RESOLUTION OF THE TENSION BETWEEN OIL SPILL RESPONSE REGULATION AND FREEDOM OF ASSOCIATION IN NIGERIA'S PETROLEUM SUBSECTOR

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Abstract

Management of environmental pollution in Nigeria's petroleum subsector operates within a regulatory framework in which the National Oil Spill Detection and Response Agency (NOSDRA) is statutorily required, under section 6(1)(f) of the NOSDRA (Establishment, Etc.) Act 2006 (amended in 2008), to ensure that all oil industry operators subscribe to and are bona fide members of Clean Nigeria Associates (CNA) or any similar association. Against the recurring ecological devastation of the Niger Delta, this statutory mandate appears to compel association, raising tension with section 40 of the Constitution of the Federal Republic of Nigeria, 1999 which guarantees the right to freedom of association, including the corollary right not to be compelled to associate with other persons. The aim of this article is to interrogate whether section 6(1)(f) of the NOSDRA Act constitutes a justifiable derogation under section 45 of Nigeria's Constitution, while assessing its functionality in advancing the agency's objectives under

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section 5(1)(d) and (e) of the Act. The main argument is that compelling industry membership is constitutionally defensible only where it satisfies the threefold derogation test of legality, legitimate aim, and proportionality. Adopting a doctrinal methodology of legal research, the article finds that the provision survives constitutional scrutiny on a conditional basis, contingent on good-faith administration of the disjunctive alternative, the promulgation of transparent criteria for recognising similar associations under section 26 of the Act, and incremental legislative refinement. The research is justified by the contemporary importance of environmental enforcement and rights protection in Nigeria.

Keywords: Resolution, *Tension, Oil Spill, Response Regulation, Freedom of Association, Petroleum Subsector*

1.0 INTRODUCTION

The Nigerian petroleum subsector remains the principal source of national revenue and, simultaneously, the most ecologically fragile theatre of regulatory contestation in the country. Decades of crude oil extraction in the Niger Delta have produced a recurring pattern of pipeline ruptures, well blow-outs, sabotage-induced discharges and operational spills whose cumulative damage to soil, surface water, marine biodiversity and human health is now well documented in legal scholarship and judicial pronouncement. To respond to that crisis, the National Assembly enacted the National Oil Spill Detection and Response Agency (Establishment, Etc.) Act 2006 (amended in 2008). That statute established the National Oil Spill Detection and Response Agency (NOSDRA) as the lead federal agency charged with preparedness, detection and response to oil spillages in Nigeria, and

clothed it with regulatory powers spanning surveillance, enforcement, post-spill assessment and remediation.[1]

Among the agency's several statutory functions, one provision has emerged as analytically and constitutionally complex. Section 6(1)(f) of the Act requires NOSDRA to "*ensure that all oil industry operators in Nigeria subscribe to and be bona fide members of Clean Nigeria Associates (CNA) or any other similar association by whatever name called*". On a textual reading, the provision converts membership in a private industry cooperative into a precondition for lawful operation in Nigeria's petroleum subsector. Yet section 40 of the 1999 Constitution guarantees every person the right to assemble freely and associate with other persons, a right that necessarily carries with it the negative corollary right not to associate.[2]

That tension forms the central problem this article seeks to resolve. The question is whether a statutory provision that compels economic actors to subscribe to a particular private association can be reconciled with the constitutional guarantee of freedom of association, or, if not, whether the provision constitutes a permissible derogation under section 45 of the Constitution, which authorises laws that are reasonably justifiable in a democratic society in the interests of defence, public safety, public order, public morality, public health, or for protecting the rights and freedoms of other persons.[3]

The aim of this article is to critically analyse the function of NOSDRA under section 6(1)(f) of the Act with reference to the objectives prescribed in section 5(1)(a)–(e), and to determine the constitutional

[1]National Oil Spill Detection and Response Agency (Establishment, Etc.) Act 2006 (amended in 2008) s 6.
[2]Constitution of the Federal Republic of Nigeria 1999 (as amended) s 40.
[3]CFRN 1999 (as amended) (n 2) s 45(1).

fate of that provision under the derogation clause. The objectives are threefold: first, to map the doctrinal terrain of freedom of association in Nigeria, including its negative dimension; secondly, to assess the regulatory function performed by section 6(1)(f) in achieving the agency's objectives; and thirdly, to apply the constitutional test of reasonable justifiability to determine whether the provision survives scrutiny.

This article proceeds in eight parts. Part 2 examines the constitutional and international framework governing freedom of association in Nigeria. Part 3 dissects the statutory framework of NOSDRA, with particular attention to sections 5 (1)(a) and (e) and 6(1)(f). Part 4 considers the role of Clean Nigeria Associates and the regulatory rationale for compelled membership. Part 5 applies the derogation test in section 45 of the Constitution. Part 6 proposes a doctrinal and legislative resolution of the tension. Part 7 sets out the recommendations, and Part 8 contains the concluding observations of the article.

