The Legal and Regulatory Framework for Environmental Impact Assessments: A Study of Selected Countries in Sub-Saharan Africa

Mohammed A. Bekhechi
Jean-Roger Mercier

THE WORLD BANK
Washington, D.C.

The Legal and Regulatory Framework for Environmental Impact Assessments

Law, Justice, and Development

The Law, Justice, and Development Series is offered by the Legal Vice Presidency of the World Bank to provide insights into aspects of law and justice that are relevant to the development process. Works in the Series will present new legal and judicial reform activities related to the World Bank's work, as well as analyses of domestic and international law. The Series is intended to be accessible to a broad audience as well as to legal practitioners.

Series editor: Rudolf V. Van Puymbroeck

The Legal and Regulatory Framework for Environmental Impact Assessments

A Study of Selected Countries in Sub-Saharan Africa

Mohammed A. Bekhechi
Senior Counsel
Environmentally and Socially Sustainable Development and International Law Group
The World Bank

Jean-Roger Mercier
Lead Environmental Assessment Specialist
Quality Assurance and Compliance Unit
The World Bank

THE WORLD BANK
Washington, D.C.

1818 H Street, NW
Washington, DC 20433

1 2 3 4 05 04 03 02

Library of Congress Cataloging-in-Publication Data has been applied for.

Contents

This Page Intentionally Left Blank

Foreword

The Legal and Regulatory Framework for Environmental Impact Assessments is intended to inform the discussion about the state of environmental laws and policies in Sub-Saharan African countries. It may also serve for comparative purposes with respect to environmental laws in the rest of the African continent and other regions of the world. In particular, now that many African countries are moving decisively ahead with their own sustainable development agendas and are devising new environmental protection-oriented laws and regulations, this text can be used to assess where these countries stand in the development of their legal and regulatory frameworks and what still needs to be accomplished.

It is a remarkable fact that during the 1990s practically half of the countries in Sub-Saharan Africa developed legislation on environmental impact assessment (EIA). This is a first and indispensable step towards much needed capacity building in these countries. The ability to have in-country EIA review and compliance monitoring is key to the environmental and social sustainability of the new types of development activities that are now being carried out, whether funded by the World Bank or by other sources, both at the local level (community-driven development) and at the national level (budget support operations).

In fact, environmental impact assessment remains the basic planning, information sharing, and community empowering tool for sustainable development activities and projects. The lack of a sound legal framework to define the EIA's content, procedures and sanctions greatly reduces its effectiveness. Time and again we observe that in spite of greatly increased environmental awareness, it is much more difficult to implement progressive policies for dealing with natural resource use and depletion, waste emission, ecosystem pollution, etc. if there are no good, enforceable environmental laws and regulations. A sound legal framework for environmental impact assessment is a powerful instrument to improve environmental performance.

The Legal and Regulatory Framework for Environmental Impact Assessments, the joint product of an environmental specialist formerly with the World Bank's Africa Regional Vice Presidency and an environmental lawyer from the Environmentally and Socially Sustainable Development and International Law Group in the Legal Vice Presidency, provides an overview of the development of environmental impact assessment-related laws and regulations in Sub-Saharan African countries. It analyzes issues of substance as well as of procedure, and highlights such important aspects as public participation and consultation, the relationships between government agencies and civil society, and compliance and monitoring mechanisms. Through this comprehensive treatment, the text provides a profound reflection on the role and function of law and regulation for sustainable development.

Ko-Yung Tung
Vice President and General Counsel

Kristalina Georgieva
Director, Environment Department

Abstract

Environmental impact assessment, or EIA as it is known, is a procedure for evaluating the impact proposed activities may have on the environment. In recent years, significant strides have been made to build a legal foundation for EIAs in Sub-Saharan Africa. Whereas EIAs typically used to be carried out only to meet requirements of foreign donors, they are now mandated in 22 Sub-Saharan countries as an important element of domestic environmental law and policy. This publication traces the development of EIA, both in terms of national policies and international law, and analyzes EIA-related laws and regulations in these 22 countries. The substantive components of EIA requirements, as well as the similarities and differences of the various national statutes, are noted and commented upon. Special attention is paid to the role and degree of public participation for the further development of law and policy with respect to environmental impact assessments in Sub-Saharan Africa.

This Page Intentionally Left Blank

Preface

Gone are the days when environmental impact assessments (EIAs) were carried out only when they were imposed by donors of development assistance and there was no legal basis for their routine preparation, implementation, and monitoring in Sub-Saharan African countries.

Welcome to a rapidly modernizing continent where exactly half of the countries have instituted their own rules and requirements and the remaining half are making great progress in the same direction.

EIAs have been established as a standard requirement in 24 countries in Sub-Saharan Africa. This publication provides a review and evaluation of the current status of environmental impact assessment legislation in these countries and a comparative methodology to assess the legal and regulatory framework applicable to EIA.

The text is based on an in-depth analysis of the relevant legislation. Because each country has established the legal basis for EIAs in an isolated way, the number of laws, statutes, and regulations differ significantly from one country to the other. These laws, statutes, and regulations are relatively recent—in the vast majority of cases, the laws were published during the last decade. SSA countries have copied their basic principles and rules from well-established EIA systems in developed countries, although trends in international environmental law also have influenced the domestic legal and regulatory framework and process. The development of the EIA-related legal and regulatory framework illustrates the fact that EIA is now considered a major tool and process in environmental planning and management in SSA countries.

The text focuses on and reviews specific aspects of the EIA system, including: (a) the definition of EIA in SSA laws, statutes, and regulations; (b) the prescribed activities, public participation, and consultation; (c) the review

process and the quality of EIA reports; (d) monitoring and enforcement; (e) compatibility with international norms; and (f) transboundary issues.

Environmental impact assessment of major development projects is now reasonably well established in all the selected SSA countries. The establishment of environmental management units in governmental agencies, sometimes at both the national and local levels, and growing awareness within civil society has helped to promote the application of EIAs in these projects, especially in urban and sensitive areas. Many SSA countries have also adopted a combined strategy of awareness raising and gradual strengthening of the enforcement of EIA legislation.

However, EIA systems in SSA countries are far from being stable and easily enforceable. Many SSA countries have already changed their EIA legal and regulatory frameworks over the last few years. For example, Madagascar enacted its first EIA-related legislation on October 21, 1992 (Decree 92-926), which was subsequently reviewed and updated in 1995 and 1996. Nonetheless, in almost all SSA countries implementation and enforcement of EIA-related laws, statutes, and regulations are still hampered by a lack of clarity, technical and human capacities, and financial resources. However, as the study shows, the current legal and regulatory frameworks provide the potential for significant further development and improvement.

The Legal and Regulatory Framework for Environmental Impact Assessments shows that there is a clear need to strengthen the current legal and regulatory framework of EIA in the selected SSA countries, including: (a) the further development of guidelines to be used by project development proponents to facilitate the implementation of EIA laws, statutes, and regulations; (b) the strengthening of public participation in the EIA process and access to EIA reports; (c) a more concise definition of the obligation to provide environmental management plans; (d) implementation monitoring and environmental auditing; (e) the assessment of transboundary and global impacts; and (f) the strengthening of the capacity of governments and courts to help enforce EIA requirements. SSA countries with no EIA requirements should be given strong incentives to integrate EIA into their legal framework by making them a factor in accessing foreign investment.

This study should be considered a work in progress that will be updated as more information from SSA countries becomes available and can be used to compare the evolution of EIA-related legal frameworks in SSA countries with

those of other regions and continents. The text is also geared towards reinforcing other World Bank initiatives related to the implementation of a regional initiative on capacity building and linkages in EIA in Africa and to the design of a new initiative on certification and capacity-building for environmental assessment and safeguard policies in borrowing countries. The authors welcome feedback on this paper from readers, as it will help improve the design of this new initiative.

This Page Intentionally Left Blank

Acronyms and Abbreviations

EA	Environmental Assessment
EIA	Environmental Impact Assessment
EPA	Environmental Protection Agency (USA)
IGADE	Inter-Governmental Authority for Development
IUCN	The World Conservation Union
NEPA	National Environmental Protection Act (USA)
OECD	Organization for Economic Cooperation and Development
SSA	Sub-Saharan Africa
SADC	Southern Africa Development Community
UNCED	United Nations Conference on Environment and Development
UNCLOS	United Nations Convention on the Law of the Sea
UNEP	United Nations Environment Program
UNFCC	United Nations Framework Convention for Climate Change

This Page Intentionally Left Blank

INTRODUCTION

> *Laws and regulations suited to country-specific conditions are among the most important instruments for transforming environment and development policies into action.*[1]

The 1991 Convention on Environmental Impact Assessment in a Transboundary Context defines environmental impact assessment as "a procedure for evaluating the likely impact of a proposed activity on the environment."[2] The same provision defines "impact" very broadly as "any effect caused by a proposed activity on the environment including human health and safety, flora, fauna, soil, air, water, climate, landscape and historical monuments or other physical structures or the interaction among these factors; it also includes effects on cultural heritage or socioeconomic conditions resulting from alterations to those factors."[3]

All national laws, regulations, and statutes that are analyzed in this paper refer without exception to EIA. In the approach taken by the World Bank on environmental assessment (EA), EIA is a subset of EA, which is defined as both a process and a tool. In the World Bank's terminology "EA is a process whose breadth, depth, and type of analysis depend on the nature, scale, and potential environmental impact of the proposed project. EA evaluates a project's potential environmental risks and impacts in its area of influence."[4] While EA covers a project "from cradle to grave," EIA is usually seen as the preparatory study which examines the likely environmental impacts of the project as submitted and the likely environmental impacts of the alternatives to that particular design. Environmental assessment, in addition to EIA, also includes project supervision and the actual monitoring of its impacts. Under UNEP's definition, "EIA means an examination, analysis and assessment of planned activities with a view to ensuring environmentally sound, and sustainable development."[5]

The World Bank's operational policy statement on environmental assessment provides that "the EA report for a Category A project is normally an environmental impact assessment, with elements of other instruments included as appropriate."[6] The present paper takes the pragmatic view that the existence and relevance of an EIA requirement is the right first step in the direction of a national EA requirement.

In conclusion, environmental impact assessment is defined generally as a process and a tool to identify the likely consequences a particular project would have on the biophysical environment and on human health and welfare and to convey this information to those responsible for sanctioning project proposals at a stage when it can materially affect decisions about future project implementation.[7] (Box 1)

EIA, like many other planning and environmental management instruments and tools, plays a critical role in ensuring the sustainable development of a country's economy. Many African countries are aware of the costs of environmental degradation and the effect of development planning, and some of them have years of experience in attempting to assess, mitigate, and monitor adverse environmental impacts of development projects and programs. Others however are only now taking the first steps toward the introduction of an environmental impact assessment mechanism as the potential benefits of the implementation of EIAs are becoming more widely understood.

Beyond economy, the potential benefits of EIA include effective compliance with sound environmental standards, sustainable use of natural

Box 1. EIA as Process

One can see that EIA is moving away from being a defensive tool of the kind that dominated the 1970s to a potentially exciting environmental and social betterment technique…If one sees EIA not so much as a technique, rather as a process that is constantly changing in the face of shifting environmental politics and managerial capabilities, one can visualize it as a sensitive barometer of environmental values in a complex environmental society. Long may EIA thrive.

T. O'Riordan, *EIA from the Environmentalist's Perspective* (1990).

resources, better decision-making processes through the involvement of stakeholders, and improved design of infrastructures. But in order to be effective, an EIA mechanism needs to be grounded in well-defined legislation and procedural rules where the rights and obligations of all stakeholders are clearly defined, and its enforcement must be ensured through appropriate implementation and compliance monitoring procedures and other instruments.

This Page Intentionally Left Blank

CHAPTER ONE

EIA and Legal Development and Reform: General Considerations

Environmental laws and regulations constitute a critical instrument for environmental protection and management in most countries. Environmental standards provide the context and measure for broader economic means of promoting environmental protection and long-term productivity—the twin goals of sustainable development.[8] In less than three decades the vast majority of countries has adopted a variety of policies, guidelines, regulations, and laws related to environmental assessment. This is the case not only in industrialized countries, but also in developing countries across all continents. Major factors underlying this reality include: (a) the adoption in 1969 of the National Environmental Policy Act (NEPA) in the United States which introduced environmental assessment into the realm of public policy; (b) the 1987 publication of *Our Common Future*, also known as the Brundtland Report, which called for improved environmental impact assessment procedures to be applicable at all levels of government;[9] (c) the endorsement of NEPA and the Brundtland Report by a growing number of countries, businesses and international institutions;[10] and (d) the adoption in industrialized and developing countries of formal EIA principles and practices for a variety of activities that impact the environment.

It should be pointed out that the development of environmental law in Sub-Saharan Africa is often perceived as the direct consequence of the requirements of international donor agencies rather than the outcome of a national willingness to strengthen the environmental agenda. The introduction and acceptance of EIA, as a policy and legislative tool, has been challenged by a general misconception that EIA may hamper economic and technological development. In addition, there is the frequently voiced opinion that EIA is unnecessary, costly, and may duplicate existing monitoring procedures and

other planning tools.[11] Despite these criticisms, there has been a recent increase in domestic EIA legislation in Sub-Saharan Africa due to the following factors: (a) increasingly onerous costs of environmental problems that could have been prevented at low cost; (b) a general increase in awareness of environmental problems and issues; (c) the autochthon development of important environmental legislation, including EIA regulations, without the involvement of donor agencies; and (d) the inclusion of environmental legislation reform as part of an overall legal reform agenda.

This paper describes the EIA-related legislation of a number of African countries[12] in order to assess their status in establishing EIA systems using the resources of the law and to compare the different approaches they have developed for EIA procedure and content.[13] Analyzing environmental impact assessment legislation in the SSA countries is an important step in measuring what has been achieved so far by these countries with regard to the development of an effective and operational EIA system, but also and ultimately in defining future steps to: (a) enhance the legal and regulatory framework; (b) strengthen the institutional framework; (c) develop an enforcement regime and other economic instruments in environmental management; (d) increase public participation in the development decision-making process; and (e) develop the capacity and role of stakeholders in environmental protection.

Finally, the paper discusses the possible harmonization of domestic EIA laws and statutes among SSA countries and with other international rules and standards where needed and feasible. In fact, at the international level, environmental impact assessment is increasingly considered to be a general principle of international environmental law[14] and this affects states' behavior. It is generally accepted that sound economic development requires a well-developed environmental legal framework, which provides all necessary instruments, mechanisms, and planning tools.[15]

CHAPTER TWO

EIA and International Law

EIA is recognized as a principle of law and as such has increasingly become a feature of modern international environmental law. It is referred to in major international environmental conventions[16] and other international legal instruments of a "soft law" nature. Also, many authors refer to EIA as a general principle of sustainable development law, and it is likely that in a few years from now all countries will formally recognize it as such and will have introduced it into their domestic legal order.[17]

International Environmental Conventions

Four international environmental conventions bear mentioning to highlight the extent to which EIA is recognized and to focus the discussion on domestic compliance with international law: the United Nations Convention on Biological Diversity;[18] the United Nations Convention on the Law of the Sea (UNCLOS);[19] the United Nations Framework Convention on Climate Change (UNFCCC);[20] and the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa.[21] The choice of these four conventions is based on the fact that thirty-two Sub-Saharan African countries have ratified the United Nations Convention on the Law of the Sea, forty-two the United Nations Biological Diversity Convention, thirty-eight the United Nations Framework Convention on Climate Change and forty-five the United Nations Convention to Combat Desertification.[22]

The recognition of EIA as a legally binding requirement and its translation into enforceable laws and regulations addresses the need for a predictable regulatory framework with clear norms and regulations to improve the business environment.[23] Further, it also lays the basis for the establishment of

safeguard policies to mitigate and compensate for negative impacts resulting from development projects. (Box 2)

It is important to monitor compliance with the provisions of the above-mentioned conventions in the countries that have ratified them. This is a very complex task given the fact that they do not deal with the details of how the EIAs are to be conducted, but merely establish the obligation for states to undertake EIAs when planned activities have potentially detrimental effects.[24] In general, it may be said that the challenge for international conventions of this nature is to enhance their impact and effectiveness, even though the instruments themselves often lack the appropriate mechanisms to do so. In practice and with few exceptions (such as Nigeria), there are no direct references to international conventions in EIA-related legislation in SSA countries.[25] This does not mean, however, that SSA countries are not willing to implement these conventions. Quite to the contrary, African governments increasingly participate in drafting international treaties, adopt domestic rules that are consistent with international treaties and

Box 2. The EIA Principle in International Conventions: The 1992 Convention on Biological Diversity

Article 14
Impact Assessment and Minimizing Adverse Impacts

1. Each Contracting party, as far as possible and as appropriate, shall:

   (a) Introduce appropriate procedures requiring environmental impact assessment of its proposed projects, that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects and, where appropriate, allow for public participation and procedures;

   (b) Introduce appropriate arrangements to ensure that the environmental consequences of its programmes and policies that are likely to have significant adverse impacts on biological diversity are duly taken into account;…

conventions,[26] and develop processes to support the implementation of international conventions.

African countries should also take strong steps toward compliance with these conventions by empowering all the actors involved in the EIA process, and by penalizing non-compliant behavior. However, their efforts to implement international law may be hindered by the lack of human and financial capacities. Experience shows that a way to help developing countries to build capacity and to implement their obligations under international agreements is to incorporate adequate financial and technical assistance provisions in the conventions themselves. As stated by the former General Counsel of the World Bank:

> Continuous cooperation among national agencies through direct, permanent contacts has been instrumental in the success of many environmental agreements. Establishing permanent networks to operate as channels of communication and verification should serve as an effective way to ensure compliance with the monitoring requirements of international environmental agreements under present conditions. The agreement can facilitate the task by increasingly empowering national agencies (both governmental and non-governmental) to carry out such functions, thus ensuring the "self enforcement" of treaty obligations.[27]

International "Soft Law" Instruments

Besides these international conventions, it is worth mentioning that during the 1992 Rio Summit UNCED recognized EIA as an essential tool to promote sustainable development and to protect the integrity of the global environment. Principle 17 of the Rio Declaration provides that:

> environmental impact assessment, 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.[28]

The World Conservation Union's Commission on Environmental Law has developed and proposed to the General Assembly of the United Nations a draft international covenant on environment and development which recognizes EIA as a tool for complying with the precautionary principle and for promoting sustainable development. Article 37 of the draft covenant provides for the establishment or enhancement of EIA systems and procedures.[29]

The World Bank Group has adopted environmental assessment directives and refined them since 1989, the most recent being Operational Policy Statement 4.01 of January 1999.[30] The application of such policies is mandatory in projects supported by the Bank.

Finally, mention must be made of the EIA guidelines and principles elaborated by UNEP. They are of particular interest for all SSA countries in the process of strengthening their environmental regulatory framework and have already had a significant impact across the continent.[31]

Although these instruments are not legally mandated, the Rio Declaration is indisputably viewed as an international instrument that reflects a consensus on certain general principles of law on the part of many countries from both the North and the South. To this extent, if such principles are followed by state practice, they can provide evidence of the existence of the *opinio juris* from which customary rules develop and become binding. It is important to note that states have supplemented the adoption of treaties and conventions ("hard law") with the development of international "soft law" instruments to foster their cooperation in the field of environment and to develop their environmental management capacity. In many cases, EIA-related laws and regulations in African countries are mostly inspired by the UNEP guidelines or other similar guidelines such as those used by multilateral development institutions or donor agencies.

Some of the laws and statutes refer explicitly to the international agreements to which the country is party,[32] but in other instances compliance with international conventions can be measured in substance, i.e., the domestic legislation is consistent with international conventions even though there is no explicit reference to such instruments in the legislation. Environmental impact assessment in countries that have ratified international conventions with EIA-related provisions should make reference to the relevant provisions of these conventions. The EIA report should clearly discuss and analyze the extent and nature of environmental impacts, taking into consideration the international obligations to which the country subscribed. Some international conventions provide mechanisms for the declaration of national wetlands of international significance, which, once declared carry state obligations.[33]

This is the policy and legal background in which African countries developed EIA systems and procedures, often pursuant to the preparation and

adoption of their national environmental action plans (NEAP). In an effort to equip themselves with an enabling environmental legal framework, many Sub-Saharan African countries have developed an EIA system comprising laws, regulations, and guidelines that is commensurate with their needs and local requirements. Many African countries have enacted some form of environmental legislation which invariably includes, among other elements, a policy statement, objectives, institutional arrangements, the content of the EIA report, enforcement mechanisms and rules, a definition of the scope and functions of the central environmental agency, and a statutory environmental review procedure.[34]

This Page Intentionally Left Blank

CHAPTER THREE

Analysis of Current SSA Countries' EIA-Related Laws, Regulations, and Statutes

General

At the end of 1999, 24 of the 48 SSA countries had enacted environmental legislation of some kind dealing with environmental impact assessment issues.[35] Others had some form of administrative procedure or policy in place with respect to EIA without background legislation, but were considering adopting environmental impact legislation, or are in the process of doing so.[36] The remaining countries have no formalized procedures and responsibility for EIA is diffuse; EIA is conducted on an ad hoc basis by the project's proponent. Benin is an interesting example where a full set of EIA guidelines for various categories of projects have been drafted by the Benin Environmental Agency without any legal basis, making the implementation of these guidelines a voluntary exercise by project proponents. How far such guidelines are effectively followed and implemented remains to be seen, especially since no incentive is provided for such implementation and no sanction could be enforced against project proponents who do not agree to implement them.

Current EIA requirements are embodied in framework environmental laws,[37] planning-oriented laws, in statutes and regulations specifically devoted to EIAs,[38] or policy documents that require and describe EIAs' procedural and substantial aspects.[39] In South Africa, Zambia, and Côte d'Ivoire EIA requirements have been introduced in framework legislation, which is implemented through specific regulations and guidelines that describe the content, procedure, and sanctions of the EIA process.[40] The case of Kenya is somewhat unique because, even though it has developed an important body of environmental legislation, it has not yet enacted a statute on EIA and is still in the

process of developing a comprehensive environmental law, the draft of which has been circulated to stakeholders for comment since 1998. It should be noted, however, that certain sectoral laws provide for EIA with regard to specific natural resource sectors, such as water (under the Water Act) and land use (under the Land Planning Act and the Pest Control Act).[41] Other countries have a framework law on environmental management and are currently developing decrees for implementing EIA and drafting EIA regulations. Cameroon is developing EIA regulations to be applied to all development projects to be undertaken in buffer zones of protected areas[42] and another set for all other potentially polluting projects.

Without exception, all laws, statutes, and regulations examined in this chapter have basic provisions relating to the definition of EIA and the categories of projects to be subjected to EIA. Sometimes the legislation includes the requirement of an initial environmental evaluation before a decision is made on subjecting a given project to a full EIA. Some legislation specifies the various mandates and responsibilities of the agencies involved in the EIA process, the status of public participation and disclosure, implementation of an environmental management plan (EMP), or monitoring and compliance with EIA report recommendations and/or EMP.

Projects and Activities Subject to EIA

As stated in Principle 2 of UNEP's Goals and Principles of EIA:

> The criteria and procedures for determining whether an activity is likely to significantly affect the environment and is therefore subject to an EIA, should be defined clearly by legislation, regulation and other means, so that subject activities can be quickly and surely identified, and EIA can be applied as the activity is being planned.[43]

However, there is no universal rule for determining which projects and activities are subject to EIA.[44] The Sub-Saharan African countries' legal instruments define the activities to be subject to EIA in different ways, mostly on the basis of the type and scale of activities concerned. However, in a few countries the law imposes a general obligation to carry out an EIA for all projects likely to have significant impacts. Therefore an initial environmental evaluation may be a useful tool to help decide what project should be subjected to an EIA. (Box 3)

Box 3. Section 15 of the Environmental Impact Assessment Decree of Nigeria

Excluded Projects (Decree No. 86, 1992)

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

(a) in the opinion of the Agency the project is in the list of projects which the President, Commander-in-Chief of the Armed Forces or the Council is of the opinion that the environment 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, showing 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.

