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Exploring Barriers to Environmental Law Enforcement and Compliance in Nigeria Niger Delta Region

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Abstract: The important role of environmental enforcement in ensuring compliance with a country's environmental policy cannot be over emphasised. The belief in many quarters that sustainable development is achievable, owes much to a country's ability to enforce stringently its environmental laws. While Nigeria has several environmental laws regulating the activities of oil multinationals in the Niger Delta Region, there is widespread non-compliance with these laws. This paper looks at the various barriers militating against an effective environmental enforcement programme in the Niger Delta Region. It employs both secondary and primary sources in collecting data which were qualitatively analysed. Our findings show that among other factors, corruption institutional inadequacy, legal loopholes, oil reliance, and lack of community awareness and participation are serious impediments to effective enforcement and compliance programme. The paper therefore recommends that government should make effort to address these barriers to ensure compliance with the law

Keywords: Compliance; environmental law enforcement; barriers; Niger Delta; Nigeria

Introduction

In Nigeria, there exist several environmental laws and Acts protecting the environment. There are generic ones like the National Environmental Standards and Regulations Enforcement Agency (NESREA) and Environmental Impact Assessment (EIA) and there are sector-specific ones like National Oil spill Detection

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and Response Agency (NOSDRA) whose function is to address the issue of oil spillage, the Gas reinjection Act, and the Petroleum Act. All of these laws are not contained in one legal document but are rather scattered across various documents. However, the availability of environmental laws in the country has not translated into a cleaner environment. Rather, unlike what is obtainable in other advanced countries, oil multinational corporations in Nigeria have abysmally failed to abide by what constitute responsible business behaviour in their oil operations in the Niger Delta Region (NDR) of Nigeria. Also, the fact that these laws are codified in different legal instruments has also raised concerns as to which law applies to any given situation and which agency should see to it that the law is enforced as it has led to situations where it has occasioned difficulty in monitoring, enforcement and compliance. In many cases, the multiplicity of functions scattered across different agencies has led to noncompliance of these laws by oil companies who exploit this lacuna in enforcement to their advantage (Oshionebo, 2009)

The impact of the oil sector on the environment of NDR is well researched. There are over a hundred and fifty gas flaring site in the region and its effect on the economy, environment, and health of the people are well documented (Ebeku, 2003). Therefore the petroleum sector constitute the greatest threat to environmental harm in Nigeria. As shown in the United Nations Environment Programme (UNEP) report on Ogoniland, the petroleum sector is so decisive when it comes to environmental discontinuities to the extent that its activities are felt before, during and after oil exploration (see UNEP report on Ogoniland, 2011). Therefore if the petroleum sector is effectively regulated, its impact on the environment will be minimal. A regulated entity decision to comply or not to comply with a nation's environmental laws can be adduced to different compliance motivation. Aside the notion that compliance with environmental laws increases the legality of business entity operations, it also significantly enhances the overall image or reputation of a firm. The public perception of the firm will be good for business as it helps to improve their environmental records in the area of protection. On this logic, one would expect oil companies in Nigeria to abide by the laws guiding their operations. This is however not the case as these companies have come under attack because of the belief that their preference is more on the side of profit making than on sustainability.

This paper explore the various barriers hindering environmental law enforcement in the country. It is premised on the notion that to understand why environmental enforcement is weak demands that we look critically at the many factors that hampers it, reducing its efficacy in ensuring compliance in the industry.

Review of Related Literature

Environmental Enforcement and Compliance

The International Network for Environmental Compliance and Enforcement (2009), defined environmental enforcement as “the set of actions that a government takes to achieve full implementation of its environmental policies or requirements (compliance) within the regulated community”. Put differently, environmental laws are standards that are enacted or designed to safeguard the environment. They are part of, and perhaps the first of many steps taken by organized authority or the state towards arriving at an effective environmental policy. Thus the term environmental policy entails both the law, and the set of actions that the government, corporate organisations or private entities take to ensure that human activities that are harmful to the environment and by implication to the survival of the human race are prevented or at the very be least reduced (Bueren, 2019). Two basic reasons account for the importance of environmental policies or laws in any given situation.

First is the empirical assertion that the effects of environmental actions always comes out as economic externalities. This means that given the motivation drive of companies or firms, those who pollute the environment do not always bear the impacts of their action. Rather, these consequences are passed over to others either in the present or in the future as negative externalities. The second reason is the belief that polluters especially see the environment and the natural resources it holds as infinite, endless or one that extends indefinitely. These two factors which necessitate or underscore the importance of environmental policy according to Bueren (2019), did result to what is popularly known as the “tragedy of the commons”, a phrase that has come to highlight the conflict that exists between ‘individual and collective rationality’ (Bueren, 2019)

For environmental policies to be effective, the need for enforcement and compliance cannot be underestimated. That is why the two are often linked together in any sustainability discourse that concerns the environment due to the complementary roles both plays toward the realization of sustainable development. Also an effective enforcement programme should be backed up by law as this will ensure that those given the mandate to ensure environmental quality should have the necessary and legal authority to do so.

