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Beyond Deterrence: Rehabilitative Environmental Governance, Corporate Compliance, and Environmental Recidivism in Kenya

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Abstract

Persistent environmental non-compliance in Kenya raises a core governance puzzle: why do firms continue to violate environmental rules despite a comparatively elaborate statutory framework, licensing system, and arsenal of sanctions? This paper argues that the problem cannot be understood through deterrence alone. Drawing on deterrence theory, responsive regulation, compliance-assurance scholarship, Situational Action Theory, and techniques of neutralization, the article reframes corporate environmental offending as a behavioral governance problem produced by the interaction between organizational propensity and regulatory exposure. Methodologically, the study combines a PRISMA-informed review of 62 scholarly and policy sources with qualitative coding of 27 National Environment Tribunal (NET) decisions from 2014 to 2025, which are interpreted alongside major disputes such as the Owino-Uhuru lead-contamination litigation. The analysis shows three recurring patterns. First, enforcement remains predominantly sanction-led, with fines and administrative penalties as the primary responses. Second, adjudicatory and regulatory reasoning rarely probes internal governance systems, executive incentives, or corporate moral reasoning. Third, structured rehabilitative tools such as Corrective Action Plans, environmental probation, and independent compliance verification are largely absent. The paper's central contribution is the concept of rehabilitative environmental governance: an enforcement architecture that retains deterrence but links sanctions to diagnosis, remediation, executive accountability, and monitored behavioral reform. In the Kenyan context, this model offers a more credible path to reducing regulatory recidivism, strengthening environmental rights protection, and moving environmental enforcement from episodic punishment toward durable compliance.

Keywords: *Environmental compliance, environmental recidivism, rehabilitative governance, situational action theory, Kenya environmental law*

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Introduction

Persistent environmental non-compliance clearly shows that formal laws do not automatically lead to effective governance. Around the world, pollution-related harm continues to cause significant human and economic costs, while environmental crime remains one of the most profitable illegal sectors in the global economy (United Nations Environment Programme, 2024; World Bank, 2022; INTERPOL & United Nations Environment Programme, 2016; Nellemann et al., 2016). Recent research also highlights how deforestation, resource extraction, and transboundary environmental damage are driven by governance gaps rather than just the lack of legal norms (Global Forest Watch, 2023; Albanbaeva et al., 2025; Burrell et al., 2023; Franzen & Bahr, 2024; Malakouti & Hazrati, 2025; Nguyen et al., 2023). The key takeaway is simple but important: environmental violations are not just isolated regulatory issues. Instead, they reflect a recurring form of economic activity that thrives where firms view environmental obligations as negotiable, weakly enforced, or financially manageable.

Traditional environmental enforcement has usually been based on deterrence theory, which suggests that actors follow rules when expected penalties outweigh the potential benefits of violation (Becker, 1968). This idea still influences many command-and-control regulations. However, research has consistently shown that the likelihood of detection, ongoing monitoring, and consistent follow-up are often more important than the severity of sanctions (Cohen, 1999). Firms operating under similar legal frameworks do not always behave in the same way because their responses are influenced by internal governance, reputational concerns, managerial values, and stakeholder pressure (Thornton, Gunningham, & Kagan, 2005). When the costs of compliance surpass the expected sanctions, fines may be seen as just part of doing business rather than as effective deterrents. In these situations, punishment can still serve as a legal signal, but it may have little actual impact on behavior.

Responsive regulation was developed to address this specific issue. By combining persuasion, graduated escalation, and the credible threat of punishment, responsive regulation aimed to move regulatory practice beyond the limited opposition between cooperation and coercion (Ayres & Braithwaite, 1992; Braithwaite, 2002). More recent work on business compliance and environmental compliance assurance further demonstrated that long-term compliance relies on a broader cycle of promotion, monitoring, enforcement, and verification, rather than solely on punishment (Parker & Nielsen, 2011; Organization for Economic Co-operation and Development, 2009, 2023). These insights are especially relevant in many African contexts, where laws often reflect international best practices but implementation is hindered by limited monitoring capacity, fragmented mandates, political pressure, and inconsistent institutional continuity (Okoth-Ogendo, 1991; Okidi & Kameri-Mbote, 2001; Kotzé & Paterson, 2009; World Bank, 2016).

