



EXAMINING THE NIGERIAN NIGER DELTA REGION'S OBSTACLES TO ENVIRONMENTAL LAW IMPLEMENTATION AND COMPLIANCE

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Abstract

It is impossible to overstate the significance of environmental enforcement in guaranteeing adherence to a nation's environmental policies. The ability of a nation to strictly implement its environmental regulations is largely responsible for the widespread idea that sustainable development is feasible. Nigeria has a number of environmental rules that govern how oil multinational corporations operate in the Niger Delta Region, however these laws are frequently broken. This study examines the different obstacles that impede the Niger Delta Region's environmental enforcement program from becoming effective. It uses primary and secondary sources to gather data that is then qualitatively analyzed. Our findings demonstrate that institutional inadequacies in the face of corruption, legal loopholes, reliance on oil, and a lack of community awareness and engagement are among the major obstacles to an effective enforcement and compliance program. The paper therefore recommends that government should make effort to address these barriers to ensure compliance with the law

Keywords: *Compliance; environmental law implementation; barriers; Niger Delta; Nigeria*

1.0 Introduction

There are numerous environmental laws and Acts that safeguard the environment in Nigeria. The National Oil Spill Detection and Response Agency (NOSDRA), which handles oil spill issues, the Gas Reinjection Act, and the Petroleum Act are examples of sector-specific agencies. Generic ones include the Environmental Impact Assessment (EIA) and the National Environmental Standards and Regulations Enforcement Agency (NESREA). These laws are dispersed throughout multiple legal documents rather than being contained in a single one¹.

The nation does have environmental rules, but that hasn't resulted in a cleaner environment. Instead, in contrast to what is possible in other developed nations, Nigerian oil multinational corporations have shamefully neglected to conduct their oil activities in the Niger Delta Region (NDR) of Nigeria in accordance with the principles of responsible corporate conduct. Additionally, because these laws are codified in various legal instruments, it has created difficulties for monitoring, enforcement, and compliance. This has led to concerns about which law applies in a given situation and which agency should be in charge of enforcing the law. Oil firms have frequently violated these rules by taking advantage of the enforcement gap created by the variety of tasks dispersed across various agencies (Oshionebo, 2009).

There is a lot of studies on how the oil industry affects the NDR environment. There are more than 150 gas flaring sites in the area, and there is ample evidence of their negative effects on the local economy,

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¹ Brown C.T. (2021). Improving compliance and enforcement of environmental regulation of the petroleum sector in Nigeria: the role of institutionalism. An unpublished thesis submitted in partial fulfilment of the requirements of the University of the West of England, Bristol for the degree of Doctor of Philosophy (PhD) Faculty of Business and Law University of the West of England, Bristol.



environment, and public health². Thus the Nigerian petroleum industry poses the biggest risk to the environment.³ According to the United Nations Environment Program (UNEP) report on Ogoniland (2011), the petroleum industry has such a significant impact on environmental discontinuities that it can be felt prior to, during, and following oil exploration. Therefore, the petroleum industry's environmental impact will be negligible if it is properly regulated. There are various compliance motivations that can be used to support a regulated entity's decision to comply or not comply with a country's environmental regulations. Apart from the idea that following environmental regulations makes business activities more lawful, it also greatly improves a company's reputation or overall image. The company will benefit from the public's positive opinion of it since it will help them improve their environmental performance in terms of protection. By this reasoning, it stands to reason that Nigerian oil firms would follow the legal framework that governs them. This is untrue, though, as some businesses have faced criticism due to the perception that their priorities lie more with profit-making than with sustainability.

This essay examines the different obstacles that the nation's environmental law enforcement faces. It is predicated on the idea that in order to comprehend why environmental enforcement is ineffective, we must critically examine the numerous obstacles that prevent it from being as effective in enforcing industry compliance.

2.0 Review of Related Literature

2.1 Environmental Enforcement and Compliance

Environmental enforcement is "the set of actions that a government takes to achieve full implementation of its environmental policies or requirements (compliance) within the regulated community," according to the International Network for Environmental Compliance and Enforcement (2009). Stated differently, environmental laws are regulations that are created or implemented with the intention of protecting the environment.⁴ They are a step toward the creation of an effective environmental policy, and possibly the first of many that the state or organized authority will take in that direction. Therefore, the term "environmental policy" refers to both the laws and the collection of measures implemented by the government, businesses, or private organizations to guarantee that human activities that endanger the environment and, consequently, the survival of the human race are avoided or, at the very least, scaled back (Bueren, 2019). Environmental laws and policies are important in every given context for two main reasons.

The first is the empirical claim that environmental acts always have economic externalities as their result. This implies that individuals who pollute the environment do not always suffer the consequences of their actions, given the motivational drive of businesses or enterprises. Instead, these effects are negative externalities that are transferred to other people, either now or in the future. The second explanation stems from the idea that polluters, in particular, consider the environment and the natural

² Ebeku, K. S. A. (2003). Judicial Attitudes to Redress for Oil-Related Environmental Damage in Nigeria, *Review of European Community and International Environmental Law*, Vol.12, pp.199-208

³ UNEP Report on Environmental Assessment of Ogoniland (2012). Retrieved from, <http://postconflict.unep.ch/publications/OEA>

⁴ International Network for Environmental Compliance and Enforcement (2009). Principles of Environmental Compliance and Enforcement Handbook 1 at 104, Retrieved from http://inece.org/principles/PrinciplesHandbook_23sept09.pdf



resources it contains to be limitless, boundless, or existing forever. As a result of these two factors, which emphasize the significance of environmental policy, the "tragedy of the commons"—a term that has come to symbolize the tension between "individual and collective rationality"—was created, according to Bueren (2019).

