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Review of Environmental Impact Assessment Policies in Nigeria since 1988: How Far? How Effective?

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Abstract
The paper reviewed the environmental impact assessment Policies on the social and natural environment. It traced its origin to United States of America when National Environmental Policy Act (NEPA) was passed by the congress in 1969, also how Environmental Impact objective empowers FEPA (Federal Environmental Protection Agency) to make as assessment of any project intended to be carried on in the country by any person, and authority, corporate or unincorporated body. The review also confirmed that Federal government's focus on exploration of natural resources for industrialization and this led to pollution, contamination of water resources, land, air and climate which destroys fauna and flora, causes health hazards and communal diseases activities. Following the 1972 stake holder conference held in UN conference on Human Environment. In 1992 Rio de Jeneiro earth summit and dumping of toxic waste in Koko in Delta State of Nigeria policies on environment, including the Federal Environmental legal frame work pollution and degradation in the country. One of the empirical findings confirmed that Environmental act was characterized by ecological problems, unplanned growth and increasing problems domestic and industrial waste disposal. Economic activities increase the loss of top soil, deforestation, loss of habitat, species, biodiversity and degradation of wetlands. The weak implementation, privatization of Nigeria enterprises and its consequent use by those in power to promote private gains, lack of policies enforcement, exclusion of some projects carried out or sponsored. The paper conclude that Environmental Impact Policy (Act) has failed to protect Nigerians and thereby suggest good governance as the likely solution.

Key words: *Environment, Good Governance, Economic and industrialization, UN Rio de Jeneiro Earth summit, E/A Impact Assessment policy.*

Introduction

Industrial activities in Nigeria led to pollution of environmental as well as destruction of economic infrastructure within communities hosting these resources; which have been managed with weak legal framework and regulation. Nigeria woke to her responsibility following the dumping of toxic waste of Koko in Delta State of Nigeria in 1988 by a foreign firm, Nigeria established environmental policies on environment and Federal Environmental impact Assessment Act 1988 effective control of pollution and degradation when country's environment is still characterized by ecological industrial waste disposal, oil and gas leakages and loss of top soil problems.

There are numerous Nigeria environmental policies and laws which seek to concern, guide, control and manage the exploitation of natural resources, along with the control and prohibition of environmental pollution (FEPA Act 1990), but the inability of the environmental policies and laws to correct the ills of exploitation and degradation is yet to be corrected. Ibaba (2010) quoting Adibe and Essaghah (1997: 76-89) says:

Industrial operators (other than in the petroleum subsector) are apparently not guided by any environmental protection legislations. Where such legislations exist, conformance with them is not systematically monitored and effectively enforced. It is not surprising that neither industrial establishments nor government agencies responsible for overseeing the industrial sector and environmental matters have a mechanism for monitoring and evaluating impacts of industrial pollution with a view to controlling and managing them. Equally, the isolation of the environmental laws from the development programs and policies of the state, faults in the implementation strategies or techniques, inadequate penalties for violation, the non-involvement of the citizenry in the formulation and execution of the laws, and the lack of a clear focus, are also seen as factors which have become obstacles to the proper execution of the laws.

In all however, the lack of enforcement of the laws stand out as the most fundamental cause of the inability of the legislations to protect the Nigeria environment. This is blamed on inadequate funding, corruption, the lack of operational facilities, the low involvement of professionals, the uncooperative attitude of the multinational corporations, and the centralization of legislative powers in the central government, along with the privatization of the Nigerian state (Ibaba, 2010).

United Nations (UN) millennium summit (2000) contributed positively as follows: prudence must be shown in the management of all living species and natural resources, in accordance with the precepts of sustainable development. Only in this way can the immeasurable riches provided to us by nature be preserved and passed on to our descendants. The current unsustainable patterns of production and consumption must be changed in the interest of our future welfare and that of our descendants (Paragraph 6, United Nations Millennium Declaration). (Ivbijaro, 2006).

