

Environmental Impact Assessment as a Tool for Sustainable Development: The Nigerian Experience

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Key words:

ABSTRACT

Ever since the 1972 Stockholm UN conference on the Human Environment, which established the nexus between under development and environmental integrity, environmental issues have become transnational. Awareness has generated of the devastating impact of uncontrolled exploitation of environmental resources. The threat to wild-life, ecosystem, fauna and flora and indeed the security of the human race has created organisations whose primary goals and objectives are the protection and preservation of the environment.

Furthermore, the 1992 UN conference on Environment and Development, otherwise known as the “Earth Summit” of Rio de Janeiro generated an action plan for sustainable development in the 21st century, which has become the policy instrument that drives environmental programmes in most developed countries. Sustainable development was defined broadly as the ability of the present generation to meet its needs without compromising the potentials of the future generations to meet theirs. In fact Principle 3 of the Rio Declaration on Environment and Development provides that “The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations”.

Yet, in the bid to develop via industrialization, developing countries are constrained to pursue the same development models whose fall out assault and degrade the environment. How to develop creatively, without compromising the native integrity of the environment now constitutes a major challenge.

Environmental Impact Assessment is the perceived tool for achieving the desired balance. Nigeria is one of the few developing countries that have specific relevant legislation and therefore this paper assesses Nigeria’s Environmental Impact Assessment Act 1992 and its practical relevance as an environmental management tool especially in respect of core infrastructure projects.

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1. INTRODUCTION

Ever since the 1972 Stockholm UN conference on the Human Environment, which established the nexus between under development and environmental integrity, environmental issues have become transnational. Awareness has generated of the devastating impact of uncontrolled exploitation of environmental resources. The threat to wild-life, ecosystem, fauna and flora and indeed the security of the human race has created organisations whose primary goals and objectives are the protection and preservation of the environment.

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2. DEVELOPMENT AND ENVIRONMENT: PAST EXPERIENCE

Nigeria, like most post-colonial countries organized its economic development around periodic development plans aimed at rapid industrialization as a means of improving the peoples’ standard of living. The first National Development Plan (1962-1966) emphasized the development of infrastructure particularly transportation, whilst subsequent plans focused on the creation of industrial complexes, direct intervention by the Government in establishing heavy engineering facilities such as steel plants, refining and petro-chemicals, hydro and

thermal power generating plants, etc. Furthermore clusters of industrial concerns developed around cities with the largest population concentration such as: Lagos, Ibadan, Port Harcourt, Kano , Kaduna, Enugu and Owerri.(1)

These industrial activities, with their potentials for environmental degradation and pollution were carried out in an uncontrolled manner, leaving a legacy of:

- Deterioration of health quality and generation of health hazards
- Destruction of flora and fauna
- Pollution of water resources
- Air and noise pollution
- Destruction of traditional economic infrastructures within communities hosting some of these high powered investments.

Policies aimed at integrating development programmes with environmental issues at planning stage were non-existent. Governments focus was maximum exploitation of natural resources for rapid development with scant regard for resource conservation and sustainability.

Whatever pre-investment studies/assessment under taken were limited to analytical techniques largely confined to economic and engineering feasibility studies, narrow emphasis on efficiency criteria and safety of life and property. Environmental and social consequences of the envisaged project were ignored.(2)

The harvest of this neglect soon manifested. Typical is the Kaduna industrial complex where textile mills were established to encourage industrialization and provide employment. Today this cluster of mills constitute environmental nuisance and a core source of water pollution. Attempt by the host community and Non-Governmental Organisations (NGOs) to force a change in the indiscriminate discharge of industrial effluent and toxic waste into river Kaduna, the only source of portable water supply, has largely failed. The proprietors of the mills insist that retooling or change to cleaner technologies involves heavy financial expenditure that would render their operations uneconomic and therefore inspire job cuts.

Only recently, the Federal Ministry of Environment, in response to the persistent outcry of the affected communities inaugurated a consultative meeting between the Ministry and the Chief Executives of the industries in Kaduna or “Industrial pollution”.This meeting verified the complaints of the affected communities and agreed as follows:

- Immediate establishment of Public and Community relations sub-committee involving all stake-holders to find solution to the problem;
- Every industrial facility in Kaduna to submit Environmental Compliance Audit within 3 months from the date of the meeting;
- All industrial facilities to co-operate with the Government-appointed consultants on the ongoing study of industrial effluent management in Kaduna
- Every facility to create and/or submit to the Federal Ministry fo Environment, the

company designated environment officer or consultant by 31st November 2001.