In this vein, Wasserman (1992:16) defines environmental enforcement as 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". This definition of environmental enforcement points to a major objective of any enforcement regime which is, to compel firms to work or do business in line with the state standards and regulations or to put it more succinctly, to effect compliance, which meant a situation or a state of maintaining environmental standard or striving to measure up with state environmental regulations (Wasserman, 1992).

Therefore the measuring tool in which any enforcement regime can be effectively assess is how much it has engender compliance within the regulated community and to go a bit further, how it has been able to address the issue of sustainable development in the community. Therefore, knowing why companies comply with the law will help us to understand why there is low compliance level in the Nigeria oil industry. This will also help us to account for the weak nature of environmental enforcement in the NDR.

Factors that Influences Compliance Behaviour

Various factors, ranging from market forces, stringent regulations and corporate values or beliefs in the morality of compliance, can make a firm comply with environmental regulations. If a regulated entity believed that the benefits that accrue to it from complying with the law (taking into cognizance the sanctions that could come from not complying) is more than the cost of compliance, there is every tendency that its compliance level will be high (Winter & May, 2001). This form of calculated motivation can be explained using operating oil companies in the NDR. Oil multinational corporations for years have refused to abide by the principle of responsible behaviour because they have come to believe that it is not beneficial for them to comply with oil regulations that for instance outlawed gas flaring, so instead they are more ready to pay the stipulated fines in flaring gas than to invest in technologies that can help towards gas reinjection (Okoye, 2020). What therefore informs the behaviour of oil companies in Nigeria is not the risk of detection but rather, how they perceived the sanctions for non-compliance (Obanijesu, 2009).

Morality also influences the compliance level of regulated entities. This is what is sometimes referred to as intrinsic or internal motivation and it has to do with an internalized moral duty to obey the law (Zhao & Qi, 2020; Nielsen & Parker, 2012).

Sometimes, firms obey the law not because it is profitable to do so or costly not to do so, but basically because they consider it their civic duty to do so, or they see the law as appropriate and something that just must be obeyed. In other words, the law is seen as being reasonable, not dictatorial. Nigeria oil industry is largely driven by foreign companies like Shell, AGIP and a host of others, and there are international environmental standards that drive these companies in their corporate behaviour wherever they operate. Sadly however, this is not the case with these companies when they operate in less developed countries. They tend to go against their own value system in these countries and operate differently from what is obtainable in other climes.

Sometimes firms are forced to comply with the law due to pressure from social groups, advocacy groups, victims of environmental disaster or even from the media. This is what is refer to as 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 noted that this sort of compliance does not borne out of a willingness to obey, but rather as the result of a concern of how certain perception can hurt the reputation of the firm. At times private organisations like NGOs published reports of non-compliance by companies. These reports can damage the non-complying company to the extent that they lose sponsorship or consumers. It has been argued for example that oil companies in Nigeria only get involved in corporate social responsibility due to the pressure from host communities. In fact the first known case of Shell social corporate responsibility in the NDR came about due to the negative spotlight they found themselves after the state murder of Ken Saro Wiwa and eight others when they protested against the massive environmental degradation in the region caused by oil related activities.

The ability for regulators to effectively communicate the rationale behind the regulations to the regulated entity can also motivate companies to obey the law. This is what is refer to as reason-driven motivation. Why should I obey? Must I obey? These are questions that must be answered by the regulator if they want to achieve compliance with the law chiefly because, companies sometimes look up to the regulators whether it is wise to obey. An example of this is the non-compliance with the gas reinjection Act. It is believed that a major reason why there is widespread noncompliance with this Act is because, oil companies are yet to see the reason why they need to invest in gas re-injection policy. This cannot be disassociated from the notion that the rationale for this policy has not been effectively communicated by the regulator (Brown, 2021)

There are other motivational strategies that can influence compliance behaviour especially in the oil and gas industry. However in most cases the ones discussed above have been dominant in explaining why regulated entities comply with the law. Understanding this motivational influence will help us to understand and explain the obstacles, barriers or challenges that hinder effective enforcement strategy in Nigeria. It will also help in explaining why oil companies in the NDR failed to comply with Nigeria environmental statutes.