In order for environmental policies to be successful, enforcement and compliance are essential. This is why environmental sustainability discourses frequently link enforcement and compliance together because of the complementary roles that both play in achieving sustainable development. An efficient enforcement program also needs legal support because it guarantees that those tasked with ensuring environmental quality have the legal and necessary authority to do so.

Similarly, the "use of legal tools to assist in and compel compliance with environmental requirements, and in some contexts to establish liability or responsibility for harm to the public or environment from polluting activities" is how Wasserman (1992:16) defines environmental enforcement. According to Wasserman (1992), one of the main goals of any enforcement regime is to force businesses to operate in accordance with state standards and regulations.⁵ To put it another way, compliance refers to a situation or state in which environmental standards are being maintained or in which efforts are being made to comply with state environmental regulations. This definition of environmental enforcement highlights this goal.

Therefore, the degree to which an enforcement regime has encouraged compliance within the regulated community—and, going a step further, how well it has addressed the issue of sustainable development in the community—is the measuring stick by which any enforcement regime may be adequately evaluated. Therefore, understanding the motivations for businesses' adherence to the law would enable us to comprehend why the Nigerian oil industry has a poor degree of compliance. This will also assist us in explaining the NDR's lax environmental enforcement.

2.2 Variables Affecting Compliance Behavior

A company may choose to comply with environmental standards for a number of reasons, including market forces, strict legislation, and corporate values or ideas about the morality of compliance. A regulated company is likely to have a high level of compliance if it believes that following the law will benefit it more than it will cost it (while also taking the potential penalties for noncompliance into consideration).⁶ The NDR's operational oil businesses might be used as an example to show this type of deliberate motive. Since they came to believe that it would not benefit them to follow oil regulations, such as those that forbade gas flaring, oil multinational corporations have long refused to follow the principle of responsible behavior. Instead, they are more willing to pay the fines associated with flaring gas than to invest in technologies that could aid in gas reinjection.⁷ According to Obanijesu (2009), the

⁵ Wasserman CE. (1992). *Principles of environmental enforcement*. Washington, D.C.: U.S. Environmental Protection Agency

⁶ Winter, S., & May, P. (2001), Motivation for compliance with environmental regulations. *Journal of Policy Analysis and Management*, 20(4), 675-698

⁷ Okoye, A. (2020). Tax-deductible Flare Gas Penalty Payments in Nigeria: Context, Responsibilities and Judicial Interpretation. *Journal of Energy & Natural Resources Law* 39 (3), pp. 1-21.



behavior of oil corporations in Nigeria is determined by their perception of the penalty for non-compliance, rather than the possibility of being detected.⁸

The degree to which regulated entities comply is also influenced by morality.⁹ This is related to an internalized moral obligation to follow the law and is frequently referred to as intrinsic or internal motivation.¹⁰

Businesses occasionally follow the law not because it is advantageous to do so or expensive not to, but rather primarily because they believe it is their civic obligation to do so or because they believe the law to be acceptable and something that must be followed. Put another way, people view the legislation as sensible rather than oppressive. The foreign corporations that dominate the Nigerian oil industry, such as Shell, AGIP, and numerous others, are guided by global environmental norms in their business practices wherever they do business. Unfortunately, when similar corporations operate in less developed nations, this is not the case. They tend to go against their own value system in these countries and operate differently from what is obtainable in other climes.

Businesses are occasionally compelled by social groups, advocacy organizations, victims of environmental disasters, or even the media to abide by the law. This is the meaning of the term "social motivation." It comes about when a regulated entity work to earn the respect of those who are impacted by their activities or actions (Peterson and Diss-Torrance, 2012). It should be highlighted that this kind of cooperation results from a worry about how a particular perception could harm the movie's reputation rather than from a want to comply.¹¹ Reports of corporate non-compliance were occasionally issued by private organizations like NGOs. The non-complying company may suffer enough from these reports to lose sponsors or customers. For instance, it has been asserted that Nigerian oil corporations only engage in CSR as a result of pressure from host communities. In actuality, the state's assassination of Ken Saro Wiwa and eight other people for their peaceful protests against the severe environmental damage brought on by oil-related activities is what gave rise to the first documented instance of Shell social corporate responsibility in the NDR.

Companies may be encouraged to abide by the law if regulators are able to persuade the regulated business of the reasoning behind the restrictions. This is known as motivation that is driven by reason. Why should I follow orders? Do I have to comply? In order to achieve legal compliance, the regulator must provide answers to these queries, primarily because corporations occasionally seek to the regulators for guidance on whether or not to obey. The failure to comply with the Gas Reinjection Act is one instance of this. It is thought that one of the main causes of the Act's widespread noncompliance is that oil corporations have not yet realized why they should invest in gas re-injection policies. This is

⁸ Obanijesu, E.O. et al (2009), 'Air-borne SO₂ Pollution Monitoring in the Upstream Petroleum Operation Areas of Niger-Delta, Nigeria, *Energy Sources*, 31(3) Part A, pp. 223-231.

⁹ Zhao, X. & Qi, Y. (2020). Why do firms obey? The state of regulatory compliance research in China. *Journal of Chinese Political Science*, 25(2) pp. 339, 352.

¹⁰ Nielsen, V. L. & Parker, C. (2012). Mixed Motives: Economic, Social, and Normative Motivations in Business Compliance. *Law & Policy*, 34 (4), pp. 428- 462.

¹¹ Peterson, K & Diss-Torrance, A. (2012). Motivation for compliance with environmental regulations related to forest health. *Journal of Environmental Management*, 112, pp. 104-119.



inextricably linked to the idea that the regulator has not adequately explained the reasoning behind this regulation (Brown, 2021).

