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PUBLIC PARTICIPATION IN ENVIRONMENTAL IMPACT ASSESSMENT IN NIGERIA: PROSPECTS AND PROBLEMS*

Abstract

Public participation in Environmental Impact Assessment (EIA) process has been a topic of major discourse all over the world. Most countries have in varied degrees recognized and given public participation a special place in the EIA process. This study examines the historical background of EIA in Nigeria, discusses EIA laws in Nigeria with a view to highlighting the major drawbacks; and identifies the advantages and disadvantages of public participation in the EIA process. It observes that the provisions of the EIA Act in Nigeria appear to be comprehensive but however, suffers major setbacks as the Act does not give room for public participation after the certificate has been issued and/or during the monitoring or follow-up stage. The study recommends that the Act should be amended to accommodate public participation at every stage of the EIA process.

Key Words: Environmental Sustainability, Environmental Impact Assessment, Public Participation.

1. Introduction

Environmental Impact Assessment (EIA) is a process of evaluating the likely environmental impacts of a proposed project or development, taking into account inter-related socio-economic, cultural and human-health impacts, both beneficial and adverse. Public Participation in EIA is a systematic process of identifying, predicting and evaluating potential impacts associated with a developmental project.¹ It is in recognition of this fact that the paper examines the historical background of EIA in Nigeria, identifies the

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¹ G. Piero & S. Clare, "European Strategy on Invasive Alien Species: Convention on the Conservation," Available at <https://books.google.com.ng/books?isbn=9287154880>, accessed on 15 December, 2015. EIA process ensures that the potential problems that would be associated to developments are dealt with even before the development itself commences.

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advantages of public participation in EIA process and discusses EIA laws in Nigeria with a view to highlighting the major setbacks to the Act. To achieve this purpose, the paper is divided into seven parts. Part one is the introduction. Part two examines the historical background to EIA. Part three highlights the benefits and challenges of EIA especially in Nigeria. Part four interrogate public participation in the EIA process in Nigeria. Parts five and six takes a comparative perspective of the EIA process with a view to exposing the gaps left in the Nigerian law. The paper concludes in part seven with a recommendation that the Government should encourage environmental awareness programmes to be organized to educate the Nigerian masses on the need to be environmentally alert to negative environmental impacts; and a call for a review of Nigeria's EIA Act to make public participation in the EIA process more meaningful.

2. Historical Background of Environmental Impact Assessment

In 1960, investors and people realized that the projects they were under-taking were affecting the environment, natural resources and people.² As a result, countries formulated laws to safeguard the environment. The United States of America (USA) was the first country to enact legislation on EIA. USA enacted the National Environmental Policy Act (NEPA) in 1970. Other countries like China and Nigeria later enacted laws on EIA. Between 1970's and 1980's, there were growing concerns over environmental issues. This was discussed at most international conferences and a number of bilateral and multilateral agreements were reached. These include:

- (i) The Convention on Environmental Impact Assessment in a Trans-boundary Context (Espoo, 1991).³

² S. A. Akshay, "Greener Assessment for Sustainable Future: Introduction to Environmental Impact Assessment Act," available at www.greener.assessment-sustainable future-introduction. Accessed on 11/121/2015.

³ It entered into force in 1997. It was the first multi-lateral treaty on EIA. The treaty looks at EIA in a trans-boundary context. The Espoo Convention sets out the obligations of Parties to assess the environmental impact of certain activities at an early stage of planning. It also lays down the general obligation of States to notify and consult each other on all major projects under consideration that are likely to have a significant adverse environmental impact across borders. Apart from stipulating responsibility of signatory countries with regards to proposals that have trans-boundary impacts, it describes the principles, provisions, procedures to be followed and list of activities, contents of documentation and criteria of significance that apply.

