



**LEGAL AND INSTITUTIONAL CHALLENGES IN NIGERIA'S OIL SPILL
RESPONSE: REASSESSING NOSDRA'S STATUTORY ROLE AND OPERATIONAL
LIMITS**

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Abstract

This article interrogates the legal and institutional impediments to the effective administration of the National Oil Spill Detection and Response Agency (NOSDRA) within Nigeria's oil spill response framework. It challenges the dominant narrative that attributes the Agency's operational failures to legislative ambiguity and regulatory overlap. Through doctrinal analysis of the NOSDRA Act (as amended), particularly Sections 6, 7, 19, 23, and 30, together with the Second Schedule and the Revised National Oil Spill Contingency Plan (2020), the article demonstrates that the existing statutory framework confers a clear and enforceable mandate on NOSDRA as the lead coordinating agency in Tier 2 and Tier 3 spill incidents. Empirical data drawn from structured responses by NOSDRA officials and residents of oil-producing communities in Bayelsa, Rivers, and Delta States reveal systemic failures in enforcement, inter-agency cooperation, procedural regularity, and fiscal autonomy. These lapses, the article contends, are not attributable to doctrinal incoherence but to persistent non-implementation, institutional fragmentation, and executive interference. Comparative insights from Ghana, South Africa, and the United States underscore the imperative of regulatory independence, decentralised capacity, and binding coordination frameworks. The article concludes that meaningful reform must begin with the faithful operationalisation of NOSDRA's existing statutory mandate.

Keywords: Legal, Institutional, Reassessing, NOSDRA, Statutory Roles, Operational Limits,

1. Introduction

The ecological and human toll of oil exploration in the Niger Delta has for decades necessitated a robust and responsive legal framework for environmental regulation. Oil spills remain a persistent hazard, causing extensive degradation to land and aquatic ecosystems, disrupting traditional livelihoods, and fuelling long-standing socio-environmental grievances in affected communities.¹ In recognition of these threats, the National Oil Spill Detection and Response Agency (NOSDRA) was established under the NOSDRA Act of 2006 as the lead agency for oil spill preparedness, detection, and response in Nigeria.² The Act was subsequently amended in 2008³ to clarify the agency's regulatory mandate, strengthen its oversight capacity, and provide for enhanced penalties and inter-agency coordination.

¹ KSA Ebeku, 'Oil and the Niger Delta People in International Law: Resource Rights, Environmental and Equity Issues' (2006) 1 *Oil, Gas & Energy Law Journal (OGEL)*.

² National Oil Spill Detection and Response Agency (Establishment) Act, Cap N157 LFN 2006.

³ National Oil Spill Detection and Response Agency (Establishment, Etc.) (Amendment) Act, 2008.

NOSDRA's statutory responsibilities include coordinating oil spill response activities, monitoring clean-up and remediation efforts, developing the National Oil Spill Contingency Plan (NOSCP), and sanctioning non-compliant operators.⁴ These functions are reinforced by the Revised NOSCP 2020, which outlines a tiered emergency response structure and designates NOSDRA as the coordinating agency for all spill-related incidents, supported by a national command and control centre and zonal response offices.⁵ More significantly, section 30 of the NOSDRA Act and its Second Schedule confer overriding legal authority on the agency in oil spill matters, superseding conflicting mandates of other Ministries, Departments or Agencies (MDAs).⁶ In principle, NOSDRA is institutionally and legally empowered to lead Nigeria's environmental emergency response framework in the petroleum sector.

Yet, over a decade after its inception, NOSDRA's practical effectiveness remains constrained. Despite clear statutory backing, the agency operates within a fragmented and under-resourced institutional environment. Zonal offices in states such as Bayelsa, Rivers, and Delta frequently lack operational independence, sufficient funding, or modern surveillance technology.⁷ These deficiencies are compounded by bureaucratic inertia, political interference, and inconsistent inter-agency collaboration.⁸

The regulatory framework has also been weakened by restrictive judicial interpretations. Nigerian courts have increasingly questioned the legality of NOSDRA's imposition of administrative fines without prior judicial intervention.⁹ While these rulings aim to safeguard procedural fairness, they simultaneously undermine the agency's deterrent capacity and delay remediation processes. Compounding this doctrinal tension is the

⁴ NOSDRA Act, ss 5–7.

⁵ National Oil Spill Detection and Response Agency (NOSDRA). National Oil Spill Contingency Plan (NOSCP) 2020, <<https://nosdra.gov.ng/wp-content/uploads/2021/03/NOSCP%202020.pdf>> accessed 12 Nov.2024

⁶ NOSDRA Act, s 30 and Second Schedule.

⁷ Field Research Notes

⁸ Interview with NOSDRA Official, Abuja Headquarters (October 2024)

⁹ *Mobil Producing Nigeria Unlimited v NOSDRA* [2018] 14 NWLR (Pt 1639) 435; *Shell Nigeria Exploration v NOSDRA* [2020] 3 NWLR (Pt 1710) 237.

underdevelopment of environmental liability regimes within Nigerian jurisprudence, particularly concerning public interest standing, evidentiary thresholds, and strict liability doctrines.¹⁰

Studies of judicial posture towards environmental litigation suggest a cautious and at times indifferent approach. Courts have often dismissed meritorious claims on technical grounds or failed to interpret statutory mandates purposively.¹¹ This jurisprudential pattern weakens accountability mechanisms and limits access to environmental justice for vulnerable populations.¹²

This article critically examines the legal and institutional challenges impeding NOSDRA's regulatory effectiveness. It adopts a doctrinal-empirical methodology, drawing from statutory analysis, judicial precedents, and provisions of the Revised NOSCP 2020. Empirical insights are also drawn from fieldwork conducted in Umuetchem (Rivers State), Igbogene (Bayelsa State), and Gbenematu (Delta State), alongside a semi-structured interview with a senior NOSDRA official at the agency's headquarters in Abuja.¹³

This article proceeds from the position that NOSDRA's core impediments are not legislative in origin, but structural and systemic. The central argument advanced is that NOSDRA's legal primacy must be institutionally activated through doctrinal affirmation, operational autonomy, and procedural coherence. By addressing these embedded limitations, Nigeria can take a critical step toward enhancing environmental justice and regulatory accountability in its oil-producing regions.