Other motivational techniques, particularly in the oil and gas sector, can affect compliance behavior. Nonetheless, the majority of the time, the explanations covered above have been the main ones for why regulated entities follow the law. Comprehending this motivational influence would aid us in comprehending and elucidating the impediments, impediments, or difficulties impeding an efficient enforcement strategy in Nigeria. It would also assist in understanding why Nigerian environmental rules were not followed by oil firms operating in the NDR.

3.0 Methods of the Study

Considering the purpose and nature of the work, three methods of gathering data were applied. These included focus groups, interviews, and the utilization of pertinent extant literature, which entails gathering data from pertinent books, journals, conferences, websites, and libraries. It was crucial to add first-hand accounts of the difficulties faced by the environmental enforcement program to the secondary source. To choose the interview subjects, a deliberate sampling strategy was applied. Thirteen key informants affiliated with regulatory bodies, oil companies, and other oil and gas industry stakeholders were interviewed between February and March 2022. The snowball approach, which identifies individuals with critical knowledge and experience through key informant referrals, was employed in these interviews. Position of authority held, knowledge, experience, and competence were used as selection criteria for interviews; the final factor was the number of years spent in the industry (five years and above). Informed consent for interviews and ethical considerations were closely followed during the conduct of these interviews and discussion. To learn more about the opinions of other residents of the communities negatively impacted by oil drilling, focus groups were also held. Focus groups were held in the oil-producing towns of Okpai, in Delta State, and Igbokoola, in Ondo State. Qualitative analysis was performed on secondary data as well as field data collected.

4.0 Barriers to Environmental Enforcement and Compliance in the Niger Delta Region

4.1 Legal Barriers to Environmental Enforcement and Compliance in Nigeria

The NDR's lax environmental regulation and compliance is explained by a number of variables. Legal and non-legal considerations make up the majority of these issues. The nation's approach to environmental enforcement has been impacted by a number of legal restrictions. Players in the oil business have somehow taken advantage of these restrictions to get out of following the nation's environmental laws. The conflicting provisions found in Nigeria's environmental policies is one example of this. Conflicts exist about not just how the constitution should be applied but also who should have the authority to enforce its requirements, starting with the constitution and ending with certain Acts that deal with particular environmental challenges.

For example, the vagueness in the phrasing of the constitution has caused varying interpretations since it has made it difficult to apply its requirements strictly. Section 20 of the 1999 Constitution, as modified, is a prime illustration of this. This clause gave the Nigeria State authority over environmental preservation and enhancement. Section 13 additionally mandated that the legislative and judicial branches of government comply to, observe, and implement Chapter 2 of the Constitution, which addresses environmental concerns inclusively. Curiously, however, section 6(6) of the constitution



prohibits the court from considering any litigation pertaining to the implementation of the clauses that are specifically included in chapter 2 of the constitution.

This has led academics to conclude that Section 20 of the 1999 Constitution is not justiciable because Section 6(6) tends to prevent the court from making decisions on matters in Chapter 2, which includes environmental matters (Abukadir, 2014; Ako, Stewart & Ekhaton, 2016; Atsegbua, Akpotare & Dimowo, 2004). The NESREA Act operates in a similar manner. Section 7 of the Act gives the agency the authority to guarantee adherence to international environmental agreements. These agreements consist of conventions, protocols, and treaties¹². The argument here is that certain of these international treaties are not domesticated in Nigerian law because the country has not ratified them¹³. Does this mean that, in accordance with its Section 7 directive, NESREA's powers also extend to the enforcement of foreign laws over which it is empowered under the Act?

Two alternative interpretations have resulted from this. On the one hand, some people held the opinion that although if NESREA power may not have been domesticated, it should still be included in the application of international treaties. Second, there are others who believe NESREA ought to limit its scope to domesticated international accords. Given that NESREA is the nation's premier environmental organization, this misconception has an impact on environmental enforcement in the nation (Ladan, 2012). Furthermore, considering their standing in Nigeria's enforcement system, NESREA's refusal to hold the oil and gas industry accountable for pollution-related actions is not only odd, but it also makes its enforcement authority useless (Stevens, 2011). When combined, these weaken their ability to enforce compliance in the oil industry.

According to some academics,¹⁴ Nigeria's environmental laws were passed in a hurry, which is why they aren't as consistent as they could be (Eneh, 2011; Salihu et al, 2016). This helps to explain why its agencies perform similar tasks, why its statements are ambiguous, and why different people would perceive it in different ways.¹⁵ For example, Oshionebo (2009) contended that the duplication of duties and the seeming lack of coordination between the agencies is a significant hindrance to the efficient enforcement of environmental law, which has a significant impact on compliance. These regulatory agencies have been ineffective as a result of this, in addition to becoming paralyzed.¹⁶

The Petroleum (Drilling and Production) Regulations, which are a part of the Petroleum Act of 1969, serve as an illustration of how ambiguous environmental laws may be. Oil firms are obligated by this Act to take reasonable measures to avoid contaminating the environment. This will need making an

¹² Ako, A. Stewart, N & Ekhaton, E.O (2016). Overcoming the (non) justiciable Conundrum: The Interpretation of the Right to a Healthy Environment in Nigeria' In A. Diver & J Miller (eds) Justifiability of Human Rights in Domestic Jurisdictions (Springer, pp. 123-138)

¹³ Atsegbua, L.A., Akpotare, V., & Dimowo, F. (2004). Environmental Law in Nigeria: Theory and Practice, Lagos, Ababa Press, pp. 37.

¹⁴ Salihu A.C. et al (2016). Analysis of the Factors Affecting Facilities Compliance to Environmental Regulations in Minna– Niger State, Nigeria, World Scientific News, 45(2) pp. 174-182.

