



## ENVIRONMENTAL IMPACT ASSESSMENT AS A TOOL FOR A SUSTAINABLE ENVIRONMENT IN NIGERIA\*<sup>1</sup>

By

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### **Abstract**

*Globally, discussions on environmental degradation and unintended outcome of global warming and climate change have taken the centre stage. The impact of climate change and its extreme weather conditions now ravage most countries of the world. In Nigeria, desertification, flooding, excessive rain, excessive heat, poor agricultural output, and public health issues are some of the signs experienced. These, also have implications for extreme poverty level, insecurity, migration, food shortage, and etcetera. A multi-pronged approach is required to combat these menace. Environmental degradation could arise from a wrong decision in locating a project in a particular environment. This could be power project, road construction, dam construction, telecommunications mast, industrial construction and others. The law requires that an Environmental Impact Assessment be conducted before such projects are executed, in order to assess the social, economic and environmental impacts of such projects in the affected community. Most of the time, this process is poorly done and the affected communities are not carried along in such decision making process. This has resulted in environmental degradation arising from project construction by government, public and private companies alike. This paper reviewed some important segments of the Environmental Impact Assessment Act of Nigeria especially in the power generating projects; suggested a more sustainable practice and procedure that will leapfrog Nigeria into having a sustainable environment. It concluded that a streamlined process devoid of corruption that includes citizens' engagement and public participation ought to create a more sustainable environmental impact assessment in Nigeria.*

### **1.0 Introduction**

Environmental degradation remains a global challenge due to its implications on the ecosystem and greenhouse gas emissions that lead to global warming. Global warming, results into extreme weather conditions that affects the economy, the society and the environment. In Nigeria, desertification, flooding, excessive rain, excessive heat, poor agricultural output, and public health issues are some of the signs experienced. These, also have implications for extreme poverty level, insecurity, migration, food shortage, and etcetera. Global warming requires a multifaceted strategy to combat as a way of reducing climate change and its consequences. Sustainable development simply means development that meets the needs of present and future generations. This is the main reason why the present generation will safeguard the environment for the future. Some degradation arises from development projects that have negative impact on the environment due to improper analysis or no analysis at all; while some of them arise from oil and gas, refining, mining, power and other industrial projects. In most cases, the interest and safety of local communities where projects are sited are not taken into

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cognisance. No form of compensation is made available to them where they suffer harm arising from a development site.

## 2.0 Conceptual Clarifications

### 2.1 Environment

Environment is derived from the French word *environia*, which means surround, encircle or encompass. It can be seen as surroundings where organisms live. Environment is the physical, biological and socio-cultural surroundings of the world. In fact, it is everything around humans, both living and non-living. *Section 37* of the National Environmental Standards Regulatory and Enforcement Agency<sup>2</sup> defines the environment to include water, air, land and all plants and human beings or animals living therein and the inter-relationships which exist among these or any of them. The relationship between humans, animals, water, air, land and other organisms must be symbiotic, such that all are able to interact within the same environment without harm. The ecosystem that is more or less symbiotic must be preserved and protected in other not to force any group into extinction. The natural environment with all the appurtenances must be protected from all forms of degradation by human activities.

### 2.2 Environmental Degradation

Environmental Degradation covers environmental contamination, pollution and other forms of decline in environmental quality.<sup>3</sup> Environmental degradation is defined as any change or disturbance to the environment perceived to be deleterious or undesirable.<sup>4</sup> It is a process through which the natural environment is compromised in some way, reducing biological diversity and the general health of the environment, which can be natural or accelerated by human activities.<sup>5</sup> The United Nations International Strategy for Disaster Reduction described environmental degradation as the reduction of the capacity of the environment to meet social and ecological objectives and needs.<sup>6</sup> This broad description highlights the need for a healthy environment that will serve the sociological and ecological needs of society and confirms that degradation weakens and reduces the capacity for environment to regenerate itself. Environmental degradation therefore can be said to be all forms of activities that contribute to the gradual or immediate damage or alteration of the ecosystem of the environment which alters or slows down the regeneration process.