Kenya illustrates the tension between legal sophistication and uneven environmental results. The Environmental Management and Co-ordination Act (EMCA) established a strong enforcement framework through licensing, environmental impact assessments (EIA), audits, restoration orders, and adjudication. Meanwhile, the post-2010 constitutional framework provides environmental governance with a rights-based foundation by linking environmental protection to the right to a clean and healthy environment, public participation, equity, and the polluter-pays principle. However, high-profile disputes and ongoing conflicts over licensing, pollution control, and industrial siting indicate that legal capacity has not consistently led to behavioral change. The Owino-Uhuru lead-contamination lawsuit is particularly revealing because it shows how prolonged harm can occur despite formal oversight, delayed regulatory

action, and unequal exposure of vulnerable communities to toxic risks (Bullard, 2000; United Nations Environment Programme, 2019; National Environment Management Authority, 2024, 2025).

The central research question of this paper is not simply whether Kenya has environmental law, but why existing enforcement does not reliably lead to sustained compliance. The article presents three connected arguments. First, ongoing environmental non-compliance in Kenya cannot be explained by enforcement gaps alone; it also depends on how firms interpret risk, obligation, and organizational advantage. Second, the dominant enforcement style remains too close to what this paper calls black-box enforcement: sanctions are applied to visible breaches, but the internal decision-making systems that cause repeated violations are rarely examined. Third, environmental governance could be improved through a rehabilitative model that links sanctions to Corrective Action Plans, managerial accountability, probationary oversight, and verified internal reforms. By exploring this argument through a behavioral-criminological lens, the paper aims to contribute not only to Kenyan environmental law but also to broader discussions on compliance, regulatory recidivism, and state capacity in the Global South (Lynch & Long, 2022; Scheffran, 2022).

Literature Review

Deterrence and the Limits of Sanction-Centred Compliance

Environmental compliance scholarship originated from a fairly simple idea: regulated entities respond logically to incentives. In this view, the regulator's role is to change the perceived utility of violation by increasing the certainty, severity, and speed of sanctions (Becker, 1968). That idea still explains a significant part of environmental governance. Firms often weigh the costs of pollution-control technology, licensing delays, or operational changes against the expected financial and reputational penalties of non-compliance. Cohen's review of environmental enforcement studies, however, showed that the behavioural impact of sanctions depends heavily on inspection consistency and detection probability, rather than on penalty levels alone (Cohen, 1999). This is important because it exposes a common enforcement illusion: regulators might strengthen formal sanctions while leaving the detection environment too weak to meaningfully change behaviour.

Work on corporate environmental behaviour strengthened this critique by showing that compliance results are shaped by organisational culture and governance structures. Thornton et al. (2005) demonstrated that firms do not merely respond to the external threat of punishment; they also react to internal norms, reputational commitments, industry expectations, and managerial views of legal duty. More recent reviews confirm that environmental compliance is increasingly woven into broader governance discussions about ESG performance, disclosure, and organisational legitimacy rather than being solely about following formal rules (Chi & Yang, 2024). The practical takeaway is that deterrence still has explanatory value, but it is incomplete whenever firms can avoid sanctions without changing the internal routines that led to the violation.

Responsive Regulation, Compliance Assurance, and Institutional Capacity

Responsive regulation aims to overcome the limitations of simple command-and-control approaches by proposing an enforcement pyramid that begins with persuasion and only

escalates when cooperation breaks down (Ayres & Braithwaite, 1992). Braithwaite's later work expanded this idea: accountability and reform are more likely when regulation combines coercive authority with institutional learning and restoration (Braithwaite, 2002). In environmental governance, this approach evolved into the concept of compliance assurance, where education, monitoring, enforcement, and follow-up are viewed as parts of an ongoing cycle (Organization for Economic Co-operation and Development, 2009, 2023). Yet, the strength of this model is also its weakness. Responsive regulation presumes that regulators can consistently monitor, distinguish among risk levels, and maintain a steady relationship with those they regulate.

Parker and Nielsen (2011) demonstrated that business reactions to regulation heavily depend on whether the regulator is seen as legitimate, knowledgeable, and capable of follow-through. In settings with limited capacity, the middle levels of the pyramid can become structurally hollow. Regulators may shift between informal warnings and sporadic crackdowns because they lack the necessary resources, data systems, or inter-agency coordination to support more balanced engagement. Under such conditions, the formal framework of responsive regulation exists on paper, but its influence on real behaviour is diminished.