2.0 CONSTITUTIONAL AND INTERNATIONAL FRAMEWORK OF FREEDOM OF ASSOCIATION IN NIGERIA

2.1 The Constitutional Provision

Section 40 of the Constitution provides that every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests. The provision contains an internal proviso permitting the State to recognise other associations formed for purposes of regulating the practice of particular professions. The right is therefore not absolute; the proviso anticipates statutory carve-outs in the case of professional regulation,

and section 45 supplies the general derogation clause applicable to fundamental rights enshrined in sections 37 to 41 of the Constitution.[4]

Constitutional scholarship in Nigeria has long emphasised that the right to associate inherently includes the right not to associate. Amao argues that any meaningful protection of associational liberty must guard the citizen against compulsion to join organisations whose mandates or ideologies they reject, since compelled association would hollow out the value the freedom is intended to protect.[5] The Supreme Court of Nigeria has, in a different but instructive context, recognised this negative dimension in *Agbai v Okogbue*, where the Court held that compelling a person to be a member of an age-grade association by reason of birth was inconsistent with the constitutional guarantee of freedom of association.[6] Although the case arose in a customary law setting, the ratio is doctrinally portable: where a person is, by force of law, conscripted into membership of an association he would otherwise decline to join, the fundamental right is engaged. Nwokedi JSC, delivering the leading judgment of the Court, observed that the right of association is essentially a question of choice, and any law or custom which seeks to impose membership on an unwilling person violates the fundamental freedom guaranteed by the Constitution.[7] That observation captures with clarity the doctrinal core that animates the present analysis: the freedom to associate is, in its deepest sense, a freedom of conscience exercised in the public square, and the State that compels affiliation must justify the compulsion not merely by reference to administrative convenience but by reference to the constitutional grammar of derogation.

[4]CFRN 1999 (as amended) (n 2) s 40.
[5]F Amao, 'Freedom of Association in Nigeria: A Cacophony of Contestations' (2025) 12(1–2) European Journal of Comparative Law and Governance 304.
[6]*Agbai v Okogbue* (1991) 7 NWLR (Pt 204) 391 (SC).
[7]*Agbai v Okogbue* (n 6).

The Nigerian courts have, however, also recognised that the freedom of association is not violated wherever the State conditions participation in a regulated activity on adherence to an organised institutional framework. In *Osawe v Registrar of Trade Unions*, the Supreme Court upheld statutory provisions restricting the registration of trade unions and held that the constitutional guarantee of freedom of association was not infringed by a regulatory scheme requiring channels of organised participation in a sector subject to legitimate public regulation.[8] Although the decision in *Osawe* originated within the domain of industrial relations, the constitutional principle therein enunciated — to the effect that legislative regulation of associational conduct is constitutionally permissible where it is demonstrably directed at a legitimate public interest — transcends its immediate factual matrix and commands broader doctrinal application. By necessary implication, the said principle furnishes a cogent and apposite framework for the constitutional interrogation of section 6(1)(f) of the NOSDRA Act.

2.2 Constitutional Supremacy and Inconsistent Legislation

The supremacy of the Constitution is foundational. Section 1(1) and (3) provides that the Constitution shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria, and that if any other law is inconsistent with the provisions of the Constitution, the Constitution shall prevail and that other law shall, to the extent of the inconsistency, be void.[9] Oyewo notes that this supremacy clause is the doctrinal hinge of all constitutional rights litigation in Nigeria, and that any statute, including a regulatory enactment such as the NOSDRA Act, must be measured against the

[8] *Osawe v Registrar of Trade Unions* (1985) 1 NWLR (Pt 4) 755 (SC).
[9] CFRN 1999 (as amended) (n 2) s 1(1) and (3), (n 2).

chapter on fundamental rights and must yield in the case of irreconcilable inconsistency.[10]

2.3 The International and Regional Dimension

Nigeria is a State Party to the principal international instruments protecting freedom of association. Article 22 of the International Covenant on Civil and Political Rights guarantees the right to freedom of association with others, including the right to form and join trade unions, subject only to such restrictions as are prescribed by law and are necessary in a democratic society in the interests of national security, public safety, public order, public health or morals or for the protection of the rights and freedoms of others.[11] The Universal Declaration of Human Rights affirms in article 20 that no one may be compelled to belong to an association.[12]

At the regional level, article 10 of the African Charter on Human and Peoples' Rights provides that every individual shall have the right to free association, provided that he abides by the law.[13] Critically, Nigeria has domesticated the African Charter through the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act,[14] and the Supreme Court has held in *Abacha v Fawehinmi* that the Charter is enforceable in Nigerian courts as part of the laws of Nigeria, although it does not enjoy the supremacy of the Constitution.[15] Jurisprudence from the European Convention system is also

[10]O Oyewo, *Constitutional Law in Nigeria* (Clarus Press 2019).
[11]International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 22.
[12]Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III), art 20.
[13]African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58, art 10.
[14]African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9 Laws of the Federation of Nigeria 2004.
[15]*Abacha v Fawehinmi* (2000) 6 NWLR (Pt 660) 228 (SC).

persuasive. The European Court of Human Rights held in *Young, James and Webster v United Kingdom* that compulsion to join a trade union as a condition of continued employment constituted an interference with the negative dimension of associational freedom and required compelling justification.[16] In *Sigurður A. Sigurjónsson v Iceland*, the Court reaffirmed that the freedom to associate necessarily carries with it a freedom not to be compelled to join.[17]

2.4 The Derogation Clause: Section 45 of the Constitution

Section 45(1) of the Constitution provides that nothing in sections 37, 38, 39, 40 and 41 shall invalidate any law that is reasonably justifiable in a democratic society (a) in the interests of defence, public safety, public order, public morality or public health, or (b) for the purpose of protecting the rights and freedom of other persons.[18] Taiwo observes that the section establishes a closed list of permissible grounds, and that any law that derogates from a Chapter IV right must demonstrably fall within one of those grounds and additionally satisfy the threshold of reasonable justifiability in a democratic society.[19]

