



LAW
ENVIRONMENT AND
DEVELOPMENT
JOURNAL

LEAD

ENVIRONMENTAL IMPACT ASSESSMENT PROCESS FOR OIL, GAS AND MINING PROJECTS IN NIGERIA: A CRITICAL ANALYSIS

Allan Ingelson and Chilenye Nwapi

ARTICLE



VOLUME
10/1

LEAD Journal (Law, Environment and Development Journal)
is a peer-reviewed academic publication based in New Delhi and London and jointly managed by the
School of Law, School of Oriental and African Studies (SOAS) - University of London
and the International Environmental Law Research Centre (IELRC).

LEAD is published at www.lead-journal.org

ISSN 1746-5893

*The Managing Editor, LEAD Journal, c/o International Environmental Law Research Centre (IELRC), International Environment
House II, 1F, 7 Chemin de Balexert, 1219 Châtelaine-Geneva, Switzerland, Tel/fax: + 41 (0)22 79 72 623, info@lead-journal.org*

ARTICLE

ENVIRONMENTAL IMPACT ASSESSMENT PROCESS FOR OIL, GAS AND MINING PROJECTS IN NIGERIA: A CRITICAL ANALYSIS

Allan Ingelson* and Chilenye Nwapi**

This document can be cited as

Allan Ingelson and Chilenye Nwapi, 'Environmental Impact Assessment Process
for Oil, Gas and Mining Projects in Nigeria: A Critical Analysis',
10/1 *Law, Environment and Development Journal* (2014), p. 35,
available at <http://www.lead-journal.org/content/14035.pdf>

Allan Ingelson, Executive Director, Canadian Institute of Resources Law & Associate Professor, MFH 3353,
Faculty of Law, University of Calgary, Calgary, AB, Canada T2N 1N4, Email: allan.ingelson@ucalgary.ca

Chilenye Nwapi, Postdoctoral Fellow, Canadian Institute of Resources Law, MFH 3353, Faculty of Law,
University of Calgary, Calgary, AB, Canada T2N 1N4, Email: enyenwapi@yahoo.ca

Published under a Creative Commons Attribution-NonCommercial-NoDerivs 2.0 License

* Executive Director, Canadian Institute of Resources Law; Associate Professor, University of Calgary Faculty of Law;
LLM, University of Denver, United States; LLB, BSc, University of Calgary, Canada; BA, University of Alberta, Canada.
**Postdoctoral Fellow, Canadian Institute of Resources Law, Faculty of Law, University of Calgary; PhD, University of
British Columbia, Canada; LLM, University of Calgary, Canada; LLB, Imo State University, Nigeria.

TABLE OF CONTENTS

1. Introduction	37
2. Oil and Gas Development in Nigeria	38
3. Environmental Impacts From Oil and Gas Exploration and Production in Nigeria	39
4. Environmental Governance in Nigeria	41
5. EIA Process for Oil and Gas Projects in Nigeria	44
5.1 Evolution	44
5.2 EIAs in the Oil and Gas Industry	45
5.3 Analysis	48
5.3.1 Type of Effects Considered in EIAs	48
5.3.2 Collection of Baseline Data	49
5.3.3 Public Participation	49
5.3.4 Time to Consider EIA Inputs	51
5.3.5 Scope of Appeals Allowed	52
5.3.6 Environmental Management Plan and Post-Assessment Monitoring	52
5.3.7 Multiplicity of Regulators	54
5.3.8 Political Commitment	54
6. Conclusion	55

1

INTRODUCTION

Environmental Impact Assessment (EIA) is a formal process by which a proposed activity with potentially significant environmental, social and economic costs is studied with a view to evaluating its impacts, examining alternative approaches and developing measures to prevent or mitigate the negative impacts.¹ EIAs have emerged as a result of the environmental challenges of energy, mining and economic developments. As Hunter et al. argue, '[o]ne of the primary reasons for conducting [EIAs] is to inform the public of the proposed projects and to engage them in a meaningful dialogue about the potential benefits and environmental and social costs of a proposed activity'.² Equally important is identification and deployment of safeguards to mitigate adverse environmental impacts from the proposed activity.

Although the exact year when the search for oil commenced in Nigeria remains in dispute, the earliest recorded attempt dates back to 1908 when a German company – the Nigeria Bitumen Corporation – explored for oil in the Araromi area between Ijebu Ode in today's Ogun State and Okitipupa in today's Ondo State of Nigeria.³ Early exploration efforts were unsuccessful and were thwarted by the outbreak of the first and second World Wars.⁴ In 1956, Shell, then a sole

concessionaire, struck oil – in commercial quantities – in the little known community of Oloibiri in today's Bayelsa State of Nigeria.⁵ Other finds were later made and were so rapidly developed that by 1958 production had reached 5,100 barrels per day and Nigeria made its first shipment of crude oil to Europe, thrusting Nigeria on to the world oil map.⁶ As oil production rose, the industry developed 'within a changing economic and political environment'.⁷ Economically, the contribution of oil revenue to total government revenue almost quadrupled between 1970 and 1974.⁸ Since then there has been an uninterrupted increase in government dependence on oil revenue, so that today oil accounts for about 80 per cent of total government revenue.⁹

EIA systems have been developing all over the world beginning with the US *National Environmental Policy Act* of 1969,¹⁰ which required EIAs for federally funded or supported projects in the USA that had potential environmental effects. Countries like Canada, Australia, New Zealand, West Germany and France adopted EIA systems in the 1970s.¹¹ The approval of the *EC Directive on Environmental Impact Assessment* in 1985¹² led to the proliferation of EIAs in Europe.

Nigeria entered the league of EIA nations in 1992 following the enactment of its *Environmental Impact*

1 George (Rock) Pring & Susan Y. Noé, 'The Emerging International Law of Public Participation Affecting Global Mining, Energy, and Resources Development', in Donald N Zillman, Alastair R. Lucas & George (Rock) Pring eds, *Human Rights in Natural Resource Development: Public Participation in the Sustainable Development of Mining and Energy Resources* 38 (New York: Oxford University Press, 2002).

2 David Hunter, James Salzman & Durwood Zaelke, *International Environmental Law and Policy* 250 (New York: Foundation Press, 1998).

3 Chilenye Nwapi, *The Primacy of People in Development: Theoretical and Legal Perspectives on Public Participation in Oil and Gas Decision-Making* 46 (Saarbrücken: Lambert Academic Publishing, 2012) [Nwapi].

4 *Id.*, at 47-48. See also Y. Omorogbe, 'The Legal Framework for the Production of Petroleum in Nigeria', 5 *J Energy & Nat Resources* L 274 (1987) [Omorogbe].

5 See Nwapi, note 3 above, at 49.

6 *Id.*, at 50. See also Lawrence Atsegbua, 'The Development and Acquisition of Oil Licenses and Leases in Nigeria' 23/1 *OPEC Review* 57 (1999).

7 Chilenye Nwapi, 'A Legislative Proposal for Public Participation in Oil and Gas Decision-Making in Nigeria' 54/2 *JAL* 184, 189 (2010).

8 Jędrzej Georg Frynas, 'Corporate and State Responses to Anti-Oil Protests in the Niger Delta' 100 *Afr Aff* 29 (2001) [Frynas (2001)].

9 Saka Luqman & Fatima Motunrayo Lawal, 'The Political Economy of Oil and the Reform Process in Nigeria's Fourth Republic: Successes and Continued Challenges' 2/2 *J Arts, Sci & Commerce* 59, 66 (2011).

10 42 USC §§ 4321.

11 Christopher Wood, *Environmental Impact Assessment: A Comparative Review* 7, 8 (London: Longman Scientific & Technical, 1995) and Olusegun A. Ogunba, 'EIA Systems in Nigeria: Evolution, Current Practice and Shortcomings' 24 *Environ Impact Ass Rev* 643, 644 (2004).

12 Council Directive 85/337/EEC (1985) OJ L175/40, amended by Council Directive 97/11/EC (1997) OJ L73/5.

Assessment Act.¹³ Although the Act requires the completion of EIAs before a variety of projects can proceed, there is a general perception that EIAs are seldom carried out in Nigeria. A 2007 study by Yusuf, Agarry and Durojaiye found that in the mining sector 'there ha[d] been zero submission of EIAs', despite huge investments and the fact that mining had been taking place in many parts of the country for decades.¹⁴ The study also found that massive road construction, innumerable water wells drilled and communication mast erections are proceeding throughout the country without the stipulated EIA.¹⁵

This article examines legislation and practice concerning the environmental impact assessment (EIA) process for oil and gas projects in Nigeria. It argues that although EIAs have become a standard legal requirement for all oil, gas and mining projects in Nigeria, not much is achieved in terms of managing the impacts of these projects. The reasons are legion. They range from the lack of political commitment on the part of the government to enforce environmental standards, the scarcity of baseline information against which the environmental impacts can be assessed, and non-implementation, or lack of committed implementation, of EIA reports. The result is that operators carry out EIAs to satisfy the dry letters of regulatory provisions for the purpose of obtaining operational permits. The article recognizes that some improvements have been made in the EIA system relevant to oil and gas development, especially since the inauguration of democracy in Nigeria in 1999. It submits that those changes have not produced any meaningful improvement due to the same factors outlined above. However, the article argues that the adoption of the *Freedom of Information Act* in 2010 has the potential to strengthen the EIA system in Nigeria since the Act makes it possible for citizens to have access to important environmental information that would put both the government and the oil and gas operators on watch regarding the carrying out of EIAs.

