# EXAMINATION OF THE NATIONAL OIL SPILL DETECTION AND RESPONSE AGENCY'S (NOSDRA'S) FINANCIAL FRAMEWORKS AND THEIR IMPLICATIONS FOR EFFECTIVE OIL SPILL RESPONSE IN NIGERIA

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**Abstract**

Nigeria's oil spill crisis demands urgent attention, particularly in the devastated Niger Delta region where environmental and socio-economic impacts continue escalating. The National Oil Spill Detection and Response Agency (NOSDRA) faces critical operational limitations due to its dependence on inconsistent government funding rather than autonomous financial mechanisms. This research examines Nigeria's oil spill response funding structure against international benchmarks, specifically the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC, 1990), which requires independent funding for national response agencies. The study analysed Nigeria's compliance through the National Oil Spill Detection and Response Agency Act 2006 (amended 2008) and the revised National Oil Spill Contingency Plan for Nigeria (2020). Empirical data from NOSDRA headquarters demonstrates how federal budgetary dependence severely constrains operational effectiveness. Comparative analysis with global best practices reveals fundamental weaknesses in Nigeria's funding model that undermine response capabilities and regulatory independence. The research developed a comprehensive framework for NOSDRA's financial autonomy, demonstrating that independent funding mechanisms are crucial for rapid response deployment, regulatory objectivity, and environmental justice in oil-producing communities. These findings inform policy discussions on strengthening institutional capacity for environmental protection and sustainable development across resource-rich developing nations. The study employs combined doctrinal and non-doctrinal legal research methodologies, utilising the Nigerian Association of Law Teachers (NALT) uniform format and citation guide for legal research writing in Nigeria. This work addresses a critical gap in Nigeria's environmental management, proposing practical solutions for enhancing oil spill response effectiveness through institutional financial independence.

**Keywords:** NOSDRA, Effective, Oil Spill Response, Financial Dependence, Implications, Environmental Regulation,

## 1. Introduction

The Niger Delta, often referred to as the "goose that lays the golden egg" for Nigeria due to its vast hydrocarbon reserves, simultaneously bears the brunt of environmental degradation caused by decades of oil exploration and exploitation. Oil spills, whether due to operational failures, sabotage, or equipment corrosion, are a recurring nightmare, devastating ecosystems and impacting the livelihoods of millions of Nigerians residing in oil-producing communities. The prompt and effective management of these spills is not merely an environmental imperative but also a matter of human rights and sustainable development. Globally, there is a growing consensus that effective environmental management, particularly in high-risk industries such as oil and gas, necessitates robust and independently funded regulatory mechanisms.[1]

In response to the escalating challenge of oil pollution, the Nigerian government established the National Oil Spill Detection and Response Agency (NOSDRA) through the National Oil Spill Detection and Response Agency (Establishment, Etc.) Act, Cap. N15, 2006 (amended in 2008).[2] This Agency is statutorily mandated to be the lead agency for all matters relating to oil spill response management in Nigeria, responsible for surveillance, detection, coordination, and enforcement of environmental legislation in the petroleum sector.[3] Furthermore, Nigeria ratified the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC, 1990),[4] which serves as a global framework emphasising the responsibility of member states to establish national systems or plans for

[1] R Salvi and others, 'Benchmark and Legal Framework Study on Oil Spill Prompt Response and Contingency Resources for Oil & Gas Offshore Structures: A Global Cooperation' (2021) 1 International Oil Spill Conference Proceedings 690820.

[2] *National Oil Spill Detection and Response Agency (Establishment) Act* 2006 (amended by Act 2008), s 1(1).

[3] *National Oil Spill Detection and Response Agency (Establishment) Act* 2006 (amended by Act 2008), s 5.

[4] National Oil Spill Detection and Response Agency, *National Oil Spill Contingency Plan for Nigeria, Revised (*NOSCP) 2020. Foreword, p vii; para 2.6, p 3.

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responding promptly and effectively to oil pollution incidents. The National Oil Spill Contingency Plan (NOSCP), revised in 2020, outlines Nigeria's commitment to OPRC 90 and details the tiered response system, roles of various government agencies, and operational procedures for oil spill management.[5]

Despite these legislative and policy frameworks, the effectiveness of oil spill response in Nigeria remains a subject of considerable debate and concern. Recent scholarly literature continues to highlight critical gaps in Nigeria's oil spill response framework, including "regulatory loopholes, inadequate enforcement, insufficient technological resources, and a lack of preparedness".[6] A critical element often cited as a major impediment to NOSDRA's optimal performance is the perceived lack of independent and adequate funding. This article argues that without true financial autonomy, NOSDRA's capacity to fulfil its mandate effectively is severely compromised, leading to delayed responses, inadequate clean-up operations, and continued environmental degradation. This paper delves into Nigeria's current funding mechanisms for oil spill response, to critically evaluate NOSDRA's financial position vis-à-vis the OPRC 1990 stipulations for independent funding, and provide a comparative analysis with international best practices. Ultimately, it seeks to advocate for a robust and independently funded model for NOSDRA to ensure effective environmental governance in Nigeria's oil sector.

## 2. The Legal and Policy Frameworks for Oil Spill Response in Nigeria

Essentially, Nigeria's legal and policy frameworks for oil spill response are the National Oil Spill Detection and Response Agency (Establishment, Etc.) Act, Cap. N15, 2006 (amended in 2008), and the National Oil Spill Contingency Plan (NOSCP), Revised 2020.

### 2.1 The National Oil Spill Detection and Response Agency (Establishment, Etc.) Act. Cap. N15, 2006 (amended in 2008)

The NOSDRA Act 2006 established NOSDRA as a body corporate with perpetual succession, mandated to monitor, regulate, and coordinate responses to all oil spills in Nigeria.[7] Key objectives and functions of the Agency, as outlined in Sections 5 and 6 of the Act, include:

i. Establishing a viable national operational organisation for oil pollution response.[8]
ii. Identifying high-risk areas and priority areas for protection and clean-up.[9]
iii. Establishing mechanisms to monitor, assist, or direct response, including mobilising resources to save lives, protect the environment, and clean up impacted sites.[10]
iv. Maximising the effective use of facilities and resources of corporate bodies, their international connections, and oil spill co-operatives like Clean Nigeria Associates (CNA).[11]
v. Ensuring funding and appropriate and sufficient pre-positioned pollution combating equipment and materials, as well as a functional communication network system for effective response to major oil pollution.[12]
vi. Providing a programme of activation, training, and drill exercises.[13]
vii. Cooperating with international organisations and neighbouring countries.[14]
viii. Enforcing compliance with environmental legislation and international agreements.[15]

Of particular relevance to this discourse is Section 5(e) of the NOSDRA Act, which explicitly states one of the Agency's objectives as ensuring "funding and appropriate and sufficient pre-positioned pollution combating equipment and materials".[16] This clause implicitly suggests a recognition of the importance of funding for the Agency's operations, yet the practical implementation of this objective forms the crux of the problem.

