

ENVIRONMENTAL IMPACT ASSESSMENT ACT

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ENVIRONMENTAL IMPACT ASSESSMENT ACT

An Act to set out the general principles, procedure and methods to enable the prior consideration of environmental impact assessment on certain public or private projects.

[1992 No. 86.]

[10th December, 1992]

[Commencement.]

PART I

General principles of environmental impact assessment

1. Goals and objectives of environmental impact assessment

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

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

(b) to promote the implementation of appropriate policy in all Federal Lands (however acquired) States and local government areas, consistent with all laws and decision-making processes through which the goal and objective in paragraph (a) of this section may be realised;

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

2. Restriction on public or private project without prior consideration of the environmental impact

(1) The public or private sector of the economy shall not undertake or embark on or authorise projects or activities without prior consideration, at an early stage, of their environmental effects.

(2) Where the extent, nature or location of a proposed project or activity is such that it is likely to significantly affect the environment, its environmental impact assessment shall be undertaken in accordance with the provisions of this Act.

(3) The criterion and procedure under this Act shall be used to determine whether an activity is likely to significantly affect the environment and is therefore subject to an environmental impact assessment.

(4) All agencies, institutions (whether public or private) except if exempted pursuant to this Act, shall, before embarking on the proposed project, apply in writing to the Agency, so that subject activities can be quickly and surely identified and environmental assessment applied as the activities are being planned.

3. Identification, etc., of significant environmental issues

(1) In identifying the environmental impact assessment process under this Act, the relevant significant environmental issues shall be identified and studied before commencing or embarking on any project or activity convened by the provisions of this Act or covered by the Agency or likely to have serious environmental impact on the Nigerian environment.

(2) Where appropriate, all efforts shall be made to identify all environmental issues at an early stage in the process.

4. Minimum content of environmental impact assessment

An environmental impact assessment shall include at least the following minimum matters, that is-

- (a) a description of the proposed activities;
- (b) a description of the potential affected environment, including specific information necessary to identify and assess the environmental effect of the proposed activities;
- (c) a description of the practical activities, as appropriate;
- (d) an assessment of the likely or potential environmental impacts of the proposed activity and the alternatives, including the direct or indirect cumulative, short-term and long-term effects;
- (e) an identification and description of measures available to mitigate adverse environmental impacts of proposed activity and assessment of those measures;
- (f) an indication of gaps in knowledge and uncertainty which may be encountered in computing the required information;
- (g) an indication of whether the environment of any other State or local government area or areas outside Nigeria is likely to be affected by the proposed activity or its alternatives;
- (h) a brief and non-technical summary of the information provided under paragraphs (a) to (g) of this section.

5. Detailed degree of environmental significance

The environmental effects in an environmental assessment shall be assessed with a degree of detailed commensuration with their likely environmental significance.

6. Examination of environmental impact assessment by the Agency

The information provided as part of an environmental impact assessment shall be examined impartially by the Agency prior to any decision to be made thereto (whether in favour or adverse thereto).

7. Opportunity for comments by certain groups

Before the Agency gives a decision on an activity to which an environmental assessment has been produced, the Agency shall give opportunity to government agencies, members of the public, experts in any relevant discipline and interested groups to make comment on the environmental impact assessment of the activity.

8. Decision not to be given until the appropriate period has elapsed

The Agency shall not give a decision as to whether a proposed activity should be authorised or undertaken until the appropriate period has elapsed to consider comments pursuant to sections 7 and 17 of this Act.

9. Decision on the effect of an environmental impact assessment to be in writing

(1) The Agency's decision on any proposed activity subject to environmental impact assessment shall-

- (a) be in writing;

- (b) state the reason therefor;
- (c) include the provisions, if any, to prevent, reduce or instigate damage to the environment.

(2) The report of the Agency shall be made available to any interested person or group.

(3) If no interested person or group requests for the report, it shall be the duty of the Agency to publish its decision in a manner by which members of the public or persons interested in the activity shall be notified.

(4) The Council may determine an appropriate method in which the decision of the Agency shall be published so as to reach interested persons or groups, in particular the originators or persons interested in the activity subject of the decision.

10. Supervision of the activity

When the Council deems it fit and appropriate, a decision on an activity which has been the subject of an environmental impact assessment, the activity and its effect on the environment or the provisions of section 9 of this Act shall be subject to appropriate supervision.

11. Notification to potentially affected States or local government area, etc.

(1) When information provided as part of an environmental impact assessment indicates that the environment within another State in the Federation or a local government area is likely to be significantly affected by a proposed activity, the State or the local government area in which the activity is being planned, shall, to the extent possible-

- (a) notify the potentially affected State or local government of the proposed activity;
- (b) transmit to the affected State or local government area any relevant information of the environmental impact assessment;
- (c) enter into timely consultations with the affected State or local government.

(2) It shall be the duty of the Agency to see that the provisions of subsection (1) of this section are complied with and the Agency may cause the consultations provided pursuant to subsection (1) of this section to take place in order to investigate any environmental derogation or hazard that may occur during the construction or process of the activity concerned.

12. Mandatory study list not to be carried out without the report of the Agency

(1) When a project is described on the mandatory study list specified in the Schedule to this Act or is referred to mediation or a review panel, no Federal, State or local Government or any of their authority or agency shall exercise any power or perform any duty or functions that would permit the project to be carried out in whole or in part until the Agency has taken a cause of action conducive to its power under the Act establishing it, or has taken a decision or issued an order that the project could be carried out with or without conditions.

[Schedule.]