Prescribed Projects

Almost all the existing EIA laws and/or regulations provide a list of projects for which an EIA must be carried out.[45] (Box 4)

In practice, there are three different approaches to categorize projects likely to have harmful impacts. The first refers to "activities which will be listed specifically by implementing regulations,"[46] a related subset of legislation

Box 4. Zambia: The Environmental Protection and Pollution Control Act (Environmental Impact Assessment) Regulations, 1997

Second Schedule
Regulation 7 (2)

Projects Which Require Environmental Impact Assessment

Projects:

1. Urban area rehabilitation
2. Water transport
3. Flood control scheme
4. Exploration for and production of hydrocarbons including refining and transport
5. Timber harvesting and processing
6. Land consolidation schemes
7. Mining and minerals processing, reduction of ores, minerals, cements and lime kilns
8. Smelting and refining of ore minerals
9. Foundries
10. Brick and earthen manufacture
11. Glassworks
12. Breweries and malting plants
13. Hydro-power schemes and electrification
14. Chemical processing and manufacturing

Others:

1. Resettlement schemes
2. Storage of hydrocarbons
3. Hospitals, clinics and health centers
4. Cemetery designation
5. Tourism and recreational development in national parks or similar reserves
6. Project located in or near environmental sensitive areas such as (i) indigenous forests, (ii) wetlands, (iii) zones of high biological diversity, (iv) areas supporting populations of rare or endangered species, (v) zones prone to erosion or desertification, (vi) areas of historical and archeological interest, (vii) areas of cultural or religious significance, (viii) areas used extensively for recreation and aesthetic reasons, (ix) areas prone to flooding and natural hazards, (x) water catchments containing major sources of public, industrial or agricultural uses, and (xi) areas of human settlements (particularly those with schools and hospitals)

providing the regulatory agency the authority to determine and publish through official notices the "types and sizes of projects, which shall not be implemented unless an environmental impact assessment is carried out."[47] The second category adopts a broad definition of the activities, including "physical" development projects, programs, policies, and development plans as well as other planning documents,[48] but no list of such activities is provided; and finally the third category, which combines parts of the first two, establishes lists of activities subject to a full EIA and activities subject to a more simple environmental analysis.[49] It is worth noting also that some statutes include a list of geographical areas where any development project, whatever its size or sector, is to be subjected to a full EIA.[50] Such a list generally comprises all the environmentally sensitive areas of the country concerned, including forest and marine protected areas, cultural heritage sites and other significantly important landscapes. One interesting innovation has been introduced in the legislation of the Republic of South Africa, which subjects to an EIA all activities leading to the modification or alteration of the biological diversity resources of South Africa.[51]

Many believe that in SSA countries many laws, regulations, and statutes that provide lists of activities to be subject to EIAs are too ambitious[52] in comparison with similar lists provided by other countries in other continents or by development agencies. The schedule related to the mandatory study activities under the Nigerian legislation on EIA is quite symptomatic of the ambition to subject as many activities as possible to a prior environmental impact assessment.[53] However, it should be noted that activities may be prescribed in terms of type, not size and that the EIA regulatory agency retains the power to establish thresholds for prescribed activities.[54] Finally, although EIA may be required for new development projects and activities only, some statutes extend it to modifications of existing facilities which involve new or increased release of pollutants, more consumption of natural resources or more production of waste as a consequence of increased volume of activity.

Initial Environmental Evaluation

Many African countries' laws and statutes require the project proponent to provide an initial environmental evaluation (IEE) in order to determine whether a full EIA would be required for the proposed project. This requirement is not always clearly spelled out in those laws and statutes, except where

they define a prescribed list of projects to be subjected to EIA. A number of African countries require an IEE as part of the mandatory EIA procedure, or sometimes as part of the planning and/or construction law.[55] The question remains whether it is appropriate to subject prescribed categories of projects to an IEE or how to determine projects likely to have a "significant harmful impact" which should be subjected to IEE where no list of prescribed projects exists. No answer is provided in the current laws and regulations examined.

EIA Requirements Based on Specific Considerations of Projects Likely to Have Significant Impacts

This approach is not favored by Sub-Saharan African countries. Some of them, however, retain it and empower their regulatory agencies to screen all development projects in order to require an adequately defined EIA. It should be mentioned that the use of a system requiring an EIA for projects likely to have significant environmental impacts is interesting and may prevent harmful projects from being implemented before a detailed environmental assessment is made.

Two consequences of this option are to be considered: (1) no matter what the size of a proposed project is, an EIA may be required after the screening of such a project is carried out—the problem is that the screening needs to be sufficiently detailed to ensure that the final decision can be made on sound grounds; and (2) the degree of significance of the potential harmful effect of a proposed project could be assessed in different ways by a government agency in charge of environmental protection and the proponent and may be challenged by either the proponent or the government agency, depending on the assessment carried out by the other. This is why there is a clear need for an indisputable and transparent definition of the size, nature, and scale of projects, and a definition of criteria to assess significant impacts in the legislation in order to avoid conflict and misinterpretation among stakeholders involved in EIA procedures. Mali Decree 99–189 of July 5, 1999 offers a good example. (Box 5)

It should be mentioned that, in general, many countries' lists of prescribed projects are very ambitious compared to their actual capacity in pollution control or land use planning and monitoring. One good solution used by many countries is to develop several lists of projects that are submitted to various levels of environmental assessment or analysis.

Box 5. Mali, Decree 99–189 of July 5, 1999

CHAPITRE II: DU CHAMP D'APPLICATION

ARTICLE 4: Sont obligatoirement soumis à l'étude d'impact sur l'environnement les projets ci-après:

1). Barrages et autres installations destinées à retenir les eaux ou les stocker d'une manière durable;
2). Ouvrages de canalisation et de régularisation de cours d'eau;
3). Centrales thermiques et nucléaires;
4). Lignes de transport d'électricité à haute tension;
5). Construction de route, d'aérogares, de chemin de fer, d'aérodrome;
6). Construction de Ports et ouvrages fluviaux;
7). Construction d'usine de production deciment, demartre et de plâtre;
8). Construction d'usine de fabrication de pâte à papier, de papier et de carton;
9). Construction d'usine de tanneries;
10). Défrichement de plus de 10 hectares;
11). Construction d'usine de fabrication de plastiques et de mousse;
12). Construction d'usine d'industrie textile;
13). Construction d'usine d'équarrissage;
14). Construction d'usine de raffinerie;
15). Construction d'usine de fabrication de piles;
16). Construction d'usine de fabrication de produits chimiques, des pesticides, de savons, de produits, pharmaceutiques, de peinture et de vermis;
17). Constuction d'usine de fabrication de sucre;
18). Construction d'usine de brasseries, confiseries;
19). Construction d'usine de conserverie de produits animaux et de végétaux;
20). Construction d'usine de fabrication de produits laitiers;
21). Construction d'usine de fabrication d'explosifs;
22). Construction et assemblage de véhicules automobiles et construction de moteur pour celle-ci;
23). Construction de station d'épuration;
24). Exploitation de mines et de carrière;
25). Installation d'élimination de déchets: incinération, décharge, site d'enfouissement;

continued

Box 5. (continued)

26). Installation d'aqueduac;
27). Utilisation de pesticide à grande échelle;
28). Travaux de remblayage et de dragage des cours d'eau;
29). Dépot d'hydrocarbure et station d'essence;
30). Oléoducs et gazoducs;
31). Opérations de lotissement et travaux de dégagement et d'ouverture de voies;
32). Construction d'hôtel d'une capacité supérieure à 30 lits.

ARTICLE 5: Sont dispensés de l'étude d'impact sur l'environnement les projects relatifs aux travaux d'entretien et de réparations quelle que soit leur nature ou leur type. Toutefois, le promoteur est tenu de déposer auprès de l'Administration compétente une notice d'étude d'impact sur l'environnement. Cette notice comporte une description sommaire du projet, les impacts éventuels sur l'environnement et les mesures envisagées pour réduire ou éliminer les impacts négatifs.

What Impacts Are Dealt With in the EIA Process

Impacts are not defined in a uniform way in all countries. The usual approach taken by EIA-related laws and regulations is to refer in a generic manner to the term "environmental impacts" followed by a listing of environmental media.[56] Generally, most of the statutes focus on the biological and physical environment while a few of them describe in detail the likely environmental impacts of the proposed activity.[57] The basic requirements relate to impacts on: water quality and quantity; air quality; noise level; ecosystems and ecological processes; and landscapes and cultural resources, including historical sites and cultural heritage. More specifically, laws and statutes require evaluation of the disposal of wastewater, solid wastes, and emissions into the atmosphere, as well as identification of the positive environmental impacts of the proposed activity.[58] (Box 6)

The human environment is also taken into account in various laws and statutes through provisions on social impact, the impact on populations, the impact on health, and the impact on communities. A wider definition

Box 6. OECD Development Assistance Committee Guidelines on Environment and Aid

***Good Practices for Environmental Impact Assessment of Development Projects* (1992)**
Coverage of environmental impacts

The term "environmental impacts" is understood to include:

1. effects on human health and well-being, the environmental media, ecosystems, (including fauna and flora) agriculture and buildings (classified as protected)
2. effects on climate and atmosphere
3. use of natural resources (both regenerative resources and mineral resources)
4. utilisation and disposal of residues and wastes
5. related aspects such as resettlement, archeological sites, landscape, monuments and social consequences as well as relevant upstream, downstream and transboundary effects.

incorporating social impacts seems to be favored by the most recent legislation and statutes. However, in the case of Mali, the 1999 decree requires an EIA to identify and evaluate the direct and indirect short- and long-term positive and negative potential impacts on the environment.[59] Recently prepared draft statutes being discussed among stakeholders in various Sub-Saharan African countries require that the social and economic impacts of projects be subjected to an EIA.[60] In fact, increased concern is expressed in a new legislative trend in which the analysis of socioeconomic implications is an integral part of an EIA study, such as working conditions and health.[61] In SSA countries, the underlying rationale for this may be that the vast majority of the African populations have closer, more complex relationships with their natural environment. In view of future legal and regulatory developments, it seems appropriate to suggest that EIA-related statutes, regulations, and guidelines deal more closely with the important issues of public health and the possible external implications of a

deterioration in the physical and mental well-being of workers and resident communities.[62]

One issue of importance in various Sub-Saharan African countries is the weak, or in some cases nonexistent, definition of the quality standards and norms against which the environmental assessment is gauged. Standards are indispensable for evaluating the environmental significance and impacts of certain actions, but in no case should the decision to carry out a project solely depend on compliance or noncompliance with standards. In most African countries, the impact assessment is carried out by applying international standards, business guidelines or foreign country norms and standards, including those of international aid agencies.[63] One example is Ghana, which has recently enacted environmental assessment regulations[64] to strengthen the powers of its environmental protection agency and clarify procedures and other matters pertaining to EIA, including the holding of public hearings. However, when it comes to enforcement, there are significant gaps in the Ghanaian environmental system. In fact, there is no legislation on discharge of wastes into water, the riverine systems or marine environment.[65] There is no legislation governing air quality standards, product quality standards and control of emissions from industrial plants, motor vehicles, and other sources. Throughout the industrial sector, including mining,[66] environmental protection is provided only within the context of the safety, health, and welfare of employees.

However, a new trend is also coming to the fore that incorporates the precautionary principle in environmental impact assessment. It is important to consider developing, in the concerned country, sets of sound environmental quality norms and standards to support EIA implementation where the EIA process reveals a weakness or lack of definition of environmental quality standards.

CHAPTER FOUR

Public Participation and Consultation During the EIA Process: General Considerations

General

Public participation in decision-making processes for development helps meet public needs, enhances access to information, leads to better development decisions, results in fewer court challenges, and ultimately reduces conflict between developers and the affected public.[67] More specifically, public participation strengthens the credibility of the entire EIA process by: (a) improving the understanding of issues among all parties involved; (b) finding common ground on whether an agreement can be reached on some of the issues; (c) highlighting tradeoffs that must be addressed during the decision-making process; (d) generating higher quality information about potential environmental impacts; and (e) holding public hearings that would otherwise be discretionary.[68] Recent laws on EIA emphasize the role of public participation in EIA procedures with a view to ensuring quality results and outcomes. Public participation, as defined in EIA-related laws and statutes, may encompass various aspects and may provide for different ways in which people contribute to the EIA decision-making process.[69]

Although country NEAP reports and relevant environmental management-related documents may recognize the principle that public participation should be an integral part of the EIA process, the timing, purpose, and legal effects of such participation vary from one country to another. In large measure, differences in approach between countries and stakeholders reflect a dichotomy between (1) those who favor a traditional regulatory approach which sees public involvement as an external factor in the decision-making process related to the EIA and (2) those who prefer to set up a consensus-building model of EIA which views public participation and consultation as the heart of the decision-making process. Regardless of the approach taken,

the methods for ensuring meaningful public participation will vary from one country to another.[70]

Provisions on Public Participation and Consultation in EIA-Related Laws of SSA Countries

By analyzing all relevant laws and statutes, one can assess exactly who decides what level of participation is mandated. In general, the complexity of issues at stake determines the type of participation required. However, in order to understand fully how public participation is conducted, it is necessary to study all relevant laws and statutes (environmental, administrative, and civil), including the constitution, in all jurisdictions (local, national, and regional).[71]

Many African constitutions only mention the right of citizens to a clean and healthy environment, and the right to participate in its protection. These rights still require additional legislation before they can be enforced. When this additional legislation exists, it is not always helpful. In fact, public participation is mentioned in many EIA-related laws, but it is not always appropriately defined and the procedure for its implementation is not always adequately specified.[72] With few exceptions, current statutes in SSA countries are weak in this area, and few provisions deal with how public concerns, opinions, and views are taken into account in the final decision on the EIA report. The scope and purpose of the public participation are sometimes broadly defined and do not allow for measurement of the real impact of public participation in the EIA decision-making process. Interestingly, no legislation in SSA countries provides for judicial review to enforce the right to participate in EIA as a means of ensuring the constitutional right to a clean and healthy environment.[73]

A few African cases do reveal aspects of good practice, which deserve to be further developed and implemented. (Box 7)

In Zambia, public participation is provided for in various provisions of the EIA-related legislation, and its process is spelled out in strong language. Public consultation starts at an early stage and follows through the entire EIA process including the drafting of terms of reference for the EIA, EIA report preparation, and review of the final EIA report. It is the developer's obligation "to organize a public consultation process, involving government agencies, local authorities, non-governmental and community-based organizations

Box 7. Definition, Scope, and Purpose of Public Participation

"L'étude d'impact sur l'environnement doit être complétée par une enquête publique dont le but est de recueillir les avis et contre propositions des parties concernées ...."

Article 19 of the 1997 Environmental Code of Burkina Faso

An EI Statement "shall be a public document which may be freely consulted by any person ...."

Section 23 (5) of the Environmental Management Act of Gambia

The EIA report shall be open for public inspection provided that no person shall be entitled to use any information contained therein for personal benefit except for "purposes of civil proceedings brought under this Act or under any written law relating to the protection of the environment or the conservation or sustainable utilization of natural resources." The same act in section 26 (1) a. empowers the relevant authority to "conduct public hearings ... for purposes of assessing public opinion ...."

Section 25 of the 1996 Environmental Management Act of Namibia

and interested and affected parties, to help determine the scope of the work to be done in the conduct of the environmental impact assessment,"[74] and "take all measures necessary to seek the views of the people in the communities which will be affected by the project."[75] The Environmental Council makes public the final EIA statement and "may organize, or cause to be organized, public meetings in the locality of the proposed project,"[76] and under some conditions may "hold a public hearing on the environmental impact statement."[77] The Zambia case illustrates a good practice that can be easily followed by other countries when the legal system and the social conditions are similar.

Another good example is the legislation of the Republic of South Africa, which imposes on the project proponent the obligation to provide for "a public participation process to ensure that all interested parties are given the

opportunity to participate in all the [EIA] relevant procedures."[78] Upon completion, the EIA report becomes a public document.[79] Other statutes have sophisticated procedures to ensure that public views are properly weighed and taken into account when based on strong evidence.

Other examples include the case of Nigeria, where the applicable statute provides for the environmental agency to ensure that "government agencies, members of the public, experts in relevant disciplines and interested groups [are given the opportunity] to make comment on environmental impact assessment of the [proposed] activity."[80] Also, in various other countries, the legislation recognizes a right to appeal EIA-related decisions by the public at large, or more specifically by affected people.[81] This feature gives more strength to the consultation requirement in the EIA procedure and may make it very effective. (Box 8)

These are good practices. However, in the majority of cases, laws and statutes on the public consultation and participation requirement in EIA are vague and weak. For example, this is the case of Côte d'Ivoire where EIA procedure lacks a sound legal basis that provides for effective public participation. Although the Environmental Code of 1996 states in article 35.6 that every person has the right to participate and to be informed on the state of the environment and to participate in environmental decision-making processes,[82] the implementing decree on EIA fails to mention public participation as a means to ensure the soundness of the EIA. The implementing decree states that the Ministry of Environment may undertake a public inquiry after the EIA is submitted by a proponent without, however, detailing the scope, contents, and modalities of such inquiry.

In fact, legislation in many African countries has made a public inquiry part of the review process in certain situations or for selected project categories. But this public inquiry is often limited to the release of the EIA Report in some public place and a public comment period of one to two months. A similar scheme was followed in the 1997 Environmental Code of Burkina Faso which states that the EIA process is to be completed by a public inquiry. In the case of Burkina Faso, an implementing decree for the 1997 Environmental Code is being prepared to provide for a detailed EIA procedure that includes public participation.[83] Other examples of weak provisions on public consultation and participation include the laws and statutes of Comoros, Namibia, Gabon, and Togo, which do not provide for any kind of public participation in the EIA process.

Box 8. Environmental Legislation from Malawi and Mauritius

Malawi
Environmental Management Act of 1996
Section 26

(1) Upon receiving the environmental impact assessment report, the Director shall invite written or oral comments from the public thereon, and where necessary may-
  (a) conduct public hearings...
  (b) require the developer to redesign the project or to do such other task as the Director considers desirable taking into account all the relevant environmental concerns...
  (c) require the developer to conduct further EIA of the whole project or such part or parts of the project...
  (d) recommend to the Minister to approve the project subject to such conditions as the director may recommend to the Minister.

Mauritius
Environmental Protection Act of 1991
Section 16 "Review of EIA"

(1) The Director shall:
  (a) review the EIA submitted by a proponent...
  (b) refer the EIA ..with such comments and observations as he thinks appropriate ... to the EIA committee…
(2) The Director may for the purpose of the Review under sub-section (1) a:-
  (a) request any public department, any enforcing agency, any non-governmental organisation or any other person to submit their observations in writing on the EIA,
  (b) set up a technical advisory committee to advise him on the EIA or on any aspects of the undertaking
  (c) require the proponent to conduct further study or to submit additional information for the purpose of ensuring that the EIA is as accurate and exhaustive as possible.

Good international practice assigns responsibility to the project proponent for meeting environmental legal requirements and therefore for organizing public participation. All the laws and statutes that recognize and

organize a public participation scheme designate a responsible agency which is empowered to review, manage, and document the public consultation and participation process. In addition, this agency, which is also responsible for overseeing and monitoring the EIA process, should be legally authorized to undertake additional public consultation when required by the nature of the project, and when it deems it fit or necessary. It is important for African countries to follow this positive trend. Where an EIA reveals that any proposed project will affect people, these affected people should be notified by appropriate means to give them an effective opportunity to become involved through formal meetings to document their fully informed inputs, views, concerns, and opinions, and ultimately give them an opportunity to help enforce environmental law and standards. This is not always clearly stipulated in the applicable statutes even though it may have been intended. This is also the process recommended by UNEP:

> More effective are those legislative provisions which mandate that a public hearing be held. Requiring that prior notice of the hearing be given and that it will be held in the local community likely to be affected helps ensure that interested parties effectively contribute to the EIA process. Government support for education, training and research/development related to EIA can assist public participation in the process.[84]

Public Participation, Consultation, and Legal Enforcement Issues in SSA Countries

If public participation is to become effective in African countries, it is necessary not only to recognize the rights of citizens in an environmental context, but also to ensure that these rights can in some meaningful way be enforced in national courts. In fact, in environmental matters, people may wish to help enforce a rule where they have suffered no legally recognizable damage. Therefore, clear procedures should be defined to allow them to bring administrative or judicial proceedings or to appeal agency determinations.

It is a fact that communities and environmental groups, for example, may wish to help advance the environmental protection agenda in their countries whether they suffer damage directly or not. In some SSA countries the law relating to associations recognizes a right of standing in favor of environmental NGOs under more or less flexible conditions. However, there should be no

doubt that communities ought to have a clearly defined right to seek protection for their community rights. To be effective, this right should help overcome four hurdles in administrative law proceedings often faced by communities (and, where permitted, NGOs): (a) the right to assert a claim (question of standing); (b) the right to adduce evidence to substantiate a claim; (c) the right to an appropriate remedy; and (d) the costs of the proceedings. This fourth condition may constitute a real obstacle to effective enforcement of meaningful community rights of participation in the EIA process in a meaningful way.[85]

This Page Intentionally Left Blank

CHAPTER FIVE

The EIA Report

This chapter deals with the EIA Report itself. First, it reviews the format and content of the Report requested from the developer or project proponent. Second, the whole EIA Report review process is surveyed, including issues of implementation monitoring and compliance with EIA recommendations.

Format and Content of the EIA Report

The EIA procedure provides for the preparation and review of an EIA Report (the Report). The Report is a document designed to guide the eventual decision-making process concerning project feasibility and ease of implementation. It is generally prepared by the project's proponent, or by a competent consultant (preferably independent).[86] Many authors recommend that in the final phase of the EIA system, developers should be encouraged to use any capacity at their disposal to prepare EIAs for their projects, without being obliged to hire an outside consultant, with a view of developing some kind of environmental awareness and self-compliance with environmental standards. There is no country in Sub-Saharan Africa where EIA consultants are certified by a regulatory agency, as is the case in other countries.[87] The expenses incurred for EIA preparation are borne by the proponent, including in some cases the costs of reviewing the EIA Report.[88]

In general, countries' laws and statutes define the content of the Report in different ways. Some of them state that the Report should describe the proposed project, its specific purposes, the affected environment and environmental and health impacts, including the impacts on the human and cultural environment in many cases. The Report is also required to provide an examination and evaluation of alternative solutions that might avoid or at least reduce and mitigate some or all of the adverse environmental impacts identified.

However, apart from the statutes of the Republic of South Africa, which allow some flexibility in defining the content and depth of the Report in accordance with the scale of the proposed project, very few SSA countries' statutes and laws link the content and depth of the Report to the scale of the proposed project. The South African legislation provides for a four-step procedure that requests the proponent to prepare: (1) a plan of study for scoping; (2) a scoping report; (3) a plan of study for environmental impact assessment; and finally (4) an environmental impact report. At each stage of the preparation of the Report, a real dialogue is established among the proponent, the potentially affected people, and the regulatory authority on how to conduct and bring about the next phase. The Report is developed by the proponent after the relevant authority agrees successively on the study for scoping, the scoping report, and the plan for the study for EIA.[89] This method is quite sophisticated and gives the proponent a real opportunity to develop a sound and comprehensive EIA. It also allows the relevant authority to follow the process step by step and adapt the EIA procedure to the proposed activity and to the specific situation of the potentially impacted environment. (Box 9)

All the statutes reviewed have a provision requiring that the EIA Report must provide a list of items,[90] including the following: (a) a description of the project site and the reasons for rejecting other alternative sites, (b) a description of the proposed activity, the technology, and raw materials to be used and their likely impacts on the environment, (c) an identification of the likely impacts, (d) comments expressed in the public participation process (where the public consultation and participation is mandated in the statutes or laws), (e) suggestions of mitigation measures, including restoration if necessary, (f) a plan for monitoring or managing the activity in compliance with the existing environmental laws and regulations, (g) the uncertainties of information, and (h) a non-technical summary to be published. Not all the items listed are required under every law and regulation in the countries concerned. In some cases, the laws and statutes do not provide for a detailed description of the EIA Report[91] or refer to specific guidelines to be enacted by the relevant regulatory agency.[92]

Review of the EIA Report, Monitoring, and Auditing

The purpose of the review is to obtain an impartial judgment of the particular and often conflicting interests of the various parties involved, and to avoid

Box 9. Developing the EIA Report
South Africa

Regulations 1183 of 5 September 1997 (Schedule)

Plan of Study

5. (1) After considering the application made in accordance with regulation 4, the relevant authority may request the applicant:
   a. to submit a plan of study for scoping for the purpose of a scoping report referred to in regulation 6; or
   b. in a suitable case, to submit such scoping report without a prior plan of study
   (2) A plan of study for scoping must include:
   a. a brief description of the activity to be undertaken
   b. a description of all tasks to be performed during scoping
   c. a schedule setting out when the tasks contemplated in para. b will be completed
   d. an indication of the stages at which the relevant authority will be consulted
   e. a description of the proposed method of identifying the environmental issues and alternatives

Scoping Report

6. (1) On being informed by the relevant authority that the plan of study for scoping has been accepted...the applicant must submit a scoping report...,which must include
   a. a brief project description
   b. a brief description on how the environment may be affected
   c. a description of environmental issues identified
   d. a description of all alternatives identified, and
   e. an appendix containing a description of the public participation process followed, including a list of interested parties and their comments.
   (2) The relevant authority may, after receiving the scoping report request the applicant to make the amendments that the relevant authority requires to accept the scoping report
   (3) After the scoping report has been accepted, the relevant authority may decide:

continued

Box 9. (continued)

a. that the information contained in the scoping report is sufficient for the consideration of the application without further investigation
b. that the information contained in the scoping report should be supplemented by an EIA which focuses on the identified alternatives and environmental issues identified in the scoping report.

