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Cleverline T Brown
University of the West of
England Bristol, United
Kingdom

The legislative and institutional framework for compliance and enforcement in the petroleum sector in Nigeria: A review

Cleverline T Brown

Corresponding Author: **Cleverline T Brown**

Abstract

Environmental regulation has become a global phenomenon in recent times due to the impact of poor environmental decisions regarding the human and natural environment. The environment in Nigeria has recorded various negative impacts of such environmental decisions especially because of the extensive activities of the petroleum sector. While it is conceded that laws exist to regulate the operations of the petroleum sector, this article argues that such laws have been largely ineffective due to non-compliance and inadequate enforcement. A review of primary and secondary sources on the subject reveal that the compliance and enforcement provisions in these laws are weak and, in most cases, nonexistent. This article finds that the compliance provisions are missing a road map as to how effective compliance can be promoted and achieved. Improving the compliance provisions in the laws and policies and compliance strategies in practice, will promote a more regulated and consequently healthier human and natural environment and save enforcement actions for when all else fails.

Keywords: Compliance mechanisms, Enforcement tools, legal framework, institutional framework

1. Introduction

Prior to the sojourn into hydrocarbon exploration and exploitation in Nigeria, the human and natural environment in Nigeria was constantly interacted with through agricultural practices and trade.¹ These formed the basis of the Nigerian economy as trade was sustained based on the number of agricultural products that was sold from the shores of the country. This appeared to be sustainable and sufficient until petroleum was discovered in commercial quantity.² the petroleum business enveloped the economic landscape of the country and eclipsed all the other viable economic alternatives to a large extent.³ From the experience of environmental degradation, it would appear that Nigeria had tested the depth of the petroleum business with both feet and proceeded to gradually sink in the impact of bad environmental decisions. However, as quickly as the government churned out laws and policies in a bid to regulate the sector, it only appeared to be playing catch-up. This has resulted in being armed with several laws purporting to regulate the sector but hardly serving the purpose for which they were enacted.

2. Evolution of the legal framework for environmental regulation

Many actions and sectors of the Nigerian economy impact the environment, such as the petroleum sector operations, agricultural sector (land use and soil conservation),⁴ the manufacturing sector, emission of fumes from exhaust pipes of motor vehicles and industries and household waste disposal methods including disposing wastes in drainages and river courses. However, the focus of this article is the petroleum sector in Nigeria and the

¹ CC Igbokwe, 'Mono-Economy in a Pandemic Ravaging Society' (2020) 3(10) *Journal of African Studies and Sustainable Development* 218, 223.

² IC Chimezie, 'Gas Flaring and Climate Change: Impact on Niger Delta Communities' (2020) 6(1) *Management and Social Sciences* 106, 106

³ SM Albert, AT Gbeminiyi and SO Sennuga, 'Nigeria Beyond Oil: Problem and Prospects' (2020) 3(9) *International Journal of Business Management* 1, 5.

⁴ Through the use of unapproved agricultural practices including fishing with the use of dynamite and unregulated use of fishing trawlers.

compliance and enforcement efforts at regulating the sector.

Long before development commenced in the petroleum sector, there was heavy reliance on trade and agriculture to sustain the economy and cater to its citizens' needs.⁵ Nigeria had several environmental conservation methods and practices. For example, there were practices to protect agricultural lands, forest and fishing rivers. There were methods adopted to protect the environment and help it heal from agricultural activities to foster the preservation and sustainable use of land.⁶ These methods included crop and land rotation, land designated and reserved for different kinds of crops with different lifespan.⁷ In most local communities, land was allocated and reserved for various uses, such as farming, forest land (where wild animals were allowed to thrive in their natural habitat), evil forests, hunting forest, religious forest and forest reserved as an abode for evil spirits.⁸ There was also in place, selective prohibition of killing and eating of certain animals at all or during a given period in a year because they were seen as sacred or just an opportunity for the species to regenerate, heal and mature from the previous hunting or fishing season. Though rudimentary at the time, these practices helped to balance the sustainable use of the available land, forest and marine resources.⁹ The lack of a specific environmental protection and preservation policy at that time clearly showed that the protection of the environment *per se* was not a priority before the discovery of oil in 1956.¹⁰ It is contended that the protection of the environment was not the primary concern of the government at that point in time, rather it was the continued exploitation of the environment for continuous crop production that was paramount.¹¹

In the 1950s and in the wake of the discovery of crude oil, environmental concerns were seen in Nigeria as hindrances or threats to advancing industrialisation or economic development.¹² This view rapidly changed as the negative impact of the operations of the hydrocarbon industry gradually dawned. This is evident from how much the legal framework for environmental regulation has evolved.¹³ The closest effort at addressing environmental protection at the time was the Criminal Code Act¹⁴ which prohibited water pollution.

Several reasons have been adduced for being responsible for the late response to an objective and deliberate policy for environmental protection in Nigeria.¹⁵ Some of the reasons include lack of political sustainability, fixation on the economic benefits of the petroleum sector, political instability (constant change between military and civilian government which all had their own agenda outside environmental protection and sustainability, upon the assumption of office). The monthly environmental sanitation exercise¹⁶ which became operational across the country was erroneously thought to be a viable substitute for actual environmental protection policies that would have specifically addressed environmental problems including the negative impact of petroleum operations.¹⁷

Following the discovery of petroleum in Nigeria and the speed with which the country embarked on the exploitation and exploration of the resource, the country soon began to experience the harsh realities of the disadvantages of the operations of the sector, chief among which is pollution and consequent degradation and destruction to the human and natural environment.¹⁸ As noted earlier, Nigeria had a system in place to cater to the preservation of the environment as seen in the pre-petroleum era environmental preservation efforts in the agricultural sector, although it was not policy driven. Following the discovery of petroleum, environmental preservation effort was reactivated and became more evident from the involvement of Nigeria in various environment-focused activities and meetings especially at the regional and continental level. Such environmental matters include preservation of the marine and coastal environment, the conservation of natural resources and the management of

⁵ T Falola and MM Heaton, *A History of Nigeria* (Cambridge University Press 2008) 332, 78.

⁶ U Etemire and NU Sobere, 'Improving Public Compliance with Modern Environmental Laws in Nigeria: Looking to Traditional African Norms and Practices' (2020) 38(3) *Journal of Energy & Natural Resources Law* 305, 310.

⁷ F Allison-Kulo, 'Enforcement of Environmental Regulatory Laws in Nigeria' (2007) <https://www.academia.edu/10234192/ENFORCEMENT_OF_ENVIRONMENTAL_REGULATORY_LAWS_IN_NIGERIA_BY> accessed 29 May 2017 6. The framework for environmental regulation in Nigeria incorporates both legal regulatory instruments and institutional regulatory agencies.

⁸ TA Aina and AT Salau, *Challenge of Sustainable Development in Nigeria*. (Nigerian Environmental Study/Action Team 1992) 247, 156.

⁹ FI Nweke and others, *Production Costs in the Yam-Based Cropping Systems of Southeastern Nigeria*, vol 6 (IITA Ibadan, Nigeria 1991) Research monograph/International Institute of Tropical Agriculture, Resource and Crop Management Program; no 6.