Methods of the Study

Given the nature and the thrust of the paper, three techniques of data collections were utilized. These were the interview technique, Focus Group Discussion and the use of relevant extant literature which involves the extraction of information from relevant journals, books, conference proceedings, the web, and libraries. It was important to complement the secondary source with first-hand opinions and views of the barriers encountered in environmental enforcement programme. A purposeful sampling technique was utilized in selecting those interviewed. These interviews which took place between February and March 2022 were conducted with thirteen key informants' attached to regulatory agencies, oil companies and other stakeholders in the oil and gas industry using the snowball approach where a key informant referrals is used to identify those with key knowledge and experience. Criteria used for interview selections were, position of authority held, knowledge, experience and expertise; and lastly, number of years spent in the industry (five year and above). In carrying out these interviews and discussion, ethical issues and informed consents for interviews were strictly adhered to. Focus group discussion was also carried out to get the views of other members of the communities that have been adversely affected by oil exploration. Focus Group Discussion was carried out in oil producing communities of Igbokoola in Ondo State, and Okpai, in Delta State. Data that were obtained from the field together with the secondary ones were qualitatively analysed.

Barriers to Environmental Enforcement and Compliance in the Niger Delta Region

Legal Barriers to Environmental Enforcement and Compliance in Nigeria

Several factors explain the weakness of environmental enforcement and compliance in the NDR. These factors can be divided majorly into two: legal and non-legal

factors. Several legal constraints have affected how environmental enforcement is carried out in the country. These constraints have somehow been exploited by oil industry players in avoiding compliance with the country's environmental provisions. One of such is the conflict in the provision contain in environmental policies in Nigeria. Beginning from the constitution down to specific Acts which addresses specific environmental issues, there are conflicts towards not only how it should be applied but also who should be able to enforce its provisions.

For instance the wordings in the constitution has led to different interpretation as its ambiguity has not made it easy for its provisions to be dutifully applied. A good example of this is Section 20 of the 1999 constitution as amended. This provision vested the protection and improvement of the environment in the Nigeria State. Section 13 further enjoined the organs of government which includes both the legislature and judiciary to conform, observe and apply chapter 2 of the constitution inclusively dealing with environmental matters. However in section 6 (6) of the constitution, it curiously exclude the court from entertaining any lawsuit dealing with the enforcement of the provisions expressly stated in chapter 2 of the constitution.

This has led scholars like Abdulkadir (2014), Ako, Stewart & Ekhaton (2016) and Atsegbua, Akpotaire & Dimowo (2004), to conclude that Section 20 of the 1999 constitution is not Justiciable as Section 6(6) tend to strip the court from adjudicating on matters in chapter 2 which includes environmental matters. The same is the case with the NESREA Act. The Act empowers the agency to ensure that there is compliance with international agreements on the environment in Section 7 of its Act. These agreements includes treaties, convention, and protocols. However the contention here is that Nigeria has not ratified some of these international treaties and thus they are not domesticated in her national laws. So does NESREA powers include the enforcement of international laws that the Act empowers it to but has not been domesticated in line with its Section 7 directive?

This has led to two different interpretations. On the one hand there are those who believed that NESREA power should not be excluded from the enforcement of international treaties even though it may not have been domesticated. Secondly, some others are of the opinion that NESREA should restrict itself to domesticated international treaties. This confusion do impact on environmental enforcement in the country especially given the fact that NESREA is the foremost environmental body in the country (Ladan, 2012). Also, NESREA preclusion from holding the oil and gas sector responsible for acts of pollution is not only curious but one that actually render their enforcement power ineffective given their position in enforcement

regime in Nigeria (Stevens, 2011). All of these put together weakens their enforcement power to effect compliance in the oil sector.

Some scholars believed that Nigeria environmental laws were enacted as a matter of urgency and that it is this situation that has made them to be less uniform (Eneh, 2011; Salihu et al, 2016). This tend to explain the overlapping functions among its agencies, the vagueness in its pronouncement and its subjection to varied and conflicting interpretations. Oshionebo (2009), for instance argued that a major drawback to effective enforcement of environmental law which seriously affects compliance is the duplication of functions and the apparent lack of cooperation between the agencies. This has not only incapacitated these regulatory agencies but it has also led to inefficiency on their part.

An example on the vagueness of environmental provisions is the Petroleum (Drilling and Production) Regulations which is contained in the Petroleum Act, 1969. Under this Act, oil companies are required to take practical precautions to prevent the pollution of the environment. This will involve investing in up-to-date technology or equipment. When there is a case of oil spills, prompt action must be taken to curtail its spread and to end it if possible. This provision has led to confusion in interpretation. This is because what is “practical precaution” is subject to how regulated entities and in this case the oil companies interprets it and it is also subject on their ability to do so. On the notion of up-to-date technology or equipment, this is only possible when there is effective monitoring and inspection, a practice that is lacking given the incessant excuse made by oil companies on equipment failure (Kadafa, 2012). According to Achebe, Nneke and Anisiji (2012), reasons for pipeline failures are numerous and they can be as a result of operator errors, outdated and aged equipments, and even sabotage.