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- (ii) The Rio Declaration on Environment and Development, 1992.⁴
 - (iii) The United Nation Convention on Climate Change and Biological Diversity, 1992.⁵
 - (iv) Doha Ministerial Declaration, 2001.⁶
 - (v) United Nations Economic Commission (UNECE) Convention.⁷

As a consequence of the illegal dumping of toxic waste in Koko, in the former Bendel State, in 1987, the Nigerian Government promulgated the Harmful Waste Decree⁸. This was followed by the creation of the Federal Environmental Protection Agency (FEPA) in 1988⁹. The Environmental Impact Assessment Act (EIA Act) of 1992¹⁰ is an additional law with the aim of protecting the Nigerian Environment.

3. Benefits and Challenges of Public Participation in EIA

The objective of public participation in EIA is to achieve the following:

- (i) Ensure public participation in the definition of environmental policy objectives and decision making.
- (ii) Ensure public confidence in the administration of the environment by demonstrating the resolve of government to enforce the environmental stewardship of government agencies and organs, corporate citizenship of government

⁴ Principle 17 of the Rio Declaration calls for use of EIA as a national decision making instrument to be used in assessing whether proposed activities are likely to have significant adverse impact on the environment.

⁵ Article 4 of the UN Convention on Climate Change and Article 14 of the UN Convention on Biological Diversity cited EIA as an implementing mechanism of actualizing the aims and objectives of the Conventions.

⁶ The Doha Ministerial Declaration encourages member countries to share expertise and experience with members wishing to perform environmental reviews at the national level.

⁷ The UNECE (Aarhus) Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (1998) covers the decisions at the level of projects and plans programmes and policies and by extension, applies to EIA.

⁸ Decree 42 of 1988.

⁹ Decree 59 of 1992. FEPA is charged with the overall responsibility of protecting and developing the Nigerian environment. FEPA was later replaced with National Environmental Standards and Regulations Enforcement Agency (NESREA).

¹⁰ Decree 86 of 1992.

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agencies and organs, corporate citizens and elite organizations;
and

- (iii) Grant the citizenry access to environmental information and data thereby promoting the quality of environmental management and compliance management.¹¹

Many international organizations as well as international agreements have built-in the idea of public participation in environmental issues.¹² There are three occasions where public participation is necessary in the EIA process, namely; access to information from the early stage, access to decision making and efficient administration of justice.

Public participation in EIA can be promoted under certain conditions. First, public involvement needs to begin before project planning and decision-making. The decision to participate must be genuine¹³. Secondly, public involvement can be used to create a project that is more suitable to, and accepted by, the public¹⁴. Thirdly, public can be a crucial and valuable source of expertise before, during and after project planning and decision-making.

The advantages of public participation in EIA process include that:

¹¹ S. Agaja, "Public Participation in Environmental Impact Assessment (EIA) Report: The Nigerian Experience," *Being iaia13 Conference Proceedings*, Alberta, Canada, 13-16 May, 2013, pp. 1-5.

¹² For instance, the World Charter for Nature 1982 states that " All persons, in accordance with their national legislation, shall have the opportunity to participate, individually or with others, in the formulation of decisions of direct concern to their environment, and shall have access to means of redress when their environment has suffered damage or degradation". The Aarhus Convention states that " In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making and access to justice in environmental matters in accordance with the provision of this Constitution".

¹³ Otherwise, public participation becomes a procedural exercise rather than a substantive democratic process.

¹⁴ Suitability should depend on public opinions and needs rather than the technical feasibility of the project.

