

THE EFFECTIVENESS OF ENVIRONMENTAL IMPACT ASSESSMENT AS AN INSTRUMENT OF ENVIRONMENTAL PROTECTION IN NIGERIA'S OIL AND GAS INDUSTRY**

ABSTRACT

This research aimed at examining the effectiveness of environmental impact assessment as an instrument of environmental protection in Nigeria's oil and gas industry. It is beyond doubt that the environment is important to mankind and functions as a veritable resource. Thus, there is need for environmental impact assessment to ensure the survival of living organisms like plants, animals and so on. It is the objectives of this research among others, to examine the history or evolution of environment impact assessment in Nigeria with a view to exposing what the situation was before the enactment of the EIA Act, the rationale for the adoption of environmental impact assessment in Nigeria and the environmental impact assessment policy in selected jurisdictions. Among others, the research found that the basic challenge confronting the Federal Ministry of Environment in Nigeria is how to translate the laudable provisions of the Environmental Impact Assessment Act into an effective tool for managing or protecting the environment. Experience especially in respect of infrastructural projects shows that environmental impact assessment is hardly undertaken prior to the approval of any project and the key defaulters of environmental impact assessment are the various levels of government; Federal, State and Local governments as these levels of government routinely approve projects within the mandatory study list, before any kind of environmental impact assessment is made. Thus, the research recommended that the Federal Ministry

of Environment in Nigeria should ensure that projects are subject to environmental impact assessment in strict accordance with the spirit of the Environmental Impact Assessment Act so that the Act will not end up a paper tiger, the various levels of government should ensure that environmental impact assessment is carried out before approving projects within the mandatory study list, the already existing companies should undergo periodic environmental audits to ensure their compliance with environmentally sound practices and so on. The research concluded that both the government and multinational companies should comply with the provisions of the Environmental Impact Assessment Act of Nigeria and international standards on environmental impact assessment.

Introduction

Environmental Impact Assessment (EIA) is defined generally as the process of elaborating on the Environmental effects of alternative actions and making the premises of decisions explicit.¹ It is also defined as a formal process used to predict the environmental consequences of any development project by trying to ensure that potential problems are foreseen and

***Dr. Anugbum ONUORA, BSC, LLB, BL, LLM, PH.D**, senior lecturer, department Of Private and Public Law. Faculty of Law, Rivers State University, Nkpolu-Oroworukwo, Port-Harcourt;anugbum@yahoo.com,
* **Okemdi .C. NNUBIA** ND-in-Law, LL.B (Hons.) BL; LLM. Lecturer, Department of Business Law, Faculty of Law, Rivers State University, Nkpolu-Oroworukwo, Port-Harcourt; GSM; +23408033134307; +23408188274170; Email; okemdinnubia@yahoo.com; okemdi95@gmail.com

¹ L Ortolana, B Jenkins and R Abracosa, 'Speculations on When and Why Environmental Impact Assessment is Effective' [1987] (4) *Environmental Impact Assessment Review*, 7.

addressed at an early stage in the project's planning and design.² EIA is a direct consequence of the precaution principle; in order to prevent environmental hazard, it is necessary to understand the environmental impacts of a project as early as possible.

The purpose of the assessment is to ensure that decision makers consider the ensuing environmental impacts when deciding whether to proceed with a project. The International Association for Impact Assessment (IAIA) defines an environmental impact assessment as 'the process of identifying, predicting, evaluating and mitigating the biophysical, social and other relevant effects of development proposals prior to major decisions being taken and commitments made.'³

Environmental impact assessments are unique because they do not require adherence to a predetermined environmental outcome, but rather they require decision makers to account for environmental values in their decisions and to justify those decisions in the light of detailed environmental studies and public comments on the potential environmental impacts of the proposal.

Environmental impact assessment is not a one-off process which terminates in the production of a report on the effects of a project and associated mitigation measures.⁴ It also deals with

² *Ibid.*

³ International Association for Impact Assessment, 'Definition of Environmental Impact Assessment'. Available at <<http://www.comfortasokoroogaji.wordpress.com>> accessed on May 20, 2019.