Plan for the EIA:

7. (1) In the event contemplated in regulation 6(3), the applicant must submit a plan for an EIA which must include:
a. a description of the environmental issues identified during scoping that may require further investigation
b. a description of feasible alternatives identified during scoping that may be further investigated
c. an indication of additional information required to determine the potential impacts of the proposed activity
d. a description of the proposed method of identifying these impacts
e. a description of the proposed method of assessing the significance of these impacts

Submission of the EI Report:

8. (1) After the plan of study of EIA has been accepted, the applicant must
submit an EI report...,which must contain:
a. a description of each alternative, including on
(i). the extent and significance of each environmental impact
(ii). the possibility for mitigation of each identified impact
b. a comparative assessment of all of the alternatives, and
c. appendices containing descriptions of:
(i). the environment concerned
(ii). the activity to be undertaken
(iii). the public participation process to be followed, including a list of interested parties and their comments
(iv). any media coverage given to the proposed activity, and
(v). any other information included in the accepted plan of study

unnecessary costs and delays.[93] This is a very important issue as there is a need to proceed as quickly as possible with development projects and to reduce their costs in developing countries. It is therefore good practice that a review be held before starting the EA process and the final EIA Report is submitted for consideration for licensing purposes.[94] Provision for the review process of the Report is a critical aspect of the quality control of the whole EIA. A good and sound example is provided in the case of the Republic of South Africa where statutes provide for a dialogue between the proponent and the relevant authority throughout the EIA process until the review of the final EIA Report.[95] Other examples include laws and statutes of other African countries, which provide for the review of the Report as a final administrative step of the EIA preparation process. According to these laws and statutes different institutions may be mandated to review the Report: (a) a competent licensing authority; (b) an inter-agency committee or (c) an independent expert panel.[96] Environmental laws and statutes establish the timeframe for the review, the sharing of information between the review agency and other agencies that may be involved in the EIA review process and the follow-up on the decision of the review agency whether it be a clearance for the project to proceed or a request for further assessment and data prior to implementation.[97]

An effective review of the EIA Report faces two major problems. The first deals with the conflicting views that may exist among various government agencies involved in the licensing process for the development project. The laws and statutes do not always adequately address such potential conflicts and the position of the responsible agency within the government may greatly influence its level of power to effectively review and enforce decisions related to the EIA Report. The second is the weakness of the human and professional capacity of almost all the review agencies in African countries.[98] These problems need to be addressed urgently in order to make the mechanisms for implementing and reviewing EIAs more effective.

The relevant authority should also have qualified staff at its disposal, including expert consultants with a wide range of skills to ensure that the review of the EIA Report is adequately and professionally done.[99] The review is the first stage of a comprehensive monitoring program that can result in real improvement of project management. It is also essential for auditing environmental impact.[100]

Finally, the review of the EIA Report should be clearly seen as part of a wider process in scope and timing which includes the EIA implementation monitoring and auditing functions. Currently, even in the average case, the EIA Report review for major projects with significant environmental impacts is done before the project is implemented. However, since the life cycle of these projects may cover a very long period of time, it is necessary to ensure that the EIA Report review extends beyond the decision to implement the project to ensure sound environmental management for the whole life of the project. This is why the EIA Report review should be considered as part of a wider process, incorporating monitoring and auditing functions into the EIA process. Unfortunately, almost all environmental laws and regulations in African countries are missing this element. This clearly points in the direction of encouraging countries in Sub-Saharan Africa to move beyond EIA into the environmental assessment (from cradle to grave) process and from compliance with legal requirements into actual enforcement of environmental safeguards.

CONCLUSION

Two major issues arise when we analyze environmental law in Africa. The first relates to the absence of national capacity at all levels of government and society to bring about comprehensive and sound environmental management. The second relates to the need to harmonize EIA-related laws and regulations with those of neighboring countries and with international technical and financial institutions. National capacity-building and harmonization may be instrumental in facilitating the implementation of EIA requirements especially for those investors and developers which need a standardized framework to help them implement their projects on time and at the best cost possible.

EIA and National Capacity-Building

Enacting legislation is not enough, but it is an important step to foster environmental protection and sustainable development. However, where the national capacity to implement the EIA requirement is lacking, legislation is just a useless tool. By national capacity, we mean capacity at all the levels where EIA is to be performed, reviewed, discussed, implemented, and monitored. These include central and local governments, decentralized agencies, the private sector, NGOs, and local communities.

As of now, laws and regulations in the vast majority of African countries describe EIA mainly as a mandate of the central government (whether it is a ministry of environment, or other sectoral ministries) and of national environmental agencies. All the statutes in force in African countries recognize that these ministries and agencies are responsible for the regulation and supervision of development activities, as well as for assessing the impact such activities have on the public and the environment. Countries such as Nigeria[101] and South Africa,[102] the first being a federal state and the second having a decentralized form of government, adopted rules to involve their

local administrations in the EIA processes. Other statutes of African countries mention local government involvement in their public participation provisions.[103] It may be noted that decentralization is being promoted in many African countries as a means to improve governance, stimulate economic growth of rural areas, and promote institutional efficiency. Therefore it seems appropriate to elaborate a regulatory framework to enable local governments to participate fully in the EIA implementation and review processes. The lack of relevant legal provisions in the statutes reviewed in this study may be compensated for by the enhancement of both environmental and decentralization legislation.

Outside government, EIA increasingly mobilizes a whole range of social groups, from small national groups of technical and scientific experts to grassroots organizations and their representatives. As the role of local governments[104] and local communities in planning and delivering development services increases,[105] so does the involvement of the most advanced members of these local groups in the preparation, review, and monitoring of EIAs. Without this continuum, the initial consensus built during the EIA cannot be sustained in the longer term, thus wasting the opportunity to monitor actual impacts on the environment. For the countries themselves, the implication is that: (a) rules, regulations, and capacities should not be limited to capital cities, but should go as close to the field as development activities do; (b) training programs should encompass government staff, grassroots, and EIA specialists including those from the private sector, possibly through the training of trainers in a "cascade" arrangement; and (c) technical and financial resources should be put at the disposal of all these groups of EIA specialists to enable them to implement fully their mandates and responsibilities.[106]

As mentioned above, review of the EIA Report is part of a comprehensive monitoring and auditing process. In practice, many significant hurdles exist that limit the use of monitoring and auditing in almost all African countries. The need to ensure a credible EIA review is still to be correctly and fully taken into account in EIA-related laws and regulations. Further legal developments would have to define the process and responsibility for monitoring and auditing in order to enhance the credibility of the regulatory agencies, the private sector, project proponents, and EIA processes as such.

Toward Harmonization of EIA Legislation among SSA Countries

A 1995 paper stated the importance of EA harmonization for African countries.[107] Harmonization of EIA procedures among these countries and with the donor community is crucial and can produce significant cost-savings. In fact, by resolving discrepancies among EIA procedures, African countries can help their own efforts to develop subregional and regional cooperation and facilitate donor funding for development projects. The compatibility of national EIA procedures with those of international donor agencies would support funding of investment initiatives. An EIA of such investments should be carried out at the time when funds are to be approved, in accordance with the agency's own procedures. If the domestic EIA procedures are fully compatible with those of the funding agency, it may be possible to avoid the extra cost and delay of involving the funding agency in these EIA. Harmonization helps ensure full compliance of the EIA procedures with those of the funding agencies.

Several subregional organizations in Africa, notably SADCC and IGADE, have expressed an interest in taking a subregional perspective on EIA rules and requirements. This makes perfect sense in the context of the removal of any unwanted bias in subregional trade and investment. None of the subregional organizations, though, has succeeded in harmonizing such rules and regulations. The World Bank is helping in such a harmonization process through the Bank's Africa Region's strategy to assist with EA capacity-building in SSA.[108] It will be interesting to see how proactive the subregional organizations will be in promoting common approaches to EIA and how responsive governments will be. Other multilateral institutions and bilateral donors, such as UNDP, UNEP, FAO, and the Dutch government are playing an important role in developing and enhancing EIA systems in African countries, while examining ways to help harmonize them. The Africa Environmental Law Partnership Project is currently assisting African countries in a genuine effort of harmonization by providing African lawyers and officials involved in environmental management the opportunity to work together and cooperate in the development of modern and sound EIA statutes.[109]

This Page Intentionally Left Blank

Appendices

This Page Intentionally Left Blank

APPENDIX I

EIA-Related Issues in Sub-Saharan African Countries' Laws and Statutes

Issues and Countries	EIA required	Timing of EIA	EIA regulatory authority	EIA preparation agency	Definition of activities to which EIA applies	Screening responsibility	Format and content of EIA Report	Conditions and procedure for public participation	Transboundary issues	EIA review and approval	Implementation of the EIA recommendations and compliance
Burkina Faso	Y[110]	N	N	N	N	N	N	N	Y	N	N
Cameroon	Y[111]	N	Y	N[112]	Y	N	N	N	N	N	Y
Comoros	Y[113]	N	N	Y	Y[114]	N	Y[115]	N	N	N	N
Congo, Rep. of	Y	N	Y	N	Y	N	Y	N	N	Y	Y
Côte d'Ivoire		Y	Y	Y	Y[116]	Y	Y[117]	Y	N[118]	Y	Y[119]
Ethiopia			Y[120]								
Gabon	Y[121]	N	Y	N	N	Y	N	N	N	N	Y
Gambia	Y[122]	Y	Y	N	N	Y	Y	N	N	Y	Y
Ghana	Y		Y[123]		Y[124]						
Guinea	Y	N	Y	N	N	N	N	N	N	Y	N
Kenya	Y[125]		Y[126]								
Madagascar	Y[127]	Y	Y	N	Y	N	Y	Y	N	Y	Y
Malawi	Y[128]	N	Y	N	N	Y	Y	N[129]	Y[130]	Y	Y
Mali	Y[131]	Y	Y	N	Y	Y	Y	Y[132]		Y	Y[133]
Mauritius	Y[134]	Y	Y	N	Y[135]	N	Y	Y	N	Y	Y
Namibia	Y[136]	N	Y	N	Y	Y	Y	N	N	Y	Y
Nigeria	Y[137]	Y	Y	Y	Y	Y	Y	Y	Y[138]	Y	Y
Seychelles	Y[139]	N	Y	N	N	N	Y	Y	N	N	N
South Africa	Y[140]	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Swaziland[141]	Y[142]		Y		Y[143]						
Togo	Y[144]	Y	Y	N	N	N	N	N	N	Y	N
Uganda	Y[145]	N	Y	N	N	N	N	N	N	Y	N
Zambia	Y[146]	Y	Y	N	Y[147]	Y	Y	Y[148]	Y[149]	Y	Y
Zimbabwe	Y[150]	Y	Y	N	Y	Y	Y	Y	N	Y	N

This Page Intentionally Left Blank

Basic Features of EIA Reports[151] in Sub-Saharan African Countries' Laws and Statutes

Content of EIA Report and country	Description of the main characteristics of impacting activity	Description of the existing environment	Analysis of the aspects of the environment that have been significantly affected and will likely continue to be affected	Description of the environmental management plan including the monitoring and control of how mitigation measures are implemented	Measures taken to reduce harmful effects	Description of possible alternatives to the project and reasons why they were not retained	Description of the legal regulatory and framework and compatibility of the proposed activity with environment regulations and land-use planning	Non-technical summary of the EIA Report
Burkina Faso	N[152]	N	N	N	N	N	N	N
Cameroon[153]		Y[154]	Y	Y	Y			
Comoros	Y[155]	Y	N	Y	Y	N	N	N
Congo, Rep. of	Y	Y	Y	N	Y	Y	Y[156]	
Côte d'Ivoire	Y	Y[157]	Y	Y	Y	Y	Y	N
Ethiopia	Y	Y	Y	N	Y	N	N	N
Gabon	N	N	N	N	N	N	N	N
Gambia	Y	Y	Y	Y	Y	Y[158]	Y	Y
Ghana	Y	Y	N	Y	Y	N	N	N
Guinea		Y[159]	Y	N	Y	Y	N	N
Kenya	Y	Y	Y	N	Y	N	N	Y
Madagascar	Y	Y	Y	Y[160]	Y	Y	N	Y
Malawi	Y	Y	Y	Y	Y	Y[161]	Y	Y
Mali	Y	Y	Y	Y[162]	Y	N	Y	Y
Mauritius	Y	Y	Y	Y[163]	Y	Y	N	N
Namibia	Y	Y	Y	Y			Y	Y
Nigeria[164]	Y	Y	Y	N[165]	Y	N	N	Y
Seychelles	Y	Y	Y	Y[166]	Y	Y	Y	Y
South Africa[167]	Y	Y	Y[168]	Y	Y	Y	Y	Y
Swaziland	Y	Y	N	N	Y	N	N	N
Togo	Y	Y	Y	Y	Y	Y	N	N
Uganda[169]	N	N	N	N	N	N	N	N
Zambia[170]	Y	Y	Y	Y[171]	Y	Y	N	Y
Zimbabwe[172]	Y	Y	Y	Y	Y			

This Page Intentionally Left Blank

Public Consultation and Participation in Environmental Impact Assessment-Related Legislation of African Countries

Issues and countries	Principle of public consultation/ participation	Responsible agency for public consultation/ participation	Public consultation/ participation at screening stage	Public consultation/ participation during EIA Study preparation	Publication of project documentation and EIA Study in local/ indigenous languages	Disclosure of EIA Report[173]	Public consultation/ participation on final EIA Report	Right of affected people and the public to express opinions	Right of public to make claims before courts (standing) and other claim procedures
Burkina Faso	Y[174]	N	N	N	N	Y[175]	Y	Y	N
Cameroon	Y	N	N	N	N	Y	Y	Y	N
Comoros	N	N	N	N	N	N	N	N	N
Congo, Rep. of	N	N	N	N	N	N	N	N	N
Côte d'Ivoire	Y[176]	Y[177]	N	N	N	Y	N	N	N
Ethiopia									
Gabon[178]	N	N	N	N	N	N	N	N	N
Gambia	Y[179]	Y	N	N	N	Y[180]	Y	N	N
Ghana	Y	Y	N	Y	N	Y	Y	Y	N
Guinea	Y	N	N	N	N	Y	Y	Y	Y
Kenya	Y[181]	N	N	N	N	Y	N	Y	Y
Madagascar	Y	Y	N	N	Y[182]	N	Y[183]	N	N
Malawi	Y	Y	N	N	Y[184]	Y	Y	Y[185]	N
Mali	Y	Y	N	Y	N	Y	Y	Y	Y
Mauritius	Y	Y	N	N	Y[186]	Y	Y	Y	N
Namibia	N	N	N	N	N	N	N	N	N
Nigeria	Y[187]	Y	N	N	Y[188]	Y[189]	Y	Y	N
Seychelles	Y[190]	Y	N	N	Y[191]	Y	Y	Y	Y[192]
South Africa	Y[193]	Y[194]	N	Y	N	Y	Y	Y	Y
Swaziland	Y	Y	N	N	N	N	N		
Togo	N	N	N	N	N	N	N		
Uganda[195]	Y	Y	N	Y	Y	Y	Y		
Zambia	Y	Y	Y[196]	Y[197]	Y[198]	Y	Y		
Zimbabwe	Y[199]	Y	Y[200]	Y	N	Y[201]			

This Page Intentionally Left Blank

APPENDIX IV

Ratification of Four Major International Environmental Conventions With Provisions on EIA

Conventions and countries	United Nations Convention on the Law of the Sea (1982)	Convention on Biological Diversity (1992)	United Nations Framework Convention on Climate Change (1992)	United Nations Convention to Combat Desertification (1994)
Angola	Y	—	—	Y
Benin	Y	Y	Y	Y
Botswana	Y	Y	Y	Y
Burkina Faso	—	Y	Y	Y
Burundi	—	—	—	Y
Cameroon	Y	Y	Y	Y
Cape Verde	Y	Y	Y	Y
Cent. Afr. Rep.	—	Y	Y	Y
Chad	—	Y	Y	Y
Comoros	Y	Y	—	Y
Congo, Dem. Rep. of	—	Y	Y	Y
Congo, Rep. of	Y	Y	Y	Y
Côte d'Ivoire	Y	Y	Y	Y
Djibouti	Y	Y	Y	Y
Equ. Guinea	Y	Y	—	Y
Eritrea	—	Y	Y	Y
Ethiopia	—	Y	Y	Y
Gabon	Y	Y	—	Y
Gambia	—	Y	Y	Y
Ghana	—	Y	Y	Y
Guinea	Y	Y	Y	Y
Guinea-Bissau	Y	Y	Y	Y
Kenya	Y	Y	Y	Y
Lesotho	—	Y	Y	Y
Liberia	—	—	—	—
Madagascar	—	Y	Y	Y
Malawi	—	Y	Y	Y
Mali	Y	Y	Y	Y
Mauritania	Y	Y	Y	Y
Mauritius	Y	Y	Y	Y
Mozambique	Y	Y	Y	Y
Namibia	Y	—	Y	Y
Niger	—	Y	Y	
Nigeria	Y	Y	Y	Y
Rwanda	—	Y	—	—
Sao-tome and Principe	Y	—	—	Y
Senegal	Y	Y	Y	Y
Seychelles	Y	Y	Y	Y
Sierra Leone	Y	Y	Y	Y
Somalia	Y	—	—	—
South Africa	Y	Y	—	Y
Sudan	Y	Y	Y	Y
Swaziland	—	Y	Y	Y
Tanzania	Y	Y	Y	Y
Togo	Y	Y	Y	Y
Uganda	Y	Y	Y	Y
Zambia	Y	Y	Y	Y
Zimbabwe	Y	Y	Y	Y

This Page Intentionally Left Blank

APPENDIX V

Relevant Articles from Major International Environmental Conventions with Provisions on EIA

United Nations, 1992. *Convention on the Law of the Sea*
Article 206
Assessments of potential effects of activities

When States have reasonable grounds for believing that planned activities under their jurisdiction or control may cause substantial pollution of or significant and harmful changes to the marine environment, they shall, as far as practicable, assess the potential effects of such activities on the marine environment and shall communicate reports of the results of such assessments in the manner provided in article 205.

United Nations, 1992. Framework *Convention on Climate Change*
Article 4
Commitments

1. All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives, and circumstances, shall:

(f) Take climate change considerations into account, to the extent feasible, in their relevant social, economic and environmental policies and actions, and employ appropriate methods, for example impact assessments, formulated and determined nationally, with a view to minimizing adverse effects on the economy, on public health and on the quality of the environment, of projects or measures undertaken by them to mitigate or adapt to climate change.

United Nations, 1994. *Convention to Combat Desertification*
Article 10
National action programmes

4. Taking into account the circumstances and requirements specific to each affected country Party, national action programmes include, as appropriate, *inter alia,* measures in some or all of the following priority fields as they relate

to combating desertification and mitigating the effects of drought in affected areas and to their populations: promotion of alternative livelihoods and improvement of national economic environments with a view to strengthening programmes aimed at the eradication of poverty and at ensuring food security; demographic dynamics; sustainable management of natural resources; sustainable agricultural practices; development and efficient use of various energy sources; institutional and legal frameworks, strengthening of capabilities for assessment and systematic observation, including hydrological and meteorological services, and capacity building, education and public awareness.

APPENDIX VI

List of Environmental Impact Assessment-Related Laws, Statutes, and Regulations of Selected Sub-Saharan African Countries[202]

I. Burkina Faso

- Loi relative au Code de l'Environnement (no. 005/97/ADP, Jan. 30, 1997).
- Loi relative au Code Forestier (no. 006/97/ADP, Jan. 31, 1997).

II. Cameroon

- Loi-cadre relative à la gestion de l'environnement (no. 96–12, Aug. 5, 1996).

III. Comoros

- Loi-cadre relative à l'environnement (no. 94–018, June 12, 1994).

IV. Congo (Rep. of)

- Loi sur la protection de l'environnement (no. 003/91, Apr. 23, 1991).
- Décret rendant obligatoires les Etudes d'Impact sur l'Environnement (no. 86/775, 1986).

V. Côte d'Ivoire

- Loi portant Code de l'Environnement (no. 96–766, Oct. 3, 1996).
- Décret déterminant les règles et procédures applicables a l'impact environnemental des projets de développement (no. 96–894, Nov. 8, 1996).

VI. Ethiopia

- National Environmental Protection Authority Act (1992)

VII. Gabon

- Loi relative à la protection et à l'amélioration de l'environnement (no. 16/93, Aug. 26, 1993).

VIII. Gambia

- National Environment Management Act (no. 13, 1994).

IX. Ghana

- The Environmental Protection Agency Act (no. 490, 1994).
- Procedures and Other Matters Pertaining to EIA (LI no. 1652, Feb. 26, 1999).

X. Guinea

- Ordonnance portant Code de l'Environnement (no. 045/PRG/87).

XI. Kenya

- Physical Planning Act (1996).

XII. Madagascar

- Loi relative à la Charte de l'Environnement malgache et annexe (no. 90–033, 1991).
- Décret portant refonte du décret 92–926 du 21 octobre 1992 relatif à la mise en compatibilité des investissements avec l'environnement.

XIII. Malawi

- Act No. 23 (Aug. 16, 1996).

XIV. Mali

- Loi relative à la protection de l'environnement et du cadre de vie (no. 91–47/AN-RM).
- Décret portant institution de la procédure d'étude d'impact sur l'environnement (no. 99–189, July 5, 1999).

XV. Mauritius

- The Environment Protection Act (1991, incorporating 1993 amendments).

XVI. Namibia

- Environmental Assessment Policy Cabinet Resolution (no. 002, Aug. 16, 1994).

XVII. Nigeria

- Federal Environmental Agency Decree (1988).
- Decree No. 86 (Dec. 10, 1992, supplement to Official Gazette Extraordinary no. 73 vol. 79, part A A979, Dec. 31, 1992).
- Federal Environmental Protection Act (1990, as amended by Decree No. 52, 1992).

XVIII. Seychelles

- The Environment Protection Act (1994).

XIX. South Africa

- Environment Conservation Act (no. 73, 1989).
- National Environmental Management Act (no. 107, 1998).
- Regulation 1182 (Regulation Gazette, Sept. 5, 1997).
- Regulation 1183 (Regulation Gazette, Sept. 5, 1997).

XX. Swaziland

- Swaziland Environment Authority Act (no. 15, 1992).

XXI. Togo

- Loi instituant Code de l'Environnement (no. 88–14, Nov. 3, 1988).

XXII. Uganda

- The National Environmental Statutes (May 1995).
- The Environmental Impact Assessment Regulations (1998).

XXIII. Zambia

- Environmental Protection and Pollution Control Act (no. 12, July 20, 1990).
- The Environmental Impact Regulations (statutory instrument no. 28, 1997).

XXIV. Zimbabwe

- Environmental Impact Assessment Policy (1994).

This Page Intentionally Left Blank

APPENDIX VII

Legislation from Selected Sub-Saharan African Countries

This Page Intentionally Left Blank

MADAGASCAR

REPOBLIKAN'I MADAGASIKARA
Tanindrazana-Fahafahana-Fandrosoana

MINISTERE DE L'ENVIRONNEMENT

DECRET N° 99–954
relatif à la mise en compatibilité des investissements avec l'environnement

LE PREMIER MINISTRE, CHEF DU GOUVERNEMENT,

Vu la Constitution,

Vu la Loi no. 90–033 du 21 Décembre 1990 portant Charte de l'Environnement et ses modificatifs,

Vu le Décret no. 95–607 du 10 Septembre 1995 portant création et organisation de l'Office National pour l'Environnement et ses modificatifs,

Vu le Décret no. 98–522 du 23 Juillet 1998 portant nomination du Premier Ministre, Chef du Gouvernement,

Vu le Décret no. 98–530 du 31 Juillet 1998 portant nomination des membres du Gouvernement,

Vu le Décret no. 98–962 du 18 Novembre 1998 fixant les attributions du Ministre de l'Environnement ainsi que l'organisation générale de son Ministère,

Sur proposition du Ministre de l'Environnement,

En Conseil du Gouvernement,

DECRETE:

Article premier:

Le présent Décret a pour objet de fixer les règles et procédures à suivre en vue de la mise en compatibilité des investissements avec l'environnement et de préciser la nature, les attributions respectives et le degré d'autorité des institutions ou organismes habilités à cet effet.

CHAPITRE I
DISPOSITIONS GENERALES

Article 2:

Au sens du présent Décret, on entend par:

Agrément environnemental ou Certificat de conformité: l'acte administratif délivré selon le cas par le Ministère chargé de l'Environnement ou le Ministère de tutelle de l'activité, après avis technique du CTE, de l'ONE ou de la cellule environnementale concernée, à l'issue d'une évaluation positive de la demande d'agrément environnemental (cf. articles 38 et 40)

Cellule Environnementale: la cellule établie au niveau de chaque Ministère sectoriel, et chargée de l'intégration de la dimension environnementale dans les politiques sectorielles respectives, dans une optique de développement durable

CTE ou Comité Technique d'Evaluation ad hoc: le Comité Technique d'Evaluation ad hoc chargé de l'évaluation du dossier d'EIE prévu par le présent Décret

CIME ou Comité Interministériel de l'Environnement: le Comité dont les attributions sont définies par le Décret n° 97–823 du 12 Juin 1997 portant création, organisation et fonctionnement du CIME.