- Every facility is bonded to achieve 100% compliance with industrial standards and regulations by 2003 and must submit relevant Action Plan within 3 months from the date of the meeting.(3)

This programme is presently monitored by Industrial Pollution and Abatement Committee (IPAC), a creature of Federal Ministry of Environment and Kaduna Environmental protection Authority (KEPA). Down South, in the Niger-Delta region, oil prospecting activities and the consequential environmental degradation issues have become an international matter. This region hosts the bulk of Nigeria's hydrocarbon reserves and therefore suffers high levels of water, air and thermal pollution. Energy production and utilization produces waste heat which affects the flora and fauna. Nigeria produces about 2 million barrels of oil daily, most of which comes from reservoirs containing gas, which is also produced along with oil. This associated gas is separated from oil at the flow stations and 95% of it is flared. This currently translates to 2 billion standard cubic feet per day (SCF/D), which is assessed at 25% of the world's gas flares and equivalent to 25% of France's total gas requirement.(4)

The activities of the oil companies on the whole are detrimental to the environment being generally responsible for contamination of water bodies with oil and other solid wastes, acid rain, accumulation of carbon dioxide and other negative health impact. This is so because environmental degradation issues were originally not programmed into oil prospecting planning and investment. Thankfully, the first tranche of the Liquefied Natural Gas Project (NLNG) has come on stream, although with minimal reduction in gas flaring. However, it is envisaged that when the entire programme is commissioned and operational, environmental degradation via gas flaring will be significantly reduced. Furthermore, the activities of the Niger-Delta Development Commission which has just become operational are designed to mitigate this degradation and inspire environment-friendly development.

3. CURRENT POLICY ON ENVIRONMENT AND APPLICABLE LAWS

3.1 National Policy

Nigeria's National Policy on Environment (1989) sets out the following goals:

- Securing the quality of the environment for health and wellbeing;
- Conserving and using the environment and natural resources for the benefit of present and future generations;
- Restoring, maintaining and enhancing the ecosystem and ecological processes essential for the functioning of the biosphere to preserve biological diversity and the principle of optimum sustainable yield in the use of natural resources;
- Promoting public awareness on the link between development and the environment; and
- International co-operation with countries and international organisations in the protection of the environment.

3.2 Applicable Laws

The synopsis of applicable laws traverse; international agreements/conventions/protocols and national laws, regulations and bye-laws which apply concurrently. They include the following:

- (a) International Agreements/Conventions (5)
 - (i) 1968 African Convention on conservation of Nature and Natural Resources.
 - (ii) 1972 UN Conference on the Human Environment (Stockholm declaration) which established the nexus between development and environmental integrity.
 - (iii) 1976 Vancouver Conference on Human Settlements. (Habitat I)
 - (iv) 1985 Vienna Convention on protection of the Ozone Layer
 - (v) 1992 UN Conference on Environment and Development (Rio Summit) which produced a suite of five documents:
 - Agenda 21 - an action plan for sustainable development in the 21st century.
 - The Rio declaration - Principles on healthy environment and equitable development.
 - The Convention on Biodiversity.
 - The Convention on climate change
 - A statement of Forest Principles.
 - (vi) 1993 Lugano Convention on Civil Liability for damage resulting from activities dangerous to the Environment.
 - (vii) 1996 Istanbul Conference on Human Settlements (Habitat II) which links quality living with construction and environment, drinking water etc.
 - (viii) Kyoto Accord/Kyoto Protocol on global warming CFCs and
 - (ix) African Charter on Human and People's Rights.
- (b) Nigerian Legislation
 - The 1999 Constitution.

At the apex of applicable local laws is the 1999 constitution of the Federal Republic of Nigeria which provides inter alia:

Section 20: "The State shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria."

Section 16 (2): The State shall direct its policy towards ensuring:

TS10.3 Sustainability

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- The promotion of a planned and balanced economic development;

Section 17 (2) (d) “In furtherance of the social order, exploitation of human or natural resources in any form whatsoever for reasons, other than the goal of the community shall be prevented.”

The only deficiency of the constitutional provisions is their non-justiceability. Performance cannot be enforced by legal action since they are categorised under foundational objectives and directive principles of state policy (chapter 2 of the constitution)

- African Charter on Human and Peoples Right (Ratification and Enforcement) Act Cap 10

Article 24: “All Peoples shall have the right to a general satisfactory environment favourable to their development.”

- Harmful Wastes (Special Criminal Provisions) Act Cap 165

This law was the immediate reaction to the dumping of toxic waste product in Nigeria in 1988, otherwise known as the Koko incident. Subsequently the Federal Military Government (as it the was) promulgated the Federal Environmental Protection Agency (FEPA) Decree No. 58 of 1988 (now Cap 131). For the first time, an Agency was set up to oversee the environment with specific powers to:

- Establish such procedures for industrial or agricultural activities in order to minimise damage to the environment from such activities
- Establish such environmental criteria, guidelines, specifications or standards for the protection of the nation’s air and inter-state waters as may be necessary to protect the health and welfare of the population from environmental degradation.(6) FEPA also has responsibility for setting standards for water quality, noise control, effluent limitation, ozone protection, control of hazardous substances, etc.
- The Environmental Impact Assessment Act of 1992.

