

Environmental impact assessment in Nigeria: regulatory background and procedural framework

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ABSTRACT

As a consequence of the illegal dumping of toxic wastes in Koko, in the former Bendel State, in 1987, the Nigerian Government promulgated the Harmful Wastes Decree which provides the legal framework for the effective control of the disposal of toxic and hazardous waste into any environment within the confines of Nigeria. This was immediately followed by the creation of a regulatory body, the Federal Environmental Protection Agency (FEPA) in 1988. FEPA is charged with the overall responsibility of protecting and developing the Nigerian environment. To put this into action a National Policy on the Environment was developed. This is the main working document for the preservation and protection of the Nigerian environment. States and Local Government Councils were also encouraged to establish their own environmental regulatory bodies for the purpose of maintaining good environmental quality as it applies to their particular terrain.

The EIA Decree No. 86 of 1992 is an additional document with the same aim of protecting the Nigerian environment. It is particularly directed at regulating the industrialization process with due regard to the environment. By this Decree, no industrial plan/development/activity falling under the FEPA's mandatory list can be executed without prior consideration of the environmental consequences of such a proposed action, in the form of an environmental impact assessment.

The Department of Petroleum Resources (DPR), an arm of the Ministry of Petroleum Resources, recognizing the national importance of the oil and gas industry sector to the continued growth of the Nigerian economy and realizing that the continued exploitation, exploration and production of the oil resources has serious environmental impacts, also decided to set out comprehensive standards and guidelines to direct the execution of projects with proper consideration for the environment. The DPR Environmental Guidelines and Standards (EGAS) of 1991 for the petroleum industry is a comprehensive working document with serious consideration for the preservation and protection of the Niger Delta, and thus the Nigerian

See Topic 2

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environment, in the course of searching for and producing crude oil. The EIA tool is also mandatory for a greater part of the oil E&P activities.

But a detailed examination of the various statutes, and the framework for the EIA process in particular, and the entire environmental regulatory process in general, reveals that many of the statutes are very much at variance with intentions, especially as they affect the execution of functions. There is duplication of functions and overlapping responsibilities in the processes and procedures guiding the execution of the various impact assessment tasks. Consequently, serious bottlenecks and bureaucratic confusion are created in the process. The result is a waste of resources, financially and materially.

This paper examines the statutory regulatory framework for the EIA process, and the inadequacies and misinterpretations of the various statutes, which have often led to delays in the execution of EIAs in Nigeria. An attempt will be made to streamline these various responsibilities through a reorganization of the regulatory environmental framework. This way, it is hoped that the bottlenecks and wastage of resources will be eliminated.

INTRODUCTION

Nigeria (Africa's most populous nation), independent since 1960, occupies an area of 923,768 km² with varied climates and seasons. Presently, its estimated population is over 100 million people.

Prior to oil, agriculture (before 1970) was the economic mainstay. With financial resources available from oil and no development policy, unguided urbanization and industrialization took place. Uncontrolled population growth, desertification, and deforestation led to degradation and devastation of the environment.

As desirable and necessary as development is, it became an albatross not of itself but because of the lack of appropriate policies to guide it.

There were several sectoral regulations aimed at controlling environmental degradation which were unsuccessful due to the absence of effective sanctions. Economic considerations and fundamental lack of knowledge of interdependent linkages among development processes and environmental factors, as well as human and natural resources, resulted in an unmitigated assault on the environment. However, the environment and the need for its preservation (in spite of all efforts by United Nations Environment Program [UNEP] and International Conventions which Nigeria ratified), took centre stage after the momentous and singular event of the secret dumping of toxic waste in Koko Port, Bendel State (now Delta State) in May 1988 by foreign parties. This was followed by the promulgation of the Harmful Wastes (Special Criminal Provisions) Act 1990. In its wake, international seminars and workshops were held in Abuja and Lagos and the consensus was for

appropriate environmental legislation to discourage short-term plans and 'fire brigade' approaches to environmental issues.

An institutional framework was set up to deal with the problems of our environment. The Federal Environmental Protection Agency (FEPA), established by Decree 58 of 1988 of the same name and amended by Decree 59 of 1992, was given responsibility for control over our environment and for the development of processes and policies to achieve this. Apart from publishing the National Policy on the Environment (NPE) in 1989, with the policy goal of achieving sustainable development, it published other sectoral regulations including the National Environmental Protection (Pollution Abatement in Industries and Facilities Generating Wastes) Regulation 1991 wherein EIA was made obligatory only when so demanded by FEPA and compliance was within 90 days of such demand. However in the oil industry the principal legislation is the Petroleum Act 1969 and all derivative regulations charged DPR among others with pollution abatement.

