

# ENVIRONMENTAL IMPACT ASSESSMENT AND SUSTAINABLE DEVELOPMENT: A REVIEW OF THE RELEVANT NIGERIAN LEGAL FRAMEWORK

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## Abstract

Environmental impact assessment (EIA) is a crucial tool for ensuring sustainable development by mitigating the adverse effects of projects on the environment. This paper provides a comprehensive review of the Nigerian legal framework governing EIA and its implications for sustainable development. Employing a doctrinal research methodology, the study examines key statutes such as the Constitution, the Environmental Impact Assessment Act, the Petroleum Industry Act, and the Minerals and Mining Regulation Act. Findings reveal significant challenges hindering the effective implementation of EIA in Nigeria, including inadequate enforcement mechanisms, insufficient public participation, and gaps in the existing legal framework. Recommendations are provided to enhance the effectiveness of the Nigerian legal framework for EIA, including strengthening enforcement mechanisms, enhancing public participation, and improving coordination among relevant government agencies and stakeholders.

**Keywords:** Environment, Environmental Impact Assessment, Sustainable Development

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## **1. Introduction**

The environment, consisting of air, water, land, and their intricate interrelationships, is essential for sustaining life on Earth. It encompasses ecological, biological, and physical components, as well as the social and built environment shaped by human activities.<sup>1</sup> Environmental sustainability is paramount for ensuring the well-being of present and future generations. Human activities, policies, projects, and constructions can significantly impact on the environment, affecting ecosystems, natural resources, biodiversity, and human health. Thus, it is imperative to assess the potential consequences of these actions for development. Environmental Impact Assessment emerged in response to the escalating environmental degradation caused by rapid urban and industrial development. Originating in the early 19th century, the need to protect the environment became increasingly apparent as industrialization and urbanization led to resource depletion and a decline in the quality of life. In 1970, the United States enacted the National Environmental Policy Act, marking the first legislative action on EIA. This move aimed to protect the environment by assessing the impact of development projects. Internationally, the importance of EIA was recognized at the United Nations Conference on the Human Environment in Stockholm in 1972, leading to the adoption of EIA in subsequent

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<sup>1</sup> Supply author, United Nations Environment Programme (UNEP) Glossary of Environmental Terms' (8 September 2022) <<https://wedocs.unep.org>> accessed 20 April 2024.

conventions.<sup>2</sup> Despite limited awareness of EIA in developing nations like Nigeria, the Nigerian government demonstrated its commitment to environmental protection by participating in the Stockholm Conference in 1975.<sup>3</sup> Nigeria's efforts continued with the establishment of the Urban Development and Environment Division under the Ministry of Economic Development, as well as its participation in subsequent international meetings focused on environmental issues.. This paper examines the evolution of EIA and evaluates the legal frameworks in Nigeria aimed at evaluating the effects of actions, policies, and projects on the environment. The goal is to promote sustainable development and preserve natural resources for future generations.

## **2. Conceptual Framework**

### **Environment**

The term “environment” encompasses the natural and physical surroundings in which an organism exists. According to the Constitution of the Federal Republic of Nigeria 1999 (Fourth Alteration), the environment includes water, air, land, forests, and wildlife.<sup>4</sup> Emphasizing the need for environmental protection, the constitution highlights its significance. Similarly, the Environmental Protection Agency

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<sup>2</sup> CSE ‘Understanding EIA’<[www.cseindia.org/understanding-eia-383](http://www.cseindia.org/understanding-eia-383)> accessed 19 July 2023.

<sup>3</sup> OA Ogumba, ‘EIA systems in Nigeria: evolution, current Practice and shortcomings’ (2004) (24) *Environmental Impact Assessment Review* 648.

<sup>4</sup> Constitution of the Federal Republic of Nigeria 1999 (Fourth Alteration), s. 20

of the United States defines environment as the natural and physical resources that form the foundation for human society. This includes air, water, land, flora, and humans themselves.<sup>5</sup> The International Union for Conservation of Nature (IUCN) defines the environment as the complex interplay of physical, chemical, and biological factors such as climate, soil, and living organisms. These factors influence the form and survival of an organism or an ecological community.<sup>6</sup> Building on these definitions, the environment can be broadly understood as the sum of all natural, physical, chemical, and biological factors that surround and influence living organisms. This includes the air we breathe, the water we drink, the land we inhabit, and the ecosystems that support biodiversity. The environment provides the essential resources and conditions necessary for survival, growth and well-being of all organisms.