Furthermore, Part V of the NOSDRA Act, specifically Sections 11 to 17, details the financial provisions for the Agency. In this regard, Section 11stipulates that the Agency shall establish and maintain a fund into which shall be paid and credited:

i. a take-off grant from the Federal Government;[17]
ii. annual subvention from the Federal Government;[18]

[5] NOSCP 2020, Foreword, p vii; para 6.0, p 13.
[6] Oil spill response strategies: a comparative conceptual study between the USA and Nigeria' (2024) GSC Advanced Research and Reviews 2(3) 124–130.
[7] National Oil Spill Detection and Response Agency (Establishment) Act 2006 (amended by Act 2008), s 1(1).
[8] Ibid, s 5(a).
[9] Ibid, s 5(b).
[10] Ibid, s 5(c).
[11] Ibid, s 5(d).
[12] National Oil Spill Detection and Response Agency (Establishment) Act 2006 (amended by Act 2008), s 5(e).
[13] Ibid, s 5(f).
[14] Ibid, s 5(g), (j).
[15] Ibid, s 6(1)(a), (b).
[16] Ibid, s 5(e).
[17] Ibid, s 11(a).
[18] Ibid, s 11(b).

iii. 5 percent of the ecological fund to serve as superfund for the management of major oil spill disasters annually;[19]
iv. 0.5 percent operations funds of oil companies for the enforcement of environmental legislation in the petroleum sector;[20]
v. such counterpart funding as may be provided, from time to time by a State or Local Government;[21]
vi. loans and grants-in-aid from national, bilateral and multilateral agencies;[22]
vii. rents, fees and other internally generated revenues from services provided by the Agency; and[23]
viii. all other sums accruing to the Agency from time to time.[24]

In the same vein, Section 12outlines how the fund may be applied, including for the cost of administration, emoluments and benefits of Governing Board members and staff, development and maintenance of property, and for all its functions under the Act.[25] Additionally, Section 13 mandates the Agency to submit annual estimates of its expenditure and income to the President through the Minister, and to keep proper audited accounts.[26]

Similarly, Section 14 requires the Agency to prepare and submit an annual report of its activities, including audited accounts, to the Federal Executive Council through the Minister.[27] In the same manner, Section 15 allows the Agency to accept gifts of land, money or other property, provided the conditions are consistent with its functions.[28] Furthermore, Section 16 grants the Agency the power to borrow sums required for its functions, by way of overdraft or otherwise, with the approval of the Governing Board. Borrowing in foreign currency, however, requires the prior approval of the Minister.[29] Then, Section 17 permits the Agency to invest its funds in prescribed or approved securities.[30]

### 2.2 The National Oil Spill Contingency Plan (NOSCP), Revised 2020

The NOSCP 2020 serves as the operational blueprint for oil spill response in Nigeria, aligning with the principles of OPRC 90, which Nigeria ratified.[31] The Plan outlines a tiered response system:

i. Tier 1 (Minor Spill): Spills of volume ≤25 barrels to inland waters or ≤ 250 barrels to land/coastal/ offshore waters, typically handled by individual companies.[32]
ii. Tier 2 (Medium Spill): Spills of volume 25–250 barrels to inland waters or 250–2500 barrels to land/coastal/offshore waters, where resources from other companies or industry cooperatives (like CNA) are called upon.[33]
iii. Tier 3 (Major/Catastrophic Spill): Spills ≤250 barrels to inland waters or >2500 barrels to land/coastal/ offshore waters, requiring substantial national or international support, with NOSDRA taking the lead.[34]

The NOSCP details the roles of various government ministries, departments, and agencies (MDAs), including the Federal Ministry of Environment, Nigerian National Petroleum Corporation (NNPC), Nigerian Maritime Administration and Safety Agency (NIMASA), and others, in the event of an oil spill.[35] It also outlines the reporting and communication protocols, emphasising that all spills must be reported to NOSDRA.[36]

Crucially, under the "Funding" section, the NOSCP states that "the funds for the establishment and the continual update and maintenance of the Plan can be derived from the Ecological Fund or from a newly established National Environmental Fund. Costs incurred in a spill combat shall however, be recovered from the spiller in accordance with the 'Polluter Pays Principle'.[37] "It further stipulates that "For the operational logistics towards the implementation of NOSCP (Tier 3), all relevant Ministries/Agencies directly concerned shall participate in the funding arrangement."[38]

### 3. The International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC), 1990, and Independent Funding

The OPRC, 1990, adopted under the auspices of the International Maritime Organisation (IMO), was a direct response to major oil pollution incidents like the *Exxon*

19 Ibid, s 11(c).
20 Ibid, s 11(d).
21 Ibid, s 11(e).
22 Ibid, s 11(f).
23 Ibid, s 11(g).
24 Ibid, s 11(h).
25 Ibid, s 12.
26 Ibid, s 13.
27 Ibid, s 14.
28 Ibid, s 15.
29 Ibid, s 16.
30 Ibid, s 17.
31 NOSCP 2020, Foreword, p vii; s 2.6, p 3.
32 NOSCP 2020, s 9.2, p 46.
33 NOSCP 2020, s 9.3, p 46.
34 NOSCP 2020, s 9.4, p 46.
35 NOSCP 2020, ss 7.0, 8.0, pp 32-45.
36 NOSCP 2020, s 11.0, p 51.
37 NOSCP 2020, s 26.0, p 202.
38 NOSCP 2020, s 26.0, p 202.

*Valdez* spill in 1989. The Convention aims to provide a global framework for international cooperation in preparing for and responding to major oil pollution incidents.[39] Nigeria's ratification of OPRC 90 signifies its commitment to these international standards.

Article 6 of OPRC 90, titled "National and Regional Systems for Preparedness and Response," outlines key obligations for State Parties. It states that:

> "Each Party shall within its capabilities either individually or through bilateral or multilateral cooperation and, as appropriate, in co-operation with the oil and shipping industries, Port Authorities and other relevant entities should establish: (i) a minimum level of pre-positioned oil spill response equipment commensurate with the risk involved together with trained personnel for deploying and operating such equipment; (ii) a programme of exercise for oil pollution response organisation and the training of relevant personnel; (iii) detailed plans and communication capabilities for responding to an oil pollution incident; and (iv) a mechanism or arrangement to coordinate the response to an oil pollution incident."[40]

While OPRC 90 does not explicitly use the term "independent funding," its underlying philosophy strongly implies the necessity of a stable, dedicated, and readily available financial mechanism for a national oil spill response agency to effectively discharge its duties. The emphasis on "pre-positioned oil spill response equipment,""trained personnel," and "detailed plans" all point to the need for continuous investment and operational readiness that cannot be subject to bureaucratic delays or political vagaries. Indeed, studies show that national policies on oil spill coordination and response vary, but a key factor in effective response is the availability of adequate contingency resources and a cooperation network of experts.[41]

The concept of independent funding for regulatory agencies, particularly in environmentally sensitive sectors, is a globally accepted best practice due to its critical role in ensuring effectiveness, impartiality, and public trust. For instance, the United States Environmental Agency (EPA), while it's a government agency, its budget is determined through congressional appropriations, which, while subject to political processes, are distinct from direct industry contributions. The EPA's mandate and enforcement powers are designed to operate independently of industry influence.[42] Equally, the Office for Environmental Protection (OEP), established by the Environmental Act, is designed to be an independent watchdog, holding the government and public bodies to account on their environmental obligations, including through enforcement powers. This independence is underpinned by its statutory role and funding structure.[43]

Notably, the concept of independent funding, as a global best practice, seeks to insulate the agency from undue influence, ensure predictability in financial flows, and enable long-term planning and investment in critical infrastructure, training, and technology. For an agency like NOSDRA, tasked with confronting powerful oil multinational corporations and coordinating complex, resource-intensive response operations, financial independence is not merely a desirable attribute but a fundamental prerequisite for its efficacy and credibility. Without it, the agency is vulnerable to being undermined, either through direct budgetary constraints or through indirect pressures from entities it is meant to regulate.

## 4. Critique of Nigeria's Stance on Independent Funding of Oil Spill Response

Nigeria's stated position on funding, as articulated in the NOSCP 2020 and especially within Part V of the NOSDRA Act 2006 (as amended by Act 2008), relies on a mixture of government allocations and industry contributions. While these provisions seemingly acknowledge the need for funding, a critical analysis, reinforced by findings from a field survey at NOSDRA's headquarters, reveals significant shortcomings that undermine the Agency's operational independence and effectiveness.

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[39] International Maritime Organisation, *International Convention on Oil Pollution Preparedness, Response and Co-operation* (1990).

[40] International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990, art 6(1).

[41] (n-1)

[42] U.S. Environmental Protection Agency. "EPA Funding Instruments and Authorities."*US EPA*. <https://www.epa.gov/grants/epa-funding-instruments-and-authorities> and "U.S. Environmental Protection Agency FY2026 President's Budget Request: In Brief."*Congress.gov*. <> access 24th July, 2025.

[43] UK Parliament. "Establishment of the Office for Environmental Protection."*Hansard*. (7 September 2021). <https://hansard.parliament.uk/commons/2021-09-07/debates/21090775000013/EstablishmentOfTheOfficeForEnvironmentalProtection> Also, Office for Environmental Protection. "Our Strategy."*The OEP*. <https://www.theoep.org.uk/sites/default/files/reports-files/E02754649%20OEP%20Our%20strategy_WEB.pdf> access 24th July, 2025.