States and Local Government Councils (LG) which comprise the second and third tiers of government were encouraged under Decree 59 of 1992 to set up their own environmental protection agencies.

Separate EIA legislation, the EIA Decree 86 of 1992, was promulgated establishing FEPA as the apex regulator, making EIA mandatory for all developmental purposes (although with some exceptions). Under it FEPA has published various sectoral EIA procedures together with EIA procedural guidelines in 1995.

INSTITUTIONAL AND REGULATORY FRAMEWORK

Prior to the establishment of the FEPA there were sectoral environmental regulations with various significant responsibilities relating to environmental protection and improvement. Also in existence were commissions with advisory capacity in environmental matters and environmental NGOs.

Due to various activities and the complex combination of interdependent operations of the oil industry it, more than any other sector, adversely affects the environment.

In the oil industry DPR adopted remedial, though inadequate, enforcement tools which included compliance monitoring and the issuing of permits/licences. Studies indicated the extent of devastation the oil industry has caused to aquatic and terrestrial ecosystems and cultural and historical resources. This, coupled with the community's dissatisfaction and agitation, especially in the Ogoni and Ijaw homelands, reinforced the need for the sector to plan, protect and enhance prudently the environmental resources for a better environment.

The need to control new installations or projects with capacity to degrade the environment was also identified. This compelled DPR to issue updated Environmental Guidelines and Standards (EGAS) in 1991 providing for the first time, together with pollution abatement technology, guidelines and standards and monitoring procedures, a mandatory EIA report as enforcement tool. There are other regulatory bodies within the sector.

FEPA, charged with the protection and development of the environment, prepared a comprehensive national policy, including procedures for environmental impact assessment for, amongst others, all development projects. Enforcement powers were also prescribed. In the National Policy on the Environment (NPE), FEPA adopted a strategy that guarantees an integrated holistic and systemic view of environmental issues that leads to prior environmental assessment of proposed activities.

The other regulators including State EPAs (unnecessarily charged with similar and identical responsibilities to those of FEPA) rather than cooperating with FEPA undermine its efforts as they demand a role in the state of the environment within their areas. This occurs particularly where FEPA involves them only at the review stage in the EIA process. This creates a lot of confusion and bureaucratic delays in implementing the EIA process leading to enormous cost and unnecessary waste of time.

ENVIRONMENTAL IMPACT ASSESSMENT SYSTEM

Features

The principal legislation is Decree 86 of 1992 which made EIA mandatory for both public and private sectors for all development projects. It has three goals and thirteen principles for how these are to be achieved. The goals are:

- Before any person or authority takes a decision to undertake or authorize the undertaking of any activity that may likely or significantly affect the environment, prior consideration of its environmental effects should first be taken.
- To promote the implementation of appropriate procedures to realize the above goal.
- To seek the encouragement of the development of reciprocal procedures for notification, information exchange and consultation in activities likely to have significant trans-state (boundary) environmental effects.

FEPA categorizes mandatory study activities into three categories. (see Figure 1 below):

Category 3 activities have beneficial impacts on the environment. For Category 2 activities (unless within the Environmentally Sensitive Area) full EIA is not mandatory, while Category 1 activities require full and mandatory EIA. Either listing or an initial environmental evaluation (IEE) system is used to determine projects requiring full EIA.