⁴ N Chioma, 'Prospects and Challenges of Alternative Disputes Arising from Non-compliance with Environmental Impact Assessment Laws and

monitoring the construction and operational phases and acting on the results of such monitoring till final abandonment or closure.⁵ The post closure is also an integral part of impact assessments.⁶ The widespread experience of environmental impact assessment as an anticipatory environment management tool has generated a considerable debate over the extent to which it is achieving its purposes. This has been measured in terms of environmental impact from issues of procedural implementation to the more substantive goals of environmental impact assessment and its place within broad decision making context.⁷

Accordingly, most authors agree that environmental impact assessment effectiveness is multi-dimensional and plural in nature.⁸ Effectiveness in this context simply refers to whether something works as intended and meets the purpose for which it is designed.

Jaap Rozema and Bond identified three (3) major aspects of environmental impact assessment effectiveness. The aspects of effectiveness identified are: procedural effectiveness, substantial effectiveness and transactive effectiveness.⁹ Procedural

Regulations [2019] (10) *The Journal of Property Laws and Contemporary Issues*, 41.

⁵ *Ibid.*

⁶ T A Yusuf, 'The Environmental Impact Assessment Practice in Nigeria; The Journey So far'. Available at <<https://www.inigerian.com>> accessed on May 20, 2019.

⁷ S Jay, 'Environmental Impact Assessment; Retrospect and Prospect' [2007] (27) *Environmental Assessment Review*, 287.

⁸ J G Rozena and A J Bond, 'Framing Effectiveness in Impact Assessment: Discourse Accommodation in Controversial Infrastructural Development' [2015](50) *Environmental Assessment Review*, 66.

⁹ Rozena and Bond (n 8)

effectiveness focuses on the process structure and adherence to the policy. Substantive effectiveness examines the effects of the environmental impact assessment on the decision making process and if it actually reduces negative environmental impact. The transactive effectiveness measure the financial and temporal cost of conducting the environmental impact assessment.¹⁰

History of Environmental Impact Assessment in Nigeria

Generally, environmental impact assessment practice started in the United States of America and as such the National Environmental Policy Act (NEPA) 1969 was enacted to take care of the EIA. It has since evolved as it has been used increasing in many countries around the world.

The origin of the Environmental Impact Assessment system in Nigeria is traceable to the initial focus of environmental awareness in the Nigeria's oil and gas industry in the late 1960's.¹¹ This could be found with the inclusion of environmental monitoring in some legislations enacted to regulate the petroleum industry by the Federal Government. This sprouted from the general persuasion in the country that only the petroleum sector required close environmental monitoring.¹² Environmental legislations then came in form of pollution reduction measures that reacted to local problems within the petroleum industry. Various industry regulation under the

¹⁰ *Ibid.*

¹¹ C T Emejuru, 'Environmental Impact Assessment: Predating NEPA' [2014](4)(1) *Journal of Private and Property Law*, 88.

¹² O Ogunba 'EIA Systems in Nigeria: Evolution, Current Practice and Shortcomings'[2004](24) *Environment Impact Assessment Review*, 647.

authority of the Petroleum Act 1969,¹³ were promulgated to regulate exploration and exploitation of petroleum in Nigeria, and control pollution. However, the regulations were more reactive rather than proactive.¹⁴

The Petroleum industry from the above narration could show some skeletal environmental protection. All the same, environmental awareness was gradually getting stronger, principally owing to the country's engagement in international conferences relating to the environment. For example, Nigeria participated in the historic United Nations Conference on Environment in Stockholm in 1972, whereupon the problems of human environment were addressed. The concomitant effect of this was the creation of an Urban Development and Environment Division in the Federal Ministry of Economic Development in 1975.¹⁵

But, it is vital to state that Environmental Impact Assessment was only recognized as a tool of environmental management in Nigeria in the Guidelines on Nigerian's Fourth National Development Plan (1981 - 1985) which required that feasibility studies for all projects, both private and governments, shall be accompanied by an Environmental Impact Assessment.¹⁶ The onus for the preparation of the environmental impact Report will be on the owners of the project.¹⁷

¹³ Cap P.1 0 Laws of the Federation 2004

¹⁴ Ogunba (n 12)

¹⁵ A A Adedeji, 'The Legal Regime of Environmental Impact Assessment in Nigeria', <https://www.researchgate.net/profile/Adeola_Adedeji2> accessed on 22 May 2019.