### **Environmental Impact Assessment**

Environmental Impact Assessment has evolved into a mandatory requirement for major projects in numerous countries, including Nigeria. Its aim is to achieve sustainable development and reduce the impact on the poverty levels of people affected by these projects. Environmental Impact assessment is a concept that is based on anticipation of future events<sup>7</sup> and the effect of such project on the development of

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<sup>5</sup> UNEP (n1)1.

<sup>6</sup> IUCN, 'Key Concepts' <<https://www.iucn.org>> accessed 20 April 2024.

<sup>7</sup> Pacifica F Achieng Ogola, 'Environmental Impact Assessment General Procedures' (A paper Presented at Short Course II on Surface Exploration

the environment in aspects of the natural, social, economic and human environment.<sup>8</sup> The Environmental Impact assessment can be said to be a factor that should be integrated into the planning of a project.

### **Sustainable Development**

Sustainable development is a way of development where the needs of the present day is achieved without causing any negative effect to the ability of the future generation to also meet their own needs.<sup>9</sup> The need for sustainable development and its enforcement was taken into consideration when significant changes in the environment and their resultant effect was noticed. These changes led to various disasters, such as, pollution of varying degrees, high concentration of industrial areas,<sup>10</sup> the desertification in northern Nigeria, oil spills in the Niger Delta,<sup>11</sup> flooding in Lagos and other coastal

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for Geothermal Resources, Organized by UNU-GTP and KenGen, at Lake Naivasha, Kenya, 2-17 November 2007)

<sup>8</sup> CFRN 1999 (as amended).

<sup>9</sup> Muskaan Garg, 'Sustainable development goals' (13 March 2020) <<https://blog.ipleaders.in/sustainable-development-goals/#:~:text=The%20sustainable%20development%20goals%20are,at%20all%20ages%20by%202030>> accessed 20 April 2024.

<sup>10</sup> Stephen I Ilesanmi, 'Role of Environmental Impact Assessment Act in Achieving Sustainable Cities and Communities in Nigeria' (2018) (8) *University of Ibadan Journal of Public and International Law* 223.

<sup>11</sup> Millicent Ele, 'Oil Spills in the Niger Delta-Does the Petroleum Industry Act 2022 Offer Guidance for Solving this Problem?' (2022) (13) (1) *Journal of Sustainable Development Law and Policy*.

areas.<sup>12</sup> These environmental disasters acted as a wake-up call to what could happen to the future, prompting efforts to curb these impacts and leading to the concept of Sustainable development.<sup>13</sup>

In the case of *Prafulla Samantray v Union of India*,<sup>14</sup> the tribunal made an order that led to the suspension of the Korean Steel making company. The court while recognizing the need for industrial development, emphasized that such development has to be within the confines of sustainable development. Furthermore, on Sustainable development, in the case of *Vellore Citizen Welfare Forum v Union of India*,<sup>15</sup> the court re-emphasized precautionary principle as basis for sustainable development. Development of the environment should be to the level that it can be sustained by nature with little or no effect to the environment while promoting sustainable development.

### **3. Legal Framework for Environmental Impact Assessment in Nigeria**

#### **i. The Constitution of the Federal Republic of Nigeria 1999 (Fourth Alteration)**

The Constitution of the Federal Republic of Nigeria establishes a comprehensive legal framework for

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<sup>12</sup> Adaku Jane Echendu, 'The Impact of Flooding on Nigeria's Sustainable Development Goals (SDGs)' (2020) (6) (1) *Ecosystem Health and Sustainability*.

<sup>13</sup> Ibid.

<sup>14</sup> [2012] WP(C) 14885 (HC).

<sup>15</sup> [1996] 5 SCR 241 (ILDC).

Environmental Impact Assessment and sustainable development. It mandates the protection and improvement of the environment, including its waters, air, land, forest, and wildlife.<sup>16</sup> The judiciary, as evidenced in the case of *Centre for Oil Pollution Watch (COPW) v. NNPC*,<sup>17</sup> has affirmed the constitutional duty to protect the environment. The Supreme Court emphasized the increasing global concern about environmental issues and held that section 20 of the Constitution makes environmental protection a State duty. This case illustrates how the Nigerian courts interpret the Constitution to ensure environmental protection for present and future generations, thus promoting sustainable development. Therefore, the Constitution not only protects the environment but also ensures that environmental considerations are integrated into development projects through the requirement of environmental impact assessment.