### 2.3 Sustainable Development

This is a multidimensional concept that has been defined to encompass economic and social development; and environmental protection.<sup>7</sup> The World Commission on Environment and Development defines sustainable development ‘as development that meets the needs of the present

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<sup>2</sup> National Environmental Standards Regulatory and Enforcement Agency (Establishment Act of 2007) hereinafter referred to as NESREA Act.

<sup>3</sup> Usman, A. K., *Environmental Protection Law and Practice* (Nigeria, Malthouse Press, 2017), 47.

<sup>4</sup> Johnson, D. L., Ambrose, S. H., Bowen, M. L. *et. al.*, ‘Meanings of Environmental terms,’ [1997] *Journal of Environmental Quality*, 26, 581-589.

<sup>5</sup> Environmental degradation concept <<http://www.wisegeek.com/what-is-environmental-degradation.htm>.> accessed 02/03/2023.

<sup>6</sup> The United Nations office for Disaster Risk Reduction (UNISDR), hereinafter referred to as UNISDR. UNISDR was created in December 1999. It is part of the United Nations Secretariat and its functions span the social, economic, environmental as well as humanitarian fields. <<https://www.unisdr.org>> assessed 10/10/2022.

<sup>7</sup> Ciegis, R., Ramanauskiene, J. and Martinkus, B., ‘The Concept of Sustainable Development and its Use for Sustainability Scenarios in Engineering Economics [2009] *The Economic Conditions of Enterprise Functioning* (2) 28.



without compromising the ability of future generations to meet their own needs.’<sup>8</sup> This is the most accepted and broad-based definition of sustainable development. The Brunt Land Commission proposed Sustainable development as a solution to environmental degradation at the initial stage before it was modified to include economic and social issues. It is also ‘a process of change in which the exploitation of resources, the direction of investments, the orientation of technological development and institutional change are made consistent with the future as well as present needs.’<sup>9</sup> For Ojiaka, the concept of sustainability includes concerns about economic, environmental and social values integration for the development of the society and not only ecological.<sup>10</sup> Sustainable development principle imposed a responsibility to preserve the environment as a legal obligation on the present generation. The Supreme Court of Philippines supported this responsibility in the case of *Minors Oposa v Secretary of Department of Environmental and National Resources*<sup>11</sup> The court interpreted the responsibility to preserve a healthy ecology for the future generation as a legal obligation on the present generation.

With the above background, Environmental impact assessment is defined as a process for identifying, predicting and evaluating potential impacts associated with a development project, which is systematic.<sup>12</sup> One may add that apart from identifying and predicting potential impacts, minimal suspicion of negative impact will suffice to trigger assessment. Environmental Impact assessment is required to make an informed decision that will prevent environmental degradation, thereby safeguarding a development that is sustainable. In summation, environmental impact assessment is a collection and assessment of possible positive and/or negative impact of private and public projects on the environment with the intention of protecting humans and environment from impending future or present harm.

#### 2.4 Environmental Impact Assessment

The assessment is an internationally acclaimed policy tool for management and environmental planning. The World Bank and many international development agencies made it a mandatory requirement before borrowing or funding.<sup>13</sup> Nigeria joined other nations when it enacted the Environmental Impact Assessment Decree No. 86 of 1992. In 1995, some Sectoral Guidelines for Environmental Impact Assessment were released to guide proper application of the assessment. According to Omorogbe, Environmental Impact Assessment is the process of accessing possible changes in the environment as a result of development, to measure how deleterious such changes may

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<sup>8</sup> Report of the World Commission on Environment and Development: Our Common Future [1987] A/42/427, Chapter 1, Section 3, paragraph 27, <<http://www.un-documents.net/ocfch.htm>> accessed 23/11/2022. (The Commission is known as ‘the Bruntland Commission’, named after the chairman, Gro Harlem Bruntland. It shall hereinafter be referred to as ‘the Bruntland Commission or Report’); The United Nations, Transforming our World: The 2030 Agenda for Sustainable Development; Resolution A/RES/70/1 <<http://sustainabledevelopment.un.org/post2015/transformingourworld>>, accessed 23/11/2022.