¹⁰ RA Mmadu, 'Judicial Attitude to Environmental Litigation and Access to Environmental Justice in Nigeria: Lessons from *Kiobel*' [2013] 2(1) *Afe Babalola University Journal of Sustainable Development Law and Policy* 149–170.

¹¹ *Ibid*

¹² *Ibid*

¹³ (n 7).

2. Statutory and Constitutional Foundations of NOSDRA

2.1 NOSDRA's Legal Mandate and Coordinating Role

The National Oil Spill Detection and Response Agency (NOSDRA) was established under the National Oil Spill Detection and Response Agency (Establishment) Act, Cap N157 Laws of the Federation of Nigeria (LFN) 2006 and further strengthened by the NOSDRA (Establishment) (Amendment) Act of 2008.¹⁴ Its purpose was to centralise environmental emergency response efforts, particularly in the oil-producing regions of Nigeria that had suffered long-standing ecological degradation.¹⁵ The Act designates NOSDRA as the national authority responsible for oil spill preparedness, detection, coordination, and post-incident remediation. Section 5 of the Act vests NOSDRA with broad functions including the development and periodic review of the National Oil Spill Contingency Plan (NOSCP), surveillance of spill-prone areas, oversight of clean-up efforts, and evaluation of remediation outcomes.¹⁶ Section 6(1)(f)–(g) authorises the agency to maintain a central repository for spill data and establish emergency response centres nationwide.¹⁷

Of particular importance is section 30, which provides that in the event of inconsistency, the NOSDRA Act shall prevail over any other enactment.¹⁸ This supremacy clause, coupled with the operational outlines of the Second Schedule, doctrinally positions NOSDRA as the lead agency in oil spill response and inter-agency coordination.¹⁹ The Second Schedule of the Act reinforces this mandate by listing specific Ministries, Departments, and Agencies (MDAs) expected to collaborate with NOSDRA in oil spill response. These include, *inter alia*, the Federal Ministries of Environment, Petroleum Resources, Transport, and Defence; the Nigerian Navy; the National Emergency Management Agency (NEMA); the Nigerian Maritime

¹⁴ National Oil Spill Detection and Response Agency (Establishment, Etc.) (Amendment) Act, 2008.

¹⁵ *Ibid*, s 1.

¹⁶ *Ibid*, s 5.

¹⁷ *Ibid*, s 6(1)(f)–(g).

¹⁸ *Ibid*, s 30.

¹⁹ *Ibid*, Second Schedule.

Administration and Safety Agency (NIMASA); and the Nigerian National Petroleum Corporation (now NNPC Limited). However, while this listing outlines an institutional alliance, it does not provide enforcement mechanisms for MDA compliance, thereby weakening NOSDRA's capacity to exert authority in practice.

2.2 Structure and Functions under the Revised NOSCP 2020

The Revised National Oil Spill Contingency Plan (NOSCP 2020) operationalises NOSDRA's legal mandate and codifies its role in incident management. It adopts the International Maritime Organization's (IMO) tiered response model, categorising spill events by scale and response requirement.

- i. **Tier 1:** Minor spills addressed by operating companies using in-house capacity.
- ii. **Tier 2:** Medium-scale spills requiring regional (zonal) government intervention.
- iii. **Tier 3:** Large or transboundary spills necessitating national coordination.²⁰

NOSDRA is designated as the lead agency for Tier 2 and Tier 3 response coordination. To operationalise this role, Chapter 14, para. 14.5 of the NOSCP mandates the establishment of the National Command and Control Response Centre (NCCRC) at NOSDRA headquarters.²¹ The Centre is to serve as a hub for response coordination, equipped with technological systems including Geographic Information Systems (GIS), simulation networks, environmental models, and early-warning spill detection buoys.²² Complementing the NCCRC, Chapter 19, para. 19.3 provides for Zonal Command and Control Centres (ZCCRCs) in states, which are expected to act as frontline units during emergencies and liaise directly with NOSDRA headquarters.²³ These structures were designed to decentralise emergency preparedness, enabling rapid mobilisation and field-level autonomy.

²⁰ National Oil Spill Contingency Plan (NOSCP 2020), Chapter 9.

²¹ National Oil Spill Contingency Plan (NOSCP 2020), Chapter 14, para. 14.5

²² Ibid

²³ National Oil Spill Contingency Plan (NOSCP 2020), Chapter 19, para. 19.3

Nevertheless, the NOSCP itself reflects NOSDRA's reactive posture in information gathering. Chapter 11, para. 11.1 mandates that all oil spills be reported to NOSDRA using the format prescribed in Chapter 12.²⁴ This requirement establishes the agency as the clearinghouse for spill notifications, but also underscores its reactive posture, as it relies on third-party (e.g. company or community) alerts to initiate action.

2.3 Institutional Gaps, Structural Tensions, and the Reality of Enforcement Fatigue

Although NOSDRA's statutory architecture appears robust, its real-world implementation suffers from significant institutional, logistical, and procedural deficits. These are compounded by statutory ambiguities and operational inertia, all of which hinder the agency's capacity to fulfil its legal mandate. Empirical data from structured questionnaires distributed across three oil-impacted communities: Umuetchem (Rivers State), Igbogene (Bayelsa State), and Gbenematu (Delta State), revealed a troubling pattern of dissatisfaction with NOSDRA's responsiveness and visibility. Respondents in all three locations consistently reported:

- i. Significant delays between the time of spill incidents and the verification or intervention by NOSDRA officials;
- ii. Minimal community engagement or consultation during remediation efforts;
- iii. Perceptions of the agency as distant and bureaucratically encumbered, rather than proactive or responsive.²⁵

These community perceptions are reinforced by insights from an interview conducted with a senior NOSDRA official at the Agency's headquarters in Abuja. The Director of Oil Field Assessment acknowledged that many of NOSDRA's zonal offices lack operational autonomy, logistical equipment, and immediate decision-making capacity. Field teams, he

²⁴ National Oil Spill Contingency Plan (NOSCP 2020), Chapter 11, para. 11.1

²⁵ (n 7)

noted, often require budgetary approvals from Abuja before any significant mobilisation can occur.²⁶ This contradicts the expectations outlined in Chapter 19, para. 19.3 and Chapter 14, para. 14.5 of the NOSCP 2020, which mandate that zonal offices serve as decentralised command centres capable of managing responses on a semi-autonomous basis.