African Environmental Governance and the Kenyan Regulatory Setting

This dilemma is especially significant in African environmental governance. A common theme in the literature is that many African countries have increasingly advanced environmental laws, yet they face ongoing enforcement challenges due to administrative fragmentation, resource constraints, overlapping responsibilities, and conflicting development goals (Okoth-Ogendo, 1991; Okidi & Kameri-Mbote, 2001; Kotzé & Paterson, 2009). These issues are not just technical problems. They influence the regulatory environment in which businesses decide whether compliance is necessary, negotiable, or can be delayed. In Kenya, the EMCA regime has created a relatively developed environmental framework, but recurring disputes before the National Environment Tribunal show that licensing conflicts, EIA shortcomings, pollution disagreements, and contested approvals still play a key role in environmental governance. NEMA's own compliance reports suggest enforcement often reacts after problems arise or become politically important, rather than through consistent, risk-based supervision (National Environment Management Authority, 2024, 2025). Thus, Kenya reflects a broader pattern shown by the World Bank and OECD: having legal tools does not automatically ensure enforcement credibility unless regulators can verify compliance over time and link sanctions to internal governance changes (World Bank, 2016; Organisation for Economic Co-operation and Development, 2023).

The Behavioral and Criminological Turn

The most significant gap in Kenyan literature is the underuse of behavioral and criminological frameworks. Green criminology has long argued that environmental harm should be analyzed not only as technical non-compliance but also as socially produced harm connected to power, state capacity, and the normalization of ecological risk (Lynch & Long, 2022). Situational Action Theory (SAT) enhances this understanding by explaining offending as the result of an interaction between propensity and exposure: individuals offend when their moral filters, interpretive processes, and situational contexts make violation both conceivable and actionable. This approach is useful because it can explain why two companies facing similar legal rules might behave differently in comparable market conditions.

Neutralisation theory introduces an additional behavioural layer by illustrating how offenders maintain a sense of legitimacy while engaging in harmful actions. Corporations might deny causing harm, deny responsibility, criticise regulators, or invoke employment and growth needs as higher loyalties that supposedly justify environmental shortcuts. These narratives are important analytically because they help explain why repeat offences can occur alongside a self-image of legality and public service. Together, SAT and neutralisation theory establish a missing link between institutional explanations of regulatory weakness and organisational explanations of ongoing non-compliance. This link serves as the conceptual entry point for the current study.

Table 1

Analytical leverage of the literature for this study

	Analytical strand	Core contribution	Use in this paper
Becker (1968); Cohen (1999)	Deterrence/enforcement economics	Explains why certainty, continuity, and proportionality of sanctions matter for compliance.	Necessary but insufficient: helps identify when non-compliance remains economically rational.
Ayres & Braithwaite (1992); Braithwaite (2002)	Responsive regulation	Shows why persuasion, escalation, and accountability should be combined rather than opposed.	Highlights the missing middle between warning and punishment in Kenyan practice.
Parker & Nielsen (2011)	Business compliance	Compliance depends on how firms interpret law and regulators, not only on formal penalties.	Supports the paper's emphasis on internal decision systems and regulatory legitimacy.
OECD (2009, 2023)	Compliance assurance	Frames compliance as a cycle of promotion, monitoring, enforcement, and verification.	Provides the institutional bridge from punishment to sustained compliance oversight.
Thornton, Gunningham, & Kagan (2005); Chi & Yang (2024)	Organizational compliance / ESG	Demonstrates that culture, reputation, disclosure, and internal governance shape firm behaviour.	Justifies moving analysis beyond the legal breach to corporate governance conditions.
Okoth-Ogendo (1991); Okidi & Kameri-Mbote (2001); Kotze & Paterson (2009)	African legal-institutional context	Explains why implementation gaps persist even where environmental law is formally robust.	Situates Kenya within a wider capacity and coordination challenge.
Lynch & Long (2022)	Green criminology	Recasts environmental offending as socially produced harm rather than	Anchors the paper's criminological reorientation.

		mere technical non-compliance.	
Bullard (2000); United Nations Environment Programme (2019)	Environmental justice	Shows that environmental harm is often distributed unequally across vulnerable communities.	Supports the paper's argument that recidivism is also a constitutional and distributive problem.
NEMA (2024, 2025)	Kenyan regulatory practice	Indicates that enforcement remains substantially reactive and complaint-driven.	Provides institutional context for the tribunal findings.
Owino-Uhuru decisions (2024)	Rights-based adjudication	Exposes prolonged harm, delayed enforcement, and the limits of episodic oversight.	Functions as the paper's most important Kenyan illustrative case.

Source Note: Author's synthesis of the 62 reviewed scholarly, legal, and policy sources

Theoretical Basis

This paper uses a multi-layered theoretical framework in which deterrence theory, responsive regulation, compliance assurance, Situational Action Theory, and neutralisation techniques are treated as complementary rather than mutually exclusive lenses. The aim is not to stage a contest between theories, but to specify what each theory explains and where each becomes insufficient when applied to persistent environmental non-compliance in Kenya. Deterrence theory provides the first layer. It explains why firms may comply when the expected costs of sanction exceed the expected gains of violation (Becker, 1968). For this study, deterrence is operationalised through sanction certainty, sanction severity, and enforcement continuity. These variables illuminate whether recurrent non-compliance reflects a rational economic calculation in which penalties remain predictable, delayed, or weaker than the cost of remediation. Deterrence matters, but it cannot explain why firms under similar regulatory conditions often display divergent compliance trajectories.