13 Decree No 86 of 1992 [EIA Act].

14 R.O. Yusuf, S.E. Agarry & A.O. Durojaiye, 'Environmental Impact Assessment Challenge in Nigeria' 2/2 *J Environ Sc & Technol* 75, 78 (2007).

15 *Id.*

2 OIL AND GAS DEVELOPMENT IN NIGERIA

Nigeria is a federation consisting of 36 states and the federal capital territory of Abuja.¹⁶ With a population of about 170 million people,¹⁷ it consists of more than 250 ethnic groups.¹⁸ Nigeria enjoys abundant natural resources. It is the world's twelfth largest producer of crude oil.¹⁹ In previous years it was a major cocoa producer as well as a major exporter of palm oil, palm kernel and groundnuts.²⁰ For at least the past three decades, however, it has been almost completely dependent on crude oil revenue with other natural resources having little or no economic importance. Nigeria is one of the most frequently cited examples of the natural resource curse because of the failure of its incredible oil wealth to generate prosperity for residents and instead paradoxically increase 'the number of people living on less than \$1 per day'.²¹ The resource curse occurs all too often because the rents from mineral resource development are used to avoid the need to compete internationally in other sectors, like agriculture and manufacturing.²²

16 *Constitution of the Federal Republic of Nigeria, 1999*, 29 May 1999, available at <http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm> [1999 Constitution], s 2(2).

17 Central Intelligence Agency (CIA), *The World Factbook*, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/ni.html>.

18 *Id.*

19 See US Energy Information Administration, 'Top World Producers 2011', available at <http://www.eia.gov/countries/index.cfm>.

20 Yinka Omorogbe, 'The Legal Framework for Public Participation in Decision-making on Mining and Energy Development in Nigeria: Giving Voices to the Voiceless' in Zillman et al. eds, note 1 above, at 558.

21 See Jim Lehrer, 'Analyzing the Natural Resource Curse', PBS, available at http://www.pbs.org/newshour/extra/teachers/lessonplans/world/conflict_diamonds_natural_resource_curse.pdf.

22 Richard M. Auty, 'Industrial Policy Reform in Six Large Newly Industrialized Countries: The Resource Curse Thesis' 22/1 *World Development* 11, 12 (1994). See also C. Murphy, 'The Most Twisted Economy on the Planet', *Fortune*, 15 March 1999, pages 17-18.

The surge in government petroleum revenue in the 1970s 'coincided with the increased centralisation of political power in Nigeria'.²³ With regard to the oil and gas industry, Frynas observes that 'the centralisation of power meant that the affairs of the local people became increasingly remote from the decision-makers in the industry'.²⁴ In 1971 the Nigerian National Oil Corporation (NNOC) (which later changed into the Nigerian National Petroleum Corporation (NNPC)) was created. The federal government of Nigeria, represented by the NNOC, became a joint-venture partner with the foreign oil companies. Thus, while the oil companies continued their operations in the local communities, they 'worked much more closely with the national government than before'.²⁵ This new relationship between the oil companies and the federal government was consolidated through the enactment of the *Land Use Act*²⁶ in 1978, which vested the ownership of all land in the state²⁷ and permitted the compulsory acquisition of land by the state in the 'overriding public interest'.²⁸ The overriding public interest includes the 'requirement of the land for mining purposes or oil pipelines and for purposes connected therewith'.²⁹

The following characteristics of oil and gas development in Nigeria equally deserve mention. Ownership of oil and gas is vested in the federal government.³⁰ This ownership is absolute and state governments, local governments, individuals and other legal entities are excluded from the possibility of owning the resources. Being an absolute owner, the federal government has the disposition right over the mineral resources. It exercises this right through various types of agreements, including concessions,³¹ joint ventures,³² production sharing contracts³³ and service contracts.³⁴

3

ENVIRONMENTAL IMPACTS FROM OIL AND GAS EXPLORATION AND PRODUCTION IN NIGERIA

The environmental impacts from oil and gas projects are well known. They can include negative impacts

23 Frynas (2001), note 8 above, at 30.

24 *Id.* See also Kwadwo Appiagyei-Atua, 'Self-Determination v. State Sovereignty: A Critique of the African Commission's Decision in the Ogoni Case', in Joshua Castellino & Niamh Walsh eds, *International Law and Indigenous Peoples* 313, 314 (Leiden: Martinus Nijhoff, 2005).

25 Frynas (2001), note 8 above, at 30.

26 Cap 202, LFN 1990.

27 *Id.*, at s 1.

28 *Id.*, at s 28.

29 *Id.* For an extensive survey of the history of oil and gas development in Nigeria, see Augustine A. Ikein, *The Impact of Oil on a Developing Country: The Case of Nigeria* (New York: Praeger, 1990). See also Jedrzj Georg Frynas, *Oil in Nigeria: Conflict and Litigation between Oil Companies and Village Communities* (Hamburg: LIT, 1999) [Frynas (1999)]; Wilson Ndarake Akpan, *Between the Sectional and the National: Oil, Grassroots Discontent and Civic Discourse in Nigeria* (A Thesis Submitted in Fulfilment of the Requirements of the Degree of Doctor of Philosophy, Department of Sociology, Rhodes University, South Africa, October 2005), available at <http://eprints.ru.ac.za/249/1/Akpan-PhD.pdf> and Fidelis Allen, *Implementation of Oil-Related Environmental Policy in Nigeria: Government Inertia and Conflict in the Niger Delta* (A Thesis Submitted in Accordance with the Requirements for the Degree of Doctor of Philosophy in the Subject of Political Science, University of Kwazulu Natal, South Africa, March 2010), available at http://researchspace.ukzn.ac.za/xmlui/bitstream/handle/10413/1190/Allen_F.pdf?sequence=1.

30 1999 Constitution, note 9 above, at s 44(3): '[T]he entire property in and control of all minerals, mineral oils and natural gas in under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly'.

31 A concession is a written authorisation granted to a person who wishes to undertake any activity for the exploration and production of mineral oils. See the *Petroleum Act*, 1969, Cap 350, LFN 1990, s 2.

32 A joint venture is an arrangement embedded into a concession that enables the federal government to participate in the exploration and production activities on terms to be agreed upon between the federal government and the concessionaire. See the *Petroleum Act*, *id.*, at Sch 1, para 34(a).

33 A production sharing contract is an arrangement whereby the operating company and the government 'share the output of the operation in predetermined [proportions]'. Omorogbe, note 17 above, at 279. See the *Deep Offshore and Inland Basin Production Sharing Contracts (Amendment) Decree*, Decree No 26 of 1999.

34 A service contract is similar to a production sharing contract. Its main distinguishing features relate to the duration of the contract (a service contract has five-year duration) and the manner of remuneration of the contractor (a service contractor is remunerated in cash rather than in kind). See Omorogbe, note 17 above, at 281.

on air, land and water quality from greenhouse gas emissions, oil spills and effluent discharges. During exploration, seismic lines can disturb significant amounts of vegetation. During production, there can be a considerable amount of dredging and filling of the waterways, leading to acidification of water bodies, erosion and spills. Five decades after oil was discovered in the Niger Delta in Nigeria, ‘an independent team of experts from Nigeria, the UK and the United States concluded that the Niger Delta is one of the world’s most severely petroleum-impacted ecosystems’.³⁵ In river and marine areas, for example, tanker leaks have occurred. The 2006 Niger Delta Human Development Report indicates that between 1976 and 2001 there were a total of 6817 oil spills in the Delta region of Nigeria, resulting in a loss of about three million barrels of oil.³⁶ The report noted that oil and gas extraction has had a severe toll on communities in the Delta region³⁷ and that ‘there is a strong feeling in the region that the degree and rate of degradation are pushing the delta towards ecological disaster’.³⁸ In its 2011 environmental report on Ogoniland, the United Nations Environment Programme stated that pollution of the soil by hydrocarbons can occur in several ways, ‘from natural seepage of hydrocarbons in areas where petroleum is found in shallow reservoirs, to accidental spillage of crude oil on the ground’ and that no matter the source of the contamination, the hydrocarbons alter the soil’s ‘physical and chemical properties’.³⁹

In a comprehensive assessment of the effects of gas flaring in Nigeria in 1996, Oluwole et al state that

the levels of concentration of volatile oxides of carbon, nitrogen, sulphur oxide and total particulates exceeded levels allowed by the Nigerian Federal Environmental Protection Agency (FEPA).⁴⁰ In a similar assessment, Emoyan et al note that ‘acidified rain water [caused by gas flaring] does not only corrode roofing sheets, monuments and other economic structures, it can also damage vegetation and contaminate ponds and lakes which are the sources of livelihood to overlying indigenous rural communities in the delta’.⁴¹ Other studies have shown a positive correlation between effluents from oil refineries in the Niger Delta region and the well-being of aquatic life in the region. For example, Onwumere and Oladimeji have documented the accumulation of heavy metals from refinery effluents in the NNPC Refinery in Kaduna, northern Nigeria.⁴² Otukunefor and Biukwu investigated the quality of effluents from the NNPC refineries in Port Harcourt, Rivers State, and its impact on the physicochemical quality of a river estuary in Okrika, Rivers State, and reported that effluent discharges and unsustainable methods of petroleum extraction resulted in increased contamination levels in aquatic ecosystems.⁴³ They observe that ‘[t]hrough the compositions of the effluents are regulated by various laws, it is not known whether they comply with the legally accepted toxicant levels for refineries in Nigeria’.⁴⁴ Emoyan et al have also confirmed the existence of high levels of heavy metal contamination

35 *Report on Niger Delta Natural Resource Damage Assessment and Restoration Project* of the Federal Ministry of Environment; Nigerian Conservation Foundation; WWF UK and CEESP-IUCN Commission on Environmental, Economic, and Social Policy, 4, 31 May 2006, available at http://cmsdata.iucn.org/downloads/niger_delta-natural_resource_damage_assessment_and_restoration.

