

OIL SPILLS IN THE NIGER DELTA:

PROPOSALS FOR AN EFFECTIVE NON-JUDICIAL GRIEVANCE MECHANISM

JULY 2014

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PRODUCED FOR STAKEHOLDER DEMOCRACY
NETWORK (SDN) UNDER THE COMPENSATION
RATES AND PROCESSES PROJECT



01

INTRODUCTION

Approximately 90% of Nigeria's exports, and 75% of the consolidated budgetary revenue comes from oil and gas, the majority of which comes from the Niger Delta.¹ Consisting of nine states – Abia, Akwa Ibom, Cross Rivers, Bayelsa, Delta, Edo, Imo, Ondo and Rivers – the Niger Delta is the third largest wetland in the world and has over 40 ethnicities and over 30 million people.² Shell, Exxon, Total, and Eni (a.k.a. Agip), among others, operate both onshore and offshore oil facilities in the Niger Delta, with an estimated 37.2 billion barrels of proven crude oil reserves as of January 2013.³

Against this massive wealth generation, it has been estimated that the equivalent to the Exxon Valdez oil spill – a spill large enough to entirely change international practices relating to oil spill prevention and response – is spilled in the Niger Delta every year.⁴ Where the Niger Delta remains the poorest region in Nigeria, with over 70% of indigenes dependent on the natural environment for their livelihood, environmental degradation due to oil spillage has increased joblessness, extreme health problems and poverty.⁵

Response to oil spills has been marked by corruption, lack of effective communication, power struggles, and an almost total failure to adequately remedy oil spills by cleaning and restoring the environment and compensating those harmed. Decades of this failed response have bred resentment and distrust among oil-affected communities, increasing militancy and black market oil trade as a last resort path to wealth-sharing and further complicating the possibility of a successful remediation and long-term peace.⁶ Oil companies, on the other hand, report that they struggle with sabotage and theft of oil, difficulties accessing spill sites, and complicated community dynamics that contribute to spills and confuse and undermine remediation efforts.⁷

02

LEGAL AND INSTITUTIONAL FRAMEWORK FOR OIL SPILL COMPENSATION IN NIGERIA

Against this backdrop, this paper outlines the principles and practical considerations by which a grievance mechanism could be established to handle and remedy complaints from communities and persons affected by oil spill in the Niger Delta. The paper is informed by comparative research and the practical experiences of those who have – through negotiation, litigation, and other forms of recourse – sought remedy after an oil spill.

Since the discovery of oil in 1956, Nigeria has put in place a number of government bodies, laws, and regulations to govern the extractive industry and its impacts, including preventing and addressing oil spills. There are dozens of laws, regulations, and policies pertaining directly to the extractive industry. The most pertinent to oil spill are the Oil Pipelines Act (OPA),⁸ the Petroleum Act,⁹ National Oil Spills Detection and Response Act, and the National Oil Spill Contingency Plan (NOSCP).¹⁰ These laws and policies are understood with reference to legislation such as the Land Use Act¹¹ and supplemented by the common law. Nigeria is party to several international instruments on oil spill compensation (that deal with offshore spills from tankers); however, to date, none have been domesticated.¹²

1. INSTITUTIONAL FRAMEWORK

The key government bodies mandated to regulate the oil industry and respond to oil spills are the Department of Petroleum Resources (DPR), the federal and state Ministries of Environment,¹³ and the National Oil Spills Detection and Response Agency (NOSDRA). Where these institutions have often failed to provide adequate remedy, aggrieved persons turn to the courts¹⁴ and direct negotiation. In addition, other state institutions at times intervene to resolve oil spill disputes despite the fact they are not mandated to do so. One such example is the Nigerian National Petroleum Corporation (NNPC).¹⁵

DPR was formed under the Ministry of Petroleum Resources and has the power, inter alia, to enforce general regulations for the petroleum sector, including environmental standards, and manage cleanup of oil spills. In 1992 and 2002, DPR issued the non-binding Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN), which “forms the basis for most environmental regulation of the oil industry.”¹⁶ DPR has significant enforcement powers, including the ability to arrest any person who has committed an offence under the laws and regulations, summoning oil companies to provide information, suspending their operations, and making regulations where needed.¹⁷ The National Oil Spills Detection and Response Agency (NOSDRA) was created by statute and is mandated to prepare for, detect, and respond to “all oil spillages in Nigeria,” form a National Control and Response Centre to monitor and receive reports of oil spill and coordinate responses, and impose penalties for oil companies’ failure to report oil spills within 24 hours or clean up and remediate spill sites.¹⁸ NOSDRA is also mandated to “assist in mediating between affected communities and the oil spiller.”¹⁹

Box 1. Existing Non-Judicial State Grievance Mechanisms in Nigeria

There are several non-judicial (or quasi-judicial) state grievance mechanisms in Nigeria, which are a reference point for the proposals discussed below.

These bodies include:

- **National Human Rights Commission**, established by statute in 1995 and in 2010 granted greater structural independence and powers; among these powers is the mandate to receive and investigate complaints of human rights violations and issue binding decisions that are enforceable in the same way as decisions of the high court;
- **Public Complaints Commission**, established by statute in 1975 and mandated to receive and investigate complaints against public officers; after investigation, the PCC can refer matters for prosecution or disciplinary action, as appropriate;
- **Police Services Commission**, established by the 1999 Constitution of the FRN and the Police Services Commission (Establishment) Act of 2001, the PSC receives complaints of police misconduct, investigates, and can take appropriate disciplinary action; and
- **National Committee on Torture**, established by the Attorney-General of the Federation in line with the Optional Protocol on the Convention against Torture.

2. LEGAL, REGULATORY AND POLICY FRAMEWORK FOR COMPENSATION AND REMEDIATION OF OIL SPILLS

Beyond common law principles of liability,²⁰ several of the above listed laws establish rules relating to liability and compensation for harms arising from oil spills. The most clearly applicable is the OPA, which requires oil pipeline licensees to pay compensation in two oil spill-related scenarios: (1) for damages resulting from leakages or breakages in pipelines, unless these are caused by the “malicious third party interference”; and (2) for damages resulting from any neglect “to protect, maintain or repair any work, structure or thing executed under the licence.” The latter provision clearly envisions the possibility of licensee liability for neglect to protect pipelines from malicious third party interference.²¹ In addition to these laws, both government and industry bodies have attempted to establish standardized compensation rates that could be used for oil spills. ²² See Annex A for details.

For spills emanating from oil pipelines and ancillary installations, the OPA seems to encourage affected persons and pipeline licensees to settle out of court; however, if the two sides are unable to settle on issues relating to damages, the courts may decide.²³ According to the OPA, aggrieved persons may additionally return to court to seek further damages if the initial award paid is not satisfactory or further harms result (or presumably are later discovered). The preference for settlement evidenced by the OPA’s complainantfriendly provisions is consistent with NOSDRA’s mandate to help mediate disputes.

In 2000, the Petroleum Industry Bill (PIB) was introduced in the National Assembly for the first time; after years of discussion, the bill was re-introduced in 2012. The PIB would, among other things, put in place an environmental quality management plan which would require greater commitment by companies to remedy and control environmental degradation related to oil extraction and oil spills. The PIB does not, however, set out a grievance mechanism or compensation and remediation scheme for oil spill related complaints, even while it creates yet another regulatory body that appears to duplicate existing institutions. ²⁴

In light of the political impasse that has prevented enactment of such comprehensive oil sector legislation for nearly 15 years, this paper attempts to propose practicable grievance redress mechanisms that could be put in place without new legislation or legislative reforms.