Responsive regulation and compliance assurance form the second layer. Here, the focus shifts from whether sanctions exist to how the enforcement relationship is designed: whether regulators can use persuasion, escalation, follow-up, and differentiated risk management effectively (Ayres & Braithwaite, 1992; Organisation for Economic Co-operation and Development, 2009, 2023). In the Kenyan case, this layer is used diagnostically rather than prescriptively. The question is not whether the ideal pyramid exists in theory, but whether intermediate regulatory mechanisms—such as monitored undertakings, staged corrective orders, or structured follow-up—are apparent in practice.

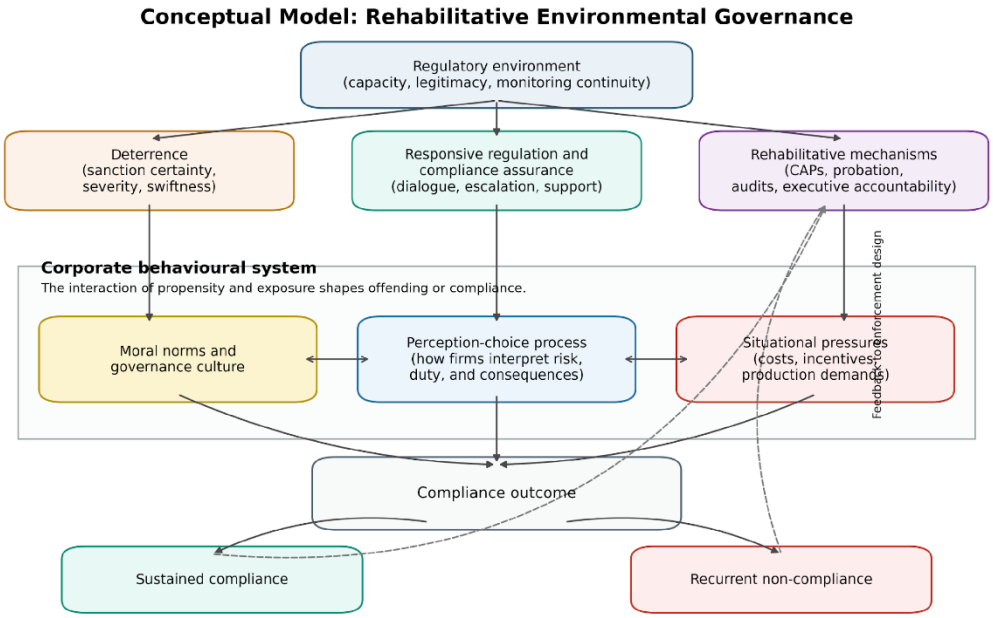
SAT forms the behavioural core of the framework. It views environmental offending as the result of an interaction between a company's tendency and regulatory exposure. Three key constructs stand out: organisational moral norms, the perception-choice process where managers interpret legal obligations and enforcement risks, and situational pressures like cost, competition, and production needs. By focusing on these constructs, the analysis goes beyond simply saying that firms offend because regulators are weak. Instead, it considers how weak,

episodic, or uneven enforcement interacts with internal governance cultures to make non-compliance a feasible organisational choice.

Neutralization theory enhances SAT by identifying the justificatory narratives through which firms justify environmental harm. In corporate contexts, such narratives may include denying harm, shifting responsibility to contractors or government agencies, criticizing regulators as anti-development, or appealing to jobs and economic growth as higher priorities. These narratives are useful because they show how environmental misconduct can be embedded within seemingly respectable corporate reasoning rather than in openly criminal mindsets. On this basis, the article introduces rehabilitative environmental governance as a conceptual model. The model begins with a simple assertion: sanctions are still necessary, but they become more effective when linked to diagnosis, remediation, and verification of internal change. Figure 1 visualizes this argument by illustrating how deterrence, responsive regulation, and rehabilitative mechanisms influence the corporate behavioral system and, through it, compliance outcomes.

Figure 1

Conceptual Model of Rehabilitative Environmental Governance



Source: Author (2026)

The model shows how deterrence, responsive regulation, and rehabilitative mechanisms interact with the corporate behavioural system to produce either sustained compliance or recurrent.