Also, the regulation directs the guilty party or polluting party to take appropriate steps to address oil spills and to end it. Of course this is one of the problems bedevilling the oil sector in Nigeria: their indifference when it comes to addressing oil spills in Nigeria if past spills incident are any indication of how they react. Also given the bureaucratic nuances that is involved in addressing oil spills in Nigeria, the lack of capacity of regulatory agencies and dependence on information from the polluting companies, it can be said that the regulation while explicit in its demand, seem to be infeasible (Olujobi, Oyewunmi & Oyewunmi, 2018)

Lack of effective deterrent in Nigeria legal provisions in its environmental law has also in no small way affected environmental enforcement and compliance in the

region. Nigeria environmental laws have imbedded in them various sanctions or penalties for violation of its tenets. But it has been argued that these deterrents do little or nothing to compel oil companies to obey the law. Rather these oil companies are ready to pay the stipulated fine for their untoward behaviour. In the 2021 Nembe, oil spill in Bayelsa State, residents in some of the communities impacted by the oil spill incidents were harmonious in their attack of the oil companies. An aggrieved stakeholder who also double as a community head in one of the impacted community said:

The company Aiteo on whose watch the oil spill occurred do not fear that they would be sanctioned or penalised for this atrocity to our environment. I believed that the lack of adequate punishment for all their nefarious activities and disregard for our wellbeing has encouraged them to have a lukewarm attitude. Just imagine, the oil was spilling there for days before they even acknowledged that it was a massive leakage. To crown it all, nothing is going to happen to them as aside, the communities and the state government visible anger, those in the national government don't give a damn about the consequences of their action. They have the money to pay because it is chicken change (paltry sum) to them (KII, fieldwork, 2022)

In recent times, there have been calls from the National Assembly to impose stiffer sanctions against corporate entity involved in gas flaring through a proposed bill, the Gas Flaring (Prohibition and Punishment) Bill, 2020. While the bill has passed some readings (second reading), its stagnation or slow pace of passage may not be unconnected with the often given reasons that investment in technology that could help phased out gas flaring is expensive and demand substantial investment. According to an environmental activist interviewed, he said this is the typical excuse used by oil companies to avoid responsibility for their actions (KII, fieldwork, 2022)

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

Aside the legal factors, there are also non-legal factors that tend to place a decisive role in weakening environmental enforcement in the region. Non-legal barriers to environmental enforcement and compliance includes but not limited to lack of political will, lack of community/public involvement in enforcement matters, low level of community partnership, lack of good governance, inadequate funding, professionalism, economic barriers, dependency on oil, political interference in environmental law enforcement and no or limited access to the court. These various factors will be discussed under economic, social, political and institutional barriers.

Economic Factors

The discovery of oil in Nigeria in the late 50s marks a watershed in Nigeria economic fortune. It led to massive wealth as petro dollars became more accessible and easy to come by compare to money from agriculture. Jike (2004) has spoken about the implication of the gestation period of agricultural produce compare to oil as a determinant for the neglect of agriculture by the ruling class in Nigeria. To get as more as they can from the new source of wealth which oil brings, the Nigerian government took a direct approach in getting involve in the production and exploration of oil in early 1970s through its Nigeria National Petroleum Corporations. While the rationale for this was understandable, it led to the unforeseen problem of a reduced capacity by the government in implementing and enforcing its regulations against massive degradation of the environment as a result of oil exploitation. This is because stringently enforcing its regulation means indicting itself which the government was not ready to do. It also means reduced income for the state (Okonmah, 1997; Uwakwe & Aloh, 2020).

The systematic undermining of the agriculture sector had further and seriously undermined the government capacity to enforce its own regulations. While the laws seem to address concerns about the environment and strive to meet global requirements, it was never meant to really indict the oil companies as doing so would affect the economic rents that the government was deriving from the sector especially following the relegation of its agricultural produce which was dominant before the discovery of oil. In spite of the fact the exploration of oil was a major cause of environmental degradation in the Niger Delta, there was no way policies on the environment was going to be enforced on an industry that is responsible for over 90 percent of the country's foreign exchange earnings, and one which also accounts for 80 percent of government revenues (Onwuazombe, 2017).