03

CURRENT OIL SPILL COMPENSATION & REDRESS PRACTICES IN NIGERIA

Despite the legal and institutional recognition that it is necessary to facilitate speedy compensation and remediation of harms resulting from oil production, victims of oil spills in the Niger Delta continue to struggle to obtain adequate redress.²⁵ When oil spills occur, the principle institutional response normally seen is a Joint Investigation Visit (JIV) that is meant to be conducted by the oil companies, together with regulatory agencies (including DPR, NOSDRA, and the federal or state Ministries of Environment), and community representatives. The resulting JIV report is presented by oil companies and regulatory agencies as a consensus position as to the cause of the spill and the scale/scope of the spill, but in reality is often discredited/disavowed by affected communities and their representatives due to a failure to include and consult with genuine community representatives and oil company's reported influence over regulatory agencies.²⁶

Clean-up and remediation, which are supposed to occur immediately, are often delayed and, when they do occur, employ less effective remediation techniques that do not reflect international best practices.²⁷ Indeed, Environmental Rights Action estimates that over 90% of spills in the Niger Delta have not been cleaned up.²⁸ This means environmental harms compound over time as some communities suffer repeated spills and, ultimately, have pushed entire communities (e.g. Goi community) to relocate in order to survive.

Anecdotally, negotiated compensation for affected persons suffers from lack of transparency and broad participation. A few political elites may reap the benefits in the name of a community where the vast majorities never see any compensation. Recourse through domestic courts is slow and plagued by delays due, among other things, to frivolous and repeated interlocutory appeals. A recent trend has seen persons and communities affected by oil spills in the Niger Delta increasingly seeking remedy through foreign courts – namely the UK and Dutch courts – but this option may not be accessible to the vast majority of spill-affected communities or appropriate in the majority of smallscale spills.²⁹

Annex B offers a few examples of outcomes resulting from individuals' or communities' quest for remedy. In order to lay the ground for the issues to be addressed in designing a more effective grievance mechanism, we categorize and elaborate these challenges below.

Lack of awareness about processes and avenues for redress. Currently, oil-affected communities and individuals often do not know who to report a spill to and are confused about the process and what is required. In a recent training of oil-affected communities from across four Niger Delta states, for instance, not one community leader was aware that NOSDRA had a mandate to mediate disputes between them and oil companies. Such lack of awareness in turn breeds confusion, distrust, and misinformation.³⁰

Lack of broad participation and problems with community representation. Too often, community participation is treated as a mere token. Communities are rarely consulted or given an opportunity to nominate their own participants in a JIV; instead, they report being chased away from ongoing JIVs by security and, if they ever seen the resulting JIV report, finding unknown or discredited persons signing as community representatives. Research has also pointed out that post-spill engagement between oil companies and communities has tended to include only elite men, sidelining other key stakeholders.³¹ Such practices facilitate elite capture of compensation, if any is paid.³² For instance, after a 2004 spill that affected the Goi community, among others, the JIV conducted by the oil company, DPR, Ministry of Environment, included only one “community representative,” and no one from the Goi community. This lack of community participation led to significant disputes over the findings of the JIV.³³ Further, women are almost completely excluded such investigations or negotiation processes, meaning the gendered harms of oil spills tend to be ignored and unremedied.³⁴

Lack of truly independent, third party neutrals in mediation of disputes. In practice, DPR, NNPC, and other actors – such as oil company contractors operating on the ‘frontlines’ – often become involved in attempts to resolve compensation issues following an oil spill. Although this process is sometimes labeled “mediation,” these institutions have conflicts of interest due to financial/structural ties to the oil industry that make it difficult for them to act as truly unbiased, uninterested third parties.³⁵ Further, NOSDRA – officially mandated to investigate oil spills and mediate between companies and communities – is reportedly dependent on oil companies for resources to make a JIV possible (thus allowing the oil company to dictate whether/when the JIV will occur), scientific expertise, and use of oil company facilities to run diagnostics on soil and water samples.³⁶ Affected communities report little engagement with NOSDRA when negotiating for compensation after a spill, and distrust NOSDRA as an impartial third party to the JIV process.³⁷ Communities are also distrustful of attempts by these institutions to facilitate settlement based on their perceived alignment with oil companies, corrupt politicians, and community leaders.³⁸

Inadequate regulatory enforcement. NOSDRA is also mandated to fine oil companies when they fail to report or cleanup/remediate spills. However, though it has made efforts to assess and impose such fines in recent history, it seems to lack the power to enforce these penalties, much less any agreements that might be reached through its mediation efforts.³⁹

Lack of equal representation and independent expertise. Current settlement processes are also marked by acute inequality of financial and technical resources between communities and oil companies. Oil companies tend to have multiple lawyers and experienced negotiators whose sole job is to represent the oil companies’ best interests, as well as technical experts and government contacts. They also bring in their own scientific experts for the investigation and assessment. Communities, meanwhile, have fewer resources to spend on experts and legal aid, and may struggle to unite around one or two representatives where a community has diverse needs, interests, and internal politics.⁴⁰

Long delays in cleanup and remediation of the oil spill. Response to oil spills by government institutions and oil companies, and mitigation and initial cleanup of firstinstance harms caused by oil spills, can take weeks or even months after a spill has been reported. Remediation, when done at all, may also take months or even years due to a complicated matrix of interested parties working against each other and, therefore, against a successful and speedy outcome.⁴¹ After suffering more than three major spills between 1997 and 2009, the Goi community finally had no choice but to vacate – without any financial or resettlement assistance—after warnings from HYPREP about the long-term health consequences they would suffer due to soil and water contamination; while various efforts to remedy have been ongoing since 1997, the first “pilot” cleanup exercise, covering an area of just about three football fields, only began in 2014.⁴²

Focus on bunkering distracts from broader issues. The current discussion on the causes of oil spills has been almost completely subsumed by a focus on bunkering, distracting from the many other factors contributing to oils spills, which include aging pipelines and poor maintenance. Further, the current discourse around bunkering fails to engage communities as active participants in mitigating the practice and rather holds communities generally complicit - without specific evidence - where bunkering may have caused an oil spill.

Box 2. Access to remedy under the Guiding Principles on Business and Human Rights

The Guiding Principles on Business and Human Rights were produced by the Special Representative to the UN Secretary-General on the issue of human rights and transnational corporations and other business enterprises; they were endorsed by the UN Human Rights Council in 2011. These principles help to clarify the respective roles and responsibilities of States and corporations for respecting, protecting, and remedying (when violated) human rights. The Guiding Principles provide direction to States and corporations on how to comply with their existing responsibilities under the international human rights system. Since the Guiding Principles' endorsement, many state institutions and companies have taken steps to put these into practice.

The Guiding Principles set out six principles (see Section III on **Access to Remedy**) for ensuring access to remedy through judicial or non-judicial grievance redress mechanisms. Although ultimately the responsibility of the State (**Principle 25**), these Principles illustrate the role of corporations in helping to ensure access to effective remedy. In short, they outline principles for a variety of possible mechanisms:

- State-based judicial mechanisms (**Principle 26**);
- State-based non-judicial grievance mechanisms (**Principle 27**); and
- Non-State-based grievance mechanisms (**Principles 28 and 30** on the role of States and industry associations in ensuring the availability of effective grievance mechanisms within a given industry, and Principle 29 on operational-level mechanisms established by businesses).

