



Environmental Impact Assessment Act, No. 86 1992

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ENVIRONMENTAL IMPACT ASSESSMENT ACT 1992

[COMMENCEMENT 10th December 1992]

The Federal Military Government hereby decrees as follow:

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Part I

General Principles of 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 authorise 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 realised;
 - (c) to encourage the development of procedures for information exchange, notification and consultation between organs and persons when proposed activities are likely to have significant environmental affects on boundary or trans-state or on the environment of bordering towns and villages.
- 2.** (1) The public or private sector of the economy shall not undertake or embark on public or authorise projects or activities without prior consideration, at an early stages, or 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 being planned.

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 step in the process.

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 effects of the proposed activities;

- (c) a description of the practical activities, as appropriate;
- (d) an assessment of the likely or potential environmental impacts on 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, Local Government Area or areas outside Nigeria is likely to be affected by the proposed activity or its alternatives;
- (h) a brief and non technical summary of the information provided under paragraph (a) to (g) of this section.

- 5.** The environmental effects in an environmental assessment shall be assessed with a degree of detail commensuration with their likely environmental significance.
- 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).

- 7.** Before the Agency gives a decision on an activity to which an environmental assessment has been produced, the Agency shall give opportunity to government agencies, members of the public, experts in any relevant discipline and interested groups to make comment on environmental impact assessment of the activity.
- 8.** The Agency shall not give a decision as to whether a proposed activity should be authorised or undertaken until appropriate period has elapsed to consider comments pursuant to sections 7 and 12 of this Decree.
- 9.** (1) The Agency's decisions on any proposed activity subject to environmental impact assessment shall –
 - (a) be in writing;
 - (b) state the reason therefor;
 - (c) include the provisions, if any, to prevent, reduce or instigate damage to the environment.
- (2) The report of the Agency shall be made available to interested person or group.
- (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 decision.

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.

11. (1) When information provided as part of environmental impact assessment indicates that the Environment within another State in the Federation or a Local Government Area is likely to be significantly affected by a proposed activity, the State, the Local Government Area in which the activity is being planned shall, to the extent possible -

(a) notify the potentially affected State or Local Government of the proposed activity;

(b) transmit to the affected State or Local Government Area any relevant information of the environmental impact assessment:

(c) enter into timely consultations with the affected State or Local Government.

(2) It shall be the duty of the Agency to see that the provisions of subsection (1) of this section are complied with and the Agency may cause the consultations provided pursuant to subsection (1) of this section to take place in order to investigate any environmental

derogation or hazard that may occur during the construction or process of the activity concerned.

12. Note: there is no section 12 within this Decree.

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 issue 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

14. (1) Notwithstanding the provisions of Part I 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, impact;
- (b) makes or authorises payment or provides a guarantee for a loan or any other form of financial assistance to the proponent for the purpose of enabling the project to be carried out in whole or in part, except when the financial assistance is in the form of any reduction, avoidance, deferral, removed, 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 thereunder, unless that financial assistance is provided for the purpose of enabling an individual project specifically

named in the enactment, regulation or order that provides the relief to be carried out;

- (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 invest 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.
- (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.

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

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

(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.

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 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.

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

- (a) the environmental effects of the project, including the environmental effects of malfunctions or accidents that may occur in connection with the project and any cumulative environmental effects that are likely to result from the project in taking into consideration with other projects, that that have been or will be carried out;

- (b) the significance or, in the case of projects referred to in section 43 44 or 45, the seriousness of those effects;
 - (c) comments concerning those effects received from the public, 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 tong term capacity for regeneration of 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 re 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 with the Agency, when fixing the terms of reference of the mediation or 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.

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 provisions of this Decree or any relevant enactment.

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.

 - (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.
- 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 of conducting screening of other project within the same class, the agency may declare the report to be a class screening report.
- (2) Any declaration made pursuant to subsection (1) of this 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.

 - (3) Where in the opinion of the Agency a project or part of a project is within a class in respect of which a class screening report has been declared, the Agency may use or permit the use of that report and the screening on which it is based to whatever extent the Agency considers appropriate for the purpose of complying with section 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 Agency are necessary to take into account Local circumstances and any cumulative environmental

efforts that in the opinion of the Agency are likely to result from the project in combination with other project that have been or will be carried out.