## **ii. The Petroleum Industry Act 2021**

The Petroleum Industry Act of 2021 represents a significant legal framework for environmental impact assessment and sustainable development within Nigeria's petroleum sector.<sup>18</sup> Section 102 of the Act<sup>19</sup> mandates that any licensee or lessee engaging in upstream and midstream petroleum operations must submit an Environmental Impact Assessment plan to the relevant commission or authority within a specified

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<sup>16</sup> CFRN 1999, s 20.

<sup>17</sup> [1999] 5 NWLR I666.

<sup>18</sup> [www.pwc.com/publication/Nigeria-Petroleum-Industry-Act](http://www.pwc.com/publication/Nigeria-Petroleum-Industry-Act) accessed 22 July 2023.

<sup>19</sup> Petroleum Industry Act 2021, s 102 (1) (a-b).

timeframe. This requirement ensures that projects are thoroughly assessed for their environmental impact before implementation. The Act stipulates that the EIA plan must comply with environmental regulations and demonstrate the applicant's capacity to rehabilitate and manage any negative environmental impacts.<sup>20</sup> Furthermore, licensees and lessees are required to assess their environmental liability annually and increase their financial contributions to the satisfaction of the commission.<sup>21</sup> If the commission is not satisfied with the assessment and financial contribution, it has the authority to appoint an independent assessor to conduct the assessment and determine the appropriate financial contribution.

Moreover, the Act mandates lessees producing natural gas to submit a plan to the commission for the elimination of gas flaring,<sup>22</sup> further emphasizing its commitment to environmental protection and sustainable development. In essence, the Petroleum Industry Act integrates Environmental Impact Assessment into project planning and implementation, ensuring that the environmental consequences of projects are carefully considered and mitigated, thereby promoting sustainable development within Nigeria's petroleum sector.

### **iii. The Minerals and Mining Regulation Act 2011**

The Minerals and Mining Act serves as a crucial legal framework for environmental impact assessment and

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<sup>20</sup> PIA 2021, s102 (3) (a-b).

<sup>21</sup> PIA 2021, s102 (5).

<sup>22</sup> PIA 2021, s108.



sustainable development within Nigeria's mining sector. Section 154<sup>23</sup> of the Act outlines the environmental obligations that every person holding an exploration license, mining lease, quarrying lease, or small-scale mining lease must comply with. These obligations include:

- Submission of a signed and approved community development agreement before the commencement of operations.
- Submission of an approved Environmental Impact Assessment.
- Submission of an approved Environmental Impact Assessment statement.
- Submission of an approved Environmental Protection and Rehabilitation Program.
- Submission of an approved Protection and Rehabilitation Fund Implementation Timetable.
- Submission of an approved mine plan and design to the Mines Inspectorate Department, including details of environmental concerns.

The Act makes it mandatory for licensees of oil exploration, quarrying, mining, etc., to fulfil all environmental obligations, including conducting an Environmental Impact Assessment for any project they undertake. The Ministry, through the Mines Environmental Compliance Department, is responsible for ensuring the protection and rehabilitation of mining environments by enforcing compliance with environmental regulations. In cases of non-compliance, authorized officers

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<sup>23</sup> Minerals and Mining Regulation Act 2011.

are empowered to supervise mining operations and enforce compliance.<sup>24</sup>

Furthermore, the Act stipulates that holders of mining leases, quarry leases, small-scale mining operations, etc., cannot commence any development or mineral extraction until they have submitted an Environmental Impact Assessment study approved by the Federal Ministry of Environment.<sup>25</sup> This assessment must be conducted by experienced and qualified multidisciplinary personnel in accordance with the provisions of the Environmental Impact Assessment Act.<sup>26</sup> In essence, the Minerals and Mining Act integrates Environmental Impact Assessment into mining activities, ensuring that environmental considerations are taken into account and mitigated, thereby promoting sustainable development within Nigeria's mining sector.

#### **iv. The Environmental Impact Assessment Act 2004<sup>27</sup>**

The Environmental Impact Assessment Act provides a crucial legal framework for conducting Environmental Impact Assessments and promoting sustainable development in Nigeria. According to the interpretation section of the Act,<sup>28</sup> an “environment” includes the air, water, all organic and inorganic matters, living organisms, and the interactions between these systems. An “environmental assessment” in

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<sup>24</sup> Minerals and Mining Regulations Act 2011, section 155 (a) & (b).

<sup>25</sup> Mineral and Mining Regulations Act 2011, section 158.