Principle 31 establishes criteria for non-judicial grievance mechanisms to be effective; such mechanisms must be **legitimate, accessible, predictable, equitable, transparent, rightscompatible, and a source of continuous learning**; additionally, operational-level mechanisms should be **based on engagement and dialogue**.

04

DESIGNING AN EFFECTIVE GRIEVANCE REDRESS MECHANISM FOR OIL SPILLS IN NIGERIA

As defined in the UN Guiding Principles on Business and Human Rights (see Box 2), “The term grievance mechanism is used to indicate any routinized, State-based or non-Statebased, judicial or non-judicial process through which grievances concerning businessrelated human rights abuse can be raised and remedy can be sought.” States, companies, and industry associations all have a role in ensuring or facilitating access to effective remedy when violations occur – which generally requires an effective grievance mechanism.

Because of the difficulties with judicial recourse identified in the previous section, this paper focuses on possible non-judicial grievance redress options that could help to more effectively, efficiently, and fairly resolve complaints arising from oil spills in the Niger Delta. Because of the problems observed with current bilateral negotiations or mediated settlements over oil spills seen above, we strongly advocate for the establishment of a standing grievance mechanism rather than merely outlining alternative dispute resolution techniques that can be explored (and often are) in lieu of or alongside litigation.

Amongst *standing non-judicial grievance mechanisms*, there are many design considerations and specific, practical questions to be addressed. In this section, we first outline a number of **principles that should guide mechanism design**. We then explore **key choices that must be made in setting up a mechanism**, including whether it is established by a single company (called “operational-level” or “internal” recourse), by an industry association (called private “external” or “third party” recourse), or backed by government (called state-based “third party” recourse), as well as what kinds of powers it would have and how it would be funded. Next, we explore the different types of **dispute resolution methods** that the mechanism could employ and outline the possibility of a tiered or multi-channel approach. Finally, we look at issues relating to **available remedies and implementation of outcomes**.

1. PRINCIPLES TO GUIDE GRIEVANCE MECHANISM DESIGN

In order to ensure that a grievance mechanism is capable of delivering effective remedy, there are certain core principles that will guide mechanism design so as to address many of the concerns or practical problems identified in current practice of oil spill dispute resolution in the Niger Delta. The following principles are informed by various similar sets of principles for grievance mechanism design. See Box 2.

Awareness. Lack of information or misinformation can breed distrust and uncertainty about which course of action to take, and can be manipulated by interested parties seeking an advantage. Therefore, once a grievance mechanism is in place, information about it should be widely shared – e.g. through SMS, fliers, signs posted in key locations (e.g. every certain distance along pipelines), community criers, town hall meetings, radio, TV – to provide accurate information to affected communities, broaden understanding and cooperation with the process, and ensure greater accountability by and for all participants. The initial information should be sufficient to enable a would-be complainant to make contact with the mechanism. Thereafter, the mechanism must make sufficient information available to allow complainants to understand the steps and procedures that are to be followed. For with the process, and ensure greater accountability by and for all participants. The initial information should be sufficient to enable a would-be complainant to make contact with the mechanism. Thereafter, the mechanism must make sufficient information available to allow complainants to understand the steps and procedures that are to be followed. For instance, rules of procedure should be written in simple terms, published and provided to complainants up front.

Participation. After a spill, full participation by all complainants and their representative(s) in all investigations and dialogues is essential. Since oil spills tend to affect more than one person at a time – often a whole community or set of communities – lack of broad participation from across the affected class all too often undermines effective post-spill recourse. To avoid such issues, an effective grievance mechanism must find ways to engage a broad and diverse set of members of an affected community. Such engagement can also ensure culturally sensitive and appropriate interaction. The legitimacy of any party claiming to act in a representative capacity on behalf of a broader class of affected persons should be verified through public, on-site community engagement. Participation in alternative dispute resolution can, ideally, begin with pre-engagement that enables two parties to build a working relationship based on mutual information sharing and agreement upon remedies should a dispute arise.⁴³

Accessibility. Complainants should be able to access and complain to the grievance mechanism directly, through various channels (e.g. in person, by phone, by SMS, etc.), and without unduly burdensome formalities. Once a complaint is commenced, complainants should be provided clear, written procedures (see awareness above). Where complicated and technical processes present barriers to access, grievance mechanisms should provide neutral support to assist poor or vulnerable complainants to meet up with requirements – e.g. accessible language, assisting illiterate or semi-literate complainants to reduce their complaints to writing, identify evidence they might collect to support their claim, etc. There must be a firewall between those persons providing assistance and the decision-makers or neutral mediators. And, of course, such assistance should never bar complainants from choosing their own external representatives or advocates. As an example, Nigeria's National Human Rights Commission (NHRC) can receive complaints in person, by phone, or in writing and certain staff are available to help reduce complaints to writing, if necessary. When conducting hearings, complainants can bring a representative of their own choice, represent themselves, or apply to the NHRC for free legal representation.

Structural Independence. As discussed above, too often the parties mediating the disputes relating to oil spills have strong ties to industry that may influence their ability to be independent or their perceived legitimacy. Indeed, this is a global issue—when BP set up a compensation fund under an “independent claims administrator” after the 2010 Deepwater Horizon spill affecting the U.S. Gulf Coast, the later discovery that the administrator Kenneth Feinman was being paid by BP undermined his legitimacy. In Nigeria, such concerns include the way oil companies pay the expenses for JIVs and influence the final JIV - issues around funding of the mechanism, appointment/removal of decisionmakers, etc. must be thought through carefully so as to safeguard the mechanism's independence. Although it is quite common for funding of a third-party grievance mechanism to come from the industry that benefits from its operation, there are ways of structuring such funding to preserve independence – for instance, statutory levies on companies using formula based partly on the company's market share and partly on the number of spills/complaints reported.

Accountability. There are several key ways to ensure the mechanism itself can be held accountable for operating as it is meant to operate. First, there must be published rules of procedure that include, for instance, timeframes for certain steps to take place once a complaint is submitted. The mechanism must periodically publish data reporting on its compliance with these various requirements, e.g. number of complaints received, number found admissible, average processing time, number resolved satisfactorily, etc. Lastly, there must be an independent body with oversight and review responsibilities. For instance, the NHRC (discussed above) has published Standing Orders and Rules of Procedure and a Governing Council, comprised of diverse stakeholders, oversees its activities.⁴⁴ A key issue is to ensure the oversight body can also receive/handle complaints about any alleged mishandling of a complaint (e.g. similar to the role of the Chief Judge in any federal or state high court if a presiding judge is alleged to lack requisite independence/impartiality).