¹⁰ MT Ladan, *Law, Cases and Policies on Energy, Mineral Resources, Climate Change, Environment, Water, Maritime and Human Rights in Nigeria* (ABU Press Ltd 2009) 35.

¹¹ *ibid.*

¹² A Ogunba, 'An Appraisal of the Evolution of Environmental Legislation in Nigeria' (2016) 40 (3) *Vermont Law Review* 673, 674; A Adegoye, 'The Challenges of Environmental Enforcement in Africa: The Nigerian experience' (Proceedings of the Third International Conference on Environmental Enforcement Oaxaca, México April 25 1994) 43, 43.

¹³ PA Aidonjio and others, 'Environmental Law in Nigeria: A Review on its Antecedence, Application, Judicial Unfairness and Prospects' (2020) 1(2) *Archive of Science & Technology* 212, 214.

¹⁴ s 245 Criminal Code Act of 1916. Prohibits the corruption or fouling of the water of any spring, stream, well, tank, reservoir, or place, so as to render it less fit for the purpose for which it is ordinarily used and punishes such act by imprisonment for six months

¹⁵ Aina and Salau (n 8) 156.

¹⁶ As provided for under relevant Public Health Laws across the country.

¹⁷ This can be gleaned from the encouragement of state governments to create state environmental protection agencies after the federal government had established the Federal Environmental Protection Agency (FEPA).

¹⁸ MG Murgan, 'An Appraisal of the Laws on Protection of Environment in Nigeria' (2015) <http://works.bepress.com/murtala_ganiyu/1/> accessed 2 June 2017.

transboundary hazardous wastes in Africa.¹⁹ Unfortunately, these efforts at environment-focused activities and meetings, while having produced results, hardly translated the results to practice as the diverse environmental problems persisted and have been described as “staggering”.²⁰

The legal framework for environmental regulation in Nigeria has come a long way since development of the petroleum sector began. Prior to the enactment of published legislation and policies, there were customary laws that crystallised into common law and consequently into other laws like the Criminal Code of 1916 and the Public Health Act of 1917. In a nutshell, Nigeria has created and nurtured an impressive array of legal instruments spanning across decades. Subsequently, the policy and legal framework for environmental concerns were shaped by the discovery of petroleum. The advantages and disadvantages of petroleum discovery in Nigeria, attending and ratifying several international, regional and continental conventions and environmental emergencies, contributed to shaping the subsequent policy and legislative framework which was followed by institutional reforms.²¹ Environmental protection laws in Nigeria have thus far developed in four stages. The development has spanned the colonial period of 1900-1956, the Petroleum focused environmental legislation period of 1956-1970s, the rudimentary and perfunctory environmental legislation period of 1970s-1987 and the contemporary period of post-1987 until present.²²

In 1987 an environmental disaster which occurred in Nigeria sent the country and the international community reeling.²³ There was national public outcry over the dumping of over 3500 tonnes of industrial waste by an Italian company which turned out to be toxic waste.²⁴ The substances contaminated the land and water of Koko community, in the old Bendel State of southern Nigeria, resulting in the death of human beings, animals and destructions of acres of farmland and watercourses.²⁵ The disastrous effect of the toxic waste incident which can still be felt today in that region, necessitated the promulgation of the Harmful Wastes (Special Criminal Provision) Decree²⁶ which criminalised the sale, purchase, transportation, importation, deposit or storage of harmful wastes on Nigeria’s soil, air or sea.²⁷

The National Policy on the Environment²⁸ was also developed after an international workshop on the environment was organised by the federal government following the toxic waste incident. The rationale behind the development of a national environmental policy in Nigeria is contained in the 1999 Constitution Republic of the federal Republic of Nigeria.²⁹ With the increased environmental awareness in Nigeria, the 1999 Constitution of the Federal Republic of Nigeria provided that government is obligated to protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria.³⁰ However, the provision is not an actionable one as it falls under the provisions of fundamental objectives and directive principles of state policy.³¹ This is to the effect that where there is any form of violation of that provision, the same Constitution prevents anyone from seeking to enforce that provision of the Constitution. The provisions under this chapter of the Constitution are deemed non-justiciable by virtue of s 6 (6) (c) of the same constitution.

With the enactment of these laws, corresponding environmental regulatory agencies were set up and replicated across the states and local government areas in Nigeria³² and the government enacted laws and joined the international campaign for the protection and preservation of the environment by subscribing to international conventions and treaties and domesticating the same such as the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties 1969 (INTERVENTION 1969),³³ International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC),³⁴ The International Convention on Civil Liability for Oil Pollution Damage 1969, renewed in 1992 and often referred to as the CLC Convention).³⁵

¹⁹ Ogunba (n 12) 674.

²⁰ WL Andreen, 'Environmental Law and International Assistance: The Challenge of Strengthening Environmental Law in the Developing World' (2000) 25 Columbia Journal of Environmental Law 17, 19.

²¹ T Olarinoye and SM Orecho, 'Evolution of Environmental Policies in Uganda and Nigeria: A Developing Country Perspective' (2015) <<https://fenix.tecnico.ulisboa.pt/downloadFile/563568428721349/>> accessed 14 October 2019 1, 2.

²² Ogunba (n 12) 675.

²³ IA Aigbe and EO Enakireru, 'Enforcement of Environmental Laws in Nigeria' (2020) 1(1) International Journal of Comparative Law and Legal Philosophy 44, 51.

²⁴ A Nabegu, AB Mustapha and AI Naibbi, 'Environmental Regulations in Nigeria: A Mini Review' (2017) 1(5) International Journal of Environmental Sciences and Natural Resources 1, 1.

²⁵ B James, 'Waste Dumpers Turning to West Africa' <<http://www.nytimes.com/1988/07/17/world/waste-dumpers-turning-to-west-africa.html?pagewanted=all>> accessed 19 July 2017.

²⁶ Harmful Wastes (Special Criminal Provision) Decree No 42 of 1988.

²⁷ *ibid* ss 1 – 2.

²⁸ The National Policy on the Environment was formulated in 1991, revised in 1999 and again in 2016.

²⁹ Pursuant to section 20 of the Constitution of the Federal Republic of Nigeria 1999, the State is empowered to protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria. T Olarinoye and SM Orecho, 'Evolution of Environmental Policies in Uganda and Nigeria: A Developing Country Perspective' (2015) <<https://fenix.tecnico.ulisboa.pt/downloadFile/563568428721349/>> accessed 14 October 2019 1, 2.

³⁰ S 20 Constitution of the Federal Republic of Nigeria 1999.

³¹ *ibid* chapter 2.

³² H Ijaiya and OT Joseph, 'Rethinking Environmental Law Enforcement in Nigeria' (2014) 5 Beijing Law Review 306.

³³ Treaty Series No. 77 (1975), *International Convention Relating to Intervention on The High Seas In Cases Of Oil Pollution Casualties*. Cambridge [England]: Proquest LLC.

³⁴ *International Convention on Oil Pollution Preparedness, Response and Co-Operation, 1990*. London: IMO.

³⁵ *International Conference on Liability and Compensation for Damage in Connexion with The Carriage of Certain Substances by Sea, 1984*. London: International Maritime Organization.