EIE ou Etude d'Impact Environnemental: l'étude qui consiste en l'analyse scientifique et préalable des impacts potentiels prévisibles d'une activité donnée sur l'environnement, et en l'examen de l'acceptabilité de leur niveau et des mesures d'atténuation permettant d'assurer l'intégrité de l'environnement dans les limites des meilleures technologies disponibles à un coût économiquement acceptable

MECIE: la mise en compatibilité des investissements avec l'environnement

ONE ou Office National pour l'Environnement: l'organe de coordination opérationnelle de la mise en œuvre des programmes environnementaux nationaux, placé sous la tutelle du Ministère chargé de l'Environnement et dont les attributions sont définies par le Décret n° 95–607 du 10 Septembre 1995 et ses modificatifs

Permis environnemental: l'acte administratif délivré par le Ministre chargé de l'Environnement à la suite d'une évaluation favorable de l'EIE

PGEP: le Plan de Gestion Environnementale du Projet qui constitue le cahier de charges environnemental du dit projet et consiste en un programme de mise en œuvre et de suivi des mesures envisagées par l'EIE pour supprimer, réduire et éventuellement compenser les conséquences dommageables du projet sur l'environnement

PREE ou Programme d'Engagement Environnemental: un programme, géré directement par la cellule environnementale du ministère sectoriel dont relève la tutelle de l'activité, qui consiste en l'engagement du promoteur de prendre certaines mesures d'atténuation des impacts de son activité sur l'environnement, ainsi que des mesures éventuelles de réhabilitation du lieu d'implantation

Promoteur ou investisseur: le maître d'œuvre du projet

Quitus environnemental: l'acte administratif d'approbation par lequel l'autorité compétente qui avait accordé le permis environnemental reconnaît l'achèvement, la régularité et l'exactitude des travaux de réhabilitation

entrepris par le promoteur et le dégage de sa responsabilité environnementale envers l'Etat

TDR: les Termes de Référence par lesquels est fixé le cadre du contenu et de l'étendue d'une EIE (cf. article 12)

Article 3:

Conformément aux dispositions de l'article 10 de la Loi n° 90–033 du 21 Décembre 1990 portant Charte de l'Environnement, les projets d'investissements publics ou privés, qu'ils soient soumis ou non à autorisation ou à approbation d'une autorité administrative, ou qu'ils soient susceptibles de porter atteinte à l'environnement doivent faire l'objet d'une étude d'impact.

Ces études d'impact prennent la forme soit d'une étude d'impact environnemental (EIE), soit d'un Programme d'Engagement Environnemental (PREE), selon que les projets relèvent des dispositions des articles 4 ou 5 suivants.

Dans tous les cas, il est tenu compte de la nature technique, de l'ampleur des dits projets ainsi que la sensibilité du milieu d'implantation.

Article 4:

Les projets suivants, qu'ils soient publics ou privés, ou qu'ils s'agissent d'investissements soumis au Droit Commun ou régis par des règles particulières d'autorisation, d'approbation ou d'agrément, sont soumis aux prescriptions ci-après :

a) la réalisation d'une étude d'impact environnemental (EIE),
b) l'obtention d'un permis environnemental délivré à la suite d'une évaluation favorable de l'EIE,
c) la délivrance d'un Plan de Gestion Environnementale du Projet (PGEP) constituant le cahier des charges environnemental du projet concerné.

1. Toutes implantations ou modifications d'aménagements, ouvrages et travaux situés dans les zones sensibles prévues par l'arrêté N° 4355/97 du 13 Mai 1997 portant désignation des zones sensibles.

La modification de cet arrêté peut être initiée, en tant que de besoin, par le Ministre chargé de l'Environnement, en concertation avec les Ministères sectoriels concernés.

2. Les types d'investissements figurant dans l'Annexe I du présent Décret.

3. Toutes implantations ou modifications des aménagements, ouvrages et travaux susceptibles, de par leur nature technique, leur contiguïté, l'importance de leurs dimensions ou de la sensibilité du milieu d'implantation, d'avoir des conséquences dommageables sur l'environnement, non visées par l'article 4.1 ou par l'annexe I du présent Décret et pour lesquelles, le Ministère chargé de l'Environnement ou le Ministère de tutelle de l'activité concernée, dûment saisi ou non par le promoteur, décide par voie réglementaire, après consultation de la cellule environnementale du secteur concerné, qu'une EIE est nécessaire.

Article 5:

Les projets d'investissements, publics ou privés, figurant dans l'Annexe II du présent Décret sont soumis aux prescriptions suivantes :

- la production par l'investisseur d'un Programme d'Engagement Environnemental (PREE) dont le contenu, les conditions de recevabilité et les modalités d'application sont définis par voie réglementaire et par les dispositions transitoires du présent décret.
- une évaluation du PREE par la cellule environnementale du Ministère sectoriel directement concerné, qui établira et enverra les rapports y afférents au Ministère chargé de l'Environnement avec copie à l'ONE.

Toutefois, en cas de modification d'une activité prévue à l'annexe II tendant à accroître les conséquences dommageables sur l'environnement, une EIE peut être requise, conformément aux dispositions de l'article 4.3, avant l'exécution des travaux de modification.

Article 6:

Pour les investissements, publics ou privés, visés à l'article 4, le permis environnemental constitue un préalable obligatoire à tout commencement des

travaux. Le permis environnemental est délivré par le Ministre chargé de l'Environnement sur la base de l'avis technique du CTE faisant suite à l'évaluation de l'EIE du projet.

Pour les investissements, publics ou privés, visés à l'article 5, l'approbation du PREE constitue un préalable obligatoire à tout commencement des travaux. L'approbation du PREE relève du Ministère sectoriel concerné, sur la base de l'avis technique de sa cellule environnementale.

Article 7:

L'EIE consiste en l'examen préalable des impacts potentiels prévisibles d'une activité donnée sur l'environnement; elle devra mettre en œuvre toutes les connaissances scientifiques pour prévoir ces impacts et les ramener à un niveau acceptable pour assurer l'intégrité de l'environnement dans les limites des meilleures technologies disponibles à un coût économiquement viable. Le niveau d'acceptabilité est apprécié en particulier sur la base des politiques environnementales, des normes légales, des valeurs limites de rejets, des coûts sociaux, culturels et économiques, et des pertes en patrimoines.

Toute absence d'EIE pour les nouveaux investissements visés à l'article 4, entraîne la suspension d'activité dès lors que l'inexistence du permis environnemental y afférent est constatée. La suspension est prononcée conjointement par le Ministère chargé de l'Environnement et le Ministère sectoriel concerné, sur proposition de l'ONE, de l'autorité locale du lieu d'implantation ou sur leur propre initiative.

Article 8:

L'ONE, en collaboration avec les Ministères sectoriels concernés, est chargé de proposer les valeurs-limites et les normes environnementales de référence et d'élaborer les directives techniques environnementales ou contribuer à leur élaboration, pour chaque type d'activité considéré. Il assure le suivi et l'évaluation de l'applicabilité des normes et procédures sectorielles concernées fixées pour la mise en compatibilité des investissements avec l'environnement.

Article 9:

Les valeurs-limites sont les seuils admissibles d'émissions ou les concentrations d'éléments qu'un milieu récepteur peut accepter. Ces seuils et concentrations seront fixés par voie réglementaire.

La norme est un référentiel officiel publié par un organisme indépendant et reconnu.

Les normes tant nationales qu'internationales ainsi que les directives en matière environnementale seront portées à la connaissance du public par tout moyen conforme à la réglementation en vigueur.

Les normes préconisées en la matière par les organismes internationaux affiliés aux Nations Unies peuvent servir de standard de référence, dans les cas où les normes nationales sont inexistantes ou font défaut.

Article 10:

Sous l'impulsion du Ministère chargé de l'Environnement et avec l'appui technique de l'ONE, toutes informations et toutes données utiles pour gérer l'environnement en vue d'un développement humain durable sont diffusées, chacun en ce qui le concerne, par les Ministères sectoriels directement intéressés.

Les collectivités territoriales, et notamment les communes, peuvent être associées à cette diffusion.

CHAPITRE II

DES REGLES ET PROCEDURES APPLICABLES POUR LA MISE EN COMPATIBILITE DES INVESTISSEMENTS AVEC L'ENVIRONNEMENT

SECTION I

Des modalités de l'étude d'impact

Article 11:

L'EIE, telle que visée aux articles 3 et 7, est effectuée aux frais et sous la responsabilité du promoteur. Son contenu est en relation avec l'importance des travaux et aménagements projetés et avec leurs incidences possibles sur l'environnement.

Une directive, élaborée par l'ONE et dûment approuvée par le Ministère chargé de l'Environnement, précisera le contenu d'une EIE qui doit au moins comprendre :

1. Un document certifiant la situation juridique du lieu d'implantation du projet;

2. Une description du projet d'investissement;

3. Une analyse du système environnemental affecté ou pouvant être affecté par le projet; cette analyse doit aboutir à un modèle schématique faisant ressortir les principaux aspects (statique ou dynamique, local ou régional) du système environnemental, en particulier ceux susceptibles d'être mis en cause par l'investissement projeté;

4. Une analyse prospective des effets possibles sur le système précédemment décrit, des interventions projetées;

5. Un Plan de Gestion Environnemental du Projet (PGEP);

6. Un résumé non technique rédigé en malagasy et en français, afin de faciliter la prise de connaissance par le public des informations contenues dans l'étude; ce résumé joint à l'étude et qui en fait partie intégrante, indiquera en substance en des termes accessibles au public, l'état initial du site et de son environnement, les modifications apportées par le projet et les mesures envisagées pour pallier aux conséquences dommageables de l'investissement à l'environnement.

Les EIE des activités prévues sur un lieu concerné par un schéma d'aménagement ou des outils de planification locale ou régionale, dûment officialisés par des textes en vigueur, devront se conformer à ces schémas ou à ces documents de planification.

L'EIE, rédigée en malgache ou en français, doit faire ressortir en conclusion les mesures scientifiques, techniques, socio-économiques, matérielles envisagées pour supprimer, réduire et éventuellement, compenser les conséquences dommageables de l'investissement sur l'environnement. Ces mesures seront intégrées dans un Plan de Gestion Environnementale du Projet (PGEP) ci-dessus.

Article 12:

Sur saisine du Ministère chargé de l'Environnement, de l'ONE, du Ministère sectoriel concerné ou du promoteur, toute personne physique ou morale intéressée, publique ou privée, peut contribuer à fixer le cadre du contenu et de l'étendue d'une EIE pour les activités prévues par l'article 4 du présent Décret.

L'ONE est chargé d'inscrire les recommandations issues des différentes entités prévues par l'alinéa précédent pour l'élaboration des Termes de Référence (TDR) de l'EIE à mener. L'élaboration des TDR est faite par l'ONE, conjointement avec les cellules environnementales des Ministères sectoriels concernés et le promoteur.

Une directive fixera les conditions dans lesquelles les TDR d'une EIE sont soumises au Ministère chargé de l'Environnement par l'ONE.

SECTION II
De la procédure d'évaluation
A. De la demande d'évaluation

Article 13:

Les conditions de recevabilité de toute demande d'évaluation de dossier des projets visés à l'article 4 du présent Décret sont généralement les suivantes, à l'exception des cas particuliers de certains secteurs pour lesquels elles seront définies par voie réglementaire :

Dépôt à l'ONE :

- d'une demande écrite du promoteur adressée au Ministre chargé de l'Environnement,
- du rapport d'EIE dont le nombre d'exemplaires est précisé par voie réglementaire,
- du récépissé de paiement de la contribution de l'investisseur aux frais d'évaluation environnementale conformément à l'article 14 du présent Décret,
- de toutes pièces justificatives du montant de l'investissement projeté.

Le dossier est déposé, contre accusé de réception, auprès de l'ONE.

La transmission du dossier aux entités compétentes pour l'évaluation prévues à l'article 23 du présent Décret relève de l'ONE ou du Ministère chargé de l'Environnement.

Dans tous les cas, le délai d'évaluation court à compter de la date d'émission d'un avis de recevabilité du dossier par l'ONE.

Article 14:

La contribution de l'investisseur aux frais d'évaluation de l'EIE est fixée selon les modalités prévues à l'Annexe III du présent Décret.

Les frais d'évaluation sont versés par l'investisseur à un compte spécial ouvert à cet effet par l'ONE et acquittés avant toute évaluation environnementale de l'investissement. Les modalités d'utilisation de la somme ainsi collectée, compte tenu des attributions prévues aux articles 23 et 24 du présent Décret, seront fixées par voie réglementaire.

Cette contribution peut être comptabilisée en tant que frais d'établissement. Il en est de même en cas d'extension des investissements existants.

En cas d'investissement public ou privé échelonné, le calcul de la contribution aux frais d'évaluation par le promoteur de l'EIE peut être basé sur un ou plusieurs lots d'investissement. Toutefois, dans ce cas, l'évaluation ne peut porter que sur les lots concernés. Les autorités compétentes ne pourront en aucun cas être liées par les décisions relatives à ces premières évaluations pour la suite des évaluations restantes.

Les modifications de l'envergure effective du projet par rapport au projet initial peuvent nécessiter des mesures supplémentaires. Ces cas seront précisés par voie réglementaire.

B. De la participation du public à l'évaluation

Article 15:

La participation du public à l'évaluation se fait soit par consultation sur place des documents, soit par enquête publique, soit par audience publique. Les résultats de la participation du public à l'évaluation constituent une partie intégrante de l'évaluation de l'EIE.

La décision sur la forme que prendra la participation du public à l'évaluation sera définie dans des directives techniques environnementales édictées

par le CTE ou l'ONE, et notifiées au promoteur au moins **quinze (15) jours** avant l'évaluation par le public.

L'organisation d'audiences à divers niveaux (local, régional ou national) est laissée à l'appréciation du CTE ou de l'ONE. Dans tous les cas, les procédures à suivre sont celles prévues par les articles 16 à 21 du présent Décret.

1. De la consultation sur place des documents

Article 16:

La consultation sur place des documents consiste en un recueil des avis de la population concernée par l'autorité locale du lieu d'implantation.

Article 17:

Les modalités pratiques de conduite de la consultation sur place des documents seront définies par voie réglementaire.

Toutefois, la durée de l'ensemble des procédures relatives à cette consultation ne devrait pas être inférieure à **dix (10) jours** ni supérieure à **trente (30) jours.**

2. De l'enquête publique

Article 18:

L'enquête publique consiste en un recueil des avis de la population affectée, par des enquêteurs environnementaux. Parallèlement aux procédures d'enquête publique, une consultation sur place des documents peut être menée auprès du public concerné.

Article 19:

La conduite des opérations d'enquête publique est assurée par des enquêteurs, en collaboration avec les autorités locales du lieu d'implantation du projet.

Les personnes intéressées à l'opération, à titre personnel ou familial, en raison de leur fonction au sein du Ministère, de la collectivité, de l'organisme ou du service qui assure la maîtrise d'ouvrage, la maîtrise d'œuvre ou le contrôle de l'opération ne peuvent être désignées comme enquêteurs.

Les modalités pratiques de conduite de l'enquête publique seront définies par voie réglementaire.

Toutefois, la durée de l'ensemble des procédures relatives à cette enquête publique ne devrait pas être inférieure à **quinze (15) jours** ni supérieure à **quarante cinq (45) jours.**

3. De l'audience publique

Article 20:

L'audience publique consiste en une consultation simultanée des parties intéressées. Chaque partie a la faculté de se faire assister par un expert pour chaque domaine. Parallèlement aux procédures d'audience publique, une consultation sur place des documents ou une enquête publique peut être menée auprès du public concerné.

Article 21:

La conduite des opérations d'audience publique est assurée par des auditeurs, en collaboration avec les autorités locales du lieu d'implantation du projet.

Les personnes intéressées à l'opération, à titre personnel ou familial, en raison de leur fonction au sein du Ministère, de la collectivité, de l'organisme ou du service qui assure la maîtrise d'ouvrage, la maîtrise d'œuvre ou le contrôle de l'opération ne peuvent être désignées comme auditeurs.

Les modalités pratiques de conduite de l'audience publique seront définies par voie réglementaire.

Toutefois, la durée de l'ensemble des procédures relatives à cette audience publique ne devrait pas être inférieure à **vingt cinq (25) jours** ni supérieure à **soixante dix (70) jours.**

SECTION III
De l'évaluation environnementale

Article 22:

L'évaluation environnementale consiste à vérifier si dans son étude, le promoteur a fait une exacte application des dispositions prévues aux articles 7 et 11 du présent Décret, et si les mesures proposées pour prévenir et/ou corriger les effets néfastes prévisibles de l'investissement sur l'environnement sont suffisantes et appropriées.

L'évaluation environnementale doit également prendre en compte toutes les autres dimensions de l'environnement telles qu'elles ressortent de la consultation sur place des documents, de l'enquête ou de l'audience publique.

L'évaluation environnementale mettra en relief que le projet soumis est celui du moindre impact, les impacts anticipés pourraient être atténués et les impacts résiduels acceptables.

A. Des organes d'évaluation environnementale

Article 23:

Un Comité Technique d'Evaluation ad hoc (CTE) est constitué pour l'évaluation de chaque dossier d'EIE. Ce Comité, nommé par décision du Ministre chargé de l'Environnement, sur proposition de l'ONE et du Ministère sectoriel concerné, est composé notamment de responsables des cellules environnementales des Ministères sectoriels concernés, de l'ONE, et du Ministère chargé de l'Environnement.

Le Ministère chargé de l'Environnement préside le CTE dont le Secrétariat est assuré par l'ONE.

Le CTE procède à l'évaluation administrative et technique d'un dossier d'EIE et délivre un avis technique. Pour l'évaluation du dossier d'EIE, le CTE peut, suivant la spécificité du dossier, faire appel à d'autres Ministères ou organismes environnementaux concernés par le Projet, ou solliciter, en tant que de besoin, le service d'autres experts.

Article 24:

Toute ou partie des attributions du CTE en matière d'évaluation peuvent être, éventuellement, déléguées aux communes ou à des structures décentralisées des lieux d'implantation de l'investissement, suivant un cahier des charges qui spécifierait les obligations techniques et administratives de chaque partie.

Le choix des communes ou des structures décentralisées se fera notamment sur la base de leurs compétences propres, de leur structure administrative, de l'existence de services compétents dans leurs circonscriptions.

En ce qui concerne les investissements situés en zones urbaines, les attributions environnementales des Communes définies dans ce Décret peuvent être transférées aux Fokontany par les autorités compétentes et sur

proposition du Ministre chargé de l'Environnement qui peut recevoir à cet effet l'avis du CTE ou de l'ONE.

B. Du délai d'évaluation

Article 25:

Le rapport d'évaluation et l'avis correspondant devront parvenir au Ministère chargé de l'Environnement au plus tard **soixante (60) jours** à compter de la réception des dossiers complets émanant du promoteur, dans le cas d'enquête publique ou de consultation sur place des documents.

Pour les dossiers à audiences publiques, le délai requis est de **cent vingt (120) jours** au maximum.

Toutefois, aux délais ci-dessus sont rajoutés les **temps de réponse** des promoteurs si le CTE leur adresse pendant le temps de son évaluation, tel que prévu aux alinéas 1 et 2 du présent article des questions ou des demandes d'informations supplémentaires. Le CTE dispose en outre d'un délai de **dix (10) jours** à compter de la réception de ces informations supplémentaires pour leur analyse.

Article 26:

Pour les activités visées à l'article 4.2 d'une certaine envergure à définir par voie réglementaire et celles visées à l'article 4.3, il est possible d'établir, après avis de l'ONE et du Ministre chargé du secteur concerné, une convention spécifique entre le Ministre chargé de l'Environnement et le promoteur, quant aux délais et aux procédures de l'évaluation.

C. De l'octroi du permis environnemental

Article 27:

Dans les **quinze (15) jours ouvrables** à compter de la réception du rapport d'EIE, du rapport d'évaluation par le public et de l'avis technique d'évaluation du CTE, le Ministre chargé de l'Environnement doit se prononcer sur l'octroi ou non du permis environnemental.

Il peut demander à l'ONE ou au CTE une (ou des) séance(s) d'explication technique du dossier.

Le permis environnemental est inséré dans toute demande d'autorisation, d'approbation ou d'agrément des travaux, ouvrages et aménagements projetés.

D. Des procédures de recours

Article 28:

Outre les procédures de droit commun, en cas de refus motivé et dûment notifié de délivrance du permis environnemental par le Ministre chargé de l'Environnement, le promoteur peut solliciter le CIME pour un deuxième examen de son dossier. Le résultat de cette contre-expertise de l'évaluation servira de nouvelle base au Ministre chargé de l'Environnement pour se prononcer sur l'octroi ou non du permis environnemental.

Le CIME, assisté d'un groupe d'experts de son choix, disposera d'un délai de **trente (30) jours** pour le contrôle de l'évaluation effectuée et transmettra les résultats de ses travaux au Ministre chargé de l'Environnement qui devra se prononcer dans un délai de **dix (10) jours ouvrables** au maximum à compter de la réception du dossier y afférent.

En cas de nouveau refus, le recours aux institutions environnementales n'est plus recevable.

CHAPITRE III
DU SUIVI ET DU CONTROLE

Article 29:

L'exécution du PGEP consiste en l'application par le promoteur, pendant la durée de vie du projet, des mesures prescrites pour supprimer, réduire et éventuellement compenser les conséquences dommageables sur l'environnement.

Le suivi de l'exécution du PGEP consiste à vérifier l'évolution de l'état de l'environnement ainsi que l'efficacité des mesures d'atténuation et des autres dispositions préconisées par ledit PGEP.

Le contrôle est une activité qui vise à assurer que le promoteur respecte, tout au long du cycle du projet, ses engagements et ses obligations définis dans le PGEP, et à l'octroi de sanctions en cas d'inapplication de ceux–ci.

Article 30:

Si par suite d'un bouleversement de l'équilibre environnemental, les mesures initialement prises se révèlent inadaptées, l'investisseur est tenu de prendre les mesures d'ajustement nécessaires en vue de la mise en compatibilité permanente de ces investissements avec les nouvelles directives et les normes environnementales applicables en la matière.

La décision sera prise par l'autorité matériellement ou sectoriellement compétente conjointement avec le Ministre chargé de l'Environnement, sur proposition du CTE et avec l'appui technique de l'ONE. La décision précisera les nouvelles mesures correctrices et/ ou compensatoires retenues ainsi que le délai d'exécution qui ne pourra dépasser les trois ans.

Avant la fermeture du projet, le promoteur doit procéder à un audit environnemental dont les modalités de mise en œuvre seront définies par voie réglementaire. Cet audit est soumis à l'ONE pour évaluation, dont le résultat servira de base à la délivrance d'un quitus environnemental par le Ministère chargé de l'Environnement.

L'obtention du quitus environnemental est nécessaire pour dégager la responsabilité environnementale du promoteur envers l'Etat.

Article 31:

En cas de cession, le cessionnaire se trouve subrogé dans les droits, avantages et obligations du cédant.

Si des modifications sont apportées par le cessionnaire au projet initial, une nouvelle étude d'impact obéissant aux règles et procédures prévues par le présent texte est requise si les modifications, additifs ou rectificatifs impliquent une modification des mesures prises en matière de protection de l'environnement.

Article 32:

L'exécution du PGEP relève de la responsabilité du promoteur.

Le promoteur adresse les rapports périodiques de l'exécution du PGEP au Ministère chargé de l'Environnement, au Ministère de tutelle de l'activité concernée, à l'ONE avec ampliation au Maire de la Commune d'implantation.

Article 33:

Pour les projets visés à l'article 4 du présent Décret, les travaux de suivi et de contrôle sont assurés conjointement par le Ministère chargé de l'Environnement, le Ministère de tutelle de l'activité concernée, et l'ONE, qui peuvent, en cas de nécessité dictée par la spécificité et l'envergure du projet, solliciter le service d'autres entités ou experts.

Pour les projets visés à l'article 5 du présent Décret, les travaux de suivi et de contrôle relèvent des cellules environnementales des Ministères sectoriels concernés qui enverront les rapports y afférents au Ministère chargé de l'Environnement et à l'ONE.

Dans tous les cas, les autorités locales des lieux d'implantation de ces projets seront associées aux travaux de suivi et de contrôle, et le cas échéant, les organismes environnementaux concernés par lesdits projets.

CHAPITRE IV
DES MANQUEMENTS ET SANCTIONS

Article 34:

Constituent des manquements susceptibles de faire encourir des sanctions à l'auteur:

- le non respect du plan de gestion environnementale du projet (PGEP) ;
- le fait pour tout investisseur d'avoir entrepris des travaux, ouvrages et aménagements tels qu'ils sont définis à l'article 4 et à l'Annexe I du présent Décret, sans obtention préalable du permis environnemental y afférent ;
- le fait pour tout investisseur d'avoir entrepris des travaux, ouvrages et aménagements tels qu'ils sont définis à l'article 5 et à l'Annexe II du présent Décret, sans approbation préalable du PREE y afférent;
- le fait par tout investisseur de s'être abstenu de prendre les mesures de correction et/ou de compensation prescrites en cas de manquement dûment constaté;
- l'inexécution totale ou partielle dans le délai prescrit des mesures de mise en conformité de l'investissement avec l'environnement.