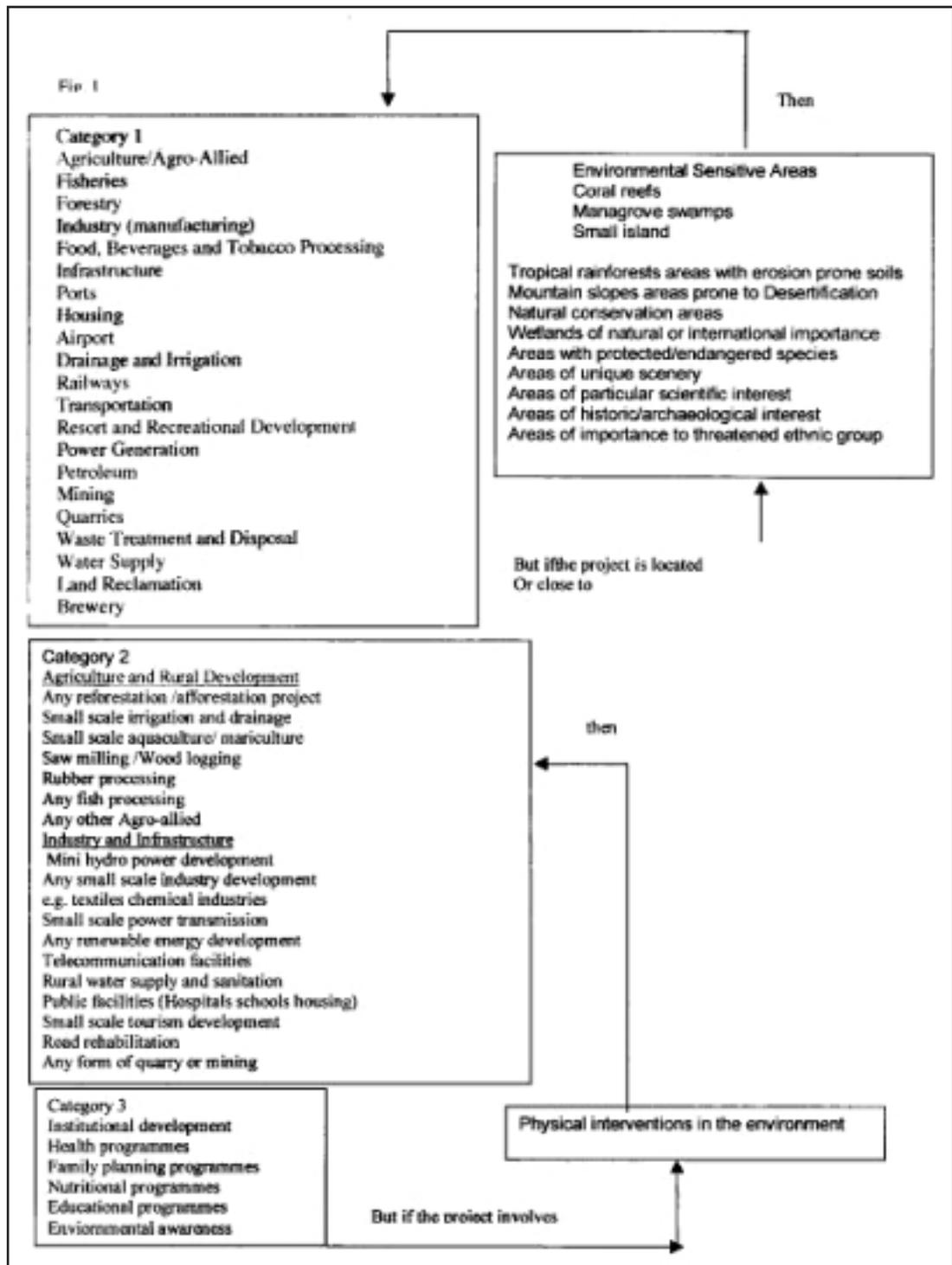


Figure 1: Category of mandatory EIA studies

The minimum requirement of an EIA report includes not only the description of the activity, potential affected environment, practical alternative, and assessment of likely or potential environmental impacts, but also identification and description of the mitigation measures, indication of gaps in knowledge, notification of trans-state adverse environmental effects (if any) and a brief non-technical summary of all the above information.

Impartial and written FEPA decisions indicating mitigation measures based on a detailed examination of environmental effects identified in the environmental impact assessment (after an opportunity within an appropriate period had been given to the stakeholders and the public for their comments) is made available to interested person(s) or group(s). It provides, where necessary, that potentially affected States or Local Government Areas are notified.

PROCESS AND PROCEDURAL FRAMEWORK

The EIA process is the various stages a project undergoes from proposal to approval for implementation, resulting in the issuing of an Environmental Impact Statement (EIS) and certificate.

The term encompasses several stages, viz:

- determining if FEPA environmental laws/regulations have been triggered;
- screening a project for potential environmental effects;
- scoping to determine the spatial and temporary dimension of environmental effects;
- carrying out detailed base line studies to determine the environmental condition prior to project implementation;
- preparing a detailed assessment report;
- carrying out a panel review of the EIA report if this is necessary; and
- obtaining authorization/approval, where appropriate.