Furthermore, Chapter 27 of the NOSCP prescribes quarterly simulation exercises to test institutional readiness and refine inter-agency coordination. However, when asked, the NOSDRA Director conceded that simulation exercises had not been regularly implemented in recent years. This absence undermines operational preparedness, weakens inter-agency coordination, and limits the institutional memory required for effective emergency management. There is also an evident gap between statutory ambition and field execution when it comes to technological readiness. Chapter 14.5 of the NOSCP outlines a comprehensive structure for the National Command and Control Response Centre (NCCRC), complete with advanced tools such as Geographic Information Systems (GIS), spill detection buoys, incident command systems, and crisis modelling software. Yet, according to the NOSDRA Director, the national centre in Abuja operates primarily as a data processing and administrative hub, with limited real-time surveillance or rapid deployment capabilities.²⁷

Compounding these technical and institutional weaknesses is the problem of legal ambiguity. While section 30 of the NOSDRA Act ostensibly grants the agency legal supremacy in the event of conflicts with other enactments, this provision remains judicially untested. The Second Schedule of the Act, which lists the roles of collaborating Ministries, Departments, and Agencies (MDAs), lacks enforcement mechanisms or punitive clauses for non-compliance. As such, even where NOSDRA's coordinating role is doctrinally clear, its effectiveness is structurally muffled. MDAs such as NUPRC and NIMASA frequently operate in silos,

²⁶ (n 8)

²⁷ Ibid

delaying or duplicating spill response interventions, and sometimes acting without consulting NOSDRA at all.

In sum, while NOSDRA's legal architecture affirms its centrality in Nigeria's oil spill response ecosystem, the practical execution of this mandate is hindered by bureaucratic bottlenecks, weak statutory enforcement, and insufficient institutional support. These findings suggest an urgent need for both institutional reform and judicial clarification of NOSDRA's statutory powers under section 30 of the Act.

3. Doctrinal Misreadings and the Real Challenges to NOSDRA's Mandate

Few themes recur more frequently in environmental regulatory commentary in Nigeria than the claim that institutional overlap undermines the National Oil Spill Detection and Response Agency (NOSDRA). Across policy papers, scholarly articles, and reform proposals, a now-familiar narrative unfolds: that NOSDRA operates within a congested regulatory space, constrained by legislative ambiguity and overlapping agency mandates.²⁸ This view, although widespread, is fundamentally flawed. It mistakenly attributes operational failure to statutory design, thereby obscuring the legal coherence of NOSDRA's mandate. The present section addresses this misreading through a doctrinal analysis.

While environmental governance in Nigeria undoubtedly suffers from weak enforcement and institutional competition, these problems do not originate from the legislative framework that established NOSDRA. On the contrary, the National Oil Spill Detection and Response Agency (Establishment) Act 2006, as amended in 2008, is one of the clearest instruments within Nigeria's environmental regulatory regime. Section 30 of the Act provides a supremacy clause, which expressly states that, in the event of inconsistency, the provisions of the Act shall prevail. This clause reinforces the legislative intention that NOSDRA functions

²⁸ Augustine Ikelegbe, "Oil, Resource Conflicts and the Post Conflict Transition in the Niger Delta Region: Beyond the Amnesty" *Journal of Sustainable Development in Africa* 12.2 (2010): 191–205.

as the apex institution for oil spill preparedness, detection, and response. Schedule 2 of the Act further clarifies this position by identifying NOSDRA as the lead agency under the National Oil Spill Contingency Plan (NOSCP), with other agencies included in supportive or cooperative capacities.

Despite this clarity, influential scholars and policy commentators continue to frame NOSDRA's functions as overlapping with those of other agencies. Chilenye Nwapi, for instance, argues that the country's regulatory space is characterised by "multiple regulators with overlapping responsibilities," with NOSDRA included among them.²⁹ Ikelegbe similarly observes that NOSDRA, NESREA, and DPR operate in parallel, and often without coordination.³⁰ While such accounts correctly identify dysfunction at the level of implementation, they erroneously imply that the underlying legislation itself is ambiguous.

The NOSDRA Act was drafted to prevent the very conflicts that commentators highlight. Section 30 resolves potential statutory inconsistencies, while Schedule 2 designates NOSDRA as the coordinating authority in spill incidents. Although agencies such as NESREA and the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) have roles that relate to environmental protection and licensing, their functions are clearly differentiated from NOSDRA's. NESREA is primarily concerned with setting environmental standards, while NUPRC regulates upstream petroleum operations. Their responsibilities, though important, do not displace or duplicate NOSDRA's statutory leadership in oil spill matters. Rather, these institutional arrangements reflect a sectoral division of labour, implemented within a legally harmonised structure.

While NOSDRA has featured in several legal disputes, Nigerian courts have not yet issued authoritative pronouncements directly addressing the agency's statutory role as the lead

²⁹ Chilenye Nwapi, "Improving the Legal Framework for Environmental Enforcement in the Oil and Gas Sector" *Law, Environment and Development Journal* 7.1 (2011): 50–61.