Article 35:

En cas de non-respect du PGEP, le Ministère chargé de l'Environnement ou le Ministère sectoriel compétent adresse à l'investisseur fautif un avertissement par lettre recommandée.

Si l'investisseur néglige de régulariser la situation ou s'abstient de le faire dans un délai de **trente (30) jours** après la notification du premier avertissement, un nouvel avertissement lui est signifié lequel sera accompagné de l'une ou des sanctions prévues à l'article suivant.

Article 36:

Le Ministre chargé de l'Environnement, en concertation avec le Ministère sectoriel compétent et la Commune concernée, peut prononcer les sanctions suivantes :

- injonction de remise en état des lieux conformément aux normes environnementales ;
- injonction de procéder dans un délai préfixé à la mise en œuvre de mesures de correction et de compensation sous peine d'astreintes ;
- suspension ou retrait du permis environnemental ;
- suspension d'activité, conformément aux dispositions de l'article 7 alinéa 2.

Indépendamment de ce retrait du permis environnemental, le Ministère sectoriel responsable peut prononcer :

- l'arrêt des travaux en cours ;
- la fermeture temporaire ou définitive de l'établissement.

Article 37:

Les sanctions administratives prononcées par l'autorité légalement compétente et les pénalités assortissant la réglementation environnementale en vigueur, ne portent pas préjudice à l'application des sanctions complémentaires prévues par les dispositions des textes réglementaires en vigueur au niveau des secteurs concernés.

CHAPITRE V
DISPOSITIONS TRANSITOIRES

Article 38:

Tout investissement en cours au jour de la publication du présent Décret et rentrant dans les catégories visées à l'article 4 du présent Décret, doit s'ajuster aux directives et normes de gestion rationnelle de l'environnement mentionnées à l'article 7 du présent Décret.

Sont considérés comme investissements en cours, les investissements pour lesquels le dossier complet de demande d'autorisation, d'approbation ou d'agrément est déjà déposé selon les prescriptions légales ou réglementaires en vigueur.

Dans les **neuf (9) mois** suivant la sortie du présent Décret, les promoteurs concernés sont tenus d'en faire la déclaration au Ministère chargé de l'Environnement, avec copie à l'ONE, et de faire connaître, compte tenu des directives et normes environnementales applicables pour les types d'investissement considéré, les mesures déjà prises, en cours ou envisagées pour la protection de l'environnement.

La déclaration accompagnée de tout document utile, doit faire ressortir les moyens permettant le suivi, l'évaluation et le contrôle de l'investissement.

La déclaration qui vaut demande d'évaluation est établie et déposée suivant les mêmes procédures qu'une demande d'évaluation d'une EIE.

Article 39:

L'évaluation environnementale des dossiers visés à l'article 38 précédent est faite par le CTE suivant les mêmes procédures qu'une évaluation d'une EIE.

Le CTE peut demander à l'investisseur tout élément d'informations complémentaires ou même prescrire une nouvelle étude environnementale.

Un certificat de conformité est délivré à l'issue d'une évaluation positive d'une demande d'agrément environnemental.

Le PGEP issu de la demande d'agrément environnemental est suivi et contrôlé suivant les dispositions prévues par les articles 29 à 33.

Article 40:

Dans les **quinze (15) mois** suivant la sortie du présent Décret, les promoteurs de toutes les activités en cours visées à l'article 5 du présent Décret sont tenus de présenter au Ministère sectoriel compétent, une demande d'agrément environnemental suivant les mêmes procédures qu'une demande d'évaluation d'un PREE.

L'analyse du dossier d'évaluation incombe à la cellule environnementale du Ministère de tutelle de l'activité qui délivre, à l'issue d'une évaluation positive, un agrément environnemental et envoie les rapports y afférents au Ministère chargé de l'Environnement avec copie à l'ONE.

Article 41:

La mise en conformité de tous les projets d'investissement en cours, selon les déclarations ou demandes d'agrément environnemental y afférentes, ne peut excéder une période de **trois (3) ans.** Toutefois, si les activités en cours entraînent des préjudices objectifs, des mesures conservatoires seront prononcées conjointement par le Ministre chargé de l'Environnement et le Ministre sectoriellement compétent.

Copie de la décision est communiquée à l'autorité locale du lieu d'implantation pour information.

Ces dispositions ne portent pas préjudice à l'application des dispositions des textes réglementaires en vigueur au niveau des secteurs concernés.

Article 42:

Le promoteur qui, après avoir fait l'objet d'un rappel par lettre recommandée des autorités compétentes, ne se conforme pas aux présentes dispositions, et ne présente pas la demande d'agrément environnemental exigé encourt les sanctions prévues à l'article 36 du présent Décret.

CHAPITRE VI
DISPOSITIONS DIVERSES

Article 43:

Sont et demeurent abrogées toutes dispositions réglementaires antérieures contraires au présent Décret, notamment celles du Décret n° 95–377 du 23 Mai 1995 relatif à la mise en compatibilité des investissements avec l'environnement.

Article 44:

Des textes réglementaires fixeront, en tant que de besoin, les modalités d'application du présent Décret, notamment dans le cas de certains secteurs où des arrêtés conjoints des ministres chargés respectivement de l'environnement et du secteur concerné devront en préciser les modalités particulières d'application.

Article 45:

Le Vice-Premier Ministre chargé du Budget et du Développement des Provinces Autonomes, le Ministre des Finances et de l'Economie, le Ministre de la Justice, Garde des Sceaux, le Ministre de l'Intérieur, le Ministre de la Santé, le Ministre des Travaux Publics, le Ministre de l'Aménagement du Territoire et de la Ville, le Ministre de l'Agriculture, le Ministre de la Pêche et des Ressources Halieutiques, le Ministre du Tourisme, le Ministre des Eaux et Forêts, le Ministre de l'Energie et des Mines, le Ministre de l'Industrie et de l'Artisanat, le Ministre de l'Elevage, le Ministre de la Recherche Scientifique et le Ministre de l'Environnement sont chargés,

chacun en ce qui le concerne, de l'exécution du présent Décret qui sera publié au Journal Officiel de la République de Madagascar.

Fait à Antananarivo, le 15 Décembre 1999

ANNEXE I

Au décret n° 99 954 du 15 Décembre 1999
fixant les nouvelles dispositions relatives à la mise en
compatibilité des investissements avec l'environnement

PROJETS OBLIGATOIREMENT SOUMIS A ETUDE D'IMPACT ENVIRONNEMENTAL (EIE)

Sont soumises à l'étude d'impact environnemental toutes activités citées ci-dessous ou atteignant l'un des seuils suivants :

- Tous aménagements, ouvrages et travaux pouvant affecter les zones sensibles

- Tout plan, programme ou politique pouvant modifier le milieu naturel ou l'utilisation des ressources naturelles, et/ou la qualité de l'environnement humain en milieu urbain et/ou rural
- Toute utilisation ou tout transfert de technologie susceptible d'avoir des conséquences dommageables sur l'environnement
- Tout entreposage de n'importe quel liquide au-delà de 50 000 m3
- Tout transport commercial régulier et fréquent ou ponctuel par voie routière, ferroviaire ou aérienne de matières dangereuses (corrosives, toxiques, contagieuses ou radioactives, etc.)
- Tout déplacement de population de plus de 500 personnes
- Les aménagements, ouvrages et travaux susceptibles, de par leur nature technique, leur ampleur et la sensibilité du milieu d'implantation d'avoir des conséquences dommageables sur l'environnement. Parmi ces activités, on peut citer:

INFRASTRUCTURES ET AMENAGEMENTS/ AGRICULTURE/ELEVAGE

- Tout projet de construction et d'aménagement de route, revêtue ou non
- Tout projet de construction et d'aménagement de voie ferrée
- Tout projet de réhabilitation de voie ferrée de plus de 20 km de long
- Tout projet de construction, d'aménagement et de réhabilitation d'aéroport à vocation internationale et régionale et nationale et/ou de piste de plus de 1.500 m
- Tout projet d'aménagement, de réhabilitation et d'entretien (précisément dragage) des ports principaux et secondaires
- Tout projet d'implantation de port maritime ou fluvial
- Tout projet d'excavation et remblayage de plus de 20.000 m3
- Tout projet d'aménagement de zones de développement
- Tout projet d'énergie nucléaire
- Toute installation hydroélectrique de plus de 150 MW
- Tout projet de centrale thermique ayant une capacité de plus de 50 MW
- Tout projet d'installation de ligne électrique d'une tension supérieure ou égale à 138 KV
- Tout projet de barrage hydroélectrique d'une superficie de rétention de plus de 500 ha

- Tout projet d'aménagement des voies navigables (incluant le dragage) de plus de 5 km
- Tout projet d'aménagement ou de réhabilitation hydroagricole ou agricole de plus de 1000 ha
- Tout projet d'élevage de type industriel ou intensif
- Tout prélèvement d'eau (eau de surface ou souterraine) de plus de 30 m3/h
- Tout projet d'épandage de produits chimiques susceptible, de par son envergure, de porter atteinte à l'environnement et à la santé humaine

RESSOURCES NATURELLES RENOUVELABLES

- Toute introduction de nouvelles espèces, animales ou végétales, ou d'organismes génétiquement modifiés (OGM) sur le territoire national
- Toute exploitation forestière de plus de 500 ha
- Toute collecte et/ou chasse et vente d'espèces n'ayant jamais fait l'objet de commercialisation par le passé
- Tout projet de création de parcs et réserves, terrestres ou marins, d'envergure nationale et régionale
- Toute introduction d'espèces présentes à Madagascar mais non préalablement présentes dans la zone d'introduction
- Tout projet de chasse et de pêche sportives

TOURISME ET HOTELLERIE

- Tout aménagement hôtelier d'une capacité d'hébergement supérieure à 120 chambres
- Tout aménagement récréo-touristique d'une surface combinée de plus de 20 hectares
- Tout restaurant d'une capacité de plus de 250 couverts

SECTEUR INDUSTRIEL

- Toute unité industrielle **soumise à autorisation,** conformément aux dispositions des textes réglementaires en vigueur de la Loi 99–021 du

19 Août 1999 relative à la politique de gestion et de contrôle des pollutions industrielles
- Toute unité de transformation de produits d'origine animale (conserverie, salaison, charcuterie, tannerie, …) de type industriel
- Toute unité de fabrication d'aliments du bétail permettant une capacité de production de plus de 150 t/an

GESTION DE PRODUITS ET DECHETS DIVERS

- Toute unité de stockage de pesticides d'une capacité supérieure à 10 tonnes
- Toute unité de récupération, d'élimination ou de traitement de déchets domestiques, industriels, et autres déchets à caractère dangereux
- Toute unité de traitement ou d'élimination de déchets hospitaliers excédant 50 kg/j
- Tout type de stockage de produits et/ou de déchets radioactifs
- Tout stockage de produits dangereux
- Toute unité de traitement d'eaux usées domestiques.

SECTEUR MINIER

- Toute exploitation ou extraction minière de type mécanisé
- Toute exploitation de substances radioactives
- Tout traitement physique ou chimique sur le site d'exploitation de substances minières
- Tout projet de recherche d'une envergure définie par arrêté conjoint des Ministres chargés respectivement de l'Environnement et des Mines à partir de la phase de développement et/ou de la faisabilité

HYDROCARBURES ET ENERGIE FOSSILE

- Tout projet d'exploration du pétrole ou de gaz naturel utilisant la méthode sismique et/ou forage
- Tout projet d'extraction et/ou de transport par pipeline de pétrole ou de gaz naturel
- Tout projet d'extraction et d'exploitation industrielle de charbon de terre ou cokeries

- Tout projet d'implantation de raffinerie de pétrole brut, de gazéification et de liquéfaction de capacité de plus de 20 000 barils équivalent-pétrole/jour
- Tout projet d'implantation offshore
- Tout projet d'extraction de substances minérales bitumineuses de plus de 500 m3/jour
- Tout projet de stockage de produits pétroliers et dérivés ou de gaz naturel d'une capacité combinée de plus de 25 000 m3 ou 25 millions de litres

ANNEXE II

Au décret n°99 954 du 15 décembre 1999
fixant les nouvelles dispositions relatives à la mise en
compatibilité des investissements avec l'environnement

INVESTISSEMENT OBLIGATOIREMENT soumis À UN PROGRAMME D'ENGAGEMENT ENVIRONNEMENTAL (PREE)

Sont soumises à l'approbation d'un programme d'engagement environnemental (PREE) toutes activités citées ci-dessous ou atteignant l'un des seuils suivants :

INFRASTRUCTURES ET AMÉNAGEMENTS/AGRICULTURE/ ELEVAGE

- Tout projet d'entretien périodique de route revêtue de plus de 20 km
- Tout projet d'entretien périodique de route non revêtue de plus de 30 km
- Toute industrie en phase d'exploitation
- Toute installation hydroélectrique d'une puissance comprise entre 50 et 150 MW
- Tout projet de centrale thermique d'une puissance comprise entre 25 et 50 MW
- Tout aménagement de terrain destiné à recevoir des équipements collectifs de plus de 5000 spectateurs ou de plus de 3 ha

- Tout projet de barrage hydroélectrique d'une superficie de rétention comprise entre 200 et 500 ha
- Tout projet d'aménagement ou de réhabilitation hydroagricole ou agricole d'une superficie comprise entre 200 et 1000 ha
- Tout projet d'élevage de type semi-industriel et artisanal

RESSOURCES NATURELLES RENOUVELABLES

- Toute exploitation forestière de plus de 150 ha
- Tout permis de capture et de vente d'espèces de faune destinées à l'exportation
- Tout projet de création de parcs et réserves d'envergure communale et privée
- Toute réintroduction d'espèces dans une zone où elle était préalablement présente
- Toute utilisation ou déviation d'un cours d'eau classé, permanent, de plus de 50% de son débit en période d'étiage
- Tout permis de collecte et de vente d'espèces destinées à l'exportation
- Toute augmentation de l'effort de pêche en zone marine par type de ressources (une étude de stock préalable est requise)

TOURISME ET HOTELLERIE

- Tout aménagement hôtelier d'une capacité d'hébergement comprise entre 50 et 120 chambres
- Tout aménagement récréo-touristique d'une surface comprise entre 2 et 20 ha
- Tout restaurant d'une capacité comprise entre 60 et 250 couverts

SECTEUR INDUSTRIEL

- Toute unité industrielle **soumise à déclaration,** conformément aux dispositions des textes réglementaires en vigueur de la Loi 99–021 du 19 Août 1999 relative à la politique de gestion et de contrôle des pollutions industrielles
- Toute unité de transformation de produits d'origine animale de type artisanal

GESTION DE PRODUITS ET DECHETS DIVERS

- Tout stockage de produits pharmaceutiques de plus de 3 tonnes

SECTEUR MINIER

- Tout projet de recherche minière (cf. Code Minier, cas PR)
- Tout projet d'exploitation de type artisanal (cf. Code Minier, cas PRE)
- Toute extraction de substances minières des gisements classés rares
- Toute orpaillage mobilisant plus de 20 personnes sur un rayon de 500 m et moins
- Tout projet de stockage de capacité combinée de plus de 4000 m^3
- Tout projet de stockage souterrain combiné de plus de 100 m^3
- Tout projet d'extraction de substance de carrière de type mécanisé

ANNEXE III

Au décret n° 99 954 du 15 Décembre 1999
fixant les nouvelles dispositions relatives à la mise en
compatibilité des investissements avec l'environnement

CONTRIBUTION DU PROMOTEUR AUX FRAIS D'EVALUATION DE L'EIE

Tout promoteur dont le projet est soumis à une Etude d'Impact Environnemental (EIE) est tenu de contribuer aux frais d'évaluation de leur dossier, selon le niveau d'investissement et conformément aux prescriptions ci-après :

1. Les frais fixés correspondent aux frais d'évaluation de l'étude d'impact (EIE), dont :

    - les frais des cellules environnementales des ministères sectoriels
    - les frais des experts sollicités lors de l'évaluation
    - les frais occasionnés par le déplacement des membres du CTE, et par l'enquête ou audience publique

Les modalités d'utilisation de ces fonds seront fixées par voie réglementaire.

2. Le promoteur doit verser, au compte prévu à cet effet et qui sera audité annuellement, les montants suivants :

   - 0,5% du montant de l'investissement matériel lorsque celui-ci est inférieur à 10 milliards de FMG
   - 10 millions de FMG majorés de 0,4% du montant de l'investissement matériel lorsque celui-ci est compris entre 10 milliards et 25 milliards de FMG
   - 35 millions de FMG majorés de 0,3% du montant de l'investissement matériel lorsque celui-ci est compris entre 25 milliards et 125 milliards de FMG
   - 160 millions de FMG majorés de 0,2% du montant de l'investissement matériel lorsque celui-ci est compris entre 125 milliards et 250 milliards de FMG
   - 410 millions de FMG majorés de 0,1% du montant de l'investissement matériel lorsque celui-ci est supérieur à 250 milliards de FMG

3. La provision à verser, le cas échéant, par le promoteur pour les frais engendrés par le contrôle et le suivi du PGEP, sera fixée conjointement par arrêté des Ministres chargés respectivement de l'Environnement et du secteur concerné.

NAMIBIA

ENVIRONMENTAL ASSESSMENT POLICY: Cabinet Resolution 16.8.94/002.

PREAMBLE

THE GOVERNMENT OF THE REPUBLIC OF NAMIBIA

RECOGNIZES THAT:

1. "The State shall actively promote and maintain the welfare of the people by adopting policies aimed at:

   The maintenance of ecosystems, essential ecological processes and biological diversity of Namibia and utilization of living natural resources on a sustainable basis for the benefit of all Namibians, both present and future . . . " [Constitution of the Republic of Namibia—Art 95 (1)].

2. There is an urgent and fundamental need for economic development, foreign investment and the alleviation of poverty [Namibia's Green Plan—chapter 11 (j)].

3. Namibia has inherited a colonial legacy of institutionalized segregation which has led to economic disenfranchisement and contributed to general environmental degradation and habitat destruction in certain areas [Namibia's Green Plan-chapter 11 (j)] .

4. Namibia is dependent on natural resources and certain biophysical components are vulnerable to environmental degradation. It is

specifically acknowledged that Namibia is an arid country and that the scarcity of water and the country's limited human and animal carrying capacity need to be taken into account prior to policy formulation and during all stages of planning.

5. Environmental Assessments are a key tool, amongst others, to further the implementation of a sound environmental policy which strives to achieve Integrated Environmental Management (IEM).

THE GOVERNMENT OF THE REPUBLIC OF NAMIBIA further DECLARES the following as relevant to its ENVIRONMENTAL ASSESSMENT POLICY:

1. The principle of achieving and maintaining sustainable development must underpin all policies, programmes and projects undertaken within Namibia. In particular, the wise utilization of the country's natural resources, together with the responsible management of the biophysical environment, must be for the benefit of both present and future generations.

2. Namibia shall place a high priority on:

   (i) maintaining ecosystems and related ecological processes, in particular those important for water supply, food production, health, tourism and sustainable development;
   (ii) observing the principle of optimum sustainable yield in the exploitation of living natural resources and ecosystems, and the wise utilization of non- renewable resources;
   (iii) maintaining representative examples of natural habitats;
   (iv) maintaining maximum biological diversity by ensuring the survival and promoting the conservation in their natural habitat of all species of fauna and flora, in particular those which are endemic, threatened, endangered, and of high economic, cultural, educational, scientific and conservation interest.

3. Namibia shall pursue an active administrative and legislative programme to achieve Integrated Environmental Management through,

inter alia, the execution of ENVIRONMENTAL ASSESSMENTS in accordance with the ENVIRONMENTAL ASSESSMENT policy which follows:

NAMIBIA'S ENVIRONMENTAL ASSESSMENT POLICY

The Government of Namibia:

RECOGNIZING that Environmental Assessments (EA's) seek to ensure that the environmental consequences of development projects and policies are considered, understood and incorporated into the planning process, and that the term ENVIRONMENT (in the context of IEM and EA's) is broadly interpreted to include biophysical, social, economic, cultural, historical and political components;

DECLARES the following ENVIRONMENTAL ASSESSMENT policy for Namibia:

1. All listed policies, programmes and projects, whether initiated by the government or the private sector, should be subjected to the established EA procedure as set out in Appendix A. A list of policies, programmes and projects requiring an EA is set out in Appendix B.

2. The EA procedure will, as far as is practicable, set out to:

   (i) better inform decision makers and promote accountability for decisions taken,
   (ii) consider a broad range of options and alternatives when addressing specific policies, programmes and projects,
   (iii) strive for a high degree of public participation and involvement by all sectors of the Namibia community in the EA process,
   (iv) take into account the environmental costs and benefits of proposed policies, programmes and projects,
   (v) incorporate internationally accepted norms and standards where appropriate to Namibia,
   (vi) take into account the secondary and cumulative environmental impacts of policies, programmes and projects,

(vii) ensure that the EA procedure is paid for by the proponent. In certain cases, such as programmes initiated by the State, it is recognized that the Government is the proponent and will meet the costs of an independent EA,

(viii) promote sustainable development in Namibia, and especially ensure that a reasonable attempt is made to minimize anticipated negative impacts and maximize the benefits of all developments,

(ix) be flexible and dynamic, thereby adapting as new issues, information and techniques become available.

3. This policy recognizes the inherent need to incorporate adequate provisions to achieve "reduction-at-source" in the areas of pollution control and waste management.

4. The costs of EA shall be borne by the proponent who is also responsible for ensuring that the quality of the EA and the EA Report are of an acceptable standard.

5. The proponent (both Government and Private Enterprise) shall enter into a binding agreement based on the procedures and recommendations contained in the EA Report. This will help ensure that the mitigatory and other measures recommended in the EA, and accepted by all parties, are complied with. This agreement should address the construction, operational and decommissioning phases as applicable, as well as monitoring and auditing.

6. In terms of the ENVIRONMENTAL ASSESSMENT ACT, an Environmental Commissioner shall be appointed by the Ministry of Environment and Tourism, and housed in the office of the National Planning Commission.

6.1 The Environmental Commissioner shall be responsible for administering the EA process as described in Appendix A. This will include registration, establishing the procedural framework for the process in consultation with the proponent, screening, evaluation and review procedures as appropriate.

6.2 The Environmental Commissioner shall report to an Environmental Board which shall be constituted in terms of the Environmental Assessment Act, and shall consist of senior representatives from various Ministries and other organizations as appropriate. The Board shall be vested with powers to co-opt individuals and specialists where required. In addition to initial screening, the Board shall be responsible for reviews so as to ensure that EA's are of a consistently high standard.

7. Decisions taken by the Commissioner and/or the Board shall be subjected to appeals according to the normal legal principles and appeal procedures in Namibia.

8. A record of all decisions by the Board shall be kept. Such records, as well as EA reports, shall be registered, accessible and available for public enquiry. The proponent will however, have the right to request confidentiality on specific information as appropriate.

9. The EA procedure will, at the cost of the proponent, include the ongoing monitoring of policies, programmes and projects after they have been implemented, to ensure that they conform with the recommendations in the EA report as well as the agreement between the proponent and the Environmental Board.

ENVIRONMENTAL ASSESSMENT PROCEDURE

1. SUBMISSION OF POLICY, PROGRAMME OR PROJECT

This is the start of the process, when the proponent (be it government or private enterprise), submits a proposal to the Environmental Commissioner, located in the National Planning Commission.

2. REGISTRATION

The Environmental Commissioner officially registers the policy, programme or project proposal, and ensures that the proponent fully understands the EA procedure which needs to be followed. The Commissioner supplies the proponent with the necessary documentation, general

guidance, contacts, and any other support which will facilitate a smooth EA process.

3. DEVELOP PROPOSAL

Because Environmental Assessments are designed to, inter alia, (a) facilitate integrated and improved planning during all stages and (b) ensure that the decision making process is informed and streamlined, the following steps are required at the earliest stage:

- notify neighbours and other interested and affected parties,
- establish policy, legal and administrative requirements and procedural framework,
- establish the need for the development, and evaluate this against local, national and international needs on various time scales,
- notify and consult with interested and affected ministries,
- identify and consider alternatives,
- identify and consider issues, opportunities and constraints of alternatives,
- consider mitigatory options,
- consider management plan options,
- consider fatal flaw & risk analyses, and worst case scenarios,
- consider secondary and cumulative effects within the region.

The above activities are the responsibility of the proponent, but are planned jointly by the proponent, the Commissioner and the Board, who engage in a consultative process at this early stage. Through these initial discussions, alternatives, affected parties, potential impacts and benefits, issues, mitigatory and optimization possibilities, etc., can be identified. Furthermore, a specific framework which clearly spells out roles, responsibilities and procedures should be established.

4. CLASSIFICATION OF PROPOSAL

In consultation with the proponent and his/her consultants, the Board decides on whether this policy, programme or project requires an EA or not. The list of Activities in *APPENDIX B* should be used to guide this decision. If it is felt that the policy, programme or project is not likely to result in

significant impacts and/or that sufficient plans to maximize benefits have already been included, there will be no need for a formal assessment. Alternatively, the Commissioner and/or Board may decide that an EA is required, and they will then discuss the Terms of Reference for the study with the proponent. During this stage, provision is made for individuals and organizations to voice their objections or reservations to the proposal.