The Federal Military Government also promulgated the Federal Environmental Protection Agency (FEPA) Act³⁶ (now repealed) which established the Federal Environmental Protection Agency. More laws were enacted, amended or repealed to reflect the development of the sector and to reflect the country's involvement in regional and international environmental meetings, conferences and ratification of the outcomes. Prominent among them is the attempt to amend the Petroleum Act of 1969, which is now styled the Petroleum Industry Governance Act,³⁷ curiously, that proposed bill has been before the legislative arm of the Nigerian National assembly for over six years now. The proposed bill has 362 sections covering the fiscal regime of the petroleum industry, operations of the upstream and downstream sector, training and education in the petroleum sector and Health Safety and Environment. To further strengthen the legal framework for environmental protection in the petroleum sector, the National Oil Spill Detection and Response Agency (NOSDRA) Act³⁸ was enacted which was closely followed by the National Environmental Standards and Regulations Enforcement Agency (NESREA) Act³⁹ that repealed the FEPA Act. It is discernible from the foregoing that the legal and institutional framework for the evolution of environmental protection in Nigeria has come a long way and has steadily improved. However, the impact of this framework development remains to be realised in practice. This can be seen in the various attempts at amendment to laws and reviews of the enforcement models of regulatory agencies. Regardless of these efforts, it is still curious as to why the environmental and petroleum sector activities have remained largely unregulated and environmental degradation has continued to be on the rise.

3. Compliance and enforcement in Nigerian environmental regulations

Compliance and enforcement of environmental and petroleum sector laws in Nigeria have had a rather checkered history due to the unsuccessful implementation of the laws and judicial pronouncements on environmental issues. Going by the global concern for sustainable development of natural resources and protection of the environment, increasing attention has been given to these issues even by countries that had previously shown little concern for the need for the protection of the environment. As a developing country, since the discovery of petroleum in commercial quantity in the Niger Delta area of the country in 1956, Nigeria has been battling with balancing its need for economic development through the development of its natural resources and the protection of the environment.⁴⁰ This is not a dilemma peculiar to Nigeria but can be seen in the early days of the industrial revolution of most industrialised nations today.⁴¹ Considering how long the petroleum sector in Nigeria has been in operation, it became increasingly necessary for the sector to be regulated and properly managed.

The issue of environmental regulation has generated a lot of interest over the years as the petroleum sector in the country developed. The government has been motivated albeit out of necessity, to deal with the deleterious effects of the nonchalant actions of the operators of the petroleum sector by setting up both legal and institutional instruments for the regulation of the environment and petroleum sector operations. This can be seen in the multitude of laws enacted over a given period to achieve the somewhat elusive effective regulation that the sector and the environment so urgently needed. Some of the relevant laws, policies and agencies include National Policy on the Environment, Constitution of the Federal Republic of Nigeria 1999,⁴² Environmental Impact Assessment Act,⁴³ Harmful Waste (Special Criminal Provision) Decree,⁴⁴ Oil Pipelines Act,⁴⁵ Petroleum Act,⁴⁶ National Environmental Standards and Regulations Enforcement Agency (NESREA) Act,⁴⁷ the National Oil Spill Detection and Response Agency (NOSDRA) as established by the National Oil Spill Detection and Response Agency Act⁴⁸ and the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN).

When laws are enacted, the success or otherwise of such laws is measured by the level of compliance and enforcement that such laws enjoy.⁴⁹ Other factors that underpin environmental legislative success include effective implementation, financial and technical backing and the awareness it creates.⁵⁰ In the course of the development of environmental protection laws in Nigeria, it can be deduced that not much thought was given to the actual compliance and enforcement regime of the laws, leading to a systematic failure of these laws.⁵¹ This is evidenced in the fact that many of the environmental laws are burdened with problems

³⁶ FEPA Decree No 58 of 1988 repealed by the National Environmental Standards Regulations Enforcement Agency (Establishment) Act 2007.

³⁷ Petroleum Industry (Draft) Bill, 2012.

³⁸ National Oil Spill Detection and Response Agency (NOSDRA) Act Cap N63 Laws of the Federation of Nigeria 2010

³⁹ National Environmental Standards Regulation and Enforcement Agency (NESREA) Act Cap N36 Laws of the Federation of Nigeria 2007.

⁴⁰ AE Ite and others, 'Petroleum Exploration and Production: Past and Present Environmental Issues in the Nigeria's Niger Delta' (2013) 1(4) American Journal of Environmental Protection 78, 81; A Ogunba, 'An Appraisal of the Evolution of Environmental Legislation in Nigeria' (2016) 40 (3) Vermont Law Review 673, 674.

⁴¹ This was the experience of nations like America and Europe. See P Wisman, 'EPA History (1970 - 1985)' (2016) <<https://archive.epa.gov/epa/aboutepa/epa-history-1970-1985.html>> accessed 13 November 2017.

⁴² Constitution of the Federal Republic of Nigeria 1999Cap C23 Laws of the Federation of Nigeria 2010.

⁴³ Environmental Impact Assessment Act Cap E12 Laws of the Federation of Nigeria 2010.

⁴⁴ Harmful Waste (Special Criminal Provision) Decree now Cap H1 Laws of the Federation of Nigeria 2010.

⁴⁵ Oil Pipelines Act Cap O7 Laws of the Federation of Nigeria 2010.

⁴⁶ Petroleum Act Cap P10 Laws of the Federation of Nigeria 2010.

⁴⁷ NESREA Act (n 39).

⁴⁸ NOSDRA Act (n 38).

⁴⁹ World Health Organisation, 'Legislation and Enforcement' (2017) <<http://www.who.int/tobacco/control/legislation/en/>> accessed 5 December 2017.

⁵⁰ ME O'Connell, 'Enforcement and the Success of International Environmental Law' (1995) 3(1) Indiana Journal of Global Legal Studies 47, 47.

⁵¹ Murgan (n 18).

of ineffective implementation thereby making them redundant.⁵²

As stated earlier, during the colonial era, protection of the environment was not exactly a priority hence the little or outright lack of environmental protection policies. Environmental infractions were dealt with under the tort of nuisance or the Criminal Code act.⁵³ In the course of the literature review of the development of environmental laws as outlined above, very little was seen of the compliance effect. The laws rather made ambitious provisions for enforcement⁵⁴ and listed an array of enforcement pronouncements which excluded the oil and gas sector from its area of application.⁵⁵ This spelt the failure of the Law, in this case the National Environmental Standards and Regulations Enforcement Agency (NESREA) Act. NESREA Act was primarily enacted to protect the environment but its regulatory power was stripped off by the exclusion of the oil and gas sector from its regulatory purview.⁵⁶ It must be noted that the effect of the operations of the oil and gas sector in Nigeria have resulted in pollution, environmental degradation and harm to the human and natural environment.⁵⁷ While a proper regulation of the petroleum sector is vital, the NESREA Act which was enacted to regulate environmental matters is left impotent by the exclusion of the sector that is currently most responsible for environmental pollution and degradation, the oil and gas sector.

4. Compliance mechanisms within environmental and petroleum sector regulations in Nigeria

In this section, the discussion on compliance mechanisms will be pursued in the context of the regulatory framework for environmental protection regulation and the strategies by which compliance is driven. The development of a compliance culture in any sphere of business is crucial. It is equally important in environmental matters because whatever happens to the environment has a rippling effect on other aspects of nature including the very existence of human beings.