<sup>9</sup> *Ibid*.

<sup>10</sup> Ojiaka, C. ‘The Relationship between Sustainable Development Goals and Human Rights Standards,’ in Wigwe, C. C. *Readings in Law and Contemporary Issues* (Faculty of Law, Rivers State University, 2018) 431.

<sup>11</sup> [1994] 33 International Legal Material (ILM) 168.

<sup>12</sup> Yusuf, T. A. ‘The Environmental Impact Assessment Practice in Nigeria: The Journey So Far [2008]<<http://www.nigeriansinamerica.com/articles/3105/1/the-environmental-impact-assessment-practice-in-nigeria-the-journey-so-far>> accessed 20/11/2022.

<sup>13</sup> Okon, E. E. ‘The Legal Framework of Environmental Impact Assessment in Nigeria,’ [2001] *MPJFIL*, Vol. 5, 218.

be.<sup>14</sup> This is to ensure that any negative impact of the project on the environment is predicted before commencement. Nigeria enacted the EIA Act in 1992 as a prerequisite for all development projects throughout the federation of Nigeria.<sup>15</sup>

### 3.0 Goals and Objectives of Environmental Impact Assessment

Section 1 of EIA Act set out the goals and objectives as follows:

The objectives of any environmental impact assessment (in the Act referred to as "the assessment") shall be-

(a) to establish, before a decision is taken by any person, authority, corporate body or unincorporated body, including the Government of the Federation, State or local government intending to undertake or authorise the undertaking of any activity, those matters that may likely or to a significant extent affect the environment or have an environmental effect on those activities and which shall first be taken into account;

(c) To encourage the development of procedures for information exchange, notification and consultation between organs and persons when proposed activities are likely to have significant environmental effects on boundary or trans-State or on the environment of bordering town and villages.

The operational word here is 'any person', which includes government at all levels, corporate bodies, unincorporated bodies, authorities and individuals. There is no exclusion whatsoever of any class of persons that do not require the assessment. The act also took to mind the precautionary principle of sustainable development when it provided that any person 'intending to undertake' any activity that 'may likely' or to a 'significant extent affect the environment' or have environmental effects on those activities shall first be taken into account.<sup>16</sup> The precautionary principle is one principle that has been used to stop environmental degradation. Environmental measures must be anticipatory to be able to prevent environmental degradation and not wait until the harm is done to salvage. Once there are serious threats of irreversible damage, precautionary measures must be taken even if there is lack of scientific certainty about the danger.<sup>17</sup> It then means that once there is an intention to undertake, steps must be followed to get the assessment done.

The assessment is to promote the implementation of appropriate policy in all federal, state and local government lands consistent with all environmental assessment laws and decision making processes and development of procedures for notification, consultation and exchange of information between all concerned parties and stakeholders. That will facilitate the realisation of the set goals and objectives of

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<sup>14</sup> Omorogbe, Y., 'Regulation of Oil Industry Pollution in Nigeria,' in Azinge (ed) *Frontiers in Law* (Benin Publishers, 1993) 158.

<sup>15</sup> Environmental Impact Assessment Act, Cap E12, L. F. N 2004, this shall hereinafter be referred to as EIA Act. <<https://www.lawnigeria.com/lawssofthefederation/environmental-impact-assessment-act-1992.html>> accessed 14/11/2022.

<sup>16</sup> Section 1(a) of the EIA Act, *op. cit.*

<sup>17</sup> Principle 15 of the Rio Declaration on Environment and Development 1992, defined the Precautionary Principle; Article 3 of the UNFCCC; The Bergen Ministerial Declaration on Sustainable Development, Yearbook of International Environmental Law (London, Oxford University Press, 1990) 429.



the EIA Act.<sup>18</sup> The Act promotes an implementation mechanism at all levels of government in Nigeria, which makes it possible to reach out to both urban and rural communities for the protection of the environment.

