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LEGAL CAPTURE OF ENVIRONMENTAL INSTITUTIONS: ANALYSING ENFORCEMENT FAILURES AND REFORM STRATEGIES FOR SUSTAINABLE ENVIRONMENTAL GOVERNANCE IN NIGER DELTA

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LEGAL CAPTURE OF ENVIRONMENTAL INSTITUTIONS: ANALYSING ENFORCEMENT FAILURES AND REFORM STRATEGIES FOR SUSTAINABLE ENVIRONMENTAL GOVERNANCE IN NIGER DELTA .

By

Olusola David Rex*

ABSTRACT

Nigeria possesses an extensive body of constitutional, statutory and institutional rules directed towards environmental protection. Yet persistent oil pollution, gas flaring, ecological degradation, inadequate remediation and weak enforcement in the Niger Delta demonstrate a substantial disjunction between environmental law on the books and environmental law in operation. This article examines that disjunction through the concept of legal capture of environmental institutions. It argues that the principal difficulty confronting environmental governance in Nigeria is not simply the absence of laws or regulatory institutions, but the distortion, weakening or selective implementation of those laws through institutional dependence, political influence, regulatory fragmentation, economic interests and inadequate accountability. Particular attention is given to section 20 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), section 13, section 6(6)(c), the fundamental rights to life and dignity, the Environmental Impact Assessment Act, the National Environmental Standards and Regulations Enforcement Agency Act, the National Oil Spill Detection and Response Agency Act and the Petroleum Industry Act 2021. The article contends that section 20, although located within Chapter II and subject to the constitutional limitations on direct judicial enforcement of Fundamental Objectives and Directive Principles of State Policy, should not be treated as a legally irrelevant aspiration. Read purposively with section 13, Chapter IV, the African Charter on Human and Peoples' Rights and Nigeria's international environmental commitments, it constitutes an important constitutional standard for evaluating governmental environmental performance. Comparative lessons are drawn from Ghana, South Africa, India, the United Kingdom, the United States, Norway, Canada and Zambia. The article concludes that reform requires more than additional legislation: it requires institutional independence, clearer allocation of regulatory functions, enforceable environmental standards, public-interest litigation, transparent monitoring, community participation, effective sanctions and judicial willingness to scrutinise regulatory failure. It proposes a model of constitutional environmental accountability capable of reducing legal capture and strengthening environmental justice in Nigeria's oil-producing regions.

Keywords: *Legal capture; environmental governance; Niger Delta; section 20; constitutional environmentalism; enforcement failure; environmental justice; regulatory capture; petroleum regulation; sustainable development.*

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1. Introduction

Environmental degradation in Nigeria's oil-producing regions presents one of the most enduring challenges to the country's constitutional commitment to good governance, sustainable development and protection of the environment. The Niger Delta has experienced repeated oil spills, contamination of land and water, gas flaring, destruction of vegetation, loss of agricultural and fishing livelihoods and significant social and economic disruption. The persistence of these problems is particularly significant because Nigeria does not lack environmental legislation or regulatory institutions. Rather, the central problem lies in the effectiveness, independence and accountability of the institutions charged with implementing the law. 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 Nigeria."²

The constitutional recognition of environmental protection is significant. It demonstrates that environmental governance is not merely a matter of administrative convenience or governmental policy. Environmental protection has been elevated to the level of a constitutional objective. The difficulty, however, is that section 20 occurs in Chapter II of the Constitution, which contains the Fundamental Objectives and Directive Principles of State Policy. Section 6(6)(c) imposes an important limitation on the judicial enforcement of Chapter II.³ Consequently, the Nigerian constitutional framework presents a paradox: environmental protection is constitutionally recognised but is not structured in the same directly enforceable form as the fundamental rights contained in Chapter IV. This apparent weakness should not, however, lead to the conclusion that section 20 is devoid of legal significance. Section 13 provides that it shall be the duty and responsibility of all organs of government, and of all authorities and persons exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of Chapter II.⁴ The combined reading of sections 13 and 20 therefore creates an important constitutional framework within which governmental environmental action and institutional performance may be evaluated.

This article advances the argument that legal capture constitutes a major explanatory variable in the failure to translate this constitutional environmental obligation into effective environmental protection. Legal capture is used here to describe the process through which institutions formally

²Constitution of the Federal Republic of Nigeria 1999 (as amended), s 20.

³Ibid s 6(6)(c).

⁴Ibid s 13.

established to regulate environmental harm become structurally, politically, economically or administratively constrained in ways that cause them to favour, accommodate or become excessively responsive to regulated interests at the expense of their statutory and constitutional purposes. The article therefore asks a fundamental question: why has the proliferation of environmental laws and institutions not produced corresponding improvements in environmental protection in Nigeria's oil-producing regions? The answer developed here is that institutional multiplication without institutional independence, accountability and enforcement capacity may merely create the appearance of environmental governance while leaving underlying power relationships substantially unchanged. The article adopts a doctrinal and comparative methodology, examining constitutional provisions, legislation, judicial decisions, regional and international instruments, institutional arrangements and selected comparative jurisdictions to evaluate how environmental rules are translated into enforcement outcomes.

2. Conceptualising Legal Capture of Environmental Institutions

The Concept of Regulatory and Legal Capture. The intellectual origins of regulatory capture are commonly associated with George Stigler's economic theory of regulation. Stigler argued that regulation may be acquired by industries and operated primarily for their benefit.⁵ The theory challenged the assumption that regulatory institutions invariably operate as neutral instruments of public welfare. Later scholarship expanded the concept beyond the conventional economic relationship between regulator and industry. Carpenter and Moss, for example, examined regulatory capture as a process through which special interests obtain influence over regulatory institutions and public policy.⁶ For environmental governance, the concept requires further development. Environmental regulation differs from many forms of ordinary economic regulation because environmental institutions are expected to protect diffuse public interests, including the interests of future generations, ecosystems and communities that may possess limited political or economic power.