One of the danger Nigeria faces today is the environmental crises from the operations of its petroleum sector. There have been several cases of environmental pollution primarily due to bad environmental practices, oil spills and other allied services⁵⁸ and this can be attributed to poor environmental decisions and non-compliance with regulations made to manage the sector. It is contended that regardless of the efforts to make more laws to regulate the environment, national compliance mechanisms have to be established for the laws to be effective.⁵⁹ The compliance mechanisms that exist in the national environmental and petroleum sector laws are cited and discussed in this section. These are drawn from the NESREA Act, NOSDRA Act and other environmental protection laws.

It is clear from the provisions of the NESREA Act on its regulatory jurisdiction that compliance is not the focal point of the Act. This is evidenced by the fact that not many of its provisions have compliance mechanisms in it and even where they are present, they are not given any prominence.⁶⁰ However, the Act is more concerned with the enforcement of environmental regulations through punitive measures, this can be seen in the various provisions outlining the powers of the agency to levy fines.⁶¹ This overshadowed the few compliance mechanisms provisions in the Act. Some of the compliance mechanisms in the Act include coordinating and liaising with relevant stakeholders within and outside Nigeria on matters of environmental standards,

⁵² Murgan (n 18).

⁵³ Criminal Code Act 1916.

⁵⁴ s 7 NESREA Act (n 39) provides that the Agency shall as part of its function, (a) enforce compliance with all laws, guidelines, policies and standards on environmental matters, enforce compliance with importation, exportation...handling and disposal of hazardous chemicals and wastes other than in the oil and gas sector (g), enforce through compliance monitoring, environmental regulations and standards and noise, air, land, seas, oceans and other water bodies other than in the oil and gas sector (h), enforce environmental control measures through registration, licensing and permitting systems other than in the oil and gas sector (j) and conduct environmental audit and establish data bank on regulatory and enforcement mechanisms of environmental standards other than in the oil and gas sector (k).

⁵⁵ See the NESREA Act (n 39).

⁵⁶ The above weaknesses in the FEPA Act were replicated in s 8 (g), (k) and (n) of the NESREA Act.

⁵⁷ C Chuks-Ezike, 'The Petroleum Industries Bill: A Deficient Policy for Environmental Management in Nigeria's Oil and Gas Sector' (2018) 2(2) Environmental Risk Assessment and Remediation 35, 35.

⁵⁸ Such as the Ogoni oil spill incident that went unabated for decades, the Bomu oil spill and the Bonga oil spill. See United Nations Environment Programme, 'Environmental Assessment of Ogoniland' (2011) <https://postconflict.unep.ch/publications/OEA/UNEP_OEA.pdf> accessed 6 July 2019; T Bodo and BG Gimah, 'Oil Crisis in the Niger Delta Region of Nigeria: Genesis and Extent' (2019) 15(36) European Scientific Journal 141; AE Ite and others, 'Petroleum Exploration and Production: Past and Present Environmental Issues in the Nigeria's Niger Delta' (2013) 1(4) American Journal of Environmental Protection 78, 84.

⁵⁹ AW Samaan, 'Enforcement of International Environmental Treaties: An Analysis' (2011) 5 (1) Fordham Environmental Law Review 260, 264.

⁶⁰ NESREA Act (n 39) ss 7 (b), (k), (l) and 8 (e) outlined below.

⁶¹ See ss 20 (3) and (4) fine for violation of regulations setting specifications and standards to protect and enhance the quality of Nigeria's air resources; 21 (3) fine for violation of programmes for the control of any substance, practice, process or activity which may be reasonably anticipated to affect the ozone in the stratosphere; 22 (3) and (4) for violation of noise, emission, control, abatement regulations as may be necessary to preserve and maintain public health and welfare; 23 (3) and (4) for violation of regulations for the purpose of protecting public health or welfare and enhancing the quality of water to serve the purpose of the NESREA Act; 24 (5) and (6) for violation of established affluent limitations and application of best management practices; 26 (3) and (4) for violation of regulations, guidelines and standards for the protection and enhancement of the quality of land resources, natural watershed, coastal zone, dams and reservoirs including prevention of flood and erosion; 27 (3) for the of any hazardous substance into the air or upon the land and the waters of Nigeria or at the adjoining shorelines is prohibited, except where such discharge is permitted or authorized under any law in force in Nigeria; 31 for the obstruction of an officer of the agency

regulations and enforcement,⁶² conducting an environmental audit and creating a data bank on regulatory and enforcement mechanisms of environmental standards...⁶³ and create public awareness and providing environmental education (...) promotion of private sector compliance with environmental regulations,⁶⁴ and conducting field follow-up of compliance with set standards and take procedures prescribed by law,⁶⁵ inspection, compliance monitoring, negotiation and review existing guidelines, regulations and standards on environment.⁶⁶

The NOSDRA Act embodies some compliance mechanisms to achieve the statutory function of ensuring compliance such as monitoring, training and drill exercises to ensure readiness to oil pollution preparedness, implementation of appropriate audit system,⁶⁷ surveillance,⁶⁸ reporting and alerting and other response activities relating to oil spills, promotion of technical cooperation between Nigeria and member states of the West African sub-region.⁶⁹ The Department of Petroleum Resources (DPR) exercises compliance functions through supervision, monitoring and advising government and relevant government agencies on technical matters relating to the petroleum sector.⁷⁰ The Environmental Impact Assessment (EIA) Act contains compliance mechanisms such as supervision,⁷¹ notification, transmission and discussion of the information of an environmental impact assessment,⁷² issuance of public notice for comments on an EIA report.⁷³

It is contended that during the implementation of the environmental laws, not much attention was paid to the provisions bearing the above-mentioned compliance mechanisms. As clear as they were, no plans were made for how these compliance provisions would be harnessed to further in the realisation of the effective implementation of the laws.

5. Enforcement tools and techniques of environmental regulation in Nigeria

The enforcement of environmental regulations in Nigeria is carried out through the instrumentality of enforcement agencies established by law. This section discusses some of the enforcement agencies to the extent of their powers and jurisdiction of enforcement and the tools and techniques by which these powers are exercised. Enforcement in the context of environmental protection is a set of actions taken to achieve compliance and to correct or halt actions that endanger the environment or public health.⁷⁴

The Petroleum Act sanctions anyone who constructs or operates a refinery in Nigeria without a licence,⁷⁵ explores for petroleum without an oil exploration licence,⁷⁶ prospects for petroleum without an oil prospecting licence⁷⁷ granted under the Act by a fine. The Minister for Petroleum Resources reserves the right to revoke any oil prospecting licence or oil mining lease if in his opinion the licensee or lessee is not conducting operations continuously⁷⁸ in a vigorous and business-like manner in accordance with the basic work programme⁷⁹ and good oil field practice.⁸⁰ Revocation can also occur where the licensee or lessee fails to comply with the provisions of the petroleum Act or regulations thereto,⁸¹ fails to meet his financial obligations under the law⁸² or failed to furnish such reports as may be required by the Minister.⁸³

NESREA is the flagship agency on environmental regulation and the focus is enforcement. NESREA exercises its power of enforcement through issuance of licences, permits and registration,⁸⁴ the power to enter and search any premises...,⁸⁵ seizure and detention,⁸⁶ suspension of operations by order of the court,⁸⁷ fines and imprisonment.⁸⁸ Other methods of enforcement are variations of licence conditions, implementing the polluter pays principle,⁸⁹ legal action, prosecution, injunctions and

⁶² NESREA Act (n 39) s 7 (b).