Another important objective is to encourage the development of procedures for information exchange, notification and consultation between organs and persons when proposed activities are likely to have significant environmental effects on trans-boundary, inter-state or on the environment of border towns and villages.<sup>19</sup> This no doubt will foster public community participation in exchange of information, data, consultations and awareness on issues concerning the community and neighbouring towns or communities. It will minimise conflict and set in motion a transparent process and procedure for redress.

The EIA Act prohibits the public and private sector of the economy from embarking or undertaking any project or activity without a mandatory assessment at the early stage prior to approvals, so that the environmental effects of such project will be ascertained on time.<sup>20</sup> Where the extent, nature or location of a proposed project or activity is such that is likely to significantly affect the environment, its environmental impact assessment shall be undertaken accordingly.<sup>21</sup> The relevant significant environmental issues shall be identified, disclosed and studied before commencement but while the activity is being planned.<sup>22</sup>

### 3.1 Minimum Content of the Assessment

An environmental impact assessment shall include the following minimum contents: a description of the proposed activities; a description of the potential affected environment including necessary disclosures to identify and assess the environmental effects of the proposed activities; a description of the practical activities; the likely or potential environmental impacts on the proposed activity and the direct or indirect cumulative, short-term and long-term effects.<sup>23</sup> This requirement needs to be harmonised in such a way that a standing team of consultants and Non-Governmental Organisation representatives are on ground to double check on information provided by the proposing company to ensure that all the projections made are correct. This will also reveal any misrepresentation of facts aimed at getting approval by fraud. The proposal should give a description of measures available to mitigate adverse environmental impacts of proposed activity; and assessments of those measures are indication of gaps in knowledge and uncertainty, which may be encountered in computing the required information.<sup>24</sup>

### 3.2 Public Participation in Decision Making

Section 7 of the EIA Act provides for opportunity for comments by certain groups as follows:

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

<sup>18</sup> Section 1 (b) of the EIA Act, *op. cit.*

<sup>19</sup> Section 1(c) *ibid.*

<sup>20</sup> Section 2 (1), *ibid.*

<sup>21</sup> Section 2 (3), *ibid.*

<sup>22</sup> Section 3, *ibid.*

<sup>23</sup> S 4 of the EIA Act.

<sup>24</sup> S 4 (f), *ibid.*



of the public, experts in any relevant discipline and interested groups to make comment on the environmental impact assessment of the activity.

This is an obligation that requires the agency to give opportunity for public participation in decision making on an activity to which an environmental assessment has been produced. Governmental agencies, members of the public, experts in any relevant discipline and interested groups represent a wide audience that may participate for the purpose of transparency of the process and accountability of the agency in the assessment outcome. Public participation in decision making is a *sine qua non* for a sustainable environmental impact assessment. The community that will be affected by the project ought to make input into the decision that will affect their lives, livelihood or environment.

*Principle 10* of the Rio Declaration established the importance of the principles of citizens' participation in environmental decision making, access to environmental information, public awareness, access to judicial and administrative justice and redress. Participation in decision making is a democratic principle of good governance, yet very difficult in democratic regimes. Public participation is part of democratic environmental governance principle that facilitates access to information and inclusive decision making for people whose lives will be affected by the activities within the environment. Public participation is a universally recognised principle of international environmental law as explicated in a number of international instruments.<sup>25</sup> It is a crucial component of this section of the EIA; though the modalities for carrying out this task are not very clear. An example is the gas-flaring certificate that is not within the public domain. For the Agency to properly get the requisite result, it must promote inclusive participation in a way that is transparent; with the collaborative efforts of all parties in the formulation and design of the program.<sup>26</sup> Peoples engagement must be in a just, fair and responsive manner that shows responsibility and accountable to the citizens.