¹⁵ Eneh, O.C. (2011). Managing Nigeria's environment: The unresolved issues. Journal of Environmental Science and Technology, 4(3), pp. 250-263.

¹⁶ Oshionebo, E. (2007). Transnational Corporation, civil society and social responsibility in Nigeria's oil and gas industry, 15 *AFR. J. INT'L & COMP. L.* 107-129.



equipment or technology purchase. In the event of an oil leak, swift action is required to stop it from spreading further and, if feasible, to put an end to it. This clause has caused ambiguity in interpretation. The reason for this is that the definition of "practical precaution" is open to interpretation by regulated entities, in this case the oil companies, and it also limits their ability to implement it.¹⁷ As for the idea of modern technology or equipment, this can only be achieved through effective monitoring and inspection, a practice that is lacking given the oil companies' constant justification for equipment failure (Kadafa, 2012). Achebe, Nneke, and Anisiji (2012) state that there are many different reasons why pipelines fail, including operator error, aging equipment, and even sabotage¹⁸.

Additionally, the regulation requires the polluting party or guilty party to take the necessary actions to address and stop oil spills. Of course, if previous spill incidents are any indication of how they respond, one of the issues plaguing Nigeria's oil industry is their indifference to dealing with oil spills throughout the country. It can also be said that, despite the regulation's explicit demands, it appears unfeasible due to the bureaucratic nuances involved in handling oil spills in Nigeria, the regulatory agencies' lack of capacity, and their reliance on information from polluting companies.¹⁹

Nigeria's environmental law lacks strong deterrence provisions, which has had a significant impact on environmental enforcement and compliance in the area. Nigerian environmental laws provide a number of punishments or sanctions for breaking its principles. However, some contend that these deterrents have little to no effect in forcing oil firms to follow the law. Instead, these oil firms are willing to pay the price that is set down for their improper actions. Residents of some of the villages affected by the oil spill occurrences in the Nembe oil leak in 2021 in Bayelsa State attacked the oil firms in a peaceful manner. One of the impacted communities' chiefs of community, who is also a disgruntled stakeholder, stated:

The company, Aiteo, which was in charge of the oil spill, is unafraid of punishment or sanctions for this environmental tragedy. I thought that their indifferent attitude toward us and the lack of sufficient punishment for all of their evil deeds had encouraged them. Imagine that for days before they even admitted that there was a significant leak, the oil was leaking there. And, to top it all off, despite the obvious rage of the state and local governments, nothing will happen to them since the national government doesn't care about the fallout from their actions. Since it is chicken change—a pitiful amount—to them, they have the funds to pay (KII, fieldwork, 2022).

The National Assembly has called for the Gas Flaring (Prohibition and Punishment) Bill, 2020, to be introduced in order to impose harsher penalties on business entities that engage in gas flaring. Despite the fact that the bill has passed certain readings (second reading), its stalling or slow progress toward approval may have something to do with the widely accepted justification that investing in technology that could aid in the phase-out of gas flaring is costly and requires significant expenditure. An

¹⁷ Kadafa, A.A. (2012). 'Oil Exploration and Spillage in the Niger Delta of Nigeria' *Civil and Environmental Research*, 2(3), pp. 38, 41.

¹⁸ Achebe, C.H., Nneke, U.C. & Anisiji, O.E (2012). Analysis of Oil Pipeline Failures in the Oil and Gas Industries in the Niger Delta Area of Nigeria. 2nd International Multi-Conference of Engineers and Computer Scientists 1, 5.

¹⁹ Olujobi, O.J., Oyewunmi, O.A., & Oyewunmi, A.E. (2018). Oil Spillage in Nigeria's Upstream Petroleum Sector: Beyond the Legal Frameworks. *International Journal of Energy Economics and Policy*, 8(1) pp. 220, 222



environmental activist who was interviewed claimed that this was the standard justification offered by oil firms to evade accountability for their deeds (KII, fieldwork, 2022).

4.2 Non- Legal Barriers to Enforcement and Compliance in the Niger Delta Region

In addition to the legal aspects, non-legal variables also play a significant influence in reducing the effectiveness of environmental enforcement in the area. Lack of political will, lack of community/public involvement in enforcement matters, low level of community partnership, lack of good governance, inadequate funding, lack of professionalism, economic barriers, reliance on oil, political interference in environmental law enforcement, and no or limited access to the courts are just a few examples of non-legal barriers to environmental enforcement and compliance. We'll talk about these many issues under the categories of institutional, political, social, and economic barriers.

4.3 Economic Factors

The late 1950s oil discovery in Nigeria was a turning point in the country's economic history. Petrodollars became easier to get and more readily available than money from agriculture, which resulted in enormous riches. According to Jike (2004), the Nigerian ruling elite has neglected agriculture because of the longer gestation period of agricultural produce than that of oil. Through the Nigerian National Petroleum Corporations, the Nigerian government adopted a direct approach to entering the oil production and exploration business in the early 1970s in an attempt to capitalize as much as possible on this newfound source of revenue. Although there was a valid reasoning for this, it resulted in an unanticipated issue whereby the government was less able to execute and enforce its legislation against the significant environmental damage caused by oil exploration.²⁰ This is due to the fact that the government was unprepared to indict itself if it were to enforce its regulations strictly. Additionally, it implies a decrease in state revenue.²¹

The government's ability to enforce its own regulations has been further and substantially undercut by the systematic undermining of the farm sector. The laws were never intended to really indict the oil companies because doing so would affect the economic rents that the government was deriving from the sector, especially after the relegation of its agricultural produce, which was dominant before the discovery of oil²². Despite the fact that the laws appear to address environmental concerns and strive to meet global requirements, this is not the case. Despite the fact that oil exploration contributed significantly to environmental degradation in the Niger Delta, environmental regulations could not be applied to an industry that generates over 90% of the nation's foreign exchange earnings and 80% of its government revenue.²³

One such example of the Nigerian elite class's rent-seeking behavior that impacted the implementation of environmental regulations in the oil industry was the privatization and division of oil blocks among individuals, particularly during military regimes. Oil blocks were unilaterally awarded to federal

²⁰ Okonmah, O.P. (1997). Right to a Clean Environment: The Case for the People of Oil-Producing Communities in the Nigerian Delta' (1997). *Journal of African Law*, 41(1), pp. 43, 47.