For large projects, a pre-feasibility study is usually undertaken. Based on the findings of this, a more detailed feasibility study may be conducted. The Terms of Reference for the detailed feasibility study should be established during the pre-feasibility study.

5. ENVIRONMENTAL ASSESSMENT

It should become clear during the **registration** or **classification of proposal** stages whether there will be significant impacts and if an EA is necessary or not. There are three main components to an EA.

(i) Scoping

This determines the extent of and approach to the investigation, and should endorse the Terms of Reference established earlier. The proponent (and his/her consultant), in consultation with the Environmental Commissioner, relevant authorities, interested and affected parties, determine which alternatives and issues should be investigated, the procedural framework that should be followed, and report requirements. It is the responsibility of the proponent to ensure that all the above are given adequate opportunity to participate in this process.

The Scoping process should indicate the following:

- the authorities and public that are likely to be concerned and affected,
- methods to be used in informing and involving concerned and affected parties,
- opportunities for public input,
- specific reference to disadvantaged communities regarding the above,

- the use of advisory groups and specialists,
- the composition of the EA team and their Terms of Reference,
- the degree of confidentiality required.

If the proposal is likely to affect people, the proponent should consider the following guidelines in Scoping:

- the location of the development in relation to interested and affected parties, communities or individuals,
- the number of people likely to be involved,
- the reliance of such people on the resources likely to be affected,
- the resources, time and expertise available for scoping,
- the level of education and literacy of parties to be consulted,
- the socio-economic status of affected communities,
- the level of organization of affected communities,
- the degree of homogeneity of the public involved,
- history of any previous conflict or lack of consultation,
- social, cultural or traditional norms within the community,
- the preferred language used within the community.

(ii) Investigation

The Investigation includes literature research and field work, and is guided by the scoping decisions. It is intended to provide the Board with enough information on the positive and negative aspects of the proposal, and feasible alternatives, with which to make a decision.

(iii) Report

The Report should consist of the following:

- Executive summary
- Contents page
- Introduction
- Terms of Reference
- Approach to study
- Assumptions and limitations

- Administrative, legal and policy requirements
- Project proposal
- The affected environment
- Assessment
- Evaluation
- Incomplete or unavailable information
- Conclusions and recommendations
- Definitions of technical terms
- List of compilers
- Acknowledgements
- References
- Personal Communications
- Appendices

It should also include:

- Management plan
- Monitoring programme
- Environmental Agreement
- Audit proposal

6. NO FORMAL ASSESSMENT

If a policy, programme or project is unlikely to result in significant impacts, and plans for maximizing benefits are adequate, then the proposal can proceed without an EA. In the unlikely event of strong opposition to the development at this late stage, the Commissioner could solicit further opinions from specific ministries, specialists, interested and affected parties and the general public. Based on the response, the proposal is either sent back for more information. (especially if there is serious uncertainty or significant information gaps), or approval to proceed is confirmed.

7. REVIEW

Once completed, an Environmental Assessment report is submitted to the Environmental Commissioner for review. The Commissioner will review the document with the assistance of local and/or outside experts, sector Ministries, and any other organizations/individuals as considered necessary. The cost of external review shall be borne by the proponent. The recommendations of the

Commissioners shall be presented to the Environmental Board which will make a decision or recommendation as appropriate. Such decision shall be recorded and made known to the proponent.

8. CONDITIONS OF APPROVAL

Once a policy, programme or project has been approved, the Board, in consultation with the proponent, may set a number of conditions. Such conditions may provide for the establishment of a management plan, which specifies tasks to be undertaken in the construction, operational and decommissioning phases of the development. By mutual agreement, a monitoring strategy and audit procedure will be determined at this early stage so that the proponent can make the necessary budgetary provisions well in advance. Provision is also made for an Environmental Agreement, whereby penalties for not adhering to the Conditions of Approval are agreed upon.

9. RECORD OF DECISION

Whether or not a proposal is approved, there should be a record of decision, which should include reasons for the decision. This Record of Decision should be made available by the Commissioner to any interested party, including the public. Any Conditions of Approval must be reflected in the Record of Decision.

10. APPEAL

The decision-making process provides an opportunity for appeal through the Commissioner and/or the Board. Besides appealing to the decision-making authority, appellants should be allowed access to a court of law if malpractice is suspected.

11. IMPLEMENTATION OF PROPOSAL

Once approved, the policy, programme or project may be implemented in accordance with the Environmental Agreement.

12. MONITORING

An appropriate monitoring programme should be required for all approved proposals. Aspects to be covered in Monitoring include verification of impact predications, evaluation of mitigatory measures, adherence to

approved plans, and general compliance with the Environmental Agreement. The responsibility for ensuring that appropriate monitoring takes place lies with the Commissioner, while the proponent shall be responsible for meeting the costs.

13. AUDITS

Periodic assessments of the positive and negative impacts of proposals should be undertaken. These will serve to provide instructive feedback on the adequacy of planning during the **Develop Proposal** stage, the accuracy of investigations in the **Environmental Assessment** stage, the wisdom of the decisions taken during the Review stage, and the effectiveness of the **Conditions of Approval** and **Monitoring Programme** during the **Implementation** stage. An audit is thus an independent reassessment of the policy, programme or project after a given period of time.

APPENDIX B
LIST OF ACTIVITIES

NB: The following list shall act as a guide for the Environmental Commissioner and Board.

Where the scale of activities indicate their relative importance and consequent inclusion in this list, but where specific quantification is not provided, it is up to the Commissioner and/or the Board to use their discretion.

POLICIES, PROGRAMMES and PROJECTS requiring an ENVIRONMENTAL ASSESSMENT

1. Structure plans (e.g. Land-use plans and policies).
2. Rezoning applications.
3. Land acquisition, for national parks, nature reserves, marine reserves, protected natural environments or wilderness areas.
4. Establishment of settlements.
5. Declaration of limited development areas.
6. Any government policy, programme or project on the use of natural resources.
7. Pest control programmes.
8. Human population growth/management programmes.

9. Nuclear installations.
10. Transportation of hazardous substances & radioactive waste.
11. Mining, mineral extraction & mineral beneficiation.
12. Power generation facilities with an output of 1 megawatt or more.
13. Electrical substations and transmission lines having equipment with an operating voltage in excess of 30,000 volts rms phase-to-phase.
14. Storage facilities for chemical products.
15. Industrial installation for bulk storage of fuels.
16. Bulk distribution facilities.
17. Manufacture of explosives.
18. Introduction and/or propagation of invasive alien plant and animal species.
19. Afforestation projects.
20. Genetic modification of organisms & releases of such organisms.
21. Major roads.
22. Railways.
23. Commercial aerodromes.
24. Ports and harbours.
25. Major pipelines.
26. Cableways and cableway stations.
27. Television and radio transmission masts.
28. Major canals, aqueducts, river diversions and water transfers.
29. Permanent flood control schemes.
30. Major dams, reservoirs, levees and weirs.
31. Establishment of armaments testing areas.
32. Reclamation of land from sea.
33. Major agricultural activities (e.g. livestock and cultivation projects in previously undeveloped/unused areas).
34. Small scale (formal) water supply schemes.
35. Human resettlement.
36. Water intensive industries.
37. Deforestation projects.
38. Desalination plants.
39. Effluent plants.
40. Salt works.
41. Marine petroleum exploration.

42. Major groundwater abstraction schemes.
43. Aquaculture and mariculture.
44. Oil exploration.
45. Multinational projects.
46. Chemical production industries.
47. Veterinary fencing.
48. Tanneries.
49. Military exercises in sensitive areas.
50. Waste disposal sites.
51. Alternate energy programmes.
52. Commercial tourism and recreation facilities (e.g. rest camps).
53. Significant use of pesticides, herbicides & defoliants.
54. Drought relief schemes.

NIGERIA

Decree No. 86 of 10 December 1992 (Supplement to Official Gazette Extraordinary No. 73 Vol 79, 31st December, 1992 — Part A A979)

ENVIRONMENTAL IMPACT ASSESSMENT
DECREE 1992

Decree No. 86

Commencement

[10th December 1992]

THE FEDERAL MILITARY GOVERNMENT

hereby decrees as follows:

PART I
GENERAL PRINCIPLES OF ENVIRONMENTAL IMPACT ASSESSMENT

Goals and objectives of the environmental impact assessment

1. The objectives of any environmental impact assessment (hereafter in this Decree referred to as "the Assessment") shall be—
   (a) to establish before a decision taken by any person, authority, corporate body or unincorporated body including the Government of the Federation, State or Local Government intending to undertake or authorize the undertaking of any activity that may likely or to a significant extent affect the environment or have environmental effects on those activities shall first be taken into account.

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

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

Restriction on public project without prior consideration of the environmental impact

2–(1) The public or private sector of the economy shall not undertake or embark on or authorize 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 is likely to significantly affect the environment, its environmental impact assessment shall be undertaken in accordance with the provisions of this Decree.

(3) The criterion and procedure under this Decree 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 exempted pursuant to this Decree, 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.

Identification, etc of significant environmental assessment

3–(1) In identifying the environmental impact assessment process under this Decree, the relevant significant environmental issues shall be identified and studied before commencing or embarking on any project or activity covered by the provisions of this Decree 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.

Minimum content

4. 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 nontechnical summary of the information provided under paragraphs (9a) to (g) of this section.

Detail degree of environmental significance

5. The environmental effects in an environmental assessment shall be assessed with a degree of detail commensurate with their likely environmental significance.

Examination of environmental impact assessment by the Agency

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

Opportunity for comments by certain groups

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

Decision not to be given until the appropriate period has elapsed

8. The Agency shall not give a decision as to whether a proposed activity should be authorized or undertaken until appropriate period has elapsed to consider comments pursuant to sections 7 and 12 of this Decree.

Decisions on the effect of an environmental impact assessment to be in writing

9–(1) The Agency's decisions on any proposed activity subject to environmental impact assessment shall—

(a) be in writing;

(b) state the reason therefore;

(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 interested persons or groups.

(3) If no interested person or group requested 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 decisions.

Supervision of the activity

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

Notification to potentially affected States or Local Government Areas, etc.

11.–(1) When information provided as part of environmental impact assessment indicated 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, 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.

Mandatory Study List not to be carried out without the Report of the Agency

13–(1) When a project is described on the Mandatory Study List specified in the Schedule to this Decree 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.

(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

Cases where environmental assessment is required

14.–(1) Notwithstanding the provisions of Part 1 of this Decree, 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 authorizes 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 Customs Tariff (Consolidated) Act or any Order made there under, 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;

(c) has the administration of Federal, State or Local Government and leases or otherwise disposes of those lands on 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.

Excluded projects

15.–(1) An environment assessment of projects shall not be required where—

(a) in the opinion of the Agency the project is in the list of projects which the President, Commander-in-Chief of the Armed Forces of

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.

Environmental assessment process

16. 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 25 of this Decree and the preparation of a report;

(c) the design and implementation of a follow-up program.

Factors for consideration of a review panel

17.–(1) Every screening of 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 sections 43, 44 or 45, the seriousness of those effects;

(c) comments concerning those effects received from the public in accordance with provisions of this Decree;

(d) measures that are technically and economically feasible and that would mitigate any significant or, in the case of projects referred to in sections 43, 44, or 45 any serious adverse environmental effects of the project.

(2) In addition to the factors set out in subsection (1) of this Decree every mandatory study of a project and every mediation or assessment by 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 program in respect of the project;

(d) the short term or long term capacity for regeneration or renewal resources that are likely to be significantly or, in the case of the projects referred to in sections 43, 44 or 45, 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 decree 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 of review panel.

(4) An environmental assessment of a project shall not be required to include a consideration of the environmental effects that could result from carrying out the project during the declaration of a national emergency.

Factors not included

18.–(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 16(1) or 34(1) of this Decree.

(2) For greater certainty, the Agency shall not take a course of action pursuant to section 16(1) or 34(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 Decree or any relevant enactment.

Screening

19.–(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.

Source of information

(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 16(1) of this Decree it shall ensure that any study and information that it considers necessary for that purpose are undertaken or collected.

Declaration of class screening report

20.–(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.

Publication

(2) Any declaration made pursuant to subsection (1) if this Decree, 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.

Use of class screening report

(3) Where in the opinion of the Agency a project or part of a project within 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 13 of this Decree.

(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 the 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.

Use of previously conducted screening

21.–(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 Decree 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 13 of this Decree.

(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.

Decision of the Agency

22.–(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 25 of this Decree; 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 Decree and shall take into account or consideration any comments that are filed.

Mandatory Study

Mandatory Study

23. 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 Decree; or
    (b) refer the project to the Council for a referral to mediation or a review panel in accordance with section 25 of this Decree.

Use of previously conducted mandatory study

24.–(1) When 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 Decree 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 17 of this Decree.

(2) Where the Agency uses or permits the uses 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.

Public notice

25.–(a) 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.

Public concerns

(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.

Decision of Council

26. After taking into consideration the mandatory study report and any comments filed pursuant to section 19(2), the Council shall—
    (a) refer the project to mediation or a review panel in accordance with section 25 of this Decree 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 concern 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 34(1)(a) of this Decree 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

Referral to Council

27. 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 review panel in accordance with section 25 of this Decree:

Termination by responsible authority

28. Where at any time the Agency decides not to exercise any power or perform any duty or function referred to in section 19 of this Decree 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.

Termination by Council

29. 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 Decree 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.

Referral by Council

30. 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 consultations with the Agency, refer the project to mediation or a review panel in accordance with section 25 of this Decree.

Decision of the Council

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

Appointment of mediator

32. 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 he Council, possesses the required knowledge or experience; and
    (b) fix the terms of reference of the mediation.

Determination of parties

33.–(1) In the case of a dispute respecting the participation of parties in a mediation, the Council may, on the requests 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.

Mediation

34.–(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 mediation shall, in accordance with the provisions of this Decree 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, and

(iii) an appropriate follow-up program;

(b) prepare a report setting out the conclusions and recommendations of the participants; and

(c) submit the report to the Council and the Agency.

Subsequent reference to review panel

35. 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.

Appointment of review panel

36. 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.

Assessment by review panel

37. A review panel shall, in accordance with the provisions of this Decree 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 hearings 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 projects and any mitigation measures on follow-up programs, and
        (ii) a summary of any comments received from the public; and
    (d) submit the report to the Council and the Agency.

Hearing of witnesses

38.–(1) A review panel shall be the power of summoning 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 that the witness is ordered to give or produce 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 authorization 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 Decree.

Enforcement of summons and orders

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

Public notice

39. 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.

Decision of the Agency

Decision of the Agency

40.–(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 30(b) of this Decree, 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

Implementation of mitigation measures

(ii) any such effect can be mitigated or justified in the circumstances,

the Agency may exercise any power or perform any duty of 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.

Follow-up program

Design and implementation

41.–(1) Where the Agency takes a course of action pursuant to section 40(1)(a) of this Decree it shall, in accordance with this Decree, design any follow-up programme that it considers appropriate for the project and arrange for the implementation of that program.

(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 recommendation set out in any report submitted by a mediator or a review panel have been adopted; and

(d) any follow-up program one designed for or pursuant to subsection (1) of this section.

Certificate

Certificate

42. 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 35(c) of this Decree in relation to the project, is in the absence to the contrary, proof of the matter stated in the certificate.

Joint Review Panels

Definition of Jurisdiction

43.–(1) For the purpose of this Decree, "jurisdiction" includes-

(a) a federal authority;

(b) the government of a State;
(c) any other agency or body established pursuant to a Decree, Act, Law, Edict or By-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 subdivison of a foreign State, or any institution of a such a government; and
(f) an international organization of States or any institution of such an organization.

Conditions

(2) Subject to section 38 of this Decree, where the referral of a project to a review panel is required or permitted by this Decree and a jurisdiction referred to in subsection (1)(e) of (f) of this section, has a responsibility or an authority to conduct an assessment of the environmental effects of the projects or any part of it, the Council and the Council of External Affairs may establish a review panel jointly with that jurisdiction.

44. The Council shall not establish a view panel jointly with a jurisdiction referred to in subsection 37(1) of this decree 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.

45. Where the Council establishes a review panel jointly with a jurisdiction referred to in subsection 37(1) of this Decree, the assessment conducted

by the panel shall be deemed to satisfy any requirement of this Decree, respecting assessment by a review panel.

Public Hearing by a Federal Authority

Substitute for review panel

46.–(1) Where the referral of a project to a review panel is required or permitted by this Decree and the Council is of the opinion that a process for assessing the environmental effects of projects followed by a Federal authority under a Decree or an act of Parliament other than this Decree or by a body referred to in section 37(1)(d) of this Decree would be appropriate substitute, the Council may approve the substitution of that process for an environmental assessment by a review panel under this Decree.

Conditions

(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.

47. The Council shall not approve a substitution pursuant to subsection 46(1) of this Decree 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 Decree;
   (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.

Substitution

48. Where the Council approves a substitution of a process pursuant to section 46(1) of this Decree, an assessment that is conducted in accordance with that process shall be deemed to satisfy any requirements of this Decree, in respect of assessment by a panel.

TRANS-BORDER AND RELATED ENVIRONMENTAL EFFECTS

Inter States environmental effects

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

Absence of government

(2) The Council shall not establish a review panel pursuant to sub-section (1) of this section where the President, Commander-in Chief of the Armed Forces and the governments of all interested States have agreed on another panel of conducting an assessment of the inner State environmental effects of the project.

Initiative for establishing review panel

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

Notice

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

Meaning of Interested state

(5) For the purpose of this section 45(3) of this Decree, "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.

International environmental effects

50.–(1) Where a project for which an environmental assessment is not required under section 5 of this Decree is to be carried out in Nigeria or on Federal lands and the President, Commander-in-Chief of the Armed Forces 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 of Foreign Affairs may establish a review panel to conduct an assessment of the international environmental effects of the project.

Notice

(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 of Foreign Affairs, serious adverse environmental effects are likely to occur as a result of the project.

Environmental effects on federal and other lands

51.–(1) Where a project for which an environmental assessment is not required under section 15 of this Decree is to be carried out in Nigeria and the Agency or the President, Commander-in-Chief of Armed Forces is of the opinion that the project is likely to cause serious adverse environmental effect 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 effects of the project on those lands.

(2) Where a project for which an environmental assessment is not required under section 5 of this Decree, 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 environmental 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 government 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—

(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 Decree, a reference to any land areas or reserves includes a reference to all waters on and air above those lands, areas or reserves.

Application of certain provisions

52. Sections 30 to 33 and 37 to 39 of this Decree, shall apply, with such modifications as the circumstances require, to review panel established pursuant to sections 43(1), 44(1) or 45(1) or (2) of this Decree.

Power to prohibit a proponent

53.–(1) Where the Agency after the appraisal of the President, Commander-in-Chief of he Armed Forces' assessment of the environmental effects of a project referred to in sections 43(1), 44(1) or 45(1) or (2) of this Decree the President, Commander-in-Chief of the Armed Forces 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 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 43(1), 44(1) or 45(1) or (2) of this Decree 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 ensuring that the project is carried out in whole or in part until the Agency is satisfied that such effects have been mitigated.

Injunction

54.–(1) Where, on the application of the Agency, it appears to a court of competent jurisdiction that a prohibition made under section 47 of this Decree 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 ensuring that the project or any part thereof is carried out until.

(a) with respect to a prohibition made pursuant to section 47(1), of this Decree the assessment of the environmental effects of the project referred to in section 43(1), 44(1), 45(1) or (2) of this Decree, 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 47(2), of this Decree the Agency is satisfied that the serious adverse environmental effects referred to in that subsection have been mitigated.

(2) At least forty-eight 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.

Commencement of prohibition

55.–(1) Any prohibition under section 47 of this Decree 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, Commander-in-Chief of the Armed Forces.

AGREEMENTS AND ARRANGEMENTS

International Agreement

56.–(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 Decree in relation to projects—

(a) that have not been identified at the time 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 organization of a foreign State, any institution of such a government or organization, under which a Federal authority exercises a power or performs a duty or function referred to in section 5(b) or (c) of this Decree in relation to the 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.

ACCESS TO INFORMATION

Public registry

57.–(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 Decree 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 program in respect of the project is completed; and

(b) where the project is referred to mediation or 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 Decree.

(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 Decree 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 governmental 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 or part containing third party information, if the President in the case of a record in the Agency's procession, 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, 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 Decree, for any consequences that flow from that disclosure, for the failure to give any notice if reasonable care is taken to give the required notice.

(6) For the purpose 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.

Preparation of statistical summary

58.–(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 assessment 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.

Defect in form or technical irregularity

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

PART III
MISCELLANEOUS

Agency's Power
Power to facilitate environmental assessment

60.–(1) For the purposes of this Decree, 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 sections 37(1)(a), (b), (c) or (d) respecting assessments of environmental effects;

(d) enter into agreements or arrangements with States for the purposes of coordination, consultation, and exchange of information in relation to the assessment of the environmental effects or projects of common interest;

(e) recommend the appointment of members to bodies established by federal authorities or to bodies referred to in section 37(1)(d) of this Decree on a temporary basis, for the purpose of facilitating a substitution pursuant to section 40 of this Decree;

(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 40 of this Decree.

Power to make regulations

61. The Agency, with the approval of the President, Commander-in-Chief of the Armed Forces 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 assessment by review panels established pursuant to section 37 of this Decree;

(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, Commander-in-Chief of the Armed Forces is of the opinion that the environmental effects of the project are likely to be negligible;

(c) prescribing a list of projects or classes of projects not covered by the mandatory study list in the Schedule to this Decree 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 powers or the performance of its duties or functions is minimal;

(e) prescribing a list for which an environmental 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.

Offence and penalty

62. Any person who fails to comply with the provisions of this Decree shall be guilty of an offence under this Decree and on conviction in the case of an individual to N 100,000 fine or to five years imprisonment and in the case of a firm or corporation to a fine of not less than N 50,000 and not more than N 1,000,0000.

Interpretation

63.–(1) In this Decree, unless the context otherwise provides—

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

"assessment by a review panel" means an environmental assessment that is conducted by a review panel appointed pursuant to section 30

and that includes a consideration of the factors set out in subsection 11(1) and (20) of this Decree;

"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 Decree 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 paragraph 55(1)(b), (d) or (e) or section 55(2) of this Decree;

"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, Decree, Law or Edict 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 and the air space above those lands,

(i) the internal waters of Nigeria within the meaning of the sea Fisheries Decree 1992, including the sealed and subsoil below and the airspace above those waters,

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

(iii) any fishing zone of Nigeria prescribed under the Sea Fisheries Decree 1992;

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

(v) the continental shelf, consisting of the seabed 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 two hundred nautical miles from the inner limits as may be prescribed pursuant to a Decree or 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 and the airspace above those reserves or surrendered lands;

"follow-up program" means a program 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 projects;

"mandatory study" means an environmental assessment that is conducted pursuant to section 17 and that includes a consideration of the factors set in subsection 11(1) and (2) of this Decree;

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

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

"mediation" means an environmental assessment that is conducted with the assistance of a mediator appointed pursuant to section 26 of this Decree and that includes a consideration of the factors set out in section 11(1) and (2) of this Decree;

"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 7(1)of this Decree 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 ministry of State, the Minister or Commissioner presiding over that department or ministry, and
(b) in any other case, such member of the National Executive Council or State Executive Council as is designated as the responsible Minister or Commissioner for that responsible authority;

"screening" means an environmental assessment that is conducted pursuant to section 13 of this Decree and that includes a consideration of the factors set out in section 11(1) of this Decree;

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

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

(a) securities of the corporation to which are attached more that fifty per cent of 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.

Citation

64. This Decree may be cited as the Environmental Impact Assessment Decree 1992.

SCHEDULE Section 13

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 wetlands wild-life habitat or of virgin forest covering an area of 100 metres or more.

(c) Irrigation schemes covering an area of 5,000 hectares or more.

4. LAND RECLAMATION

(a) Coastal reclamation involving an area of 50 hectares or more.

5. FISHERIES

(a) Construction of fishing harbours.

(b) Harbour expansion involving an increase of 50 per cent or more in fish landing capacity per annum.

(c) Land based aquaculture projects accompanied by clearing of mangrove swamp forest covering an area of 50 hectares or more.

6. FORESTRY

(a) Conversion 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 industry, housing or agricultural use covering an area of more than 10 hectares.

(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.
Aluminum — all sizes
Copper — all sizes
Others — producing 50 tonnes/day and above of product.

(d) Non-metallic — Cement — for clinker throughout of 30 tonnes/hour and above

– Lime — 100 tonnes/day and above burnt lime rotary kiln or 50 tonnes/day and above vertical kiln.

(e) Iron and steel — Require iron ore as raw materials for production greater than 100 tonnes/day; or

– Using scrap iron as raw materials for production greater than 200 tonnes a 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 with outfall into beachfronts 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 aluminum, copper, gold or tantalum.

(c) Sand dredging involving an are of 50 hectares or more.

12. PETROLEUM

(a) Oil and gas fields development.

(b) Construction of off-shore pipeline 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 hydroelectric 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-fueled power stations.