Although the Constitution does not itself articulate a structured proportionality framework, comparative jurisprudence under the European Convention treats accessibility and foreseeability as integral to the legality limb.[20] Nigerian courts have, in cases such as *DPP v Obi*[21] and *Olawoyin v Attorney-General of Northern Nigeria*[22], required the State to justify rights-restrictive legislation by reference to

[16]*Young, James and Webster v United Kingdom* (1981) Series A no 44, [55]–[57].
[17]*Sigurður A Sigurjónsson v Iceland* (1993) Series A no 264, [37].
[18]CFRN 1999 (as amended) (n 2) s 45(1).
[19]E A Taiwo, 'Enforcement of Fundamental Rights and the Standing Rules under the Nigerian Constitution: A Need for a More Liberal Provision' (2009) 9(2) African Human Rights Law Journal 546.
[20]*Sunday Times v United Kingdom* (1979) Series A no 30, [49].
[21]*DPP v Obi* (1961) 1 All NLR 186 (SC).
[22]*Olawoyin v Attorney-General of Northern Nigeria* (1961) 1 All NLR 269 (SC).

a clear legitimate aim and a rational connection between the restriction and the aim sought to be achieved. Modern Nigerian jurisprudence has progressively converged towards a three-part inquiry: first, whether the restriction is prescribed by law; secondly, whether it pursues a legitimate aim within the section 45 catalogue; and thirdly, whether it is reasonably justifiable - that is, whether the means employed are rationally connected to the end and do not exceed what is necessary to achieve it. It is against that doctrinal backdrop that section 6(1)(f) of the NOSDRA Act must be assessed.

3.0 STATUTORY FRAMEWORK OF THE NATIONAL OIL SPILL DETECTION AND RESPONSE AGENCY

3.1 Establishment and Constitutional Pedigree

NOSDRA was established by section 1 of the NOSDRA Act as a body corporate with perpetual succession and a common seal, with responsibility for preparedness, detection and response to all oil spillages in Nigeria.[23] The agency operates within a federal legislative competence anchored in items 39 and 60 of the Exclusive Legislative List of the 1999 Constitution, which vest the National Assembly with authority over mines and minerals, including oil fields, oil mining, geological surveys and natural gas. The fundamental objectives and directive principles of State policy in Chapter II of the Constitution further mandate the State to protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria,[24] although Section 6(6)(c) of the 1999 Constitution explicitly bars courts from adjudicating on whether any act conforms with the Fundamental Objectives and Directive Principles in Chapter II, rendering environmental rights under Section 20 historically non-justiciable.

[23]NOSDRA Act (n 1) s 1.
[24]CFRN 1999 (as amended) (n 2) s 20.

However, a "new dawn" has emerged through judicial creativity, whereby courts have bypassed this limitation by anchoring environmental claims in the justiciable fundamental rights provisions of Chapter IV, particularly the right to life (Section 33) and the right to dignity of the human person (Section 34).[25] The landmark case of *Gbemre v Shell Petroleum Development Company Nigeria Limited*[26] exemplified this shift, with the Federal High Court holding that gas flaring violated constitutional rights to life and dignity, effectively giving environmental claims enforceable constitutional status.[27] The domestication of the African Charter on Human and Peoples' Rights provides a further independent legal basis, as Article 24's guarantee of a satisfactory environment is now directly enforceable in Nigerian courts, circumventing the Section 6(6)(c) barrier entirely.[28] The Supreme Court's decision in *Centre for Oil Pollution Watch v NNPC*[29] reinforced this trajectory by liberalising locus standi rules, confirming that NGOs and public interest groups possess sufficient standing to litigate environmental matters without requiring personal injury. Collectively, these judicial innovations, supported by progressive legislation such as the Climate Change Act 2021, have transformed Section 6(6)(c) from an absolute bar into a surmountable procedural hurdle, making environmental rights practically enforceable without any constitutional amendment.[30]

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[25] P K U Yashim and L E Anyia 'A New Dawn on the Jurisprudence of Justiciability of Environmental Rights in Nigeria' (2026) 2(1) Prime University Law Journal 44 - 48.

[26] *(2005) AHRLR 151 (NgHC 2005).*

[27] O Ibrahim, 'Nigerian Supreme Court's Stealth Relaxation of Locus Standi in Environmental Litigation: Redirecting Judicial Approach to Public Interest Litigation' (2021) 2(2) Journal of Private and Business Law 200.

[28] A O Gbade, 'Public Interest Litigation as a Catalyst for Sustainable Development in Nigeria' (2013) 6(6) OIDA International Journal of Sustainable Development 85.

[29] *Centre for Oil Pollution Watch v NNPC* (2019) 5 NWLR (Pt 1666) 518.

[30] Ibrahim (n 27) 207.

The agency's constitutional basis rests upon a conjunction of enumerated legislative powers and a normative environmental policy framework, namely the NOSDRA Act, the Oil Spill Recovery, Clean-up, Remediation and Damage Assessment Regulations (OSRCRDAR),[31] the Oil and Oily Wastes Management Regulations (OOWMR),[32] and Nigeria's National Oil Spill Contingency Plan.[33] In *Attorney-General of Ondo State v Attorney-General of the Federation*, the Supreme Court held that the non-justiciable directive principles enshrined in Chapter II may, on a permissible doctrinal extension, be rendered justiciable by legislation enacted by the National Assembly within its competence.[34] The NOSDRA Act may accordingly be construed as precisely such legislation, one that gives justiciable effect to section 20 of the Constitution within the petroleum subsector.