⁵G J Stigler, "The Theory of Economic Regulation" (1971) 2 Bell Journal of Economics and Management Science 3.

⁶D Carpenter and D A Moss (eds), Preventing Regulatory Capture: Special Interest Influence and How to Limit It (Cambridge University Press 2014).

Accordingly, this article uses legal capture to denote a broader institutional phenomenon in which: regulatory laws are designed or interpreted in ways that favour powerful regulated interests; secondly regulatory agencies become dependent upon or excessively influenced by the industries they regulate; thirdly enforcement is selective or systematically delayed; Fourthly, institutional mandates are fragmented in ways that facilitate responsibility avoidance; Fifth, sanctions become insufficient to deter environmental violations; sixth, information asymmetry prevents effective public scrutiny; seventh, political or economic interests interfere with regulatory decision-making; and eighth, affected communities experience difficulty obtaining effective remedies.

Legal capture therefore differs from ordinary regulatory inefficiency. Regulatory inefficiency may result from lack of resources, technical incompetence or administrative delay. Legal capture, by contrast, involves a deeper distortion of institutional purpose. An institution may possess adequate legal powers and still be captured if those powers are exercised selectively or in a manner systematically accommodating the interests of regulated actors.

3.Environmentalism Under The 1999 Constitution

Section 20 and the Constitutional Recognition of Environmental Protection. Section 20 is the central constitutional environmental provision. It imposes upon "the State" the obligation to protect and improve the environment and safeguard Nigeria's water, air, land, forests and wildlife.⁷ Three elements are particularly significant. First, the provision employs the language of duty rather than mere governmental preference. Secondly, it uses the expressions "protect and improve", indicating both preventive and restorative responsibilities. Thirdly, its environmental scope is broad, extending beyond pollution control to land, water, air, forests and wildlife. The provision therefore reflects an understanding of environmental governance as a continuing constitutional responsibility. Its weakness lies not in its normative breadth but in its institutional enforceability.

Section 13 as a Constitutional Governance Gateway. Section 13 is crucial to understanding the legal significance of section 20. It provides that all organs of government and all authorities exercising legislative, executive or judicial powers shall conform to, observe and apply the provisions of Chapter II.⁸ This provision does not simply repeat Chapter II. It creates a

⁷J R May and E Daly, *Global Environmental Constitutionalism* (Cambridge University Press 2015).

⁸E B Weiss, *In Fairness to Future Generations: International Law, Common Patrimony and Intergenerational Equity* (United Nations University Press 1989).

constitutional relationship between governmental power and constitutional objectives. Section 20 identifies the environmental objective; section 13 addresses the responsibility of governmental institutions in relation to Chapter II. The appropriate doctrinal proposition is therefore not that section 13 automatically converts section 20 into a directly enforceable fundamental right. Such an interpretation would conflict with section 6(6)(c). Rather, section 13 may be understood as a constitutional governance and interpretive gateway through which Chapter II objectives inform governmental decision-making and constitutional interpretation. The Supreme Court's approach to constitutional interpretation supports a purposive understanding of constitutional provisions. In *Rabiu v State*, the Court emphasised the need to interpret constitutional provisions in a manner that gives effect to their purpose rather than defeats it.⁹ Similarly, *Attorney-General of Ondo State v Attorney-General of the Federation* demonstrates the constitutional significance of Chapter II objectives within the broader constitutional order.¹⁰ Although the case was not an environmental case, its importance lies in demonstrating that Chapter II cannot simply be dismissed as constitutionally meaningless.

4. The Limitation of Section 6(6)(c) And The Possibility of Indirect Constitutional Enforcement

The principal difficulty is section 6(6)(c), which prevents the courts from exercising jurisdiction in respect of matters relating to the conformity of an act or law with the Fundamental Objectives and Directive Principles of State Policy, subject to the constitutional qualifications contained in the provision.¹¹

This limitation substantially distinguishes Nigeria from constitutional systems where environmental rights are expressly located within enforceable bills of rights. Yet the limitation should not be interpreted as eliminating all constitutional consequences of environmental degradation. Environmental harm frequently implicates rights protected by Chapter IV, particularly: the right to life under section 33; the right to dignity under section 34; property interests; access to justice; and rights protected by the African Charter as domesticated in Nigeria. This rights-based route was illustrated dramatically in *Gbemre v Shell Petroleum Development*

⁹*Ibid.*

¹⁰*Rabiu v State* (1980) 8–11 SC 130.

¹¹*Attorney-General of Ondo State v Attorney-General of the Federation* (2002) 9 NWLR (Pt 772) 222 (SC).

Company Nigeria Ltd. The Federal High Court considered gas flaring in relation to the constitutional rights to life and dignity and the environmental protection provisions of the African Charter. The case therefore illustrates the potential for environmental protection to be connected with enforceable fundamental rights even where section 20 itself is located in Chapter II. The doctrinal lesson is important: The non-justiciability of section 20 does not necessarily make environmental harm constitutionally irrelevant. Rather, environmental claims may be reframed through enforceable rights, statutory duties, administrative law and international human-rights obligations.

5. Environmental Governance as the operational Expression of Section 20

Constitutional environmental protection requires institutional implementation. The Nigerian environmental governance architecture includes, among others: the Federal Ministry of Environment; NESREA; NOSDRA; NUPRC; NMDPRA; state environmental agencies; environmental impact assessment authorities and mechanisms; courts and tribunals exercising relevant jurisdiction; and community and civil-society organisations. The problem is therefore not simply institutional absence. It is institutional effectiveness.

