Corporate Human Rights Accountability in Nigeria's Extractive Sector: Towards a Citizen-Centered Remedy Mechanism

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Thesis submitted to the University of Ottawa
in partial Fulfillment of the requirements for the
Doctor of Philosophy in Law

Faculty of Law, Common Law.

University of Ottawa

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Abstract

This research examines the constraints on access to remedy for corporate human rights violations in Nigeria's petroleum sector and proposes citizen-centered participatory approaches to strengthen the implementation of Pillar III of the UN Guiding Principles on Business and Human Rights. Despite comprehensive legal frameworks and international commitments, victims of corporate human rights violations in Nigeria's oil sector face systematic barriers to accessing effective remedies. The research identifies a fundamental remedy gap where formal legal mechanisms exist but fail to provide meaningful redress to affected communities. State-based judicial mechanisms remain largely inaccessible due to prohibitive litigation costs, complex procedural requirements, and judicial attitudes favoring corporate interests. Non-judicial mechanisms, including regulatory agencies and corporate grievance procedures, suffer from institutional weaknesses, insufficient funding, and lack of independence from corporate influence. Most significantly, existing remedy mechanisms systematically exclude affected communities from meaningful participation in remedy design, implementation, and monitoring, perpetuating power asymmetries between multinational corporations and local communities. The study employs a multidisciplinary methodology combining doctrinal legal analysis, systematic gap analysis, and comparative analysis. Key findings reveal systematic failures across Nigeria's remedy mechanisms that collectively deny effective redress to oil-affected communities. Key findings reveal that Nigeria's constitutional framework renders environmental rights non-justiciable, statutory mechanisms lack meaningful community participation provisions, and judicial patterns demonstrate systematic barriers including prohibitive costs, restrictive standing requirements, and weak enforcement. Based on the findings, the primary contribution of this research is the development of a comprehensive Citizen-Centered Participatory Framework (CCPF) that transforms remedy provision from top-down, state-controlled processes to community-empowered mechanism. The proposed framework integrates five core models: (1) Enhanced Access to Information Systems with community-controlled monitoring; (2) Free, Prior, and Informed Consent (FPIC) as both preventive and remedial mechanism; (3) Community-controlled Impact and Benefit Agreements (IBAs); (4) Community-Led Environmental Monitoring networks; and (5) Participatory Grievance Mechanisms incorporating restorative justice approaches. The proposed CCPF addresses these gaps by establishing community ownership of remedy processes, multi-dimensional approaches addressing individual, collective, and structural harms, and integration

with UN Working Group effectiveness criteria for legitimacy, accessibility, predictability, equity, transparency, rights-compatibility, and continuous learning. The research concludes that implementing citizen-centered approaches can transform corporate accountability from voluntary compliance frameworks toward enforceable community-driven remedy systems. This transformation requires constitutional reform, legislative amendments, institutional capacity building, and sustained political commitment to genuine participatory governance. The study provides practical policy recommendations for operationalizing the framework within Nigeria's 2023 National Action Plan on Business and Human Rights while contributing to broader theoretical understanding of remedy mechanisms in extractive industry contexts.

Acknowledgement

This PhD journey tested my resilience, faith, and determination in ways I could never have imagined. Along the way, I navigated family bereavements, profound personal loss, and serious health challenges that repeatedly threatened my ability to complete this work. Yet, through every trial, I grew both professionally and personally, emerging not only as a better scholar but also as a stronger and more reflective person.

First and foremost, I give all glory to God for His unfailing grace, strength, and guidance. This accomplishment is a testament to His faithfulness through every season of this journey. I am deeply grateful to my supervisor, Professor Palladam Vasudev, for his guidance, support, and encouragement throughout this research. I also sincerely thank my committee members, Professor Damilola Olawuyi and Professor Penelope Simons, for their insightful contributions and unwavering support. I am especially indebted to Professor Damilola Olawuyi, whose tireless efforts, intellectual generosity, and rigorous discussions helped shape the very foundations of this thesis. His critical engagement continually challenged me to refine my thinking and strengthen my scholarship. My heartfelt appreciation also goes to my friends and colleagues, Chidimma, Oyeniyi, and Abiodun, whose countless conversations, brainstorming sessions, and intellectual exchanges helped me formulate many of the ideas that eventually found their way into this dissertation.

To my daughter, Ifechi, and my mother, Chioma Ekweozoh, thank you for being my two musketeers on this remarkable adventure. We are united by the belief that it was always *all for one and one for all*. Through the uncertainties of starting anew in a different country, your love, sacrifice, and unwavering support gave me the strength to persevere. Mum, although dementia has altered so much, I know that you are always present in spirit. The values you instilled in me, the sacrifices you made, and your enduring love remain woven into every achievement of my life, including this one. To my father, Cyril Ekweozoh, my greatest cheerleader, thank you for your unwavering love, encouragement, and steadfast belief in me. I also wish to acknowledge my uncle Peter and big sister, Ifeoma Nweke, whose examples helped set the pace and inspired me to pursue excellence. Their accomplishments, guidance, and belief in the value of education created a path that made this achievement possible This dissertation represents far more than an academic achievement; it is a testament to resilience, faith, love, family, and the enduring power of perseverance.

Dedication

To the Almighty God, whose mercy and grace sustained me through every trial.

To my daughter, Ifechi and my mother, Chioma for being my anchor, my inspiration, and my greatest blessing. Without you, this journey would not have been possible.

List of Acronyms and Abbreviations

ACHPR	-	African Charter on Human and Peoples' Rights
AFR	-	Attorney General of the Federation
BOT	-	Board of Trustees
CAC	-	Corporate Affairs Commission
CAMA	-	Companies and Allied Matters Act
CBN	-	Central Bank of Nigeria
CBM 8	-	Community-Based Monitoring
CCPF	-	Citizen-Centered Participatory Framework
COPW	-	Centre for Oil Pollution Watch
CPC	-	Consumer Protection Council
CSR	-	Corporate Social Responsibility
CSDDD	-	Corporate Sustainability Due Diligence Directive
DPR	-	Department of Petroleum Resources
EIA	-	Environmental Impact Assessment
EITI	-	Extractive Industries Transparency Initiative
ERF	-	Environmental Remedial Framework
ESG	-	Environmental, Social, and Governance
EU	-	European Union
FPIC	-	Free, Prior, and Informed Consent
FOI	-	Freedom of Information
FRA	-	European Union Agency for Fundamental Rights

GPS	-	Global Positioning System
HCDT	-	Host Communities Development Trust
IBA	-	Impact and Benefit Agreements
ICCPR	-	International Covenant on Civil and Political Rights
ICESCR	-	International Covenant on Economic, Social and Cultural Rights
ICJ	-	International Commission of Jurists
IoT	-	Internet-of-Things
IPLC	-	Indigenous People and Local Communities
IRMA	-	Initiative for Responsible Mining Assurance
MAN	-	Manufacturers Association of Nigeria
MSI	-	Multi-Stakeholder Initiative
NAFDAC	-	National Agency for Food and Drug Administration Control
NAP	-	National Action Plan
NCC	-	Nigerian Communications Commission
NEITI	-	Nigeria Extractive Industries Transparency Initiative
NESREA	-	National Environmental Standards and Regulations Enforcement Agency
NGO	-	Non-Governmental Organization
NHRC	-	National Human Rights Commission
NMDPRA	-	Nigerian Midstream and Downstream Petroleum

		Regulatory Authority
NNPC	-	Nigerian National Petroleum Corporation
NNPCL	-	Nigerian National Petroleum Company Limited
NOSDRA	-	Nigerian Oil Spill Detection and Response Agency
NTA	-	Native Title Act
NUPRC Commission	-	Nigerian Upstream Petroleum Regulatory
NWGBHR	-	National Working Group on Business and Human Rights
OECD	-	Organisation for Economic Co-operation and Development
OHCHR	-	Office of the High Commissioner for Human Rights
OPTS	-	Oil Producers Trade Section
PCC	-	Public Complaints Commission
PEP	-	Penalties and Enforcement Provisions
PIA	-	Petroleum Industry Act
RICO Act	-	Racketeer Influenced and Corrupt Organizations
RMA	-	Resource Management Act
SERAP	-	Socio-Economic Rights and Accountability Project
SFB	-	Collaborative Research Center (Sonderforschungsbereich)
SON	-	Standards Organization of Nigeria

UDHR	-	Universal Declaration of Human Rights
UK	-	United Kingdom
UN	-	United Nations
UNGPs	-	UN Guiding Principles on Business and Human Rights
UNODC	-	United Nations Office on Drugs and Crime
US	-	United States
USD	-	United States Dollar
VFS	-	Visa Facilitation Services
WAPP	-	West African Power Pool
WHO	-	World Health Organization

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Chapter 1 -Introduction

1.1. Introduction

The Niger Delta region of Nigeria presents one of the most compelling contemporary examples of the persistent gap between international human rights commitments and the lived realities of communities affected by extractive industry operations. For over six decades, multinational oil corporations have extracted petroleum resources from this ecologically diverse region, generating substantial revenues for both corporate shareholders and the Nigerian state, while leaving behind a legacy of environmental degradation, social disruption, and systematic denial of effective remedies for affected communities. This research emerges from the recognition that despite extensive legal frameworks, policy interventions, and international standards designed to protect human rights and provide access to remedy, communities in the Niger Delta continue to experience what can only be described as a comprehensive failure of accountability mechanisms. The magnitude of this accountability deficit becomes apparent when examining the systematic pattern of corporate human rights violations and the corresponding inadequacy of remedial responses across multiple communities and decades of extractive activities.

In May 1998, the peaceful occupation of a Chevron oil platform by youth from the Ilaje/Ese-Eso community in Ondo State crystallized the fundamental tensions that characterize corporate-community relations throughout the Niger Delta.[1] The community had experienced an abrupt cessation of fresh water supply and contamination of their fishing grounds, impacts that directly threatened their subsistence, livelihoods and violated their rights to health, water, and adequate standard of living. When community representatives requested dialogue with Chevron management to address these concerns, the company initially agreed to meet but subsequently failed to honor this commitment.[2] The peaceful two-day occupation that followed was met not with corporate engagement but with military force deployed at Chevron's request, resulting in the killing of two unarmed protesters, Jolly Ogungbeje and Arolika Irowarinun, and serious injuries to others.[3] As reported:

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[1] Christine Bustany & Daphne Wysham, "Chevron's Alleged Human Rights Abuses in the Niger Delta and Involvement in Chad-Cameroon Pipeline Consortium Highlights Need for World Bank Human Rights Investment Screen" (2013), online: Center for Sustainable Economy <https://sustainable-economy.org/wp-content/uploads/2018/02/Chevron-HR-in-Niger-Delta-Chad-Cam.pdf.\> For a cultural understanding of how the traditional setting of this society builds up claims of rights [Bustany & Wysham].

[2] *Ibid.*

[3] Bustany & Wysham, *supra,* note 1.

> In Chevron helicopters, the Nigerian Navy and Mobile Police—known as the "Kill 'n' Go"—accompanied by Chevron personnel, fired upon the demonstrators, killing two people, Jolly Ogungbeje and Arolika Irowarinun, and seriously injuring two others. Parrere, one of the demonstrators shot by the military, believed that when the helicopters came that the "…people inside might be Chevron's reps who were actually coming to dialogue." But instead, "[when] they were about to land, we heard shooting of tear gas and guns." While Chevron maintains that the youths were killed after trying to disarm the troops, there is circumstantial evidence to suggest otherwise—namely, that the military shot the youths from behind.[4]

While Chevron acknowledged that its pilots operated the company's helicopters and its chief of security accompanied the troops who shot at the protesters, the company nonetheless maintained that "its only action against the occupation was to call the federal authorities to inform them of the incident, which it asserts it was obligated to do by law."[5] The company also completely absolved itself from responsibility regarding the incident arguing that "it was a matter between the Federal Government Armed Forces and the community militants."[6]

The subsequent litigation that emerged from this incident illustrates the broader challenges facing victims of corporate human rights violations in accessing effective remedies. After rejecting nominal monetary offers from Chevron to settle this dispute, the aggrieved youth filed suit in 1999 under the United States Alien Tort Claims Act.[7] The plaintiffs in that case applied for compensation, injunctive and other relief under the Act which allows litigation in U.S courts against individuals or corporations that commit human rights[8] violations. The plaintiffs also sought compensation under the Federal Racketeer Influenced and Corrupt Organizations Act (RICO) and California state law. Chevron requested that the case be tried in Nigeria rather than in the United States under the doctrine of *forum non conveniens*. The District Court denied Chevron's *forum non*

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[4] *Ibid.*
[5] Ọmọlade Adunbi, "Mythic Oil: Resources, Belonging and the Politics of Claim Making among the Ìlàjẹ Yorùbá of Nigeria" (2013) 83(2) Africa: Journal of the International African Institute at 293.
[6] *Ibid.*
[7] *Bowoto v Chevron Corp* (2010), 621 F (3d) 1116 (9th Cir); See also David Horton, "Illuminating the Path of Aliens' Judicial Recourse: Preventing Another Bowoto v. Chevron by Congressional Legislation" (2010) 10 Appalachian J Law 27; Peter Muchlinski, "The Provision of Private Law Remedies against Multinational Enterprises: A Comparative Law Perspective" (2009) 4:2 J. Comp. Law at 148
[8] As the terms "human rights" are used throughout this research, a description might be in order. I use human rights here as a concept that "suggests that *every* human being – man or woman, rich or poor, adult or child, healthy or sick, educated or not – holds human rights… [the concept being] morally moving yet difficult to defend…inspiring yet constantly subject to critical challenge". See Brian Orend, *Human Rights: Concept and Context* (Ontario: Broadview Press, 2002)

conveniens motion in April 2000, allowing the case to proceed in California.[9] However, after a protracted litigation lasting nearly a decade, a jury unanimously found Chevron not liable for any of the allegations on December 1, 2008.[10] The plaintiffs' subsequent appeals to the Ninth Circuit Court of Appeals (2010) and petition to the U.S. Supreme Court (2011-2012) were both unsuccessful, leaving the victims without any remedy despite the documented killing of two unarmed protesters.[11] Jurors in the California State District court found Chevron not liable for any of the allegations made in the suit. The judgment was confirmed by both the Court of Appeals and the United States Supreme Court when the latter court denied a petition for a writ of *certiorari*.[12] This story and the litigation arising from it provides an appropriate launching pad to discuss and analyze the research problems within this thesis. It is one of several controversies between multinational oil corporations in Nigeria and their host communities that often escalates to litigation and where that fails other forms of mass action/protests by the oil communities. Over a long period of time, these cases have shown up within the Nigerian court system where the communities or civil society organizations committed to public interest litigation have presented the cases in various ways, but all mostly pointing to the devastation of the living environment in the Niger Delta region and the attendant human rights impact of that development. In their use of litigation to address the practices of the multinational oil industry in Nigeria neither the actual victims of these practices nor civil society groups that sometimes initiate public interest litigation on behalf of those victims have restricted the forum to Nigerian courts alone. They have on occasion also utilized regional courts and even courts in the home states of the oil corporations.

The Ilaje/Ese-Eso case represents not an isolated incident but rather a microcosm of the systematic remedy failures that characterize the Niger Delta experience.[13] The Ogoni people,

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[9] *Bowoto v Chevron Texaco Corp*, 312 F Supp 2d 1229 (ND Cal 2004) at 1229.

[10] S.F. jury clears Chevron of protest shootings" (San Francisco: San Francisco Chronicle, 2008), online: https://www.sfgate.com/business/article/S-F-jury-clears-Chevron-of-protest-shootings-3183175.php; See also *Bowoto v Chevron Corporation*, 621 F 3d 1116 (9th Cir 2010) at 1120.

[11] *Bowoto v Chevron Corporation*, 621 F 3d 1116 (9th Cir 2010) [appeal dismissed]; *Bowoto v Chevron Corporation*, 565 US 1163 (2012) [certiorari denied]. See also Marco Simons, *As Expected, Bowoto v. Chevron Petition is Denied after Mohamad Decision* (Washington D.C.: EarthRights International, 2012), online: https://earthrights.org/blog/as-expected-bowoto-v-chevron-petition-is-denied-after-mohamad-decision/.

[12] *Ibid.*

[13] See Peter M. Lewis, "Endgame in Nigeria? The Politics of a Failed Democratic Transition" (1994) 93 African Affairs 323–340; Richard Joseph, "Nigeria: Inside the Dismal Tunnel" (1996) 95 Current History 193–200 at 195; Adonis Hoffman, "Nigeria: The Policy Conundrum" (1995) 101 Foreign Policy 146–158; Okechukwu Oko, "Lawyers in Chains: Restrictions on Human Rights Advocacy under Nigeria's Military Regimes" (1997) 10 Harvard Human Rights Journal at 257; Julius O. Ihonvbere, "Are Things Falling Apart? the Military and the Crisis of Democratisation in Nigeria" (1996) 34 The Journal of Modern African Studies at 193–225; Claude Welch Jr, "Civil-Military Agonies in Nigeria: Pains of an Unaccomplished Transition" (1995) 21 Armed Forces and Society at593–614; Opeoluwa Adisa Oluyemi, "The Military Dimension of Niger Delta Crisis and Its Implications on Nigeria National Security" (Sage Open, 2020), online: https://journals.sagepub.com/doi/pdf/10.1177/2158244020922895;

whose struggle against environmental degradation gained international attention through the Movement for the Survival of Ogoni People (MOSOP), provide perhaps the most documented example of these failures. Despite presenting the Ogoni Bill of Rights to the Nigerian government in 1990, demanding political control over their affairs, economic resource control, adequate representation, and environmental protection, the Ogoni community experienced escalating state repression culminating in the execution of Ken Saro-Wiwa and eight other environmental activists in 1995. The international outcry that followed led to Shell's withdrawal from direct operations in Ogoniland, yet environmental contamination persisted, and meaningful remediation remained elusive for decades.[14] The United Nations Environmental Programme assessment of Ogoniland, conducted in 2011 at the request of the Nigerian government, documented the extent of environmental devastation and revealed contamination levels that posed serious risks to public health, with benzene concentrations in some water sources exceeding World Health Organization guidelines by over 900 times.[15] This scientific confirmation of what communities had long experienced represented both validation of their claims and an indictment of the systematic failure of existing remedy mechanisms. Despite court orders, government commitments, and corporate promises, the promised cleanup and restoration of Ogoniland has proceeded at a snail pace, with affected communities continuing to experience the devastating health, environmental, and livelihood impacts of decades of oil operations.[16]

The pattern of inadequate remedies extends beyond these high-profile cases to encompass communities throughout the oil-producing regions of Nigeria. The people of Bodo community in Rivers State experienced massive oil spills in 2008 and 2009 that devastated their fishing grounds and agricultural lands, affecting an estimated 69,000 people. While Shell eventually agreed to a settlement of £55 million in 2015, this resolution came only after years of litigation in both Nigerian and United Kingdom courts, and many community members reported that the compensation received was inadequate to address their losses or restore their livelihoods.[17] The

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John P Tuman, "Organized Labor under Military Rule: The Nigerian Labor Movement, 1985–1992" (1994) 29 Studies in Comparative International Development at 26–44; Okechukwu Ibeanu, "Exiles in their Own Home: Conflicts and Internal Population Displacements in Nigeria" (1999) 12 Journal of Refugee Studies at 161–179; Jean Damu &David Bacon, "Oil Rules Nigeria" (1996) 26 The Black Scholar: Journal of Black Studies and Research at 51–54.

[14] Amnesty International 'No clean up, no justice: Shell's oil pollution in the Niger Delta' (Amnesty International, 2020), online: <https://www.amnesty.org/en/latest/news/2020/06/no-clean-up-no-justice-shell-oil-pollution-in-the-niger-delta/.\>

[15] UNEP 'UNEP Ogoniland Oil Assessment Reveals Extent of Environmental Contamination and Threats' (2017) online <https://www.unep.org/news-and-stories/story/unep-ogoniland-oil-assessment-reveals-extent-environmental-contamination-and> [*UNEP*].

[16] *UNEP*, *supra*, note 15.

[17] *Ibid.*

Bodo case demonstrates how even successful litigation may fail to provide meaningful remedy when settlements are negotiated without meaningful community participation and when restoration measures do not address the full scope of harm experienced by affected populations. These documented cases reveal the existence of a remedy gap[18] where formal legal frameworks and institutional mechanisms exist on paper but fail to deliver effective redress to victims of corporate human rights violations in practice. The remedy gap in Nigeria's extractive sector manifests across multiple dimensions that systematically disadvantage affected communities. Procedural barriers include prohibitive litigation costs that place formal judicial remedies beyond the reach of most community members, complex evidentiary requirements that favor well-resourced corporate defendants, and lengthy court processes that can extend for years or decades while environmental and social harms persist. Jurisdictional challenges arise when multinational corporations structure their operations across multiple legal systems, enabling them to exploit regulatory gaps and shift liability away from entities with substantial assets. The inadequacy of existing remedy mechanisms becomes particularly evident when examined against international standards for effective remedies established under human rights law. The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation require that remedies be accessible, adequate, effective, and timely.[19] Yet evidence from the Niger Delta demonstrates systematic failures across each of these criteria. Remedies are not accessible when communities lack the financial resources, legal knowledge, or access necessary to pursue formal complaints or litigation. They are not adequate when monetary settlements fail to address the full scope of harm experienced by communities or when remediation measures do not restore environmental and livelihood conditions. They are not effective when legal victories fail to produce meaningful changes in corporate conduct or when court orders remain unenforced. They are not timely when legal processes extend for years while communities continue to suffer ongoing harm.

The remedy gap is also shaped by regulatory and institutional fragmentation as business-related environmental harm does not fall neatly within one field of law. A petroleum spill may simultaneously raise questions of environmental protection, corporate governance, human rights, public health, land rights, petroleum regulation, civil liability and access to justice. However,

[18] Within the context of this research, the term "remedy gap" refers to the disconnect between the existence of formal legal and institutional frameworks for redressing corporate human rights violations and the actual lack of meaningful, effective remedies for affected communities in practice. It describes situations where systems for grievance and accountability exist on paper, but victims remain unable to access justice, adequate compensation, or restoration due to procedural barriers, lack of enforcement, or exclusion from remedy processes

[19] G.A. Res. 60/147, UN Doc. A/RES/60/147 (2005).

these fields are governed by different rules and administered by different institutions, often without an effective mechanism for coordination. This separation creates practical difficulties for affected communities because petroleum regulators may focus on production and industry compliance, environmental agencies on pollution control, corporate regulators on company administration, human rights institutions on rights violations, and courts on the particular claims placed before them. Yet the affected community experiences the consequences as one connected harm. Where institutions operate in isolation, information is divided, responsibility becomes dispersed, proceedings may be duplicated, and communities must navigate several processes to obtain a complete remedy.

Fragmentation also has an international dimension because international human rights law, investment law, environmental law, corporate regulation and voluntary business standards have developed through different institutions and with different enforcement structures. Businesses may receive enforceable protections under investment agreements, while communities face greater difficulty enforcing human rights and environmental standards. The Guiding Principles respond partly to this problem by calling for policy coherence, but they do not remove the underlying separation among legal regimes. This study recognizes fragmentation as an important part of the scope in which the remedy gap arises and therefore treats it as a structural condition affecting remedy.

The failure of traditional state-based judicial mechanisms has prompted affected communities and their advocates to explore alternative forum and approaches, yet these efforts have also revealed the systemic nature of accountability deficits. Regional litigation before the Economic Community of West African States (ECOWAS) Court, as in the case brought by the Socio-Economic Rights and Accountability Project (SERAP) against the Nigerian government and major oil companies, while it succeeded in establishing legal principles the struggle to secure implementation of remedial orders remains unfulfilled. Transnational litigation in the home states of multinational corporations has faced obstacles including *forum non conveniens* dismissals, restrictive interpretations of extraterritorial jurisdiction, and corporate law doctrines that shield parent companies from liability for subsidiary conduct.[20] Corporate self-regulation initiatives, including environmental management systems, community development programs, and

[20] Jacquelyn Silva, "Transnational Corporations and International Human Rights Disputes: Alternatives to Litigation" (2020) 61:4 Santa Clara L Rev at 867

grievance mechanisms, have similarly failed to provide effective remedies for affected communities.[21] While oil companies operating in Nigeria have adopted elaborate corporate social responsibility policies and established various community engagement programs,[22] these initiatives typically operate without independent oversight, lack meaningful community participation in design and implementation, and prioritize corporate risk management over genuine accountability to affected populations.[23] The voluntary nature of these mechanisms means that communities have little recourse when corporate commitments are not fulfilled or when grievance processes fail to address community concerns adequately.

The systematic nature of these remedy failures raises fundamental questions about the adequacy of existing approaches to corporate human rights accountability in contexts characterized by significant power asymmetries between multinational corporations and local communities. The challenges facing Niger Delta communities in accessing effective remedies cannot be understood as simply technical or procedural deficiencies in otherwise adequate systems. Rather, they reflect deeper structural factors including the legacy of colonial resource extraction patterns, the concentration of economic and political power in ways that favor corporate interests over community rights, and the absence of meaningful mechanisms for community participation in decisions that affect their lives and livelihoods. The persistence of remedy gaps despite formal legal protections and international attention suggests the need for alternative approaches that address the underlying power dynamics and structural constraints that limit the effectiveness of traditional accountability mechanisms. This recognition has informed growing interest in participatory and community-centered approaches to corporate accountability that emphasize the agency and expertise of affected communities rather than treating them as passive beneficiaries of externally designed remedial interventions. Such approaches draw on insights from new governance theory, which recognizes the limitations of hierarchical, state-centered regulatory models and emphasizes the potential for multi-stakeholder, network-based governance arrangements to address complex regulatory challenges more effectively than traditional command-and-control approaches.[24]

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[21] Engobo Emeseh et al, "Corporations, CSR and self regulation: what lessons from the global financial crisis?" (2019) 11:2) Ger L J at 230- 259

[22] A Musa et al, "Corporate Social Responsibility in Nigeria's Oil and Gas Industry: The Perspective of the Industry" (2013) 3:2 Intl J of Process Management & Benchmarking at 101.

[23] *Ibid.*

[24] JG Ruggie, "Global Governance and 'New Governance Theory': Lessons from Business and Human Rights" (2014) 20 Global Governance 5 at 6.

Thus, the justification for this research is established as the exploration of citizen-centered alternatives to traditional remedy mechanisms. It presents not merely as an academic exercise but an urgent practical necessity for communities that continue to experience negative human rights impacts of extractive industry operations while existing accountability systems continuously fail to provide meaningful redress. The development of such alternatives requires careful attention to the specific contexts and needs of affected communities, the structural constraints that limit the effectiveness of existing mechanisms, and the institutional innovations that might enable more participatory and responsive approaches to corporate human rights accountability. The aim of this research is thus to analyze the constraints on access to effective remedy[25] for corporate human rights violations in Nigeria and discuss how a citizen-centered approach to the implementation of the Third Pillar of the United Nations Guiding Principles on Business and Human Rights (UNGPs) can be applied to strengthen access to effective remedies for victims of business related human rights abuse in Nigeria, especially in the Niger Delta region.[26] The premise of the research is that in Nigeria's oil resource regions, effective remedies have remained ever illusory for the millions of peoples affected by the negative human rights impacts of oil resource extraction. In trying to frame the reasons for the clear failure of both state judicial/non-judicial remedies as well as non-state and non-judicial remedies for redress of corporate human rights abuses in the Nigerian context, the research applies the concept of limited statehood and the new governance theory as appropriate frameworks. The analysis will continually emphasize the Niger Delta region of Nigeria and the oil and gas sector, focusing on how conflicts in host communities involved in natural resource extraction projects can be attributed to the ineffectiveness of remedies for

[25] The word "remedy" as used in this research is interchangeable with "redress". Wherever I use "redress" instead, it should be interpreted to mean "remedy". See for example Godfrey Musila, "The Right to an Effective Remedy under the African Charter on Human and Peoples' Rights" (2006) 6(2) African Hum. Rights L. Journal 442 at 446. The world's leading expert on the topic of corporate human rights violations also uses the terms interchangeably as in this report John Ruggie, "Obstacles to Justice and Redress for Victims of Corporate Human Rights Abuse" (London: Oxford Pro Bono Publico, 2014), online: <http://ohrh.law.ox.ac.uk/wordpress/wp-content/uploads/2014/05/OPBP-Comparative-submission-for-the-Special-Representative-on-Business-and-Human-Rights-Nov-2008.pdf>; Other scholars alternate also between "remedies" and "redress" when discussing the topic. See for example Robert Grabosch, "Prospects of legal Redress for Victims of Corporate Human Rights Violations in a Globalised World" in Laurence Boulle ed., *Globalisation and Governance* (Siber Ink, 2011) at 158; Fiona Haines & Kate Macdonald, "Nonjudicial Business Regulation and Community Access to Remedy" (2020) 14(4) Regulation and Governance 840 at 844.

[26] United Nations Human Rights Council, "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework" Report of the Special Representative of the Secretary-General on the issue of Human Rights and Transnational Corporations and Other Business Enterprises, UN Doc. A/HRC/17/31 (United Nations: UNHRC, 2011), online: http://www.ohchr.org/Documents/Publications/FAQ_PrinciplesBussinessHR.pdf; See also Penelope Simons & Audrey Macklin, The Governance Gap: Extractive Industries, Human rights, and the Home State advantage (New York, Routledge, 2014).

corporate human rights violations arising from those projects.[27] This research contributes to this endeavor by examining the specific challenges facing Niger Delta communities in accessing effective remedies and exploring how citizen-centered participatory approaches might address the limitations of existing systems while empowering communities to play more central roles in protecting their rights and securing appropriate redress when those rights are violated.

1.2. Problem Statement

Despite comprehensive legal frameworks and international commitments, victims of corporate human rights violations in Nigeria's oil sector face systematic barriers to accessing effective remedies. This research identifies a fundamental disconnect between formal remedy mechanisms and their practical implementation, creating remedy gaps[28] that leaves affected communities without meaningful redress. The deep-seated remedy gap in Nigeria's extractive sector is primarily attributable to a confluence of post-colonial power structures and conditions of limited statehood. This manifests notably in Nigeria's constitutional framework which effectively renders environmental rights non-justiciable, statutory mechanisms that fail to mandate meaningful community participation, and judicial patterns characterized by systematic access barriers, including prohibitive costs and restrictive standing requirements. The problem manifests across multiple dimensions.

State-based judicial mechanisms, while constitutionally guaranteed, remain largely inaccessible to oil-affected communities due to prohibitive litigation costs, complex procedural requirements, and judicial attitudes that favor corporate interests.[29] Litigation success rates are extremely low, with most cases either dismissed on technical grounds or settled out of court without addressing underlying violations or preventing future harm.[30] State-based non-judicial mechanisms,

[27] See for example, Oluwatoyin O. Oluwaniyi, "Oil and Youth Militancy in Nigeria's Niger Delta Region" (2010) 45 Journal of Asian and African Studies 309–325, in which the author summarized causes of restiveness in the Niger Delta to include "equity, access to oil resource and power, self-determination, ethnic autonomy, decentralization of a hegemonic federal power, and citizenship rights in terms of the relationship between ethnic majorities and minorities." See also Kaniye Ebeku, "Oil and the Niger Delta People: The Injustice of the Land Use Act" (2002) 35 Law and Politics in Africa, Asia and Latin America 201–231; Kenneth Omeje, "The State, Conflict, and Evolving Politics in the Niger Delta, Nigeria" (2004) 101 Review of African Political Economy 425–440

[28] *Ibid*, note 18. The term "remedy gap" refers to the disconnect between the existence of formal legal and institutional frameworks for redressing corporate human rights violations and the actual lack of meaningful, effective remedies for affected communities in practice. It describes situations where systems for grievance and accountability exist on paper, but victims remain unable to access justice, adequate compensation, or restoration due to procedural barriers, lack of enforcement, or exclusion from remedy processes

[29] CT Brown & NS Okogbule, "Redressing Harmful Environmental Practices in the Nigerian Petroleum Industry through the Criminal Justice Approach" (2020) 11:1 J Sust Dev L & Policy 18 at 45.

[30] *Ibid.*

including regulatory agencies and administrative bodies, suffer from institutional weaknesses, insufficient funding, and lack of independence from corporate influence.[31] Environmental impact assessment processes exclude meaningful community participation, while compensation frameworks fail to address the collective nature of environmental harm experienced by entire communities. For instance, despite decades of oil extraction since 1956, it was only in 2011 that the United Nations Environmental Programme conducted the first comprehensive environmental assessment of Ogoniland at the Nigerian government's request.[32] This assessment became necessary because decades of negotiations, initiatives and protests ultimately failed to deliver a solution that meets the expectations and responsibilities of all sides.[33] This disconnect between legal frameworks and practical outcomes exemplifies what is described as the gap between law on paper and law in action. While formal remedy mechanisms exist, empirical evidence suggests they have failed to provide adequate redress for affected communities, creating persistent conflicts between oil companies and their host communities.

In addition, non-state mechanisms, particularly corporate grievance procedures and community development agreements, operate without adequate oversight or enforcement mechanisms.[34] These voluntary arrangements often prioritize corporate risk management over genuine remedy, leaving communities with limited recourse when agreements are breached or prove inadequate.[35] The research identifies several structural factors contributing to this remedy deficit. Nigeria's postcolonial legal system retains colonial-era biases that privilege extractive industries over community rights. Limited statehood conditions, characterized by weak institutional capacity and regulatory capture, enable corporate impunity.[36] Traditional remedy approaches remain state-centric and fail to account for the collective, intergenerational nature of environmental harm experienced in extractive contexts. Most significantly, existing remedy mechanisms exclude affected communities from meaningful participation in remedy design, implementation, and monitoring.[37] This exclusion violates fundamental principles of effective remedy under

[31] *Ibid.*
[32] UNEP-EP, Environmental Assessment of Ogoniland Report (UNEP-EP, 2020), online: <http://unep.org/topics/disasters-and-conflicts/country-presence/nigeria/environmental-assessment-ogoniland-report>.
[33] *Ibid.*
[34] National Action Plans on Business and Human Rights, "Non-Judicial Grievance Mechanisms" (National Action Plans on Business and Human Rights, 2025), online: <https://globalnaps.org/issue/non-judicial-grievance-mechanisms/>.
[35] *Ibid.*
[36] Thomas Risse, Governance Without a State? Policies and Politics in Areas of Limited Statehood (New York: Columbia University Press, 2011) at 11.
[37] *Ibid.*

international law, which require that remedy mechanisms be accessible, legitimate, and rights compatible.[38] The absence of citizen-centered approaches perpetuates power asymmetries between multinational corporations and local communities, undermining the effectiveness of even well-intentioned remedy initiative.

It is important to highlight that the problem examined in this study goes beyond the absence of remedies, as a deeper problem is that affected communities often have limited influence over how harm is identified, how evidence is produced, how remedial processes are designed and how outcomes are implemented and monitored. Communities may be consulted after important decisions have already been made, while technical information, financial resources and decision-making authority remain concentrated in state institutions and corporations. This study therefore argues for a citizen-centred approach to remedy. A remedy is citizen-centered when affected people are treated as rights-holders and active participants rather than only as victims, beneficiaries or sources of information. Such an approach requires timely access to relevant information, meaningful participation in identifying harm, opportunities to influence the form of remedy, independent legal and technical support, involvement in monitoring implementation, and accessible procedures for challenging inadequate outcomes. Citizen participation is necessary because the effectiveness of a remedy cannot be determined solely by the institution or company responsible for providing it. An award of compensation may not address contaminated land, damaged livelihoods, health consequences, cultural loss or the risk of repeated harm. Affected communities are often best placed to identify these dimensions of harm and to explain what restoration requires in their particular context. Their participation can therefore improve the accuracy, legitimacy, accessibility and responsiveness of remedial processes. The thesis does not suggest that participation alone can overcome every barrier to remedy. Weak institutions, procedural delay, inadequate enforcement, corporate power, regulatory capture and unequal access to expertise must also be addressed. Participation may itself be captured by companies or community elites if representation, information and accountability are poorly designed.

Based on the above problem, the study's central research question is:

[38] OHCHR, Access to Remedy in Cases of Business-Related Human Rights Abuse: An Interpretive Guide (New York and Geneva: OHCHR, 2024), online: <https://www.ohchr.org/sites/default/files/2024-11/access-to-remedy-bhr-interpretive-guide-en.pdf>.

How can citizen-centered participatory approaches enhance access to effective remedies for corporate human rights violations in Nigeria's petroleum sector?

The sub-questions for research are:

1. What are the specific gaps in Nigeria's legal and institutional framework that prevent effective access to remedy for corporate human rights violations?
2. What models of citizen-centered participation can provide more effective pathways to remedy for corporate human rights violations in extractive contexts?
3. What lessons from comparative jurisdictions can inform the development of citizen-centered remedy mechanisms in Nigeria?
4. What citizen-centered approaches can be proffered to strengthen Pillar III implementation in Nigeria'?

1.3. Research Objectives

This study seeks to achieve the following objectives:

1. To analyse the specific gaps in Nigeria's legal and institutional framework that prevent effective access to remedy for corporate human rights violations.
2. To examine the models of citizen-centered participation that can provide more effective pathways to remedy for corporate human rights violations in extractive contexts.
3. To identify lessons from comparative jurisdictions that can inform the development of citizen-centered remedy mechanisms in Nigeria.
4. To propose citizen-centered approaches to strengthen Pillar III implementation in Nigeria.

1.4. Methodology

The research employs a multidisciplinary methodology combining doctrinal analysis, gap analysis, comparative analysis, and case study methods to examine access to remedy for corporate human rights violations in Nigeria's petroleum sector. The methodological approach was intended to systematically evaluate Nigeria's legal and institutional framework against international standards while proposing citizen-centered alternatives. While law will be the dominant discipline of the research analysis, the research applied insights from other disciplines such as political science, history, socio-legal studies, and political economy. Legal analysis was mostly doctrinal with attention paid to development and application of legislative/constitutional norms to the subject-matter of the research. This method involves detailed analysis of constitutional provisions,

particularly Chapter IV (Fundamental Rights) and Chapter II (Directive Principles) of Nigeria's 1999 Constitution, to assess how environmental and human rights are protected and enforced. The analysis extends to key statutes including the Petroleum Industry Act (2021), Environmental Impact Assessment Act (2004), National Human Rights Commission Act (2010), and other relevant legislation identified in Nigeria's 2023 National Action Plan on Business and Human Rights.[39] In the effort to develop the argument around the weakness and inadequacy of legal mechanisms of redressing corporate human rights violations, the study inevitably evaluated domestic case-law and judicial decisions. Case law analysis forms a crucial component of the doctrinal approach, examining landmark decisions in *Gbemre v Shell Petroleum Development Company,*[40] *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation,*[41] *and Oronto Douglas v Shell Petroleum Development Company*[42] to understand judicial patterns and access to justice failures. The analysis traces the evolution of judicial thinking and attitude on environmental rights and corporate accountability to identify consistent patterns or problematic inconsistencies in judicial decision-making. International legal instruments are examined to establish the benchmark standards against which Nigeria's domestic framework is evaluated. This includes analysis of the UN Guiding Principles on Business and Human Rights,[43] the African Charter on Human and Peoples' Rights[44], and relevant decisions of the African Commission on Human and Peoples' Rights,[45] particularly *SERAC v Nigeria*[46] which established important precedents for environmental rights in Africa. In particular, the analysis accounts for decisions of the African Commission on Human and People's Rights[47] as well as the African Court on Human

[39] National Action Plans on Business and Human Rights, "Non-Judicial Grievance Mechanisms" (National Action Plans on Business and Human Rights, 2025), online: <https://globalnaps.org/issue/non-judicial-grievance-mechanisms/>. [NAPBHR Report].
[40] *Gbemre v Shell Petroleum Development Company Nigeria Ltd & Ors, [2005] AHRLR 151 (Federal High Court of Nigeria, Benin Judicial Division).*
[41] *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation, [2019] 5 NWLR (Pt 1666) 518 (SC).*
[42] *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation, Suit No FHC/L/CS/573/2005 (Federal High Court, Lagos Division) (Unreported).*
[43] Ruggie, John, and Palais Des Nations. "Guiding principles on business and human rights: Implementing the UN "Protect, Respect and Remedy" Framework." Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises (2011). https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf?
[44] African Charter on Human and Peoples' Rights, 27 June 1981, 1520 U.N.T.S. 217, OAU Doc CAB/LEG/67/3 rev.5.
[45] Smis, Stefaan, and Olalekan Bello. "Social and Economic Rights Action Centre (SERAC) and the Centre for Economic and Social Rights (CESR) v Nigeria: two decades on-questioning the continued implementation gap." *African Human Rights Yearbook* 5 (2021): at 454-474.
[46] *Registered Trustees of the Socio-Economic Rights & Accountability Project (SERAP) v President of the Federal Republic of Nigeria*, Suit No ECW/CCJ/APP/08/09 (10 December 2010), Ruling No ECW/CCJ/APP/07/10 (ECOWAS Community Court of Justice).
[47] *Ibid.*

and Peoples Rights[48] to see the extent that they clarify Nigeria's obligations to establish effective access to remedy mechanisms.

Apart from evaluation of primary sources and case law, secondary materials were assembled and employed in the research through the gathering of relevant current literature in the field. This was done through desk and online research involving not just covering analysis of caselaw, primary and secondary sources but also reports/studies from relevant policy-oriented institutions. More so, policies and internal working documents from relevant multinational corporations whether developed voluntarily/proactively or in response to pressure from communities, international institutions, or civil society actors will be consulted.

Finally, the research undertakes a focused comparative analysis with New Zealand's resource management framework to identify lessons for enhancing citizen participation in remedy mechanisms. New Zealand was selected as a comparator based on several criteria: shared common law tradition, colonial history, Westminster system similarities, and experience with extractive industries in Indigenous people and local communities (IPLC) territories[49]. The comparative analysis examines New Zealand's Resource Management Act[50] framework, Treaty of Waitangi[51] settlement processes, and co-management arrangements to understand how participatory governance can be operationalized in practice. However, the comparison recognizes fundamental differences between the two contexts, including Nigeria's federal system versus New Zealand's unitary structure, Nigeria's resource dependency versus New Zealand's diversified economy, and Nigeria's limited statehood challenges versus New Zealand's developed institutional capacity. The comparative method focuses on extracting adaptable principles rather than proposing direct transplantation of New Zealand's mechanisms. This approach acknowledges that legal and institutional arrangements must be tailored to local contexts while drawing insights from successful participatory governance models elsewhere.

This study does not include empirical research as the aim of the study is to examine the content and adequacy of Nigeria's legal and institutional framework for remedy, identify gaps between the framework and relevant international standards, and develop a normative framework for citizen-centered participation. These questions require close analysis of legislation, judicial

[48] Thomas Antkowiak, "Remedial Approaches to Human Rights Violations: The Inter-American Court of Human Rights and Beyond" (2008) 46:351 Colum J Transnat'l L, 351 at 353-354.
[49] Andrew Erueti & Joshua Pietras, "Extractive Industry, Human Rights and Indigenous Rights in New Zealand's Exclusive Economic Zone" (2013) 11 NZYIL 37 at 454-474
[50] Resource Management Act 1991, No 69 (as at 20 October 2025), Public Act.
[51] Treaty of Waitangi, 1840, 89 Consol. T.S. 473 (English text).

decisions, institutional mandates, international standards, official reports and documented cases. A predominantly doctrinal and qualitative methodology is therefore appropriate. Community experiences are examined through judicial records, official investigations, environmental assessments, reports by international and civil-society organisations, and existing empirical scholarship. These sources provide important evidence of the barriers communities face in seeking remedy. Nevertheless, they cannot fully replace direct engagement with affected communities.

Notwithstanding, the combination of methods enables comprehensive examination of remedy gaps from multiple perspectives. Also, the research's proposal for citizen-centered alternatives requires understanding both existing failures and successful models elsewhere. The combination of gap analysis and comparative analysis enables identification of specific deficiencies in current approaches while providing insights into potential solutions.

1.5. Significance of the Research

This research advances business and human rights scholarship by integrating new governance theory with limited statehood analysis to explain persistent remedy failures in developing country contexts. While existing studies focus primarily on documenting problems with voluntary corporate accountability frameworks, this research develops theoretical understanding of why state-centric approaches fail. The integration provides new insights into the structural conditions that enable corporate human rights violations and limit effective remedy provision. The study also contributes to legal scholarship by demonstrating how citizen-centered participatory approaches can operationalize international human rights standards in domestic contexts. This research develops frameworks for understanding how meaningful community participation can enhance the effectiveness of remedy mechanisms while addressing legitimacy and accessibility challenges that undermine traditional approaches.

The study also has practical policy recommendations as the research provides directly applicable insights for policymakers working to implement Nigeria's 2023 National Action Plan on Business and Human Rights.[52] The Action Plan acknowledges significant challenges in Nigeria's remedy framework but lacks specific guidance on how citizen-centered approaches can address identified gaps. This research fills this policy gap by providing detailed frameworks for integrating

[52] NAPBHR Report, *supra* note 39.

community participation into existing regulatory and institutional structures without requiring comprehensive legal overhaul. This research provides guidance on how these mechanisms can be strengthened to deliver meaningful community empowerment rather than superficial consultation. Ultimately, this research's significance lies in its development of a comprehensive Citizen-Centered Participatory Framework (CCPF), offering concrete, actionable guidance for transforming corporate human rights accountability from reactive, exclusionary processes to proactive, community-empowered systems in Nigeria and similar developing contexts facing challenges of limited statehood and colonial legacies.

The study also contributes to global discussions about business and human rights implementation by providing evidence from a major developing country context. Most existing research focuses on developed country experiences or provides abstract theoretical analysis without adequate attention to implementation challenges in weak governance contexts. This research addresses this geographical and empirical gap by providing detailed analysis of both challenges and opportunities in a context that represents conditions facing many developing countries. The research also contributes to broader movements for community empowerment and participatory governance by providing evidence-based frameworks for meaningful community participation in complex governance processes. These insights extend beyond extractive industry contexts to inform community participation in environmental governance, development planning, and corporate accountability more broadly.

The significance of this research lies in its potential to transform how corporate human rights violations are addressed from reactive, exclusionary processes controlled by external institutions toward proactive, participatory approaches that center affected communities as primary agents in remedy design and implementation. This transformation has implications not only for individual remedy cases but for broader patterns of corporate accountability and community empowerment in contexts where traditional governance institutions have failed to protect community rights and welfare.

1.6. Scope and Limitations of the Research

This research focuses specifically on access to remedy for corporate human rights violations in Nigeria's petroleum sector, with particular emphasis on the Niger Delta region. The study examines the gap between international standards for effective remedy mechanisms and the practical reality facing oil-producing communities in Nigeria. Given that a lot has already been

written about the activities of oil corporations in Nigeria's Niger Delta region, it will be appropriate to establish the limitations of this research both in terms of what it covers and challenges that may be encountered in achieving the objectives that it sets out from the outset. For a start, while the analysis has multidisciplinary elements, and this is pointed out wherever applicable, the research is essentially legal in its main focus. The multidisciplinary ideas include significantly the legal,[53] as well as the political or how politics is a fundamental factor in corporate oversight,[54] historical,[55] the economic,[56] cultural,[57] gender,[58] health,[59] etc. They are therefore only referenced as a way of understanding legal developments especially from a critical standpoint. Therefore, rather than shifting the focus away from law, the multidisciplinary lens is intended to highlight non-legal factors that may account for the weakness and ineffectiveness of legal processes.

Although the primary focus of this thesis is access to remedy under Pillar III of the UNGPs, the evidence from Nigeria's petroleum sector shows that failures at earlier stages of the project life cycle such as consultation, consent, impact assessment and benefit-sharing are a root cause of the remedy gap. Remedy in this study is therefore conceived broadly, encompassing preventive, corrective and transformative measures across the entire life cycle of extractive projects, from project design to decommissioning. There may not be a one-size-fits-all paradigm in terms of what the problems that this research investigates, or the solutions proposed.

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[53] Sara L. Seck, "Transnational Judicial and Non-Judicial Remedies for Corporate Human Rights Harms: Challenges of and for Law" (2013) 31 Windsor Yearbook of Access to Justice at 177 [Seck]; Leo E. Strine, "Corporate Power Ratchet: The Courts' Role in Eroding "We the People's" Ability to Constrain Our Corporate Creations" (2016) 51 Harvard Civil Rights-Civ. Liber. L. Rev.at 423

54 Peter A. Gourevitch & James Shinn, Political Power and Corporate Control: The New Global Politics of Corporate Governance (New Jersey: Princeton University Press, 2005); John Ruggie, "Global Governance and "New Governance Theory": Lessons from Business and Human Rights" (2014) 20 Global Governance at 5–17; Stephen Wilks, The Political Power of the Business Corporation (Camberley Surrey: Edward Elgar Publishing Limited, 2013) at 95; Joseph L. Staats, "Habermas and Democratic Theory: The Threat To Democracy of Unchecked Corporate Power" (2004) 57 Political Research Quarterly at 585–594.

[55] Alastair Mcintosh, *Soil and Soul: People Versus Corporate Powe*r (London: Aurum Press Limited, 2001) at 113; Ajay Mehrotra, "The Public Control of Corporate Power: Revisiting the 1909 U.S. Corporate Tax from a Comparative Perspective" (2010) 2 Theo. Inq. in L. at 497

[56] Eric Engle, "Corporate Social Responsibility (CSR): Market-Based Remedies for International Human Rights Violations?" (2004) 40:103 Willamette L. Rev. 103.

[57] Leah Horowitz, "Culturally Articulated Neoliberalisation: Corporate Social Responsibility and the Capture of Indigenous Legitimacy in New Caledonia" (2015) 40 Trans Inst Br Geogr at 88-101; describing how a mining company undercut and ultimately co-opted local resistance, largely by successfully capturing culturally-based ideologies of customary and indigenous legitimacy; Alicia Fentimana & Nenibarini Zabbey, "Environmental Degradation and Cultural Erosion of Ogoniland: A Case Study of the Oil Spills in Bodo" (2015) 2(4) The Extractive Industries and Society at 615-624

[58] Janis Sarra, "The Gender Implications of Corporate Governance Change" (2002) 1(2) Seattle Journal of Social Justice at 457.

[59] Joshua Eaton, *The Nigerian Tragedy, Environmental Regulation of Transnational Corporations, and the Human Right to a Healthy Environment in International Crimes* (England:Routledge, 2003) at 1-47

On the subject matter scope, the research operationalizes "human rights" within the specific context of environmental degradation and livelihood impacts arising from oil extraction activities. The primary focus is on environmental rights as recognized under Article 24 of the African Charter on Human and Peoples' Rights, which guarantees "the right to a general satisfactory environment favorable to their development." These environmental rights are linked to other fundamental rights including the right to life and health, adequate standard of living, food security, and access to clean water.

The research acknowledges several important methodological constraints that affect the scope:

a. First, the study relies primarily on doctrinal analysis and secondary sources rather than fieldwork. The current analysis draws primarily from documented cases and existing literature. This limitation means that direct community voices and experiences are not captured in the analysis.
b. Second, the comparative analysis is limited to New Zealand's resource management framework rather than examining multiple jurisdictions. This focused approach, while providing depth, may limit the range of insights available for understanding how participatory remedy mechanisms function in different contexts. The selection of New Zealand as the primary comparator, while justified by shared legal traditions and colonial history, may not capture the full diversity of approaches to citizen-centered remedy mechanisms.
c. Third, the research is narrowly focused on the petroleum sector, which may limit the applicability of findings to other extractive industries such as mining etc. While the petroleum sector provides a substantive case study for understanding remedy gaps, the specific characteristics of oil extraction and its environmental impacts may not be fully representative of corporate human rights challenges in other contexts.
d. The study addresses fragmentation only to the extent necessary to explain barriers to remedy and to show why coordination is required for implementing the CCPF. The limited treatment of the subject should not be understood as a conclusion that fragmentation is unimportant.

Despite these limitations, the research makes important contributions to understanding remedy gaps and provides valuable insights for policymakers, practitioners, and scholars working on corporate accountability in similar contexts. The focused approach enables deep analysis of specific challenges while the comparative dimension provides concrete examples of alternative approaches that could be adapted to other contexts.

1.7. Chapter Outline

Chapter 1

This chapter introduces research, providing a comprehensive background of the legal and political context for the research. The chapter in addition, indicate the objectives of the research, the major research questions to be answered, the methodology and structure of the research

Chapter 2

This chapter will provide a detailed literature review on the topic of the research and discussion of the key theories that will be applied. The chapter sharpen reflection on, and analysis of, the research questions with the intention of identifying the gaps in the literature that the research is intended to cover. This chapter examines the theoretical connections between the challenge of corporate human rights accountability and the various factors identified as contributing to the ineffective nature of current legal solutions that are being applied to address the challenge. Through comprehensive literature review, it demonstrates how voluntary approaches in line with the UNGPs have proven inadequate, particularly in extractive industries, while identifying emerging citizen-centered alternatives. The chapter concludes by examining Global South perspectives on remedy and environmental justice that inform the subsequent analysis.

Chapter 3

This chapter conducts a systematic gap analysis of Nigeria's remedy mechanisms against international standards established in chapter two. Through doctrinal analysis, it examines constitutional frameworks, key legislation including the Petroleum Industry Act 2021, Environmental Impact Assessment Act (1992), and institutional arrangements including regulatory agencies and the Nigeria National Human Rights Commission.[60] The analysis reveals systematic exclusion of citizens from remedy processes, inadequate enforcement mechanisms, and persistent barriers to accessing effective redress. The chapter documents judicial patterns that demonstrate how courts have evolved from hostility toward environmental claims to gradual recognition of rights, while highlighting ongoing access barriers including prohibitive costs, jurisdictional complexities, and power imbalances that favor corporate defendants.

Chapter 4

This chapter presents a comprehensive framework for transforming Nigeria's remedy mechanisms through meaningful citizen participation. Building on the gaps identified in Chapter Three, it operationalizes new governance principles through specific models including Free,

[60] Obiora Chinedu Okafor and Shedrack Agbakwa, "On Legalism, Popular Agency and 'Voices of Suffering': The Nigerian Human Rights Commission in Context" (2002) 24 Hum. Rts. Qtly. 662 at 663.

Prior, and Informed Consent (FPIC), Impact and Benefit Agreements, community-led environmental monitoring, and participatory grievance mechanisms. The chapter examines New Zealand's resource management framework as a comparative case study, demonstrating how common law jurisdictions can successfully integrate citizen participation while addressing IPLC's rights.[61] It proposes expert assistance frameworks that enable communities to engage effectively with multinational corporations, multi-stakeholder governance structures, and institutional arrangements necessary for implementation. The chapter concludes with detailed recommendations for legal reforms, capacity building programs, and sustainability mechanisms required to operationalize citizen-centered remedy approaches in Nigeria's extractive sector.

Chapter 5

This chapter presents an assessment of challenges (political economy, institutional, social, legal) and prospects (policy, technology, international support, strategic coalitions) for the real-world implementation and scaling of citizen-centered remedy mechanisms in Nigeria.

Chapter 6

This chapter which is the concluding chapter summarizes the entire study including the summary of findings, the proposed recommendation and the conclusion of the research. The study's original contribution to knowledge is further highlighted here and areas for further research are proposed.

[61] For the purpose of this research, references to "indigenous rights" (as commonly used in other jurisdictions) should be understood to mean "community rights" within the Nigerian context. While the term "indigenous rights" is not widely employed in Nigerian law or policy, it carries the same substantive meaning, encompassing the rights of local or host communities over their ancestral lands, resources, and participation in decision-making concerning natural resource extraction

Chapter 2 - Conceptual, Theoretical Framework and Literature Review

2.1. Introduction

This chapter provides the conceptual and theoretical foundation for examining access to remedy in Nigeria's oil sector. The literature review establishes the meaning, scope, and essential elements of effective remedy under international law, particularly within the framework of the UN Guiding Principles on Business and Human Rights. This chapter serves as the analytical blueprint for understanding how remedy mechanisms operate and what makes them effective for rights-holders seeking redress for corporate-related human rights violations. The chapter develops a theoretical framework combining limited statehood theory, and new governance approaches to explain why remedy gaps persist in contexts like Nigeria. By examining both international doctrinal standards and critical Global South scholarship, this chapter creates the foundation for subsequent chapter. The literature reviewed here directly informs the analytical criteria that will be applied to evaluate Nigerian laws, institutions, and remedial mechanisms in the following chapter.

2.2. Conceptual Framework

2.2.1. Access to Remedy

Access to remedy, as understood in contemporary business and human-rights discourse, refers to the ability of rights-holders to seek and obtain both procedural redress and substantive reparation for harms arising from business activities.[62] The United Nation's (UN) Guiding Principles' on Business and Human Rights of 2011[63] commentary makes it clear that this concept encompasses "procedural and substantive aspects," ranging from impartial processes to outcomes such as restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.[64] The UN Working Group on the issue of human rights and transnational corporations and other business enterprises in its 2017 report to the General Assembly, offers a further refinement by distinguishing between "access" (the pathways rights-holders can realistically pursue) and "delivery" (the

[62] Rehulina Rehulina, Understanding Human Rights Corporate Supply Chain Responsibility in Business and Human Rights (Debrecen, 2025) online at <https://dea.lib.unideb.hu/server/api/core/bitstreams/0a960b46-2e2a-48d9-b62c-a7f33c8b8e70/content>

[63] John Ruggie, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, UN Doc HR/PUB/11/04 (2011) [Ruggie, *Guiding Principles*]. Available online at <https://www.ungpreporting.org/resources/the-ungps/>

[64] United Nations Human Rights: Office of the High Commissioner 'Access to Remedy' (UNOHCHR, 2024) online at <https://www.ohchr.org/en/special-procedures/wg-business/access-remedy>

capacity of those pathways to produce results that victims themselves value).[65] An effective system therefore rests on two mutually reinforcing pillars: first, that victims can reach an appropriate forum without prohibitive costs, fear or complexity; and second, that the forum can actually deliver a bouquet of remedies responsive to the lived experience of harm.[66]

The Working Group operationalizes this dual perspective through eight effectiveness criteria that apply across judicial and non-judicial mechanisms. Remedies must be:

i. legitimate,
ii. accessible,
iii. predictable,
iv. equitable,
v. transparent,
vi. rights-compatible,
vii. a source of continuous learning; and
viii. founded on engagement and dialogue with those affected. [67]

Crucially, the report insists on the *centrality of rights-holders* and recommends an *all-roads-to-remedy* approach in which States and businesses view every policy choice, from due-diligence legislation to corporate grievance design, through the lens of whether it advances both access and delivery for victims.[68] This rights-holder orientation addresses a criticism levelled at earlier interpretations of Pillar III of the UNGPS: that discussions of remedy remained overly institution-centered and failed to ask whether victims, especially those in vulnerable groups, regarded the process or its outcome as meaningful.[69]

This understanding is vital for the Nigerian case study that follows. Nigeria's oil-producing communities remain emblematic of contexts where victims face formidable barriers to both access and delivery of remedy: exorbitant litigation costs, evidentiary hurdles, weak enforcement and

[65] *Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, on access to effective remedy for business-related human rights abuses*, 72nd Sess, UN Doc A/72/162 (18 July 2017) at para. 23.
[66] *Ibid.*
[67] Principle 31, UN Human Rights Office, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (2011) at 21
[68] D. Surya, "Access to Remedies under the UN Guiding Principles on Business and Human Rights: The Role of (European) States" (EuroParl, 2017), online: https://www.europarl.europa.eu/cmsdata/118524/Deva%20Presentation.pdf
[69] *Ibid.*

pervasive power asymmetries. Applying the Working Group's eight criteria as analytical yardsticks will allow subsequent chapters of this research to interrogate not merely whether courts, regulatory agencies or company grievance offices exist, but whether Niger Delta residents can in practice use them to secure outcomes they deem just. The criteria also provide a concrete template for evaluating proposed citizen-centered mechanisms enabling a clear demonstration of how participatory models might narrow the persistent gap between international standards and domestic realities. In this way, the conceptual scaffolding built here directly shapes the methodological lens through which Nigeria's legal and institutional landscape will be assessed in the next chapter.

2.2.2. Right to Remedy

The right to an effective remedy for human rights violations is one of the most fundamental principles in international law, evolving from its early articulation in the Universal Declaration of Human Rights to its comprehensive elaboration in contemporary human rights instruments.[70] This is a growing understanding that rights without remedies are merely aspirational declarations, lacking the practical force necessary to protect human dignity in concrete situations.

The conceptual foundation of the right to remedy was first articulated in Article 8 of the Universal Declaration of Human Rights (UDHR) of 1948, which proclaimed that "everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law".[71] This declaratory provision established the core principle that legal systems must provide accessible avenues for redress when fundamental rights are violated.[72] However, the UDHR's non-binding nature meant that this right remained largely aspirational, requiring subsequent treaty development to create enforceable obligations.[73] The transformation from declaratory principle to binding obligation occurred with the adoption of the International Covenant on Civil and Political Rights (ICCPR) in 1966.[74] Article 2(3) of the ICCPR

[70] United Nations Human Rights: Office of the High Commissioner 'International Convention on Civil and Political Rights'(OHCHR, 2025), online: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

[71] Article 8 UDHR (1948)

[72] H Cantú Rivera, "Article 8 – The Right to an Effective Remedy" in H Cantú Rivera, ed, The Universal Declaration of Human Rights: A Commentary (Leiden: Brill Nijhoff, 2023) 175, online: <https://brill.com/edcollchap/book/9789004365148/BP000009.xml>.

[73] United Nations Human Rights: Office of the High Commissioner 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law' (OHCHR, 2025), online: <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>

[74] United Nations Human Rights: Office of the High Commissioner 'International Convention on Civil and Political Rights' (OHCHR, 2025), online: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

significantly expanded and strengthened the right to remedy by imposing specific obligations on State Parties to "ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity".[75] This provision is an advancement by creating enforceable state duties and extending protection even against violations committed by state agents.[76]

This tripartite structure established remedy not merely as a procedural requirement, but as a substantive right with corresponding state obligations. The Human Rights Committee's General Comment 31 (2004) further clarified that Article 2(3) requires States to "ensure that individuals also have accessible and effective remedies to vindicate those rights," emphasizing that such remedies "should be appropriately adapted so as to take account of the special vulnerability of certain categories of person, including in particular children".[77] This interpretation demonstrated the evolution of remedy from a static concept to a dynamic principle that must be tailored to address the specific circumstances and vulnerabilities of different rights-holders. The jurisprudential development of the right to remedy gained significant momentum through the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,[78] adopted by the UN General Assembly in 2005 . These principles, developed over sixteen years of expert consultation and state engagement, provided the first comprehensive codification of the rights of victims of human rights violations to reparation and access to justice within domestic legal systems.[79] The Basic Principles established that the right to remedy derives from the general principle of state responsibility under international law, whereby "every violation of an international obligation which results in harm creates a duty to make adequate reparation" [80]

[75] *Ibid*.
[76] Danish Institute for Human Rights "Furthering the Right to Defend Rights: ICCPR General Comment 31 para. 15, 16, 17,18,19,20" (Danish Institute, 2025), online: <https://defend.humanrights.dk/node/4486v> [Danish].
[77] Danish, *supra*, note 76.
[78] GA Res 60/147, UN Doc A/RES/60/147 (16 December 2005).
[79] Danish, *supra*, note 77.
[80] Chanturia L., "Right to an effective remedy in the European Convention on Human Rights." (2023) J. Law. 9

2.2.3. Essential Elements of Effective Remedy under International Law

Contemporary international law recognizes that for a remedy to be truly effective, it must satisfy multiple interconnected criteria that address both procedural and substantive dimensions of justice.[81] The essential elements are examined below;

a. Accessible

The accessibility requirement addresses multiple barriers that prevent rights-holders from seeking redress.[82] Geographical accessibility ensures that remedy mechanisms are not limited by physical distance or location, particularly important in addressing violations in remote or underserved areas.[83] Financial accessibility mandates that remedial procedures must not impose prohibitive costs on victims, requiring states to address economic barriers through legal aid, fee waivers, or other support mechanisms.[84] The Human Rights Committee has emphasized that remedies must be "accessible and effective" in practice, not merely theoretical, and should remove "all available and accessible remedies" that might impede victims' pursuit of justice.[85] Linguistic accessibility has emerged as a strong component, requiring that remedy mechanisms accommodate language diversity and provide interpretation services where necessary.[86] The European Court of Human Rights has established that effective remedies must be "effective in practice as well as in law"[87] and should be capable of preventing or stopping the alleged violation or providing suitable

[81] United Nations Enable 'International Norms and Standards Relating to Disability' (UN Enable, 2023), online: <https://www.un.org/esa/socdev/enable/comp103.htm>
[82] K. Otteburn, "Reaching the limit: access to remedy through nonjudicial mechanisms for victims of business-related human rights abuses" (2024) 28:2 The Int'l. J. of Hum. Rts. 220 at 44.
[83] M.A. Bhatti & S.A. Alzahrani, "Navigating Linguistic Barriers: Exploring the Experiences of Host National Connectedness among Multilingual Individuals" (2023) 9(3) Eurasian Journal of Applied Linguistics at 96 -112; J. Purtle et al, "Language issues and barriers" (2011) 1 Encyclopedia of disaster relief 379, at 82.
[84] M. Minow, "Access to justice" (2022) 2 American J. of L. and Equality at 293-311
[85] Human Rights Committee, General Comment No 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UNHRCOR, 80th Sess, UN Doc CCPR/C/21/Rev.1/Add.13 (2004), online: https://digitallibrary.un.org/record/533996?ln=en&v=pdf#files; OHCHR, Access to Remedy in Cases of Business-Related Human Rights Abuse: An Interpretive Guide (New York and Geneva: OHCHR, 2024), online: <https://www.ohchr.org/sites/default/files/2024-11/access-to-remedy-bhr-interpretive-guide-en.pdf>.
[86] M. Hirvonen & T. Kinnunen, "Accessibility and linguistic rights" in *Routledge handbook of translation and ethics* (England: Routledge, 2020) at 470
[87] Katarzyna Zombory, "The right to an effective remedy: a key element for ensuring the effectiveness of the ECHR human rights system–the example of Poland and Hungary" in *Efficiency of the Judiciary* (Poland: Publishing House of the Institute of Justice, 2023) 205-244 at 212.

redress.[88] This practical effectiveness standard requires that accessibility barriers be systematically addressed rather than merely acknowledged.

b. **Adequate**

The adequacy criterion requires that remedies be proportionate to the violation and capable of addressing the harm suffered.[89] The African Court on Human and Peoples' Rights has established that reparation must be "adequate, effective and prompt" and "proportional to the gravity of the violations and the harm suffered".[90] This proportionality assessment involves both quantitative and qualitative considerations, examining not only the scale of harm but also the gravity of the breach and the importance of the rights affected. Adequacy encompasses both the substance and scope of remedial measures, requiring that they address all dimensions of harm experienced by victims. Recent jurisprudence has emphasized that adequate remedies must consider both material and non-material harm, including psychological damage, loss of dignity, and broader impacts on family and community relationships.[91] The Inter-American Court of Human Rights has consistently held that adequate reparation must seek to restore victims to their original situation while addressing structural causes of violations.[92]

c. **Effective**

Effectiveness requires that remedies be capable of producing concrete results and meaningful redress for victims.[93] The European Court of Human Rights has established that a remedy cannot be considered effective if it is "illusory" or fails to ensure proper enforcement by judicial

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[88] *Ibid* at 240. See also Dinah Shelton, "Accountability in human rights law: an introduction to remedies" in Research Handbook on Accountability for Human Rights Violations (Cheltenham, UK: Edward Elgar Publishing, 2025) at 22.

[89] C. Berman, "Access to Remedy: Practical Guidance for Companies" (Ethical Trade, 2024), online: <https://www.ethicaltrade.org/sites/default/files/shared_resources/Access%20to%20remedy_0.pdf>; N. Jägers, "Access to effective remedy: The role of information" in *Research Handbook on Human Rights and Business* (Camberley Surrey: Edward Elgar Publishing, 2020) at 403-421

[90] African Court on Human and Peoples' Rights, Comparative Study on the Law and Practice of Reparations for Human Rights Violations (Arusha: African Union, 2019), p.2. online: <https://www.african-court.org/wpafc/wp-content/uploads/2020/11/Comparative-Study-on-the-Law-and-Practice-of-Reparations-for-Human-Rights-Violations.pdf>.

[91] K.A. Havu, "Damages liability for non-material harm in EU case law" (2019) 44:4 European L. Rev. at 492- 514

[92] Safia K. Southey, "Beyond Enforcement: How the Inter-American System of Human Rights Shapes Reparations" (SSRN, 2025), online: <https://dx.doi.org/10.2139/ssrn.5199588>

[93] A. Ashworth, "Victims' rights, defendants' rights and criminal procedure" in *Integrating a victim perspective within criminal justice* (England: Routledge, 2019) at p. 197.

authorities.[94] This standard requires that remedy mechanisms have the authority and capacity to issue binding decisions and that clear consequences exist for authorities who fail to comply with remedial orders.[95] The effectiveness criterion also encompasses institutional capacity and independence, requiring that remedy mechanisms operate through "independent and impartial bodies" with adequate powers to investigate violations and order appropriate redress.[96] International jurisprudence has consistently emphasized that a failure by states to investigate allegations of violations can constitute a separate breach of treaty obligations.[97]

d. **Timely**

The temporal dimension of effective remedy requires that redress be provided within reasonable timeframes without undue delay.[98] The European Court of Human Rights has established detailed jurisprudence on the right to trial within a reasonable time, recognizing that excessive delays can undermine the entire remedial process.[99] The assessment of reasonable time involves consideration of case complexity, conduct of parties, actions of relevant authorities, and the importance of the case for the claimant. Studies[100] have emphasized that timeliness must be balanced against thoroughness, ensuring that expedited procedures do not compromise the quality of investigations or the adequacy of remedies. The African Commission on Human and Peoples' Rights has further noted that "prompt access to redress" is essential, as delays can constitute "de facto denial of redress".[101]

Based on the understanding of right to remedy and access to remedy, this study, focuses on a citizen-centered remedy approach. In this study, a citizen-centered remedy mechanism refers to a

[94] W. Piątek, "The right to an effective remedy in European law: significance, content and interaction" (2019) 6(3) China-EU L. Jour. 163-74.
[95] *Ibid*.
[96] Danish, *supra*, note 76.
[97] SRC "Adequate and Effective Remedies for Economic, Social and Cultural Rights: Background briefing paper for the National Taskforce on Human Rights Leadership" (SRC, 2020), online: <https://www.scottishhumanrights.com/media/2163/remedies-for-economic-social-and-cultural-rights.pdf>
[98] T.Z. Kamilovska, "Effective Remedy for Excessive Length of Proceedings: A Macedonian Perspective" (2021) 1 (9)Access to Just. E. Eur. at 61–78
[99] Council of Europe "The right to trial within reasonable time under Article 6 ECHR" (EU Council, 2025), online: <https://rm.coe.int/the-right-to-trial-within-reasonable-time-eng/16808e712c>
[100] Piątek W, Potěšil L, "A right to have one's case heard within a reasonable time before the Czech and the Polish Supreme Administrative Courts–standards, the reality and proposals for the future" (2021) 17:1 Utrecht L. Rev. at 20 ; M.M.Alic, "Trial within a reasonable time in comparative law" (2019) 83 Strani Pravni Zivot; J. Bóka "To Delay Justice Is Injustice': A Comparative Analysis of (Un) reasonable Delay" in *Fair Trial and Judicial Independence: Hungarian Perspectives* (Cham: Springer International Publishing, 2013) at 20-32
[101] Luke Moffett, "Expert Report in the Abaifouta et al v Chad case" (2017), online: Queen's University Belfast Pure Research Portal <https://pure.qub.ac.uk/files/532505759/MOFFETT_Expert_Report_Abaifouta_et_al_case.pdf>.

remedial process in which affected individuals and communities have an informed and continuing role in identifying harm, determining appropriate remedial measures, monitoring implementation and evaluating outcomes. The term does not require every individual to participate directly in every decision. It requires transparent and inclusive representation, particular attention to marginalized groups, access to independent support, and procedures through which affected people can influence decisions and challenge exclusion. The term "citizen" is used in a participatory sense and does not exclude non-citizens, migrants, displaced persons or others whose rights are affected by petroleum operations.

2.2.3.1. Types of Remedy

Contemporary international law recognizes five primary forms of remedy that can be employed individually or in combination to address human rights violations.[102] This typology, codified in the UN Basic Principles and Guidelines,[103] reflects the understanding that different violations require different remedial approaches to achieve full reparation. They are restitution, compensation, rehabilitation, satisfaction and guarantee of non-repetition.

a. Restitution aims to restore victims to their original situation before the violation occurred.[104] The Basic Principles specify that restitution includes "restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property".[105] The African Commission on Human and Peoples' Rights has emphasized that where violations stem from victims' vulnerability or marginalization, restitution must also address "structural causes of the vulnerability or marginalization, including discrimination and socio-economic disadvantages".[106]

[102] United Nations Human Rights: Office of the High Commissioner "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law" (OHCHR, 2025), online: https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation
[103] *Ibid.*
[104] *Ibid.*
[105] A.J. Ali, "Remedies for Human Rights Violations: A Reform Proposal for Addressing Victims of Criminal Proceedings in Ethiopia" (2020) 19:1 Nw. UJ Int'l Hum. Rts. At 12; A. Bangiev & L. Claridge, "The Right to Remedy for Indigenous Peoples in Principle and in Practice" (Global Peatlands, 2021) online: <https://globalpeatlands.org/sites/default/files/2022-06/The-Right-to-Remedy-Full-ENG%20%2826th%20Nov%29.pdf>
[106] African Union 'Fact Sheet on Filing Reparation Claims' (AU, 2020), online: <https://www.african-court.org/wpafc/wp-content/uploads/2020/10/FACT-SHEET-ON-FILING-REPARATION-CLAIMS-Revised-October-2020.pdf>

b. Compensation provides monetary redress for economically assessable damage resulting from violations.[107] The Basic Principles identify specific categories of compensable harm including "physical or mental harm; lost opportunities, including employment, education and social benefits; material damages and loss of earnings, including loss of earning potential; moral damage; and costs required for legal or expert assistance, medicine and medical services, and psychological and social services".[108] International courts have developed sophisticated methodologies for calculating both pecuniary and non-pecuniary damages,[109] with non-pecuniary awards addressing psychological harm, loss of dignity, and impacts on family relationships.[110]

c. Rehabilitation encompasses medical and psychological care as well as legal and social services aimed at restoring victims' health and well-being.[111] The African Court on Human and Peoples' Rights has recognized that rehabilitation includes "measures to restore the dignity and reputation of victims" and can encompass both individualized and collective measures where entire communities are affected.[112] Contemporary interpretations emphasize that rehabilitation must be ongoing and responsive to the evolving needs of victims.[113]

d. Satisfaction addresses violations through acknowledgment, disclosure of truth, and measures to restore victims' dignity and reputation.[114] The Basic Principles identify various forms of satisfaction including "effective measures aimed at the cessation of continuing violations" and "verification of the facts and full and public disclosure of the truth".[115] International jurisprudence has recognized that judicial findings of violation constitute a basic form of

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[107] United Nations Human Rights: Office of the High Commissioner "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law" (OHCHR, 2025), online: <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>

[108] *Ibid*.

[109] D.A. Gonzalez-Salzberg, "Non-Pecuniary damage under the American convention on human rights: an empirical analysis of 30 years of case law" (2021) 34:1 Harv. Hum. Rts. J. at 81.

[110] Z. Radivojević & N. Raicevic "State Liability for Non-Pecuniary Damages in the Jurisprudence of the European Court of Human Rights" (2020) r. XLIV 1 Teme-časopis za društvene nauke, at 17.

[111] ICTJ "Getting to Full Restitution: Guidelines for Court-Ordered Reparations in Cases Involving Sexual Violence Committed during Armed Conflict, Political Violence, or State Repression" (ICJT, 2017), online: <https://www.ictj.org/sites/default/files/ICTJ-Briefing-Court-Reparations-2017.pdf>

[112] C. Sandoval, "Rehabilitation as a form of reparation under international law" (Redress, 2025), online: <https://redress.org/wp-content/uploads/2018/01/The-right-to-rehabilitation.pdf>

[113] M.I. Khan, A. Nisar, & S. Kanwell, "From Punishment to progress: the legal evolution of criminal rehabilitation" (2023) 2:2 Pakistan JL Analysis & Wisdom at 556.