### 4.1 Reliance on the Ecological Fund and Government Subvention: An Illusion of Dedicated Funding

Section 11 of the NOSDRA Act outlines various sources of funding for the Agency, notably including "annual subvention from the Federal Government"[44] and "5 percent of the ecological fund to serve as superfund for the management of major oil spill disasters annually."[45] While noble in its intent, reliance on these government-dependent sources presents several critical challenges. As confirmed by a NOSDRA official during a field survey, "Paucity of funds: inadequate funding for carrying out statutory duties" remains a significant challenge.[46] The National Oil Spill Detection and Response Agency (NOSDRA) annual reports for 2021, 2022, and 2023 show varying trends in funding sources and highlight operational inadequacies that could be linked to resource limitations. NOSDRA's funding primarily comprises Government Grants and Subventions, and Internally Generated Revenue (IGR).

Government Grants and Subventions saw a slight dip from ú 2.86 billion in 2021 to ú 2.84 billion in 2022, and then significantly increased to ú 3.38 billion in 2023. Internally Generated Revenue (IGR) rose from ú 188 million in 2021 to ú 216 million in 2022, before decreasing to ú 139 million in 2023. Total Funding for NOSDRA generally increased over the period, from approximately ú 3.04 billion in 2021 to ú 3.51 billion in 2023.

While the annual reports do not explicitly state "inadequacy of funding," the "Management Letter" sections for both 2022 and 2023 highlight operational deficiencies indicative of resource limitations. These include:

i. Inadequate storage conditions (lack of proper ventilation) leading to the rapid deterioration of high-value items.
ii. Insufficient storage space, resulting in items being stored on the floor and difficulties in inventory management.

These issues, if unaddressed due to financial constraints, could hinder NOSDRA's operational effectiveness in carrying out its mandate of oil spill detection and response.

The Ecological Fund is designed to address a wide array of ecological problems across the country, including desertification in Northern Nigeria, erosion in Eastern Nigeria and North Central states of the country, and flooding in the Niger Delta region, North Central states of Nigeria and virtually in all the Northern States of the country.[47] This means NOSDRA's funding from this source is subject to intense competition from other pressing environmental concerns, leading to inadequate allocations that fall far short of the significant resources required for effective oil spill preparedness and response. Similarly, the annual subvention is subject to the broader national budgetary process, which can lead to unpredictable funding cycles and delays, hindering the Agency's ability to plan and execute its functions effectively. Sections 13 and 14 of the NOSDRA Act, which mandate the Agency to submit annual estimates and reports through the Minister to the President and Federal Executive Council, further underscore this budgetary subservience, limiting its ability to independently allocate resources or respond to urgent needs without political interference.[48] Olaniyan, in his analysis of the multi-agency response approach in Nigeria, implicitly supports this by highlighting weaknesses in the operationalisation of responses, which are often tied to resource availability and bureaucratic hurdles.[49]

The 5% allocation from the Ecological Fund, designated as a "superfund" for major disasters,[50] is inherently reactive. While providing for catastrophic events, it does not guarantee consistent operational funding for daily surveillance, prevention, detection of minor spills, ongoing clean-up monitoring, regular training, or equipment maintenance. Effective oil spill management demands a proactive approach, yet this funding structure forces NOSDRA into a primarily reactive stance, waiting for a "major disaster" to fully unlock these designated funds.

### 4.2 The "Polluter Pays Principle" in Practice and Lack of Robust Industry Contributions

The NOSCP correctly asserts that costs incurred in spill combat shall be recovered from the spiller in accordance

[44] *National Oil Spill Detection and Response Agency (Establishment) Act* 2006 (as amended by Act 2008), s 11(b)

[45] Ibid, s 11©.

[46] Interview with Director, Oil Field Assessment, NOSDRA Headquarters, Abuja (Field Survey in November, 2024).

[47] While specific details on the Ecological Fund's scope are not in the provided documents, it is a generally known public fund in Nigeria addressing diverse ecological issues.

[48] *National Oil Spill Detection and Response Agency (Establishment) Act* 2006 (as amended by Act 2008), ss 13, 14.

[49] A Olaniyan, 'The Multi-Agency Response Approach to the Management of Oil Spill Incidents: Legal Framework for Effective Implementation in Nigeria' (2015) 6 *Afe Babalola University Journal of Sustainable Development Law & Policy* 110–128.

[50] *National Oil Spill Detection and Response Agency (Establishment) Act* 2006 (as amended by Act 2008), s 11(c).

with the "Polluter Pays Principle" (PPP).[51] Section 11(d) of the NOSDRA Act also makes provision for "0.5 percent operations funds of oil companies for the enforcement of environmental legislation in the petroleum sector."[52] While these provisions suggest an industry contribution, the practical implementation of PPP and the limited direct industry funding are fraught with challenges.

Firstly, as highlighted in the NOSCP, risks like "sabotage" and "corroded equipment/aged facility" complicate the establishment of causation in oil spills.[53] Data from Nigeria's National Oil Spill Detection and Response Agency (NOSDRA) reveals that sabotage and oil theft account for approximately 70% of oil spills in the Niger Delta region over an 11-year monitoring period. The agency's Oil Spill Monitor[54] documented 822 separate incidents between 2020 and 2021, which collectively released 28,003 barrels of oil into the environment. These findings underscore the predominant role of illegal activities in Nigeria's oil spill crisis, particularly affecting the ecologically sensitive Niger Delta area. Between 2015 and March 2021, NOSDRA documented a stark disparity in spill causes: sabotage resulted in 3,628 incidents, while corrosion accounted for just 308 spills—highlighting that sabotage occurs at nearly twelve times the rate of equipment failure.

This ambiguity allows oil companies to dispute liability, delaying or even avoiding compensation and clean-up costs. For instance, NOSDRA's annual reports for the year 2021, 2022, and 2023 unfortunately, do not provide specific breakdowns of expenditures related to oil spill cleanup costs on an annual or biannual basis. The financial statements primarily detail revenue sources (government grants and internally generated revenue) and broad expenditure categories, but they do not itemise the agency's spending specifically on oil spill cleanup activities.

In the light of the aforementioned, even when liability is clear, securing prompt and full recovery of costs can be an arduous process due to the slow Nigerian judicial system and weak enforcement mechanisms, leaving NOSDRA to bear the immediate financial burden or delay crucial response actions. Ayo concludes that the PPP "has not been particularly effective as an environmental protection instrument in Nigeria" due to various technicalities.[55] Udungeri, further argues that the "civil and criminal liability approaches adopted to implement the polluter pays are inappropriate for internalising external costs."[56]

Secondly, the 0.5% operations funds from oil companies, while a direct contribution, may not be sufficient for comprehensive enforcement activities, let alone for the broader operational needs of a robust oil spill response agency. The failure of the 0.5% operations funds from oil companies to adequately fund NOSDRA can be attributed to:

i. Insufficient Base & Fluctuating Revenue: A fixed small percentage of "operations funds" may be inherently inadequate, and its value is unstable due to volatile oil prices.
ii. Rising Costs: The increasing expense of environmental enforcement, monitoring, and oil spill cleanup outpaces the fixed contribution.
iii. Compliance & Access Issues: Challenges in ensuring oil company compliance with declarations and timely remittance, alongside potential bureaucratic delays in fund access, impede effective utilization.
iv. Limited Scope: The specific definition of "operations funds" might be too narrow, not covering the comprehensive financial needs of a robust agency, impacting proactive measures and essential infrastructure.