36 United Nations Development Programme (UNDP), *Niger Delta Human Development Report* 76 (Abuja: UNDP, 2006), available at http://hdr.undp.org/en/reports/national/africa/nigeria/nigeria_hdr_report.pdf.

37 *Id.*, at 73.

38 *Id.*, at 74.

39 United Nations Environment Programme (UNEP), *Environmental Assessment of Ogoniland* 37 (Nairobi: UNEP, 2011), available at http://postconflict.unep.ch/publications/OEA/UNEP_OEA.pdf [UNEP Report].

40 A.F. Oluwole et al, *Impact of the Petroleum Industry on Air Quality in Nigeria*, (Paper presented at the 8th Biennial International Seminar on the Petroleum Industry and the Nigerian Environment, Port Harcourt, 17-21 November, 1996 (cited in O.O. Emoyan, I.A. Akporborie & E.E. Akporhonor, ‘The Oil and Gas Industry and the Niger Delta: Implications for the Environment’ 12/3 *J Appl Sci Environ Manage* 29, 31 (2008)). FEPA was established via the *Federal Environmental Protection Agency Act*, Cap 131, LFN 1990 [FEPA Act].

41 *Id.*

42 B.G. Onwumere & A.A. Oladimeji, ‘Accumulation of Metals and Histopathology in *Oreochromis niloticus* Exposed to Treated NNPC Kaduna (Nigeria) Petroleum Refinery Effluent’ 19 *Ecotoxicol & Environ Safety* 123-134 (1990).

43 T.V. Otukunefor & C. Biukwu, ‘Impact of Refinery Influent on Physicochemical Properties of a Water Body on the Niger Delta’ 3/1 *Appl Ecol & Environ Res* 61, 70 (2005).

44 *Id.*, at 61.

in River Ijana – an effluent receiving stream that flows by the NNPC refinery in Warri, Delta State.⁴⁵

It is useful to point out that the environmental impacts from oil and gas development in Nigeria also have cross-border features. Oil and gas infrastructure constructed for the transportation of refined or unrefined oil from one state of the country to another, and, in the case of the West African Gas Pipeline, from the Niger Delta region (South-South Nigeria) to Lagos (South-West Nigeria) and then to Ghana, can affect communities where oil exploration and production does not occur. Government approval and construction of these pipelines raise significant environmental concerns for the communities along the pipeline route.

4 ENVIRONMENTAL GOVERNANCE IN NIGERIA

The question of which level of government has the power to regulate the environment is not clearly outlined in the Nigerian Constitution. There are two sets of legislative lists under the Constitution: the Exclusive Legislative List, under which the federal government alone is granted powers to legislate, including matters incidental to the matters under the list,⁴⁶ and the Concurrent Legislative List, under which both the federal and the state governments are granted power to legislate, including matters incidental to the matters under the list.⁴⁷ In the event of a conflict between a federal law and a state law enacted pursuant to the Concurrent Legislative List, the doctrine of paramountcy applies to give primacy to federal legislation.⁴⁸ In addition, it is accepted in

Nigeria that any item that cannot be pigeonholed into either the Exclusive Legislative List or the Concurrent Legislative List automatically falls under a third list called the Residual List. This list – a coinage of the judiciary – is not named in the Constitution. But it is recognised in Nigeria as a valid source of legislative power, one would conclude, as a matter of constitutional convention, since this is how it has been consistently treated in both jurisprudence⁴⁹ and the literature.⁵⁰

But while environmental protection is not assigned to either the Exclusive Legislative List or the Concurrent Legislative List, section 20 of the 1999 Constitution provides that '[t]he state shall protect and improve the environment and safeguard the water, air, land, forest and wildlife of Nigeria'. This provision is however found in Chapter II of the Constitution, the non-justiciable 'Fundamental Objectives and Directive Principles of State Policy'.⁵¹

49 See, for instance, *Attorney General of Qgun State v Abeniagba* (2002) 2 WRN 52 at 77 (SC) (defining Residual List (per Bello JSC) as 'what was left after the matters in the Exclusive and Concurrent Legislative lists and those matters which the Constitution expressly empowers the Federation and the State to legislate upon have been subtracted from the totality of the inherent and unlimited powers of a sovereign Legislature' and declaring that '[t]he Federation has no power to make laws on the residual matters'); *AG Abia State v AG Federation* (2006) SC 99/2005, SC 121/2005, SC 216/2005 (Judgment of 7 July 2006) (noting that '[t]he Constitution of the Federal Republic of Nigeria, 1999, like most Constitutions, does not provide for a residual list. And that is what makes the list residual. The expression emanates largely from the judiciary, that is, it is largely a coinage of the Judiciary to enable it exercise its interpretative jurisdiction, as it relates to the Constitution'.) and *Faweihinmi v Babangida*, SC 360/2001 (Judgment of 31 January 2003).

50 See, for instance, S. Gozie Ogbodo, 'Environmental Protection in Nigeria: Two Decades after the Koko Incident' 15 *Ann Surv Int'l & Comp L* 1, 9 (2009) [Ogbodo]; A.A. Adesopo & A.S. Asaju, 'Natural Resource Distribution, Agitation for Resource Control Right and the Practice of Federalism in Nigeria' 15/4 *J Hum Ecol* 277 (2004); Ombolaji Adewale, 'Oil Spill Compensation Claims in Nigeria: Principles, Guidelines and Criteria' 33/1 *JAL* 91, 99 (1989) and Margaret T. Okorodudu, 'Nigeria: Analysis of Federal and State Taxing Powers' 11 *Int'l Tax J* 305, 307 (1985).

51 Section 6(6)(c) of the Constitution ousts the jurisdiction of the courts from considering any question as to whether or not the State has complied with the provisions of Chapter II of the Constitution.

45 O.O. Emoyan et al., 'Water Quality Assessment of River Ijana, Ekpan, Warri, Delta State, Nigeria' 31 *J Chem Soc's, Nigeria*, 154-160 (2006). See also O.O. Emoyan, F.E. Ogban & E. Akarah, 'Evaluation of Heavy Metals Loading of River Ijana, Warri Nigeria' 10/2 *J Appl Sci & Environ Manage* 121-127 (2006).

46 1999 Constitution, note 9 above, at ss 4(2) and (3).

47 *Id.*, at s 4(4)(a).

48 *Id.*, at s (4)(5).

Given the non-listing of environmental protection under the Constitution, it is assumed that environmental protection falls under the Residual List and therefore is outside the competence of the federal legislature. But a closer look at the Constitution reveals that this assumption is not unerringly accurate. The existence of federal environmental laws, which has for decades been unchallenged, undermines this assumption.

Jurisdiction over 'mines and minerals, including oil fields, oil mining, geological surveys and natural gas', including matters incidental to these subjects, resides with the federal government pursuant to the Exclusive Legislative List.⁵² Environmental regulation can be deemed as a matter incidental to this power, provided it relates to environmental protection connected with 'mines and minerals, including oil fields, oil mining, geological surveys and natural gas'. It is therefore arguable that the regulation of the environmental effects of 'mines and minerals, including oil fields, oil mining, geological surveys and natural gas' falls exclusively to the federal legislature since these are incidental to a matter under the Exclusive Legislative List. Environmental matters incidental only to items under the Concurrent Legislative List fall to both levels of government (subject to the paramountcy doctrine) while those that are not connected with items on either list will fall under the jurisdiction of the state legislatures.

In the exercise of their residual powers, the state legislatures have enacted legislation governing environmental matters within their respective territories and have established what have been described as 'complementary enforcement agencies',⁵³ typically called State Environmental Protection Agencies as well as state ministries of environment. As noted by Fagbohun, this trend has been justified on the basis that 'the substantial degree of activities touching the use of these natural resources and the negative environmental fallouts take place in the states and localities'.⁵⁴ It is to be

expected, however, from a constitutional standpoint, that these state environmental laws are limited in their scope of application and cannot extend to environmental matters arising from activities reserved exclusively under federal jurisdiction, such as mines, minerals, oil and gas. Therefore EIAs for oil and gas projects in Nigeria are undertaken under federal environmental laws.

Institutionally, the Department of Petroleum Resources (DPR) – an arm of the federal Ministry of Petroleum Resources – plays a key role in the enforcement of environmental laws in Nigeria. The DPR is empowered to ensure that oil and gas operators in Nigeria do not destroy the environment in the course of their operations. It has the power to issue licenses/permits for oil and gas operations as well as to establish environmental guidelines and standards for oil and gas operations as required by the *Petroleum Act* of 1969.⁵⁵ In 1992 the DPR issued the 'Environmental Guidelines and Standards for Petroleum Industry in Nigeria' revised in 2002, that form the basis for most environmental regulation of the oil and gas industry in Nigeria.⁵⁶

In 1988, after discovering that an Italian company had illegally dumped toxic waste in a small village in Koko, Delta State of Nigeria,⁵⁷ the federal government established the Federal Environmental Protection Agency (FEPA) as the agency responsible for the protection of the Nigerian environment.⁵⁸ FEPA was empowered to:

enter into agreements with public or private organisations and individuals to develop, utilise, co-ordinate and share environmental monitoring

⁵² *Id.*, at Item 39, Schedule II, Part 1.