⁶³ NESREA Act (n 39) s 7 (k).

⁶⁴ NESREA Act (n 39) s 7 (l).

⁶⁵ NESREA Act (n 39) s 8 (e).

⁶⁶ NESREA Act (n 39) s 8 (e).

⁶⁷ NOSDRA Act (n 38) s 5 (c), (f) and (m).

⁶⁸ NOSDRA Act (n 38) s 6 (a).

⁶⁹ NOSDRA Act (n 38) s 7 (b) and (e).

⁷⁰ 'What we do' (2017) <<https://dpr.gov.ng/index/functions-of-dpr/>> accessed 20 March 2018.

⁷¹ Environmental Impact Assessment (EIA) Act Cap E12 Laws of the Federation of Nigeria 2004, s 10.

⁷² *ibid* s 11.

⁷³ *ibid* s 24.

⁷⁴ ZO Edo, 'The Challenges of Effective Environmental Enforcement and Compliance in the Niger Delta Region of Nigeria' (2012) 14 (6) *Journal of Sustainable Development in Africa* 261, 265.

⁷⁵ S 13 (2) (a) Petroleum Act (n 46).

⁷⁶ S 13 (2) (b) (i) Petroleum Act (n 46).

⁷⁷ S 13 (2) (b) (ii) Petroleum Act (n 46).

⁷⁸ S 25 (1) (a) (i) Petroleum Act (n 46).

⁷⁹ S 25 (1) (a) (ii) Petroleum Act (n 46).

⁸⁰ S 25 (1) (a) (iii) Petroleum Act (n 46).

⁸¹ S 25 (1) (b) Petroleum Act (n 46).

⁸² S 25 (1) (c) Petroleum Act (n 46).

⁸³ S 25 (1) (d) Petroleum Act (n 46).

⁸⁴ NESREA Act (n 39) s 7 (j).

⁸⁵ NESREA Act (n 39) s 30 (1) a.

⁸⁶ NESREA Act (n 39) s 30 (f).

⁸⁷ NESREA Act (n 39) s 30 (g).

⁸⁸ NESREA Act (n 39) s 31.

⁸⁹ The polluter pays principle indicates that cost of pollution should be borne by the person responsible for the pollution. See P Sands and others, *Principles of International Environmental Law* (Third Edition edn, Cambridge University Press 2012) 926,

implementation of orders of remedial works,⁹⁰ conduct of public investigations on pollution of natural resources⁹¹ and establishment of mobile courts for the speedy dispensation of cases of violation of environmental regulation.⁹²

The National Oil Spill Detection and Response Agency (NOSDRA) is the regulatory agency that is responsible for the coordination and implementation of the National Oil Spill Contingency Plan (NOSCP otherwise known as the plan) for Nigeria⁹³ and is solely dedicated to responding to oil spills in the oil and gas sector in Nigeria⁹⁴ by the establishment of a national operational organisation that guarantees a safe, timely, effective and appropriate response to major or disastrous oil spill and pollution,⁹⁵ identify high risk and priority areas for protection and clean up,⁹⁶ to establish monitoring mechanisms for response expediency,⁹⁷ maximising the use of available facilities in implementing appropriate spill responses,⁹⁸ provide training, drill exercises and programme activation to ensure preparedness, response and management of oil spills.⁹⁹ These objectives of the agency are carried out along with other legal instruments such as the Oil in Navigable waters Act, the Oil Pipelines Act and the Petroleum Act. Some of the tools and techniques through which the agency exercises its powers of enforcement include imposition of fines for failure to clean up impacted sites¹⁰⁰ and issuance of notices.¹⁰¹

Another regulatory unit of the government is the Department of Petroleum Resources (DPR). This is the technical arm of the Ministry of Petroleum Resources which has evolved over the years and has the responsibility of ensuring compliance with petroleum laws, regulations and guidelines in the oil and gas industry.¹⁰² It discharges this responsibility through supervision of all petroleum sector operations under licences and leases in the country, monitoring the petroleum sector to ensure that operations therein are in consonance with national goals and aspirations, processing industry application for licences, leases and permits with the corresponding power to refuse to grant or withdraw same. The DPR exercises wide discretionary powers in the regulation of the petroleum sector and this extends to fiscal and taxation powers.

6. Analysis of the compliance mechanisms and enforcement tools in environmental laws in Nigeria.

Considering the enforcement powers of the NESREA, this section argues that from the wording of the NESREA Act, the enforcement powers of the agency are watered down by some inhibitions present in the Act itself. One of such hindrances is the fact that for the power to enter and search to be exercised, the Agency must possess a search warrant¹⁰³ which can hardly be obtained without administrative delays. It is contended that the power to enter and search should be expedient and cannot suffer the prevalent administrative delays akin to the Nigerian judicial system. This is because of the likely urgency of the impact of the suspected violation as a waste of time may allow further deterioration of the environment in the event of an actual violation. This provision differs from that of the repealed FEPA Act where FEPA was empowered to conduct such search activities without a warrant.¹⁰⁴ In support of the possession of a search warrant, Ladan noted that the right to enter and search with a warrant is in line with the constitutional recognition of the right to privacy.¹⁰⁵ However, it is argued that the Constitution provides for the guarantee and protection of 'the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications.'¹⁰⁶ The section made no mention of corporate entities and business premises, therefore, corporate business premises and entities do not fall within Ladan's argument.

From the above, it does appear that even when there is evidence of non-compliance or violation of an environmental regulation that will require the exercise of the power of the Agency to suspend activities, seal and close premises, the Agency must obtain a court order to do so.¹⁰⁷ It is trite that in matters of environmental regulation and in the race to ensure effective enforcement, it is important for the responsible regulatory agency to act quickly. Time spent on issues of administrative and other procedures can allow violators to tamper with or destroy evidence or actions may be continued in furtherance of the violation. The resulting

228; P Dupuy and JE Vinuales, *International Environmental Law* (Cambridge University Press 2015) 438, 71; P Schwartz, 'Polluter-Pays Principle' in M Fitzmaurice, DM Ong and P Merkouris (eds), *Research Handbook on International Environmental Law* (Edward Elgar Publishing 2010) 736, 243; G Omedo, K Muigua and R Mulwa, 'Financing Environmental Management in Kenya's Extractive Industry: The Place of the Polluter Pays Principle' (2020) 16(1) *Law, Environment and Development Journal* 1.

⁹⁰ E Sodipo and others, 'Environmental Law and Practice in Nigeria: Overview' (2018) <[https://uk.practicallaw.thomsonreuters.com/w-006-3572?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&comp=pluk](https://uk.practicallaw.thomsonreuters.com/w-006-3572?transitionType=Default&contextData=(sc.Default)&firstPage=true&comp=pluk)> accessed 31 October 2018.

⁹¹ NESREA Act (n 39) s 7 (g)

⁹² NESREA Act (n 39) s 8 (f).

