



An Evaluation of the Environmental Impact Assessment Regime of Oil and Gas Projects In Nigeria

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ABSTRACT

The goal of this paper is to examine the current state of environmental, social and health impact assessment (EIA) in Nigeria with specific focus on the oil and gas sector of the economy. It evaluates the legal regime, implementation difficulties and advocates for social efficiency. In conclusion, the paper stresses that there are inherent defects with the current legal and institutional regimes with regards to the oil and gas projects hence, the EIA Act should be revised and the regulatory institutions should be restructured.

Keywords: EIA, Crude Oil, Gas, Onshore, Offshore, Nigeria.

Introduction

Environmental Impact Assessment (EIA) is stipulated in Principle 17 of the Agenda for the 21st century of the United Nations Conference on Environment and Development (UNCED), held in Rio de Janeiro, Brazil on June 3rd to 14th, 1992. It expresses that: “Environmental Impact Assessment as a national instrument shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment

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and subject to a decision of a competent authority.” There are several definitions of EIA however; the International Association for Impact Assessment (IAIA) defines it as: “The process of identifying, predicting, evaluating and mitigating the biophysical, social, and other relevant effects of development proposals prior to major decisions being taken and commitments made.”

Environmental Impact Assessment (EIA) of oil and gas projects involve the evaluation of the probable negative and positive effects of an intended crude oil and related projects on the environment, together comprising of the natural, social, health and economic facets. The key reason for the EIA is to guarantee that the decisions taken by the approving authorities are well guided by the comprehensive advanced knowledge of the consequential effects of the proposed project.³

EIAs are distinctive in that they do not necessitate observance to a pre-arranged environmental outcome, but rather they require the policy makers to give account of environmental standards in their crucial decisions and to be able to rationalise those collective decisions in the light of thorough environmental impact information alongside the opinions and comments of the members of the public, stakeholders and experts. The core objective of Environmental Impact Assessment (EIA) is:

To give the environment its due place in the decision making process by clearly evaluating the environmental consequences of a proposed activity before action is taken. The concept has ramifications in the long run for almost all development activity because sustainable development depends on protecting the natural resources which is the foundation for further development.⁴

The Evolution Of Environmental Impact Assessment

Environmental concern is a global issue. In 1980, the World Conservation Strategy (WCS) published by the United Nations identified that humanity is an integral aspect of nature. It reiterated that humanity does not have pragmatic prospect without a guaranteed safeguard for the sustainability of nature and natural resources. WCS emphasised that conservation comprises of protective actions and the lucid use of natural resources. The WCS further highlighted that conservation is not the reverse of development thus, supports every effort that encourages sustainable development. It is therefore, undeniable that the environment is a vital aspect of human wellbeing hence, should be protected.⁵

³ Organization for Economic Cooperation and development. Good Practices for Environmental Impact Assessment of Development Projects, Paris, Development Assistance Committee, OECD, 1992.

⁴ A. Gilpin. *Environmental impact assessment (EIA): cutting edge for the twenty-first century*. Cambridge: Cambridge University Press, 1995, p. 3.

⁵ L Ortolano. Controls on project proponents and environmental impact assessment effectiveness. *The Environmental Professional* 15, pp. 352-63 (1993)

The use of EIA as an instrument of legitimate authority for the protection of the environment was started by the enactment and coming into force of the National Environment Policy Act, 1969 in the United States of America. Shortly afterward, other countries started to enact similar laws to regulated economic activities that are likely to have adverse effect to the national environment.⁶

Environmental concerns have largely been neglected by the federal government of Nigeria until 1987 when a major incident occurred. The Nigerian government were awakened when an Italian vessel arrived in the small Niger Delta town of Koko and dumped a large quantity of toxic waste. There was no operative environmental legislation in the country to handle such incident. However, the military government swiftly formulated the Federal Environmental Protection Agency (FEPA) Decree 58 of December 30, 1988 (amended by Decree 59 of 1992). In 1989, FEPA published the National Policy on Environment (NPE).⁷ It also established the first environmental regulating agency in the country and subsequently created the National Council on Environment (NCE). In 1990, the NCE advocated for the introduction of EIA as an essential precondition for the active implementation of the national environmental policy, and recommended that EIA should be made compulsory for all improvement projects with effect from March 1991.