- 1) It improves process quality by exerting pressure on project sponsors/donors to address the negative environmental impacts of some projects.
- 2) It draws attention to the concerns of the local people and by focusing on specific issues of local concern, the process has made more relevant and useful and even reduces conflict.
- 3) It induces many of the larger agencies and commercial organizations to set up special environmental units/departments to focus on EIA.
- 4) It extends and improves public awareness of environmental concerns.
- 5) It promotes the sustainability of some projects.
- 6) It builds and strengthens indigenous capacity and give greater access to community skills and knowledge.
- 7) It improves community understanding of conservation issues and responsibility for conservation outcomes.
- 8) It reduces cost for the developers as key issues are identified early in the process and potential delays in decision making are reduced.¹⁵

The EIA process in Nigeria has not been strengthened to enjoy these benefits due to series of inadequacies in the system. The challenges of EIA include:

- 1) Time and money: Many stakeholders¹⁶ lack the time or financial resources to engage with EIA processes.¹⁷
- 2) Education: Low levels of education and the technical nature of many development-related issues can be a major barrier to effective participation in EIA.¹⁸

¹⁵ E. Lekneses, "The Role of EIA in the Decision-Making Process," *Environmental Impact Assessment Review*, Volume 21, (2000) pp. 309-334.

¹⁶ Whether local people, expert institutions or other government agencies

¹⁷ Their involvement will generally incur an immediate cost in terms of time and sometimes.

¹⁸ For example, a villager in Bangladesh, when asked whether he had participated in the EIA process for a major flood control and irrigation project that would radically alter his livelihood prospects, responded thus "If I were to be consulted what would I say? You see I'm just an ordinary man. I don't know anything. All I know is that one has to have meals every day" see Ross Hughes *Environmental Impact Assessment and Stakeholder Involvement* International Institute for Environment and Development. *Environmental Planning Issues* No. 111998.

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- 3) Gender: Insensitivity to gender issues, and particularly to the lower status accorded to women in decision-making in many parts of the world, is a common constraint to effective stakeholder involvement.¹⁹
- 4) Cultural differences: These can be particularly acute where indigenous groups are stakeholders in the EIA process.²⁰
- 5) Communication barriers between indigenous and non-indigenous approaches.
- 6) Physical remoteness: It is costly and time consuming for practitioners to reach small, diverse and scattered groups in remote areas, and conversely, it is difficult for the inhabitants of such areas to gain access to information relevant to development plans and EIA.
- 7) Political and institutional culture of decision making. In many countries and regions, there is little or no culture of public involvement in decision-making.²¹

4. Public Participation in the EIA Process in Nigeria

The principal law on EIA in Nigeria is the Environmental Impact Assessment Act, 1992.²² The Act makes EIA mandatory for development projects likely to have adverse impacts on the environment prior to implementation.²³ The EIA Act made it compulsory for certain projects to have an EIA before they can be carried out. These projects are classified into three categories: namely; Projects that require full and mandatory EIA;²⁴ Projects

¹⁹ Major changes in attitude and conventional approaches are required if impact assessment is to make a real difference to people's lives.

²⁰ Communication difficulties may arise not simply because of language and education, but also because indigenous groups often hold entirely different belief systems and ways of perceiving issues.

²¹ In some cases, public involvement is perceived as a threat to authority and is viewed defensively by many government agencies and project proponents.

²² Laws of the Federation of Nigeria, 1992.

²³ Before the enactment of EIA Act in Nigeria, project appraisals were limited predominantly to feasibility studies and economic-cost-benefit analysis. Most of these appraisals did not take environmental costs, public opinion and social and environmental impacts of development projects into consideration. See C. O. Nwoko, "Evaluation of Environmental Impact Assessment System in Nigeria," (2013) *Gender Journal of Environmental Management and Public Safety*, pp. 22-31.

²⁴ These include Agriculture/ Agro Allied, Fisheries, Industry (Manufacturing), Food, Beverages and Tobacco, Infrastructure, Housing, Airports, Ports, Drainage and Irrigation, Power Generation, Petroleum, Mining, Quarries, Waste Treatment Disposals, Water Supply, Land Reclamation and Breweries.

where full EIA are not so mandatory except if it is within environmentally sensitive area;²⁵ and Projects that are beneficial to the environment.²⁶ EIA process in Nigeria passes through; Consideration of Alternatives,²⁷ Screening,²⁸ Scoping,²⁹ Baseline Study,³⁰ Assessing Impacts,³¹ Mitigation³², Public Consultation with Stakeholders³³, Review and Decision making³⁴, Final Decision-

²⁵ (Coral reefs, mangrove swamps, small islands, tropical rain forest with erosion). These include Agriculture and Rural Development (Aforestation/Reforestation project, small scale irrigation or drainage, Small scale agriculture, saw milling/wood logging, Rubber processing and fish processing), Mini Hydro Power Development (e.g. textile chemical industry, small scale power transmission) Renewable Energy Development etc.