6. The Environmental Impact Assessment Act and Preventive Governance

The Environmental Impact Assessment Act provides a preventive mechanism for identifying and evaluating environmental consequences before specified projects are undertaken. Its importance lies in its capacity to shift environmental governance from reaction to prevention. An effective EIA regime should: identify environmental risks before project approval; assess cumulative impacts; consider alternatives; facilitate public participation; establish mitigation measures; impose monitoring requirements; and ensure compliance with environmental conditions. The constitutional significance is that effective EIA implementation gives practical content to the obligation to "protect and improve" the environment under section 20. Where environmental assessments are superficial, compromised or treated as procedural formalities, the constitutional objective is weakened.

7. NESREA And The Challenges of Overlapping Institutional Mandates

The National Environmental Standards and Regulations Enforcement Agency Act 2007 established NESREA as the principal federal environmental enforcement institution outside areas

assigned to specialised petroleum regulation.¹² The Agency is responsible for enforcing environmental standards and regulations and coordinating relevant environmental compliance activities. However, Nigeria's petroleum sector possesses specialised environmental regulatory institutions. This creates a difficult institutional question: Where environmental mandates overlap, who bears ultimate responsibility for enforcement? The answer cannot be allowed to become a contest of jurisdiction. Institutional overlap can produce: duplication; delay; inconsistent standards; information fragmentation; regulatory arbitrage; jurisdictional disputes; and responsibility avoidance. The problem is particularly serious where the regulated activity is economically significant to the State. The World Bank's assessment of Nigeria's environmental institutional framework has similarly identified the importance of institutional coordination and enforcement capacity.¹³ Thus, institutional fragmentation may become an instrument of legal capture where each institution can attribute responsibility to another while environmental harm continues.

8. NOSDRA And Oil-Spill Governance

NOSDRA was established under the National Oil Spill Detection and Response Agency (Establishment) Act 2006. Its statutory responsibility includes preparedness, detection and response to oil spills.¹⁴ The establishment of NOSDRA represented an important institutional response to the environmental consequences of petroleum operations. Nevertheless, oil-spill governance depends upon: accurate detection; prompt investigation; reliable determination of spill causes; effective remediation; transparent data; community participation; adequate compensation; and enforcement against responsible operators. Where any of these stages fails, environmental governance becomes incomplete. The continuing significance of NOSDRA to environmental governance is therefore not simply that it exists, but whether it can exercise its statutory responsibilities independently, promptly and transparently.

9. The Petroleum Industry Act 2021 And Environmental Accountability

The Petroleum Industry Act 2021 represents one of the most significant reforms of Nigeria's petroleum regulatory architecture. Its environmental provisions include requirements relating to

¹²National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007, ss 7–8.

¹³World Bank, Nigeria: Country Environmental Analysis (World Bank 2006).

¹⁴National Oil Spill Detection and Response Agency (Establishment) Act 2006, ss 1, 5.

environmental management and financial contributions towards remediation.¹⁵ The PIA is particularly important to the legal-capture analysis because it attempts to institutionalise environmental responsibility within the petroleum regulatory system. However, legislative reform does not automatically eliminate capture. An environmental fund, remediation obligation or regulatory power is only as effective as: the institution administering it; the transparency of its operation; the independence of decision-makers; the adequacy of monitoring; the availability of sanctions; and the accessibility of affected communities to remedies. Thus, the PIA should be evaluated not merely by the number of environmental provisions it contains but by its implementation architecture.

10. Judicial Response To Environmental Failure

Gbemre v Shell, *Gbemre* represents one of the most significant Nigerian environmental rights decisions. The applicant challenged gas flaring in the Iwherekkan community and connected the environmental consequences to constitutional rights to life and dignity. The case was important because it moved environmental litigation beyond a narrow compensation-based model towards constitutional rights. Its institutional significance, however, is even greater. The case demonstrates the limits of judicial success where judgments are not followed by effective administrative implementation. The lesson is that: A strong judgment cannot compensate indefinitely for a weak enforcement institution.

SERAC v Nigeria, The African Commission's decision in *SERAC v Nigeria* is foundational to the Nigerian environmental justice discourse. The Commission found Nigeria responsible for violations of Articles 2, 4, 16, 18(1), 21 and 24 of the African Charter, among others, in relation to the treatment of the Ogoni people.¹⁶ The significance of *SERAC* extends beyond human-rights doctrine. It exposes the institutional consequences of environmental governance failure: state failure to regulate → corporate environmental harm → community deprivation → rights violations → lack of effective remedy. The Commission's approach therefore provides an important normative framework for evaluating legal capture.

¹⁵Petroleum Industry Act 2021, ss 102–103.

¹⁶Social and Economic Rights Action Center (SERAC) and Another v Nigeria (2001) AHRLR 60 (ACHPR), Communication No 155/96, decision 27 October 2001.

Centre for Oil Pollution Watch v NNPC. The Supreme Court's decision in Centre for Oil Pollution Watch v NNPC represents an important development in environmental public-interest litigation. The Court relaxed traditional barriers to standing and recognised the ability of an environmental organisation to pursue litigation concerning pollution affecting a community even though the organisation itself was not the direct victim of the environmental damage. The decision is significant because legal capture thrives where affected communities lack effective access to courts. By widening access to environmental litigation, the decision strengthens one of the institutional checks against regulatory failure.