Although Nigeria has been actively engaged in industrial projects of environmental degrading nature, for several years, there was no singular legislation devoted to the assessment of the probable consequences of the industrial activities to the environment. In 1992, the Environmental Impact Assessment (EIA) Act was enacted. From the outset, the manifested deficiency of the EIA Act is that, it does not have a retrospective effect. There are no provisions in the Act for the review of existing projects that are already causing huge environmental disasters. For example, most of the operating crude oil and natural gas projects pre-date the EIA Act and, it is these industrial projects that are accounting for the larger part of the environmental degradation in the country.⁸

Amongst others, the EIA Act 1992 requires comprehensive assessment of public or private projects likely to have a significant impact on the environment;⁹ and, requires the application in writing to the relevant agency before embarking on projects for environmental assessment to be determined and approved.¹⁰ Section 13 of the Act provides the list of the type of projects where EIA are required. Section 60 stipulates the legal liability for breach of any of the provisions of the Act; and, Section 14 (1) (d) forbids the Federal, State, Local Council or any of its agencies “under the provisions of any law or enactment, issues a permit or license, grants an approval or takes any other action for the

⁶ The earliest countries that enacted the EIA laws were: Australia (1974), Thailand (1975), France (1976), Philippines (1978), Israel (1981), Pakistan (1983), and Japan (1984).

⁷ Kato Gogo Kingston. *Oil and Gas Laws: A Guide for International Practitioners* (Mauritius: Lambert Academic Publishing, 2017)

⁸ *ibid*

⁹ Section 2(1); Also in Section 14(1) (a) & (b)

¹⁰ Section 2(4)

purpose of enabling the project to be carried out in whole or in part” prior to the undertaking of EIA. Nevertheless, the national policy on environment is anchored¹¹ on the following perceived objectives:¹²

- (a) To accomplish responsive pollution control through processes responding to recognised local problems with regards to air, water, and soil pollution, with solutions measured to address and deal with negotiations and the abatement necessities between the government officials and the polluting industries.
- (b) To safeguard pre-emptive impact identification and alleviation through environmental. Social and health impact assessments and project licensing.¹³
- (c) To accomplish amalgamation of larger environmental considerations in project variety and planning through environmental developments with consideration of socioeconomic as well as biophysical¹⁴ effects compulsory examination of options, targeting the identification of the most suitable options environmentally as well as economically, and public reviews.
- (d) To attain incorporated and sustainable arrangements that enhance effective policy making that supports acceptable programmes and aggregate projects without infringement on miscellany, malleability, and sustainability.¹⁵

EIA Threshold For The Oil And Gas Projects

Environmental pollution from onshore and offshore development of oil and gas industries do produce significant destructive effects on the biodiversity of land and marine environment, and predominantly on the occupation and food sources of the host communities.¹⁶ The economic costs of the negative externalities are often assessed with the social cost technique in accordance with the prevailing international compensation

¹¹ T. Rajaram and A Das. Need for participatory and sustainable principles in India’s EIA System: Lessons from the Sethusamudram ship channel project. *Impact Assessment Project Appraisal* 24, 115-26 (2006)

¹² Kato Gogo Kingston. *Oil and Gas Laws: A Guide for International Practitioners* (Second Edition) (Mauritius: Lambert Academic Publishing, 2018)

¹³ P. C Stern. and V. Fineberg. *Understanding risk: informing decisions in a democratic society.* National Research Council, Committee on Risk Characterisation. Washington, D.C.: National Academic Press (1996)

¹⁴ World Bank. *Defining an Environmental Development Strategy for the Niger Delta, Vol. II,* Washington D.C. (2000/2001)

¹⁵ World Bank. *Implementing geographic information systems in environmental assessment.* In: *Environmental Assessment Sourcebook: Update No 9.* Washington, DC: World Bank (1995).

¹⁶ S. Thompson., J.R Treweek, D. J. Thurling. The ecological component of environmental impact assessment: a critical review of British environmental statements. *Journal of Environmental Planning and Management*, 40(2), 157-171 (1997)

structure.¹⁷ The cost of the effects of negligible incidents are gauged by the compensation machinery, and consequently determined by the worth of settled claims.¹⁸ The activities in the oil and gas sector which require EIA in Nigeria include but not limited to: Development of Oil and gas fields; Construction of off-shore, on-shore, and overland pipe lines; Construction of oil and gas processing facilities; Construction of oil refineries; and, Waste treatment and disposal.