Crucially, as revealed by the field survey, NOSDRA has "inadequate oil spill response equipment" and "have to rely on oil companies and other relevant Agencies where their equipment and technical expertise are lacking."[57] This reliance on regulated entities for critical equipment and expertise due to internal funding shortfalls highlights a fundamental conflict of interest and compromises NOSDRA's independent enforcement capabilities. This situation creates a form of moral hazard, similar to the argument by the Hamilton Project in the US context, where insufficient liability caps or weak enforcement

[51] NOSCP 2020, s 26.0, p 202.
[52] *National Oil Spill Detection and Response Agency (Establishment) Act* 2006 (as amended by Act 2008), s 11(d).
[53] NOSCP 2020, s 3.0.4, p 5.
[54] Oil Spill Monitor: <https://nosdra.oilspillmonitor.ng> access 24th July, 2025.
[55] T. E Ayo, 'Challenges of Enforcing the Polluter Pays Principle as an Environmental Protection Tool in the Nigerian Oil-Producing Community' (2023) 10 *NAU Journal of Commercial and Private Law* 160–178.
[56] K Udungeri, 'Environmental Protection and Cost Internalisation: Implementing the Polluter-Pays Principle in the Nigerian Oil and Gas Sector' (University of Leeds School of Law Seminar, 10 December 2021) https://essl.leeds.ac.uk/education-social-sciences-law/events/event/1209/environmental-protection-and-cost-internalisation-implementing-the-polluter-pays-principle-in-the-nigerian-oil-and-gas-sector accessed 12 June 2025.
[57] (n-44)

effectively subsidise risky behaviour by not making polluters bear the full cost of potential damages.[58]

Thirdly, there is no robust mechanism to ensure that polluters have sufficient financial guarantees (e.g., insurance, bonds) to cover the full costs of a major oil spill response and remediation. This is particularly concerning for smaller operators or in cases of catastrophic spills where costs can be astronomical. The absence of such "Financial Security Requirements (FSRs)" is a critical flaw, as argued by Udungeri, leading to the government and victims often funding environmental restoration at taxpayers' expense.[59]

Then, a particularly troubling finding from the field survey indicates that there is "Pressure on the Agency's personnel to compromise the report of Joint Investigation Visits (JIV's) assessment of the cause and scale of oil spill by oil companies so that they can avoid responsibility."[60] This direct pressure, likely exacerbated by NOSDRA's reliance on oil companies for certain operational capabilities and the *ex post facto* nature of cost recovery, directly undermines the Agency's integrity and its ability to objectively enforce environmental legislation.

### 4.3 Operational and Ethical Vulnerabilities Due to Dependence

The Act's financial provisions, coupled with the reliance on other agencies and the findings from the field survey, expose significant operational and ethical vulnerabilities as follows:

**a. Delay in Response and Reliance on Regulated Entities**

The field survey explicitly states a challenge: "Delay in responding to oil spills due to reliance on regulated entities to visit oil spill sites i.e., oil companies."[61] This is a direct consequence of NOSDRA's own "inadequate oil spill response equipment"[62] and "paucity of funds,"[63] forcing it to depend on the very entities it is supposed to regulate for immediate on-site presence and initial response. This reliance contradicts the OPRC 1990's emphasis on a State Party's independent capacity for prompt response.

**b. Compromised Independence of Action**

Sections 15, 16, and 17 of the NOSDRA Act, which allow the Agency to accept gifts, borrow money, and invest funds,[64] theoretically provide avenues for diversification. However, the limited financial capacity and the overall governmental control implied by Section 11 (especially subventions) and Sections 13 and 14 (budgetary approval) mean that these provisions are unlikely to fundamentally alter the Agency's financial dependence. The power to borrow, especially in foreign currency, still requires Ministerial approval,[65] further reinforcing a lack of true financial autonomy.

**c. Challenges in Joint Investigation Visits (JIV)**

While the NOSDRA Act and NOSCP mandate joint investigation visits (JIVs),[66] the field survey reveals challenges such as "Insecurity posed by vandals and saboteurs of oil pipelines,""Lack of cooperation by host communities affected by oil spill," and issues with community representatives refusing to sign JIV reports.[67] While these are not directly funding issues, they complicate the evidence-gathering process for liability, indirectly impacting the effectiveness of PPP and increasing the operational burden on a financially constrained agency. The fundamental challenge of "Inadequate funding of the Agency" is listed as a cause for some of these JIV difficulties.[68]

In summary, while the NOSDRA Act attempts to provide a financial framework, the current mechanisms, as revealed by legal analysis and findings from field survey conducted by the author, reinforce a system of dependency rather than independence. The reliance on competitive government funds, the challenges in enforcing the PPP as a recovery tool, and the direct pressure to compromise investigations due to inadequate resources profoundly hinder NOSDRA's autonomy and operational capacity, ultimately compromising its ability to effectively protect Nigeria's environment from oil pollution. Recent comparative studies highlight critical gaps in Nigeria's oil spill response framework, particularly in contrast to the USA, emphasising that

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[58] The Hamilton Project, 'Liability and financial responsibility for oil spills under the Oil Pollution Act of 1990 and related statutes' (2010) https://www.hamiltonproject.org/news-and-commentary/commentary/liability-and-financial-responsibility-for-oil-spills-under-the-oil-pollution-act-of-1990-and-related-statutes/ accessed 12 June 2025.

[59] (n-53)

[60] (n-44)

[61] (n-44)

[62] (n-44)

[63] (n-44)

[64] *National Oil Spill Detection and Response Agency (Establishment) Act* 2006 (as amended by Act 2008), ss 15, 16, 17.

[65] Ibid, s 16(3).

[66] *National Oil Spill Detection and Response Agency (Establishment) Act* 2006 (as amended by Act 2008), s 8.2; NOSCP 2020, s 8.2, p 34.

[67] (n-44)

[68] (n-44)

insufficient technological resources and a lack of preparedness exacerbate the consequences of spills.[69]

**5. Comparative Analysis: International Best Practices in Funding Oil Spill Response Agencies**

To provide a scholarly critique of Nigeria's funding approach, it is imperative to examine how other jurisdictions, particularly those with significant oil and gas activities, fund their oil spill regulatory and response agencies. The OPRC 1990, while not explicitly mandating a specific funding model, emphasises the need for preparedness and adequate resources, which implicitly points towards stable and independent funding.

**5.1 United States: Oil Spill Liability Trust Fund (OSLTF)**

The United States has one of the most comprehensive oil spill liability and compensation regimes, primarily governed by the Oil Pollution Act of 1990 (OPA 90), enacted after the *Exxon Valdez* spill.[70] A cornerstone of this regime is the Oil Spill Liability Trust Fund (OSLTF), managed by the U.S. Coast Guard and the National Pollution Funds Centre. The OSLTF is financed primarily by a 9-cents-per-barrel tax on crude oil received at U.S. refineries and on petroleum products imported into the U.S.[71] It also receives revenue from cost recoveries from responsible parties, penalties, and interest on investments. This is a dedicated, self-sustaining fund.

The fund provides immediate access to up to $1 billion per spill for response, removal, and damages, allowing the Coast Guard and other federal agencies to act swiftly without waiting for annual appropriations or determining liability.[72] The Oil Spill Liability Trust Fund maintained a balance of $842 million at fiscal year 2004 but faced projected depletion by fiscal year 2009 due to structural deficits averaging $200 million annually[1]. The fund's primary revenue source, a 5-cent per barrel petroleum tax, expired in 1994.[73]

Cost recovery from responsible parties has been limited, with only 27% of expenditures recovered between fiscal years 1995-2004[1]. During this period, total removal and claims expenditures reached $492.3 million while recoveries totaled $130.6 million[1]. The fund processed 4,875 removal cost claims and 477 losses of profits claims between fiscal years 1992-2004.[74] The fund provides up to $50 million annually for immediate response activities across all U.S. states and territories[1]. Louisiana received the highest allocation ($100.4 million), followed by California ($40.3 million) and Alaska ($16.6 million) between fiscal years 1997-2004.[75]

Seven responsible party liability limit claims totaling $36.3 million have been paid, with an additional $52.4 million under adjudication[1]. All 17 incidents exceeding liability limits between fiscal years 1993-2004 involved vessel spills.[76] Federal agencies receive annual appropriations for administrative and enforcement activities, with dedicated funding for the Prince William Sound Oil Spill Recovery Institute and Alaska Denali Commission through interest on transferred legacy funds.[77]

Responsible parties are then billed for the costs. The OSLTF covers costs incurred by federal, state, and tribal governments for oil spill response, natural resource damage assessments and restoration, and certain uncompensated damages (e.g., lost profits, property damages).[78] This model provides significant financial autonomy and predictability for response efforts. The fund is pre-funded by the industry, ensuring that resources are available when needed, irrespective of the polluter's financial standing or willingness to pay immediately. The effectiveness of such pre-funded mechanisms, as opposed to post-spill compensation, is highlighted by academic research which notes that the Polluter Pays Principle is often only used for cost recovery, not for the preparedness that is crucial for effective response.[79]

**5.2 Canada: Environmental Damages Fund (EDF) and Polluter Pays Principle**

Canada's approach also emphasises the polluter pays principle, but with mechanisms to ensure funds are available for remediation. While not a dedicated, always-on fund like OSLTF for all spills, specific industries

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69 (n-6)

70 Oil Pollution Act of 1990 (OPA 90), 33 U.S.C. § 2701 et seq. (1990).

71 U.S. Coast Guard, National Pollution Funds Centre, 'Oil Spill Liability Trust Fund' https://www.npfc.uscg.mil/about/osltf.html accessed 12 June 2025.