⁹³ NOSDRA Act (n 38) s 5.

⁹⁴ C Obilor, 'Review of the NOSDRA Act 2006'

<https://www.academia.edu/28817987/REVIEW_OF_THE_NOSDRA_ACT_2006> accessed 21 January 2018.

⁹⁵ NOSDRA Act (n 38) s 5 (a).

⁹⁶ NOSDRA Act (n 38) s 5 (b).

⁹⁷ NOSDRA Act (n 38) s 5 (c).

⁹⁸ NOSDRA Act (n 38) s 5 (d).

⁹⁹ NOSDRA Act (n 38) s 5 (f).

¹⁰⁰ NOSDRA Act (n 38) s 6 (3).

¹⁰¹ NOSDRA Act (n 38) s 6 (4).

¹⁰² 'What we do' (2017) <<https://dpr.gov.ng/index/functions-of-dpr/>> accessed 4 February 2018.

¹⁰³ NESREA Act (n 39) s 30 (1).

¹⁰⁴ S 27 of the FEPA Act (n 36)

¹⁰⁵ MT Ladan, 'Review of NESREA Act 2007 and Regulations 2009-2011: A New Dawn in Environmental Compliance and Enforcement in Nigeria' (2012) 8(1) *Law Environment and Development Journal (LEAD)* 118.

¹⁰⁶ Constitution of the Federal Republic of Nigeria 1999 s 37.

¹⁰⁷ NESREA Act (n 39) s 30 (1) g.

environmental damage may worsen and therefore, these highlighted hurdles would only continue to diminish the powers of the regulatory agency to achieve its functions or exercise its powers of enforcement. It is conceded however, that the procedure for the exercise of the power to enter and search, suspend activities, seal or close premises may have been inserted in the NESREA Act to ensure that search powers are not abused therefore it is believed that with the provision of a speedier option to obtain a search warrant, such matters can be expedited without an abuse of power.

While it is commendable that vast provisions were made in the NESREA Act for enforcement, the fact that the jurisdiction of the agency does not extend to the *oil* and *gas* sector is worrisome. The powers of enforcement as provided in the NESREA Act are quite extensive, but the copious provisions on enforcement are all to the exclusion of the *oil* and *gas* sector. The reason for this exclusion is still unknown and therefore, questionable. The provisions of sections 7 (g), (h), (j), (k), (l), 8 (g) and 29 excluding the *oil* and *gas* sector from the regulatory jurisdiction of NESREA however, sharply contradicts the inclusion of '*oil* and *gas*' in the list of international treaties to be enforced by the same agency in s 7 (c) of the Act. This section allows the agency, as part of its functions to 'enforce compliance with the provisions of international agreements...on the environment including climate change...*oil* and *gas*, chemicals...'.¹⁰⁸

As stated earlier, the sector is also unarguably the major cause of environmental pollution and degradation in the Nigeria. It is therefore curious that the major piece of legislation that creates the primary environmental regulation agency that regulates the activities that affect the environment excludes the *oil* and *gas* sector from its enforcement jurisdiction. In other words, the *oil* and *gas* sector is not within the regulatory purview of the NESREA Act.¹⁰⁹ This means that no enforcement action can be taken by the agency in matters relating to the *oil* and *gas* sector irrespective of the infraction. This shows the inconsistency of the enforcement provisions in the NESREA Act and consequently, NESREA itself and further weakens the powers of enforcement of the agency. It is quite obvious that the enforcement powers of NESREA is not settled, this has provided a platform on which confusion thrives as to which regulatory agency is really responsible for implementing environmental regulations regarding the oil and gas sector. For instance, in the event of a potential environmental crisis like an oil spill, NESREA will be precluded from acting to forestall such acts and NOSDRA cannot act as it can only be activated upon an actual oil spill and not before.¹¹⁰

From the discussion on the enforcement powers of NOSDRA, it does appear that rather than retain a preventive function, NOSDRA can only activate its powers in the aftermath of an oil spill. The agency is not empowered to prevent or act to prevent a spill action. This handicap of the agency and its enabling law has been the subject of academic literature on the performance of the agency since its inception. Commentaries and environmental writers have called for the amendment of the present NOSDRA Act to give it more effective powers and coverage.¹¹¹ It has been noted that the Agency is hampered by both institutionally and politically induced ills.¹¹² In response to the call for the amendment of the NOSDRA Act, the federal government through its legislative arm proposed an amendment to the existing NOSDRA Act (2006).¹¹³ Apart from a proposal for the change of the name of the Agency from National Oil Spill Detection and Response Agency (NOSDRA) to National Oil Pollution Management Agency, a very vital proposal was made in section 1 (1) to read

There is established an Agency to be known as the National Oil Pollution Management Agency (in this Act referred to as the Agency)" with the responsibility to **prevent**, detect, minimize and respond to all oil spillages and pollution as well as gas flaring and leakages and other hazardous and obnoxious substances in the **petroleum sector**, coordinate private sector participation in oil pollution management, have access to the 'Oil Spillage Liability Trust Fund' as set up by law.¹¹⁴

The proposed bill also made proposals that empower it to exercise its enforcement powers over the petroleum sector and further define Persons to cover individuals, corporations, partnerships, associations, states, municipality, commission or political subdivision of states or any interstate body¹¹⁵ and for an upward review of the financial penalties for culprits.¹¹⁶ It was hoped that the bill if eventually passed into law, would go a long way to solve the primary issue of shifting responsibility and blame between operators of the sector and host communities.¹¹⁷

In 2018, the NOSDRA Act was amended with some curious changes. The power to enter and search first originated from the defunct FEPA Act¹¹⁸ where such search could be conducted without a warrant. This provision was replicated in the NESREA Act¹¹⁹ but this time, the search was to be conducted with a warrant. In the amendment of the NOSDRA Act however, s 30 (1) – (5) of the NESREA Act was lifted in its entirety into s 27 (1) – (5) of the amended NOSDRA Act. the only difference however

¹⁰⁸ NESREA Act (n 39) s 7 (c).

¹⁰⁹ NESREA Act (n 39) s 7 (g), (h), (j), (k), (l), 8 (g) and 29.

¹¹⁰ See NESREA Act (n 39) s 7 (g), (h), (j), (k), (l), 8 (g) and 29 and NOSDRA Act s 1 (1).

¹¹¹ BE Ewulum, E Okaphor and N Okoli, 'An Appraisal of the Impact of the National Oil Spill Detection and Response Agency on Environmental Pollution in Nigeria' (2020) 2(1) International Journal of Comparative Law and Legal Philosophy 58, 65; UJ Orji, 'An Appraisal of the Legal Frameworks for the Control of Environmental Pollution in Nigeria' (2012) 38 (2) Common Wealth Law Bulletin 321; R Ajayi, 'Environmental Degradation: Review of NOSDRA Act Now.' *Vanguard* (October 11 2011) <https://www.vanguardngr.com/2011/10/environmental-degradation-review-of-nosdra-act-now/> accessed 6 March 2019.

¹¹² EO Ekhatior, 'Environmental Protection in the Oil and Gas Industry in Nigeria: The Roles of Governmental Agencies' (2013) 5 International Energy Law Review 196.

¹¹³ National Oil Spill Detection and Response Agency (NOSDRA) (Amendment) Bill Nigerian Senate.