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

PART II

Environmental assessment of projects

13. Cases where environmental assessment is required

Notwithstanding the provisions of Part I of this Act, an environmental impact assessment shall be required where a Federal, State or local government agency authority established by the Federal, State or local government council-

(a) is the proponent of the project and does any act or thing which commits the Federal, State or local government authority to carrying out the project in whole or in part;

(b) makes or authorises payment or provides a guarantee for a loan or any other form of financial assistance to the proponent for the purpose of enabling the project to be carried out in whole or in part,

except when the financial assistance is in the form of any reduction, avoidance, deferral, removal, refund, remission or other form of relief from the payment of any tax, duty or excise under the Customs Excise Tariff, etc. (Consolidated) Act or any order made thereunder, unless that financial assistance is provided for the purpose of enabling an individual project specifically named in the enactment, regulation or order that provides the relief to be carried out;

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(c) has the administration of Federal, State or local government and leases or otherwise disposes of those lands or any tests in those lands or transfers the administration and control of those lands or invests therein in favour of the Federal Government or its agencies for the purpose of enabling the project to be carried out in whole or in part; or

(d) under the provisions of any law or enactment, issues a permit or licence, grants an approval or takes any other action for the purpose of enabling the project to be carried out in whole or in part.

14. Excluded projects

(1) An environmental assessment of a project shall not be required where-

(a) in the opinion of the Agency the project is in the list of projects which the President or the Council is of the opinion that the environmental effects of the project are 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.

(2) 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-

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

15. Environmental assessment process

Whenever the Agency decides that there is the need for an environmental assessment on a project before the commencement of the project, the environmental assessment process may include-

- (a) a screening or mandatory study and the preparation of a screening report;
- (b) a mandatory study 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.

16. Factors for consideration of a review panel

(1) Every screening or mandatory study of a project and every mediation or assessment by a review panel shall include a consideration of the following factors, that is-

- (a) the environmental effects of the project, including the environmental effects of malfunctions or accidents that may occur in connection with the project and any cumulative environmental effects that are likely to result from the project in taking into consideration with other projects that have been or will be carried out;
- (b) the significance or, in the case of projects referred to in section 47,48 or 49, the seriousness of those effects;
- (c) comments concerning those effects received from the public in accordance with provisions of this Act;
- (d) measures that are technically and economically feasible and that would mitigate any significant or, in the case of projects referred to in sections 47, 48 or 49 any serious adverse environmental effects of the project.

(2) In addition to the factors set out in subsection (1) of this Act, every mandatory study of a project and every mediation or assessment by a review panel shall include a consideration of the following factors, that is-

- (a) the purpose of the project;
- (b) alternative means of carrying out the project that are technically and economically feasible and the environmental effects of any such alternative means;

- (c) the need for and the requirements of any follow-up programme in respect of the project;
- (d) the short-term or long-term capacity for regeneration of renewal resources that are likely to be significantly or, in the case of the projects referred to in sections 47, 48, or 49 of this Act, seriously affected by the project; and
- (e) any other matter that the Agency or the Council at the request of the Agency, may require.

(3) For greater certainty, the scope of the factors to be taken into consideration pursuant to subsection (1) (a), (b) and (d) and subsection (2) (b), (c) and (d) of this section shall be determined-

- (a) by the Agency; or
- (b) where a project is referred to mediation or a review panel, by the Council, after consulting the Agency, when fixing the terms of reference of the mediation or review panel.

(4) An environmental assessment of a project shall be required to include a consideration of the environmental effect that could result from carrying out the project during the declaration of a national emergency.

17. Factors not included

(1) The Agency may delegate any part of the screening or mandatory study of a project, including the preparation of the screening report or mandatory study report, but shall not delegate the duty to take a course of action pursuant to section 21 (1) or 39 (1) of this Act.

(2) 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 the provisions of this Act or any relevant enactment.

18. Screening

(1) Where the Agency is of the opinion that a project is not described in the mandatory study list or any exclusion list, the Agency shall ensure that-

- (a) a screening of the project is conducted; and
- (b) a screening report is prepared.

(2) Any available information may be used in conducting the screening of a project, but where the Agency is of the opinion that the information available is not adequate to enable it to take a course of action pursuant to section 21 (1) of this Act, it shall ensure that any study and information that it considers necessary for that purpose are undertaken or collected.

19. Declaration of class screening report

(1) Where the Agency receives a screening report and the Agency is of the opinion that the report could be used as a method in conducting screening of other projects within the same class, the Agency may declare the

report to be a class screening report.

(2) Any declaration made pursuant to subsection (1) of this Act, shall be published in the Gazette and the screening report to which it relates shall be made available to the public at the registry maintained by the Agency.

(3) Where, in the opinion of the Agency, a project or part of a project is within a class in respect of which a class screening report has been declared, the Agency may use or permit the use of that report and the screening on which it is based to whatever extent the Agency considers appropriate for the purpose of complying with section 12 of this Act.

(4) Where the Agency uses or permits the use of a class screening report, it shall ensure that any adjustments are made that in the opinion of Agency are necessary to take into account local circumstances and any cumulative environmental effects that in the opinion of the Agency are likely to result from the project in combination with other projects that have been or will be carried out.

20. Use of previously conducted screening

(1) Where a proponent proposes to carry out, in whole or in part, a project for which a screening report has been prepared but the project did not proceed or the manner in which it is to be carried out has subsequently changed or where a proponent seeks the renewal of a licence permit or approval referred to in section 5 (d) of this Act in respect of a project for which a screening report has been prepared, the Agency may use or permit the use of that report and the screening on which it is based to whatever extent the Agency considers appropriate for the purpose of complying with section 12 of this Act.

(2) Where the Agency uses or permits the use of a screening or screening report pursuant to subsection (1) of this section, the Agency shall ensure that any adjustments are made that in its opinion are necessary to take into account any significant changes in the circumstances of the project.