<sup>26</sup> Minerals and Mining Regulations Act 2011, s 160.

<sup>27</sup> Environmental Impact Assessment (EIA) Act. CAP E12, LFN 2004.

<sup>28</sup> EIA Act s 61.

respect of a project is defined as an evaluation of the environmental effects of the project conducted in accordance with the Act. The Act defines a “project” as any physical work proposed by a proponent to construct, operate, modify, decommission, abandon, or otherwise carry out. A “proponent” refers to the person, body, or federal authority proposing the project. The objective of an environmental impact assessment is to determine the extent to which an activity will affect the environment, and to promote the implementation of appropriate policies on all federal lands. The Act mandates that no private or public project can be undertaken without prior consideration of its environmental effects.<sup>29</sup> If a project is likely to significantly affect the environment, an Environmental Impact Assessment is required.<sup>30</sup> The significance of the environmental impact, whether negative or not, must also be assessed. Key components of an Environmental Impact Assessment include:

- Description of the proposed activities
- Description of practical activities
- Assessment of likely or potential environmental impacts, including direct or indirect short-term and long-term effects
- Indication of whether the environment of any State, local government area, or areas outside Nigeria is likely to be affected by the proposed activity or its alternatives.<sup>31</sup>

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<sup>29</sup> EIA Act s 2(1).

<sup>30</sup> EIA Act s2(2).

<sup>31</sup> EIA Act s 4 (a –g).

However, there are exceptions to the mandatory requirement for an environmental impact assessment. If the president or the council believes that the project's effects on the environment will be minimal, an impact assessment may not be required.<sup>32</sup> Possible considerations for minimal effects may be deference to effects that are temporary and confined to a small area or projects unlikely to affect protected areas, endangered species or critical habitat. Another strong candidate for minimal effect is a project which causes environmental changes that are easily reversed or restored. It is also helpful that the EIA Act lists out activities for which the completion of an EIA is mandatory, this it terms mandatory study activities.<sup>33</sup> Additionally, if a project is carried out during a national emergency or in the interest of public safety, an environmental impact assessment might be exempted.<sup>34</sup> The likely reason for exempting projects with minimal effect is that EIAs can be time consuming and expensive. Exempting minimal impact projects frees up resources for more critical assessments. Moreover, by not requiring EIAs for minimal projects, the project shifts to projects with potentially severe environmental consequences. Finally, there is a need to find a balance between economic development and environmental protection. Exempting minimal projects from conducting a mandatory study, expedites development activities with minimal

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<sup>32</sup> EIA Act s 14(1).

<sup>33</sup> EIA Act, Schedule to the EIA.

<sup>34</sup> EIA Acts 14(1) (b – c).

environmental drawbacks.<sup>35</sup> The Environmental Impact Assessment process may include:

- Screening or mandatory study and the preparation of a screening report
- Mandatory study or assessment by a review panel, as provided in Section 36 of the Act, and the preparation of a report
- Design and implementation of a follow-up program

In summary, the Environmental Impact Assessment Act is a vital piece of legislation that provides guidance for conducting environmental impact assessments, ensuring that environmental considerations are integrated into project planning and implementation, thereby promoting sustainable development in Nigeria.

#### **4. Environmental Impact Assessment and Sustainable Development within the Framework of Nigerian Legislation**

Environmental Impact Assessment (EIA) is a systematic process used to identify, predict, and evaluate the environmental effects of proposed actions and projects before major decisions and commitments are made. It has emerged as an essential tool for achieving sustainable development in Nigeria, with its significance deeply rooted in various aspects

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<sup>35</sup> Olanrewaju A Fagbohun, 'Introduction and Overview of Environmental Impact Assessment (Law & Policy)' (A Paper Presented at the Intensive Course on EIA/DIA Organised for the Nigeria Export Processing Zones Authority by the Environmental Law Research Institute, at Lagos, Nigeria, 4-7 February 2014)

of development planning and decision-making.<sup>36</sup> Initially developed as a decision-making tool, EIA has evolved to become a requirement for major projects in Nigeria<sup>37</sup> guided by legislation such as the Environmental Impact Assessment Act of 2004. Section 2 of the Environmental Impact Assessment Act states:

No person shall undertake any project for which an environmental impact assessment report is required under this Act unless such a report has been approved by the Director-General.”This underscores the mandatory nature of EIA in Nigeria’s development projects, ensuring that environmental considerations are integrated into decision-making processes. Also, the recently enacted Petroleum Industry Act (PIA) of 2021 emphasizes the importance of EIA in the oil and gas sector, which is vital to Nigeria’s economy. Section 104(1) of the Petroleum Industry Act stipulates that “the Commission shall cause an environmental impact assessment of any project or activity to be conducted before the issuance of a licence or lease under this Act.