Transparency. In relation to a grievance mechanism, transparency operates at two levels: (1) transparency throughout the process of handling the complaint for all parties involved; and (2) transparency around the mechanism's operations for a broader public (see accountability). Equal access to the same information by all parties to the complaints process is essential; this includes transparency around compensation amounts to be paid to different persons or classes of persons whose complaints arise from the same event. At times, it may be appropriate to allow ongoing discussions under a mediation process or the outcome to be confidential (as to non-parties); however, in this case, confidentiality must be agreed to by all parties. Transparency is especially important where it has historically been common for compensation to be unequal or inconsistent, based more on one's "ability to cough" than on application of a standard formula or demonstrated harms suffered.⁴⁵

Claimant choice. In order to encourage claimants to pursue a non-judicial alternative, it is important that the mechanism's procedures clearly guarantee that a claimant can, at any point up until final settlement, opt out of the mechanism and seek redress elsewhere. Indeed, some non-judicial grievance mechanisms actually allow for the final outcome of the complaints-handling process (whether through mediation or adjudication) to only become binding on both parties if accepted by the complainant. We note that such procedures – which are necessary to respect right to remedy and fair hearing guarantees – can impose difficulties on defendants, especially where large numbers of complainants may not all agree and may, ultimately, follow different recourse paths. However, as most Nigerian courts are yet to adopt class action litigation rules, it remains impossible to bind all members of a class and give defendants the kind of certainty they might wish for.

Equity. A grievance mechanism should work to equalize the power imbalances inherent to a dispute between an oil affected community and an oil company.

This includes:

- (i) Ensuring the right of both sides to independent advice/support from any chosen representative(s), without requiring those representatives be lawyers or otherwise;
 - (ii) Ensuring procedures are aimed at achieving "substantial fairness" rather than demanding compliance with unduly burdensome or technical procedures; and
 - (iii) Continuing its role through the process of supervising implementation of any outcomes.
- Oil-spill specific principles

Independent scientific expertise. If technical disputes come up in the course of handling an oil-spill related complaint, the grievance mechanism must ensure that truly independent expertise is available to guide the process. Except in rare circumstances where complainants have ways of accessing independent expertise to support their quest for remedy, e.g. in the Bodo Community v. Shell case, ⁴⁶ complainants (and regulatory agencies) currently have to rely on expertise paid for by the oil company.⁴⁷ The importance of truly independent expertise is underscored by the widely reported unreliability of JIV reports under the current practice.⁴⁸ In the Bodo case, for instance, plaintiffs' counsel illustrated the huge gap between the findings of the JIV conducted after the spill and those of the expert hired by the plaintiffs: the first estimated 4,000 barrels spilled, while the second estimated 500,000 spilled; the first estimated 36 hectares of mangrove affected, while the second estimated over 1,000 hectares affected.⁴⁹ Because of such huge gaps in the findings of scientific experts in adversarial proceedings, it is essential—and more efficient—for the mechanism to find some way of bringing in independent expertise if a dispute arises between the parties as to the scope/scale of the spill and its impacts, etc.⁵⁰

Prioritization of mitigation and cleanup. The biggest tragedy of the systemic failure of mechanisms meant to respond to oil spill in the Niger Delta is the compounding of environmental harm and related consequences for health, livelihoods and community way of life. An effective grievance mechanism should prioritize addressing environmental impacts immediately after an oil spill (in line with EGASPIN). It should be made clear from the outset of any engagement that immediate/early efforts to mitigate harm and cleanup environmental impacts (even if aspects of liability are disputed) will be factored in to offset compensation awards. Cleanup efforts could also include the community, thereby making it more participatory, inclusive, and transparent, and could thereby improve relations toward early amicable settlement.

Equitable apportionment of liability. The current discourse around the causes of oil spills tends to look at bunkering/sabotage simply as a defense against oil company liability; however, the OPA clearly provides that the company can still be liable (at least partially) if it neglects to protect, maintain, or repair pipelines, even if they are affected by malicious third party interference. The grievance mechanism must, therefore, be able to take into account submissions from all parties as to not only the cause of the spill but also possible negligence – by the oil pipeline licensee as well as by government security forces who are meant to lead pipeline security. If there are allegations of complicity in bunkering or sabotage by members of the affected community, these should be specific and proven, including by way of evidence that might have resulted from a police investigation, if any. The resulting settlement could, thus, point to other parties who should be partially liable, if the liability of the pipeline operator has been reduced or waived under the circumstances.

2. SETTING UP THE MECHANISM

Non-judicial grievance mechanisms can take many forms, which sometimes, but not always, correspond to different names, including “ombudsman,” “complaints commission,” “mediator,” etc. Underlying these differences are key decisions (often dependent on real world factors rather than best case scenarios) as to where the mechanism derives its authority, what powers it has to fulfill its mandate, and where/how it is funded.

While in many situations, it makes sense for companies to have operational-level grievance mechanisms (a.k.a. internal recourse mechanisms) – and oil companies should have these to handle the numerous other complaints that might arise in the course of doing business – we strongly recommend that all oil spill-related complaints should pass through a single, thirdparty mechanism. Such a single entry-point across the industry will equally assist compliance with existing regulatory requirements, since companies must already report all spills to NOSDRA within 24 hours – a practice that recent statistics indicate have been inconsistent.⁵¹ Even if certain complaints – e.g. those relating to Tier 1 spills – are referred back to the company’s internal grievance mechanism to allow swifter resolution, this should then only occur after initial investigation has been done to correctly assess the scope/scale of the spill and ensure that complainants are given consistent information and an overview of their options, etc.

Third-party mechanisms are normally established either by government or else by an industry association for its member companies (sometimes called a “voluntary” mechanism). The authority, powers, and sources of funding for the mechanism are determined, then, by the government or the industry association. Government-backed mechanisms generally have an enabling statute that helps to establish them, with further details worked out through subsidiary legislation. Industry-backed mechanisms are established by a decision of an industry association (occasionally in compliance with a regulatory requirement) and can either be situated within the association (with certain firewalls) or established separately.

In the Nigerian context, for instance, a government body such as NOSDRA could, under its existing statutory mandate, establish a department specifically set up to mediate oil spill-related disputes between oil companies and communities. Without new legislation or an amendment to NOSDRA's statute, however, it would have somewhat limited powers – that is, it would not have the power to issue binding decisions unless they were agreed by all parties, nor would it have the powers to summon said parties or compel evidence, and so on. However, there are many examples from other countries where regulatory bodies use other tactics – known as “moral suasion” – in lieu of formal enforcement powers. Indeed, a strong and sincere government-backed intermediary that takes time to hear both/all sides, build trust, and ensure fair outcomes to challenging disputes may be even more effective than one that relies solely on enforcement powers.⁵²

Alternatively, an industry body such as the Oil Producers Trade Section of the Lagos Chamber of Commerce (OPTS) could determine that it wanted to provide a mechanism for resolving oil spill-related disputes between communities and its members. In various countries, industry associations have taken this step when there is a strong business incentive—often industry-wide reputational risk that needs to be addressed for the benefit of all members. For instance, after a series of crises in the microfinance industry in Pakistan involving suicides among over-indebted borrowers that began to threaten investment in the sector, the Pakistan Microfinance Network proactively put in place an industry-wide complaints handling mechanism covering all of its members.

If new legislation were possible, rather than solely building on existing institutions and mandates, then a wider array of options could be considered. A NOSDRA Amendment Act could give the Agency a mandate to set up a more formal grievance mechanism and broader powers (e.g. to adjudicate, summon witnesses, compel evidence, and enforce decisions).⁵³ Alternatively, legislation could compel the relevant industry body to set up its own voluntary grievance mechanism that complies with the fundamental principles set out above.⁵⁴

In any of the above new arrangements, it is essential to ensure sufficient resources to enable a mechanism to fulfill its mandate, but in such a way as to ensure its independence. In various countries, third-party grievance mechanisms – both statutory and voluntary – are funded through levies on the industry. The key to independence is for these levies to be mandatory (not voluntary) and based on a formula that is fair and divorced from the handling of a specific case. For instance, a government mediator in Armenia is funded through statutorily imposed levies based on market share of each industry player. In the UK, annual fees to support an ombudsman are based partially on market share and partially on the number of complaints that come against any particular industry player. No matter the formula, it can either be imposed by legislation or a levy on industry association members.