¹¹⁴ *ibid* s 2 (2).

¹¹⁵ *ibid* s 33.

¹¹⁶ *ibid* s 8 (1).

¹¹⁷ L Dunkwu, 'A Review of the National Oil Spill Detection and Response Agency (Amendment) Bill 2012: Identifying Loopholes for Improvements' (2013)

<https://www.academia.edu/8732244/A_Review_of_the_Nigerian_Oil_Spill_Detection_And_Response_Agency_Amendment_Bill> accessed 21 January 2018.

¹¹⁸ S 27 of the FEPA Act (n 36).

¹¹⁹ NESREA Act (n 39) S 30 (1) (a) – (g), (2) – (5)

is that the power to enter and search could now be exercised *with* or *without* a search warrant. S 31 of the NESREA Act which provided for monetary fines for the obstruction of an officer of the agency, was also replicated in s 28 of the amended NOSDRA Act with a slight upward review of the fines for obstruction of an officer of the agency. Unfortunately, the amendment did not resolve the issue of the activation time of the agency. The agency still acts upon the event of an oil spill but not in any way before to prevent the act of oil spill. Considering the fore-going, it is argued that the lack of seriousness that has been applied to review the NOSDRA Act, is reminiscent of the same attitude that environmental regulation efforts have modelled since the inception of the petroleum sector business in Nigeria.¹²⁰ The Bill was passed into law in 2019 and transmitted to the President of Nigeria for assent. Unfortunately, assent was denied because the President felt some important sections of the Bill undermined the powers of the minister of petroleum resources and the functions and powers of the ministry of petroleum resources.¹²¹ Regulatory agencies in Nigeria have faced several challenges over time in the implementation of their statutory mandates. These challenges are both substantive and procedural in nature. Such challenges include inadequate manpower, inadequate funds to execute the process of enforcement to a conclusive end, corruption and bad governance, inadequate and conflicting laws,¹²² lack of the technical know-how in a technologically transforming world, conflicting roles of other enforcement agencies, lack of expertise and facilities to conduct required tests and gather data without compromising on time required and integrity,¹²³ lack of specialised courts to facilitate the speedy dispensation of justice, undue delay with court processes and access to information, inter-departmental bottlenecks and lack of commensurate punitive measures in the laws.¹²⁴ The challenges to compliance and enforcement have plagued the Nigerian environment and petroleum sector and regulatory agency for decades. This is because, despite the array of legislation available on the subject, it is arguable that the sector remains largely unregulated due to significant non-compliance with the law by the sector actors involved. The actors for whom the laws were enacted have realised that the cost of compliance far outweighs the cost of non-compliance, therefore, they would rather default and pay the cost for non-compliance and postpone compliance to a later date. This is seen for example, in the continuous flaring of associated gas still happening in Nigeria and all the while, endangering the environment.¹²⁵ Even in the instance of judicial pronouncements on environmental matters, court orders have been seen to be disobeyed or completely ignored without consequences.¹²⁶ In the case of *Jonah Gbemre v SPDC Ltd & Ors*, the court held that the continuous flaring of gas in the plaintiff's community impacted negatively on the right to life of the plaintiff and ordered that the defendants stopped the flaring of gas in that community. However, the company ignored the court order and continued flaring gas. It is contended that compliance mechanisms for environmental regulations appear to be practically non-existent in the Nigerian petroleum sector as justice must not only be done but must be seen to be done.¹²⁷ As in the above-mentioned case, justice was perceived to be concluded but not so in reality because the unhealthy act of gas-flaring continued.

7. Failure of compliance mechanisms and enforcement tools within Nigerian environmental laws

From the discussions so far, it is evident that considerable effort was made by the Nigerian government to make laws to cater to environmental issues. However, the laws were usually reactive in nature i.e., in response to some environmental issue rather than being proactive towards the protection of the environment hence the inability of the laws to achieve its purpose due to non-compliance.¹²⁸

The FEPA Act at the time of its existence was the most comprehensive law for environmental protection. The act suffered some major setbacks such as weak provisions for the enforcement of environmental regulations, provisions for manual enforcement through facilities visit for physical inspection for compliance. The act also carried penalty provisions that lacked the power to create the requisite deterrent effect and these resulted in the vast industrial pollution problems that besieged the Nigerian environment.¹²⁹

The various environmental legislations mentioned above are not exhaustive, but one issue stands out: that is the fact that the provisions concerned with environmental regulation are scattered across many legislations.¹³⁰ This is one of the major shortcomings of the legal framework for environmental regulation in Nigeria. The location of the various provisions makes it practically impossible to tell if the law for any particular situation actually existed or not and also made it rather confusing and cumbersome to ascertain which regulatory agency has the right or authority of enforcement.¹³¹

The environmental legislation in Nigeria also failed for other reasons. First, the laws did not address past environmental problems caused by the many years of pollution resulting from the operations of the petroleum sector.¹³² Second, sanctions provided by

¹²⁰ Another example of this levity is that which has plagued the attempt to amend the Petroleum Act for the past 8 years.

¹²¹ Q Iroanusi, 'Buhari Declines Assent to NOSDRA Amendment Bill, Gives Reasons' *Premium Times* (2019) 1.

¹²² ED Oruonye and YM Ahmed, 'The Role of Enforcement in Environmental Protection in Nigeria' (2020) 7(1) *World Journal of Advanced Research and Reviews* 48, 54.

¹²³ Ijaiya and Joseph (n 32) 306.

¹²⁴ *Jonah Gbemre v SPDC Ltd & Ors* (2005) African Human Rights Law Report (NgHC) 151.

¹²⁵ This is evident in the continuous flaring of associated gas and excess natural gas in defiance of the Associated Gas Reinjection Act 2004 as amended. Another example of non-compliance is the style of oil waste disposal practiced by oil sector actors and recently the NSCDC is their effort to curb illegal petroleum refining in the creeks of the Niger Delta region.

¹²⁶ *Jonah Gbemre* (n 124).

¹²⁷ AR Oakes and H Davies, 'Justice Must Be Seen to Be Done: A Contextual Reappraisal' (2016) 37 (2) *Adelaide Law Review* 461, 461.

¹²⁸ Etemire and Soberec (n 6) 305.

¹²⁹ Ladan (n 105) 120.

¹³⁰ See Ijaiya and Joseph (n 32).

¹³¹ Ladan (n 105) 120.

¹³² JP Eaton, 'The Nigerian Tragedy, Environmental Regulation of Transnational Corporations and the Human Right to a Healthy Environment' (1997) 15 *Boston University International Law Journal* 261.

the laws were either unrealistic or too weak to create any deterrent effect and was always subject to abuse, neither did it create an incentive to clean up the environment as soon as the need arose.¹³³ Third, there were too many loopholes in the laws that enabled the polluting party to escape liability.¹³⁴ In spite of the many incidents of environmental abuse, there was hardly any record of effective enforcement successfully executed as a result of the inadequacies in the laws and the enforcement institutions. There is even a lack of basic training in enforcement procedure. Moreover, the government enjoys extensive economic benefits such as foreign exchange earnings, taxes, contract jobs and services hence their perceived lack of concern for the effective regulation of the petroleum sector and the environment through enforcement.¹³⁵ It is believed that if environmental regulation had been more serious, that would have threatened the free flow of those benefits.