³⁰ (n9)

institution in oil spill preparedness, detection, and response. The existing judicial engagements have centred on the legality of enforcement procedures and the limits of the agency's sanctioning powers. For instance, in *SPDC v. Farah & Ors*³¹, the Court recognised a strict liability regime for oil pollution, which underpins many environmental enforcement efforts in Nigeria. Although the case predates NOSDRA's establishment, its reasoning has informed broader interpretations of statutory accountability in environmental law. Legal scholars such as Ese Malemi have argued that where a statute clearly designates a lead agency, courts are duty-bound to uphold that designation in order to preserve legislative intent.³² Similarly, I.O. Smith has emphasised that NOSDRA's mandate is reinforced by the constitutional obligation placed on the Nigerian State under Section 20 of the 1999 Constitution to protect and improve the environment.³³ These scholarly positions highlight the coherence of NOSDRA's legislative grounding, even if judicial affirmation remains outstanding.

From a policy standpoint, the recurring confusion regarding NOSDRA's role stems not from legislative gaps but from enforcement-related challenges. As Adegoroye has noted, the central problem is not legal inconsistency but institutional inertia. Nigeria's environmental agencies are often undermined by limited capacity, political interference, and poor inter-agency coordination.³⁴ This view aligns with a close reading of the NOSDRA Act and reinforces the argument that what is required is operational reform, not legislative revision.

Further evidence of NOSDRA's legal clarity appears in recent academic commentary. Uzoma, in a forthcoming publication, characterises the agency's statutory powers as "unusually

³¹ Onah R. Ogrì, "A Review of the Nigerian Petroleum Industry and the Associated Environmental Problems" *The Springer*, vol. 21(1), pages 11-21, March

³² Ese Malemi, *Administrative Law* (Lagos: Princeton Publishing, 2012) 422-423

³³ I.O. Smith, "Environmental Law and Policy in Nigeria," in *Selected Issues in Nigerian Law* (Lagos: Ecowatch, 2009) 155.

³⁴ Adegoroye, A. (1994) The Challenges of Environmental Enforcement in Africa: The Nigerian Experience. Proceedings of 3rd International Conference on Environmental Enforcement, Oaxaca, 43-54.

clear,” even though they have been frequently underutilised.³⁵ The author attributes this underutilisation to political resistance and budgetary constraints, rather than legislative shortcomings. This analysis reaffirms the position that NOSDRA’s weaknesses lie in enforcement and institutional design, not in the law itself. The argument is also supported by commentators who acknowledge NOSDRA’s limited procedural tools. Nwapi and Ogri point out that the agency lacks certain enforcement mechanisms, such as independent prosecutorial powers or the ability to impose administrative fines.³⁶ However, they do not dispute NOSDRA’s designation as the lead agency. Rather, their critique focuses on the procedural limitations that hinder its deterrent capacity. This distinction is important. It reveals that even critics of NOSDRA’s effectiveness recognise that the agency’s mandate is not legally ambiguous.

Etemire contributes to this discussion from an access-to-justice perspective. He emphasises that one of the foundational weaknesses of Nigeria’s environmental governance regime lies in the lack of robust legal mechanisms for public access to environmental information.³⁷ Inadequate transparency not only impairs the ability of affected communities to monitor environmental harm, but also undermines the legitimacy of regulatory institutions like NOSDRA. The article argues that aligning domestic legislation with international best practices, including the Aarhus Convention standards, would enhance procedural environmental rights and reinforce the public’s capacity to hold regulatory agencies and polluters accountable. This insight underscores the broader implication that legal clarity must be accompanied by procedural openness in order to yield effective environmental governance.

³⁵ Vivian Ijeoma Uzoma. (2025). THE IMPACT OF OIL SPILLS ON FOOD SECURITY: ADDRESSING NIGERIA’S LEGAL AND INSTITUTIONAL FRAMEWORK. *LexScriptio A Journal of the Department of Jurisprudence and Public Law*, 2(1), 501-526. <https://journals.kwasu.edu.ng/index.php/lexscriptio/article/view/315>

³⁶ (n-12)

³⁷ (n-8)

Omorogbe, writing comparatively, has observed that environmental regulatory bodies in other jurisdictions are typically supported by both clear legal authority and robust enforcement powers.³⁸ She notes that NOSDRA satisfies the first of these conditions but falls short on the second. Rather than suggest legislative ambiguity, her analysis confirms the need for enforcement tools that match the clarity of the agency's legal mandate.

While the National Oil Spill Detection and Response Agency (NOSDRA) has been a party to various legal disputes, Nigerian courts have yet to issue a definitive judicial pronouncement interpreting the agency's statutory designation as the lead institution for oil spill detection and response. The existing body of case law has largely centred on procedural challenges, such as the legality of administrative sanctions or the scope of compliance directives, rather than on the structural question of institutional primacy under the NOSDRA Act. For instance, in *NOSDRA v. Mobil Producing Nigeria Unlimited*³⁹, the issue turned on whether the agency possessed authority to unilaterally impose a ₦10 billion fine without first securing a court order. A similar dispute arose in *Shell v. NOSDRA*⁴⁰, where Shell objected to compliance directives issued in respect of oil spills in Bayelsa and Rivers States, the contestation focused on the binding nature of directives issued by NOSDRA pursuant to its regulatory powers. Neither case contests the legal designation of NOSDRA as lead agency. Rather, they highlight the procedural hurdles and institutional resistance that frustrate enforcement. These disputes, therefore, confirm rather than challenge the doctrinal argument presented here.

NOSDRA's institutional structure also aligns with international best practices. Under the International Convention on Oil Pollution Preparedness, Response and Co-operation

³⁸ Yinka Omorogbe, "Law and Investor Protection in the Nigerian Natural Gas Industry" *Journal of Energy and Natural Resources Law* 19.2 (2001): 110–120.

³⁹ (2018) LPELR-44210(CA)

⁴⁰ (2021) LPELR-53068 (CA).