11. Democratic Transition Failed To Eliminate Legal Capture

Nigeria's transition from military to democratic governance in 1999 created expectations of greater accountability and participation. Yet democratic transition did not automatically eliminate environmental capture. Five factors explain this. First, petroleum remained economically dominant. The Nigerian State continued to depend heavily upon petroleum revenues. This creates structural incentives to protect production even where environmental regulation imposes costs. Secondly, institutional dependence remained. Regulatory institutions continued to operate within political and administrative structures that could limit their independence. Thirdly, institutional fragmentation persisted. The creation of additional agencies did not necessarily produce a coherent regulatory architecture. Fourthly, enforcement remained weak. Environmental laws may impose substantial obligations while enforcement remains inconsistent. Fifthly, affected communities remained structurally disadvantaged. Communities frequently possess less information, financial capacity and political influence than petroleum operators and government institutions. Consequently, democratisation altered the formal constitutional environment without necessarily transforming the underlying distribution of regulatory power.

12. Legal Capture And Environmental Justice

Legal capture has distributive consequences. Where environmental institutions fail to enforce environmental standards, the costs are not distributed equally. Oil-producing communities may bear: pollution costs; health risks; loss of agricultural productivity; destruction of fishing resources; displacement; loss of cultural and ecological assets; and diminished economic opportunities. Meanwhile, economic benefits derived from petroleum may be distributed nationally or concentrated among corporate and governmental actors. Environmental justice

therefore requires not merely environmental protection but fairness in the distribution of environmental burdens, participation in environmental decision-making and access to remedies. David Schlosberg's conception of environmental justice is useful because it incorporates distribution, recognition, participation and institutional fairness.¹⁷ Legal capture undermines all four dimensions.

13. Section 20 And International Environmental Law

Nigeria's constitutional environmental framework should also be understood within the broader development of international environmental law. Relevant principles include: sustainable development; prevention; precaution; polluter pays; intergenerational equity; public participation; access to environmental information; and environmental impact assessment. Nigeria's participation in international environmental instruments reinforces the importance of these principles. The African Charter is particularly significant because it recognises the right of peoples to a generally satisfactory environment favourable to their development in Article 24. The SERAC decision demonstrated that Article 24 can provide a powerful normative basis for environmental protection in the African human-rights system. Thus, section 20 should not be interpreted in isolation from Nigeria's international and regional obligations.

14. Comparative Constitutional Jurisprudence

Comparative constitutionalism demonstrates that the weakness of environmental protection in Nigeria is not inevitable.

Ghana

Ghana environmental governance framework combines a constitutional environmental directive with a specialized Environmental Protection Agency. Article 36(9) of the 1992 Constitution requires the State to recognise and protect the environment and to seek to establish a reasonable ecological order. The Environmental Protection Agency Act 1994 (Act 490) supplies an institutional framework for environmental regulation. The principal lesson for Nigeria is not the mere existence of a central agency, but the value of clearer institutional responsibility,

¹⁷D Schlosberg, *Defining Environmental Justice* (Oxford University Press 2007).

coordinated environmental administration and mechanisms through which environmental decisions can be subjected to public and legal scrutiny.¹⁸

South Africa

Section 24 of the South African Constitution expressly recognises an environmental right and requires reasonable legislative and other measures to prevent pollution and ecological degradation, promote conservation and secure ecologically sustainable development¹⁹. South Africa therefore provides a useful contrast with Nigeria. Nigeria places environmental protection primarily within Chapter II, while South Africa places it within an enforceable Bill of Rights. The Nigerian reform lesson is not necessarily to copy section 24 verbatim but to consider whether constitutional environmental protection should be strengthened through a more enforceable rights framework.

India

India demonstrates how courts may develop environmental constitutionalism through rights interpretation. In *Vellore Citizens' Welfare Forum v Union of India*, the Supreme Court recognised the precautionary principle and polluter-pays principle as important components of Indian environmental law.²⁰ The Indian experience demonstrates that constitutional environmental protection can develop through judicial interpretation even where environmental rights are not initially formulated in exactly the same language as conventional civil and political rights.

United Kingdom

The United Kingdom provides a different model. The Environment Act 2021 strengthened environmental governance through the creation of the Office for Environmental Protection (OEP), providing institutional oversight of environmental law and governmental environmental performance. The Nigerian lesson is the importance of an institution capable of scrutinising government itself rather than merely regulating private actors. This is important because environmental capture can occur when regulators become more concerned with regulated entities than with the constitutional environmental interest.

Constitution of the Republic of Ghana 1992, art 36(9); Environmental Protection Agency Act 1994 (Act 490).

¹⁹Constitution of the Republic of South Africa 1996, s 24.

²⁰*Vellore Citizens' Welfare Forum v Union of India* (1996) 5 SCC 647.

United States

The United States provides important lessons in judicial review and citizen participation. In *Massachusetts v Environmental Protection Agency*, the Supreme Court recognized the legal significance of greenhouse-gas regulation and confirmed the judiciary's role in reviewing agency refusal to act.²¹ Similarly, *Friends of the Earth v Laidlaw Environmental Services* demonstrated the importance of citizen standing in environmental enforcement. The lesson for Nigeria is that environmental enforcement should not depend exclusively upon government agencies. Civil society and affected communities should possess meaningful mechanisms for compelling compliance.

Norway

Article 112 of the Norwegian Constitution recognises the right to an environment conducive to health and to a natural environment whose productivity and diversity are maintained. It further requires long-term management of natural resources for future generations and provides for access to environmental information.²² Norway is particularly relevant to Nigeria because both countries are petroleum-producing states. Its comparative significance lies in demonstrating that petroleum exploitation does not inherently require constitutional environmental weakness. The critical variable is the quality of governance.