The Act is established to check the impact of development activities on the environment. *Principle 17* of the Rio Declaration provided for EIA as a national instrument to be undertaken for proposed activities that have adverse effect on the environment.<sup>27</sup> It should be noted that in the spirit of sustainable development, all forms of development must be carried out in a sustainable way such that it will not cause environmental degradation or mortgage the enjoyment of a healthy environment for future generations.

### 3.3 Projects that Require Mandatory Assessment

*Section 12* of the EIA Act provides for mandatory study list not to be carried out without the report of the Agency.

(1) When a project is described on the mandatory study list specified in the Schedule to this Act or is referred to mediation or a review panel, no Federal, State or local

<sup>25</sup> The UNFCCC made provision for obligatory responsibility on parties to promote public awareness and participation on issues of climate change in *article 4 (1) (i)*. By *Principle 10* of the Rio Declaration, environmental issues are best handled with participation of all concerned citizens at the relevant level

<sup>26</sup> National Research Council: 'Public Participation in Environmental Assessment and Decision Making' in Thomas, D. and Stern, P. C. , National Research Council Academics ( National Academic Press, Washington D. C. 2008).

<sup>27</sup> *Principle 17* of Rio Declaration on Environment and Development 1992.

Government or any of their authority or agency shall exercise any power or perform any duty or functions that would permit the project to be carried out in whole or in part until the Agency has taken a cause of action conducive to its power under the Act establishing it, or has taken a decision or issued an order that the project could be carried out with or without conditions.

(2) Where the Agency has given certain conditions before the carrying out of the project, the conditions shall be fulfilled before any person or authority shall embark on the project

The Agency is under obligation to take decision on such mandatory projects and issue an order specifying if the project could be carried out with conditions or without conditions. The EIA Act thereby imposes a mandatory assessment for the projects that are listed in the schedule to the Act pursuant to *Schedule 13* of Act. The listed nineteen areas include agriculture, airports, railways, transportation, housing and infrastructure, ports, fisheries, waste disposal, power generation and transmission, land reclamation, drainage and irrigation, mining, oil and gas field development and petroleum. Power generation is the major concern here and will be extracted from the Schedule for the full benefit of the provision.

*Schedule 13* of the EIA Act provides for Power generation and transmission in the mandatory list referred to in *Section 12* of the Act.

- 13 (a) construction of steam-generated power stations burning fossil fuels and having a capacity of more than 10 megawatts;
- (b) Dams and hydro-electric power schemes with either or both of the following-
  - (i) Dams over 15 metres high and ancillary structures covering a total area in excess of 40 hectares;
  - (ii) Reservoirs with a surface area in excess of 400 hectares;
- (c) Construction of combined-cycle power stations;
- (d) Construction of nuclear-fuelled power stations.

Power generation through gas plant was omitted even though gas powered plant still has some element of emissions from the flare site and the heat generated during electricity generation, which has adverse effect on agricultural farms and wildlife. The electricity transmission process no doubt generates radiation which is injurious to man and environment. It is submitted that the clause 'power generation and transmission' should cover all forms of power generation and transmission, which includes gas and coal, powered generation plants, even though not expressly stated. However, there is need for amendment of the Act to clearly itemize all forms of power generation; or an insertion of the clause 'all forms of electricity and energy generation and transmission.'

There is a critical need for assessment wherever the power generation projects are being planned, due to its devastating effect on the environment and humans. Most of the energy generating and transmission installations constitute noise pollution, generate radiation which is injurious to human health and could also affect farmlands and agricultural production where the waste generated are not managed professionally. Air pollutants emitted from power plants can affect surface water and deplete oxygen



levels in water.<sup>28</sup> The impact on local air quality, makes is absolutely necessary for an EIA assessment to involve public participation and where that is not properly done, could lead to a rejection of the outcome document. Unfortunately, where there is any breach in making the right decision, the citizens within those environments are usually helpless. The courts are not yet inclined to give these provisions ‘teeth to bite’. Some of such cases were dismissed for want of right of private enforcement of environmental laws rather than public interest litigation.