²¹ Uwakwe, F & Aloh, J.N. (2020). The Role of the principles of public participation in petroleum development contracts in developing countries. *International Journal of Comparative Law and Legal Philosophy*, 2(3), pp. 81, 85.

²² Abdulkadir, B.A. (2014). The Right to a Healthful Environment in Nigeria: A Review of Alternative Pathways to Environmental Justice in Nigeria. *Afe Babalola University Journal of Sustainable Development Law and Policy*, 3 (1), pp. 100-118

²³ Onwuazombe, F. (2017). Human rights abuse and violations in Nigeria: a case study of the oil-producing communities in the Niger Delta Region, *Annual Survey of International & Comparative Law*, 22 (1), pp. 115.



government cronies, and despite the fact that this was an issue acknowledged by succeeding administrations that needed to be fixed, nothing concrete was done about it. Even though Mr. Olusegun Obasanjo explicitly said that these arbitrary allocations will be investigated, his second coming under the fourth republic, which followed his electoral victory in 1999, was unable to accomplish much in this area.

Okpan & Njoku (2019) claim that the administration of Obasanjo annulled 11 oil blocks in an effort to increase the openness and transparency of allocations.²⁴ However, this was a token effort because, towards the conclusion of his government, his administration was also implicated in the arbitrary distribution of oil blocks. Because it was given randomly to people who supported Obasanjo's unsuccessful "third term bid," his actions were dubbed the "Oil Block Bazaar".²⁵ According to Iwuoha²⁶ (2021) and Cletus (2020), there is a claim that the "personalization of oil block allocation/rents" or patron-client relationships result in "poor development of the upstream oil sector." It is reasonable to assume that the government will stop at nothing to protect its interests if oil blocks are owned by its clients²⁷. Therefore, the government, whose hold on power is further sustained by corrupt earnings from oil, will not benefit from the enforcement of oil restrictions.²⁸

Over time, reliance on the oil industry has increased. This is not shocking considering that the government did not get any foreign exchange profits from the agricultural sector. Oil money appears to be a simpler way for public officials to amass extreme wealth, and this has undoubtedly been a driving force behind the push for resource control and fiscal federalism. Government management do not see it in their best interests to regulate the oil industry to comply with international oil regulations, even if the environmental catastrophe portends calamity for the people living in the NDR. The oil firms have taken advantage of this understanding by using antiquated technologies and ill-equipped machinery in their operations in Nigeria. They also know how important oil wealth is to the country's political economy. Therefore, by blocking measures in the national parliament devoted to finding solutions, persons with vested interests in the Nigerian oil business have frequently played crucial roles in ensuring that policies intended to solve the enforcement gap do not come to light.²⁹

4.4 Social Barriers to Compliance and Implementation

One of the major effects of the environmental devastation caused by oil multinational corporations and special interests in government circles is what Jike (2004) referred to as "social disequilibrium," which is here defined as the collapse of the traditional support structure and values that sustained Niger Delta society for many years prior to the start of oil exploration. The vast majority of Nigerians, and particularly those living in the Niger Delta, are living in extreme poverty despite the fact that the

²⁴ Okpan, S & Njoku, P. (2019). Evaluation of Corruption and Conflict in Nigerian Oil Industry: Imperative for Sustainable Development. *Journal of Sociology and Anthropology Research*, 5(4) pp.198

²⁵ The Nation Newspaper, Thursday, June 19, 2008, pp. 1-2.

²⁶ Iwuoha, V.C. (2021). Rethinking the patron-client politics of oil block allocation, development and remittances in Nigeria. *Review of African political economy*, Vol. 48, pp. 552-580.

²⁷ Cletus, O.A. (2020). Politics of Oil Block Allocation and the Nigerian Economy. *Journal of Forensic Accounting and Fraud Investigation*, 5(1), pp. 221, 224

²⁸ Usman, S.O. (2011). The opacity and conduit of corruption in the Nigeria oil sector: beyond the rhetoric of the anti-corruption crusade' (2011) 13(2). *Journal of Sustainable Development in Africa*, pp. 294,296.

²⁹ Nabegu, N. A. & Mustapha A. (2017). Environmental regulations in Nigeria: a MINI review. *International Journal of Environmental Sciences and Natural Resources*. Vol. 1, Issue 5, pp. 142-144



petroleum business has brought in immense revenues for the oil corporations, the Nigerian State, and its upper class. The traditional livelihood of those who rely on farming, fishing, and hunting for their daily sustenance has been severely curtailed by oil drilling. Jike described how the environment was being destroyed, forcing ape-like species—most notably, monkeys—to migrate or disappear from the area's forests, where they had been a common sight before oil development (Jike, 2004). Their extinction can be attributed, among other things, to gas flaring's extreme heat generation and deforestation. Farmlands have been unusable due to multiple activities taken by these oil firms. In addition to oil spills, "virile young men found themselves out of work and began to swell the bloated labour market" as a result of "the intricate crisscrossing of oil exploration pipelines and rig facilities within the Niger-Delta [having] displaced farmsteads and farmers".³⁰