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<sup>36</sup> UD Onuora and AV Eze and NB Ugboji. ‘Environmental Impact Assessment: A Veritable Tool for Sustainable Development in Nigeria’ (2017) (10) (9)*IOSR Journal of Applied Chemistry*38.

<sup>37</sup> AA Ibrahim and A Sani and AM Gado and MA Ibrahim and MS Sulaiman and IU Zungum, ‘Environmental impact assessment in Nigeria- A review’ (2020) (8) (3) *WorldJournal of Advanced Research and Reviews*330.

This demonstrates the legal requirement for an environmental impact assessment before the approval of projects in the petroleum industry, ensuring that environmental concerns are adequately addressed.

Additionally, the Nigeria Minerals and Mining Act of 2011 also underscores the importance of EIA in the mining sector. Section 71(1) of the Nigeria Minerals and Mining Act states that the holder of a mineral title shall not carry out mining operations on any land within the mineral title area without first obtaining an environmental impact assessment approval from the Minister in respect of such operations. This provision highlights the requirement for an environmental impact assessment before the commencement of mining operations, ensuring that environmental considerations are integrated into the mining sector's activities.

The relationship between EIA and sustainable development is established through several key points, which are reinforced by Nigerian legislation. The EIA contributes to sustainable development by integrating environmental concerns into the decision-making process, as mandated by the Environmental Impact Assessment Act. It is considered the official appraisal process to identify, predict, evaluate, and justify the ecological, social, and related biophysical effects of a proposed policy, program, or project on the environment.<sup>38</sup> By

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<sup>38</sup> NP Anulika and O Osaze and AH Abiola and EO Ignatius, 'The Role of Environmental Impact Assessment in Environmental Sustainability of Onitsha Metropolis in Anambra State' (2015) (3) (11) *International*

assessing the potential positive and negative impacts of a project, EIA provides valuable information for decision-makers to make informed choices that promote sustainable development.

Moreover, it helps in improving project design and siting, ensuring accountability and transparency, and protecting the environment and community well-being,<sup>39</sup> as required by various legislation such as the Petroleum Industry Act and the Nigeria Minerals and Mining Act. One of the significant aspects of EIA is its contribution to accountability and transparency in the development process. It provides a platform for public involvement and participation, allowing affected communities and stakeholders to voice their concerns and contribute to decision-making. This ensures that the interests of the public and the environment are taken into consideration, leading to more environmentally sensitive and socially acceptable projects.

Furthermore, EIA aims to justify the ecological, social, and related biophysical effects of a proposed project on the environment. By evaluating the potential impacts and proposing mitigation measures, EIA helps in reducing environmental damage and protecting the well-being of communities affected by the project.<sup>40</sup>

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*Journal of Technology Enhancements and Emerging Engineering Research* 109.

<sup>39</sup> Ibrahim (n38) 8.

<sup>40</sup> Anulika (n39) 9.



In summary, the relationship between EIA and sustainable development is crucial within the framework of Nigerian legislation. EIA plays a significant role in promoting sustainable development by integrating environmental concerns into decision-making, improving project design, ensuring accountability and transparency, and protecting the environment and community well-being. Its systematic approach to assessing environmental impacts ensures that development activities in Nigeria are carried out in a manner that minimizes negative impacts on the environment and promotes long-term sustainability.

## **5. Challenges**

Research has shown that irrespective of the vast legal framework mandating the compliance with the EIA it is hardly undertaken prior to the commencement of relevant development projects.<sup>41</sup> According to Owoyemi and Bamigboye<sup>42</sup>, which views this writer aligns with, some of the challenges of Environmental Impact Assessment (EIA) in Nigeria include:

1. Lack of credibility and transparency;
2. Absence of effective sanctions;
3. Abuse of the exclusion clause in the EIA Act; and
4. Limited awareness among a large percentage of the Nigerian populace regarding EIA provisions and their

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<sup>41</sup> EA Ijigah and RA Jimoh and BO Aruleba and AB Ade, 'An Assessment of Environmental Impacts of Building Construction Projects' (2013) (3) (1)*Civil and Environmental Research* 93.