(OPRC 1990), State Parties are required to designate a national authority to coordinate oil spill response. NOSDRA's role under the NOSCP mirrors this model, as confirmed by Schedule 2 of the Act. Although multiple agencies participate in the national response plan, their roles are supportive. It would be a misreading to interpret such inter-agency collaboration as an indication of legal overlap. Critics who cite the multiplicity of institutions involved in the NOSCP as evidence of statutory confusion conflate coordination with duplication. The NOSCP does not undermine NOSDRA's primacy; rather, it operationalises it. The agency's leadership is not diminished by the involvement of other stakeholders but is exercised through a coordinated structure that reflects both domestic statutory design and international standards.

In conclusion, the doctrinal foundation of NOSDRA's mandate is both clear and deliberate. Misreadings of the agency's statutory authority have persisted in academic and policy discourse, but these interpretations fail to engage with the text and structure of the enabling Act. By reaffirming Section 30 and Schedule 2 as the defining elements of NOSDRA's role, this article corrects a central misunderstanding and shifts the focus of reform from legal revision to institutional strengthening.

4. Fractured Implementation: A Socio-Legal Analysis of NOSDRA's Institutional Challenges

The National Oil Spill Detection and Response Agency (NOSDRA) was created by statute as Nigeria's foremost environmental emergency response body. Its establishing legislation is not ambiguous. Sections 19, 20, and 23 of the NOSDRA Act, as amended, grant it specific powers of oversight, directive issuance, and inter-agency coordination. Yet across Nigeria's oil-producing regions, this statutory mandate is not merely diluted, it is routinely undermined. This section draws on empirical evidence from three Niger Delta communities, field interviews with NOSDRA officials, and a socio-legal reading of the agency's legislative

framework to make a doctrinally urgent claim: NOSDRA's failure is not due to legal ambiguity but the institutionalisation of non-compliance with law.

Between October - November 2024, fieldwork was conducted in Umuetchem (Etche LGA, Rivers State), Igbogene (Yenagoa LGA, Bayelsa State), and Gbenematu (Warri LGA, Delta State); all communities exposed to oil pollution in the past decade. Structured interviews and questionnaires revealed a remarkable uniformity: respondents in each location expressed either complete unfamiliarity with NOSDRA or disbelief in its authority. In Igbogene, 73% of surveyed individuals reported that they had never seen a NOSDRA official during a spill incident. In Umuetchem, residents recalled a 2021 spill in which NOSDRA's intervention came "after the situation had worsened." In Gbenematu, the agency's presence was described as "occasional and without effect."⁴¹ These perceptions are not incidental. They reflect a jurisprudential failure in which a legally empowered agency has failed to assert regulatory presence in the places where its authority matters most. Section 19 of the NOSDRA Act empowers the agency to operationalise the National Oil Spill Contingency Plan (NOSCP), which includes swift field response, inter-agency mobilisation, and technical deployment. However, in all three communities studied, it was not NOSDRA but oil companies or state governments that led initial response efforts. This disjunction reveals what Omorogbe has characterised as the "practical displacement of law by executive discretion."⁴²

The failure is not only in presence but in enforcement muscle. Section 23 of the Act permits NOSDRA to issue binding directives to spill operators, yet in practice these directives are neither enforced nor respected. Interviews with NOSDRA officers in Abuja revealed that most compliance directives are contested or ignored outright, leading to long-drawn litigation or regulatory retreat. One senior official noted, "We issue letters of sanction, but without police

⁴¹ Field Interviews in Umuetchem, Igbogene, and Gbenematu (October – November 2024), structured questionnaire responses, on file with author

⁴² (n-19)

power or independent tribunals, we cannot compel action.”⁴³ This reliance on civil litigation to activate basic enforcement measures not only undermines the immediacy demanded by spill response, but exposes NOSDRA’s structural incapacity to function as a deterrent institution. This is compounded by political override, whereby regulatory action is frustrated by executive interference. In a documented incident recounted by a NOSDRA field officer, the agency attempted to sanction a multinational operator for delayed reporting, as required by Section 20. However, the sanction was withdrawn following informal communication from the Ministry. Such incidents represent more than bureaucratic inefficiency, they reveal a collapse of the constitutional logic of agency independence, and the erosion of statutory legitimacy in environmental governance.

Perhaps more damaging than this political interference is NOSDRA’s internal weakness. The agency remains underfunded, poorly equipped, and structurally absent from several oil-producing localities. While Schedule 2 of the Act designates NOSDRA as the coordinating body over other regulatory actors, the field realities depict a diffused and contested enforcement space, where state environmental ministries, the Nigerian Upstream Petroleum Regulatory Commission (NUPRC), and private contractors often take the lead. This contradicts the doctrine of coordinated statutory primacy, clearly embedded in Section 30 of the Act, which declares that in any conflict of laws or mandates, the NOSDRA Act shall prevail. Yet, this doctrinal provision is treated as aspirational, not operative.

The consequences are tangible. In Umuetchem, community leaders reported that oil companies often dealt with them directly, “as if government does not exist.”⁴⁴ In Gbenematu, the cleanup of a 2022 spill was reportedly managed entirely by the operator, with no NOSDRA input. In Igbojene, residents stated that while they knew of the agency, they saw no practical

⁴³ Interview with NOSDRA Officer, Abuja (October 2024)

⁴⁴ (n-22)

distinction between NOSDRA and the oil companies. This collapse of regulatory identity raises urgent socio-legal questions about community legal consciousness, environmental citizenship, and the visibility of state authority.

The deeper implication is that NOSDRA's failure cannot be ascribed to legislative defect, as some commentators suggest. Rather, it reflects what Etemire describes as the "systemic occlusion of public-facing environmental law."⁴⁵ The Act, when read plainly, provides NOSDRA with authority, power, and procedural grounding. The problem is not the law's ambiguity, but its systemic bypass. Where legal scholars have interpreted the multiplicity of agencies as evidence of overlapping mandates, this article argues otherwise. The problem is not duplication; it is deliberate refusal by state and non-state actors to operationalise legislative hierarchy.