Displaced from their homelands and unable to find employment in a technical and skilled industry, the youths in particular turned to militant activities because they would not accept, in the same subtly as their elders, the deterioration of their culture and the destruction of their traditional means of subsistence (Jike, 2004). In this setting of poverty nexus, women were negatively impacted, in contrast to male teenagers who have more options (IBRD/World Bank, 2012). According to Allen (2012) and Babatunde (2010), the region's young restlessness, conflicts, and environmental degradation have thus continued to be caused by the non-implementation of environmental laws resulting from oil. In response to the unease that youth activism creates, the oil companies have increased their financial contributions to the militarization of the area by hiring private security companies or utilizing state security forces to safeguard their assets and infrastructure. In short, government regulators discovered that it is challenging to implement environmental rules in war zones. Nearly all of the regulatory agency participants they spoke with believed that the violence in the area had further undermined or damaged enforcement tactics. One person in particular brought up the fact that they had to accompany security forces to incidents involving oil spills because they fear being attacked while attempting to clean up the spills. Nowadays, a large portion of the oil spills in the Niger Delta are caused by sabotage.

4.5 Nigeria's Political Obstacles to the Implementation and Compliance

The study's analysis of the social and economic obstacles to environmental enforcement and compliance in the Niger Delta amply demonstrates the influence of politics. Thus far, it is evident that the oil industry lacks the political will necessary to guarantee compliance. The issue of gas flaring in the area was the one that most strongly supported this theory. Although flaring gas has been illegal since 1984, the practice continues unabated to this day. At a focus group meeting in Okpai, Ndokwa East, Delta State, one of the participants used these same words to describe how the people in the area are frustrated by the government's nonsensical deadlines:

The gas flaring deadline has been moved about so much that it is now more of an electioneering catchphrase. Since we now know that the government is more concerned with the money it receives from the oil companies than with how this fire is hurting our health and crops, nobody here believes the government anymore. The quality of the produce from our farms has suffered greatly, which has an

³⁰ Jike, V.T. (2004). Environmental degradation, social disequilibrium and the dilemma of sustainable development in the Niger delta of Nigeria. *Journal of Black Studies*, 34 (5), pp. 686-701.



economic impact on us as farmers in the first place. The oil firms have acquired some influential members of the community, and the government continues to ignore our predicament, leaving the rest of us helpless (FGD, fieldwork, 2022).

Although laws prohibiting gas flaring have been in place since 1979, the Nigerian people have witnessed multiple extensions to the prohibition on the activity. The deadlines for ceasing gas flaring have, at the very least, been documented as having been extended at least seven times. Notable years in this context are 1984, 2004, 2016, and 2020 (Akinpelu, 2021). The country is currently planning to phase out gas flaring in the nation by 2025. When asked about this new date, respondents did not appear to be enthusiastic about it, mostly since previous attempts had produced little to no results and, more importantly, the nation's dependence on oil had not decreased³¹. The lack of technology in government enforcement programs is seen in how difficult it is to track payments for infractions (Akinpelu, 2021).

The Nigerian government's cooperation agreement with International Oil Companies (IOCs) has also prevented government regulation of the oil industry because doing so would need government regulation. This is because it will be futile to implement the legislation strictly because the federal government, through the Nigeria National Petroleum Corporation, is in a joint venture with foreign oil firms.³² Directly under the Ministry of Petroleum Resources, of which the NNPC is a part, is the Department of Petroleum Resources (currently known as the Nigerian Midstream and Downstream Petroleum Regulatory Authority), which oversees the operations of these businesses. Because government regulation of pollution cannot be objective, this has a significant impact on the government's ability to handle environmental pollution in Nigeria.³³ This clarifies why, at best, the process of updating oil laws that can strengthen the enforcement agencies' capabilities has been ineffective or slow.³⁴

4.6 Institutional Obstacles to the Niger Delta Region's Effective Implementation and Compliance

While the aforementioned variables have a significant negative impact on environmental enforcement and compliance, institutional impediments have also hampered enforcement in the region and rendered low compliance in the oil sector an inevitable result. As was previously mentioned, some people believe that one of the main issues impeding enforcement in Nigeria is the reactive nature of the country's environmental laws, which were prompted by the unsightly 1988 toxic waste dump in Koko, a riverine community in Delta state. It was so embarrassing that poisonous garbage could be shipped from Europe to Nigeria under public view without the government knowing about it. Government reacted swiftly by enacting several laws in 'saving face', that were far reaching. several laws in 'saving face', that were

³¹ Akinpelu, Y. (2021). Analysis: 77% of oil spills in Nigeria occurred in only three states. Premiumtimes, May 15. Retrieved from, <https://www.premiumtimesng.com/news/headlines/461635-analysis-77-of-oil-spills-in-nigeria-occurred-in-only-three-states.html>.

³² Transparency International (2005). Transparency International country study report: Nigeria Retrieved from https://www.transparency.org/news/feature/transparency_international_2004_annual_report

³³ World Bank Group (1995). Nigeria: Defining an Environmental Development Strategy for the Niger Delta, In Industry and Energy Operations Division West Central Africa Department, Vol. 2 147, 45. Retrieved from, <http://documents.worldbank.org/curated/en/506921468098056629/Annexes>.