21. Decision of the Agency

(1) After completion of a screening report in respect of a project, the Agency shall take one of the following courses of action, that is-

- (a) where, in the opinion of the Agency-
 - (i) the project is not likely to cause significant adverse environmental effects; or
 - (ii) any such effect can be mitigated,

the Agency may exercise any power or perform any duty or function that would permit the project to be carried out and shall ensure that any mitigation measures that the Agency considers appropriate are implemented;

- (b) where, in the opinion of the Agency-
 - (i) the project is likely to cause significant adverse environmental effects that may not be mitigable; or
 - (ii) public concerns respecting the environmental effects of the project warrant it,

the Agency shall refer the project to the Council for a referral to mediation or a review panel in accordance with section 35 of this Act; or

(c) where, in the opinion of the Agency, the project is likely to cause significant adverse environmental effects that cannot be mitigated, the Agency shall not exercise any power or perform any duty or function conferred on it under any enactment that would permit the project to be carried out in whole or in part.

(2) For greater certainty, where the Agency takes a course of action referred to in subsection (1) (a) of this section, the Agency shall exercise any power and perform any duty or function conferred on it by or under any enactment in a manner that ensures that any mitigation measures that the Agency considers appropriate in respect of the project, are implemented.

(3) Before taking a course of action in relation to a project pursuant to subsection (1) of this section, the Agency shall give the public an opportunity to examine and comment on the screening report and any record that has been filed in the public registry established in respect of the project pursuant to section 51 of this Act and shall take into consideration any comments that are filed.

22. Mandatory study

Where the Agency is of the opinion that a project is described in the mandatory study list, the Agency shall-

- (a) ensure that a mandatory study is conducted, and a mandatory study report is prepared and submitted to the Agency, in accordance with the provisions of this Act; or
- (b) refer the project to the Council for a referral to mediation or a review panel in accordance with section 35 of this Act.

23. Use of previously conducted mandatory study

(1) Where a proponent proposes to carry out, in whole or in part, a project for which a mandatory study report has been prepared but the project did not proceed or the manner in which it is to be carried out has subsequently changed, or where a proponent seeks the renewal of a licence, permit or approval referred to in section 5 (d) of this Act in respect of a project for which a mandatory study report has been prepared, the Agency may use or permit the use of that report and the mandatory study on which it is based to whatever extent the Agency considers appropriate for the purpose of complying with section 12 of this Act.

(2) Where the Agency uses or permits the use of a mandatory study or a mandatory study report pursuant to subsection (1) of this section, it shall ensure that any adjustments are made that in its opinion are necessary to take into account any significant changes in the circumstances of the project.

24. Public notice

(1) After receiving a mandatory study report in respect of a project, the Agency shall, in any manner it considers appropriate, publish in a notice setting out the following information-

- (a) the date on which the mandatory study report shall be available to the public;
- (b) the place at which copies of the report may be obtained; and

(c) the deadline and address for filing comments on the conclusions and recommendations of the report.

(2) Prior to the deadline set out in the notice published by the Agency, any person may file comments with the Agency relating to the conclusions and recommendations of the mandatory study report.

25. Decision of Council

After taking into consideration the mandatory study report and any comments filed pursuant to section 24 (2), the Council shall-

(a) refer the project to mediation or a review panel in accordance with section 35 of this Act where, in the opinion of the Council-

(i) the project is likely to cause significant adverse environmental effects that may not be mitigable; or

(ii) public concerns respecting the environmental effects of the project warrant it; or

(b) refer the project back to the Agency for action to be taken under section 39 (1) (a) of this Act where, in the opinion of the Council-

(i) the project is not likely to cause significant adverse environmental effects; or

(ii) any such effects can be mitigated.

Discretionary powers

26. Referral to Council

Where at any time the Agency is of the opinion that-

(a) a project is likely to cause significant adverse environmental effects that may not be mitigable; or

(b) public concerns respecting the environmental effects of the project warrant it,

the Agency may refer the project to the Council for a referral to mediation or a review panel in accordance with section 35 of this Act.

27. Termination by responsible authority

Where at any time the Agency decides not to exercise any power or perform any duty or function referred to in section 25 of this Act in relation to a project that has not been referred to mediation or a review panel, it may terminate the environmental assessment of the project.

28. Termination by Council

Where at any time the Agency decides not to exercise any power or perform any duty or function referred to in section 25 of this Act in relation to a project that has been referred to mediation or a review panel, the Council may terminate the environmental assessment of the project.

29. Referral by Council

Where at any time the Council is of the opinion that-

- (a) a project is likely to cause significant adverse environmental effects that may not be mitigable; or
- (b) public concerns respecting the environmental effects of the project warrant it,

the Council may, after consultation with the Agency, refer the project to mediation or a review panel in accordance with section 35 of this Act.

30. Decision of the Council

Where a project is to be referred to mediation or a review panel under this Act, the Council shall, within a prescribed period, refer the project-

- (a) to mediation, if the Council is satisfied that-
 - (i) the parties who are directly affected by or have a direct interest in the project have been identified and are willing to participate in the mediation through representatives; and
 - (ii) the mediation is likely to produce a result that is satisfactory to all of the parties;or
- (b) to a review panel, in any other case.

31. Appointment of mediator

Where a project is referred to mediation, the Council shall, in consultation with the Agency-

- (a) appoint as mediator any person who, in the opinion of the Council, possesses the required knowledge or experience; and
- (b) fix the terms of reference of the mediation.

32. Determination of parties

(1) In the case of a dispute respecting the participation of parties in a mediation, the Council may, on the request of the mediation, determine those parties who are directly affected by or have a direct interest in the project.

(2) Any determination by the Council pursuant to subsection (1) of this section shall be binding.

33. Mediation

(1) A mediator shall not proceed with a mediation unless the mediator is satisfied that all of the information required for a mediation is available to all of the participants.

(2) A mediator shall, in accordance with the provisions of this Act and the terms of reference of the mediation-

- (a) help the participants to reach a consensus on-
 - (i) the environmental effects that are likely to result from the project;
 - (ii) any measures that would mitigate any significant adverse environmental effects;
 - (iii) an appropriate follow-up programme;
- (b) prepare a report setting out the conclusions and recommendations of the participants; and
- (c) submit the report to the Council and the Agency.