14. QUARRIES

Proposed quarrying of aggregate, limestone, silica, quartzite, sandstone, marble and decorative building stone within 3 kilometers of any existing residential, commercial or industrial area, 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 on national parks.
(d) Development of tourist or recreational facilities on islands in surrounding waters which may be 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 composing plant.
  (iii) Construction of recovery/recycling plant.
  (iv) Construction of municipal solid waste landfill facility.
(c) *Municipal Sewage*
  (i) Construction of waster 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 meters per day.

MADE at Abjua this 10th day of December 1992.

GENERAL L.B. BABANGIDA
President, Commander-in-Chief
of the Armed Forces,
Federal Republic of Nigeria

EXPLANATORY NOTE

(This note does not form part of the above Decree but is intended to explain its purport.)

The Decree among other things sets out the procedures and methods to enable the prior consideration of environmental impact assessment on certain public or private projects. The Decree also gives specific powers to the Federal Environmental Protection Agency to facilitate environmental assessment on the projects.

PUBLISHED BY AUTHORITY OF THE FEDERAL GOVERNMENT OF NIGERIA AND PRINTED BY THE MINISTRY OF INFORMATION AND CULTURE, PRINTING DIVISION, LAGOS

This Page Intentionally Left Blank

NOTES

Introduction

1. *Agenda 21* ch. 8 (adopted at the United Nations Conference on Environment and Development held on Jun. 3–14, 1992), <http://www.un.org/esa/sustdev/agenda21text.htm>.

2. *Convention on Environmental Impact Assessment in a Transboundary Context* art. 1 (Sept. 2, 1991), 30 I.L.M. 802 [hereinafter the Espoo Convention].

3. *Id.*

4. World Bank, *Operational Policies: Environmental Assessment* (OP 4.01, Jan. 1999) para. 2, in *The World Bank Operational Manual* <http://wbln0018.worldbank.org/institutional/manuals/opmanual.nsf>. *See generally* William Sheate, *From Environmental Impact Assessment to Strategic Environmental Assessment: Sustainability and Decision-Making* in Jane Holder, *Impact of EC Environmental Law in the UK* 268–289 (Wiley Pub. 1996).

5. United Nations Environmental Programme, *The Goals and Principles of Environmental Impact Assessment* UNEP/GC.14/L.37–B (UNEP 1987).

6. *Supra* n.4 at annex B, n.1. A Category A project is one likely to have significant adverse environmental impacts that are sensitive, diverse, or unprecedented.

7. *See e.g.* World Bank, *Environmental Assessment in Africa: A World Bank Commitment Proceedings of the Durban Workshop* (World Bank 1996).

Chapter One: EIA and Legal Development and Reform: General Considerations

8. *See* Faith Halter, *Towards More Effective Environmental Regulation in Developing Countries* (paper presented at OECD Development Center Seminar, August 27, 1990).

9. World Commission on Environment and Development, *Our Common Future* (Oxford U. Press 1987).

10. Since then, international financial institutions, including the World Bank, have tied the provision of development funding to the assessment of the environmental impacts of proposed projects.

11. In fact, in French-speaking Africa, old legislation known as "réglementation des établissements classés" whose introduction by the then French colonial administration goes as far back as 1926 empowers the government at the local and central levels to closely monitor pollution emanating from polluting plants and/or harmful activities. In some cases, this pollution control monitoring involves a public consultation process called "*enquête commodo-incommodo*." However, this legislation is far less sophisticated than the EIA mechanism and does not cover a wide range of projects and programs.

12. A list of these countries and of their relevant laws and statutes is included in Appendix VI.

13. A good attempt to present such legal development on EIA has been made by the Commission for Environmental Impact Assessment of the Netherlands in a document called *EIA Profiles of Developing Countries* (Leiden 1998). Nineteen summaries for African countries are reported.

14. In the decision of the International Court of Justice on the Nagymoros Dam Case, Judge Weeramantry, in a separate opinion, considered that the principle of prior environmental assessment is part of customary law. For further discussion of customary environmental law, *see* D. Bodanski, *Customary (and not so Customary) International Environmental Law* in 3 *Indiana J. of Global Legal Studies* 105 (1995).

15. Among these economic instruments, incentives and quality standards are of the greatest importance to complement environmental regulations.

Chapter Two: EIA and International Law

16. The Espoo Convention is the most comprehensive international instrument on EIA; *supra* n.2. In addition, other instruments make reference to EIA. *See e.g. United Nations Convention on Biological Diversity* art. 14(1)(a) (June 5, 1992), 31 I.L.M. 818; *United Nations Framework Convention on Climate Change* art. 4(1)(f) (entered into force Mar. 21, 1992) 31 I.L.M. 849; *United Nations Convention on the Law of the Sea* art. 206 (Dec. 10, 1982); 1295 U.N.T.S. 211; and *West and Central African Marine Environment Convention* art. 13 (1981).

17. The Espoo Convention explicitly states in its preamble that the parties are "mindful of the need and importance to develop anticipatory policies and of preventing, mitigating and monitoring significant adverse environmental impact in general and more specifically in a transboundary context…". Espoo Convention, *supra* n. 2, at preamble. This Convention does not apply to African countries but is an indication of the state of international law.

18. United Nations Convention on Biological Diversity, *supra* n.16.

19. United Nations Convention on the Law of the Sea, *supra* n.16.

20. United Nations Framework Convention on Climate Change, *supra* n.16.

21. United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (Sept. 21, 1994), <http://sedac.ciesin.org/pidb/texts/un.desertification.final.resolution.1994.html> [hereinafter the United Nations Convention to Combat Desertification].

22. *See* Appendix IV.

23. It is clear that the private sector, especially in relation to large development projects, is willing to undertake EIAs to respond to the growing demand for better environmental management and sustainable development of natural resources. The business community is often sympathetic to governments which develop regulatory frameworks that include sound EIA procedures and review processes, as well as pollution control guidelines, in order to avoid environmental risks and high-cost insurance for their projects. For the private sector, EIA procedures may also be seen as an instrument to (1) prevent delays in obtaining authorizations, (2) identify mitigation measures involving recycling and recovery of components of waste streams, (3) create a cleaner working environment, and (4) identify lower cost alternatives.

24. *See* Ibrahim F.I. Shihata, *Implementation, Enforcement and Compliance with International Environmental Agreements—Practical Suggestions in Light of the World Bank's Experience*, 9 Georgetown Intl. Environmental L. Rev. 37 (1996).

25. *But see* Nigeria, Environmental Impact Assessment Decree sec. 56 (no. 86, Dec. 10, 1992).

26. *See e.g.* Burkina Faso, Loi relative au Code Forestier (no. 006/97/ADP) at art. 77.2, which states that "en application des conventions internationales dûment ratifiées par le Burkina Faso et selon les besoins, il peut attirer d'autres types d'aires de protection faunique."

27. Shihata *supra* n.24, at 46.

28. *Rio Declaration on Environment and Development* Principle 17 (Aug. 12, 1992), <gopher://gopher.un.org/00/conf/unced/English/riodecl.txt>.

29. N. Robinson, IUCN's *Proposed Covenant on Environment and Development*, 13 Pace Environmental L. Rev. 133 (1995).

30. World Bank, *supra* n.4

31. United Nations Environmental Program, *supra* n.5.

32. *See e.g.* Nigeria, Environmental Impact Assessment Decree *supra* n.25, at sec. 36.

33. *See e.g.* the *Convention on Wetlands of International Importance Especially as Waterfowl Habitat* (Feb. 2, 1971), <http://www.ramsar.org/key_conv_e.htm> [hereinafter the Ramsar Convention].

34. World Bank, *supra* n.7.

Chapter Three: Analysis of Current SSA Countries' EIA-Related Laws, Regulations, and Statutes

35. All sub-Saharan countries are included. Information about current environmental impact assessment legislation was gathered from governmental agencies, academia, and local NGOs. Also, the authors have gathered information from the UNEP/UNDP Joint Project on Environmental Law and Institutions in Africa, which published the six-volume *Compendium of Environmental Law of African Countries* (including North Africa). It may happen that new laws, regulations and/or guidelines have been enacted after this paper was reviewed and printed. These new texts may be analyzed in an updated version of the paper.

36. This is the case of Burkina Faso, Benin, Gabon, Kenya, Lesotho, Senegal, Uganda, Cameroon, and Niger where draft legislation on EIA were circulated for comment and discussion among stakeholders including ministries, NGOs, development agencies, academia, etc. Many of these are being prepared with the assistance of bilateral donors, or within the framework of Bank-financed projects.

37. This is the case for Burkina Faso, Loi relative au Code de l'Environnement (no.005/97/ADP, Jan. 30 1997); Comoros, Loi-cadre relative à l'environnement (no. 94–018, June 22, 1994); Gabon, Loi relative à la protection et à l'amélioration de l'environnement (no. 16/93, Aug. 26, 1993); Gambia, Environmental Management Act (no. 13, 1994); Ghana, Environmental Protection Agency Act (no. 490, 1994); Malawi, Environmental Management Act (1996); Mauritius, Environmental Protection Act (no. 34, as amended in 1993); Seychelles, Environmental Protection Act (1994); Swaziland, Environment Authority Act (no. 15, 1992); Togo, Loi relative au Code de l'Environnement (no. 88–14, Nov. 3, 1988); and Uganda, The National Environmental Statutes (May 17, 1995).

38. This is the case for the Republic of Congo, Décret rendant obligatoires les études d'impact sur l'environnement (no. 86–775, June 7, 1986); Côte d'Ivoire, Décret déterminant les règles et procédures applicables aux études relatives à l'impact environnemental des projets de développement (no. 96–894, Nov. 8, 1996); Madagascar, Décret relatif à la mise en compatibilité des investissements avec l'environnement (no. 92–926, Oct. 21, 1992); Nigeria, Environmental Impact Assessment Decree, *supra* n.25; Zambia, Environmental Impact Regulations (statutory instrument no. 28, 1997); and South Africa, Environmental Conservation Act (no. 73, 1989), as well as Regulation 1182 (Regulation Gazette, Sept. 5, 1997) and Regulation 1183 (Regulation Gazette, Sept. 5, 1997). These regulations pertain to the activities described in section 21 of the Environmental Conservation Act. *See generally* for South Africa the Explanatory Memorandum regarding Government Notices 1750, 1752, and 1751 of November 1, 1996, on proposed actions in terms of sections 21, 22 and 26 of the Environmental Conservation Act, 1989.

39. Namibia, Environmental Assessment Policy Cabinet Resolution (no. 002, Aug. 16, 1994); and Zimbabwe, Environmental Impact Assessment Policy (July 1994).

40. South Africa, Environmental Conservation Act (no. 73, 1989); Zambia, Environmental Protection and Pollution Control Act (no. 12, 1990); and Côte d'Ivoire, Loi portant Code de l'Environnement (no. 96–766, Oct. 3, 1996).

41. In Kenya, at the cross-sectoral level, the EIA process is administered by an interministerial committee, which develops administrative guidelines and questionnaires. The guidelines' coverage is adequate to facilitate informed decision-making by relevant authorities on the environmental impact of the proposed projects. However, this procedure is purely administrative with no legal basis, and it is implemented in the context of wide discretionary powers. It is clear that the desire to attract investments may override ecological considerations. *See* Bondi D. Ogolla, *Kenya. Environmental Management Policy and Law* 3 Environmental Policy and Law 164 (1992).

42. In October 1999, a bill was drafted on environmental impact studies in buffer zones.

43. UNEP, *supra* n.5.

44. World Bank, *supra* n.4, at para. 8(a-d) defines different categories of projects: (1) Category A for projects "likely to have significant adverse environmental impacts that are sensitive, diverse or unprecedented"; (2) Category B, for projects that are likely to have "potential adverse environmental impacts on human populations or environmentally important areas ... are less than those of category A projects"; (3) Category C for projects that are "likely to have minimal or no adverse environmental impacts", and finally (4) Category FI for projects that involve "investment of Bank funds through a financial intermediary, in subprojects that may result in environmental impacts."

45. The most recently enacted, a decree on EIA in Mali, provides in its core text, under article 4 a list of 32 activities, projects and programs which are subject to EIA. Article 5 of this decree states that non prescribed projects are subject to "une notice d'étude d'impact sur l'environnement" (i.e., environmental impact study note) which summarizes the likely impacts of the project on the environment and the mitigatory measures to be undertaken and implemented to reduce or eliminate them; Mali, Décret portant institution de la procédure d'étude d'impact sur l'environnement art. 4–5 (no. 99–189, July 5, 1999).

46. Comoros, Loi-cadre relative à l'environnement, *supra* n.37, at art. 14.1 which stipulates "un décret du conseil des ministres : ... arrête la liste des travaux et projets soumis à l'étude d'impact préalable, en raison de la nature des activités projetées."

47. Malawi, Environmental Management Act, *supra* n.37, at sec. 24. As of January 1998, no notice had been issued. It is interesting to note that in the Namibia EIA Policy, a list is provided in an appendix, but the policy states that this list "should be used to guide" the Board when it decides on whether a "policy, program or project requires an EA or not." *See* Namibia, Environmental Assessment Policy Cabinet Resolution, *supra* n. 39 at sec. 4. To be effective, this approach requires that the specifications should be broad enough and designed to cover all projects likely to have significant harmful impacts on the environment.

48. Burkina Faso, Loi relative au Code de l'Environnement, *supra* n.37, at art. 20 states that: "un décret pris en conseil des ministres ... établit la liste des travaux, ouvrages, aménagements et activités, ainsi que les documents de planification assujettis à l'étude ou à la notice d'impact sur l'environnement." However, the décret is not yet enacted. Article 67 of the Environmental Code of Gabon states that "les travaux, ouvrages ou aménagements industriels, agricoles, urbains, ruraux, miniers ou autre entrepris par les collectivités publiques, les entreprises publiques ou privées qui risquent, en raison de l'importance de leur dimension ou de leurs incidences écologiques, de porter atteinte à l'environnement, doivent donner lieu à une étude d'impact préalable...." The same provision is found in Togo, Loi relative au Code de l'Environnement, *supra* n.37, at art. 22.

49. In Côte d'Ivoire, the decree on EIA is followed by two annexes. Annex I includes "projets soumis à étude d'impact environnemental" which is comprised of a wide range of activities including projects in the sectors of (a) agriculture, (b) forest management plans,

(c) extractive industries, (d) energy and industry, (e) waste management, (f) food-processing industry, (g) chemical industry, (h) manufacture, and (i) infrastructure, including cement plants, tourist resorts, and the arms industry. Annex II includes "projets soumis au constat d'impact environnemental" comprising a list of activities in the same sectors as in annex I, but of smaller size and with less harmful effect on the environment. Annex II includes also urban planning and land use planning documents, as well as projects modifying previous projects that were subjected to a full EIA; Côte d'Ivoire, Décret déterminant les règles et procédures applicables aux études relatives à l'impact environnemental des projets de développement, *supra* n.38, at annexes I-II. The Republic of Congo has a single annex on "liste des travaux, ouvrages et aménagements soumis à l'étude d'impact" focusing on infrastructure activities; Republic of Congo, Décret rendant obligatoires les études d'impact sur l'environnement, *supra* n.38. The Gambia, Environmental Management Act, *supra* n.37 includes a schedule in part A, dealing with "projects to be considered for environmental impact assessment" and comprising a wide range of activities classified into fourteen categories of sectors. Madagascar, Décret relatif à la mise en compatibilité des investissements avec l'environnement, *supra* n.38 includes an annex listing 22 categories of activities to be subject to EIAs, one of which is resettlement of population. *See* Nigeria, Environmental Impact Assessment, *supra* n.25, at sec. 13; Uganda, The National Environmental Statutes, *supra* n. 37 at third sched.; South Africa, Environmental Conservation Act, *supra* n.38. The case of South Africa is interesting because it differentiates activities subject to EIA depending on whether they will impact one province or more than one province, or affect an international treaty or agreement with a neighboring country.

50. Côte d'Ivoire, Décret déterminant les règles et procédures applicables aux études relatives à l'impact environnemental des projets de développement, *supra* n.38, at annex III lists six categories of areas, including (a) protected areas; (b) wetlands and mangroves; (c) areas of scientific, cultural and/or tourist interest; (d) ecologically sensitive areas; (e) watershed buffer zones; and (f) marine areas whether domestic or international.

51. South Africa, Regulation 1182, *supra* n.38, at sec. 4: "the intensive husbandry of, or importation of, any plant or animal that has been declared a weed or an invasive alien species", sec. 5: "the release of any organism outside its natural area of distribution that is to be used for biological pest control", and sec. 6: "the genetic modification of any organism with the purpose of fundamentally changing the inherent characteristics of that organism."

52. *See e.g.* Zambia, Environmental Impact Regulations, *supra* n.38 at second sched. (reg. 7.2).

53. Nigeria, Environmental Impact Assessment Decree, *supra* n.25, at sec. 13 lists detailed activities under headings such as agriculture, airport, drainage and irrigation, land reclamation, fisheries, forestry, housing, industry, infrastructure, ports, mining, petroleum, power generation and transmission, quarries, railways, transportation, resort and recreational development, waste treatment and disposal and water supply.

54. Zimbabwe, Environmental Impact Assessment, *supra* n.39, at sec. 6.2 (table 3).

55. *See e.g.* the requirement for a building permit, which necessitates an evaluation of the land use change and impact on the neighborhood of all construction projects.

56. EIA would analyze and identify the likely harmful impacts "directs et indirects, des projets ... sur la santé, la qualité de l'environnement, les ressources naturelles et les équilibres écologiques" (Gabon, loi relative à la protection et à l'amelioration de l'environnement, *supra* n.37, at art. 68); "environmental impacts of the proposed activity including the direct, indirect, short-term and long-term effects..." (Gambia, Environmental Management Act, *supra* n.37, at sec. 23(3)(e)); and "the direct and indirect effects that the undertaking is likely to have on the environment" (Mauritius, Environmental Protection Act, *supra* n.37, at sec. (14)(c)). Côte d'Ivoire, Décret déterminant les règles et procédures applicables aux études relatives à l'impact environnemental des projets de développement, *supra* n.38, at art. 12.2 is as complete a checklist of EIA-related issues as the one enacted in

Zambia (*see* Zambia, Environmental Impact Regulations, *supra* n.38) and may be considered to be good practice.

57. Zambia, Environmental Impact Regulations, *supra* n.38, at sec. 4. *See* Box 4 in the main text.

58. It is always advisable to evaluate the magnitude of these impacts not only in biophysical terms but also in monetary terms.

59. Mali, Décret portant institution de la procédure d'étude d'impact sur l'environnement, *supra* n.45, at art. 9.5 states that EIA should have the following elements: "une identification et une évaluation des impacts positifs et négatifs potentiels, directs et indirects, immédiats et à long terme, importants et secondaires, locaux et régionaux du projet proposé sur l'environnement." Only an estimation of the amount of wastes and emissions is required under article 9.7. There is no explicit reference to social and/or human impacts of the proposed project.

60. *See* the legislation of Burkina Faso, Uganda, and Kenya.

61. In general, all EIA-related legislation focuses on the external environment, that is the environment outside project site limits. This is due in part to the fact that African countries often copied EIA legislation from industrialized countries that have an enabling legal framework for occupational health protection and working conditions. In African countries, where the legal framework dealing with the working conditions and health is generally weak, it is important to refocus EIA-related legislation on a comprehensive definition of the environment, which includes the internal and external environment. It is important to consider, for example, the change of air quality or noise level on the health of workers and their families.

62. Note should be taken of the AIDS crisis, which should not be ignored during the EIA process.

63. The World Health Organization (WHO), the Food and Agriculture Organization (FAO) and other international institutions and business organizations have developed specific standards for water, waste, noise, etc.

64. Ghana, Procedures and Other Matters Pertaining to EIA (LI 1652, Feb. 26, 1999).

65. There are a number of laws governing water resources, i.e., Rivers Ordinance (1903), Volta River Development Act (1961), Ghana Water and Sewage Act (1965), and Oil in Navigable Waters Act (1964), but they are all too outdated to be of any useful and practical application.

66. A marginal improvement was provided under the 1986 Mineral and Mining Law which requires the licensee to protect the environment from adverse mining effects (section 72 of the law). But the Small-scale Gold Mining Law of 1989 allows people to undertake what is usually defined as surface operations that are a real threat to the environment through chemical pollution, stream siltation, soil erosion, and open ditches in mining areas. *See* G.A Sarpong, Presentation Paper, *The Ghanaian Environmental Law Regime*, (launching of the Network of African Environmental Lawyers, Nairobi, Kenya, Sept. 12, 1999).

Chapter Four: Public Participation and Consultation During the EIA Process: General Considerations

67. Authors mentioned that EIA is a process that relies on the expression of public communication. The main benefit of EIA may be to advance mutual communication and understanding. *See* W.A. Tilleman, *Public Participation in the EIA Process: A Comparative Study of Impact Assessment in Canada, the United States and the European Community*, 33 Columbia J. of Transnational Law 337 (1995).

68. The legislation of some African countries states that the relevant authority may request a public inquiry the conclusions and recommendations of the EIA Report. Examples include Burkina Faso, Côte d'Ivoire, and Zambia.

69. Do citizens of African countries enjoy a right to a clean and healthy environment under the public law of their respective countries? It is very difficult to answer such a question especially in terms of differentiating between an enjoyable and enforceable right under the public law of a given African country and commonly shared legal rhetoric which does not confer any enforceable right to citizens. The right to participate in environmental decision-making processes appears to be one of the most difficult to evaluate, because it is very narrowly drawn in the various legislations examined here. However, it is the practice that will help determine the real extent of such a right.

70. S.H. Davis & N. Rukuba-Ngaiza, *Meaningful Consultation in Environmental Assessment* (World Bank Social Development Notes No. 39, 1998).

71. In countries where no such legislation exists, it may be difficult to assess how governments define public participation. However, EIAs and public consultations are often carried out to satisfy the requirements of donor agencies. These consultations can prove to be very important for both the project proponent and the affected public. The Chad-Cameroon Petroleum Development and Pipeline Project is an excellent example of this concept. Neither Cameroon nor Chad has any national legislation mandating public participation in the EIA process. However, as per World Bank policy, a full public consultation was conducted, and the project's final environmental management plan requires ongoing consultation to protect the affected public from any possible negative effects of project implementation and to ensure that any mitigation measures are developed in conjunction with the affected population. *The Chad-Cameroon Petroleum Development Project: Environmental Assessment* <http://www.-wds.worldbank.org/> (accessed Oct. 26, 2001).

72. One interesting example is Uganda where the Local Government Act requires that dissemination of information follow the traditions of the locality where the by-laws or local laws are made. This is also likely to apply to the EIA process.

73. It should be noted that not all OECD countries have this provision in their legislation either.

74. Zambia, Environmental Impact Regulations, *supra* n.38, at sec. 2.

75. *Id.* at sec. 10(1).

76. *Id.* at sec. 16(2).

77. *Id.* at sec. 17(2)(a)–(b).

78. South Africa, Regulation 1182, *supra* n.38, at sec. 3(1)(f).

79. *Id.* at sec. 11.

80. However, the federal agency has the discretionary power to call for public consultation and this procedure is used mainly for big projects funded by foreign agencies or investors. The legislation needs to be reviewed and updated to encompass public participation and consultation at the state and local levels and to empower governmental environmental agencies to review and monitor EIA.

81. Cases include Seychelles and South Africa legislation. *See* Appendix III.

82. Côte d'Ivoire, Loi portant Code de l'Environnement, *supra* n.40, at art. 35.6 reads "toute personne a le droit d'être informée sur l'état de l'environnement et de participer aux procédures préalables à la prise de décisions susceptibles d'avoir des effets préjudiciables à l'environnement."

83. *See* Appendix III.

84. UNEP, *UNEP's New Way Forward: Environmental Law and Sustainable Development* 265 (United Nations Publications, 1995).

85. In industrialized countries, EIA-related laws deal with the issue of people's rights to participate in the EIA process and to appear before a court to protect their rights to a clean and healthy environment; *see* Ward, *The Right to an Effective Remedy in European Community Law and Environmental Protection: A Case Study of United Kingdom Decisions Concerning the Environmental Assessment Directive*, 4 J. of Envtl. Law 221 (issue 2, 1993).

Chapter Five: The EIA Report

86. Togo, Loi relative au Code de l'Environnement, *supra* n.37, at art. 30 states that: "Le promoteur indiquera au bureau [des études d'impact] les noms du ou des consultants qu'il aura choisi pour effectuer l'étude.... [Le ministre] pourra récuser par une décision motivée les consultants qui auraient montré une incompétence préjudiciable à la bonne exécution des études d'impact"; South Africa, Regulation 1183, *supra* n.38, at sec. 3 states that "(1) an applicant (a) must appoint an independent consultant who must on behalf of the applicant comply with these regulations." Côte d'Ivoire stresses the need to use national capacity for EIA, *see* Côte d'Ivoire, Loi portant Code de l'Environement, *supra* n.40, at art. 9, which states that the proponent "peut recourir à un organisme ou consultant indépendant de son choix.... Mais l'utilisation partielle ou entière des capacités nationales est obligatoire. Elle devra, dans la mesure des compétences disponibles, être conforme à la répartition 2/3 experts et/ou consultants nationaux, 1/3 experts et/ou consultants non nationaux."