Box 3. Tier 1, Tier 2, and Tier 3 Oil Spills

In the 1980s, the oil industry developed a system to categorize oil spills to facilitate response planning, known as Tiered Preparedness and Response. The Convention on Oil Pollution Preparedness, Response and Co-operation uses these same three tiers in provision on how signatory states should ensure rapid response to oil spills. The system is summarized as follows:

“**Tier 1** spills are operational in nature occurring at or near an operator’s own facilities, as a consequence of its own activities. The individual operator is expected to respond with their own resources. **Tier 2** spills are most likely to extend outside the remit of the Tier 1 response area and possibly be larger in size, where additional resources are needed from a variety of potential sources and a broader range of stakeholders may be involved in the response. **Tier 3** spills are those that, due to their scale and likelihood to cause major impacts, call for substantial further resources, from a range of national and international sources.” – Guide to Tier Preparedness Response, International Petroleum Industry Environmental Conservation Association (IPIECA)

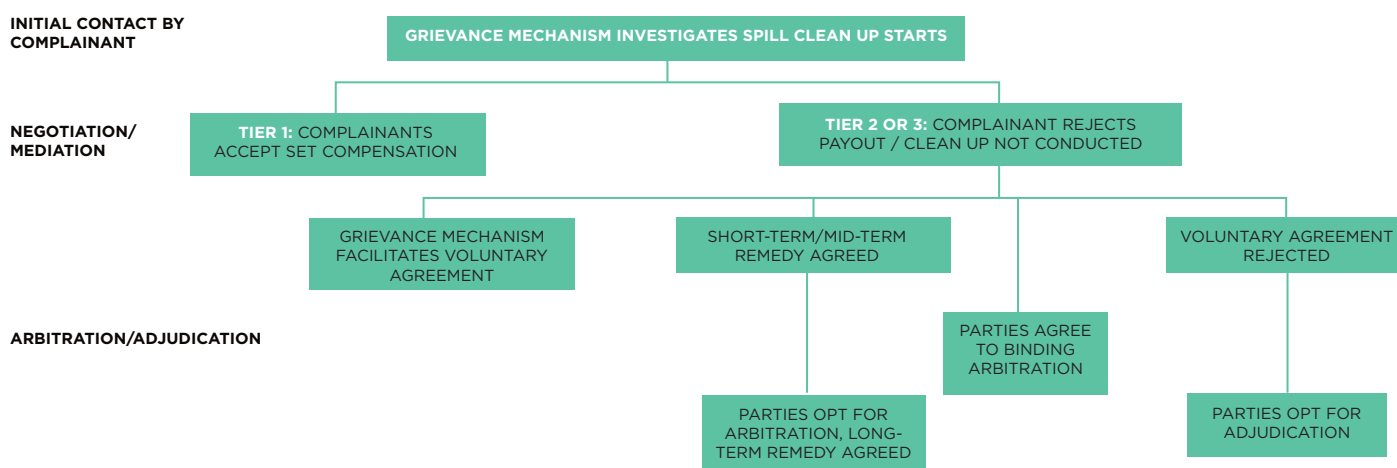
3. GRIEVANCE PROCESSING METHODS/OPTIONS

Closely interrelated with the issues of how a mechanism is established, where it derives its authority, and what powers it has, is the question of what **methods** it employs to resolve disputes. Under the current legislative and regulatory regime (see above), the only method that a grievance mechanism could employ is mediation. However, this can be modified by agreement or by broader legislative changes. ⁵⁵

Because of the balancing of different factors that is inherent in the choice of non-judicial recourse – cost, efficiency, speed, substantial fairness, prioritization of issues such as cleanup/mitigation of damages, etc. – and the value of having all oil spill complaints channeled through the same mechanism, a multi-track methods approach might be ideal.⁵⁶ Such an approach could help also to ensure that a single mechanism would be able to facilitate response to the broader environmental impact of the spill as well as address immediate and long-term injuries to the complainant. One way of channeling complaints into different tracks would be based on the level and gravity of the spill, the immediate and long-term impacts on environment and health, and accordingly, the appropriate remedy.

Different tracks for Tier 1, Tier 2 and Tier 3. Once the gravity and extent of the spill has been determined, it can be classified as Tier 1, 2, or 3 (see Box 3), which can in turn dictate which approaches complaints relating to the spill can/should be channeled through. It should also help to set out time frames for environmental cleanup and how severe the longterm impacts will be on the environment and the neighbouring communities. Different methods may apply for different tiers. For instance, a Tier 1 spill may only affect a small number of people and have localized, less significant environmental impacts. In this instance, a quick, transparent cleanup and payout scheme may be appropriate. However, the impacts of a Tier 3 oil spill may not be understood for quite some time, and could affect thousands of people across a very large area. Clean up, and the long term impacts of the oil spill will delay full remedy, and this requires a more contextual approach (see Remedy).

Methods. There are many different methods for handling complaints. These may include **quick pay-outs** (generally used for Tier 1 spills or as an interim measure to help offset the harm caused by loss of income, food or water sources); **negotiation** (usually a first step, facilitated or observed by the grievance mechanism); **mediation** (the grievance mechanism acts as the neutral third party who facilitates the negotiation between the two sides, and helps them to reach a voluntary agreement); **arbitration** (unlike mediation, both parties agree to abide by a decision given by the grievance mechanism prior to the start of arbitration); and **adjudication** (more like a court process, adjudication can involve a committee or tribunal formed of experts in the field, who review evidence in accord with the evidentiary rules of procedure as well as precedent on this matter and issue a final binding decision). As argued above, the grievance mechanism should have a single entry point for all complainants, to enable equal treatment and adequate preliminary investigation, but then could recommend different tracks for different complaints, as appropriate. It could look something like:



4. REMEDIES AND IMPLEMENTATION

Remedy should be both procedural and substantive. This means that it should be both free of corruption and political influence, and it should generally aim to counteract or make good any injuries that have occurred. “Remedy may include apologies, restitution, rehabilitation, financial or non-fiscal compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition.”⁵⁷ Effective remedy must be transparent and include community participation. Finally, the grievance mechanism must provide oversight and, if necessary, enforcement of the agreed remedy.

Range of remedy options – cleanup/remediation, compensation for irreparable harms suffered, alternative community remedies: All forms of remedy must include consultation and input by the intended beneficiary/ies. This includes the participation of affected communities in the cleanup and remediation of the oil spill, as well as their active participation in determining which form(s) of remedy would be most appropriate. Remedy can be, and often tends to be, monetary. However, damages can be drastically reduced by returning the injured party to the place they were prior to the harm – thus, if it is impossible to return the affected environment to its prior state (or an adequate state of healthy environment), remedies could include resettlement to a satisfactory alternative location. Where remediation is closely linked to remedy, remedy should not be finalized and concluded until after remediation itself has also been finalized and found satisfactory by the regulatory bodies. Thus, remedy should also include an understanding of the level of the spill – Tier 1, Tier 2 or Tier 3 – and the time frame for the clean up. For instance, while immediate remedy might be appropriate for a Tier 1 spill that is contained and cleaned immediately (with few and foreseeable side effects), in the case of a Tier 3 spill, remedy is most appropriate after comprehensive cleanup and restoration has begun, and may require **immediate** (based on mitigating the immediate harms of loss of farm, land, community, etc.), **mid-term** (compensating lost employment, providing alternatives such as training and participation in the clean up, and temporary resettlement) and **long-term** (restoration of the land to its initial state, rebuilding/resettlement of communities, or full compensation for the loss thereof) remedies.