Another form of rent seeking behaviour displayed by the Nigerian elite class which affected enforcement of environmental regulation in the oil sector was the privatization and sharing of oil blocks among individuals especially under military regimes. Cronies of the federal government were allocated oil blocks arbitrarily and even though this was a problem recognized by successive administration that need to be corrected, nothing was actually done. The second coming of Mr Olusegun Obasanjo during the 4th republic following his electoral victory in 1999 could not achieve much in this regard even though he has specifically promised that these arbitrary allocations will be looked into.

According to Okpan & Njoku (2019), the Obasanjo's administration revoked 11 oil blocks with the objective of making allocations more open and transparent. But this was a half-hearted effort because his administration was also involved in the arbitrary allocation of oil blocks during the end of his administration (see Table 1). Obasanjo's action was described as 'Oil Block Bazaar' as it was arbitrarily shared to those who were in favoured of his failed 'third term bid' (The Nation Newspaper, 2008). This patron-client relations or the "personalization of oil block allocation/rents", it is argued brings about "poor development of the upstream oil sector" (Iwuoha, 2021; see also Cletus, 2020). If oil blocks are in the hands of clients of government, then it is safe to think that government will do anything to safeguard their interests. Enforcing oil regulations will therefore not be in the interest of government whose hold on power is further perpetuated with corrupt proceeds obtained from oil (Usman, 2011).

Table 1. The Last Minute Award Of Oil Block Bazaar During Obasanjo Tenure (1999-2007)

S/No	Name of Companies	No. of Blocks	Amount (\$)
1	Essar Energy Exp. And Prod	Block 226	\$18.5 million
2	Monipulo	Block 231	\$17,999,980 million
3	Conoil	Block 290	\$49,999,975 million
4	Global Energy Coy Ltd	Block 2009&2010	\$11,499,949 million
5	Continental Oil	Block 2007	\$54,999,982 million
6	Sterline Global Oil Res.	Block 2005&2006	\$5,150,000 million
7	Bayelsa Oil Coy	Block 240	\$5,599,949 million
8	Abbey Courts/Coscharis	Block 293	\$50,167,510 million
9	Deltagate/Petrodel	Block 258	\$12,500,000 million
10	Sahara Energy	Block 228	\$2,500,000 million

Source: Okpan & Njoku (2019)

Dependency on the oil sector has grown over the years. This is not surprising as proceeds from agriculture did not translate into foreign exchange earnings for the government. Oil wealth seem to be the easier means for government officials to be very wealthy and this, no doubt has been in the forefront for the call towards fiscal federalism and resource control. Regulating the oil sector to conform to global oil

practices is not in the interest of government managers even as environmental disaster spells doom for the inhabitants of the NDR. The oil companies understand the role oil wealth plays in Nigeria political economy and have used it to their advantage as they employ outdated technologies and ill-equipped machineries in their operations in the region. Thus those with vested interests in Nigerian oil industry have often played decisive roles in ensuring that policies aimed in addressing enforcement gap does not come to light by slow-walking bills in the national assembly dedicated to resolving the problems (Nabegu & Mustapha, 2017)

Social Obstacles to Compliance and Enforcement

One of the significant fallout from the destruction of the environment by oil multinationals and vested interests in government circles is what Jike (2004) called “social disequilibrium” defined here as the truncation of the traditional value and support system that have held the Niger Delta society for decades before the advent of oil exploration. While the petroleum industry has made enormous profits for the oil multinationals, the Nigerian State and its elite class, paradoxically it has led to absolute poverty of the vast population of Nigerians and more specifically the Niger Delta inhabitants. Oil exploration has truncated the traditional occupation of the people who depends on farming, fishing and hunting for their daily bread. Jike wrote of the destruction of the ecosystem and the consequent forced disappearance or migrations of ape-like species notably, monkeys from the forest of the region which were highly visible before oil exploration (Jike, 2004). Their disappearance can be adduced among other factors like deforestation to the intense heat generated through gas flaring. Farmlands have been rendered unproductive from several actions by these oil companies. Aside oil spills, “The intricate crisscross of oil exploration pipelines and rig facilities within the Niger-Delta [has] displaced farmsteads and farmers” the result is that “Virile young men found themselves out of work and began to swell the bloated labour market” (Jike, 2004: 689-690)

Displaced from their lands and unable to find jobs in an industry that is technical and skill-intensive, the youths especially, branched out into militants activities as they refuse to accept the erosion of their culture and destructions of their traditional means of survival in the same subtle manner their elders did (Jike, 2004). Unlike the male youths who have limited options, the women were adversely affected in this environment- poverty nexus (IBRD/World Bank, 2012). Thus environmental degradation and the non-implementation of oil-induced environmental laws has

continued to be the basis of the violence, conflicts and youth restiveness in the region (Allen, 2012; Babatunde, 2010). The oil companies have reacted to the insecurity that youth activism brings, not by enhancing their compliance levels but by further spending money towards the militarization of the region by bringing in private security outfits, and/or making use of government security outfits to protect their investment and facilities. Succinctly put, enforcing environmental laws in a conflict zone environment is a difficult task as government regulators found out (Almost every regulatory agency participants interviewed are of the opinion that the conflict in the region has further eroded or weakened enforcement strategies. One participant particularly noted that during cases of oil spills, they have to go with security forces as there is the fear that they could be attacked in trying to clean up the spills). Today, sabotage accounts for a significant part of oil spills in the Niger Delta.