²⁶ These include institutional development, health programmes, family planning programmes nutritional programmes, educational programmes and environmental awareness.

²⁷ EIA should provide an environmental input on the decisions on what is to be constructed and where it is to be located. This provides the best opportunity to avoid significant environmental effects by steering clear of environmentally sensitive locations and selection designs and processes that have a reduced environmental impact.

²⁸ This refers to the decision as to whether an EIA is required or not or the environmental effect a particular project would have.

²⁹ The purpose of scoping is to identify projects that are likely to have significant effects. The identification of key effects is usually undertaken using a combination of professional judgment and gathering of other people's opinions, particularly the determining authority and government agencies. This is where public participation in the EIA process commences.

³⁰ Where there is strong evidence that a proposed development will impact on the environment negatively, a baseline study is required. This study will establish the inventory of the site itself and can include ecological survey for biodiversity, pollution impacts e.g. ground noise disturbance, archeological surveys to ascertain special sites of cultural heritage, etc. The baseline study is important as it bring about project modification or non-approval of the project in view.

³¹ Here the environmental effects of a developmental proposal are predicted. A detail EIA Report is prepared. Three elements are involved. The first element is to understand the baseline conditions. The second element is to predict the magnitude of the impacts. The third element is to assess the significant of the impacts.

³² When the significant effects are identify, the developer and the consultants may then decide to bring about elimination or prediction of the impacts in order for the development to be approved.

³³ Consultation with stakeholders is essential during the EIA process. Public consultation documents seek to communicate the anticipated impacts and proposed mitigations of the project's impact and disclosure report should describe the environmental, socioeconomic and community health effects of the project.

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Making/ Authorization³⁵, Post-Project Authorization Activities³⁶ and Commissioning/ Audit³⁷.

Environmental Impact Assessment (“EIA”) has been one of the most effective and practical tools to support the implementation of sustainable development in Nigeria.³⁸ EIA is also widely accepted as a mechanism for public participation in planning processes and decision-making and as a tool to provide information and data to the public regarding projects and other activities in the country.

Failure to comply with EIA is a serious problem. For instance, in *Dr. Tunji Braithwaite v Standard Chartered Bank Nig. Ltd.*,³⁹ the

³⁴ See Sections 25 and 37 EIA Act. The findings of the EIA are written up in an environmental statement and submitted to the review panel together with the application for consent for approval. The EIA review panel crosschecks the document for adequate information and evaluates it. The information is evaluated for its relevance to the decision to be made, reliability in terms of information provided and the interpretation of data and sufficient to form a sound basis for a decision. The verification exercise by the independent review body ensures that the information in the EIA report is complete, correct and unbiased.

³⁵ The outcomes of the final decision- making can either be that the project or one of its alternatives is approved, a request for further study/modify for future consideration or that the project is cancelled or rejected altogether. If it is approved, an Environmental Impact Statement and Certificate is issued.