72 Ibid

73 U.S. Coast Guard. *Report on Implementation of the Oil Pollution Act of 1990*. Washington, DC: U.S. Department of Homeland Security; 2005. Available from: <https://www.uscg.mil/Portals/0/NPFC/docs/PDFs/Reports/osltf_report.pdf> access 24th July, 2025.

74 (n-15)

75 Ibid.

76 Ibid.

77 Ibid.

78 Ibid

79 M Aksoy and H Özyurt, 'Combating of oil spills by funding of oil spill preparedness vs funding for compensation after the spill events' (2021) 1 International Oil Spill Conference Proceedings 1141590.

contribute to funds. The Environmental Damages Fund (EDF) is a government fund that directs funds from fines and penalties for environmental violations towards environmental restoration projects.[80] While not a pre-funded oil spill response fund, it ensures that money from environmental crimes is used for environmental benefit.

For oil spills, Canadian legislation places primary responsibility for response and clean-up directly on the polluter. Canada's "polluter pays" approach to oil spill management framework establishes that companies responsible for spills must lead and fund cleanup efforts through several key pieces of legislation including the Marine Liability Act and Canadian Environmental Protection Act. The system operates through industry-funded response organisations and compensation funds, with polluters required to demonstrate substantial financial capacity (up to $1 billion for pipeline operators) to cover potential cleanup costs. While government agencies like the Canadian Coast Guard provide oversight, they recover their expenses from the responsible parties or industry-funded pools rather than taxpayers bearing the burden. Essentially, Canada has structured its oil spill response system to ensure environmental cleanup costs are borne by the industries that create the risks, not the public.

The *Canada Shipping Act, 2001* and the *Arctic Waters Pollution Prevention Act* contain provisions for liability and compensation.[81] For spills from ships, Canada has the Ship-Source Oil Pollution Fund, which provides compensation for oil pollution damage caused by ships and can cover response costs if the responsible party fails to do so or cannot be identified.[82] It is funded by levies on contributing oil. The Canadian system heavily relies on strict liability and mandatory insurance requirements for oil handling facilities and ships to ensure that polluters have the financial capacity to respond.[83]

### 5.3 European Union: Industry-Funded Compensation Schemes

The EU's approach to oil pollution liability and compensation is largely integrated through international conventions like the Civil Liability Convention (CLC) and the Fund Convention, supplemented by regional and national legislation. Many EU member states are parties to the International Oil Pollution Compensation (IOPC) Funds, which provide supplementary compensation for oil pollution damage from tankers when the ship owner's liability is insufficient.[84] These funds are financed by contributions from oil receivers in member states. The IOPC Funds system, established under the CLC and Fund Conventions, demonstrates a robust multi-tiered compensation approach where liability is strict and compulsory insurance is mandated.[85]

Some European countries have national funds or industry-led initiatives. For example, the United Kingdom, while a party to the IOPC Funds, also has industry-backed response organisations like Oil Spill Response Limited (OSRL), which is funded by its members (primarily oil and gas companies) to provide a global response capability.[86] The EU emphasises a strong regulatory framework for prevention, preparedness, and response, often requiring industry to have robust contingency plans and resources.

### 5.4 China: China Oil Pollution Compensation Fund (COPCF)

China, as a major global oil importer, has also developed its own domestic oil pollution compensation mechanism. The China Oil Pollution Compensation Fund (COPCF), established in 2012, is financed through levies on maritime oil cargo fees.[87] This fund specifically compensates for damages caused by significant ship-source oil pollution incidents involving persistent oils.

The COPCF allows for quicker adjustments to compensation limits through policy modifications, providing greater flexibility suited to China's primary shipping activities in coastal and domestic routes.[88] While the COPCF provides domestic compensation, China also recognises the need for international mechanisms like the IOPC Fund to cover larger-scale incidents and facilitate global risk-sharing.[89] This demonstrates a dual approach to funding oil spill response and compensation.

[80] Environment and Climate Change Canada, 'Environmental Damages Fund' accessed 12 June 2025.

[81] *Canada Shipping Act* 2001, S.C. 2001, c. 26; *Arctic Waters Pollution Prevention Act*, R.S.C., 1985, c. A-12.

[82] Transport Canada, 'Ship-Source Oil Pollution Fund' https://tc.canada.ca/en/marine-transportation/pollution-response/ship-source-oil-pollution-fund accessed 12 June 2025.

[83] Government of Canada, 'Oil spill preparedness and response' https://www.canada.ca/en/transport-canada/services/marine-transportation/oil-spill-preparedness-response.html accessed 12 June 2025.

[84] International Oil Pollution Compensation Funds, 'About the IOPC Funds' https://www.iopcfunds.org/about-us/ accessed 12 June 2025.

[85] IOPC Funds, 'Liability and compensation for oil pollution damage' https://iopcfunds.org/wp-content/uploads/2018/06/Text-of-Conventions_e.pdf accessed 12 June 2025.

[86] Oil Spill Response Limited (OSRL), 'About Us' https://www.oilspillresponse.com/about-us accessed 12 June 2025.

[87] Y Li and X Zhang, 'Addressing oil pollution compensation in China: an analysis of the CLC and domestic fund models' (2025) 13 Frontiers in Marine Science 1602260.

[88] Ibid

[89] Ibid

## 5.5 Comparison and Lessons for Nigeria

| Feature | Nigeria (NOSDRA) | United States (OSLTF) | Canada (SSOPF/Industry) | European Union (IOPC Funds/Industry) | China (COPCF/Industry) |
|---|---|---|---|---|---|
| Primary Funding Source | Ecological Fund (5%); Annual Subvention; 0.5% from oil companies; Gifts, Loans, Rents; Polluter Pays Principle for recovery | Dedicated per-barrel tax on oil; Cost recoveries; Penalties | Industry responsibility (liability/insurance); Ship-Source Oil Pollution Fund (levy on oil) | Contributions from oil receivers (IOPC Funds); Industry-funded response organisations | Levies on maritime oil cargo fees (COPCF); industry responsibility |
| Funding Nature | Government-dependent, subject to budgetary allocations, competitive, potentially unstable. Limited direct industry contribution. | Pre-funded, dedicated, stable, and immediately accessible | Primarily polluter-funded with supplementary fund for ship spills | Industry-funded international/national compensation; Industry-funded response capabilities | Dedicated domestic fund from industry levies; also utilizes international funds |
| Autonomy/Predictability | Low; subject to political and bureaucratic delays, hampers long-term planning, ministerial approvals for loans/budgets. | High; immediate access to large funds, insulated from annual appropriations | Moderate to high; relies on industry capacity and robust liability framework | Moderate to high; international cooperation provides a safety net | Moderate to high; domestic fund offers flexibility, complemented by international funds |
| Enforcement of PPP | Challenging due to causation issues, litigation, lack of financial guarantees, and reported pressure to compromise investigations. Ineffective as environmental protection tool. | Robust; OSLTF provides immediate response, then responsible parties are billed | Strong emphasis on strict liability and financial guarantees | Strong; international conventions and national laws ensure liability | Strong; fund ensures compensation even with difficulties in identifying exact polluters |
| Capacity Building | Inconsistent due to funding instability; R&D and training may suffer; reliance on oil companies for equipment/expertise due to inadequacy. | Consistent and well-resourced due to dedicated fund | Dependent on individual company investment and robust regulatory oversight | Supported by industry efforts and international cooperation in R&D and training | Enabled by stable domestic funding and international engagement |