³⁴ Terada, C. (2012). Recycling Electronic Wastes in Nigeria: Putting Environmental and Human Rights at Risk. *Journal of International Human Rights*, 10(3), pp. 154, 169.



far reaching. Since the oil industry was primarily considered as the path to Nigeria's rapid industrial development, there was no law, strictly speaking, regulating the sector's operations prior to that time. As pollution was seen as an inevitable byproduct of industrialization, laws were actually developed primarily to further that goal. Because environmental regulations were not carefully considered, as is suggested, some institutional hurdles were brought about by the reactive nature of environmental policy.³⁵

The issue of overlapping responsibilities among the several environmental regulatory authorities was one of the mentioned obstacles. An environmental activist interviewed in Bayelsa State stated that although the nation's environmental laws appear sufficient to address environmental problems, a significant challenge that oil companies frequently encounter is the duplication of duties due to the establishment of multiple agencies all aimed at addressing the same issues. This activist was responding to questions concerning environmental agencies and their statutory functions. This respondent claims that the establishment of NESREA, NOSDRA, and DPR has not significantly assisted in guaranteeing compliance because these organizations all perform similar tasks, confusing the regulated community. It is common for the regulated community to act against the law in an attempt to further their interests when they are perplexed by the vagueness of the legislation. For instance, they search for the agency that will be more hospitable to them or that they can readily bribe in the event of an oil leak (FGD, fieldwork, 2022).

There is a significant disadvantage to enforcement and compliance in the area because these authorities all perform overlapping functions. The primary law enforcement body in Nigeria is called NESREA. Its exclusion from directly intervening in the oil and gas industry is a peculiar command in and of itself, but it also supervises the work done by DPR and NOSDRA, which are mandated by their different Acts to deal with pollution issues. For example, inconsistent data on oil spills are published by DPR and NOSDRA.³⁶ Data gathered from the field also reveals that a fundamental issue hindering enforcement in the area is a shortage of personnel and the necessary instruments to carry out an effective enforcement campaign. The region's low compliance rate can be attributed to a number of issues, including old equipment, insufficient staff, and a lack of professionalism. The enforcement authorities are also beset by a shortage of finances and insufficient training capabilities. When questioned about the independence of regulatory agencies in carrying out their tasks, a respondent who also happens to be the director of a unit at one of the enforcement agencies said:

If and when you rely on the people you are regulating for logistics like transportation, the use of their technology, and their own created data, you cannot expect perfect compliance. When and what they want to show you will be determined by them. This is a significant issue that we frequently encountered when performing our duties. Furthermore, I believe that if all of these shortcomings are quickly fixed, enforcement can really get better (KII, fieldwork, 2022).

³⁵ Omorogbe, Y. (2001). *Oil and gas law in Nigeria*. Lagos: Malthouse Press Limited.

³⁶ Watts, M & Zalik, A. (2020). Consistently unreliable: oil spill data and transparency discourse. *The extractive industries and society* 7(3)



The aforementioned reaction demonstrates how Nigerian regulatory bodies are dependent on regulated firms, which has a direct impact on enforcement. For instance, NOSDRA is unable to compel compliance that would guarantee oil corporations clear up oil spill locations. The majority of what they do is provide estimates since they lack the necessary resources to gather unbiased and precise data on oil spills. Even more pitifully, they cling to information provided to them by the oil firms, which frequently explains the disparities in publicly available data on oil spills. Once more, the Act establishing NOSDRA is severely limited in its ability to force oil firms to compensate victims of oil spills, which undoubtedly impacts the execution of Nigeria's National Environmental Policy³⁷.

Their reliance on oil companies will be lessened with the support of government financing allocated specifically for regulatory agencies or through self-funding. Nigerian oil corporations are more likely to abide by applicable environmental laws or regulations if they are aware that the regulated bodies are capable of carrying out their duties. But despite completely ignoring the effects of their acts on the environment, they have managed to take advantage of these shortcomings in the government in order to further their own self-serving objectives. Ineffective institutions have hampered Nigeria's efforts to enforce the law and implement compliance programs. Considering that these organizations lack access to the funding and technology necessary for them to perform their jobs well, they are weak in comparison to the oil firms they oversee. Their inability to take accountability and responsibility for their actions hinders them from carrying out their missions in an efficient manner. In those circumstances, they become more prone to being captured. When a regulated entity begins to exert control over the regulators tasked with upholding laws, this is known as agency capture. Strong lobbying from the regulated community with the goal of getting enforcement authorities to start thinking like the industries they are regulating may be the cause of the situation, rather than necessarily corruption. Mandates to stop gas flaring in Nigeria, for instance, have largely failed because foreign oil companies have successfully lobbied the government to change the deadlines by accepting their justifications that it is not possible to complete the task within the allotted time due to the significant financial and investment involved. The government's reliance on oil profits has contributed to its ability to be effectively pressured into following the demands of the oil industry.³⁸

However, corruption has played a major role in regulatory capture in Nigeria, particularly as the NDR illustrates. According to Newell (2003), corrupt behaviors actively foster weak institutions and reduce the efficacy of regulatory authorities.³⁹ When ethics are violated, corruption results. This is the main argument of Stigler's (1971) thesis: although regulations are initially intended to further public goods or interests, they eventually stray from these noble objectives and wind up serving the preferences and interests of the "regulated."⁴⁰ According to Noah (2021:7), "corporations tend to exploit the regulations

³⁷ Bueren, E. v. (2019). Environmental policy. Retrieved from, <https://www.britannica.com/contributor/Ellen-van-Bueren/9527648>.

³⁸ Laden, M. T. (2012). Review of NESREA Act 2007 and regulations 2009-2011: a new dawn in environmental compliance and enforcement in Nigeria. *Law, Environment and Development journal*, 8 (1), pp. 116-141

³⁹ Newell, P. (2003). Corporate accountability for development: two cases from India, *A Draft Paper for the Development Research Center on Citizenship, Participation and Accountability*, IDS, University of Sussex, Brighton.