⁵³ Ogbodo, note 50 above, at 9.

⁵⁴ O. Fagbohun, 'Reappraising the Nigerian Constitution for Environmental Management' 1/1 *Ambrose Ali Univ LJ* 44 (2002).

⁵⁵ See Tari Dadiowei, 'Environmental Impact Assessment and Sustainable Development in the Niger Delta: The Gbarain Oil Field Experience', Niger Delta Economics of Violence, Working Paper No 24, 9, 2009, Institute of International Studies, University of California, Berkeley, available at http://oldweb.geog.berkeley.edu/ProjectsResources/ND%20Website/NigerDelta/WP/Dadiowei_24.pdf.

⁵⁶ UNEP Report, note 39 above, at 36.

⁵⁷ Rosemary Adomokai & William R. Sheate, 'Community Participation and Environmental Decision-Making in the Niger Delta' 24/5 *Environ Impact Asses Rev* 498 (2004).

⁵⁸ FEPA Act, note 40 above, at ss 1 & 4.

programmes, research effects, basic data on chemical, physical and biological effects of various activities on the environment and other environmentally related activities as appropriate.⁵⁹

In 1999, however, FEPA was dissolved by an executive fiat and its responsibilities transferred to the Federal Ministry of Environment (FME) created the same year.⁶⁰ The creation of the FME was followed by the establishment of the National Oil Spill Detection and Response Agency (NOSDRA) in 2006⁶¹ 'with responsibility for preparedness, detection and response to all oil spillages in Nigeria'⁶² and to coordinate and implement the National Oil Spill Contingency Plan (NOSCP) initiated the same year, in accordance with international standards.⁶³ NOSCP is a blueprint for checking oil spills through containment, recovery and remediation/restoration. NOSDRA also provided for the creation of the National Control and Response Centre with responsibility to coordinate all reports concerning oil spill incidents in Nigeria and to 'serve as the command and control centre for compliance monitoring of all existing legislation on environmental control, surveillance for oil spill detection and monitoring and the coordination of responses required in plan activations'.⁶⁴

At the state level, there are Ministries of Environment established in every state of the federation. Local governments – the third tier of government – do not have a *de jure* function in the environmental governance of the oil industry. But they do have a *de facto* role,⁶⁵ especially when conflicts arise in connection with the activities of the oil companies.

The judiciary also has a critical role to play in dealing with disputes that arise over compensation claims relating to the environmental effects of oil operations, whether between communities or individuals and the oil companies, or between communities or individuals and the government. It also considers criminal sentences relating to environmental offences.⁶⁶ For instance, the courts have held that a village ravaged by oil spills could sue the corporate tortfeasor based on the tort of negligence as well as on the rule in *Rylands v Fletcher*.⁶⁷ In a series of other cases, the courts upheld the tort of nuisance as a viable liability theory in environmental cases against oil and gas companies.⁶⁸ In the past, a major obstacle to such cases was the issue of standing. In *Oronto Douglas v Shell Petroleum Development Company Ltd and 5 Others*,⁶⁹ the plaintiff – an environmental activist – sought to compel Shell to comply with the provisions of the EIA before commencing a liquefied natural gas project. The court dismissed the suit on the ground of lack of standing. Following this decision, environmental activists resorted to sponsoring victims of environmental abuses to bring such actions.⁷⁰ However, following the amendment of the fundamental rights enforcement procedure rules in 2009, the rule of standing was liberalized to enable all classes of litigants, including the poor and illiterates to have access to justice. Courts are required to 'encourage and welcome public interest litigations in the human rights field and no human rights case may be dismissed or struck out for want

59 *Id.*, at s 5(e).

60 Nwapi, note 16 above, at 129.

61 *National Oil Spill Detection and Response Agency (Establishment) Act*, No 15 of 2006 [NOSDRA Act].

62 *Id.*, at s 1(1).

63 *Id.*, at s 5. See also, Federal Ministry of Environment, 'NOSDRA', available at <http://environment.gov.ng/index.php/about-moe/agencies-parastatals/nosdra>

64 NOSDRA Act, note 61 above, at s 18(1).

65 UNEP Report, note 39 above, at 36.

66 *Id.*

67 *Shell Petroleum Development Nigeria Ltd v HRH Chief G.B.A. Tiebo VII and Others*, (1976) 4 N.W.L.R (Pt. 445) 657.

68 See, for instance, *Sismograph Service (Nigeria) Limited v Ogheni*, (1976) 4 SC 85; *Shell Petroleum Development Company of Nigeria Limited v Chief Otoko and Others*, (1990) 6 WLR (Pt. 159) 693; *Adediran and Another v Interland and Transport Limited*, (1991) 9 N.W.L.R (pt. 241) 155.

69 Unreported Suit No FHC.CS/573/93 (Delivered 17 February 1997).

70 Emeka Polycarp Amaechi, 'Litigating Right to Healthy Environment in Nigeria: An Examination of the Impacts of the Fundamental Rights (enforcement Procedure) Rules 2009, in Ensuring Access to Justice for Victims of Environmental Degradation' 6/3 *Law, Environment & Development Journal* 330 (2010).

of locus standi'.⁷¹ The rule explicitly grants 'human rights activists, advocates or groups as well as any non-governmental organisations, [to] institute human rights application on behalf of any potential applicant'.⁷² These provisions have strengthened the role of the courts in environmental protection in Nigeria.

After reviewing the jurisdictional issues and command and control of environmental regulatory regime, this article will now consider the EIA framework.

5 EIA PROCESS FOR OIL AND GAS PROJECTS IN NIGERIA

5.1 Evolution

It was in response to oil and gas development that the idea of EIAs evolved in Nigeria. The federal government concluded that the oil and gas industry was the only industry that called for close environmental scrutiny.⁷³ Although oil exploration activities in Nigeria began in 1908, and production started in the 1950s, it was not until the early 1990s that environmental planning considerations through EIAs became part of the decision-making process in the development of Nigeria's oil and gas resources. It is noteworthy and curious that the same operators in the Nigerian oil and gas industry who operated during the first four decades after the discovery of oil in Nigeria without carrying out EIAs, were the same operators who were carrying out EIAs in their home countries to avoid or mitigate the adverse environmental impacts of their operations. While the absence of regulatory requirements in Nigeria might be cited as the reason for the operators' failure to carry out EIAs in Nigeria, the fact that EIAs had

become standard practice in their home countries should have created a moral obligation on the operators to carry out EIAs notwithstanding the absence of mandatory legal requirements.

The earliest attempt to require EIAs in Nigeria appears to have arisen in the 1981-1986 Five Year Development Plan released by the federal government. A provision in the plan states that 'feasibility and viability studies for all projects, both private and public should be accompanied by environmental impact assessments'.⁷⁴ But this provision was not followed up with legislative formalisation. In 1990, FEPA published its National Policy on the Environment. The same year, the National Council on the Environment declared that EIA was a necessary requirement for an effective implementation of the National Plan on the Environment released by FEPA.⁷⁵ The Council directed that EIA be made mandatory for all development projects beginning from March 1991.⁷⁶ In 1991, the DPR issued its Environmental Guidelines and Standards for the Petroleum Industry in Nigeria, which provided, for the first time, details of EIA processes for the Nigerian government.⁷⁷ In 1992, two separate pieces of EIA legislation were promulgated. The first related to urban and regional planning: the *Town Planning Act*; while the second, the *EIA Act*,⁷⁸ applied to some projects in the oil and gas industry. With regard to evolution of the EIA process in Nigeria and its application to the Nigerian oil and gas industry, in 2002 Aghan, Irechukwu and Zagi report that before 1991, less than ten environmental studies' reports, which included two pre-project and five post-impact

71 *Fundamental Rights (Enforcement Procedure) Rules, 2009*, Preamble, para 3(e).

72 *Id.*

73 Olusegun A. Ogunba, 'EIA Systems in Nigeria: Evolution, Current Practice and Shortcomings' 24 *Environ Impact Ass Rev* 643, 647 (2004).

74 M.T. Okorodudu-Fabura, *Law of Environmental Protection Materials and Text* (Ibadan: Caltop Publications, 1988) cited in Ogunba, note 73 above, at 648.

75 *Id.*, at 648-649.

76 *Id.*, at 649.

77 G.U. Aghan, D.O. Irechukwu & M.M Zagi, 'Environmental Impact Assessment and the Nigerian Oil Industry: A Review of Experiences and Learnings' (Paper presented at the international conference on Health, Safety and Environment in Oil and Gas Exploration and Production, organized by Society of Petroleum Engineers (SPE), Kuala Lumpur 20-22 March 2002), available at <http://www.onepetro.org/mslib/servlet/onepetroreview?id=00074074#>.

78 EIA Act, note 6 above.

environmental studies, relating to oil spill and blowouts, were carried out in Nigeria.⁷⁹ Between 1991 and 2002, over 200 studies had been carried out.⁸⁰ Ogunba describes the evolution of EIA in Nigeria as one 'from reactive control measures to a proactive EIA system'.⁸¹ We will now discuss the current EIA legislation adopted in 1992.

5.2 EIAs in the Oil and Gas Industry

The EIA Act principally governs EIAs for the oil and gas industry in Nigeria. Section 1 thereof sets out its objectives:

- (a) to establish before a decision taken (sic) 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 that may likely or to a significant extent affect the environment or have environmental effects on those activities shall first be taken into account;
- (b) to promote the implementation of appropriate policy in all Federal Lands (however acquired) States and Local Government Areas consistent with all laws and decision making processes through which the goal and objective in paragraph (a) of this section may be realised;
- (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 towns and villages.