For FEPA, the Director General/Chief Executive is the responsible officer.

The National Procedural Guidelines show practical steps from project conception to commissioning (see Figure 2). The steps are:

- project proposal
- initial environmental examination (IEE)/preliminary assessment
- screening
- scoping
- EIA study
- review
- decision making
- monitoring, and

- auditing.

The proponent initiates the process in writing to the responsible officer. A notification form is duly completed with all relevant information on the proposal. Using the criteria of :

- magnitude – probable severity of each potential impact;
- prevalence/extent and scope – extent to which the impact may eventually extend;
- duration and frequency – is activity short term, long term or intermittent;
- risks – probability of serious environmental effects;
- significance/importance – value attached to a specified area; and
- mitigation – measures available for associated and potential environmental effects

FEPA does internal screening (IEE) to determine the project's category under the mandatory study activities list.

Where no adverse environmental effects exist, the EIA is issued and the project commences with appropriate mitigation and monitoring measures. Otherwise within ten working days of receipt of the proposal, the screening report is sent to the proponent for scoping and the preparation of Terms of Reference (ToR). The ToR embodies the scope of the proposed EIA study and this is examined and the scope of the study defined accordingly by FEPA. The proponent carries out the study, generally using consultants, and the draft EIA report in 15 copies is submitted to the responsible officer. For this draft report to be complete it must as an annex record the results of public participation in a public form.

Within 15 working days of the receipt of the draft report, FEPA concludes evaluation of the draft and determination of the review method which it communicates to the proponent in writing. The four methods are:

- In-house review.
- Panel review (sitting may be public).
- Public review – an elaborate display of the report for 21 working days with appropriate display venues chosen by FEPA for the convenience of the public stakeholders and communities. Through newspaper advertisement FEPA invites interested groups /persons to participate.
- Mediation.

Within one month of the review process, review comments are furnished to the proponent. In this review stage, the public participates only when FEPA's chosen method of review guarantees its participation.

The final EIA report, addressing and proffering answers to review comments, is submitted within six months to the responsible officer. At this early stage, and on mutual agreement, FEPA and the proponent set

conditions establishing a follow-up program (mitigation, compliance and monitoring plan), a monitoring strategy and audit procedure. A 'no project' decision is communicated to the proponent if the review comments are adverse and/or improperly addressed in the final report and the final EIA report is unsatisfactory. The decision-making body is the FEPA technical committee chaired by the Director General/Chief Executive.

Within one month of the receipt of a final EIA report which has been adjudged as satisfactory, the committee approves and issues the Environmental Impact Statement (EIS) followed by certification by the responsible officer complete with appropriate conditions and with a validity period. Armed with the certificate, the proponent commences the project subject to the conditions and specifications contained in the EIS. If the project is not commissioned within the validity period on the certificate a revised and updated EIA report becomes necessary for revalidation.

The progress of the project is monitored to ensure compliance with all conditions and mitigation measures. Environmental audit, assessing both positive and negative impacts of the project, is carried out periodically. In its exercise of discretionary powers, FEPA refers any project likely to cause significant environmental effects that may not be mitigated (or where public concern about the project warrants it) to the FEPA council for mediation or panel review.

The EIA study team usually is a multi-disciplinary panel of experts and the report is prepared using a systematic, interdisciplinary approach incorporating all relevant analytical disciplines to provide meaningful and factual data, information and analyses. The presentation of data should be clear and concise, yet include all facts necessary to permit independent evaluation and appraisal of both the beneficial and adverse environmental effects of alternative actions. The detail provided should be commensurate with the extent and expected impact of the action and the amount of information required at the particular level of decision-making.

FEPA certifies consultants and reviewers. Only research institutions and limited liability companies of proven competence are so certified.

Sadly in the oil sector, there is confusion as a result of multiple regulators. The Department of Petroleum Resources and the State Environmental Protection Agencies have enabling instruments which permit them to conduct EIA without limitation. DPR's instrument is its regulation, EGAS 1991, which empowered it to conduct EIA, but there is no legislation so empowering it directly. The States instruments are subject to Federal enactment and other than inordinate show of relevance they are to merely monitor the process for, and on behalf of, FEPA. FEPA should as early as possible inform the relevant State EPA at its secretariat stage.