¹⁶ O G Amokaye, *Environmental Law and Practice in Nigeria* (Lagos: University of Lagos Press 2004) 543.

¹⁷ *Ibid.*

According to Amokaye, such policy statement was more or less an expression of government's concern for environmental degradation and the need for resource conservation and environmental protection.¹⁸

More often than not, they do not appear to have been made out of conviction about the utility of the Environmental Impact Assessment system or an understanding of its mechanism, but more in response to pressures from donor agencies such as World Bank.¹⁹ The formal recognition of Environmental Impact Assessment and the emergence of a legal framework could be traced to the Koko incidence in 1987 which brought into limelight the issue of environmental protection in Nigeria. This involved the dumping of toxic waste in Koko, a Southern Nigeria village in the Niger Delta by an Italian ship. This caught the country unaware and unprepared, as it had neither effective environmental legislation nor environment controlling body to manage the incident effectively.²⁰ Prior to this incident, sentiments and expression about Environmental Impact Assessment by Nigerian government then were mere lip service of national commitments to certain international conventions and laws calling for sustainable development, this situation was aptly stated by the then Head of the Environmental Impact Assessment Division of the FEPA as follows:

...the EIA culture in the country, has been most flimsy. Most projects proponents who conducted

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ Ogunba (n 12)

EIA studies did so from parochial perspectives, which were informed by the disciplines of the co-coordinator of the studies... Many developers who should have applied the process of EIA due to the nature of their activities avoided doing so since it was not legally a part of their project requirements.²¹

However, the response of Nigerian government to the Koko incident was drastic as it went ahead to immediately establish the Federal Environmental Protection Agency (FEPA) via Decree 58 of December 30, 1989. FEPA owned up its challenge of tackling the environmental problems of the country by first, publishing this National Policy on the Environment. By 1990, National Council on the Environment at its meeting in 1990, lent its *imprimatur* to Environmental Impact Assessment as an indispensable prerequisite for the effective implementation of the National Policy on the Environment, and ordered that Environmental Impact Assessment be made mandatory for all development project with effect from March 1991. It was in 1992 that an Act creating the legal framework for Environmental Impact Assessment was decreed by the then Military Government of Nigeria, thereafter, the Environment Impact Procedure which is a set of guidelines for

²¹ M F Ivbijaro, *Environmental Impact Assessment/Environmental Audit Report in Nigeria: An Overview* (Lagos: N.I.A.L.S. 1994).

the practice of Environmental Impact Assessment was released in 1995 by the FEPA. Thus, the Environmental Impact Assessment Sectoral Guidelines for Oil and Gas Industry Projects of Nigeria²² was released in 1995 for proper assistance to project proponents in conforming with the requirements of the Environmental Impact Assessment Decree No. 86 of 1992.

Considering that flurry of activities on environmental issues in the country impact negatively in the petroleum industry, the Department of Petroleum Resources, Lagos in 1991 issued the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN) to ensure that petroleum industry operators do not degrade the environment in the course of their operations. To effectively carry out these regulatory activities, the Department has been developing environmental guidelines and standards since 1981. These cover the control of the pollutants from the various petroleum exploration, production and processing operations. These guidelines were upgraded respectively in 1999 and 2002 respectively and have specified format for Environmental Impact Assessment reports. Part VIII (A) of the EGASPIN lists activities requiring mandatory Environmental Impact Assessment reports as seismic operations, oil and gas field developments, laying of crude oil and gas delivery lines, flow lines and pipelines in excess of 20km, hydrocarbon processing facilities, construction of waste treatment and disposal facilities,

²² It is worth noting that FEPA does not exist any longer, since the creation of Ministry of Environment in 1999. The National Environmental Standard and Regulation Emergency Agency Act (NESREA) 2007 repealed the FEPA Act.

and dredging activities of about 550msq. Again in 1995, Sectoral Guidelines for Environmental Impact Assessment in the Oil and Gas Industry was prepared and released for the purposes of practical application of the Environmental Impact Assessment Act 1992 rules. This was to guide its proper application to the oil and gas industry.