Methodology

This is a theoretically oriented qualitative study that combines two sources of evidence: a PRISMA-informed review of the environmental compliance literature and a qualitative analysis of National Environment Tribunal (NET) decisions in Kenya. The design is interpretive rather than statistical. It aims to identify recurring enforcement logics, behavioural

patterns, and governance implications rather than to estimate the national prevalence of environmental violations. The literature review followed a PRISMA-informed search and selection process to make the paper's theoretical synthesis clearer (Page et al., 2021). Searches were performed on Google Scholar and JSTOR and were complemented by policy and grey literature from UNEP, OECD, NEMA, the World Bank, and related institutional sources. The search terms included combinations of environmental compliance, deterrence, responsive regulation, compliance assurance, corporate environmental behavior, environmental crime, green criminology, Situational Action Theory, and Kenya environmental governance. The search period ranged from 1990 to 2025 and was limited to English-language sources. Studies without a governance or compliance focus were excluded. The process identified 121 records initially, resulting in 62 sources for the final synthesis.

Table 2

Coding framework for the qualitative analysis of NET decisions

Analytical Dimension	Operational Indicator	Why it Matters
Violation type	Pollution, licensing conflict, EIA deficiency, project siting dispute, or permit-condition breach	Identifies what kinds of environmental conflicts most often reach adjudication.
Enforcement history	Evidence of prior notices, warnings, improvement orders, or earlier regulatory contact	Allows assessment of regulatory recidivism rather than first-time offending.
Sanction form	Fine, administrative penalty, temporary closure, suspension, licence restriction, or revocation	Shows the practical balance between monetary and operational sanctions.
Behavioural diagnosis	Whether the decision discusses intent, internal governance, compliance systems, or structural capacity	Tests whether adjudication opens the corporate black box or focuses only on the breach.
Corrective or probationary measures	Presence of CAPs, monitored undertakings, audits, reporting duties, or supervised remediation	Indicates whether enforcement links punishment to structured reform.
Rights and community harm	Reference to public participation, health risk, environmental rights, or community exposure	Captures the environmental-justice dimension of enforcement reasoning.

Source/Note. The coding framework was applied to the purposively selected NET decisions (2014-2025).

The second source of evidence involved qualitative coding of 27 NET decisions issued between 2014 and 2025. Decisions were intentionally selected based on three criteria: relevance to corporate or project-based environmental non-compliance, availability of a complete written decision, and enough detail to evaluate the connection between the alleged violation, regulatory response, and remedial reasoning. This purposive approach is suitable because the focus is on identifying patterns in adjudicatory reasoning and enforcement strategies, rather than creating a statistically representative national dataset. Each tribunal decision was reviewed using a standardized coding protocol. The coding included: (1) the type of environmental dispute or

violation; (2) evidence of previous warnings, notices, or earlier enforcement actions; (3) the sanction or regulatory response implemented; (4) whether the decision addressed corporate intent, internal governance structures, or overall compliance capacity; (5) whether behavioral or corrective measures such as Corrective Action Plans or probationary oversight were mandated; and (6) whether rights-based or community-harm considerations were evident in the reasoning. Table 2 summarizes this protocol.

Analytically, the paper triangulates through the literature review, tribunal decisions, and major public disputes such as the Owino-Uhuru litigation. This enables the study to connect broad theories, institutional practices, and a high-profile Kenyan case. However, the design has limitations. First, relying on public decisions and reports cannot fully capture informal regulatory negotiations or internal compliance systems within firms. Second, the analysis interprets tribunal reasoning as an indicator of enforcement logic, but not as a direct measure of all regulatory activity outside litigation. Third, some cited policy materials are self-reports from institutions and should be read critically. These limitations do not undermine the study's value; rather, they define its scope as an analytically structured diagnosis of regulatory recidivism and reform possibilities.

Analysis of Findings

Sanction Dominance Remains the Modal Enforcement Pattern

The coded NET material reveals a clear pattern: Kenyan environmental adjudication remains largely focused on punishment-based responses. Among the decisions analyzed, monetary fines and administrative penalties are the most common measures, while temporary suspensions and strict license restrictions are much less frequent. This pattern matters because it indicates that environmental enforcement primarily relies on punitive tools that can be priced, challenged, or absorbed, rather than on mechanisms that encourage organisational learning. In short, the system is legally active but lacks behavioural depth.

Equally important is the high rate of repeated regulatory interactions. About 63% of the decisions involved firms or projects with prior warnings or notices, contested approvals, or prior regulatory contacts. This shows that many disputes reaching the tribunal are not their first compliance issues. Instead, they are part of ongoing regulatory relationships where previous contacts did not lead to lasting compliance. This pattern strongly suggests recidivism in the regulatory context used in this paper.