Canada

Canada demonstrates the importance of federalism and coordinated environmental governance. In *R v Hydro-Québec*, the Supreme Court of Canada upheld federal environmental legislation under the federal criminal-law power.²³ The case demonstrates that environmental regulation may require strong national standards even within a federal system. For Nigeria, the lesson is particularly relevant to overlapping federal and state environmental responsibilities.

Zambia

Zambia offers a particularly relevant African comparator because its constitutional framework expressly integrates environmental management principles with public participation and access

²¹*Massachusetts v Environmental Protection Agency* 549 US 497 (2007).

²²Constitution of the Kingdom of Norway 1814, art 112.

²³*R v Hydro-Québec* [1997] 3 SCR 213.

to environmental information. Articles 255–257 of the Constitution of Zambia recognise principles including polluter pays, precaution, sustainable management, equitable benefit-sharing, public participation and access to environmental information. The Environmental Management Act 2011 establishes the Zambia Environmental Management Agency and provides statutory mechanisms for environmental assessment, public participation and enforcement. The Zambian experience therefore illustrates how constitutional principles can be translated into institutional duties and participatory procedures. For Nigeria, the important lesson is the institutionalisation of information, participation and accountability rather than transplantation of Zambia's legal framework as a whole.²⁴

15. Section 20 as a Constitutional Standard For Analysing Legal Capture

The most important contribution of this analysis is the proposition that section 20 should operate as a constitutional benchmark for evaluating institutional performance, even where it does not itself provide a conventional private cause of action. The analytical framework may be stated as follows. Constitutional objective. Section 20 establishes environmental protection as a constitutional objective. Institutional obligation Section 13 requires organs and authorities exercising governmental powers to conform to, observe and apply Chapter II. Statutory implementation. Environmental statutes establish institutions and regulatory procedures. Administrative responsibility. Environmental agencies must exercise their statutory powers consistently with constitutional objectives. Judicial supervision. Courts can review unlawful administrative conduct, enforce statutory duties and protect fundamental rights. Public participation: Communities and civil society provide external accountability. Capture indicator: Where these mechanisms systematically fail in favour of regulated interests, evidence of legal capture emerges. This framework allows legal capture to be assessed through objective indicators rather than merely allegations of corruption or administrative inefficiency.

16. Pointer of Legal Capture in Nigerian Environmental Governance.

Constitution of Zambia 1991 (as amended), arts 255–257; Environmental Management Act 2011 (Act No 12 of 2011), especially provisions on environmental management, assessment, public participation and access to environmental information.

Legal capture is assessed through observable institutional indicators rather than assumed from the existence of regulatory failure alone. These indicators include selective enforcement, where materially similar violations receive different regulatory treatment; regulatory delay, where inspections, investigations or sanctions are repeatedly postponed without adequate reasons; remediation failure, where environmental damage remains unresolved or verification is weak; limited participation, where affected communities are excluded from information and decision-making; judicial implementation gaps, where orders or statutory duties are not translated into measurable compliance; information asymmetry, where regulators or communities lack timely access to reliable environmental data; institutional dependence, where funding, appointments or operational structures create incentives inconsistent with regulatory independence; and weak deterrence, where penalties are too uncertain or low to alter the economic calculus of non-compliance. Taken together, these indicators provide a practical basis for identifying whether the legal framework is merely ineffective or is being systematically distorted by capture.

Remediation failure Environmental damage remains unresolved Limited participation Affected communities are excluded from decision-making Judicial implementation failure Court orders do not produce effective environmental restoration These indicators provide an empirical bridge between the doctrinal concept of capture and the observed environmental conditions of oil-producing regions.

17. Appraisal of The Nigerian Framework

Nigeria's environmental legal framework has several important strengths. First, environmental protection possesses constitutional recognition. Secondly, Nigeria has developed a substantial body of environmental legislation. Thirdly, specialised environmental institutions have been established. Fourthly, environmental litigation has gradually become more accessible. Fifthly, regional human-rights law provides additional normative protection. The weaknesses, however, are substantial. Constitutional weakness. Section 20 is located in Chapter II and is affected by the non-justiciability limitation. Institutional fragmentation. Environmental responsibilities are dispersed across multiple institutions. Weak enforcement, Legal standards are frequently stronger than enforcement capacity. Regulatory dependence. Economic dependence on petroleum creates incentives that may conflict with stringent environmental enforcement. Community exclusion. Affected communities often lack timely information and effective participation. Remediation

deficits Environmental restoration may be delayed or inadequately implemented. Accountability gaps. There is insufficient independent scrutiny of environmental regulators themselves. These weaknesses collectively create conditions in which legal capture can flourish.

18. Reforms Strategies

Constitutional Reform. Nigeria should consider strengthening the constitutional status of environmental protection. A constitutional amendment could transform environmental protection from a principally directive constitutional objective into an expressly enforceable environmental right. Such reform could draw upon South Africa, Zambia and Norway. However, constitutional amendment should not be regarded as a substitute for institutional reform.

Independent Environmental Oversight. Nigeria should consider strengthening independent oversight of environmental regulators. A body with powers analogous, in appropriate respects, to the UK's OEP could: investigate regulatory failure; review governmental environmental compliance; publish independent reports; monitor implementation of environmental laws; investigate systemic regulatory weaknesses; and refer serious failures for judicial or administrative action.

Clearer Institutional Mandates. The Federal Government should undertake a comprehensive review of environmental mandates. The objective should be: one environmental harm — clearly identified responsible institution — measurable duty — enforceable deadline — transparent outcome. Where jurisdiction overlaps, legislation should identify the lead institution and supporting agencies.