[114] Hicks D. Dignity, *Its essential role in resolving conflict* (London: Yale University Press, 2021) at 33-197.

[115] African Union 'Fact Sheet on Filing Reparation Claims' (AU, 2020), online: <https://www.african-court.org/wpafc/wp-content/uploads/2020/10/FACT-SHEET-ON-FILING-REPARATION-CLAIMS-Revised-October-2020.pdf>

satisfaction, while more complex cases may require public apologies, memorials, or other symbolic measures.[116]

e. 'Guarantees of non-repetition' seek to prevent the recurrence of violations through systemic reforms.[117] These measures address the recognition that human rights violations often arise from broader contexts of abuse requiring structural changes.[118] The Human Rights Committee has emphasized that "the purposes of the Covenant would be defeated without an obligation to take measures to prevent a recurrence of a violation," requiring states to implement measures "beyond a victim-specific remedy, to be taken to avoid recurrence of the type of violation in question"[119]

The development of right to remedy from the basic principle articulated in the UDHR to the comprehensive framework established through contemporary international law demonstrates the increasing sophistication of international human rights protection mechanisms. This development shows growing recognition that effective remedy requires not only formal availability of redress mechanisms but also substantive capacity to address the full range of harms experienced by victims while preventing future violations through systemic reform. The integration of these various elements and forms of remedy provides a foundation for evaluating the adequacy of domestic implementation and the effectiveness of both judicial and non-judicial grievance mechanisms in addressing corporate human rights abuses within this research.

2.2.4. Access to Remedy Under the UN Guiding Principles

The development of the UN Guiding Principles on Business and Human Rights (UNGPs) emerged as a response to what has been termed the "governance gap"[120] in regulating business-related

[116] United Nations Human Rights: Office of the High Commissioner, "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law" (OHCHR, 2025), online: <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>

[117] *Ibid.*

[118] A. Bangiev & L. Claridge, "The Right to Remedy for Indigenous Peoples in Principle and in Practice" (Global Peatlands, 2022), online: <https://globalpeatlands.org/sites/default/files/2022-06/The-Right-to-Remedy-Full-ENG%20(26th%20Nov).pdf>

[119] United Nations Human Rights: Office of the High Commissioner "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law" (OHCHR, 2025), online: <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>

[120] The governance gap is the fundamental disconnect between the expanding scope and impact of transnational corporate activities and the limited capacity of existing legal and institutional frameworks to effectively govern and regulate these activities; see generally Simons, Penelope & Audrey Macklin, *The governance gap: extractive industries, human rights, and the home state advantage*. (England: Routledge, 2014) at pp xxxvii+422.

human rights violations.[121] This gap is a fundamental disconnect between the expanding scope and impact of transnational corporate activities and the limited capacity of existing legal and institutional frameworks to effectively govern these activities. As Ruggie[122] observed, markets pose the greatest risks "when their scope and power far exceed the reach of the institutional underpinnings that allow them to function smoothly". The governance gap manifests in several dimensions that collectively undermine effective accountability for corporate human rights abuses. First, the territorial limitations of state jurisdiction create enforcement challenges when multinational corporations operate across multiple legal systems with varying regulatory standards and enforcement capacities.[123] Second, the principle of corporate separateness under traditional corporate law shields parent companies from liability for human rights violations committed by subsidiaries or suppliers operating in different jurisdictions, making it extremely difficult for victims to secure accountability.[124] Third, the international human rights regime remains primarily state-centric, with limited direct obligations for corporate entities, despite their significant influence on human rights outcomes.[125]

This governance gap has been intensified by the structural features of contemporary global capitalism, where transnational corporations control substantial resources and wield enormous influence often exceeding that of many states.[126] The fragmentation of regulatory approaches across jurisdictions, combined with the mobility of capital and the complexity of global supply chains, has created conditions conducive to corporate impunity for human rights violations. Recognizing these systemic challenges, the UNGPs was conceived as a framework to bridge the governance gap by clarifying the differentiated but complementary responsibilities of states and businesses in protecting and respecting human rights.[127]

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[121] B. Jafarian, "Business and human rights in the context of sanctions: a road to filling the governance gap" (Digital Commons, 2025), online: <https://digitalcommons.schulichlaw.dal.ca/llm_theses/102/>

[122] J.G. Ruggie, "Business and human rights" (2013) DQ 168; John Gerard Ruggie, "Protect, Respect and Remedy: The United Nations Framework for Business and Human Rights" Report presented at the American Society of International Law, Proceedings, 103rd Annual Meeting, Washington, D.C., March 25-28, 2009 (Ruggie).

[123] *Ibid*.

[124] Ruggie, *supra*, note 122.

[125] *Ibid*.

[126] S. Deva, "From business or human rights to business and human rights: what next?" in *Research handbook on human rights and business* (Camberley Surrey: Edward Elgar Publishing, 2020) at 1-21.

[127] D.E. Surya, "The UN Guiding Principles' orbit and other regulatory regimes in the business and human rights universe: Managing the interface" (2021) 6:2 Business and Hum. Rts. J. 336-51.

2.2.4.1. Pillar III of the UNGP

Business and human rights is not a separate branch of law operating independently of international human rights law. It is a field concerned with how existing human rights standards apply to the activities and effects of business enterprises, the duties of states to regulate those activities, the responsibility of businesses to respect human rights, and the availability of remedies where harm occurs. International human rights law therefore provides the substantive rights that the business and human rights framework seeks to protect. A distinction must nevertheless be drawn between the legal status of international human rights obligations and that of the United Nations Guiding Principles on Business and Human Rights. International human rights treaties are binding on states that have ratified them, subject to the terms of each treaty and the applicable rules of domestic implementation. Relevant obligations may also arise under customary international law, regional human rights instruments and domestic legislation. The UN Guiding Principles, by contrast, are not a treaty and do not independently create new international legal obligations. As an instrument, they are generally classified as soft law. Describing the Guiding Principles as soft law does not mean that their entire normative content is voluntary. The first pillar restates the existing duty of states to protect individuals against human rights abuses by third parties, including business enterprises. The second pillar establishes the corporate responsibility to respect human rights as a global standard of expected conduct. This responsibility exists independently of a state's willingness or capacity to enforce its own laws. The third pillar combines binding and non-binding elements. States may have binding obligations to provide access to effective remedy under international and regional human rights law. The Guiding Principles clarify how states, companies and grievance mechanisms should contribute to meeting that objective. Their effectiveness criteria provide authoritative standards for assessing non-judicial grievance mechanisms, but the criteria do not by themselves make the outcome of a corporate grievance process legally enforceable. This distinction informs the use of the Guiding Principles in this thesis as it provides the central normative and evaluative framework for examining access to remedy.

The remedy pillar of the UNGPs, encompassing Principles 25-31, establishes a comprehensive framework for ensuring victims of business-related human rights abuses have access to effective

remedy.[128] This pillar recognizes that "even the most concerted efforts cannot prevent all abuse,"[129] making effective remedial mechanisms essential to the overall coherence of the framework. The remedy pillar operates on the principle that access to effective remedy serves both corrective and preventive functions by providing redress to victims while deterring future violations through accountability mechanisms.[130] The architectural design of Pillar III is a pluralistic approach to remedy that moves beyond traditional state-centric models to embrace multiple complementary mechanisms. This approach acknowledges the practical limitations many victims face in accessing formal judicial systems, particularly in contexts characterized by weak rule of law, corruption, or resource constraints[131]. By establishing a spectrum of remedial options, the UNGPs seek to create what this study considers a remedy ecosystem where different mechanisms can work together to provide comprehensive access to justice.

a. State-based judicial mechanisms

State based judicial approach establishes that states should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce barriers that could lead to denial of access to remedy.[132] The principle recognizes judicial mechanisms as being "at the core of ensuring access to remedy" due to their capacity to provide binding decisions, establish legal precedents, and offer the full range of remedial measures including punitive sanctions.[133] The effectiveness of judicial mechanisms depends on their impartiality, integrity, and ability to accord due process. States are expected to ensure that courts remain independent of economic or political pressures from both state agents and business actors, while protecting the legitimate activities of human rights defenders.[134] This requirement is particularly important in contexts where corporate influence on judicial processes may compromise the independence and effectiveness of court proceedings.

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[128] Business & Human Rights Resource Centre. "UN Guiding Principles - Business & Human Rights Resource Centre." (Business & Human Rights Resource Centre, 2024), online: https://www.business-humanrights.org/en/big-issues/governing-business-human-rights/un-guiding-principles/

[129] John Gerard Ruggie, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, UN Doc A/HRC/8/5 (7 April 2008).

[130] UNGA, Human Rights and Transnational Corporations and Other Business Enterprises: Note by the Secretary-General, UN Doc A/72/162 (2017), online: <https://docs.un.org/en/A/72/162>.

[131] *Ibid.*

[132] Principle 26 of the UNGP on Business and Human Rights.

[133] *Ibid.*

[134] *Ibid.*

Various studies[135] have identified several categories of barriers that can undermine the effectiveness of judicial mechanisms in business and human rights cases. Legal barriers include doctrines of corporate separateness that shield parent companies from liability for subsidiary conduct,[136] jurisdictional limitations that prevent victims from accessing appropriate forums,[137] and exclusion of certain groups from equal legal protection.[138] Practical and procedural barriers encompass prohibitive litigation costs, difficulties in securing legal representation, inadequate options for aggregating claims, and insufficient resources for state prosecutors to investigate corporate involvement in human rights violations.[139] The principle also recognizes the particular vulnerabilities faced by marginalized groups in accessing judicial remedy.[140] Individuals from groups at heightened risk of vulnerability or marginalization often face additional cultural, social, physical, and financial impediments to accessing, utilizing, and benefiting from judicial mechanisms.[141] The UNGPs require states to give particular attention to the rights and specific needs of such groups at each stage of the remedial process, from initial access through to final outcomes.[142]

b. State-based non-judicial mechanisms

This principle requires that states provide effective and appropriate non-judicial grievance mechanisms alongside judicial mechanisms as part of a comprehensive state-based system for remedy of business-related human rights abuse.[143] It acknowledges that even effective and well-resourced judicial systems cannot address all alleged abuses, and that judicial remedy is not always

[135] Mazaraki N & Tsuvina T, "Creating an effective mediation scheme for business-related human rights abuses: The case of Ukraine" (2024) 9:1 Business and Hum. Rts. J. at 129; Skinner G., *Transnational corporations and human rights: Overcoming barriers to judicial remedy* (London: Cambridge University Press, 2020) at 14-26; Rubio JJ & Yiannibas K., "Human rights in business: removal of barriers to access to justice in the European Union" (2017) Taylor & Francis. See also United Nations, Office of the High Commissioner for Human Rights (OHCHR), "Mandatory Human Rights Due Diligence (mHRDD)" (n.d) <https://www.ohchr.org/en/special-procedures/wg-business/mandatory-human-rights-due-diligence-mhrdd>
[136] Pargendler M. "The new corporate law of corporate groups" (2024) 14 Harv. Bus. L. Rev. at 339.
[137] Farrington F., "A return to the doctrine of forum non conveniens after Brexit and the implications for corporate accountability" (2022) 18:3 J. of Pte. Int'l. L. at 399.
[138] K.K. Larsson, "Digitization or equality: When government automation covers some, but not all citizens" (2021) 38(1) Government information quarterly 101547.
[139] *Ibid.*
[140] J. Saloranta, "Establishing a Corporate Responsibility Ombudsman: Enhancing remedy through state-based non-judicial mechanisms?" (2021) 28:1 Maastricht Journal of Eur. and Comp. L. at 102.
[141] *Ibid.*
[142] OHCHR, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, UN Doc A/HRC/17/31 (2011), Principle 26, Commentary [hereinafter UN Guiding Principles].
[143] Principle 27 of the UNGP on Business and Human Rights.

required or favored by all claimants. State-based non-judicial mechanisms covers a diverse range of institutions and processes including national human rights institutions, labor tribunals, ombudsperson offices, government-run complaints offices, and administrative bodies with human rights mandates.[144] These mechanisms may employ mediation-based, adjudicative, or culturally appropriate processes, or combinations thereof, depending on the issues involved and the needs of the parties. [145]

The effectiveness of non-judicial mechanisms is enhanced by their potential advantages over judicial processes in certain contexts.[146] They can offer more accessible, flexible, and cost-effective processes for addressing grievances, particularly for cases involving complex technical issues or ongoing business relationships where dialogue and collaborative problem-solving may be more appropriate than adversarial proceedings.[147] Non-judicial mechanisms can also provide specialized expertise in particular sectors or types of human rights issues, enabling more informed and contextually appropriate responses. [148] National human rights institutions (NHRIs) are identified as having a particularly important role in providing non-judicial remedy for business-related human rights violations.[149] However, various studies[150] reveal significant variations in the mandates and capacities of NHRIs to address corporate human rights abuses, with many institutions lacking explicit mandates covering business actors or sufficient powers to investigate and remedy corporate violations

c. Non-state-based mechanisms

[144] M. Rogge, "Understanding unilateral, bilateral, and multilateral approaches to meaningful stakeholder engagement in the design and implementation of operational grievance mechanisms" in *The Routledge Handbook on Meaningful Stakeholder Engagement* (England: Routledge, 2024) at 199-217
[145] *Ibid*.
[146] M.P. Montesinos, "Corporate Due Diligence in post conflict settings: the role of civil society and victims in advancing environmental and human rights protection in Colombia" (2024) 27(2) Revista española de empresas y derechos humanos at 47 (Montesinos).
[147] *Ibid.*
[148] Montesinos, *supra*, note 146.
[149] P. Pokharel, "Interface between the Judiciary and National Human Rights Institutions: A Means to Ensure Effective Remedies for Business-Related Human Rights Abuses?" in *Business and Human Rights* (Brill Nijhof, 2025) at 387-408; L.C. Reif, "Business and human rights: what role for National Human Rights Institutions?" in *Research Handbook on Global Governance, Business and Human Rights* (Camberley Surrey: Edward Elgar Publishing, 2022) at 254-273
[150] K. Otteburn, "Reaching the limit: access to remedy through nonjudicial mechanisms for victims of business-related human rights abuses" (2024) 28(2) The International Journal of Human Rights at 220-44; M.A. Khan, "Access to an Effective Remedy through Online Dispute Resolution in Context of Business and Human Rights" (2024) 8 YB on Int'l Arb. & ADR at 215.

This principle addresses the role of non-state-based grievance mechanisms in providing access to remedy for business-related human rights violations.[151] The principle recognizes that operational-level grievance mechanisms established by businesses themselves, as well as collaborative initiatives involving multiple stakeholders, can provide valuable pathways to remedy that are complementary to formal state-based remedies. It further specifically addresses operational-level grievance mechanisms, requiring that such mechanisms meet specific effectiveness criteria and be based on engagement and dialogue with affected stakeholders.[152] These company-level mechanisms can offer early-stage recourse and resolution for grievances, potentially preventing disputes from escalating while maintaining business relationships and community trust. When properly designed and implemented, operational mechanisms can provide fast, contextually appropriate responses to grievances while generating valuable learning for companies about potential and actual human rights impacts. The principle further extends beyond company-level mechanisms to encompass industry, multi-stakeholder, and other collaborative initiatives that can supplement both judicial and operational-level mechanisms.[153] Examples include OECD National Contact Points, industry ombudsperson schemes, certification bodies, and multi-stakeholder initiatives with grievance or complaints procedures. These mechanisms can leverage collective resources and expertise while providing neutral forums for addressing disputes that may be beyond the capacity of individual company mechanisms.

However, various researchers[154] have revealed significant challenges in the effectiveness of non-state-based mechanisms. For example, company-controlled grievance processes often lack the independence and enforcement capacity necessary to provide meaningful remedy, with many operating primarily as risk management tools rather than genuine accountability mechanisms.[155] Studies of OECD National Contact Points have similarly found significant variations in their

[151] Guiding Principles on Business and Human Rights: Implementing the United Nations (UNGP) "Protect, Respect and Remedy" Framework, UNHRCOR, 17th Sess, Annex, UN Doc A/HRC/17/31 (2011) principles 28–30
[152] *Ibid* at Principle 29
[153] UNGP, *supra* note 151 at principle 30
[154] Buzenche M., "Non-state actors and law-making in IBHR: the internet intermediaries' responsibility to respect human rights and the UNGPs' non-state-based grievance mechanisms" (Academy of European Law European Society of International Law Paper AEL 2022/08), online: https://cadmus.eui.eu/server/api/core/bitstreams/7da4b094-1c6e-5cbf-9722-76026aaa75cd/content; M. Wielga & J. Harrison, "Assessing the effectiveness of non-state-based grievance mechanisms in providing access to remedy for rightsholders: A case study of the roundtable on sustainable palm oil" (2021) 6(1) Business and Hum. Rts. J. at 67-92; J. Saloranta, "Establishing a Corporate Responsibility Ombudsman: Enhancing remedy through state-based non-judicial mechanisms?" (2021) 28(1) Maastricht Jour. of Europ. and Comp. L. at 102.
[155] Grama, Ben. "Lost in Translation: Company Grievance Mechanisms and Human Rights." *Journal of Human Rights Practice*, vol. 17, no. 3, 2025, at 2.

effectiveness and that many OECD NCPs suffer from limited mandates, lack of transparency, and insufficient follow-up mechanisms.[156]

d. Effectiveness criteria

This principle establishes comprehensive effectiveness criteria that all non-judicial grievance mechanisms should meet to ensure they provide effective access to remedy.[157] These criteria provide a framework for evaluating and improving the design and operation of both state-based and non-state-based mechanisms, establishing benchmarks against which the adequacy of remedial processes can be assessed. The effectiveness criteria require that grievance mechanisms be legitimate, accessible, predictable, equitable, transparent, rights-compatible, and constitute a source of continuous learning.[158] For operational-level mechanisms, an additional criterion requires that they be based on engagement and dialogue with affected stakeholder groups.[159] These criteria reflect extensive consultation with affected communities, civil society organizations, businesses, and other stakeholders to identify the key features that enable grievance mechanisms to function effectively.[160]

Legitimacy requires that mechanisms enable trust from stakeholder groups for whose use they are intended while being accountable for the fair conduct of grievance processes.[161] This involves ensuring sufficient independence from business operations, minimizing conflicts of interest, and employing suitably qualified personnel with understanding of local contexts and sensitivity to vulnerable groups.[162] Accessibility covers both awareness-creation to ensure affected stakeholders know about the mechanism and access assistance to overcome barriers such as language, cost, or fear of retaliation.[163]

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[156] L. Íñigo Álvarez, "Improving the Effectiveness of Non-Judicial Mechanisms Under the OECD National Contact Points: Issues of Legitimacy and Accessibility" in Davaanyam, O., Krajewski, M. (eds) Exploring Corporate Human Rights Responsibilities in OECD Case Law. DFGW 2023. Interdisciplinary Studies in Human Rights, vol 14. Springer, *(*Cham: Springer Nature Switzerland, 2023) at 135 – 153.
[157] Guiding Principles on Business and Human Rights: Implementing the United Nations (UNGP) "Protect, Respect and Remedy" Framework, UNHRCOR, 17th Sess, Annex, UN Doc A/HRC/17/31 (2011) principles 31.
[158] *Ibid*, at 31
[159] *UNGP, supra* note 151 at principle 31
[160] *Ibid.*
[161] R. Wolfsteller & Y. Li, "Business and human rights regulation after the UN guiding principles: Accountability, governance, effectiveness" (2022) 23(1) Hum. Rts. Rev. at 1-7 [Wolsteller & Li]
[162] *Ibid* at 4
[163] Wolsteller & Li, *supra,* note 161.

The rights-compatible criterion ensures that outcomes and remedies accord with internationally recognized human rights standards, with particular attention to ensuring remedies are adequate, effective, prompt, and culturally appropriate.[164] The continuous learning criterion requires mechanisms to identify lessons for preventing future harms and improving operational effectiveness through systematic analysis of grievance patterns and stakeholder feedback. Additionally, for operational-level mechanisms specifically, an engagement and dialogue criterion requires that mechanisms be founded on meaningful engagement and dialogue with affected stakeholder groups, ensuring that affected communities have a voice in both remedy design and implementation.

2.2.4.2. Integration with Pillars I and II: How Remedy Connects to the Duty to Protect and Respect

The remedy pillar does not operate in isolation but forms part of an integrated framework where each pillar reinforces and supports other pillars in achieving the overall objective of preventing and addressing business-related human rights abuses. The integration between the remedy pillar and the state duty to protect (Pillar I) is evident in the recognition that effective remedy mechanisms are essential to fulfilling the state's obligation to protect human rights from abuse by third parties.[165] As the state based measure makes clear, unless states take appropriate steps to investigate, punish, and redress business-related human rights abuses when they occur, the state duty to protect can be rendered weak or even meaningless.[166] This integration according to Huomachi and Worluh-Okolie[167] is an understanding that protection duties encompass not only preventive measures but also reactive measures to address violations when they occur. The remedy pillar thus operationalizes the remedial dimension of the state duty to protect by establishing concrete requirements for accessible and effective remedial mechanisms.[168]

The relationship between remedy and the corporate responsibility to respect human rights (Pillar II) is similarly integrated, establishing that where businesses identify that they have caused or

[164] A. Rasche & S. Waddock, "The UN guiding principles on business and human rights: Implications for corporate social responsibility research" (2021) 6(2) Business and Hum. Rts. J. at 227-40.
[165] See the case of *Centre for Oil Pollution Watch (COPW) Vs NNPC (2018)* (Climate Case Chart, 2025), online: https://climatecasechart.com/non-us-case/centre-for-oil-pollution-watch-copw-vs-nnpc-2018-supreme-court-of-nigeria/
[166] Guiding Principles on Business and Human Rights: Implementing the United Nations (UNGP) "Protect, Respect and Remedy" Framework, UNHRCOR, 17th Sess, Annex, UN Doc A/HRC/17/31 (2011) principle 26
[167] N. Huomachi & Worluh-Okolie, "Human rights law and environmental protection: A focus on Nigeria" (2024) 10 (3) Intl. J. L., at 16-20
[168] *Ibid.*

contributed to adverse impacts, they should provide for or cooperate in remediation through legitimate processes.[169] This connection reflects the understanding that respect for human rights encompasses not only avoiding harm but also addressing harm when it occurs despite due diligence efforts. The integration between pillars is further evident in the recognition that effective remedy mechanisms serve important preventive functions by creating incentives for both states and businesses to strengthen their protective and due diligence measures.[170] Accessible and effective remedies increase the likelihood that violations will be detected and addressed, thereby enhancing the deterrent effect of human rights obligations.[171] Conversely, the absence of effective remedy undermines the credibility of both state protection duties and corporate responsibility commitments by signaling that violations can occur with impunity.[172]

This integrated approach acknowledges the complementary roles of different actors in creating comprehensive accountability for business-related human rights abuses.[173] States provide the foundational legal and institutional framework within which remedy operates, while businesses contribute through operational-level mechanisms and cooperation with formal remedial processes.[174] Civil society organizations, affected communities, and other stakeholders play crucial roles in monitoring implementation, supporting victims' access to remedy, and advocating for strengthened accountability mechanisms. The integration of the remedy pillar with the broader UNGPs framework reflects the understanding that sustainable progress in business and human rights requires coherent action across prevention, accountability, and remedy. Without effective remedial mechanisms, prevention efforts lack credibility and enforcement, while remedy without prevention fails to address the root causes of abuse. This integrated approach has influenced the

[169] Guiding Principles on Business and Human Rights: Implementing the United Nations (UNGP) "Protect, Respect and Remedy" Framework, UNHRCOR, 17th Sess, Annex, UN Doc A/HRC/17/31 (2011) principle 22
[170] Philippa Osim Inyang, "The Necessity for Revisiting Direct Corporate Human Rights Obligations in the Current Business and Human Rights Treaty Process." (2021) 4(2) African J. L., Pol. Research & Admin at 71-87
[171] Office of the High Commissioner for Human Rights. "Access to Remedy in Cases of Business-Related Human Rights Abuse: An Interpretive Guide." (OHCHR, 2025) <https://www.nigeriarights.gov.ng/about/nhrc-mandate.html>
[172] *Ibid.*
[173] Office of the High Commissioner for Human Rights. "Access to Remedy in Cases of Business-Related Human Rights Abuse: An Interpretive Guide." (OHCHR, 2024) <https://www.ohchr.org/en/publications/policy-and-methodological-publications/access-to-remedy-bhr-interpretive-guide>
[174] N. Bueno et al, "The EU Directive on Corporate Sustainability Due Diligence (CSDDD): The Final Political Compromise." (2024) 9(2) Bus. & Hum. Rts J. at 294-300; Rasche, Andreas, and Sandra Waddock, "The UN guiding principles on business and human rights: Implications for corporate social responsibility research." (2021) 6(2) Bus. & Hum. Rts. J. at 227-240

development of mandatory human rights due diligence legislation in various jurisdictions, which increasingly incorporates explicit remedy requirements alongside due diligence obligations.[175]

2.2.5. The Right to a Healthy Environment as a human right

The recognition of the right to a healthy environment as a fundamental human right represents a pivotal evolution in international law, directly relevant to understanding access to remedy in business and human rights contexts. This evolution began with the landmark 1972 Stockholm Declaration, which proclaimed in Principle 1 that humanity has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being.[176] This declaration marked the first major international recognition of environmental rights within a human rights framework, establishing the conceptual foundation for subsequent legal and normative developments that would prove essential to understanding remedy mechanisms for corporate environmental abuses.

The Stockholm Declaration was particularly significant as it placed environmental protection within the context of human rights rather than treating it merely as a technical or economic issue. This framing established a crucial precedent that environmental degradation could constitute a violation of fundamental human rights, thereby creating the legal foundation for seeking remedy through human rights mechanisms. The Declaration's emphasis on environmental quality as essential for human dignity directly connects to contemporary debates about access to remedy for communities affected by extractive industries activities that cause environmental harm. Building upon Stockholm's foundation, regional human rights systems began to incorporate explicit environmental rights into binding treaty instruments. The African Charter on Human and Peoples' Rights, adopted in 1981, took the pioneering step of explicitly affirming in Article 24 that all peoples shall have the right to a general satisfactory environment favorable to their

[175] Loi relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre [French Duty of Vigilance Law], No 2017-399 (27 March 2017); Lieferkettensorgfaltspflichtengesetz [Supply Chain Due Diligence Act], LkSG (16 July 2021) (Germany); Corporate Sustainability Due Diligence Directive, [2024] OJ, L 1760 [CSDDD]; John Quinn & Rónán Condon, "Beyond the Individual-Company: From Corporate Social Responsibilities to Corporate Social Liability" (2025) 16:1-2 Transnat'l Legal Theory 226, <https://doi.org/10.1080/20414005.2025.2479318>; Peer Zumbansen, "Global Value Chain Legislation, Modern Slavery, Climate Change and Finance: Lessons from the European Corporate Sustainability Due Diligence Directive" (2024) McGill SGI Research Paper in Business, Finance, Law and Society, SSRN <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4784608>.

[176] Declaration of the United Nations Conference on the Human Environment, UN Doc A/CONF.48/14/Rev.1 (16 June 1972), online: <https://www.ipcc.ch/apps/njlite/srex/njlite_download.php?id=6471> [Stockholm Declaration].

development.[177] This provision marked the first treaty-based recognition of environmental rights as justiciable human rights, creating enforceable legal obligations that communities could invoke to seek remedy for environmental harms.

The African Charter's approach was particularly innovative in several respects. First, it framed environmental rights as collective rather than purely individual rights, recognizing that environmental degradation often affects entire communities and peoples. Second, it linked environmental protection to development, acknowledging the complex relationship between economic progress and environmental sustainability that is particularly relevant in contexts involving extractive industries. Third, and most importantly for remedy purposes, Article 24 created a legally enforceable right that could be invoked before both domestic courts and the African Commission on Human and Peoples' Rights.[178] Other regional systems followed suit, though with different approaches. The San Salvador Protocol to the American Convention on Human Rights,[179]adopted in 1988, reaffirmed the right to live in a healthy environment. The Arab Charter on Human Rights[180], revised in 2004, and the ASEAN Human Rights Declaration of 2012[181] similarly recognized environmental rights. While the European Convention on Human Rights does not contain an explicit environmental right, the 1998 Aarhus Convention[182] filled this gap by establishing comprehensive procedural environmental rights, including access to information, participation in decision-making, and access to justice in environmental matters. The trajectory toward global recognition culminated in October 2021 when the UN Human Rights Council adopted Resolution 48/13, recognizing the right to a clean, healthy and sustainable environment as a human right by a vote of 43 in favor, none against, and four abstentions.[183] This was followed in July 2022 by the UN General Assembly's adoption of Resolution 76/300, which recognized this right with unprecedented support of 161 votes in favor, no votes against, and eight abstentions. These resolutions represent a watershed moment, providing global legitimacy to

[177] African Charter on Human and Peoples' Rights, OAU Doc CAB/LEG/67/3 rev 5, 21 I.L.M. 58, art 24 (adopted 27 June 1981, entered into force 21 October 1986).
[178] Social and Economic Rights Action Centre (SERAC) & Another v Nigeria, (2001) AHRLR 60 (ACHPR 2001).
[179] Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights: "Protocol of San Salvador" (adopted 17 November 1988, entered into force 16 November 1999) OAS Treaty Series No 69, art 11.
[180] Arab Charter on Human Rights, 22 May 2004, (2004) 44 ILM 730 art. 38.
[181] ASEAN, ASEAN Human Rights Declaration (18 November 2012), art 28(f).
[182] Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, 25 June 1998, 2161 UNTS 447, 38 ILM 517 (1999) [Aarhus Convention] art 9(3) on access to information; art 7(3) on public participation.
[183] UN Human Rights Council, The human right to a clean, healthy and sustainable environment, UN Doc A/HRC/RES/48/13 (8 October 2021). See Deepa Badrinarayana, "To Have and to Be: An International Human Right to Clean, Healthy, and Sustainable Environment" (2023) 48 Wm & Mary Envtl L & Pol'y Rev 55.

environmental rights and strengthening the foundation for seeking remedy through human rights mechanisms.

This development was also significantly reinforced by the International Court of Justice's landmark Advisory Opinion on States' Obligations with Respect to Climate Change, delivered on July 23, 2025.[184] The ICJ confirmed that the right to a clean, healthy, and sustainable environment is 'essential for the enjoyment of other human rights' under international law[185]. Critically for corporate accountability, the Court held that states have a binding obligation to regulate the conduct of private actors, including corporations, whose activities contribute to environmental and climate harm.[186] The Court emphasized that a state's failure to take appropriate regulatory measures to limit emissions caused by private actors under its jurisdiction may constitute an internationally wrongful act attributable to that state.[187] This clarification establishes that states cannot meet their environmental and human rights obligations without actively regulating corporate conduct in extractive and other environmentally harmful industries.

For the purpose of this study, the development of environmental rights has salience for understanding access to remedy in extractive industries, where corporate activities often generate severe environmental degradation that directly impacts human rights. Contemporary scholarship and jurisprudence increasingly recognize that extractive activities can violate multiple human rights simultaneously, creating complex remedy challenges that require comprehensive approaches. Extractive industries are associated with a wide range of human rights impacts, primarily through environmental degradation that undermines rights to food, water, health, and life. Oil and gas operations frequently result in air and water pollution, soil contamination, and destruction of ecosystems upon which communities depend for their livelihoods. Mining activities similarly generate environmental impacts including toxic waste, water depletion, and habitat

[184] Request for an Advisory Opinion on the Obligations of States with Respect to Climate Change, Advisory Opinion, ICJ Rep (23 July 2025) [ICJ Climate Advisory Opinion] < https://icj-web.leman.un-icc.cloud/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf>. In July 2025, the International Court of Justice issued an advisory opinion clarifying States' legal obligations to address climate change under international law. Shortly before, the Inter-American Court of Human Rights delivered its own advisory opinion linking climate change to human rights, with particular emphasis on vulnerable groups and climate-induced displacement. Together, these opinions represent a major shift in international law, strengthening States' climate obligations and potentially extending accountability to the private sector for climate impacts.

[185] *Ibid* at para 393.

[186] ICJ Climate Advisory Opinion, *supra*, note 184 at 282.

[187] *Ibid* at 428 (stating that "a state may be held responsible where it fails to take the necessary regulatory and legislative measures to limit the quantity of emissions caused by private actors under its jurisdiction").

destruction. These environmental harms translate directly into human rights violations, affecting communities' access to clean water, food security, health, and adequate standard of living.

The interconnectedness of environmental degradation and human rights violations creates particular challenges for remedy mechanisms. Unlike discrete civil and political rights violations that may affect specific individuals, environmental harms often impact entire communities over extended periods. This temporal and spatial complexity means that traditional remedy approaches focused on individual compensation may be inadequate to address the full scope of harm. The UNGPs make this clear: companies have an obligation to enable accessible, adequate, and rights-compatible remedies, and these remedies must respond to the actual nature of the harm—not just pay for it. The Working Group on Business and Human Rights (WGBHR) reinforces this point in its report, stressing that remedy for environmental and community-level harm must include both individual and collective measures, along with guarantees of non-recurrence.[188]

In the context of extractive industries, this becomes even more critical. These companies operate through complex cross-border corporate structures that often create governance gaps and weaken accountability. As the WGBHR notes, such gaps make it harder for affected communities to obtain timely and effective remedy, especially in countries where courts are weak or where corporations have political protection[189]. This is why the UNGPs, and the Working Group emphasize strengthening access to remedy through non-judicial mechanisms, cross-border cooperation, and environmental restoration as a core component of effective remedy.

Taken together, these standards highlight the need to treat environmental rights as human rights, opening pathways for communities to seek remedy not just domestically but also through regional and international human rights systems.

2.2.5.1. Procedural Rights: Access to Information, Participation in Decision-Making, Access to Justice

The right to a healthy environment encompasses both substantive and procedural dimensions, with procedural rights playing a crucial role in enabling effective access to remedy. Procedural environmental rights include three interconnected elements: access to environmental information, public participation in environmental decision-making, and access to justice in environmental matters. These procedural rights serve not only as independent entitlements but also as essential

[188] Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, on access to effective remedy for business-related human rights abuses, 72nd Sess, UN Doc A/72/162 (18 July 2017) at para. 40.
[189] *Ibid* at 74.

tools for enforcing substantive environmental rights and ensuring effective remedy when violations occur. The right to access environmental information is foundational to the entire remedy framework. Without adequate information about environmental conditions, pollution sources, health risks, and corporate activities, affected communities cannot effectively identify violations, assess harms, or pursue appropriate remedies. This information access right encompasses both passive entitlements to receive information that public authorities hold and active rights to seek specific information from both governmental and corporate sources. Contemporary international law[190] increasingly recognizes that corporations engaged in activities that may affect the environment have obligations to provide relevant information to potentially affected communities. In the same vein, the right to public participation in environmental decision-making provides communities with opportunities to influence decisions that may affect their environmental conditions before harm occurs. This participatory right includes consultation requirements for major development projects, environmental impact assessments that must consider community input, and meaningful engagement in policy development processes. From a remedy perspective, violations of participation rights can themselves constitute human rights violations requiring redress, while also contributing to subsequent environmental harms that necessitate additional remediation.

Access to justice in environmental matters encompasses both the right to bring environmental claims before courts and administrative bodies and the right to effective remedies for environmental harms. This pillar directly connects procedural environmental rights to the remedy framework of the UNGPs, establishing that environmental justice requires not only the availability of forums for raising environmental claims but also the practical accessibility of such forums and their capacity to provide meaningful redress. The Aarhus Convention, which provides the most comprehensive international codification of procedural environmental rights, explicitly recognizes the interconnectedness of these three pillars. The convention establishes that each pillar reinforces

[190] UNECE, Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, 25 June 1998, 2161 UNTS 447, arts 4-5 (entered into force 30 October 2001) [Aarhus Convention]; UN Office of the High Commissioner for Human Rights, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, UN Doc A/HRC/17/31 (2011), Principles 21, 31 [requiring corporations to communicate how they address human rights impacts and provide for or cooperate in remediation through legitimate processes]; European Union, Directive 2003/4/EC of the European Parliament and of the Council on public access to environmental information, OJ, L 41/26; IFC Performance Standard 1 on Assessment and Management of Environmental and Social Risks and Impacts (2012), paras 20, 26-36 [requiring project-level disclosure and consultation with affected communities]; Request for an Advisory Opinion on the Obligations of States with Respect to Climate Change, Advisory Opinion, ICJ Rep at para 428 (23 July 2025) [confirming state obligations to regulate corporate environmental disclosure and ensure access to environmental information].

the others: information access enables meaningful participation, participation helps prevent environmental harms that would require subsequent remedy, and access to justice provides enforcement mechanisms for both information and participation rights.[191] This integrated approach has influenced the development of procedural rights in other regions and provides a model for strengthening remedy mechanisms in business and human rights contexts.

2.3. Theoretical Framework

Theoretical frameworks provide the conceptual foundation necessary to understand the social phenomena and guide this research. In the context of this research, a strong theoretical lens is essential to explain why traditional state-centric approaches have proven inadequate and how alternative governance arrangements might offer more effective solutions. This study draws on New Governance Theory and Theory of Limited Statehood as complementary theoretical frameworks. These theories directly address the research questions concerning the insights that postcolonial theory and limited statehood provide for understanding remedy challenges in Nigeria, and whether citizen-centered approaches could better implement Pillar III of the UN Guiding Principles. Together, they illuminate why Nigeria's petroleum governance exhibits persistent remedy gaps despite formal legal frameworks, and provide theoretical justification for participatory, community-centered alternatives that could enhance access to effective redress for corporate human rights abuses.

2.3.1. New Governance and Regulatory Theory

New governance theory emerged in response to the limitations of traditional command-and-control regulatory models that had dominated public administration since the New Deal era.[192] This shift represents a fundamental rethinking of how governance operates, moving away from the hierarchical, state-centric, bureaucratic approaches that characterized "old governance" toward more flexible, collaborative, and participatory models.[193] The traditional regulatory model, which found its fullest expression in the Great Society programs of the 1960s and environmental

[191] Peter Davies, "Public Participation, the Aarhus Convention, and the European Community" in Donald M Zillman, Alastair Lucas & George (Rock) Pring, eds, Human Rights in Natural Resource Development: Public Participation in the Sustainable Development of Mining and Energy Resources (Oxford: Oxford University Press, 2002) 155.

[192] Orly Lobel, New Governance as Regulatory Governance (November 21, 2012). The Oxford Handbook of Governance, David Levi-Four, ed, 2012, San Diego Legal Studies Paper No. 12–101, at 1, online: SSRN <https://ssrn.com/abstract=2179160>.

[193]John Gerard, "Global Governance and "New Governance Theory": Lessons from Business and Human Rights". Global Governance: A Review of Multilateralism and International Organizations 20.1 (2014): 5–17 at 8. online: <https://doi.org/10.1163/19426720–02001002> See also Mayntz R "Steering" in Handbook on Theories of Governance Christopher Ansell & Jacob Torfing, eds, (Camberley: Edward Elgar Publishing, 2022) 278–284

regulations of the 1970s, was characterized by detailed prescriptive rules, top-down expert-driven decision-making, and rigid one-size-fits-all approaches.[194]

New governance has several key characteristics that set it apart from traditional regulatory approaches. First, it is fundamentally multi-actor in nature, recognizing that effective governance requires the participation of diverse stakeholders from government, civil society, and the private sector.[195] Rather than relying solely on state authority, new governance embraces polycentric governance, which acknowledges that no single actor has the knowledge and resource capacity to tackle problems unilaterally.[196] Second, new governance is characterized by non-hierarchical relationships among participants. Instead of traditional command-and-control structures, it emphasizes co-steering, co-regulation, and co-guidance, where different actors share responsibilities and work collaboratively rather than through top-down direction.[197] This approach recognizes that effective governance emerges from "the interaction between government and society and among various actors, not the integral government planning and management."[198] Third, new governance operates through network-based structures rather than formal institutional hierarchies. These networks are "self-organizing, interorganizational networks characterized by interdependence, resource exchange, rules of game and significant autonomy from government."[199] The networks facilitate coordination and collaboration while maintaining flexibility and responsiveness to changing circumstances.

Ruggie's research expounds the application of new governance principles to complex global challenges. Ruggie explicitly adopted what he termed a "polycentric governance" approach, recognizing that addressing business-related human rights abuses requires coordination among multiple governance systems.[200] His framework identified three interconnected governance systems: "(a) public law and governance at national and international levels; (b) corporate governance that shapes policies, including about risk management; and (c) civil governance

[194] Lobel, *supra*, note 192.
[195] *Ibid* at 10
[196] Lobel. *Supra*, note 194 at 8
[197] *Ibid.*
[198] John Gerard, "Global Governance and "New Governance Theory": Lessons from Business and Human Rights". Global Governance: A Review of Multilateralism and International Organizations 20.1 (2014): 5–17. <https://doi.org/10.1163/19426720–02001002>.
[199] *Ibid* at 10.
[200] Gerard, *supra*, note 198; See also Ruggie, John Gerard. Just Business: Multinational Corporations and Human Rights. First edition., W. W. Norton & Company, 2013.

involving various stakeholders concerned about the adverse impacts of business conduct."[201] Ruggie's approach was deliberately designed to move beyond state-centric solutions, instead creating a framework where differentiated but complementary responsibilities could address governance gaps.[202] The UNGPs that emerged from this process embody new governance principles by combining binding state duties with voluntary corporate responsibilities, supported by multiple grievance mechanisms and stakeholder engagement processes. This multi-layered approach recognizes that "the state by itself cannot do all the heavy lifting required to meet most pressing societal challenges and that it therefore needs to engage other actors to leverage its capacities."[203]

Moving beyond state-centered approaches, new governance theory fundamentally challenges the assumption that the state should be the primary or sole actor in addressing public problems. Instead, it recognizes that contemporary challenges are too complex and dynamic for any single institution to address effectively. This shift reflects an empirical observation that government is already no more the single dominating actor that can unilaterally impose its will, and that integral government planning is not accepted by the civil society any more.[204] The move beyond state-centrism does not diminish the importance of government but rather repositions it within a broader ecosystem of governance actors. The focus should be on optimizing the overall regulatory regime rather than any one component.[205] This requires understanding how different governance mechanisms, including state regulation, market discipline, corporate self-regulation, and civil society monitoring, can work together to achieve better outcomes than any single approach alone. Central to new governance is the principle that affected stakeholders should have meaningful opportunities to participate in decision-making processes.[206] This emphasis on participation reflects both democratic values and practical recognition that stakeholders possess valuable knowledge and resources necessary for effective governance.

Effective stakeholder engagement in new governance contexts requires community-led engagement that takes place across all phases of policy or project implementation.[207] The

[201] *Ibid*
[202] Gerard, *supra*, note 198
[203] *Ibid* at 8
[204] Nancy L Rosenblum & Robert C. *Post, Civil Society and Government* (Princeton University Press, 2002) at pp. v–vi <https://doi.org/10.2307/j.ctv1ddd0qb.2>
[205] Gerard, *supra*, note 200 at 9.
[206] *Ibid*
[207] Beia Spiller, Tinzar Htun, and Kriti Shah Spiller, "Community Engagement and Participatory Inclusion in Mining: Challenges, Barriers, and Opportunities." (Resources for the future, 2025), online:

participatory dimension of new governance extends beyond mere consultation to include what Spiller et al[208] calls a shared governance, where each network member is responsible for decision-making and management. This approach recognizes that stakeholders are not merely sources of information but active partners in governance processes who can contribute to both problem identification and solution development.

Furthermore, new governance makes extensive use of soft law instruments, non-binding principles, codes of conduct, guidelines, and declarations, rather than relying exclusively on hard law and enforcement.[209] This approach recognizes that soft law is increasingly being used by policymakers to enable greater cooperation and inclusivity because it offers greater flexibility and can adapt more quickly to changing circumstances than formal legal frameworks.[210] The effectiveness of soft law in new governance contexts depends on so called "smart mix" approaches that combine voluntary mechanisms with various forms of accountability and enforcement.[211] Soft law instruments can lay the ground for the possibility of transforming into hard law if, over time, its principles become widely accepted and it is evident states are treating them as legal obligations. The UNGPs exemplify this approach, creating authoritative but non-binding standards that have subsequently influenced domestic legislation worldwide.[212] Conversely, polycentric governance represents one of new governance theory's most significant innovations.[213] This concept, originally developed by Vincent Ostrom,[214] describes governance systems with "multiple centers of authority" rather than single hierarchical structures. In polycentric systems, "various private and public governance systems" work together "to add distinct value, compensate for one another's weaknesses, and play mutually reinforcing roles."[215] Polycentric governance is particularly relevant for addressing complex problems that cross traditional jurisdictional boundaries. It allows

<https://www.rff.org/publications/working-papers/community-engagement-and-participatory-inclusion-in-mining-challenges-barriers-and-opportunities/>

[208] *Ibid.*

[209] *Ibid.*

[210] Ryan Hagemann, Jennifer Huddleston Skees and Adam Thierer. "Soft law for hard problems: The governance of emerging technologies in an uncertain future." (2018) 17 Colo. Tech. L. J. 37

[211] UN Office of the High Commissioner for Human Rights, Guiding Principles on Business and Human Rights, UN Doc A/HRC/17/31 (2011), Commentary to Principle 3 ("states should consider a smart mix of measures – national and international, mandatory and voluntary – to foster business respect for human rights")

[212] Beata Faracik, "Implementation of the UN Guiding Principles on Business and Human Rights." (2017) 578 European Parliament; MATTEO IEZZI, "The UNGPs in Practice: A Comparative Study of Germany and Japan, and the Influence of Lobbying on Business and Human Rights." (UNITESI, 2024), online: <https://unitesi.unive.it/handle/20.500.14247/25844>

[213] Elinor Ostrom, "Beyond markets and states: polycentric governance of complex economic systems." (2010) 100 (3) American economic review at 641-672 [Ostrom].

[214] *Ibid* at 670.

[215] Ostrom, *supra*, note 213 at 671.

for "greater coordination, both internationally and within host countries, and an opportunity for more effective and equitable community engagement to emerge." [216]The approach recognizes that different governance levels and actors have comparative advantages in addressing different aspects of complex problems.

2.3.1.1. Application to Business and Human Rights

The UNGPs represent perhaps the most successful application of new governance theory to a complex global challenge. Ruggie deliberately structured the Guiding Principles around new governance principles, creating what he called a "polycentric governance regime in the business and human rights area."[217] The framework's three pillars, state duty to protect, corporate responsibility to respect, and access to remedy, embody the multi-actor approach central to new governance theory. The Guiding Principles were developed through an extensive participatory process that exemplifies new governance's emphasis on stakeholder engagement.[218] The strength of new governance lies in creating frameworks that enable these different governance systems to work together synergistically. As Peters notes, "the most effective domestic regimes are likely to be a mix of hard law standards supported by more flexible standards and guidance."[219]

This theory is especially relevant to this research because Nigeria's oil sector reflects the very governance failures that New Governance approaches are designed to address. These conditions are characteristic of the Niger Delta, where multinational oil companies, state regulators, and local communities operate in a system marked by weak oversight, information asymmetries, and limited public participation. In this context, classic regulatory tools have consistently fallen short. New Governance scholars point to this kind of environment as precisely where more collaborative, participatory, and adaptive governance models are needed: mechanisms that share responsibility, build transparency, and create iterative problem-solving processes between state and non-state actors.

The sector is characterized by what scholars identify as key indicators of governance failure: weak state capacity, regulatory capture, jurisdictional gaps, and power asymmetries between corporate actors and local communities. New governance theory provides a framework for understanding

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[216] *Ibid.*

[217] John Gerard Ruggie, "Global governance and 'new governance theory': Lessons from business and human rights." (2014) 20 [Global Governance] at 5.

[218] *Ibid.* Ruggie consulted broadly with states, corporations, and NGOs as part of the process of crafting the UNGP, conducting "nearly fifty international consultations on five continents, numerous site visits to individual firms and local communities, extensive research, and pilot projects. This consultative approach was essential to building the broad consensus that enabled the Human Rights Council's unanimous endorsement of the Guiding Principles.

[219] Anne Peters, "Soft law as a new mode of governance." in *The Dynamics of Change in EU governance* (Camberley Surrey: Edward Elgar Publishing, 2011) at 21-51.

how citizen participation and community engagement can be meaningfully integrated into oil sector governance. The theory's emphasis on participatory governance aligns with recognition that effective, equitable, and meaningful community engagement is essential for addressing the negative impacts of extractive industries. In the Nigerian context, this means moving beyond the current approach where stakeholder engagement is bundled into the Environmental Impact Assessment (EIA) process. Applying this approach to this research could help create core-peripheral governance structures, where responsibility of leading the network lies not with one organization but with a number of organizations.

2.3.2. Limited Statehood Theory

Limited statehood theory provides an analytical lens for understanding the governance challenges that characterize many postcolonial states, particularly in contexts where traditional state-centric approaches to remedy and accountability have proven inadequate.[220] This theoretical framework, primarily developed by scholars such as Thomas Risse, Tanja A. Börzel, and their colleagues at the Collaborative Research Center (SFB) 700, offers important insights into why conventional state-based mechanisms may fail to deliver effective remedies for corporate human rights violations,[221] particularly in developing countries like Nigeria.

Areas of limited statehood are fundamentally characterized by the inability of central state institutions to effectively implement and enforce decisions across their territory and/or policy sectors.[222] This weakness manifests in various forms, including the absence of a monopoly over the legitimate use of force, insufficient administrative capacity, and inadequate resources to maintain rule of law.[223] In such contexts, state institutions struggle to fulfill their basic functions of providing security, maintaining order, and delivering essential public services to their citizens. The concept of limited statehood differs significantly from the traditional Weberian notion of the modern state, which assumes effective bureaucratic capacity and territorial control.[224] Instead, limited statehood recognizes a spectrum of state capacity, ranging from areas where state institutions function reasonably well to those where they are entirely absent or dysfunctional.[225]

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[220]Chike Okosa, "Statehood theory: Current scholarship on the various theories of statehood in international law." (2018) 1 Nile University Law Journal at 107-128

[221]Thomas Risse, Tanja A. Börzel, and Anke Draude, *eds. Governance in Areas of Limited Statehood: Conceptual Clarifications and Major Contributions of the Handbook in The Oxford handbook of governance and limited statehood* (London: Oxford University Press, 2018) 3–26 at 13 [Risse te al].

[222] A Tanja, Börzel, and Thomas Risse, Effective governance under anarchy: Institutions, legitimacy, *and social trust in areas of limited statehood* (London: Cambridge University Press, 2021)3–26 at 6.

[223] Risse et al, *supra*, note 221 at 13.

[224]Tanja et al, *supra*, note 222 at 6.

[225] *Ibid* p.7

This recognition is particularly important for understanding postcolonial states like Nigeria, where colonial legacies have created centralized yet ineffective governance structures that often fail to reach remote or marginalized communities.

Weak institutional capacity manifests in several key areas. First, states may lack the administrative infrastructure necessary to monitor and regulate corporate activities, particularly in extractive sectors where multinational corporations operate in remote areas.[226] Second, judicial systems may be under-resourced, corrupt, or lacking in independence, making them ineffective forums for addressing corporate human rights violations.[227]Third, regulatory agencies may lack the technical expertise, funding, or political support necessary to enforce environmental and human rights standards against powerful corporate actors.[228]

The weakness of state institutions creates significant governance gaps, which are often filled by various non-state actors.[229] These actors range from multinational corporations and international organizations to local/traditional authorities, religious leaders, and civil society organizations. Importantly, areas of limited statehood are rarely ungoverned spaces, instead, they typically feature complex arrangements where multiple actors exercise different forms of authority and provide various governance functions. In the Nigerian context, this phenomenon is particularly evident in the Niger Delta region, where oil multinationals have often assumed quasi-governmental roles in providing infrastructure, security, and social services in areas where the state is absent or ineffective.[230] Similarly, traditional authorities continue to exercise significant influence in local governance, dispute resolution, and resource management, often operating parallel to or in competition with official state institutions.[231] The emergence of non-state armed groups and militant organizations in Nigeria's Delta region further illustrates how governance gaps can be filled by actors whose legitimacy may derive from sources other than formal legal authority. This multiplicity of governance actors creates complex governance configurations or arrangements involving various combinations of state and non-state actors operating through different modes of coordination, including hierarchy, negotiation, and competition. These configurations can be

[226] *Ibid.*
[227] Berger T & Lake M Human Rights, the Rule of Law, and Democracy in *The Oxford handbook of governance and limited statehood*. (London: Oxford University Press, 2018) 416 -437 at 424.
[228] Thomas Risse, Tanja A. Börzel, and Anke Draude, eds. *Governance in Areas of Limited Statehood: Conceptual Clarifications and Major Contributions of the Handbook in The Oxford handbook of governance and limited statehood*. (London: Oxford University Press, 2018) 3-26 at 16.
[229]A Jennifer, Widner, "Effective Governance under Anarchy: Institutions, Legitimacy, and Social Trust in Areas of Limited Statehood. By Tanja A. Börzel and Thomas Risse" (Cambridge: Cambridge University Press, 2021) 378.
[230] Adunbi, O., *Oil wealth and insurgency in Nigeria*. (Indiana University Press, 2015) at 182
[231] *Ibid* at 182.

highly effective in some contexts, providing stability and essential services where the state has failed. However, they can also create legitimacy challenges and accountability deficits, particularly when powerful corporate actors effectively capture governance functions.

Limited statehood fundamentally challenges traditional notions of territorial sovereignty and the rule of law.[232] In areas where the state cannot effectively enforce its authority, legal frameworks may exist on paper but lack practical implementation mechanisms. This creates a situation where formal laws and regulations governing corporate conduct may be comprehensive and well-designed yet remain largely ineffective due to enforcement deficits. The territorial dimension of limited statehood is particularly relevant to understanding corporate human rights violations in extractive industries. Oil companies operating in Nigeria's Niger Delta, for example, often function in areas where federal and state governments have limited practical control, despite formal legal authority. This territorial weakness enables corporate actors to operate with minimal oversight, contributing to environmental degradation and human rights abuses that would be less likely to occur in areas with stronger state presence. Moreover, the sectoral dimension of limited statehood means that even where the state maintains general territorial control, it may lack capacity in specific policy areas such as environmental regulation, labor rights enforcement, or corporate accountability. This sectoral weakness is often exacerbated by corruption, regulatory capture, and the revolving door between government and industry that undermines independent oversight.
Conversely, Limited statehood theory provides a framework for understanding why traditional state-based remedy mechanisms often fail to provide effective redress for corporate human rights violations.[233] In contexts where state institutions lack capacity, independence, or legitimacy, judicial mechanisms may be compromised by corruption, political interference, or simple resource constraints. Administrative remedies may be ineffective due to weak regulatory capacity, insufficient funding for oversight bodies, or lack of technical expertise to address complex corporate misconduct. Furthermore, the territorial and sectoral limitations of state authority mean that even where legal remedies exist in theory, they may be practically inaccessible to affected communities.[234] Rural or marginalized populations may lack physical access to courts, language barriers may prevent effective participation in legal proceedings, and the costs of litigation may be

[232] Dima Jamali, 'Governing Business Responsibility in Areas of Limited Statehood' in Sameer Azizi, Tanja A Börzel and Hans Krause Hansen (eds), *Governing Business Responsibility in Areas of Limited Statehood* (Sage, London 2021).
[233] *Ibid.*
[234] Anssi Paasi et al, "Locating the territoriality of territory in border studies." (2022) 95 Political Geography 102584 <https://doi.org/10.1016/j.polgeo.2021.102584>

prohibitive for individuals or communities seeking redress against well-resourced corporate defendants. The shadow of hierarchy, the implicit threat of state intervention that encourages compliance with regulations and voluntary agreements is fundamentally weakened in areas of limited statehood. Without credible enforcement mechanisms, corporate actors may have little incentive to participate meaningfully in grievance processes or to provide adequate remedies for human rights violations. This creates a vicious cycle where weak state capacity undermines the effectiveness of both judicial and non-judicial remedy mechanisms.

Recognizing the limitations of traditional state-centric approaches, limited statehood theory points toward the need for alternative governance arrangements that can function effectively even in the absence of strong hierarchical state control.[235] These arrangements may involve various combinations of state and non-state actors, operating through different coordination mechanisms and drawing legitimacy from diverse sources. One important category of alternative arrangements involves what Börzel and Risse term "functional equivalents" to the shadow of hierarchy.[236] These may include external statehood (where international actors provide governance functions), the risk of anarchy (which creates incentives for self-regulation), social norms and community pressure, and market-based mechanisms that embed governance in economic relationships.[237] In the corporate accountability context, these alternatives might include international oversight mechanisms, industry self-regulation schemes, multi-stakeholder initiatives, and community-based monitoring systems. Another category involves a complementary governance, where different non-state actors coordinate to provide public goods and services that the state cannot deliver effectively.[238] In some cases, this may involve collaborative arrangements between corporations, civil society organizations, and local communities to address human rights concerns through negotiated agreements or participatory monitoring mechanisms.

The theory further posits that civil society organizations can serve multiple governance functions in areas of limited statehood, including monitoring corporate conduct, facilitating dialogue between different stakeholders, providing technical expertise on complex issues, and mobilizing communities for collective action.[239] Their legitimacy often derives not from formal legal authority but from their perceived representativeness, their commitment to public interest values, and their

[235]Tanja A. Börzel, and Thomas Risse, *Effective governance under anarchy: Institutions, legitimacy, and social trust in areas of limited statehood* (London: Cambridge University Press, 2021) p. 29-57
[236] *Ibid*, p. 30
[237] Tanja et al, *supra*, note 235 at 33
[238] *Ibid.*
[239] Ruth Hanau Santini, Abel Polese, and Rob Kevlihan, (eds.) *Limited statehood and informal governance in the Middle East and Africa*. (Routledge, Taylor & Francis Group, 2021) at 3.

embedded relationships within local communities. Community-based governance mechanisms are particularly important in postcolonial contexts where traditional authority structures may retain significant legitimacy even as formal state institutions remain weak. These mechanisms can include customary dispute resolution processes, traditional environmental management systems, and community-based natural resource governance arrangements that operate according to locally understood rules and norms. However, the theory also recognizes that civil society and community participation in governance is not automatically positive or effective.[240] Power asymmetries, internal conflicts, elite capture, and capacity constraints can all limit the effectiveness of community-based governance mechanisms. Moreover, the informality of many such arrangements can create challenges for accountability and may enable powerful actors to avoid their responsibilities. The integration of civil society and community governance mechanisms into broader accountability frameworks requires careful attention to issues of legitimacy, capacity, and institutional design.[241] This integration is particularly challenging in the corporate accountability context, where technical complexity, resource asymmetries, and jurisdictional issues create barriers to meaningful community participation in remedy processes.

Thus, limited statehood theory provides a valuable framework in this study for understanding both the challenges and opportunities that characterize governance in postcolonial contexts like Nigeria. By recognizing the limitations of state-centric approaches while identifying alternative governance arrangements, this theory offers insights into how remedy mechanisms might be redesigned to function more effectively in contexts where traditional institutional assumptions do not hold.

2.4. Literature Review: The Remedy Gap in Business and Human Rights

2.4.1. Discourse on the UNGPs Voluntary Framework

The environment of corporate accountability for human rights violations has been fundamentally shaped by the UNGPs, adopted in 2011 as a "soft law" framework designed to address the governance gaps created by transnational corporate activities. However, over a decade since their endorsement, a substantial body of literature has emerged critiquing the voluntary nature of the UNGPs and questioning their effectiveness in delivering meaningful remedies for victims of corporate human rights abuses. These critiques coalesce around several key themes: the inherent limitations of voluntary approaches, persistent empirical evidence of remedy gaps, structural

[240] *Ibid.*
[241] Susan Wong, "Elite Capture or Captured Elites?" (2010) WIDER Working Paper No. 2010/82 at 2-15.

power asymmetries, and jurisdictional barriers that continue to shield multinational corporations from accountability.

The fundamental critique of the UNGPs centers on their non-binding, voluntary character, which scholars increasingly argue is inadequate to address ongoing corporate human rights violations. The works of Bilchitz[242] contend that the soft law approach has proven insufficient to prevent adverse human rights impacts or guarantee corporate accountability when such impacts occur. The European Coalition for Corporate Justice observed in their ten-year assessment that despite the UNGPs' adoption, major disasters from Bangladesh's Rana Plaza collapse to Brazilian dam failures demonstrated that "mere commitments are not enough," and that the framework's "non-binding nature explains poor track record in implementation".[243] This criticism reflects a broader scholarly consensus that voluntary frameworks, while creating the appearance of corporate responsibility, lack the coercive force necessary to compel consistent compliance or meaningful change in corporate behavior.[244]

Supporting this critique, empirical research[245] has consistently demonstrated a persistent remedy gap where grievance mechanisms fail to provide effective redress for rights-holders. Harrison and Wielga's[246] comprehensive study of Multi-Stakeholder Initiative (MSI) grievance mechanisms found that even those adhering to procedural standards demanded by the UNGPs still failed to provide remedies for claimants, with three of six examined mechanisms collectively producing only one case where remedy was provided to complainants. Similarly, Grama's[247] research revealed that company-run grievance mechanisms often lacked transparency and independence, operating more as "privatized bodies of knowledge" than genuine avenues for justice. The systematic analysis by Miller-Dawkins, Macdonald and Marshall [248] of various non-judicial

[242]David Bilchitz, "The Moral and Legal Necessity for a Business and Human Rights Treaty." (2020) 5(2) Bus. & Hum. Rts J. 180-205

[243] European Coalition for Corporate Justice, "Justice Delayed: 10 Years of UN Guiding Principles on Business & Human Rights." (ECCJ 2021), online: <https://corporatejustice.org/news/justice-delayed-10-years-of-un-guiding-principles>

[244]S. Joseph & J. Kyriakakis, "From soft law to hard law in business and human rights and the challenge of corporate power" (2023) 36(2) Leiden J. Intl. L. 335.

[245] J. Harrison & M. Wielga, "Grievance mechanisms in multi-stakeholder initiatives: Providing effective remedy for human rights violations?" (2023) 8 (1) Business and Human Rights Journal 43-65; J. J. Poonjatt, *Using Legal Waivers in Operational-Level Grievance Mechanisms and their impact on Access to Remedies in Business and Human Rights* (Doctoral dissertation, UNSW Sydney).

[246] *Ibid.*

[247] Laura Grama, "In Search of Effective Corporate Grievance Mechanisms: Can Artificial Intelligence Bridge the Gap?" (2024) 16(3) Journal of Human Rights Practice at 819-847

[248] May Miller-Dawkins, Anne Macdonald, and Shelley Marshall. "Rightsholder-Driven Remedy for Business-Related Human Rights Harms: A Framework for Analysis." (2023) 184 Journal of Business Ethics at -812.

mechanisms found generalized failures to provide effective remedies to rights-holders across different systems, highlighting the structural inadequacies inherent in voluntary approaches.

The power asymmetries between corporations and rights-holders represent another critical dimension of the UNGPs' limitations. McDonnell, Bagheri and Curphey[249] documented how grievance mechanisms are characterized by power imbalances tilted in favor of companies, which effectively force communities to accept outcomes that are not rights-compatible, if remedy is offered at all. This imbalance manifests in multiple ways: corporations control grievance processes, hire mediators, and often view communities as passive subjects rather than active participants in remedy design. The complexity of global supply chains further exacerbates these power differentials, as individual workers or community members lack the resources, information, and negotiation experience to effectively challenge well-resourced multinational companies. As noted in research on VSS-level mechanisms,[250] the geographically distant and culturally foreign nature, of most grievance mechanisms, combined with their complex, administrative, and legalistic characteristics, makes it highly challenging for rights-holders to engage without support from civil society organizations or trade unions. [251]

Drawing on empirical analysis of the Talisman Energy case, Simons and Macklin[252] demonstrate that voluntary mechanisms are incapable of systematically preventing human rights violating behavior by transnational corporations, or of assuring accountability of these actors or recompense for victims of such violations. This critique directly challenges the prevailing approach in international business and human rights governance. The authors propose a comprehensive framework for home state regulation comprising five key components: (1) reservation of public support for corporations that cause or are complicit in human rights violations in weak governance zones; (2) creation of independent agencies to conduct human rights impact assessments and monitoring; (3) public disclosure of findings; (4) statutory causes of action for private actors to sue corporate citizens; and (5) leveraging and complementing existing mechanisms. This

[249]Katherine McDonnell, Morvarid Bagheri, and Shauna Curphey, "Addressing Corporate Activity That Negatively Impacts Natural Resources: Community-Led Engagement as a Path to Rights Compatible Remedies" (Just Ground, 2021), <https://www.justground.org/news-ideas/aba-njgms-negotiation>

[250] VSS-level mechanisms refer to Voluntary Sustainability Standards (also called Voluntary Standards Systems) mechanisms that operate at different governance levels in extractive industries and supply chains

[251]D. Birchall, "The role of civil society and human rights defenders in corporate accountability" (2020) Research handbook on human rights and business at 422-45.

[252]Penelope Simons & Audrey Macklin, The Governance Gap: Extractive Industries, Human Rights, and the Home State Advantage (London: Routledge, 2014) at 132.

framework represents one of the most detailed proposals for mandatory home state regulation in the business and human rights literature.[253]

Conversely, the power imbalances are compounded by significant jurisdictional barriers that continue to shield multinational corporations from accountability despite the UNGPs' emphasis on access to remedy[254]. The doctrine of *forum non conveniens* remains a formidable obstacle, allowing courts in home states to decline jurisdiction in favor of foreign forums that are often less accessible or effective for victims.[255] Aristova's[256] analysis of transnational litigation in English courts demonstrated how the revival of *forum non conveniens* doctrine threatens to undermine access to justice for disadvantaged foreign litigants. Similarly, the corporate veil operates to shield parent companies from liability for subsidiaries' misconduct, requiring victims to establish direct fault or complicity,[257] an often, insurmountable evidentiary burden.

The extraterritorial jurisdiction challenges further illustrate the limitations of voluntary frameworks in addressing corporate abuses that span multiple jurisdictions. Ahmad's[258] comprehensive study of common law doctrines found that home state courts have consistently interpreted corporate legal personality in ways that disaggregate transnational business operations, adhering to the corporate veil and restrictively construing extraterritorial application of human rights law. The US Supreme Court's decision in *Nestlé USA v. Doe*[259] exemplified this trend, requiring clear domestic conduct links for human rights claims against corporations for overseas abuses, effectively creating what scholars term a "jurisdictional vacuum" where victims have no viable forum for redress.[260]

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[253] *Ibid* at 248..
[254]Laura Grama, "In Search of Effective Corporate Grievance Mechanisms: Can Artificial Intelligence Bridge the Gap?" (2024) 16 (3) J. Hum. Rts. Prac. At 819.
[255]C. A. Whytock and C.B. Robertson, "Forum non conveniens and the enforcement of foreign judgments" (2011) 111 Colum. L. Rev. 1444.
[256]Ekaterina Aristova, "The future of tort litigation against transnational corporations in the English courts: Is forum [non] conveniens back?" (2021) 6(3) Bus. and Hum. Rts J. 399.
[257] P.L. Davies, "Corporate Liability for Wrongdoing within (Foreign) Subsidiaries: Mechanisms from Corporate Law, Tort and Regulation (January 2023). NUS Law Working Paper No. 2023/007, NUS EW Barker Centre for Law & Business Working Paper 23/01, Online: SSRN: <https://ssrn.com/abstract=4345589>
[258] Hassan Ahmad, "Transnational Corporate Human Rights Claims in Common Law Courts: A Comparative Analysis" (2022) 70:2 Am J Comp L 227.
[259] Nestlé USA, Inc v Doe, 141 S Ct 1931 (2021), 593 US 628.
[260] Nestlé USA v. Doe was a 2021 U.S. Supreme Court case brought by former child slaves from Mali against Nestlé USA and Cargill under the Alien Tort Statute (ATS). The plaintiffs alleged that the companies aided and abetted child slavery on cocoa plantations in Côte d'Ivoire by providing financial and technical assistance to local farmers and maintaining long-term supply relationships. The Court assumed for purposes of decision that the alleged conduct amounted to child slavery and that corporations could, in principle, be sued under the ATS, but dismissed the case

The empirical evidence of UNGPs implementation failures extends beyond individual case studies to broader assessments of corporate compliance. The Corporate Human Rights Benchmark reported in 2020 that "only a minority of companies demonstrate the willingness and commitment to take human rights seriously," with a concerning "disconnect between commitments and processes on the one hand and actual performance and results on the other".[261] This finding aligns with broader critiques of Corporate Social Responsibility (CSR) approaches, by scholars like Kolber,[262] Hart,[263] Quinn[264] among others who argue that moral expectations without legal obligations or threats of punishment, allow companies to treat human rights as public relations exercises rather than enforceable commitments.

Further complicating the effectiveness of voluntary mechanisms is the phenomenon of regulatory capture[265] in many host states, where governments eager for foreign investment are reluctant to enforce labor, environmental, or human rights laws against powerful multinational companies. This dynamic reflects what Ramasastry identified as a "governance gap"[266] where host state governments are unwilling or unable to provide citizens with access to remedies for human rights violations caused by businesses. The combination of weak enforcement capacity, corruption, and investment-driven development models creates conditions where even formal remedy mechanisms exist only on paper.

The limitations of the UNGPs' voluntary approach have resulted in the growing momentum toward binding legal instruments. The push for treaty negotiations at the UN level on business and human rights, initiated in 2014, is an acknowledgment that soft law mechanisms alone are insufficient to

because the plaintiffs had not plausibly alleged that the relevant wrongful conduct occurred in the United States. The majority held that general corporate decision-making or the mere presence of a U.S. headquarters is insufficient; an ATS claim must be based on specific domestic conduct that itself constitutes the alleged violation. By insisting on a clear, substantial U.S. territorial nexus, the judgment sharply limited the use of U.S. courts to pursue civil remedies against corporations for human rights abuses committed abroad. Commentators argue that this approach contributes to a jurisdictional vacuum, because victims are often unable to obtain redress either in host states with weak legal systems or in home states that now refuse to hear transnational claims absent strong domestic conduct links.

[261] World Benchmarking Alliance 'Corporate respect for human rights: where are we now?' (2020), online: <https://www.worldbenchmarkingalliance.org/news/corporate-respect-for-human-rights-where-are-we-now/>

[262] A.J. Kolber, "Punishment and moral risk" (2018) U. Ill. L. Rev. 487.

[263] Hart HL, Punishment and responsibility: Essays in the philosophy of law (Oxford University Press, 2008) at 94

[264] Quinn W., "The right to threaten and the right to punish". (1985) Philosophy & Public Affairs 327-73.

[265] Wallace CD., *The multinational enterprise and legal control: host state sovereignty in an era of economic globalization* (BRILL, 2021); Li J. "In pursuit of fairness: How Chinese multinational companies react to US Government bias." (2021) 62 Harv. Int'l LJ. At 375.

[266] Ramasastry, Anita. "Corporate social responsibility versus business and human rights: Bridging the gap between responsibility and accountability." (2015) 14 (2) J. of Hum. Rts. 237-259 at 240.

address corporate human rights abuses. Bilchitz[267] and other treaty proponents argue that binding obligations are necessary to create enforceable duties for states and potentially corporations to prevent abuses and ensure remedies. However, these efforts face their own challenges, including resistance from developed states and concerns about feasibility and enforcement mechanisms.[268] Meanwhile, the emergence of mandatory human rights due diligence laws in Europe, including France's Duty of Vigilance Law and the EU's Corporate Sustainability Due Diligence Directive are indirect attempts to harden the soft law principles of the UNGPs through binding domestic legislation. These developments reflect a recognition among policymakers that voluntary approaches must be supplemented with legal requirements to achieve meaningful corporate accountability. Yet even these initiatives face implementation challenges and concerns about uneven enforcement across jurisdictions.

The theoretical frameworks underlying corporate accountability further illuminate the limitations of voluntary approaches. Stakeholder theory, while advocating for broader consideration of affected parties, lacks enforceable mechanisms to compel corporate action beyond profit maximization. Similarly, traditional CSR models remain inherently voluntary and self-serving, allowing corporations to maintain the appearance of responsibility while prioritizing shareholder interests. The global legal pluralism that characterizes modern business operations creates additional complications, as corporations navigate multiple overlapping legal regimes with inconsistent standards and enforcement mechanisms. Further research by Soha and Connoly,[269] Jimenez et al[270] and Lianos,[271] also highlight how digital capitalism introduces new frontiers of corporate human rights violations that existing voluntary frameworks are poorly equipped to address. The commodification of personal data, algorithmic discrimination, and surveillance capitalism represent emerging challenges that require more robust regulatory responses than voluntary guidelines can provide. These developments underscore the need for binding legal frameworks that can adapt to evolving forms of corporate power and impact.

[267]David Bilchitz, "The Moral and Legal Necessity for a Business and Human Rights Treaty." (2020) 5 (2) Business and Hum. Rts. J. at 180-205.
[268] *Ibid.*
[269] Soh C, Connolly D., "New frontiers of profit and risk: The Fourth Industrial Revolution's impact on business and human rights." (2021) 26 (1) New Political Economy 168.
[270] Jiménez A, Oleson JC., "The crimes of digital capitalism." (2022) 48 Mitchell Hamline L. Rev. 971.
[271] Lianos I., "Value extraction and institutions in digital capitalism: Towards a law and political economy synthesis for competition law" (2022) 1 (4) European Law Open 852.

The critique of voluntary frameworks extends to their impact on democratic governance and rule of law. Stefan, [272]and Bantekas et al[273] argue that reliance on soft law mechanisms undermines the development of robust legal institutions and democratic accountability mechanisms in host states. By substituting voluntary corporate commitments for legal obligations, the UNGPs model may inadvertently weaken the incentives for developing effective governance systems and enforceable rights protections.

In essence, the body of literature examining the UNGPs' voluntary framework reveals consistent patterns of limitation and failure across multiple dimensions. The non-binding nature of the principles, combined with persistent power asymmetries, jurisdictional barriers, and inadequate enforcement mechanisms, has created a system where corporate human rights abuses continue largely unabated despite formal commitments to respect human rights. While the UNGPs have succeeded in raising awareness and in establishing normative standards, their voluntary character has proven insufficient to deliver the effective remedies demanded by victims of corporate abuse. This recognition has fueled growing calls for binding legal instruments and mandatory due diligence requirements that can provide the enforcement mechanisms and coercive power necessary to achieve meaningful corporate accountability.

2.4.2. Barriers to Effective Remedy in Practice

Contemporary scholarship on business and human rights remedy reveals persistent obstacles that prevent victims from accessing meaningful redress for corporate abuses. These barriers operate at multiple levels and are particularly pronounced in developing countries where weak institutional frameworks intersect with complex transnational corporate structures.

Carpenter and Moss[274] analysis reveals how standing doctrines, originally designed to ensure judicial efficiency, have evolved into restrictive gatekeeping mechanisms that disproportionately affect vulnerable communities seeking to challenge corporate conduct. Their work builds upon earlier findings by Erichson[275] who documented how civil litigation systems struggle with information asymmetries that favor well-resourced corporate defendants over individual plaintiffs.

[272]O. Ștefan, "Preserving the rule of law through transnational soft law: The cooperation and verification mechanism." (2024) 16(3) Hague J. on the Rul. L. 671.
[273] Bantekas I, Akestoridi K.," Sustainable Development Goals, between Politics and Soft Law: The Emergence of Political Normativity" in International Law" (2022) 37 Emory Int'l L. Rev. 499
[274] D. Carpenter and D. A. Moss, "Introduction: A Focus on Regulatory Capture," in D. Carpenter and D. A. Moss (eds), Preventing Regulatory Capture: Special Interest Influence and How to Limit It (Cambridge: Cambridge University Press, 2013) at 16.
[275] HM. Erichson, " Civil Procedure and the Legal Profession". (2010) 79 Fordham L. Rev. 1827.

This challenge is particularly acute in transnational cases where victims must navigate jurisdictional requirements while corporate defendants deploy *forum non conveniens* arguments to shift cases to less favorable venues.