Limited Behavioural Diagnosis in Adjudicatory Reasoning

The second pattern is what the paper calls limited behavioural diagnosis. Tribunal reasoning often emphasises the need to maintain statutory compliance, enforce licensing discipline, or convey seriousness to violators. This language is understandable and often necessary from a normative perspective. However, only a small minority of decisions genuinely examine internal compliance systems, board or managerial accountability, organisational culture, or the reasoning that led firms to view non-compliance as acceptable. In practice, the focus remains on the breach itself rather than on the organisational factors that made the breach more likely. This matters because environmental recidivism rarely results from ignorance alone. Repeat violations usually stem from a mix of economic incentives, weak internal controls, fragmented reporting, and normalised risk transfer to vulnerable communities. When these internal issues go unexamined, legal decisions can punish the act without changing the system that caused it.

The outcome is an enforcement approach that penalises results while keeping the perception and decision-making process largely unchanged.

The Absence of Rehabilitative Enforcement Tools

A third observation is the almost complete lack of structured rehabilitative tools. In the coded data, there's little evidence of decisions mandating comprehensive Corrective Action Plans with specific deadlines, independent environmental audits linked to executive accountability, or probation-like supervision for compliance following serious offences. This is important because it highlights a missing link between dialogue and punishment. The enforcement tools can warn, fine, suspend, or revoke, but they seldom require proven internal reform. That absence helps explain why formal punishment may have a limited behavioural impact. If sanctions are not linked to diagnostic inquiry, remediation, and monitoring, they are more likely to act as episodic legal interruptions rather than as mechanisms for organisational change. Table 3 summarises these findings.

Environmental Justice and Uneven Exposure

The findings also have a distributive aspect. Cases involving pollution, siting conflicts, or licensing disputes often affect communities with limited technical skills, poor access to monitoring data, and heavy reliance on external regulators for redress. This reflects the broader environmental justice literature, which shows that environmental damage often occurs in communities least able to handle or challenge it effectively (Bullard, 2000; United Nations Environment Programme, 2019). In Kenya, this means that regulatory recidivism is not just a matter of efficiency. It is a constitutional and distributive issue where weak behavioral reform worsens unequal exposure to harm.

Table 3

Enforcement patterns in the coded NET decisions (n = 27)

Analytical Dimension	Observation from Coded Decisions	Interpretive Significance
Repeat regulatory exposure	Approximately 63% of coded decisions involved prior warnings, notices, or earlier enforcement interaction.	Many disputes reaching the tribunal are episodes in longer, unresolved compliance relationships.
EIA or approval-related conflict	Approximately 48% of coded decisions involved defective, absent, or contested EIA/licensing processes.	Gatekeeping at the approval stage remains a major vulnerability in environmental governance.
Monetary fines / administrative penalties	Approximately 72% of cases were resolved primarily through financial penalties.	Sanctions often remain economically legible and potentially absorbable rather than transformative.
Temporary suspension / closure	Approximately 18% of cases involved temporary	Escalation occurs, but usually in episodic rather than sustained form.

	closure or suspension orders.	
Licence revocation / severe restriction	Approximately 10% of cases involved withdrawal, cancellation, or equivalent permit restriction.	The most severe sanctions are comparatively rare within the enforcement repertoire.
Explicit deterrence language	Approximately 71% of decisions emphasised signalling, punishment, or the need to uphold compliance.	The adjudicatory model is normatively active but strongly deterrence-oriented.
Meaningful discussion of intent	Approximately 15% of decisions substantially considered corporate intent or moral reasoning.	Internal drivers of offending remain weakly examined.
Discussion of internal governance/capacity	Approximately 10% of decisions addressed compliance systems, governance structure, or organisational limitations.	Little distinction is made between isolated breach and systemic compliance failure.
Corrective Action Plans	No coded decision meaningfully imposed a structured CAP linked to measurable milestones.	The enforcement architecture lacks an institutionalised mechanism for monitored remediation.
Environmental probation-style supervision	No coded decision imposed probationary oversight with continuing audits or behavioural verification.	Punishment is rarely connected to ongoing organisational reform.

Source/Note. Percentages are reported as in the manuscript's coded findings and are used here as indicators of qualitative patterns rather than as national prevalence estimates.