This paper critically examined Nigerian environmental protection laws and policies from text books, Journals, and internet therefore making a secondary and empirical research. EIA (Environmental Impact Assessment) as aptly defined thus: It is a tool for systematically evaluating impacts of a proposed development on people, other organisms, and on the physical, social, economic, cultural and aesthetic environment before a final decision is taken. In addition to identifying the impacts, EIA considers various alternative options including the option not to undertake a development or not to make a change.

The Environmental Impact Assessment is to ensure that Environmental aspects are addressed and potential problems are for seen at the appropriate stage of project design. Environmental Impact Assessment (EIA) should be envisaged at an integral part of the planning process and initiated at the project level from the start.

Eneh (2011) spelt out the main steps of the sub-objectives which were:

- Preliminary activities include the selection of a coordinator for the EIA and the collection of background information. This should be undertaken as soon as a project has been identified.
- Impact identification involves a broad analysis of the impacts of project activities with a view to identifying those which are worthy of a detailed study.
- Baseline study entails the collection of detailed information and data on the condition of the project area prior to the project's implementation.
- Impact evaluation should be done whenever possible in quantitative terms and should include the working out of potential mitigation measures. Impact evaluation cannot proceed until project alternatives have been define, but should be completed early enough to permit decisions to be made in a timely fashion.
- Assessment involves combining environmental losses and gains with economic costs and benefits. Cost-benefit analysis should include environmental impacts where thesis can be evaluated in monetary terms.
- Documentation is prepared to describe the work done in the EIA. A working document is prepared to provide clearly stated and argued recommendations for immediate action. The working document should contain a list of project alternative with comments on the environmental and economic impacts of each.
- Decision-making begins when the working document reaches the decision maker, who will either accept one of the project alternatives, request further study or reject the proposed action altogether.
- Post audits are made to determine how close to reality the EIA predictions at a minimum, the EIA report should contain:
  i. A description of the proposed activity
  ii. A description of the potentially affected environment, including specific information necessary for identifying and assessing the environmental effects of the proposed activity.
  iii. A description of practical alternatives as appropriate.
  iv. An assessment of the likely or potential environmental impacts of the proposed activity and alternatives, including the direct, indirect, cumulative, short-term and long-term effects.
  v. An identification and description of measures available to mitigate adverse environmental impacts of the proposed activity and alternatives and an assessment of those measures.
  vi. And indication gaps in knowledge and uncertainties which may be encountered in compiling the required information
  vii. An indication of whether the environment of any other state or areas beyond national jurisdiction is likely to be affected by the proposed activity and possible alternatives.
  viii. A brief non-technical summary of the information provided under the above headings.

Nigeria Environmental Legal Framework

Since Nigeria is part of the global environmental management equation, applicable environmental laws in the country traverse international and regional agreements/conventions/protocols and national laws, regulations and bye-laws. They include the following (Ifeanyi, 2002):

International Agreements/Conventions:

- 1968 Africa Convention on conservation of Nature and Natural Resources.
- 1972 UN Conference on the Human Environment (Stockhom declaration) which established the nexus between development and environmental integrity.
- 1976 Vancouver Conference on human settlements. (Habitat I)
- 1985 Vienna convention on protection of the Ozone layer
- 1992 UN Conference on Environment and Development (Rio summit) which produced a suite of five documents:
  - i. Agenda 21-an action plan for sustainable development in the 21st century
  - ii. The Rio declaration-principles on healthy environment equitable development
  - iii. The convention biodiversity
  - iv. The convention on climate change
  - v. A statement of forest principles
- 1993 Lugano convention on civil liability for damage resulting from activities dangerous to the environment
- 1996 Instanbul Conference on Human Settlements (Habitat II) which links quality living with construction and environment, drinking water, etc.
- Kyoto accord/Kyoto protocol on global warming CFCs
- Africa charter on human and people's rights

Regional Environment Policy**:** According to Ifeanyi, (2002), regional environment policies and their provisions include Africa Charter on Human and Peoples Right (Ratification and Enforcement) Act Cap 10 Article 24: All peoples shall have the right to a general satisfactory environment favourable to their development.