³⁶ See Section 41 EIA Act. The regulatory body is required to carry out its statutory role of ensuring that the project as approved is implemented and monitoring the follow-up programme for mitigations at the construction, operational and post-closure stages of the project

³⁷ After the commencement/ commissioning of the project, an environmental audit is required to be carried out from time to time. An audit is the process of reviewing activities and records against defined standards or procedures to establish what is being done and how far the process is complying with requirements

³⁸ Environmental Impact Assessment is defined as a process or set of activities designed to contribute pertinent environmental information to project or programme decision making...a process which attempts to identify, predict and assess the likely consequences of proposed development activities... a planning aid concerned with identifying, predicting and assessing impacts arising from proposed activities such as policies, programmes, plans and development projects which may affect the environment... a basic tool for the sound assessment of development proposals to determine the potential environmental, social and health effects of a proposed development. EIA means an assessment of the possible positive or negative impact that a proposed project may have on the environment, together consisting of the natural, social and economic aspects

³⁹ (2011) LPELR – CA/L/427/2011 (R). Dr. Tunji Braithwaite claimed that a 14-storey building being constructed by the Standard Chartered Bank in Victoria Island, Lagos, violated Nigeria’s environmental laws. Dr. Tunji Braithwaite had

Standard Chartered Bank in Lagos, Nigeria was allegedly erected without complying with Section 4(b) of the Nigeria EIA Act. Dr. Tunji Braithwaite had instituted an action against the Bank at the Ikeja High Court to stop the construction of a 14 story building in Victoria Island, Lagos, Nigeria for creating negative environmental impact on the environment.⁴⁰ In Nigeria, the Environmental Impact Assessment Act, 1992 has adopted the precautionary principle approach, especially based on section 2(4). The provision of section 2(4) of the

asked the court to stop the project, which is being erected opposite his residence, due to its environmental impact. He also asked the court to grant him N10 billion as damages and an order for the 14-storey building and the multi-level car park to be demolished. Dr. Adejumo, an associate professor in the Department of Urban and Regional Planning of the University of Lagos, in his testimony for the plaintiff said an Environmental Impact Assessment (EIA) was not carried out on the building. According to him, the car park in the building which will accommodate about 120 cars on a daily basis, will lead to noise and air pollution, as well as vehicular traffic in the area. Using a visual aid, the witness said the carbon monoxide from the cars and the three power generating plants sited in the building would lead to emission of gases hazardous to human health. He said: "A simulation of what the building would look like when completed showed that it would have negative environmental impact on its immediate surroundings, including Braithwaite's residence. According to the witness "The EIA did not follow the Federal Government of Nigeria's EIA procedure, especially Section 4(b) of the Nigeria EIA Decree 86 of May 1992," He said the construction of the project did not follow best EIA practices as residents and other stakeholders were not consulted by the bank. However, Counsel to the bank, Mr Adeniyi Adegboire, described the suit as a "nuisance case" which ought not to be entertained by the court. Adegboire argued that the plaintiff's claims must be particularised, adding that the project had no negative impact on the area, as being alleged. The case has not been concluded.

⁴⁰ However, the challenge has been that of enforceability of the provision of EIA in Nigeria. In *Douglas V. Shell Petroleum Development Company Limited and Others Unreported Suit No. FHC/CS/573/931* where the plaintiff who sought a declaration against the commissioning of a gas project by the defendants without complying with EIA Act was held not to have the locus standi to institute the action. This suggests to mean that governments, corporations and individuals can ignore the provisions of the Act and go ahead to carry out projects without first considering the impact such projects will have on the environment. Despite this problem of enforceability, there is still a good left in the Act. In *Sanni Abacha v. Gani Fawehinmi* (2002) FWLR (Pt.4) 533 the Supreme Court held that enforceability is still possible to a great extent. The court said that instead of relying on the provisions of the Constitution on enforcement of fundamental human rights (which inferably include right to sustainable environment) an aggrieved party can come under the provisions of Article 24 of the African Charter on Human and People's Rights 1986.

