remediation, and environmental liability claims, supported by judges with environmental and energy law expertise, technical assessors where necessary, and bespoke case management rules. In other words, energy disputes should enjoy a sui generis regime like in election litigation governed by the Fourth Amendment to the Constitution, providing for strict timelines to deal with these urgent matters.

Nigerian law should also develop clearer principles on parent company liability for environmental harm connected with Nigerian subsidiaries, drawing from Okpabi, the Bille and Ogale litigation, and Nigerian doctrines of agency, control, negligence, and corporate veil piercing. The Federal High Court Rules should be amended to facilitate effective representative and class actions in

environmental matters, including rules on opt-out classes, litigation funding safeguards, and court-supervised settlement administration. The procedural framework must now catch up with the substantive opening created by *Centre for Oil Pollution Watch v. NNPC*.

7.0 Conclusion

The Niger Delta has powered the Nigerian economy for more than half a century. By its contribution to the federation purse and by the price paid in livelihoods, social stability, and ecological capital, the region deserves a development settlement worthy of its national importance. ESG, properly understood, is neither a foreign imposition nor a public relations slogan. It is a framework through which the long-delayed conversation between the State, operators, and host communities can be translated into measurable obligations.

For that reason, ESG reform in the Niger Delta should be anchored within, and not outside, the NDDC's statutory mandate. The Commission's Regional Development Master Plan should become the organising platform through which ESG commitments, HCDT interventions, climate obligations, operator-funded projects, and government development programmes are coordinated, monitored, and measured. Host Communities Development Trusts should complement, not compete with, regional planning. Climate regulation should support, not distract from, energy access and livelihood restoration. Sustainability disclosure should not end as elegant reporting; it should help regulators, communities, financiers, and operators measure whether resource extraction is producing real development.

The instruments now exist: the NDDC Act, the Petroleum Industry Act, the Climate Change Act, the FRC Sustainability Roadmap, the National Carbon Market Framework, and the emerging body of environmental case law. What remains is institutional courage and disciplined implementation. The future of ESG in the Niger Delta will ultimately be judged not by the elegance of sustainability disclosures, but by whether the law succeeds in transforming resource extraction into measurable human development for the communities that bear its greatest burdens. ESG is not a gift from the corporations to the Niger Delta but a minimum obligation that is long overdue.

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