<sup>42</sup> O Owoyemi and O Bamigboye, 'Contemporary environmental impact assessment issues in Nigeria' (2013) (60) *RMZ – M&G*219.

rights to object to environmentally unfriendly prospective projects during the 21-day public display of EIA drafts.

Another challenge to the implementation of EIA and the achievement of sustainable development is the fragmented institutional framework. The EIA involves multiple stakeholders and regulatory bodies, including government agencies, local communities, and project proponents. In some cases, there may be a lack of coordination and collaboration among these stakeholders, leading to fragmented decision-making and ineffective implementation of EIA requirements. Also, the EIA processes can be time-consuming, involving various stages such as screening, scoping, assessment, and monitoring. Delays in the EIA process can occur due to bureaucratic procedures, lack of coordination, or inadequate resources. These delays can hinder timely decision-making and implementation of sustainable development projects.<sup>43</sup>

## **6. The Relationship between Environmental Impact Assessment and NESREA**

The United Nations Environmental Program (UNEP) describes Environmental Impact Assessment (EIA) as a tool for identifying the environmental, social, and economic impacts of a project before making decisions. Its goal is to forecast environmental impacts early in the project planning and design stages, discover methods to mitigate negative effects, adapt projects to fit the local environment, and

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<sup>43</sup> Ijigah(n 412) 10.

present these predictions and alternatives to decision-makers. By using EIA both environmental and economic benefits can be achieved, such as reduced cost and time of project implementation and design, avoided treatment/clean-up costs and impacts of laws and regulations.<sup>44</sup> The National Environmental Standards and Regulations Enforcement Agency (NESREA) on the other hand, is an offshoot of the Koko Dumping Incident in 1988. That landmark issue led to the development of specific environmental legislations in Nigeria. Laws and institutions regulating the environment in Nigeria prior to the Koko dumping incident, were spinoffs of other areas of law and as such were distributed loosely across several statutes. Due to the revolution in Nigeria regarding environmental laws, the Federal Environmental Protection Agency Act (“FEPA Act”) 1988 (amended as Decree No. 59 of 1992), was repealed and replaced by the National Environmental Standards Regulatory and Enforcement Agency (Establishment) Act of 2007. Section 1 of the NESREA Act establishes the Agency, designating NESREA as the enforcing body for environmental standards, regulations, rules, laws, policies, and guidelines.<sup>45</sup> The Act stipulates the objectives of the agency. Accordingly, the Agency shall, subject to the provisions of this Act, have responsibility for the protection and development of the environment, biodiversity conservation and sustainable

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<sup>44</sup> George Lubega Matovu, ‘The Challenges in Monitoring and Enforcement of Environmental Laws in Uganda’ (a Paper Presented at a Training Workshop to Strengthen and Enhance the Capacity of Police Investigators and State Prosecutors to Enforce Environmental Laws, 2006).

<sup>45</sup> NESREA Act 2007 s 1(2)(a).

development of Nigeria's natural resources in general and environmental technology, including coordination and liaison with relevant stakeholders within and outside Nigeria on matters of enforcement of environmental standards, regulations, rules, laws, policies and guidelines.<sup>46</sup> Upon the Agency, has a wide range of functions and powers been vested to ensure compliance with environmental standards, laws, regulations, policies and guidelines. Thus, drawing its power to enforce environmental impact assessment.<sup>47</sup>

Additional significant provisions of the EIA Act shall be highlighted to aid the discussion of the relationship between the EIA and NESREA with regards to compliance and engendering sustainable development.

Section 7 of the EIA Act mandates that government agencies, the public, experts in the relevant field, and interested groups must be allowed to provide feedback on the environmental assessment of an activity. The Act also prohibits the Agency from making a decision on an activity subject to environmental assessment until the designated period for receiving comments from these stakeholders has elapsed.<sup>48</sup> The Agency is mandated to make available the EIA report to interested persons or groups. Even where there is no request from persons or groups, the Agency is to ensure the publication of its decision in a manner by which members of

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<sup>46</sup> NESREA Act s 2.

<sup>47</sup> NESREA Act ss 7 and 8.

<sup>48</sup> EIA Act s 7

the public or persons interested in the activity shall be notified.

The EIA Act specifies the conditions under which environmental assessments are required for projects and when they are not necessary.<sup>49</sup> Where the Agency is of the opinion that an environment assessment is required before the commencement of the project, the EIA Act makes provisions as to the assessment process. Section 15 of the Act provides for:

- (a) a screening or mandatory study and the preparation of a screening report;
- (b) a mandatory or assessment by a review panel as provided in Section 35 of this Act and the preparation of a report;
- (c) the design and implementation of a follow-up program.