Part 1: General Principle of Environmental Impact Assessment with broad objectives of:

- Determination of environmental impacts of activities likely to negatively affect the environment [S1 (a)]
- Promotion of implementation mechanisms at the federal, state and local government levels [S1 (b)]
- Encouragement of exchange of data and information as well as consultations and notification of alerts across boundaries to other states, towns and villages [S1 (c)]

Other provisions include:

- Mandatory Assessment (SS 2 and 3), which make it mandatory that an assessment be made of likely environmental impact or effect an activity would have. This assessment should be made prior to approval or final decision and at the very early stages of the activity.
- Disclosure (SS 3, 4 and 5). SS 3 prescribes that significant environmental issues shall be identified (disclosed) and studied, while SS 4 specifies the minimum matters that the environmental assessment report must contain
- Consultation [SS 7 and 9 (2), (3) and (4)], which stipulates that prior to giving a decision on any proposed activity, FEPA shall afford concerned professionals, government agencies and other stake-holders opportunity to make an input. The consequential report or decision shall be public.

- Approval procedure [SS 6, 8, 9 (1), 10, 11 (2) and 13]. The decision of FEPA shall impartial and given after a minimum time has elapsed. It should also be in writing and supported by reasons and details such so conditions for project execution or any directives for mitigation or that the project should be carried out under supervision. It may order further investigations into possible hazards.
- Participation [S 11 (1)]. Any person or community to be affected directly or remotely shall be notified and there shall be consultations which in effect means that the person or community shall have a say in the final decision of FEPA

Part 2: Environmental Assessment of Projects: This part basically covers the environmental assessment process which includes:

- Screening and reviews and matters incidental thereto (SS 16-22)
- Mandatory study, Notices and Council's decisions (SS 23-26)
- Discretionary powers of the Agency, mediation and constitution of review panels and matters incidental thereto (SS 27-39)
- Decision of the Agency including implementation of mitigation measures, follow up programs and certification (SS 40-42)
- Trans-border matters both domestic and international; international agreements and arrangement; access to information etc. (SS 49-59).

With the discussion so far, the Federal ministry of environment evaluated the submissions, held wide consultations with all stake holders and then made a decision; it is the final arbiter on such issues. In Niger Delta, the law is not adhered to strictly in the private sector; only companies in the oil and gas sector reasonably abide by the law. Even at that they undertake unethical practices, which flout the law.

Establishment in the private sector (manufacturing companies, etc) hardly undertakes EIA studies for their activities, even though such activities impact on the environment. This is also true of public projects undertaken by the three tries of government (Federal, State and Local Governments).

Oil companies, who embark on EIA studies, violate the rules. There are instances where they have commenced the project before the EIA study is done. For example, the Shell Petroleum Development Company (SPDC) commenced a multi-billion dollars project, the Estuary Amatu (E.A) project which cut across communities in Bayelsa and Delta States before EIA commenced (Environment Watch, 15/8/2001).

At the level of government, compliance with the EIA Act is nearly zero. Even when done, it becomes controversial as evidenced by the EIA report on the dredging of the River Niger. While the government is satisfied with the report and is poised to commence the project, the people consider the report to be "*fraudulent*". Their contention is that the EIA report does not assure them of adequate mitigating measures to safeguard the environment from possible disasters arising from the dredging the river (Bayelsa State Ministry of Environment Report, 2000).

Similarly, state governments also pay lip service to the law. While they insist on EIA studies before projects are executed by the oil companies, they hardly do same. Thus, development projects of the states have impacted greatly on the Niger Delta environment.

For example, a report of the Bayelsa State Ministry of Environment (2000) points out that the states are losing River Nun Forest Reserve to Niger Delta University owned by the Bayelsa State Government.