This is the core legislation that governs environmental impact assessment in respect of proposed projects in Nigeria and flows directly from the provisions of principle 17 of Rio declaration:

“Environmental Impact assessment as or national instrument shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.”(7)

The Act therefore makes it mandatory that before the final decision is taken or approval given for any activity likely to significantly affect the environment, the effect of such activity shall first be taken into account.(8)

4. ENVIRONMENTAL IMPACT ASSESSMENT: PRINCIPLES AND PRACTICE

4.1 The Act is Basically divided into four Parts

Part I - General Principles of Environmental Impact Assessment with broad objectives of:

- Determination of environmental impacts of activities likely to negatively affect the environment; [S1(a)]
- Promotion of implementation mechanisms at the federal, state and local government levels; [S.1(b)]
- To encourage exchange of data and information as well as consultations and notification of alerts across boundaries to other states, towns and villages [S1(c)]

Other provisions include:(1o)

(a) Mandatory Assessment - (SS 2 and 3)

These sections make it mandatory that an assessment be made of likely environmental impact or effect an activity would have. This assessment should be made prior to approval or final decision and at the very early stages of the activity.

(b) Disclosure - (ss 3,4 and 5)

Section 3 prescribes that significant environmental issues shall be identified (disclosed) and studied while Section 4 specifies the minimum matters that the environmental assessment Report must contain:

- Consultation - [SS 7 and 9(2), (3) & (4)]

Prior to giving a decision on any proposed activity, FEPA shall afford concerned professionals, government agencies and other stake-holders opportunity to make an input. The consequential report or decision shall be public.

- Approval procedure - [SS 6,8,9(1),10,11(2) and 13)]

The decision of FEPA shall be impartial and given after a minimum time has elapsed. It should also be in writing and supported by reasons and details such as conditions for project execution, or any directives for mitigation or that the project should be carried out under supervision. It may order further investigations into possible hazards.

- Participation - [S 11(1)]

Any person or community to be affected directly or remotely shall be notified and there shall be “consultations” which in effect means that the person or community shall have a say in the final decision of FEPA.

Part II - Environmental Assessment of Projects.

This part basically covers the environmental assessment process which includes:

- Screening and reviews and matters incidental thereto - (SS 16-22)
- Mandatory study, Notices and Council’s decisions - (SS 23-26)
- Discretionary powers of the Agency, mediation and constitution of review panels and matters incidental thereto (SS 27 - 39)
- Decision of the Agency including implementation of mitigation measures, follow up programmes and certification (SS 40 - 42)
- Trans-border matters both domestic and international; international agreements and arrangement; access to information etc. (SS 49-59).

PART III - Miscellaneous

This covers the Agency’s powers to issue guidelines, codes of practice and facilitating regulations; offence and penalty; interpretation etc. The final part is the Schedule which contains the mandatory study activities. These include potential projects in:

- Agriculture
- Airport
- Drainage and Irrigation
- Land reclamation
- Fisheries
- Forestry
- Housing
- Industry
- Infrastructure
- Ports
- Mining
- Petroleum
- Power generation and transmission
- Quarries
- Rail ways
- Transportation
- Resort and Recreational Development
- Waste treatment and disposal
- Water supply

The foregoing clearly indicates that Nigeria has a comprehensive and modern piece of

legislation that should drive sustainable development. Furthermore, FEPA has developed detailed procedural sectoral guidelines for ease of preparation and assessment of Environmental Impact Reports. This guide lines categorised activities into:

- Projects requiring public review panels,extensive public consultation etc (Full EIA)
- Projects with limited potential environmental impacts e.g. electricity transmission; small scale agro based industries; tourism, rehabilitation of roads etc.
- Projects likely to have negligible or no potential environmental impacts such as education family planning, health, nutrition etc.(11)

4.2 Approval Procedure

As outlined in the procedural guidelines approval procedure involves:(12)

(a) Notification to FEPA

This basically starts with a notification in writing by the submission of the project proposal and completion of the relevant form (EIA Notification Form) and payment of N10,000.00 (\$100)

(b) Initial Examination by FEPA

FEPA then conducts an Initial Environmental Examination (IEE) by considering all relevant information. The project is assigned a category and a Screening Report is issued and sent to the Project Proponent.

(c) Submission of Terms of Reference

The project proponent in turn submits its Terms of Reference covering the environmental issues, based on site scoping. This is sent back to FEPA

(d) Reviews and Hearing

If FEPA is not satisfied with any issue, it may call for public hearing or ask for further studies.