Furthermore, the EIA Act in the Schedule provides for a Mandatory Study list of nineteen projects to include agriculture, airport, drainage and irrigation, land reclamation, fisheries, forestry, housing, industry, infrastructure, ports, mining, petroleum, power generation and transmission, quarries, railways, transportation, resort and recreational development, waste treatment and disposal and water supply.<sup>50</sup>

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<sup>49</sup> EIA Act s 13 and 14.

<sup>50</sup> Mantu John Ishaku, 'NESREA and the Challenge of Enforcing the Provisions of Environmental Impact Assessment Act In Nigeria' (1

The EIA Act has made enormous provisions to be enforced by NESREA. These provisions are quite demanding with respect to the technical and scientific know-how it requires for effective and efficient implementation. This continues to pose a challenge to the agency as all mandatory study or assessment require a level of technical or scientific expertise that are quite difficult or expensive to access.

A lot of explanations have been advanced as the cause of NESREA's failure to effectively implement Environmental Impact Assessment. One frequently cited reason is the widespread corruption among public officials responsible for enforcing these laws. Corruption is a national concern in Nigeria, affecting many sectors of the economy. Given the nature of those whom enforcement agents have to deal with, it is easy to see how these officials are easily bribed and compromised.<sup>51</sup>

The lack of adequate personnel poses a significant challenge to NESREA's enforcement of EIA provisions. Although Section 17 of the EIA Act allows for the delegation of tasks such as project screening and the preparation of screening or mandatory study reports, the Agency cannot delegate its responsibilities or actions under Section 21 (1), which

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January 2019) <[https://www.researchgate.net/publication/334386328\\_NESREA\\_and\\_the\\_Challenge\\_of\\_Enforcing\\_the\\_Provisions\\_of\\_Environmental\\_Impact\\_Assessment\\_Act\\_in\\_Nigeria](https://www.researchgate.net/publication/334386328_NESREA_and_the_Challenge_of_Enforcing_the_Provisions_of_Environmental_Impact_Assessment_Act_in_Nigeria)> accessed 27 May 2024.

<sup>51</sup> JA Adelegan, 'The history of environmental policy and pollution of water sources in Nigeria' (2006) *Department of civil engineering, University of Ibadan*.

pertains to the environmental assessment process, or Section 39 (1), which pertains to mediation. Sub Section 2 of Section 17 provides that “*for greater certainty, the Agency shall not take a course of action pursuant to Section 21 (1) or 39 (1) unless it is satisfied that any duty or function delegated pursuant to subsection (1) thereof has been carried out in accordance with provisions of this Decree or any relevant enactment.*”

As observed from the preceding discussion, NESREA may delegate its powers to other specialized groups, however that power to delegate is restrictive. On that note, NESREA must maintain highly trained and skilled personnel in those areas of its operation that cannot be delegated. This remains a hurdle for NESREA as the experts needed are either inadequate and lacking or expensive to employ and retain.

More so, public participation is instrumental to ensuring compliance with Environmental Assessment. NESREA is mandated to make copies of its decisions available to the public for further scrutiny and comments from experts.<sup>52</sup> However, this requirement is usually not complied with. This was demonstrated in the case of *Baytide (Nig) Ltd. v Aderinokun*.<sup>53</sup> Although the decision of the Lower Court was overturned, the Lower Court had ruled that failing to provide the respondents or other interest groups the opportunity to comment on the Environmental Impact Assessment report

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<sup>52</sup> EIA Act s 7.

<sup>53</sup> [2014] 4 NWLR (Pt 1396) 164 (CA).

prepared by the appellant for the construction of the petrol station rendered any approval granted by any authority for the construction of the petrol station on that parcel of land invalid and ineffective.

Finally, the waiver of a requirement for Environmental Impact Assessment by the EIA Act creates a challenge for the agency as regards effective implementation. To drive this point home the provisions of Section 14(1) shall be reproduced.