The temporal dimension of remedy access presents additional challenges, as limitation periods often work against victims of corporate human rights abuses. Recent research by the European Law Institute demonstrates that traditional limitation periods, designed for conventional commercial disputes, are ill-suited to complex corporate human rights cases where harms may manifest years after initial conduct.[276] This temporal mismatch is compounded by what Forti et al,[277] calls the discovery problem, where victims may remain unaware of their rights or the connection between corporate conduct and their suffering for extended periods. Further research by Lima et al,[278] Block et al[279] and Teremetskyi et al[280] suggests that developing countries face particular challenges in this regard, as legal awareness programs remain limited, and victims often lack access to information about their rights.

Furthermore, evidence gathering challenges represent another significant barrier identified in recent scholarship. Research by the European Union Agency for Fundamental Rights (FRA) reveals that information asymmetries between corporations and victims create insurmountable obstacles to effective remedy. Corporations typically possess superior resources, technical expertise, and access to crucial evidence, while victims struggle to obtain the documentation necessary to substantiate their claims.[281] This dynamic is particularly pronounced in environmental cases where scientific evidence linking corporate conduct to harm may be complex and expensive to obtain.[282]

[276] European Law Institute, Business and Human Rights: Access to Justice and Effective Remedies (with input from the EU Agency for Fundamental Rights) (Brussels: European Law Institute, 2024), online: <https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI_Report_on_Business_and_Human_Rights.pdf>.

[277] G. Forti et al, Victims and corporations. Legal challenges and empirical findings (Wolters Kluwer-CEDAM, 2018)

[278] V. Lima and M. Gomez, "Access to justice: Promoting the legal system as a human right" in *Peace, justice and strong institutions* (Cham: Springer International Publishing, 2021).

[279] K. Block et al, "It's about building a network of support": Australian service provider experiences supporting refugee survivors of sexual and gender-based violence." (2022) 20(3) Journal of immigrant & refugee studies 383.

[280]V. Teremetskyi et al, "Access to Justice and Legal Aid for Vulnerable Groups: New Challenges Caused by the Covid-19 Pandemic" (2021) 24 (1) J. Legal Ethical & Regulatory Journal.

[281] *Ibid* at p.4

[282] *Ibid*

The complexity of corporate structures and supply chains presents an evolving challenge that has gained increasing scholarly attention. Studies by Sun et al.,[283] Villers[284] and Williams[285] demonstrate how multinational corporations deliberately utilize complex corporate structures to obscure accountability and limit liability. These structures often involve multiple subsidiary companies, joint ventures, and subcontracting arrangements that create what Williams term accountability gaps.[286] Further research by the International Commission of Jurists illustrates how victims attempting to trace responsibility through these complex arrangements face nearly impossible evidentiary burdens.[287] The literature suggests that this complexity is not accidental but represents a strategic choice by corporations to minimize legal exposure.[288]

Supply chain complexity adds another layer of difficulty, as documented in recent studies examining global value chains. Narula's[289] research on multinational enterprise behavior reveals how "cascading compliance" arrangements in supply chains create multiple points of potential failure while diffusing responsibility across numerous actors. This diffusion makes it extremely difficult for victims to identify appropriate defendants and establish clear causal links between specific corporate actors and resulting harms.[290] The literature suggests that even well-intentioned corporations struggle to maintain effective oversight across multi-tiered supply networks, creating situations where harmful practices persist despite nominal corporate policies against such conduct.

Moving beyond practical barriers, various researchers[291] have extensively documented structural barriers in developing countries that impede effective remedy. Dixon's[292] study on judicial

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[283] P Sun et al, "The Management of Socio-Political Issues and Environments: Toward a Research Agenda for Corporate Socio-Political Engagement" (2024) 61:2 J Mgmt Stud 277 at 281

[284] C Villiers, "New Directions in the European Union's Regulatory Framework for Corporate Reporting, Due Diligence and Accountability: The Challenge of Complexity" (2022) 13:4 European J Risk Regulation 548 at 522.

[285] J Williams, "Greenwashing: Appearance, Illusion and the Future of 'Green' Capitalism" (2024) 18:1 Geography Compass e12736 at 5.

[286] *Ibid.*

[287] International Commission of Jurists, Overcoming Barriers to Access to Justice for Victims of Corporate Human Rights Abuses (Geneva: ICJ, 2023), online: <https://www.icj.org/wp-content/uploads/2023/07/FINAL-Overcoming-Barriers-to-Access-to-Justice-for-Victims-of-Corporate-Human-Rights-Abuses.pdf>.

[288] Annalisa Pistor, The Code of Capital: How the Law Creates Wealth and Inequality (Princeton University Press 2019), at 78–84.

[289] Narula R, Lee JM., "The theories of the multinational enterprise" (2020) 1 Encyclopedia of International Economics and Global Trade 1.

[290] *Ibid.*

[291] Lima V, Gomez M., "Access to justice: Promoting the legal system as a human right" in *Peace, justice and strong institutions* (Cham: Springer International Publishing, 2021) at 1-11; Farhoudian A, et al, "Barriers and facilitators to substance use disorder treatment: An overview of systematic reviews" (2022) 16 Substance abuse: research and treatment 11782218221118462; Anwary I., "Evaluation of the effectiveness of public administration policies in the development of stringent legal framework: An analysis of the criminal justice system in Indonesia" (2022) 17 (2) International Journal of Criminal Justice Sciences 312; Beqiraj J, McNamara L., "International access to justice: Barriers and solutions" (2014) 2 (8) Bingham Centre for the Rule of Law Report.

[292] Dixon R., Responsive judicial review: democracy and dysfunction in the modern age (Oxford University Press; 2023).

independence reveals systematic weaknesses that undermine courts' capacity to adjudicate corporate human rights cases effectively including how weak judicial independence manifests in various forms including political interference, inadequate funding, and susceptibility to corruption. The UNODC's assessment of Nigeria's justice system further illustrates how these weaknesses create environments where powerful corporate actors can effectively evade accountability through various forms of influence and interference.[293] Even in developed countries like Canada, Simons[294] finds continuing intransigence on the part of the government in moving beyond a voluntary self-regulation regime. Despite apparent progress in Canadian policy development, including the creation of the Canadian Ombudsperson for Responsible Enterprise (CORE) and various policy initiatives, Canada's 2022 Responsible Business Conduct Abroad Strategy does not mandate Canadian officials to assess whether companies are operating in line with international human rights standards, and leaves officials with significant discretion to support companies even where they are involved in human rights abuse and environmental harm. This analysis of Canada, a developed nation with relatively strong institutions, shows that institutional capacity alone does not guarantee effective movement beyond voluntary self-regulation. It shows that even states with comparatively strong governance frameworks face structural and political obstacles in creating mandatory business and human rights regimes. Rather than suggesting that all developing countries will necessarily face greater difficulties, the Canadian experience illustrates that states across different regions and income levels struggle with similar resistance to binding corporate accountability, while the specific configuration of constraints varies by context. For Nigeria, this is instructive as it indicates that efforts to move beyond voluntarism must contend not only with limited statehood and resource dependence, but also with political and bureaucratic dynamics that have proven challenging even in other legal systems.

Corruption adds another layer in the literature as the works of Pedersen and Johansen[295] demonstrates how judicial corruption not only prevents individual cases from proceeding fairly but also undermines the entire rule of law framework necessary for effective remedy. Their work suggests that corruption in developing countries often operates systematically rather than as isolated incidents, creating environments where corporate actors can predict and exploit judicial

[293] UNDOC 'Assessment of Justice Sector Integrity and Capacity in Ten Nigerian States' (UNDOC, 2017), online: https://www.unodc.org/conig/uploads/documents/publications/Otherpublications/Assessment_of_Justice_Sector_Integrity_and_Capacity_in_10_Nigerian_States_20071.pdf

[294] Penelope Simons, "Developments in Canada on business and human rights: One step forward two steps back." (2023) 36 (2) Leiden J Intl L 363-388 at 363.

[295] Pedersen K, Johannsen L., "When corruption hits the judiciary: A global perspective on access to justice and corruption" (2023) 13 (4) Oñati Socio-Legal Series 1258.

weaknesses. [296]This systematic nature of corruption according to Minow[297] means that even reform efforts may be captured or undermined by entrenched interests. Chartier[298] study further recognizes the limited access to legal aid as another structural barrier as his study reveals chronic underfunding that leaves most potential victims without meaningful access to legal representation. This is supported by the work of Simshaw[299] that show that legal aid ratios in many developing countries are so low that individual lawyers may handle hundreds of cases simultaneously, making effective representation impossible. Their works suggests that this resource constraint is not merely a matter of insufficient funding but reflects deeper political choices about prioritizing access to justice for marginalized communities.

Gadson's[300] work takes a different direction by demonstrating how agencies intended to oversee corporate conduct often become co-opted by the very industries they are meant to regulate. This capture occurs through various mechanisms including revolving door arrangements, information dependencies, and resource constraints that make regulators dependent on industry cooperation.[301]His work suggests that developing countries are particularly vulnerable to such capture due to their need for foreign investment and limited regulatory capacity. Magnuson[302] adds that investment pressures compound these challenges by creating situations where governments may be reluctant to enforce regulations against powerful corporate actors. His work analyzed how competition for foreign direct investment can create "race to the bottom" where countries deliberately weaken regulatory frameworks to attract investment. This dynamic creates environments where even well-designed remedy frameworks may lack the political will necessary for effective implementation. Despite extensive documentation of these barriers, significant gaps remain in the literature as most of the research focuses on documenting problems rather than evaluating potential solutions, and there is limited empirical assessment of remedy mechanism effectiveness in developing country contexts. Additionally, the literature tends to analyze barriers in isolation rather than examining how they interact and reinforce each other systematically. Few studies examine how victims themselves experience and navigate these multiple barriers, and there is insufficient attention to how community-level factors might either exacerbate or mitigate access

[296] *Ibid.*
[297] Minow M., "Access to justice" (2022) 2 American Journal of Law and Equality 293.
[298] Chartier B., Access to justice: legal aid and other forms of advocacy.
[299] Simshaw D. "Access to AI justice: Avoiding an inequitable two-tiered system of legal services." (2022) 24 Yale JL & Tech. 150.
[300] Gadson RO., "Co-opting the state: mobilizing environmental justice claims in a regulatory agency" (2025) 59 (1) Law & Society Review 82.
[301] *Ibid.*
[302] Magnuson W., "Unilateral corporate regulation" (2016) 17 Chi. J. Int'l L. 521.

barriers. The literature also reveals limited engagement with alternative approaches that might address structural barriers more effectively than traditional judicial mechanisms. While some scholars have begun examining innovative approaches such as citizen-centered remedy mechanisms,[303] this remains an underexplored area with significant potential for future research. The predominant focus on state-based and corporate-driven mechanisms may overlook community-based alternatives that could prove more effective in contexts where traditional institutions remain weak or compromised.

2.4.3. Specific Challenges in Extractive Industries

The extractive industries, including oil, gas, and mining operations, is a constellation of challenges that distinguish them from other sectors in terms of environmental harm, corporate accountability, and access to remedy.[304] These industries operate under conditions of heightened complexity that create obstacles for establishing clear causation, attributing responsibility, and ensuring meaningful redress for affected communities.[305]

Environmental harm complexity stands as perhaps the most technically demanding challenge confronting the extractive industries. Kaufmann et al[306] document how environmental governance failures in conflict-prone regions create conditions where oil revenues provide critical economic lifelines to various actors, including political elites and armed groups, making environmental governance politically and economically too difficult to manage. This is compounded by the scientific challenges of establishing clear causation chains between corporate activities and environmental damage. Stadler and Nobes'[307] comprehensive analysis of extractive companies' accounting practices reveals that the diversity of operations both within and between countries makes systematic evaluation of environmental impacts extraordinarily difficult. Their research demonstrates that even basic accounting policies for exploration and evaluation expenditures varied dramatically across companies, countries, and sub-sectors, creating a fragmented landscape

[303] Lobel, Orly, New Governance as Regulatory Governance (November 21, 2012). The Oxford Handbook of Governance, David Levi-Four, ed., 2012, San Diego Legal Studies Paper No. 12-101 at SSRN: <https://ssrn.com/abstract=2179160>

[304] Owen JR, Kemp D., Extractive relations: Countervailing power and the global mining industry (England: Routledge, 2017)

[305] Watts M., "Hyper-extractivism and the global oil assemblage" (2021) Our extractive age: Expressions of violence and resistance 207-48.

[306] Kaufmann M, Wiering M., "The role of discourses in understanding institutional stability and change–an analysis of Dutch flood risk governance" (2022) 24 (1) Journal of Environmental Policy & Planning 1.

[307] Stadler C, Nobes C., "Varied international practice in accounting for extractive activities." (2024) Accounting and Business Research 1.

where consistent assessment of environmental liability becomes nearly impossible.[308] However, their study primarily focused on financial reporting diversity rather than examining how this complexity specifically impedes legal accountability mechanisms, leaving a significant gap in understanding how accounting heterogeneity translates into barriers for remedy access.

Olawuyi[309] focusing on the legal gaps between formal legal frameworks and practical implementation, in relation to remedy mechanisms for communities affected by extractive operations, examines various African jurisdictions to provide comparative context for understanding Nigeria's challenges within the broader continental framework. Particularly relevant to this research is Olawuyi's discussion of innovative legal strategies needed to achieve sustainable and rights-based extractive industries. He argues that current legal frameworks across Africa remain inadequately equipped to address the complex intersections between extractive operations, environmental degradation, and human rights violations[310]. His proposed solutions emphasize the need for stronger institutional frameworks, enhanced community participation, and more effective enforcement mechanisms.[311]

The challenge of establishing environmental causation is further complicated by the temporal and spatial dimensions of extractive industry impacts. Studies by Asif et al.,[312]Nkem et al.,[313] Little et al.,[314] Keramea et al[315] document how environmental damage from oil spills and mining operations can persist for decades, with contamination spreading through complex pathways that make attribution to specific corporate actors extremely difficult. These researchers collectively found that oil spills in marine environments demonstrates that contamination may persist for years after initial incidents, with long-term ecological effects often manifesting through indirect pathways

[308] Nobes C, Stadler C., "Towards a solution to the variety in accounting practices of extractive firms under IFRS" (2021) 31 (4) Australian Accounting Review 273.
[309] Olawuyi, Damilola S. Extractives industry law in Africa. (Cham, Switzerland: Springer, 2018) 127-337. [Olawuyi]
[310] *Ibid* at 127
[311] Olawuyi, *supra*, note 309 at 337.
[312] Asif Z, Chen Z, An C, Dong J., "Environmental impacts and challenges associated with oil spills on shorelines" (2022) 10 (6) Journal of Marine Science and Engineering 762.
[313] Nkem AC, Topp SM, Devine S, Li WW, Ogaji DS., "The impact of oil industry-related social exclusion on community wellbeing and health in African countries" (2022) 10 Frontiers in public health 858512.
[314] Little DI, Sheppard SR, Hulme D., "A perspective on oil spills: What we should have learned about global warming" (2021) 202 Ocean & Coastal Management 105509.
[315] Keramea P, Spanoudaki K, Zodiatis G, Gikas G, Sylaios G. "Oil spill modeling: A critical review on current trends, perspectives, and challenges" (2021) 9 (2) Journal of marine science and engineering 181.

such as food chain bioaccumulation and habitat disruption.[316] In the same vein, Colvin et al's[317] review of oil spill health impacts found evidence of respiratory, endocrine, immunological, and genotoxic effects persisting for years in highly exposed cleanup workers, with some genetic polymorphisms increasing susceptibility to oil-related damage. Yet their research primarily examined health outcomes and did not go towards the causation patterns that create legal and procedural barriers for communities seeking remedy through formal methods.

Moreover, community impacts in extractive industries present a distinctive challenge in that environmental harm typically affects entire communities collectively rather than discrete individuals, creating complications for traditional legal frameworks designed around individual rights and remedies. The systematic review by Dongo and Relvas[318] examining oil industry impacts in Africa revealed that social exclusion manifested across multiple dimensions simultaneously - political, social, economic, and cultural. Their analysis showed that oil industry activities created cascading effects including loss of livelihoods, environmental degradation, and cultural disruption that affected communities as collective entities rather than as aggregations of individual victims. This collective nature of harm according to Zakari et al[319] creates challenges for legal systems that typically require individual plaintiffs to establish specific, personal injuries. The review documented how communities dependent on natural resources affected by oil spills were particularly vulnerable, experiencing not just individual health impacts but also broader social cohesion deterioration and cultural losses that persisted over time.

The collective versus individual harm distinction becomes particularly problematic when considering remedy mechanisms. Setyawati's[320] examination of extractive industries in Indonesia demonstrates how marginalized rural communities face systematic exclusion from mining investment opportunities, with patriarchal systems making the exclusion of women, youth, and people with disabilities particularly acute. The research revealed how extractive operations disrupted traditional economies and created competitors for resources like land, water, and workforce, but these impacts manifested at community and cultural levels that resist easy

[316] *Ibid.*
[317] Colvin, K., Lewis,C. and Galloway, T. 'Current issues confounding the rapid toxicological assessment of oil spills' (2020) 245 (2) Chemosphere, online: <https://doi.org/10.1016/j.chemosphere.2019.125585>
[318] Dongo DF, Relvas S. "Evaluating the role of the oil and gas industry in energy transition in oil-producing countries: A systematic literature review" (2025) 120 Energy Research & Social Science 103905.
[319] Zakari A, Khan I, Tawiah V, Alvarado R, Li G., "The production and consumption of oil in Africa: the environmental implications" (2022) 78 Resources Policy 102795.
[320] Setyawati, D., "Injustice and Environmental Harm in Extractive Industries and Solar Energy Policies in Indonesia," (2022) 11 (1) International Journal for Crime, Justice and Social Democracy 14-27.

quantification or individual attribution.[321] However, the study did not adequately explore how these collective impacts could be addressed through existing remedy frameworks, nor did it propose alternative approaches that might better serve affected communities' collective needs.
Long-term and intergenerational effects constitute another distinctive challenge for extractive industries, where environmental damage frequently persists across multiple generations, creating complex temporal dimensions for both causation and remedy.[322]

Faga and Uchechukwu's[323] and, Ewin et al's[324] comprehensive analysis of oil exploration in Nigeria's Niger Delta provides compelling evidence of how petroleum exploitation creates transgenerational environmental degradation. Their research documents how persistent emission of carbon dioxide and oil pollution contaminated arable land, fishing waters, and the atmosphere, resulting in almost total collapse of the local economy with effects that will likely persist for future generations. The study demonstrated how resources derived from oil exploitation are dissipated by elite minorities without regard to future generations, creating a pattern of intergenerational injustice where present extraction benefits are privatized while environmental costs are imposed on future community members.
The intergenerational dimension creates particular challenges for legal frameworks that typically operate within defined temporal boundaries and require present-day standing to bring claims. Halanych et al's[325] research reveals that some environmental effects, such as impacts on deep ocean corals and failed recruitment of marine species (the inability of fish and invertebrate populations to replenish through successful breeding and larval survival), can persist for decades after initial incidents. The Exxon Valdez oil spill case demonstrated that certain species remained in unrecovered status years after the incident, with some showing delayed recovery patterns that only became apparent through long-term monitoring.[326] These findings underscore how traditional

[321] *Ibid.*
[322] Bowles P, Andrews N., *Extractive Bargains and the State-Society Nexus: One World, Many Bargains. In Extractive Bargains: Natural Resources and the State-Society Nexus* (Cham: Springer International Publishing, 2023) at 3-30
[323] Faga, H.P. and Uchechukwu, U., "Oil Exploration, Environmental Degradation, and Future Generations in the Niger Delta: Options for Enforcement of Intergenerational Rights and Sustainable Development Through Legal and Judicial Activism," (2019) 34 Journal of Environmental Law and Litigation, 185.
[324] Ewim DR, et al., "Survey of wastewater issues due to oil spills and pollution in the Niger Delta area of Nigeria: a secondary data analysis" (2023) 47(1) Bulletin of the National Research Centre 116.
[325] Halanych KM, et al., "Effects of petroleum by-products and dispersants on ecosystems" (2021) 34(1) Oceanography 152.
[326] Martín-Cervantes PA, del Carmen Valls Martínez M., "Exxon Valdez" in *Encyclopedia of Sustainable Management* (Cham: Springer International Publishing, 2023) 1583-1589; Council EV. Exxon Valdez Oil Spill Trustee Council; online: < https://evostc.state.ak.us/>

legal timeframes for bringing environmental claims may be fundamentally inadequate for addressing the temporal scales on which extractive industry impacts actually manifest. Yet the research did not address how legal systems might be modified to account for these extended temporal effects or how intergenerational equity might be incorporated into remedy frameworks.

Corporate power and state complicity represent perhaps the most systemic challenge confronting efforts to address extractive industry violations, as the political economy of resource extraction often creates alignment between corporate and state interests that undermines independent regulation and remedy provision.[327] The extensive analysis of extractive bargains by Kelly[328] examining state-society relations reveals how states increasingly make larger claims for extraction, seeking to persuade citizens that extractive activities can deliver broader societal benefits even as direct economic benefits decline and environmental costs escalate. The works of Kelly[329] and Arce et al[330] documented how states construct complex "extractive bargains" that attempt to build consensus for resource extraction policies, often through promises of development benefits that may not materialize while environmental costs are imposed on local communities. The symbiotic relationship between corporations and states in extractive contexts creates challenges for remedy mechanisms that depend on state institutions for enforcement. David-Barret's[331] research on state capture in extractive industries demonstrates how companies can systematically influence legislation and regulatory frameworks through various forms of corruption, creating conditions where formal remedy mechanisms become ineffective. The analysis reveals how extractive companies, operating in sectors less exposed to competition, become particularly prone to rent-seeking behavior that captures state institutions meant to provide oversight and accountability. Under these conditions, affected communities, according to Tang et al.,[332] find themselves confronting not just corporate actors but also state institutions that have been compromised through various forms of capture.

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[327] Ryerson, C., Pinkert, D., and Kelly, A., "Seeking justice: the state of transnational corporate accountability," (2022) 132 Yale Law Journal Forum, 787.

[328] Kelly M., *Wealth Supremacy: How the Extractive Economy and the Biased Rules of Capitalism Drive Today's Crises* (Berrett-Koehler Publishers, 2023)

[329] *Ibid.*

[330] Arce M, Hendricks MS, Polizzi MS. The roots of engagement: Understanding opposition and support for resource extraction. (Oxford University Press, 2022).

[331] Dávid-Barrett E. "State capture and development: a conceptual framework" (2023) 1 Journal of International Relations and Development; David-Barrett L., "State capture and inequality" (2021) Research Paper in Pathfinders 4-27.

[332] Tang S, Elfenbein DW, Pasipanodya T. "Self-Regulation in Weak Institutional Environments: The Extractive Industries Transparency Initiative, Corruption, and Growth in Resource-Rich African Communities" (ResearchGate, 2025), online: <https://www.researchgate.net/publication/390842467_Self-Regulation_in_Weak_Institutional_Environments_The_Extractive_Industries_Transparency_Initiative_Corruption_and_Growth_in_Resource-Rich_African_Communities >

The Nigerian experience provides a particularly stark illustration of how state complicity undermines remedy mechanisms. Asiegbu et al's[333] research on resource allocation capture in Nigeria documents how political corruption has systematically distorted the distribution of oil revenues, creating a situation where the federal government's interest in oil revenue directly impacts its willingness and ability to protect communities in oil-rich regions. The analysis reveals how Nigeria's federal political system has been exploited to marginalize oil-producing communities, with their comparatively small population size limiting their political representation and voice in federal government decisions.[334] This creates a structural condition where the same state institutions responsible for providing remedy to oil-affected communities have institutional incentives that align with corporate rather than community interests.[335] The challenge of corporate power according to Wolfsteller[336] is further compounded by the transnational nature of many extractive corporations, which can leverage jurisdictional complexity to avoid accountability. Jackson's[337] research on transnational environmental litigation reveals how corporate defendants vastly outmatch individual or community plaintiffs in resources, legal expertise, and information access. This resource asymmetry affects remedy in multiple ways: it impedes negotiation by allowing companies to propose inadequate settlements knowing victims lack viable alternatives, and it deters litigation by making the cost of pursuing claims often outweigh possible recovery for affected communities. [338]Even where formal remedy mechanisms exist, power imbalances mean that voluntary processes often replicate rather than address underlying structural inequalities.[339]

Existing literature reveals significant gaps in addressing these interconnected challenges. While scholars have documented the complexities of environmental causation in extractive contexts, limited research has examined how these complexities specifically impede access to remedy or how alternative approaches might better serve affected communities. Similarly, while the collective nature of extractive industry impacts has been studied, insufficient attention has been paid to developing remedy frameworks that can adequately address community-wide and cultural harms rather than simply aggregating individual damages. The temporal dimensions of extractive

[333] Asiegbu MF, Ikeanyibe OM, Abang PO, Nwosu OC, Ugwu CE. "Natural resource fund governance and the institutionalization of rent seeking in Nigeria's oil sector." (2024) 52 (1) Politics & Policy 169.
[334] *Ibid.*
[335] Iwuoha VC., "Rethinking the 'patron–client' politics of oil block allocation, development and remittances in Nigeria" (2021) 48 (170) Review of African political economy 552.
[336] Wolfsteller R, Li Y., "Business and human rights regulation after the UN guiding principles: Accountability, governance, effectiveness." (2022) 23 (1) Human rights review 1.
[337] Jackson K., "The Theories of Corporate Personhood and Their Three False Choices: Developing a Framework for Corporate Rights" (2024) 21 Berkeley Bus. LJ. 387
[338] *Ibid.*
[339] Jackson, *supra,* note 337 at 389.

industry impacts present another area where existing remedy frameworks appear fundamentally inadequate, yet scholarly attention to alternative approaches remains limited. Most significantly, little research has explored how remedy mechanisms might be restructured to function effectively under these compromised institutional conditions. This research seeks to fill these critical gaps by examining whether current Nigerian laws and remedy mechanisms provide adequate redress for corporate human rights abuses in the extractive sector, and exploring how citizen-centered alternatives might better address the distinctive challenges identified in the literature.

2.4.4. Emerging Approaches to Remedy

The limitations of traditional state-centric and judicial remedial mechanisms have prompted scholars and practitioners to explore innovative approaches that prioritize community participation, restorative justice principles, and alternative regulatory frameworks. This emerging body of literature reflects a growing recognition that effective remedy in the business and human rights context requires moving beyond conventional legal paradigms to embrace more inclusive, participatory, and transformative approaches. Fraser[340] and O'Faircheallaigh[341] notes that these alternative approaches have gained traction in extractive industries contexts, where traditional legal remedies have proven inadequate in addressing the complex, long-term impacts of corporate activities on local communities.

2.4.4.1. Participatory and Community-Centered Approach

a. Impact and Benefit Agreements (IBAs)

The works of Cascadden et al,[342] Gibson and MacDonald[343] and, Caine and Krogman[344] on Impact and Benefit Agreements (IBAs) demonstrate how negotiated agreements between extractive companies and IPLC have evolved as private contractual mechanisms designed to provide remedial benefits while mitigating adverse impacts. Their research reveals that IBAs serve dual purposes: addressing negative impacts through enhanced mitigation measures and financial compensation, while ensuring IPLC receive a fair share of project benefits. Caine and Krogman[345]

[340] Fraser J., "Challenging State-centricity and legalism: promoting the role of social institutions in the domestic implementation of international human rights law" (2019) 23 (6) The International Journal of Human Rights 974.
[341] O'Faircheallaigh, C., "International recognition of Indigenous rights, Indigenous control of development and Indigenous peoples' living standards in Canada" (2012) 47 (4) Australian Journal of Political Science 559,
[342] Cascadden M, Gunton T, Rutherford M., "Best practices for impact benefit agreements" (2021) 70 Resources Policy 101921.
[343] Gibson G, MacDonald A. "Building connections between impact and benefit agreements and environmental and social impact assessment" in *Handbook of Social Impact Assessment and Management* (Edward Elgar Publishing, 2024) 531.
[344] Caine, K. J., & Krogman, N., "Powerful or just plain power-full? A power analysis of impact and benefit agreements in Canada's North" (2010) 23 (1) Organization & Environment 76.
[345] *Ibid.*

document various provisions typically found in IBAs, including labor provisions that ensure employment accessibility through preferential hiring and IPLC staffing quotas, economic development provisions that foster relationships between local IPLC-owned enterprises and extractive firms, and community wellbeing provisions that address societal challenges through education and social programming. While the works of Cascadden et al,[346] Gibson and MacDonald[347] and, Caine and Krogman[348] provide valuable insights into how negotiated agreements can serve remedial functions, their analysis remains primarily descriptive rather than evaluative and does not examine power asymmetries that may undermine the effectiveness of such mechanisms. Moreover, Caine and Krogman's research focuses exclusively on the Canadian context, which limits its immediate applicability to African postcolonial settings. Despite this geographic limitation, Canada's experience as a settler colonial state presents important parallels with postcolonial African contexts, particularly in how colonial legal frameworks, resource governance regimes, and IPLC state relations continue to shape the operation of extractive industry agreements. However, significant differences in legal recognition of IPLC rights, constitutional frameworks, and approaches to reconciliation require careful consideration when drawing lessons for African postcolonial contexts.

Building on this foundation, Fidler's[349] comprehensive analysis of negotiated agreements in the Canadian mining sector reveals that IBAs have become standard practice, with 182 such agreements in place as of 2012. Fidler's research demonstrates that these agreements are negotiated bilaterally between project proponents and IPLC groups whose lands or communities will be affected, with the aim of identifying potential socio-economic impacts and creating suitable benefit regimes to mitigate community concerns. His work provides important empirical evidence about the proliferation of IBAs and their role in addressing community grievances, noting that they often include provisions for milestone payments, annual payments tied to profitability, and ongoing monitoring mechanisms. However, Fidler's analysis lacks engagement with questions of legitimacy and effectiveness, particularly regarding whether these mechanisms actually deliver meaningful remedy to affected communities or merely serve to legitimize extractive activities without addressing underlying power imbalances. Furthermore, his work does not examine how

[346] Cascadden & Gunton, *supra*, note 342.
[347] Gibson & MacDonald, *supra*, note 343.
[348] Caine & Krogman, *supra*, note 344.
[349] Fidler, C., "Increasing the certainty of Aboriginal treaty and land claims settlements through negotiated agreements" (Doctoral dissertation: University of Calgary, 2009)

such agreements might function in contexts characterized by limited statehood or weak regulatory frameworks.

Caicco,[350] O'Faircheallaigh,[351] and Prno and Slocombe[352] extend this analysis by examining how IBAs function as tools to accommodate Aboriginal interests and ensure that benefits flow to impacted communities while addressing social risk factors within communities. Their research reveals that IBAs can act as risk-mitigating tools for both proponents and IPLC groups, reflecting unique circumstances and community preferences while being responsive to market forces. Prno and Slocombe[353] document how IBAs typically include provisions for the relinquishing of certain legal actions and claims against proponents, as well as commitments that IPLC groups will not support legal challenges to project approvals. While the works of Caicco,[354] O'Faircheallaigh,[355] and Prno and Slocombe[356] provide valuable insights into how IBAs function as alternative remedy mechanisms, their analysis suffers from an acceptance of IBAs as adequate remedy mechanisms without examining the structural limitations that undermine their effectiveness. Specifically, while IBAs are legally binding contracts between communities and corporations, they are not mandated by law, lack standardized legal requirements governing their content, and operate without mandatory state oversight or enforcement mechanisms. This legal vacuum means that power asymmetries and economic dependence substantially shape both the negotiation of these agreements and their actual implementation, constraining genuine community choice and accountability. Additionally, their research does not engage with broader questions about whether such privatized remedy mechanisms are consistent with international human rights standards or whether they may actually undermine access to formal legal remedies.

b. Free, Prior, and Informed Consent (FPIC)

The literature on Free, Prior, and Informed Consent (FPIC) provides another important dimension of alternative approaches to remedy, though various researchers have debated whether FPIC should be understood primarily as a preventive mechanism or as a form of remedy itself.

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[350] Ms. Caicco HM. Creating Pathways to Reconciliation Through Incorporating Indigenous Voices and Culture into the Development of Impact Benefit Agreements (IBAs) on First Nation Traditional Territory <https://uwo.scholaris.ca/items/a4e34175-3200-43c1-8511-129b97f2ba8b>

[351] O'Faircheallaigh C., "Impact and benefit agreements as monitoring instruments in the minerals and energy industries" (2020) 7 (4) The Extractive Industries and Society 1338.

[352] Prno, J., & Slocombe, D. S., "Exploring the origins of 'social license to operate' in the mining sector: Perspectives from governance and sustainability theories." (2012) 37 (3) Resources Policy 346.

[353] *Ibid.*

[354] Caicco, *supra*, note 350.

[355] O'Faircheallaigh C., "Impact and benefit agreements as monitoring instruments in the minerals and energy industries" (2020) 7 (4) The Extractive Industries and Society 1338.

[356] Prno, J., & Slocombe, D. S., "Exploring the origins of 'social license to operate' in the mining sector: Perspectives from governance and sustainability theories" (2012) 37 (3) Resources Policy 346.

Tomilson[357] and Lehr and Smith's[358] comprehensive analyses of corporate FPIC implementation reveals that FPIC encompasses both a process and an outcome, involving information exchanges, consultation, internal deliberation, and negotiation steps conducted to seek consent from affected IPLC. Their research demonstrates that effective FPIC processes require that consent be given voluntarily without coercion (free), before the specified activity is authorized (prior), and after communities have received relevant, timely, and culturally appropriate information (informed). Lehr and Smith[359] further argue that FPIC mechanisms can provide important remedial benefits by enabling early dialogue between companies and communities, potentially preventing harm from escalating and rebuilding trust in corporate relationships. However, their analysis is primarily normative and does not address the structural constraints that may limit the effectiveness of FPIC in practice, particularly in contexts where communities lack the resources or technical expertise to meaningfully evaluate complex industrial projects. Moreover, their work does not sufficiently engage with questions about how FPIC processes might function as remedy mechanisms in postcolonial contexts characterized by limited statehood and weak governance institutions.

The Accountability Framework Initiative's operational guidance on FPIC provides additional insights into how these mechanisms might function in practice, emphasizing that FPIC is both a collective human right and a practical tool for promoting, protecting, and safeguarding underlying fundamental human rights including property rights, cultural rights, and self-determination.[360] The Framework outlines detailed procedural requirements for effective FPIC processes, including the identification of decision-makers and parties to negotiation, specification of decision-making processes of respective parties, and agreements on information sharing formats and protocols.[361] While this guidance provides valuable practical insights into FPIC implementation, it remains largely prescriptive rather than analytical, and does not critically examine the limitations of FPIC as a remedial mechanism or how power asymmetries may undermine its effectiveness in practice. Furthermore, the Framework's focus on procedural requirements does not adequately address substantive questions about whether FPIC processes can deliver meaningful remedy for past harms or whether they primarily function as legitimation mechanisms for ongoing extractive activities.

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[357] Tomlinson K. Indigenous rights and extractive resource projects: negotiations over the policy and implementation of FPIC. The International Journal of Human Rights. 2019 May 28;23(5):880.
[358] Lehr, A. K., & Smith, G. A., "Implementing a corporate free, prior, and informed consent policy: Benefits and challenges" (Foley Hoag LLP, 2010)
[359] *Ibid.*
[360] Sawathvong S, Hyakumura K., "A comparison of the free, prior, and informed consent (FPIC) guidelines and the "Implementation of Governance, Forest Landscapes, and Livelihoods" project in Lao PDR: The FPIC team composition and the implementation process." (2024) 13 (4) Land 408.
[361] *Ibid.*

2.4.4.2. Regulatory Innovations and Mandatory Approaches

Moving beyond industry-specific mechanisms, the literature on mandatory human rights due diligence laws represents another important development in alternative approaches to remedy. Lapierre et al's[362] analysis of France's Corporate Duty of Vigilance Law demonstrates how this groundbreaking 2017 legislation requires large companies to effectively manage human rights and environmental risks throughout their value chains, including subsidiaries, subcontractors, and suppliers. The law requires companies to establish, implement, and publish vigilance plans that include risk mapping, regular assessments, preventive actions, alert mechanisms, and monitoring systems.[363] Lapierre's research reveals that the law establishes two key enforcement mechanisms: formal notice procedures that can compel companies to enact or improve vigilance plans, and civil liability provisions that enable affected persons to seek damages for negligence. While this research provides important insights into how mandatory due diligence laws might strengthen access to remedy, the analysis does not provide evidence about the law's effectiveness in practice. Moreover, the focus on French law limits the applicability of these insights to other jurisdictions, particularly postcolonial contexts where different legal traditions and enforcement capacities may affect implementation.

The European Union's Corporate Sustainability Due Diligence Directive (CSDDD), adopted in July 2024, initially represented a significant evolution in mandatory approaches to remedy. However, the directive has been substantially weakened through the EU's 2025 Omnibus Simplification Package, which eliminated the harmonized civil liability regime that was central to

[362] Lapierre, T., Duverne, C., & Zorrilla, J., "What if future EU mandatory human rights due diligence legislation comes to rescue of French corporate duty of vigilance law?" (2017) International Bar Association <https://www.ibanet.org/article/0b9779ee-5105-4a43-b92e-ef4536e664f9>

[363] *Ibid.*

effective remedy.[364] Scott's[365] analysis of the new European human rights rules reveals that the CSDDD requires proactive identification of adverse impacts, prevention measures, and remediation of violations while creating civil liability for failure to provide adequate remediation. However, Scott's analysis acknowledges that these mandatory due diligence laws risk being undermined by divergent national implementations and uneven enforcement, and notes that early assessments suggest significant implementation challenges. While this research provides important insights into regulatory innovations, it remains largely prospective and does not provide evidence about the effectiveness of these approaches in delivering meaningful remedy to affected communities. Although European regulatory developments such as the CSDDD theoretically provide remedy mechanisms for communities in postcolonial contexts whose rights have been violated by European corporations, through extraterritorial civil liability claims in European courts—the practical application of these mechanisms remains constrained by significant barriers. The accessibility of European legal remedies depends on communities' capacity to navigate complex European legal systems, afford litigation costs, gather evidence of violations occurring in distant locations, and engage with judicial processes operating in unfamiliar legal and linguistic contexts. Furthermore, the weakening of EU-wide harmonized liability standards through the 2025 Omnibus Package means that remedy availability will now vary across Member States, creating additional fragmentation for Global South rights-holders seeking to access justice. These practical limitations raise questions about whether European regulatory frameworks, despite their theoretical extraterritorial scope, genuinely empower affected communities or merely create an illusion of remedy accessible only to those with sufficient financial and institutional resources.

a. Regional Human Rights Mechanisms

[364] Under the revised CSDDD, Member States retain full discretion to establish their own civil liability rules, creating a fragmented legal landscape across the EU rather than the uniform accountability framework originally envisioned. This retreat from harmonized civil liability fundamentally undermines the directive's potential to provide effective remedy, as victims' access to justice will now vary dramatically depending on which Member State's courts they access. Additionally, the Omnibus Package has narrowed the directive's scope to apply only to companies with over 5,000 employees and €1.5 billion in annual revenue, reducing coverage from approximately 3,400 companies to fewer than 1,000, and restricted due diligence obligations primarily to direct suppliers, thereby excluding most environmental and human rights risks that lie deeper within complex global supply chains; European Commission, Proposal for a Directive of the European Parliament and of the Council amending Directives (EU) 2022/2464 and (EU) 2024/1760 as regards certain provisions for simplification and adjustment of reporting and due diligence obligations, COM(2025) 80 final (26 February 2025) [Omnibus Simplification Package]; See Lara Wolters, quoted in "European Council agrees to weaken corporate sustainability laws" (27 June 2025), online: EU Perspectives <https://euperspectives.eu/2025/06/corporate-sustainability-laws/ > [stating that without harmonised liability rules, "there is no action to prevent sweatshops collapsing on workers" and the result is "a nightmarish legal patchwork"].

[365] Scott, M., "ESG watch: New European human rights rules leave companies with 'big gap to close'" Reuters, (July 11, 2024) <https://www.reuters.com/sustainability/society-equity/esg-watch-new-european-human-rights-rules-leave-companies-with-big-gap-close-2024-07-11/>

The negotiations around a binding international treaty on business and human rights is another significant development in alternative approaches to remedy. The analysis by Georgetown University Law Center of the proposed legally binding instrument reveals that the draft treaty would establish broader jurisdictional provisions, reversal of burden of proof, removal of statute of limitations for human rights abuses, and elimination of *forum non conveniens* doctrines.[366] The proposed treaty would obligate state parties to take appropriate legal and policy measures to ensure business enterprises respect internationally recognized human rights and prevent human rights abuses throughout their operations.[367] However, the Law Center's analysis acknowledges that the treaty negotiations face significant political obstacles, with key states like the United States and European Union only recently engaging in the process, while implementation challenges and enforcement mechanisms remain unresolved. While this research provides important insights into potential innovations in international law, it remains largely prospective and does not extend to how a binding treaty might function in practice, particularly in contexts characterized by limited statehood and weak enforcement capacities.

Regional human rights mechanisms provide another avenue for alternative approaches to remedy, though their effectiveness varies considerably across different regions. The analysis of regional human rights systems by the European Parliament reveals that while the African, Inter-American, and European systems provide different models for addressing corporate accountability, they face significant structural constraints.[368] The African system, while comprehensive in scope, suffers from under-funding, lack of political support from member states, and limited institutional capacity. The Inter-American system provides more advanced mechanisms for addressing business and human rights violations compared to other regional systems, yet it faces significant limitations that constrain its effectiveness in providing comprehensive remedies for victims. The Inter-American Court of Human Rights (IACtHR) has demonstrated increasing willingness to engage with business and human rights principles,[369] particularly through landmark cases such as

[366] Overview of the proposed binding treaty on business and human rights. (Georgetown University Law Center, 2023)
[367] *Ibid.*
[368] The role of regional human rights mechanisms (Think Tank | European Parliament, 2010), online: <https://www.europarl.europa.eu/thinktank/en/document/EXPO-DROI_ET(2010)410206>
[369] University of Ottawa. "Business and Human Rights in Latin America." Human Rights Research and Education Centre. Accessed online at:< https://www.uottawa.ca/research-innovation/hrrec/teaching-training/business-and-human-rights-latin-america.>

Kaliña and Lokono v. Suriname (2015),[370] *Miskito Divers v. Honduras (2021),*[371] *and Martina Vera v. Chile (2021),*[372] which explicitly incorporate the United Nations Guiding Principles on Business and Human Rights into its jurisprudence. These decisions establish important state obligations, including the duty to prevent human rights violations by private entities operating under state jurisdiction, adopt specific laws and policies on human rights due diligence, and establish effective grievance and reparation mechanisms. However, the system's reach and capacity are substantially limited by two critical structural obstacles. First, the absence of the United States as a party to key Inter-American human rights conventions, most notably the American Convention on Human Rights, creates a significant governance gap, as the United States is home to numerous multinational corporations engaged in extractive activities throughout Latin America and the Caribbean, yet remains outside the system's jurisdiction. This jurisdictional limitation means that victims of violations perpetrated by U.S.-based corporations frequently cannot access the Inter-American Court's remedial mechanisms against their home state. Second, the system historically lacked autonomous access for individuals directly to the Inter-American Court, a restriction that channeled claims exclusively through the Inter-American Commission on Human Rights, thereby creating procedural delays and gatekeeping functions that hindered victims' direct appeal mechanisms. Although recent developments have expanded individual access possibilities, the practical barriers remain substantial. Additionally, the IACtHR has demonstrated reluctance to issue specific prescriptive orders mandating corporations' compliance with due diligence frameworks or corporate accountability standards, instead emphasizing state-based obligations and providing only general guidance on business conduct. The Court's decisions, while advancing the integration of business and human rights principles with the American Convention, often fall short of imposing concrete remedial measures targeting corporate behavior directly, instead primarily addressing state responsibility for failure to regulate and monitor private business activities adequately. Furthermore, weak domestic legal systems and institutions throughout the Americas have proven insufficient in preventing corporate human rights abuses and providing effective remedies to victims at the national level, necessitating reliance on regional mechanisms that are themselves constrained by jurisdictional and procedural limitations.

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[370] *IACTHR (2015) Series C, No. 309 (hereinafter Kaliña and Lokono Peoples). For the discussion see MacKay, Fergus, The Case of the Kaliña and Lokono Peoples v Suriname and the UN Declaration on the Rights of Indigenous Peoples: Convergence*, Divergence and Mutual Reinforcement (April 2018). Erasmus Law Review, Vol. 11, No. 01, 2018, online: SSRN <https://ssrn.com/abstract=3174650>.

[371] IACHR. Report No. 64/18. Case 12.738. Merits. Opario Lemoth Morris and others. (Miskito Divers). Honduras. May 8, 2018

[372] IACHR, Report No. 44/16, Case 13.039, Martina Rebecca Vera Rojas (Chile), November 11, 2016.

While this research provides valuable comparative insights into regional mechanisms, it does not specifically examine how these systems address corporate human rights violations or their effectiveness in providing remedy to affected communities. Moreover, the analysis remains largely institutional rather than evaluative and does not assess whether regional mechanisms can effectively complement or substitute for weak national remedial systems.

2.4.4.3. Restorative vs. Retributive Justice Approaches

The literature on restorative justice approaches to corporate accountability is a significant departure from traditional punitive models, though its application in business and human rights contexts remains underdeveloped. Schormair and Gerlach's[373] groundbreaking work on corporate remediation develops a restorative justice framework for addressing business-related human rights violations. They argue that restorative approaches can provide dialogue-based, non-judicial remediation that focuses on harms and needs of victims while aiming to restore justice through restorative dialogue. The authors propose that companies should design and prepare remediation processes in collaboration with victims, offenders, and affected community members, enabling repair of harm, restoration of legitimacy, and transformation of business practices to prevent future violations. However, Schormair and Gerlach's work remains largely theoretical rather than empirical and does not provide evidence about how restorative approaches might work in practice or whether they can effectively address power asymmetries between corporations and affected communities. Furthermore, their research does not examine how restorative approaches might function in postcolonial contexts or how they might complement or substitute for formal legal remedies.

Preston's[374] analysis of restorative justice for environmental crimes provides additional insights into how these approaches might address corporate environmental harms. Preston argues that restorative processes can be transformative for victims, offenders, communities, environments, and justice systems by bringing together victims, offenders, and communities to collectively resolve how to deal with environmental harms and their implications for the future.[375] His research explores different models of restorative justice and examines how the broader community, future generations, and the environment itself might be recognized as victims of environmental crime and participate in restorative processes. Preston's work demonstrates how restorative approaches

[373] Schormair, M. J. L., & Gerlach, L. M., "Corporate remediation of human rights violations: A restorative justice framework" (2020) 167: 3 Journal of Business Ethics 475.
[374] Preston, B. J., "The use of restorative justice for environmental crime" (2011) 35 (3) Criminal Law Journal 136.
[375] *Ibid*

can yield reparation, restitution, and compensation for environmental harm while encouraging preventive measures and community healing. However, Preston's analysis remains largely conceptual and does not provide evidence about the effectiveness of restorative approaches in environmental contexts. Moreover, his focus on criminal law contexts limits the applicability of these insights to civil remedial proceedings, and his work does not address how restorative approaches might function in contexts characterized by limited statehood or weak judicial systems.

a. Truth and reconciliation

The literature on truth and reconciliation approaches to corporate harms represents another dimension of restorative approaches, though their application in business contexts remains limited. The International Commission of Jurists'[376] analysis of transitional justice mechanisms in business and human rights contexts reveals that truth commissions have been used in several jurisdictions to address corporate complicity in human rights violations during periods of conflict or authoritarian rule. The ICJ research documents how truth commissions in countries like South Africa, Argentina, and Colombia have examined the role of businesses in facilitating or exacerbating human rights abuses, though with varying degrees of success.[377] The analysis reveals that truth commissions can serve important functions in establishing historical records, providing platforms for victim testimony, and making recommendations for institutional reform. However, the ICJ study notes that truth commissions focused on corporate accountability have often occurred in piecemeal fashion with little grounding in international human rights law and standards.[378] Moreover, the research acknowledges that truth commissions alone are insufficient to provide comprehensive remedy and must be complemented by other accountability mechanisms including judicial proceedings and reparations programs.

b. Collective vs. Individual Remedies

The distinction between collective and individual remedies represents another important dimension in the literature on alternative approaches. The African Court on Human and Peoples' Rights' comparative study on reparations reveals that collective compensation awards are

[376] International Commission of Jurists, "Corporate accountability for abuses of economic, social and cultural rights in conflict and transition" (2020) 15 Practitioners' Guide < https://www.icj.org/resource/corporate-accountability-for-abuses-of-economic-social-cultural-rights-in-conflict-and-transition-icj-new-guide/ > [ICJ].
[377] *Ibid.*
[378] ICJ, *supra,* at note 376

particularly important for remedying violations committed against specific groups, especially in contexts involving large-scale violations.[379] The study demonstrates that collective reparations may take various forms including symbolic measures, victim assistance programs, community development grants, and institutional reforms, depending on the needs of victims.[380] The African Court analysis argues that where entire groups have suffered harm, collective reparations may be preferable to individual awards because they can address structural and systemic issues affecting wider populations.[381] However, the study acknowledges that designing effective collective reparations presents significant challenges, including identifying appropriate beneficiaries, determining fair distribution mechanisms, and ensuring that collective measures do not obscure individual harms. While this research provides important insights into collective approaches to remedy, it does not specifically examine how collective reparations might address corporate human rights violations or how they might be implemented in contexts characterized by limited statehood.

The emergence of new governance theory provides a broader conceptual framework for understanding these alternative approaches to remedy. Salcito[382] and Ruggie's[383] analysis of global governance and new governance theory demonstrates how business and human rights challenges require moving beyond traditional command-and-control regulation toward networked governance approaches that align different governance systems. Specifically, Ruggie argues that corporate conduct is shaped by three distinct governance systems: public law and governance, civil governance involving affected stakeholders, and corporate governance that internalizes elements of the other two.[384] His research suggests that effective remedy requires better alignment between these systems through mechanisms that add distinct value, compensate for each other's weaknesses, and play mutually reinforcing roles. While Ruggie's work provides important conceptual insights into how alternative approaches might function, it remains largely theoretical and does not provide evidence about the effectiveness of networked governance approaches in

[379] African Court on Human and Peoples' Rights. (2019). Comparative study on the law and practice of reparations for human rights violations. African Union, onlinc: https://www.african-court.org/wpafc/wp-content/uploads/2020/11/Comparative-Study-on-the-Law-and-Practice-of-Reparations-for-Human-Rights-Violations.pdf> [ACHPR]
[380] *Ibid.*
[381] ACHPR, *supra,* note 379
[382] Salcito K., "Human rights and due diligence" in *Handbook of Social Impact Assessment and Management* (Edward Elgar Publishing, 2024) at 230-245
[383] Ruggie, J. G., "Global governance and "new governance theory": Lessons from business and human rights" (2014) 20 (1) Global Governance 5.
[384] *Ibid.*

practice. Moreover, his analysis does not adequately address how new governance approaches might function in contexts characterized by limited statehood or how they might address structural power imbalances between corporations and affected communities.

c. Multi-stakeholder initiatives (MSIs)

The literature on multi-stakeholder initiatives (MSIs) provides another perspective on new governance approaches to remedy. Baumann-Pauly et al.'s[385] analysis of industry-specific MSIs reveals that these initiatives have emerged as a default mechanism for addressing human rights challenges in various industries by bringing together businesses, civil society organizations, and other stakeholders.[386] Their research examines MSIs such as the Fair Labor Association and Global Network Initiative, demonstrating how these initiatives can develop legitimacy through inclusive standard-setting processes and stakeholder engagement.[387] The authors argue that MSIs represent a middle path between purely voluntary approaches and mandatory regulatory mechanisms, offering potential benefits including enhanced accountability, shared learning, and collaborative problem-solving. However, both Baumann-Pauly[388] and Harrison and Wielga research[389] identify significant limitations of MSIs. Harrison and Wielga's comprehensive study of the Roundtable on Sustainable Palm Oil found that MSI grievance mechanisms, despite adhering to procedural standards demanded by the UNGPs, failed to provide remedies for claimants, with only one case out of multiple complaints resulting in remedy provision.[390] Baumann-Pauly similarly documents questions about MSIs' democratic legitimacy, potential for corporate capture, and uneven enforcement mechanisms.[391] These structural failures suggest that MSIs, while representing a middle path between voluntary approaches and mandatory regulation, may ultimately perpetuate power asymmetries that favor corporate interests over rights-holder protection. While these research provides valuable insights into multi-stakeholder approaches, it does not specifically

[385] Baumann-Pauly, D., Nolan, J., van Heerden, A., & Samway, M., "Industry-specific multi-stakeholder initiatives that govern corporate human rights standards: Legitimacy assessments of the fair labor association and global network initiative" (2017) 143 (4) Journal of Business Ethics 771.
[386] *Ibid*
[387] Baumann-Pauly et al., *supra,* note 385.
[388] Dorothée Baumann-Pauly et al, *Organizing Accountability: Platform Governance and the Shape of Multi-Stakeholder Initiatives* (NYU Stern Center for Business and Human Rights, 2016) at 15–23
[389] M. Wielga & J. Harrison, "Assessing the Effectiveness of Non-State-Based Grievance Mechanisms in Providing Access to Remedy for Rightsholders: A Case Study of the Roundtable on Sustainable Palm Oil" (2021) 6:1 Business and Human Rights Journal 67–92 at 85–88.
[390] *Ibid.*
[391]Baumann-Pauly et al., *supra,* note 385.

examine how MSIs might function as remedy mechanisms or whether they can provide effective redress for victims of corporate human rights violations.

The application of stakeholder capitalism theory to remedy mechanisms represents another important development in the literature. Palladino and Karlsson's[392]analysis of stakeholder governance models argues that rebalancing power within firms to drive inclusive decision-making is necessary for fostering accountable capitalism. Their research suggests that stakeholder governance approaches can incentivize firms to act in ways that benefit the economy as a whole rather than select shareholders, potentially including more responsive approaches to remedy.[393] The authors examine how stakeholder models might transform corporate governance structures, decision-making processes, and accountability mechanisms to align with broader stakeholder interests. However, Palladino and Karlsson's work remains largely prescriptive and does not provide evidence about how stakeholder governance approaches might improve remedy outcomes in practice. Moreover, their analysis does not address how stakeholder approaches might function in postcolonial contexts or how they might overcome structural constraints that limit corporate accountability.

d. Community Healing and Rehabilitation

The literature on community healing and rehabilitation approaches provides additional insights into alternative remedial mechanisms, particularly in extractive industries contexts. Research on community-based approaches to mine rehabilitation by Alonzo et al[394] reveals six different models for working with communities in rehabilitating legacy mines, ranging from community information and consultation to community leadership and ownership of rehabilitation processes. Alonzo et al demonstrated that community leadership models, while less common than information-based approaches, can provide more meaningful engagement and better outcomes for affected communities. However, the study acknowledges that community-based approaches face significant challenges including resource constraints, technical capacity limitations, and power imbalances with mining companies. While this research provides valuable insights into participatory approaches to addressing corporate-caused environmental harm, it focuses primarily

[392] Palladino, L., & Karlsson, K., *Towards 'accountable capitalism': Remaking corporate law through stakeholder governance* (Roosevelt Institute, 2018)
[393] *Ibid.*
[394] Alonzo D, et al., "Working with the community for the rehabilitation of legacy mines: approaches and lessons learned from the literature" (2024) 98 Resources Policy 105351.

on technical rehabilitation rather than broader remedy mechanisms and does not examine how community-based approaches might address human rights violations or provide comprehensive redress for affected communities. The limited attention to power asymmetries and structural constraints represents a significant gap across much of this literature. While various studies have documented a range of innovative approaches to remedy,[395] many fail to adequately address how power imbalances between corporations and affected communities may undermine the effectiveness of alternative mechanisms. The voluntary nature of many proposed solutions, from IBAs to MSIs to corporate grievance mechanisms, raises questions about whether they can provide meaningful remedy or whether they primarily serve to legitimize corporate activities while deflecting more stringent accountability measures.

2.4.5. Global Southern Perspectives on Remedy and Environmental Justice

Researchers[396] have long argued that the vocabulary and institutional prescriptions of global business-and-human-rights discourse does not fully cover the lived realities of communities that experience environmental harm at the extractive frontier.

Raji and Abejide's[397] study of oil pollution litigation in the Niger Delta demonstrates how formal remedies routinely collapse under the combined weight of evidentiary burdens, protracted procedure and corporate influence, leaving victims to subsist in the midst of legal abundance. Idemudia's[398] seminal work argues that the language of "corporate social responsibility" masks a deeper crisis of distributive justice by re-inscribing colonial patterns of accumulation; he concludes that without an enforceable governance framework, CSR initiatives reproduce rather than resolve, grievances linked to oil production. Frynas'[399] socio-legal survey of more than 500 oil-spill suits filed against Shell in the 1980s and 1990s similarly demonstrates that, while domestic tort litigation appears prolific, procedural delays, evidentiary burdens and forum shopping render formal remedy largely illusory for most plaintiffs. These early insights have been refined by a new generation of

[395] Healy C., "Beyond restorative justice: Prioritising deliberative self-determination in Indigenous Sentencing Court systems" (2025) 47 The Sydney L. Rev. 1; Rastegar R, Becken S., "Embedding justice into climate policy and practice relevant to tourism." (2024) Journal of Sustainable Tourism 1-8; Gao H, Lin T., "How to Compensate Forest Ecosystem Services Through Restorative Justice: An Analysis Based on Typical Cases in China". (2025) 16 (8) Forests 1254.
[396] Ite AE, et al., "Petroleum industry in Nigeria: Environmental issues, national environmental legislation and implementation of international environmental law" (2016) 4 (1) American Journal of Environmental Protection.
[397] Raji AO, Abejide TS., "The British mining and oil regulations in colonial Nigeria c. 1914-1960s: an assessment" (2014) 51 (1447) Singaporean Journal of Business, Economics and Management Studies 1.
[398] Idemudia, U., "Corporate Social Responsibility in the Niger Delta: Past, Present and Future Challenges" (2022) 66(4) Journal of African Law 587.
[399] Frynas, J.G., "Rethinking the Role of Corporate Social Responsibility in the Nigerian Oil Sector" (2010) 22(7) Journal of International Development 833.

Nigerian researchers who combine doctrinal analysis with empirical fieldwork to show the multiple registers, legal, cultural, gendered, through which communities contest environmental harms and seek redress. Ekhator[400] shows that Nigeria's environmental-justice deficit is inseparable from colonial patterns of land tenure that exclude customary rights from compensation schedules, thereby leaving IPLC women disproportionately burdened by ecological loss and unpaid care work. His doctrinal critique of public-interest standing further explains why landmark victories such as *Gbemre v Shell*[401] have had limited transformative impact: the high costs of expert evidence and the doctrine of locus standi continue to constrain community-scale claims, leading to a "justice-in-principle" gap between constitutional rhetoric and enforceable relief. The Niger Delta experience exemplifies what Olawuyi and Ako[402] describe as divergent tales where oil revenues benefit government and corporate actors while environmental and social costs are borne by local communities without adequate remedy. The authors argue that environmental justice considerations must become integral to governance in Nigeria, especially if its oil industry is to survive. The authors document how multinational oil companies have, in joint ventures with the Federal Government of Nigeria, exploited Niger Delta resources for over half a century while generating "multiple negative impacts on host communities. Despite extensive legal frameworks regulating the oil industry, they demonstrate that remedy mechanisms remain inadequate, leading to restive host communities and production disruptions that do not augur well for the national economy. Their analysis is particularly valuable for this research because it provides empirical documentation of the failure of existing legal and institutional frameworks to deliver environmental justice in Nigeria's oil sector. They argue that current approaches have created "divergent tales" where oil revenues benefit government and corporate actors while environmental and social costs are borne by local communities without adequate remedy or compensation.

Siloko's[403] recent work on human security echoes this assessment, showing that monetary compensation obtained through sporadic court victories rarely translates into restored livelihoods or ecological rehabilitation and thus fails the African Commission's standard of adequate, effective

[400] Ekhator, E.O., "The Concept of Environmental Justice in the Nigeria Legal System" (2024) Global Journal of Politics, Law and Research 12-25; Ekhator, E.O. and Obani, P., "Environmental Justice and Women in Nigeria: A Critical Analysis of Gender Dimensions in Oil Pollution Cases" (2020) 15(2) Journal of Environmental Law and Policy 45.
[401] (2005) 6 AHRLR 152 (Nigeria).
[402] Ako, Rhuks T., and Damilola S. Olawuyi. "Environmental justice in Nigeria: divergent tales, paradoxes and future prospects." *The Routledge Handbook of Environmental Justice*, (Routledge, 2017) at 567.
[403] Siloko BE, "Human security, sustainable livelihoods and development: the case of the Niger Delta region in Nigeria" (2024) 14 (2-3) Global Discourse 411.

and prompt reparation. Drawing on extensive field interviews, Yamou[404] documents how women farmers in Bayelsa State navigate informal mediation forums because statutory processes are seen as alien, expensive and ultimately toothless. These studies complicate the predominant Euro-American focus on doctrinal completeness by foregrounding the micro-politics of enforcement and the social meanings attached to remedy in post-colonial setting.

Nigerian legal scholars extend this critique to administrative grievance architecture. Igbayiloye and Niyi-Gafar's[405] 2025 survey of mining litigation emphasizes the strategic use of procedural maneuvers, appeals, jurisdictional challenges, to protract cases until claimants' resources are exhausted or they are induced into unpalatable out-of-court settlements. Their data corroborate an earlier comparative study by Perrin,[406] which found that in *Wiwa v Shell*[407] and *Bowoto v Chevron*[408] the defendants weaponized discovery rules and settlement confidentiality to forestall precedent-setting judgments. Such practices, they argue, convert the adversarial system into a "negotiated attrition arena" that privileges corporations' superior staying power. Against this backdrop of legal attrition, Idowu's[409] empirical research on community-centric CSR identifies emergent forms of negotiated remedy, youth employment quotas, seed-fund endowments for local cooperatives, restorative justice circles, whose legitimacy derives less from court endorsement than from iterative dialogue and social monitoring structures embedded in host communities. While these arrangements lack formal enforceability, they often achieve faster restitution of livelihoods than statutory processes mired in injunctions and interlocutory appeals. Ezenwa-Ohaeto[410] further demonstrates that the statutory mandate of agencies such as the National Oil Spill Detection and Response Agency is crippled by overlapping jurisdiction and endemic under-funding, creating a remedy-in-name-only gap that fuels recourse to militancy. Emoyan et al's[411]

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[404] Yamou TA. *Addressing environmental damage to enhance agricultural livelihoods and improve the well-being of local communities: The case of crude oil pollution in Nigeria* (Doctoral dissertation, University of Kent,).

[405] O Igbayiloye & S Niyi-Gafar, "Litigation against MNCs: A Medium for Accountability for Human Rights Violations in Nigeria's Extractive Industries" (2025) 12:1 J Comp Pol'y Analysis & L at 87.

[406] Perrin, S., "Ogoni Activism and Access to Remedy: Transnational Corporate Accountability in Nigeria's Oil Sector" (2024) Columbia Hum. Rts. L. Rev., online: <https://hrlr.law.columbia.edu/files/2025/05/Perrin_Ogoni-Activism_Final-Upload.pdf>

[407] 226 F.3d 88 (2d Cir. 2000).

[408] *621 F.3d 1116*, 2010

[409] Idowu, A., Kalagbor, I. and Mulat-Weldmeskel, E., 'Corporate Social Responsibility (CSR), Service Failures and Community Development in Nigeria's Niger Delta' (2022) 14(3) University Politehnica of Bucharest Scientific Bulletin 156.

[410] Ezenwa-Ohaeto N, Ewulum BE, Okaphor E. "An Appraisal of the Impact of the National oil spill detection and response agency on environmental pollution in Nigeria" (2020) African J. of Const'l and Admin. L. 4

[411] Emoyan OO, Agbaire PO, Ohwo E, Tesi GO., "Priority mono-aromatics measured in anthropogenic impacted soils from Delta, Nigeria: concentrations, origin, and human health risk." (2022) 23 (1-2) Environmental Forensics 141.

environmental science analysis corroborates the legal scholarship: empirical water-quality tests in Ogoniland reveal contamination levels exceeding WHO thresholds years after court-ordered clean-ups, underscoring the chasm between judicial pronouncement and material redress. Together, these Nigerian voices underline the necessity of evaluating "delivery" alongside "access," reinforcing the UN Working Group's insistence that legitimacy turns on outcomes perceived as restorative by rights-holders.

Global South authors also provide a more skeptical reading of fashionable participatory devices such as FPIC. While corporate social-performance literature often presents FPIC as a silver bullet, Cuba et al's[412] comparative research in Ghana and Peru finds that consent processes are frequently front-loaded, enabling companies to secure a social license while deferring substantive remedial commitments which she labels as the performance of participation. Ugandan economist Atuhairwe counters that, if embedded in community-owned monitoring frameworks and buttressed by independent funding for technical advice, FPIC can discipline state regulators and firms by exposing non-compliance to transnational advocacy networks.[413] This divergence within Southern research cautions against treating FPIC as either inherently emancipatory or irredeemably co-opted; instead, its effectiveness depends on the surrounding ecology of accountability institutions, power asymmetries and resource flows.[414]

Debates over emerging hard-law initiatives reveal a similar division.[415] Opinion by the European Union Agency for Fundamental Rights argues that home-state legislation shifts attention away from the urgent task of strengthening host-state judiciaries and may even legitimize continued capital flight by offering a veneer of compliance.[416] Nigerian commentators echo this ambivalence. As Ekhator[417] observes, while extraterritorial statutes like the UK Modern Slavery Act stimulate

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[412] N Cuba et al, "Extractive Industries, Livelihoods and Natural Resource Competition: Mapping Overlapping Claims in Peru and Ghana" (2014) 54 Applied Geography 250 at 255.

[413] Kurniawan NI, Lujala P, Rye SA, Vela-Almeida D., "The role of local participation in the governance of natural resource extraction." (2022) 9 The Extractive Industries and Society 101029; Vela-Almeida D, Gonzalez A, Gavilán I, Sánchez GM, Torres N, Ysunza V., "The right to decide: A triad of participation in politicizing extractive governance in Latin America." (2022) 9 The Extractive Industries and Society 100875.

[414] *Ibid.*

[415] South African jurist Moyo welcomes the EU's Corporate Sustainability Due Diligence Directive as a "regulatory lever" that African civil-society groups can exploit in European courts, yet warns that the Directive's causal-link and limitation-period provisions may still leave most pesticide and tailings-dam victims without standing. [415] CSDD 'Updates, Compliance' (2025), online: <https://www.corporate-sustainability-due-diligence-directive.com/#:~:text=The%20Corporate%20Sustainability%20Due%20Diligence%20Directive%20(the%20Directive)%20sets%20out,their%20subsidiaries%20and%20in%20their%20%E2%80%9C>

[416] European Union Agency for Fundamental Rights (2017) 'Improving access to remedy in the area of business and human rights at the EU level Opinion of the European Union Agency for Fundamental Rights', online: <https://fra.europa.eu/sites/default/files/fra_uploads/fra-2017-opinion-01-2017-business-human-rights_en.pdfv>

[417] Ekhator, E.O., 'The Concept of Environmental Justice in the Nigeria Legal System" (2024) Global Journal of Politics, Law and Research 12.

voluntary corporate supply-chain audits, incentivizing multinational corporations to conduct internal compliance checks to avoid liability in foreign courts, these laws do little to strengthen the evidentiary and technical capacities of local regulators such as the National Oil Spill Detection and Response Agency (NOSDRA). Corporate audits remain private exercises conducted for corporate risk management rather than shared with host-state authorities, and they do not provide Nigerian regulators with the monitoring equipment, technical expertise, or independent investigative capacity necessary to detect violations and build enforcement cases. Consequently, communities seeking remedy continue to depend on weak domestic regulatory institutions while corporations export compliance responsibility outside Nigerian jurisdiction. Frynas[418] in turn proposes a hybrid model: combining home-state due-diligence mandates with reciprocal obligations on multinational enterprises to fund a locally administered remediation trust whose disbursements are triggered by independent pollution-monitoring data. Engaging these contrasting positions ensures that the analysis does not replicate a one-directional transfer of norms but instead recognizes the contested politics of remedy design across jurisdictions.

Alongside these scholarly interventions, an emerging body of feminist environmental-justice literature foregrounds the gendered dimensions of remedy. Ekhator and Obani's[419] intersectional analysis documents how women's subsistence activities like fishing, small-scale farming, water collection, render them first responders to ecological degradation while patriarchal land-tenure norms exclude them from compensation frameworks that hinge on formal title. They call for remedy packages that incorporate micro-credit for women-led aquaculture projects, access to reproductive health services in polluted zones and guaranteed seats for women in community-development boards. Such proposals resonate with grassroots mobilizations like the 2002 Itsekiri and Ijaw women's peace occupation of Chevron's Escravos terminal, where demands included both environmental clean-up and scholarships for girls.[420] By linking remedy to gender justice, these scholars expand the normative horizon of corporate accountability beyond compensation toward transformative redistribution of power within affected communities.

[418] Frynas, J.G., "Rethinking the Role of Corporate Social Responsibility in the Nigerian Oil Sector" (2010) 22(7) Journal of International Development 833-845; Frynas, J.G., "The Oil Industry in Nigeria: Conflict between Oil Companies and Local Communities" in P. Andrews-Speed (ed), *The Oil Industry in Nigeria* (Palgrave Macmillan 2000) 89-134.

[419] Ekhator, E.O. and Obani, P., "Environmental Justice and Women in Nigeria: A Critical Analysis of Gender Dimensions in Oil Pollution Cases" (2020) 15(2) Journal of Environmental Law and Policy 45.

[420] Babatunde AO., "From peaceful to non-peaceful protests: The trajectories of women's movements in the Niger Delta" in *The Unfinished Revolution in Nigeria's Niger Delta* (Routledge, 2018) at 103.

These diverse Southern voices converge on a common insight that remedy cannot be reduced to a legal endpoint but must be conceived as a continuous, negotiated process that recognizes historical dispossession and asymmetrical bargaining power of affected peoples. Incorporating this body of Global South research broadens the evidentiary base of the chapter and highlights the specific social and institutional dynamics that shape remedy effectiveness in Nigeria. The insights marshalled here will inform Chapter 3's legislative and administrative gaps and ground Chapter 4's proposal for a citizen-centered model that is attuned to local power relations and knowledge practices.

2.4.6. Literature Gaps and Research Justification

While extensive theoretical frameworks exist around the UNGPs and access to remedy, most studies focus on developed country experiences or provide normative analysis without robust empirical grounding. Recent research demonstrates that despite more than a decade of UNGP implementation, the practical impact, particularly regarding human rights respect and remedy access, remains limited. This shortfall is especially severe in sub-Saharan Africa, where studies document that business-related human rights abuses persist as serious problems despite policy advances. The academic literature also reveals a significant gap: there is insufficient systematic analysis of citizen-centered alternatives to conventional remedy mechanisms. Although scholars acknowledge that state-based judicial and non-judicial remedies are inadequate, particularly in weak governance contexts, few studies explore how participatory or community-driven approaches could provide more effective paths to redress.[421] This absence is most pronounced in extractive industries scholarship, where despite abundant evidence of governance failures, researchers have not adequately examined public accountability deficits or explored mechanisms to empower affected communities to lead remedy processes. Furthermore, a substantial gap exists between UNGP objectives and implementation realities in developing countries. Research consistently shows this disparity: most companies lack genuine commitment to human rights protection, and the areas showing the least improvement relate to the human rights due diligence

[421] The rationale for focusing on citizen-centered alternatives is grounded in both the empirical record and the theoretical frameworks adopted in this thesis. Empirically, the Niger Delta experience shows that even where formal judicial and administrative mechanisms exist, affected communities remain unable to obtain meaningful redress because of systemic barriers such as prohibitive costs, jurisdictional hurdles, weak enforcement and exclusion from decision-making, producing what this study terms the "remedy gap" between law on paper and law in action. Theoretically, new governance and limited statehood research suggest that in contexts where state institutions are weak, fragmented or captured, top-down, state-centric remedies are unlikely to succeed unless they are complemented by bottom-up, participatory mechanisms that mobilize the knowledge, agency and monitoring capacity of affected communities themselves. Citizen-centered approaches are therefore treated here not as a purely normative preference, but as a response to the demonstrated limits of conventional remedies in Nigeria's petroleum sector and similar weak-governance settings.

process. However, the literature lacks systematic analysis of why this implementation gap persists and what alternative approaches might bridge it, particularly in resource-rich but governance-weak contexts.

Nigerian Case Study Justification

Nigeria, specifically, the Niger-delta region, provides a valuable case study for addressing these literature gaps and advancing business and human rights scholarship. The country's petroleum sector exemplifies the intersection of multinational corporate activity, environmental degradation, human rights violations, and inadequate remedy mechanisms that characterize many Global South contexts. As the largest oil producer in sub-Saharan Africa, Nigeria's experience with corporate accountability challenges offers insights that extend beyond its borders to other resource-rich developing countries facing similar governance dilemmas. The limited research on participatory remedy mechanisms in Nigeria's petroleum sector is a particularly significant knowledge gap. While studies extensively document environmental and human rights impacts from oil extraction in the Niger Delta, including water contamination with benzene at levels over 900 times above WHO guidelines, destruction of agricultural lands and fishing grounds, and systematic violations of the right to life, health, and adequate standard of living,[422] there is minimal systematic analysis of how citizen-centered approaches might enhance access to remedy. As discussed in Section 1.1, the Chevron-Ilaje community conflict and subsequent failed litigation exemplifies how existing remedy mechanisms systematically exclude affected communities despite documented human rights violations.[423] Similarly, Chapter 3's analysis of Nigerian case law from 1972 to 2024 reveals that even successful litigation rarely produces effective remedies for communities facing ongoing environmental degradation. Existing research focuses primarily on litigation strategies, regulatory frameworks, and corporate social responsibility initiatives, without adequate attention to community-driven alternatives or participatory governance models that might prove more effective in contexts of limited statehood. This research gap is especially significant given Nigeria's recent adoption of its National Action Plan on Business and Human Rights, which explicitly acknowledges challenges around lack of effective, transparent, sustainable grievance

[422] See UNEP, Environmental Assessment of Ogoniland (Nairobi: United Nations Environment Programme, 2011) [documenting benzene contamination 900 times above WHO standards]; Amnesty International, *Nigeria: Petroleum, Pollution and Poverty in the Niger Delta* (London: Amnesty International, 2009); *SERAP v Nigeria*, Communication No 155/96, African Commission on Human and Peoples' Rights (2001) [recognizing systematic violations of environmental and human rights]; Ike Okonta & Oronto Douglas, *Where Vultures Feast: Shell, Human Rights, and Oil in the Niger Delta* (San Francisco: Sierra Club Books, 2001)
[423] *Ibid at* Section 1.1

mechanisms and the need for improved stakeholder identification and analysis.[424] The NAP's recognition of these deficits creates an opportune moment for research that can inform policy development and implementation strategies.

Furthermore, Nigeria's dual character as both a major oil producer and a postcolonial state with significant governance challenges makes it an ideal laboratory for testing theoretical frameworks that integrate postcolonial analysis with business and human rights scholarship. The country's experience illuminates how colonial legacies continue to shape contemporary corporate-state-community relations and remedy mechanisms, providing insights that can inform broader theoretical development in the field. The potential for theoretical contributions to business and human rights scholarship from the Nigerian case study is substantial. By examining limited statehood concepts illuminate persistent remedy failures, this research can contribute to more understandings of why international frameworks like the UNGPs struggle in certain contexts. Moreover, by investigating citizen-centered alternatives, the study can provide practical insights for enhancing Pillar III implementation in similar contexts across the Global South. The Nigerian case study offers both scholarly value in advancing business and human rights theory and practical relevance for policymakers and practitioners working to enhance corporate accountability in challenging governance environments.