Owino-Uhuru and the Anatomy of Regulatory Recidivism

The Owino-Uhuru lead-contamination dispute clearly illustrates the paper's main argument. The case shows not an absence of law, but a failure to turn legal authority into consistent protection of environmental and public health rights. Although the court's final decision was important, the timeline of harm indicates that the regulation only became effective after long-term exposure and ongoing legal pressure. From a deterrence perspective, this pattern indicates that the cost of compliance for the offending company was, for too long, lower than the cost of continued pollution. From a responsive regulation perspective, it suggests that the enforcement pyramid was weak in its middle levels: neither persuasive correction nor carefully planned escalation changed corporate behaviour early enough. SAT helps clarify why. The issue was not only weak enforcement but also that a fragile and inconsistent regulatory environment interacted with a corporate setting where harmful behaviours could be normalised. In such an environment, neutralisation becomes organizationally plausible. Harm may be justified as unproven, unavoidable, economically necessary, or subject to administrative debate. When these interpretive strategies become routine, legal compliance is replaced by managerial rationalisation. Therefore, the significance of Owino-Uhuru is that it reveals the dynamic interaction between corporate tendencies and regulatory vulnerability, which this article highlights as central to environmental recidivism.

The Limits of Black-Box Enforcement

The Kenyan pattern examined in this paper can be described as black-box enforcement. Regulators and adjudicators respond to observable outputs—unlawful discharge, a defective EIA, a contested approval, or failure to meet permit conditions—without sufficiently opening the organisational black box that produced those outputs. This is understandable in legal proceedings, which are often designed to resolve disputes over breaches rather than to reconstruct internal governance systems. Yet it is also precisely why repeat offending remains likely. When enforcement addresses symptoms but not organisational causation, non-compliance is displaced rather than transformed. Black-box enforcement has three key weaknesses. First, it is reactive, tending to respond only after harm becomes apparent or conflict escalates. Second, it is weakly diagnostic, failing to systematically examine how internal reporting, incentive structures, executive oversight, or cost calculations contribute to the breach. Third, it is limited in verification, as even when sanctions are imposed, the system seldom requires credible proof that internal risk management has actually changed. Behaviorally, exposure is only temporarily affected, but the underlying propensity remains insufficiently institutionalized.

Rehabilitative Environmental Governance as an Institutional Alternative

This study's central theoretical contribution is the idea of rehabilitative environmental governance. The concept does not advocate for a milder regulatory system. Instead, it assumes that punishment remains essential, especially for serious or repeated violations. What changes is the purpose and structure of punishment. Sanctions become tools for structured remediation rather than final actions. A company that has committed serious or repeated violations should not just pay a fine and continue business as usual. Instead, it should be required to identify the root causes of its failures, implement a monitored Corrective Action Plan, undergo independent audits where needed, and hold senior management or board members accountable.

Figure 2 illustrates this institutional shift. Under the dominant model, enforcement moves from violation to penalty to short-term adjustment, often leaving the risk of repeat offenses unchanged. In a rehabilitative model, the process includes risk-based diagnosis, graduated engagement, corrective planning, probationary monitoring, and verification of internal change. This is not leniency. It is a more intrusive and behaviorally intelligent form of regulation because it addresses the organizational routines that sustain non-compliance. The practical benefit of this model is that it connects environmental law with everyday corporate governance. Corrective Action Plans turn legal requirements into management tasks; executive accountability links environmental risk to board oversight; probationary monitoring continues enforcement beyond the point of sanctions; and community-facing disclosure or grievance systems boost legitimacy and early problem detection. Compared to other fields, this approach aligns with trends where regulators increasingly combine sanctions with due diligence, audited compliance systems, and documented remediation (Organisation for Economic Co-operation and Development, 2018; World Bank, 2016).

Implications for Kenyan Regulatory Design

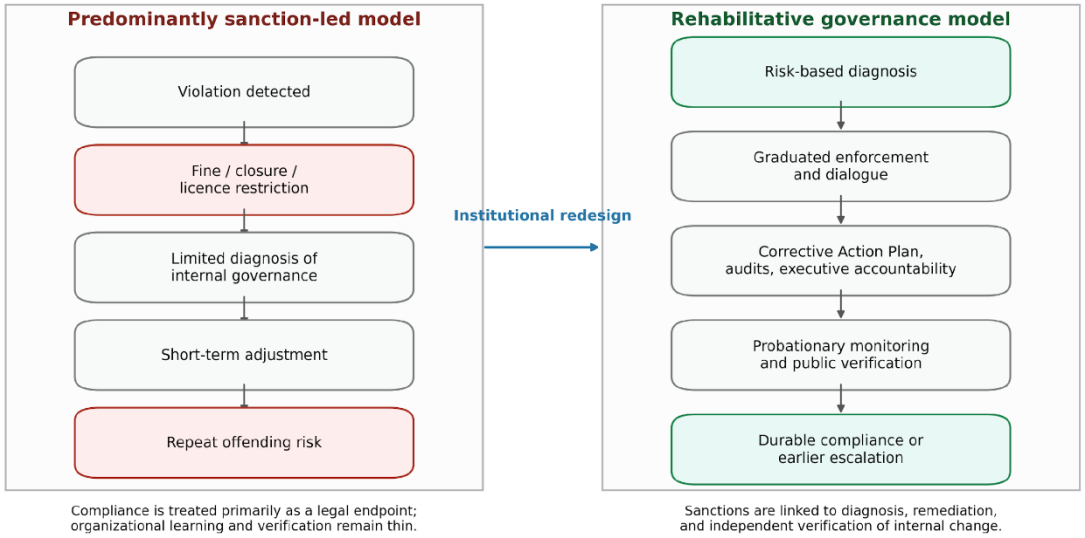
For Kenya, the paper recommends four key institutional priorities. The first is to implement structured corrective orders for repeat or high-risk offenders. These orders should outline milestones, deadlines, documentation requirements, and verification procedures. The second is to formalize environmental probation for serious violations, enabling firms to continue or