That position is further reinforced by the Supreme Court's subsequent decision in *Attorney-General of Lagos State v Attorney-General of the Federation*, in which the Court affirmed that section 20 of the Constitution constitutes the foundation for environmental legislation enacted by the National Assembly and for regulations made pursuant thereto.[35] It is that provision, therefore, which furnishes the constitutional basis for the promulgation of both the NOSDRA Act and the Agency's Regulations, which, pursuant to section 26 of the Act,[36] govern the management of oil spills, oily waste, and gas pollution throughout Nigeria.[37]

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[31]Oil Spill Recovery, Clean-up, Remediation and Damage Assessment Regulations 2011.
[32]Oil and Oily Wastes Management Regulations 2011.
[33]National Oil Spill Contingency Plan for Nigeria (Revised 2020).
[34]*Attorney-General of Ondo State v Attorney-General of the Federation* (2002) 9 NWLR (Pt 772) 222 (SC).
[35]*Attorney-General of Lagos State v Attorney-General of the Federation* (2003) FWLR (Pt 168) 909.
[36]NOSDRA Act (n 1) s 26.
[37]NOSDRA Act (n 1) ss 30(1) and (2).

3.2 Objectives Under Section 5 of the NOSDRA Act 2006 (amended in 2008)

Section 5 prescribes the objectives of the agency, which are to monitor and regulate Tier 1 and Tier 2 oil spills and to coordinate, implement and review the National Oil Spill Contingency Plan for Nigeria.[38] Sub-paragraphs (a) to (e) are particularly germane to the present inquiry. The agency is required, in respect of the Plan, to: (a) establish a viable national operational organisation that ensures a safe, timely, effective and appropriate response to all oil pollution as well as hazardous and noxious substances in the petroleum subsector; (b) identify high-risk areas as well as priority areas for protection and clean-up; (c) establish the mechanism to monitor and assist or where expedient direct the response, including the capability to mobilise the necessary resources to save lives, protect threatened environment, and clean up to the best practical extent of the impacted sites; (d) maximise the effective use of the available facilities and resources of corporate bodies, their international connections and oil spill cooperatives, that is Clean Nigeria Associates (CNA), in implementing appropriate spill response; and (e) ensure funding and appropriate and sufficient pre-positioned pollution combating equipment and materials, as well as functional communication network systems required for effective response to major oil pollution.[39]

Two observations are immediate. First, sub-paragraph (d) explicitly names Clean Nigeria Associates in the text of the statute and contemplates maximisation of its facilities and resources as a strategic objective of NOSDRA. Secondly, the statute draws a structural distinction between the agency's regulatory monitoring function over Tier 1 and Tier 2 spills, on the one hand, and its coordination role under the Contingency Plan, on the other. The section 32 definitions

[38]NOSDRA Act (n 1) s 5.
[39]NOSDRA Act (n 1) s 5(a)–(e).

clarify that Tier 1 spills are operational spills less than or equal to 7 tonnes occurring at or near a company's own facilities, while Tier 2 spills exceed that threshold but remain below 700 tonnes, in respect of which mutual aid resources from other operators may be invoked.[40] Sub-paragraph (e) is of particular significance. Yashim and Oche, in their doctrinal evaluation of the adequacy of Nigeria's oil spill response framework, observe that section 5(e) does not merely permit but affirmatively mandates the agency to ensure the existence of appropriate and sufficient pre-positioned pollution-combating equipment and materials, and a functional communication network, as a condition of effective major-spill response;[41] the statutory objective therefore presupposes a standing, pre-positioned response capability, and section 6(1)(f) is the mechanism by which that capability is institutionally secured across the sector.

3.1.3 Functions Under Section 6 of the NOSDRA Act 2006 (amended in 2008)

Section 6(1) of the NOSDRA Act, sets out the general functions of the agency, including surveillance and enforcement of environmental legislation in the petroleum subsector, compliance with international agreements, receipt of oil spillage reports, coordination of the Contingency Plan and removal of hazardous and noxious substances.[42] Section 6(2) imposes on every oil spiller the duty to report a spill within 24 hours, with a default penalty of N2,000,000 for each day of

[40]NOSDRA Act (n 1) s 32 (interpretation of 'Tier 1' and 'Tier 2'). A Tier 3 spill, by contrast, denotes a major spill exceeding 700 tonnes, or one whose magnitude or location is such that effective response exceeds national capability and requires the mobilisation of international assistance under the National Oil Spill Contingency Plan (n 28).

[41]P K U Yashim and P N Oche, 'Evaluation of the Adequacy of Nigeria's Legal and Policy Frameworks for Oil Spill Response Coordination' (2025) 2(1) Margaret Lawrence University Law Journal 343, 347–348.