Rationale for the Adoption of Environmental Impact Assessment

The EIA Act was enacted in 1992 in Nigeria following the Koko incident and other cases of environmental degradation in the country. The EIA was adopted for the purpose of carrying out impact assessment of any project to be carried out in Nigeria. The assessment is to ensure that decision makers consider the ensuring environmental impacts when deciding whether to proceed with a project. The main objective of the EIA is to ensure that potential environmental impacts are foreseen at the appropriate stage of project design and addressed before any decision is taken on the project.²³ EIA was adopted to proffer mitigation measures to avoid, reduce or minimize the negative impacts on the environment, public health and property. These mitigations entail identifying possible alternatives site, project process design, including that of not proceeding with the project.

The Effectiveness of Environmental Impact Assessment as an Instrument of Environmental Protection in Nigeria's Oil and Gas Industry

The enactment of the Environmental Impact Assessment (EIA) Act brought fundamental changes in the environmental management sector in Nigeria. The Act promotes environmental

²³ Yusuf (n 6).

assessment, gives it strong legal support and defines the institutional set up for the management of the environment. It also makes environment impact assessment mandatory for development projects likely to have adverse impacts on the environment prior to implementation. The act provides that,

The Federal, State, Local Government or any of its agencies prior to Environmental Assessment of the project in accordance with the Environmental Impact Assessment Act shall not under the provisions of any law or enactment issue a permit or license, grant or approval or take any other action for the purpose of enabling the project to be carried out in whole in or in part.²⁴

By virtue of the Act, environmental impact assessment is mandatory for activities in all sectors of the economy. The activities in the oil and gas sector which require environmental impact assessment include;

1. Oil and Gas field development.²⁵
2. Construction of offshore, onshore and over line pipeline.
3. Construction of oil refineries

²⁴ Environmental Impact Assessment Act, Cap E12, Laws of the Federation of Nigeria, 2004, S 14 (1)(a)(b)(d).

²⁵ Department of Petroleum Resources, *Environmental Guidelines and standards for the Petroleum Industry in Nigeria* (Department of Petroleum Resources, 2002) 56.

4. Waste treatment and disposal

This means that the destruction of the several artisanal refineries carried out in the Niger Delta in recent times should not have been done without an environmental impact assessment.²⁶ If an EIA had been carried out it would have prevented or greatly reduced the incident of soot and pollution of fauna and flora in Port Harcourt. The EIA is a paper tiger; it is more present in our law books than in actual practice. According to Tayo, the EIA as practiced in Nigeria is greatly flawed. He said,

The regulatory body for the EIA administration in Nigeria is the Federal Ministry of Environment. The regulatory body, with the approval of the President, Commander-in-chief of the Armed Forces is vested with the power to make regulations on EIA procedure. Regrettably, the EIA procedure of August 1994 devised by the regulation body is deficient and defective. In most cases the provisions in the EIA procedure step outside the ambits of the EIA Act. The faulty EIA procedure and vagaries of administrative fiats are being used to undermine the EIA Act. Hence, there are

²⁶ A Ogbuigwe, *Legal Issues in the Niger Delta Resource Dilemma* (Port Harcourt: Anpez Centre for Environment and Development, 2018) 64.

environmental degradation and public health impairments arising from the projects whose approvals were purportedly obtained under the EIA Act. The failings of the regulator in this respect give rise to violent agitations in the oil-bearing communities, to asset their rights to healthy and unpolluted environment. Also, the public access to information through the public registry is yet to be honoured in compliance since the commencement of the EIA Act in 1992.²⁷

There is indeed room to challenge many of the EIA processed in Nigeria and relating to oil and gas projects in Nigeria in the court within and outside Nigeria. In the case of *Councilor F.B Farah and others v. Shell Petroleum Development Company Limited*,²⁸ the claimants brought an action against the defendant for failing to carry out an environmental impact assessment of their farmland which led to an oil blow out that lasted several weeks and caused extensive damage to the claimants' land. The company accepted to rehabilitate the claimants' land to its *status quo ante* but the rehabilitation was substandard. The trial judge found in favour of the claimants and awarded them damages under various headings amounting to N4, 621,307.

²⁷ Yusuf (n 6).

²⁸ (1995) 3 N.W.L.R (Part 382) 148.