34. Subsequent reference to review panel

Where at any time after a project has been referred to mediation, the Council is of the opinion that the mediation is not likely to produce a result that is satisfactory to all of the parties, the Council may terminate the mediation and refer the project to a review panel.

35. Appointment of review panel

Where a project is referred to a review panel, the Council shall, in consultation with the Agency-

- (a) appoint as members of the panel including the chairman thereof, persons who, in the opinion of the Council, possess the required knowledge or experience; and
- (b) fix the terms of reference of the panel.

36. Assessment by review panel

A review panel shall, in accordance with the provisions of this Act and its terms of reference-

- (a) ensure that the information required for an assessment by a review panel is obtained and made available to the public;
- (b) hold hearing in a manner that offers the public an opportunity to participate in the assessment;
- (c) prepare a report setting out-
 - (i) the conclusions and recommendations of the panel relating to the environmental effects of the project and any mitigation measures or follow-up programme; and
 - (ii) a summary of any comments received from the public; and
- (d) submit the report to the Council and the Agency.

37. Hearing of witnesses

(1) A review panel shall have the power to summon any person to appear as witness before the panel and or ordering the witness to-

- (a) give evidence, orally or in writing; and
- (b) produce such documents and things as the panel considers necessary for conducting its assessment of the project.

(2) A review panel shall have the same power to enforce the attendance of witnesses and to compel them to give evidence and produce documents and other things as is vested in the Federal High Court or a High Court of a State.

(3) A hearing by a review panel shall be in public, unless the panel is satisfied after representation made by a witness that specific, direct and substantial harm would be caused to the witness by the disclosure of the evidence, documents or other things pursuant to subsection (1) of this section.

(4) Where a review panel is satisfied that the disclosure of evidence, documents or other things would cause specific, direct and substantial harm to a witness, the evidence, documents or things shall be privileged and shall not without the authorisation of the witness, knowingly be or be permitted to be communicated, disclosed or made available by any person who has obtained the evidence, documents or other things pursuant to this Act.

(5) Any summons issued or order made by a review panel pursuant to subsection (1) of this section may, for the purposes of enforcement, be made a summons or order of the Federal High Court by following the usual practice and procedure.

38. Public notice

On receiving a report submitted by a mediator or a review panel, the Agency shall make the report available to the public in any manner the Council considers appropriate and shall advise the public that the report is available.

39. Decision of Agency

(1) Following the submission of a report by a mediator or a review panel or the referral of a project back to the Agency pursuant to section 25 (b) of this Act, the Agency shall take one of the following courses of action in relation to the project, that is-

- (a) where in the opinion of the Agency-
 - (i) the project is not likely to cause significant adverse environmental effect; or
 - (ii) any such effect can be mitigated or justified in the circumstances,

the Agency may exercise any power or perform any duty or function that would permit the project to be carried out in whole or in part and shall ensure that any mitigation measures that the Agency considers appropriate are implemented; or

(b) where, in the opinion of the Agency, the project is likely to cause significant adverse environmental effects that cannot be mitigated and cannot be justified in the circumstances, the Agency shall not exercise any power or perform any duty or function conferred on it by or under any enactment that would permit the project to be carried out in whole or in part.

(2) For greater certainty, where the Agency takes a course of action referred to in subsection (1) (a) of this section, it shall exercise any power and perform any duty or function conferred on it by or under any enactment in a

manner that ensures that any mitigation measure that the Agency considers appropriate in respect of the project is implemented.

40. Design and implementation

(1) Where the Agency takes a course of action pursuant to section 39 (1) (a) of this Act it shall, in accordance with this Act, design any follow-up programme that it considers appropriate for the project and arrange for the implementation of that programme.

(2) The Agency shall advise the public of-

- (a) its course of action in relation to the project;
- (b) any mitigation measure to be implemented with respect to the adverse environmental effects of the project;
- (c) the extent to which the recommendations set out in any report submitted by a mediator or a review panel have been adopted; and
- (d) any follow-up programme designed for or in the pursuant to subsection (1) of this section.

41. Certificate

A certificate stating that an environmental assessment of a project has been completed, and signed by the Agency that exercises a power or performs a duty or function referred to in section 8 of this Act in relation to the project, is in the absence to the contrary, proof of the matter stated in the certificate.

42. Definition of jurisdiction

- (1) For the purposes of this Act, "**jurisdiction**" includes-
- (a) a federal authority;
 - (b) the government of a State;
 - (c) any other agency or body established pursuant to an Act, law, or bye-law or the legislature of a State and having powers, duties or functions in relation to an assessment of the environmental effects of a project;
 - (d) any body established pursuant to a comprehensive land claims agreement and having powers, duties or functions in relation to an assessment of the environmental effects of a project;
 - (e) a government of a foreign State or of a subdivision of a foreign State, or any institution of such a government; and
 - (f) an international organisation of States or any institution of such an organisation.

43. Joint review panel

(1) Subject to subsection (2) of this section, where the referral of a project to a review panel is required or permitted by this Act and a jurisdiction referred to in subsection (1) (e) or (f) of this section, has a responsibility or an authority to conduct an assessment of the environmental effect of the project or any part of it, the Council and the Minister of External Affairs may establish a review panel jointly with that jurisdiction.

(2) The Council shall not establish a review panel jointly with a jurisdiction referred to in subsection 42 of this Act unless the Council is satisfied that-

- (a) the Council may appoint or approve the appointment of the chairman or a co- chairman and one or more other members of the panel;
- (b) the Council may fix or approve the terms of reference for the panel;
- (c) the public shall be given an opportunity to participate in the assessment conducted by the panel;
- (d) on completion of the assessment, the report of the panel shall be submitted to the Council; and
- (e) the panel's report shall be published.

(3) Where the Council establishes a review panel jointly with a jurisdiction referred to in subsection 42 of this Act, the assessment conducted by that panel shall be deemed to satisfy any requirements of this Act, respecting assessment by a review panel.