[42]National Oil Spill Detection and Response Agency (Establishment, Etc.,) Act 2006 (amended in 2008) (n 1) s 6(1)(a)-(g).

failure to report,[43] and section 6(3) criminalises failure to clean up the impacted site within two weeks of occurrence, prescribing a fine not exceeding N5,000,000 or imprisonment not exceeding two years or both, anchored on the polluter pays principle.[44]

Section 6(1)(f), the focal point of this article, sits within that broader regulatory framework. It is functionally distinct from the criminal enforcement provisions of section 6(2) and (3); rather than penalising post-spill non-compliance, it operates ex ante by conditioning lawful participation in the petroleum subsector on membership in Clean Nigeria Associates or any other similar association. The provision was inserted to formalise an industry self-help arrangement that pre-existed the agency itself, ensuring that the cooperative's pre-positioned equipment, trained personnel and mutual aid protocols are uniformly accessible across the sector.

3.1.4 Special Functions Under Section 7 of the NOSDRA Act and the Role of the National Control and Response Centre

Section 7 of the NOSDRA Act, prescribes special functions, including coordination of the Contingency Plan within 200 nautical miles of the baseline of the territorial waters of Nigeria, regional cooperation, surveillance and facilitation of trans-border response. Subsection (g)(i) provides that, for the purposes of a Tier 3 oil spill response, the National Control and Response Centre established under section 18 of the Act shall undertake the functions specified under section 19.[45] The Second Schedule to the Act, made pursuant to sections 7(g)(ii) and 19(1) and (2), maps the inter-ministerial collaboration architecture for Tier 3 spills, and significantly assigns specific operational

[43](n 1) s 6(2).
[44](n 1) s 6(3).
[45]National Oil Spill Detection and Response Agency (Establishment, Etc.,) Act 2006 (amended in 2008) (n 1) s 7(g)(i).

responsibilities to the Oil Producers Trade Section of the Lagos Chamber of Commerce, namely the provision of operational and Environmental Sensitivity Index (ESI) maps, logistic support services including equipment and specialist personnel, and the securing of services of international organisations in response efforts.[46]

This statutory map confirms that the Act presupposes the existence of an organised, industry-funded response capability accessible to the State at moments of crisis. In the absence of that capability, the agency's objectives under section 5 would be operationally hollow. NOSDRA's in-house operational capacity remains limited and the agency relies substantially on industry-supplied equipment and personnel for Tier 2 and Tier 3 incidents. Yashim and Anyia, in their empirical study of the agency's operational limits, document that NOSDRA's field presence in spill incidents is frequently preconditioned on the logistical and financial cooperation of the very operators it regulates, and that the agency lacks the autonomous capacity to convene Joint Investigation Visits or to mobilise to remote spill sites without recourse to industry support.[47] That structural dependence is itself the practical predicate for section 6(1)(f): a pooled, pre-positioned industry capability is the resource on which the agency's coordination role under the Contingency Plan is operationally premised.

[46]National Oil Spill Detection and Response Agency (Establishment, Etc.,) Act 2006 (amended in 2008), (n 1) sch 2, para 11 (functions of the Oil Producers Trade Section/Lagos Chamber of Commerce).

[47]P K U Yashim and L E Anyia, 'Legal and Institutional Challenges in Nigeria's Oil Spill Response: Reassessing NOSDRA's Statutory Role and Operational Limits' (2025) 3 PLASU Law Journal 136.

4.0 CLEAN NIGERIA ASSOCIATES AND THE RATIONALE FOR COMPELLED MEMBERSHIP

4.1 Nature and Origin of Clean Nigeria Associates

Clean Nigeria Associates (CNA) is a non-profit industry cooperative formed by Nigerian oil and gas companies to provide pre-positioned oil spill response capability. It is best understood as a cooperative organisation created by Nigerian major oil and gas firms for oil spill preparedness and response, and as an industry-operator cooperative that serves as a source of assistance and resources for major Tier 3 spills which require a collaborative response. The cooperative operates on a mutual aid basis: each subscribing company contributes financially, equipment is stockpiled at strategic locations, and member companies are entitled to draw on the pooled resources during spill incidents that exceed their individual response capacity.

In substance, therefore, CNA is a private association formed for the protection of the commercial interests of its members and the management of their shared exposure to environmental liability. The freedom to form such an association is itself a manifestation of section 40 of the Constitution. The interpretive question is whether the State may, in regulating the environment in the petroleum subsector, compel non-members to join that association on pain of being excluded from lawful operation. The doctrinal stakes are substantial because the question implicates not only the negative dimension of associational freedom but also the constitutional permissibility of conditioning licensure on private membership, a regulatory technique that has historical antecedents in the closed-shop arrangements once prevalent in industrial relations.

4.2 Regulatory Rationale for the Mandate

The legislative rationale for section 6(1)(f) may be reconstructed from the framework of the Act and the contextual scholarship. First, oil spill response is a time-critical operation; the loss of golden hours after a spill exponentially increases ecological damage. Pre-positioned equipment and trained personnel must therefore be accessible at short notice. Secondly, the State lacks the fiscal and operational capacity to maintain a sovereign response fleet of the scale required to address the volume of spills in the Niger Delta. Thirdly, the polluter pays principle, statutorily embedded in section 6(3) of the Act, requires that the cost of response be borne by the industry rather than the public purse. A pooled industry resource fulfils that policy commitment.