⁷⁹ Aghan et al., note 77 above.

⁸⁰ *Id.*

⁸¹ Ogunba, note 4 above, at 649.

The Act requires that where the extent, nature or location of a proposed project or activity is such that it is likely to have a significant effect on the environment, an EIA must be undertaken.⁸² It lists projects for which an EIA *must* be carried out, the circumstances in which it shall not be required and circumstances in which it may not be required.⁸³ Projects for which an EIA must be carried out include mining, petroleum, power generation and transmission.⁸⁴ The mining projects include:

- a) Mining of materials in new areas where the mining lease covers a total area in excess of 250 hectares;
- b) Ore processing, including concentrating for aluminum, copper, gold or tantalum; and
- c) Sand dredging involving an area of 50 hectares or more.⁸⁵

The petroleum projects include:

- a) Oil and gas field development;
- b) Construction of offshore pipelines in excess of 50 kilometres in length;
- c) Construction of oil and gas separation, processing, handling, and storage facilities;
- d) Construction of oil refineries; and
- e) Construction of product depots for storage or petrol, gas or diesel (excluding service stations) which are located within three kilometres of any commercial, industrial or residential areas and which have a combined capacity of 60,000 barrels or more.⁸⁶

⁸² EIA Act, note 6 above, s 2(2).

⁸³ *See* the Schedule to the Act.

⁸⁴ Others include agriculture, airports, drainage and irrigation, fisheries, forestry, housing, industry, infrastructure, land reclamation, ports, quarries, transportation, railways, resort and recreational development, waste treatment and disposal, and water supply.

⁸⁵ Schedule to the EIA Act, Item 11.

⁸⁶ *Id.*, at Item 12.

Power generation and transmission projects include:

- a) Construction of steam generation power stations burning fossil fuels and having a capacity of more than ten megawatts;
- b) Dams and hydroelectric power schemes with either or both of the following:
 - i. dams over fifteen metres high and ancillary structures covering a total area in excess of 40 hectares; and
 - ii. reservoirs with a surface area in excess of 400 hectares;
- c) Construction of combined cycle power stations; and
- d) Construction of nuclear-fueled power stations.⁸⁷

However, certain projects, including the below listed, are exempted from EIAs:

- a) Projects the President or the Council of States is of the opinion that their environmental effects are likely to be minimal;
- b) Projects that are to be carried out during a national emergency for which temporary measures have been taken by the Government; and
- c) Projects that are to be carried out in response to circumstances that, in the opinion of FEPA, are in the interest of public health or safety.⁸⁸

The circumstances in which an EIA *may* not be required are difficult to discern from the provisions of section 15(2) of the Act which states: 'For greater certainty, an EIA may not be required where the Federal, State or Local Government exercises power or performs a duty or function for the purpose of enabling projects to be carried out' if: (a) the project

has been identified at the time the power is exercised or the duty or function is performed; and (b) the Federal, State or Local Government has no power to exercise any duty or perform functions in relation to the projects after they have been identified.

The EIA procedure itself consists of seven stages: (1) Project proposal, (2) Screening, (3) Scoping, (4) Draft EIA Report and Review Process, (5) Final EIA Report, (6) Decision-Making, and (7) Project Implementation. At the first stage, the proponent of the project submits a project proposal to the Federal Ministry of Environment (Ministry). The proposal shall include a land use map and all relevant information concerning the project, whereupon the Ministry shall issue the proponent guidelines that will facilitate the EIA process.⁸⁹ The second stage (the screening stage) involves an examination of the project by the Ministry for the purpose of determining whether the project is one in which an EIA is mandatorily required, is exempted, or one in which an EIA may not be carried out. Given the nature of oil and gas exploration and production, as well as mining development, it is not likely that the exemption will be applied to oil, gas and mining projects. This is because oil and gas exploration and production, as well as mining development, usually have more than minimal environmental effects, cannot plausibly constitute an emergency, nor can it plausibly be in the interest of public health and safety to explore for and produce mineral oil. The Ministry is required to complete this process within twenty days of receipt of the project proposal.⁹⁰

When the Ministry determines that an EIA is required, or may be required (and decides that it should be carried out), the project proponent is required to map out the scope of the intended EIA. This involves an identification of the potential impacts of the project, qualifying those impacts as beneficial or as adverse.⁹¹ The project proponent submits the result of the scoping exercise to the

⁸⁷ *Id.*, at Item 13.

⁸⁸ EIA Act, note 6 above, at s 15(1).

⁸⁹ Femi Olokesusi, 'Legal and Institutional Framework of Environmental Impact Assessment in Nigeria: An Initial Assessment' 18 *Environ Impact Asses Rev* 168 (1998).

⁹⁰ *Id.*

⁹¹ M.A. Akintunde & Akin Olajide, 'Environmental impact assessment of Nigerian National Petroleum Corporation (NNPC) Awka Mega Station' 2/4 *Am J Sc & Ind Res* 511, 518 (2011).

Ministry and, depending on its outcome and the degree of public interest in the project, the Ministry may require the project proponent to undertake further studies of the project and may arrange a public hearing. The project proponent shall then conduct an EIA in accordance with a terms of reference agreed to with the Ministry.⁹²

The fourth stage consists of the project proponent's submission of a draft EIA report to the Ministry and the Ministry's review of the report. The Ministry shall inform the project proponent of the selected review method. The review process may involve site visits, public hearing, or mediation. The Ministry shall, within 60 days of receipt of the project proponent's submissions, communicate its comments to the project proponent, which may require amendments to the project.⁹³

The fifth stage is the submission of the final EIA report by the project proponent. The report is to be submitted within six months of the project proponent's receipt of the Ministry's comments on the initial draft. Section 4 of the EIA Act requires that the report include the following, at a minimum:

- a) a description of the proposed activities;
- b) a description of the potentially affected environment including specific information necessary to identify and assess the environmental effects of the proposed activities;
- c) a description of the practical activities, as appropriate;
- d) an assessment of the likely or potential environmental impacts on the proposed activity and the alternatives, including the direct or indirect cumulative, short-term and long-term effects;
- e) an identification and description of measures available to mitigate adverse environmental impacts of

the proposed activity and assessment of those measures;

- f) an indication of gaps in knowledge and uncertainty which may be encountered in preparing the required information;
- g) an indication of whether the environment of any other State, Local Government Area or areas outside Nigeria is likely to be affected by the proposed activity or its alternatives;
- h) a brief and non-technical summary of the information provided under paragraphs (a) to (g) of this section.

Next is the approval stage of the final EIA report. The approving authority is a technical committee of the Ministry.⁹⁴ The EIA Act expressly requires the participation of the public at this stage: 'Before the [Ministry of Environment] provides a decision on an activity to which an environmental assessment has been prepared, the Agency shall give government agencies, members of the public, experts in any relevant discipline and interested groups an opportunity to comment on the environmental impact assessment of the activity'.⁹⁵ The approval process consists of the Ministry's publication of a notice stating:

- a) the date on which the mandatory study report shall be made 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.⁹⁶

The review panel is required to hold hearings in a manner that offers the public an opportunity to

⁹⁴ FEPA (Amendment) Decree No. 59 of 1992, s 2A makes reference to a technical committee of FEPA headed by the Director-General of FEPA.

⁹⁵ EIA Act, note 6 above, at s 7.

⁹⁶ *Id.*, at s 25(1).

⁹² Olokesusi, note 89 above, at 168.

⁹³ *Id.*

participate in the EIA.⁹⁷ The following factors shall be considered in the review:

- a) the environmental effects of the project, taking into account its cumulative effects with other projects that have been or will be carried out;
- b) the gravity of those effects;
- c) comments received from the public concerning those effects;
- d) mitigation measures that are technically and economically feasible;
- e) the need for and the requirements of any follow-up program in respect of the project;
- f) the potential capacity for regeneration of renewable resources that are likely to be seriously affected by the project.⁹⁸

The final stage in the EIA procedure is the implementation stage. Where, following the review process, the Ministry has certified the EIA, the project proponent is required to implement the project in accordance with the EIA report. In addition the Ministry is required to monitor the progress of the project to ensure that the project proponent complies with the stipulated conditions, including measures required to mitigate the adverse impacts from the project.⁹⁹

5.3 Analysis

5.3.1 Type of Effects Considered in EIAs

Oil and gas development has a variety of environmental impacts. As noted, the effects can range from the most immediate effects on the biophysical environment (such as land degradation and water pollution) to the more remote effects on the human environment (such as the displacement of local inhabitants of the area where the projects take place). Ostensibly, the Nigerian EIA process

considers a broad range of environmental effects. For instance, the principal instrument for integrating biodiversity conservation into sectoral programmes in Nigeria is the EIA Act.¹⁰⁰

However, the Nigerian EIA process contains a number of major deficiencies with regard to the environmental effects considered. Oil development has had a significant impact on the biodiversity of the Niger delta. With regard to biodiversity, the EIA process does not possess a 'standard methodology for incorporating wildlife issues'.¹⁰¹ This in part can be attributed to the lack of reliable information about the status of wildlife in the Niger Delta.