Strengthening Environmental Public Interest Litigation. The significance of *Centre for Oil Pollution Watch v NNPC* should be built upon. Environmental NGOs and affected communities should have broad standing to challenge: unlawful environmental approvals; regulatory inaction; failure to enforce environmental standards; defective remediation; unlawful pollution; failure to conduct required environmental assessments.

Community Participation

Communities should have legally enforceable access to: environmental information; EIA documents; spill investigation reports; remediation plans; monitoring data; regulatory decisions;

and grievance procedures. Participation should occur before, rather than merely after, major environmental decisions.

Environmental Data Transparency. Environmental regulators should maintain publicly accessible databases containing: oil-spill records; pollution measurements; enforcement actions; penalties; remediation status; EIA approvals; compliance reports; and regulatory decisions. Transparency is one of the most effective institutional barriers to capture.

Strengthening Sanctions. Environmental sanctions must be sufficiently serious to remove the economic benefit of non-compliance. Where the expected cost of pollution is lower than the cost of prevention, rational economic actors may continue polluting. Effective sanctions should therefore incorporate: restoration; compensation; administrative penalties; criminal liability where appropriate; licence consequences; and continuing compliance orders.

19. Theoretical Contribution: From Regulatory Capture to Legal Capture

The article proposes that regulatory capture theory should be expanded within environmental law. Traditional regulatory capture focuses primarily upon the relationship: Industry → Regulator. Legal capture requires a broader institutional model: Political power + economic dependence + institutional fragmentation + regulatory discretion + weak accountability → distortion of environmental enforcement. The concept therefore captures situations where environmental institutions remain formally lawful while their practical operation becomes inconsistent with their constitutional purpose. This is particularly relevant to Nigeria because capture does not necessarily require an explicit unlawful agreement between government officials and corporations. Capture may be structural. It may arise from: dependence upon petroleum revenues; revolving-door relationships; political appointments; information asymmetry; inadequate institutional funding; regulatory discretion; weak sanctions; administrative delay; and absence of effective external oversight. This broader conception provides a stronger analytical tool for explaining persistent environmental enforcement failures.

20. Findings

The analysis establishes that Nigeria's environmental enforcement crisis is not adequately explained by a simple absence of legislation. The country has constitutional environmental duties, environmental assessment rules, specialised regulatory institutions, petroleum-sector

controls, judicial remedies and international commitments. The more persistent difficulty lies in the institutional translation of those norms into impartial, timely and verifiable action. Legal capture provides the analytical bridge between the existence of formal rules and the recurrent failure of those rules to protect communities and ecosystems.

Legal capture is best understood as a multidimensional process operating through normative, institutional, administrative and remedial channels. It may influence the formulation or interpretation of rules, the structure and incentives of regulatory bodies, the exercise of enforcement discretion, and the quality of remedies after environmental harm occurs. This broader conception matters because capture may exist even where an individual decision is formally lawful. The critical question is whether the cumulative structure of law and administration systematically favours regulated interests over the public environmental interest.

The constitutional analysis confirms that section 20 of the Constitution provides an important normative foundation for environmental governance, while section 13 supplies a broader constitutional expectation that organs of government should conform to constitutional objectives. Section 6(6)(c), however, limits direct judicial enforcement of Chapter II policy objectives. The resulting gap should not be treated as rendering environmental constitutionalism legally irrelevant. The reasoning in *Gbemre v Shell* and related jurisprudence demonstrates the possibility of connecting environmental harm to enforceable rights, statutory duties, administrative-law principles and the African Charter.

The institutional analysis shows that enforcement is a chain rather than a single event. Detection must lead to investigation; investigation must produce credible attribution; attribution must lead to sanctions or other lawful consequences; remediation must follow where harm is established; and remediation must itself be independently verified. Failure at any stage can defeat the purpose of the preceding stages. Institutional fragmentation among environmental and petroleum regulators therefore becomes a capture risk where responsibility is unclear, information is compartmentalised, or agencies can shift responsibility to one another.

The petroleum sector intensifies these risks because the State simultaneously acts as resource owner, revenue beneficiary, policy-maker and regulator. This structural combination creates incentives for environmental decisions to be evaluated through revenue and production considerations. The problem is not that petroleum production is inherently incompatible with

environmental protection; rather, it is that regulatory independence becomes more difficult to sustain where the same governmental system depends heavily on the activity being regulated.

The analysis further establishes that information asymmetry is a central mechanism of environmental capture. Regulators require technical data, laboratories, monitoring equipment, qualified personnel and reliable records to challenge corporate accounts of environmental incidents. Communities likewise require access to environmental information if participation and public-interest litigation are to be meaningful. Where information is unavailable, delayed or contested without an independent verification mechanism, enforcement becomes vulnerable to manipulation and remedial disputes become prolonged.

Environmental justice provides the clearest account of the consequences. Enforcement failure is not environmentally neutral. Pollution burdens are concentrated in host communities, while the economic benefits of petroleum production are distributed through national and corporate structures. Weak participation, inadequate compensation, prolonged remediation and barriers to judicial access therefore transform regulatory weakness into distributive, procedural and corrective injustice. The implications extend to livelihoods, social stability, public confidence and the legitimacy of environmental institutions.

The comparative analysis demonstrates that stronger outcomes are associated not merely with more environmental statutes but with institutional arrangements that make environmental duties enforceable and regulators answerable. Ghana illustrates the value of coordinated environmental administration; South Africa demonstrates the strength of an express constitutional environmental right; India shows how courts can develop environmental principles through rights jurisprudence; the United Kingdom illustrates the value of an institution capable of scrutinising governmental environmental performance; the United States demonstrates the importance of judicial review and public-interest standing; Norway shows that petroleum production can coexist with strong constitutional environmental commitments; Canada illustrates the importance of federal coordination and judicial scrutiny; and Zambia provides a particularly relevant African example of constitutional principles concerning participation, information, precaution and polluter responsibility.