In the case of *Oronto Douglas v Shell Petroleum Dev. Co. Ltd*<sup>29</sup> the plaintiff sought the following reliefs: That the defendants should not construct or operate a liquefied natural gas project without complying with the EIA Act; that the report of the EIA be publicised to the community and Non- governmental organisations in accordance with the provisions of *Section 7* of EIA Act; and an injunction restraining the commencement of the project till the EIA Act is complied with. The suit was dismissed for lack of *locus standi*. The court held that there was neither a cause of action nor a specific legal right. The narrow interpretations of locus standi have made it possible for companies to flaunt legal provisions without redress to the people. The denial of *locus standi* is an abdication of the provision for fair hearing guaranteed under *section 36 of the 1999 Constitution of Nigeria*. The Fundamental Rights (Enforcement Procedure) Rules of 2009 enjoined the courts to encourage Public Interest Litigation<sup>30</sup> and demanded that no action shall be dismissed on the ground of *locus standi*.<sup>31</sup>

However, in *Jonah Gbemre v Shell PDC Ltd and Ors*,<sup>32</sup> The applicants were granted leave to institute the action in a representative capacity for a community in Delta State. The Court held that the fundamental right to life and human dignity protected by the Constitution also includes the right to a clean and pollution-free healthy environment. This gives hope that respite is on the way for environmental related challenges. It is also expected that punitive measures will act as a deterrent to environmental violators. Unfortunately, in the instant case above, the court merely gave an order restraining the oil companies from further flaring of gas but did not make any order as to costs, compensation, or award damages.

The Supreme Court in its decision in *Centre for Oil Pollution Watch v N.N.P.C* has laid the issue of lack of locus standi in environmental matters to rest.<sup>33</sup> The court expanded the frontiers of PIL and *locus standi* concerning environmental litigation. In the instant case, there was an alleged oil spillage in Acha, Abia State, which contaminated streams serving drinking water to the community. An action was brought by a non-governmental organization on behalf of the community against the Nigerian National Petroleum Corporation, seeking an order of the court among other things for remediation and restoration of clean water supply and provision of medical facilities for treatment of victims. The lower court denied the plaintiffs access to sue on the basis that they had no *locus standi* to sue as a non-governmental organization. On appeal to the Court of Appeal, the decision of the lower court was upheld. On further

<sup>28</sup> Centre for Science and Environment: EIA Analysis of Jindal Thermal Power Plant <https://www.cseindia.org> accessed 18/09/2023

<sup>29</sup> Suit No. FHC/L/CS/573/93; [1998] LPELR-CA/L/143/97

<sup>30</sup> Public interest Litigation shall hereinafter be referred to as PIL.

<sup>31</sup> See Adesomoju, A. ‘Falana Criticizes Fines on Public Interest Litigants, Lawyers,’ Punch Newspaper, June, 3, 2019; where Falana criticized the courts for exorbitant fines ranging between N5million – N10million slammed on Public Interest litigants and their lawyers, whose cases were truck out for lack of locus standi.

<sup>32</sup> [2005] Suit No. FHC/CS/53/05; [2005] AHRLR 151.

<sup>33</sup> *Center for Oil Pollution Watch v. N.N.P.C* [2019] 5NWLR (Pt. 1666 ) 518 at 580.



appeal to the Supreme Court, the appeal was granted and remitted to the lower court for the determination of the substantive matter. The Supreme Court frowned at the technical rules of *locus standi* and held that individuals and groups should not be shut out from approaching the courts to redress unlawful environmental conduct or seek enforcement of statutory provisions made to protect public health, life, and the environment. With this decision, Nigerian courts are expected to join the rest of the progressive world to ignore technicalities and grant access to justice to litigants as provided by the Fundamental Rights (Enforcement Procedure) Rules of 2009.