2.5. Conclusion

The literature review demonstrates that effective remedy under international law requires mechanisms that are accessible, adequate, and effective in both procedural and substantive terms. The UNGPs emphasis on state-based and non-state mechanisms creates multiple pathways for remedy, yet power asymmetries, procedural barriers, and enforcement gaps often prevent meaningful redress, particularly in extractive industry contexts. The theoretical framework combining limited statehood analysis, and new governance theory explains why remedy failures persist in post-colonial contexts like Nigeria. New governance approaches point toward participatory, multi-stakeholder solutions that could address these structural constraints. Global South scholarship, particularly from African and Nigerian authors, emphasizes that remedy must be understood as a continuous, negotiated process rather than a discrete legal outcome. This literature highlights the gendered dimensions of environmental harm, the limitations of purely formal legal approaches, and the importance of community-centered remedial practices that

[424] National Action Plans on Business and Human Rights, “Non-Judicial Grievance Mechanisms” (National Action Plans on Business and Human Rights, 2025) at 158, online: <https://globalnaps.org/issue/non-judicial-grievance-mechanisms/>.

recognize and leverage local knowledge and power relations. The insights developed in this chapter provide the analytical framework for Chapter 3, which will apply these theoretical and doctrinal standards to assess Nigeria's specific legal and institutional context. Chapter 3 will examine how Nigerian petroleum legislation, regulatory agencies, and judicial mechanisms perform against the international standards of accessibility, adequacy, and effectiveness identified here.

Chapter 3 -An Analytical Assessment of Nigeria's Legal and Institutional Framework for Corporate Human Rights

3.1. Introduction

This chapter employs a doctrinal method of research through a gap analysis to systematically evaluate Nigeria's compliance with international standards on access to remedy. The analysis examines three categories of remedy mechanisms as outlined in UNGP Pillar III: state-based judicial mechanisms (including constitutional protections, environmental laws, and court procedures), state-based non-judicial mechanisms (such as regulatory agencies, ombudsman institutions, and administrative processes), and non-state-based mechanisms (including corporate grievance procedures and community development agreements). For each mechanism, the chapter assesses: legal framework adequacy against international standards; practical accessibility for affected communities; effectiveness in delivering meaningful remedies; and institutional capacity for implementation and enforcement. The methodology draws from legal doctrine analysis, case law examination, and institutional assessment, supplemented by evidence from documented cases of environmental harm.

The chapter proceeds by examining constitutional and legislative frameworks for environmental protection and human rights enforcement, evaluating the effectiveness of judicial remedies through landmark cases, analyzing regulatory institutions and their enforcement capabilities, assessing non-judicial mechanisms including traditional dispute resolution mechanisms and corporate social responsibility programmes, and identifying systemic barriers that impede access to effective remedy. This comprehensive gap analysis provides the foundation for the citizen-centered participatory approach proposed in subsequent chapters.

3.1.1. Access to Remedy Under UNGP Pillar III

Access to remedy under the UN Guiding Principles on Business and Human Rights (UNGPs) (as discussed in chapter 2) is a fundamental component of the international framework for corporate accountability. Pillar III of the UNGPs establishes that "when a right is violated, victims must have access to effective remedies which are legitimate, accessible, predictable, equitable, and

transparent and rights compatible".[425] This pillar requires States to "take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within the territory and/or jurisdiction those affected have access to remedy."[426] The concept covers both procedural access, the ability to raise grievances and seek redress, and substantive remedies that provide meaningful relief to victims. Pillar III therefore serves as the conceptual framework that structures this analysis: its foundational principle clarifies that States must "take appropriate steps" to ensure remedy, while its operational principles enumerate the characteristics, legitimacy, accessibility, predictability, equitability, transparency and rights-compatibility, that any effective mechanism must exhibit.

3.1.2. Human Rights Framework in This Research

This research operationalizes "human rights" within the specific context of environmental degradation and livelihood impacts arising from oil extraction activities in the Niger Delta. The primary focus is on environmental rights as recognized under Article 24 of the African Charter on Human and Peoples' Rights (ACHPR), which guarantees "the right to a general satisfactory environment favorable to their development".[427] These environmental rights are linked to other fundamental rights including: the right to life and health, as oil pollution creates "serious risks to public health" through contaminated water, soil, and air; the right to adequate standard of living and food security, as oil spills destroy agricultural lands and fishing grounds that form the basis of local livelihoods; and the right to water, where oil operations contaminate drinking water sources, sometimes with "benzene, a known carcinogen, at levels over 900 times above the World Health Organization (WHO) guideline".[428] This understanding aligns with the African Commission on Human and Peoples' Rights decision in *SERAC v. Nigeria*,[429] which recognized the interdependence between environmental rights and other civil, political, and socio-economic rights.

[425] OHCHR 'Guiding Principles on Business and Human Rights' (OHCHR, 2024), online: <https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf>
[426] *Ibid.*
[427] African Charter on Human and People's Rights (ACHPR) (Ratification and Enforcement) Act (1981), Article 24.
[428] WHO 'PREVENTING DISEASE THROUGH HEALTHY ENVIRONMENTS EXPOSURE TO BENZENE: A MAJOR PUBLIC HEALTH CONCERN; (WHO, 2024), online: <https://iris.who.int/bitstream/handle/10665/329481/WHO-CED-PHE-EPE-19.4.2-eng.pdf>
[429] (2001) AHRLR 60 (ACHPR 2001)

3.1.3. Nigeria's International Legal Obligations

Nigeria bears clear obligations under international law to provide effective remedies for human rights violations, including those committed by corporate actors. As a State Party to the International Covenant on Civil and Political Rights (ICCPR) (1966),[430] Nigeria must ensure that victims of rights violations "have an effective remedy" and that competent authorities enforce such remedies. Under the International Covenant on Economic, Social and Cultural Rights (ICESCR)[431] (1966), ratified by Nigeria in 1993, the state must protect citizens' rights to health, adequate standard of living, and environmental quality. The African Charter on Human and Peoples' Rights, domesticated through Nigeria's African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (1983),[432] creates binding obligations to protect environmental rights and provide remedies for violations.[433] Article 1 of the Charter requires Nigeria to "adopt legislative or other measures to give effect to" Charter rights, while the principle of effective participation mandates that "affected people" must be involved "in all decisions relating to the exploration and use of natural resources". [434] Furthermore, as articulated in the African Commission's guidelines on Articles 21 and 24, Nigeria has specific duties regarding extractive industries including: ensuring full, adequate and effective compensation for the consequences of environmental damage arising from industrial activities; providing measures necessary for the cleaning up and restoration of the affected environment; and guaranteeing access to appropriate judicial and non-judicial mechanisms for raising grievances and seeking appropriate remedy. [435]

3.2. Constitutional Framework

3.2.1. Constitution of the Federal Republic of Nigeria (1999) (as amended)

The Nigerian Constitution of 1999 (as amended)[436] establishes the foundational framework for human rights protection in Nigeria. Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria contains the fundamental rights provisions that form the bedrock of human rights

[430] International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) [ICCPR].
[431] International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) [ICESCR].
[432] African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, 1983 (Nigeria).
[433] African Commission on Human and Peoples' Rights, Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (Nairobi: ACHPR 2010).
[434] *Ibid.*
[435] African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, 1983 (Nigeria).
[436] Constitution of the Federal Republic of Nigeria (CFRN), 1999 (as amended).

protection in Nigeria. These provisions establish justiciable rights that citizens can enforce through the courts. Section 33(1) provides:

> "Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria." [437]

This provision has been interpreted by Nigerian courts as encompassing environmental dimensions, particularly where environmental degradation threatens human life.[438]

Section 34(1) guarantees that

> "…every individual is entitled to respect for the dignity of his person, and accordingly— (a) no person shall be subjected to torture or to inhuman or degrading treatment; (b) no person shall be held in slavery or servitude; and (c) no person shall be required to perform forced or compulsory labor."[439]

Section 43 establishes property rights by providing that "…subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria. [440] However, this right is significantly qualified by subsequent constitutional provisions relating to land ownership and natural resource control.[441]

Section 46 provides the enforcement mechanism for fundamental rights by providing that any person who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress. [442] This section establishes the procedural framework through which citizens can seek remedies for violations of their fundamental rights.

The Constitution also contains Section 46(4) which specifies the High Court's powers in fundamental rights enforcement:

> "The High Court shall have power to make such orders as it may consider appropriate including orders by way of injunction restraining further contravention; order directing the release of any

[437] Section 33 (1) CFRN (1999) (as amended)
[438] *Jonah Gbemre v Shell Petroleum Development Company Nigeria Ltd & Ors*, Suit No FHC/B/CS/53/05, AHRLR 151 (FHC Benin, 14 November 2005) at para 22.
[439] Section 34 (1) CFRN (1999) (as amended).
[440] Section 43 CFRN (1999) (as amended).
[441] Section 44(1) CFRN (1999) as amended).
[442] Section 46 CFRN (1999) (as amended)

person detained unlawfully; order directing that any person shall be brought to court; compensation; and such other orders as the court may deem appropriate".[443]

While Chapter IV contains the justiciable fundamental rights, environmental rights are primarily articulated in Section 20 of the Constitution, which falls within Chapter II (Fundamental Objectives and Directive Principles of State Policy). Section 20 provides that the State shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria.[444] The placement of environmental protection within Chapter II rather than Chapter IV creates a fundamental tension in Nigeria's constitutional framework.[445] The Supreme Court of Nigeria has recognized this challenge in *Centre for Oil Pollution Watch (COPW) v. Nigerian National Petroleum Corporation (NNPC),*[446] noting that environmental protection is "a constitutional obligation of the state" while simultaneously being rendered non-justiciable by Section 6(6)(c) of the Constitution.

Nigerian courts have also developed creative interpretations to bridge this gap. In the landmark case of *Gbemre v Shell Petroleum Development Company Nigeria Ltd & Ors*,[447] the Federal High Court held that "the constitutionally guaranteed fundamental rights to life and dignity of human person provided in Sections 33(1) and 34(1) of the Constitution... inevitably includes the right to clean poison-free, pollution-free and healthy environment." Similarly, *in Centre for Oil Pollution Watch (COPW) v Nigerian National Petroleum Corporation*,[448] the Supreme Court established that: "Section 33 of the 1999 Constitution guarantees the right to life whilst Section 20 of the Constitution provides that 'the State shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of the country.'[449] These provisions show that the Constitution, the legislature and the African Charter on Human and Peoples' Rights, to which Nigeria is a signatory, recognize the fundamental rights of the citizen to a clean and healthy environment and a right to life. The African Charter on Human and Peoples' Rights (Ratification

[443] Section 46 (4) CFRN (1999) (as amended)
[444] Constitution of the Federal Republic of Nigeria, 1999 (as amended).
[445] The placement of environmental protection within Chapter II rather than Chapter IV creates a fundamental tension in Nigeria's constitutional framework because Chapter II contains the Fundamental Objectives and Directive Principles of State Policy, which are explicitly rendered non-justiciable under Section 66(c) of the Constitution, whereas Chapter IV contains Fundamental Rights that are justiciable and enforceable before the courts. This means that while the Constitution purports to protect the environment, courts cannot directly enforce environmental rights under Section 20 as they can enforce other fundamental rights, forcing victims of environmental harm to pursue indirect remedies through creative interpretation of the justiciable rights to life and human dignity under Chapter IV instead.
[446] (2019) 5 NWLR (Pt. 1666) 518.
[447] (2005) FHC/B/CS/53/05.
[448] *(2019) 5 NWLR (Pt. 1666) 518*
[449] Constitution of the Federal Republic of Nigeria, 1999 (as amended).

and Enforcement) Act of 1983 provides additional support for environmental rights enforcement. Article 24 of the African Charter guarantees that "all peoples shall have the right to a general satisfactory environment favorable to their development. This provision has been domesticated into Nigerian law and is enforceable alongside constitutional rights under the Fundamental Rights (Enforcement Procedure) Rules 2009.[450]

3.2.1.1.Gap Analysis

The most significant gap in Nigeria's constitutional framework is the non-justiciability of environmental rights under Section 20. Section 6(6)(c) of the Constitution provides that the judicial powers of courts

> "Shall not, except as otherwise provided by this Constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the fundamental Objectives and Directive Principles of State Policy set out in chapter II of this Constitution."

This provision creates what various researchers[451] have described as constitutional aberration which, in a constitutional provision, rocks the root of its constitutionality and runs contrary to the preceding provisions of section 6 (a) (b). The non-justiciability clause effectively renders environmental protection obligations aspirational rather than legally enforceable, creating a significant barrier to access to remedy for environmental rights violations.

The practical impact of this gap is illustrated in various cases where litigants have struggled to establish direct constitutional claims for environmental degradation. In *Jonah Gbemre v Shell Petroleum Development Company*,[452] while the court ultimately found in favor of environmental rights, it had to rely on creative interpretation of Sections 33 and 34[453] rather than direct enforcement of Section 20. However, the Supreme Court in *Olafisoye v Federal Republic of*

[450] Fundamental Rights (Enforcement Procedure) Rules, 2009, issued by the Chief Justice of Nigeria pursuant to Section 46(3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
[451] Nyekwere EH, Nnawulezi U, Adiyatma SE, Balarabe K, Rouf MA. "Constitutional and judicial interpretation of environmental laws in Nigeria, India and Canada" (2023) 7 (2) Lex Scientia Law Review 905; Okeke, O.E., "Pro-justiciability approach towards enforcing the provisions of Chapter II of the constitution of the Federal Republic of Nigeria 1999" (2023) 14 (1) Nnamdi Azikiwe University Journal of International Law and Jurisprudence 102; Olujobi OJ, Irumekhai OS, Aina-Pelemo AD. "Sustainable development and national integration: a catalyst for enhancing environmental law compliance in Nigeria" (2024) 54 (1) Environmental Pol. and L. 27.
[452] (2005) 6 AHRLR 152 (Nigeria).
[453] Section 33 of the Constitution of the Federal Republic of Nigeria (1999) as amended guarantees that 'every person has a right to life,' while Section 34 protects 'respect for the dignity of his person' by prohibiting torture, inhuman treatment, slavery, and forced labor

Nigeria[454] established important exceptions to the non-justiciability principle. Justice Niki Tobi held that;

> "the non-justiciability of section 6(6)(c) of the constitution is neither total nor absolute as the subsection provides a leeway by the use of the words 'except as otherwise provided by this constitution'.

This means that if the constitution otherwise provided in another section, which makes a section or sections of chapter II justiciable it will be so interpreted by the courts. The court identified two circumstances under which Chapter II provisions could become justiciable:

i. where the constitution makes another provision on any of the subjects in the chapter which, being outside the chapter, is justiciable; and
ii. where the National Assembly passes any legislation making any of the subjects of the chapter the subject of such an Act and thus justiciable[455]

Despite these judicial developments, the fundamental gap remains; environmental rights severally lack direct constitutional justiciability, forcing litigants to pursue indirect enforcement through life and dignity provisions. This creates additional procedural burdens and evidential requirements that may be difficult for affected communities to meet.

Furthermore, Nigeria's constitutional framework for fundamental rights enforcement suffers from a significant absence of citizen-centered mechanisms that would facilitate meaningful access to remedy for corporate human rights violations. Section 46 establishes that fundamental rights enforcement must be pursued through High Court applications, but the Fundamental Rights (Enforcement Procedure) Rules 2009 maintain complex procedural requirements that create barriers for ordinary citizens and communities. The Nigeria National Action Plan on Business and Human Rights acknowledges that "cost of litigation is a major impediment to access to remedy for victims of business human rights abuses".[456] Research by the National Human Rights Commission reveals that litigation costs in fundamental rights cases often exceed what affected communities can afford, particularly in cases involving corporate defendants with substantial legal resources.[457] This economic barrier effectively excludes many victims of corporate human rights abuses from accessing constitutional remedies. Also, Nigerian courts have traditionally applied restrictive

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[454] (2004) All N.L.R. 203.
[455] *Ibid.*
[456] National Action Plans on Business and Human Rights, "Non-Judicial Grievance Mechanisms" (National Action Plans on Business and Human Rights, 2025), online: <https://globalnaps.org/issue/non-judicial-grievance-mechanisms/>.
[457] National Human Rights Commission 'NHRC Bulletin' (NHRC, 2025), online: <https://www.nigeriarights.gov.ng/files/bulletins/2025/january_2025_edition.pdf>

interpretations of standing requirements in environmental and corporate human rights cases. In *Oronto Douglas v Shell Petroleum Development Company Nigeria Ltd* [458] the court dismissed the case partly on grounds of insufficient *locus standi*, requiring plaintiffs to demonstrate direct personal injury rather than allowing public interest litigation. While the Fundamental Rights (Enforcement Procedure) Rules 2009 expanded standing provisions to include any person or group of persons and any civil society organization, courts have inconsistently applied these provisions, particularly in cases involving corporate environmental violations.

Also, Nigeria lacks specialized environmental courts or tribunals equipped to handle corporate human rights cases involving environmental harm. The regular High Courts, while constitutionally empowered under Section 46, often lack the technical expertise and resources needed to effectively adjudicate environmental rights cases involving corporate activities. The absence of specialized forums creates several problems: lengthy delays in case resolution, inadequate understanding of technical environmental evidence, and inconsistent judicial approaches to corporate human rights violations. As noted by various researchers,[459] procedural delays are a major obstacle, as environmental cases can take years to resolve, exacerbating ecological damage while litigation drags on. Similarly, while Section 46(4) grants High Courts broad remedial powers, including injunctions and compensation, the practical enforcement of these remedies remains problematic. This enforcement gap undermines the effectiveness of even successful litigation, creating a situation where formal access to remedy exists on paper but lacks practical efficacy.

In the same vein, the constitutional enforcement framework is court-centric[460] and does not provide mechanisms for meaningful citizen participation in designing or implementing remedies for corporate human rights violations. Affected communities are positioned as passive recipients of judicial decisions rather than active participants in remedy formulation. This gap is particularly significant in the context of corporate human rights violations, where community-based remedies and participatory redress mechanisms may be more effective than traditional judicial orders. The absence of constitutional provision for citizen-centered remedy mechanisms limits the potential for innovative and culturally appropriate solutions to corporate human rights abuses. The constitutional framework lacks specific provisions protecting human rights defenders and

[458] *Oronto Douglas v Shell Petroleum Development Company Nigeria Ltd* (1998) JELR 45634 (CA) Court of Appeal

[459] Conde M, Walter M, Wagner L, Navas G. "Slow justice and other unexpected consequences of litigation in environmental conflicts" (2023) 83 Global Environmental Change 102762.

[460] This means that the primary responsibility and authority for interpreting, applying, and enforcing constitutional provisions, particularly in cases of rights violations or the constitutionality of laws, rests with the judiciary

communities pursuing remedies against corporate violations. This gap is emblematic when communities face intimidation or retaliation for asserting their constitutional rights against powerful corporate interests.

These constitutional gaps create a fundamental disconnect between Nigeria's formal commitment to human rights protection and the practical reality facing victims of corporate human rights abuses. While the Constitution establishes theoretical access to remedy through judicial mechanisms, the absence of citizen-centered enforcement frameworks significantly undermines the effectiveness of these provisions. As Olawuyi[461] notes in his analysis of Nigerian environmental law, the constitutional framework suffers from fragmented institutional arrangements, weak enforcement mechanisms, and limited community participation' that undermine effective remedy provision. The result is a system where corporate human rights violations, particularly in the environmental context, often go unredressed despite clear constitutional commitments to human rights protection and environmental safeguarding.

3.3. Statutory Framework

Table 1 below provides a list of Nigerian statutes and regulations that are relevant to corporate human rights accountability in the oil and gas sector. It organizes the laws indicating the; title of the law or act, year enacted, current status, core focus or subject matter of the legislation. This research will focus only on the current laws that are directly relevant to access to effective remedies for corporate human rights violations in line with Pillar III of the UN Guiding Principles on Business and Human Rights which will be discussed in the next section. The emphasis will be an analytical assessment of the "access to remedy" gaps within these current laws; particularly how they address (or fail to address) environmental rights, community participation, and enforcement in the Niger Delta oil sector.

Table 1: Current Legal Framework Relevant to Access to Remedy
Source: Researcher's Compilation

No.	Law/Act	Year	Status	Key Focus
No.	**Law/Act**	**Year**	**Status**	**Key Focus**

[461] Damilola Sunday Olawuyi, Principles of Nigerian Environmental Law (Ota: Afe Babalola University Press, 2015), online: <https://elmi.hbku.edu.qa/en/publications/principles-of-nigerian-environmental-law/> at 95–101

1	Constitution of the Federal Republic of Nigeria	1999	Current (Amended)	Federal ownership of petroleum resources, fundamental rights provisions
2.	Companies and Allied Matters Act	2020	Current (Amended	Corporate governance reforms; directors' duties; stakeholder considerations; tighter due diligence obligations
2	Petroleum Industry Act (PIA)	2021	Current	Comprehensive industry transformation, host community development trust, grievance mechanisms
3	Environmental Impact Assessment Act	1992	Current	Mandatory EIA for oil and gas projects, public participation requirements
4	National Environmental Standards and Regulations Enforcement Agency (NESREA) Act	2007	Current (Amended 2018)	Environmental standards enforcement, pollution control and remediation
5	Land Use Act	1978	Current	Land acquisition and compensation, limitations on oil spill compensation

6	Niger Delta Development Commission Act	2000	Current	Comprehensive Niger Delta development, infrastructure and environmental remediation
7	Nigerian National Action Plan (NAP) on Business and Human Rights	2023	Current	Implementation of UN Guiding Principles, corporate accountability mechanisms
8	Oil in Navigable Waters Act	1968	Current	Marine oil pollution prevention and response
9	Harmful Wastes (Special Criminal Provisions) Act	1988	Current	Prohibition of toxic waste dumping, criminal sanctions
10	Nigerian Oil and Gas Industry Content Development Act	2010	Current	Local content requirements, community participation in oil sector

3.3.1. Petroleum Industry Act (2021)

The Petroleum Industry Act 2021 (PIA)[462] is one of the most comprehensive reforms of Nigeria's petroleum sector since the discovery of oil. The Act consolidates and updates various legacy petroleum laws while establishing new institutional frameworks, governance structures, and community development mechanisms. However, despite its scope and the incorporation of seemingly progressive provisions for access to remedy, the Act contains significant gaps that limit community participation in remedy design and weakens enforcement mechanisms. The PIA contains several provisions that provide avenues for remedy, particularly in the areas of environmental restoration, host community development, and penalties for violations. These

[462] Petroleum Industry Act, 2021 (Nigeria) [PIA].

provisions are scattered throughout the Act but are categorized into three main areas: Environmental Remedial Framework (ERF), Host communities' development trust (HCDT) framework and, penalties and enforcement provisions (PEP).

Under the ERF, Section 102 of the PIA requires licensees and lessees to submit environmental management plans for approval, stating that:

> "A licensee or lessee shall submit to the Commission for approval an environmental management plan comprising measures for prevention and mitigation of negative environmental impacts arising from petroleum operations, and measures to be taken in the event of an incident likely to lead to a breach of environmental standards."[463]

While this provision establishes a framework for environmental protection, it places the onus primarily on corporate compliance rather than community participation in environmental oversight. Section 103 further establishes a financial contribution mechanism for environmental remediation:

> "A licensee or lessee shall pay such financial contribution as prescribed to an environmental remediation fund established by the Commission for the rehabilitation and management of negative environmental impacts arising from petroleum operations in the area of operation."[464]

However, this provision lacks specificity regarding community involvement in determining the adequacy of such contributions or in overseeing the utilization of the fund. The environmental remediation fund established under Section 103 operates without clear mechanisms for community participation in its governance or oversight, creating a gap between regulatory intention and community empowerment.

The Host Communities Development Trust (HCDT) provisions in Chapter 3 of the PIA (Sections 234-257) establishes the most comprehensive attempt at providing community-focused remedies through the HCDT. Section 240 mandates that;

> "Each settlor shall make an annual contribution to the trust fund of an amount equal to 3% of its actual annual operating expenditure of the preceding financial year in the upstream petroleum operations."[465]

This represents a significant improvement over previous voluntary CSR arrangements. However, the remedy provisions within the HCDT framework reveal substantial gaps in community

[463] Petroleum Industry Act, 2021, Section 102.
[464] Petroleum Industry Act, 2021, Section 103.
[465] Petroleum Industry Act, 2021 , Section 240.

participation. Section 242 establishes the Board of Trustees (BOT) composition but fails to ensure meaningful community control:

> "The Board of Trustees shall consist of: (a) four representatives of the host communities; (b) two representatives of the settlor; (c) one representative of the Minister; and (d) two independent trustees." [466]

While communities have numerical representation, the selection process for community representatives is not specified, creating opportunities for manipulation and undermining genuine community participation in remedy design. Moreover, Section 257(2) introduces a controversial "forfeiture" mechanism:

> "Where an act of vandalism, sabotage or other civil unrest occurs that causes damage to petroleum operations and designated facilities or disrupts production activities within the host community, the community shall forfeit its entitlement to the extent of the costs of repairs."[467]

This provision effectively penalizes entire communities for actions that may be committed by individuals, reversing the remedy principle and creating a punitive rather than restorative framework.

The PEP category contains extensive penalty provisions, particularly in Sections 228-231, covering various offenses. Section 229 states "a person who commits an offence under section 228 is liable on conviction to a fine as may be prescribed in the regulations made by the Commission or the Authority." However, these penalty provisions focus primarily on deterrence rather than remedy for affected communities. Section 104 addresses gas flaring penalties:

> "Money realized from gas flare penalty shall be utilized for environmental remediation and relief of the host communities affected by the gas flare in such manner as may be prescribed by the Commission."[468]

While this provision directs penalty proceeds toward community relief, it does not establish mechanisms for community participation in determining how such funds should be utilized or in overseeing their implementation.

3.3.1.1.Gap Analysis

Despite establishing the HCDT framework, the Act fails to guarantee meaningful community control over remedy resources. The environmental remediation fund established under Section 103 operates entirely under regulatory control, with no mandatory community representation in its

[466] Petroleum Industry Act, 2021, Section 242.
[467] Petroleum Industry Act, 2021, Section 257(2).
[468] Petroleum Industry Act, 2021, Section 104.

governance structure. Adebisi and Ezebuiro[469] note that the oil companies are given disproportionate control over money intended for community development. The absence of clear guidelines for appointing the BOT raises concerns about transparency and the possibility of manipulation by oil companies.

Also, under Section 102, the environmental management plan requirement follows a top-down approach where companies submit plans to regulators without requiring community consultation. The provision states that plans should include "measures for prevention and mitigation of negative environmental impacts," but does not require community input in determining what constitutes adequate prevention or appropriate mitigation measures. This exclusion is particularly problematic given that communities possess IPLC knowledge about local environmental conditions and have direct experience of environmental impacts. In the same vein, The PIA lacks comprehensive grievance mechanisms that would allow communities to challenge inadequate remedial measures or seek alternative forms of remedy. Section 307 establishes a general framework for legal proceedings but includes a restrictive provision:

> "No suit shall be commenced against the Commission, the Authority, the Minister, NNPC Limited or any of their officers in respect of any act done in pursuance of this Act unless three months' notice of the intended suit is given."[470]

This three-month notice requirement, while appearing procedural, creates additional barriers for communities seeking timely legal remedy, particularly in cases of ongoing environmental damage. Unlike international standards such as the requirement for Free, Prior and Informed Consent (FPIC) in IPLC territories, the PIA does not mandate meaningful consultation with communities in designing remedy measures. Section 216 requires "consultation for regulations" but limits this to:

> "The Commission or the Authority shall, before making any regulation under this Act, publish a notice of its intention to do so and shall give interested persons an opportunity to make representation."[471]

This general consultation requirement falls short of ensuring community participation in remedy design, as it applies only to regulation-making rather than to the development of specific remedial measures for particular harms. This exclusion reflects broader patterns identified by Olawuyi[472]

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[469] Adebisi S, Ezebuiro K. “Analysis of the Petroleum Industry Act and its impact on the Nigerian Oil and Gas Sector” (2020) 6 (3) Gusau International Journal of Management and Social Sciences 293.
[470] Petroleum Industry Act, 2021, Section 307.
[471] Petroleum Industry Act, 2021, Section 216.
[472] Olawuyi, Damilola S. *Extractives industry law in Africa*. (Cham, Switzerland: Springer, 2018); Olawuyi, Damilola Sunday. "Principles of Nigerian environmental law." (2015), at 42-47

across African extractive legislation, where formal legal frameworks exist alongside 'persistent gaps between formal provisions and practical implementation.

The second major gap in the PIA's remedy framework relates to enforcement mechanisms. While the Act grants extensive powers to regulatory bodies, the practical implementation of these powers reveals significant weaknesses. While the PIA establishes various penalty provisions, many scholars and practitioners argue that these penalties are insufficient to deter violations or ensure adequate remedy. The gas flaring penalty structure under Section 104, for example, allows companies to treat penalties as a cost of doing business rather than as a meaningful deterrent. As noted by Accountability Lab, "the punitive sanctions for noncompliance under the Act are insufficient to deter breaches and ought to be enhanced.[473]

Also, the PIA does not grant communities independent enforcement rights or standing to pursue enforcement actions against violators. Communities must rely entirely on regulatory action, creating a gap when regulators fail to act or lack the resources to pursue enforcement effectively. This is particularly endemic in contexts where regulatory capture or resource constraints limit effective oversight. Many of the enforcement provisions in the PIA are discretionary rather than mandatory. Section 26(5) states that the Commission "may seal or close any premises" for breaches, while Section 217 provides that the Commission or Authority "may" issue enforcement orders.[474] This discretionary language weakens the remedy framework by allowing selective enforcement and creating uncertainty for communities seeking redress. The PIA's monitoring and reporting requirements are inadequate to ensure effective remedy implementation. While Section 255[475] requires annual reports from HCDTs, there is no requirement for independent monitoring or community verification of remedy effectiveness. This creates opportunities for cosmetic compliance without genuine remedial impact.

These gaps in the PIA's remedy framework have significant implications for access to remedy in Nigeria's petroleum sector. The limited community participation in remedy design means that remedial measures may not address the actual needs and priorities of affected communities. The weak enforcement mechanisms create implementation gaps where remedy obligations exist on paper but are not effectively realized in practice.

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[473] See Policy Brief - Addressing Gas Flaring in Nigeria: Strengthening Regulatory Frameworks and Enforcement (Accountability Lab, 2025), online: <https://nigeria.accountabilitylab.org/wp-content/uploads/2025/06/Policy-Brief-Addressing-Gas-Flaring-in-Nigeria-Strengthening-Regulatory-Frameworks-Enforcement-.pdf.pdf>

[474] Petroleum Industry Act, 2021 (Nigeria) [PIA].

[475] *Ibid.*

3.3.2. Environmental Impact Assessment Act 2004

The Environmental Impact Assessment (EIA) Act 2004 is another primary legislative framework in Nigeria for evaluating the environmental consequences of proposed development projects before they are authorized to proceed. While the Act provides for public participation in the EIA process, an analysis of its provisions reveals that the framework creates opportunities for only superficial consultation rather than meaningful engagement of affected communities, particularly in the context of oil and gas projects in the Niger Delta region.

The key provision governing public participation in the EIA process is contained in Section 7 of the Act, which states in its entirety:

> "Before the Agency gives a decision on an activity to which an environmental assessment has been produced, the Agency shall give opportunity to government agencies, members of the public, experts in any relevant discipline and interested groups to make comment on the environmental impact assessment of the activity."[476]

This provision is complemented by Section 8, which provides that "the Agency shall not give a decision as to whether a proposed activity should be authorized or undertaken until appropriate period has elapsed to consider comments pursuant to sections 7 and 12 of this Act."[477]

Furthermore, Section 12 addresses situations involving cross-boundary environmental effects, requiring consultations with potentially affected states or local government areas. The procedural framework for implementing these provisions is elaborated in the EIA Procedural Guidelines, which specify that public participation occurs through:

> "Public review of documents, display, and disclosures for 21 working days. The venues of display shall include the affected Local Government Area, the State Ministry of Environment, the Federal Ministry of Environment Headquarters, and field offices, as well as electronic portals and websites of relevant organizations."[478]

3.3.2.1.Gap Analysis

Despite these apparently comprehensive provisions, the EIA Act's approach to public participation suffers from fundamental structural deficiencies that reduce meaningful engagement to mere procedural compliance.

[476] Petroleum Industry Act, 2021, Section 7.
[477] Petroleum Industry Act, 2021, Section 8.
[478] Petroleum Industry Act, 2021, Section 12.

First, the Act's conception of public participation is fundamentally passive, focusing on "giving opportunity" for comments rather than actively engaging communities in meaningful dialogue. Section 7 uses permissive language ("shall give opportunity") that treats public input as a procedural requirement rather than a substantive component of decision-making. This approach reduces public participation to what has been criticized as "information dissemination and data gathering activity" rather than "a process through which the public can influence decision-making."[479] The 21-day public display period, while seemingly adequate, often occurs after critical project parameters, including size, location, and type, have already been determined. This timing constraint means that public input can only address marginal aspects of projects rather than fundamental design decisions that most significantly affect communities.

Critically, the Act did not provide specifically that developers should consult the local communities. While Section 7 mentions "members of the public" as potential commenters, it does not differentiate between affected communities and the general public, nor does it require proponents to actively engage with communities that will bear the direct consequences of proposed projects. This omission is particularly problematic in the context of oil and gas projects in the Niger Delta, where specific communities experience disproportionate environmental impacts. The Act's failure to mandate direct community consultation means that oil companies can satisfy legal requirements through general public notices without ever engaging meaningfully with affected populations.

The Act further lacks effective sanctions for failure to conduct genuine public consultation. While it provides penalties for non-compliance with EIA requirements generally, there are no specific consequences for superficial or inadequate public participation. This regulatory gap means that proponents can satisfy legal requirements through minimal compliance, posting notices in newspapers or government offices, without ensuring that affected communities actually receive information or have meaningful opportunities to respond. Research indicates that Nigerians are not fully participating in EIA process due to inadequate legal framework.[480] The law does not provide for an effective sanction for failure to consult the public in EIA process.

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[479] Ojogbo SE. "Public participation and environmental degradation in developing markets: the challenges in focusing on Environmental Impact Assessment (EIA) in Nigeria" (2018) 6 Legal Issues J. 37.

[480] Osuizugbo IC, Nnodu CV., "Barriers to environmental impact assessment implementation for construction projects in Nigeria" (2023) 13 (5) Built Environment Project and Asset Management 719; Akintoye OA. *Contextual Factors Influencing Environmental Impact Assessment in Nigeria* (Doctoral dissertation, Department of Environmental Management, Faculty of Environmental Sciences, University of Calabar, Calabar, Nigeria); Ojobgo, S. E., "Public participation and environmental degradation in developing markets: the challenges in focusing on Environmental Impact Assessment (EIA) in Nigeria" (2018) 6 Legal Issues J. 37; Olorundami TA. *Environmental*

A significant structural limitation is that the Act does not give room for public participation after the certificate has been issued and/or during the monitoring or follow-up stage. This exclusion is particularly problematic for long-term projects like oil extraction, where environmental impacts emerge over time and require ongoing community input for effective mitigation. In contrast, more robust EIA systems provide for public participation throughout project lifecycles, including monitoring and compliance phases. The absence of post-approval participation mechanisms in Nigeria's framework means that communities have no formal avenue to raise concerns about ongoing environmental damage or non-compliance with mitigation measures. The inadequacy of Nigeria's EIA public participation framework is illustrated by experiences in the Niger Delta oil sector. Research by Babatunde[481] reveals that oil extraction projects were approved without consulting the local communities, resulting in widespread environmental damage and social unrest. The lack of public participation in the EIA process has been a key factor in these ongoing conflicts. In the case of *Dr. Tunji Braithwaite v Standard Chartered Bank Nigeria Ltd.,*[482] the court noted failures in EIA compliance, including inadequate public consultation. However, the legal system's focus on procedural compliance rather than substantive participation means that even where violations are identified, they rarely result in meaningful remedies for affected communities. The Niger Delta experience demonstrates that superficial consultation processes not only fail to protect community interests but actually exacerbate conflicts by creating false expectations of participation while excluding communities from meaningful influence over decisions affecting their environment and livelihoods. The EIA's procedural approach reflects what Olawuyi[483] identifies as a systemic problem in Nigerian environmental law, where comprehensive regulatory frameworks exist 'on paper' but 'lack the institutional capacity and political will necessary for effective implementation.

The EIA Act's superficial approach to public participation has profound implications for access to remedy in business and human rights contexts. By limiting community engagement to passive comment periods, the framework denies affected populations the opportunity to influence project design in ways that could prevent human rights violations from occurring. This ex-ante

Impact Assessment (EIA) effectiveness and "local context": the case of Nigeria (Doctoral dissertation, Newcastle University).

[481] Babatunde AO. "Oil pollution and water conflicts in the riverine communities in Nigeria's Niger Delta region: challenges for and elements of problem-solving strategies" (2020) 38 (2) Journal of Contemporary African Studies 274.

[482] (2013) L.P.E.LR. 20814 (CA)

[483] Olawuyi, Damilola S., (ed.) *Climate change law and policy in the Middle East and North Africa region*. (England: Routledge, 2021); Olawuyi, Damilola S. *Extractives industry law in Africa*. (Cham, Switzerland: Springer, 2018).

participation gap compounds ex-post remedy challenges, as communities excluded from initial decision-making processes face greater difficulties in establishing standing and causation in subsequent litigation. The absence of documented community concerns during EIA processes weakens legal claims and reduces the effectiveness of judicial remedies. Moreover, the Act's exclusion of public participation from monitoring and follow-up phases means that communities lack formal mechanisms to raise ongoing concerns about environmental damage or human rights impacts. This creates a regulatory vacuum where violations can persist without formal channels for community input or response.

3.3.3. National Human Rights Commission Act (Amended) Act 2010

The 2010 Amendment Act was enacted with the objectives that directly address the remedy gaps identified in earlier sections of this research. According to the Act's Explanatory Memorandum, the legislation was designed to provide for:

> "(a) Independence in the conduct of the affairs of the Commission; (b) the funds of the Commission to be a direct charge on the Consolidated Revenue Fund of the Federation; (c) the establishment of the Human Rights Fund; and (d) the recognition and enforcement of the awards and recommendations of the Commission as decisions of the High Court."[484]

Section 5 of the Amendment Act significantly expanded the Commission's mandate beyond its original scope. The amended functions now include:

> "(j) receive and investigate complaints concerning violations of human rights and make appropriate determination as may be deemed necessary in each circumstance; (k) examine any existing legislation, administrative provisions and proposed bills or bye-laws for the purpose of ascertaining whether such enactments or proposed bills or bye-laws are consistent with human rights; (l) prepare and publish, in such manner as the Commission considers appropriate, guidelines for the avoidance of acts or practices with respect to the functions and powers of the Commission under this Act."[485]

Subsection (j) is particularly relevant to corporate human rights violations, as it establishes the Commission's explicit authority to receive and investigate complaints and "make appropriate determination" - language that suggests both adjudicatory and remedial functions.[486] Subsection

[484] Federal Republic of Nigeria Official Gazette, National Human Rights Commission (Amendment) Act, 2010, Explanatory Memorandum (published [2010], in Official Gazette). The Explanatory Memorandum highlights the amendments that strengthened the Commission's investigative powers, enabled it to make binding determinations, and award compensation for human rights violations.
[485] National Human Rights Commission Act, 2010, Section 5.
[486] National Human Rights Commission Act, 2010, Section 5 (j).

(k) provides the Commission with a legislative review function that could be used to assess the adequacy of corporate accountability laws, while subsection (l) empowers the Commission to develop preventive guidelines that could address corporate human rights risks ex ante. The Act also empowers the Commission to "act as conciliator between parties to a complaint"[487] and to "make determination as to the damages or compensation payable in relation to any violation of human rights where it deems this necessary in the circumstances of the case".[488] These provisions establish the Commission as both a mediator and an adjudicator, providing multiple pathways for remedy that can be tailored to the specific circumstances of each case.

Perhaps the most significant innovation of the 2010 Amendment is found in Section 22, which addresses the enforceability of the Commission's determinations:

> "(1) An award or recommendation made by the Commission shall be recognized as binding and subject to this section and this Act shall upon application in writing to the court, be enforced by the court.
>
> (2) In this section, 'court' means the Federal High Court or the High Court of the Federal Capital Territory or the High Court of a State."[489]

This provision addresses one of the fundamental weaknesses of non-judicial mechanisms which is the lack of enforcement power. By making the Commission's awards and recommendations enforceable through the regular court system, the Act creates a hybrid mechanism that combines the accessibility and flexibility of non-judicial procedures with the enforcement capacity of judicial institutions. The significance of this enforcement provision is that corporate defendants who might ignore purely advisory recommendations now face the prospect of court-enforced compliance with Commission determinations. This enforcement mechanism is particularly important in cases involving powerful multinational corporations that might otherwise view Commission proceedings as inconsequential.

Section 15 of the Amendment Act established the Human Rights Fund, which "shall be applied by the Commission towards (a) the conduct of research on human rights issues; and (b) the facilitation of human rights activities of the Commission in collaboration with other human rights non-governmental organizations, civil society organizations and other stakeholders."[490] The Fund is to receive contributions from "national and multinational, public and private companies," with such contributions being "tax deductible." This funding mechanism is particularly relevant to corporate

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[487] National Human Rights Commission Act, 2010, Section 5(q).
[488] National Human Rights Commission Act, 2010, Section 6(1)(e).
[489] National Human Rights Commission Act, 2010, Section 22.
[490] National Human Rights Commission Act, 2010, Section 15.

human rights cases, as it creates a framework for corporate contributions to human rights protection while potentially reducing the resource constraints that have historically limited the effectiveness of remedy mechanisms.

3.3.3.1.Gap Analysis

From an access to remedy perspective, the 2010 Amendment Act addresses several of the structural barriers identified in earlier sections of this research. First, the Commission's financial independence and operational autonomy reduce the political constraints that have historically limited state-based remedy mechanisms. Second, the quasi-judicial powers enable the Commission to compel disclosure and attendance, addressing the information asymmetries that favor corporate defendants. Third, the enforceability provisions bridge the gap between non-judicial accessibility and judicial enforcement capacity.

However, significant limitations remain. The monetary penalties for non-compliance (N100,000 maximum fine) provided under Section 6 are relatively modest for multinational corporations, potentially limiting their deterrent effect. The Act does not specify procedural timelines, potentially allowing for indefinite delays that could undermine remedy effectiveness. Additionally, while the Act empowers the Commission to award compensation, it provides limited guidance on the criteria for determining appropriate compensation levels, particularly for collective or environmental harms typical of extractive industry impacts.

Also, the Act does not establish specific procedures for collective or representative complaints, potentially limiting its accessibility for community-based claims typical of extractive industry impacts. The compensation determination provisions lack detailed criteria or guidelines, potentially leading to inconsistent or inadequate awards. More fundamentally, the Act's effectiveness depends on the broader legal and political environment in Nigeria. Systemic corruption, judicial inefficiency, and political interference continue to affect the implementation of human rights protections generally.[491] The Commission's formal independence may prove insufficient to overcome these structural constraints, particularly in high-stakes cases involving powerful corporate and political interests. The Act also does not address extraterritorial issues that frequently arise in corporate human rights cases involving multinational corporations. While the Commission has authority over corporate activities within Nigeria, it lacks jurisdiction over parent

[491] Worluh-Okolie NH, Okoye JA. 'Legal and Institutional Frameworks for Human Rights Protection in Nigeria: Challenges and Pathways to Effective Enforcement' (2024) *Fountain University Law Journal.*;1(2):200.

companies or corporate decision-making that occurs outside Nigeria's borders, potentially limiting its effectiveness in addressing the full scope of corporate responsibility.

Regardless, the Act's creation of a quasi-judicial mechanism with investigative powers, adjudicatory authority, and enforcement capacity addresses several of the structural barriers that have historically limited access to effective remedies. However, the Act's ultimate effectiveness depends on practical implementation, adequate resource allocation, and integration with broader legal and political reforms.

3.3.4. Niger Delta Development Commission Act (2000)

The Niger Delta Development Commission Act of 2000 was enacted to address the underdevelopment, environmental degradation and social dislocation that oil production has inflicted on the Niger Delta.[492] On paper, the Act establishes a tripartite governance structure, Federal, state and local representatives, tasked with planning, executing and monitoring development projects across the region. Its objectives span infrastructural investment, environmental protection, capacity building and youth empowerment. Yet a closer examination reveals structural and operational lacunae that undermine its effectiveness as a remedy mechanism under Pillar III of the UNGPs

Section 7(1) establishes the Commission's mandate for the sustainable development of the Niger-Delta region with tasks such as formulating policies and guidelines for regional development, while also conceiving, planning and implementing projects and programs to achieve this goal. A critical aspect of its function involves conducting surveys of the Niger-Delta area to determine necessary development measures and prepare master plans that promote physical development.[493] The Commission operates within a framework of intergovernmental coordination, implementing measures approved by both the Federal Government and member States. It plays an important diagnostic role by identifying factors that inhibit the region's development and providing assistance to member States to address these challenges.[494] The Commission also maintains oversight responsibilities, assessing and reporting on funded projects to ensure proper utilization of resources.[495] Environmental protection forms a key component of the Commission's mandate. It

[492] Bode-Obania, P. and Ajisebiyawo, A. “The Niger delta development commission and Its strategies for addressing environmental challenges to sustainable development in the Niger Delta Region, Nigeria” (2025) 7 (2) *International Journal of Social Science and Humanities* 34-42

[493] Niger Delta Development Commission Act, 2000, Section 7(1) (c).

[494] Niger Delta Development Commission Act, 2000, Section 7(1) (b).

[495] Niger Delta Development Commission Act, 2000, Section 7(1) (g).

addresses ecological and environmental problems while advising on the prevention and control of oil spillages.[496] This environmental focus extends to liaising with oil companies on pollution prevention and control matters.[497] Finally, the Commission's broad mandate includes executing any additional works and performing other functions necessary for the sustainable development of the Niger-Delta region.[498]

Although comprehensive, this litany of tasks lacks enforceable standards, timetables or performance metrics. The Commission is empowered to "tackle ecological and environmental problems"[499] but not mandated to achieve or report against any concrete environmental-remediation targets. Similarly, the duty to "ensure that funds released … are properly utilized" is hortatory rather than binding, with no statutory accountability mechanism or community grievance channel to challenge misallocation.

In the same vein, Section 9(1) prescribes a dozen directorates, including Administration and Human Resources, Community and Rural Development, Environmental Protection and Control, and Projects Monitoring and Supervision. However, this elaborate organizational chart conveys ambition but obscures accountability. No provision requires the Commission to publish performance reports by directorate, nor to allocate decision-making authority to communities most affected. With directorates siloed around technical functions, the Act fails to integrate local grievance redress or participatory feedback into project design or monitoring.

Section 14 creates a dedicated funding mechanism to ensure stable financial resources for the Commission. The provision establishes that the Commission shall maintain a fund to cover all its operational expenditures.[500] This fund receives revenue from multiple sources to guarantee consistent financing. By vesting the Commission with a distinct revenue stream, the Act meets the UNGPs' requirement for a predictable remediation mechanism. In practice, however, delays and rollbacks in fund transfers by the Ministry of Finance have repeatedly undercut project continuity.[501] The Act provides no sanction if the Federal Government fails to release the prescribed 15 percent on time, nor does it oblige oil companies to remit the 3 percent promptly or transparently. Under the UNGPs, remedy mechanisms must offer timely, rights-compatible

[496] Niger Delta Development Commission Act, 2000, Section 7(1) (h).
[497] Niger Delta Development Commission Act, 2000, Section 7(1) (i).
[498] Niger Delta Development Commission Act, 2000, Section 7(1) (j).
[499] Seck, *supra*, note 53.
[500] Niger Delta Development Commission Act, Section 14.
[501] Ebeku KS. "Assessing the performance of the Niger Delta Development Commission (NDDC) 2001-2020: Another failed dream" (2020) 3 (3) International Journal of Law and Society 78.

outcomes; the Commission's inability to deliver basic infrastructure; schools, clinics, potable water, illustrates its failure to meet that standard.[502]

Secondly, the Commission's governance architecture centralizes decision-making in Abuja and Port Harcourt, with limited formal channels for structured community participation. Although the Act provides for local government representation, it lacks clear procedural safeguards to ensure that affected communities can initiate or influence project selection, monitor implementation or seek redress for faulty execution. This gap violates the principles of accessibility and equitability: communities without political patronage or technical expertise cannot navigate the Commission's opaque project pipeline, and there is no formal grievance channel to challenge project abandonment or substandard work.

Thirdly, environmental remediation, perhaps the most urgent need for oil-impacted communities, is only cursorily addressed through general mandates to "promote sustainable development." The Act does not define enforceable standards for environmental cleanup, corporate liability or community compensation. When remediation has been attempted, it often relies on ad hoc memoranda of understanding between the Commission, government agencies and oil companies. Without statutory teeth or independent oversight, these voluntary arrangements fail the UNGPs' criteria for transparency and rights-compatibility, leaving communities to litigate environmental harms at their own expense.

Finally, accountability mechanisms under the Act are weak. The lack of an independent audit function and the Commission's broad discretion over budgetary allocations create avenues for mismanagement and corruption. Affected persons have no direct route to challenge financial misappropriation or to demand restitution. Under the UNGPs, effective remedy requires mechanisms that are both predictable and legitimate; the absence of enforceable sanctions against Commission officials or contractors means that communities have no certainty that grants intended for them will translate into concrete benefits.

While the Niger Delta Development Commission Act 2000 was conceived as a statutory response to the region's acute needs, its structural design and implementation record reveal systemic barriers

[502] Principle 31 of the UN Guiding Principles on Business and Human Rights (UNGPs).

to access to remedy. It neither guarantees community participation nor ensures timely, enforceable environmental and developmental relief.

3.3.5. Land Use Act (1978)

This study's analysis of the Land Use Act focuses on three aspects of the legislation: vesting and tenure powers, alienation controls, and compensation provisions. The Act's foundational provision in Section 1 establishes that all land within a state are vested in the Governor, to be held in trust for the benefit of all Nigerians.[503] This principle is further developed in Section 5, which grants the Governor sweeping authority over land tenure.[504] The Governor may issue statutory rights of occupancy, impose and adjust rental fees, enforce financial penalties for breaches of occupancy conditions, modify land covenants at discretion, and extend compliance deadlines for land-use terms.[505] Most significantly, the Act extinguishes all pre-existing land rights whenever a statutory right of occupancy is granted.[506]

This framework creates several challenges. The concentration of power in the Governor's office comes at the expense of customary and communal land claims, with no requirement for consultation or compensation when these traditional rights are extinguished. The system of penal rents operates as a financial deterrent rather than a mechanism for restoring rights or compensating losses. Furthermore, the broad discretionary powers granted to the Governor introduce uncertainty and potential for arbitrary decision-making, undermining principles of predictable and equitable remedy.

The Act's restrictions on land transactions present additional barriers. By requiring gubernatorial consent for any transfer of occupancy rights, Section 22 establishes bureaucratic obstacles that particularly affect communities and organizations seeking to use land for remedial purposes.[507] The lack of transparency in the consent process compounds these difficulties, creating an environment where access to redress is neither straightforward nor guaranteed. Compensation provisions reveal further limitations. While the Act permits land revocation for public interest projects like pipelines and mining operations, the compensation framework is notably restrictive. Payment is limited to the value of unexhausted improvements, explicitly excluding the land itself

[503] Land Use Act (1978), Section 1
[504] Land Use Act (1978), Section 5.
[505] *Ibid.*
[506] Olawuyi, *supra*, note 483.
[507] Land Use Act (1978), Section 22.

from valuation. For resource-related revocations, the Act defers to sector-specific legislation, creating a fragmented system where accountability is diffused across multiple legal regimes.

These structural features collectively create significant barriers to remedial justice. The Act's design prioritizes state control and administrative convenience over the protection of community rights and equitable access to remedy. By extinguishing customary rights without adequate safeguards, substituting financial penalties for substantive redress, maintaining narrow compensation standards, and operating through opaque discretionary processes, the legislation falls short of international standards for legitimate, accessible, predictable and equitable remedies as outlined in the UN Guiding Principles on Business and Human Rights.

3.3.6. Companies and Allied Matters Act (2020)

The Companies and Allied Matters Act 2020 (CAMA 2020) is another significant law of Nigeria's corporate regulatory framework. While the Act introduced several modernizing provisions aimed at enhancing corporate governance and transparency, the focus of this study will be on the approach to corporate accountability, particularly regarding human rights obligations and access to remedies for communities affected by corporate activities in Nigeria's extractive industries.

Section 305(3) of the Act introduced what appears to be a progressive provision regarding environmental responsibility as it provides that

> "A director shall act at all times in what he believes to be the best interests of the company as a whole so as to preserve its assets, further its business, and promote the purposes for which it was formed, and in such manner as a faithful, diligent, careful and ordinarily skillful director would act in the circumstances and, in doing so, shall have regard to the impact of the company's operations on the environment in the community where it carries on business operations."[508]

This provision represents the first explicit statutory requirement in Nigerian corporate law mandating directors to consider environmental impacts. The inclusion of environmental considerations within directors' fiduciary duties aligns with global trends toward Environmental, Social, and Governance (ESG) frameworks. However, several critical gaps undermine its effectiveness as a tool for ensuring corporate accountability and access to remedies.

The most significant limitation of Section 305(3) lies in its subjective nature. The provision requires directors to act in what "he believes to be the best interests of the company," creating a

[508] Companies and Allied Matters Act 2020 (Nigeria), s 305(3).

subjective test that depends entirely on the director's personal assessment rather than objective standards. Afolayan and Awwal-Bilanta[509] notes that if the directors honestly believe they are acting in the interest of the company there can be no breach of duty, whether or not the court thinks it was in the best interest of the company. This subjective standard creates a substantial accountability gap because:

a. The Act provides no objective criteria for assessing environmental impacts or community interests
b. Courts cannot second-guess directors' honest beliefs about what serves the company's interests
c. The provision contains no enforcement mechanisms or remedial pathways for affected communities.

For communities in the Niger Delta suffering from oil spills, gas flaring, and environmental degradation, this subjective standard offers little recourse when corporate directors genuinely believe that prioritizing production over environmental protection serves the company's interests.

Despite the environmental provision in Section 305(3), CAMA 2020 fundamentally maintains a shareholder-centric approach to corporate governance. Section 305(4) provides "the matters to which a director of a company is to have regard in the performance of his functions include the interests of the company's employees in general, as well as the interests of its members." While this provision mentions employee interests alongside shareholder interests, it conspicuously omits any reference to community interests or broader stakeholder concerns. The Act's overall structure reflects what this research describes as the traditional primacy model of corporate governance which is based on a shareholder-centric model with very little corporate responsibility impacts on stakeholder groups like local communities.

CAMA 2020's approach to Corporate Social Responsibility (CSR) further reveals another significant accountability gap. While Section 43 grants companies the general capacity to make donations, including charitable contributions, this capacity is severely constrained by the overriding duty to act in shareholders' interests. Section 43(1) provides that companies have "all the rights and powers of a natural person with full capacity, including the right to make donations". However, Section 43(2) prohibits "corporate donations to political parties, associations, or for any other political purposes". More significantly, the Act requires that any corporate giving must

[509] M Afolayan & O Awwal-Bilanta, "Duties of Directors under CAMA 2020 and Analysis of the Principles of Corporate Governance" (2024) 10:1 Int'l J Soc Sci Mgmt Res 56 at 59.

ultimately benefit the company and advance shareholder success.[510] This creates what this study considers as an interest-based CSR rather than altruistic CSR practice. For communities in the Niger Delta, this means that corporate social investments are not legally guaranteed and depend entirely on corporate discretion and perceived business benefits.

The combined effect of these gaps creates what this study describes as an accountability vacuum in Nigerian corporate law. Despite CAMA 2020's modernizing aspirations, the Act fails to provide;

a. Formal recognition of community standing or rights in corporate decision-making processes.
b. Comprehensive tools for compelling corporate compliance with environmental or social obligations.
c. Accessible, effective mechanisms for communities to seek redress for corporate-caused harms
d. Mandatory human rights due diligence but opts for voluntary, discretionary approaches.

The Act's reliance on subjective standards, shareholder primacy, and voluntary approaches perpetuates the very problems it was hailed to address. For communities seeking meaningful access to remedies, CAMA 2020 offers more symbolism than substance, creating the illusion of corporate accountability while preserving the structural arrangements that enable corporate impunity.

3.3.7. The 2023 National Action Plan on Business and Human Rights

Nigeria's National Action Plan (NAP) on Business and Human Rights was approved by the Federal Executive Council in April 2023,[511] marking a significant milestone in the country's effort to operationalize the UN Guiding Principles on Business and Human Rights within its domestic framework. The NAP is the culmination of nearly a decade of advocacy, research, and multi-stakeholder consultations that began in 2013.[512] While the NAP demonstrates Nigeria's commitment to addressing business-related human rights violations, an analysis of its remedy provisions reveals substantial gaps, particularly in citizen-centered participatory mechanisms and accountability frameworks for non-state actors.

[510] Companies and Allied Matters Act 2020 (Nigeria), ss 43(1)–(3).
[511] Olugbode, M. "AGF Fagbemi Reveals Efforts to Make Nigeria a Model for Responsible Business Conduct in Africa" (Arise News, 2025), online: <https://www.arise.tv/agf-fagbemi-reveals-efforts-to-make-nigeria-a-model-for-responsible-business-conduct-in-africa/>
[512] *Ibid.*

The NAP's treatment of access to remedy under Pillar III follows the UNGPs' tripartite framework, acknowledging that "access to remedy for communities or persons who are victims of adverse impact of business operations can be through the following framework:

(i) State-Based Judicial Mechanism;

(ii) State-Based Non-Judicial Mechanism;

(iii) Non-State-Based Grievance[513]

The NAP explicitly states that "access to remedy includes legal, administrative, judicial and non-judicial remedy".[514] It also confirms the systemic challenges facing Nigeria's judicial system in addressing business-related human rights violations. According to the NAP,

> "State-Based Judicial Mechanisms are faced with a number of challenges associated with general justice delivery in Nigeria. These challenges include delay in the judicial process, overbearing political interference, lack of judicial independence, judicial corruption, low level of judicial awareness of the UNGPs etc."[515]

This admission reflects reality regarding the ineffectiveness of judicial remedies in corporate human rights cases (this was further discussed in section 3.6. of this chapter). To address these challenges, the NAP proposes several interventions. The National Working Group on Business and Human Rights (NWGBHR) is mandated to carry out intensive advocacy to the Judiciary in order to effect the issuance of 'Practice Directions' that will facilitate speedy resolution of cases of human rights violations by businesses.[516] It also emphasizes continuous sensitization of judges and magistrates on the Action Plan and encourages Alternative Dispute Resolution approaches. [517]

Although the NWGBHR mandate embodies an ambitious, whole-of-society approach, its potential remains constrained by coordination, resources, and authority. With more than twenty institutions involved, overlapping mandates and jurisdictional disputes threaten to undermine coherent policy development. Moreover, the NAP does not specify dedicated funding for the Working Group, leaving its capacity for oversight and follow-through in question. Finally, the NWGBHR's role is largely advisory; it lacks formal enforcement powers, thereby limiting its ability to compel compliance or sanction non-state actors. Significantly, the NAP recognizes the dimension of corporate accountability by stating that the NWGBHR "shall encourage strategic litigation, not

[513] National Action Plans (NAP) on Business and Human Rights, "Non-Judicial Grievance Mechanisms" (National Action Plans on Business and Human Rights, 2025) p. 165, online: <https://globalnaps.org/issue/non-judicial-grievance-mechanisms/>.
[514] NAP on Business and Human Rights (2023), Chapter 5, Section 5.2.1.
[515] NAP on Business and Human Rights (2023), Chapter 5, Section 5.2.2.
[516] NAP on Business and Human Rights (2023), Chapter 6, Section 6.3.2.
[517] NAP on Business and Human Rights (2023), Chapter 5, Section 5.2.2.

just municipally where these businesses are carried out, but also in the home countries of the respective multinational companies in instances where the violation is caused by transnational corporations".[518] This provision acknowledges the jurisdictional limitations that have historically undermined remedy for victims of transnational corporate abuse.

Furthermore, the NAP identifies numerous state agencies with regulatory functions pertaining to business and human rights, including the National Human Rights Commission (NHRC), Public Complaints Commission (PCC), National Oil Spill Detection and Response Agency (NOSDRA), Consumer Protection Council (CPC), Nigerian Communications Commission (NCC), National Administration of Food and Drug Control (NAFDAC), National Bio-Safety Management Agency, National Environmental Standard and Regulatory Enforcement Agency (NESREA), Standards Organization of Nigeria (SON), Central Bank of Nigeria (CBN), Corporate Affairs Commission (CAC), Nigerian National Petroleum Corporation (NNPC), and Department of Petroleum Resources (DPR).[519] The Plan acknowledges that these agencies "have the potential of addressing the greatest number of human rights violations by businesses because they exercise statutory powers and regulatory functions".[520] However, the NAP's proposed intervention is limited to "strengthening of the National Human Rights Commission to discharge its quasi-judicial responsibilities in addressing human rights violations by businesses; and rendering of effective remedy".[521]

3.3.7.1.Gap Analysis

Despite its comprehensive scope, the NAP exhibits fundamental gaps in citizen-centered participatory mechanisms for remedy. This deficiency is particularly problematic given the dissertation's central argument that effective remedies require meaningful participation by affected communities in the design, implementation, and monitoring of remedy mechanisms.

First, while the NAP acknowledges the importance of community consultation in the establishment of operational-level grievance mechanisms, it lacks concrete provisions ensuring meaningful community participation in the broader remedy ecosystem. The Plan's approach remains largely top-down, with remedy mechanisms primarily designed and controlled by state institutions and corporations rather than being genuinely participatory processes that center the voices and needs

[518] NAP on Business and Human Rights (2023), Chapter 6, Section 6.3.2.
[519] NAP on Business and Human Rights (2023), Chapter 6, Section 6.3.1.
[520] *Ibid.*
[521] NAP on Business and Human Rights (2023), Chapter 6, Section 6.3.3

of affected communities. The NAP's provision that Community Relations Guidelines shall be developed "in conjunction with the community stakeholders"[522] is a step toward participation but falls short of the citizen-centered approach canvassed here. The phrase "in conjunction with" suggests consultation rather than genuine co-creation or community leadership in the design of remedy processes.

Critically, the NAP lacks provisions for community-led monitoring of remedy mechanisms. While it establishes monitoring responsibilities for the NWGBHR and requires companies to monitor their own grievance mechanisms, it does not create space for affected communities to independently monitor and evaluate the effectiveness of remedy processes. This represents a significant gap, as community-led monitoring has proven essential for ensuring accountability and effectiveness of remedy mechanisms in other contexts. In the same vein, The NAP fails to adequately acknowledge or integrate traditional and customary remedy systems that exist within Nigeria's diverse cultural landscape. Given Nigeria's pluralistic legal system and the importance of customary law in many communities affected by business operations, this omission represents a missed opportunity to create more culturally appropriate and accessible remedy mechanisms. Also, while the NAP acknowledges the challenge of litigation costs and proposes exploring Legal Aid through the Nigerian Bar Association, it lacks comprehensive provisions for legal empowerment of affected communities. The NAP does not adequately address information asymmetries between corporations and communities, nor does it create robust mechanisms for ensuring that communities have access to the technical expertise necessary to meaningfully participate in remedy processes.

The NAP's reliance on voluntary measures makes sense to an extent it is, after all, an action plan rather than a statute or regulatory instrument. Its purpose is to signal governmental intent, not to create binding legal duties. This is precisely why its approach to corporate accountability raises concern. Even where the NAP uses mandatory-sounding language, it stops short of establishing enforcement mechanisms or sanctions that would ensure follow-through. For example, while businesses are said to be "obligated" to establish operational-level grievance mechanisms, the NAP does not specify what happens when companies fail to do so.[523]

[522] National Action Plans on Business and Human Rights, "Non-Judicial Grievance Mechanisms" (National Action Plans on Business and Human Rights, 2025) at 163, online: <https://globalnaps.org/issue/non-judicial-grievance-mechanisms/>.
[523] *Ibid* at 163

This gap is further reflected in the NAP's commitment that the National Working Group on Business and Human Rights will "enter into negotiation with the Manufacturers Association of Nigeria (MAN) and related bodies to ensure compliance with this plan."[524] Negotiation, rather than regulatory oversight or statutory requirements, signals a fundamentally soft-law approach. And while this may be consistent with the nature of an action plan, it raises questions about whether the government intends or is prepared to adopt more robust measures capable of compelling corporate compliance, particularly on remedy obligations.

3.4. Institutional Framework

The institutional framework supporting Nigeria's legal remedies regime for corporate human rights violations comprises several key agencies that, despite their statutory mandates, face significant operational challenges that undermine their effectiveness. The examination of these institutions reveals systemic weaknesses that contribute to the persistent remedy gap experienced by affected communities.

3.4.1. National Human Rights Commission

The National Human Rights Commission (NHRC) is one of Nigeria's primary institutions for protecting and promoting human rights at the domestic level.[525] Established by the National Human Rights Commission Act, the Commission serves as Nigeria's National Human Rights Institution with a broad mandate to investigate human rights violations, promote human rights education, and provide remedies for victims of abuses.[526]

Within the context of corporate human rights violations, particularly those arising from oil extraction activities in the Niger Delta, the NHRC occupies a theoretically significant position in the remedy architecture. The Commission's statutory functions include receiving complaints about human rights violations, conducting investigations into such violations, and providing appropriate remedies through various mechanisms including mediation, conciliation, and recommendations for compensation.[527] The NHRC also has the mandate to monitor compliance with international human rights treaties to which Nigeria is a party, including those that impose obligations on states

[524] NAP, *supra*, note 522 at 159.
[525] Worluh-Okolie NH, Okoye JA. "Legal and Institutional Frameworks for Human Rights Protection in Nigeria: Challenges and Pathways to Effective Enforcement" (2024) 1 (2) Fountain University Law Journal 200.
[526] Ogbike AM, Ibe CE. "The Role of the Nigeria's Human Rights Commission in the Promotion and Protection of Workers Rights" (2024) 8 AJLHR 78.
[527] Section 6 (1) NHRCA (2010)

to regulate corporate conduct and provide effective remedies for business-related human rights abuses.[528] However, the Commission's effectiveness in addressing corporate human rights violations, particularly in the extractive sector, has been severely limited by multiple structural and operational constraints.

Recent data from the Commission indicates that it has received over two million complaints, demonstrating the scale of human rights challenges across Nigeria.[529] The Commission reports that violations of the right to freedom from discrimination constitute the most frequent category of complaints, followed by infringements on freedom of expression, assembly, and association.[530] While environmental rights violations related to corporate activities feature in the Commission's caseload, they represent a smaller proportion of the overall complaints received.

The Commission's approach to corporate human rights violations has traditionally focused on individual complaints[531] rather than systematic engagement with corporate actors or structural issues affecting entire communities. This individualistic approach is poorly suited to addressing the collective nature of environmental and community rights violations that characterize the Niger Delta context. Oil spills, gas flaring, and environmental degradation affect entire communities simultaneously, yet the Commission's procedures are designed primarily for processing individual grievances.

Furthermore, the Commission lacks the technical expertise and resources necessary to effectively investigate complex corporate human rights violations in the extractive sector. Environmental damage assessment, corporate due diligence evaluation, and supply chain analysis require specialized knowledge and resources that the Commission does not possess. This limitation is compounded by the Commission's dependence on government funding, which creates potential conflicts of interest when investigating violations involving state-owned enterprises or activities that generate significant government revenue. The enforcement powers of the NHRC represent another significant limitation. Unlike some national human rights institutions in other jurisdictions, the Nigerian Commission lacks quasi-judicial powers and cannot issue binding decisions or orders. Its recommendations, while carrying moral authority, are not legally enforceable, and there is no systematic mechanism for monitoring implementation of its recommendations. In cases involving

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[528] *Ibid.*

[529] National Human Rights Commission 'NHRC Reports Over 2 million Complaints, Freedom from Discrimination Suffers the most' (NHRC, 2025), online:<https://www.nigeriarights.gov.ng/nhrc-media/news-and-events/513-nhrc-reports-over-2-million-complaints-freedom-from-discrimination-suffers-the-most.html>

[530] *Ibid.*

[531] Worluh-Okolie NH, Okoye JA. "Legal and Institutional Frameworks for Human Rights Protection in Nigeria: Challenges and Pathways to Effective Enforcement" (2024) 1 (2) Fountain University Law Journal 200.

powerful multinational corporations with extensive legal and financial resources, this lack of enforcement capability renders the Commission's interventions largely ineffective.

The Commission's relationship with other relevant institutions also presents challenges. Coordination with environmental agencies, regulatory bodies, and judicial institutions is often ad hoc and informal, lacking the systematic integration necessary for addressing complex corporate human rights violations.[532] This fragmentation means that even where the Commission identifies violations, the follow-up mechanisms necessary for effective remediation are often absent or inadequate. Additionally, the Commission faces significant accessibility challenges, particularly for rural communities in the Niger Delta region where many corporate human rights violations occur.[533] Physical access to the Commission's offices, language barriers, and lack of awareness about the Commission's mandate and procedures prevent many potential complainants from utilizing its services.[534] The Commission's limited presence in oil-producing communities means that it often lacks the local knowledge and relationships necessary for effective intervention in corporate-community disputes. The Commission's mandate also creates definitional challenges in addressing corporate human rights violations. While the Commission is empowered to address violations of constitutional and internationally recognized human rights under the Act, the intersection between environmental degradation and human rights is not always clearly articulated in its enabling legislation.[535] This creates uncertainty about the scope of the Commission's authority to address environmental harms caused by corporate activities, particularly where such harms may not constitute direct violations of clearly defined civil and political rights.

3.4.2. Federal Ministry of Environment

The Federal Ministry of Environment, established in 1999, serves as Nigeria's primary institutional mechanism for environmental protection and natural resource conservation.[536] The Ministry operates through a decentralized structure with zonal offices in the six geopolitical zones and field offices in all 36 states and the Federal Capital Territory.[537]

[532] Ogbike AM, Ibe CE. "The Role of Nigeria's Human Rights Commission in the Promotion and Protection of Workers Rights" (2024) 8 AJLHR 78.
[533] Obajobi JJ. "The role of the national human rights commission against human rights violations in Nigeria" (2022) 3 (1) Zamfara Journal of Politics and Development 1-6.
[534] *Ibid.*
[535] Obiora Chinedu Okafor and Shedrack Agbakwa, "On Legalism, Popular Agency and 'Voices of Suffering': The Nigerian Human Rights Commission in Context" (2002) 24 Hum. Rts. Qtly. 663 at 662.
[536] Federal Ministry of Environment 'About Us' (2025), online: <https://ead.gov.ng/>
[537] *Ibid.*

Under the Ministry's supervision operate several critical agencies relevant to corporate environmental accountability, including the National Environmental Standards and Regulations Enforcement Agency (NESREA), the National Oil Spill Detection and Response Agency (NOSDRA), the National Biosafety Management Agency, and the National Agency for the Great Green Wall.[538] This institutional ecosystem theoretically provides comprehensive coverage of environmental protection issues, from standard setting and enforcement to emergency response and long-term conservation initiatives.

The Ministry's core functions include formulating environmental policies, coordinating environmental activities across different sectors, and supervising the implementation of environmental standards and regulations.[539] In the context of corporate human rights violations, the Ministry plays a crucial role in establishing the environmental regulatory framework that governs corporate conduct and in ensuring that remediation measures are implemented when violations occur. The Ministry oversees the Environmental Impact Assessment process, which requires major projects to undergo comprehensive environmental evaluation before approval.[540]

However, the Ministry's effectiveness in addressing corporate environmental violations has been significantly constrained by multiple systemic challenges. Foremost among these is the underfunding that affects virtually all environmental agencies in Nigeria. Despite the scale of environmental challenges, particularly in the extractive sector, budgetary allocations to the Ministry and its agencies remain inadequate for effective monitoring, enforcement, and remediation activities. This funding constraint directly impacts the Ministry's capacity to respond effectively to corporate violations and provide meaningful remedies to affected communities. The Ministry also faces significant technical capacity limitations that undermine its ability to effectively regulate sophisticated multinational corporations. Environmental monitoring, pollution assessment, and remediation oversight require advanced technical expertise and equipment that the Ministry often lacks.[541] Oil companies and other corporations typically possess superior technical resources and expertise, creating an asymmetric relationship that disadvantages regulatory oversight and enforcement efforts.

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[538] Abubakar A, Ishak MY, Yaro KM, Zangina AS. "The Role Of Government Institutions In Managing The Environment In Nigeria: Policy And Governance Review" (2023) 43 (1) Borneo Science| the Journal of Science and Technology https://doi.org/10.51200/bsj.v43i1.4402 (Abubakar et al).

[539] *Ibid.*

[540] Abubakar et al., *supra*, note 358

[541] Ogunkan DV. "Achieving sustainable environmental governance in Nigeria: A review for policy consideration" (2022) 2 (1) Urban Governance 212.

The Ministry's approach to corporate environmental violations has been largely reactive rather than proactive. Instead of systematic monitoring and prevention-focused strategies, the Ministry typically responds to violations after they have occurred and after significant environmental damage has already been inflicted.[542] This reactive approach is particularly problematic in the context of oil extraction activities, where prevention of environmental damage is significantly more cost-effective and environmentally sound than post-damage remediation.

3.4.3. Nigerian Upstream Petroleum Regulatory Commission (NUPRC)

The NUPRC's mandate covers the full spectrum of upstream petroleum activities, from exploration and production to decommissioning and abandonment.[543] This comprehensive scope includes environmental oversight, safety regulation, technical standards enforcement, and commercial regulation of upstream operations.[544] The Commission is empowered to issue licenses and permits, monitor compliance with regulatory requirements, conduct inspections and audits, and impose penalties for violations of petroleum laws and regulations.[545] Within the context of corporate human rights remedies, the NUPRC occupies a position as the primary regulator of the upstream activities that generate the majority of environmental and social impacts affecting Niger Delta communities. Oil spills, gas flaring, seismic survey activities, and other upstream operations that frequently result in human rights violations fall directly within the Commission's regulatory mandate. The Commission's effectiveness in preventing such violations and ensuring appropriate remedies when they occur is therefore central to the overall remedy architecture.

The Commission's technical capacity, while improved compared to its predecessors, remains inadequate for effectively regulating sophisticated multinational corporations with extensive technical and financial resources. Environmental monitoring, safety oversight, and compliance assessment in the petroleum sector require advanced technical expertise and equipment that the Commission often lacks. This capacity gap creates an asymmetric relationship between regulator and regulated entities that undermines effective oversight and enforcement. Regulatory capture represents a particularly significant challenge for the NUPRC, given the economic and political

[542] *Ibid.*
[543] Nwankwo O, Edem M, Muku J, Ike C, Ogionwo E., ”Achieving safety at sea–discussing the safety programs implemented by the Nigerian upstream petroleum regulatory commission” in *SPE Nigeria Annual International Conference and Exhibition* (SPE, 2022) D021S004R002
[544] *Ibid.*
[545] Sayyadi BA, Nwankwo OK, Atebe OJ, Ogionwo E. “Implementing Oil and Gas Industry HSE Programs in a Dual Regulatory Framework of the Nigerian Oil and Gas Industry” in *SPE Nigeria Annual International Conference and Exhibition* (SPE, 2024) D031S016R006.

importance of the upstream petroleum sector. The Commission operates in an environment where upstream petroleum activities generate the majority of government revenue and foreign exchange earnings, creating powerful incentives for regulatory forbearance and accommodation of industry interests.

The Commission's approach to corporate accountability has also been largely focused on technical compliance rather than broader human rights considerations.[546] While the Commission monitors compliance with environmental and safety standards,[547] its institutional capacity to address the broader human rights implications of corporate conduct is limited. This narrow focus means that even where technical violations are identified and addressed, the underlying human rights impacts may not receive adequate attention or remediation.

3.4.4. Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA)

The Nigerian Midstream and Downstream Petroleum Regulatory Authority represents the second major regulatory innovation introduced by the Petroleum Industry Act of 2021, with responsibility for regulating the midstream and downstream segments of Nigeria's petroleum industry.[548]

Within the corporate human rights remedies framework, the NMDPRA's role is particularly significant because midstream and downstream operations often occur in close proximity to populated areas, creating direct interfaces between corporate activities and community welfare.[549] Pipeline corridors, storage facilities, and distribution networks frequently cross community lands and can generate environmental and social impacts that affect human rights. The Authority's effectiveness in preventing such impacts and ensuring appropriate remedies is therefore crucial for affected communities.