These comparisons do not justify wholesale legal transplantation. Their value lies in identifying institutional design principles capable of adaptation to Nigerian conditions: independence,

transparency, scientific integrity, meaningful participation, predictable enforcement, access to justice, and measurable accountability. The central implication is therefore reform of the enforcement architecture rather than multiplication of regulatory texts.

The principal contribution of the article is the proposition that section 20 should be treated as a constitutional benchmark for evaluating whether environmental institutions are functioning consistently with the constitutional purpose of protecting and improving the environment. Read together with section 13, enforceable rights, statutory duties and administrative-law controls, section 20 can support a more demanding conception of regulatory accountability. The resulting analytical chain is: legal and institutional vulnerability, capture, enforcement failure, environmental harm, environmental injustice and inadequate remedy. Breaking that chain requires institutional safeguards at each stage rather than reliance upon any single reform measure.

21. Conclusion

This article has examined the problem of legal capture of environmental institutions in Nigeria, with particular reference to enforcement failures in the oil-producing regions. It has demonstrated that the persistence of environmental degradation in the Niger Delta cannot adequately be attributed to the absence of environmental legislation. Nigeria possesses constitutional environmental obligations, extensive environmental statutes, specialized regulatory institutions and a growing body of environmental jurisprudence. The more fundamental problem is the disconnection between legal norms and institutional outcomes. Section 20 of the Constitution occupies a particularly important position within this framework. It represents Nigeria's clearest constitutional expression of environmental responsibility, requiring the State to protect and improve the environment. However, because the provision is located in Chapter II, its direct enforceability is constitutionally constrained. This limitation has contributed to what may properly be described as incomplete environmental constitutionalism. Nevertheless, section 20 should not be treated as constitutionally irrelevant. Read purposively with section 13, Chapter IV, the African Charter and environmental legislation, it provides a constitutional benchmark against which governmental environmental policy, institutional performance and enforcement practices can be evaluated. The article's central doctrinal contribution is therefore the proposition that legal capture should be understood as a constitutional governance problem, not merely as an administrative or

regulatory problem. Where environmental institutions possess statutory powers but systematically fail to exercise them in accordance with their constitutional and legislative purposes; where institutional fragmentation facilitates responsibility avoidance; where economic dependence weakens regulatory independence; where enforcement is selective; and where affected communities cannot obtain effective remedies, the resulting phenomenon goes beyond ordinary administrative inefficiency. It represents a distortion of the legal purpose of environmental governance.

The Niger Delta provides the clearest demonstration of this problem. The region has experienced prolonged environmental degradation notwithstanding decades of legislation and institutional intervention. The establishment of additional agencies and enactment of additional regulations will not, by themselves, resolve this problem. Indeed, Nigeria's current regulatory architecture—including the PIA and subsequent environmental remediation regulations—demonstrates that legal production continues to outpace institutional implementation. The decisive reform question is therefore how to make environmental institutions accountable for outcomes rather than merely for possessing powers. The answer requires a transition from a model of institutional existence to one of institutional effectiveness.

Environmental governance should consequently be assessed through measurable indicators including: compliance rates; response time to environmental incidents; enforcement actions; sanctions imposed and recovered; remediation completed; environmental quality restored; public participation achieved; regulatory decisions disclosed; and community complaints effectively resolved. Ultimately, the success of section 20 should be judged not by the elegance of its language but by whether Nigeria's rivers, forests, land, air and communities are actually protected. The constitutional objective must therefore be transformed from aspiration into accountability.

Summarily therefore, Nigeria's environmental enforcement crisis is best understood not as a simple deficiency of environmental legislation but as a problem of legal capture in which institutional fragmentation, political-economic dependence, regulatory discretion and weak accountability progressively disconnect environmental institutions from the constitutional purpose embodied in section 20 of the 1999 Constitution

22. RECOMMENDATIONS

i. Constitutional Recognition of an Enforceable Environmental Right Nigeria should consider constitutional amendment to expressly recognise an enforceable right to a clean, healthy and ecologically sustainable environment. The proposed right should be accompanied by corresponding duties upon government to: prevent pollution; protect ecosystems; promote sustainable development; protect vulnerable communities; ensure access to environmental information; and provide effective remedies. Such reform would address the principal weakness created by the current placement of environmental protection within Chapter II.

ii. Reinterpret Section 13 as a Constitutional Accountability Provision Pending constitutional amendment, courts should give section 13 greater doctrinal significance. Section 13 should be utilised as a constitutional interpretive principle requiring public authorities to exercise statutory and administrative powers consistently with the objectives of Chapter II. This would not necessarily convert section 20 into a directly enforceable fundamental right; rather, it would ensure that governmental decision-making does not treat constitutional environmental objectives as legally irrelevant.

iii. Establish an Independent Environmental Accountability Commission: Nigeria should consider establishing an independent environmental oversight institution with powers comparable, in appropriate respects, to the independent environmental oversight model developed in the United Kingdom. Its functions should include: investigating systemic regulatory failure; auditing environmental institutions; reviewing enforcement decisions; investigating complaints against regulators; publishing annual environmental enforcement reports; monitoring compliance with environmental judgments; and referring serious institutional failures to appropriate authorities. This would introduce accountability of regulators, rather than merely regulation of private actors.