### 3.4 Other Projects

*Section 13* of the EIA Act stipulates other instances where an environmental impact assessment shall be required; where a federal, state or local government agency or authority is the proponent of the project and does any act or thing, which authorises it to carry out the project completely or in part. Where such government or agency makes or authorises payment or provides a guarantee for a loan or any other form of financial assistance to the proponent for the purpose of enabling the project to be carried out in whole or in part; except when the financial assistance is in the form of any reduction, avoidance, deferral, removal, refund, remission or other form of relief from the payment of any tax, duty or excise under the Customs Excise Tariff, etc.<sup>34</sup>

*Section 14* excluded some projects where the project is in the list of projects which the president or the council are of the opinion that they have minimal environmental effects;<sup>35</sup> or where the project is to be carried out during national emergency for which temporary measures have been taken by the government.<sup>36</sup> Also, excluded are where the project is to be carried out in response to circumstances that, in the opinion of the agency, the project is in the interest of public health or safety.<sup>37</sup> These circumstances should be backed up by a professional certification or undertaking guaranteeing the safety of the environment and the community and not just based on assumption. This may be a loophole for corruption and other clandestine activity or a way of circumventing due process.

### 3.5 Environmental Assessment Process and Review Panel

The EIA Act stipulated the environmental assessment process where the Agency decides that there is need for an environmental assessment on a project before the commencement of the project.<sup>38</sup> The environmental assessment process may include: a screening or mandatory study and the preparation of a report accordingly; a mandatory study or assessment by a review panel and the preparation of a report;<sup>39</sup> and the design and implementation of a follow-up program. The screening or mandatory study of a project and every mediation or assessment by a review panel shall be in consideration of some critical factors. The process must consider the cumulative environmental effects of the project, which includes the malfunctions or accidents that may occur in connection with the project or taking into consideration with other projects that have been or will be carried out.<sup>40</sup> To be considered also is the

<sup>34</sup> *Section 13 (a – b)* of the EIA Act.

<sup>35</sup> *Section 14 (1) (a)* of the EIA Act.

<sup>36</sup> *Ibid* at (b).

<sup>37</sup> *Ibid* at (c).

<sup>38</sup> *Section 15* EIA.

<sup>39</sup> *Section 15 (b) ibid*; This must be made in accordance with the provisions of section 35 of the EIA Act

<sup>40</sup> *Section 16 (1) (a) ibid*.



significance or the seriousness of those effects and comments received from the public concerning those effects, measures that are technically and economically feasible and that would mitigate any significant or serious adverse environmental effects of the project.<sup>41</sup>

The Act stipulates that every mandatory study of a project, mediation or assessment by a review panel shall consider the purpose of the project; alternative means of carrying out the project that are technically and economically feasible and the environmental effects of any such alternative means.<sup>42</sup> In case of a power generation and transmission project, a scarcely populated environment that is far from high-density area will be best suited so that the local communities could be relocated to another location with compensation. This will save human health while reducing the impact of the project. Consideration shall be given to the need for the requirement of any follow-up programme in respect of the project and the short-term or long-term capacity for regeneration of renewal resources that are likely to be significantly or seriously affected by the project. The agency or council is at liberty to consider any other matter that is required on the request of the Agency. If after due consideration of all the stipulated matters the agency's screening report states that the project is not likely to cause adverse environmental damage or that such an effect may be mitigated, then the agency may exercise the power to perform their duty or ensure that the mitigation measures prescribed are implemented fully.<sup>43</sup>

Where the report shows significant adverse effect or there are public concerns in respect of the environmental effects, either then the agency will refer the matter to the council for mediation, a review panel or it shall not exercise any function to that effect. Before taking a course of action in relation to a project pursuant to *Section 21(1)*, the Agency shall give the public an opportunity to examine and comment on the screening report and any record that has been filed in the public registry established in respect of the project pursuant to *section 51* of the EIA Act. Consideration should be given to any comments that are filed. The idea of not exercising any function seems to be hanging because it would have been better to send a communication back to the applicant giving reasons for the non-approval of the project. This will help them in re-strategizing for another project or for research to be continued on better ways to make the environmental impact less; or with mitigating options. However, the Act provided for public notice of the outcome for the mandatory projects stipulated under the schedule to the Act.<sup>44</sup> It further provide that the date on which the mandatory study report shall be available to the public; the place at which copies of the report may be obtained and the deadline and address for filing comments on the conclusions and recommendations of the report. 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.<sup>45</sup>