However, like its upstream counterpart, the NMDPRA faces substantial challenges that limit its effectiveness in addressing corporate human rights violations and ensuring adequate remedies. The Authority inherited many of the institutional weaknesses that characterized its predecessor agencies, including resource constraints, technical capacity limitations, and coordination challenges. These inherited problems are compounded by the complexity of establishing new

[546] Nigerian Upstream Petroleum Regulatory Commission. Petroleum Industry Act, 2021, No. 6. Section 1.
[547] Ewere A. Omoregie, *"Environmental Governance and Regulatory Challenges in Nigeria: The Case of NESREA"* (2020) 11(1) African Journal of Environmental Law and Policy 45 at 53.
[548] Ter Akase M, Kente JS, Mohammed U. "Assessment of Communication Strategies by the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA) for the Management of the Petroleum Industry in Nigeria" (2025) 10 (1) GVU Journal of Management and Social Sciences 299.
[549] *Ibid.*

institutional structures and procedures while maintaining continuity of regulatory oversight. Coordination challenges are particularly complex for the NMDPRA because midstream and downstream operations interface with multiple other regulatory agencies and policy domains.[550] Environmental impacts may fall under the jurisdiction of environmental agencies, safety issues may involve occupational safety regulators, and commercial practices may engage competition authorities. The Authority's ability to coordinate effectively across these multiple jurisdictions while maintaining its core regulatory mandate is often limited by bureaucratic complexity and unclear institutional relationships.

3.4.5. Nigerian Oil Spill Detection and Response Agency

The Nigerian Oil Spill Detection and Response Agency (NOSDRA) is another environmental agency aimed at addressing the perennial problem of oil spills in Nigeria's petroleum sector. This agency established by the NOSDRA Act of 2006 has the statutory responsibility for preparedness, detection, and response to all oil spills in Nigeria.[551] While the Act creates an institutional framework for oil spill management and response, a detailed analysis reveals significant gaps in its approach to remedies for corporate human rights violations, particularly its reactive rather than participatory methodology.

Section 1 of the NOSDRA Act creates the agency with broad corporate powers, with responsibility for preparedness, detection and response to all oil spillages in Nigeria as set out in section 5 of this Act. This framework grants NOSDRA legal personality and operational structure, including decentralized zonal offices to address spills in oil-producing regions like the Niger Delta. The objective of the agency is to monitor, regulate Tiers one and two oil spills as well as coordinate, implement and review the National Oil Spill Contingency Plan for Nigeria.[552] The focus on post-spill actions, cleanup, response, and remediation, demonstrates a reactive rather than preventive mandate. Section 19 grants NOSDRA intervention powers during major spills. While mediation is mentioned, it is only triggered after spills occur, lacking mechanisms for preemptive community engagement or participatory prevention strategies.

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[550] Energy Focus Report 'Professor Wumi Iledare Urges the National Assembly to Refine the PIA for Greater Transparency, Competition, and Energy Security ' (October, 2025) online: <https://www.energyfocusreport.com/professor-wumi-iledare-urges-the-national-assembly-to-refine-the-pia-for-greater-transparency-competition-and-energy-security/>

[551] National Oil Spill Detection and Response Agency (Establishment) Act (2006), Section 1(1) of

[552] National Oil Spill Detection and Response Agency (Establishment) Act (2006), Section 3(1)(a)–(c).

While a good development, this study identifies several gaps in this act. Firstly, the Act lacks provisions for community involvement in spill prevention or response planning. NOSDRA relies on reports from oil companies or civil society, undermining independent detection and community trust. Section 2 establishes a Governing Board with members from federal ministries and oil industry groups (OPTS) but excludes community representatives.[553] This imbalance prioritizes corporate interests over those of affected populations. Also, Section 6(3) penalizes spillers for failing to clean up sites but does not establish participatory remediation processes. Communities have no formal role in defining adequate cleanup or seeking redress. Studies confirm NOSDRA's reactive nature, relying on external reports rather than proactive detection. This approach delays responses and exacerbates environmental and social harms, leaving communities without timely remedies.

3.5. The Absence of Citizen-Centered Approaches in Nigeria's Corporate Human Rights Remedies Framework

A critical examination of Nigeria's legal and institutional framework for corporate human rights remedies reveals a fundamental gap: the systematic exclusion of citizens and affected communities from decision-making processes that directly impact their lives and livelihoods. While the laws and institutions analyzed in previous sections contain various mechanisms for addressing corporate violations, they operate within what can be characterized as a "top-down governance model" that privileges state and corporate interests over meaningful citizen participation. The challenges facing Nigerian regulatory institutions reflect broader patterns identified by Simons,[554] where even well-intentioned oversight mechanisms can be undermined by 'significant discretion' that enables continued corporate violations.

The 1999 Nigerian Constitution depicts the exclusion of citizens from natural resource governance through Section 44(3), which vests "entire property in and control of all minerals, mineral oils and natural gas" exclusively in the Federal Government. This constitutional provision fundamentally excludes communities from decision-making processes regarding resources extracted from their ancestral lands. Key exclusionary elements include:

a. No constitutional requirement for community consent before resource extraction
b. Absence of mandatory consultation mechanisms with affected populations
c. No guaranteed representation of host communities in resource management decisions

[553] National Oil Spill Detection and Response Agency (Establishment) Act 2006, Section 2.
[554] Simons, *supra*, note 294.

d. Limited constitutional protection for traditional land rights in oil-bearing areas

Nigeria had no protective laws for citizens when oil was first discovered, and this exclusionary approach has persisted through successive constitutional frameworks.

In the same vein, the PIA's approach to citizen participation remains fundamentally top-down. While the Act introduces the HCDTs, these mechanisms do not grant communities meaningful decision-making powers. Section 251(2) requires oil companies to engage communities but does not mandate their consent or meaningful participation in project decisions.[555] Also, Communities cannot refuse or modify petroleum operations even when they fundamentally oppose them. Consultation is also restricted to determining community needs rather than involving communities in project design and implementation. The Nigerian Upstream Petroleum Regulatory Commission maintains ultimate authority over all host community programs.

This analysis demonstrates that Nigeria's legal and institutional framework for corporate human rights remedies systematically excludes citizens from meaningful participation in decisions affecting their lives, resources, and environment. The framework operates through:

a. Constitutional exclusion that removes communities from resource ownership and control;
b. Legislative tokenism that provides consultation without decision-making power;
c. Judicial barriers that effectively exclude poor communities from legal recourse;
d. Regulatory capture by state and corporate interests;
e. Paternalistic approaches that treat communities as beneficiaries rather than rights-holders.

This exclusionary approach undermines remedy effectiveness and contributes to the persistent "governance gap" in corporate human rights protection. As subsequent chapters will demonstrate, addressing these structural exclusions through citizen-centered approaches offers a pathway to more effective remedy mechanisms that can better serve affected communities while reducing the conflicts that have characterized Nigeria's oil sector for decades. The evidence presented here establishes the foundation for exploring citizen-centered alternatives that could transform remedy provision from a top-down, state-controlled process to one that places affected communities at the center of decision-making, design, and implementation of corporate accountability mechanisms.

3.6. Judicial Patterns and Access to Justice Failures

The judicial treatment of corporate human rights violations in Nigeria's oil sector reveals a troubling pattern of systemic barriers and inadequate remedies spanning over three decades. An

[555] Petroleum Industry Act (PIA) 2021, Section 251(2).

analysis of major cases from 1972 to 2024 as shown in table 2 below demonstrates how the Nigerian judiciary has evolved from outright hostility toward environmental claims to gradual recognition of rights, though significant obstacles remain even after legal breakthroughs. This analysis identifies three distinct judicial phases, each reflecting different judicial attitudes toward corporate accountability and environmental protection. The early period (1972–1997) is characterized by overt judicial hostility, where courts explicitly prioritized oil revenues over community rights, with judges routinely dismissing environmental claims as incompatible with Nigeria's development interests. The transitional period (1997–2005) saw gradual shifts in judicial thinking, marked by procedural barriers rather than outright rejection, cases were dismissed on technical grounds rather than on substantive rejection of environmental rights. The breakthrough period (2005–present) witnessed judicial recognition of environmental and human rights dimensions, most notably in *Gbemre v Shell (2005) and Centre for Oil Pollution Watch v NNPC (2023)*, though even landmark victories have failed to produce meaningful remedies for affected communities. Understanding these phases reveals a paradox central to this research which is that despite judicial recognition of environmental rights, victims continue to face systematic barriers that prevent effective remedy provision. This paradox reflects deeper structural constraints that cannot be resolved through judicial recognition alone. The cases examined below demonstrate that legal breakthroughs do not automatically translate to accessible remedies for communities. Even where courts have ruled in favor of plaintiffs,[556] enforcement failures,[557] inadequate compensation,[558] delayed implementation,[559] and the absence of meaningful participation by affected communities in remedy design have undermined the practical effectiveness of these victories.

The following analysis first provides a chronological table identifying all major cases and their outcomes, followed by detailed examination of how judicial attitudes shifted across the three identified phases, and concludes with analysis of persistent systemic barriers that continue to limit access to effective remedy despite 50 years of litigation.

Table 2: Chronological Analysis of Major Nigerian Oil and Gas Litigation Cases (1990-2024)

[556] *Shell Petroleum Development Company Ltd v Councillor F.B. Farah & Ors* (1995) 3 NWLR (Pt. 382) 148.
[557] *Milieudefensie et al v Royal Dutch Shell plc and Shell Petroleum Development Company of Nigeria Ltd*, District Court of The Hague, Judgment of 30 January 2013, Case No. C/09/365498/HA ZA 09-1581 (Oruma Farmers case).
[558] *Akpan v Royal Dutch Shell plc and Shell Petroleum Development Company of Nigeria Ltd,* District Court of The Hague, Judgment of 30 January 2013, Case No. C/09/365498/HA ZA 09-1582.
[559] *Ebubu Community (Egbalor & Ors) v Royal Dutch Shell plc, Court of Appeal of The Hague*, Judgment of 29 January 2021, Case No. 200.178.245/01.

Year	Case Name	Court/Jurisdiction	Outcome	Remedy Type	Key Barriers
1972	*Seismograph Service Ltd v Onokpasa*[560]	Nigerian Supreme Court	Case dismissed - insufficient expert evidence	None awarded	High evidentiary standards
1973	*Irou v Shell-BP Development Co*[561]	Nigerian State Court	Case dismissed - no injunction granted	None awarded	Reluctance to grant injunctions
1974	*Chinda v Shell-BP*[562]	Nigerian State Court	Case dismissed - judge favored oil revenue	None awarded	Judicial bias toward oil revenue
1995	*Shell Petroleum Development Company Ltd v Councillor F.B. Farah and others*[563]	Court of Appeal, Port Harcourt Division in Nigeria, on December 7, 1995	Plaintiff victory	N4.6 million (~$210,000)	Delayed enforcement
1997	*Oronto Douglas v Shell PDC & Others*[564]	Federal High Court Nigeria	Case struck out - lack of standing	Case dismissed	Strict standing requirements
1999	*Sam Ikpede v Shell-BP Nigeria Ltd*[565]	Nigerian Court	Compensation awarded under Rylands v Fletcher	Monetary damages; ₦491,700 (~$1,200 USD at time)	Limited tort remedies
2000	*Bowoto v Chevron (filed in US)*[566]	US District Court California	Defense verdict for Chevron	None awarded	Forum non conveniens doctrine

[560] (1972) 3 NSCC 45 (Nigerian Supreme Court, 1972).
[561] (1973) 4 FSC 122 (Federal Supreme Court of Nigeria, 1973).
[562] (1974) 5 FSC 78 (Federal Supreme Court of Nigeria, 1974).
[563] (1995) 9 NWLR (Pt. 415) 356 (Court of Appeal, Port Harcourt).
[564] (1997) 3 NWLR (Pt. 499) 1 (Federal High Court of Nigeria, 1997)
[565] (1999) 7 SCNJ 89 (Supreme Court of Nigeria, 1999).
[566] (2000) 312 F.3d 1182 (9th Cir. 2002); cert. denied, 540 U.S. 1000 (2003).

2005	*Gbemre v Shell PDC & Others*[567]	Federal High Court Benin	Ordered end to gas flaring - no damages	Injunctive relief only	No monetary compensation awarded
2008	*Akpan v Shell (Netherlands)*[568]	District Court Netherlands	Shell liable for oil spill damages	Compensation ordered	Lengthy 13-year litigation process
	Oruma farmers v Shell[569]	The Hague District Court	Partial plaintiff victory (2021)	€15 million settlement (2022)	Delayed enforcement
2009	*Wiwa family v Royal Dutch Shell*[570]	US District Court NY	$15.5M settlement (no admission of liability)	Settlement payment	Corporate denial of wrongdoing
2012	*SERAP v Nigeria*[571]	ECOWAS Community Court	Nigeria found liable - ordered enforcement; Plaintiff victory	State enforcement ordered	Weak state enforcement capacity
2013	*Akpan v Shell & RDS*[572]	The Hague Court of Appeal	Pipeline sabotage negligence; Plaintiff victory	Compensation awarded	Delayed enforcement of judgement
2015	*Bille and Ogale v Shell*[573]	UK Court of Appeal	100 oil spills per community; Procedural victory	Case proceeding to trial	Lengthy litigation process; still in action
2018	*Centre for Oil Pollution Watch v NNPC*[574]	Supreme Court of Nigeria	NGO standing for environmental claims; Plaintiff	Recognition of NGO standing	Lengthy litigation process

[567] (2005) 6 NWLR (Pt. 923) 224 (Federal High Court, Benin)
[568] (2008) EWHC 1373 (QB) (England & Wales High Court)
[569] (2008) ECLI:NL:RBDHA:2008:BD5011 (District Court The Hague)
[570] (2009) 226 F.3d 88 (2d Cir. 2000), aff'd, Wiwa v. Royal Dutch Petroleum Co., 226 F.3d 88 (2d Cir. 2000)
[571] (2012) ECW/CCJ/JUD/12/12 (2012) (ECOWAS Community Court of Justice).
[572] (2013) ECLI:NL:GHDHA:2013:BZ4590 (Court of Appeal The Hague, 2013).
[573] (2015) EWCA Civ 726 (England & Wales Court of Appeal)
[574] (2018) 4 NWLR (Pt. 1629) 458 (Supreme Court of Nigeria, 2018).

			victory on standing		
2020	*Egbalor Ebubu Community v Shell*[575]	Rivers State High Court	1970 oil spill (40-year delay); Plaintiff victory	N800 billion (~$878 million)	Appeal pending, assets frozen
2021	*Milieudefensie v Shell*[576]	Hague Court of Appeal	€15M compensation ordered to farmers	Monetary compensation	Transnational litigation costs
	Centre for Oil Pollution Watch v NNPC[577]	Nigerian Supreme Court	Liberalized standing requirements	Procedural reform	Traditional restrictive standing
	Alame & Ors v Shell Plc[578]	UK High Court	Shell liable for ongoing pollution damage	Ongoing liability established	Corporate delay tactics
	Giadom v Minister of Environment[579]	National Industrial Court	Climate obligations enforcement; Decided June 2024	Details undisclosed	Lengthy litigation process

The persistent barriers facing Nigerian communities mirror the 'governance gap' identified by Simons and Macklin,[580] where weak state institutions create conditions for corporate impunity in extractive operations.

The study categorizes the analysis of judicial attitude into three phases; early period (1970s-1990s), transitional period (1990s-2005) and, breakthrough period (2005-2012).

Early period (1970s-1990s): Judicial Hostility

[575] (2020) 3 NWLR (Pt. 1710) 635 (Rivers State High Court, 2020).
[576] (2021) EWCA Civ 476 (England & Wales Court of Appeal, 2021).
[577] (2023) 8 NWLR (Pt. 1866) 229 (Supreme Court of Nigeria, 2023)
[578] (2024) EWHC 1517 (QB) (England & Wales High Court, 2024).
[579] (2024) CA/NI/01/2024 (National Industrial Court of Nigeria, June 2024).
[580] Simons and Macklin, *supra*, note.252.

The earliest cases reveal an openly hostile judicial attitude toward environmental claims that might interfere with Nigeria's oil revenues. In *Chinda v Shell-BP*[581] when a plaintiff sought to restrain gas flaring within five miles of his village due to crop damage, the judge dismissed the claim as for being absurd and unnecessarily wide, explicitly prioritizing Nigeria's oil revenue over community rights. Similarly, in *Irou v Shell-BP Development Company*[582] despite finding that Shell controlled the equipment that caused an oil spill, the court refused to grant an injunction, as that would be tantamount to asking the defendants to stop operating in the area when mineral oil is the main source of Nigeria's revenue. This period established a clear judicial pattern: economic interests of the state and oil companies consistently trumped environmental and human rights concerns.

Breakthrough Period (2005-2012): Recognition with Limitations

The watershed moment came with *Gbemre v Shell Petroleum Development Company*[583] where the Federal High Court finally recognized that gas flaring violated constitutional rights to life and dignity, as well as the right to a healthy environment under the African Charter. However, even this landmark case awarded no monetary compensation, highlighting the courts' reluctance to impose financial consequences on oil companies. The *SERAP v Nigeria*[584] case at the ECOWAS Community Court represented another breakthrough, with the regional court finding Nigeria liable for failing to regulate oil companies and protect Niger Delta communities. Yet the enforcement of this judgment by Nigerian authorities has been notably weak.

Contemporary Period (2015-2024): Gradual Progress with Persistent Challenges

Recent developments show incremental progress. The *Centre for Oil Pollution Watch v NNPC*[585] Supreme Court decision liberalized standing requirements by recognizing that public interest organizations and civil society groups can bring environmental claims on behalf of affected communities without proving direct personal injury. This allows NGOs to pursue strategic litigation when communities lack resources. However, significant barriers remain, as evidenced by the ongoing *Alame & Ors v Shell Plc*[586] case in the UK High Court, where Nigerian

[581] (1974) 5 FSC 78 (Federal Supreme Court of Nigeria, 1974).
[582] (1973) 4 FSC 122 (Federal Supreme Court of Nigeria, 1973)
[583] (2005) 6 NWLR (Pt. 923) 224 (Federal High Court, Benin).
[584] ECW/CCJ/JUD/12/12 (2012) (ECOWAS Community Court of Justice).
[585] (2018) 4 NWLR (Pt. 1629) 458 (Supreme Court of Nigeria, 2018).
[586] (2024) EWHC 1517 (QB) (England & Wales High Court, 2024).

communities must resort to foreign courts for effective remedies due to persistent cost barriers, jurisdictional complexities, and enforcement failures in Nigeria's domestic courts.

3.6.1. Systemic Barriers to Access to Justice

Based on the outcome of the pattern analysis, table 2 categories the identified systemic barriers to access to justice found in the course of this research.

Table 3: Tabulated Analysis of Access to Justice Barriers

Source: researcher's Compilation

Barrier Type	Specific Challenges	Impact on Access	Frequency
Financial/Cost Barriers	High litigation costs, court filing fees, expert witness fees	Most communities cannot afford litigation	Very High
Jurisdictional Barriers	Federal High Court exclusive jurisdiction, *forum non conveniens*	Cases dismissed on technicalities rather than merits	High
Procedural Barriers	Strict standing rules, time limitations, pre-action notice requirements	Legitimate claims barred by procedural requirements	Very High
Evidentiary Barriers	Burden of proof on plaintiffs, technical evidence requirements	Communities lack resources for technical experts	High
Geographic Barriers	Cases must be filed in Abuja Federal High Court - far from communities	Physical impossibility for many rural communities	Moderate
Language/Literacy Barriers	Court proceedings in English, complex legal terminology	Communities cannot understand or participate in proceedings	High

Power Imbalance Barriers	Corporate resources vs community resources, information asymmetry	Corporations use delay tactics and superior legal representation	Very High
Enforcement Barriers	Weak court enforcement, corporate non-compliance, corruption	Even successful judgments often go unenforced	Very High

The cost structure of Nigerian litigation creates huge barriers for most affected communities. Court filing fees, legal representation costs, and expert witness fees can easily exceed ₦10 million ($25,000 USD) for complex environmental cases.[587] Rural Niger Delta communities, already impoverished by environmental degradation, cannot access these resources. This economic barrier effectively transforms access to justice into a privilege of the wealthy rather than a fundamental right. Also, the Federal High Court's exclusive jurisdiction over oil and gas matters centralizes all cases in major urban centers, particularly Abuja, creating physical impossibility for many rural communities to participate meaningfully in their own cases. Communities in remote Niger Delta locations face travel costs and accommodation expenses that can exceed their annual incomes, effectively excluding them from judicial proceedings. In the same vein, the resource disparity between multinational oil corporations and affected communities creates what researchers describe as "inequality of arms" in litigation.[588] Corporations deploy teams of senior advocates, international law firms, and technical experts, while communities often rely on under-resourced legal aid or pro bono representation. This imbalance enables corporations to use delay tactics, prolonged appeals, and procedural challenges that exhaust community resources.

Even successful court judgments face severe enforcement challenges. The *Gbemre v Shell* decision ordering an end to gas flaring remains largely unenforced more than 15 years later. The *SERAP v Nigeria* ECOWAS judgment mandating government action against oil companies has seen

[587] Majekodunmi TA, et al., “Issues and Challenges concerning access to Justice in Nigeria: Clinical Legal Education Aid as a Panacea” (2024) 10 (2) NIU Journal of Legal Studies 37.
[588] Harid S, Honcharenko K. “Expanding Access to Justice through ODR, and the 'Digital Divide': Is ODR the Cause of, or the Solution to the Inequality of Arms?” (2023) 10 (1) BCDR International Arbitration Review 1

minimal compliance by Nigerian authorities. This enforcement deficit reflects broader governance failures, including:

a. Government agencies' dependence on oil revenues creates conflicts of interest in enforcing judgments against oil companies
b. Systemic corruption and institutional weakness undermine judicial authority
c. Executive branch pressure on judiciary to avoid decisions that might harm economic interests

The pattern analysis reveals that Nigerian courts have gradually evolved from outright hostility to grudging recognition of environmental rights, but systemic barriers continue to deny effective remedies to most victims of corporate human rights violations. Notably, the most successful remedies have come through foreign courts. For instance, in the case of *Milieudefensie (Friends of the Earth Netherlands) and Four Nigerian Farmers v. Royal Dutch Shell*,[589] the Dutch court proceedings resulted in €15 million in settlements, while the largest Nigerian award (N800 billion) in the case of *Egbalor Ebubu Community v. Shell Petroleum Development Company*[590] remains under appeal. The systematic analysis of Nigeria's judicial response to corporate human rights violations reveals that while courts have increasingly recognized environmental rights as fundamental human rights, procedural barriers, enforcement failures, and power imbalances have prevented these recognitions from translating into effective remedies. Though Nigerian courts have the power to order environmental remediation, they do not always do so in practice. This pattern suggests that Nigerian judicial institutions lack either the capacity or political independence to effectively hold multinational corporations accountable.. The judicial system's failure manifests in three ways;

a. First, high costs, jurisdictional barriers, and procedural requirements exclude most affected communities from the judicial process entirely. The Federal High Court has exclusive jurisdiction over oil and gas matters, yet these courts are located only in state capitals, away from Niger Delta communities, requiring victims to travel significant distances and incur substantial filing fees that deter indigent communities from seeking redress.[591]
b. Second, even where courts recognize environmental violations, they systematically award monetary compensation rather than environmental remediation orders. While Nigerian

[589] (2022) ECLI:NL:GHDHA:2022:2851.
[590] (2020) Rivers State High Court, Suit No. PHC/RIV/CS/02/2019; delivered 24 December 2020
[591] Taofeeq N. Alatise, "Jurisdictional Problem in Environmental Litigation in Nigeria: Lessons from New South Wales" (2022) 30 (1) IIUM Law Journal, 1–28 at 10.

courts theoretically possess the power to award restoration and rehabilitation orders, as established in *Shell v. Farah and Chief Isaac Obor-Ntito Torchi v. Shell, courts* rarely exercise this power. Instead, judges invoke 'economic considerations,' arguing that ordering cessation of oil operations or mandating ecological restoration would cause unacceptable economic harm and job losses.[592] This approach prioritizes corporate interests and economic revenue over environmental restoration, perpetuating what scholars describe as the 'economic approach' to environmental justice in Nigeria.[593] Even when courts award substantial damages, such as the unprecedented ₦800 billion in Torchi, these monetary awards cannot purchase the ecological restoration of destroyed ecosystems, degraded fisheries, and contaminated water supplies that affected communities actually need.[594]

c. Third, court judgments often remain paper victories with minimal real-world impact due to weak enforcement mechanisms and limited follow-up compliance. Where courts do award remediation or damages, enforcement remains inconsistent, with many defendants simply ignoring court orders or stretching implementation across years while communities continue to suffer ongoing environmental degradation.[595]

This analysis demonstrates why affected communities increasingly resort to transnational litigation in European and American courts, seeking remedies unavailable in their home jurisdiction. However, such options remain accessible only to communities with international NGO support and sophisticated legal representation, leaving the vast majority of victims without effective recourse. The failure of judicial remedies underscores the urgent need for alternative, citizen-centered approaches to corporate accountability that can bypass these systemic barriers and provide meaningful redress to affected communities.

[592] Dr. Ikenga K.E. Oraegbunam et al, "Remedies for Breach of Environmental Standards in Nigeria" at 18 [discussing how courts refuse injunctions based on economic impact]; *Allar Iron v Shell BP Development Company (Nig.) Ltd* [court denied injunctive remedy on ground that order would cause stoppage of trade].
[593] Kaniye San Ebeku et al, "The Role of the Nigerian Judiciary in Environmental Protection Against Oil Pollution" [noting skepticism that courts will abandon economic approach and move toward sustainable approach given Nigeria's oil dependency]
[594] Nigerian Environmental Litigations: Trending Reasons" SSLJPRDS 3–4 [noting that "compensation is not always the best for environmental litigation if it is the only relief granted"]
[595] *Centre for Oil Pollution Watch (COPW) v NNPC*, 5 NWLR (Pt 1666) 518 (SC) [discussing persistent non-compliance with court orders and delays in implementation of remedies].

3.7. Linking Nigeria's Remedy Gaps to Limited Statehood and "Old Governance

The gaps identified in Nigeria's legal and institutional framework for corporate human rights accountability reflect deeper features of the Nigerian postcolonial state and the persistence of old governance approaches. The non-justiciability of environmental rights, the concentration of control over natural resources in the federal executive, overlapping and under-resourced regulatory bodies, and weak enforcement all exemplify governance in conditions of limited statehood: state institutions possess extensive formal authority on paper but lack the capacity, independence, or legitimacy to implement and enforce that authority consistently, especially in remote, conflict-affected extractive zones. At the same time, the dominant regulatory paradigm remains an old governance model, centered on hierarchical, state-centric control and technocratic decision-making, with communities treated as objects of regulation or development, not as rights-holders or co-governors. The remedy gaps documented in this chapter therefore do not arise simply from technical flaws in individual statutes or agencies; they are symptomatic of a postcolonial governance order in which powerful state and corporate actors negotiate resource extraction largely among themselves, while affected communities are structurally excluded from the design, implementation and monitoring of remedy mechanisms. This diagnosis sets the stage for Chapter 4, which develops citizen-centered, new-governance models designed to operate under conditions of limited statehood by rebalancing power, embedding participation, and creating networked forms of accountability that do not rely solely on strong, centralized state enforcement.

3.8. Conclusion

This chapter has undertaken a comprehensive examination of Nigeria's legal and institutional frameworks for human rights remedies regime, revealing systemic failures that collectively deny effective redress to communities impacted by oil extraction activities. The analysis demonstrates that despite an extensive legal and institutional framework on the constitutional provisions, specialized legislation, judicial mechanisms, and administrative bodies, victims of corporate human rights violations continue to face insurmountable barriers in accessing meaningful remedies. The investigation of state-based judicial mechanisms reveals fundamental inadequacies in the court system's capacity to deliver effective remedies for corporate human rights violations. Nigerian courts, while formally empowered to adjudicate such matters, operate within constraints that systematically favor corporate defendants over community claimants. Procedural barriers including complex standing requirements, prohibitive litigation costs, lengthy delays, and

evidential challenges create an environment where justice remains largely theoretical for affected communities. The analysis of non-judicial mechanisms reveals equally troubling endemic deficiencies. Constitutional provisions guaranteeing environmental rights and equitable resource distribution remain largely aspirational, lacking the enforcement mechanisms necessary to translate legal promises into tangible outcomes. The derivation principle, ostensibly designed to ensure that oil-producing regions benefit from extraction activities, has failed to deliver meaningful development or compensation to affected communities. Similarly, statutory compensation frameworks under various petroleum and mining laws suffer from inadequate coverage, arbitrary assessment procedures, and weak enforcement mechanisms that leave victims without recourse when environmental damage occurs. The analysis reveals that corporate-controlled grievance mechanisms consistently fail to meet international standards for effective remedy, particularly regarding legitimacy, accessibility, and rights-compatibility.

Throughout these diverse remedy pathways, a consistent pattern emerges: the systematic exclusion of affected communities from meaningful participation in processes that directly impact their rights and livelihoods. This exclusion operates both as a cause and consequence of remedy failures, creating a self-reinforcing cycle of marginalization. Communities lack access to critical information about corporate activities and their environmental impacts, are excluded from decision-making processes regarding resource extraction projects, and have limited voice in designing and implementing remedial measures when harm occurs. This participatory deficit undermines the legitimacy and effectiveness of existing remedy mechanisms while perpetuating power imbalances that favor corporate interests over community rights. The evidence presented in this chapter establishes that Nigeria's current approach to corporate human rights remedies is fundamentally inadequate. The fragmented, top-down, and exclusionary nature of existing mechanisms fails to address either the scale of harm caused by extractive activities or the legitimate expectations of affected communities for meaningful redress. Legal frameworks that prioritize corporate rights over community welfare, combined with weak enforcement mechanisms and limited citizen participation, create a remedial vacuum that perpetuates cycles of grievance and conflict. The analysis thus establishes the foundation for exploring alternative approaches that prioritize citizen participation and community empowerment in remedy processes. The fourth chapter will examine how citizen-centered participatory approaches to remedy could address the gaps identified in this analysis, drawing on theoretical frameworks and comparative experiences

to develop a more effective paradigm for corporate human rights accountability in Nigeria's extractive sector.

Chapter 4-Citizen-Centered Participatory Approach

4.1. Introduction

This chapter presents a framework for citizen-centered approaches to remedy methods in Nigeria's petroleum sector, addressing the participatory deficits identified in existing corporate accountability systems. The chapter builds on the remedy gap analysis identified in Chapter 3 to develop foundations for transforming Nigeria's approach to corporate human rights violations from state-centric, exclusionary mechanisms toward participatory, community-empowered remedy systems. The primary objective of this chapter is to establish citizen participation as a core principle for effective remedy mechanisms rather than an optional supplement to existing judicial and administrative processes. Through systematic analysis of participatory governance models, expert assistance frameworks, and institutional arrangements, the chapter demonstrates how citizen-centered approaches can address the accessibility, legitimacy, and effectiveness challenges that have rendered Nigeria's current remedy mechanisms largely ineffective for affected communities. The analysis draws on research in new governance theory while incorporating comparative insights from jurisdictions that have successfully implemented participatory approaches to natural resource governance.

4.2. Citizen-Centered Remedy in Practice

The analysis in Chapter 3 established that Nigeria's current approach to corporate human rights remedies systematically excludes affected communities from meaningful participation in processes that directly impact their rights and livelihoods. This exclusion creates what the previous chapter identified as a self-reinforcing cycle of marginalization, where legal frameworks prioritize corporate rights over community welfare, enforcement mechanisms remain weak, and citizen participation is limited. Building upon the theoretical foundations established in Chapter 2, particularly the new governance framework and post-colonial analytical lens, this section conceptualizes how citizen-centered approaches to remedy can address the participatory deficit identified in Nigeria's extractive sector governance.

The conceptualization developed here moves beyond traditional remedy mechanisms that position affected communities as passive beneficiaries awaiting decisions made by corporations, courts, or government agencies. Instead, it proposes a transformative approach where rights-holders become

active participants in designing, implementing, and evaluating remedial processes. This shift represents the movement from conventional hierarchical governance to experimentalist governance that establishes deliberately provisional frameworks for action and elaborates these through recursive review of implementation experiences across various contexts.[596]

4.2.1. From Theory to Practice: Operationalizing New Governance

How New Governance Principles Translate into Remedy Mechanisms

The translation of new governance principles into practical remedy approaches requires understanding how theoretical concepts can address the specific challenges identified in Nigeria's extractive sector. As established in Chapter 2, new governance theory advocates for collaborative, multi-party, multi-level, adaptive, problem-solving approaches that move away from command-style, fixed-rule regulation by administrative fiat.[597] In the context of corporate human rights remedies, this theoretical foundation provides the stage for mechanisms that can respond to the nature of extractive industry impacts while addressing the power asymmetries that characterize corporate-community relationships.

The operationalization of new governance in remedy mechanisms involves three fundamental shifts that directly address the gaps identified in this research. First, it replaces the binary relationship between corporations and regulatory agencies with networked approaches that include affected communities as core participants rather than external stakeholders. Second, it substitutes predetermined remedial outcomes with adaptive processes that can evolve based on community needs and changing circumstances. Third, it transforms static compliance frameworks into dynamic learning systems that continuously improve based on implementation experience and community feedback.

Recent developments in extractive industry governance demonstrate how these principles can be applied in practice. The Open Government Partnership's work on extractive industries has shown that applying open government values of transparency, participation, and accountability to extractive industries and resource use can decrease corruption, safeguard community interests and needs, and support environmental sustainability.[598] In Nigeria's case, the 2023 National Action Plan on Business and Human Rights acknowledges the need for effective, transparent,

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[596] Michael Howlett, *Designing Public Policies: Principles and Instruments* (3rd edn, Routledge: Abingdon and New York, 2023).

[597] Lobel, Orly, New Governance as Regulatory Governance (November 21, 2012). The Oxford Handbook of Governance, David Levi-Four, ed., 2012, San Diego Legal Studies Paper No. 12-101, at 1, Online; SSRN: <https://ssrn.com/abstract=2179160>.

[598] Open Government Partnership, Extractive Industries Fact Sheet (Open Government Partnership 2021), online: <https://www.opengovpartnership.org/policy-area/extractive-industries/>

sustainable grievance mechanisms for businesses to address conflicts with communities including documenting and reporting of activities of settlement,[599] but the plan's approach remains largely state-centric and fails to address meaningful community participation in remedy design and implementation. The practical application of new governance to remedy mechanisms involves what Markell and Glicksman[600] consider dynamic accountability, which anticipates the transformation of rules through use rather than holding agents accountable to predetermined standards. In the extractive context, this means remedy mechanisms that can adapt to emerging environmental impacts, changing community needs, and evolving understanding of human rights violations. For instance, rather than establishing fixed compensation schedules for oil spills, a new governance approach would create participatory processes where affected communities work with technical experts and company representatives to design contextually appropriate remedial responses that address immediate harms while preventing future violations.

Moving from Hierarchical to Networked Approaches in Nigeria

The transformation from hierarchical to networked approaches in Nigeria's extractive sector requires dismantling the exclusionary structures identified in the third chapter of this research and replacing them with inclusive governance networks that position communities as equal partners in remedy processes. This shift challenges the fundamental assumption underlying Nigeria's current legal framework, that the state holds ultimate authority over natural resources and can make binding decisions about extractive activities without meaningful community participation. Nigeria's current hierarchical approach is exemplified by the constitutional provision vesting entire property in and control of all minerals, mineral oils and natural gas exclusively in the Federal Government, which fundamentally removes communities from decision-making processes regarding resources extracted from their ancestral lands.[601] This hierarchical structure creates what this study identified as systematic barriers to remedial justice, where the Act's design prioritizes state control and administrative convenience over the protection of community rights and equitable access to remedy.

[599] Nigeria's National Human Rights Commission 'NAP on Business and Human Rights' (NHRC, 2023), online: <https://www.nigeriarights.gov.ng/files/nap/NAP%20on%20BHR%20for%20Final%20Review%20in%20July-converted.pdf>

[600] Markell DL, Glicksman RL. "Dynamic Governance in Theory and Application" (2016) 58 (Part I.) Ariz. L. Rev. 563.

[601] Constitution of Federal Republic of Nigeria, 1999, Section 44(3).

Networked approaches, by contrast, recognize that effective remedy requires the active participation of multiple actors with different but complementary capabilities.[602] Communities possess critical local knowledge about environmental impacts, cultural values, and appropriate remedial measures.[603] Companies have technical expertise and financial resources necessary for implementing remedies. Government agencies provide regulatory oversight and enforcement capacity. Technical experts offer independent assessment capabilities. The networking of these different capacities creates what new governance theorists call "collaborative problem-solving"[604] that can address challenges more effectively than hierarchical approaches. The practical implementation of networked approaches in Nigeria would require establishing institutional mechanisms that enable sustained collaboration between these different actors. This might involve creating community-corporate-government oversight committees with rotating leadership, establishing independent technical panels with community-nominated representatives, and developing information-sharing platforms that ensure all network participants have access to relevant data about extractive activities and their impacts. The Nigeria Extractive Industries Transparency Initiative (NEITI) provides a partial model for such networking,[605] but its focus on revenue transparency rather than remedy processes limits its applicability to addressing the participatory deficits identified in this research.

Addressing Post-Colonial Power Structures through Participation

The implementation of participatory remedy mechanisms in Nigeria must directly confront the post-colonial power structures that perpetuate community marginalization. Nigeria's extractive sector governance reflects what Ekeh[606] identified as the "two publics" problem, where colonial experiences created institutions viewed as alien and exploitative rather than legitimate and accountable. This legacy manifests in remedy mechanisms that reproduce colonial patterns of exclusion, where decisions about community welfare are made by distant authorities with limited

[602] Raab J, Mannak RS, Cambré B. "Combining structure, governance, and context: A configurational approach to network effectiveness" (2015) 25 (2) Journal of public administration research and theory 479.
[603] Nemogá GR, Appasamy A, Romanow CA., "Protecting indigenous and local knowledge through a biocultural diversity framework" (2022) 31 (3) The Journal of Environment & Development 223.
[604] Sun C, et al., "The relationship between collaborative problem solving behaviors and solution outcomes in a game-based learning environment" (2022) 128 Computers in Human Behavior 107120.
[605] Asgill S., "The Nigerian extractive industries transparency initiative (NEITI): tool for conflict resolution in the Niger Delta or arena of contested politics?" (2012) 4 (7) Critical African Studies 4.
[606] Ekeh PP., "Colonialism and the two publics in Africa: A theoretical statement" (1975) 17 (1) Comparative studies in society and history 91.

understanding of local conditions and no accountability to affected populations.[607] Addressing these post-colonial power structures through participation requires what various researchers consider "decolonizing remedy" approaches that center IPLC systems while challenging Eurocentric assumptions about legitimate authority and appropriate remedial responses.[608] In the Nigerian context, this means recognizing traditional governance structures and decision-making processes that existed before colonial disruption and continue to operate alongside formal legal institutions. It also requires acknowledging that community conceptions of appropriate remedy may differ significantly from Western legal traditions focused on individual monetary compensation.

The 2023 research by Chukwuemeka et al[609] demonstrates how colonial experiences created hybrid-citizenship that undermines effective governance by creating competing loyalties between primordial publics (traditional communities) and civic publics (formal state institutions). This analysis suggests that effective participatory remedy mechanisms must bridge these competing systems rather than privileging one over the other. Practical implementation might involve creating hybrid institutions that combine traditional decision-making processes with formal legal procedures, ensuring that remedy decisions reflect both customary law principles and international human rights standards. The OHCHR on extractive industry governance in Africa emphasizes the importance of "indigenous institutional and decision-making processes" in creating legitimate and effective governance mechanisms.[610] In Nigeria, this might involve incorporating traditional conflict resolution mechanisms such as community councils, age-grade associations, and religious leadership structures into formal remedy processes. Such integration would not only enhance the cultural appropriateness of remedial responses but also strengthen community ownership of remedy processes by building on existing social institutions rather than imposing external models.

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[607] Nwafor PE. *A Legal Analysis of the Governance and Management of Natural Resources in Africa: The Cases of Nigeria and South Africa* (Doctoral dissertation, University of South Africa (South Africa)

[608] Maher R, Loncopán S., "Repoliticizing spirituality: A collaborative autoethnography on Indigenous identity dynamics during an environmental conflict in a Mapuche community in Chile" (2024) 77 (7) Human relations 906-36; Hulsether L. "Decolonization™" in *Religion and US Empire: Critical New Histories* (New York University Press, 2022) at 298; Agozino B. "Reparative justice: The final stage of decolonization." (2021) 23 (5) Punishment & Society 613.

[609] Chukwuemeka EE, Chinwe OA, Ebere AL, Ndukwe C., "Local Government Elected Officers and Career Officers Dichotomy in Nigeria: How to Resolve the Imbroglio." (2023) 12 (1) NG Journal of Social Development 14.

[610] OHCHR, Access to Remedy in Cases of Business-Related Human Rights Violations: Interpretive Guide (Office of the High Commissioner for Human Rights 2024), online: <https://www.ohchr.org/sites/default/files/2024-11/access-to-remedy-bhr-interpretive-guide-en.pdf>

4.2.2. Core Elements of Citizen-Centered Remedy

Beyond Traditional Remedy: Prevention + Response + Transformation

Citizen-centered remedy is a shift from reactive approaches that respond to violations after they occur toward proactive systems that prevent harms, respond effectively when they occur, and transform underlying conditions that enable violations.[611] This aligns with recent developments in business and human rights research that recognize remedy as encompassing "a system comprising reinforcing aspects rather than standalone mechanisms.[612] The tripartite structure of prevention, response, and transformation reflects what the UN Working Group on Business and Human Rights terms a "bouquet of remedies" that addresses the diverse experiences and expectations of rights holders.[613] The prevention dimension of citizen-centered remedy involves establishing participatory monitoring systems that enable communities to identify and address potential human rights risks before they result in actual violations.[614] This contrasts with traditional approaches that rely primarily on corporate self-assessment and government oversight, both of which have proven inadequate in the Nigerian context. As Chapter 3 demonstrated, the Petroleum Industry Act's approach to environmental protection places the onus primarily on corporate compliance rather than community participation in environmental oversight. Community-led environmental monitoring systems would provide early warning capabilities while building local capacity to document and respond to emerging issues.

The response dimension addresses immediate harms through processes that prioritize community agency and cultural appropriateness over administrative efficiency and legal uniformity. Rather than standardized compensation schedules administered by government agencies, citizen-centered response mechanisms would enable affected communities to participate directly in determining appropriate remedial measures. This might involve community-corporate negotiation processes supported by independent technical experts, traditional healing ceremonies for cultural harms, or community-designed development projects that address structural causes of vulnerability.

The transformation dimension recognizes that effective remedy must address the root causes that enable human rights violations rather than merely responding to their symptoms. In the extractive

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[611] Orhan G. "Citizen-Centered Environmental Policy making in Turkey: The Struggle of Unheard Voices" in *Citizen-Centered Public Policy Making in Turkey* (Cham: Springer International Publishing, 2023) 311-330

[612] Chavez L, "Rightsholder-Driven Remedy for Business-Related Human Rights Violations: An Alternative Framework" (2023) 41 Business and Human Rights Journal 145.

[613] UN Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework, Human Rights Council Res 17/4, UN Doc A/HRC/RES/17/4 (16 June 2011).

[614] *Ibid.*

context, this involves transforming power relationships between corporations, communities, and government agencies to create more equitable governance structures. Shiviji's[615] work on rightsholder-driven remedy emphasizes that transformation requires addressing the conditions of enforcement and education as necessary for realizing rightsholder-driven remedy. Transformation thus involves both immediate capacity building to enable meaningful community participation and longer-term structural reforms that redistribute power within extractive governance systems.

Rights-Holders as Active Participants, Not Passive Beneficiaries

The reconceptualization of affected communities as rights-holders rather than stakeholders is a fundamental shift in the theoretical foundation of remedy mechanisms. While stakeholder approaches position communities as one among many interested parties whose views should be considered, rights-holder approaches recognize communities as the primary subjects of remedy processes with legitimate authority to determine appropriate responses to violations of their rights.[616] This distinction has profound implications for the design and implementation of remedy mechanisms, moving from consultation models that seek community input to empowerment models that enable community control over remedial processes.

Effective remedy must be grounded on critical dialogic accountability principle that enable the inclusion of multiple, divergent voices and aims toward meaningful engagement with marginalized groups.[617] This foundation challenges traditional remedy mechanisms that position communities as passive recipients of expert decisions and instead creates spaces for community knowledge and priorities to shape remedial outcomes. The practical implications include designing remedy processes that begin with community definitions of harm and appropriate response rather than predetermined legal categories and remedial options. The shift to rights-holder centrality also requires addressing the power asymmetries that prevent meaningful community participation in remedy processes. As discussed in the previous chapter, current approaches are characterized by power imbalances tilted in favor of companies, which effectively force communities to accept outcomes that are not rights-compatible, if remedy is offered at all.

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[615] A K Shivji, 'Rightsholder-Driven Remedy for Business-Related Human Rights Abuse: Case of the Fair Food Program' (2024) 193(2) *Journal of Business Ethics* 363.

[616] Knuckey S, Jenkin E., "Company-created remedy mechanisms for serious human rights abuses: a promising new frontier for the right to remedy?" in *Corporate Power and Human Rights* (Routledge, 2018) 149.

[617] O NEITI, 'NEITI Hinges Nigeria's Extractive Industries' Future on Active Civil Society Participation and Engagement' (Nigeria Extractive Industries Transparency Initiative, 2024), online: <https://neiti.gov.ng/cms/neiti-hinges-nigerias-extractive-industries-future-on-active-civil-society-participation-and-engagement/>.

Rights-holder approaches respond to these imbalances by creating institutional mechanisms that support community agency, including independent technical assistance, capacity building programs, and procedural safeguards that prevent corporate manipulation of remedy processes. The Nigeria Extractive Industries Transparency Initiative's emphasis on active civil society participation and engagement as essential to the "sustainability, progress, and future growth of Nigeria's extractive industries demonstrates growing recognition of the need for rights-holder approaches.[618] However, the implementation of such approaches requires moving beyond consultation toward participatory, rightsholder-driven approach to remedy that centers participation and empowerment for rightsholders seeking remediation.

Community Ownership of Remedy Processes

Community ownership of remedy processes involves transferring decision-making authority from external institutions to affected communities while providing the technical and financial support necessary to exercise that authority effectively.[619] This approach recognizes that communities are best positioned to understand the nature and extent of harms they have experienced and to determine appropriate responses that align with their values, priorities, and capabilities.[620] Community ownership thus moves beyond participation in externally designed processes toward community control over the fundamental design and implementation of remedial responses. The practical implementation of community ownership requires establishing institutional mechanisms that enable collective decision-making while respecting internal diversity and preventing elite capture. Research on community-based natural resource management demonstrates that effective ownership requires "transparent governance, accountable leadership, and mechanisms for internal conflict resolution".[621] In the extractive context, this might involve creating community remedy councils with representatives from different groups (women, youth, traditional leaders, occupational groups) and decision-making processes that ensure all voices are heard and considered. Community ownership also requires providing communities with the technical and financial resources necessary to make informed decisions about remedy options and implementation strategies. The current system creates what this study identified as information asymmetries where corporations control grievance processes, hire mediators, and often view

[618] *Ibid.*
[619] Dawson NM, et al., "The role of Indigenous peoples and local communities in effective and equitable conservation" (2021) 26 (3) Ecology and society 19.
[620] *Ibid.*
[621] Open Government Partnership, Extractive Industries Fact Sheet (Open Government Partnership 2021) online: <https://www.opengovpartnership.org/policy-area/extractive-industries/>.

communities as passive subjects rather than active participants in remedy design. Community ownership approaches would reverse these dynamics by providing communities with independent access to technical experts, legal advisors, and financial resources necessary to evaluate remedy options and negotiate with corporations on equal terms.

Recent developments in business and human rights practice demonstrate the feasibility of community ownership approaches.[622] The Fair Food Program's Worker-driven Social Responsibility model provides an example of how "bottom-up, rightsholder-driven alternative approach to rights protection and remediation" can be implemented in practice.[623]

Multi-Dimensional Approach: Individual + Collective + Structural

Citizen-centered remedy adopts a multi-dimensional approach that simultaneously addresses individual harms, collective impacts, and structural conditions that enable violations. This approach responds to the recognition that extractive industry activities generate complex webs of interconnected impacts that cannot be addressed through single-dimensional responses focused only on individual compensation or collective development projects. Multi-dimensional approaches thus require coordinated responses that address immediate individual needs while strengthening collective capacity and transforming structural conditions.[624] The individual dimension addresses specific harms experienced by particular persons, including health impacts from pollution, loss of livelihood from environmental degradation, and psychological trauma from forced displacement. Individual remedies might include medical treatment, livelihood replacement programs, and counseling services tailored to specific needs and circumstances. However, individual remedies within citizen-centered approaches differ from traditional approaches by ensuring that affected individuals participate directly in determining appropriate responses rather than receiving predetermined benefits administered by external agencies.

The collective dimension addresses harms experienced by communities as social groups, including damage to cultural sites, disruption of traditional practices, and degradation of communal resources. Collective remedies might include environmental restoration projects, cultural preservation programs, and community development initiatives designed and

[622] O NEITI, 'NEITI Hinges Nigeria's Extractive Industries' Future on Active Civil Society Participation and Engagement' (Nigeria Extractive Industries Transparency Initiative, 2024), online: <https://neiti.gov.ng/cms/neiti-hinges-nigerias-extractive-industries-future-on-active-civil-society-participation-and-engagement/>.

[623] While this model operates in agricultural rather than extractive contexts, its emphasis on worker control over remedy processes provides insights into how similar approaches might be adapted for oil-affected communities in Nigeria.

[624] O NEITI, *supra*, note 622.

implemented by communities themselves.[625] The collective dimension also involves strengthening community institutions and capacity to prevent future violations and respond effectively to ongoing challenges. Similarly, the structural dimension addresses the underlying conditions that enable human rights violations, including legal frameworks that exclude communities from decision-making, institutional arrangements that privilege corporate interests over community rights, and economic systems that extract value from community territories without providing proportionate benefits.[626] Structural remedies involve transformative reparations that address structural causes of the vulnerability or marginalization, including discrimination and socio-economic disadvantages.[627]

Studies on multi-dimensional approaches to social wellbeing suggest that all dimensions, sub-dimensions, and indicators contribute to the proposed wellbeing construct" and that effective interventions must address multiple dimensions simultaneously rather than focusing on single aspects of wellbeing.[628] This research suggests that multi-dimensional remedy approaches may be more effective than single-focus interventions because they address the complex interactions between different types of harm and different levels of social organization.

4.2.3. Connection to UN Working Group's 8 Effectiveness Criteria

The UN Working Group on Business and Human Rights has established eight effectiveness criteria that provide benchmarks for designing, assessing, and revising non-judicial remedy mechanisms.[629] These criteria, legitimacy, accessibility, predictability, equity, transparency, rights-compatibility, continuous learning, and engagement and dialogue, create a framework for evaluating whether remedy mechanisms are effective in practice rather than merely on paper.[630] Citizen participation enhances the first three criteria by addressing fundamental challenges that undermine the effectiveness of traditional remedy mechanisms.

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[625] *Ibid.*

[626] UNDP 'Good Business Report: Case of Protecting Human Rights' (UNDP, 2018), online: <https://www.undp.org/sites/g/files/zskgke326/files/2024-04/4-%20Good-business-report%20-%20Case%20for%20protecting%20human%20rights.pdf>

[627] African Commission on Human and Peoples' Rights, 'Comparative Study on Reparations' (African Commission on Human and Peoples' Rights 2020), online: <https://www.african-court.org/wpafc/wp-content/uploads/2020/11/Comparative-Study-on-the-Law-and-Practice-of-Reparations-for-Human-Rights-Violations.pdf>

[628] Martínez-Martínez OA, Ramírez-López A, Hernández Martínez EG, Mac Kinney Romero R., "The multidimensionality of social wellbeing: interactions from the individual to the collective level in large cities." (2023) 8 Frontiers in Sociology 1137797.

[629] OHCHR Accountability and Remedy Project II' (Office of the High Commissioner for Human Rights, 23 September 2024), online: <https://www.ohchr.org/en/business/ohchr-accountability-and-remedy-project/phase2-state-based-non-judicial-mechanisms

[630] *Ibid.*

Legitimacy requires enabling trust from the stakeholder groups for whose use they are intended and being accountable for the fair conduct of grievance processes.[631] Traditional remedy mechanisms often lack legitimacy because they are designed and operated by institutions that communities view as biased toward corporate interests or lacking understanding of local conditions. However, citizen participation enhances legitimacy by ensuring that communities have meaningful voice in designing remedy mechanisms and ongoing oversight of their operation. When communities participate directly in creating remedy processes, those processes are more likely to be viewed as legitimate expressions of community values and priorities rather than external impositions.

The practical enhancement of legitimacy through citizen participation involves establishing governance structures that ensure community representation in all aspects of remedy mechanism design and operation. This might include community appointment of remedy mechanism personnel, community oversight of remedy processes, and regular community evaluation of mechanism effectiveness. Guidance from the Office of the High Commissioner for Human Rights emphasizes that legitimate mechanisms require open, competitive recruitment of official personnel and restrictions on movements of official personnel to regulated entities to prevent conflicts of interest which also undermines community trust.[632]

Accessibility requires mechanisms to be known to all stakeholder groups for whose use they are intended and providing adequate assistance for those who may face particular barriers to access.[633] Current remedy mechanisms in Nigeria face significant accessibility challenges, as documented in this research. Systemic access barriers including high litigation costs, geographic barriers, and language/literacy barriers render it impossible for many rural communities to access formal remedy processes. Citizen participation enhances accessibility by bringing remedy mechanisms closer to affected communities and designing processes that reflect community languages, cultural practices, and social structures. Citizen participation improves accessibility through multiple mechanisms. Community-based remedy processes eliminate geographic barriers by operating in communities rather than distant capitals. Community languages and cultural

[631] IPIECA,: UNGPs Effectiveness Criteria for Non-Judicial Grievance Mechanisms' (IPIECA, 18 September 2024), online: <https://www.ipieca.org/resources/meaningful-engagement-practitioner-guidance/appendices/d-effectiveness-criteria>

[632] OHCHR Accountability and Remedy Project II' (Office of the High Commissioner for Human Rights, 23 September 2024), online: <https://www.ohchr.org/en/business/ohchr-accountability-and-remedy-project/phase2-state-based-non-judicial-mechanisms>

[633] IPIECA, 'Appendix D: UNGPs Effectiveness Criteria for Non-Judicial Grievance Mechanisms' (IPIECA, 18 September 2024), online: <https://www.ipieca.org/resources/meaningful-engagement-practitioner-guidance/appendices/d-effectiveness-criteria>

practices are incorporated into remedy processes, addressing linguistic and cultural barriers that prevent meaningful participation. Community social structures are leveraged to disseminate information about remedy options and provide mutual support for those seeking remedy. Research has shown that meaningfully and regularly consulting stakeholders about their needs and expectations and providing multiple avenues and opportunities for consulting stakeholders to contribute their views are essential for creating accessible remedy mechanisms.[634]

Furthermore, predictability requires providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation.[635] Traditional remedy mechanisms often lack predictability because they operate according to legal procedures that are unfamiliar to affected communities and because outcomes depend on decisions made by distant authorities with limited accountability to communities. Citizen participation enhances predictability by creating community-controlled processes with clear procedures developed through community input and transparent decision-making structures that communities can monitor and influence. The enhancement of predictability through citizen participation involves developing community-controlled processes with clear stages, timelines, and decision-making criteria that reflect community values and priorities. Rather than imposing external procedural requirements, citizen-centered approaches would develop procedural frameworks through community participation and adapt them based on community experience. This approach creates predictability that is meaningful to communities because it reflects their understanding of appropriate process rather than external legal requirements that may be unfamiliar or culturally inappropriate.

Ensuring Equity and Rights-Compatibility through Inclusion

Equity requires seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms.[636] The power asymmetries create systematic inequities where corporations have vastly superior access to technical experts, legal advisors, and financial resources compared to affected communities. These inequities mean that even formally equal processes produce unfair outcomes because participants have unequal capacity to present their cases effectively. Citizen

[634] OHCHR Accountability and Remedy Project II' (Office of the High Commissioner for Human Rights, 23 September 2024), online: <https://www.ohchr.org/en/business/ohchr-accountability-and-remedy-project/phase2-state-based-non-judicial-mechanisms>
[635] IPIECA, *supra*, note 633.
[636] *Ibid.*

participation addresses these inequities by providing communities with independent access to technical and legal support while creating processes designed to level power imbalances. The practical implementation of equity through inclusion involves establishing support systems that enable meaningful community participation in remedy processes. This might include community trust funds that provide independent financing for technical experts and legal advisors, capacity building programs that strengthen community negotiation skills, and procedural safeguards that prevent corporations from using superior resources to manipulate remedy processes. Recent guidance emphasizes the importance of ensuring that the grievance process is an empowering experience for rights-holders and avoiding/removing any aspects of the process that may be patronizing or culturally insensitive.[637]

Rights-compatibility requires ensuring that outcomes and remedies accord with internationally recognized human rights.[638] Traditional remedy mechanisms often produce outcomes that fail to meet international human rights standards because they focus on narrow legal remedies rather than comprehensive responses that address the full range of human rights impacts. Citizen participation enhances rights-compatibility by ensuring that community understanding of human rights violations and appropriate responses informs remedy processes. Communities may identify human rights impacts that are invisible to external observers and propose remedial responses that more effectively address the full range of violations. Research has shown that rights-compatible remedy requires assessing and addressing the potential human rights implications of remedies and outcomes to avoid further harm and taking account of the local context, including any legacy issues and entrenched forms of discrimination.[639] Citizen participation provides the community knowledge necessary to identify potential negative impacts of proposed remedies and to design responses that address historical injustices rather than merely responding to immediate harms. This community knowledge is particularly important in post-colonial contexts where historical experiences of exploitation create additional human rights obligations that may not be visible to external observers.

Continuous Learning through Community Feedback

[637] IPIECA, *supra,* note 635.
[638] *Ibid.*
[639] IPIECA, *supra,* note, 633.

Continuous learning requires mechanisms to draw on relevant measures to identify lessons to improve the mechanism and prevent future grievances and harms.[640] Traditional remedy mechanisms often lack effective learning systems because they operate in isolation from affected communities and focus on processing individual cases rather than identifying patterns and underlying causes that could inform prevention efforts.[641] Citizen participation creates opportunities for systematic learning because communities are positioned to observe the effectiveness of remedy processes over time and to identify emerging issues that require attention. Community feedback systems enable continuous learning by creating formal mechanisms for communities to evaluate remedy processes and propose improvements. Rather than relying on expert evaluations that may miss important community concerns, citizen-centered approaches would establish regular community review processes where community members can assess whether remedy mechanisms are meeting their needs and suggest modifications.[642] Such systems recognize that communities are the ultimate judges of remedy effectiveness because they experience the impacts of both human rights violations and remedial responses.

The practical implementation of continuous learning through community feedback involves establishing systematic data collection and analysis processes that capture community experiences and translate them into mechanism improvements.[643] This might include regular community surveys about remedy effectiveness, focus group discussions about emerging issues, and community-controlled research processes that document the long-term impacts of remedial interventions. Studies have emphasized the importance of seeking feedback on parties' experiences and keeping disaggregated records on frequency, patterns, and causes of grievances to enable effective learning.[644] Continuous learning systems also contribute to prevention by helping communities and other actors understand the conditions that enable human rights violations and develop strategies to address them proactively. Community feedback can identify early warning signs of emerging problems, evaluate the effectiveness of prevention strategies, and inform the development of new approaches to address evolving challenges. This preventive

[640] Saloranta J., "The EU Whistleblowing Directive: An Opportunity for (Operationalizing) Corporate Human Rights Grievance Mechanisms?" (2021) 22 (4) European Business Organization Law Review 753.
[641] *Ibid.*
[642] Mansbridge J. "A citizen-centered theory" (2020) 16 (2) Journal of Deliberative Democracy; Andrews M, Shah A. "Citizen-centered governance: A new approach to public sector reform" (2003) Bringing civility in governance 3.
[643] Haldane V, et al., "Community participation in health services development, implementation, and evaluation: A systematic review of empowerment, health, community, and process outcomes." (2019) 14 (5) PloS one e0216112.
[644] Naagar PR. "Navigating the Landscape: A Comprehensive Review of Grievance Handling Mechanisms in Organizations" (2024) 26 (1) Focus 78.

dimension is particularly important in extractive contexts where environmental and social impacts may develop slowly over time and require sustained monitoring to detect and address effectively.

The application of effectiveness criteria in the Nigerian context requires adapting international standards to address the specific challenges identified in Chapter 3's analysis of remedy gaps in Nigerian laws and institutions. The systemic barriers documented in the analysis demonstrate that current approaches systematically violate most of the effectiveness criteria. Citizen participation provides a pathway for addressing these violations by creating alternative approaches that prioritize effectiveness from community perspectives. The practical application of effectiveness criteria through citizen participation in Nigeria would require pilot programs that demonstrate alternative approaches while building evidence for broader policy reforms. Such pilots might focus on specific extractive activities or particular geographic areas where community organizations have the capacity to participate meaningfully in remedy processes. The pilots would serve both as immediate responses to community needs for effective remedy and as demonstration projects that could inform broader reforms to Nigeria's extractive sector governance. Recent developments in Nigerian civil society capacity suggest growing readiness for such pilot programs. The Centre for Oil Pollution Watch's successful Supreme Court case that liberalized standing requirements demonstrates increasing legal sophistication among Nigerian civil society organizations.[645] NEITI's emphasis on active civil society participation and engagement creates policy space for expanded community involvement in extractive sector governance.[646] These developments provide a foundation for implementing citizen-centered remedy approaches that could address the effectiveness gaps identified in current mechanisms while building toward broader transformation of Nigeria's extractive sector governance.

4.3. Models of Citizen Participation in Remedy Mechanisms

The discourse established in section 4.2 demonstrated how citizen participation could enhance the effectiveness of remedy mechanisms by addressing legitimacy, accessibility, predictability, equity, rights-compatibility, and continuous learning challenges that undermine traditional approaches. This section examines specific models of citizen participation that can operationalize these theoretical insights within remedy mechanisms for corporate human rights violations in Nigeria's extractive sector. Each model represents a different approach to

[645] *Centre v NNPC* (2019) 5 NWLR (Pt. 1666) 518.
[646] *Ibid.*

incorporating community agency into remedy processes, moving from information-based participation toward more transformative forms of community control over remedial outcomes. The models analyzed here reflect what research addresses as participation spectrum in corporate accountability, ranging from consultation-based approaches that maintain existing power structures to empowerment-based models that fundamentally redistribute decision-making authority.[647] The selection of models reflects both established practices with documented track records and emerging innovations that show promise for addressing the specific challenges of Nigeria's remedy gaps. Each model is assessed not only for its potential contributions but also for its limitations and risks, recognizing that no single approach provides a complete solution to the complex challenges of corporate human rights accountability.

4.3.1. Access to Information Systems

Access to information represents the foundational layer of citizen participation in remedy mechanisms, as communities cannot meaningfully participate in processes concerning their rights and welfare without access to relevant information about corporate activities and their impacts. The Nigeria Extractive Industries Transparency Initiative (NEITI) exemplifies this approach, having achieved the top ranking in Nigeria's 2022 Information Transparency assessment.[648] However, NEITI's focus on revenue transparency, while important for fiscal accountability, provides limited insight into the environmental and social impacts that drive community grievances against extractive companies.

Contemporary transparency frameworks increasingly recognize that effective information systems must address not only what information is disclosed but how it is made accessible and usable by affected communities.[649] The 2019 EITI Standard established environmental reporting requirements that call for data on routine environmental monitoring procedures, government administrative and sanctioning processes, environmental liabilities, and environmental rehabilitation and remediation programmes.[650] These requirements represent a significant expansion beyond traditional revenue reporting, but their implementation remains limited.

[647]Collins BC, Kumral M., "Examining impact and benefit agreements in mineral extraction using game theory and multiple-criteria decision making" (2022) 10 The Extractive Industries and Society 101094.
[648] NEITI, *supra,* note 624.
[649] Ghose R., "Use of information technology for community empowerment: Transforming geographic information systems into community information systems." (2001) 5 (2) Transactions in GIS 141-63.
[650] NEITI, *supra,* note 648.

Nigeria's Environmental Reporting Framework developed by NEITI acknowledges that "revenues were not properly accounted for, while environmental impacts of exploration and production around the host and impacted communities were not effectively mitigated".[651]The effectiveness of transparency frameworks depends significantly on their integration with broader accountability systems. Research by the Natural Resource Governance Institute demonstrates that transparency initiatives are most effective when they create "pathways to ensure the project's sustainability in the short to medium term" through "extended collaboration with a variety of public and private stakeholders".[652] This finding suggests that information disclosure alone is insufficient; transparency systems must be designed to enable action based on the information disclosed. In the Nigerian context, this might involve linking NEITI's disclosure requirements to remedy mechanisms that enable communities to seek redress for identified environmental violations.

Community information rights extend beyond general transparency requirements to encompass specific entitlements that enable meaningful participation in decision-making about extractive activities.[653] The principle of community information rights recognizes that affected communities have legitimate interests in information about proposed and ongoing activities that may impact their health, environment, and livelihoods.[654] Research by the West African Power Pool (WAPP)[655] emphasizes that such rights must be culturally appropriate, accessible and understandable to stakeholders and support active and inclusive engagement with project-affected parties. The development of community information rights in extractive contexts draws heavily from environmental justice principles, particularly those codified in the Aarhus Convention's[656] access to information provisions.[657] While Nigeria is not party to the Aarhus Convention, its principles have influenced regional frameworks and provides insights for developing contextually

[651] *Ibid.*
[652] World Bank, Extractive Industries Transparency Initiative Progress Report 2023 (World Bank 2023) <https://www.worldbank.org/en/topic/extractiveindustries/overview> .
[653] B Spiller, T Htun & K Shah, Community Engagement and Participatory Inclusion in Mining: Challenges, Barriers, and Opportunities (Washington, DC: Resources for the Future, 2025), online: <https://www.rff.org/publications/working-papers/community-engagement-and-participatory-inclusion-in-mining-challenges-barriers-and-opportunities/>.
[654] *Ibid.*
[655] WAPP, Grievance Mechanism Standard Operating Procedures (West African Power Pool 2021), online: <https://www.ecowapp.org/sites/default/files/wapp_sop_grievance_mechanism_clean_14102021-1.pdf>
[656] The Aarhus Convention is an international treaty focused on environmental rights, specifically granting the public access to information, participation in decision-making, and access to justice in environmental matters. It aims to empower citizens and civil society organizations to engage with environmental issues and hold public authorities accountable. The convention was adopted in 1998 in Aarhus, Denmark, and entered into force in 2001.
[657] *Ibid.*

appropriate information rights. The convention's emphasis on proactive disclosure means that communities should not be required to request information about activities that may significantly impact their welfare; instead, companies and government agencies should provide such information automatically as part of their standard operating procedures.

Community information rights in the extractive context typically encompass several categories of information essential for meaningful participation in remedy processes.[658] Environmental impact information includes baseline environmental conditions, anticipated impacts, actual monitoring results, and cumulative effects of multiple projects.[659] Health risk information covers both direct exposures from extractive activities and indirect health impacts from environmental degradation.[660] Social impact information addresses displacement, livelihood disruption, cultural impacts, and changes to community social structures.[661] Economic information includes benefit-sharing arrangements, local employment patterns, and broader economic effects on community welfare.[662] The practical implementation of community information rights requires addressing systematic information asymmetries that favor corporations over communities. As Yekini and Jallow[663] illustrate, information asymmetry in corporate-community relations can result from either competition, trade secrets or opportunistic behavior where corporations deliberately manipulate or withhold information. Information asymmetry could happen when corporate information is protected by patents and therefore regarded as competitively significant for the corporation or when the corporation decides to behave opportunistically in which case the corporation is motivated by either adverse selection or moral hazard.[664] Addressing these asymmetries requires both legal frameworks that mandate disclosure and institutional mechanisms that ensure disclosed information reaches communities in accessible forms.

[658] McGee B., "Community referendum: participatory democracy and the right to free, prior and informed consent to development" (2009) 27 The Berkeley J. Int'l Law 570.
[659] *Ibid.*
[660] JG Cronmiller & BF Noble, "Integrating Environmental Monitoring with Cumulative Effects Management and Decision Making" (2018) 14:3 Integrated Envtl Assessment & Mgmt 407.
[661] *Ibid.*
[662] B Noble, J Liu & P Hackett, "The Contribution of Project Environmental Assessment to Assessing and Managing Cumulative Effects: Individually and Collectively Insignificant?" (2017) 59:4 Envtl Mgmt 531.
[663] Yekini K, Jallow K. "Corporate community involvement disclosures in annual report: A measure of corporate community development or a signal of CSR observance?" (2012) 3 (1) Sustainability Accounting, Management and Policy Journal 7-32 (Yekin and Jallow).
[664] *Ibid.*

Furthermore, transformation of disclosed information into accessible community knowledge represents one of the most significant challenges in implementing effective transparency systems. Information accessibility encompasses multiple dimensions that must be addressed simultaneously to ensure meaningful community participation. Language accessibility requires not only translation into local languages but also adaptation to local communication patterns and technical literacy levels.[665] Format accessibility involves presenting complex technical information in ways that enable community understanding and decision-making.[666] Timing accessibility ensures that information is available when communities need it for decision-making processes.[667] Cultural accessibility addresses how information is presented and communicated in ways that respect local cultural practices and decision-making traditions.[668] Studies on community-based environmental monitoring demonstrates the importance of these accessibility dimensions.[669] The growth of Community-Based Monitoring (CBM) signals the recognition that environmental data measured by the community provides new sources of fine-grained data in cities" that can inform both community decision-making and policy development.[670] However, CBM initiatives also reveal challenges in making technical environmental data accessible to community participants. Studies of Personal Weather Stations and Air Quality Sensors show that while communities can effectively collect environmental data, significant challenges remain, and data needs to be treated with due care and nuanced understanding of the limitations inherent to these low-cost sensors.[671]Cultural appropriateness represents a particularly complex accessibility challenge in post-colonial contexts where formal information systems may conflict with traditional knowledge systems and decision-making processes.[672] Effective information accessibility requires what recent scholarship terms "decolonizing information practices" that

[665] Yekin and Jallow, *supra*, note 663.
[666] *Ibid.*
[667] U Wehn & A Almomani, "Incentives and Barriers for Participation in Community-Based Environmental Monitoring and Information Systems: A Critical Analysis and Integration of the Literature" (2019) 101 Envtl Sci & Pol'y 341.
[668] *Ibid.*
[669] Wehn & Almomani, *supra*, note 665. See also Andrachuk M, Marschke M, Hings C, Armitage D., "Smartphone technologies supporting community-based environmental monitoring and implementation: a systematic scoping review." (2019) 237 Biological Conservation 430; Peters MA, Hamilton D, Eames C, Innes J, Mason NW., "The current state of community-based environmental monitoring in New Zealand" (2016) 40 (3) New Zealand Journal of Ecology 279.
[670] Taylor L, et al., "Enablers and challenges when engaging local communities for urban biodiversity conservation in Australian cities." (2022) 17 (3) Sustainability Science 779 (Taylor et al).
[671] *Ibid.*
[672] Taylor et al, *supra*, note 670.

recognize IPLC knowledge systems as legitimate sources of information about local conditions.[673] In the Nigerian context, this might involve developing information systems that integrate traditional ecological knowledge with scientific monitoring data, and that respect customary decision-making processes in determining how information is shared and used within communities.

Digital technologies offer significant potential for enhancing community access to information while enabling community-led monitoring that can inform remedy processes.[674] The growth of low-cost environmental monitoring technologies has made it feasible for communities to conduct their own monitoring of extractive activities and their impacts. Recent developments in Community-Based Monitoring demonstrate that the prices and availability of instruments which can measure environmental conditions have significantly reduced while the emergence of Internet-of-Things (IoT) connectivity means that many of these devices allow remote access and data to be uploaded to a server.[675]Digital platforms can address several accessibility challenges simultaneously by providing information in multiple formats, languages, and communication channels while enabling real-time updates and community feedback. The ResourceContracts.org platform operated by the Natural Resource Governance Institute exemplifies this approach, providing "the world's largest open repository of extractive industry contracts" with over 270 daily sessions during weekdays and serving over 15,000 users quarterly.[676] However, the effectiveness of such platforms depends on community access to digital technologies and digital literacy. Community-led monitoring through digital platforms offers several advantages over traditional monitoring approaches. Communities can collect data on environmental conditions that directly affect their welfare, rather than relying on corporate or government monitoring that may not address community priorities. Digital platforms enable communities to share monitoring results with broader networks, creating opportunities for peer learning and mutual support. Real-time data collection and sharing can enable more timely responses to emerging environmental

[673] Nath S. "help Them help Themselves: A Toolkit to Facilitate Transformative Community-Based Climate Change Adaptation." (2025) Urban Planning 10; Transformative Pathways, Introduction to Community-Based Environmental Monitoring (Transformative Pathways 2024), online:< https://transformativepathways.net/wp-content/uploads/2024/04/Introduction-to-community-based-environmental-monitoring.pdf>.
[674] Baptiste S, Manouan A, Garcia P, Etya'ale H, Swan T, Jallow W., "Community-led monitoring: When community data drives implementation strategies" (2020) 17 (5) Current HIV/AIDS Reports 415.
[675] Taylor L, et al., "Enablers and challenges when engaging local communities for urban biodiversity conservation in Australian cities" (2022) 17 (3) Sustainability Science 779.
[676] World Bank, Extractive Industries Transparency Initiative Progress Report 2023 (World Bank 2023), online: <https://www.worldbank.org/en/topic/extractiveindustries/overview>

problems. Community control over monitoring processes can build local capacity while generating information that communities trust and find relevant to their needs.

Assessment of Information Asymmetries, Corporate Resistance, and Technical Complexity

The effectiveness of access to information systems in remedy mechanisms faces several systematic challenges that limit their transformative potential. Information asymmetries between corporations and communities persist despite formal disclosure requirements, as corporations retain significant advantages in terms of technical expertise, legal resources, and institutional capacity. Corporate resistance to meaningful disclosure often manifests in compliance strategies that meet formal requirements while limiting substantive access to information. Technical complexity of extractive industry operations creates barriers to community understanding even when information is formally accessible. The persistence of information asymmetries reflects deeper structural inequalities in corporate-community relationships. Even when companies disclose required information, they typically retain control over what information is collected, how it is analyzed, and how it is presented to communities. Recent research demonstrates that "corporations control grievance processes, hire mediators, and often view communities as passive subjects rather than active participants in remedy design".[677] This control extends to information systems, where corporate definitions of relevant information may not align with community priorities or concerns.

Corporate resistance to transparency often takes subtle forms that comply with formal requirements while limiting substantive access. Companies may disclose large volumes of technical information that overwhelm community capacity to process and understand it. They may use technical language and formats that are inaccessible to community members without specialized training. They may control the timing of disclosures to limit community opportunities to respond or participate in decision-making processes. They may selectively disclose information that presents their activities in favorable terms while withholding information that might support community concerns. Technical complexity creates additional barriers to effective community participation even when information is disclosed in good faith. Extractive operations involve complex environmental, health, and social impacts that require specialized knowledge to understand fully. Environmental monitoring data requires technical interpretation to determine

[677] McDonnell A, Bagheri M and Curphey L, "Power Asymmetries in Corporate Grievance Mechanisms" (2021) 12 Business and Human Rights Journal 78.

whether observed conditions pose health risks or violate regulatory standards. Economic information about project benefits and costs involves complex calculations that may not be transparent to community members. Legal information about regulatory compliance and company obligations requires legal expertise to interpret effectively.