According to Amari Omaka, in some countries such as the United States, the courts are empowered by law to review disputed environmental impact statements'.²⁹ Though section 59 of the Act appears to restrict the courts review where the application sole ground for relief is based on forms or technical irregularity, calls can be made for an amendment of the statute in order to give the public participation and comments requirement in the Act some efficacy.³⁰

The Scope of Environmental Assessment Process

The EIA process entails the following four stages:

A) EIA Reports Preparation

The EIA reports should clearly state:

A The environmental effects associated with the project and its alternatives at the construction, operational and abandonment phases.

B Mitigation measures and monitoring strategy for the entire life cycle of the project.

C The post-closure care / reclamation of the environment should also be explicitly stated in the EIA Reports.³¹

B) Public Participation / Independent Review

1 The EIA report is presented to the public for comments. The public display affords the stakeholders and other interested members of the public an opportunity to give their views on the environmental effects and observance of relevant procedures in respect of the EIA process. The comments

²⁹ A Omaka, *Municipal and International Environmental Law* (Lagos: Lions Unique Concept 2012) 133.

³⁰ *Ibid.*

³¹ EIA Act, Cap E12, Laws of the Federation of Nigeria, 2004, Ss 4, 21 & 24.

arising from the public display of the EIA report are forwarded to the Independent Review Panel as part of the assessment process.³²

2 The EIA report is also subject to an impartial, scientific and independent review. The peer review should be independent of the regulatory body and the project proponent. The verification exercise by the independent review body ensures that the information in the EIA report is complete, correct and unbiased.

The Nigerian EIA Act recognizes the ‘Mediator’ and the ‘Review Panel’ for the independent review. The EIA Act, in sections 34 and 37, set out their duties in the EIA process.

- i. ensure that the information required for assessment is obtained and made available to the public;
- ii. hold hearing in a manner that offers the public an opportunity to participate in the assessment;
- iii. prepare a report setting out:-
 - the conclusions and recommendations relating to the environmental effects of the project and any mitigation measures or follow-up program;
 - a summary of any comments received from the public; and
- iv. submit the report to the council and the regulatory ministry. Section 39 of the EIA Act places a requirement on the regulatory ministry to publish the report of the independent review body in any manner the council considers appropriate, and shall advise the public that the report is available.

³² *Ibid*, Ss 7, 22 (3), 25 & 37.

3 Final Decision-Making/Authorization

- In view of the relevant provisions of the EIA Act in sections 13 (1) & (2), 40 (1) & (2), 41 and 42, the outcomes of the final decision – making can be one of the following:
- Request for further study/modify for future consideration.
- The project is cancelled or rejected altogether.

Sections 9 and 41 of the EIA Act sum up, in respect of a project, the issues relating to final decision – making and those to be notified on the decision.

- a. The decision of the regulatory ministry shall be in writing and include the following:
 - Its course of action in respect of the project
 - The extent which the recommendations concerning mitigations for adverse environmental effects in the mediation and/or review panel’s reports have been adopted
 - Any follow-up programme to be implemented with respect to the project
- b. The regulatory ministry shall make the decision available to interested persons or groups
- c. If no interested persons or groups request for the decision, the regulatory body shall publish the same in any manner by which members of the public and persons / groups interested in the activity shall be notified.

4 Post – Project Authorization Activities

The regulatory body is required to carry out its statutory role of monitoring the follow – up programme for mitigations at the construction, operational and post-closure stages of the project.³³

³³ EIA Act, Cap E12, Laws of the Federation of Nigeria, 2004, s 41.

The foregoing clearly indicates that Nigerian has a comprehensive and modern piece of legislation that should drive effective environmental management sustainable development. However, the basic challenge confronting the Federal Ministry of Environment is how to translate the laudable provisions of the EIA Act into an effective tool because Nigeria, like most developing countries has 'world class' legislation on various issues, which nevertheless suffers failure at the implementation stage.

There is no doubt about the fact that EIA is hardly undertaken in the oil and gas industry in Nigeria prior to the execution of any project in the industry. This gap has resulted in the present state of environment of the Nigeria Delta region. The region has suffered several environmental hazards like pollution, sooth, gas flaring and so on.