In accordance with the EIA mandatory requirements, every oil firm is obliged to conduct Environmental, Social and Health Impact Assessments (EIAs) for all development projects.¹⁹ The EIA reports specify how the corporations are to cope with the consequences and values of the oil and gas projects to the environment and to the host communities. There are two major categories of oil and gas projects that require EIA. Category 1 EIAs are conducted on projects such as oil field development and several other major projects that are likely to result in complicated and perverse environmental damages.²⁰ The EIA reports on this category are expected to be on public display for a minimum of 21 working days. There is also a mandatory requirement for public hearing and reviews, which are often managed by the institutional regulators. Category 2 EIAs, does not require 21 working days public display²¹ though it is subject to technical reviews administered by the relevant agencies and regulators. Public participation is a crucial aspect of the EIA permit procedure in that Section 7 of the EIA Act provides:

Before the agency gives a decision on an activity to which an environmental assessment has been produced, the Agency shall give opportunity to government agencies, members of the public, experts in any relevant discipline and interested groups to make comment on environmental impact assessment of the activity.

In support of the EIA Act and the FEPA, Nigeria enacted the National Oil Spill Detection and Response Agency (NOSDRA) Act in 2006 alongside the establishment of the propelling agency, NOSDRA. The agency was allotted the duty for alertness as to the detection and responding to all incidences of oil spills in Nigeria. Furthermore, the Department of Petroleum Resource (DPR), a department of the Federal Ministry of Petroleum Resources (FMPR), which primarily handles the exploration and importation of Petroleum products in Nigeria published the first Environmental Guidelines and Standards

¹⁷ A.O Tolulope. Oil Exploration and Environmental Degradation: the Nigerian Experience. International Information Archives, International Society for Environmental Information Science. EIA04-039, 2: 387-393 (2004).

¹⁸ A.V.B Weaver, K. Keatimilwe and P. Tarr. Environmental impact assessment in Southern Africa: In IEMA and EIA Center. Environmental Assessment Year Book. Lincoln: IEMA and EIA Center (2002).

¹⁹ Kato Gogo Kingston. Pollution And Environmental Responsibility In Petroleum Extraction In The Niger Delta Of Nigeria: Modelling The Coase Theorem. (Mauritius: Lambert Academic Publishing, 2017)

²⁰ H. Saarikoski. Environmental impact assessment (EIA) as a collaborative learning process. Environmental Impact Assessment Review 20, pp. 681-700 (2000).

²¹ Sections 7; Section 22 (3), Section 25; Section 37 of the EIA Act

(EGAS) in 1991. The guidelines were the first comprehensive environmental policy document in Nigeria. It provided for pollution abatement technology, strategies and standards and monitoring measures to enhance the effectiveness of mandatory EIA reports. The DPR went further to maintain routine Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (*EGASPIN*).

The Challenges Of Effective Eia Regime In Nigeria

There are several deficiencies that plague the EIA regime in Nigeria. The problems are multifaceted and deeply rooted in procedural and administrative impropriety at all levels including the project proponents, supervisory and accountability fiasco²² of various agencies that are supposed to be responsible for decision making.²³ There are issues of lack of professional competence of the large number of the EIA practitioners in Nigeria resulting in inadequate screening, scoping, coordination and defective procedures for public participation. Many of the EIA practitioners simply generate scoping data without actually conducting the field visits to project locations. Thus, several data used in the final decisions are forged.²⁴

Section 39 of the EIA Act makes it mandatory for the federal Ministry of Environment to publish the reports of the independent review panel in any way the Ministry considers suitable, and should advise the public about the availability of the report. Also, section 25 of the EIA Act provides that: “(1) After receiving a mandatory study report in respect of a project, the Agency shall, in any manner it considers appropriate, publish in a notice setting out the following information – (a) the date on which the mandatory study report shall be available to the public; (b) the place at which copies of the report may be obtained; and (c) the deadline and address for filing comments on the conclusions and recommendations of the report; and, (2) Prior to the deadline set out in the notice published by the Agency, any person may file comments with the Agency relating to the conclusions and recommendations of the mandatory study report.”

In reality, the public displays rarely take place. There are instances where the copies of the EIA draft reports are only distributed at the public hearing session meaning that the host communities of the projects are often deprived the rights to be informed. It is inappropriate to present EIA draft reports to the stakeholders on the day and time of the public hearing in the sense that, it is practically impossible for the persons to read and properly comprehend the contents of the draft reports and be able to respond and contribute to the deliberations. This is a violation of Section 25 and section 29 of the Act. The host communities have the rights to fair hearing which often are denied through reckless and wilful misconducts of the project proponents.