Another major deficiency is the failure of the EIA regime to consider ethnodiversity. Globally, there have been conflicts between oil and gas and mining corporations and indigenous peoples who occupy the lands where oil and gas development takes place. Nigeria is no exception to this and in fact is a quintessential example of a country with huge ethnodiversity, the Niger Delta region being the most diverse part of the country, ethnically. The inhabitants of the region are intensely spiritual and have over the years developed an intimate affinity with their lands.¹⁰² Their beliefs include the designation of certain forests as 'sacred forests' and 'evil forests', sacred forests being those associated with benevolent gods while evil forests being those associated with 'evil spirits'.¹⁰³ These forests are not to be accessed without some prior sacrifice to the gods and mistaken entry into the forests calls for acts of cleansing. Certain species of animals are also regarded as sacred and therefore not to be killed. Although these beliefs are being compromised due

⁹⁷ *Id.*, at s 37(b).

⁹⁸ *Id.*, at s 17. See also Nwapi, note 16 above, at 137.

⁹⁹ Olokesusi, note 89 above, at 169.

¹⁰⁰ See Federal Government of Nigeria, *Nigeria: First National Biodiversity Report*, 23 July 2001, p. 23, available at <http://www.cbd.int/doc/world/ng/ng-nr-01-en.pdf>.

¹⁰¹ Mohammed K. Hamadina, Dimie Otobotekere & Donald I. Anyanwu, 'Impact Assessment and Biodiversity Considerations in Nigeria: A Case Study of Niger Delta University Campus Project on Wildlife in Nun River Forest Reserve' 18/2 *Manage of Environ Quality: An Int'l Journal* 179, 195 (2007).

¹⁰² E.J. Alagoa, 'The People: Traditions of Origin', in E.J. Alagoa ed, *The Land and People of Bayelsa State, Central Niger Delta* 73 (Port Harcourt: Onyoma Research Publications, 1999).

¹⁰³ Hamadina et al, note 101 above, at 192.

to extreme poverty and hunger in the region,¹⁰⁴ the location of large oil and gas projects in the ancestral lands of these people contributes to this disruption, especially if it causes displacement of the populations. Notwithstanding the danger of this displacement, the Nigerian EIA process pays little attention to or respect for the ethnodiversity of the Niger Delta region.

5.3.2 Collection of Baseline Data

For an EIA to be effectively carried out, there must exist reliable baseline data against which the impact of the project can be weighed. Most scholars identify the absence of baseline data as a significant hindrance to the conduct of effective EIAs in developing countries. Wood, for instance, has argued that the absence of relevant baseline data (and ‘the different significance attached to impacts in different countries’) is one of the strongest grounds for ensuring that local experts take part in the conduct of EIA and that local communities participate in the EIA process.¹⁰⁵

Lack of baseline data is perhaps the greatest challenge to the Nigerian EIA process. Even the DPR acknowledges that lack of reliable baseline data is a significant obstacle to an effective EIA process in Nigeria. According to Zagi, (Head, Technical Services Unit of the DPR), the DPR has ‘pockets of environmental baseline data as against having one acceptable baseline data’, and that data are in need of revalidation.¹⁰⁶ This results in duplication and wasted effort, time and money to collect data each time an EIA is required.¹⁰⁷ In a study of the Niger Delta University Campus Project on Wildlife in the Nun River Forest Reserve, Hamadina et al note that

while the Nun River Forest Reserve has rich wildlife, the magnitude of loss of biodiversity in the area is difficult to quantify due to scarcity of necessary data.¹⁰⁸ The lack of baseline information has sometimes ‘even led to the fabrication of data’.¹⁰⁹

5.3.3 Public Participation

The importance of public participation in EIAs is well established. The sustainability of development interventions is today generally believed to be achievable through the proper participation of stakeholders in the management of the resources.¹¹⁰ Donor agencies and international financial institutions today require public participation in their development projects and in particular in the EIA process of those projects.¹¹¹ Public participation in EIAs is also recognized in a number of international treaties, including, most notably, the 1991 *Convention on Environmental Impact Assessment in a Transboundary Context*.¹¹² Sheate underscored the importance of public participation in EIA processes as follows:

They will be the people who know their own local environment and will be able to identify key areas of concern. Those concerns and fears may, in some cases, prove to be ill-founded, but if they are not identified at the earliest opportunity, they may arise at a later stage when they are more likely to lead to conflict. By involving the public as early as possible issues may be identified which ‘experts’ might not have considered important.¹¹³

104 *Id.*, at 193.

105 Christopher Wood, ‘Environmental Impact Assessment in Developing Countries: An Overview’ (Paper presented at the conference on New Directions in Impact Assessment for Development: Methods and Practice, Organised by University of Manchester & Women in Sustainable Enterprise (WISE) Development Ltd, Manchester 24-25 November 2003) p.13, available at <http://www.sed.man.ac.uk/research/iarc/ediais/pdf/Wood.pdf> [Wood].

106 M.M. Zagi, ‘Environmental Impact Assessment: What it Entails Today’, available at <http://www.ddhmag.com/eiazagi407.htm>.

107 *Id.*

108 Hamadina et al, note 101 above, at 194.

109 Chris O. Nwoko, ‘Evaluation of Environmental Impact Assessment System in Nigeria’ 2/1 *Greener J Envtl Manag & Pub Safety* 29 (2013).

110 Frances Cleaver, ‘Paradoxes of Participation: Questioning Participatory Approaches to Development’ 11 *J Intl Dev* 597 (1999).

111 G. Pring, J. Otto & K. Naito, ‘Trends in International Environmental Law Affecting the Minerals Industry’ 17 *JERL* 163 (1999).

112 Convention on Environmental Impact Assessment in a Transboundary Context, 25 February 1991, 30 ILM 800 (1991), Arts. 2(6) & 4(2).

113 W.R. Sheate, *Environmental Impact Assessment: Law and Policy – Making an Impact II* 83 (London: Cameron May, 1996).

Local people can enhance the value of EIAs not only by identifying the kind of impacts the project would have on them and their environment, but also by helping to provide baseline information that is necessary for an effective EIA.¹¹⁴ The sharing of information is vital to an effective EIA.

Umeh and Uchegbu have argued that the Nigerian EIA Act has the potential to promote sustainable development in Nigeria.¹¹⁵ In a study of community participation in environmental decision-making in the Niger Delta of Nigeria, Adomokai and Sheate conclude that public participation has improved since the EIA Act and has brought many positive changes for all stakeholders, especially for the affected communities.¹¹⁶ This is thanks to the increasingly more visible negative effects of development activities on the environment, which affect the livelihood of local communities, the rate of community unrest in the oil-bearing region, and an increase in public consciousness about environmental matters.¹¹⁷ The scholars note, however, that although there is an increase in public participation and concern for the environment, there is still a tendency for some communities to demand compensation instead of trying to resolve the potential environmental problem. And this is because communities are still in need of the basic necessities of life, the environment being of secondary importance:

[W]hen people cannot feed, clothe, provide good accommodation for their families or good education for their children, how can you come and tell them to be properly concerned for the environment? When you resolve developmental issues and the basic needs of the people then we can begin to talk about the environment properly.¹¹⁸

Orubu et al have concluded that aside from occasional recruitment of a few local workers as data

collectors by environmental consultants, residents of the oil region in Nigeria are seldom aware that EIAs are to be, or are being, carried out in their communities.¹¹⁹

It is significant that under the EIA Act, public involvement in the EIA process is required to begin only at the decision-making stage by the review panel, after the initial draft of the EIA report has been submitted to the Ministry of Environment. Section 22(3) of the Act states that:

[b]efore taking a course of action in relation to a project pursuant to subsection (1) of this section, the [Federal Ministry of Environment] 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 ... and shall take into consideration any comments that are filed.

Such public comments are also to be received when considering the mandatory study report.¹²⁰ There is no legal requirement for the project proponent to engage the affected public in its own assessment before submitting its reports to the Federal Ministry of Environment. At the scoping stage, however, the Ministry may arrange a public hearing, but this depends on the degree of public interest in the project and therefore is not a legal obligation but is highly discretionary. The terms of reference drawn up by the Ministry and the project proponent following the completion of the scoping may include a public hearing, but this, again, is not a legal obligation but a mere discretion as it depends on the degree of public interest in the project. And although section 17(1)(c) of the Act states that '[e]very screening ... shall include a consideration of ... comments received from the public ...', those comments will be considered only if they are

114 Wood, note 105 above, at 13.

115 L.C. Umeh & S.N. Uchegbu, *Principles and Procedures of Environmental Impact Assessment (EIA)* 20 (Lagos: Computer Edge Publishers, 1997).

116 See FEPA Act, note 58 above, at 504.

117 *Id.*

118 *Id.*, at 510.

119 Christopher O. Orubu, Ayodele Odusola & William Ehwareme, 'The Nigerian Oil Industry: Environmental Diseconomies, Management Strategies and the Need for Community Involvement' 16/3 *J Hum Ecol* 203, 212 (2004).

120 EIA Act, note 6 above, ss 25 & 26.

received, and whether or not comments will be received will depend on whether they will be invited, which in turn will depend on the degree of public interest in the project. The determination of the degree of public interest sufficient to warrant a public hearing is at the discretion of the Minister.

It is therefore only at the decision-making stage that the views of the affected public must be invited as a matter of legal obligation. To a large extent, this is retroactive public participation. The public are invited to comment on a draft that was prepared without their input, and perhaps even knowledge, as there are no prescribed formal notice requirements. Given the importance of oil and gas and mining projects to the national economy, it is unlikely that all public concerns can be adequately addressed at this stage, for the intent of the government is usually to have the proposed projects developed as quickly as possible in order to raise revenue for the government. But EIAs for oil and gas and mining projects are not activities that can be completed properly without a significant amount of time. A thorough and careful assessment of the short and long term environmental risks and how to prevent or mitigate them requires ample time and an adequate consideration of the views of those to be affected. Even though the companies may, of their own volition, involve the affected public during the preparation of the EIA report, this is at their option. Although the companies may feel compelled to consult the affected communities in the conduct of the EIA in order to avert conflict, the optional nature of such consultation remains and will most certainly affect the level of the company's commitment to involve the affected community and this undermines the value of an exercise as critically important as an EIA in oil and gas and mining development.