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Act requires the project proponent to bring evidence in the form of a report which indicate that the development project will not cause harm to the environment in order to achieve sustainable development and if the project is likely to harm the environment, the project proponent is required to proposed measures that shall be undertaken to prevent, reduce or control the adverse impact on the environment.⁴¹

The procedure for achieving public participation provided under sections 25⁴², 39⁴³ and 41⁴⁴ of the Act are as follows:

- a) The developer submits an EIA to the Agency,
- b) The Agency examines the report and makes same available to government agencies, members of the public, experts in any relevant discipline and interested groups who are given the opportunity to participate in the EIA review process at a given location for at least 21 working days on national and local dailies and announcements on electronic media,

⁴¹ Section 4 of the Act stipulates minimum content of environmental impact assessment as follows (a) A description of the proposed activity (b) A description of the potential affected environment, including specific information necessary for identifying and assess the environmental effect of the proposed activity (c) A description of practical activities as appropriate (d) An assessment of the likely or potential environmental impacts of the proposed activity and 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 the proposed activity and an 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 area outside Nigeria is likely to be affected by the proposed activities or its alternatives (f) a brief non-technical summary of information provided.

⁴² Section 25 provides that the public shall have access to the mandatory report of EIA and that the public can file appropriate comments relating to the mandatory study report.

⁴³ Section 39 provides for the notification of the public by the Federal Ministry of Environment (FME) on the availability of report.

⁴⁴ Section 41 provides for the duty of the FME to advice the public on the course of action as it is related to the project and the extent of the mitigation measures taken.

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- c) The review panel meetings are held in the public so that stakeholders and the public can utilize this opportunity to put forwards their views and concern for consideration,⁴⁵
 - d) The Review Panel or Mediation Report shall again be made available to the public for comments following which the Review Panel may either approve or reject the EIA.
 - e) Where the EIA is approved⁴⁶, a monitoring or follow-up programme is drawn up and still made available to the public before a certificate is issued.

The Act clearly recognizes public concern in EIA review process and spells out the procedure for notifying the public of this action and the modalities for filing comments. In addition, the Act details the stages of review where the public can be involved such as public display, mediation and review panel.

Since 1995, Nigerian laws have provided for stakeholder consultation by way of a continuous programme of public participation, public forums, the public display and review of documents and public attendance at panel reviews. The provisions of the EIA Act in Nigeria appear to be quite comprehensive as it involves the public almost in all the stages of EIA process. However, it suffers some setbacks, namely:

- i) The Act does not give room for public participation after the certificate has been issued and/or during the monitoring or follow-up stage;⁴⁷
- ii) The Act did not provide specifically that developers should consult the local communities;⁴⁸
- iii) Nigerians are not fully participating in EIA process due to inadequate legal framework. The law does not provide for an effective sanction for failure to consult the public in EIA process.

⁴⁵ Projects that may likely cause adverse effects are referred to Ministry of Environment Ministerial Council for subsequent referral to mediation.

⁴⁶ The approving agency is the Federal Ministry of Environment (FMENV) formally known as National Environmental Protection Agency.

⁴⁷ For instance in USA, a number of projects have been halted as a result of public participation even after the approval and when development has gone to an advanced stage.

⁴⁸ The Act does not require companies to consult communities on all the projects they are funding.

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There is also lack of communication between government and the people. The Government should carry out enlightenment programmes and use social scientists to reach out to the populace. There is the further problem of lack of transparency as it appears that most developers are not transparent in releasing information concerning the exact impact of their projects in the EIA process and because of lack of experienced professionals in the field, the developers get away with whatever information they submit. The public generally believe that they do not have the ability to test the information or comment on it, hence they stay away. EIA documents are drafted in technical terms thus making it difficult to solicit involvement from the affected public who are mostly uneducated. Thus, lack of technical capacity, knowledge and experience in environmental matters remain a major setback even where they are aware.

5. Public Participation in the EIA Process in other Jurisdictions

Public participation in EIA has been legislated in the laws of various countries, such as the United States, China, and India.