Transparency and community participation in implementation: Remedy is not only about the award itself, but also about the injured party’s experience of a satisfactory outcome that allows him/her to feel like their injury was fairly addressed. The long history of distrust between communities and oil companies in the Niger Delta makes transparency and complainant participation in the implementation especially important to this second element of remedy. Oil companies occasionally accuse communities of stopping their environmental cleanup/remediation attempts unless there are short-term gains. Therefore community consultation, participation, and understanding of the importance of harm mitigation, cleanup, and remediation activities is essential. Further, participation and transparency helps communities to form realistic goals for compensation and allows companies to understand alternative remedies (such as employment and educational opportunities) that may be accepted in lieu of cash payments. Remedy should respond to the long-term foreseeable harms and should cover the totality of injury – health risks, loss of community/education/income, as well as loss of crops or land. Regardless, the best remedy is the one that is accepted and agreed to by the recipients.

Enforcement/oversight of implementation – role of grievance mechanism continues through implementation phase: A grievance mechanism must be able to oversee and enforce any remedy agreement. All too often remedy has been awarded to oil-affected communities with no enforcement. This is especially so in the case of environmental cleanup, where an estimated 90% of oil spills in the Niger Delta have not been cleaned.

04

CONCLUSION: PUTTING PRINCIPLES INTO PRACTICE

To date, no standing mechanism has been able to offer fair and effective alternative dispute resolution in the context of Niger Delta oil spills. Litigation is often inappropriate to the scale and urgency of spill remediation and compensation, government bodies meant to help facilitate efficient response lack the requisite independence and enforcement powers, and negotiated settlements between companies and communities tend not to fairly compensate harms suffered, address ongoing/future harms or reach all affected persons (often suffering from elite capture). Meanwhile, there is strong evidence that most spills are not cleaned up, while the environmental consequences continue to undermine health and livelihoods. Against this background, an effective grievance mechanism is urgently needed.

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- ⁸ First act created to regulated the transmission of oil and set in place basic guidelines for the extractive industry. Oil Pipelines Act (1956) [OPA].
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- ¹⁰ The National Oil Spill Contingency Plan [NOSCP] (Revised May 2009) sets out a plan for how the Federal Government should respond to oil spills around Nigeria. NOSDRA is the implementing agency.
- ¹¹ The Land Use Act vests ownership of all land in the federal government and allows for compulsory acquisition where there is an overriding public interest, which includes land which is required for “oil pipelines and for purposes connected therewith.” Ingelson, note 4 at 5.
- ¹² Nigeria is party to the 1992 International Convention on Civil Liability for Oil Pollution Damage and the 1992 International Convention on the Establishment of International Fund for Compensation for Oil Pollution Damage. In 1993 Nigeria acceded to the 1990 International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC), and it entered into force in 1995. However, to date, none of these instruments have been domesticated. The Civil Liability Conventions (CLC) of 1969 and 1992, and the Fund Conventions (FC) of 1971 and 1992, 3 Britannia News Conventions 11 – 13 (3 June 2011); see also <http://www.ecolex.org/ecolex/view/RecordDetails?id=TRE-001109&index=treaties>.
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- ¹⁴ Oil spill related disputes are subject to the exclusive jurisdiction of the federal high courts in Nigeria (see section 251(1)(n) of the 1999 Constitution of the Federal Republic of Nigeria), although victims have increasingly been exploring litigation before foreign jurisdictions.
- ¹⁵ The NNPC is a state-owned enterprise that holds national shares of in the oil industry and negotiates contracts with international and domestic oil companies. The majority of these contracts are either joint venture (generally used for onshore extraction in which the NNPC holds majority shares) or production sharing contracts (generally used for offshore extraction in which the terms vary). NNPC is occasionally called on to mediate oil spill disputes; this practice is, however, problematic in light of its interest in the outcome and not part of the NNPC's statutory mandate; responding to oil spills rather falls within the purview of DPR and NOSDRA. EIA Report, note 3; Discussions with individuals who engage with and who are from oil affected companies revealed that NNPC sometimes joins in the negotiation process.
- ¹⁶ United Nations Environment Programme (UNEP), Environmental Assessment of Ogoniland 37 (Nairobi: UNEP, 2011), available at http://postconflict.unep.ch/publications/OEA/UNEP_OEA.pdf [UNEP Report].
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- ¹⁸ To date, no National Control Response Centres have been created. National Oil Spill Detection and Response Agency (Establishment) Act, No 15 of 2006 [NOSDRA Act].
- ¹⁹ Id., at 19(1)(e).
- ²⁰ These include theories of nuisance, negligence, strict liability (often called “the rule in Rylands case”), and *res ipsa facto*, all of which have been used to recover damages in cases of oil spill litigated through Nigerian courts. See discussion in Bodo Community & Ors. v. SPDC [2014] EWHC 1973 (TCC) (ruling on preliminary objections). Note that this ruling, although merely persuasive in Nigerian courts, found that the compensation scheme envisioned under the OPA governing liability of pipeline licensees was comprehensive and actually supplanted common law remedies. The judgment indicated that the same may not be true for other oil sector operators.
- ²¹ See Bodo Community & Ors. v. SPDC [2014] EWHC 1973 (TCC) (ruling on preliminary objections).
- ²² 2008 National Technical Development Forum (NTDF) Rates, the 1998 Department of Petroleum Resources (DPR) Rates and the 1997 Oil Producers Trade Section of the Lagos Chamber of Commerce (OPTS) Rates.
- ²³ Although the OPA itself identifies magistrate or high courts, the 1999 Constitution of FRN has vested exclusive jurisdiction over issues relating to mines (including oil and gas) in the Federal High Courts.
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- ²⁶ Bad Information, see note 25.
- ²⁷ UNEP Report, note 16 at page 12.
- ²⁸ Okeowo, note 6.
- ²⁹ The four cases that recently went to the Dutch courts were supported by NGOs that could provide free legal assistance along with other support; the case to the UK court was taken up by a well-known UK law firm, Leigh Day, which was able to take up the case despite the Plaintiffs' inability to pay based on their calculations using the “loser pays” rules; however, Leigh Day explained that this type of litigation only makes sense from the law firm's perspective in a case involving an oil company with ties to the UK and with at least a few thousand plaintiffs (in order to achieve an economy of scale that justifies the expense of such sophisticated litigation).
- ³⁰ Joint JEI training of paralegals in oil affected communities, July 2014; see also Bad Information, see note 25.
- ³¹ Bad Information, see note 25.
- ³² Carlo Koos, Which Grievances Make People Support Violence: Evidence from a Survey Experiment in the Niger Delta, 7 (unpublished as of 21 July, 2014); Bad Information, see note 25.
- ³³ Interview with Chief Dooh, Goi community.
- ³⁴ Lack of community participation also gets in the way of ensuring an approached that is tailored to the context and culture of the injured communities. Id.
- ³⁵ In a series of interviews with individuals from oil affected communities and discussions with a flow station engineer based in Port Harcourt, it is clear that no single party is responsible for mediation between the injured parties and the oil companies. This seems to complicate identification of who the actual community representative is as well as the extent of the actual harms. Bad Information, note 25; UNEP Report, note 16.
- ³⁶ UNEP Report, note 16 at 37; Though a percentage of the funding for NOSDRA comes from federal oil revenue, the majority is envisioned to come from third party donations, however there are no limitation on who can provide said donations. NOSDRA Act, note 18 at Section 15.
- ³⁷ Bad Information, see note 25.
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- ³⁹ Bad Information, see note 25; NOSDRA fined Shell US\$5 Billion for failing to provide immediate relief after the Bonga oil spill occurred in December 2011. However, to date, Shell has still not paid. Nigeria Fines Shell N800 Billion for Bonga Oil Spill – Official, Premium Times (2 February 2014), available at <http://www.premiumtimesng.com/news/154618-nigeria-fines-shell-n800-billion-bonga-oil-spill-official.html> (last visited 21 July 2014).
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- ⁴¹ Community livelihoods and environment are not the only areas impacted by delays – traditional, social and cultural practices are also severely impacted by long delays in cleanup. Oil companies, government actors, and communities all complicate attempts to remediate and redress the injured parties. This includes: oil companies using delay tactics in the courts, government actors failing to impose or enforce penalties on regulation and remediation violations, and communities refusing access to oil spill areas unless given jobs or compensation beforehand. These factors work against a successful and timely remediation. Further, where Nigeria: Petroleum, Pollution and Poverty in the Niger Delta, Amnesty International 39 (2009); Chima Jack-Osimiri, Arbitration as a Conflict Resolution Approach to Oil Spill Compensation Payment in Oil Producing Communities of Rivers State Nigeria, 2(1) Intl. J. of Adv. L. Studies 19 (April 2011).
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- ⁴⁴ Standing Orders and Rules of Procedure of the National Human Rights Commission of Nigeria (2014).