*“(1) An environmental assessment of project shall not be required where –*

- (a) in the opinion of the Agency the project is in the list of projects which the President, Commander-in-Chief of the Armed Forces or the Council is of the opinion that the environmental effects of the project is likely to be minimal;*
- (b) the project is to be carried out during national emergency for which temporary measures have been taken by the Government;*
- (c) 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.”*

In a country like ours, where major investors and political "godfathers" fund political campaigns, it is challenging for elected leaders to govern without interference from these sponsors, who prioritize their interests over those of the nation and the general populace. The President's opinion



should not matter in this case as it cannot be assuredly said that he will remain an unbiased umpire at every instance, especially where he has a personal stake in the proposed project. This aspect of the law poses a significant challenge to the effectiveness of environmental impact assessments in Nigeria.<sup>54</sup>

From the foregoing, it can be inferred that a review of the EIA Act is necessary considering the role the EIA plays in sustainable development. Principles of sustainable development should be incorporated in such a manner that provisions of the EIA Act will not contradict itself. This will help overcome some of the obstacles faced by the agency in enforcement. It has been noted that as new trends continue to emerge it becomes imperative for the Act to be reviewed, its shortcomings addressed and to ensure its conformity with international best practices.<sup>55</sup> Also, NESREA must take a step further to ensure effective enforcement and compliance with the EIA. The presence of excessive bureaucratic bottlenecks have corrupted the system.<sup>56</sup> NESREA must involve stakeholders not just in conference discussions but also in on-

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<sup>54</sup> Ishaku (n51) 13.

<sup>55</sup> 'FG to review Environmental Impact Assessment Act' <<https://www.dailytrust.com.ng/news/environment/fg-to-review-environmental-impact-assessmentact/205060.html>> accessed on 18 November 2017.

<sup>56</sup> Laurretta Asemota, 'The Ineffectiveness of NESREA in Environmental Regulations Enforcement in Nigeria' (16 July 2018) <[https://www.linkedin.com/pulse/ineffectiveness-nesrea-environmental-regulations-nigeria-asekota?utm\\_source=share&utm\\_medium=member\\_android&utm\\_campaign=share\\_via](https://www.linkedin.com/pulse/ineffectiveness-nesrea-environmental-regulations-nigeria-asekota?utm_source=share&utm_medium=member_android&utm_campaign=share_via)> accessed 27 May 2024.

the-ground efforts where the need to address ongoing environmental nuisances and degradation is greatest.

## **7. Recommendations**

In the light of the above discussion, this paper recommends that there is need to strengthen Enforcement Mechanisms. There is a need to enhance the enforcement mechanisms of the existing legal frameworks governing Environmental Impact Assessment (EIA) in Nigeria. This could involve stricter penalties for non-compliance with EIA regulations, as well as improved monitoring and evaluation mechanisms to ensure adherence to environmental standards. There is also the need to enhance Public Participation. There is a significant lack of awareness among the Nigerian populace regarding EIA provisions and their rights to object to environmentally unfriendly projects. Therefore, there is a need to enhance public participation in the EIA process by raising awareness about EIA requirements and providing avenues for public input and feedback. Another important recommendation is improving Coordination among Stakeholders. Fragmentation within the institutional framework governing EIA in Nigeria poses a significant challenge to its effective implementation. To address this, there is a need for improved coordination and collaboration among relevant government agencies, local communities, and project proponents. This could involve the establishment of a centralized authority responsible for overseeing the EIA process and ensuring coordination among all stakeholders. EIA Processes have to be streamlined. The EIA processes in

Nigeria are often time-consuming and bureaucratic, leading to delays in project implementation. There is a need to streamline these processes by reducing bureaucratic hurdles, improving coordination among stakeholders, and providing adequate resources for the timely completion of EIA assessments. Implementation of these recommendations, can enhance the effectiveness of Nigerian legal framework for EIA, promote sustainable development, and preserve natural resources for future.

## **8. Conclusion**

In conclusion, this paper has provided a comprehensive review of the Nigerian legal framework governing Environmental Impact Assessment and its implications for sustainable development. Despite the existence of robust legal frameworks aimed at promoting sustainable development and protecting the environment, significant challenges hinder the effective implementation of EIA in Nigeria. These challenges include inadequate enforcement mechanisms, insufficient public participation, gaps in the legal framework, and a fragmented institutional framework. To address these challenges and enhance the effectiveness of the Nigerian legislations for EIA, several recommendations have been proposed. These include strengthening enforcement mechanisms, enhancing public participation, improving coordination among relevant government agencies and stakeholders, and streamlining EIA processes. By implementing these recommendations, Nigeria can overcome the existing challenges and ensure that environmental

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considerations are integrated into decision-making processes, thereby promoting sustainable development and preserving natural resources for future generations. Through a concerted effort from all stakeholders, Nigeria can achieve its sustainable development goals and contribute to global efforts to protect the environment and promote sustainable development.