²² C Wood. *Environmental Impact Assessment: a Comparative Review*. Harlow: Prentice Hall, 2nd edition (2002).

²³ S. Needhidasan and S. Thayumanavan. Sustainable development through environmental impact assessment for developmental projects- An Overview. *International Journal of Advances in Engineering and Technology*, Vol. 6, Issue 4, 1585-1591 (2013).

²⁴ A Smith. Scoping, public participation and the consultation process. *EA* 5(4), pp. 36-38 (1997)

The EIA regime in the oil and gas sector is also hindered by the authorised transfer of minerals mining rights. It is important to note that, in Nigeria, the rights to transfer property rights in crude oil deviates from the general rule which states that, a person can transfer his rights in the property at will. Paragraph 14 of the First Schedule of the Petroleum Act 1969 provides: “Without the prior consent of the Minister, the holder of oil prospecting licence or an oil mining lease shall not assign his licence or lease, or any right, power or interest therein or thereunder.” This simply means that the holder of the OPL or OML can assign or transfer such rights only with the consent and permission of the Petroleum Minister. The Minister has absolute discretion to grant or to refuse consent.²⁵

The EIA regime is connected to the transfer of concession licenses.²⁶ For example, in transactions involving crude oil projects, the holder of the Oil Mining Lease (OML) can transfer such rights to a sub-lessee. Where the OML project was never commenced before the transfer, often the new lease holder of the project ought to conduct a fresh EIA especially, where several years have accumulated in that, the circumstances of the project location may have changed and the previously acquired data may not adequately reflect the current reality with respect to the measures to be taken to preserve the human and natural environment.²⁷

Nonetheless, there are several other problems. As earlier stated, EIA is concerned with a comprehensive analysis of the impacts of a proposed project activities with the view of ascertaining those, which are worthy of thorough study. Where the EIA practitioners hired by the project proponent is ill-equipped and fail to exercise due regards to the project environment, the drafted information that guides the licensing process thus, rests on falsehood.²⁸ This is the most dangerous circumstance that many EIA in Nigeria is facing. The falsehood and misrepresentation in many EIA presented by the oil firms could be identified in the baseline reports, documentation, and post audits.²⁹

²⁵ S. Needhidasan and S. Thayumanavan. Environmental impact assessment- A decision making tool for water resources projects in India. International Journal of Advanced Scientific and Technical Research. 2(5), 139-145 (2012); R Read. Planning authority review. In: Weston, J. ed., Planning and Environmental Impact Assessment in Practice. Addison Wesley Longman (1997)

²⁶ C O Orubu, A Fajingbesi, A Odusola and N Magbagbeola. Environmental Regulations in the Nigerian Petroleum Industry: Compliance Status of Compliance and Implications for Sustainable Development. Research Report, ACBF/NCEMA, Ibadan (2002); C O Orubu, C.O. The Exploitation of Non-Timber Forest Resources in the Niger Delta: Problems and Prospects. Port Harcourt: Niger Delta Environmental Survey (NDES, 1999).

²⁷ R. F. Mikesell. Environmental assessment and sustainability at the project and program- level. In: Goodland, R and Edmundson, V. (editors) Environmental Assessment and Development (pp 20-25). World Bank: Washington, D.C (1994).

²⁸ W. S Leu, W Williams and A Bark. Development of an environmental impact assessment evaluation model and its application: Taiwan Case Study. Environmental Impact Assessment Review, 115- 133 (1996)

²⁹ R Goodland and R Tillman, R (1995) Strategic environmental assessment: Strengthening the EIA process in Mastri, L (ed.) Environmental Assessment (EA) in Africa: A World Bank Commitment. Proceedings of the Durban (South Africa) Workshop, Durban, 25 June: 3-34.