44. Substitute for review panel

(1) Where the referral of a project to a review panel is required or permitted by this Act and the Council is of the opinion that a process for assessing the environmental effects of projects that is followed by a Federal authority under an Act of the National Assembly other than this Act, or by a body referred to in section 42 (1) (d) of this Act, would be an appropriate substitute, the Council may approve the substitution of that process for an environmental assessment by a review panel under this Act.

(2) An approval of the Council pursuant to subsection (1) of this section shall be in writing and may be given in respect of a project or a class of projects.

45. Conditions

The Council shall not approve a substitution pursuant to subsection 44 (1) of this Act unless the Council is satisfied that-

- (a) the process to be substituted includes a consideration of the factors referred to in section 11 of this Act;
- (b) the public has been given an opportunity to participate in the assessment;
- (c) at the end of the assessment, a report has been submitted to the Council; and
- (d) the report has been published.

46. Substitution

Where the Council approves a substitution of a process pursuant to section 44 (1) of this Act, an assessment that is conducted in accordance with that process shall be deemed to satisfy any requirements of this Act, in respect of assessment by a panel.

47. Inter-State environmental effects

(1) Where a project for which an environmental assessment is not required under section 5 of this Act, is to be carried out in a State and the President is of the opinion that the project is likely to have serious environment effects in another State, the Council may establish a review panel, to conduct an assessment of the inter-State environmental effects of the project.

(2) The Council shall not establish a review panel pursuant to subsection (1) of this section where the President and the governments of all the interested States have agreed on another panel for conducting an assessment of the inter-State environmental effects of the project.

(3) A review panel may be established pursuant to subsection (1) of this section on the initiative of the President or at the request of the government of any interested State.

(4) At least ten days before establishing a review panel pursuant to subsection (1) of this section, the President shall give notice of the intention to establish a panel to the proponent of the project and to the State or all interested States.

(5) For the purposes of this section and section 49 (3) of this Act, "**interested state**" means-

- (a) a State in which the project is to be carried out; or
- (b) a State that claims that serious adverse environmental effects are likely to occur in that State as a result of the project.

48. International environmental effects

(1) Where a project, for which an environmental assessment is not required under section 5 of this Act, is to be carried out in Nigeria or on Federal lands and the President is of the opinion that the project is likely to cause serious adverse environmental effects outside Nigeria and those Federal lands, the Agency and the Minister for Foreign Affairs may establish a review panel to conduct an assessment of the international environmental effects of the project.

(2) At least ten days before establishing a review panel pursuant to subsection (1) of this section, the Agency, with the approval of the President, shall give notice of the intention to establish a panel to-

- (a) the proponent of the project;
- (b) the government of any State in which the project is to be carried out or that is adjacent to Federal lands on which the project is to be carried out; and
- (c) the government of any foreign State in which, in the opinion of the Minister for Foreign Affairs, serious adverse environmental effects are likely to occur as a result of the project.

49. Environmental effects on Federal and other lands

(1) Where a project, for which an environmental assessment is not required under section 15 of this Act, is to be carried out in Nigeria and the Agency or the President is of the opinion that the project is likely to cause serious adverse environmental effects on Federal lands or on lands in respect of which a State or local government has interests, the Agency or the President may establish a review panel to conduct an assessment of the environmental effect of the project on those lands.

(2) Where a project for which an environmental assessment is not required under section 5 of this Act, is to be carried out on lands in a local government land or on lands that have been set aside for the use and benefit of certain class of persons pursuant to legislation and the Agency is of the opinion that the project is likely to cause serious adverse environmental effects outside those lands, the Agency may establish a review panel to conduct an assessment of the environmental effects of the project outside those lands.

(3) At least ten days before a review panel is established pursuant to subsection (1) or (2) of this section, the Agency shall give notice of the intention to establish a panel to the proponent of the project and to

the governments of all interested states and if, in the case of a project that is to be carried out the Agency is of the opinion that the project-

(a) is likely to cause or have serious adverse environmental effects on lands in a reserve that is set apart for the use and benefit of a certain class of persons, to that class of persons;

(b) on settlement lands described in a comprehensive land claims agreement referred to in subsection (2) of this section, to the party to the agreement; and

(c) on lands that have been set aside for the use and benefit of a certain class of persons, to that class of persons.

(4) For the purposes of this Act a reference to any land areas or reserves includes a reference to all waters on and air above those lands, areas or reserves.

50. Application of certain provisions

Sections 35 to 38 and 42 to 44 of this Act, shall apply, with such modifications as the circumstances require, to a review panel established pursuant to sections 47 (1), 48 (1) or 49 (1) or (2) of this Act.

51. Power to prohibit a proponent

(1) Where the Agency, after the appraisal of the President's assessment of the environmental effects of a project referred to in sections 47 (1), 48 (1) or 49 (1) or (2) of this Act, the President may by Order published in the Gazette, prohibit the proponent of the project from doing any act or thing that would commit the proponent to ensuring that the project is carried out in whole or in part until the assessment is completed and the Agency is satisfied that the project is not likely to cause any serious adverse environmental effects or that any such effects shall be mitigated or are justified in the circumstances.

(2) Where a review panel established to assess the environmental effects of a project referred to in subsection 47 (1), 48 (1) or 49 (1) or (2) of this Act submits a report to the Agency indicating that the project is likely to cause any serious adverse environmental effects, the Agency may prohibit the proponent of the project

from doing any act or thing that would commit the proponent to ensure that the project is carried out in whole or in part until the Agency is satisfied that such effect have been mitigated.

52. Injunction

(1) Where, on the application of the Agency, it appears to a court of competent jurisdiction that a prohibition made under section 51 of this Act in respect of a project has been, is about to be or is likely to be contravened, the court may issue an injunction ordering any person named in the application to refrain from doing any act or thing that would commit the proponent to ensure that the project or any part thereof is carried out until-

(a) with respect to a prohibition made pursuant to section 51 (1), of this Act, the assessment of the environmental effects of the project referred to in sections 47 (1), 48 (1) or 49 (1) or (2) of this Act, is completed and the Agency is satisfied that the project is not likely to cause any serious adverse environmental effects or any such effects shall be mitigated or are justified in the circumstances; and

(b) with respect to a prohibition made pursuant to section 51 (2), of this Act, the Agency is satisfied that the serious adverse environmental effects referred to in that subsection has been mitigated.