Edemadide notes that the NOSDRA Act mandates the agency to maximise the effective use of facilities and resources of corporate bodies and oil spill cooperatives, specifically mentioning Clean Nigeria Associates, and that without such a mandate the agency's enforcement capability would be substantially diminished.[48] The legislative design accordingly treats CNA as a vehicle for operationalising the polluter pays principle on a sector-wide basis, ensuring that the costs of pre-positioned response capability are internalised by the industry rather than externalised onto the public purse. This internalisation is empirically essential because the agency's own budgetary allocations and personnel deployments would otherwise be incapable of meeting the operational demands of a sector characterised by recurrent, dispersed and often simultaneous spill events across the Niger Delta and offshore acreage. Yashim and Oche's analysis of the statutory and policy framework confirms the structural premise on which this design rests: the tiered response

[48]B E Edemadide, 'Enforcement of Regulatory Standards for Environmental Protection in Nigeria: A Legal Review' (2023) 8(1) African Journal of International Energy and Environmental Law 41.

model embedded in the Contingency Plan assumes that Tier 1 operations are discharged by the individual operator and Tier 2 operations by the industry cooperative, with the agency itself exercising oversight and strategic coordination rather than primary operational response.[49] On that reading, compelled membership of a qualifying cooperative is not an incidental regulatory imposition but the structural keystone of the tiered model the Act adopts.

4.3 Critique: The Voluntariness Deficit

Notwithstanding the regulatory rationale, the doctrinal critique remains potent. Compelled industry membership, while solving the enforceability problem, transforms what was a private cooperative into a quasi-public regulatory body without the procedural safeguards that public bodies must observe. Nurse cautions that greenwashing risks attach to industry self-regulation schemes whose internal governance is opaque.[50]

The constitutional concern crystallises in three concrete propositions. First, a newly licensed petroleum operator that wishes to maintain its own internal spill response capability, or to subscribe to a different cooperative that meets all technical specifications, may nonetheless be compelled by section 6(1)(f) to subscribe to CNA. Secondly, the disjunctive phrase "or any other similar association by whatever name called" ameliorates but does not eliminate the constitutional problem, because the determination of what is sufficiently "similar" remains within the discretion of the agency. Thirdly, the absence of statutory criteria for that determination raises a parallel concern about delegated legislative power and administrative arbitrariness.

[49]Yashim and Oche (n 36) 360, 366–367.
[50]A Nurse, 'Cleaning Up Greenwash: A Critical Evaluation of the Activities of Oil Companies in the Niger' in Tanya Wyatt (ed), Hazardous Waste and Pollution: Detecting and Preventing Green Crimes (Springer 2016) 147.

5.0 APPLYING THE DEROGATION TEST UNDER SECTION 45 OF THE CONSTITUTION

5.1 Prescribed by Law

The first limb of the derogation test asks whether the rights-restrictive measure is prescribed by law. Section 6(1)(f) plainly satisfies this requirement. It is an enactment of the National Assembly, expressed in clear terms, and published in the Official Gazette as part of the principal statute, promulgated in 2006 and amended in 2008. The proviso in section 40 of the Constitution itself contemplates legislative restriction in the form of laws regulating professional associations, and although CNA is not a professional regulatory body in the conventional sense, the statutory pedigree of the requirement is unimpeachable. Taiwo notes that the legality limb is the most easily satisfied of the three because Nigerian courts have consistently required only that the restriction be embodied in a duly enacted law of general application and be accessible to the citizen affected.[51] It bears observation, however, that the comparative jurisprudence on the legality limb treats accessibility and foreseeability as integral to the quality of law. To the extent that the determination of what constitutes a "similar association" under section 6(1)(f) remains presently uncodified, the foreseeability dimension of legality is partially imperilled; this concern reinforces, rather than displaces, the conclusion in Part 6.2 that the agency should promulgate regulations under section 26 of the Act articulating the relevant criteria.

5.2 Legitimate Aim

The second limb requires that the restriction pursue one of the legitimate aims enumerated in section 45(1) of the Constitution:

[51]Taiwo (n 19).

defence, public safety, public order, public morality, public health, or the protection of the rights and freedoms of other persons.[52] Oil pollution in the Niger Delta is a documented threat to public health and to the rights and freedoms of other persons. In *Gbemre v Shell Petroleum Development Company of Nigeria Ltd*, the Federal High Court held that gas flaring violated the right to life and dignity guaranteed by sections 33 and 34 of the Constitution, read together with the right to a clean environment,[53] and the African Commission on Human and Peoples' Rights, in *Social and Economic Rights Action Centre and Centre for Economic and Social Rights v Nigeria*, found Nigeria in violation of multiple Charter rights by reason of its complicity in petroleum pollution affecting the Ogoni people.[54]

Section 6(1)(f) is therefore demonstrably directed at public health, public safety and the protection of the rights and freedoms of persons whose lives, livelihoods, water sources and ecosystems are imperilled by inadequately resourced spill responses. The legitimate aim limb is comfortably satisfied. The operational logic of CNA, that of pooling industry resources for rapid mutual aid response to spills exceeding individual operator capacity, is precisely calibrated to the public health and environmental protection imperatives that the State is constitutionally required to advance under Chapter II of the Constitution.