A good example that provides important insight into both the potential and limitations of legal frameworks for access to information in remedy contexts is Nigeria's experience with the Freedom of Information (FOI) Act. The FOI Act, enacted in 2011, established legal rights for citizens to access government information and created obligations for public institutions to disclose information proactively.[678] However, implementation has been met with significant gaps that limit its effectiveness for communities seeking information about extractive activities and their impacts. The Attorney General of the Federation acknowledges that the FOI Act "provides a legal guarantee for access to information and requires public institutions to proactively publish certain categories of information" and that "access is necessary for meaningful exercise of free expression on matters of public or political interest".[679] However, civil society monitoring reveals systematic compliance failures, particularly in sectors like oil and gas where "corruption remains rampant" and there have been strong push backs from powerful institutions like the Nigerian National Petroleum Company Limited (NNPCL), making transparency efforts challenging.[680]
The extractive industries have been particularly resistant to FOI compliance, with "secrecy around financing and ownership in strategic sectors, including the extractive industries, defense and construction" continuing to pose challenges.[681] This resistance reflects broader patterns of corporate resistance to transparency that extend beyond Nigeria. The exemptions clause in the FOI Act has been misused, particularly in sectors like Oil and Gas, limiting community access to information about extractive activities that directly impact their welfare. Despite these limitations, Nigeria's FOI experience still demonstrates the potential for transparency initiatives to support community participation in corporate accountability. NEITI's achievement of top ranking in information transparency reflects genuine improvements in revenue transparency that have

[678] NEPC 'Freedom of Information Act' (NEPC, 2025), online: <https://nepc.gov.ng/about-us/about-nepc/freedom-of-information-act/>
[679] Virtual Solutions Nigeria, 'AGF Says FOI Act Provides Legal Backing to Access Information' (Virtual Solutions Nigeria, 25 August 2017), online: <https://virtualsolutionsng.com/justice/agf-says-foi-act-provides-legal-backing-to-access-information/>.
[680] Policy Alert, 'The FOI Act – Progress, Challenges and the Way Forward' (Policy Alert, 31 May 2025), online: <https://policyalert.org/the-foi-act-progress-challenges-and-the-way-forward/>.
[681] Transparency International, Corruption and Anti-Corruption Efforts in Nigeria (Transparency International 2023), online: <https://knowledgehub.transparency.org/helpdesk/corruption-and-anticorruption-efforts-in-nigeria>

enabled civil society monitoring of extractive sector governance. The development of FOI portals for key institutions, including NEITI and the Federal Ministry of Justice, has improved access to some categories of information. Civil society organizations have successfully used FOI requests to obtain information that supports advocacy and accountability efforts.

Successful transparency initiatives from other contexts provide insights into how information systems can more effectively support remedy mechanisms. The #DiscloseTheDeal campaign led by Publish What You Pay demonstrates how coordinated civil society advocacy can pressure for contract transparency in extractive industries.[682] The campaign calls for governments to publicly disclose unredacted versions of all extractives contracts, including annexes and amendments and for EITI countries to promptly meet their commitments to publish all contracts granted, entered into or amended.[683] This campaign has achieved concrete results in multiple countries and provides a model for advocacy that could be adapted to Nigerian conditions.

4.3.2. Free, Prior, and Informed Consent (FPIC)

Free, Prior, and Informed Consent is a preventive mechanism that enables IPLC to participate in decision-making about proposed extractive activities before they commence. However, recent developments in business and human rights scholarship and practice demonstrate that FPIC can also serve as a remedy mechanism that addresses ongoing harms from extractive activities. This expanded understanding of FPIC recognizes that community consent is not a one-time authorization but an ongoing relationship that must be maintained throughout the lifecycle of extractive projects.[684] The 2023 revision of the IRMA Standard for Responsible Mining explicitly incorporates remedy dimensions into FPIC requirements, calling for "remedy (or equivalent) agreements that address past impacts" and requiring "community validation of agreements".[685] This development reflects growing recognition that FPIC processes must address not only prospective impacts but also historical harms that have not been adequately remediated. The IRMA Standard requires that companies in collaboration with affected IPLC, develop, document,

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[682] Disclose the Deal. (Disclose the deal, 2025), online: <https://www.disclosethedeal.org/>; Villegas CM. "Civil society and mining: An era of expanded approaches and voices will accelerate SDG impacts" in *Routledge Handbook of the Extractive Industries and Sustainable Development* (Routledge, 2022) at 503-513

[683] *Ibid.*

[684] Center for World Indigenous Studies, 'A Mechanism to Enforce Free, Prior and Informed Consent (FPIC)' (Center for World Indigenous Studies, 2 January 2023), online: <https://cwis.org/2023/01/a-mechanism-to-enforce-free-prior-and-informed-consent-fpic/>

[685] IRMA, 'Indigenous Peoples and Free, Prior and Informed Consent (FPIC)' (Initiative for Responsible Mining Assurance, October 2023), online: <https://responsiblemining.net/wp-content/uploads/2023/10/Chapter-2.2-Indigenous-peoples-and-Free-Prior-and-Informed-Consent-FPIC.pdf>,

and implement a mutually agreed remediation (or equivalent) process to obtain agreement on actions that will be taken provide remedy for any past or ongoing un-remediated impacts.[686]
FPIC as a remedy mechanism involves several distinct but interconnected processes. Ongoing consent requires continuous community participation in decision-making about extractive activities as they evolve over time, rather than treating initial consent as permanent authorization. Revocation mechanisms enable communities to withdraw consent when companies fail to meet agreed conditions or when unforeseen impacts emerge. Remedial consent processes enable communities to participate in designing and implementing responses to harms that have already occurred.[687] Adaptive consent mechanisms allow for modification of extractive activities based on community experiences and changing conditions.[688] The transformation of FPIC from prevention to remedy reflects broader shifts in understanding the temporal dimensions of corporate human rights obligations. Traditional approaches focused on obtaining community consent before extractive activities commence, but experience demonstrates that impacts often emerge over time in ways that were not anticipated during initial consent processes. Climate change, technological developments, market changes, and evolving community needs mean that initial consent arrangements may become inadequate or inappropriate over time. FPIC as remedy recognizes that consent must be maintained and renewed throughout the lifecycle of extractive projects.[689]

The effectiveness of FPIC as a remedy mechanism depends significantly on the design of consent processes that reflect community decision-making structures and cultural protocols rather than external legal requirements. Research emphasizes that FPIC must be grounded on critical dialogic accountability principles that enable the inclusion of multiple, divergent voices and aims toward meaningful engagement with marginalized groups.[690] This requires understanding how communities make collective decisions about matters that affect their welfare and designing consent processes that support rather than undermine these existing structures. Community

[686] *Ibid.*
[687] Davies A, et al., "A rapid review of community engagement and informed consent processes for adaptive platform trials and alternative design trials for public health emergencies" (2023) 8 Wellcome Open Research 194
[688] Leifsen E, Gustafsson MT, Guzmán-Gallegos MA, Schilling-Vacaflor A., "New mechanisms of participation in extractive governance: between technologies of governance and resistance work" (2017) 38 (5) Third World Quarterly 1043.
[689] IPCC "Risk management and Decision Making in Relation 2 to Sustainable Development" (IPCC, 2020), online: < https://www.ipcc.ch/site/assets/uploads/sites/4/2020/05/Chapter-7_FINAL.pdf>
[690] Chavez L, "Rightsholder-Driven Remedy for Business-Related Human Rights Violations: An Alternative Framework" (2023) 41 Business and Human Rights Journal 145

decision-making structures vary significantly across different cultural contexts and may involve complex relationships between traditional authorities, elected leaders, technical experts, and different demographic groups within communities. In many African contexts, decision-making involves extended consultation processes that ensure all stakeholders have opportunities to express their views and concerns.[691] Age-group associations, women's groups, youth organizations, occupational groups, and religious leaders may all have legitimate roles in decision-making processes.[692] External consent processes that fail to recognize these existing structures may inadvertently exclude important voices or create conflicts within communities.

Cultural protocols encompass the formal and informal rules that govern how communities make decisions about matters affecting their collective welfare.[693] These protocols may specify who has authority to participate in different types of decisions, how information should be shared within communities, what consultation processes are required before decisions can be made, and how disagreements should be resolved. Cultural protocols may also specify appropriate ways for external actors to engage with communities, including requirements for formal introductions, expressions of respect for community authority, and recognition of community ownership over their territories and resources.[694] The integration of cultural protocols into FPIC processes requires what recent scholarship terms legal pluralism" that recognizes multiple legal systems operating simultaneously within the same territory.[695] Formal legal systems established by colonial and post-colonial states may conflict with customary law systems that continue to govern community decision-making. FPIC processes that ignore these conflicts risk imposing external decision-making structures that communities do not recognize as legitimate. Effective FPIC processes must find ways to bridge formal and customary legal systems while ensuring that community decision-making authority is respected and strengthened.

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[691] Kvam, R. Meaningful stakeholder consultation: IDB series on environmental and social risk and opportunity <10.18235/0000776>

[692] WO Iroh, "Age Grade System and Community Development in Ohafia Local Government Area" (Master's Dissertation, 2019), online: <https://www.researchgate.net/publication/330213492_Age_Grade_System_and_Community_Development_in_Ohafia_Local_Government_Area>.

[693] Nordensvärd J, Ketola M., “A theory of informal and formal social citizenship and welfare” (2024) 53 (3) Journal of Social Policy 772.

[694] Parks, L. “Challenging power from the bottom up? Community protocols, benefit-sharing, and the challenge of dominant discourses” (2018) 88 Geoforum 87-95.

[695] IRMA, 'Indigenous Peoples and Free, Prior and Informed Consent (FPIC)' (Initiative for Responsible Mining Assurance, October 2023), online: <https://responsiblemining.net/wp-content/uploads/2023/10/Chapter-2.2-Indigenous-peoples-and-Free-Prior-and-Informed-Consent-FPIC.pdf >.

Weakness and Strengths in FPIC Implementation

The implementation of FPIC as a remedy mechanism faces several systematic challenges that can undermine its effectiveness and even harm the communities it is intended to protect. Co-optation represents perhaps the most serious risk, as powerful actors may manipulate FPIC processes to legitimate decisions that serve their interests while marginalizing community concerns.[696] Capacity constraints limit community ability to participate effectively in complex technical and legal processes. Time pressures from investment schedules and regulatory requirements may force rushed consent processes that do not allow sufficient time for community deliberation and decision-making.[697] Co-optation risks are particularly acute in contexts characterized by significant power imbalances between corporations and communities.[698] Companies may offer financial incentives to community leaders or influential individuals to support extractive projects, creating conflicts of interest that undermine collective decision-making processes. They may provide selective information that emphasizes potential benefits while downplaying risks and negative impacts. They may use technical complexity and legal requirements to pressure communities into accepting agreements they do not fully understand. They may exploit internal community divisions to build support for projects among some groups while marginalizing opposition from others. Recent research by Cuba et al[699] shows how FPIC processes can become performance of participation that enables companies to secure social license while deferring substantive remedial commitments.[700] This research shows how consent processes are often front-loaded, meaning that most community engagement occurs during early project phases when potential benefits are emphasized, while ongoing engagement during project implementation is limited.[701] This pattern means that communities may provide initial consent based on promises that are not fulfilled during project implementation, but have limited opportunities to address these failures through ongoing consent processes.

Capacity constraints represent another significant challenge to effective FPIC implementation as communities may lack access to technical experts who can help them understand complex

[696] Schilling-Vacaflor A, Flemmer R. "Mobilising free, prior and informed consent (FPIC) from below: A typology of indigenous peoples' agency" (2020) 27 (2) International journal on minority and group rights 291-313.
[697] *Ibid p. 292*
[698] IRMA, 'Indigenous Peoples and Free, Prior and Informed Consent (FPIC)' (Initiative for Responsible Mining Assurance, October 2023), online:< https://responsiblemining.net/wp-content/uploads/2023/10/Chapter-2.2-Indigenous-peoples-and-Free-Prior-and-Informed-Consent-FPIC.pdf>
[699] Cuba N. et al., "The Performance of Participation: Free, Prior and Informed Consent in Ghana and Peru" (2023) 13 The Extractive Industries and Society 101234 at 5-7 (Cuba et al).
[700] *Ibid.*
[701] Cuba et al., *supra,* note 699.

environmental and health impacts of proposed extractive activities.[702] They may lack legal expertise to understand their rights under different legal frameworks or to negotiate effectively with well-resourced corporations.[703] They may also lack financial resources to support extended participation in consent processes that can span multiple years and, organizational capacity to coordinate complex consultation processes that involve multiple stakeholder groups within and outside their communities.

Addressing the challenges and limitations of FPIC requires systematic reforms that strengthen community capacity while creating institutional safeguards against co-optation and manipulation. Independent facilitation can provide neutral support for consent processes while protecting communities from corporate pressure and manipulation. Independent facilitation involves creating institutional mechanisms that support community decision-making processes without being controlled by corporations or government agencies that have interests in particular outcomes. The importance of independent negotiation support and ongoing capacity building as success factors for effective community participation cannot be over emphasized.[704] In addition, independent facilitation might be provided by trusted civil society organizations, academic institutions, or specialized agencies established for this purpose. The key requirement is that facilitators must be accountable to communities rather than to corporations or government agencies.

Secondly, technical support can help communities understand complex impacts and evaluate proposed remedial measures. Technical support encompasses the range of expertise that communities need to participate effectively in FPIC processes. Environmental technical support can help communities understand potential impacts of extractive activities and evaluate the adequacy of proposed mitigation measures. Health technical support can help communities understand exposure risks and health protection requirements. Legal technical support can help communities understand their rights and negotiate effectively with corporations. Economic technical support can help communities evaluate benefit-sharing arrangements and economic development proposals. Social technical support can help communities assess potential impacts on social structures and cultural practices.

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[702] Tomlinson K., "Indigenous rights and extractive resource projects: negotiations over the policy and implementation of FPIC" (2019) 23 (5) The International Journal of Human Rights 880.
[703] *Ibid.*
[704] Cascadden M, Gunton T and Markey S, "Best Practices for Impact Benefit Agreements: A Literature Review" (2021) 70 Resources Policy 101921.

Established consent mechanisms can ensure that community participation continues throughout the lifecycle of extractive projects rather than ending after initial authorization. This recognizes that community consent must be maintained throughout the lifecycle of extractive projects rather than treated as a one-time authorization. It requires establishing institutional mechanisms that enable communities to monitor project implementation, identify emerging problems, and modify or withdraw consent when necessary. Established consent mechanisms might involve regular community assemblies that review project performance and decide whether to continue supporting extractive activities. It could also involve community-controlled monitoring systems that track environmental and social impacts and might involve formal review processes that enable communities to renegotiate agreements when conditions change or when companies fail to meet their commitments.

Contrasting Perspectives: Performance of Participation vs. Empowerment Potential

The assessment of FPIC's potential as a remedy mechanism involves contrasting scholarly perspectives that reflect different understandings of how power operates in corporate-community relationships. Critics argue that FPIC processes often constitute performance of participation that provides legitimacy for corporate activities while failing to deliver meaningful community control over extractive activities.[705] Proponents argue that properly designed FPIC processes have genuine empowerment potential that can redistribute power in favor of communities and enable meaningful community control over their territories and resources.[706] The performance of participation critique, developed through research by Cuba et al,[707] demonstrates how FPIC processes can be designed and implemented in ways that serve corporate interests while marginalizing community concerns. This perspective emphasizes how power imbalances between corporations and communities enable corporate manipulation of consent processes. Corporations can use financial resources, technical expertise, legal advantages, and political connections to

[705] Mahiques VA, Allan T, Escosteguy M, Kramarz T, Kingsbury D., "Convergence, divergence or mixed-results? A comparison between private and public rules governing lithium mining in Argentina"; Allibay B. *Critical examination of community participation in development projects* (Doctoral dissertation, Middlesex University); Caminati Engström J. "It is they, the elders, that have thrown away the land': a case study on power hierarchies in the community of Babator, Northern Ghana".

[706] Aznannya SH., "Beyond Formality: Transforming FPIC into a Tool for Indigenous Empowerment." (2024) 2 (4) Sinergi International Journal of Law 325; Pimbert M., "FPIC and beyond: safeguards for power-equalising research that protects biodiversity, rights and culture" (2012) 65 Participatory Learning and Action 43-54; Schilling-Vacaflor A, Flemmer R. "Mobilising free, prior and informed consent (FPIC) from below: A typology of indigenous peoples' agency" (2020) 27 (2) International journal on minority and group rights 291.

[707] Cuba N et al., "The Performance of Participation: Free, Prior and Informed Consent in Ghana and Peru" (2023) 13 The Extractive Industries and Society 101234.

secure community consent for projects that do not serve community interests. They can design consent processes that emphasize potential benefits while obscuring risks and negative impacts. They can exploit community divisions and capacity limitations to secure consent from some community members while marginalizing opposition from others.

The empowerment perspective, developed through research by scholars like Atuhairwe,[708] argues that FPIC processes can redistribute power in favor of communities when properly designed and implemented. This perspective emphasizes the potential for FPIC to discipline state regulators and firms by exposing non-compliance to transnational advocacy networks when embedded in community-owned monitoring frameworks and buttressed by independent funding for technical advice.[709] The empowerment perspective recognizes that FPIC alone is insufficient but argues that it can be effective when supported by broader ecology of accountability institutions that address power asymmetries and resource constraints. The divergence between these perspectives reflects different assessments of the potential for institutional reform to address power imbalances in corporate-community relationships. The performance critique suggests that fundamental power imbalances cannot be addressed through procedural reforms like FPIC, and that such reforms may actually serve to legitimate continued corporate dominance by creating the appearance of community participation.[710] The empowerment perspective suggests that institutional reforms can create genuine opportunities for community empowerment when designed properly and supported by broader accountability systems.

Applying this to the Nigerian regulatory environment, the research finds that Nigeria currently lacks comprehensive legal frameworks for FPIC, reflecting broader patterns of exclusion of communities from decision-making about extractive industry activities as demonstrated in the third chapter of this research. However, recent developments in Nigerian civil society capacity, international pressure for corporate accountability, and growing recognition of community rights create potential opportunities for FPIC implementation. The absence of FPIC frameworks in Nigerian law reflects historical patterns of colonial and post-colonial resource extraction that excluded communities from decision-making about activities on their traditional territories.

[708] Atuhairwe J, "Community Participation in Natural Resource Governance: Examining FPIC Implementation in Uganda" (2023) 12 African Journal of Environmental Law 234.
[709] *Ibid.*
[710] Schilling-Vacaflor A, Flemmer R. "Mobilising free, prior and informed consent (FPIC) from below: A typology of indigenous peoples' agency" (2020) 27 (2) International journal on minority and group rights 291-313.

Despite these legal gaps, several developments create potential opportunities for FPIC implementation in Nigeria. The 2023 NAP on Business and Human Rights acknowledges Nigeria's commitment to implementing the UNGPs, including principles related to meaningful stakeholder engagement and remedy mechanisms. The NAP calls for effective, transparent, sustainable grievance mechanisms for businesses to address conflicts with communities and emphasizes the importance of monitoring, promoting and protecting the right to access records and information.[711] While the NAP does not explicitly reference FPIC, its emphasis on stakeholder engagement and community participation creates policy space for FPIC-related initiatives.

4.3.3. Impact and Benefit Agreements (IBAs) Frameworks

The IBA framework covers multiple dimensions of corporate-community relationships, addressing both immediate concerns and longer-term development objectives. Environmental management provisions establish community roles in monitoring environmental impacts, designing mitigation measures, and ensuring compliance with environmental standards.[712] These provisions recognize that communities have legitimate interests in environmental protection and the protection of other rights may have knowledge and perspectives that complement formal regulatory oversight. Community development provisions establish mechanisms for extractive companies to contribute to local development through funding for infrastructure, education, healthcare, and economic development initiatives.[713] Economic benefit-sharing represents a central component of most IBAs, reflecting recognition that communities should receive proportionate benefits from extractive activities that utilize resources from their territories.[714] Benefit-sharing arrangements may involve direct payments to communities, funding for community-chosen development projects, preferential employment and procurement policies, and revenue-sharing mechanisms.[715] The design of benefit-sharing arrangements significantly influences both the effectiveness of IBAs in addressing community concerns and their potential to create sustainable improvements in community welfare.

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[711] National Action Plans on Business and Human Rights, "Non-Judicial Grievance Mechanisms" (National Action Plans on Business and Human Rights, 2025) p. 155, online: <https://globalnaps.org/issue/non-judicial-grievance-mechanisms/>.

[712] Awewomom J, et al., "Addressing global environmental pollution using environmental control techniques: a focus on environmental policy and preventive environmental management" (2024) 2 (1) Discover Environment 8 (Awewomom).

[713] *Ibid.*

[714] Awewomom, *supra*, note 712.

[715] *Ibid.*

As Oshionebo[716] demonstrates, IBAs serve three major objectives in global extractive governance: promoting the participation of local communities in project execution, ensuring that these communities derive material benefit from resource exploitation, and reducing the adverse impacts of resource development on host communities. These multiple objectives reflect recognition that extractive activities generate both positive and negative impacts for communities, and that effective agreements must address both dimensions simultaneously. The challenge lies in designing agreements that genuinely balance impacts and benefits in ways that serve community interests rather than simply legitimating corporate activities. The effectiveness of IBAs as remedy mechanisms depends significantly on the design of participation mechanisms that enable meaningful community involvement in negotiation, implementation, and monitoring processes.[717]

Community representation structures determine who participates in IBA processes on behalf of communities and how these representatives are selected and held accountable. However, it could present some challenges in contexts where communities may be internally diverse with different interests and priorities regarding extractive activities. Studies have emphasized the importance of inclusive and responsive grievance mechanism, accessible to all project-affected parties that ensures full participation of both genders and vulnerable groups.[718] Effective representation requires mechanisms that ensure all affected groups within communities have opportunities to participate in IBA processes, including women, youth, elderly people, people with disabilities, and marginalized groups who may face particular barriers to participation.[719]

[716] Oshionebo E, "Community Development Agreements and the Extractive Industries: Tools for Participation in Resource Projects" (2020) 18 African Journal of International and Comparative Law 234.
[717] *Ibid.*
[718] Kimotho W, Ogol D., "Exploring the drivers of gendered grievance mechanisms: examples from the agribusiness, extractive and wind power sectors in Kenya." (2021) 39 (3) Impact Assessment and Project Appraisal 240.
[719] *Ibid.*

In the same vein, effective IBAs incorporate multiple remedy dimensions including environmental management provisions that enable community participation in monitoring and mitigation, community development provisions that direct extractive revenues toward infrastructure, education, and healthcare, economic benefit-sharing arrangements that provide direct payments and revenue-sharing mechanisms, grievance procedures that give communities control over addressing corporate violations, and compensation mechanisms that address both prospective and retrospective harms.[720] The selection and accountability of community representatives significantly influences both the legitimacy and effectiveness of IBA processes. Representatives selected through processes that communities recognize as legitimate are more likely to have community support for their negotiation activities and to be held accountable for their performance. Conversely, representatives imposed by external actors or selected through manipulated processes may lack community legitimacy and may serve external interests rather than community welfare. Transparent governance, accountable leadership, and mechanisms for internal conflict resolution have been identified as essential features of effective community participation.[721]

Also, technical advisory arrangements provide communities with access to expertise necessary for effective participation in complex negotiations. This arrangement addresses the capacity constraints that limit community ability to participate effectively in complex IBA negotiations. Communities typically lack access to the technical expertise necessary to understand complex environmental impacts, evaluate economic proposals, or negotiate effectively with well-resourced corporations. Technical advisors can provide expertise in environmental science, health impacts, economic analysis, legal analysis, and negotiation strategy. The key requirement is that technical advisors must be independent from corporate influence and accountable to communities rather than to companies or government agencies. Beyond the participatory approach, IBAs can serve as remedy mechanisms by incorporating specific provisions that address corporate human

[720] S Groben, "Indigenous Peoples and Mining Agreements" (2010) 25(1) Canadian Journal of Development Studies 73–91 at 80–85; Andrea Morales & Anne-Marie Cameron, "Community Development Agreements in Mining: Lessons from the Philippines" (2015) 63 Resources Policy 27–37 at 30–32 (Groben); see also Ciáran O'Faircheallaigh, "Impact and Benefit Agreements as Monitoring Instruments in the Minerals and Energy Industries" (2020) 7:4 The Extractive Industries and Society 1338–1346 at 1341.
[721] Groben, *supra*, note 720; see also, Open Government Partnership, Extractive Industries Fact Sheet (Open Government Partnership 2021), online: <https://responsiblemining.net/wp-content/uploads/2023/10/Chapter-2.2-Indigenous-peoples-and-Free-Prior-and-Informed-Consent-FPIC.pdf>

rights violations and enable ongoing community participation in remedial processes.[722] This can be done through Grievance procedures and Compensation mechanisms.[723]

Grievance procedures within IBAs can complement broader remedy mechanisms by providing community-controlled processes for addressing corporate violations of agreed terms. Effective grievance procedures must meet the effectiveness criteria established by the UN Guiding Principles, including legitimacy, accessibility, predictability, equity, transparency, rights-compatibility, continuous learning, and engagement and dialogue.[724] This requires designing procedures that communities recognize as legitimate and that provide meaningful opportunities for community participation in determining appropriate responses to corporate violations. Recent guidance emphasizes that effective grievance mechanisms must be culturally appropriate, accessible and understandable to stakeholders and must support active and inclusive engagement with impacted parties while being free of external manipulation, interference, coercion, discrimination, and intimidation.[725] In the IBA context, this requires grievance procedures that reflect community decision-making processes and cultural protocols rather than imposing external legal procedures that communities may not understand or accept as legitimate.

Compensation mechanisms within IBAs can address both prospective and retrospective harms from extractive activities.[726] Prospective compensation addresses anticipated impacts that are identified during IBA negotiations, while retrospective compensation addresses harms that emerge during project implementation.[727] The design of compensation mechanisms significantly influences their effectiveness as remedy mechanisms. Community control over compensation decisions enables communities to determine appropriate forms of redress based on their values and priorities. Independent assessment of harms ensures that compensation decisions are based on objective evaluation of impacts rather than corporate self-assessment.

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[722] Hoekstra J. Understanding the Role of Lawyers in Business and Human Rights: The 2023 Update of the IBA Practical Guide. Edinburgh Law Review. 2024 May;28(2):300-6.
[723] *Ibid.*
[724] OHCHR, Meeting the UNGPs' Effectiveness Criteria (Office of the High Commissioner for Human Rights 2022) OHCHR, Meeting the UNGPs' Effectiveness Criteria (Office of the High Commissioner for Human Rights 2022) .
[725] WAPP, Grievance Mechanism Standard Operating Procedures (West African Power Pool 2021) <https://www.ecowapp.org/sites/default/files/wapp_sop_grievance_mechanism_clean_14102021-1.pdf>
[726] O'Faircheallaigh C. "Impact and benefit agreements as monitoring instruments in the minerals and energy industries." (2020) 7 (4) The Extractive Industries and Society 1338.
[727] *Ibid.*

Success factors and Limitations of IBA

Research on IBA effectiveness identifies several factors that distinguish successful agreements from those that fail to deliver meaningful benefits to communities. Independent negotiation support enables communities to participate in IBA negotiations on more equal terms with corporations.[728] Continuous capacity building ensures that communities can participate effectively in IBA implementation and monitoring over the extended timeframes of extractive projects.[729] Transparent governance mechanisms ensure that IBA benefits reach intended beneficiaries and that communities can hold both companies and community leaders accountable for their performance.[730] Independent negotiation support addresses the fundamental power imbalances that characterize corporate-community negotiations.[731] Corporations typically have significant advantages in terms of financial resources, technical expertise, legal representation, and negotiation experience. Without independent support, communities may be pressured into accepting agreements that serve corporate interests rather than community welfare. Independent support might include funding for community-chosen legal representation, technical advisors, and negotiation capacity building. The key requirement is that support must be independent of corporate control and accountable to communities.

However, community negotiating capacity alone cannot offset inherent power imbalances unless it is supported by a regulatory framework that constrains corporate discretion over agreement terms. Cascadden et al.,[732] comprehensive best practices framework identifies this structural requirement: the institutional context must include 'regulatory frameworks that support community participation' in order for IBAs to achieve their potential. Without such frameworks, communities negotiate from a position of fundamental weakness. Research demonstrates that where regulatory frameworks are weak or absent, corporations retain near-total control over agreement terms, scope, and interpretations, effectively dictating the terms of what appears to be negotiated agreement. This finding emphasizes that effective IBAs require not only well-designed agreements but also supportive institutional contexts and genuine commitment from all parties to agreement implementation. The institutional context includes regulatory frameworks that support

[728] Cascadden & Gunton, *supra,* note 704.
[729] Baird K, Buse CG, Hanna K, Krehbiel R, Ogen K., "Insights from first nations, government and industry leaders on criteria for successful impact benefit agreements." (2024) 73 (6) Environmental Management 1106-20 (Baird et al).
[730] *Ibid.*
[731] Baird et al, *supra,* note 729.
[732] Cascadden M, Gunton T, Rutherford M., "Best practices for impact benefit agreements" (2021) 70 Resources Policy 101921.

community participation, civil society organizations that can provide ongoing support to communities, and accountability mechanisms that can address corporate violations of agreement terms. Continuous capacity building recognizes that effective community participation in IBAs requires sustained investment in community knowledge and organizational capacity.[733] Initial capacity building for IBA negotiations is insufficient if communities lack ongoing support for agreement implementation and monitoring. This might include training programs for community representatives, technical education about extractive activities and their impacts, organizational development support for community institutions, and leadership development programs that build community capacity for effective participation in complex governance processes.

Despite their potential as remedy mechanisms, IBAs face several systematic limitations that can undermine their effectiveness and even harm the communities they are intended to benefit. Elite capture occurs when IBA benefits are captured by community leaders or influential individuals preventing them from reaching intended beneficiaries. Corporate manipulation involves company strategies to secure agreements that serve corporate interests while providing minimal benefits to communities. Enforcement challenges reflect the difficulty of ensuring corporate compliance with IBA terms, particularly in contexts with weak governance institutions. Elite capture represents a pervasive challenge in community development initiatives, and IBAs are particularly vulnerable to this problem because they often involve significant financial resources and economic opportunities. Community leaders who participate in IBA negotiations may use their positions to secure personal benefits while marginalizing broader community interests. They may negotiate agreements that provide benefits to their families, supporters, or political allies while excluding marginalized groups or political opponents. They may use control over IBA benefits to strengthen their own power within communities rather than promoting broader community development. Also, corporate manipulation of IBA processes can take multiple forms, all designed to prioritize company objectives over community benefits. Companies could offer attractive initial proposals during negotiations but subsequently modify agreements to reduce their obligations. They could also use complex legal language that obscures company obligations and community rights. They could exploit community divisions to negotiate separate agreements with different groups, creating competition within communities and weakening collective bargaining power. They could use IBA processes to legitimize extractive activities while failing

[733] *Ibid.;* see also Waliczky Z, et al., "Important Bird and Biodiversity Areas (IBAs): their impact on conservation policy, advocacy and action." (2019) 29 (2) Bird Conservation International 199-215.

to deliver promised benefits. Similarly, enforcement challenges reflect broader governance failures that limit the effectiveness of contractual agreements in contexts with weak rule of law. Even well-designed IBAs may be ineffective if communities lack mechanisms to enforce corporate compliance with agreed terms. Traditional contract law may provide inadequate remedies for IBA violations, particularly when violations involve complex environmental or social harms that are difficult to quantify and address through monetary damages. Government agencies that should oversee corporate compliance may lack capacity or political will to ensure enforcement.

International experience with IBAs provides important insights into their potential effectiveness as remedy mechanisms and the conditions necessary for successful implementation. Canadian IPLC IBAs represent the most developed model of community-controlled agreements, with over 182 agreements in place as of 2012 and extensive research on their design and implementation.[734] Australian native title agreements provide an important model, particularly for addressing historical injustices and ensuring ongoing community participation in resource development.[735] African experiences with IBAs are more limited but offer insights into implementation challenges in contexts similar to Nigeria. Canadian Indigenous IBAs have evolved significantly since the 1990s, reflecting growing recognition of Indigenous rights and improved community capacity for effective negotiation. Early agreements focused primarily on employment and training opportunities, but more recent agreements address broader community development objectives, environmental protection, and cultural preservation.[736] The evolution of Canadian IBAs demonstrates the importance of ongoing learning and adaptation in agreement design. It also shows how changes in legal frameworks, particularly recognition of Indigenous rights, can strengthen community bargaining power and improve negotiated outcomes. A study of Canadian IBAs reveal several factors that contribute to agreement effectiveness.[737] Community control over negotiation processes enables Indigenous communities to determine their own priorities and

[734]Natural Resources Canada, 'Impact and Benefit Agreements Research Network' (Natural Resources Canada 2012), online: <https://publications.gc.ca/site/archivee-archived.html?url=https://publications.gc.ca/collections/collection_2012/rncan-nrcan/M2-9-2012-eng.pdf >
[735] Aboriginal and Torres Strait Islander (ATSI) Act 2005, Part II (establishing statutory framework for consultation and benefit-sharing); see also Tom Gunton & John Diday, "Natural Resource Governance: A Framework for Evaluating Government Performance in Canada" (2013) 63:3 Resources Policy 128–137 at 132–134.
[736] *Ibid.*
[737] O'Faircheallaigh C., "Explaining outcomes from negotiated agreements in Australia and Canada" (2021) Resources Policy 101922.

negotiate agreements that reflect their values and objectives.[738] Access to independent technical and legal support enables communities to participate effectively in complex negotiations. Recognition of Indigenous rights provides legal foundation for community authority and strengthens community bargaining power.

In the same vein, Australian native title agreements operate within a different legal framework but offer similar insights into effective IBA design. The Native Title Act (NTA) creates legal recognition of Indigenous rights while establishing negotiation processes for resource development on native title lands.[739] This legal framework enables IPLC to participate in resource development decisions from positions of recognized legal authority rather than as stakeholders seeking to influence corporate and government decisions.[740] The legal framework also provides enforcement mechanisms that enable communities to seek remedies for agreement violations.

However, African experiences with IBAs are more limited but depict monumental challenges related to weak governance institutions, limited community capacity, and powerful corporate interests. Research from Ghana, South Africa, and other African countries signals that while IBAs can provide benefits to communities, they are vulnerable to elite capture, corporate manipulation, and weak enforcement.[741] These experiences suggest that IBAs may not be effective in areas of limited statehood but could be most effective in strong governance contexts, a robust civil society, and legal frameworks that recognize community rights.

4.3.4. Community-Led Environmental Monitoring

The development of community-led environmental monitoring reflects growing recognition that traditional environmental monitoring systems, controlled by government agencies and corporations, often fail to address community concerns or to provide information that communities need for decision-making.[742] Government monitoring may focus on compliance with regulatory standards rather than community health and welfare. Corporate monitoring may be designed to demonstrate compliance with permit requirements rather than to identify environmental problems that concern communities[743]. Both approaches may use technical language and data presentation methods that are inaccessible to community members.

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[738] *Ibid.*
[739] Native Title Agreement, online: <https://aiatsis.gov.au/sites/default/files/research_pub/native-title-agreement-making-research-resources_2.pdf>
[740] *Ibid.*
[741] World Bank, *Extractive Industries Transparency Initiative Progress Report 2023* (World Bank 2023)
[742] Conrad C and Daoust T, "Community Monitoring of Natural Resource Systems and the Environment" (2022) 15 Annual Review of Environment and Resources 447
[743] *Ibid.*

Community-led monitoring addresses these limitations by enabling communities to define their own monitoring priorities, collect data using methods they understand and trust, and analyze results in ways that support community decision-making.[744] This approach recognizes that communities have legitimate interests in environmental quality that may differ from regulatory priorities, and that communities have knowledge and perspectives that complement formal scientific monitoring.[745] Community monitoring can address questions that formal monitoring systems ignore, such as cumulative impacts from multiple sources, subtle changes in environmental conditions that affect community welfare, and cultural or spiritual impacts that formal monitoring does not recognize. The effectiveness of community-led monitoring depends on several factors that distinguish it from other forms of community engagement. Community control over monitoring design ensures that monitoring addresses community priorities rather than external agendas. Community capacity building enables community members to collect and analyze data using appropriate methods. Community ownership of data ensures that monitoring results are used to serve community interests rather than external purposes.[746] Integration with formal decision-making processes ensures that community monitoring results can influence policy and corporate behavior.

Recent technological developments have significantly expanded the potential for effective community-led environmental monitoring by providing access to affordable, user-friendly monitoring tools that were previously available only to professional scientists and government agencies.[747] Mobile applications enable community members to collect and share environmental data using smartphones and tablets. Satellite imagery provides access to environmental information about large geographic areas. Sensor networks enable communities to collect continuous data about environmental conditions. The integration of these technologies can create powerful community-controlled monitoring systems that complement and sometimes exceed the capabilities of formal monitoring systems. Mobile applications designed for community environmental monitoring have proliferated rapidly in recent years, reflecting both technological

[744] Loha W., "Community-led development: Perspectives and approaches of four member organizations." < DOI:10.32388/R1W3AV.2.>
[745] *Ibid.*
[746] Danielsen, F. et al., 'Community monitoring of natural resource systems and the environment' 47 (1) Annual review of environment and resources 637.
[747] Danielsen F, Eicken H, Funder M, Johnson N, Lee O, Theilade I, Argyriou D, Burgess ND., "Community monitoring of natural resource systems and the environment" (2022) 47 (1) Annual review of environment and resources 637; Starkey E, et al., 'Practicalities of community-led continuous water quality monitoring: lessons from Taiwan and UK pilots." (2024) 12 Frontiers in Environmental Science 1371048.

advances and growing demand for community-controlled monitoring. These applications typically enable community members to record observations about environmental conditions, upload photographs and videos, record GPS coordinates, and share information with other community members and external organizations. Recent research demonstrates that the emergence of Internet-of-Things (IoT) connectivity means that many of these devices allow remote access and data to be uploaded to a server while growing public awareness of the harmful effects of these exposures may be leading to increasing uptake.[748]The Global Forest Watch Community Application exemplifies the potential for mobile technology to support community monitoring of environmental conditions relevant to extractive industries. This application enables community members to report deforestation, document environmental violations, and share information with global networks of environmental advocates.[749] The application integrates with satellite imagery systems to provide real-time information about forest cover changes, enabling communities to document environmental impacts as they occur.[750] Similar applications have been developed for water quality monitoring, air pollution monitoring, and biodiversity monitoring.

Similarly, satellite imagery technology has become increasingly accessible to community organizations through initiatives like Google Earth Engine and other platforms that provide free access to satellite data and analysis tools. These platforms enable communities to monitor large-scale environmental changes that affect their territories, including deforestation, mining activities, oil spills, and infrastructure development. Community organizations can use satellite imagery to document environmental changes over time, identify emerging threats to environmental quality, and provide evidence to support advocacy and legal action. Sensor networks offer another promising avenue for community environmental monitoring, particularly for tracking air and water quality in areas affected by extractive activities. The prices and availability of instruments which can measure environmental conditions have significantly reduced, making it feasible for communities to deploy their own sensor networks.[751] Community-controlled sensor networks can provide continuous monitoring of environmental conditions, early warning systems for

[748] Taylor A et al., "Community-Based Monitoring of Urban Environmental Data: Opportunities and Challenges" (2024) Buildings and Cities Commentary < https://www.buildingsandcities.org/inner.php/insights/commentaries/community-based-monitoring-urban-environmental.html?print=1>
[749] Global Forest Watch. (nd) <https://www.globalforestwatch.org/ >
[750] *Ibid.*
[751] Global forest watch, *supra*, note 749.

environmental emergencies, and data that can be used to document corporate violations of environmental standards.

Furthermore, the effectiveness of community-led environmental monitoring depends significantly on community capacity to collect, analyze, and use environmental data for decision-making and advocacy purposes. Capacity building for community monitoring encompasses multiple dimensions including technical training for data collection, analytical skills for data interpretation, organizational capacity for monitoring program management, and advocacy skills for using monitoring results to influence policy and corporate behaviour. Recent research emphasizes that providing training to community members on data collection methods, equipment usage, and environmental science is essential for generating high-quality data.[752]Technical training for community environmental monitoring must balance scientific rigor with accessibility to community members who may have limited formal scientific education. Effective training programs typically combine classroom instruction with hands-on field experience, enabling community members to practice data collection methods under expert supervision. Training programs may also include peer-to-peer learning opportunities where experienced community monitors share their knowledge with newer participants. Effective communication between experts and community members is key" and that clear instructions, regular updates, and feedback mechanisms ensure a smooth collaboration[753]The design of training programs for community environmental monitoring must also address the specific contexts and priorities of participating communities. Training programs that ignore local knowledge systems may fail to build on existing community expertise and may create conflicts between scientific and traditional approaches to environmental assessment. Effective programs integrate scientific methods with traditional ecological knowledge, recognizing both as legitimate ways of understanding environmental conditions. This integration can enhance both the scientific rigor and the cultural appropriateness of community monitoring programs.

Furthermore, data sovereignty represents a crucial principle for community-led environmental monitoring that ensures communities maintain control over information they collect about their territories and environmental conditions.[754] This principle recognizes that environmental data

[752] Jena S, "Community Engagement in Environmental Monitoring & Assessment" (2023) 15 International Journal of Environmental Research 234.
[753] *Ibid.*
[754] Reyes-García V, et al., "Data sovereignty in community-based environmental monitoring: toward equitable environmental data governance" (2022) 72 (8) BioScience 714.

about community territories belongs to communities rather than to external organizations that may assist with monitoring activities.[755] The principle of data sovereignty reflects broader movements for IPLC data sovereignty that recognize IPLC rights to control information about their territories, resources, and cultural practices.[756] In the environmental monitoring context, data sovereignty ensures that communities can determine how monitoring data is used and can prevent misuse and manipulation of data by external actors who may have interests that conflict with community welfare. Data sovereignty also ensures that communities can benefit from their own monitoring activities rather than providing free data to external organizations that may profit from community knowledge. Community control over data access and use requires establishing clear protocols for how monitoring data can be accessed and used by external parties. These protocols might specify that external researchers must obtain community consent before using community monitoring data, that external organizations must share benefits from data use with communities, and that communities have rights to review and approve external publications based on community data.[757] Such protocols ensure that community monitoring serves community interests rather than providing free data for external research and advocacy activities. Community authority over data interpretation and reporting recognizes that communities have legitimate perspectives on what their monitoring data means and what responses are appropriate. External experts may provide technical analysis of community monitoring data, but communities should retain authority to determine what their data means for their own decision-making and advocacy activities. This principle prevents external experts from imposing their interpretations of community data and ensures that community voices remain central to discussions of environmental conditions in their territories.

Enforcement Linkages: Connecting Monitoring to Remedy Processes

The effectiveness of community-led environmental monitoring as a remedy mechanism depends on establishing clear linkages between monitoring activities and formal remedy processes that can address identified environmental problems. Without these linkages, community monitoring may document environmental problems without creating opportunities for communities to secure

[755] Data sovereignty encompasses multiple dimensions including community ownership of data, community control over data access and use, community authority over data interpretation and reporting, and community rights to benefit from data use by external parties

[756] Finn Danielsen, Hajo Eicken, Mikkel Funder, Noor Johnson, Olivia Lee, et al. "Community Monitoring of Natural Resource Systems and the Environment" (2022) 47 Annual Review of Environment and Resources at 637 <https://doi.org/10.1146/annurev-environ-012220-022325>

[757] *Ibid.*

appropriate responses. Enforcement linkages ensure that community monitoring data can be used to support legal action, regulatory enforcement, corporate accountability initiatives, and community advocacy campaigns.

a. Legal enforcement linkages enable communities to use monitoring data to support litigation against corporations or government agencies that violate environmental standards.[758] This requires ensuring that community monitoring data meets evidentiary standards for legal proceedings and that communities have access to legal representation that can effectively use monitoring data in court. Recent research demonstrates that communities can successfully use monitoring data to support legal action when they have access to appropriate technical and legal support.[759]
b. Regulatory enforcement linkages enable communities to use monitoring data to trigger government agency investigations and enforcement actions against corporate violations of environmental regulations.[760] This requires establishing formal mechanisms for communities to submit monitoring data to regulatory agencies and ensuring that agencies have obligations to investigate credible community reports of environmental violations. Regulatory enforcement may be more accessible to communities than legal action because it does not require communities to bear the costs of litigation.[761]
c. Corporate accountability linkages enable communities to use monitoring data to pressure corporations to address environmental problems through direct negotiation, public advocacy campaigns, or engagement with corporate accountability mechanisms.[762] Corporations may be more responsive to community concerns when communities can provide credible evidence of environmental problems and when corporate reputation or social license may be affected by community advocacy.[763] Corporate accountability may be particularly effective when communities can connect with broader networks of

[758] Morgera E., *Corporate accountability in international environmental law* (Oxford University Press, 2020); Gray WB, Shimshack JP., "The effectiveness of environmental monitoring and enforcement: A review of the empirical evidence" (2011) Review of Environmental Economics and Policy.
[759] Environmental Governance Programme, 'Learnings from Participatory Environmental Monitoring (PEM) in 2023' (Environmental Governance Programme, 2 July 2025), online: <https://www.environmentalgovernanceprogramme.org/-learnings-from-pem-in-2023>
[760] *Ibid.*
[761] Gray WB, Shimshack JP., "The effectiveness of environmental monitoring and enforcement: A review of the empirical evidence" (2011) Review of Environmental Economics and Policy < https://ideas.repec.org/a/oup/renvpo/v5y2011i1p3-24.html>
[762] Banerjee SB., "Transnational power and translocal governance: The politics of corporate responsibility" (2018) 71 (6) Human relations 796-821.
[763] *Ibid.*

advocacy organizations and when corporations face pressure from investors, consumers, or regulators.

International experience with community-led environmental monitoring provides important insights into effective implementation strategies and the potential for monitoring to support remedy processes. Amazon Watch's work with IPLC in the Amazon rainforest demonstrates how community monitoring can document environmental violations while supporting broader advocacy campaigns for indigenous rights and environmental protection.[764] The Global Forest Watch Community Application provides a technological platform that enables communities worldwide to monitor forest conditions and share information with global environmental networks.[765] Amazon Watch's community monitoring initiatives combine technological tools with capacity building and advocacy support to create comprehensive programs that serve multiple community objectives.[766] Communities use GPS devices, cameras, and mobile applications to document illegal logging, oil spills, mining activities, and other environmental violations on their territories. Amazon Watch provides training and technical support to enable communities to collect high-quality data that can be used for legal action and advocacy campaigns.[767] The organization also provides advocacy support that helps communities connect their monitoring activities with broader campaigns for IPLC rights and environmental protection. The Global Forest Watch Community Application demonstrates the potential for technological platforms to support community monitoring while connecting local communities with global environmental networks. The application enables communities to report deforestation and forest degradation using smartphone technology, while providing access to satellite imagery and analysis tools that communities can use to monitor conditions in their territories.

These examples demonstrate several key factors that contribute to effective community monitoring programs. Community control over monitoring design ensures that programs address community priorities and serve community interests. Technical support enables communities to collect high-quality data that can be used for multiple purposes including legal action, advocacy, and community decision-making. Advocacy support helps communities translate monitoring

[764] Moreira GE, França BZ., "Amazon Rainforest beyond the Satellite View: Environmental Protection, Indigenous Rights, and Political Controversies in Brazil" in *Jahrbuch des Föderalismus* (Nomos Verlagsgesellschaft mbH & Co. KG, 2024) 332-348.
[765] *Ibid.*
[766] Moreira & Franca, *supra*, note 764.
[767] González NC, Kröger M., "The adoption of earth-observation technologies for deforestation monitoring by Indigenous people: evidence from the Amazon." (2023) 20 (3) Globalizations 415.

results into effective action that addresses identified environmental problems. Network connections enable communities to learn from each other and to access resources and support from broader environmental movements.

4.3.5. Participatory Grievance Mechanisms

The design of participatory grievance mechanisms requires meaningful community involvement from the early stages of development, ensuring that communities have authority to determine how grievances will be identified, processed, and resolved. This is because this approach recognizes that grievance mechanisms are most effective when communities view them as legitimate and when they operate according to principles that communities understand and accept.[768]

Community involvement in mechanism design begins with recognition that communities are the primary intended users of grievance mechanisms and therefore have legitimate authority to determine how these mechanisms should function.[769] Existing literature suggests that effective grievance mechanisms must be based on engagement and dialogue with stakeholders and must promote dialogue as a means to address and resolve grievances.[770] This requires extensive consultation processes that enable all community members to participate in designing grievance mechanisms, including marginalized groups who may face particular barriers to accessing traditional complaint systems. The principle of cultural sensitivity recognizes that effective grievance mechanisms must operate according to cultural practices and decision-making traditions that communities recognize as legitimate.[771] Traditional legal systems, conflict resolution practices, and authority structures provide important foundations for grievance mechanism design that may be more effective than imported models based on external legal traditions. Compliance Advisor/Ombudsman (CAO) the independent accountability mechanism of the World Bank Group that addresses complaints from communities and civil society affected by World Bank-financed projects,[772] has issued guidance emphasizing the importance of incorporating customary and traditional methods of dispute resolution into grievance

[768] Grama B. "Company-administered grievance processes for external stakeholders: A means for effective remedy, community relations, or private power?" (2022) 39 Wis. Int'l LJ. 71.
[769] *Ibid.*
[770] Bonsucro, *Using Third Parties to Support the Design and Implementation of Grievance Mechanisms* (Bonsucro 2021).
[771] Tumelo S., "Conflict resolution in indigenous communities: A social work perspective" (2024) 13 (10) International Journal of Research in Business and Social Science 68-77.
[772] World Bank Group, Compliance Advisor/Ombudsman (CAO), Guidance on Grievance Mechanisms (Washington DC: World Bank), online: <https://www.cao-ombudsman.org> [explaining CAO mandate and institutional role within World Bank Group].

mechanism.[773] Cultural sensitivity in grievance mechanism design requires understanding how communities traditionally address conflicts and grievances, including the roles of different community members in conflict resolution, the procedures used to investigate complaints, the types of remedies that are considered appropriate, and the ways that community harmony is restored after conflicts are resolved. This understanding must inform all aspects of grievance mechanism design, from initial complaint processes to final remedy implementation. External legal requirements and international standards must be integrated with traditional practices rather than replacing them.

Moreover, participatory grievance mechanisms typically operate through multi-tier systems that provide multiple pathways for grievance resolution, enabling communities to choose approaches that are appropriate for different types of grievances and different community preferences.[774] Multi-tier systems recognize that not all grievances require the same types of responses and that communities may prefer informal resolution for some issues while seeking formal adjudication for others. Community-level mediation represents the first tier in many participatory grievance systems, providing informal processes for addressing grievances through dialogue between affected parties. Mediation processes are typically designed to restore relationships and community harmony rather than to determine fault or assign blame. Mediation can be particularly effective for grievances that involve interpersonal conflicts, minor environmental impacts, and other issues where restoration of community relationships is more important than formal accountability. Community-level mediation requires trained mediators who are trusted by community members and who understand community values and conflict resolution traditions. Mediators may be traditional leaders, religious figures, respected elders, or other community members who have demonstrated ability to help resolve conflicts fairly. The selection and training of mediators significantly influences the effectiveness of mediation processes.

[773] The CAO's Office of the Ombudsman addresses concerns about the project's social and environmental impacts, while its Office of Compliance Advisor investigates whether the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA) comply with their environmental and social policies. In its guidance on grievance mechanisms, the CAO emphasizes that effective mechanisms must take into consideration customary and traditional dispute resolution practices, such as chieftaincy councils, elder assemblies, and community-based mediation—when designing grievance systems, recognizing that communities may have established, trusted processes for resolving disputes that predate and are more legitimate than corporate mechanisms; CAO, A Guide to Designing and Implementing Grievance Mechanisms for Development Projects (Compliance Advisor Ombudsman 2021)

[774] Fach Gómez K., "Alternative Dispute Resolution Mechanisms and Transformative Constitutionalism in Latin America: How a People-Driven and Effective Universal Access to Justice Fosters Rule of Law and Generates Social Inclusion (longer version)." Online: SSRN 4323903. 2023.

Also, the effectiveness of participatory grievance mechanisms depends significantly on the availability of facilitation and support services that enable meaningful community participation in grievance processes. Independent mediators provide neutral facilitation that can help parties find mutually acceptable resolutions to grievances. Legal aid services ensure that community members can access legal representation when needed for grievance processes. Technical experts provide specialized knowledge that enables communities to understand complex issues that may be involved in grievances. Independent mediators must be genuinely neutral and must be perceived as neutral by all parties to grievance processes. This requires mediators who do not have financial or political interests in particular outcomes and who are not controlled by corporations or government agencies that may be subjects of grievances. Effective grievance mechanisms require grievance mechanism (GM) focal points, designated individuals or community-based representatives who serve as the primary contact persons responsible for receiving, documenting, and facilitating resolution of complaints from affected community members. These focal points must be both professionally competent and technically trained to handle complaints effectively, while simultaneously being trusted and recognized by their communities as legitimate representatives of community interests rather than corporate agents.[775] Independence is essential for building community trust in grievance processes and for ensuring that mediation serves community interests rather than external agendas. The selection and training of independent mediators presents complex challenges in contexts where community conflicts may involve powerful external actors like extractive companies or government agencies. Mediators must have sufficient status and authority to command respect from all parties while remaining genuinely neutral. They must understand both community values and external legal requirements that may influence grievance resolution. They must have communication skills that enable them to facilitate dialogue between parties with very different backgrounds, interests, and communication styles. Legal aid services address the reality that many grievances involving corporate human rights violations require legal expertise that is not available within communities. Legal aid may be needed to understand applicable legal standards, to evaluate the strength of grievance allegations, to prepare evidence for grievance processes, and to ensure that grievance outcomes are legally enforceable. The availability of high-quality legal aid can significantly

[775] WAPP, *Grievance Mechanism Standard Operating Procedures* (West African Power Pool 2021)

influence both community willingness to use grievance mechanisms and the effectiveness of these mechanisms in securing appropriate remedies.

Flexible Approaches Tailored to Community Preferences

Participatory grievance mechanisms must provide flexible remedy options that can address the diverse types of harms that communities may experience from extractive activities while respecting community preferences about appropriate forms of redress.[776] Traditional legal systems typically provide limited remedy options, usually focused on monetary compensation or injunctive relief. Participatory mechanisms can provide much broader ranges of remedy options that address individual harms, collective impacts, and structural conditions that enable violations.

a. Individual remedies address specific harms experienced by particular community members, such as health impacts from pollution, loss of livelihood from environmental degradation, or displacement from extractive activities.[777] Individual remedies might include medical treatment, income replacement, alternative livelihood opportunities, or relocation assistance. The design of individual remedies should reflect community values about appropriate forms of assistance while ensuring that remedies effectively address identified harms.
b. Collective remedies address harms experienced by communities as groups, including damage to community resources, disruption of cultural practices, and impacts on community social structures.[778] Collective remedies might include environmental restoration projects, cultural preservation initiatives, community development programs, or strengthening of community institutions. Collective remedies require community participation in determining appropriate responses and community control over remedy implementation.
c. Structural remedies address underlying conditions that enable corporate human rights violations, including legal frameworks that exclude communities from decision-making, institutional arrangements that favor corporate interests over community rights, and economic systems that extract value from community territories without providing

[776] Owen JR, Kemp D., "Corporate responses to community grievance: Voluntarism and pathologies of practice." (2024) 189 (1) Journal of Business Ethics 55-68.
[777] White R., "Resource extraction leaves something behind: Environmental justice and mining" (2013) International Journal for Crime, Justice and Social Democracy 50-64.
[778] Saul J., *Collective trauma, collective healing: Promoting community resilience in the aftermath of disaster* (Routledge, 2022).

proportionate benefits.[779] Structural remedies might include policy reforms, institutional changes, or development of new governance mechanisms that address root causes of violations.

The effectiveness of participatory grievance mechanisms requires systematic accountability measures that enable communities to monitor mechanism performance and to make improvements based on experience with grievance processes. Performance monitoring provides information about how well grievance mechanisms are serving community needs and meeting their stated objectives. Performance monitoring must be designed and controlled by communities rather than by external organizations, ensuring that monitoring addresses community priorities and that results are used to serve community interests.[780] Community-controlled monitoring can identify emerging problems with grievance processes and can provide information needed for continuous improvement. Feedback loops between community experiences and mechanism development ensure that grievance mechanisms evolve to better serve community needs over time. Feedback systems might include regular community meetings to discuss grievance mechanism performance, surveys of community members who have used grievance processes, and focus group discussions about mechanism effectiveness. Feedback systems must provide safe spaces for community members to express criticism of grievance mechanisms without fear of retaliation.

Restorative Justice Approaches, Healing Circles, Community Conferencing

Innovations participatory grievance mechanisms draw on restorative justice approaches that emphasize healing, relationship repair, and community reintegration rather than punishment and blame.[781] These approaches offer particular promise for addressing corporate human rights violations that have damaged community relationships and created ongoing conflicts between communities and corporations.[782] Restorative approaches recognize that effective grievance resolution must address not only immediate harms but also underlying relationship problems that

[779] Turner SJ., "Business, human rights and the environment—Using macro legal analysis to develop a legal framework that coherently addresses the root causes of corporate human rights violations and environmental degradation." (2021) 13 (22) Sustainability 12709.
[780] Guerra-López, I. and Hicks, K., "The participatory design of a performance-oriented monitoring and evaluation system in an international development environment" (2015) 48 Evaluation and program planning 21-30.
[781] Omowon A, Kunlere AS., "Restorative justice practices: Bridging the gap between offenders and victims effectively." (2024) 24 (3) World Journal of Advanced Research and Reviews 2768.
[782] *Ibid.* .

enable ongoing violations.[783] Restorative justice approaches to corporate human rights violations emphasize dialogue between affected communities, corporate representatives, and other stakeholders about the circumstances and impacts of violations.[784] Studies have demonstrated that restorative processes can be transformative for victims, offenders, communities, environments, and justice systems by bringing together victims, offenders, and communities to collectively resolve how to deal with environmental harms and their implications for the future"[785] This approach enables communities to explain how violations have affected them while providing opportunities for corporate acknowledgment of responsibility and commitment to appropriate remedies.

Also, healing circles is another specific restorative practice that has been adapted for use in corporate accountability contexts. Healing circles bring together affected community members, corporate representatives, and neutral facilitators for structured dialogue about the impacts of corporate activities and appropriate responses.[786] Participants sit in circles rather than across tables, symbolizing equality and shared responsibility for finding solutions.[787] Healing circles emphasize storytelling, active listening, and collaborative problem-solving rather than adversarial positioning. Similarly, community conferencing represents another restorative approach that enables broader community participation in grievance resolution processes. Community conferences bring together larger groups of community members to discuss corporate violations and to develop collective responses.[788] Conferences may include multiple sessions that address different aspects of violations and different types of responses.[789] Community conferencing can be particularly effective for addressing violations that have affected entire communities and for developing collective remedies that address community-wide impacts.

The implementation of restorative approaches in corporate human rights contexts requires careful attention to power imbalances that may prevent meaningful dialogue between communities and

[783] Van Ness DW, Strong KH, Derby J, Parker LL., *Restoring justice: An introduction to restorative justice*. (Routledge, 2022).
[784] Nadeem M., "Corporate governance and supplemental environmental projects: A restorative justice approach" (2021) 173 (2) Journal of Business Ethics 261.
[785] Schormair MJ, Gerlach LM., "Corporate remediation of human rights violations: A restorative justice framework." (2020) 167 (3) Journal of Business Ethics 475.
[786] Brown MA, Di Lallo S., "Talking circles: A culturally responsive evaluation practice" (2020) 41 (3) American Journal of Evaluation 367
[787] *Ibid.*
[788] Vanclay F, Hanna P., "Conceptualizing company response to community protest: principles to achieve a social license to operate" (2019) 8 (6) Land 101.
[789] *Ibid.*

corporations. Corporate representatives must participate genuinely in restorative processes rather than using them as opportunities for public relations or legal defense. Restorative processes must be voluntary for all parties and must not prevent communities from pursuing other forms of accountability when restorative approaches are insufficient. When properly implemented, restorative approaches can provide more comprehensive and satisfying remedies than traditional legal processes while strengthening relationships and preventing future violations.

4.4. Comparative Analysis: New Zealand's Resource Management Framework

The selection of New Zealand as a single comparator for examining citizen participation in remedy mechanisms for corporate human rights violations in this study is informed by significant institutional and legal similarities between New Zealand and Nigeria, combined with New Zealand's approaches to participatory governance in natural resource management. This section provides comprehensive analysis of New Zealand's resource management framework as a model for strengthening citizen participation in remedy mechanisms, examining both its achievements and limitations while drawing specific lessons applicable to Nigeria's extractive industry context.

4.4.1. Comparative Criteria

4.4.1.1. Common Law System, Colonial History, IPLC Rights Recognition

Both countries operate within the Westminster parliamentary tradition, having inherited British legal and administrative systems that provide common foundations for understanding institutional reform possibilities. The Westminster system's flexibility[790] in adapting to local conditions has enabled both countries to develop distinctive approaches to governance while maintaining recognizable institutional structures. The common law tradition shared by both jurisdictions creates important similarities in legal reasoning, precedent-based jurisprudence, and institutional arrangements for dispute resolution. New Zealand's legal system demonstrates how common law jurisdictions can evolve beyond colonial origins to develop innovative approaches to IPLC rights recognition and participatory governance.[791] The Resource Management Act 1991 exemplifies this evolution by incorporating IPLC consultation requirements and community participation mechanisms within a common law framework. Similarly, both countries have struggled with

[790] Pirsoul N, Armoudian M., "Deliberative democracy and water management in New Zealand: A critical approach to collaborative governance and co-management initiatives." (2019) 33 (14) Water Resources Management 4821.
[791] K. Fisher, and M. Parsons, "River co-governance and co-management in Aotearoa New Zealand: enabling Indigenous ways of knowing and being" (2020) 9(3) Transnat'l. Env. L. 455.

colonial legacies that excluded IPLC populations from natural resource governance while establishing extractive industries that prioritized external economic interests over local community welfare. New Zealand's experience with Treaty of Waitangi settlements[792] provides valuable insights into how historical grievances regarding natural resource control can be addressed through negotiated agreements that establish ongoing participatory relationships rather than one-time compensation payments.

4.4.1.2. Mining, Oil and Gas Development in IPLC Territories

New Zealand's extractive industry context provides relevant parallels to Nigeria's petroleum sector challenges, particularly regarding the interface between resource extraction activities and IPLC rights. Research has shown that IPLC's lands are threatened by the potential expansion of industrial development globally,[793] with New Zealand's experience offering important lessons for managing these tensions through participatory governance mechanisms. The country's approach to managing resource extraction in areas of Indigenous significance demonstrates practical applications of participatory governance principles.[794] Treaty settlements have established co-management arrangements for natural resources that provide IPLC with genuine decision-making authority rather than merely consultative roles. These arrangements recognize that effective resource management requires incorporating indigenous knowledge systems and governance approaches rather than simply adding consultation requirements to existing colonial institutions. New Zealand's mining and oil and gas development activities have generated conflicts with indigenous communities[795] similar to those experienced in Nigeria's Niger Delta region. However, the development of co-governance arrangements through Treaty settlements has created institutional mechanisms for addressing these conflicts through negotiated agreements that establish ongoing relationships rather than adversarial litigation.

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[792]M. Mutu, "The treaty claims settlement process in New Zealand and its impact on Māori Land" (2019) online: <https://ideas.repec.org/a/gam/jlands/v8y2019i10p152-d276822.html>

[793]C.M. Kennedy et al, "Indigenous Peoples' lands are threatened by industrial development; conversion risk assessment reveals need to support Indigenous stewardship" (2023) 6(8) One Earth 1032-49; A. Scheidel et al, "Global impacts of extractive and industrial development projects on Indigenous Peoples' lifeways, lands, and rights. Science Advances" (2023) eade9557; CM. Kennedy et al, "Indigenous lands at risk: Identifying global challenges and opportunities in the face of industrial development".

[794] C. Macinnis-Ng et al, "Climate-change impacts exacerbate conservation threats in island systems: New Zealand as a case study" (2021) 19(4) Frontiers in Ecology and the Environment 216.

[795] M.E. Ninomiya et al, "A. Indigenous communities and the mental health impacts of land dispossession related to industrial resource development: a systematic review" (2023) 7(6) The Lancet Planetary Health e501-17.

4.4.1.3. Westminster System Similarities with Nigeria

Despite Nigeria's adoption of a presidential system, both countries share Westminster parliamentary traditions that emphasize representative democracy, rule of law, and institutional accountability. New Zealand's experience demonstrates how Westminster traditions can be adapted to incorporate greater citizen participation while maintaining institutional stability and democratic accountability. New Zealand's parliamentary system has evolved to accommodate proportional representation and multi-party governance while maintaining Westminster institutional forms.[796] This evolution demonstrates the flexibility of Westminster institutions in adapting to changing democratic expectations and provides insights relevant to Nigeria's federal system, which combines Westminster institutional heritage with presidential governance structures. The Westminster tradition's emphasis on parliamentary sovereignty and flexible constitutional arrangements[797] has enabled New Zealand to develop innovative participatory governance mechanisms through ordinary legislation rather than requiring constitutional amendment. This approach offers pragmatic insights for Nigeria, where constitutional reform faces significant political obstacles, but legislative innovation remains possible within existing constitutional frameworks.

4.4.2. Resource Management Act Framework

4.4.2.1. Participatory Planning Processes: Community Involvement in Resource Consents

The Resource Management Act 1991 establishes comprehensive participatory planning processes that integrate community involvement throughout resource management decision-making rather than limiting participation to consultation on predetermined proposals.[798] The Act requires that all persons exercising functions and powers under it shall take into account the principles of the Treaty of Waitangi while ensuring that planning processes encourage public participation in decision-making processes. [799]The participatory planning framework operates through multiple layers of community engagement, beginning with regional policy statements and extending through district plans to individual resource consent applications. Public participation rights

[796]D. Wilson, *Influences on parliamentary procedure in New Zealand 1935-2015* (Doctoral dissertation, Open Access Te Herenga Waka-Victoria University of Wellington).

[797] New Zealand operates under the Westminster tradition of parliamentary sovereignty, which permits the legislature to enact ordinary legislation that fundamentally alters governance arrangements without constitutional amendment procedures.

[798] Kenneally J. *Local Democracy & Resource Management Reform* (Doctoral dissertation, University of Otago) <https://ideas.repec.org/a/gam/jlands/v8y2019i10p152-d276822.html>

[799] *Ibid.*

include the ability to make submissions on planning documents, present evidence to hearings committees, and appeal decisions to the Environment Court. This multi-layered approach ensures that community input can influence both strategic planning decisions and specific project approvals. Resource consent processes specifically require applicants to undertake consultation with affected communities before submitting applications. While consultation is not legally mandatory, courts have recognized that consultation is best practice, and it is foolish for a party not to consult with those with a known interest in a proposal.[800] This approach creates practical incentives for meaningful community engagement while preserving flexibility in consultation methods and scope. The participatory framework extends beyond formal submission and hearing processes to include ongoing monitoring and enforcement mechanisms. Section 35(2) of the Resource Management Act requires local authorities to monitor the efficiency and effectiveness of their policy statements and plans as well as the exercise of resource consents.[801] This ongoing monitoring requirement creates opportunities for continued community involvement in ensuring that consent conditions are properly implemented and environmental outcomes achieved.

4.4.2.2. Māori Consultation Requirements: Indigenous Rights Integration

The Resource Management Act incorporates specific requirements for Māori consultation that go beyond general public participation provisions to recognize Indigenous peoples' special relationships with natural resources. Section 8 requires that decision-makers take into account the principles of the Treaty of Waitangi while Schedule 4 mandates that resource consent applications include description of effects on *tangata whenua* and their *taonga*.[802] These consultation requirements recognize that Māori communities have distinct interests in resource management decisions based on ancestral relationships with specific areas and resources. The requirement to consult with *tangata whenua* acknowledges that these relationships create particular knowledge, interests, and responsibilities that differ from general public interests in environmental protection or development. The Waitangi Tribunal has extensively examined the adequacy of Resource Management Act provisions regarding Māori participation and has consistently found that the Act has not delivered appropriate levels of control, partnership, and influence for kaitiaki in

[800] Kenneally, *supra*, note 798.
[801] Resource Management Act, Section 35(2).
[802]The terms 'tangata whenua' and 'taonga' originate from Māori language and custom; 'tangata whenua' refers to the indigenous Māori people with ancestral rights to land and resources, while 'taonga' encompasses culturally and spiritually significant treasures, including environmental components such as rivers, forests, and ancestral sites, which are protected under the Treaty of Waitangi and incorporated into resource management and decision-making processes; Section 8; Schedule 4 Resource Management Act

relation to taonga in the environment.[803] This critique has driven ongoing reforms to strengthen Māori participation rights and has informed the development of co-governance arrangements through Treaty settlements.[804]

Recent developments in New Zealand's resource management system have further strengthened Indigenous participation requirements through the Natural and Built Environment Act 2023, which requires that planning documents give effect to *Te Mana o te Wai*[805] and establishes Regional Planning Committees with mandatory Māori representation.[806] These reforms demonstrate ongoing evolution toward genuine partnership models rather than merely consultative arrangements.

4.4.2.3. Environmental Impact Assessment: Public Participation Mechanisms

Environmental impact assessment under the Resource Management Act incorporates comprehensive public participation mechanisms that enable community input into both the preparation and evaluation of environmental assessments. Schedule 4 of the Act requires that every resource consent application include an Assessment of Environmental Effects that describes ways in which adverse environmental effects can be avoided, remedied or mitigated and includes record of any consultation undertaken, including with affected parties.[807] The public participation framework for environmental impact assessment operates through notification requirements that determine whether applications must be publicly notified for submissions. While less than 5% of consent applications are actually notified, the notification framework creates incentives for applicants to undertake consultation to avoid public notification requirements. This approach balances public participation rights with administrative efficiency by focusing formal participation processes on applications with significant environmental effects or public interest.

The Environment Court provides accessible appeal mechanisms for challenging environmental impact assessment decisions. As a specialist court with both judicial and expert members, the Environment Court can conduct de novo hearings that enable fresh consideration of environmental evidence and community concerns. The Court's accessibility provisions include the ability for parties to represent themselves without legal counsel and the use of New Zealand

[803] Ministry of Environment 'Shorter Extracts on the RMA by Report' (New Zealand Ministry of Environment, 2022), online: <https://environment.govt.nz/publications/tribunal-findings-rma/shorter-extracts-on-the-rma/>
[804] *Ibid.*
[805] Te Mana o te Wai is a Māori concept that recognizes the fundamental importance of water, prioritizing its health and well-being above other uses.
[806] Natural and Built Environment Act 2023
[807] Schedule 4, Resource Management Act

Sign Language and *te reo*[808] Māori in proceedings. Environmental impact assessment processes incorporate ongoing monitoring requirements that enable continued community involvement in ensuring that environmental effects are properly managed. Consent conditions typically include monitoring requirements that create opportunities for community observation and input into compliance assessment. This ongoing engagement extends public participation beyond initial consent decisions to include implementation and adaptive management phases.

4.4.2.4. Appeals and Review Systems: Accessible Challenge Mechanisms

The Resource Management Act establishes comprehensive appeals and review systems that provide accessible mechanisms for challenging resource management decisions.[809] The Environment Court has jurisdiction to hear appeals from local authority decisions on resource consents, plan changes, and designations, conducting de novo hearings that enable fresh consideration of evidence and arguments.[810] The accessibility of appeal mechanisms reflects deliberate design choices to enable community participation in judicial review of resource management decisions. The Environment Court's procedures explicitly accommodate self-represented parties, with simplified forms, reduced fees for community groups, and procedures designed to facilitate participation by non-lawyers. Section 281 of the Resource Management Act provides the Court with power to waive procedural requirements where parties would otherwise be prevented from exercising appeal rights.[811] Appeal rights extend to both procedural and substantive challenges to resource management decisions.[812] Appellants can challenge the adequacy of consultation processes, the quality of environmental impact assessments, and the substantive merits of decisions based on Resource Management Act[813] criteria. This comprehensive scope of review enables communities to challenge not only technical aspects of environmental assessment but also the adequacy of participatory processes. The Environment Court's specialist expertise enables meaningful review of complex environmental and planning issues while maintaining accessibility for community appellants. The Court includes both Environment Judges and expert Commissioners with technical knowledge, enabling informed

[808] The Polynesian language of the Māori.
[809] Resource Management Act 1991, 1991 No 69 (NZ), s 8.
[810] *Ibid.*
[811] Resource Management Act, Section 281.
[812] *Ibid.*
[813] Resource Management Act 1991, 1991 No 69 (NZ), s 8.

consideration of environmental evidence while maintaining judicial independence and procedural fairness.

4.4.3. Treaty of Waitangi Settlement

4.4.3.1. Settlement Processes: Negotiated Agreements and Ongoing Relationships

Treaty settlement processes have developed sophisticated approaches to negotiating agreements that establish ongoing relationships rather than merely providing historical compensation. The Crown's approach emphasizes comprehensive settlements with large natural groups that address all of the historical Treaty claims of a claimant group while establishing frameworks for ongoing Crown-Māori relationships.[814] Settlement negotiations regarding natural resources involve complex considerations including the role of local authorities, consistency with existing legislation, and possible redress mechanisms that can include co-governance arrangements, statutory acknowledgments, and potential funding to support good management of the resources in the future.[815] These negotiations demonstrate how historical grievances can be addressed through agreements that create positive institutional arrangements rather than merely providing compensation for past injustices.

The settlement process recognizes that natural resource relationships cannot be adequately addressed through monetary compensation alone but require institutional arrangements that enable ongoing participation in resource management decisions. Natural resource redress mechanisms include statutory acknowledgments of cultural relationships, appointment rights to governance bodies, and co-management arrangements that provide shared decision-making authority.[816] Ongoing relationship agreements establish frameworks for continued engagement between Māori communities and Crown agencies that extend beyond specific settlement terms. These agreements recognize that resource management involves ongoing decisions that affect Māori interests and require sustained consultation and partnership rather than one-time consultation processes.

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[814] S. Summerfield, "Towards a Positive Treaty Partnership in the Post-Settlement Era": Treaty of Waitangi Settlements and Decolonisation in Aotearoa New Zealand" (Doctoral dissertation, Open Access Te Herenga Waka-Victoria University of Wellington).

[815] R. Joseph et al, "The Treaty, Tikanga Māori, ecosystem-based management, mainstream law and power sharing for environmental integrity in Aotearoa New Zealand–possible ways forward. National Science Challenges: Sustainable Seas: Te Mata Hautū Taketake–the Māori and Indigenous Governance Centre Te Piringa" (Faculty of Law, University of Waikato. 2018)

[816] *Ibid.*

4.4.3.2. Co-management Arrangements: Shared Governance over Natural Resources

Treaty of Waitangi settlements have established innovative co-management arrangements that provide Māori communities with genuine shared governance authority over natural resources rather than merely consultative roles.[817] These arrangements recognize that effective resource management requires incorporating Māori knowledge, values, and governance systems through institutional mechanisms that enable sustained partnership rather than sporadic consultation.[818] The Waikato River Authority exemplifies effective co-governance through its ten-member board comprising five tribal representatives and five Crown representatives, operating under consensus decision-making procedures[819]. The Authority has statutory responsibility for developing vision and strategy documents that guide resource management decisions throughout the Waikato River catchment, demonstrating how co-governance can provide strategic direction for regional resource management.

Co-management arrangements have been extended to various natural resources including lakes, rivers, forests, and coastal areas through individual Treaty settlements that recognize the specific relationships in particular resources.[820] The Te Waihora Co-Governance Agreement governing Lake Ellesmere and the Rotorua Te Arawa Lakes Strategy Group demonstrate how co-governance can be adapted to different resource management contexts while maintaining core principles of shared decision-making authority. These arrangements hold great potential for transforming river management by recognizing and accommodating ontological and epistemological pluralism while moving closer to achieving sustainable and just river futures for all.[821] This transformation occurs through institutional mechanisms that enable Māori knowledge systems and governance approaches to influence resource management decisions rather than being marginalized by colonial institutional frameworks.