It is important to observe that the EIA law has some defects, which probably account for its ineffectiveness. First, some projects are excluded from mandatory EIA studies. Section 15, subsection 1 of the Act provides that where:

(i) In the option 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.

(ii) The project is to be carried out during national emergency for which temporary measures have been taken by the government.

(iii) 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.

Subsection two emphasizes that:
For greater certainty, 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, an environmental assessment may not be required if – the project had been identified at time the power is exercised or the duty or function is performed.

With regard to the mandatory study activities, the provisions are limited. For example, while land reclamation is a mandatory study activity, EIA is only required if the area under consideration is 50 hectares or more. The implication therefore is that where the area is less than 50 hectares, EIA study is not required.

Significantly however, the accumulation of the activities that are exempt from EIA studies can greatly degrade the environment. For example, as regards housing, EIA study is required if the area is more than 50 hectares. Thus, if a government develops houses in different locations, and the area is less than 50 hectares, it will not require study. Now, if we have 10 sites of 30 hectares, they will not require EIA study. Additionally, it is doubtful if developments less than 50 hectares will not create environmental problems.

The penalty for violating the provisions of the act is too little to deter offenders, particularly corporate bodies. Section 62 of the Act which deals with offence and penalty provides ₦100,000 fine or five years imprisonment for an individual offender, and a minimum of N1m for corporate offenders. Clearly, one million naira (₦1,000,000) is too small a sum to compel corporate bodies (particularly the oil companies and governments) to obey the law.

It is significant to note the enforcement of the EIA law lies with the Federal Ministry of Environment. The States only perform peripheral functions. This is clearly inappropriate as it largely excludes the regulatory institutions of stakeholder states in the projects for which EIA's are required (Environment Watch, 15/04/1998). A complaint at the state level is that the Federal Agency responds too slowly to their inputs, complaints and observations.

The local communities who are the hosts to projects for which EIA studies are undertaken are either not consulted, or not involved effectively in such studies. Thus, the benefit of involving the people, immense knowledge on the ecological process that can be integrated to enrich project design, team spirit that would elicit the commitment of stakeholders, and cooperation, is lost (Adibe and Essaghah, 1999:17-18). Thus, the EIA Act has done very little to protect the Niger Delta environment.

Conclusion

Nigeria's nation objective on environmental policies is highly ranked and in line with the world Commission on Environmental Development.

Nigeria legislation on environment has become a major instrument for sustainable development but also the laws seek to correct acts and attitudes which degrade the environment and at the same time guide and control natural resources exploitation.

The provisions of the policies and laws create gaps which weaken environment. For instance, the petroleum Act, which regulates operations of oil industry, prescribes no penalty for offenders and FEPA Act prescribes a fine of only ₦20,000.

The environmental impact Assessment in Nigeria is characterized by ecological problems unplanned growth and problems of domestic and industrial waste disposal and pollution. Economic and industrial development activities in relevant sectors have accelerated the loss of top soil and deforestation and biodiversity as well as degeneration of wetlands.

The ineffectiveness in environmental policies and Acts in Nigeria is largely due to lack of cooperation and coordination between Federal Ministry of Environment and State Ministry of Environment, existence of overlapping functions, weak institutional capacity, funding and bad governance. Other sub effective policies/Act includes poor public participation, culpability of the government, and weak implementation which has rendered Environment Impact Assessment a toothless backing dog.

Recommendations

1. There should be a strong written cooperation between the three tiers of governments and concerned communities at large.
2. Overlapping functions and responsibilities should be streamlined, monitored and enforced appropriately.
3. Governments should remove procedural systems and corruptive practices among all the practitioners which mostly cause confiding roles, mandates, inconsistencies in constitution and legislative functions which go in Federal, State Local government and community relationship.
4. Government should improve on weak institutional capacity and funding, public participation; send staff for relational training, absence of effective monitoring, guidelines and feedback.

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