CONCLUSION AND RECOMMENDATIONS

We acknowledge that Nigeria has taken serious steps to develop effective environmental strategies by the promulgation of the EIA Decree and all the procedural guidelines. Yet there are too many regulators with similar and identical responsibilities. Harmonization and clear allocation of responsibilities has become necessary. FEPA is the apex regulator, and DPR in reliance on regulations can not usurp the responsibility of FEPA nor the State EPA when under our canon of legal interpretation, any Edict (law) in conflict with the Decree (Act) to the extent of the conflict is void. Recognition of this, and an eschewing of rivalries among the administrators, will encourage co-operation among them.

To be relevant the regulators (administrators) should be better supported and, for effective compliance monitoring and enforcement, stiffer sanctions and penalties should be prescribed and strictly adhered to. This way environmental requirements will be met and maintained. Compliance should be tied to renewal of licenses and consents and proponents should ensure that staff are highly motivated with adequate equipment and capacity building programs vigorously pursued not only by the administrators but also the proponents. The administrators should invest more in capacity building, staff motivation and provision of conducive work environments together with the necessary facilities. The government in this regard should make funds available to the secretariat. Otherwise, they become exposed to monetary inducements leaving compliance in the hands of the proponent. This is unhealthy. With basic knowledge of their responsibilities they could become more efficient and effective in improving the quality of EIA report.

The administrators should set up a databank and provide baseline data. The EIA process is in transition in Nigeria, and may take years or even decades to develop and this depends on a strong and continuous political commitment at the highest levels within and among our administrators, on the active role of an informed and involved public and on some pragmatic programs of national action and sub-regional and regional co-operation (Kampala Declaration 1989).

The natural consequence, therefore, is that experience is increasing and the need for sufficient information in the transition period is met, as has recently been undertaken by some oil companies, government and international organizations in the Niger Delta Environmental Survey (NDES). This will provide environmental baseline data for the area. We hope that it extends to other areas of the Federation.