(i) United States

The USA was the first country to promulgate a law on environmental impact assessment. The EIA process in USA is regulated by the National Environmental Policy Act (NEPA) of 1969.⁴⁹ NEPA requires all federal agencies to follow the procedures outlined in NEPA and prepare a detailed statement before they carry out an environmental significant proposed action or plan.⁵⁰ Public participation requirement in USA can be found in the Council on Environmental Quality's Regulation (CEQR) meant to implement the provisions of NEPA. The CEQR provides for opportunities for public

⁴⁹ There are three goals of NEPA namely, Harmony between human and environment, eliminate environmental damage and promote welfare of humanity and to enrich understanding of natural resources.

⁵⁰ The Agency must prepare an Environmental Impact Statement (EIS) which makes Agencies not only to weigh the environmental impact of a proposed development but also its consequences.

participation/involvement at every step in the EIA process.⁵¹ CEQR on public participation make provision for:

- (a) Notice and disclosure of EIA documents, public hearings, and commenting pave the avenues for public involvement in the NEPA process and agencies are required to provide public notice of NEPA- related hearings, public meetings, and the availability of environmental documents. In all instances, notice must be mailed to anyone requesting it.⁵²
- (b) For proposed actions of national concern, notice must be published in the *Federal Register* and mailed to “national organizations reasonably expected to be interested in the matter”. Where the effects of a proposed action are discrete, or primarily of local concern, the regulations provide several methods by which agencies can provide notice. The regulations leave it to the agencies to craft their own procedures regarding when public hearings or public meetings might be “appropriate” in the NEPA process.⁵³ Short of actually requiring public hearings, the regulations instruct that hearings might be “appropriate” where there is substantial controversy or interest surrounding the proposed action, or where another agency requests a hearing.⁵⁴
- (c) Where a draft EIS is to be the topic of a public hearing, agencies must make the draft EIA available to the public fifteen days prior to the hearing. Agencies must make NEPA-related “environmental documents”, including Environmental Assessments (EAs), Finding of No Significant Impacts (FONSIs), Notice of Intents (NOIs), and Environmental Impact Statements (EISs), available to the public pursuant to the Freedom of Information Act. The public is afforded no less than forty-five days to comment on the draft EISs. By contrast, the regulations do not expressly mandate a public comment period for EAs of FONSIs, although agencies commonly circulate EAs for the public.⁵⁵

⁵¹ Except the scoping stage.

⁵² José, L. Moorman and G. Zhang, “Promoting and Strengthening Public Participation in China’s Environmental Impact Assessment Process: Comparing China Law US NEPA,” *Vermont Journal on Environmental Law*. Vol. 8.

⁵³ This agency discretion applies to scoping meetings as well.

⁵⁴ Op cit. José, L. Moorman and Zhang, G. Promoting and Strengthening Public Participation in China’s Environmental Impact Assessment Process: Comparing China Law US NEPA.

⁵⁵ Ibid.

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(d) Furthermore, US courts have interpreted NEPA and the CEQ regulations to require public comment for both EAs and FONSI. CEQ regulations do, however, mandate a thirty-day “public review” period where FONSI is controversial or unprecedented.⁵⁶

It is obvious that the CEQ regulations not only clarify the public’s role in the NEPA process, but also broaden the scope of participation as provided in NEPA. There are opportunities for public participation/involvement at every step in the process. Citizen’s participation could be by way of identifying violations; settlement processes; and through the citizen’s suit procedure. All NEPA-related environmental documents are made available to the public by the agencies as they become available. Public hearing hearings, although not mandated by the regulations, are commonly agency practice, especially where controversial or otherwise significant proposals are being assessed.⁵⁷ Furthermore, opportunities for public comment on environmental documents exist throughout the NEPA process, in both the screening and scoping stages. The scoping phase is one area of the NEPA process where the agency obligation to the public is somewhat lacking.

(ii) China

The EIA law of 2003 of China makes provision for participation in EIA process⁵⁸. Despite this law, EIA in China is poor as a result of the gap between the law and practice concerning public participation in EIA process. This prompted the China’s State Environmental Protection Administration to introduce measures in 2006⁵⁹ and 2008 that introduced the requirement of open government information.⁶⁰

⁵⁶ Ibid.