⁴⁰ Stigler G. J. (1971). The Theory of Economic Regulation, *Bell Journal of Economics and Management Science*, 2: 3 – 21.



and use them as a tool to attain their desired profits" is what is ultimately observed. A regulatory agency is vulnerable to capture if it is not financially, politically, or operationally motivated. This sentiment was voiced during a focus group discussion in the Ondo State community of Igbokoola. One responder, who was asked about the ability of regulatory bodies to enforce regulatory regulations, made the following observation, which seemed to go over well with the other respondents:

Because the oil companies are so wealthy, law enforcement officials always rejoice when they gain direct access to these corporations. It's evident in the way they live and the opulent homes that many of them have constructed. Thus, accepting payments to turn a blind eye is standard procedure, and these businesses also target people they think could cause them issues in the community. Because of this, it is challenging to apply the legislation exactly as written. For members of this community, having family in the oil industry or in government, particularly those with authority over the oil sector, is a fantasy because of the rate at which oil money is distributed among those with access to the oil corporations (FGD, fieldwork, 2022).

Another respondent, a former regulator who is currently employed in the private sector, stated that corruption is the main issue impeding the execution of environmental laws in Nigeria and that, in order for these laws to be successful, the government must find solutions. When dealing with a business that gives you more money in a single day than you would in ten years of service, how can you appropriately enforce the law? Because it will offer them access to oil corporations, you can see a lot of internal strife even inside these regulatory bodies as they compete to be allocated to field work. Imagine receiving 10 million naira from a firm to ignore them. How would you respond, particularly if you are being underpaid? (fieldwork, FGD, 2022).

The truth is that oil multinationals can utilize their political connections to get around appointed regulators and go beyond government agencies in order to achieve favorable results since they have unfettered access to the ruling elites. This was brought up during our conversation with certain NOSDRA personnel, who lamented the fact that it was not unusual to hear a regulated firm threaten to travel to Abuja, particularly if they were not receiving the desired result. Additionally, it frequently happens that when government officers attempt to execute the law, politicians call them and advise them to proceed cautiously. This is undoubtedly not a new practice; in fact, former Federal Environmental Protection Agency Director Adegoke Adegoroye effectively described a similar situation decades ago. He noted that the existence of strong organizations and persons with access to positions of authority impedes efforts to enforce the law, which is one of the problems facing enforcement regimes throughout Africa and Nigeria in particular (Adegoroye, 1994). These days, large companies who have what it takes to "muscle" their way through still employ this common strategy⁴¹. As seen by Adegoroye's experience, they not only make sure they have access to Abuja but also exert control over the media to suit their purposes. According to Noah's (2021) research, the media has been complicit in the issue of corporate environmental accountability.⁴²

⁴¹ Adegoroye, A. (1993). The challenges of environmental enforcement in Africa: the Nigeria experience. Proceedings of the third international conference on environmental enforcement. Retrieved from <https://www.inece.org/3rdvoll/pdf/adegoro/pdf>

⁴² Noah, A. (2021). Corporate environmental accountability in Nigeria: An example of regulatory failure and regulatory capture. *Journal of Accounting in Emerging Economies*, 5.



5.0 Conclusion

There are more benefits to breaking environmental regulations than just financial ones. Its effects on the ecosystem and the health of those who suffer from environmental degradation may be the greatest. The biggest barrier to Nigeria's enforcement regime, however, has been the country's reliance on oil, rent-seeking behavior, and corruption. As a result, even though there are laws in place to address environmental injustice, the various governments, particularly the central government, have taken care to ensure that they are not applied strictly because doing so would result in lower revenue from a resource that has defined the nation's economic trajectory for more than 50 years. Since environmental enforcement is the only way to accomplish sustainable development, it is imperative that it be treated seriously.

6.0 Recommendation

It is imperative for the development of the Niger Delta Region and the decrease in conflicts related to oil that the many gaps or hurdles in environmental enforcement and compliance are closed. It is even more important and crucial to Nigeria's achievement of the country's sustainable development goals. Therefore, it is crucial that the Nigerian government move quickly and take the following actions, among other things:

1. The government's support of Nigeria's environmental regulating agencies is crucial, particularly with regard to their technological prowess, staffing levels, and employee compensation. This will guarantee their efficacy as they endeavor to be autonomous from companies whose operations are subject to regulations. It will lessen the possibility of being taken over by "big money" businesses. Reliance on Energy firms can obstruct efficient environmental control with their logistical support. This is the situation with Nigeria's delta region's oil businesses.
2. Encouraging community involvement in environmental enforcement initiatives can help guarantee that national environmental laws are followed. The government ought to make an effort to inform the public about appropriate behavior and the value of prioritizing environmental quality. Community participation in environmental programs has been lacking due to a combination of avarice, corruption, and a lack of environmental understanding. Environmental education and focused community engagement can help with this.
3. The government needs to be dedicated to carrying out its environmental policy. Although the nation has regulations governing petroleum activity, oil firms flagrantly flout these rules. The government must diversify the economy away from the oil industry and implement policies that would spur the expansion of other industries like manufacturing and agriculture if it is to properly enforce its laws. An excessive reliance on oil has made it possible for the government to be pressured into bending the law or delaying penalties against oil businesses. The government's decision to become deeply involved in the oil industry, where it controls a greater portion of the earnings, has had a negative impact on its ability to enforce laws. This has something to do with its reliance on oil. As a result, economic diversification will enable the government to generate revenue from sources other than oil, strengthening its oversight role.



4. The numerous uncertainties in Nigeria's environmental laws and regulations, some of which were mentioned in the paper, are a significant hindrance to an efficient program for enforcing compliance with the environment. It has frequently resulted in redundant tasks being assigned to the different entities. Effective environmental enforcement occurs when the regulated community is aware of the law's requirements, what it says, and who is in charge of enforcing it. A policy with precise wording promotes compliance. Thus, the Nigerian government ought to standardize its environmental policies to guarantee that each of its agencies has a separate role and that, in cases when collaboration is required, this is made apparent.