### 5.6. Key Lessons for Nigeria

1. **Dedicated, Industry-Funded Mechanisms for Preparedness:** The most striking difference is the absence of a robust, pre-funded mechanism for oil spill response in Nigeria, akin to the U.S. OSLTF, Canada's SSOPF, or China's COPCF. While Section 11(d) of the NOSDRA Act mentions 0.5% from oil companies, this appears insufficient and not truly "ring-fenced" for independent operational capacity. As noted by academic literature, the cost of oil spill preparedness cannot effectively be recovered through reactive liability regimes alone; it requires pre-emptive levies from risk-contributing sectors.[90] Relying on general government funds or a competitive Ecological Fund inherently limits NOSDRA's operational capacity and financial independence. A higher, mandatory per-barrel levy on oil production or imports, directly channelled to a dedicated oil spill response fund managed by NOSDRA, would provide the necessary stability and predictability, echoing successful models globally.
2. **Robust Financial Guarantees for Polluters:** While the polluter pay principle (PPP), is stated in the NOSCP, its effective implementation requires that polluters have demonstrable financial capacity to cover the full costs of response and remediation. Nigeria needs stronger regulations mandating robust insurance coverage or environmental bonds for all

[90] (n-79)

oil and gas operators, as opposed to simply relying on *ex post facto* recovery, which is often problematic and leads to taxpayers funding clean-ups.[91]

3. **Strengthening Enforcement and Regulatory Independence:** The reported "pressure on the Agency's personnel to compromise"[92] highlights a severe threat to regulatory integrity. Streamlining the process of establishing liability and ensuring prompt recovery of costs from polluters is crucial. This might involve strengthening environmental courts, imposing stricter penalties for non-compliance, and providing NOSDRA with greater legal authority to levy fines and collect clean-up costs efficiently, without compromising its independence through reliance on industry. This would align with scholarly calls for strengthening legislation and enhancing technological capacity in Nigeria.[93]
4. **Operational Independence:** For NOSDRA to truly be effective, it needs to be insulated from political and bureaucratic interference in its day-to-day operations and financial management. While Sections 15-17 of the NOSDRA Act provide avenues for diversification, the continued requirement for ministerial approvals for budgets, foreign borrowing, and the overall dependence on federal subventions and a competitive Ecological Fund undermine true autonomy.
5. **Investment in Technology and Human Capital:** A dedicated, adequately funded mechanism would allow for consistent investment in modern spill detection and response technologies, continuous training and professional development for NOSDRA personnel, and crucial R&D to address the unique challenges of Nigeria's environment, thereby reducing the current reliance on oil companies for equipment and expertise, as noted in the field survey.[94]

The comparative analysis, bolstered by empirical insights from the field and recent scholarly works, clearly demonstrates that countries with effective oil spill response systems have moved beyond relying solely on general government budgets or *ad hoc* arrangements. Instead, they have established industry-contributed, dedicated funds or robust liability frameworks that ensure financial resources are readily available for immediate and comprehensive response actions. Nigeria's current approach leaves NOSDRA in a financially precarious and operationally compromised position, hindering its ability to meet its statutory obligations and international commitments under OPRC.[95]

## 6. Critique of Nigeria's Stance on Independent Funding for NOSDRA

Nigeria's stance on funding NOSDRA, as outlined in the NOSDRA Act and the NOSCP 2020, while acknowledging the need for funds and adhering to the "Polluter Pays Principle," fundamentally falls short of establishing genuine financial independence for the Agency. This shortfall is not merely an administrative inconvenience but a critical impediment to effective oil spill governance in a country severely impacted by oil pollution.

### 6.1 The Illusion of Funding: The Ecological Fund and its Limitations

The NOSCP states that funds for the Plan's maintenance and update should come from the Ecological Fund or a new National Environmental Fund.[96] The NOSDRA Act further specifies that 5% of the Ecological Fund is to serve as a "superfund for the management of major oil spill disasters annually."[97] While superficially appearing to provide a dedicated revenue stream, this arrangement is deeply problematic and creates an illusion of funding independence.

For instance, the Ecological Fund, despite its specific name, is ultimately a part of the consolidated revenue fund of the federation and its allocations are subject to the broader national budgetary process. This means that NOSDRA's share is not guaranteed and can be reduced or delayed based on prevailing economic conditions, competing national priorities, or political decisions. This directly contrasts with the OPRC 1990's implicit demand for stable and predictable funding for preparedness and response. An agency dealing with environmental emergencies cannot afford to be beholden to annual appropriations cycles or political horse-trading. The requirement for NOSDRA to submit annual estimates through the Minister for Presidential approval (Section 13) and annual reports to the Federal Executive Council (Section 14) further reinforce this reliance on governmental budgetary processes, hindering its financial autonomy.[98]

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91 (n-71)
92 (n-44)
93 (n-6)
94 (n-44)
95 NOSCP 2020, s 26.0, p 202.
96 *National Oil Spill Detection and Response Agency (Establishment) Act* 2006 (as amended by Act 2008), s 11©.
97 Ibid, ss 13, 14.
98 Ibid, s 11(d).

Also, the Ecological Fund is designed to address a multitude of environmental challenges across the country, not exclusively oil spills. This broad mandate means NOSDRA competes with other critical issues like desertification, erosion, and climate change for a share of the pie. The 5% allocation for major oil spills, while designated as a "superfund," is for *major disasters*, not the consistent operational funding required for surveillance, prevention, detection, minor spill response, ongoing clean-up monitoring, regular training, or equipment maintenance. This operational funding gap is where the current system is most vulnerable.

Remarkably, a significant weakness is the absence of a direct, hypothecated levy or tax on oil production or related activities, specifically earmarked for NOSDRA's operations. As seen in the U.S. OSLTF, a per-barrel tax directly ties the funding mechanism to the very industry causing the risk. This ensures that the polluters are continuously contributing to the response mechanism, rather than relying on general government revenue or *ex post facto* recovery efforts which are often contentious and delayed. The current system indirectly taxes the general populace (through their share of the Ecological Fund), rather than directly placing the financial burden on the industry that generates the pollution risk. While Section 11(d) mentions "0.5 per cent operations funds of oil companies" [90], this is a minor fraction compared to the comprehensive, pre-funded mechanisms seen internationally, and its sufficiency for "enforcement of environmental legislation" alone is questionable, let alone for broader operational needs. This limited direct contribution fails to internalise the full environmental cost of operations.[99]

Consequently, **w**hile the 5% from the Ecological Fund for major spills is a step towards having funds for catastrophic events, effective oil spill management demands a proactive approach centred on prevention and rapid initial response to prevent minor spills from escalating. Relying on a "superfund" that is activated *after* a major disaster means the agency might lack the consistent resources for critical preventive measures, continuous monitoring, and prompt Tier 1 and Tier 2 interventions, which are often crucial in mitigating larger impacts.

### 6.2 The "Polluter Pays Principle" as a Post-Spill Recovery Mechanism, not a Pre-funding Source

Nigeria's commitment to the Polluter Pays Principle (PPP) for cost recovery[100] is commendable in theory but faces severe practical limitations when it comes to *funding* immediate response. This is because the current framework primarily uses PPP as a cost *recovery* mechanism, not a robust *pre-funding* mechanism. This means NOSDRA (or the government) must first expend resources for response, and then attempt to recover these costs from the spiller. This "pay-then-recover" model places an immense financial burden on the Agency and the government, especially for large spills where costs are substantial and immediate. Scholarly consensus from the Nigerian context confirms that PPP has not been effective, often leaving victims uncompensated or inadequately so due to legal technicalities and slow court processes.[101]

Notably, as discussed earlier, the challenges of proving causation, lengthy litigation, and weak enforcement mechanisms mean that recovering costs from polluters is often a protracted and uncertain process. This creates a funding gap and forces NOSDRA to operate on a reactive and often under-resourced basis. If a polluter cannot be identified, or is insolvent, the burden falls entirely on public funds, contradicting the spirit of PPP. This is further exacerbated by the explicit revelation from the field survey of "Pressure on the Agency's personnel to compromise the report of JIV's assessment of the cause and scale of oil spill by oil companies so that they can avoid responsibility."[102] This systemic pressure directly compromises the integrity of investigation and enforcement, making effective cost recovery and accountability immensely difficult.