4.4.3.3. Remedy Mechanisms: Historical Grievances and Ongoing Partnership

Treaty settlement processes demonstrate innovative approaches to addressing historical grievances while establishing institutional mechanisms for preventing future violations. Rather than focusing solely on compensation for past harms, settlements emphasize restoration and

[817] C.J. Iorns Magallanes, "Māori co-governance and/or co-management of nature and environmental resources" (2021) <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=3940958>
[818] *Ibid.*
[819] R. Joseph et al, "The Treaty, Tikanga Māori, ecosystem-based management, mainstream law and power sharing for environmental integrity in Aotearoa New Zealand–possible ways forward. National Science Challenges: Sustainable Seas: Te Mata Hautū Taketake–the Māori and Indigenous Governance Centre Te Piringa" (Faculty of Law, University of Waikato. 2018)
[820] *Ibid.*
[821] Joseph et al., *supra*, note 819.

protection of natural resources combined with institutional arrangements that enable ongoing partnership in resource management. The Waitangi Tribunal has played a crucial role in developing remedy frameworks that address both historical grievances and ongoing participatory rights.[822] The Tribunal's findings that the Resource Management Act has not delivered appropriate levels of control, partnership, and influence for *kaitiaki*[823] have driven settlement negotiations that establish co-governance arrangements as remedies for inadequate participation rights.[824]

Remedy mechanisms established through Treaty settlements include both institutional reforms and resource-specific arrangements.[825] Institutional reforms include statutory recognition of Māori environmental management plans, mandatory consultation requirements, and appointment rights to resource management bodies.[826] Resource-specific arrangements include co-governance authorities, joint management agreements, and statutory acknowledgments of cultural relationships.[827] The integration of remedy mechanisms with ongoing relationship frameworks demonstrates how historical grievances can be addressed through institutional arrangements that prevent future violations rather than merely providing compensation for past harms. Co-governance arrangements operate as both remedy for historical exclusion and institutional mechanisms for ensuring ongoing participation in resource management decisions.

4.4.4. Lesson for Nigeria

New Zealand's resource management framework demonstrates the importance of independent institutional arrangements that insulate participatory processes from political interference while ensuring that technical expertise informs decision-making. The Environment Court's combination of judicial independence with specialist environmental expertise provides a model for institutional design that enables accessible community participation while maintaining professional standards for environmental assessment. Regional Planning Committees established under New Zealand's reformed resource management system provide another model for independent institutional design. These committees combine local government representatives with Māori appointees and operate with technical secretariat support, demonstrating how independent bodies can facilitate participatory planning while maintaining democratic

[822] D. Tremblay, R. Martinez, M. Oliveira, "From Expropriation to Compensation: Legal Remedies for Indigenous Land Grievance". (2025) 4(1) Interdisciplinary Studies in Society, Law, and Politics 208-19.
[823] Meaning a guardian or trustee, especially of an environmental area or resource.
[824] *Ibid.*
[825] Rut Huss, and Alexandra Norrman, "Echoes of an Empire: A comparative analysis of Indigenous political rights in Australia and New Zealand" (Lund University, 2025) online at <https://lup.lub.lu.se/student-papers/search/publication/9189428> (Huss & Norman)
[826] *Ibid.*
[827] Huss & Norman, *supra,* note 825.

accountability. This institutional model could inform the design of oversight committees proposed in Nigeria's institutional framework for citizen participation. The Waitangi Tribunal provides an additional model for independent institutions that can investigate historical grievances while recommending ongoing institutional reforms. The Tribunal's combination of judicial procedures with investigative powers demonstrates how independent bodies can address both remedy and prevention functions within integrated institutional frameworks. Transparent process requirements in New Zealand's resource management system create accountability mechanisms that enable community monitoring of institutional performance. Public notification requirements, accessible decision-making criteria, and comprehensive monitoring obligations demonstrate how transparency can support participatory governance by ensuring communities have access to information necessary for effective participation.

Furthermore, New Zealand's legal framework demonstrates how participatory rights can be embedded in legislation through mandatory consultation requirements, accessible appeal mechanisms, and enforceable procedural standards. The Resource Management Act's consultation requirements create legal obligations for meaningful community engagement while preserving flexibility in consultation methods and scope. The accessibility of appeal rights through the Environment Court demonstrates how legal frameworks can support community participation by providing mechanisms for challenging inadequate consultation or decision-making processes. Simplified procedures, reduced fees for community groups, and waiver provisions for procedural requirements demonstrate practical approaches to ensuring appeal rights are accessible to affected communities. Statutory recognition of IPLC rights through Treaty of Waitangi provisions demonstrates how legal frameworks can address power imbalances by establishing special consultation requirements and decision-making roles for marginalized communities. These provisions go beyond general public participation rights to recognize distinct IPLC interests and knowledge systems. Legal frameworks that establish ongoing monitoring and review requirements create accountability mechanisms that support sustained community participation rather than limiting engagement to initial decision-making processes. New Zealand's approach demonstrates how legal obligations for monitoring and review can create ongoing opportunities for community engagement in implementation and adaptive management.

Moreover, New Zealand's approach to community participation includes substantial government support for capacity building that enables effective engagement in complex resource management

processes. Technical assistance, funding support, and institutional infrastructure demonstrate practical approaches to addressing capacity constraints that otherwise limit community participation effectiveness. The development of community engagement tools and guidance demonstrates how government agencies can support community participation by providing accessible information about participatory processes and decision-making criteria. The proposed Policy Community Engagement Tool reflects systematic efforts to improve government capacity for meaningful community engagement across policy development processes. Treaty settlement processes include capacity building components that support Māori communities in developing governance institutions and technical expertise necessary for effective participation in co-management arrangements. Settlement agreements often include funding for capacity development, training programs, and institutional infrastructure that enable communities to exercise governance responsibilities effectively. Government support for community participation extends beyond funding to include institutional arrangements that facilitate sustained engagement. *Mana Whakahono ā Rohe*[828] provisions enable iwi[829] and local authorities to negotiate ongoing engagement protocols that clarify consultation processes and establish frameworks for continued collaboration.

However, despite significant innovations in participatory governance, New Zealand's experience reveals ongoing limitations and challenges that provide important lessons for Nigeria's institutional design. The Waitangi Tribunal has consistently found that Resource Management Act provisions do not require compliance by the Crown with the principles of the Treaty relative to those issues of IPLC participation and control over natural resources. Implementation gaps persist between formal participation rights and practical community ability to influence resource management decisions. Power imbalances between corporate applicants and community participants remain significant despite formal participation rights. Complex technical requirements, resource disparities, and procedural complexity can limit effective community participation even where legal rights exist. These challenges emphasize the importance of capacity building, technical assistance, and institutional support for enabling meaningful community engagement. The limited scope of participatory rights for addressing historical environmental damage represents another significant limitation. The Resource Management Act cannot be used to require historical rectification of environmental effects, limiting the remedial

[828] A Mana Whakahono ā Rohe (MWAR) agreement is a binding statutory arrangement under the Resource Management Act (RMA) that provides for a more structured relationship between local authorities and iwi/hapū authorities.

[829] iwi are the largest social units within Māori society, often translated as "tribe" or "clan."

potential of participatory processes for addressing legacy environmental harms. This limitation has important implications for Nigeria's extractive industry context, where the discussion so far has shown how the extensive historical environmental damage requires remedial attention.

4.4.4.1. Adaptation Considerations

Adapting New Zealand's participatory governance innovations to Nigeria's context requires careful consideration of fundamental differences in constitutional structure, legal traditions, and economic dependency on extractive industries. The adaptation of New Zealand's participatory governance innovations to Nigeria's context requires systematic analysis of contextual differences and their implications for institutional design. *Table 4* provides comprehensive comparison across 15 key consideration categories, revealing both opportunities and constraints for adaptation.

Table 4: Adaptation Considerations for New Zealand's Resource Management Framework in Nigeria

Consideration Category	New Zealand Context	Nigerian Context	Key Differences	Adaptation Requirements	Implementation Challenges
Constitutional and Legal Structure	Unitary system with parliamentary sovereignty; Treaty of Waitangi constitutional status	Federal system with three-tier government; Section 44(3) vests mineral resources in federal government	Multiple jurisdictions vs. centralized authority; Constitutional mineral ownership constraints	Constitutional reform or creative legal interpretation; Multi-level coordination mechanisms	Federal-state jurisdictional conflicts; Constitutional amendment difficulties
Legal Traditions	Common law with Māori customary law integration	Common law, customary law, Islamic law (Sharia) pluralism	Single indigenous legal system vs. multiple legal traditions	Framework accommodating diverse legal systems; Pluralistic dispute resolution mechanisms	Conflicting legal principles; Jurisdictional complexity across legal systems
Economic Dependency	Diversified economy with multiple revenue sources	Heavy dependence on oil revenues (80%+ government income)	Economic diversification vs. resource dependency	Demonstrate participatory governance enhances rather than hinders extraction; Economic incentives for participation	Political resistance due to revenue concerns; Corporate resistance to additional costs

Community Structures	Iwi and hapū with recognized tribal structures	Diverse traditional authorities, age grades, village councils, religious leaders	Relatively homogeneous indigenous structure vs. highly diverse community systems	Flexible representation mechanisms; Multiple entry points for engagement; Cultural sensitivity protocols	Elite capture risks; Representation legitimacy challenges; Inter-community conflicts
Language and Communication	English and te reo Māori (2 official languages)	English (official) plus 500+ indigenous languages	Bilingual vs. highly multilingual context	Comprehensive language support systems; Translation services; Local language protocols	Resource intensiveness; Training requirements; Communication barriers
Cultural Decision-Making	Consensus-based Māori decision-making traditions	Varied systems: consensus, hierarchical, age-based, gender-specific	Single indigenous tradition vs. multiple cultural approaches	Culturally adaptive consultation processes; Multiple decision-making frameworks	Process complexity; Time requirements; Cultural conflicts
Institutional Capacity	Well-developed civil service; Specialist environmental expertise	Limited technical capacity; Resource constraints; Brain drain	High institutional capacity vs. capacity deficits	Systematic capacity building programs; Technical assistance; Professional development	Funding requirements; Human resource development; Institutional sustainability
Democratic Traditions	Stable democracy; Strong rule of law; Independent judiciary	Fragile democratic institutions; Weak rule of law; Judicial independence concerns	Institutional stability vs. institutional fragility	Institution strengthening; Independence safeguards; Accountability mechanisms	Political instability; Corruption challenges; Institutional capture risks
Resource Extraction Context	Limited extraction in indigenous areas; Strong environmental movement	Extensive extraction in community areas; Weak environmental enforcement	Peripheral extraction vs. intensive extraction in populated areas	Stronger environmental protections; Community benefit mechanisms; Impact mitigation	Environmental legacy issues; Ongoing pollution; Community displacement
Political Economy	Multi-party democracy; Coalition governments; Interest group influence	Dominant party system; Federal-state tensions; Elite dominance	Pluralistic politics vs. concentrated power structures	Power redistribution mechanisms; Checks and balances; Civil society strengthening	Elite resistance; Rent-seeking behavior; Patronage systems

Gender and Social Inclusion	Gender equality emphasis; Māori women's participation recognized	Patriarchal traditions; Women's limited participation in some cultures	Gender-inclusive framework vs. male-dominated structures	Gender-sensitive participation protocols; Women's empowerment programs; Youth inclusion	Cultural resistance; Social norm challenges; Capacity building needs
Technical Complexity	Sophisticated environmental assessment systems; Expert institutions	Limited technical capacity; Weak monitoring systems	High technical standards vs. technical capacity gaps	Simplified assessment procedures; Technical assistance programs; Capacity building	Skills shortages; Equipment needs; Quality assurance challenges
Enforcement Mechanisms	Strong regulatory enforcement; Independent Environment Court	Weak enforcement; Corrupt practices; Limited judicial capacity	Effective enforcement vs. enforcement deficits	Independent oversight bodies; Transparent procedures; Accountability systems	Corruption risks; Political interference; Resource constraints
International Factors	Developed country status; Strong international networks	Developing country challenges; Limited international support	Resource abundance vs. resource constraints	International technical assistance; Capacity building support; Best practice networks	Aid dependency; External conditionalities; Technology transfer needs
Time Horizons	Long-term institutional development (30+ years)	Immediate development pressures; Short political cycles	Long-term perspective vs. short-term pressures	Phased implementation; Quick wins with long-term vision; Institutional permanence	Political cycle misalignment; Immediate needs vs. long-term goals

Table 4 reveals three critical adaptation patterns that distinguish Nigeria's context from New Zealand's. First, Nigeria's institutional complexity, federal system, legal pluralism, and cultural diversity across 250+ ethnic groups, requires flexible and varied remedy pathways rather than the single statutory framework that sufficed in New Zealand. A citizen-centered remedy framework must accommodate state-based judicial mechanisms, customary dispute resolution, hybrid approaches, and regional legal variations including Islamic law frameworks, rather than assuming uniform legal and procedural preferences. Second, Nigeria's structural dependence on petroleum revenue (90% of exports, 40% of government revenue) creates political economy constraints absent in New Zealand. This dependency generates political resistance to strong remedy mechanisms, as policymakers fear discouraging corporate investment or provoking corporate

exit. Remedy advocates must therefore simultaneously make justice and economic arguments, demonstrating that effective remedy need not trigger economic collapse, a dual persuasion challenge that New Zealand did not face. Third, Nigeria's capacity deficits require comprehensive institutional support infrastructure. Unlike New Zealand's established judicial competence and legal awareness, Nigerian remedy mechanisms must confront illiteracy, geographic isolation, underfunded courts, limited environmental law expertise, and weak monitoring capacity. Effective remedy requires foundational investments in legal literacy programs, community legal aid, court infrastructure, complaint documentation systems, representative training, and independent verification mechanisms. These capacity requirements are not barriers but necessary components of realistic reform implementation. The comparative exercise thus reveals that Nigeria requires not merely different institutions but a comprehensive capacity-building ecosystem to support institutional effectiveness.

4.5. Expert Assistance Framework

The analysis of participatory remedy mechanisms in section 4.3 revealed that communities often lack the technical expertise necessary to engage effectively with multinational extractive corporations in remedy processes. This expertise gap creates systematic disadvantages that undermine even the most carefully designed participatory mechanisms. Addressing this challenge requires developing expert assistance frameworks that enable communities to obtain expert assistance, as needed, in dealing with extractive companies using models adapted from corporate governance practice where independent directors can seek expert advice on issues and the cost must be borne by companies. The expert assistance framework addresses three interconnected dimensions of community capacity constraints: technical knowledge gaps, institutional capacity limitations, and resource asymmetries that prevent meaningful community participation in remedy processes. This framework draws on emerging practices in corporate governance, multi-stakeholder environmental assessment, and community capacity building to create systematic approaches for providing communities with access to independent expert support funded through extractive industry operations.

Developments in extractive industry governance demonstrate growing recognition that community participation in remedy mechanisms requires more than procedural reforms.[830]

[830] O. Abe, “Between control and confrontation: The pitfalls and potential of corporate-community participatory development in Africa's energy and extractive industries” (2022) 11 The Extractive Industries and Society 101095.

Effective participation requires substantive capacity that enables communities to understand complex technical information, evaluate proposed remedial measures, and negotiate effectively with well-resourced corporations. The World Bank's Extractive Industries Global Programmatic Support acknowledges that successful community engagement requires "capacity-building and built partnerships" that provide communities with "financial literacy training" and access to "certified" technical expertise.[831] This recognition reflects broader understanding that remedy mechanisms fail when they assume community capacity rather than actively building it. The expert assistance framework addresses several systematic limitations identified in existing remedy mechanisms.[832] Power asymmetries between corporations and communities reflect not only resource differences but also knowledge asymmetries that enable corporate manipulation of remedy processes. Information complexity in extractive operations creates barriers to community participation even when companies disclose required information. Capacity constraints limit community ability to evaluate technical proposals or negotiate effectively with corporate legal and technical teams. Institutional weaknesses in community organizations prevent sustained engagement with complex remedy processes that may extend over multiple years.

4.5.1. Corporate Governance Model Adaptation

Independent Director Analogy: Expert Advice at Company Expense

The corporate governance principle that enables independent directors to seek expert advice at company expense provides a valuable model for ensuring community access to independent expertise in extractive industry contexts.[833] This principle recognizes that effective governance requires access to specialized knowledge that may not be available within existing institutional structures.[834] The UK Corporate Governance Code establishes that "it is the responsibility of the company secretary to ensure that directors, especially non-executive directors, have access to independent professional advice at the company's expense where they judge it necessary to discharge their responsibilities as directors of the company".[835]

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[831] World Bank 'Extractives Global Programmatic Support' (World Bank, 2022) online at <https://documents1.worldbank.org/curated/en/099740107202331671/pdf/IDU0272fe39b0f4dc04ca3085fe070d0c002cd09.pdf>

[832] *Ibid.*

[833] MZ Hossain, L. Hasan, and MH Hasan, "Corporate governance as a global phenomenon: evolution, theoretical foundations, and practical implications" (2024) 13(2) Journal of Financial Risk Management 342.

[834] *Ibid.*

[835] FRC 'Corporate Governance Code Guidance' (FRC, 2023) online at <https://www.frc.org.uk/library/standards-codes-policy/corporate-governance/corporate-governance-code-guidance/>

Adapting this principle to community-corporate relationships in extractive contexts requires recognizing communities as legitimate stakeholders with governance interests parallel to those of corporate directors. Communities affected by extractive activities have legitimate interests in understanding and evaluating corporate proposals, monitoring compliance with agreed standards, and ensuring that remedial measures effectively address identified harms.[836] Just as independent directors require access to specialized expertise to fulfill their oversight responsibilities, communities require access to technical, legal, and financial expertise to participate effectively in remedy processes. The implementation of corporate-funded expert assistance for communities requires establishing clear frameworks that ensure independence while providing necessary funding. Corporate governance experience demonstrates that expert advice is most effective when experts are selected and controlled by those seeking advice rather than those paying for it.[837] The Central Bank of Nigeria emphasizes that requests for independent professional advice by directors and/or Board Committees shall be a matter for Board consideration and approval but that companies must "facilitate access to relevant independent professional advice for its directors.[838] This approach balances corporate financial responsibility with independence requirements.

The corporate governance model suggests several mechanisms that can ensure expert independence while maintaining corporate funding. Independent selection processes enable communities to choose their own technical advisors from approved panels of qualified experts.

a. Funding protocols establish clear procedures for accessing expert assistance while preventing corporate interference in expert selection or advice.
b. Scope limitations define appropriate areas for expert assistance while preventing abuse of funding arrangements.
c. Performance standards ensure that experts provide high-quality advice that meets community needs rather than corporate preferences.
d. Conflict of interest management represents a critical component of corporate-funded expert assistance frameworks.

Corporate governance experience demonstrates that independence requires not only financial arrangements but also institutional safeguards against conflicts of interest. Nigeria's banking

[836]O. Abe, “Between control and confrontation: The pitfalls and potential of corporate-community participatory development in Africa's energy and extractive industries” (2022) 11 The Extractive Industries and Society 101095.
[837]R.I. Tricker, *Corporate governance: Principles, policies, and practices* (USA: Oxford University Press, 2015).
[838] Central Bank of Nigeria ‘Corporate Governance Guidelines’ <https://www.cbn.gov.ng/Out/2023/FPRD/Circular%20and%20Guidelines%20for%20Corporate%20Governance.pdf>

sector corporate governance guidelines specify that independent professional advisors must be knowledgeable and/or have experience in the field" while maintaining independence from corporate control.[839] Similar requirements in extractive contexts might include prohibitions on experts providing concurrent services to companies funding their advice, cooling-off periods between corporate consulting and community advisory roles, and disclosure requirements for any financial relationships with extractive companies.

Community Advisory Boards: Technical, Legal, Environmental Expertise

The establishment of Community Advisory Boards (CABs) provides institutional mechanisms for delivering expert assistance to communities while ensuring sustained engagement throughout remedy processes.[840] CABs can be modeled on environmental advisory boards used in complex environmental assessment processes, which bring together technical experts, community representatives, neutral facilitators to provide ongoing oversight and expertise.[841] In extractive industry contexts, CABs can provide communities with regular access to expertise while creating institutional structures that outlast individual remedy cases.[842] The composition of effective CABs requires balancing technical expertise with community representation to ensure that expert advice serves community priorities rather than external agendas.[843] Technical expertise might include environmental scientists who can evaluate impact assessments and monitoring data, lawyers specializing in extractive industry regulation who can interpret complex legal requirements, economists who can assess benefit-sharing proposals and economic development initiatives, and social scientists who can evaluate impacts on community social structures and cultural practices. Community representation ensures that expert advice addresses community priorities and is delivered in ways that communities can understand and use.

The importance of neutral facilitation in expert advisory processes cannot be overemphasized. For instance, the Netherlands Environmental Assessment Agency's work on Strategic Environmental Assessment emphasizes that neutral facilitator and trainer helped build trust in the process and between participants while enabling better partnerships and trust between

[839] *Ibid.*
[840] Y. Zhao et al, "Forming and implementing community advisory boards in low-and middle-income countries: a scoping review" (2019) 20(1) BMC medical ethics 73.
[841] *Ibid.*
[842] J. Clark and B. Friedman, "Community Advisory Boards: What works and what doesn't (Lessons from a National Study)" (2020) 47 Am. J. Crim. L. 159.
[843] *Ibid.*

government and basin-based partners, including private sector and CSOs.[844] In extractive contexts, neutral facilitation can help manage power imbalances between corporate-funded experts and community representatives while ensuring that advisory processes serve community needs.

The functions of CABs in remedy contexts extend beyond providing technical advice to include capacity building, monitoring, and advocacy support. Impact assessment functions enable CABs to provide independent evaluation of corporate environmental and social impact assessments, review of proposed mitigation measures, and assessment of cumulative impacts from multiple extractive activities.[845] Monitoring functions involve oversight of corporate compliance with remedy agreements, evaluation of remedy implementation effectiveness, and early warning systems for emerging problems.[846] Capacity building functions include training community members in technical skills, supporting development of community monitoring systems, and building institutional capacity for ongoing engagement with extractive companies.[847]

Conflict of Interest Management: Independence Requirements and Selection Processes

The effectiveness of expert assistance frameworks depends on conflict-of-interest management systems that ensure expert independence while maintaining necessary funding arrangements. Corporate governance experience demonstrates that independence requires both structural arrangements and behavioral standards that prevent conflicts from arising or address them when they occur.[848] The challenge in extractive industry contexts is designing systems that maintain expert independence while recognizing the practical reality that extractive companies are often the only available funding source for community expert assistance. Independence requirements must address both financial and professional relationships that might compromise expert objectivity. Financial independence might require that experts receive payment through independent intermediaries rather than directly from extractive companies, that payment arrangements be established before experts begin work to prevent companies from using payment as leverage, and that expert contracts specify that advice belongs to communities rather than to

[844] EIA (2024) online at <https://www.eia.nl/en/wp-content/uploads/2024/12/Environmental-Assessment-in-Landscape-Management.pdf> .
[845] *Ibid.*
[846] R. Van Loo. "Regulatory monitors" (2019) 119(2) Columbia L. Rev. 369-444.
[847] *Ibid.*
[848] Gerged AM, Albitar K, Al-Haddad L., "Corporate environmental disclosure and earnings management—The moderating role of corporate governance structures." (2023) 28 (3) International Journal of Finance & Economics 2789.

funding companies. Professional independence might prohibit experts from accepting concurrent consulting arrangements with companies they are advising communities about, require disclosure of any past relationships with relevant companies, and establish cooling-off periods between corporate consulting and community advisory roles.

Selection processes represent another component of independence management, as the method for selecting experts significantly influences their orientation and accountability. Community-controlled selection enables communities to choose experts whose background and approach align with community priorities and concerns. Independent panels can provide technical evaluation of expert qualifications while protecting against both community favoritism and corporate manipulation. Transparent processes ensure that selection decisions are based on relevant qualifications rather than political or financial considerations. Multiple stakeholder input can balance community priorities with technical qualifications and independence requirements. Research on extractive industry negotiations emphasizes the importance of "independent negotiation support" and "ongoing capacity building" as success factors for effective community participation.[849] This research demonstrates that independence requires not only appropriate funding arrangements but also institutional structures that protect expert-community relationships from corporate interference. The research suggests that expert assistance is most effective when experts understand their primary obligation as serving community needs rather than satisfying corporate funders or maintaining relationships with corporate clients.

[849] E. Wilson, et al 'Meaningful Community Engagement in the Extractive Industries' (IIED, 2016) online at <https://www.iied.org/sites/default/files/pdfs/migrate/16047IIED.pdf>

4.5.2. Multi-Stakeholder Expert Panels

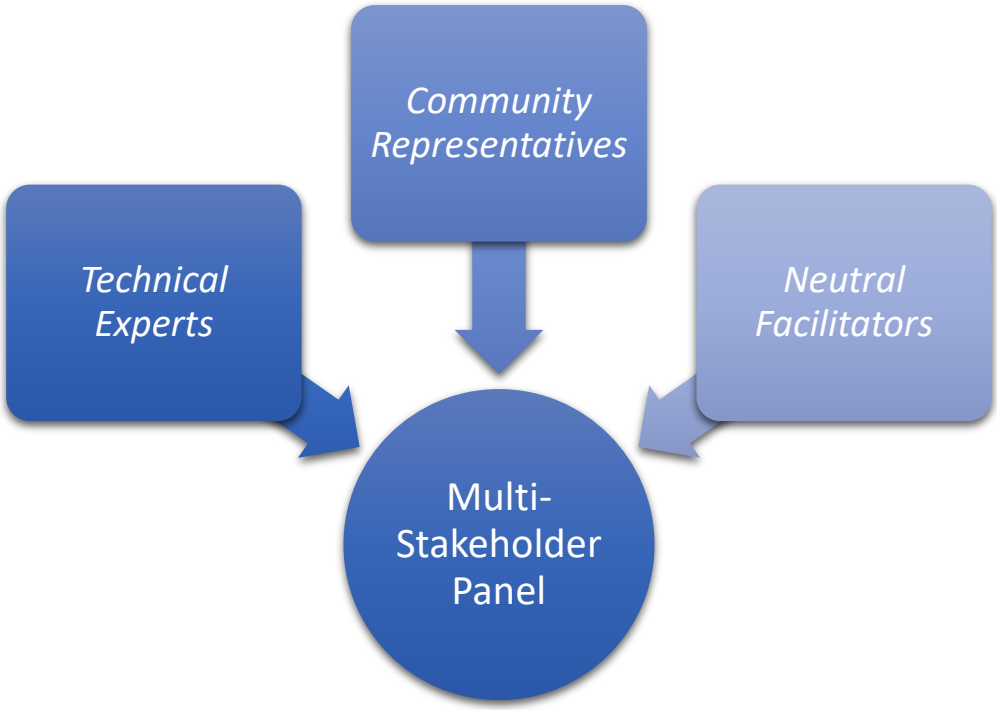


Figure 1: Multi Stakeholder Panel

Multi-stakeholder expert panels represent an institutional innovation that can address the complex technical and social dimensions of extractive industry remedy processes while maintaining democratic accountability to affected communities.[850] These panels draw on experience with environmental assessment processes that recognize the need for technical expertise while ensuring meaningful community participation.[851] The Shared Resources, Joint Solutions programme demonstrates that Environmental and Social Impact Assessment and Strategic Environmental Assessment would also be good tools to enhance multi-stakeholder dialogues by bringing together diverse forms of expertise and different stakeholder perspectives.[852]

The composition of effective multi-stakeholder expert panels requires careful attention to representation, expertise, and power balance among different panel members. Technical experts provide specialized knowledge in areas such as environmental science, public health, engineering, economics, and law that enable evaluation of complex extractive industry impacts and proposed remedial measures. Community representatives ensure that panel deliberations address

[850]KK Mary, *Multi-Stakeholder Engagement Framework for Extractive Industries in the Oil and Gas Sector* (Doctoral dissertation, Institute of Petroleum Studies-Kampala).
[851] *Ibid.*
[852]E.A. Asamoah and R.D. Anyinah, "Multi-stakeholder Engagement in Extractive Areas in Burkina Faso, Ghana, and Guinea: Perspectives across Africa" in *The Routledge Handbook on Meaningful Stakeholder Engagement* (England: Routledge, 2024)

community priorities, and that technical analysis is relevant to community concerns and experiences. Neutral facilitators help manage power imbalances among panel members while ensuring that deliberation processes enable all participants to contribute meaningfully to panel recommendations.

Similarly, selection of technical experts for multi-stakeholder panels requires balancing technical qualifications with independence and community accessibility. Technical qualifications ensure that experts have the specialized knowledge necessary to evaluate complex extractive industry issues and to provide credible advice that can influence corporate behavior and government policy. Independence requirements ensure that experts can provide objective analysis without conflicts of interest that might compromise their advice. Community accessibility means that experts can communicate effectively with community representatives and can present technical information in ways that community members can understand and use. Community representation on expert panels must address the challenge of ensuring that representatives can participate effectively in technical deliberations while maintaining accountability to their communities. Effective community representation often requires capacity building support that enables community representatives to engage with technical information and to participate meaningfully in expert deliberations. This might include training in relevant technical concepts, access to independent advisors who can help community representatives understand technical issues, and institutional support that enables representatives to consult with their communities about panel deliberations and recommendations.

Neutral facilitation serves multiple functions in multi-stakeholder expert panels, including managing power imbalances among participants, ensuring inclusive deliberation processes, and translating between different forms of expertise and knowledge. Research on multi-stakeholder environmental assessment emphasizes the importance of "neutral facilitator and trainer" who can "help build trust in the process and between participants" while creating opportunities for "better partnerships and trust between government and basin-based partners.[853] In extractive industry contexts, neutral facilitation can help bridge differences between technical experts, community representatives, and corporate stakeholders while maintaining focus on community remedy priorities.

Functions of the Panel

[853] *Ibid.*

Multi-stakeholder expert panels can serve multiple functions throughout the lifecycle of extractive industry operations and remedy processes, providing ongoing technical support and democratic oversight that addresses the dynamic nature of extractive industry impacts. These functions parallel those identified in environmental assessment literature as essential for effective environmental governance: impact assessment, remedy design, and implementation monitoring, that enable adaptive management of complex environmental and social challenges. Impact assessment functions enable multi-stakeholder expert panels to provide independent evaluation of corporate environmental and social impact assessments, analysis of cumulative impacts from multiple extractive activities, and assessment of proposed mitigation measures.[854] Independent evaluation is crucial because corporate impact assessments often minimize negative impacts while emphasizing potential benefits, creating misleading impressions about the likely consequences of extractive activities.[855] Panel-based evaluation can provide more balanced assessment that considers both positive and negative impacts while evaluating the adequacy of proposed mitigation measures. Cumulative impact analysis addresses the limitation of project-specific assessments that fail to consider the combined effects of multiple extractive activities in the same region.

Remedy design functions involve multi-stakeholder expert panels in developing remedial responses to identified impacts from extractive activities.[856] This might include evaluation of alternative remedial approaches based on their effectiveness, feasibility, and community acceptability.[857] Panel-based remedy design can draw on diverse forms of expertise to develop comprehensive approaches that address technical, social, and cultural dimensions of remedy.[858] Community representation in remedy design ensures that proposed measures reflect community priorities and values rather than external assumptions about appropriate remedy approaches. Implementation monitoring represents perhaps the most important function of multi-stakeholder expert panels, as effective remedy requires ongoing oversight that ensures corporate compliance with remedial commitments. Panel-based monitoring can provide independent assessment of remedy implementation progress, early warning of compliance failures, and recommendations for adaptive management when remedy approaches prove inadequate. The combination of technical

[854]Kisakye Kaitesi Mary, "Multi-Stakeholder Engagement Framework for Extractive Industries in the Oil and Gas Sector." (PhD diss., Institute of Petroleum Studies-Kampala, 2020) (Kisakye).
[855] *Ibid.*
[856] Kisakye, *supra*, note 854.
[857] *Ibid.*
[858] Panel-based remedy design can draw on diverse forms of expertise to develop comprehensive approaches that address technical, social, and cultural dimensions of remedy.

expertise and community representation in monitoring enables both rigorous technical evaluation and assessment of remedy effectiveness from community perspectives.

Funding Approach

The development of funding mechanisms for multi-stakeholder expert panels must address the fundamental challenge of ensuring independence while recognizing that extractive companies are often the only available funding source for technical expertise. Studies on extractive industry governance emphasizes the importance of independent funding for technical advice as essential for enabling communities to discipline state regulators and firms by exposing non-compliance to transnational advocacy networks.[859] This research demonstrates that funding independence is crucial for expert credibility and effectiveness.

Trust fund mechanisms offer one approach to maintaining expert independence while enabling corporate funding of community technical assistance.[860] Trust funds can be established through legislation or through contractual agreements between communities and extractive companies. Legal frameworks might require extractive companies to contribute specified percentages of their operating costs to community expert assistance trust funds, similar to existing requirements for environmental remediation or community development contributions. Contractual arrangements might specify trust fund contributions as part of Impact and Benefit Agreements or other community-corporate agreements. The governance of expert assistance trust funds must ensure community control while maintaining professional standards for expert selection and management. Community control might involve community representation on trust fund governing boards, community authority over trust fund expenditure priorities, and community accountability requirements for trust fund management. Professional standards might include minimum qualifications for experts funded through trust funds, performance requirements for expert services, and quality assurance mechanisms that ensure expert assistance meets community needs. Multi-stakeholder funding arrangements can distribute funding responsibilities among extractive companies, government agencies, and international donors to reduce dependence on individual corporate funders while maintaining adequate funding levels. Government contributions might recognize state responsibilities to support community participation in extractive industry governance. International donor funding might support expert assistance as

[859]N. Hall, and N. Reiners, "Challenges and Opportunities for Transnational Advocacy" (2025) 27(3) International Studies Review, viaf015.
[860] *Ibid.*

part of broader extractive industry governance initiatives. Multi-stakeholder funding can reduce corporate leverage over expert panels while ensuring adequate resources for effective.

4.5.3. Capacity Building Programs

Community paralegal programs represent a sustainable approach to building local capacity for legal advocacy and community representation in extractive industry contexts. These programs train community members to provide basic legal services and advocacy support within their own communities, creating ongoing capacity that outlasts specific remedy processes.[861] Recent experience demonstrates that community-based paralegals provide basic justice services to urban poor communities, employing dispute resolution, legal empowerment, and community mobilization techniques while working proactively with and in their own communities to identify and address areas of broad concern.[862] The development of effective community paralegal programs in extractive industry contexts requires addressing the specific legal and technical challenges that communities face when dealing with large corporations and complex regulatory frameworks. Legal training might include understanding of extractive industry regulations, community rights under national and international law, contract interpretation skills relevant to community-corporate agreements, and litigation support skills that enable paralegals to work with lawyers on complex cases. Technical training might include basic environmental science concepts relevant to extractive industry impacts, understanding of corporate financial reports and benefit-sharing calculations, and monitoring skills that enable paralegals to assess corporate compliance with legal and contractual obligations.

In the same vein, the effectiveness of community-based approaches depends on leveraging existing community structures and knowledge systems.[863] For instance the Centre for Public Interest Law's work in Ghana to equip community representatives with the requisite tools to function effectively as focal persons and liaisons between their communities, Civil Society

[861]M. Hulihulis et al, "The Role of Indigenous Community Paralegals in Providing Legal Aid Case Study of Sorong Regency" (2024) 2(1) Journal of Law Justice 22-34.
[862] Hulihulis M, Naim S, Hasriyanti H, Keliobas M, Kariadi K., "The Role of Indigenous Community Paralegals in Providing Legal Aid Case Study of Sorong Regency." (2024) 2 (1) Journal of Law Justice 22-34; JUSTICE, F.R.A.T., CHALLENGES AND OPPORTUNITIES FOR COMMUNITY PARALEGALS; Franco J, Soliman H, Cisnero MR, Presidency LV. Community-based Paralegalism in the Philippines. Community paralegals and the pursuit of justice. 2018:96-138; Franco J, Soliman H, Cisnero MR, Presidency LV. Community-based Paralegalism in the Philippines. Community paralegals and the pursuit of justice. 2018:96-138.
[863] *Ibid.*

Organizations, and mining companies.[864] This approach recognizes that effective paralegal programs must build on existing community leadership structures rather than imposing external models of legal advocacy. The sustainability of community paralegal programs requires ongoing support systems that enable paralegals to maintain and develop their skills while providing them with necessary resources for effective advocacy. Ongoing support might include regular training updates that address changes in relevant laws and regulations, access to legal and technical resources that enable paralegals to research specific issues, networking opportunities that enable paralegals to learn from each other and from experienced advocates, and institutional support that protects paralegals from corporate or government retaliation for their advocacy activities.

Leadership Development: Negotiation Skills, Organizational Capacity

Leadership development programs can strengthen community capacity to engage effectively with extractive companies and government agencies while building institutional capacity for sustained advocacy and community development. These programs address the reality that effective community participation in remedy processes requires strong leadership that can represent community interests in complex technical and political negotiations. In addition, negotiation skills training combined with organizational capacity building could enable communities to effectively represent their communities and participate in making the decisions about extractive industry operations. Negotiation skills training enables community leaders to engage more effectively with corporate representatives and government officials in formal and informal negotiation processes. Training programs might include interest-based negotiation techniques that enable communities to identify and articulate their priorities clearly, power analysis methods that help community leaders understand and address power imbalances in negotiation processes, communication skills that enable effective interaction with corporate and government representatives, and conflict resolution techniques that can help manage internal community disagreements about negotiation strategies. Experience from IPLC demonstrates that "foundational concepts in the negotiation process" combined with "proven interest-based negotiation terminology and techniques" can significantly improve community outcomes in negotiations with corporations and governments.[865]

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[864] News Ghana 'Social Stratification' (New Ghana, 2025) online at <https://www.newsghana.com.gh/ghana/social-stratification/page/1727/> See also CEPIL Launches Twi Land Compensation Guide To Empower Mining Communities

[865] See generally Indigenous Leadership | Banff Centre for Arts and Creativity <https://www.banffcentre.ca/indigenous-leadership>.

Organizational capacity building addresses the reality that effective community advocacy requires strong institutions that can sustain engagement over the extended timeframes often required for remedy processes. Capacity building might include strategic planning skills that enable communities to develop and implement long-term advocacy strategies, financial management skills that enable communities to manage resources effectively and transparently, governance skills that ensure community organizations operate democratically and accountably, and networking skills that enable communities to build relationships with other communities, civil society organizations, and technical experts who can provide ongoing support. Leadership development programs must address the challenge of ensuring that capacity building serves community empowerment rather than creating new forms of elite capture or external control. Community-controlled leadership selection ensures that capacity building supports leaders who are accountable to their communities rather than to external organizations providing training. Inclusive leadership development addresses power imbalances within communities by ensuring that women, youth, and marginalized groups have opportunities to develop leadership skills. Ongoing accountability mechanisms ensure that trained leaders use their enhanced skills to serve community interests rather than their own personal advancement. The sustainability of leadership development programs requires creating ongoing support systems that enable trained leaders to maintain and develop their skills while providing them with resources necessary for effective community representation. Ongoing support might include regular skills updates that address changing circumstances and new challenges, peer networking opportunities that enable trained leaders to learn from each other and share experiences, institutional support that protects community leaders from corporate or government retaliation, and succession planning that ensures leadership capacity is maintained even when individual leaders move on to other roles.

This expert assistance framework addresses the fundamental capacity constraints that limit community participation in remedy processes by providing systematic approaches to ensuring community access to technical, legal, and leadership expertise. The framework draws on proven approaches from corporate governance, environmental assessment, and community development while adapting these approaches to the specific challenges of corporate-community relationships in extractive industry contexts. By providing systematic approaches to building and supporting community expertise, this framework can help ensure that participatory remedy mechanisms

translate into genuine community empowerment rather than sophisticated forms of consultation that maintain existing power structures.

4.5.4. Discourse

Assessment of multi-stakeholder governance structures reveals systematic challenges that have limited the effectiveness of many participatory initiatives in extractive contexts. Power imbalances remain pervasive despite formal commitments to inclusive governance, as corporations and government agencies retain control over resources, information, and technical expertise that enable them to shape multi-stakeholder processes to serve their interests. Elite capture within communities can result in participatory mechanisms being co-opted by community leaders who are not representative of broader community interests or who develop interests aligned with corporate or government priorities. Accountability deficits emerge when multi-stakeholder processes lack enforcement mechanisms that ensure decisions are implemented effectively and when community representatives lack adequate support to monitor implementation and advocate for community interests. Resource asymmetries between corporate participants and community representatives create ongoing challenges for meaningful participation, as communities often lack the financial, technical, and legal resources necessary to engage effectively in complex governance processes. Recent analysis[866] of international investment law and extractive industries demonstrates how investment treaties and ISDS have a particularly pronounced impact on the domestic governance of extractive industries by restricting government ability to implement community participation requirements and environmental protections. These external constraints must be addressed through institutional design that protects participatory governance mechanisms from external interference while ensuring they operate within applicable international legal frameworks.

Furthermore, analysis of Nigeria's regulatory landscape reveals significant gaps in legal recognition of community participation rights, with existing frameworks prioritizing state and

[866] Center for Strategic and International Studies & Initiative for Policy Dialogue (Columbia University), International Investment Law and The Extractive Industries (New York: CCSI, 2022) at 6–12 [documenting how investment treaties and ISDS restrict government ability to implement environmental and social policies in extractive industries]; Kyla Tienhaara et al, "Preventing Climate-Related Investor-State Disputes: A Path Forward" (2022) 6 Environmental Research Letters 1–10 [estimating $340 billion in potential ISDS claims from cancelling upstream oil and gas projects misaligned with 1.5°C climate pathway]; Kyla Tienhaara, *The Expropriation of Environmental Governance: Protecting Investments, Restricting Rights* (Cambridge: Cambridge University Press, 2009 145–180 [analyzing regulatory chill and state sovereignty constraints from ISDS in environmental regulation].

corporate interests over community agency. Statutory recognition of participation rights requires constitutional and legislative amendments that establish communities as legitimate stakeholders in extractive industry governance with enforceable rights to information, consultation, and consent. Legal frameworks must specify minimum standards for community participation that go beyond tokenistic consultation to require meaningful engagement in decision-making processes. Enforcement provisions must include both positive incentives for inclusive practices and sanctions for excluding communities from relevant processes.[867] This approach recognizes that effective participation requires legal foundations combined with institutional flexibility to address local contexts and priorities.

In the same vein, regulatory integration requires transforming existing institutional mandates to prioritize facilitation of community participation rather than merely regulating corporate compliance with technical standards. Nigeria's regulatory agencies currently operate with limited mandates to engage communities meaningfully in extractive industry governance, focusing primarily on technical compliance monitoring and revenue collection. Institutional reform must expand regulatory mandates to include explicit duties to facilitate community participation, provide technical assistance for community engagement, monitor compliance with participation requirements, and ensure accessibility of regulatory processes for affected communities. The transformation of regulatory institutions requires addressing institutional capacity constraints that limit effective community engagement.[868] Nigerian regulatory agencies require capacity building support to develop expertise in participatory governance methods, community engagement techniques, conflict resolution processes, and cultural sensitivity approaches that enable effective community interface.

Furthermore, effective regulatory integration depends on enforcement mechanisms that create genuine incentives for corporate and government compliance with participation requirements. Current Nigerian frameworks rely primarily on administrative penalties that are often insufficient

[867] Legal standing provisions must enable communities to seek judicial enforcement of participation rights without prohibitive procedural barriers. Recent comparative experience demonstrates the importance of comprehensive legal frameworks for participatory governance. The 2023 EITI Standard emphasizes that "multi-stakeholder groups play a key role in ensuring that EITI implementation addresses the most significant extractive sector governance challenges in each EITI implementing country" while requiring that "implementing countries are encouraged to go beyond" minimum requirements "where stakeholders agree that this is appropriate".

[868] Recent research demonstrates that "strengthening local governance and administrative capacity is essential for effective collaboration" while "training local community leaders to advocate for their interests and manage resources responsibly" ensures "meaningful participation in decision-making".

to deter non-compliance with community engagement requirements. Enhanced enforcement mechanisms must include licensing sanctions that can suspend or revoke extractive industry permits for systematic exclusion of communities from required processes. Financial penalties must be substantial enough to create real incentives for compliance while being directed toward community benefit rather than general government revenue.[869] The EITI's experience demonstrates that "incentives and corrective actions" combined with "transparent reporting" can drive improvements in extractive industry governance when supported by effective multi-stakeholder oversight.

In addition, long-term sustainability requires institutional arrangements that can maintain effective operation over the extended timeframes typically required for extractive industry operations and their associated impacts. Institutional permanence must address challenges including political instability that can threaten participatory institutions, corporate resistance to ongoing participatory requirements, government policy changes that may undermine participatory frameworks, and community leadership transitions that can disrupt institutional continuity. Capacity maintenance requires ongoing investment in community leadership development, technical skills training, institutional infrastructure maintenance, and knowledge management systems that preserve institutional memory and learning. Long-term sustainability depends on institutional permanence and capacity maintenance that enables participatory institutions to adapt to changing circumstances while maintaining their core functions. The sustainability framework must integrate legal protections for participatory institutions, diversified funding sources that reduce dependence on single funders, institutional learning systems that enable continuous improvement, and succession planning that ensures leadership transitions do not undermine institutional capacity.[870]

4.6. Conclusion

The citizen-centered remedy framework developed in this chapter provides a comprehensive alternative to Nigeria's current exclusionary approach to corporate human rights accountability

[869] Positive incentives for inclusive practices can complement sanctions by rewarding companies and government agencies that exceed minimum participation requirements. Tax incentives, expedited permitting processes, and public recognition programs can encourage voluntary adoption of best practices in community engagement.
[870] The World Bank's experience with extractive industries demonstrates that "capacity-building and built partnerships" combined with "financial literacy training" and access to "certified" technical expertise are essential for "long-term success" of participatory governance initiatives.

for negative human rights impacts on oil communities in the Niger Delta. The framework demonstrates how participatory governance principles can be operationalized through specific mechanisms including community-controlled information access systems, participatory monitoring arrangements, community development agreements with genuine community decision-making authority, and expert assistance programs that enhance community capacity while maintaining community control over strategic decisions. These mechanisms are supported by institutional frameworks that include regulatory integration through legal recognition of participation rights, multi-stakeholder governance structures with balanced representation and independent oversight, and sustainable funding mechanisms through community-controlled trust funds and diversified resource mobilization. The comparative analysis of New Zealand's resource management framework illustrates how common law jurisdictions can develop innovative participatory approaches while highlighting the adaptation challenges posed by Nigeria's federal system, cultural diversity, and economic dependency on extractive industries. The framework addresses these challenges through flexible institutional arrangements that accommodate multiple legal traditions, diverse community structures, and complex political economy dynamics while maintaining core principles of community empowerment and participatory governance. The citizen-centered remedy framework proposed in this chapter provides the foundation for examining implementation challenges and prospects in Chapter 5. Chapter 5 will examine these implementation challenges through analysis of political economy factors that create resistance to participatory governance reforms, capacity building requirements that must be addressed to enable effective community participation, and resource mobilization strategies that can sustain citizen-centered institutions over the extended timeframes required for institutional transformation.

Chapter 5 - Challenges and Prospects for Implementing Citizen-Centered Remedy Mechanisms in Nigeria

5.1. Introduction

This chapter examines the practical realities of implementing citizen-centered remedy mechanisms in Nigeria's petroleum sector. While Chapter Four presented a comprehensive framework for participatory approaches to corporate human rights accountability, the transition from theoretical frameworks to real-world implementation requires careful analysis of both obstacles and opportunities within Nigeria's specific context. The analysis builds on the remedy gaps identified in Chapter Three and the participatory models developed in Chapter Four to assess the feasibility of transforming Nigeria's approach to corporate accountability. The chapter evaluates four categories of implementation challenges: political economy factors that may resist participatory reforms, institutional constraints that limit administrative capacity, social dynamics that affect community participation, and legal barriers that impede systematic reform. Simultaneously, it examines five categories of implementation prospects: policy developments that create opportunities for reform, technological innovations that enable community participation, international support mechanisms that provide resources and expertise, strategic coalitions that can drive change, and emerging governance trends that favor participatory approaches.

5.2. Structural and Systematic Challenges

The implementation of citizen-centered participatory approaches to remedy for corporate human rights violations in Nigeria's oil sector faces structural and systemic obstacles that transcend mere legal or procedural reforms. These challenges, deeply in the country's political economy and institutional architecture, create conditions that systematically undermine the effectiveness of traditional state-based remedy mechanisms while simultaneously creating barriers to citizen participation. Understanding these challenges is important designing participatory approaches that can function effectively within Nigeria's complex governance environment.

5.2.1. Limited Statehood Constraints

Nigeria's oil sector exemplifies the phenomenon of limited statehood, where central state institutions struggle to implement and enforce decisions effectively across their territory and

policy sectors.[871] The regulatory agencies responsible for overseeing Nigeria's oil sector suffer from chronic institutional weaknesses that severely limit their effectiveness.[872] The Nigerian Upstream Petroleum Regulatory Commission (NUPRC) and the National Oil Spill Detection and Response Agency (NOSDRA), despite being vested with significant regulatory mandates, operate under conditions of inadequate human and financial resources that constrain their ability to perform essential functions.[873] Reports by independent observers and civil society organizations have documented systemic problems including inadequate technical expertise, limited manpower, and poor funding across both federal and state environmental institutions.[874] These capacity constraints manifest in practical terms through the inability of regulatory agencies to conduct routine monitoring of oil operations, perform timely environmental impact assessments, or respond effectively to oil spills and environmental emergencies.[875] The absence of real-time enforcement capabilities means that operators can circumvent environmental obligations with minimal risk of detection or sanction. This situation creates an enforcement vacuum where violations of human rights and environmental standards can occur with impunity, undermining the credibility of formal remedy mechanisms. The institutional capacity deficit extends beyond technical and financial resources to encompass fundamental problems of organizational structure and coordination. Multiple regulatory agencies often have overlapping mandates that create confusion and duplication of effort rather than comprehensive coverage.[876] For instance, while the Petroleum Industry Act (PIA) 2021 vests the NUPRC[877] with regulatory oversight of upstream operations, including environmental compliance, NOSDRA maintains statutory powers under the NOSDRA Act 2006 to monitor, detect, and respond to oil spills. This dual mandate often leads to regulatory confusion, enforcement delays, and duplication of functions, which weakens the efficacy of environmental governance.

[871]Adekunle Alaye, and Oludare Ogunbanwo, "Oil Politics and Governance: Emerging Socio-Economic Trends in Nigerian States." (2024) 20 Acta U. Danubius Jur. 126.
[872] *Ibid.*
[873]Hamuel Oti Chukwu, and Ibe Steve Ojiridike, "The challenges of nationhood and state formation in Nigeria's fourth republic' (2025) 1(1) JOURNAL OF PSYCHOLOGY, SOCIOLOGY, HISTORY AND INTERNATIONAL STUDIES <https://www.nigerianjournalsonline.org/index.php/JPSHIS/article/view/146>
[874]Faith Akatiki Joseph, . "Examination of the Role of Civil Society Organisations in Post-Legislative Scrutiny." (PhD dissertation, NILDS-Department of Studies, 2024); Songonuga, Temitope O. "Civil society in Nigeria: Reasons for ineffectiveness." (PhD diss., Monterey, California: Naval Postgraduate School, 2015);Olushola John Magbadelo, "Reforming Nigeria's federal civil service: Problems and prospects." (2016) 72 (1) India Quarterly 75-92.
[875] *Ibid,* n. 693
[876]Ngozi Chinwa Ole, and Etti Best Herbert, "The Nigerian Offshore Oil Risk Governance Regime: Does the Petroleum Industry Act 2021 Address the Existing Gaps?" (2022) 31 (3) Studia Iuridica Lublinensia 143-163.
[877] Nigerian Upstream Petroleum Regulatory Commission.

Similarly, oil companies exert considerable influence over regulatory outcomes, often dictating the terms of environmental impact assessments and remediation efforts with little or no community input.[878] This influence operates through various mechanisms including the dependency of regulatory agencies on corporate cooperation and information, the revolving door between government and industry, and the economic incentives that align regulatory interests with corporate priorities rather than community welfare.[879] The practical consequences of regulatory capture are evident in the persistent failure to enforce environmental standards despite clear evidence of ongoing violations. Studies[880] using remote sensing and geospatial technologies have confirmed that oil spill sites remain active long after official closure declarations, exposing flaws in monitoring protocols and post-cleanup certification. Many spill and flare events are underreported or manipulated in official databases, undermining public trust and scientific analysis.[881] The political interference and weak compliance culture allow powerful oil companies to operate with minimal oversight, even when their activities result in gross human rights violations and cause significant environmental damage.[882]

In the same vein, Nigeria's federal system creates complex jurisdictional arrangements that fragment regulatory authority across multiple levels of government and numerous agencies. The overlapping mandates between federal, state, and local authorities in oil sector governance create opportunities for regulatory arbitrage and forum shopping by corporations seeking to avoid accountability. These jurisdictional complexities are exacerbated by ambiguities regarding the allocation of regulatory authority between different levels of government, which can create legal uncertainty and hinder the development of coherent remedy mechanisms. The fragmentation of regulatory authority is particularly problematic in the context of oil operations that span multiple jurisdictions and affect communities across different administrative boundaries. Local communities seeking remedy for corporate violations often find themselves navigating a maze of different regulatory agencies with overlapping or contradictory mandates, none of which may have clear authority or capacity to address their grievances comprehensively. This fragmentation

[878] Godspower Oke Omokaro et al, "Oil spillage in the Niger Delta: impacts, institutional failures, and policy reforms." (2025) 2(3) Academia Environmental Sciences and Sustainability <http://doi.org/10.20935/AcadEnvSci7827> (Godspower et al)
[879] *Ibid,*
[880] Godspower et al., *supra,* note 878.
[881] Seyi Adewale Adebangbe, Deborah Dixon, and Brian Barrett, "Working with “Safety”: Researching Oil-Spill-Impacted Communities in the Niger Delta." (2025) The Professional Geographer 1-15.
[882] *Ibid.*

not only undermines regulatory effectiveness but also hampers the achievement of broader policy objectives, such as ensuring access to remedy for affected communities.

Even where adequate legal frameworks exist on paper, significant gaps persist between legal provisions and practical implementation. The disconnect between statutory obligations and practical enforcement reflects persistent problems of institutional capture, political interference, and bureaucratic underperformance. Despite the PIA 2021's transformative potential, its enforcement architecture remains fragile, with no comprehensive public database showing the submission, approval, or evaluation of flare reduction plans, and scarce judicial or administrative precedents enforcing penalties for non-compliance.[883] The enforcement deficit is compounded by the absence of compliance culture and the weak enforcement mechanisms that persist throughout Nigeria's regulatory system. Oil companies continue to circumvent environmental obligations because routine monitoring and real-time enforcement are often absent. State institutions tasked with environmental oversight often suffer from overlapping mandates and inadequate prosecutorial power, particularly NOSDRA, which lacks direct authority to enforce penalties or pursue litigation. This enforcement vacuum means that even when violations are detected, there are few effective mechanisms for compelling corporate accountability or providing meaningful remedy to affected communities.

5.2.2. Political Economy Barriers

The political economy of Nigeria's oil sector derives from the fundamental dependency of the Nigerian state on oil revenues and the resulting alignment of state interests with corporate rather than community welfare.[884] Traditional elites and political leaders have historically co-opted community-based initiatives and transformed them into mechanisms for advancing their own interests rather than representing genuine community concerns. In the Niger Delta context, local elites have co-opted restive militants to intimidate opponents and maintain their political and economic power. These dynamics create significant risks that citizen-centered remedy mechanisms could be captured by traditional authorities or political leaders who use participatory processes to legitimize their continued dominance rather than to empower marginalized community members.[885] The pattern of elite capture is particularly concerning given the

[883]David Oladeji Ehijie Borha, and Olusola Joshua Olujobi. "An examination of the Petroleum Industry Act 2021: prospects, challenges, and the way forward." (2023) 12 F1000Research 551.
[884]Adekunle Alaye, and Oludare Ogunbanwo, "Oil Politics and Governance: Emerging Socio-Economic Trends in Nigerian States." (2024) 20 Acta U. Danubius Jur. 126.
[885] *Ibid.*

patronage networks that characterize Nigerian politics. Community leadership structures often reflect broader patterns of cronyism politics where traditional authorities derive their legitimacy from their connections to state power rather than from genuine community representation. When participatory processes are introduced without adequate safeguards against elite capture, they can become mechanisms through which existing power hierarchies are reinforced rather than challenged. Research on Niger Delta politics[886] demonstrates how political elites have successfully co-opted community organizations and traditional institutions to serve their interests. Local communities dependent on natural resources affected by oil spills were particularly vulnerable to elite manipulation, experiencing not just individual health impacts but also broader social cohesion weakening that made them susceptible to capture by political entrepreneurs. These dynamics suggest that citizen-centered approaches must include robust safeguards against elite capture if they are to serve genuine community interests.

Also, the Nigerian government's overwhelming dependence on oil revenues creates fundamental structural incentives that align state interests with corporate rather than community welfare. Nigeria's economy has become so dependent on oil exports that the federal government derives approximately 80-90% of its revenues from the oil sector.[887] This dependency creates a situation where government officials at all levels have economic incentives to prioritize oil production and corporate profits over environmental protection and community rights.[888] The revenue dependence problem is compounded by the country's failure to diversify its economic base despite decades of oil wealth. Political will in effectively managing crude oil wealth in Nigeria has been lacking, placing serious limitations on the country's effort to diversify its productive base and move from being a mono-product to a multi-product economy. This mono-economic structure means that government officials often view environmental regulations, and community demands for remedy as obstacles to economic growth rather than legitimate claims for protection of human rights. The structural dependency on oil revenues also creates incentives for government officials

[886]Tarila Marclint Ebiede, and Arnim Langer. "The political lives of ex-militant leaders in Nigeria's Niger Delta." (2023) 23 (3) Conflict, Security & Development 219-236.; Anele Nnanta Amadi, "The Presidential Amnesty Programme (PAP) and the Niger Delta: analysing the role of local communities in the programme between 1999 and 2017." (2023).; Ndubuisi Nwokolo, and Iro Aghedo, "Consolidating or corrupting the peace? The power elite and amnesty policy in the Niger Delta region of Nigeria." (2018) 3(3) Chinese Political Science Review 322-344.

[887]. Akinola, Adeoye . "THE NIGERIAN OIL ECONOMY" (2022) The Oxford Handbook of Nigerian History 421; Chinenye Francisca Nduokafor, Chavwuko Stephen Ovwighose, and Ugochukwu J. Nwoye. "Effect of oil and non-oil revenue of the federal government on the economy of Nigeria." (2024) 5(2) Journal of Contemporary Issues in Accounting 16-40; A. Ebimobowei, "Oil revenue and economic growth of Nigeria: 1990–2019" (2022) 5(1) African Journal of Economics and Sustainable Development, 17-46; O.

[888] A. Ebimobowei, "Oil revenue and economic growth of Nigeria: 1990–2019" (2022) 5(1) African Journal of Economics and Sustainable Development, 17-46.

to maintain close relationships with multinational oil companies, even when those relationships compromise their ability to serve as neutral arbiters in disputes between corporations and communities. The symbiotic relationship between corporations and the state in extractive contexts creates particular challenges for remedy mechanisms that depend on state institutions for enforcement. When state revenues depend directly on corporate activities, government officials may be reluctant to enforce regulations or support community claims that could reduce corporate profitability and state revenues in turn.

Furthermore, the lack of sustained political commitment to participatory governance reforms represents another significant barrier to implementing citizen-centered remedy approaches. Despite formal commitments to democratic governance and human rights, Nigerian political leaders often lack the political will necessary to implement reforms that would genuinely empower communities and constrain corporate power. This deficit in political will manifests through inconsistent policy implementation, frequent changes in regulatory leadership, and the subordination of long-term institutional development to short-term political considerations.[889] The political will deficit is exacerbated by the short-term incentives that dominate Nigeria's electoral cycle. Political leaders facing elections every four years have limited incentives to invest in long-term institutional reforms that might constrain their own power or reduce their access to oil revenues. The immediate pressures of electoral competition often override longer-term commitments to governance reform, particularly when those reforms might antagonize powerful corporate sponsors or traditional elites who provide crucial political support.[890]The absence of sustained political will is evident in the pattern of policy reversals and institutional instability that has characterized Nigeria's governance of the oil sector. Regulatory agencies are frequently reorganized, senior officials are regularly replaced, and policy priorities shift with each change in political leadership.[891] This institutional instability makes it difficult to develop the long-term relationships and sustained commitment necessary for effective citizen participation in remedy mechanisms.

In addition, Nigeria's political system has extensive patron-client relationships that systematically undermine genuine citizen participation in governance. In clientelist systems, political relationships are based on personal loyalty and material exchange rather than program

[889] Chinenye Francisca Nduokafor, Chavwuko Stephen Ovwighose, and Ugochukwu J. Nwoye. "Effect of oil and non-oil revenue of the federal government on the economy of Nigeria." (2024) 5(2) Journal of Contemporary Issues in Accounting 16-40.
[890] Richard Joseph, *Democracy and Prebendal Politics in Nigeria: The Rise and Fall of the Second Republic* (Cambridge University Press 1987), at 61–65.
[891] Energy focus report, *supra,* note 550.

commitments or ideological alignment.[892] These patterns create strong incentives for political leaders to maintain control over resource distribution and limit genuine citizen participation that might challenge existing patronage networks. Clientelist politics manifests in the oil sector through the distribution of benefits and opportunities based on political loyalty rather than need or merit. Community leaders who maintain good relationships with political patrons may receive preferential access to contracts, compensation payments, employment opportunities, or development projects, while those who challenge the system are often excluded or penalized. These dynamics create strong disincentives for genuine citizen participation and encourage community members to work within existing patronage networks rather than demanding systemic reform. The persistence of clientelist politics also affects the design and implementation of participatory mechanisms. When political leaders view participatory processes primarily as opportunities to reward patronage rather than genuine forums for citizen voice, they design these processes to reinforce existing power relationships rather than challenge them. Community members, understanding these dynamics, often participate in ways that are calculated to maintain their access to benefits rather than advancing collective community interests.

5.2.3. Corporate Resistance and Power Asymmetries

Multinational oil companies maintain substantial advantages in terms of access to and control over technical information that is crucial for understanding environmental impacts and designing appropriate remedies. Corporations typically possess superior resources, technical expertise, and access to crucial evidence, while communities struggle to obtain the documentation necessary to substantiate their claims against corporate violations. This information asymmetry is particularly pronounced in environmental cases where scientific evidence linking corporate conduct to harm may be complex and expensive to obtain. The information asymmetry problem is compounded by corporate control over monitoring and reporting systems. Oil companies often control the collection and interpretation of environmental data, enabling them to present information in ways that minimize apparent environmental impacts while maximizing their own credibility.[893] Studies[894] have revealed that many spill and flare events are underreported or manipulated in

[892] Olajide Olufunsho Ayobolu, "Nigerian political parties and the phenomenology of issues-based campaigns: a critical appraisal of the philosophical orientation of political parties in Nigeria since 1999." (2025) 5(1) Nigerian journal of arts and humanities (NJAH) <http://nigerianjournalsonline.org/index.php/NJAH/article/view/217>
[893]Annie Brett, "Information as Power: Democratizing Environmental Data." (2022) Utah L. Rev. 127.
[894] Seyi Adewale Adebangbe, Deborah Dixon, and Brian Barrett. "Working with “Safety”: Researching Oil-Spill-Impacted Communities in the Niger Delta." (2025) The Professional Geographer 1-15; Godspower Oke Omokaro et al, "Oil spillage in the Niger Delta: impacts, institutional failures, and policy reforms." (2025) 2 (3)Academia

official databases, undermining both public trust and scientific analysis. When corporations control the information systems that are supposed to monitor their own performance, they manipulate public understanding of their environmental footprints and undermine remedy mechanisms. Information asymmetries also extend to legal and regulatory knowledge. Multinational corporations employ teams of experienced lawyers and regulatory specialists who understand how to navigate complex regulatory systems and minimize legal liability. Local communities typically lack access to comparable legal expertise and may not understand their rights or the procedural requirements for pursuing remedy through formal channels. This knowledge gap creates significant disadvantages for communities attempting to hold corporations accountable through legal or regulatory processes.

Moreover, the vast differences in financial and legal capacity between multinational corporations and local communities create systematic advantages for corporate interests in any dispute or negotiation. Corporations can afford to hire top-tier legal representation, expert witnesses, and technical consultants, while communities often rely on under-resourced NGOs or pro bono legal support.[895] These resource disparities affect remedy processes in multiple ways: they impede negotiation by allowing companies to propose inadequate settlements knowing victims lack viable alternatives, and they deter litigation by ensuring the cost of pursuing claims outweighs any remedy prospects for impacted communities. The resource disparity extends beyond financial resources to include organizational capacity and technical expertise. Multinational corporations have sophisticated organizational systems for managing complex legal and regulatory processes, while communities often lack the institutional infrastructure necessary to sustain long-term engagement with remedy mechanisms. Corporate legal teams dedicate limitless resources to managing corporate exposure to liability, while community representatives must typically balance advocacy activities with their primary occupations and family responsibilities. Various studies have documented how these resource asymmetries create systemic inequities in grievance processes, even when those processes are designed to be formally neutral. Power asymmetries between corporations and communities reflect not only resource differences but also knowledge asymmetries that enable corporate manipulation of remedy processes. Even when communities have formal rights to participate in remedy mechanisms, their ability to exercise those rights

Environmental Sciences and Sustainability; Helen Thanopoulou et al, "Supporting informed public reactions to shipping incidents with oil spill potential: An innovative electronic platform." (2023) 15 (20) Sustainability 15035.

[895] ASEAN "Thematic Study on Legal Aid" (2019) online at < https://aichr.org/wp-content/uploads/2019/09/AICHR-Thematic-Study-on-Legal-Aid-for-web.pdf>

effectively is constrained by their limited access to the resources necessary for meaningful participation.

Rather than engaging in genuine efforts to prevent harm or provide meaningful remedy when harm occurs, many multinational corporations adopt evasive strategies which could include minimal compliance (box-ticking) to avoid accountability.[896] This strategic compliance approach involves companies meeting procedural requirements for environmental assessment, community consultation, or grievance handling without genuinely addressing underlying community concerns or preventing future harm. Strategic compliance strategies often involve corporate grievance mechanisms that lack transparency and independence, operating more as corporate social responsibility than redress mechanisms. Companies design these processes to manage risk and maintain operational control rather than provide meaningful redress to affected communities. The complexity and administrative nature of most grievance mechanisms, combined with their geographically distant and culturally foreign characteristics, makes it highly challenging for rights-holders to engage effectively without support from civil society organizations or trade unions. The strategic compliance approach is evident in corporate responses to environmental regulations where companies may invest heavily in legal and public relations strategies to demonstrate compliance while continuing practices that cause environmental harm.[897] Oil companies operating in Nigeria have been documented as treating environmental compliance requirements as risk management/mitigation rather than binding legal obligations, calculating that the costs of non-compliance are lower than the costs of respecting human rights[898].

Also, communities and individuals who challenge corporate operations or demand accountability often face risks of intimidation, economic retaliation, or violence that discourage participation in remedy mechanisms.[899] The potential for corporate retaliation creates a chilling effect that deters community members from engaging in advocacy activities or pursuing formal complaints against oil companies. This retaliation could take various forms ranging from economic pressure such as loss of employment or business opportunities to more direct forms of intimidation including harassment and murder of community leaders and human rights defenders. The retaliation risk is compounded by the close relationships between multinational oil companies and security forces in Nigeria. Oil companies have historically relied on both state security forces and private security

[896] E Mujih, "Do Not Simply Tick the Box: The Effectiveness of the Corporate Governance Code 2018 in the Absence of an Implementation Mechanism" (2021) 42:2 Co Lawyer 43. at 48 (Mujih).
[897] *Ibid.*
[898] Mugih, *supra,* note 896.
[899] Vanclay, F. and Hanna, P., "Conceptualizing company response to community protest: Principles to achieve a social license to operate" (2019) *Land, 8*(6), at 101.

contractors to protect their operations, and these security arrangements have sometimes been used to intimidate community activists and suppress protest activities. The history of violent suppression of community protests in the Niger Delta, including incidents such as the killing of Ken Saro-Wiwa and other Ogoni leaders,[900] creates a legacy of fear that continues to affect community willingness to challenge corporate operations. Environmental justice researchers[901] have emphasized that the intersection of corporate environmental abuses creates particular vulnerabilities for community leaders and human rights defenders who challenge powerful corporate interests. IPLC, women, and children often bear the brunt of both environmental impacts and retaliation for challenging corporate activities. These intersecting vulnerabilities mean that those who are most affected by corporate human rights violations are often also those who face the greatest risks for seeking remedy or demanding accountability.

5.3. Community-Level Implementation Challenges

The implementation of citizen-centered participatory remedy mechanisms in Nigeria's Niger Delta faces significant community-level challenges that operate across three interconnected dimensions that collectively constrain genuine community participation and limit the transformative potential of alternative remedy approaches. Despite formal recognition of community rights and participation requirements in various legal frameworks, deep-seated structural impediments at the community level continue to reproduce patterns of marginalization and ineffective remedy access that participatory mechanisms are designed to address

5.3.1. Internal Community Dynamics

The question of leadership legitimacy represents one of the most complex challenges confronting citizen-centered remedy mechanisms in the Niger Delta. The region's communities operate within pluralistic governance systems where traditional authority structures coexist uneasily with modern democratic institutions, creating fundamental tensions about who possesses legitimate authority to represent community interests in remedy process.[902] The Land Use Act of 1978 fundamentally altered traditional land tenure systems by vesting all land ownership in the state while simultaneously recognizing certain customary claims, creating ambiguity about the

[900] Gregory A. Odey, "The Ogoni Uprising in Nigeria: the Niger-Delta Crisis and its Impact on Nigeria's Unity, 1980-1999." (2021) <https://dc.etsu.edu/etd/3973/>
[901] David Birchall, "The role of civil society and human rights defenders in corporate accountability." (2020) Research handbook on human rights and business 422-445.
[902] MA Habiba, "Conflicts in the Niger Delta: Analysis of Causes, Impacts and Resolution Strategies" (PhD Dissertation, Coventry University, 2018) at 122–126.

legitimacy of traditional leaders' authority over community representation. This legal transformation has produced situations where traditional rulers maintain cultural authority and community respect while lacking formal legal standing to negotiate on behalf of their communities with oil companies or government agencies. The legitimacy crisis is further complicated by the emergence of multiple competing leadership structures within Niger Delta communities. Beyond traditional rulers, communities now contend with elected local government officials, youth leaders, women's group representatives, and various community development associations, each claiming different forms of representational authority.[903] The proliferation of leadership structures reflects both democratic aspirations and the strategic response of various groups to access remedy mechanisms and corporate social responsibility programs. However, this multiplicity creates confusion about authentic community representation and enables oil companies to exploit these divisions by selectively engaging with leaders who are most amenable to corporate interests rather than those who genuinely represent community concerns.[904]

Also, internal conflicts represent another dimension of community dynamics that severely undermines participatory remedy mechanisms. The Niger Delta's ethnic diversity creates persistent tensions between different ethnic groups within communities, particularly in areas where oil discoveries have altered traditional settlement patterns and economic relationships. The conflict between Ijaw and Itsekiri communities in Warri exemplifies how ethnic divisions can paralyze community decision-making processes and prevent unified responses to corporate human rights violations.[905] These conflicts often intensify when oil resources are discovered, as different ethnic groups compete for recognition as the IPLC entitled to receive compensation and

[903] J Gaventa, "Representation, Community Leadership and Participation: Citizen Involvement in Neighbourhood Renewal and Local Governance" (London: Neighbourhood Renewal Unit, Office of Deputy Prime Minister, February 2004) at 8–11

[904] MA Habiba, "Conflicts in the Niger Delta: Analysis of Causes, Impacts and Resolution Strategies" (PhD Dissertation, Coventry University, 2018) at 127.

[905] The Warri Crisis (1997-2003) was a series of violent conflicts in Delta State, Nigeria, between the Ijaw and Itsekiri ethnic groups, displacing over 200,000 people. The conflict originated from disputes over local government headquarters relocation from an Ijaw community (Ogbe Ijoh) to an Itsekiri community (Ogidigben), but fundamentally centered on control of oil revenues and benefits. Both groups claim ancestral ownership of Warri, seeking proportional representation in government structures that distribute oil contracts, jobs, and development projects. The Itsekiri traditionally dominated local government positions, while the numerically larger Ijaw felt marginalized from oil-related benefits despite living in resource-producing areas. This ethnic division creates competing claims to legitimacy when engaging with oil companies like Shell and Chevron. The conflict exemplifies how ethnic fragmentation paralyzes unified community responses to corporate violations. Instead of presenting cohesive demands for environmental remediation or compensation, communities become divided along ethnic lines, with each group separately negotiating with oil companies. This division enables corporate manipulation - companies can exploit ethnic tensions by favoring one group over another, undermining collective bargaining power and preventing unified accountability mechanisms. The crisis demonstrates that without addressing underlying ethnic divisions and establishing inclusive governance structures, communities remain vulnerable to corporate exploitation despite shared experiences of environmental degradation and rights violations.

participate in remedy processes. Ethnic conflicts intersect with religious divisions that further fragment community solidarity. Religious differences can undermine collective action when communities must present unified positions in remedy negotiations, as religious leaders may prioritize denominational interests over broader community welfare. These divisions are often exploited by external actors, including oil companies and government officials, who use divide-and-rule strategies to weaken community negotiating position.

In the same vein, generational tensions between elders and youth represent a particularly acute challenge for participatory remedy mechanisms. Traditional authority systems typically vest decision-making power in elderly men, whereas younger community members often bear the greatest burden of environmental degradation and economic displacement caused by oil operations. Youth frustration with traditional leadership has fueled the emergence of militant groups and cult organizations that challenge established authority structures through violence and intimidation[906]. The disconnect between traditional gerontocratic governance and youth demands for participation creates situations where remedy mechanisms fail to address the concerns of those most affected by corporate violations while simultaneously alienating traditional leaders who retain significant cultural authority.

Furthermore, capacity constraints significantly limit community ability to engage effectively with complex remedy mechanisms. Despite formal participation requirements, most community members lack the technical and legal knowledge necessary to understand environmental impact assessments, evaluate proposed remediation measures, or negotiate effectively with corporate legal teams. NEITI has noted that educational deficits and limited technical literacy prevent meaningful community participation in extractive industry governance, even when formal consultation mechanisms exist.[907] These capacity limitations are exacerbated by language barriers, as technical documents are typically provided in English rather than local languages, and analysis of corporate claims about environmental impacts and remediation measures rely on easily manipulated scientific data rather than local knowledge. Gender marginalization within community leadership structures creates additional barriers to effective participation in remedy mechanisms. Traditional authority systems in the Niger Delta typically exclude women from formal decision-making roles, despite women's central involvement in agricultural and fishing

[906] MA Habiba, "Conflicts in the Niger Delta: Analysis of Causes, Impacts and Resolution Strategies" (PhD Dissertation, Coventry University, 2018) at 126.

[907] Olayinka Moses et al, "Extractive sector governance: does a nexus of accountability render local extractive industries transparency initiatives ineffective?" (2024) 32(1) Meditari Accountancy Research 176-206; Oluwakemi Oluwafunmilayo Oke, "Implementing global norms in local contexts: evaluating the effectiveness of transparency and accountability in the Nigerian extractive sector." (PhD dissertation, University of British Columbia, 2021).

activities that are most directly affected by oil pollution. Research by the Partnership for Inclusive Development in the Niger Delta[908] found that customary practices prevent women from inheriting land, exclude them from family decision-making, and restrict their ability to engage in economic activities without male approval.[909] These restrictions limit women's ability to participate directly in remedy negotiations and ensure that their specific concerns about environmental health impacts and livelihood disruption are adequately addressed. However, youth increasingly organize through alternative structures, including cult groups and militant organizations to challenge traditional authority through violence and disruption of oil operations. Youth marginalization operates through similar mechanisms, as traditional authority systems grant decision-making power based on age and gender hierarchies that exclude younger community members.[910] However, youth increasingly organize through alternative structures, including cult groups and militant organizations to challenge traditional authority through violence and disruption of oil operations. The emergence of youth-led movements reflects both democratic aspirations and frustration with exclusion from remedy processes that impact their future. Yet youth militancy often undermines community solidarity and creates security concerns that oil companies use to justify limited community engagement and increased reliance on security forces rather than participatory dialogue.