5.3 Reasonable Justifiability in a Democratic Society

The third and most demanding limb is reasonable justifiability in a democratic society. This limb interrogates both the rational connection between the means employed and the legitimate aim pursued, and the proportionality of the means in the sense of being no more restrictive

[52]CFRN 1999 (as amended) (n 2) s 45(1)(a)-(b).
[53](2005) AHRLR 151 (NgHC 2005).
[54](2001) AHRLR 60 (ACHPR 2001).

than necessary. The European Court of Human Rights articulated the proportionality inquiry in *Handyside v United Kingdom*, where the Court held that the State enjoys a margin of appreciation in determining the necessity of a restriction but must demonstrate that it is responsive to a pressing social need.[55]

Applied to section 6(1)(f), the rational connection between compelled industry membership and the public health and environmental protection aims is sustainable. A pooled response capability accessible to the agency materially advances spill response readiness, and NOSDRA's operational reliance on industry resources is structural and not incidental. Yashim and Anyia's empirical findings confirm that the agency's practical effectiveness is constrained less by any defect in its legislative mandate than by institutional and logistical deficits, and that its field operations remain dependent on industry cooperation;[56] a statutory mechanism that secures organised, pre-positioned industry capability is therefore rationally connected to, rather than incidental to, the agency's capacity to discharge its objectives. The proportionality assessment, however, raises closer questions. Three considerations are pertinent.

First, the existence of the disjunctive phrase "or any other similar association by whatever name called" functions as a proportionality safeguard: an operator that maintains equivalent response capability through alternative cooperative arrangements is not, on the face of the statute, foreclosed from compliance. This pluralism, however thin in practice, distinguishes the Nigerian provision from a model in which a single named cooperative enjoys statutory monopoly. The European

[55]*Handyside v United Kingdom* (1976) Series A no 24, [49]. The proportionality test, although developed under article 10(2) ECHR, has been applied equally to article 11(2): see *Sigurjónsson* (n 17).
[56]Yashim and Anyia (n 42).

Court of Human Rights has, in *Sigurður A. Sigurjónsson v Iceland*, treated the absence of meaningful associational alternatives as a material factor weighing against the proportionality of a compulsion.[57]

Secondly, the section operates within a wider regulatory matrix that imposes operator-specific obligations in addition to membership: the 24-hour reporting requirement in section 6(2) of the Act, the two-week clean-up obligation in section 6(3), and the regulatory powers of inspection and entry in section 27. Compelled membership is, in that sense, an incremental rather than a substitutive imposition; it does not extinguish the operator's own duties but enhances the collective capability available to the State during major incidents. This regulatory complementarity strengthens the proportionality case.

Thirdly, the constitutional negative dimension of associational freedom is engaged but not destroyed. The operator remains free, in principle, to advocate against the policies of CNA, to seek statutory amendment, to associate concurrently with other bodies, or to organise an alternative compliant association. What is foreclosed is the option of operating in the petroleum subsector while being a member of no relevant cooperative at all. Nigerian constitutional law has long countenanced statutory schemes that condition lawful participation in a regulated sector on adherence to an organised body of standards and procedures. This conclusion is fortified by *Osawe v Registrar of Trade Unions*, in which the Supreme Court declined to invalidate statutory provisions channelling associational activity in furtherance of a recognised regulatory purpose, and which thereby supplies Nigerian doctrinal authority for the proposition that legitimate regulatory channelling does not, of itself, violate section 40 of the Constitution.[58]

[57]*Sigurjónsson* (n 17) [35].
[58]Osawe (n 8).

On balance, section 6(1)(f) is capable of being defended as a reasonably justifiable derogation, provided that two interpretive conditions are satisfied. The first is that the disjunctive alternative must be administered in good faith: where an operator presents a genuinely equivalent cooperative arrangement, the agency must accept it without unreasonable obstruction. The second is that the agency's power to determine similarity must be exercised on statutorily articulated criteria, failing which the provision risks impermissible delegation of legislative power. Systemic risks arise when administrative discretion is unconstrained by clear statutory criteria, and the proportionality of the provision depends on the elimination of that indeterminacy.

6.0 RESOLVING THE TENSION: TOWARDS A HARMONIOUS CONSTRUCTION 6.1.1 The Doctrinal Route

The first route to resolution is doctrinal: the harmonious construction of section 6(1)(f) of the NOSDRA Act with section 40 of the Constitution. The provision should be read as imposing a regulatory obligation to subscribe to an oil spill response cooperative meeting prescribed operational standard, rather than as imposing a personal obligation to join Clean Nigeria Associates specifically. So construed, the negative dimension of associational freedom is engaged only minimally: the operator is required to participate in some qualifying cooperative arrangement, but the choice of cooperative remains, in principle, theirs. This is consistent with the canon, articulated by Sir Udo Udoma JSC in *Nafiu Rabiu v The State*, that the Constitution should be construed liberally and that statutes should, wherever possible, be interpreted in a manner that preserves their constitutional validity.[59]

[59] *Nafiu Rabiu v The State* (1981) 2 NCLR 293 (SC) (per Sir Udo Udoma JSC) (the canon of liberal construction and constitutional avoidance).

This construction is reinforced by the textual disjunction in section 6(1)(f) itself, which contemplates "any other similar association by whatever name called". The legislative intention, properly understood, was not to entrench CNA as the singular vehicle of compliance but to ensure that, whichever vehicle the operator elects, the State retains assured access to pooled response capability. A generous reading of the disjunctive phrase guards against the danger of allowing a private cooperative to ossify into a monopolistic gatekeeper of regulatory compliance.