The lack of adequate involvement of the public in EIA processes in developing countries such as Nigeria has been blamed on the use of international environmental consultants who due to budgetary and time constraints may compromise the 'exploratory nature of EIA'.¹²¹ The lack of meaningful public participation consultation requirements in the Nigeria EIA system seriously undermines the effectiveness of the EIA process in Nigeria.

¹²¹ Wood, note 105 above, at 12.

5.3.4 Time to Consider EIA Inputs

As noted above, public input to EIAs are required at the stage of review of the EIA reports by the review panel set up by the Federal Ministry of Environment. It has been argued above that public inputs should be required as early as possible – beginning from the time of the impact assessment by the project proponent. The late involvement of the public might result in the governmental authority seeking to justify results already reached.

A review of some of the most significant oil and gas projects undertaken thus far in Nigeria reveals that things are much worse than allowing public input from the review stage. An example is the Nigerian Liquefied Natural Gas (NLNG) project at Bonny, Rivers State. The mandatory EIA required for the project was not done until the commencement of the project. A suit by an environmental activist challenging the non-enforcement of the EIA Act with regard to the project was dismissed for lack of legal standing.¹²² Although the striking order was reversed on appeal and the suit sent back for trial, the suit was overtaken by events in that the project had by then been completed, leading the plaintiff to discontinue the suit.¹²³ What followed were protests by the affected communities concerning the project. The federal government responded by initiating and facilitating the conclusion of a memorandum of understanding between the affected communities and the NLNG Company so that the first shipment of natural gas would not be delayed.¹²⁴

The West African Gas Pipeline Project (WAGP) provides another example of delayed and inadequate consultation. WAGP is an international gas

¹²² *Oronto Douglas v Shell Petroleum Development Company Ltd. & Ors* [1999] 2 NWLR (Pt 591).

¹²³ Nwapi, note 16 above, at 139.

¹²⁴ Engobo Emeseh, 'The Limitations of Law in Promoting Synergy between Environment and Development Policies in Developing Countries: A Case Study of the Petroleum Industry in Nigeria' (Paper presented at the Berlin Conference on the Human Dimensions of Global Environmental Change, 'Greening of Policies – Interlinkages and Policy Integration', organised by Environmental Policy Research Centre (FFU), Freie Universität Berlin, Berlin, 3-4 December 2004) pp.18-19, available at http://userpage.fu-berlin.de/ffu/akumwelt/bc2004/download/emeseh_f.

transmission system designed to transport natural gas from the Western Niger Delta of Nigeria to consumers in Benin Republic, Ghana, and Togo. Both public and private sector companies from these four countries are collaborating in a joint venture company known as the West African Gas Pipeline Company to construct and operate the pipeline. Multilateral financial institutions, including the World Bank and the US Agency for International Development, supported the project.¹²⁵ It was claimed that the project would contribute to gas flaring reduction in Nigeria, and that the project qualified as a Clean Development Mechanism project under the Kyoto Protocol.¹²⁶ Recognising the potential adverse environmental effects of such a huge transnational gas infrastructure, the Environmental Rights Action (ERA), Friends of the Earth Nigeria (FoE-Nigeria), and Oilwatch commenced an information and consultation process to give communities surrounding the pipeline an opportunity to express their concerns about the potential impact of such a huge project on them. The communities and NGOs that participated in the consultation process rejected the project on the grounds that the affected people were not consulted in the EIA process.¹²⁷ This rejection was followed by community protests, leading the project sponsors to begin a consultation process with the communities. This is a clear case of retroactive consultation. FoE-Nigeria decried this 'belated consultation' – 'a process in which people will be told stories about decisions that have already been made'.¹²⁸

5.3.5 Scope of Appeals Allowed

The opportunity to appeal environmental decisions is an important component of an effective EIA process. Most scholars agree that effective public input to EIAs requires the provision of 'administrative

or judicial review procedures in which the adequacy of the environmental review process can be tested'.¹²⁹ An appeal avenue is necessary to allow adequate public input to the environmental decision, which leads to a better decision and a sense of community ownership of the decision.¹³⁰

There is no provision under the Nigerian EIA Act for appealing a decision approving an EIA report. In effect, the decision of the assessment panel is final even if the affected public that submitted comments to the panel does not agree that the decision was reached judiciously and reasonably in light of the available facts or that due process was followed.

5.3.6 Environmental Management Plan and Post-Assessment Monitoring

The success of an EIA system does not end with the production of the EIA report, however effective the EIA process. The preparation of an Environmental Management Plan (EMP) is essential. An EMP is a detailed plan and schedule of measures necessary to address the potential impacts identified through the EIA. Those measures are to be undertaken during the implementation of the project to either eliminate or reduce the adverse effects of the project. An EMP includes the specific actions needed to implement the measures. It should make clear the costs associated with the implementation of the measures, the compensatory measures available should the measures fail to adequately address the adverse effects of the project, and the institutional arrangements available to implement the measures, i.e., the agencies, bodies or officers charged with implementing the measures.¹³¹ The Nigerian EIA Act does not contain an EMP requirement. This means that at the conclusion of an EIA, there is no mechanism for implementing the measures necessary to manage the adverse impacts of projects.

125 Friends of the Earth International, 'The Myths of the West African Gas Pipeline', 2 January 2006, available at <http://www.foei.org/en/publications/pdfs/wagp-inet.pdf>.

126 See, for instance, 'West African Gas Pipeline Gets Green Light', Chevron Press Release, available at http://investor.chevron.com/phoenix.zhtml?c=130102&p=irol-newsArticle_Print&ID=657716&highlight

127 Isaac Osuoka, 'Another Pipe Dream: Communities respond to nightmare on a proposed West African Gas Pipeline', cited in Nwapi, note 3 above, at 140.

128 *Id.*

129 S. Bache, 'Are Appeals an Indicator of EIA Effectiveness? Ten Years of Theory and Practice in WA' 5/3 *Aust J Environ Manage* 167 (1998).

130 *Id.*

131 Pacifica F. Achieng Ogola, 'Environmental Impact Assessment General Procedures' (Paper presented at Short Course II on Surface Exploration for Geothermal Resources organized by UNU-GTP and KenGen, Kenya, 2-17 November 2007) p 10, available at <http://www.os.is/gogn/unu-gtp-sc/UNU-GTP-SC-05-28.pdf>.

Associated with an EMP is post-monitoring of the EIA implementation process. An effective EIA process continues up to the time the project is completed. After the approval of an EIA, it is necessary to monitor whether the proposed mitigation measures are being implemented and, if they are, how they are working. The implementation of a project design may reveal gaps in the EIA that were not previously observed but which need to be addressed. As Dabholker puts it, '[e]nvironmental intelligence thus provides constant feedback for strategies and operational functions and institutions'.¹³² Lee has stressed that the effectiveness of an EIA is dependent on the 'degree of success in integrating assessment findings into decision-making in the planning and project cycle' and that this is frequently low in developing countries, resulting in poor links with project implementation.¹³³

A 2007 study showed that while about 60 per cent of submitted EIAs in Nigeria were approved, only 31 per cent of the projects were being monitored.¹³⁴ Human and financial problems bedevil post-assessment monitoring in Nigeria. It has been acknowledged that the DPR does not have 'enough manpower to go and monitor every project at the operational stage'.¹³⁵ Findings reveal that the regulatory authorities lack the skills and facilities, such as laboratories, to perform their supervisory and monitoring responsibilities. They depend on the oil and gas corporations for the impact assessment itself, which renders the outcome of the EIA determinable by the corporations in concert with some corrupt government officials.¹³⁶ NOSDRA, it has been found, estimates volumes of oil spilled by simple geometrical interpretations based on oil spills reported. This approach is 'more or less guess work. Ideally, the agency ought to be equipped with

all the necessary tools and not depend on guesses and laboratories belonging to oil companies'.¹³⁷ The corporations can manipulate the implementation of the EIA reports through financial inducements to the traditional chiefs and youths in the affected communities. These financial inducements often create conflicts within the communities over the sharing of the funds, sometimes leading to violent attacks on employees of the corporations.¹³⁸

Studies show that although the corporations claim to engage in environmental monitoring and auditing involving regular checks and inspections of equipment and operational systems, a reality check reveals that 'the process is ineffective and sometimes not followed through with operational systems' due, to a large extent, to corruption.¹³⁹ The study reports that equipment is seldom checked to detect corroding pipelines and fails to ensure it is in good working condition, resulting in frequent pipeline leaks that pollute the environment.¹⁴⁰ It must be pointed out though that not every oil pipeline leak in Nigeria is caused by equipment failure; some – and both the companies and the government claim that most – of the leaks are the result of sabotage. But the reality is that there is lack of effective monitoring and when the leaks occur the response system is very weak.

Anayo argues that the EIA Act has suffered severe implementation problems. In his words:

Experience, especially in respect of infrastructure projects, has shown that environmental impact assessment is hardly undertaken prior to the approval of any project. The key defaulters in this exercise are the various levels of government; federal, state and local. These various levels of government routinely approve projects within the mandatory study list, before any kind of impact assessment is made.¹⁴¹

132U. Dabholker, 'Environmental Management in Developing Countries,' Proceedings of international workshop on the goals and guidelines of the National Environmental Policy for Nigeria, 157, 12-16 November 1991, cited in Allen, note 29 above, at 64.