Political Barriers to Enforcement and Compliance in Nigeria

The economic and social barriers to environmental enforcement and compliance in the Niger Delta which the study has analysed clearly shows the role politics plays. So far, what is clear is that there is the lack of political will to ensure compliance in the oil industry. No action espoused this notion more than the case of gas flaring in the region. In spite of the fact that the flaring of gas has been prohibited since 1984, it is a constant practice even today. A participant during a focus group discussion held in Okpai, Ndokwa East, in Delta State, explains the frustration of government incoherent deadlines on the people of the region in these exact words:

Deadline for gas flaring has being shifted several times that it has become more of a slogan for electioneering. Nobody here believes the government any longer as we now know they are more interested in the money they get from the oil companies than how this fire is affecting our health and crops. Produce from our farms has been seriously affected and this affect us economically because principally we are farmers. The government continues to turn a blind eye to our plight and the oil companies have bought some powerful persons in the community and the rest of us cannot do anything (FGD, fieldwork, 2022)

While policies aimed at stopping gas flaring have been in existence since 1979, the Nigerian people have seen dates banning the practice extended several times. At least it is on record that deadline dates for stopping gas flaring have been extended at least 7 times. 1984, 2004, 2016, and 2020 are notable dates in this regard (Akinpelu, 2021). The country is now looking at 2025 to phase out gas flaring in the country. Respondents when asked, did not seem to be positive about this new date basically

because earlier efforts have yielded little or no results and even more so, the country's dependency on oil have not improved. The laxity in government enforcement programmes is clearly seen in their technology deficiency so much so that, tracking payment for violation is difficult (Akinpelu, 2021).

The partnership deal that the Nigerian government entered with International Oil Companies (IOCs) has also made it impossible for government to regulate the oil sector as it would mean regulating itself. This is because, since the federal government through the Nigeria National Petroleum Corporation is in a joint venture with foreign oil companies, stringently applying the law will be counterproductive. The Department of Petroleum Resources (now Nigerian Midstream and Downstream Petroleum Regulatory Authority) that regulates the activities of these companies is an agency that is directly under the Ministry of Petroleum Resources which the NNPC is also a part of. This had great impact on government capacity to address environmental pollution in Nigeria as it is impossible for there to be objectivity in government regulation of pollution (World Bank Group, 1995). This explains why the process of reviewing oil legislations that can enhance the capacity of enforcement agencies has either failed or sluggish as best (Terada, 2012; Transparency International, 2005).

Institutional Barriers to Effective Enforcement and Compliance in the Niger Delta Region

While environmental enforcement and compliance suffers greatly from the factors analysed above, there were also institutional barriers that has hindered enforcement in the region and has made low compliance an inevitable outcome in the oil sector. As already posited above, it is believed in some quarters that a major theme that has among others, hindered enforcement, is the fact that environmental laws in Nigeria were reactive laws as it was necessitated by an embarrassing dumping of toxic waste in Koko, a riverine community in Delta state in 1988. It was so embarrassing that in the full glare of the public, toxic waste could be transported from Europe to Nigeria without the knowledge of the government. Government reacted swiftly by enacting several laws in 'saving face', that were far reaching. Prior to that time there was no law, strictly speaking, that regulates the activities of the oil sector as the oil industry was seen in the main as the route to the rapid industrial development of Nigeria. In fact, laws made were primarily to advance the pursuit of industrialization and pollution was treated as an inevitable outcome of that process. This reactive nature

of environmental policy brought with it, certain institutional barriers because as it is argued, the laws were not a thorough thought out process. Among the noted barriers were the problem of overlapping functions among the various environmental regulatory agencies. In responding to questions concerning environmental agencies and their statutory functions, an environmental activist interviewed in Bayelsa State noted that while environmental laws in the country seem adequate enough to address environmental problems, a major obstacle that oil companies often face is the duplication of duties because of the creation of different agencies all directed to addressing the same issues. According to this respondent,