#### **4.0 Challenges to Achieving a Sustainable Environmental Assessment**

The success of the EIA Act is dependent on public participation and legal regulations. Some of the consultants lack expertise while some practitioners in the sector are grossly incompetent. Multiple and conflicting decision making, unstable regulatory regime and poor information provision are part of the

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<sup>41</sup> *Section 16 (1) (b – c) ibid.*

<sup>42</sup> *Section 16 (2)*

<sup>43</sup> *Section 21* of the EIA Act.

<sup>44</sup> *Section 24* of the EIA Act.

<sup>45</sup> *Section 24 (2)* of the EIA Act.



challenges.<sup>46</sup> Another shortcoming is that of bureaucratic processes and flagrant abuse of the entire process by government at the federal and state level. Most of the government-sponsored projects do not comply with the provisions of the act. There is also evidence of lack of strong institutional framework and coordinated strategy for implementation of the provisions, which is a major drawback.<sup>47</sup> Unfortunately, the agency is not able to give coverage to Nigerians by performing optimally. Environmental protection is 'slaughtered at the altar' of companies who pursue profit and bumper production in unsustainable ways that harm the environment.<sup>48</sup> Infrastructural development has been left to hamper environmental protection as governmental agencies and companies manipulate the process of EIA requirement through corruption. Some of these project activities affect the environment adversely and contribute to global warming that have climate change effect. According to Onuora and Nnubia,<sup>49</sup> the EIA is a mere piece in window dressing as the environment remains degraded by projects that were executed without any assessment. They suggested a periodic environmental audit for existing companies to ensure compliance with environmental practices.

## 5.0 Conclusion

The Environmental Impact Assessment process in Nigeria need to be made more sustainable through the involvement of professional environmental consultants and public participation and reviews, in other to ensure that the process is transparent and people have faith in the outcome. The provisions of the Act have the capacity to engender a sustainable environment in Nigeria if only the process is followed and reviewed in a more transparent way. Government and its agencies are known to circumvent the process or evade it completely, thereby executing and approving projects that impacts negatively on the environment.

## 6.0 Recommendations

Environmental Impact Assessment should follow environmental justice principle, as a way of ensuring public participation in decision making on issues affecting a particular community.

Professional environmental assessors should be certified professionals who will be guided by the ethics and professionalism of the profession, so that they can always be called to question at any time they were found to have given unprofessional certification or assessment, this will reduce malpractice and inducement in their call to duty.

The regulatory agencies involved in the process should be streamlined in a way that it becomes less cumbersome and avoid delays in carrying out their duties. They should also shun corruption and be prosecuted at any time they are caught with sharp practices.

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<sup>46</sup> Ozuruigbo, I. and Nnodu, V. C., 'Barriers to Environmental Impact Assessment Implementation for Construction Projects in Nigeria [2023] Research gate, < Doi:10.1108/BEPAM-12-2022-0203 > accessed 2/09/2023.

<sup>47</sup> Nwoke, C., 'Evaluation of Environmental Impact Assessment in Nigeria,' [2013] *Green Journal of Environment Management and Public Safety*, Vol. 2 (1) 22 – 31.

<sup>48</sup> Hirsch, W. Z., *Law and Economics: An Introductory Analysis* (San Diego Academic Press, 1988) 283.

<sup>49</sup> Onuora, Anugbum and Nnubia Okemdi, 'The Effectiveness of Environmental Impact Assessment as an Instrument of Environmental Protection in Nigeria's Oil and Gas Industry' [2020/21] *Chukwuemeka Odumegwu Ojukwu University Journal of Commercial and Property Law*, Vol. 3, No. 1., 117 – 140.