133N. Lee, 'Integrating Appraisals and Decision Making', in N. Lee & C. George eds, *Environmental Assessment in Developing and Transitional Countries: Principles, Methods and Practice* 172 (Chichester: John Wiley & Sons, 2000).

134Yusuf et al., note 7 above, at 79.

135Zagi, note 106 above.

136Allen, note 29 above, at 206.

137*Id.*

138*Id.*, at 203.

139*Id.*, at 226.

140*Id.*, at 227.

141I. Anayo, 'Environmental Impact Assessment as a Tool for Sustainable Development: The Nigerian Experience' *TSTO.3 Sustainability* 2 (2002).

The oil and gas developers claim that they have adequate environmental programmes for the implementation of EIAs. But a recent study shows that while corporations have established internal environmental policies, plans, implementation mechanisms, procedures for monitoring and regular management reviews as well as health, safety and environmental units,¹⁴² they lack either the institutional base or the willingness to implement their environmental policies or even comply with government regulations and still operate in 'severe environmentally unfriendly ways'.¹⁴³ The study states that most of them rarely conduct an EIA before starting a project.¹⁴⁴

The lack of effective post-assessment monitoring in Nigeria has also been blamed on the selfishness and greed of local justice and environmental groups as well as community leaders in the oil region who, instead of serving as watchdogs against non-implementation of EIA reports, foster their non-implementation due to pecuniary interests.¹⁴⁵

5.3.7 Multiplicity of Regulators

To ensure that an effective EIA process is in place, a clear line of regulatory authority is necessary. The presence of multiple authorities creates conflicts, confuses project operators that are willing to adhere to best EIA practices, and makes it easy for dishonest operators to evade their responsibilities.

A multiplicity of regulatory bodies with similar or identical roles in the EIA process is one of the factors militating against the conduct of effective EIAs in Nigeria. There is, for instance, the Federal Ministry of Environment (FME), the DPR, the Federal (and State) Ministry of Lands, NOSDRA, the National Emergency Management Agency, and the Nigerian Maritime Administration and Safety Agency, among others. Even the State Ministries of Environment seek roles in the EIA process since the environment that is to be affected is under their jurisdiction. There are considerable areas of overlap between the functions of different agencies in the EIA system,

leading to deep rivalry among them.¹⁴⁶ For instance, when the FME attempted to bring the DPR under the Ministry, the DPR stoutly opposed it.¹⁴⁷ In the opinion of a management staff of the DPR, the FME is required to play only 'a supportive role as far as oil pollution is concerned', but the Ministry frequently seeks to play the principal role.¹⁴⁸ Prospective permit seekers attempt to satisfy each of these bodies, resulting in a waste of time and costs in the execution of reports. The net effect of this is that the EIA process is very cumbersome and expensive. The cause of this multiplicity of regulatory bodies may be traceable, in part, to the enabling laws that create and empower the regulatory bodies. There is hardly a clear distribution of responsibilities among the bodies. New laws appear to have been enacted without due consideration of the contents of extant laws. One way to harmonise the role of the different bodies, Zagi suggests, is for the different bodies to enter into a Memorandum of Understanding, under which areas of conflict will be identified and the lines of authority delineated by agreement.¹⁴⁹ This is a viable approach, but it cannot obviate the need to harmonize the laws.

5.3.8 Political Commitment

It is believed that multinational corporations have become such powerful global actors that many individual governments lack the resources and will to regulate them effectively to protect the best interests of the residents.¹⁵⁰ Many of the corporations have grown into entities of such 'astonishing magnitude' that, economically speaking, they match the power of individual countries.¹⁵¹ A 2000 study of the economic and political power of the world's top 200 corporations by the Institute for Policy Studies reported that corporations comprised about 51 per cent of the top 100

142 Allen, note 29 above, at 223.

143 *Id.*, at 225.

144 *Id.*, at 228-229.

145 *Id.*, at 166-170.

146 Ogunba, note 4 above, at 654.

147 *Id.*

148 Zagi, note 106 above.

149 *Id.*

150 Stephen R. Ratner, 'Corporations and Human Rights: A Theory of Legal Responsibility' 111 *Yale LJ* 461 (2001).

151 Philip Blumberg, 'Accountability of Multinational Corporations: The Barriers Presented by Concepts of the Corporate Juridical Entity' 24 *Hastings Int'l & Comp L Rev* 297 (2001).

'economies' in the world.¹⁵² It also concluded that the sales of the top 200 corporations were growing on a larger scale than total world-wide economic activity, and that these were the entities that were dictating the course of globalisation and gaining the most from it.¹⁵³ It is in the developing nations that the influence of these corporations is most evident and scholars have decried the 'sensational abuse of international corporate power' by multinational corporations operating in these countries.¹⁵⁴ Chika Onwuekwe has lamented:

The urge for economic growth and to improve the living standards of its people (through the provision of 'modern' amenities) puts any government in the [developing countries] under intense pressure to approve [foreign direct investment] or development projects without adequate consideration of the environmental consequences. It has also been demonstrated that governments in these countries sometimes consciously encourage investments or projects even at the pain of environmental degradation.¹⁵⁵

Political will is therefore essential for the conduct of an effective EIA, especially in countries like Nigeria where the oil and gas corporations exact significant economic influence. Describing the state of EIA in Nigeria, Echefu and Akpofure have observed that the Nigerian EIA process is 'in

transition' and that it '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 cooperation' (emphasis added).¹⁵⁶ Other scholars agree. Ogunba, for instance, has argued that 'to ensure that the practice matches the sophistication of legislation and guidelines', 'a stronger political will' is required on the part of governmental bodies charged with the implementation of EIA guidelines.¹⁵⁷

The attitude of the Nigerian government is by no means isolated. Several countries in the developing world have interpreted EIA as 'holding up development, or at least delaying it'.¹⁵⁸ There is a general perception that 'EIA is anti-development'.¹⁵⁹ Lee and George have observed that many governments in the developing world fail to understand that the purpose of EIA 'is to assist the development process, not to prevent development from taking place'.¹⁶⁰

6 CONCLUSION

The foregoing analysis reveals that the EIA system for oil and gas and mining projects in Nigeria reflects tokenism. For the most part, EIAs are carried out to make it appear that the environmental impact of

152 Sarah Anderson & John Cavanagh, 'Top 200: The Rise of Global Corporate Power' Institute for Policy Studies (IPS), 4 December 2000, available at http://www.ips-dc.org/reports/top_200_the_rise_of_corporate_global_power.

153 *Id.*

154 Peter Muchlinski, *Multinational Enterprises and the Law* 6 (Cambridge, Mass: Blackwell Publishers, 1995). See also Canadian Centre for the Study of Resource Conflicts, *Corporate Social Responsibility: Movements and Footprints of Canadian Mining and Exploration Firms in the Developing World*, October 2009, available at http://www.miningwatch.ca/sites/www.miningwatch.ca/files/CSR_Movements_and_Footprints.pdf.

155 Chika B. Onwuekwe, 'Reconciling the Scramble for Foreign Direct Investments and Environmental Prudence: A Developing Country's Nightmare' 7/1 *Journal of World Investment & Trade* 115 (2006).

156 Nerry Echefu & E. Akpofure, 'Environmental Impact Assessment in Nigeria: Regulatory Background and Procedural Framework', 71 *UNEP EIA Training Resource Manual*, Case Studies from Developing Countries, available at <http://www.unep.ch/etu/publications/14%2063%20to%2074.pdf>.

157 Ogunba, note 4 above, at 657.

158 A. Gupta & M. Asher, *Environment and the Developing World: Principles, Policies and Management* 240, 237 (New York: Wiley, 1998).

159 H. Abaza, 'Strengthening Future Environmental Assessment Practice: An International Perspective', in Lee & George eds, note 133 above, at 274.

160 N. Lee & C. George, 'Introduction', in Lee & George eds, note 133 above, at 6.

oil and gas and mining projects are carefully evaluated when in reality there is no genuine intent to do so. This is why public participation in the EIA process is seldom properly allowed. This tokenism is brought about by the desire of the national government to expedite economic development. It is this desire that has produced the lack of political will to insist on effective EIAs that will mitigate the negative environmental, social and cultural impacts. The end result is that there is a concentration of the benefits of oil development in the hands of the big corporations and a few government officials and the assignment of development costs to the poor local communities who live in the oil-bearing region.

Where it is not tokenism, the EIA process is fraught with significant challenges that impede its effectiveness. These challenges range from the multiplicity of the regulatory bodies (resulting in inter-agency rivalry in the regulation of EIA) to the lack of manpower and facilities to carry out reliable baseline studies as well as effective monitoring of the projects (resulting in government dependence on the companies' laboratories during the investigation of pollution incidents). There is therefore need for the regulatory agencies to be equipped with the necessary resources including manpower and technological skills to carry out EIAs and monitor the implementation of the EIA reports. Otherwise, economic progress in the country will continue to be limited to benefit a much smaller number of people and there will be a lack of sustainable development notwithstanding significant oil development.

*LEAD Journal (Law, Environment and Development Journal) is jointly managed by the
School of Law, School of Oriental and African Studies (SOAS) - University of London
<http://www.soas.ac.uk/law>
and the International Environmental Law Research Centre (IELRC)
<http://www.ielrc.org>*