Unlike jurisdictions with robust systems, Nigeria lacks a mandatory and comprehensive financial assurance requirement for oil companies (e.g., dedicated escrow accounts, robust insurance policies specifically for environmental remediation, or substantial environmental bonds) that would guarantee immediate access to funds for response regardless of liability disputes. Without such assurances, PPP remains a principle that is difficult to enforce when it matters most – in the immediate aftermath of a spill. Udungeri, strongly argues for the inclusion of Financial Security Requirements (FSRs) in Nigerian environmental legislation, highlighting that their absence leads to the public purse bearing cleanup costs that should be internalised by operators.[103]

[99] (n-53)
[100] NOSCP 2020, s 26.0, p 202.
[101] (n-52)
[102] (n-44)
[103] (n-53)

### 6.3 NOSDRA's Subordination and Compromised Independence

The NOSDRA Act establishes the agency as a parastatal under the Federal Ministry of Environment[104] and stipulates that its Governing Board includes representatives from various ministries, including Petroleum Resources, Finance, and Interior.[105] While inter-agency cooperation is necessary, this structure, coupled with the funding mechanism and empirical observations, compromises NOSDRA's independence.

To buttress the aforementioned, as a parastatal, NOSDRA's budget is an integral part of the Federal Ministry of Environment's budget, meaning its financial requests are filtered and potentially curtailed by the Ministry before reaching the National Assembly. This arrangement limits NOSDRA's ability to advocate directly for its financial needs or to embark on multi-year strategic investments without ministerial blessing. Sections 13 and 14 of the NOSDRA Act reinforce this by requiring financial estimates and reports to be routed through the Minister.[106] The power to borrow (Section 16), especially in foreign currency, also requires Ministerial approval,[107] further reinforcing a lack of true financial autonomy.

Furthermore, the presence of representatives from the Ministry of Petroleum Resources and other ministries with ties to the oil industry on NOSDRA's Governing Board, while intended for coordination, can also create a potential for conflict of interest. The Ministry of Petroleum Resources, for instance, has a primary mandate to promote oil production, which might inadvertently lead to less stringent enforcement if it impacts commercial interests. An independently funded NOSDRA would be less susceptible to such influences.

In the same vein, the multi-agency funding model for Tier 3 responses, as stipulated in the NOSCP[108] introduces layers of bureaucracy. Mobilising resources from different ministries, each with its own procurement rules and financial processes, can lead to significant delays in an emergency situation where swift action is critical. This contravenes the OPRC 1990's emphasis on prompt and effective response. The field survey's finding of "Delay in responding to oil spills due to reliance on regulated entities to visit oil spill sites i.e., oil companies"[109] directly points to a lack of immediate, independent operational capacity. Consequently, a lack of stable and independent funding, compounded by the internal "paucity of funds"[110] and "inadequate oil spill response equipment"[111] identified in the field survey, directly affects NOSDRA's ability to attract and retain highly skilled personnel and to acquire and maintain state-of-the-art equipment. If salaries and operational funds are subject to budgetary uncertainties, it becomes difficult to build a professional and technologically advanced oil spill response force capable of independent action. The Agency's "reliance on oil companies and other relevant Agencies where their equipment and technical expertise are lacking"[112] highlights this critical gap, leading to what GSC Online Press (2024) identifies as "insufficient technological resources" within Nigeria's response framework.[113]

### 6.4 The OPRC 1990 and the Call for Functional Autonomy

While OPRC 1990 does not explicitly use the term "independent funding," its emphasis on "preparedness," "prompt response,""sufficient pre-positioned equipment, " and "trained personnel"[114] strongly implies the need for a national authority that is functionally and financially autonomous to a significant degree. The Convention's spirit is that national systems should be robust enough to act decisively without being constrained by unpredictable funding or undue influence from the very industry they regulate.

However, Nigeria's current funding model for NOSDRA, as detailed in the NOSDRA Act and the NOSCP, and corroborated by empirical observations and recent scholarly work, falls short of this implied standard. By integrating NOSDRA's funding within the general government budgetary process, relying on a multi-purpose Ecological Fund, and experiencing operational and ethical compromises due to inadequate funding and reliance on regulated entities, Nigeria has inadvertently created a system where NOSDRA's operational capacity is often constrained by external factors, rather than being driven by the environmental imperatives of oil spill management. Olaniyan, underscores the need for coherence and systemic integration within Nigeria's multi-agency response to

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[104] *National Oil Spill Detection and Response Agency (Establishment) Act* 2006 (as amended by Act 2008), s 1.2; NOSCP 2020, s 14.2, p 58.

[105] *National Oil Spill Detection and Response Agency (Establishment) Act* 2006 (as amended by Act 2008), Pt II, s 2(2)(b).

[106] Ibid, ss 13, 14.

[107] Ibid, s 16(3).

[108] NOSCP 2020, s 26.0, p 202.

[109] (n-44)

[110] (n-44)

[111] (n-44)

[112] (n-44)

[113] (n-6)

[114] International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990, art 6(1).

address current weaknesses,[115] a goal fundamentally undermined by financial precarity.

## 7. Comparative Analysis: International Best Practices in Funding Oil Spill Response Agencies

To provide a scholarly critique of Nigeria's funding approach, it is imperative to examine how other jurisdictions, particularly those with significant oil and gas activities, fund their oil spill regulatory and response agencies. The OPRC 1990, while not explicitly mandating a specific funding model, emphasises the need for preparedness and adequate resources, which implicitly points towards stable and independent funding.

### 7.1 Key Elements of Effective International Funding Models

The U.S. OSLTF, funded by a per-barrel tax on oil, provides a clear example of a dedicated revenue stream that ensures consistent and substantial funding.[116] This ring-fencing of funds means they are not subject to annual budgetary competition or political shifts. Similarly, the China Oil Pollution Compensation Fund (COPCF) is financed through levies on maritime oil cargo fees, creating a dedicated domestic fund for response.[117] This mechanism aligns with scholarly recommendations that pollution levies should be collected from "risk contributing sectors" like oil exploration and production industries, proportional to the risk created.[118] Notably, funds are collected before a spill occurs, ensuring immediate availability for response and remediation, rather than relying on *ex post facto* recovery, which is often slow and litigious. This critical distinction between funding preparedness versus funding compensation after a spill is a recurring theme in international discourse on effective oil spill management.[119]

Similarly, mandatory insurance requirements, bonds, or compensation funds (like the IOPC Funds for ship-source pollution) ensure that polluters have the financial capacity to meet their liabilities, reducing the burden on public funds and regulatory agencies.[120] The IOPC Funds, in particular, demonstrate a robust international system where compulsory insurance is mandated, and funds are financed by contributions from oil receivers.[121] While subject to government oversight, the management of these dedicated funds and the operational decisions of the response agencies are typically insulated from day-to-day political interference, allowing for swift and technically sound decisions. Salvi et al. (2021) note that "industry established and funded a network of Tier 3 Centers" consistent with OPRC 90, recognises the need for increased resources and coordination for effective response.[122]

In these models, PPP is effectively implemented as a mechanism to recover costs after initial response, ensuring polluters ultimately bear the financial burden and incentivising preventive measures. It also serves as a deterrent against irresponsible practices.

### 7.2 Why Nigeria's Model Deviates and the Consequences

Nigeria's model, in contrast, largely relies on a reactive recovery of costs (PPP) and a non-dedicated government fund (Ecological Fund), supplemented by a small percentage from oil companies and other ad hoc sources. This deviation has several detrimental consequences:

The lack of immediate, dedicated funds, compounded by the reported "Delay in responding to oil spills due to reliance on regulated entities,"[123] means NOSDRA might face delays in mobilising resources for prompt response, especially for large spills. These delays can lead to the escalation of environmental damage, making clean-up more complex and expensive. Inconsistent funding, evidenced by "inadequate oil spill response equipment" and "paucity of funds,"[124] hampers NOSDRA's ability to procure and maintain state-of-the-art equipment, and to provide continuous, high-quality training for its personnel. This results in a response capability that may not be commensurate with the scale of oil pollution in Nigeria.