- 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.
- 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 ensure 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 consideration any comments that are filed.

- 23.** Where the Agency is of the opinion that a program 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.
- 24.** (1) Where a proponent proposes to carry out, in whole or in part, a project for which a mandatory study report has been prepared but the project did not proceed or the manner in which it is to be carried out has subsequently changed, or where a proponent seeks the renewal of a licence, permit or approval referred to in section 5(d) of this 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 use of a mandatory study or a mandatory study report pursuant to subsection (1) of this section, it shall ensure that any adjustments are made that in its opinion are necessary to take into account any significant changes in the circumstances of the project.

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

- (a) the date on which the mandatory study report shall be available to the public;
 - (b) the place at which copies of the report may be obtained; and
 - (c) the deadline and address for filing comments on the conclusions and recommendations of the report.
- (2) Prior to the deadline set out in the notice published by the Agency, any person may file comments with the Agency relating to the conclusions and recommendations of the mandatory study report.

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 concerns respecting the environmental effects of the project warrant. it; or

- (b) refer the project back to the Agency for action to be taken under section 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.

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.

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 that project.

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.

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

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 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.

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 the Council possesses the required knowledge or experience; and

(b) fix the terms of reference of the mediation.

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

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

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.

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 parties, the Council may terminate the mediation and refer the project to a 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 term of reference of the 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 hearing in a manner that offers the public an opportunity to participate in the assessment;

(c) Prepare a report setting out –

(i) the conclusions and recommendations of the panel relating to the environmental effects of the project and any mitigation measures or follow-up program, and

(ii) a summary of any comments received from the public; and

(d) Submit the report to the Council and the Agency.

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 or things as the panel consider 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 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.

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

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.

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

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

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

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

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

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 one.

(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 which the recommendations 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 in the pursuant to subsection (1) of this section.

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.

43. (1) For the purposes 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 Bye-law or the legislature of a State and having powers, duties or functions in relation to an assessment of the environmental effects of a project;
- (d) any body established pursuant to a comprehensive land claims agreement and having powers, duties or functions in relation to an assessment of the environmental effects of a project;
- (e) a government of a foreign State or of a subdivision of a foreign State, or any institution of a such a government; and
- (f) an international organisation of States or any institution of such an organisation.

(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) or (f) of this section, has a responsibility on an authority to conduct an assessment of the environmental effects of the project 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 review 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 that panel shall be deemed to satisfy any requirements of this Decree, respecting assessment by a 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 that is 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.

(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.

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.

49. (1) Where a project for which an environmental assessment is not required under section 5 of this Decree, is to be 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.

(2) The Council shall not establish a review panel pursuant to subsection (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 inter State environmental effects of the project.

(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.

(4) At least ten days, before establishing a review panel pursuant to subsection (1) of this section, the President, Commander-in-Chief or 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.

(5) For the purpose of this section and 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.

50. (1) Where a project for which an environmental assessment 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.

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

- (a) the proponent of the project;

- (b) the governments of any interested States in 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.

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 the 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 environmental effects outside those lands, the Agency may establish a review panel to conduct an assessment of the environmental effects of the project outside those lands.

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

a project that is to be carried out the Agency is of the opinion that

(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 comprehensive land claims agreement referred to in subsection (2) if this section to the party to the agreement; and

(c) on lands that have been set aside for the use and benefit of 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.

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.

53.(1) Where the Agency after the appraisal of the President, Commander-in-Chief of the 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.

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 sections 43(1), 44(1) or 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.

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

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 organisation of a foreign States, any institution of such a government or organisation, under which a Federal authority exercises a power or performs a duty or function referred to in section 5(b) or (c) of this 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 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

- 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) any record or part of a record that the Agency, in the case of a record in its possession, or any other Ministry or government agency determines would have been disclosed to the public if a request had been made in respect of that record at The time the record was filed with the registry, including any record that would be disclosed in the public interest;
 - (c) any record or part of a record, except a record or part containing third party information, if The President in the case of a record in the Agency's possession, or the President believes on reasonable grounds that its disclosure would be in the public interest because it is required in order for the public to participate effectively in the assessment,
- (5) Notwithstanding any other enactment, no civil or criminal proceedings shall lie against the Agency, or against any person acting on behalf of or under the direction of, 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 purposes of this section, "third party information" means –
- (a) trade secrets of a third party;
 - (b) financial, commercial, scientific or technical information that is confidential information supplied to a government institution by a third party and is treated consistently in a confidential manner by the third party;

- (c) information the disclosure of which could reasonably be expected to result in material financial loss or gain to, or could reasonably be expected to prejudice the competitive position of a third party; and
- (d) information the disclosure of which could reasonably be expected to interfere with contractual or other negotiations of a third party.