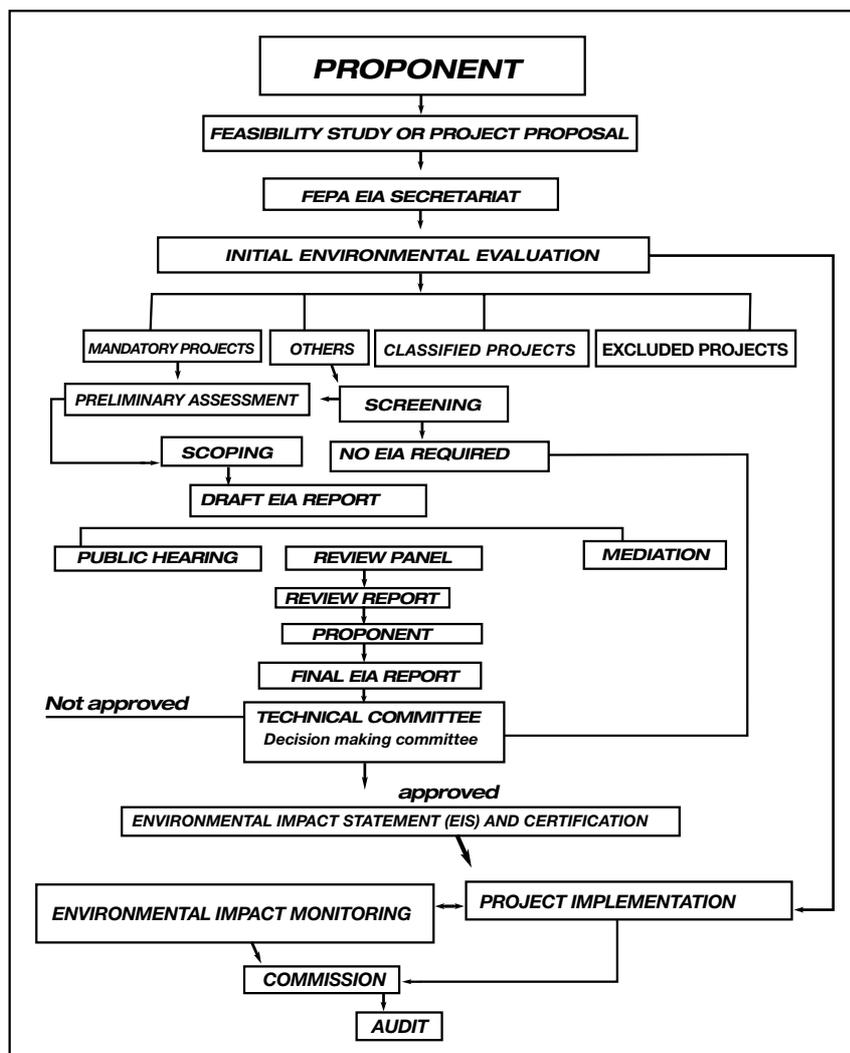


Figure 2: Flow chart of FEPA EIA procedures

Public participation is not statutorily protected yet current realities have encouraged public involvement as the communities have become aware of the need to protect the environment. Though largely illiterate and poor, and thereby vulnerable to monetary inducement in the hands of unscrupulous proponents, nevertheless their knowledge of the locality can enhance the process. In this regard the law should be reviewed.

FEPA usually involves the State EPAs only at the review stage and it has been observed that this angers them, prompting a demand for a repeat of the EIA study by the proponent, with its attendant resources wastes. Often they refused to attend public forums as FEPA officials are usually absent from these. The illiterate public, left to the mercy of the proponent, is misled. It is suggested that FEPA should involve the relevant State EPA at the secretariat stage i.e. when the proponent submits the proposal so as to enable them to monitor and participate actively in the entire process and not only in the review. In this regard, on receipt of the project proposal, FEPA should send

a copy to the other relevant agencies liaising effectively from that stage and involving the proponent. The proponent should provide assurance that the required regulations are met, using concepts of self-regulation, goal-setting and negotiated agreements to complement prescriptive legislation.

The process of accreditation by FEPA, apart from being time-consuming, cumbersome and arduous, encourages fraudulent companies to engage the services of mercenaries for the purpose of answering interview questions. We suggest that a more pragmatic and result-oriented approach should be adopted with sporadic checks of such companies. Some States insist on their own accreditation exercise despite FEPA's creating multiple accreditation. We suggest that for the process of accreditation to be accepted by all States, which should be involved in the exercise. The efforts of the environmental NGOs ought to be stepped up in the area of continuous capacity building of their members so that they can participate efficiently and meaningfully in public forums thereby enhancing the quality of the EIA report and the decisions taken arising from them.

The Law Reform Commission and Federal Ministry of Justice in conjunction with the States, environmental NGOs and interested groups and companies, should develop an integrated, co-ordinated and comprehensive legislation on the environment, removing rivalries, bureaucratic bottlenecks and areas of overlapping, duplication and confusion.

We venture, however to add that the EIA process in Nigeria if adequately handled, with the consultants involved in capacity building and the administrators highly motivated and with the Government making funds available, will result in environmental issues being built into taxation, prior approval procedures for investment, technology choices and into all components of development policies (Kontagora 1991).

LIST OF RELEVANT PUBLISHED PAPERS AND OTHER SOURCE MATERIAL

Aina E. O. A. 1989, *New Direction for Sustainable Development in Nigeria*, A paper delivered at the International Workshop on the Environment and Sustainable Development in Nigeria at the NICON-NOGA HILTON Hotel, Abuja.

Achieving Sustainable Development in Nigeria. National Report for the United Nations Conference on Environment and Development Rio de Janeiro, Brazil (1992).

Amid. D. Adekunle 1998, *In Search of Partners in a Context of Multiple Regulators: The Perspective of an Operator in Nigeria Oil Industry*. A paper presented at the International seminar on the Petroleum Industry and the Nigerian Environment Abuja Sheraton Hotel & Towers .

Anderson Brian 1996 , *Environmental Issues and Management Strategies*. Keynote

address at the International seminar on the Petroleum Industry and the Nigerian Environment. Port Harcourt.

Ojile M. O. 1998, *Answers to Technical Qualifying Questions for the EIA Studies*.

Raph Mulders 1997 *The State of Environmental Impact Assessment in the Developing Countries*. The Hague.

Delta State Environmental Protection Agency (DELSEPA) Edict No. 5 1997.

Rivers State Environmental Protection Agency (RSEPA) Edict No. 2 1994.

Department of Petroleum Resources (DPR), *Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (1991)*.

Federal Environmental Protection Agency (FEPA) Decree 59, 1992.

National Policy on the Environment (1989).

Environmental Impact Assessment Decree 86, 1992.

FEPA *Environmental Impact Assessment procedural Guidelines (1995)*.

United Nations Environment Program, *Environmental law Guidelines and Principles Environmental Impact Assessment (1991)*.

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