The creation of NESREA, NOSDRA and DPR has not really helped in ensuring compliance because these agencies all have overlapping functions which creates confusion within the regulated community. When the regulated community are confused due to the lack of clarity in the law, it is normal that their actions will go against the laws as they look for short cut to advance their interest. When there is oil spill for example, they look for the agency that will be more homely to them or one that they can easily bribed (FGD, fieldwork, 2022)

These agencies all have functions that overlap and this is a major drawback to enforcement and compliance in the region. NESREA is the main enforcement agency in Nigeria. While it is excluded from directly interfering in the oil and gas sector which in itself is a curious directive, it also oversee functions carried out by DPR and NOSDRA who by their various Acts mandates them to address problems of pollution. DPR and NOSDRA for instance publish data on oil spills that can be conflicting (Watts & Zalik, 2020). Data collected from the field also shows that a basic problem plaguing enforcement in the region is lack of tools, and manpower that is needed to carry out proper enforcement program. Inadequate staffs, outdated equipment and lack of professionalism are some of the obstacles that has resulted in low compliance level in the region. Lack of funds and inadequate training skills also plague enforcement agencies. A respondent who happens to have head a unit in one of the enforcement agency responded when asked about the independence of regulatory agency in discharging their duties:

You cannot expect a hundred percent compliance if and when you depend on those you are regulating for logistics like transportation, use of their technology and their own generated data. They will show you what they want to show you and when they want to show you. This is a major problem that we often faced in the course of doing our jobs. And I think that enforcement can really improve if all of these inadequacies are speedily addressed (KII, fieldwork, 2022)

The above response shows the dependency of regulatory agencies in Nigeria on regulated entities and this clearly affect enforcement. NOSDRA for example cannot enforce compliance that will ensure that oil companies clean up oil spill sites. They lack the required tools to obtain independent and accurate data on oil spills so what they do mostly is to give estimates. More pathetically they rely on data presented to them by the oil companies and this often account for the discrepancies on oil spill statistics that are in the public domain. Again the Act establishing NOSDRA lack the power to compel oil companies to pay compensations to oil spill victims, a serious limitations that do certainly affects the enforcement of Nigeria National Environmental Policy.

Self-funding or government dedicated funding for government regulatory agencies will help to undercut their dependence on oil companies. If the oil companies in Nigeria knows that regulated agencies have the capacity to do their job, they are more likely to comply with the relevant environmental policies or laws. However, they have been able to exploit these inadequacies of the government to advance their selfish goals while totally neglecting the impact their actions have on the environment. Weak institutions have been a bane to effective enforcement and compliance programme in Nigeria. These institutions are weak compare to the oil companies that they are regulating given their lack of access to vital resources, be it finance or technology that they need to effectively carry out their duties. They are also hampered by their lack of responsibility and accountability which restrict them from effectively discharging their mandates. Under such conditions, they become susceptible to capture. Agency capture occurs when the regulated entity starts controlling the regulators who are meant to enforce government regulations. It may not necessarily be a case of corruption but strong lobbying from the regulated community with the objective that enforcement agencies starts thinking like the industries that they are regulating. For example, mandates to end gas flaring in Nigeria has failed basically because foreign oil companies have successfully lobbied the government to shift deadline dates by buying into their excuses that given the massive investment and money involved, it is not feasible to do so within the timeframe given. Government dependency on oil revenues has been a factor in successfully been lobbied to act in line with the dictates of oil companies.

However, in Nigeria, especially as we see in the NDR, corruption has contributed immensely to regulatory capture. Corruption weakens the effectiveness of regulatory agencies and weak institutions are proactively a breeding ground for corrupt practices (Newell, 2003). Corruption takes place when work ethics are compromised.

This is the core of Stigler (1971) thesis, chiefly that, while the enactment of regulations are primarily directed to serve public goods or interests, over time, the regulations deviates from these lofty goals and end up advancing the ‘regulated’ preferences and interests. Thus what is witnessed eventually is that “corporations tend to exploit the regulations and use them as a tool to attain their desired profits” (Noah, 2021:7). If a regulatory agency lacks the motivation, the finances, and the tools to perform, it becomes susceptible to capture. This was the feeling expressed in a focus group discussion held in Igbokoola community in Ondo State. In responding to questions relating to regulatory agencies ability to enforce regulatory laws, one respondent made the following observation which tends to sit well with others present:

The oil companies have plenty money to throw around and that is why those who are enforcers of the law are always happy when they have direct access to these oil companies. You can see it in the way they live and the mansions many of them built. So taking of bribes to look the other way is a normal practice just as these companies also targets those they believe can give them problems in the communities. That is why it is difficult for the laws to be enforced to the letter. Given the rate that oil money is shared among those that have access to the oil companies, it is a dream for members of this community that they have relatives that works in the oil sectors and the government especially those that have oversight on the oil industry (FGD, fieldwork, 2022)