(e) Draft EIA Report

When FEPA is finally satisfied, the Draft EIA Report is prepared by the project proponent and submitted to FEPA with a review fee of N240,000.00 (\$2,400).

(f) Approval/ “No Project Decision”.

If FEPA is satisfied with the EIA Report, it may either approve or decline approval. If approval is declined, there may be a review process (with a review panel sitting and evidence

called by both sides). The review panel will make recommendations on the basis of the hearing.

(g) Final EIA Report

If approval is given or the review process is in favour of an approval, a final EIA Report is submitted to FEPA within 6 months.

(h) Certification

FEPA's Technical Committee then issues an Environmental Impact Statement (EIS) along with a certificate.

(i) Follow up

Some conditions of approval may specify that the project be executed under supervision. Such supervision and the monitoring functions of FEPA will continue throughout the project phases and possible commissioning.

5. CHALLENGES AND CONSTRAINTS

The basic challenge confronting FEPA (now Federal Ministry of Environment) is how to translate the laudable provisions of the Act into an effective tool for managing the environment. The challenge is crucial because Nigeria, like most developing countries, has "world class" legislation on various issues, which nevertheless suffers failure at the implementation stage.

Experience especially in respect of infrastructure projects has shown that Environmental Impact Assessment is hardly undertaken prior to the approval of any project. The case of National Stadium Abuja is typical. Engineering infrastructure is a core need of Nigeria today and is the basic driver of other investments that inspire economic development. The principle enshrined in the Act, of pro-active integration of development programme and environmental issues to deliver environment-friendly projects is observed more in the breach.

The key defaulters in this exercise are the various levels of Government; federal, state and local. These levels of Government routinely approve projects within the mandatory study list, before any kind of Impact Assessment is made. For example Niger Delta Development Commission in a recent press release had already decided to dredge Ayetoro canal prior to any EIA (13) Therefore most EIA Reports are actually "post mortem" documents contrived to "fulfil all righteousness" and fence-off resistance from concerned Non-Governmental Organisation and affected host communities.

Even where the requisite impact assessments were done, the detailed procedure laid down in the Act/Guidelines were usually fouted especially in respect of consultations. Insufficient consultations usually raises anxieties or premature expectations which often manifested in

unsubstantiated fears that projects may cause adverse impacts or false hopes that projects will bring benefits.(14) This is usually the “mother” of most “community unrest”.

A matter currently in the Nigerian High Court, involves the Federal Ministry of Environment and some coastal Communities along the Imo River. The Federal Government awarded the contract for the dredging of the River. to improve vehicular access to the nation’s only aluminium smelting factory at Ikot Abasi. The affected coastal communities stiffly resisted the project on the ground that the Draft EIA Report was unfavourable to the project. Unknown to them however, the Final Report got the approval of the ministry and so the dredging project commenced. This represents a classic failure of consultations and so today the matter is subjudice.

Furthermore, the proposal to dredge the river Niger to improve inland waterways, is currently facing resistance from the coastal communities who are demanding compensation for the potential impacts of the project.

The Federal Government only recently declined payment of compensation since it said, the project holds potential economic benefits to the affected communities.

Finally, the investment climate in Nigeria today is completely receptive of all kinds of investments considered as necessary to dirve economic growth.This has unwittingly made the country a dumping ground for all kinds of obsolete technologies.

Poverty and prohibitive costs are often cited as disincentives to importing clean technologies that meet international environmental standards. Government, for social reasons, appear willing to grant waivers thus diluting the effect of the EIA Act.

6. CONCLUSIONS

Given the investment scenario prior to the Act and the current patronizing attitude to its provisions especially by the public sector project proponents, aggressive implementation of its provisions is necessary if the Act will not end up a “paper Tiger”. New projects should be subject to Environmental Impact Assessment in strict accordance with the spirit of the Act.

Already existing companies should undergo periodic environmental audits (EA) to assure their compliance with environmentally sound practices. Environmental Audit is a management tool comprising a systematic, documented, periodic and objective evaluation of how well environmental organisation, management and equipment are performing with the aim of contributing to safeguarding the environment by (i) facilitating management control of environmental practices; (ii) assessing compliance with any company policies, which include meeting regulatory requirements;”(15). For construction activities related to manufacturing, three approaches are in practice:

- Utilisation of the Best Control Available Technology (BCAT)
- Compensation to local communities, and

- Institutionalisation of adequate abatement measures.(16)

Sometimes, Government may have to offer tax and other incentives to encourage the provision of the these abatement measures. Adequate punitive sanctions may also be employed. Perhaps, a combination of this “carrot and stick” may inspire compliance with the provisions of the Act and thus ensure that “a stitch in time saves nine.”

God Bless.

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