(2) At least 48 hours before an injunction is issued under subsection (1) of this section, notice of the application shall be given to the persons named in the application unless the urgency of the situation is such that the delay involved in giving such notice would not be in the public interest.

53. Commencement of prohibition

(1) Any prohibition under section 51 of this Act shall come into force on the day it is made.

(2) The prohibition shall cease to have effect fourteen days after it is made unless, within that period, it is approved by the President.

54. International agreement

(1) Where a Federal authority or the Government of Nigeria on behalf of a Federal authority enters into agreement or arrangement with the government of a State or any institution of such a government under which a Federal authority exercises a power or performs a duty or function referred to in section 15 (b) or (c) of this Act in relation to projects-

(a) that have not been identified at the time the power is exercised or the duty or function is performed; and

(b) in respect of which the Government of Nigeria or the Federal authority, as the case may be, shall have no power to exercise or duty or function to perform when the projects are identified,

the Government of Nigeria or the Federal authority concerned shall ensure that the agreement or arrangement provides for the assessment of the environmental effects of those projects and that the assessment shall be carried out as early as practicable in the planning stages of those projects.

(2) Where a Federal authority or the Government of Nigeria on behalf of a Federal authority enters into an agreement with the government of a foreign State or of a subdivision of a foreign State, an international organisation of a foreign State, any institution of such a government or organisation, under which a Federal authority exercises a power or performs a duty or function referred to in section 5 (b) or (c) of this Act in relation to the projects-

(a) that have not been identified at the time the power is exercised or the duty or functions performed; and

(b) in respect of which the Government of Nigeria or the Federal authority, as the case may be, shall have no power to exercise or duty or function to perform when the projects are identified,

the Government of Nigeria or the Federal authority shall ensure that the agreement or arrangement provides for the assessment of the environmental effects of those projects and that the assessment shall be carried out as early as practicable in the planning stages of those projects.

55. Public registry

(1) For the purpose of facilitating public access to records relating to environmental assessments, a public registry shall be established and operated in accordance with the provisions of this Act in respect of every project for which an environmental assessment is conducted.

(2) The public registry in respect of a project shall be maintained-

(a) by the Agency, from the commencement of the environmental assessment until any follow-up programme in respect of the project is completed; and

(b) where the project is referred to mediation or a review panel by the Agency, from the appointment of the mediator or the members of the review panel until the report of the mediator or review panel is submitted to the Agency or the Secretary to the Government of the Federation as the case may be.

(3) Subject to subsection (4) of this section, a public registry shall contain all records and information produced, collected or submitted with respect to the environmental assessment of the project, including-

(a) any report relating to the assessment;

(b) any comments filed by the public in relation to the assessment; and

(c) any record prepared by the Agency for the purposes of section 35 of this Act.

(4) A public registry shall contain a record referred to in subsection (3) of this section if the record falls within one of the following categories-

(a) records that have otherwise been made available to the public carrying out the assessment pursuant to this Act and any additional records, that have otherwise been made publicly available;

(b) a record or part of a record that the Agency, in the case of a record in its possession, or any other Ministry or government agency, determines would have been disclosed to the public if a request had been made in respect of that record at the time the record was filed with the registry, including any record that would be disclosed in the public interest;

(c) any record or part of a record, except a record or part containing third party information, if the President in the case of a record in the Agency's possession, or the President believes on reasonable grounds that its disclosure would be in the public interest because it is required in order for the public to participate effectively in the assessment.

(5) Notwithstanding any other enactment, no civil or criminal proceedings shall lie against the Agency, or against any person acting on behalf of or under the direction of the Agency, and no proceedings shall lie against the State or any of its agencies, for the disclosure in good faith of any record or any part of a record pursuant to this Act, for any consequences that flow from that disclosure and for failure to give any notice if reasonable care is taken to give the required notice.

(6) For the purposes of this section, "third party information" means-

- (a) trade secrets of a third party;
- (b) financial, commercial, scientific or technical information that is confidential information supplied to a government institution by a third party and is treated consistently in a confidential manner by the third party;
- (c) information, the disclosure of which could reasonably be expected to result in material financial loss or gain to, or could reasonably be expected to prejudice the competitive position of a third party; and
- (d) information, the disclosure of which could reasonably be expected to interfere with contractual or other negotiations of a third party.

56. Preparation of statistical summary

(1) During each year, the Agency shall maintain a statistical summary of all the environmental assessments undertaken or directed by it and all courses of action taken, and all decisions made, in relation to the environmental effects of the projects after the assessments were completed.

(2) The Agency shall ensure that the summary for each year is compiled and completed within one month after the end of that year.

57. Defect in form or technical irregularity

An application for judicial review in connection with any matter under this Act shall be refused where the sole ground for relief established on the application is a defect in form or a technical irregularity .

PART III

Miscellaneous

58. Power to facilitate environmental assessment

(1) For the purposes of this Act, the Agency may-

- (a) issue guidelines and codes of practice to assist in conducting assessment of the environmental effects of projects;
- (b) establish research and advisory bodies;
- (c) enter into agreements or arrangements with any jurisdiction within the meaning of section 42 (1) (a), (b), (c) or (d) respecting assessments of environmental effects;
- (d) enter into agreements or arrangements with States for the purposes of co-ordination, consultation, and exchange of information in relation to the assessment of the environmental effects of projects of common interest;
- (e) recommend the appointment of members to bodies established by Federal authorities or to bodies referred to in section 42 (1) (d) of this Act on a temporary basis, for the purpose of facilitating a substitution pursuant to section 44 of this Act;

[Schedule.]