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 effects of the project 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.

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

Part III

Miscellaneous

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 section 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 of 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.

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 projects are likely to be negligible;

- (c) prescribing a list of projects or classes of projects not covered by, the best of mandatory study list in the Schedule to this 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 or environmental assessment is not required, when, the Council is of the 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 environment assessment is required, where the Council is of the opinion that an environmental assessment of the projects would be inappropriate for reasons of national security

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 N50,000 and not more than N 1,000,000

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 subsections 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 socioeconomic 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) any 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 on and air space above those land
- (b) the following lands and areas namely,
 - (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
- (c) reserves, surrendered lands and any other lands that are set apart for the use and benefit of a class of Nigerians by the Federal Government of Nigeria and all waters on and airspace above those reserves or surrendered lands:

"follow-up 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 project;

"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 regulations made here under;

"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 summarises 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 than fifty per cent of the votes that may be cast to elect directors of the corporation are held, other than by way of security only, by or for the benefit of that corporation; and

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

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

Schedule

Mandatory Study Activities

1. Agriculture

- (a) Land development schemes covering an area of 500 hectares or more to bring forest and 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 change in type of agricultural use.

2. Airport

- (a) Construction of airports (having an airstrip of 2,500 metres or more
- (b) Airstrip development in State and national parks.

3. Drainage and Irrigation

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

4. Land Reclamation

- (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 forests 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 industrial, housing or agricultural use covering an area of 50 hectares or more.
- (e) Clearing of mangrove swamps on islands adjacent to national marine parks.

7. Housing

8. Industry

- (a) Chemical

Where production capacity of each product or of combined products is greater than 100 tonnes/day,

- (b) Petrochemicals all sizes.
- (c) Non-ferrous primary smelting

Aluminium - all sizes

Copper - all sizes

Others - producing [50?] tonnes/day and above of product

(d) Non-metallic

- Cement - for clinker throughput of 30 tonnes/hour and above
- Lime - 100 tonnes/day and above burnt 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 per 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 industry covering an area of 50 hectares or more.

- (c) Construction of Expressways.
- (d) Construction of national highway.
- (e) Construction of new townships.

10. Ports

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

11. Mining

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

12. Petroleum

- (a) Oil and gas fields development.
- (b) Construction of off-shore pipelines in exceed 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-fuelled power stations.

14. Quarries

Proposed quarrying of aggregate, limestone, silica, quartzite, sandstone marble and, decorative building stone within 3

kilometres of any existing residential, commercial or industrial areas, or any area for which a licence, permit or approval has been granted for residential, commercial or industrial development.

15. Railways

- (a) Construction of new routes.
- (b) Construction of branch lines.

16. Transportation

17. Resort and Recreational Development

- (a) Construction of coastal resort-facilities or hotels with more than 80 rooms.
- (b) Hill station resort or hotel development covering an area of 50 hectares or more.
- (c) Development of tourist or recreational facilities in national parks.
- (d) Development of tourist or recreational facilities, on islands in surrounding waters which 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 composting plant.
 - (iii) Construction of recovery/recycling plant.
 - (iv) Construction of municipal solid waste landfill facility.
- (c) Municipal Sewage
- (i) Construction of waste water treatment plant.
 - (ii) Construction of marine outfall.

19. Water Supply

- (a) Construction of dams, impounding reservoir with a surface area of 200 hectares or more.
- (b) Groundwater development for industrial, agricultural or urban water supply of greater than 4,500 cubic metres per day.

Made at Abuja this 10th day of December 1992.

General I. B. Babangida,

President, Commander-in Chief of the Armed Forces

Federal Republic of Nigeria



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