Crude oil is explored and exploited in the region without recourse to EIA. These environmental hazards in the Nigeria Delta Region have diluted the effectiveness of the EIA Act as an instrument of environmental protection in Nigeria's Oil and Gas Industry. At the moment, the EIA remains weak until its provisions are translated into an effective instrument of environmental protection.

When pollution occurs due to lack of EIA, and victims of the said pollution go to court, sometimes these victims end up not getting their claims for lack of the right to sue otherwise known as *Locus Standi*. In *Oronto Douglas v. Shell Development Company Limited & 5 Others*,³⁴ the plaintiff sought a compliance with the

³⁴ Unreported suit no: FHC/2CS/573/1993. Ruling delivered on the 17th February, 1997 .

provisions of the EIA Act in relation to the Liquid Natural Gas (LNG) project at Bonny being executed by the defendants. The court held that the plaintiff had no standing to institute the action since he had shown no *prima facie* evidence that his right was affected or any direct injury caused to him, or that he suffered any injury more than the generality of the people. In *Jonah Gbemre v. Shell Petroleum Development Company & 2 Others*,³⁵ to put an end to gas flaring, the prayers upheld by the court included;

1. That continued flaring of gas in Iwherken Community by Shell and failure to carry out EIA violate the people's right to life and dignity by the Constitution of the Federal Republic of Nigeria, 1999 and the African Charter on Human and People's Right.
2. The burning gas by flaring by shell in the community poisons and pollutes the environment in the community as it leads to the emission of carbon dioxide, the main green house gas among others.

To date, neither the oil companies nor the government have complied with the subsisting court ruling hence gas flaring and lack EIA continue with mere paltry fines.

According to the United Nations Environment Programme on environmental assessment report on Ogoni, the cumulative impacts of the environmental degradation exerts a significant environmental stress in Ogoni.³⁶

Furthermore, about 1.8 billion cubic feet gas is flared daily resulting in about 45.8 billion kw of heat released into the

³⁵ Unreported suit no: FHC/B/CS/53/2015 (Judgment of 14 November, 2005)

³⁶ G U Ojo and J Gaskiya, *Environmental laws of Nigeria: A Critical Review* (Lagos: Great Publication 2003) 36.

atmosphere.³⁷ It was on this basis that the UNEP recommended that EIA be carried out in the affected areas. However, it is sad to note that since the flag up of the Ogoni clean up by the present administration a couple of years ago, concerted efforts are yet to be made in accordance with the UNEP report. Ogoni clean up has been politicized and the ogoniland has remained in a state of albatross.

Challenges of EIA Practice in Nigeria

The regulatory body for the EIA administration in Nigeria is the Federal Ministry of Environment. The regulatory body, with the approval of the President, Commander – in – Chief of the Armed Forces, is vested with the power to make regulations on EIA Procedure.³⁸

Regrettably, the EIA Procedure of August 1994 devised and contrived by the regulatory body is deficient and defective. In most cases, the provisions in the EIA procedure step outside the ambits of the EIA Act.

The faulty EIA procedure and vagaries of administrative fiats are being used to undermine the EIA Act. Hence, there is a legacy of environmental degradation and public health impairments arising from the projects whose approvals were purportedly obtained under the EIA Act. The failings of the regulator in this respect give rise to violent agitations in the oil- bearing communities, to assert their rights to healthy and unpolluted environment.

The EIA practice in Nigeria (in its present form) is a showcase for corruption and infraction of the EIA Act. Also, the public

³⁷ *Ibid.*

³⁸ EIA Act, Cap E12, Laws of the Federation of Nigeria, 2004, s 61.

access to information through the public registry is yet to be honoured in compliance since the commencement of the EIA Act in 1992.

However, the Etche community of Rivers State in the Niger Delta demonstrated a proactive non-violent approach to protection of their environment in respect of the ill-planned waste management facility for non-hazardous and hazardous wastes (tagged 'Integrated Waste Management Facility' – IWMF) proposed to be built and operated in the community by Shell Petroleum Development Company of Nigeria, Limited, Port Harcourt (SPDC-E).