A financially dependent NOSDRA may find it challenging to assert its authority robustly against powerful oil companies, particularly if those companies contribute significantly to the national economy or exert political influence, and especially when Agency personnel face "Pressure... to compromise the report."[125] The lack of independent funding can create a perception, or reality, of regulatory capture. When polluters are not held fully accountable or cannot pay, the financial burden shifts to the government (and by extension, taxpayers) or,

[115](n-47)
[116](n-68)
[117](n-79)
[118](n-71)
[119](n-71)
[120](n-76)
[121](n-77)
[122](n-41)
[123](n-44)
[124](n-44)
[125](n-44)

worse, to the affected communities who suffer long-term environmental and socio-economic consequences without adequate compensation or remediation. This underscores the critical need for financial security requirements that ensure operators internalise the cost of their operations.[126]

## 8. Proposal for an Independently Funded NOSDRA Model in Nigeria

To address the critical deficiencies in NOSDRA's funding mechanism and align Nigeria with international best practices and the spirit of OPRC 1990, the following independently funded models are proposed.

### 8.1 Establishment of a Dedicated Oil Spill Response and Remediation Fund (OSRRF)

Establish a mandatory per-barrel levy on all crude oil produced, refined, and imported in Nigeria, and a percentage levy on the gross revenue of oil and gas exploration and production companies operating in Nigeria. This levy should be legally ring-fenced specifically for the OSRRF, overcoming the limitations of the current 0.5% provision in Section 11(d) of the NOSDRA Act. The fund should also receive contributions from penalties and fines imposed for environmental violations related to oil spills. This approach is consistent with international models that collect pollution levies from risk-contributing sectors for preparedness.[127]

The OSRRF should be managed by an independent board comprising technical experts, representatives from civil society organisations, environmental law practitioners, and a limited number of relevant government officials, with NOSDRA's Director-General serving as a non-voting member or secretary. This ensures transparency, accountability, and insulation from undue political or industry influence, moving beyond the current ministerial oversight outlined in Sections 13 and 14 of the NOSDRA Act.

NOSDRA should have direct, unimpeded access to the OSRRF for all its operational activities related to oil spill preparedness, detection, response, clean-up oversight, and remediation monitoring. There should be clear guidelines for withdrawal and expenditure, subject to rigorous auditing. This directly addresses the "paucity of funds" and "delay in responding" to issues identified in the field survey.

A fixed annual percentage of the fund should be dedicated to NOSDRA's recurrent expenditures, including salaries, equipment procurement and maintenance (addressing "inadequate oil spill response equipment"), training programmes, R&D, surveillance, and preventive initiatives. This ensures predictability, unlike reliance on annual subventions or a competitive Ecological Fund.

A significant portion of the fund should be reserved for immediate deployment during major oil spill incidents (Tier 3), allowing NOSDRA to act swiftly without waiting for *ad hoc* government approvals or litigation outcomes, which currently contribute to delays. This mirrors the pre-funding approach of successful international models.[128]

### 8.2 Strengthened Financial Assurance Requirements for Operators

1. **Mandatory Environmental Insurance/Bonds:** Legislate mandatory comprehensive environmental impairment liability insurance policies or substantial environmental bonds for all oil and gas operators. These policies/bonds must be sufficient to cover the full potential costs of clean-up, remediation, and compensation for damages resulting from even catastrophic spills, addressing the current "lack of financial guarantees." This aligns with scholarly arguments for the necessity of Financial Security Requirements (FSRs) to ensure cost internalisation.[129]
2. **Escrow Accounts for High-Risk Operations:** For particularly high-risk operations (e.g., deepwater drilling, operations in environmentally sensitive areas), operators should be required to deposit funds into a dedicated escrow account, accessible by NOSDRA in the event of a spill where immediate response is critical and liability is initially unclear.
3. **Regular Review of Financial Capacity:** Conduct regular, independent assessments of operators' financial capacity to cover potential spill liabilities and adjust insurance/bond requirements accordingly.

### 8.3 Streamlined Enforcement and Legal Framework

1. **Environmental Courts/Tribunals:** Establish specialised environmental courts or tribunals with expedited procedures for adjudicating oil spill liability cases and enforcing environmental laws. This would significantly reduce the lengthy litigation processes that currently delay compensation and cost recovery, as highlighted by scholarly work on PPP enforcement in Nigeria.[130]

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[126] (n-53)
[127] (n-71)
[128] (n-68)
[129] (n-53)
[130] (n-52)

2. **Strengthened Penalties:** Review and significantly increase the fines and penalties for oil spill incidents and non-compliance with environmental regulations. These penalties should serve as a strong deterrent and contribute directly to the OSRRF, reinforcing the PPP.
3. **Clearer Liability Framework:** While the PPP is stated, the legal framework could be further refined to minimise ambiguities regarding causation in cases where multiple factors (e.g., sabotage, equipment failure, age of infrastructure) contribute to a spill, ensuring that the primary responsibility for immediate response and initial clean-up remains with the operator, regardless of final liability determination. This would also help mitigate the "Pressure on the Agency's personnel to compromise"[131] identified in the field survey.
4. **Empowered NOSDRA:** Grant NOSDRA greater legal authority to impose administrative fines and compel immediate clean-up and remediation, with robust mechanisms for appeal to prevent abuse of power, but without undermining the urgency of response. This would contribute to strengthening the overall legal framework for oil spill response in Nigeria.[132]

### 8.4 Enhanced Transparency and Accountability

1. **Public Reporting:** The OSRRF and NOSDRA's financial activities should be subject to stringent public reporting requirements, including annual audited financial statements, details of funds received and expended, and performance metrics related to spill response effectiveness.
2. **Independent Oversight:** Beyond the management board, an independent audit body, potentially comprising representatives from the Auditor-General's office and external auditors, should regularly scrutinise the OSRRF and NOSDRA's expenditures.
3. **Stakeholder Engagement:** Ensure continuous engagement with affected communities, civil society organisations, and academic institutions in the oversight and planning processes, fostering trust and ensuring that funding decisions reflect the real needs on the ground.

[131] (n-44)
[132] (n-6)

## 9. Conclusion

Oil spills in Nigeria are not merely environmental incidents; they are deeply entrenched socio-economic and human rights crises that demand a robust and uncompromising response. The existing funding model for the National Oil Spill Detection and Response Agency (NOSDRA), as detailed in the NOSDRA Act (particularly Part V) and the NOSCP, and critically evidenced by empirical findings from a field survey, is fundamentally flawed. Its reliance on competitive government funds, reactive cost recovery, and the challenges of operational dependence on regulated entities have left NOSDRA in a precarious financial position, hindering its operational independence, limiting its capacity to act swiftly, and ultimately compromising environmental protection in a nation heavily reliant on oil.

The International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC, 1990), to which Nigeria is a signatory, implicitly calls for a national response system underpinned by stable and predictable financial resources. A comparative analysis with international best practices, particularly the U.S. Oil Spill Liability Trust Fund, Canada's Ship-Source Oil Pollution Fund, and China's Oil Pollution Compensation Fund, clearly demonstrates the efficacy of dedicated, industry-funded and pre-funded mechanisms that ensure immediate response and insulate regulatory agencies from budgetary uncertainties and political interference.

For Nigeria to genuinely combat oil pollution and uphold its environmental commitments, a paradigm shift in NOSDRA's funding is imperative. The establishment of a dedicated Oil Spill Response and Remediation Fund (OSRRF), financed by a mandatory levy on the oil and gas industry, coupled with strengthened financial assurance requirements for operators, streamlined enforcement mechanisms, and enhanced transparency, is a critical step. This model would provide NOSDRA with the necessary financial autonomy and predictability to effectively carry out its mandate: preventing, detecting, and responding to oil spills with the urgency and efficacy that Nigeria's environment and its affected communities desperately require. Without such a fundamental reform, the aspiration of a clean and sustainable Niger Delta will remain elusive, and the environmental costs of oil production will continue to be borne disproportionately by the vulnerable.