6.2 The Regulatory Route

The second route is regulatory. Section 26 of the Act empowers the agency, with the approval of the Governing Board, to make regulations setting specifications and standards relating to oil spill contingency planning, the engagement of oil spill responders, and the development of frameworks to guide operators.[60] The agency could, and in the interest of constitutional integrity should, promulgate regulations articulating the criteria by which an association is deemed "similar" to CNA for the purposes of section 6(1)(f). Such criteria might include minimum capital subscription, pre-positioned equipment thresholds, personnel training standards, geographic coverage, and audit and reporting obligations. Codification of these criteria would convert an opaque administrative discretion into a transparent rule-based determination, satisfying the proportionality limb of the derogation test.

6.3 The Legislative Route

The third route is legislative. The provision can and ought to be amended to refine its language and to insert express procedural safeguards. A proposed reformulation would replace the present

[60]NOSDRA Act (n 1) s 26.

mandatory text with a tiered obligation: operators must subscribe to an industry oil spill response cooperative meeting standards prescribed by regulations made under section 26 of the Act, or maintain in-house operational response capability of equivalent or superior standard certified by the agency on application. Such a reformulation would preserve the regulatory imperative while substantially mitigating the constitutional friction by widening the menu of compliant pathways. A further legislative refinement worth considering is the express inclusion of a sunset and review clause requiring the National Assembly to revisit section 6(1)(f) of the NOSDRA Act, at periodic intervals to assess its continuing necessity and proportionality in the light of evolving response capability.

6.4 Locus Standi and Access to Justice

A subsidiary but consequential concern relates to the enforcement of rights-based challenges to section 6(1)(f) of the NOSDRA Act. Taiwo has argued that the standing rules under section 46 of the Nigerian Constitution remain restrictively interpreted.[61] Arguably, this stance limits the access of host communities and civil society organisations to constitutional remedies for petroleum subsector environmental violations. Any meaningful resolution of the tension must therefore proceed in tandem with a liberal posture on locus standi, so that the constitutional checks on regulatory overreach are not foreclosed by procedural barriers. The trend in cases such as *Director of State Security Services v Agbakoba* has been towards a more liberal recognition of standing in fundamental rights matters,[62] and that trend should be entrenched in the petroleum environmental regulatory context.

[61]Taiwo (n 18).
[62](1999) 3 NWLR (Pt 595) 314 (SC).

6.5 Synthesis

The cumulative effect of the doctrinal, regulatory and legislative routes is that the tension between section 6(1)(f) of the NOSDRA Act and section 40 of the Nigerian Constitution is not irreconcilable. It is a tension capable of dissolution through interpretive prudence and incremental reform. The provision serves a legitimate aim, is rationally connected to that aim, and operates within a wider regulatory matrix that does not unduly displace the constitutional right of association in either its positive or negative dimension. What remains is the obligation on the agency and the National Assembly to refine the operational framework of the provision so that its proportionality is not merely defensible in the abstract but is demonstrable in administrative practice. This conclusion is consonant with the broader assessment, advanced by Yashim and Anyia, that the deficiencies in Nigeria's oil spill response regime are attributable not to incoherence in the enabling legislation but to persistent non-implementation, institutional fragmentation, and the absence of clear operational criteria;[63] the resolution of the constitutional tension identified in this article likewise lies in faithful regulatory specification rather than in wholesale legislative displacement. The institutionalist critique of Nigerian regulatory enforcement converges on a single proposition: the legitimacy of a rights-restrictive regulatory provision is sustained not by its statutory text alone but by the institutional culture of transparency, predictability, and accountability that surrounds its administration.

7.0 RECOMMENDATIONS

The article makes the following recommendations. First, NOSDRA should, pursuant to section 26 of its Act, promulgate regulations articulating the criteria by which an association is recognised as

[63]Yashim and Anyia (n 42).

similar to Clean Nigeria Associates for the purposes of section 6(1)(f) of its Act. Secondly, the National Assembly should consider an amendment to section 6(1)(f) explicitly providing for an in-house equivalence pathway, certified by the agency on transparent criteria, as an alternative to cooperative membership. Thirdly, the courts should, in adjudicating challenges to the provision, adopt a harmonious construction that minimises constitutional friction while preserving the regulatory imperative. Fourthly, the agency should publish an annual transparency report on its administration of section 6(1)(f), including the number of alternative associations recognised and the operational standards applied. Fifthly, civil society engagement should be strengthened by a liberal interpretation of locus standi under section 46 of the Constitution, allowing public interest litigants to scrutinise the administration of the provision.

8.0 CONCLUSION

The tension between oil spill response regulation and freedom of association in Nigeria's petroleum subsector is real but not destabilising. It is the tension that emerges whenever a constitutional liberty intersects with a public welfare imperative, and it is resolved by the same constitutional grammar that animates all derogation analysis: legality, legitimate aim, and proportionality. Section 6(1)(f) of the NOSDRA Act survives that scrutiny, but only conditionally. The conditions are interpretive prudence, regulatory specification, and legislative refinement. If those conditions are met, the provision performs its statutory function in service of the agency's objectives without violating the Constitution it was enacted to advance. If they are not, the provision will, sooner or later, be tested in litigation, and the courts will be required to undertake the proportionality balancing that this article has attempted in scholarly form. The constitutional health of the provision will ultimately depend on the integrity with which the agency administers the disjunctive alternative, the rigour

with which the National Assembly refines the statutory framework, and the responsiveness of the courts to good-faith claims by operators and host communities alike. It is in the conjunction of those institutional virtues that the doctrinal harmony proposed in this article becomes a lived constitutional reality.