- (f) establish criteria for the appointment of mediators and members of review panels; and
- (g) establish criteria for the approval of a substitution pursuant to section 44 of this Act.

59. Power to make regulations

The Agency, with the approval of the President, may make regulations, published in the Gazette-

- (a) respecting the procedures and requirements of, and the time or period relating to the environmental assessment process set out in, or including the conduct of assessments by review panels established pursuant to, section 35 of this Act;
- (b) prescribing a list of projects or classes of projects for which an environmental assessment is not required, where the Council, with the approval of the President, is of the opinion that the environmental effects of the projects are likely to be negligible;
- (c) prescribing a list of projects or classes of projects not covered by the best of mandatory study list in the Schedule to this Act for which a mandatory study is required where the Council is of the opinion that the projects are likely to have significant adverse environmental effects;
- (d) prescribing a list of projects or classes of projects for which an environmental assessment is not required, where the Council is of opinion that the contribution of the Agency to its powers or the performance of its duties or functions is minimal;
- (e) prescribing a list for which an environment assessment is required, where the Council is of the opinion that an environmental assessment of the projects would be inappropriate for reasons of national security.

60. Offence and penalty

Any person who fails to comply with the provisions of this Act shall be guilty of an offence under this Act and liable on conviction in the case of an individual to ~~₦~~100,000 fine or to five years' imprisonment and in the case of a firm or corporation to a fine of not less than ~~₦~~50,000 and not more than ~~₦~~100,000.

61. Interpretation

(1) In this Act, unless the context otherwise provides-

"Agency" means the Nigerian Environmental Protection Agency established by the Federal Environmental Protection Agency Act;

[Cap. F10.]

"assessment by a review panel" means an environmental assessment that is conducted by a review panel appointed pursuant to section 35 and that includes a consideration of the factors set out in subsections 11 (1) and (2) of this Act;

"Council" means the Federal Environmental Protection Council established by the Federal Environmental Protection Agency Act;

"environment" means the components of the earth, and includes-

- (a) land, water and air, including all layers of the atmosphere;
- (b) all organic and inorganic matter and living organisms; and
- (c) the interacting natural systems that include components referred to in paragraphs (a) and (b);

"environmental assessment" means, in respect of a project, an assessment of the environmental effects of the project that is conducted in accordance with this Act and any regulations made thereunder;

"environmental effect" means, in respect of a project-

- (a) any change that the project may cause to the environment;
- (b) any change the project may cause to the environment, whether any such change occurs within or outside Nigeria, and includes any effect of any such change on health and socio-economic conditions;

"exclusion list" means any list prescribed pursuant to section 61 (1) (b), (d) or (e) of this Act;

"Federal authority" means-

- (a) a Minister of the Government of the Federation of Nigeria;
- (b) an agency of the Government of Nigeria or other body established by or pursuant to an Act or law that is ultimately accountable through a Governor of the State of Nigeria in the conduct of its affairs;
- (c) any other prescribed body, but does not include the Commissioner in a local government;

"Federal lands" means-

(a) lands that belong to the Federal Government of Nigeria in which Nigeria has a right thereon or has the power to dispose of and all waters on and air space above those lands;

(i) the internal waters of Nigeria within the meaning of the Sea Fisheries Act, including the sea bed and subsoil below and the airspace above those waters;

[Cap. S4.]

(ii) the territorial sea of Nigeria as determined in accordance with the Territorial Waters Act, including the sea bed and subsoil below and the airspace above that sea;

[Cap. T5.]

(iii) any fishing zone of Nigeria prescribed under the Sea Fisheries Act;

(iv) any exclusive economic zone that may be created by the Government of Nigeria; and

(v) the continental shelf, consisting of the sea bed and subsoil of the submarine areas that extend beyond the territorial sea throughout the natural prolongation of the land territory of Nigeria to the outer edge of the continental margin or to a distance of 200 nautical miles from the inner limits as may be prescribed pursuant to an Act; and

(b) reserves, surrendered lands and any other lands that are set apart for the use and benefit of a class of Nigerians by the Federal Government of Nigeria and all waters on and airspace above those reserves or surrendered lands;

"follow-up programme" means a programme for-

(a) verifying the accuracy of the environmental assessment of a project; and

(b) determining the effectiveness of any measures taken to mitigate the adverse environmental effects of the project;

"mandatory study" means an environmental assessment that is conducted pursuant to section 17 and that includes a consideration of the factors set out in section 11 of this Act;

"mandatory study list" means the list in the Schedule to this Act and those that may be prescribed pursuant to section 55 (1) (c) of this Act;

"mandatory study report" means a report of a mandatory study that is prepared in accordance with the provisions of this Act or any regulation made thereunder;

"mediation" means an environmental assessment that is conducted with the assistance of a mediator appointed pursuant to section 32 of this Act and that includes a consideration of the factors set out in section 11 of this Act;

"mitigation" means, in respect of a project, the elimination, reduction or control of the adverse environmental effects of the project, and includes restitution for any damage to the environment caused by such effects through replacement, restoration, compensation or any other means;

"prescribed" means prescribed by regulations;

"project" means a physical work that a proponent proposes to construct, operate, modify, decommission, abandon or otherwise carry out or a physical activity that a proponent proposes to undertake or otherwise carry out;

"proponent", in respect of a project, means the person, body or Federal authority that proposes the project;

"record" includes any correspondence, memorandum, book, plan, map drawing, diagram, pictorial or graphic work, photograph, film, microform, sound recording, videotape, machine readable record, and any other documentary material, regardless of physical form or characteristics, and any copy thereof;

"responsible authority" in relation to a project, means a Federal authority that is required pursuant to subsection 14 (1) of this Act to ensure that an environmental assessment of the project is conducted;

"responsible Minister" means, in respect of a responsible authority-

(a) in the case of a department or a ministry in a State, the Minister or Commissioner presiding over that department or ministry; and

(b) in any other case, such Minister or Commissioner as the President or Governor may designate as the responsible Minister or Commissioner for that responsible authority;

"screening" means an environmental assessment that is conducted pursuant to section 19 of this Act and that includes a consideration of the factors set out in section 17 (1) of this Act;

"screening report" means a report that summarises the results of a screening.