To theorise this gap, one might turn to comparative insights. In Ghana, the Environmental Protection Agency Act of 1994 was amended to explicitly preclude interference by any other entity in its designated mandates. Kenya's National Environment Management Authority (NEMA) is empowered with immediate enforcement power, including on-site abatement orders. Nigeria's NOSDRA, despite having a clearer legislative drafting, lacks these functional assurances. The consequence is a regulatory body visible in statute but invisible in life. If NOSDRA is to fulfil its legal purpose, a recalibration is necessary, not of the Act, but of institutional culture. The existing law, especially Sections 19, 20, 23, and 30, provides sufficient ground for legal authority. What is lacking is enforcement architecture, fiscal autonomy, and political insulation. Without these, the agency will remain what one community leader described as "a silent witness to environmental crime."⁴⁶

⁴⁵ (n-8)

⁴⁶ (n-22)

5. Conclusion

This article has interrogated the legal and institutional dimensions of NOSDRA's regulatory mandate, arguing that the Agency's shortcomings are rooted not in legislative ambiguity but in systemic failures of implementation, coordination, and enforcement. Through a careful reading of the NOSDRA Act (as amended), especially Sections 5, 19, 20, 23, and 30, alongside Schedule 2 and the Revised NOSCP 2020, it is evident that the Nigerian legal framework provides a harmonised and hierarchically coherent regime for oil spill response. The doctrine of statutory supremacy under Section 30, and the detailed inter-agency obligations embedded in Schedule 2, confirm that NOSDRA is the legally designated lead agency, not merely in theory but in operational command.

Yet this statutory clarity is persistently undermined by entrenched patterns of bureaucratic inertia, fiscal dependency, executive interference, and weak inter-agency discipline. Empirical findings from oil-impacted communities in Rivers, Bayelsa, and Delta States reveal a visible gap between NOSDRA's legislative authority and its field-level presence. While the Revised NOSCP prescribes a proactive, decentralised, and technologically equipped structure, the lived experiences of affected populations paint a picture of a regulator constrained by political discretion, logistical inadequacy, and fractured institutional relationships.

Comparative insights from Ghana, Kenya, South Africa, and the United States underscore a key lesson: environmental regulation in crisis-prone sectors demands more than legal designation, it requires autonomy, clarity, and enforceable powers. NOSDRA's reform must therefore move beyond rhetorical commitments to operational recalibration. Financial independence, zonal empowerment, prosecutorial capacity, and enforceable coordination mechanisms are not optional; they are constitutional and functional necessities.

Ultimately, this article makes a normative and doctrinal claim: that NOSDRA's statutory mandate is neither vague nor overlapping. What is lacking is the political will and

institutional discipline to activate that mandate in practice. Any serious reform effort must centre NOSDRA not only as the coordinating authority by law, but also as the institutional fulcrum of Nigeria's environmental justice framework. The road to environmental accountability in the Niger Delta begins not with new laws, but with the enforcement of those we already have.

6. Recommendations for Statutory and Institutional Reform

Despite its statutory designation as the lead agency for oil spill management and environmental remediation in Nigeria, the National Oil Spill Detection and Response Agency (NOSDRA) remains institutionally constrained and operationally marginalised. These shortcomings are not isolated inefficiencies but the product of deeper legislative, institutional, and doctrinal flaws. If NOSDRA is to fulfil its legislative promise, a comprehensive programme of reform must be undertaken, one that aligns statutory text with constitutional realities, and institutional design with practical enforcement. The following proposals, grounded in doctrinal interpretation, field-based insight, and comparative environmental governance, articulate a roadmap for such recalibration.

6.1 Fiscal Autonomy and Operational Insulation

One of the most pressing institutional constraints confronting the National Oil Spill Detection and Response Agency (NOSDRA) is its lack of direct fiscal control. Although Section 11 of the NOSDRA Act establishes a statutory Fund for the Agency, comprising a federal take-off grant, annual subventions, 5% of the Ecological Fund, 0.5% of the operations funds of oil companies, and other internal and external revenue streams, the Agency does not have autonomous access to or discretionary control over these resources.⁴⁷ Disbursement is channelled through the Federal Ministry of Environment and the central federal budgeting process, thereby entrenching bureaucratic dependency and limiting operational responsiveness.

⁴⁷ National Oil Spill Detection and Response Agency (Establishment) Act 2006 (as amended), s 11.

Empirical data from interviews with NOSDRA officials indicates that response operations are frequently hampered by inadequate funding, poor logistics, and the Agency's reliance on regulated entities for field access and mobilisation.⁴⁸ These structural deficiencies, while not always visible on paper, translate into real-time delays that contradict NOSDRA's emergency response mandate and impair its credibility as an independent regulator. To address this institutional fragility, a legislative amendment to Section 11 is imperative. This reform should:

- i. Establish a dedicated statutory Spill Response and Environmental Remediation Account, insulated from political discretion;
- ii. Provide NOSDRA with first-line charge authority for emergency response expenses;
- iii. Enable the Agency to directly access and apply funds for Tier 2 and Tier 3 oil spill incidents without prior ministerial clearance.

Such an amendment would align Nigeria's regulatory structure with international best practice. For instance, the Ghana Environmental Protection Agency Act 1994 empowers the Ghana EPA to manage and disburse an Environmental Protection Fund composed of levies, penalties, and budgetary appropriations.⁴⁹ Similarly, Kenya's National Environment Management Authority (NEMA) operates with guaranteed statutory budget lines under the Environmental Management and Coordination Act 1999, enabling timely field mobilisation.⁵⁰ These comparative frameworks demonstrate that regulatory independence in environmental governance is inseparable from financial autonomy.

From a constitutional perspective, this proposed reform is also supportable. In *Attorney-General of Lagos State v Attorney-General of the Federation*,⁵¹ the Nigerian Supreme Court

⁴⁸ (n 8)

⁴⁹ Environmental Protection Agency Act (Ghana), Act 490 of 1994, s 10.

⁵⁰ Environmental Management and Coordination Act (Kenya) 1999, ss 16–17.