⁴⁵ Koos article, look to others! For discussion of how lack of transparency in mass compensation processes for oil spills can undermine legitimacy of a mechanism (in that case the GCCF set up by BP), see Isacharoff & Rave, "BP Oil Spill Settlement and the Paradox of Public Litigation," Louisiana Law Review, Winter 2014.

⁴⁶ In this case, presently being litigated through UK courts, the complainant community is represented by Leigh Day, a law firm that specializes in mass tort litigation and is able to undertake the up-front expenses of preparing such cases (including expensive scientific expertise) because of the UK's "loser pays" rules for recovering litigation costs. A lawyer working with Leigh Day estimated that the costs of independent expertise in an arbitration-like setting (e.g. not highly contentious litigation) could cost about £100,000. Interview with Dan Leader, Leigh Day, 8 July 2014.

⁴⁷ Bad Information, see note 25.

⁴⁸ Id.

⁴⁹ Interview with Dan Leader, Leigh Day, 8 July 2014.

⁵⁰ Bad Information, see note 25.

⁵¹ Between 2007 and 2013, the difference between the number of spills involving Shell that was recorded by NOSDRA was 303 less than those recorded by Shell. Bad Information, see note 25.

⁵² Examples of this come from Nigeria's National Human Rights Commission that has started, under its strengthened mandate (see Box 1), to hold series of public inquiries of various human rights issues of national concern. Along with adjudicating individual cases, the NHRC has offered through these hearings to mediate certain disputes where both/all sides are willing. In other country contexts, a newly introduced industry mediator in Senegal has used his office to go to different far-flung communities, convene a town-hall meeting with industry in that area, local authorities, and ordinary citizens, and explain the role he could play as a mediator, explain how complaints are brought, and listen to all sides on the general issues encountered in that area. This builds understanding and trust in the fairness of his judgments.

⁵³ An amendment could expand NOSDRA's current mandate to mediate between parties over oil spill-related disputes, for instance giving it the ability to have a multi-channel approach (see below). Some of the requisite powers to enable NOSDRA to fulfill its mandate could be modeled on the NHRC Amendment Act 2010. Such a change might require that provisions of the OPA that envision only judicial recourse options be amended.

⁵⁴ This is a middle ground approach that has been used in South Africa where industry ombudsmen are a common way to approach third-party recourse; certain industries are required to either set up a voluntary scheme for resolution of disputes or else complaints go to a government-backed statutory ombudsman.

⁵⁵ Agreement includes voluntary agreement among members of an industry association or between parties to a dispute to submit to a binding non-judicial outcome (e.g. arbitration).

⁵⁶ Alternative dispute mechanisms have traditionally been the forms through which issues are resolved in many Nigerian communities. However, many traditional formats are changing under globalization and changing interpretations of culture. A multi-track approach can therefore combine different best-practice to address these areas. Bolaji Owasanoye, Dispute Resolution Mechanisms and Constitutional Rights in Sub-Saharan Africa, Doc. Series No. 14 Alternative Dispute Resolution Methods (September 2000).

⁵⁷ Guiding Principles HR. Principle 25

APPENDIX

APPENDIX A. Laws, Regulations, Policies Relevant to Remediation & Compensation of Oil Spills

Law / Policy / Regulation	Addresses harms caused by oil company/operator?	Application	Remedy Prescribed
Petroleum Act P10, LFN 2004	Destruction of productive trees, interference w/ fishing rights, disturbance of surface rights	Oil licensee / lessee	“fair and adequate compensation” (surface rights, trees); “adequate compensation” (fishing rights)
Oil Pipelines Act, Cap 07, LFN 2004	Destruction of crops, economic trees, disturbance of surface rights, loss of value in land, injurious affection, damages suffered as a consequence of breakage/leakage of pipelines or ancillary installation	Pipeline licensee	“just compensation” in accordance with LUA so far as they are applicable and do not conflict w/ OPA
Nigerian Minerals and Mining Act, 2007	While this act applies only to mineral extraction, not petroleum extraction, it foresees compensation crops, economic tress, buildings or “works” that are damaged	Holder of a mineral title	Reimburse or make payment that is determined by the Minister pursuant to a report by a committee which would be called in the event of large scale\ damages
National Nigerian Petroleum Corporation Act, Cap N123, LFN 2004	The act does not limit compensation claims, but it does require a one month written notice of intent in neglect or default claims against the NNPC, which must be brought before the end of 12 months.	Any injured party	None
Land Use Act, Cap L5, LFN 2004	Taking of land, buildings – including installations and improvements thereon, and crops	Same as OPA	Envisions payment to community, chief or leader who will dispose of compensation in accord with customary law, a fund set out by the Governor which will be used to benefit the community Cost is determined “on the basis of the prescribed method of assessment as determined by the appropriate officer [and which is regulated by the National Council of States] less any depreciation” plus interest for delayed payment and costs of proven improvements to the land
National Oil Spill Contingency Plan, 2009 (revised)	“lost man hours”, “naira lost due to oil spilled” and “repair work”	Oil spiller via NOSDRA	Damages set out in a Site Clean-Up/Remediation Assessment Report to be referred to NOSDRA