Conclusions

In Nigeria, It is evident that there has been unsubstantiated development in the practice of Environmental Impact Assessment (EIA) in respect of the suitable and justifiable creation of developmental projects. However, a methodical check at the development shows that the bulk of project proponents in the oil and gas sector would rather manipulate the EIA process than actually conduct the EIA exercise. The preference for lobbying instead of doing the right thing is consequential in the sense that in many instances, the EIA project proponents do not include workable impact alleviation processes into the design stages of the projects.³⁰

Contingency plans for waste management is crucial to the oil and gas projects. Many EIA proponents and contractors have largely neglected this aspect of the entire evaluation process. It is common knowledge that crude oil production projects do result in the generation and accumulation of large quantities of solid, liquid and gaseous (emissions) wastes. Although, some EIA reports do appear to acknowledge these possible negative externalities by proposing plans on how to manage the waste however, the plans are often stated in vague and impractical terms. There are solid and liquid wastes that are associated with crude oil drilling and production activities including “spray/aerosol cans, batteries, drill cuttings, drilling muds / fluids, used drums, filters, lumber and packing materials, waste rags, kitchen gabbage, etc.); liquid wastes (including acids/caustics, cooking oils, deck drainage, grey water, chemicals, oily sludge, sanitary waste water, etc) and gaseous wastes (including emissions from engine exhausts, gas from well testing, etc.).”³¹

Some of the onshore crude oil project sites require the displacement of human, plants and animal species. Those that do not cause displacement do have close proximity to the towns and communities hence, impacts negatively on several human activities such as farming, fishing and the general transport system. In several instance, EIA reports often fail to provide explanation on how the project operators will address and resolve the problems and effects of restrictions on the economic bases of the host community.

Crude oil projects are known to attract huge number of people to the host communities. Therefore, there is the possibility of overcrowding as people migrate to the project areas for employment and businesses. Associated with overcrowding is housing shortage, congestion, unemployment, pollution, prostitutions, drug abuse, drug trafficking and other social problems resulting in the spread of diseases, increase in criminality, insurgency and currency racketeering. Despite acknowledging some of these social consequences in several EIA reports, there are often lacks of effective and sustainable contingency plans on how to tackle the imminent problems.

³⁰ A C Ogbonna; I C Nwakanma and P C Njoku. Environmental Impact Assessment (EIA) On Project Design: An Empirical Approach. *West African Journal of Industrial and Academic Research* Vol.8 No.1 September 2013

³¹ See: Nigeria Agip Oil Company, NAOC Sustainability, 2017.

Oil and gas projects are in the category of the type that causes destruction to biodiversity. It is therefore, predictable that one of the critical effects of such project is the loss of the heritable diversity of numerous species of marine and land plants and animals. There is often the risk of extermination of the biodiversity within the ecosystems as a result of various degrees of crude oil and gas pollution. EIA reports in many instances do not device adequate mitigation measures to handle the possible losses.

In Nigeria, several EIA reports prepared by the project operators in the oil and gas industries have largely left out the sensitive issue of blowout. Blow out is a very likely accident with regards to crude oil production processes. Unpredicted flow of oil and gas do ensue during the process of drilling wells hence; when there is a zone of atypically high gravity in the oil well systems blowout do happen. Typically, blowouts are mostly recurrent at the preliminary stages of well construction, when precautionary measures are not in place, but could also supervene during production. Concerted and prolonged discharging of crude oil into the environment does cause cataclysmic situations. Irrepressible blowouts do develop into large oil spills including excessive gas spread into the atmosphere with dangerous outcome.

EIA reports in the crude oil industries in Nigeria often place very limited attention on possible circumstances where remediation of the environment will be required. Remediation is the process by which polluted environment (onshore or offshore) is cleaned-up and abated by the use of scientifically approved techniques to contain or eradicate hazardous substances including petroleum spills from the environment. It is an internationally recognised policy that, prior to the commencement of projects that are likely to cause pollution, there should be Remedial Action Plan (RAP). The RAP always is often incorporated into a workable site-specific Health and Safety Plan (HASP).³²

Central to protecting the host communities and their environment during oil and gas project development is operative regulations. Essential to effective regulation of any industrial project is the ability to set suitable standards, to monitor and regulate the activities pertaining to the project. The EIA reports need to set the standards, visible methods, processes, verifiable and credible monitoring mechanism to ensure compliance with the laws and standards required for the development of projects.

Finally, the majority of the oil and gas project proponents often neglect the importance of alternatives, because they tend to stick rigidly to a specific type of design, despite the fact that, EIA regimes are meant to consider several available options for better management of the projects to enhance efficiency and sustainable development; they tend to cut costs by doing the wrong thing with catastrophic consequences to the project environment. It is hereby strongly recommended that the EIA Act should be revised and the relevant regulatory institutions should be restructured.

³² In-situ and ex-situ bio-remediation. Also see: Nigeria Agip Oil Company, NAOC Sustainability, 2017

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