87. For example, this is the case in Tunisia, the Czech Republic, Mexico, and Thailand.

88. Zambia, Environmental Impact Regulations, *supra* n.38, at sched. 5. *See* Côte d'Ivoire, Décret déterminant les règles et procédures applicables aux études relatives à l'impact *supra* n.38, at art. 17, which states that "l'examen des études d'impact par le Bureau d'étude d'impact donnera lieu au versement d'une taxe, au fonds de l'environnement" and Madagascar, *supra* n.38, at art. 12, which provides that the proponent will be charged 0.5% of the amount of the investment, but that the fees are tax deductible.

89. South Africa, Regulation 1183, *supra* n.38.

90. A description of the required contents of the EIA Report can be found in *supra* n.84, at p.264.

91. *E.g.* Gabon, Loi relative à la protection et à l'amélioration de l'environnement, *supra* n.37, at art. 68(ff).

92. *E.g.* Uganda, The National Environmental Statutes, *supra* n.37, at sec. 21(2) reads: "An environmental impact statement shall be made according to guidelines established by the Authority."

93. Some legislation lack provisions on EIA review. *See e.g.* Seychelles, Environmental Protection Act, *supra* n.37 at sec. 15(6), which states that the "Authority shall be responsible for the monitoring of the conclusions of the EIA Study and to ensure that the necessary conditions are complied with." No mention of any review is made in the act.

94. *E.g.* Togo, Loi relative au Code de l'Environnement, *supra* n.37, at art. 26.2.

95. South Africa, Environmental Conservation Act, *supra* n.38.

96. *E.g.* Nigeria, Environmental Impact Assessment Decree, *supra* n.25 provides for the option to call for mediation between the authority and the proponent, or to establish a review panel, or to hear experts to make sure that the EIA documents reflect the reality by providing the needed information and drawing sound conclusions.

97. The Togolese law, for example, provides a one-month period:

Le bureau [*des études d'impact*] pourra, au vu du premier état de l'étude, tenir celle-ci pour suffisante, ou poser de nouvelles questions au promoteur, ou lui demander une rectification de l'étude dans un délai d'un mois....

Togo, Loi relative au Code de l'Environnement, *supra* n.37, at art.26.2.

98. EA review is not just a desk task, but involves monitoring the physical, social, and economic variables associated with project impacts. To help weak or newly-established government environmental agencies, an outside and independent review process of the EIA report might always contribute to the successful completion of the review procedure, in particular in the case of large infrastructure and other development projects. But even where such a solution is adopted, capacity-building at the central and local government and private sector levels is a critical exercise, without which an effective EIA Report review and monitoring cannot be appropriately carried out.

99. It is not required that such experts be permanent staff of the relevant authority. Rather it is a good option to have a list of national experts (in universities, consulting firms, industry, other government agencies) and of international experts (with proven expertise in the country) that the relevant authority may use on a contractual basis to review EIA Reports and/or to provide any necessary input during the EIA process.

100. Environmental impact auditing involves comparing the impacts predicted in the EIA Report with those which actually occur after implementation, in order to assess the validity of those predictions. Environmental auditing also focuses on institutions and programs for environmental management and associated risks and liabilities.

Conclusion

101. Nigeria, Environmental Impact Assessment Decree, *supra* n.25, at secs. 11, 49.

102. South Africa, Environmental Conservation Act, *supra* n.38. The regulations regarding activities identified under section 21(1) of the Environmental Conservation Act clearly state that the "relevant authority" in charge of implementing, reviewing and monitoring the environmental impact assessment may be the minister of environmental affairs, or a provincial or local authority.

103. *E.g.* Zambia, Environmental Impact Regulations, *supra* n.38, at sec. 7(2): "To ensure that public views are taken ... the developer shall organize a public consultation process involving ... local authorities...."

104. *See* Managing the Environment Locally in Sub-Saharan Africa, *The Poverty, Environment, Governance Trilogy: Proceedings of the Knowledge and Expertise Resource Network* (1998), <http://www.melissa.org/english/frameset.htm>.

105. The trend to finance projects through social development funds is now established, and community action programs represent the next logical step.

106. In January 2000, a small group of mostly African EA professionals met at CSIR, Stellenbosch in South Africa to discuss a long-standing idea in the SADC region to build a regional resource center for capacity-building in environmental assessments (SAIEA). The idea was born during the African EA Stakeholder Meeting in Nairobi in July 1998 and brought to the forefront during the IAIA (International Association for Impact Assessment) meeting in Glasgow last June. The idea was then endorsed by IAIA during a meeting in Montreal toward the end of 2000, and then proceeded to Stellenbosch for a practical analysis and more detailed planning.

107. World Bank, *supra* n.7.

108. GEOPLAN International, *Environmental Assessment Capacity Development in Africa* (final draft report, December 1999).

109. The project is funded by the Dutch Government and located within UNEP. The project has a steering committee which includes UNDP, UNEP, FAO, and the World Bank. It is headed by an eminent Kenyan lawyer, Prof. Charles Okidi.

Appendix I: EIA-Related Issues in Sub-Saharan African Countries' Laws and Statutes

110. Burkina Faso, Loi relative au Code de l'Environnement, *supra* n.37, at sec. 5 (arts. 17–24) states that environmental notices will be required for activities to be defined by specific regulations. A draft EA decree is being prepared under a UNDP/UNEP/Dutch project.

111. Cameroon, Décret 84–797 (July 17, 1984) empowered the "Direction des établissements humains et de l'environnement" of the Ministry of Planning to conduct "les études d'impact relatives [aux] opérations de développement sur l'environnement." But no indications were provided on the implementation of this mandate, nor on the

procedure to be followed for EIA. Cameroon, Loi portant régime des forets, de la faune et de la pêche (no. 94–01, 1994) has introduced EIA as a requirement for all development projects which may impact forests or the aquatic environment. Cameroon, Loi-cadre relative à la gestion de l'environnement (no. 96–12, Aug. 5, 1996) has finally introduced EIA requirements as a general obligation, but without providing all the needed details on its implementing procedures.

112. Cameroon, Décret 95–PM–531 (Aug. 23, 1995) compels the government to prepare an EIA before changing forest status.

113. Comoros, Loi-cadre relative à l'environnement, *supra* n.37, at sec. 3.

114. *Id.* at art. 11 mentions that all development projects ("projets d'aménagement et de développement, y compris les plans d'urbanisme") are to be subjected to an EIA.

115. A very rough definition of EIA content is provided in *id.* at art. 12.

116. Three lists are annexed to Comoros, Décret 96–894 (Nov. 8, 1996). The first lists all projects subjected to EIA. The second deals with projects subjected to an environmental analysis (called "constat d'environnement"), and the third describes areas where all development projects, regardless of whether they appear in the two lists, are subjected to a full EIA. These areas include: protected areas, wildlands, areas of scientific or touristic interest, and marine areas.

117. A model EIA report is annexed to Décret 96–894; Côte d'Ivoire, Décret déterminant les règles et procédures applicables aux études relatives à l'impact environnemental des projets de développement, *supra* n.38.

118. However, Annex III to Decree 96–894 specifies that all projects located in marine areas whether under national jurisdiction or in international waters or any other international waterway are subject to EIA; *see id.*

119. However, there is no clear designation of the institution in charge of the monitoring. The sectoral ministry, the EIA directorate, the Classified Plants Office (service des établissements classés) and the Centre for Pollution Control (CIAPOL) all have part of the monitoring mandate. There is a clear case of conflicting and overlapping mandates which may hinder the enforceability of the EIA recommendations implementation.

120. It is interesting to note that Ethiopia has established an Environmental Protection Authority with two main departments (the EA Review and Control Department and the Policy and Legislation Department), but is lacking a regulatory framework for EIA.

121. *See* Gabon, Loi relative à la protection et à l'amelioration de l'environnement, *supra* n.37, at arts. 67–71, which very broadly define EIA requirements and procedures.

122. Gambia, Environmental Management Act, *supra* n.37 at pt. V covers "EIA, audits and monitoring."

123. Ghana, Environmental Protection Agency Act, *supra* n.37 at sec. 12 covers the "Power of Agency to Request Environmental Impact Assessment." Guidelines for EIA have been issued for the mining sector.

124. *Id.* at secs. 12, 28(b).

125. It was the 1977–1983 Development Plan which mentioned the need for an EIA as a prerequisite for development projects. Also a policy paper circulated by the Minister of Environment and Natural Resources mentions EIA as a top priority, but no regulation has been yet enacted. Drafts have been circulated, but not yet adopted.

126. Ministry of Environment and Natural Resources.

127. Madagascar, Décret relatif à la mise en compatabilité des investissements avec l'environnement, *supra* n.38.

128. Malawi, Environmental Management Act, *supra* n.37 at pt. V covers "EIA, Audit and Monitoring."

129. *Id.* at sec. 25(3) relates to the EIA Report and states that the "EIA Report shall be open for public inspection." Also subsection 1(a) of section 26 states that "upon receiving the EIA report, the director,… where necessary may conduct public hearings at such places as the Director deems necessary for the purpose of assessing public opinion thereon."

130. *Id.* at sec. 25(2)(g) states that "an indication of whether the environment of any other country or of areas beyond the limits of national jurisdiction is or are likely to be

affected by the proposed project and the measures to be taken to minimize any damage to the environment."

131. Mali, Décret portant institution de la procédure d'étude d'impact sur l'environnement, *supra* n.45.

132. *Id.* at arts. 12–13 mentions that the minister shall make public the EIA Report as the process unfolds and that the proponent shall consult the concerned local communities, persons and organizations during a period not exceeding thirty days.

133. The proponent shall report to the Ministry of Environment every year on EIA implementation; *see id.* at art. 17.

134. Mauritius, Environmental Protection Act, *supra* n.37, at secs. 13–23 deals specifically with EIA.

135. *Id.* at sec. 2, covers undertakings that require an environmental impact assessment.

136. Namibia, Environmental Assessment Policy Cabinet Resolution, *supra* n.39. The legal force and mandatory aspect of this policy remains to be seen. In general, the policy as such is an administrative decision that does not affect the rights and obligations of legal persons.

137. Nigeria, Environmental Impact Assessment Decree, *supra* n.25.

138. *Id.* at sec. 50(1) states that when a project "is likely to cause serious adverse environmental effect outside Nigeria…. The Agency and the Minister of Foreign Affairs may establish a review panel to conduct an assessment of the international environmental effects of the project."

139. Seychelles, Environmental Protection Act, *supra* n.37 at pt. IV(sec. 15) deals with EIA.

140. EIA is required under various laws in South Africa; *see* South Africa, Conservation Act (no. 73, 1989); South Africa, Minerals Act (1991); and South Africa, Development Facilitation Act (1995).

141. Swaziland, Environmental Authority Act, *supra* n.37, at sec. 5(l-m) states that the Authority "shall establish guidelines for preparing environmental impact assessment on all development projects."

142. *Id.* at sec. 18(1)(b) stipulates that the minister of environment sets regulations for "the procedures for the introduction of EIAs on development projects" after consultation with the authority.

143. It is worth noting that *id.* refers to "all development projects."

144. Togo, Loi relative au Code de l'Environnement, *supra* n.37.

145. Uganda, The National Environmental Statutes, *supra* n.37, at pt. V (secs. 20–23) addresses EIA and environmental audit.

146. The case of Zambia is interesting because of the existence of two EIA regulations that deal with EIA: (i) the Environmental Impact Regulations, *supra* n.38; and (ii) the Mines and Minerals (Environmental) Regulations (1997). The second is more specifically oriented towards mining operations. It is worth noting that a wildlife bill currently being discussed states that a wildlife impact assessment would be conducted under some circumstances spelled out in the bill. Such a wildlife impact assessment will be conducted according to the EPPC-EIA.

147. Zambia, Environmental Impact Regulations, *supra* n.38, at second sched. 7(2) includes a list of projects which require EIA and encompasses mining and mineral processing, reduction of ores, etc. as part of these activities. They are therefore subject to the requirements of the Environmental Impact Regulations.

148. Zambia, The Mines and Minerals (Environmental) Regulations, *supra* n.146, do not make reference to public participation nor to EIA Report disclosure. Rather, the Environmental Impact Regulations, *supra* n.38, at regs. 8(2–3), 10(1–2), clearly oblige the developer to seek public views and organize public consultation.

149. Zambia, Environmental Impact Regulations, *supra* n.38 at reg. 13(1).

150. Zimbabwe, Environmental Impact Assessment Policy, *supra* n.39. Prior to 1994, the Government of Zimbabwe conducted various EIAs as a requirement of international donor agencies. The legal force and the mandatory aspect of the 1994 policy remains to be

questioned. Some sectoral legislation (the 1981 Natural Resources, Act, the Mines and Minerals Act, and the Forestry Act) require EIA, but none of them explicitly describes the EIA process to be undertaken.

Appendix II: Basic Features of the EIA Report in Sub-Saharan African Countries' Laws and Statutes

151. Some legislation uses the term "Environmental Impact Assessment Statement" or "Environmental Impact Statement" or "Environmental Impact Report."

152. It is interesting to note that Burkina Faso's 1994 Environmental Code did stipulate the content of an EIA (Burkina Faso, Loi relative au Code de l'Environnement (no. 002/94/ADP, Jan. 19, 1994) at art. 7 (paras. 1–9). However, this article was not included in 1997 legislation, which only refers to an implementing decree to be enacted to define EIA content (*supra* n.37 at art. 23). This decree is in a draft form and is being discussed among government officials and stakeholders.

153. No specific format or formal requirement for the EIA report is yet defined by the law. The implementing decree for Cameroon's Environmental Management Framework Law has yet to be drafted to define such elements; *see* Cameroon, Loi-cadre relative à la gestion de l'environnement (no. 96–12, Aug. 5, 1996).

154. *Id.* at art. 19(2).

155. Comoros, Loi-cadre relative à l'environnement, *supra* n.37.

156. Republic of Congo, Décret rendant obligatoires les études d'impact sur l'environnement, *supra* n.38 at art.3 states that the EIA shall be conducted according to existing legislation, but does not require the proponent to state explicitly which legislation in the EIA Report.

157. This requirement is very broad and includes not only the physical environment, but also all land-use planning acts of concern for the existing environment. Côte d'Ivoire, Décret déterminant les règles et procédures applicables aux études relatives à l'impact environnemental des projects de développement, *supra* n.38, at art. 12(2) describes this requirement: "statut juridique du site et de son environnement définis par des plans d'aménagement du territoire et par des arrêtés de protection des milieux déterminés."

158. Gambia, Environmental Management Act, *supra* n.37, at sec. 23(d) requires an explanation of the "reasons for selecting the proposed site and rejecting alternative sites."

159. Guinea, Ordonnance portant Code de l'Environnement de la République de Guinée (no. 045/PRG/87, 1987), at art. 83(2)(1).

160. Madagascar, Décret relatif à la mise en compatabilité des investissements avec l'environnement, *supra* n.38, at art. 5(3) compels the author of the impact assessment to propose "quelques indicateurs d'impact pertinents et facilement mesurables qui serviront à évaluer périodiquement l'incidence de l'investissement sur l'environnement physique ou humain."

161. Malawi, Environmental Management Act, *supra* n.37, at sec. 25(1)(c) requires "the description of the technology, method or process to be used in the implementation of the project and of any available alternative technology, method or process, and the reason for not employing the alternative technology, method or process," and sec. 25(1)(d) requires an explanation of "the reasons for selecting the proposed site of the project as opposed to any other available alternative site."

162. Mali, Décret portant institution de la procédure d'étude d'impact sur l'environnement, *supra* n.45, at art. 9 mentions that the EIA report shall include, inter alia a plan for following up on and monitoring impacts.

163. Mauritius, Environmental Protection Act, *supra* n.37, at sec. 14(g) states that EIA shall contain: "the irreversible and irretrievable commitments of resources which will be involved by the undertaking, if implemented in the matter proposed by the proponent."

164. Nigeria, Environmental Impact Assessment Decree, *supra* n.25 requires a "minimum content" for all EIA Reports, but also requires that "the environmental effects in an

environmental assessment shall be assessed with a degree of detail commensurate with their likely environmental significance."

165. *Id.* at sec. 10 states that "when the Council deems fit and appropriate, a decision on an activity which has been the subject of environmental impact assessment, the activity and its effects on the environment or the provisions of section 9 of this decree, shall be subject to appropriate supervision."

166. Seychelles, Environmental Protection Act, *supra* n.37, at sec. 15(3)(g) states that the EIA Report shall comprise a "true statement and description of… the irreversible and irretrievable impact on the commitments of resources which will be involved by the project or the activity."

167. South African legislation has the most comprehensive definition of EIA Report content. *See* the Environmental Impact Report Regulations (Nov. 1996) and Regulation 1183, *supra* n.38.

168. For activities identified under section 21(1) of the Environmental Conservation Act, the EIA Report must provide a description of the extent and significance of each identified environmental impact; South Africa, Environmental Conservation Act, *supra* n.38, at sec. 21(1).

169. Uganda, The National Environmental Statutes, *supra* n.37 requires an environmental impact statement, but its content is not specified by law.

170. Zambia has two separate regulations for EIA: the Mines and Minerals (Environmental) Regulations, *supra* n.146 and the Environmental Impact Regulations, *supra* n.38.

171. The Environmental Impact Regulations (Zambia, *supra* n.38) refer explicitly to "an impact management plan containing a description of measures proposed for preventing, minimizing or compensating for any adverse impact, and enhancing beneficial effects, and measures to monitor effluents, streams or important environmental features that may be affected by the project…" The 1997 Mines and Minerals (Environmental) Regulations refer to an "environmental management plan" (*supra* n.146, at sec. 5(1)(b)). The Mines and Minerals (Environmental) Regulations also require the developer to make a written commitment to implement the environmental management plan and to allocate appropriate resources to cover the operational cost of protecting the environment covering the full life of the mine (*supra* n.146, at sec. 5(2)(a)). This requirement is not made for other proponents in non-mining activities.

172. Zimbabwe, Environmental Impact Assessment Policy, *supra* n.39 at sec. 4(3) requires a "detailed EIA Report." However, it states that "guidance on preparing the EIA Reports is provided by the Ministry," which explains why EIA Reports may differ from one project to another.

Appendix III: Public Consultation and Participation in Environmental Impact Assessment-Related Legislation of African Countries

173. The term "Report" is used as a synonym for "Statement" or "Study" appearing in some legislation.

174. Burkina Faso, *supra* n.37, at art. 19 states that the EIA will be "complétée par une enquête publique dont le but est de recueillir les avis et les contres propositions des parties concernées par l'étude d'impact…" However, the procedure and content of this public inquiry are not yet set up by decree as required under this same legislation in article 19.2. A decree is being prepared as part of a UNDP/UNEP/Dutch project on EIA procedure and regulations and includes public involvement in the EIA process.

175. Since a public inquiry has to take place, such a disclosure seems inevitable.

176. Côte d'Ivoire, *supra* n.38, at art. 16 mentions that the EIA will be subjected to a "public inquiry" and will be disclosed to the public.

177. The EIA Office within the Ministry of Environment is in charge of the public inquiry and responsible for disclosing the EIA Report; *id.* at art. 11.

178. Gabon, Loi relative à la protection et à l'amelioration de l'environnement, *supra* n.37 does not mention the principle of public participation at all, not even as a general principle of environmental law.

179. Although the Environmental Management Act of 1994 organizes the participation of people in environmental management through environmental committees at the national and local levels, it does not describe how this participation is carried out during the actual EIA process; Gambia, Environmental Management Act, *supra* n.37.

180. *Id.* at sec. 23(5) states that once the EIA is done, the EI Statement "shall be a public document which may be freely consulted by any person provided that the Agency shall protect any information which it considers to be proprietary."

181. Yes, as a general policy statement. Also, in practice where an environmental impact assessment is prepared, public participation is required including EIA Report disclosure.

182. Madagascar, Décret relatif à la mise en compatabilité des investissements avec l'environnement, *supra* n.38, at art. 5(3) mentions that "l'étude d'impact rédigée en malgache ou en français [ndlr] doit faire ressortir…"and "afin de faciliter la prise de connaissance par le public des informations contenues dans l'étude, celle-ci fera l'objet d'un résumé non technique rédigé en malgache ou en français…"

183. This is an interesting feature of the Madagascar legislation. *Id.* at art. 10 empowers the environmental agency to decide whether the document should be made public for information purposes or for public consultation through the old fashioned procedure of "enquête publique de commodo et incommodo." If the agency decides to undertake a public inquiry, the public at large will be invited to give oral and/or written comments on the EIA during a two-month period. After this period an expert panel from the Agency reports on the EIA, including public comments.

184. Malawi, Environmental Management Act, *supra* n.37, at sec. 25(3) states that "the EIA report shall be open for public inspection…."

185. *Id.* at sec. 26(1)(a) states that the director shall "conduct public hearings at such place or places as the director deems necessary for purposes of assessing public opinion…"

186. Mauritius, Environmental Protection Act, *supra* n.37, at sec. 15(2) states that "the Director shall give notice [to review the EIA report, ndlr] to that effect in two issues of the Gazette and in two issues of two daily newspapers, there being in each case an interval of at least seven (7) days between the first and the second publications."

187. Nigeria, Environmental Impact Assessment Decree, *supra* n.25 has a chapter on "Opportunity for comments by certain groups" which are described as "government agencies, members of the public, experts in any relevant discipline and interested groups to make comments on EIA of the activity."

188. It is interesting to note that it is the decision of the agency on the EIA Report which will be made public and available to an "interested group or person." *See id.* at sec. 9(1)–(3).

189. *Id.* at sec. 25(a) states that after receiving a mandatory study report on a project, the Agency shall, in any manner it considers appropriate, publish a notice containing the following information: (i) the date on which the mandatory study report shall be available to the public, (ii) the place at which copies of the report may be obtained; and (iii) the deadline and address for filing comments on the conclusions and recommendations of the report."

190. Seychelles, Environmental Protection Act, *supra* n.37, at sec. 15(5)(a) states that "An environmental impact assessment study shall be open for public inspection at all reasonable times."

191. *Id.* at sec. 15(5)(b) states that the EIA study shall be published in "two issues of a local newspaper with an interval of at least seven days between the first and the second publication."

192. A limited right of administrative appeal is given to the public at large, including affected peoples. The question remains whether the decisions may be challenged before the courts. *Id.* at sec. 15(13) states that "any person aggrieved by the decision or order of the Authority under this section may appeal."

193. South Africa, Regulation 1183, *supra* n.38, at sec. 3(1)(f) states that an applicant is "responsible for the public participation process to ensure that all interested parties, including government departments that may have jurisdiction over any aspect of the activity, are given the opportunity to participate in all the relevant procedures contemplated in these regulations."

194. *Id.* at sec. 3(3)(d) states that the relevant authority must "try to keep the inputs required from the applicant to the minimum that are necessary to make an informed decision on the application, without putting any limitation on the rights that interested parties may have in terms of these regulations" and section 3(5) states that "any interested parties who wish to participate in the public participation process…must respond within the time agreed to between the relevant authority and the applicant."

195. This information is drawn from Uganda, The National Environmental Statutes, *supra* n.37. These statutes are being complemented by regulations. Draft environmental impact assessment regulations have been under preparation in Uganda since 1997. This draft provides for "public comments" (section 19) and for "comments of persons specifically affected by the project" (section 20). EIA-related documentation is made public and the right of appeal is recognized.

196. Zambia, Environmental Impact Regulations, *supra* n.38, at sec. 7(2) states that "to ensure that public views are taken into account during the preparation of the TORs, the developer shall organize a public consultation process,…., to help determine the scope of the work to be done in the conduct of the EIA and in the preparation of the EIA statement."

197. *Id.* at sec. 10(1).

198. *Id.* at secs. 16, 17, 18, and 19 describes the various means used to publicize and disclose the EIA Statement and to foster public participation and consultation including notification in newspapers, broadcasting on national radio, and public meetings and hearings.

199. Zimbabwe, Environmental Impact Assessment Policy, *supra* n.39, at sec. 3(7) states that "Public consultation is an essential part of the EIA policy" which provides "genuine opportunities for individuals, communities, private organizations and public interest groups to provide input to the process of specifying, reviewing, and accepting EIA reports." To facilitate effective public consultation in Zimbabwe, individuals and groups with a legitimate interest in projects have unrestricted access to all formal EIA documents.

200. *Id.* at sec.4(2) states that: "a Preliminary EIA (PEIA) report is required" and that "public consultation is mandatory when undertaking a PEIA." At minimum, the proponent must meet with the principal stakeholders to inform them about the proposed activity and to solicit their views about it…"

201. *Id.* at sec.5(4) states that for "all prescribed activities, formal EIA documents are made available for public review and comment on demand."

Appendix VI: List of Environmental Impact Assessment-Related Laws, Statutes, and Regulations of Selected Sub-Saharan African Countries

202. Other laws, statutes, and regulations may contain specific provisions on EIA. This might be the case of construction laws, planning laws, forestry and water-related laws and statutes.

This Page Intentionally Left Blank