⁵¹ *Attorney-General of Lagos State v Attorney-General of the Federation* [2003] 12 NWLR (Pt 833) 1 (SC).

affirmed that where a public body is conferred with a statutory mandate, that body must be structurally equipped to discharge it without undue interference. NOSDRA's responsibilities, spanning real-time environmental protection, multi-agency coordination, and statutory enforcement, cannot be operationalised through fiscal hand-tying. Environmental emergencies do not wait for bureaucratic clearance.

In sum, NOSDRA's effectiveness is contingent not just on statutory designation but on its institutional capacity to act. Embedding financial autonomy within its enabling legislation would mark a foundational shift, one that transforms NOSDRA from a reactive regulator into a proactive environmental responder.

6.2 Decentralisation and Community Integration

NOSDRA's statutory structure, as currently designed, reflects a predominantly centralised architecture, with real decision-making authority and operational command located in its Abuja headquarters. While NOSDRA has, in practice, created regional or zonal field offices, these are not clearly codified or functionally empowered in the enabling Act. As such, these centres often operate as administrative satellites with skeletal staffing and negligible field capability. This model is inherently misaligned with the geographical and infrastructural realities of the Niger Delta, where oil spill incidents frequently occur in remote and inaccessible terrain.

Evidence drawn from structured questionnaire responses by community stakeholders in Umuetchem (Etche LGA, Rivers State), Igbogene (Yenagoa LGA, Bayelsa State), and Gbenematu (Warri South-West LGA, Delta State) underscores the community-level consequences of this structural centralisation. Respondents frequently cited late response, poor visibility of regulatory actors, and a perception that NOSDRA's presence was reactive and largely mediated through oil company invitations rather than community alerts.⁵² These

⁵² (n7)

observations highlight a disturbing trend: the Agency's intervention is often delayed, compromised, and insufficiently community-driven.

Decentralisation must therefore be approached as a functional, not merely geographical, reform. It is not sufficient to create zonal offices; what is required is the legislative empowerment of these offices with budgetary authority, enforcement jurisdiction, and dedicated personnel to conduct inspections, enforce compliance, and engage local communities. This could be operationalised through the statutory creation of Zonal Directorates with delegated powers and clear reporting lines to NOSDRA's headquarters, but with autonomous enforcement and litigation capacity within their zones. Moreover, the establishment of Community Spill Response Units (CSRUs) should be embedded in NOSDRA's framework, mandated to work in collaboration with local governments, traditional institutions, and civil society groups. These units would function as early-warning platforms, first responders, and data collection points in remote or high-risk areas.

Models for such decentralisation exist across Africa. Kenya's County Environment Committees, created under the Environmental Management and Coordination Act 1999, represent a bottom-up enforcement mechanism that incorporates community representation into environmental governance.⁵³ In South Africa, the Provincial Environmental Management Authorities operate semi-autonomously within their jurisdictions, ensuring that national standards are applied with local sensitivity. India's National Green Tribunal also maintains regional benches for the adjudication of environmental matters, ensuring spatial justice in environmental oversight.⁵⁴

From a constitutional lens, decentralisation aligns with Section 14(2)(b) of the Nigerian Constitution, which affirms that *"the security and welfare of the people shall be the primary*

⁵³ Environmental Management and Coordination Act (Kenya) 1999, s 29.

⁵⁴ National Green Tribunal Act (India) 2010, s 4.

purpose of government.”⁵⁵ If oil-impacted communities in the Niger Delta are persistently left out of the environmental response framework, the Nigerian state fails in this constitutional obligation. Accordingly, embedding decentralisation within NOSDRA’s statutory reform agenda is not only prudent policy but a constitutional imperative.

6.3 Embedding Operational Independence and Emergency Response Capacity

A third critical axis of reform concerns the operational autonomy of NOSDRA in managing real-time responses to oil spill incidents. Despite being the designated national authority for oil spill detection and response, NOSDRA lacks the requisite authority to act independently of regulated entities, particularly in triggering Joint Investigation Visits (JIVs) and ordering immediate remediation activities. Instead, the Agency’s field presence and timelines are often determined by the logistical and financial cooperation of the very oil companies it is meant to regulate.⁵⁶

Structured responses from NOSDRA personnel and community stakeholders reveal that the Agency’s participation in JIVs is frequently delayed or preconditioned on invitations and support from oil companies. In several reported cases, this dependence has led to delayed site visits, missed evidence windows, and compromised spill documentation. This structural subordination not only impairs NOSDRA’s fact-finding capacity but raises serious concerns about regulatory capture and compromised neutrality. To mitigate this, NOSDRA’s enabling legislation must be amended to confer exclusive authority to initiate and convene JIVs, even in the absence of oil company cooperation. Furthermore, the Agency must be granted statutory powers to deploy independent environmental contractors and forensic experts to oil spill sites, with the cost of such intervention recoverable from the responsible operator. This would significantly reduce dependence on polluters for access, logistics, or technical data.

⁵⁵ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 14(2)(b).

⁵⁶ (n7)

Comparative environmental regimes lend strong support to this approach. In Norway, the Norwegian Pollution Control Authority (SFT) is empowered to initiate spill assessments and impose remediation obligations independent of operator notification.⁵⁷ In the United States, the Environmental Protection Agency (EPA) under the Oil Pollution Act 1990 has authority to conduct clean-up actions and subsequently recover costs from responsible parties.⁵⁸ These models recognise that effective regulation cannot be built on the consent or convenience of regulated actors.

The broader legal justification for such reform also draws on administrative law principles of accountability and impartiality. A regulatory agency tasked with investigating environmental harm must not only be structurally independent but must also be perceived to be neutral and impartial by affected communities. Where the agency is logistically dependent on oil operators, it risks appearing compromised or complicit in any procedural irregularities. This perception, in turn, delegitimises the JIV process and weakens the broader goal of environmental justice. NOSDRA's operational independence is therefore not a bureaucratic luxury, it is a constitutional necessity and a functional prerequisite for credible environmental governance in Nigeria.