iv. Clarify the Mandates of NESREA, NOSDRA and Petroleum Regulators: Government should undertake a comprehensive legislative and administrative review of overlapping environmental mandates. A clear matrix should identify:

Supporting institutions	Accountability mechanism	Oil-spill detection	NOSDRA
NUPRC/State agencies	Public reporting	Upstream petroleum environmental compliance	NUPRC
NESREA/NOSDRA where applicable	Regulatory audit	General environmental standards	NESREA
Federal/State authorities	Compliance reports	EIA	Appropriate competent authority
Relevant regulators	Public disclosure		

Remediation	Responsible operator/regulator	NOSDRA/NUPRC/other	agencies
Independent verification,	Decommissioning	NUPRC	Environmental authorities

Financial assurance/audit The objective should be to eliminate the possibility of jurisdictional evasion.

v. Strengthen Regulatory Independence Environmental regulators should enjoy greater operational, financial and professional independence. Appointments should be based primarily upon: professional competence; environmental expertise; integrity; regulatory experience; and demonstrable independence from regulated industries. Security of tenure should be strengthened where constitutionally and legislatively appropriate.

vi. Introduce Transparent Environmental Enforcement Data All major environmental regulators should maintain publicly accessible digital databases containing: environmental permits; EIAs; oil-spill reports; inspection reports; violations; sanctions; remediation orders; remediation completion certificates; compensation outcomes; and unresolved environmental complaints. Transparency reduces information asymmetry and makes regulatory capture more difficult.

vii. Strengthen Environmental Public Interest Litigation The principle emerging from *Centre for Oil Pollution Watch v NNPC* should be further developed through legislation and procedural rules. Environmental organisations, affected communities and public-interest litigants should have accessible standing to challenge: regulatory inaction; unlawful approvals; failure to enforce environmental standards; inadequate remediation; environmental information failures; and systemic regulatory misconduct.

viii. Introduce a Statutory Duty to Enforce Environmental regulators to be subject to clearly defined statutory enforcement duties. Where credible evidence of serious environmental violation exists, the responsible regulator should be required to: 1. investigate within a prescribed period; 2. publish or communicate findings; 3. determine responsibility; 4. impose appropriate sanctions; 5. supervise remediation; and 6. verify completion.⁷ Regulatory discretion should remain, but 8 unstructured discretion should be reduced.

ix. Strengthen Community Participation Host communities should have enforceable rights to: environmental information; participation in relevant EIAs; consultation concerning remediation; access to spill-investigation reports; representation in environmental monitoring; complaints mechanisms; and judicial remedies. Participation should be substantive rather than ceremonial.

x. Strengthen Environmental Remediation Environmental remediation should be treated as an enforceable regulatory outcome rather than a voluntary corporate responsibility. The emerging regulatory framework under the PIA, including the Upstream Petroleum Environmental Remediation Fund Regulations 2024, provides a basis upon which remediation accountability can be strengthened. Independent verification should be required before a polluted site is certified as remediated.

xi. Apply the Polluter-Pays and Precautionary Principles More Effectively; Nigeria should ensure that the economic cost of environmental harm is not transferred to communities and taxpayers. The regulatory framework should therefore ensure that operators bear the appropriate costs of: prevention; containment; remediation; restoration; and compensation. At the same time, scientific uncertainty should not be used as a reason to postpone reasonable preventive measures.

xii. Strengthen Judicial Enforcement of Environmental Judgments A mechanism should be developed for monitoring compliance with environmental judgments. Where a court orders remediation or cessation of unlawful environmental conduct, the relevant regulator should be required to file periodic compliance reports. This would prevent the phenomenon in which judicial victory produces little practical environmental change.

xiii. Introduce Performance-Based Regulatory Evaluation Environmental institutions should be evaluated annually against measurable performance indicators. Assessment should include: number of inspections; response times; enforcement actions; sanctions; remediation completed; unresolved cases; community complaints; environmental quality indicators; and compliance with judicial orders. This converts environmental governance from a largely procedural exercise into an outcome-based accountability system.

xiv. Develop a Legal-Capture Risk Assessment Framework. Every major environmental regulatory institution should periodically undertake a Legal Capture Risk Assessment examining: political interference; industry influence; institutional dependence; conflicts of interest; revolving-door employment; enforcement disparities; unexplained regulatory delays; unexplained waiver of sanctions; and patterns of preferential treatment. Such assessments would make legal capture empirically measurable rather than merely theoretical.

xv. Adopt Comparative Best Practices Without Blind Legal Transplantation: Nigeria should selectively adapt Ghana's coordinated environmental administration; South Africa's enforceable

environmental-rights model; India's environmental principles; the United Kingdom's independent environmental oversight; the United States' public-interest litigation and judicial review mechanisms; Norway's constitutional environmental commitments; Canada's coordinated federal environmental governance; and Zambia's constitutional principles of participation, environmental information, precaution and polluter responsibility. The objective should be functional adaptation to Nigerian institutional realities rather than mechanical transplantation.

Finally, the principal challenge of environmental governance in Nigeria is no longer the production of environmental law but the prevention of its capture. The constitutional promise of section 20 can become meaningful only when environmental institutions are independent enough to enforce the law, transparent enough to be scrutinised, accountable enough to resist political and corporate influence, and accessible enough to be challenged by affected communities. Legal capture is therefore not merely an enforcement defect; it is a constitutional accountability failure. The appropriate reform objective is consequently to move Nigerian environmental governance from a regime of formal legality to a regime of effective constitutional environmental accountability.

ARTICLE INFORMATION

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FAILURES AND REFORM
STRATEGIES FOR
SUSTAINABLE
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