APPENDIX B. Example Cases of Communities Seeking Remedy

Case/Community	Facts of the Spill	Resolution
SPDC v. Farah [1995] 3 NWLR 148. (This case took place before the 1999 Constitution placed full jurisdiction of these matters in the Federal High Court).	1970: Bomi Well blowout affects a widespread swath of farming and hunting land. Shell compensates for loss of crops and economic trees, but not the damage to land or other longterm effects based on promise to rehabilitate the land. The land is never rehabilitated.	1991: Community files suit with the Bori High Court in Rivers State and are awarded N4.6 Million (US\$210,000) finding that victims of the spill should be compensated for loss of income for destroyed farmland, and for general damages of shock, fear, and "general inconvenience." Both parties have expert witnesses, and the court appoints two additional independent expert witnesses who issue a report supporting the testimony given by the plaintiff's expert witness. The court is highly critical of the defendant's use of an interested party (the expert had also be hired to do the cleanup) to testify on whether the land had been rehabilitated. 1994: Shell appeals. The lower Court's decision is upheld, finalizing the case after 24 years.
Barizaa M.T. Dooh v The Shell Petroleum Development Co. of Nig. Ltd, Suit No. FHC/PH/159/97(30 March 1998); Mr. Barizaa M.T. Dooh (deceased) v The Shell Pet. Dev. Co. of Nig. LTD (and Chief Eric Barizaa Dooh – Applicant Seeking to Be Substituted for the Deceased), Suit No. FHC/PH/159/97 (23 Oct. 2012).	1994-96: Several oil spills from the K-Dere Manifold in Goi Community, Rivers State. 1996: Shell, through a representative, pays undisclosed amount of compensation to Chiefs of community on behalf of community. This compensation never reaches Mr. Barizaa M.T. Dooh. March 2012: After years of illness – believed to be caused by long term exposure to the oil spills in Goi – Mr. Dooh dies.	27 Dec. 1996 & 12 Mar. 1997: Mr. Barizaa Dooh, community member in Goi, writes Shell protesting payment of compensation to the Chiefs, stating he did not receive compensation or remediation for damages to his property. March 1998: Mr. Barizaa Dooh files suit, seeking compensation for damage to farms and fishponds. 2011: In protesting a pre-decision appeal instigated by the defendant in 2011, the attorney for the case asserts that "[r] espondent [Dooh] has informed me and I truly believe him that he is an elderly man approaching eighty (80) years of age and often susceptible to ill-health on account of his age and that from his experiences in the proceedings, the Applicant [SPDC] has always exploited all available means and tactics to frustrate him and ensure that he does not obtain judgment in the suit before the Federal High Court till he dies...." 27 May 2012: Motion by Chief Eric Dooh, as the son and beneficiary of the decedent's lands, seeking to substitute himself as the Plaintiff is denied. He is advised to look into re-filing the suit.

APPENDIX B. Example Cases of Communities Seeking Remedy

Case/Community	Facts of the Spill	Resolution
Ogbodo, Rivers State	<p>25 June 2001: Community notifies Shell the day after pipeline ruptures. Several days later Shell representative visits. Oil catches on fire, worsening pollution and destruction affecting 42 communities. The slow response breeds confusion, conflict and distrust.</p> <p>2001-2003: Inter-communal conflict breaks out over compensation and contracts for oil-spill cleanup.</p> <p>Feb. 2002: Partial cleanup started of 2 zones.</p> <p>March - June 2005: Some more clean up conducted.</p>	<p>June/July 2011: Shell brings water and a team of health workers to address increasing spill-related problems. These remedies are reported as insufficient. People who can afford to, leave the area. No evacuation or resettlement is done.</p> <p>February 2003: Shell representative from London visits and promises a post-impact assessment and full remediation. Neither done.</p> <p>To date: Some individuals and families receive amounts claimed to be less than market value, and Shell reports that an undisclosed compensation agreement has been reached with some communities - includes future development project. Waterways are still not rehabilitated.</p>
Batan, Delta State	<p>20 Oct. 2002: Spill reported from an underground pipe.</p> <p>23 Oct. 2002: Shell reports sabotage to Delta State Governor before the JIV conducted.</p> <p>25 Oct. 2002: JIV conducted, equipment failure found. Process filmed by community, but the Shell expert fails to take photos or document the spill sufficiently.</p> <p>26 Oct. 2002: Shell rejects JIV as being coercive, and asserts sabotage. Community does not accept change.</p>	<p>To date: Community given a "development package worth approximately US\$100,000." No individual payments, and Shell has not agreed that the spill was due to equipment failure.</p>
Iwerekan, Delta State	<p>Gas flaring in Delta state was having a particularly egregious effect on the Iwerekan community, with particularly bad side effects on health.</p>	<p>2005: Jonah Gbemre, with support from Friends of the Earth Nigeria, files suit in Federal High Court of Nigeria, and the court finds violations of right to life and dignity. Shell and NNPC ordered to create a plan to stop gas flaring by 30 April 2007.</p> <p>2007: Gbemre attends court with his representative to discover that no plan to stop the flaring had been submitted, the judge was transferred to another court, and the court file was unavailable. Shell obtains a court order further delaying compliance.</p> <p>Current: To date, this ruling has not been enforced.</p>

APPENDIX B. Example Cases of Communities Seeking Remedy

Case/Community	Facts of the Spill	Resolution
Bodo v. Shell (Case was heard by United Kingdoms High Court by agreement of both parties; the Judgement issued on	<p>28 Aug. 2008: Major oil spill into Bodo Creek, Ogoniland, killing fish and other wildlife, and damaging mangroves, as well as damaging farmland and drinking water. This affects many communities. Bodo community claims report of spill made to NOSDRA and Shell. At some point, the oil catches on fire, adding to air pollution and increasing level of damage. No action taken.</p> <p>5 Oct. 2008: Shell claims report of spill made on this date.</p> <p>7 Dec. 2008: A larger spill occurs.</p>	<p>7 Nov. 2008: Leak stopped and JIV conducted by Shell, NOSDRA and community; no cleanup done.</p> <p>19-21 February 2009: JIV conducted by Shell, NOSDRA and community. NOSDRA dependent on Shell for both the JIV and the impact assessment.</p> <p>2 May, 2009: Shell brings food to Bodo community - rejected as inadequate.</p> <p>12 May & 9 June: NOSDRA sends letters to Shell asking to "accelerate" plans to assess damage despite the fact that this task is within NOSDRA's mandate.</p> <p>September 2009: Center for Environment, Human Rights and Development (CEHRD) commissions independent scientific post-impact assessment of spill.</p> <p>2009-2011: Community, directly and through supporting NGOs, seeks remediation and remedy.</p> <p>April 2011: International law firm Leigh Day files suit on behalf of Bodo Community in UK Courts.</p> <p>Sept. 2011: NOSDRA reports that it is still waiting on Shell's damage assessment report.</p> <p>20 June 2013: UK High Court issues ruling finding limited liability for oil companies in sabotage cases, and no aggravated, exemplary or punitive damages. The issue of damages will be heard in May 2014. Bodo community has not received remedy or remediation; other affected communities remain without recourse.</p>
Bonga Oil Field, Coast of the Niger Delta	<p>2011: An estimated 40,000 barrels spilled during transfer of oil to a tanker off the coast of the Niger Delta. Shell asserts that spill stopped and cleaned before reaching shore. Governmental agency NIMASA accuses SPDC of frustrating attempts to assess oil spill, while NOSDRA asserts that the spill "posed a serious environmental threat to the offshore environment."</p>	<p>2013: Nigerian Maritime Administration and Safety Agency (NIMASA) estimates that communities affected by oil spill should be compensated N1.04 Trillion (US\$6.5 Billion) and NOSDRA issues a fine of N800 Billion (US\$5 Billion) on Shell for the oil spill.</p>