restart operations only under audited conditions and periodic reporting. The third is to improve the behavioral aspects of adjudication by making internal governance, executive oversight, and compliance structures more transparent in both regulatory investigations and tribunal decisions. The fourth is to enhance community-based monitoring in high-risk areas so that environmental rights enforcement does not rely solely on episodic state action.

These reforms would not eliminate the need for sanctions, suspensions, or license revocations. Instead, they would make these measures more effective by connecting them to a longer compliance process. If the main policy goal is reducing recidivism rather than just symbolic enforcement, then Kenya needs a regulatory system that can diagnose, remediate, and verify internal corporate change.

Figure 2

Institutional Shift from Sanction-led Enforcement to Rehabilitative Governance



Source: Author (2026)

The figure contrasts an enforcement sequence that ends at penalty with one that links sanction to diagnosis, remediation, and verification of internal change.

Table 4

Policy Architecture for Rehabilitative Environmental Governance in Kenya

Regulatory tool	When to apply it	Behavioural Purpose
Structured Corrective Action Plans	Repeat offenders, serious pollution events, and major licensing failures	Translate legal breach into time-bound managerial reform with measurable milestones and documentary proof.
Environmental probation	After a serious violation, conditional reopening, or post-judgment remediation	Extends enforcement beyond the sanction moment through periodic audits, reporting, and supervisory review.
Executive and board accountability	Where internal oversight failures contributed to the breach	Links environmental compliance to ordinary corporate governance rather than treating it as an external legal interruption.
Risk-based inspection and follow-up	High-risk sectors, repeat violators, and communities with acute exposure	Improves sanction certainty and helps detect whether organisational change is actually occurring.
Community-facing disclosure and grievance channels	High-risk industrial zones and contested projects	Strengthens legitimacy, early warning, and rights-based monitoring by affected communities.
Independent verification audits	Complex remediation cases and repeat offending	Reduces over-reliance on self-reporting and makes behavioural claims empirically testable.

Source/Note. The table translates the article's conceptual argument into an implementable regulatory menu.

Conclusion

This paper has argued that persistent environmental non-compliance in Kenya is best understood not only as a failure of enforcement intensity, but as a failure to connect enforcement to organizational behaviour. The central analytical move has been to reframe corporate environmental offending as a behavioural governance problem shaped by the interaction of deterrence, regulatory design, internal norms, and situational pressures. The review of scholarship and the coding of NET decisions point in the same direction: sanctions matter, but sanctions alone do not reliably generate durable compliance where firms can absorb penalties and where adjudicatory reasoning rarely interrogates internal governance systems. The article contributes to the literature in three ways. First, it clarifies why sanction-dominant enforcement may remain legally expressive yet behaviourally shallow. Second, it brings criminological perspectives—especially SAT and neutralisation theory—into conversation with environmental governance debates that have often remained confined to legal design and institutional capacity. Third, it advances the concept of rehabilitative environmental governance as a practical and theoretical model for reducing regulatory recidivism. The model is especially relevant in contexts such as Kenya, where formal legal frameworks are substantial but continuous behavioural oversight remains limited.

Recommendations

The broader implication is that effective environmental governance requires more than the capacity to punish. It requires the capacity to diagnose how firms reason about compliance, to compel verified remediation, and to monitor whether internal change is actually occurring. Future work could extend this agenda by interviewing regulators, tribunal members, corporate compliance officers, and affected communities; by comparing Kenya with other African jurisdictions; and by testing whether risk-based rehabilitative interventions improve compliance durability over time. For now, the evidence assembled here is sufficient to support a clear conclusion: environmental governance in Kenya will remain vulnerable to regulatory recidivism until enforcement moves beyond black-box sanctioning and toward structured behavioral reform.

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