The fact that the laws were also enacted in response to critical environmental issues¹³⁶ and in consideration of the economic benefits derived from the country's petroleum sector, exposed the unpreparedness of the Nigerian government for effective implementation of the laws. It is believed that this unpreparedness has resulted in the inadequacy of the environmental laws to effectively regulate the environment and petroleum sector. It is contended that this is mostly because regulation goes beyond enacting laws but extends to incentivising compliance, effecting enforcement where non-compliance occurs or promptness to review or amend the laws where the situation so demands.

In the decision of what regulatory instrument or plan of action to adopt, the choice of an appropriate regulatory instrument must depend on a preliminary factor. First, it will depend on the justification for the intervention before the decision of which instrument to adopt or which to avoid can be made.¹³⁷ It is conceded that regardless of the existence of regulatory instruments, serious and pervasive corporate misdeeds persist and are often labelled *compliance failure*. This compliance failure in an organisation ideally activates a compliance process through compliance management of monitoring and assessment to query and evaluate this recorded compliance failure.¹³⁸ According to Root, this compliance process covers prevention, detection, investigation and remediation and while they are distinct tasks, they can be activated simultaneously.¹³⁹

8. Key findings

The distinction between compliance and enforcement is to the effect that compliance favours a more cooperative approach to regulation as against the command-and-control system applied in the enforcement system of environmental regulation. A compliance strategy aspires to attain the broad aims of the law rather than sanctioning its breach by requiring some positive accomplishment rather than just abstaining from the act.¹⁴⁰ In other words, while compliance seeks to prevent harm, enforcement employs a strategy of compliance in regulatory control and seeks to punish an evil to achieve retribution.¹⁴¹

Gunningham's model of compliance and enforcement leans toward a regulatory design where enforcement is implemented by securing compliance with rules by regulated entities.¹⁴² This is because of the difficulty in determining where and how to intervene in the affairs of regulated entities. In this sense, the primary objective of a compliance strategy would be to prevent and repair while the primary objective of an enforcement system is retribution and to punish evil, thereby supporting the application of punishment for any harm done. However, the dilemma of this position on compliance and enforcement lies in the fact that the parameters for effective environmental regulation are largely hampered by problematic state of affairs such as inadequate legal provisions and the fact that regulated entities have good economic motivation for non-compliance.¹⁴³ It is argued that while this stand does not discount the place of enforcement in environmental regulation, it presents a nuanced picture that recognises the importance of environmental regulation with the flavour of both compliance and enforcement.¹⁴⁴ This is evident where in defining compliance, the act of enforcement is included as part of the process of securing compliance¹⁴⁵ and in defining enforcement, 'compelling observance or compliance with a law, rule or obligation' is referred to as enforcement.¹⁴⁶

9. Conclusion

By the participation of Nigeria at international and regional fora in matters of good environmental practices, the importance of the need to take a more serious look at the issue of fortifying the environmental integrity of Nigeria, cannot be overemphasised. In furtherance of this, Nigeria has taken steps in the past to establish laws and ratify and adopt international environmental regulatory instruments and even expressed some of them in the national laws of the country and established regulatory institutions to give such laws effect. However contradictory provisions in the laws, a multiplicity of regulatory agencies, weak compliance and enforcement provisions and corruption keep taking out the strength in the laws and making the agencies impotent

¹³³ *ibid* 288.

¹³⁴ FEPA Act (n 36) S 20 (4).

¹³⁵ Eaton (n 132) 289.

¹³⁶ Ladan (n 105) 199.

¹³⁷ A Ogus, 'Regulatory Institutions and Structures' 73(4) *Annals of Public and Cooperative Economics* 627, 629.

¹³⁸ V Root, 'The Compliance Process' (2019) 94 *Indian Law Journal* 203, 220.

¹³⁹ *ibid* 227 - 228.

¹⁴⁰ N Gunningham, 'Enforcement and Compliance Strategies' in R Baldwin, M Cave and M Lodge (eds), *The Oxford Handbook of Regulation* (Oxford University Press 2010) 120, 121.

¹⁴¹ K Hawkins, 'Bargain and Bluff: Compliance Strategy and Deterrence in the Enforcement of Regulation' (1983) 5(1) *Law and Policy Quarterly* 35, 36.

¹⁴² Gunningham (n 140) 121.

¹⁴³ Hawkins (n 141) 37.

¹⁴⁴ Hawkins (n 141) 39. However, enforcement is resorted to when all else fails.

¹⁴⁵ T Amodu, *The Determinants of Compliance with Laws and Regulations with Special Reference to Health and Safety* (London School of Economics and Political Science for the Health and Safety Executive RR638, 2008) 1 <<http://www.hse.gov.uk/research/rrpdf/rr638.pdf>> accessed 19 February 2018.

¹⁴⁶ Oxford Dictionaries, *Oxford Dictionary of English* (3rd Revised edn, Oxford University Press 2010) 2112.

to their responsibilities.

The temptation is always there to assume that the existence of laws on a particular sector will automatically bring about compliance and the abatement of the problems which it is intended to solve, unfortunately, this is not always the case.¹⁴⁷ It has been opined that oil and gas from its cradle to its grave, though very essential to the economic sustenance of Nigeria, is highly hazardous and problematic to the Nigerian human and natural environment.¹⁴⁸ Again, the lack of or weakness of institutional structures for compliance monitoring and measurement and enforcement of environmental regulation is a major factor in the Niger Delta struggle with the federal government of Nigeria¹⁴⁹ for better operational conditions and economic existence. The element of innovative compliance and enforcement styles must be addressed as it is possible that the laws are honoured more in breach than in observance where it is thought that it will be cheaper to violate the law and pay the penalty than to comply with the law. This is because the sector operatives hold the prospect of higher profits over the sanctity of the environment.¹⁵⁰

The compliance conversation that Nigeria should have had, should start now. Compliance strategies should be infused into the environmental regulatory architecture of Nigeria. These strategies should aim to encourage regulated entities to comply with environmental regulation and motivate them to employ global standards and best practices in the execution of the petroleum sector business. This will not only preserve the environment; it will also promote efforts towards achieving the United Nations Sustainable Development Goals as pledged by Nigeria.

¹⁴⁷ Edo (n 74) 265.

¹⁴⁸ KK Ezeibe, 'The Legislative and Institutional Framework of Environmental Protection in the Oil and Gas Sector in Nigeria – A Review' (2011) 2 Nnamdi Azikiwe University Journal of International Law and Jurisprudence 39. According to Ezeibe, these hazards can be in form of greenhouse gases, poisonous and carcinogenic chemicals produced in the course of gas flaring, through the destruction of fauna, flora, clean water soil and the environment through oil spills and oil drilling, transportation and handling activities or even exhaust fumes released into the atmosphere by the final consumers of the products of the sector or by its mere unprotected presence.

¹⁴⁹ AOY Raji and TS Abejide, 'Compliance with Oil and Gas Regulations in the Niger Delta Region, Nigeria C. 1960s-2000: An Assessment' (2014) 3(8) Arabian Journal of Business and Management Review (OMAN Chapter) 35.

¹⁵⁰ *ibid.*