The Etche community appointed an Environmental Impact Assessment (EIA) advisor for the IWMF who acted as an expert witness for the community at different fora organized by the agencies of Federal and Rivers State Governments (both executive and legislature). The issue of discussions bordered on environmental effects, corruption, and infraction of environmental regulations in respect of the Environmental Impact Assessment (EIA) Process for the SPDC-E's IWMF.

The SPDC-E eventually abandoned the IWMF to hush up the case then pending before the Federal House of Representatives. This was the only but costly strategy available to the SPDC-E to prevent its wrong-doings and unholy dealing with the regulatory bodies from getting to the public domain.

The Etche community, guided by an expertise advice, successfully rejected the SPDC-E's IWMF, for failing to comply with the due Environmental Impact Assessment (EIA) process. There was no single incident of violence through-out the period

of the heated debates and discussions concerning the IWMF, which lasted over eight (8) years (1999-2006). The Etche community approach to Primary Environmental Care (PEC) in its community was exemplary and worth replicating in the Niger Delta area.

Regrettably, the Niger Delta local communities, more often than not, are unable to make informed contributions and decisions on projects affecting their environment in accordance with the laws of the land. So, they make recourse to violent agitations to assert their rights. And the oil companies cash in on the justifiable reaction of the local communities to invite security agencies to unleash naked terror on them.

International Instrument Recognizing EIA AS an Environmental Management Tool

The first international conference which emphasized the need to protect the environment is the Stockholm Conference of 1972. The Conference by necessary implication, amplified the need for EIA.

Similarly, the Rio Declaration Environment and Development came up in 1992 and principle 17 of the Declaration states that, 'Environmental Impact Assessment (EIA) as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority'. Thus, EIA is recognized internationally for the protection of the environment the world over.

Recommendations

It is therefore recommended that,

1. The new EIA procedure should capture the following;
 - a) Rectification of ambiguities, obscurities, omissions, wrong spellings and misleading cross references in the EIA Act.
 - b) The entire EIA process activities in the EIA Act; the actors at every step, the duration of activity at every step, the time frame between one step and the next.
 - c) Institutional framework reflecting the statutory roles of the tripartite structure (the president, the council and the regulatory ministry) in accordance with the EIA Act.
 - d) Transparent procedure for ensuring disclosure of records relating to environmental assessments.
 - e) The right to appeal through the administrative mechanisms and further be heard by tribunal or arbitrator deducted to EIA cases.
2. A separate agency which will be empowered to oversee EIA structure providing binding guidelines and procedures for conduct or oversight of the EIA process.
3. There is need for aggressive implementation of the provision of the EIA Act and all projects should be made to undergo environmental impact assessment before they are awarded and carried out.
4. The already existing companies should undergo periodic environmental audits to ensure their compliance with environmentally sound practices.
5. Adequate punitive sanctions should be employed for failure to carry out EIA.
6. Apart from the oil and gas industry, EIA should be carried out before and after launching projects like fisheries, mining,

drainage and irrigation, agriculture, land reclamation and so on.

Conclusion

This research has examined the effectiveness of environmental impact assessment as an instrument of environmental protection in Nigeria's oil and gas industry and found that the EIA Act is a mere piece in window dressing as the environment remains degraded in Nigeria. The research reveals that environment impact assessment is one of the approaches as to plan for and manage the foreseeable negative impacts of any project to be undertaken. EIA is a direct consequence of the precautionary principle or approach as it prevents environmental hazards.

Given the rationale for the adoption of the environmental assessment as a policy or instrument of environmental protection, Nigeria is yet to achieve the objective of the policy. Thus, aggressive implementation of the provisions of the Environmental Impact Assessment Act is necessary if the Act will not end up a paper tiger and all new projects should be subject to environmental impact assessment in accordance with the spirit of the Act.

This research submits that the already existing companies should undergo periodic environmental audits to ensure their compliance with environmentally sound practices. Environmental audit is a veritable management tool comprising a systematic, documented, periodic and objective evaluation of how well environmental organization, management and equipment are performing with the aim of contributing to safeguarding the environment by facilitating management control of environmental practices and assessing compliance

with any company policies, which include meeting regulatory requirements.

It is hoped that if the recommendations made by this study are considered, the EIA Act will not remain a tiger paper but an effective tool or instrument of environmental protection in Nigeria oil and gas industry.