5.3.2. Cultural and Social Barriers

Traditional authority systems create fundamental tensions with participatory democracy that undermine citizen-centered remedy mechanisms. The Niger Delta's customary governance structures operate according to principles that emphasize hierarchy, respect for elders, and consensus-building through extended deliberation rather than majority voting. These traditional decision-making processes conflict with the procedural requirements of formal remedy mechanisms, which typically operate according to democratic principles of individual rights, majority rule, and time-bound decision-making, Traditional rulers often view participatory

[908] Partnership for Inclusive Development in the Niger Delta 'Gender Assessment in the Niger Delta Region of Nigeria' (Pind Foundation, 2011) online at <https://pindfoundation.org/wp-content/uploads/2016/08/Gender-Assessnent.pdf>

[909] Sam, Kabari, and Tubodenyefa, Zibima. "Inclusive environmental decision-making in a developing nation: insights from the Ogoni remediation project, Niger Delta, Nigeria." (2024) 73(2) Environmental Management 323-337.

[910] MA Habiba, "Conflicts in the Niger Delta: Analysis of Causes, Impacts and Resolution Strategies" (PhD Dissertation, Coventry University, 2018) at 89.

democracy as a foreign imposition that undermines their cultural authority and disrupts social harmony, while community members educated in democratic principles may challenge traditional authority as undemocratic and exclusionary. The tension between customary and democratic governance is particularly acute in remedy contexts because traditional systems emphasize restoration of social harmony through dialogue and compensation, while formal legal systems focus on establishing individual rights and assigning liability. Traditional dispute resolution mechanisms typically seek outcomes that preserve community relationships and acknowledge the interconnectedness of social, spiritual, and environmental dimensions of harm. In contrast, formal remedy mechanisms often reduce complex community impacts to quantifiable damages that can be compensated through monetary payments or technical remediation measures. This fundamental difference in approach creates situations where communities may participate in formal remedy processes while simultaneously pursuing traditional resolution mechanisms that operate according to different principles and may reach conflicting outcomes.

Also, trust deficits represent perhaps the most significant cultural barrier to effective community participation in remedy mechanisms. Decades of broken promises, inadequate compensation, and corporate manipulation have created deep-rooted skepticism about the sincerity of corporate and government commitments to meaningful community participation. The history of oil extraction in the Niger Delta is marked by numerous instances where communities were promised development benefits that never materialized, environmental remediation that was inadequately implemented, and compensation payments that were diverted by corrupt officials or inequitably distributed.[911] These experiences have created historical betrayals that erode community trust in formal processes and make community members reluctant to invest time and energy in participatory mechanisms that they believe are designed to legitimize corporate activities rather than provide meaningful remedy. Trust deficits are reinforced by ongoing patterns of corporate behavior that demonstrate limited commitment to genuine participation. Oil companies frequently conduct community consultations that meet formal procedural requirements while failing to incorporate community input into actual decision-making. Research by Spaces for Change found that community engagement in the Niger Delta often involves cosmetic box ticking exercises where companies present hard line/predetermined plans to communities without meaningful opportunities for negotiation, modification or rejection.[912] These pseudo-participatory processes

[911] TZ Bornu, 'Niger Delta: The Unsolved Problem' (2025) 7(5) American Journal of Political Science, Law & Criminology 99, 104.

[912] Ibiangake Friday Ndioho, Integrated Impact Assessment in the Nigerian Niger Delta: Effects of Non-Implementation of Health Interventions (PhD thesis, Manchester Metropolitan University 2024) 160.

actually deepen mistrust by creating expectations that are not fulfilled, leading community members to conclude that formal participation mechanisms are designed to co-opt rather than empower communities.

Communication barriers create additional obstacles to meaningful participation in remedy mechanisms. The Niger Delta's linguistic diversity means that many community members cannot effectively communicate in English, which is typically the language of formal remedy processes.[913] Technical documentation, environmental impact assessments, and legal agreements are produced in English using specialized terminology that is incomprehensible to most community members even when translated into local languages. The absence of culturally appropriate communication methods means that information sharing often follows top-down patterns that mirror traditional authority relationships rather than creating opportunities for genuine dialogue and mutual learning. Cultural differences in communication styles further complicate participatory processes. Many Niger Delta cultures emphasize indirect communication, respect for authority, and consensus-building through extended discussion,[914]while formal remedy mechanisms often require direct questioning, individual expression of opinions, and time-bound decision-making. Community members may be reluctant to challenge corporate representatives directly or express disagreement publicly, particularly in settings where traditional authorities are present. These cultural preferences for harmony and respect can be misinterpreted by external facilitators as consent or lack of interest, when they actually reflect cultural norms that prioritize relationship preservation over individual expression.

Social cohesion challenges arise from the disruptive effects of extractive activities on traditional social structures and relationships. Oil extraction has fundamentally altered the Niger Delta's economic and social landscape by introducing new forms of wealth and opportunity while simultaneously destroying traditional livelihoods and environmental resources.[915] These changes have created new social hierarchies based on access to oil company employment, contracts, and compensation payments, while undermining traditional status systems based on age, lineage, and cultural knowledge.[916] The resulting social fragmentation makes it difficult for communities to regroup and organize to negotiate effective remedy. Instead, it creates opportunities for external actors to exploit internal divisions and further weaken the already fragmented community front.

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[913] MA Habiba, "Conflicts in the Niger Delta: Analysis of Causes, Impacts and Resolution Strategies" (PhD Dissertation, Coventry University, 2018).

[914] *Ibid.*

[915] AP Onyena & K Sam, "A Review of the Threat of Oil Exploitation to Mangrove Ecosystem: Insights from Niger Delta, Nigeria" (2020) 22 Global Ecology & Conservation e00961. 6.

[916] *Ibid* at 7.

The monetization of social relationships through oil-related compensation and employment has altered traditional reciprocity systems and created new forms of inequality within communities.[917] Individuals who secure employment in oil companies or lucrative contracts often accumulate wealth and influence that disrupts traditional authority patterns, while community members who lose traditional livelihoods through environmental degradation become economically dependent and subservient to those with oil induced income. These new forms of stratification can undermine community solidarity and create conflicts of interest that prevent collective action in remedy processes.

5.3.3. Economic Pressures and Dependencies

Poverty and loss of livelihood creates immediate pressures that overshadow long-term participatory engagement in remedy mechanisms. The environmental degradation caused by oil extraction has destroyed many traditional economic activities, including fishing, farming, and palm oil production, forcing community members to focus on immediate survival rather than long-term advocacy for systemic change.[918] The urgency of daily subsistence needs makes it difficult for community members to invest time in participatory processes that may not yield immediate benefits, even when such processes might address root causes of their economic difficulties. This creates a vicious cycle where economic desperation undermines the collective action necessary to address the structural causes of economic insecurity. The contamination of farmland and water sources has eliminated many women's income-generating activities while simultaneously increasing their domestic responsibilities as they must travel greater distances to access clean water and food. These increased burdens limit women's time for participation in remedy processes while simultaneously making them more dependent on male relatives who may have access to oil-related employment or compensation.[919] The contamination of farmland and water sources has eliminated many women's income-generating activities while simultaneously increasing their domestic responsibilities as they must travel greater distances to access clean water and food. These increased burdens limit women's time for participation in remedy processes

[917] S Tulaeva & S Nysten-Haarala, "Resource Allocation in Oil-Dependent Communities: Oil Rent and Benefit Sharing Arrangements" (2019) 8:2 Resources 86.
[918] B Chijioke, IB Ebong & H Ufomba, "The Impact of Oil Exploration and Environmental Degradation in the Niger Delta Region of Nigeria: A Study of Oil Producing Communities in Akwa Ibom State" (2018) 18:3 Global J Hum Soc Sci 54.
[919] Okolo-Obasi, E.N., Uduji, J.I. and Asongu, S.A., 2020. Strengthening women's participation in the traditional enterprises of sub-Saharan Africa: The role of corporate social responsibility initiatives in Niger Delta, Nigeria. *African Development Review*, *32*, at S78-S90.

while simultaneously making them more dependent on male relatives who may have access to oil-related employment or compensation.[920]

Youth face particular challenges as traditional economic activities decline while oil-related employment opportunities remain limited and often require educational qualifications or technical skills that are unavailable in many coastal oil host communities. The absence of viable economic alternatives has contributed to youth involvement in illegal oil refining, pipeline vandalism, and other criminal activities that provide immediate income but undermine community relationships with oil companies and government agencies.[921] Youth economic desperation makes them vulnerable to manipulation by various actors, including politicians, militant leaders, and oil companies seeking to co-opt potential opposition[922]. Economic dependency on oil companies creates structural constraints on community participation in remedy mechanisms. Many communities have become reliant on corporate social responsibility programs for basic services, including healthcare, education, and infrastructure, that should be provided by government agencies.[923] This dependency creates situations where communities are reluctant to challenge corporate practices too forcefully for fear of losing access to essential services. Oil companies often use CSR programs strategically to create dependency relationships that limit community criticism and ensure cooperation with corporate objectives rather than community needs.[924]
The employment dependency is particularly problematic because oil companies typically hire small numbers of community members for positions that create privileged relationships with corporate management. These individuals often become intermediaries between companies and communities, but their economic dependence on corporate employment may compromise their ability to represent community interests authentically. Grama's study suggests that oil companies deliberately cultivate relationships with community members through employment and contracts as a strategy for managing community relations and preventing collective action against corporate practices.[925] Opportunity costs associated with meaningful participation in remedy mechanisms

[920] Okolo-Obasi, E.N., Uduji, J.I. and Asongu, S.A., 2020. Strengthening women's participation in the traditional enterprises of sub-Saharan Africa: The role of corporate social responsibility initiatives in Niger Delta, Nigeria. *African Development Review*, *32* at .S78-S90 (Okolo-Obasi et al).
[921] *Ibid.*
[922] Okolo-Obasi et al, *supra*, note 920.
[923] *Ibid.*
[924] U Idemudia, "Oil Companies and Sustainable Community Development in the Niger Delta, Nigeria: The Issue of Reciprocal Responsibility and its Implications for Corporate Citizenship Theory and Practice" (2014) 22:3 Sustainable Dev at 177.
[925]Ben Grama, "Company-administered grievance processes for external stakeholders: A means for effective remedy, community relations, or private power?" (2022) 39 Wis. Int'l LJ 71.

create additional economic barriers to effective community engagement. Genuine participation requires sustained time commitment for learning about technical issues, attending meetings, and engaging in advocacy activities that take community members away from income-generating activities. For economically vulnerable households, the opportunity cost of participation may be prohibitive, particularly when remedy processes extend over months or years without producing tangible benefits. This creates a situation where meaningful participation becomes a luxury that only relatively privileged community members can afford, thereby limiting the representativeness of community voices in remedy processes.

Furthermore, the time requirements for effective participation are particularly challenging for women, who typically bear primary responsibility for household food production, childcare, and elder care in addition to any income-generating activities. The multiple responsibilities that women carry make it difficult for them to attend meetings, particularly when such meetings are scheduled according to male work patterns or held in locations that require extended travel. These practical barriers to participation often result in women's exclusion from remedy processes, even when formal mechanisms include provisions for gender inclusion. Benefit distribution conflicts create internal community tensions that undermine collective action in remedy processes. When oil companies provide compensation or development projects, decisions about benefit allocation often become sources of conflict between different families, ethnic groups, or community factions.[926] Traditional authority systems may not provide clear guidance for distributing benefits from extractive activities, creating opportunities for conflicts that can paralyze community decision-making. These conflicts are often exacerbated by external actors who may support different community factions as a strategy for weakening unified community opposition to harmful corporate practices. The absence of transparent and accountable mechanisms for benefit distribution means that community members may spend more energy competing for access to limited resources than collaborating to demand better corporate practices or more adequate remediation measures. Oil companies often exploit these internal conflicts by providing benefits through channels that favor cooperative community leaders while excluding more critical voices.[927]This divide-and-rule strategy weakens community solidarity and undermines the

[926] *Ibid.*

[927] This pattern is well-documented in Niger Delta practice, where oil companies provide infrastructure, employment, and development projects preferentially to communities and leaders perceived as pro-development, while withholding benefits from areas that have demonstrated opposition to corporate operations or demanded stronger environmental protections. Scholars identify this as a deliberate elite capture strategy: corporate funds flow through channels controlled by aligned community elites who have incentives to maintain cordial relationships with companies, while marginalized voices, particularly environmental activists, youth leaders, and women's groups, are

collective action necessary for effective remedy advocacy. Compensation distribution conflicts are particularly acute because traditional systems for sharing resources may not address the unique characteristics of oil-related payments. Traditional sharing mechanisms typically distribute resources based on family relationships, age hierarchies, or contributions to community welfare, but oil compensation may be calculated according to individual land ownership, proximity to oil facilities, or other criteria that do not align with customary distribution principles. The mismatch between compensation criteria and traditional sharing norms creates opportunities for conflicts that can destabilize communities for extended periods. For instance, when oil companies provide compensation based on individual land ownership, this disrupts customary systems where resources are shared by family, age hierarchy, and community contribution, generating disputes over benefit allocation that paralyze collective action.

5.4. Legal and Institutional Implementation Barriers

The implementation of citizen-centered participatory approaches to corporate human rights remedies in Nigeria faces significant legal and institutional barriers that fundamentally constrain the effectiveness of such mechanisms. These barriers operate at multiple levels, creating systematic obstacles that prevent meaningful participation by affected communities in remedy processes. Understanding these barriers is essential for developing effective strategies to overcome them and create genuinely participatory remedy frameworks.

5.4.1. Constitutional and Legal Framework Constraints

The most fundamental constitutional barrier to effective environmental remedy in Nigeria stems from the non-justiciable nature of Section 20 of the Constitution. Section 20 of the Constitution of the Federal republic of Nigeria (1999) provides that the State shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria.[928]However, this provision falls under Chapter II of the Constitution, which contains the Fundamental Objectives and Directive Principles of State Policy. By virtue of Section 6(6)(c) of the Constitution, these

systematically excluded from benefit-sharing arrangements and decision-making processes. This selectivity creates perverse incentives: cooperative community leaders have material reasons to support corporate interests regardless of environmental or social consequences, while critical voices lacking access to corporate benefits face pressure to moderate their positions or risk economic marginalization; K.C. Gbali, "Corporate Social Responsibility and Management of Oil-Related Conflicts in Host Communities of the Niger Delta" (2021) 12:4 West African Journal of Archaeology and Resource Research 95–118 at 105–110.

[928] Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 4(7), 315; Forestry Act, Cap F23 LFN 2004; National Park Service Act, Cap N65 LFN 2004; Endangered Species (Control of International Trade and Traffic) Act, Cap E9 LFN 2004.

provisions are explicitly rendered non-justiciable, meaning that courts cannot enforce them directly. This constitutional limitation creates a fundamental paradox for environmental human rights remedy. While the Constitution appears to guarantee environmental protection, victims of environmental degradation cannot directly invoke Section 20 to seek redress for environmental harm. The non-justiciability barrier has particularly severe implications for citizen-centered remedy mechanisms because it undermines the constitutional foundation upon which participatory environmental protection could be built. Without a justiciable right to environmental protection, communities cannot use constitutional provisions as the basis for demanding meaningful participation in environmental decision-making or remedy processes. This creates a legal vacuum where environmental rights exist in principle but cannot be enforced in practice, fundamentally weakening any citizen-centered approach to environmental remedies.

Even where legal remedies theoretically exist, procedural complexity and prohibitive litigation costs create systematic barriers to access. The cost of environmental litigation in Nigeria is so high that most affected communities cannot afford adequate legal representation. Within some jurisdiction in the country, the filing fees are calculated based on the monetary value of claims, with a claim of ten million naira requiring a filing fee exceeding fifty thousand naira before the suit can even be filed.[929] These costs are particularly problematic for Niger Delta communities affected by oil spills and pollution. The temporal limitations add another layer of complexity, as limitation periods for environmental claims often work against victims who may not immediately understand the connection between corporate conduct and environmental harm. The procedural complexity extends beyond mere financial barriers to encompass technical requirements that effectively exclude community participation. Environmental litigation requires sophisticated scientific evidence to establish causation between corporate activities and environmental harm.

Standing doctrine in Nigerian courts has traditionally imposed strict requirements that limit public interest environmental litigation. The legal concept of *locus standi* requires that plaintiffs demonstrate a direct and personal interest in the matter before the court, which creates particular challenges for environmental cases where harm is often collective rather than individual.[930]

[929] It is important to note that the fee for a N10 million claim in the Federal High Court was N50,000, but the fee for claims between N5 million and N10 million was a reported N5,000, and the exact fee depends on the court and its applicable rules. The fee stated (exceeding N50,000) is not a universal requirement, as different courts and specific jurisdictions within Nigeria have varying rules for determining filing costs; Chizoba I. Okpara, and Chris O. Itafu-Njar, "Public interest litigation in Nigeria: a tool for advancing environmental justice and sustainable development." (2025) 6 Orient L. J. <https://journals.ezenwaohaetorc.org/index.php/OLJ/article/download/3240/3378>

[930] Sofia Ciuffoletti, Have Trees Got Standing? A Brief Account of Locus Standi Doctrines and Case Law in the Environmental Litigation on the Basis of the Principle of Effectiveness of Rights (Diritto & Questioni Pubbliche, 2020)

However, there has been some liberalization of this rule. The Supreme Court's decision in *Centre for Oil Pollution Watch v. NNPC*[931] represented a significant departure from strict standing requirements, recognizing that environmental harm affects entire communities and that public interest organizations should have standing to bring such cases. The Court reasoned that the communities affected by the spillage leading to the degradation of the environment may not be able to muster the financial muscle to sue and therefore recognized the legitimacy of public interest litigation in environmental matters. Despite this progress, evidence and causation challenges remain formidable barriers. Establishing clear causal links between specific corporate activities and environmental harm requires sophisticated scientific analysis that is often beyond the resources of affected communities. The temporal dimension of environmental harm compounds this challenge, as contamination may persist for years or decades, making attribution to specific corporate actors extremely difficult. The asymmetry of information between corporations and communities further exacerbates these evidentiary challenges, as corporations typically possess superior resources, technical expertise, and access to crucial evidence while victims struggle to obtain necessary documentation.

5.4.2. Institutional Design Deficit

Nigeria lacks specialized environmental courts or tribunals capable of handling the technical complexity of corporate environmental cases. Unlike some jurisdictions that have established Environmental Courts and Tribunals (ECTs) with specialized expertise and expedited procedures, Nigeria continues to rely on general jurisdiction courts that are often ill-equipped to address environmental disputes effectively. The absence of specialized institutions creates multiple problems for environmental remedy. Regular courts with heavy caseloads spanning different causes of action cannot provide the expedited treatment that environmental cases often require, given the urgent nature of environmental harm. More significantly, judges in general jurisdiction courts may lack the technical expertise necessary to evaluate complex environmental evidence or understand the interconnected nature of ecosystem impacts. The absence of such specialized institutions means that environmental cases are processed through adversarial court procedures that do not accommodate meaningful community participation or collaborative problem-solving approaches.

In the same vein, the institutional landscape for environmental regulation in Nigeria is characterized by overlapping mandates and poor coordination among agencies, creating

[931] (2018) NWLR (Pt. 1666) 518.

significant barriers to effective remedy implementation.[932] Multiple agencies have environmental responsibilities, and this creates several problems. First, there are several regulatory agencies performing identical functions in Nigeria with regards to the monitoring and control of oil spills leading to confusion about roles and responsibilities. Second, the overlapping mandates often result in conflicting approaches to environmental issues, with agencies operating according to different standards and procedures. Third, the lack of coordination undermines the development of coherent remedy frameworks that could incorporate citizen participation systematically. The institutional coordination failures are particularly evident in the oil and gas sector, where NESREA's mandate explicitly excludes the oil and gas sector and the removal of any pollutant related thereto, creating a regulatory gap that undermines comprehensive environmental oversight. This fragmentation prevents the development of integrated citizen-centered approaches that could bridge different regulatory domains and provide coherent platforms for community engagement across multiple agencies.[933]

5.4.3. Integration with existing Systems

Nigerian civil service culture makes it receptive to significant resistance to participatory approaches that would be essential for effective citizen-centered remedy mechanisms. The public administration system is characterized by a top-down approach to policy-making that neglects the input of frontline implementers and marginalizes stakeholder participation in decision-making processes. This bureaucratic resistance manifests in several ways. First, civil servants often view public participation as threatening to their professional authority and administrative efficiency.[934] Second, the hierarchical nature of Nigerian bureaucracy creates structural barriers to meaningful consultation with communities, as decision-making authority is concentrated at senior levels with limited mechanisms for incorporating community input.[935] Third, performance incentives within the civil service do not reward participatory engagement, creating disincentives for officials to invest time and effort in community consultation processes.[936] The resistance to participatory approaches is exacerbated by capacity constraints within government agencies. Street-level

[932] Olawuyi, *supra*, at note 309.
[933] Olawuyi, Damilola S. "Environmental Enforcement and Regulatory Capacity in Nigeria's Oil and Gas Sector." Institute for Oil, Gas, Energy, Environment and Sustainable Development, 2018. <https://dailytrust.com/environment-standards-compliance-in-oil-sector-still-weak-ogees-report/>
[934] Bello, and F. Matthew. "Good governance and civil service accountability in Nigeria-problems and prospects." *Good Governance and Civil Service Accountability in Nigeria-Problems and Prospects* (2021).
[935] *Ibid.*
[936] Bello & Matthew, *supra,* note 934.

bureaucrats report increased workloads, operational inefficiencies, and diminished job satisfaction due to inadequate funding, unclear guidelines, and limited capacity-building opportunities. Under these conditions, meaningful public participation appears to bureaucrats as an additional burden rather than an opportunity to improve policy effectiveness.

Also, citizen-centered remedy mechanisms operate on different temporal and spatial scales than existing legal and administrative frameworks, creating systematic compatibility problems. Legal proceedings operate according to statutory timelines and procedural requirements that may not accommodate the extended time periods required for meaningful community consultation and participation. Environmental impact assessment processes exemplify these timeline mismatches. The EIA establishes specific timeframes for public comment periods and agency review, but these periods are often insufficient for genuine community engagement, particularly in remote areas where communication and transportation infrastructure are limited. Meaningful participation requires time for information dissemination, community discussion, internal deliberation, and feedback formulation, but legal requirements often impose deadlines that foreclose such processes.

Moreover, scale compatibility issues arise because citizen participation mechanisms are typically designed for local or community-level engagement, while many environmental problems and corporate activities operate at regional, national, or international scales. Oil spill impacts, for example, may affect multiple communities across different states and local government areas, requiring coordination across multiple jurisdictional boundaries. Current legal and institutional frameworks provide limited mechanisms for scaling up community participation to address such complex, multi-jurisdictional environmental problems. The temporal dimensions of environmental harm also create scale compatibility problems. Environmental degradation from extractive activities may persist for decades, requiring sustained remedy efforts that extend beyond the timeframes of typical legal proceedings or political cycles. Citizen-centered mechanisms must therefore be designed to operate over extended time periods, but existing institutional frameworks are often oriented toward short-term problem-solving rather than long-term environmental stewardship.

5.5. Prospects and Enabling Factors

Nigeria's pathway toward citizen-centered remedy mechanisms in the extractive sector is shaped by unique opportunities and constraints that distinguish it from other contexts where similar approaches have been attempted. While the analysis in previous chapters has revealed substantial

gaps and limitations in existing remedy frameworks, examining the prospects and enabling factors reveals that specific conditions within Nigeria's current political, technological, and institutional landscape create meaningful opportunities for innovation. These prospects are not merely theoretical possibilities but represent practical pathways that build upon existing capacities, emerging technologies, and evolving governance structures already present within Nigeria's complex federal system. The key distinction in assessing Nigeria's prospects lies in recognizing that citizen-centered remedy mechanisms need not be imported wholesale from other contexts but can be developed through hybrid approaches that integrate formal and informal governance structures already operating within Nigerian communities. This approach leverages the country's existing social capital, technological infrastructure, and civil society networks while addressing the specific challenges that have made traditional remedy mechanisms ineffective. The prospects identified here emerge from concrete analysis of Nigeria's institutional landscape rather than generic assumptions about what might work in developing countries generally.

5.5.1. Policy and Legal Opportunities

The current policy and legal landscape in Nigeria presents several opportunities that can serve as foundations for implementing citizen-centered remedy mechanisms. These opportunities represent existing institutional and legal frameworks that, while not currently optimized for participatory governance, contain provisions and structures that can be leveraged and strengthened to support more inclusive approaches to corporate human rights remedies. Nigeria's NAP on Business and Human Rights, adopted in 2023, represents a significant policy opportunity for implementing citizen-centered remedy mechanisms.[937] The NAP's emphasis on multi-stakeholder consultation and its recognition of civil society organizations as key implementation partners provides a policy foundation for systematically integrating citizen participation into remedy frameworks. However, realizing the potential of the NAP for supporting citizen-centered approaches requires addressing several implementation challenges. The NAP's effectiveness depends on sustained political commitment and adequate resource allocation. As a policy framework rather than binding legislation, the NAP commits the government to undertake specific actions, establishing mechanisms, developing regulations, and building capacity, but cannot compel corporate participation. Without legislation mandating corporate compliance with human rights due diligence and remedy obligations, corporations retain discretion to engage

[937] The NAP explicitly recognizes the need for enhanced stakeholder participation and community engagement in business and human rights governance, creating institutional space for the participatory approaches advocated in this research.

selectively. The NAP's success therefore hinges on translation into binding legislation and consistent community inclusion in monitoring and evaluation.

In the same vein, The Petroleum Industry Act of 2021 introduces transformative provisions for community participation in the governance of extractive industries, particularly through the Host Community Development Trust framework (HCDT).[938] The HCDT framework requires oil and gas companies to establish community-controlled development trusts funded by annual payments equivalent to three percent of a company's actual annual operating expenditures in host community areas. This participatory framework can serve as a foundation for broader citizen-centered approaches to addressing business-related human rights violations. The trust structure provides communities with institutional capacity and financial resources that can be leveraged to engage more effectively with extractive companies on remedy issues. However, early implementation experiences reveal both opportunities and challenges in leveraging the HCDT framework for citizen-centered remedy mechanisms. Additionally, news report indicates increased trust and cooperation between communities with HCDTs and oil companies, indicating that participatory governance structures can help address the relationship problems that often underlie business-related human rights violations.[939] As of June 2024, only 167 of Nigeria's petroleum license holders had established the required community development trusts, with 97 of these trusts remaining unfunded three years after the PIA's enactment.[940] This partial implementation reflects both corporate resistance and institutional capacity constraints that may limit the framework's effectiveness as a foundation for participatory remedy mechanisms. The effectiveness of HCDTs as vehicles for citizen-centered approaches also depends on addressing power imbalances within community structures. The PIA grants oil companies significant discretion in determining HCDT governance structures,[941] potentially enabling corporate capture of community institutions. Without strong safeguards for democratic participation and transparency, HCDTs risk becoming instruments for legitimizing corporate activities rather than genuine platforms for community empowerment.

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[938] Petroleum Industry Act 2021, Sections 235 – 249.

[939] Ibunge, B. PIA: HCDTs Have Reduced Communities, Oil Firms Conflict, Says Senate Committee (2025) <https://www.thisdaylive.com/2025/09/26/pia-hcdts-have-reduced-communities-oil-firms-conflict-says-senate-committee/ >

[940] Onuba, I (2025). NUPRC Approves 167 Applications For Incorporation Of Host Community Development Trusts < https://thewhistler.ng/nuprc-approves-167-applications-for-incorporation-of-host-community-development-trusts/)

[941] Petroleum Industry Act 2021, Section 251.

Furthermore, constitutional reform efforts currently under consideration include proposals to move environmental rights from Chapter II to Chapter IV of the Constitution, thereby making them justiciable and enforceable through the courts. This change would provide communities with direct constitutional grounds for challenging corporate activities that degrade their environment or threaten their health and livelihoods. Making environmental rights justiciable would also strengthen the legal foundation for participatory remedy mechanisms by establishing clear constitutional obligations for government agencies to protect community environmental rights. The proposed constitutional amendments also include provisions for strengthening local government autonomy and enhancing community participation in governance processes. These reforms would create more space for citizen-centered approaches to addressing business and human rights violations by empowering local institutions that are more accessible and accountable to affected communities. Strengthened local governance would also enhance the institutional capacity needed to implement participatory remedy mechanisms effectively. Constitutional reform processes themselves present opportunities for advancing citizen-centered approaches to remedy. The National Assembly's consideration of constitutional amendments includes public consultation processes that enable communities and civil society organizations to advocate for provisions supporting participatory governance. These consultation processes can be used to build political support for constitutional changes that would strengthen citizen-centered remedy mechanisms. [942]

Conversely, Nigeria's participation in regional integration frameworks creates additional opportunities for implementing citizen-centered remedy mechanisms. The Economic Community of West African States has developed increasingly robust frameworks for promoting participatory governance and human rights protection that can support citizen-centered approaches to business and human rights remedies. The ECOWAS Community Court of Justice has established jurisdiction over human rights violations by member states and has heard cases involving corporate accountability and environmental rights.[943] ECOWAS protocols on democratic

[942] However, constitutional reform processes in Nigeria face significant political constraints that may limit opportunities for meaningful change. Constitutional amendments require approval by two-thirds of both houses of the National Assembly and ratification by at least two-thirds of state legislatures. This high threshold for constitutional change means that reforms require broad political consensus that may be difficult to achieve given competing interests and priorities. Additionally, constitutional reform processes have historically been dominated by political elites with limited meaningful participation by affected communities and civil society organizations

[943] The ECOWAS Court's human rights jurisdiction provides an alternative forum for communities seeking remedy for business-related human rights violations when domestic courts prove inadequate. Several landmark cases demonstrate the Court's willingness to hold member states accountable for failing to protect communities from corporate abuses. This regional jurisdiction creates additional pressure on the Nigerian government to strengthen

governance and good governance provide normative frameworks supporting participatory approaches to governance. The ECOWAS Protocol on Democracy and Good Governance[944] requires member states to promote citizen participation in governance processes and to ensure transparent and accountable government institutions. These regional commitments can be leveraged to advocate for citizen-centered approaches to addressing business and human rights violations. The African Union's (AU) extractive industries governance frameworks also support participatory approaches to natural resource governance. The African Mining Vision[945] emphasizes the importance of community participation in mining governance and calls for benefit-sharing arrangements that ensure local communities receive fair shares of extractive industry revenues. The AU's business and human rights initiatives promote stakeholder engagement and community participation in corporate accountability mechanisms. Regional knowledge-sharing and technical cooperation programs create opportunities for learning from other African countries' experiences with participatory governance in extractive industries. Countries such as Ghana and South Africa have developed innovative approaches to community participation in mining governance that provide models for adaptation in the Nigerian context. Regional platforms for sharing best practices can help build the institutional knowledge and technical capacity needed to implement citizen-centered remedy mechanisms effectively.[946]

The transformation prospects for citizen-centered remedy mechanisms in Nigeria's extractive sector are significant but require strategic navigation of political, institutional, and resource constraints. The convergence of policy opportunities through the NAP, legal frameworks like the PIA, constitutional reform possibilities, and regional integration advantages create a unique window of opportunity for advancing participatory approaches to business and human rights remedies. Success in realizing these opportunities depends on building broad coalitions that include affected communities, civil society organizations, progressive government officials, and

domestic remedy mechanisms and may provide leverage for communities advocating for more participatory approaches to remedy.

[944] Protocol A/SP1/12/01 on Democracy and Good Governance Supplementary to the Protocol relating to the Mechanism For Conflict Prevention, Management, Resolution, Peacekeeping and Security

[945] The African Mining Vision (AMV); Available here: Africa Mining Vision_English. See also Olawuyi, Damilola S. *Extractives industry law in Africa*. (Cham, Switzerland: Springer, 2018) at 127.

[946] However, regional integration frameworks also face limitations that may constrain their effectiveness in promoting citizen-centered remedy mechanisms. ECOWAS institutions often lack the resources and enforcement capacity needed to compel member state compliance with regional commitments. The effectiveness of regional human rights mechanisms depends on member state cooperation, which may be limited when domestic interests conflict with regional obligations.

enlightened corporate leaders. These coalitions must be capable of sustaining advocacy efforts over the extended timeframes required for institutional and legal reforms while building the community capacity and institutional infrastructure needed for effective implementation.

5.5.2. Institutional Innovation Opportunities

The evidence from the Niger Delta region demonstrates that traditional rulers and community-based governance structures continue to exercise substantial influence in mediating disputes, managing resources, and organizing collective action, even in areas heavily affected by oil extraction activities. This suggests that effective citizen-centered remedy mechanisms need not replace existing governance structures but can be designed to work through and alongside them. The analysis of Nigeria's institutions reveals that traditional authorities in oil-producing communities maintain extensive networks of communication with grassroots populations through title holders and age-grade systems[947] that provide more effective channels for information dissemination and consultation than formal government structures. These authorities possess accurate local knowledge accumulated over many years and maintain good networks of communication with the grassroots that formal institutions often lack.[948] This local knowledge and communication capacity represents a significant institutional asset that can be leveraged in designing citizen-centered remedy mechanisms.

Moreover, the experience of civil society organizations working in Nigeria's extractive sector demonstrates that hybrid approaches combining formal advocacy strategies with traditional consultation processes often prove more effective than purely formal or purely informal approaches. The Nigeria Extractive Industries Transparency Initiative's civil society engagement framework explicitly recognizes the need to work with diverse forms of community organization, including traditional authorities, religious leaders, and cooperative societies, rather than restricting engagement to formally registered civil society organizations.[949] This recognition reflects practical experience that community mobilization and sustained engagement require working through existing social structures rather than attempting to bypass them. The hybrid institutional model proposed here would establish formal legal frameworks that recognize and

[947] An age grade system is a social organization where people of similar age form groups to promote individual and community development

[948] WO Iroh, "Age Grade System and Community Development in Ohafia Local Government Area" (Master's Dissertation, 2019), online: <https://www.researchgate.net/publication/330213492_Age_Grade_System_and_Community_Development_in_Ohafia_Local_Government_Area>.

[949] *Ibid.*

support traditional dispute resolution processes while ensuring these processes meet basic human rights standards and provide effective access to remedy for all community members. This approach addresses the limitation identified in earlier chapters that formal legal mechanisms often prove inaccessible to community members while avoiding the risk that purely informal processes may be captured by local elites or fail to protect vulnerable groups. The model creates formal oversight mechanisms that can intervene when traditional processes fail while allowing community-controlled processes to operate as the primary forum for most disputes. Practically, such hybrid institutions could be established through amendments to existing legislation that formally recognize traditional authorities as partners in environmental and social impact assessment processes, grievance handling, and remedy implementation.

The Federal High Court's recognition of customary law in environmental disputes provides a legal foundation for such hybrid approaches, while the constitutional provisions protecting customary law offer additional support for integrating traditional governance systems into formal remedy mechanisms. The challenge lies in designing institutional arrangements that respect community autonomy while ensuring that vulnerable groups have effective access to remedy processes and that outcomes align with human rights standards. This requires developing formal oversight mechanisms that can intervene when traditional processes fail while avoiding the paternalistic assumption that traditional processes are inherently inadequate.

Furthermore, Nigeria's expanding digital infrastructure and mobile connectivity create unprecedented opportunities for technology-enabled community participation in extractive industry monitoring and remedy processes. This technological infrastructure provides the foundation for digital platforms that can overcome traditional barriers to community participation in remedy mechanisms, including geographical distance, language barriers, and information asymmetries. The development of satellite monitoring tools for oil spills and gas flaring in the Niger Delta demonstrates the potential for technology-enabled community monitoring systems. The National Oil Spill Detection and Response Agency's collaboration with civil society organizations to develop the Oil Spill Monitor and Gas Flare Tracker platforms shows that government agencies recognize the value of community-accessible monitoring technologies.[950] These platforms enable communities to access real-time information about environmental conditions in their areas and to document violations of environmental standards using satellite

[950] The National Oil Spill Detection and Response Agency's collaboration with civil society organizations to develop the Oil Spill Monitor and Gas Flare Tracker platforms shows that government agencies recognize the value of community-accessible monitoring technologies.

data and ground-based monitoring. Mobile phone-based reporting systems represent another significant opportunity for enhancing community participation in monitoring extractive industry activities and accessing remedy mechanisms. Communities could use mobile applications to report environmental violations, document health impacts, and access information about their rights and available remedy processes. Such systems could be designed to work through existing community communication networks, enabling traditional authorities and community leaders to coordinate collective responses while ensuring that individual community members have direct access to reporting mechanisms.

Digital platforms also create opportunities for connecting Nigerian communities with international networks of communities facing similar challenges, enabling peer-to-peer learning and mutual support that can strengthen local advocacy efforts. Communities in the Niger Delta could connect with communities in Ecuador, Peru, or other countries facing similar extractive industry impacts, sharing strategies for community monitoring, remedy negotiation, and collective organization. Such networks can provide communities with access to technical expertise, legal support, and advocacy resources that may not be available domestically. The implementation of technology-enabled participation must recognize that digital platforms are tools that enhance rather than replace human organizing and collective action. The most effective applications of technology in community organizing combine digital tools with face-to-face organizing, traditional communication systems, and existing social networks. Technology platforms must be designed to strengthen rather than undermine existing community governance systems, providing tools that community leaders can use to enhance their effectiveness rather than bypassing traditional structures.

On the other hand, another proposal could be building on existing CSO networks and community organizations. The extensive network of civil society organizations working on extractive industry issues includes national advocacy organizations, regional networks, community-based organizations, and specialized technical assistance providers that collectively possess significant expertise in community organizing, legal advocacy, environmental monitoring, and policy analysis.[951] These organizations have developed strategies for engaging with government

[951] Key CSOs include: Environmental Rights Action/Friends of the Earth Nigeria (ERA/FoEN, www.eraction.org), focused on environmental advocacy and community mobilization; Health of Mother Earth Foundation (HOMEF, www.homef.org), specializing in environmental justice and climate action; Social Action Nigeria <www.saction.org>, providing legal advocacy and community support; Centre for Environment, Human Rights and Development (CEHRD, www.cehrd.org.ng), monitoring human rights violations and providing legal assistance; Spaces for Change (SDN), offering technical assistance to regulators and communities; BudgIT (www.budgit.org), using data and technology for budget transparency and accountability; SERAP (www.serap-nigeria.org), engaging in

agencies, multinational corporations, and international organizations while maintaining strong connections to affected communities. The extensive network of civil society organizations working on extractive industry issues includes national advocacy organizations, regional networks, community-based organizations, and specialized technical assistance providers that collectively possess significant expertise in community organizing, legal advocacy, environmental monitoring, and policy analysis. These organizations have developed sophisticated strategies for engaging with government agencies, multinational corporations, and international organizations while maintaining strong connections to affected communities. Moreover, the development of coalitions among civil society organizations working on extractive industry issues has created institutional capacity for sustained engagement with complex policy processes and multi-year advocacy campaigns. Organizations such as the Civil Society Legislative Advocacy Centre, the Niger Delta Budget Monitoring Group and Publish What You Pay Nigeria[952] have demonstrated ability to coordinate collective action among diverse organizations while maintaining connections to grassroots communities. These coalitions possess the organizational capacity necessary for managing multi-stakeholder remedy mechanisms that require sustained engagement over extended timeframes.

The experience of corporate-community partnerships in the Niger Delta reveals both the potential and limitations of multi-stakeholder approaches in the Nigerian context. While many partnership initiatives have failed to deliver meaningful benefits to communities, there are successful cases that demonstrate that multi-stakeholder governance can work when it includes genuine community representation, transparent decision-making processes, and enforceable accountability mechanisms. The key lesson from these experiences is that effective multi-stakeholder platforms require careful attention to power balances, representation mechanisms, and institutional design rather than simply bringing stakeholders together for consultation. Multi-stakeholder platforms for remedy mechanisms could build on existing networks by creating formal structures that bring together affected communities, civil society organizations, extractive companies, and relevant government agencies to address specific conflicts or ongoing issues.

public interest litigation on human rights and governance; HEDA Resource Centre, pursuing legal action against corporate violations; Kebetkache Women Development and Resource Centre, centering women's voices in extractive industry advocacy; and the Nigerian Climate Justice Movement, a coalition launched in 2025 uniting over 40 CSOs on climate and environmental justice. These organizations provide technical expertise, legal representation, environmental monitoring, community mobilization, and policy research that communities often lack resources to conduct independently

[952] Obi, C., "Nigeria: The role of civil society in the politics of oil governance and revenue management. In *Public brainpower: Civil society and natural resource management* (Cham: Springer International Publishing, 2017) at 201.

Such platforms could operate at multiple levels, including community-specific forums for addressing local issues, regional platforms for addressing cumulative impacts affecting multiple communities, and national-level forums for addressing policy and regulatory issues that affect remedy mechanisms generally. The design of multi-stakeholder platforms must address the fundamental challenge of power asymmetries between different stakeholders while ensuring that community representatives have genuine decision-making authority rather than merely advisory roles. This requires establishing clear mandates for platform decisions, creating enforcement mechanisms that can compel compliance with platform agreements, and providing communities with access to technical and legal support that enables effective participation in platform processes. Platforms must also include mechanisms for resolving disputes between stakeholders and for addressing situations where consensus cannot be achieved.

5.5.3. Civil Society and Community Strengths

The traditional political structure in most Niger Delta communities centers around the village head or Amayanabo who is assisted by a council of chiefs with representatives from constituent houses or families.[953] Research demonstrates that while these traditional leaders are treated with reverence, the governance system has evolved to include elected community councils in many areas, creating hybrid structures that combine traditional authority with democratic representation.[954] This evolution reflects the adaptive capacity of traditional institutions to respond to changing circumstances while maintaining their role as mediators and decision-makers in community affairs. The continued functionality of these traditional systems provides an important foundation for citizen-centered remedy mechanisms because they offer established channels for community consultation, consensus-building, and collective decision-making that are already understood and respected by local populations.

Also, community councils, which have emerged as democratic counterparts to traditional authority structures, represent another crucial component of existing social capital in the region. These councils typically consist of elected positions including chairperson, secretary, treasurer, and publicity secretary, with assistant positions in each category. They operate as the primary interface between communities and external actors, including oil companies and government agencies, and have developed considerable experience in articulating community needs and

[953] Nnanta Amadi, Anele. "The Presidential Amnesty Programme (PAP) and the Niger Delta: analysing the role of local communities in the programme between 1999 and 2017." (2023). <https://wlv.openrepository.com/entities/publication/01d86315-d134-458b-b4f3-2436c761ffd1>

[954] *Ibid.*

managing development projects. The existence of these established structures means that citizen-centered remedy mechanisms can build upon existing organizational capacity rather than requiring the creation of entirely new institutions, significantly enhancing the prospects for successful implementation. Women's organizations in the region have played particularly important roles in environmental advocacy and community organizing, often using traditional and cultural mechanisms to exert pressure on both corporations and government agencies. The famous Chevron Women's Protest of 2002, where Ijaw women occupied Chevron's Escravos terminal for ten days to demand employment opportunities and development projects for their communities, demonstrated both the organizing capacity of women's groups and their understanding of how to leverage cultural norms and corporate vulnerabilities to achieve their objectives. Such examples illustrate the existing social capital that can be mobilized for citizen-centered remedy initiatives. The strength of existing community organizations is further evidenced by their ability to form coalitions and networks that transcend ethnic and geographic boundaries. Organizations such as the Ijaw National Congress (INC), the Movement for the Survival of the Ogoni People (MOSOP), and the Niger Delta Women for Justice[955] represent pan-ethnic formations that have successfully mobilized across traditional divisions to address common concerns related to environmental degradation and economic marginalization.[956] These coalition-building capacities represent crucial assets for implementing citizen-centered remedy mechanisms that require coordination across multiple communities and stakeholder groups.

Furthermore, the international network connections developed by Niger Delta organizations span multiple sectors and geographic regions, creating diverse sources of support and expertise. Environmental organizations such as Friends of the Earth International, Greenpeace, and the Sierra Club have established ongoing relationships with Niger Delta groups that provide platforms for international advocacy, technical support for environmental monitoring and funding for community-based campaigns. These relationships have enabled Niger Delta organizations to participate in global environmental campaigns, share experiences with communities facing similar challenges in other countries, and access international forums for raising concerns about corporate environmental practices. Human rights organizations including Amnesty International, Human Rights Watch, and the International Commission of Jurists have provided crucial support

[955] Mai-Bornu Z. Oil, conflict, and the dynamics of resource struggle in the Niger Delta: A comparison of the Ogoni and Ijaw movements. The Extractive Industries and Society. 2019 Nov 1;6(4):1282; See also MA Habiba, "Conflicts in the Niger Delta: Analysis of Causes, Impacts and Resolution Strategies" (PhD Dissertation, Coventry University, 2018).

[956] *Ibid.*

for Niger Delta advocacy efforts by documenting human rights violations, providing legal support for transnational litigation, and creating international pressure international pressure for corporate and government accountability.[957] The involvement of these organizations in Niger Delta advocacy has created precedents for international engagement with business and human rights issues in the region while building capacity for legal advocacy and documentation that can support citizen-centered remedy initiatives. Academic institutions and research organizations in Europe, North America, and other African countries have established collaborative relationships with Niger Delta organizations that provide access to technical expertise, research resources, and policy analysis capacity. Universities such as the University of California Berkeley, University of Oxford, University of Cape Town, and numerous other institutions have conducted collaborative research with Niger Delta communities and organizations, creating opportunities for capacity building, knowledge exchange, and evidence generation that can support advocacy and policy initiatives.[958] These academic partnerships have produced extensive documentation of the environmental and social impacts of oil extraction while building local research capacity that can contribute to citizen-centered remedy mechanisms.

The connections to IPLC rights movements globally provide particularly important resources for Niger Delta communities because they offer frameworks for understanding and articulating community rights that transcend conventional approaches focused solely on environmental protection or economic development. The relationships between Niger Delta organizations and IPLC movements in Latin America, North America, and other regions have created opportunities for sharing strategies, learning from successful advocacy campaigns, and developing approaches

[957] Amnesty International (2018). Nigeria: Amnesty Data Activists Uncover Serious Negligence by Oil Giants Shell and Eni.
<https://www.amnesty.org.uk/press-releases/nigeria-amnesty-data-activists-uncover-serious-negligence-oil-giants-shell-and-eni>

[958] UC Berkeley's Institute of International Studies and Geography Department have conducted extensive collaborative research on Niger Delta conflict and development through the "Niger Delta: Economies of Violence" program (https://geography.berkeley.edu/labs-projects/projects/niger-delta-economies-violence), resulting in numerous working papers and dissertations on resource governance, conflict dynamics, and community development; see Michael J. Watts, Ike Okonta & Dimieari Von Codes, "Economies of Violence: Petroleum, Politics and Community Conflict in the Niger Delta, Nigeria" (UC Berkeley Working Paper, 2005); Elias Edise Courson, Spaces of Insurgency: Petro-Violence and the Geography of Conflict in Nigeria's Niger Delta (PhD Dissertation, University of California Berkeley, 2016). University of Cape Town's Multi-Sector Commodity Chain Project collaborated with the University of Ibadan on oil sector governance research; see Ademola Oyejide & Adeolu Adewuyi, "Enhancing Linkages of Oil and Gas Industry in the Nigerian Economy" (UCT-MMCP Discussion Paper 8, 2011). University of Leicester research on women's livelihoods in the Niger Delta extractive industries; see Zainab Ladan Mai-Bornu, "The Oil Extractive Industry in The Niger Delta: Impacts on the Livelihoods of Women" (2023) 15:1 Cosmopolitan Civil Societies Journal 1–20. These research collaborations have generated evidence on governance gaps, environmental justice, community participation, and policy reform options accessible to advocacy organizations and policymakers.

to community-based natural resource governance that reflect IPLC values and practices. These relationships have been particularly valuable in developing approaches to Free, Prior, and Informed Consent, community-based monitoring, and participatory governance that can serve as foundations for citizen-centered remedy mechanisms. Also, the documentation and revitalization of traditional ecological knowledge represents an important capacity-building opportunity that can enhance community participation in remedy mechanisms while strengthening cultural identity and community cohesion. Community-based research projects that work with elders and other knowledge holders to document traditional environmental knowledge can build local research capacity while creating community-controlled information resources that can support advocacy and policy initiatives. Such documentation efforts can also create opportunities for knowledge transfer to younger community members who may have less direct experience with traditional practices due to environmental degradation and social change. The prospects for citizen-centered remedy mechanisms in Nigeria's oil sector are significantly enhanced by these existing civil society and community strengths. The combination of established organizational capacity, extensive activism experience, international networks, and rich traditional knowledge systems provides a foundation of assets that can be leveraged to implement more effective and participatory approaches to corporate accountability. However, realizing this potential requires careful attention to building upon existing strengths rather than imposing external models, ensuring that citizen-centered initiatives respect and strengthen existing institutions and knowledge systems rather than displacing them.

5.6. Conclusion

The analysis presented in this chapter reveals that implementing citizen-centered remedy mechanisms in Nigeria faces substantial challenges but also benefits from significant opportunities that create pragmatic prospects for reform. The political economy challenges are real and substantial, particularly given government dependence on oil revenues and corporate resistance to expanded accountability measures. However, these challenges are not insurmountable when viewed alongside growing policy momentum, technological capabilities, and strategic coalition possibilities. The chapter's analysis supports cautious optimism about implementation prospects while emphasizing the need for sustained commitment, adequate resources, and strategic thinking about sequencing and coalition building. The challenges are significant, but the opportunities are genuine, and the potential benefits for affected communities, corporate accountability, and governance effectiveness justify the investment required for

successful implementation. The pathway forward requires moving beyond theoretical frameworks toward practical experimentation that can demonstrate how citizen-centered approaches can address Nigeria's persistent remedy gaps while contributing to broader governance improvements.

Chapter 6 - Conclusion

This study has undertaken a comprehensive examination of Nigeria's corporate human rights remedy mechanisms, revealing fundamental deficiencies in existing frameworks while proposing transformative citizen-centered alternatives. Through systematic analysis combining doctrinal legal research, gap analysis, and comparative institutional assessment, this study has addressed critical questions about access to effective remedies for corporate human rights violations in Nigeria's petroleum sector.

6.1 Summary of Findings

Through comprehensive doctrinal analysis, gap assessment, and comparative examination, the study generated four key findings that illuminate both the structural barriers preventing effective remedy access and the transformative potential of citizen-centered alternatives.

1. **Systematic Exclusion of Citizens from Remedy Processes:** The first and most fundamental finding of this research is that Nigeria's legal and institutional framework for addressing corporate human rights violations in the petroleum sector systematically excludes affected communities from meaningful participation in remedy processes, creating persistent gaps between formal legal protections and practical access to effective redress. This exclusion operates across multiple dimensions, beginning with constitutional provisions that vest exclusive control of mineral resources in the Federal Government without requiring community consent, continuing through legislative frameworks that prioritize corporate compliance over community participation, and extending to judicial mechanisms that create prohibitive barriers to community access. The analysis of major cases spanning from 1972 to 2024 reveals a troubling pattern where communities face systematic obstacles including prohibitive litigation costs exceeding ₦10 million for complex environmental cases, complex procedural requirements that favor well-resourced corporate defendants, lengthy court processes that can extend for decades while environmental harms persist, and power imbalances that enable corporations to use superior resources and delay tactics to exhaust community capacity for sustained legal action. This finding directly addresses the first research sub-question regarding the specific gaps in Nigeria's legal and institutional framework that prevent effective access to remedy for corporate human rights violations.

2. **Fundamental Inadequacy of Current Remedy Mechanisms against International Standards:** The research established that Nigeria's existing remedy mechanisms systematically fail to meet international effectiveness criteria established under the UN Guiding Principles on Business and Human Rights. Using the UN Working Group's eight effectiveness criteria as analytical benchmarks, legitimacy, accessibility, predictability, equity, transparency, rights-compatibility, continuous learning, and engagement, the study documented comprehensive failures across all dimensions of remedy effectiveness. The research revealed that community trust in formal remedy mechanisms has been systematically undermined by decades of unfulfilled promises, inadequate compensation, and environmental degradation that persists despite legal commitments to protection and restoration The concentration of Federal High Court jurisdiction over petroleum matters in urban centers like Abuja creates geographic barriers where rural Niger Delta communities face travel and accommodation costs exceeding their annual incomes. Financial barriers including court filing fees, legal representation costs, and expert witness expenses routinely exceed ₦10 million for complex environmental cases, effectively excluding impoverished communities from judicial processes. Predictability deficits result from discretionary enforcement, unclear procedural requirements, and inconsistent judicial approaches to environmental rights cases. Equity violations reflect systematic power imbalances where multinational corporations deploy teams of senior advocates, international law firms, and technical experts while communities rely on under-resourced legal aid or pro bono representation. Rights-compatibility failures manifest in remedy outcomes that fail to address the full range of human rights impacts while perpetuating structural conditions enabling ongoing violations. Monetary compensation typically addresses only direct economic losses while ignoring cultural harms, community health impacts, and intergenerational environmental damage.

3. **Transformative Potential of Citizen-Centered Participatory Approaches:** The research demonstrated that citizen-centered participatory approaches offer transformative potential for addressing remedy gaps through institutional innovations that position affected communities as primary agents in remedy design, implementation, and evaluation rather than passive beneficiaries of externally determined processes. This transformation operates across multiple dimensions that directly address the systematic failures identified in existing remedy mechanisms. The research identified five specific participatory models

that operationalize these transformative potentials: (1) Access to Information Systems that provide communities with independent monitoring capabilities and data sovereignty rights; (2) Free, Prior and Informed Consent mechanisms that enable ongoing community control over extractive activities throughout project lifecycles; (3) Impact and Benefit Agreements that establish negotiated frameworks for community participation in project benefits and harm mitigation; (4) Community-Led Environmental Monitoring that provides independent data collection and analysis capabilities; and (5) Participatory Grievance Mechanisms that integrate traditional conflict resolution with contemporary human rights standards. This finding addresses the second research sub-question regarding models of citizen-centered participation that can provide more effective pathways to remedy for corporate human rights violations in extractive contexts.

4. **Feasibility of Implementation through Legal and Institutional Adaptation:** The comparative analysis of New Zealand's resource management framework found that citizen-centered participatory approaches can be successfully implemented within common law jurisdictions through legislative innovation and institutional reform, providing practical pathways for adaptation to Nigeria's context without requiring comprehensive constitutional overhaul. However, the research also identified significant adaptation challenges including Nigeria's federal constitutional structure versus New Zealand's unitary system, Nigeria's economic dependence on oil revenues versus New Zealand's diversified economy, Nigeria's highly diverse community structures versus New Zealand's relatively homogeneous IPLC framework, and Nigeria's multilingual context requiring comprehensive language support systems. The feasibility analysis concluded that successful implementation requires: (1) pilot programs demonstrating participatory approaches in specific geographic areas or project contexts; (2) capacity building investments that strengthen community organizations and technical expertise; (3) legal reforms that create enforceable participation rights and accessible remedy mechanisms; (4) institutional innovations that provide independent facilitation and technical support; and (5) political coalition building that creates support for participatory governance among diverse stakeholders including government agencies, civil society organizations, and reform-minded corporate actors. This finding addresses the third research sub-question regarding lessons from comparative jurisdictions that can inform citizen-centered remedy mechanism development in Nigeria.

These findings collectively demonstrate how citizen-centered participatory approaches can address the fundamental challenges identified in Nigeria's corporate human rights remedy framework while providing a foundation for transforming extractive industry governance from exclusionary, state-centric models toward inclusive, community-empowered systems. The research questions are interconnected, with gaps in legal and institutional frameworks creating the necessity for citizen-centered alternatives, comparative experiences providing models for implementation, and the overall framework demonstrating how participatory approaches can enhance access to effective remedies for corporate human rights violations in Nigeria's petroleum sector.

6.2 Recommendation for policy makers

Building on the findings of this research, the following four recommendations aim to overcome the participatory deficits and remedy gaps identified in Nigeria's petroleum sector. Each recommendation addresses a distinct finding and outlines practical steps for implementation.

1. **Institutional Framework for Citizen Participation in Remedy Mechanisms:** The study proposes an Institutional Framework for Implementation of Citizen Participation in Remedy Mechanisms proposed in *Appendix 1*. The study proposal of this institutional arrangements is necessary to position citizen-centered remedy mechanisms in Nigeria's extractive sector, drawing on comparative experience from New Zealand and emerging best practices in extractive industry governance. This model comprises five components; legal mandates, multi-stakeholder governance bodies, independent oversight, community-controlled trust funds, and adaptive learning mechanisms. Together, they transform top-down decision-making into a collaborative, transparent system that empowers affected communities to design, monitor, and enforce remedial measures.

2. **Access to Information and Community Monitoring:** The study identified access to information systems and community-led environmental monitoring as core participation models, arguing that communities must control environmental and social data and be able to use it in regulatory and remedial processes. New Zealand's model of transparent environmental reporting, public registers, and rights to challenge consents makes information a practical tool for affected communities, which contrasts with Nigeria, where

there are severe capacity constraints, regulatory fragmentation, and digital access gaps and where the state operates under conditions of limited statehood and intense revenue dependence on oil. Based on this, an implementation approach for Nigeria would be to amend the PIA and EIA Act to grant communities enforceable rights to localised, real-time disclosure of EIAs, monitoring data and spill/flare information, in accessible formats and local languages. The country would also benefit from legally recognised community-generated data (for example via NESREA/NOSDRA regulations) as admissible evidence in enforcement and judicial proceedings. Finally, there should be a community–regulator digital platform (building on NEITI and FOI Act experience) where host communities upload monitoring results and trigger mandatory regulatory responses within fixed timelines.

3. **Free, Prior and Informed Consent (FPIC)**

   This study reconceptualizes FPIC as both a preventive and remedial safeguard, arguing that consent must be ongoing, reviewable and linked to credible remedies for past and present harms, rather than a one-off signature at project inception. Thus, the study recommends introducing FPIC clauses into the PIA, Land Use Act and EIA Act, requiring documented, ongoing community consent as a condition for granting and maintaining licences. The continuation of consent should be tied to demonstrable fulfilment of remediation and compensation obligations; non-remedy would trigger FPIC review and potential withdrawal. Statutory guidelines should be developed, drawing from New Zealand practice, on who represents communities, how internal decision-making is respected and how disputes around consent are resolved.

4. **Impact and Benefit Agreements (IBAs) and Host Community Development Trusts**: This study presents IBAs as a model for embedding benefit-sharing, environmental obligations and grievance procedures in binding agreements negotiated and controlled by communities. New Zealand functions, in part, through long-term arrangements combining financial redress, governance roles and environmental obligations into enduring Crown–Māori relationships, as opposed to Nigeria, which has limited statehood, patronage politics and a high risk of elite capture, with companies retaining strong influence over governance and project selection. Implementation for Nigeria would be to amend PIA HCDT provisions to require:

a. democratically elected community boards, with reserved seats for women and youth
b. mandatory independent negotiation support funded through operator levies
c. minimum content standards for agreements (benefit-sharing formulae, environmental commitments, grievance and monitoring clauses aligned to the five models in Chapter 4).
d. Link HCDT performance to regulatory reviews: repeated failure to meet agreed environmental and social obligations should trigger licence sanctions.

4. **Community-led environmental monitoring**: In line with the argument that community-led monitoring, supported by low-cost technology and legal recognition of community-generated data, is essential for early detection of harm and for shifting power over evidence away from exclusive corporate control, and given that Nigeria's regulators have limited technical capacity, fragmented mandates and almost no structured role for communities in official monitoring (as opposed to the co-governance bodies that exist in New Zealand), the study recommends:

    a. creation of a statutory Community Monitoring Support Unit within NOSDRA/NUPRC to train and accredit community monitors, manage data platforms and liaise with regulators
    b. requiring that spill investigations and clean-up certification include community-appointed monitors as co-signatories
    c. mandating that monitoring data triggers time-bound regulatory duties (inspection, enforcement, public notices), closing the loop between monitoring and remedy.

5. **Participatory grievance mechanisms and restorative justice**:
    In line with the proposed participatory grievance mechanisms that blend traditional dispute resolution with rights-based standards and restorative justice, shifting focus from narrow compensation to relationship repair, community healing and structural guarantees of non-repetition, as seen in New Zealand's practice, the study recommends requiring all major petroleum projects to establish community-designed grievance mechanisms meeting the UNGP effectiveness criteria, with:

    a. co-drafted procedures

b. recognized roles for elders, women and youth
c. options for restorative processes (healing circles, community conferences) alongside formal outcomes
d. clear escalation routes to NHRC/courts if company-level processes fail.
e. amending the NHRC Act to create a specialized Extractive Remedies Unit with authority to review and certify company grievance mechanisms and to intervene where patterns of abuse are identified.

6.3 Practical Barriers to Implementation

This research identifies several practical barriers that emerge from the thesis that would affect the real-world roll-out of the proposed recommendations proffered in section 6.2. Nigeria's regulatory agencies, including NUPRC, NOSDRA and NESREA, currently operate with weak technical capacity, chronic underfunding and overlapping mandates, which already undermine enforcement of existing rules. Building statutory FPIC, community monitoring units or strong grievance systems on top of these weak foundations risks creating paper reforms without implementation. Also, oil-revenue dependence, patronage politics and regulatory capture mean that both federal and state actors have strong incentives to prioritize production and company interests over intrusive, community-empowering rules. At community level, HCDTs and IBAs are structurally exposed to elite capture and company dominance, given companies' influence over board composition and project selection. Furthermore, there are hundreds of small, sometimes competing communities, with plural authority systems (chiefs, elected councils, youth and women's groups), ethnic tensions and militant actors. Patriarchal norms and "sub-collectives" mean that women and other vulnerable groups are routinely excluded from land, decision-making and compensation processes, making it difficult to identify legitimate representatives, ensure inclusive FPIC, or prevent local capture of monitoring and grievance bodies. In the same vein, environmental rights remain non-justiciable under Section 20, so communities must rely on creative use of life and dignity rights and face high costs, strict procedures and weak enforcement even when they win; there are no specialized environmental courts, and general courts are slow, expensive and overstretched, which undercuts the enforceability of any new participatory rights inserted into PIA, EIA or the Land Use Act. Finally, multinationals control most environmental and operational data, and company grievance mechanisms and CSR schemes typically function as risk-management tools rather than genuine accountability pathways. Without strong incentives and sanctions,

companies are likely to resist meaningful FPIC, community-generated evidence, or binding co-governance over HCDTs and IBAs.

Ultimately, a citizen-centered remedy mechanism will succeed only if affected communities have the capacity to participate on fair terms. Legal recognition of participation without information, resources, technical support and protection against retaliation risks produces only symbolic inclusion. The future development of the CCPF should therefore combine rights-based capacity-building with careful, inclusive adaptation of community-based dispute-resolution knowledge. In this way, remedy can be both legally robust and grounded in the lived realities, knowledge and priorities of affected communities.

6.4 Contribution to Knowledge

This research provides several original contributions to the field of business and human rights law with a specific focus on access to remedy for corporate human rights violations in Nigeria's petroleum sector First, by moving beyond descriptive analysis to proposing a detailed institutional and procedural draft framework and roadmap (*in appendix 1*), the research provides actionable guidance suited for government, corporate, and civil society stakeholders seeking to implement Nigeria's National Action Plan on Business and Human Rights and to align with the UNGP's Pillar III in practice. The work also offers a comparative analysis between Nigeria and New Zealand, both common law, with different outcomes regarding IPLC participation in extractive governance. Concrete lessons and adaptation pathways are identified, particularly regarding resource management co-governance arrangements and the operationalization of Free, Prior, and Informed Consent (FPIC) to inform pragmatic reform strategies in Nigeria and similar settings. Also, through a doctrinal, comparative, and gap analysis, the research provides the most detailed mapping to date of the persistent lacunae in Nigeria's constitutional, statutory, and institutional frameworks regarding remedy for corporate human rights abuses.

6.5 Conclusion

This research has undertaken a comprehensive legal analysis of Nigeria's corporate human rights remedy mechanisms, revealing fundamental gaps between formal legal frameworks and the practical experiences of communities affected by petroleum extraction in the Niger Delta. Through systematic examination of constitutional provisions, statutory frameworks, institutional

arrangements, and judicial patterns, the study demonstrates that Nigeria's current legal approach to corporate accountability systematically excludes citizens from meaningful participation in remedy processes, thereby violating core principles of effective remedy under international law.

The legal analysis establishes that Nigeria's constitutional framework creates a foundational paradox by placing environmental protection in the non-justiciable Chapter II while requiring courts to protect life and human dignity under Chapter IV. This constitutional structure forces communities to pursue indirect enforcement through creative judicial interpretation rather than direct constitutional remedy, creating additional procedural burdens and evidential requirements that favor well-resourced corporate defendants. The research demonstrates how this constitutional gap reflects broader patterns of legal exclusion that prioritize state control over natural resources while marginalizing community rights and participation. The examination of statutory frameworks reveals that despite comprehensive legislation governing petroleum operations, environmental protection, and human rights, Nigerian law consistently fails to establish meaningful roles for affected communities in remedy design, implementation, and monitoring.

The proposed citizen-centered approach represents a fundamental reconceptualization of remedy mechanisms from state-controlled processes that treat communities as passive beneficiaries toward participatory frameworks that position rights-holders as active agents in remedy design and implementation. This approach addresses the legitimacy, accessibility, and effectiveness gaps identified in current mechanisms by establishing community control over grievance processes, providing independent technical support, and creating accountability mechanisms that ensure corporate compliance with remedy obligations. From a legal theory perspective, this research contributes to business and human rights scholarship by demonstrating how post-colonial legal systems perpetuate colonial patterns of resource extraction that exclude IPLC populations from governance over their traditional territories. The integration of limited statehood theory with new governance approaches provides analytical frameworks for understanding why state-centric remedy mechanisms fail in contexts characterized by weak institutional capacity and regulatory capture. The research shows how legal frameworks that appear comprehensive on paper fail to deliver effective remedies when they operate within governance systems designed to prioritize external economic interests over local community welfare.

The legal implications extend beyond Nigeria's petroleum sector to broader questions about corporate accountability, environmental justice, and participatory governance in post-colonial contexts. The research demonstrates how legal reforms that prioritize citizen participation can

address structural inequalities that undermine remedy effectiveness while strengthening democratic governance and rule of law. The proposed institutional frameworks for expert assistance, multi-stakeholder governance, and community capacity building provide blueprints for legal and policy reforms that could enhance corporate accountability across multiple sectors and jurisdictions. The research also contributes to law scholarship by demonstrating how environmental rights can be operationalized through participatory mechanisms even within constitutional frameworks that do not explicitly guarantee justiciable environmental rights. The analysis shows how citizen-centered approaches can bridge the gap between aspirational environmental protection provisions and enforceable remedy mechanisms through creative legal interpretation and institutional innovation. For legal practitioners, this research provides evidence-based frameworks for advancing corporate accountability litigation while building community capacity for sustained engagement with legal processes. The systematic analysis of judicial patterns, procedural barriers, and enforcement challenges offers practical insights for legal strategy development while highlighting the importance of complementing legal action with broader advocacy and capacity building initiatives.

Looking forward, this research establishes a foundation for broader legal scholarship examining how participatory governance principles can be integrated into corporate accountability frameworks across different legal systems and cultural contexts. The methodological approach combining doctrinal analysis, gap analysis, and comparative legal study provides a template for similar research in other jurisdictions facing comparable challenges with corporate impunity and remedy gaps. The legal significance of this research ultimately lies in its demonstration that effective remedy for corporate human rights violations requires more than formal legal rights and institutional mechanisms. It requires legal frameworks that genuinely empower affected communities to participate in processes that affect their rights and welfare, supported by institutional arrangements that address power asymmetries and capacity constraints. This understanding has profound implications for legal reform, judicial decision-making, and the development of international corporate accountability standards. The research concludes that transforming Nigeria's approach to corporate human rights remedies from exclusionary, state-controlled mechanisms toward inclusive, citizen-centered frameworks represents both a legal imperative under international human rights law and a practical necessity for addressing the persistent conflicts that have characterized Nigeria's petroleum sector. The proposed citizen-centered approach offers a pathway toward more effective, legitimate, and sustainable remedy

mechanisms that can serve as models for corporate accountability reform in comparable contexts worldwide.

6.6 Areas for Further Research

Building on the findings and limitations of this study, several avenues for further research are identified. Further research can examine the legal integration mechanisms between environmental impact assessment processes and ongoing community participation requirements. Another could look at the domestic incorporation strategies for UN Guiding Principles on Business and Human Rights beyond the current National Action Plan; or, the Development of community legal standing in petroleum-related environmental litigation. Future research could also examine how relevant agencies collect, share and use information concerning corporate human rights and environmental harm. This should include the relationship among petroleum regulators, environmental agencies, the National Human Rights Commission, corporate regulatory bodies, state authorities and the courts. Empirical research involving officials, affected communities, companies and practitioners would help determine where coordination fails in practice. Future work should also consider how corporate law could better incorporate human rights and environmental responsibility into directors' duties, corporate disclosure, due diligence and parent-company accountability. At the international level, research should examine how investment agreements, transnational corporate structures and emerging due-diligence laws interact with Nigeria's ability to regulate petroleum companies and provide effective remedies. Finally, further research could benefit from the analysis of the Legal framework for implementing Free, Prior and Informed Consent (FPIC) within Nigeria's existing petroleum legislation. This broader research agenda would complement the CCPF. While the framework seeks to coordinate information, participation, monitoring and remedy around the experience of affected communities, lasting reform also requires greater coherence among the legal regimes and institutions that govern corporate activity. Future research may also examine pre-colonial and contemporary community-based dispute-resolution practices across the Niger Delta and other parts of Nigeria. Such research may identify which practices can be adapted to petroleum-related human rights and environmental disputes, how they can be made inclusive of women, youth and marginalized groups, and how they can operate alongside courts, regulators and formal grievance mechanisms. Participatory research with affected communities would be particularly valuable in determining whether, and under what safeguards, local dispute-resolution traditions can strengthen the Citizen-Centered Participatory Framework.

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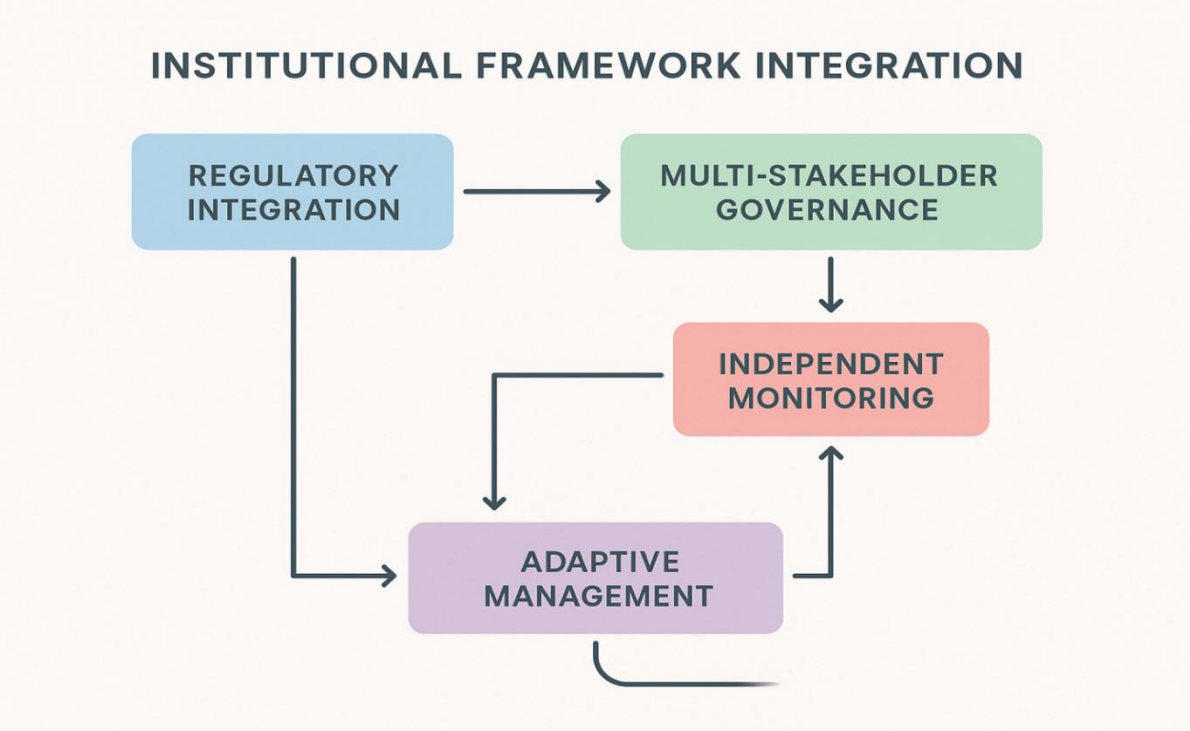
Appendices

Appendix 1: Institutional Frameworks for Implementation of Citizen Participation in Remedy Mechanisms

Framework Component	Legal Reform Requirements	Institutional Mechanisms	Implementation Challenges	Success Factors
Regulatory Integration	• Statutory recognition of participation rights; • Mandatory consultation requirements; • Enforcement sanctions for non-compliance; • Institutional mandates for facilitation	• Regulatory agencies with participation mandates; • Community liaison offices; • Technical assistance programs; • Information disclosure systems	• Regulatory capture by corporate interests; • Weak enforcement capacity; • Limited community • awareness; Resource constraints	• Strong legal framework; • Independent oversight; • Community capacity building; • Adequate funding
Multi-Stakeholder Governance Structures	• Legal establishment of oversight committees; • Multi-stakeholder representation requirements; • Decision-making authority provisions; • Conflict resolution mechanisms	• Community-corporate-government committees; • Tripartite governance boards; • Sectoral working groups; • Regional coordination bodies	• Power imbalances among stakeholders; • Elite capture risks; • Coordination difficulties; Conflicting interests	• Balanced representation; • Clear mandates; • Neutral facilitation; • Institutional support
Independent Monitoring Bodies	• Legislative mandate for third-party verification; • Independence requirements; • Public reporting obligations;	• Independent verification entities; • Public reporting systems; • Community complaint mechanisms;	• Funding independence threats; • Technical capacity limitations; • Corporate resistance;	• Adequate funding; • Technical expertise; • Community trust; • Government support

	• Whistleblower protections	• Professional audit standards	• Political interference	
Trust Fund Mechanisms	• Legal framework for fund establishment; • Community control provisions; • Transparency and governance requirements; • Contribution obligations	• Community-controlled trust funds; Independent fund management; Transparent governance structures; Beneficiary participation systems	• Elite capture of funds; Weak governance capacity; Transparency deficits; Sustainability concerns	• Community control; Transparent governance; Professional management; Adequate funding
Adaptive Management Systems	• Regular review mandates; • Mechanism adjustment procedures; • Performance monitoring requirements; • Stakeholder feedback integration	• Regular review cycles; • Performance monitoring systems; • Stakeholder feedback mechanisms; • Mechanism modification procedures	• Resistance to change; • Information overload; • Resource intensiveness; Political instability	• Stakeholder commitment; • Learning culture; • Flexibility; Adequate resources

The framework presented here addresses this need by establishing institutional mechanisms that enable sustained citizen participation while ensuring accountability and effectiveness



Institutional Framework Integration Model for Citizen Participation in Remedy Mechanisms

The institutional framework integration model demonstrates the complex relationships among different components of participatory governance systems and highlights the need for coordinated implementation that addresses interdependencies among legal, institutional, and operational dimensions. The model shows how regulatory integration provides the legal foundation for other institutional components, how multi-stakeholder governance structures coordinate among different framework elements, how independent monitoring provides accountability and feedback mechanisms, how trust fund mechanisms provide essential resource support, and how adaptive management enables continuous improvement of the overall framework.