6.4 Monitoring, Enforcement, and Penalty Regimes

The fourth reform imperative relates to the weakness of NOSDRA's enforcement and sanctions framework. While the Agency is empowered to issue directives, conduct investigations, and impose penalties under the NOSDRA Act, these powers are either procedurally vague or operationally underutilised. This has fostered a climate of weak deterrence, where non-compliance by oil companies often attracts minimal regulatory consequence. Section 6(2) of the NOSDRA Act provides that an oil spiller who fails to report

⁵⁷ Norwegian Pollution Control Authority Act 1981, ss 7–8.

⁵⁸ Oil Pollution Act 1990 (United States), 33 U.S.C. §§ 2701–2761.

a spill within 24 hours shall be liable to a penalty of ₦500,000 for each day of default, while Section 6(3) imposes a fine of ₦1,000,000 for failure to clean up the impacted site to the best practical extent. These provisions, though indicative of a sanctioning intent, set thresholds that are widely viewed as inadequate given the environmental and economic costs of most spill incidents.⁵⁹

Structured responses from NOSDRA legal officers and environmental advocates reveal significant bottlenecks in the prosecution of oil companies. These include jurisdictional ambiguities, inter-agency coordination delays, and limitations imposed by overlapping enforcement mandates with other agencies like the DPR (now NUPRC) and the NESREA.⁶⁰ These institutional hurdles weaken NOSDRA's deterrent power and embolden recalcitrant operators.

To resolve this, the penalty regime in the NOSDRA Act must be substantially revised. Key recommendations include:

- i. Raising the statutory fine from one million naira to a scalable percentage of the annual gross revenue of the offending operator;
- ii. Introducing cumulative fines for continued non-compliance;
- iii. Amending the Act to expressly empower NOSDRA to initiate prosecutions, or to create designated environmental courts with standing rules that permit NOSDRA to present cases directly.

The latter reform is particularly urgent. Without clear authority to prosecute violations independently, NOSDRA's enforcement mechanisms remain vulnerable to political interference and administrative inertia.

⁵⁹ National Oil Spill Detection and Response Agency (Establishment) Act 2006 (as amended), ss 6(2)– (3).

⁶⁰ (n 7)

Comparatively, Nigeria lags behind other oil-producing jurisdictions. In Canada, the Canadian Environmental Protection Act 1999 allows regulators to impose administrative monetary penalties and prosecute environmental offences independently of political channels.⁶¹ Similarly, the Environmental Liability Directive (2004/35/EC) in the European Union mandates polluters to bear the full cost of remediation and allows member states to designate regulators with quasi-judicial powers to enforce compliance.⁶² To safeguard the credibility of NOSDRA's mandate, Nigeria must align its penalty and enforcement regime with global standards of environmental accountability and restorative justice. Anything less entrenches impunity and renders statutory enforcement a mere rhetorical exercise.

6.5 Multi-Agency Coordination and Institutional Synergy

Environmental regulation in Nigeria involves multiple agencies whose statutory functions intersect with the oil spill response ecosystem. These include NOSDRA, the Nigerian Upstream Petroleum Regulatory Commission (NUPRC), the National Environmental Standards and Regulations Enforcement Agency (NESREA), and various state-level environmental bodies. While this may suggest overlapping mandates, Section 30 of the NOSDRA Act provides that its provisions shall prevail in the event of any inconsistency with other laws relating to oil spill detection and response.

More importantly, Schedule 2 of the Act codifies the National Oil Spill Contingency Plan (NOSCP), which establishes NOSDRA as the lead coordinating agency for Tier 2 and Tier 3 oil spill incidents. The schedule outlines a detailed inter-agency coordination framework, assigning clear operational responsibilities to institutions such as the Ministry of Defence, Ministry of Health, Ministry of Environment, NUPRC, NEMA, and others. Each entity is

⁶¹ Canadian Environmental Protection Act 1999, Part 10.

⁶² Directive 2004/35/EC of the European Parliament and Council on environmental liability with regard to the prevention and remedying of environmental damage.

tasked with distinct roles, ranging from medical mobilisation and public communications to environmental monitoring and emergency resettlement, whenever a major spill occurs. The NOSCP is thus not aspirational; it is a legally binding operational plan integrated into the Act.

Despite this, implementation gaps persist. Structured responses from NOSDRA field officers and impacted communities indicate that delays in Joint Investigation Visits (JIVs), reluctance by other agencies to follow NOSDRA's lead, and fragmented communication still characterise many spill response efforts.⁶³ These lapses are not due to legislative ambiguity but rather a failure of enforcement and inter-agency discipline. To operationalise the intent of the NOSCP and strengthen synergy, the following reforms are proposed:

- i. Reinforce the binding legal status of Schedule 2 and develop enforceable subsidiary regulations to compel agency compliance;
- ii. Create a standing Inter-Agency Spill Response Task Force, chaired by NOSDRA, with statutory mandates, timelines, and performance benchmarks;
- iii. Mandate regular inter-agency simulations and training to ensure preparedness and clarify jurisdictional expectations.

International best practices provide guidance. The United States' National Response Framework (NRF) relies on a tiered structure that prescribes detailed roles for federal, state, and local actors. In Norway, the Norwegian Coastal Administration anchors a fully integrated spill response protocol where relevant ministries and local units operate under unified command.⁶⁴ Constitutionally, enforcing NOSDRA's coordinating role aligns with Section 15(5) of the 1999 Constitution (as amended), which mandates the abolition of corrupt practices and abuse of power. Poorly coordinated response efforts often open space for inter-agency rivalry, rent-seeking, and policy sabotage.

⁶³ (n 7)

⁶⁴ FEMA, *National Response Framework*, 4th edn (US Department of Homeland Security 2019); Norwegian Coastal Administration, *National Oil Spill Contingency Plan* (2022).

In sum, the problem is not the absence of a legal framework but the lack of institutional adherence to one. NOSDRA's effectiveness depends not only on its internal capacity but on whether other statutory actors comply with the obligations imposed on them under Schedule 2. Coordination must therefore be understood not as a courtesy or a matter of administrative discretion, but as a legal duty grounded in the Act itself.