Another respondent who has worked as a regulator but now in the private sector commented,

The basic problem that is working against the enforcement of environmental laws is corruption and if Nigeria environmental laws must be effective, the government must seek out ways to deal with it. How do you enforce laws properly against an industry that pays you more money in one day that you cannot get in 10 years of service? That is why even in these regulatory agencies, you see much infighting among themselves to be assigned to field work as that will give them access to oil companies. Just imagine a company giving you 10 million naira to look the other way, what will you do especially when you are poorly paid? (FGD, fieldwork, 2022)

The fact is that, given their unrestricted access to the ruling elites, it is possible for oil multinational to go beyond government agencies and use their political connections to achieve favourable outcomes by bypassing appointed regulators. This fact was noted in our interview with some officials of NOSDRA who bemoan that it

is very common to hear a regulated entity threatening to go to Abuja especially if they are not getting the outcome that they want. It is also often the case that agents of government are called and told to thread carefully by politicians when they try to enforce the law. This is certainly not a new trend as such scenario was well captured decades ago by Adegoke Adegoroye, a former Director of the Federal Environmental Protection Agency. He observed that one of the challenges that plague enforcement regime in Africa and Nigeria in particular is the existence of powerful groups and individuals who with access to seats of authority hinders efforts to enforce the law (Adegoroye, 1994) This is a typical tactic still used today by big corporations who have what it takes, to ‘muscle’ their way through. They not only ensure that they have access to Abuja but as Adegoroye experience shows they also influences the media to do their biddings. Noah (2021) research on corporate environmental accountability shows the complicity of the media in this regard.

Bridging the Environmental Enforcement and Compliance gap in Nigeria Niger Delta Region

Bridging the various gaps or barriers identified in environmental enforcement and compliance in the Niger Delta Region is critical to its development and to the reduction of oil-related conflicts in the region. It is even more significant and critical to the realization of sustainable development goals in Nigeria. It is therefore important that among other things, the Nigerian government should act urgently by taking the following steps:

1. It is essential that environmental regulatory agencies in Nigeria are supported by the government especially in areas of technological capability, adequate staffing, adequate staff remuneration, among other things. This will ensure their effectiveness as they strive to be independent from firms whose activities are regulated. It will reduce the likelihood of being captured by ‘big money’ companies. Dependence on oil companies for logistics support can hinder effective environmental regulation. This is the case with oil companies in the delta region of Nigeria.
2. Community engagement in environmental enforcement programmes can go a long way in ensuring that government environmental policies are complied with. Government should put in efforts to educate communities what constitute responsible behaviour and why it is important that the quality of the environment comes first. Lack of environmental awareness, greed and corruption has led to lack

of community participation in environmental related programmes. This can be addressed through targeted community engagement and environmental education.

3. Government should be committed to implementing its environmental policies. While there are laws regulating petroleum activities in the country, these laws are brazenly violated by oil companies. To effectively enforce its laws, government need to diversify the economy away from oil and create polices that will encouraged the growth of other sectors like manufacturing and agriculture. Overly dependence on oil has led to situations where the government is blackmailed to bend its own laws or postpone sanctions against oil companies. Government decision to be heavily involved in the oil sector where it control a larger share of oil proceeds have adversely affected its enforcement powers. This is not unrelated to its dependency on oil. Therefore diversification of the economy will give the government the opportunity to source for income elsewhere outside oil thereby increasing its oversight function.

4. A major drawbacks to effective environment enforcement and compliance programme is the many ambiguities in Nigeria environmental laws or documents that contains these laws some of which were pointed out in the paper. In many cases it has led to duplication of duties among the various agencies. Environmental enforcement works effectively when the regulated community knows what to expect, what the law says, and those who are mandated to enforce the law. A clear worded policy encourages compliance. Therefore the Nigeria government should harmonize its environmental policy to ensure that its agencies have clear-cut functions distinct from one another and where there is need to work together, this should be clearly stated.

Conclusion

The noncompliance with environmental laws goes beyond its financial implication. Perhaps, its greatest impact is on the environment and health of victims of environmental degradation. However, Nigeria oil dependency, rent seeking behaviour and corruption has been the greatest obstacle to enforcement regime in the country. It has led to a situation where though the laws exist to address environmental injustice, the various governments especially at the centre have made sure that they are not applied stringently as it would mean a reduced income on a resource that defines the country's economic trajectory for over 50 years. It is vital that

environmental enforcement is taken seriously as it is the only means through which sustainable development can be achieved.

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