(2) For the purposes of this Act, a company is controlled by another company if-

(a) securities of the corporation to which are attached more than fifty per cent of the votes that may be cast to elect directors of the corporation are held, other than by way of security only, by or for the benefit of that corporation; and

(b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the corporation.

62. Short title

This Act may be cited as the Environmental Impact Assessment Act.

SCHEDULE

[Section 12.]

Mandatory study activities

1. Agriculture

- (a) land development schemes covering an area of 500 hectares or more to bring forest land into agricultural production;
- (b) agricultural programmes necessitating the resettlement of 100 families or more;
- (c) development of agricultural estates covering an area of 500 hectares or more involving changes in type of agricultural use.

2. Airport

- (a) construction of airports (having an airstrip of 2,500 metres or longer);
- (b) airstrip development in state and national parks.

3. Drainage and irrigation

- (a) construction of dams and man-made lakes and artificial enlargement of lakes with surface areas of 200 hectares or more;
- (b) drainage of wetland, wild-life habitat or of virgin forest covering an area of 100 hectares or more;
- (c) irrigation schemes covering an area of 5,000 hectares or more.

4. Land reclamation

Coastal reclamation involving an area of 50 hectares or more.

5. Fisheries

- (a) construction of fishing harbours;
- (b) harbour expansions involving an increase of 50 percent or more in fish landing capacity per annum;
- (c) land based aquaculture projects accompanied by clearing of mangrove swamp forests covering an area of 50 hectares or more.

6. Forestry

- (a) conservation of hill forest land to other land use covering an area of 50 hectares or more;
- (b) logging or conversion of forest land to other land use within the catchment area of reservoirs used for municipal water supply, irrigation or hydro-power generation or in areas adjacent to state and national parks and national marine parks;
- (c) logging covering an area of 500 hectares or more;

(d) conversion of mangrove swamps for industrial, housing or agricultural use covering an area of 50 hectares or more;

(e) clearing of mangrove swamps on islands adjacent to national marine parks.

7. Housing

Housing development covering an area of 50 hectares or more.

8. Industry

(a)	Chemical	Where production capacity of each product or of combined products is greater than 100 tonnes/day
(b)	Petrochemicals	All sizes
(c)	Non-ferrous	Primary smelting. Aluminium-all sizes Copper-all sizes Other—producing 50 tonnes/day and above of product
(d)	Non-metallic	Cement—for clinker throughput of 30 tonnes/hour and above. Lime-100 tonnes/day and above burnt line rotary kiln or 50 tonnes/day and above vertical kiln
(e)	Iron and Steel	Require iron ore as raw material for production greater than 100 tonnes/days; or Using scrap iron as raw material for production greater than 200 tonnes/day
(f)	Shipyards	Dead weight tonnage greater than 5000 tonnes.
(g)	Pulp and paper industry	Production capacity greater than 50 tonnes/day.

9. Infrastructure

(a) construction of hospitals without falling into beach fronts used for recreational purposes;

(b) industrial estate development for medium and heavy industries covering an area of 50 hectares or more;

(c) construction of expressways;

(d) construction of national highways;

(e) construction of new townships.

10. Ports

- (a) construction of ports;
- (b) port expansion involving an increase of 50 percent or more in handling capacity per annum.

11. Mining

- (a) mining of materials in new areas where the mining lease covers a total area in excess of 250 hectares;
- (b) ore processing, including concentrating for aluminium, copper, gold or tantalum;
- (c) sand dredging involving an area of 50 hectares or more.

12. Petroleum

- (a) oil- and gas fields development;
- (b) construction of off-shore pipelines in excess of 50 kilometres in length;
- (c) construction of oil and gas separation, processing, handling, and storage facilities;
- (d) construction of oil refineries;
- (e) construction of product depots for the storage of petrol, gas or diesel (excluding service stations) which are located within 3 kilometres of any commercial, industrial or residential areas and which have a combined storage capacity of 60,000 barrels or more.

13. Power generation and transmission

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

14. Quarries

Proposed quarrying of aggregate, limestone, silica, quartzite, sandstone, marble and decorative building stone within 3 kilometres of any existing residential, commercial or industrial areas, or any area for which a licence, permit or approval has been granted for residential, commercial or industrial development.

15. Railways

- (a) construction of new routes;
- (b) construction of branch lines.

16. Transportation

Construction of mass rapid transport projects.

17. Resort and recreational development

- (a) construction of coastal resort facilities or hotels with more than 80 rooms;
- (b) hill station resort or hotel development covering an area of 50 hectares or more;
- (c) development of tourist or recreational facilities in national parks;
- (d) development of tourist or recreational facilities on islands in surrounding waters which maybe declared as national marine parks.

18. Waste treatment and disposal

- (a) toxic and hazardous waste-
 - (i) construction of incineration plant;
 - (ii) construction of recovery plant (off-site);
 - (iii) construction of waste water treatment plant (off-site);
 - (iv) construction of secure landfill facility;
 - (v) construction of storage facility (off-site);
- (b) municipal solid waste-
 - (i) construction of incineration plant;
 - (ii) construction of composting plant;
 - (iii) construction of recovery/recycling plant;
 - (iv) construction of municipal solid waste landfill facility;
- (c) municipal sewage-
 - (i) construction of waste water treatment plant;

(ii) construction of marine outfall.

19. Water Supply

(a) construction of dams, impounding reservoirs with a surface area of 200 hectares or more;

(b) groundwater development for industrial, agricultural or urban water supply of greater than 4,500 cubic metres per day.

ENVIRONMENTAL IMPACT ASSESSMENT ACT

SUBSIDIARY LEGISLATION

No Subsidiary Legislation