⁵⁷ ibid

⁵⁸ The first legislation in China is the Environmental Protection Law of 1979.

⁵⁹ Provisional Measure for Public Participation in Environmental Impact Assessment, 2006; Measures for the Disclosure of Environmental Information, 2008.

⁶⁰ The measures make specific requirements on corporate disclosure and also stated that every March 31st environmental authorities should publish an environmental information disclosure report to improve public access to environmental information.

In 2006, the China's State Environmental Protection Administration (SEPA) issued Provisional Measures for Public Participation in EIA (2006 Measures). The SEPA Guidelines require public disclosure of EIA information at the outset of an EIA investigation and prior to the designated time for public participation. The SEPA guidelines include the following:

- (a) Developers, agencies, or the organizations that have been commissioned to conduct EIA investigations are encouraged to solicit within fifteen days to submitting EIA documents (herein after refer to as "responsible entities") to the environmental agency for approval.
- (b) This initial disclosure must identify the initiating developer or agency, as well as the organization that has been hired to conduct the EIA investigation, and the "major items and methods of soliciting public suggestions and opinions".
- (c) Once the responsible entity has finalized a draft, EIA informs and solicits suggestions and opinions through questionnaires, expert consultations, workshops, debates, and hearings about the EIA document from the public prior to submitting it for approval.
- (d) Discretion rests with the responsible entity to choose the form and time of public participation, which they must then include in the notice of EIA availability, and must be made available at least ten business days prior to the time set for public participation either in the newspapers, website or in public places
- (e) When the time for public comment has passed, the responsibility entity is the required to clearly explain why certain opinions were accepted and others were rejected and include these explanations with the draft EIA document when it is filed for approval.
- (f) Finally, if any member of the public feels that the responsible entity has not clearly explained its decision to reject an opinion, they may send their comments directly to the environmental agency in charge of approving the EIA.

The major criticism of the EIA laws and regulations in China is the limitation as to the nature of projects where public participation are permitted and even for the projects where public participation are

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allowed, it does not provide for same at the screening stage. There is also no strong requirement for the approving agency to take complaints seriously especially where the responsible entity fails to solicit public opinion and the length of time given is random.

(iii) India

Environmental Impact Assessment (EIA) in India started as an administrative requirement in 1977-78 for multipurpose river valley projects and hydropower projects.⁶¹ EIA was legally protected under the Environmental Protection Act 1986, in the year 1994. However, it was only in 1997 that the EIA Notification 1994 was amended and for the first time, public involvement in the environmental clearance through the public hearing mechanism was made statutory. After two decades of EIA practice in India, the environmental clearance process moved out of the inner coterie of the government departments, the government appointed experts and project proponents to include the public in general in the environmental clearance process. Post 2000, along with various amendments of the EIA Notification 1994, a parallel process was initiated towards revising the existing environmental clearance process, which finally culminated in a new EIA Notification 2006.

In India, EIA was made mandatory in 1994 under the Environmental Protection Act of 1986 with the following objectives: predict environmental impact of projects; find ways and means to reduce adverse impacts; shape the projects to suit local environment ; present the predictions and options to the decision-makers. The stages of an EIA process in India include:

- (a) **Screening:** First stage of EIA, which determines whether the proposed project, requires an EIA and if it does, then the level of assessment required.⁶²
- (b) **Scoping:** This stage identifies the key issues and impacts that should be further investigated. This stage also defines the boundary and time limit of the study.⁶³

⁶¹ T. Arvin, "Public Participation in Environmental Impact Assessment - Legal Service India," available at www.legalserviceindia.com/.../1435-Public-Participation-in-environment. Accessed on 11 December, 2015.

⁶² Ibid.

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- (c) **Impact analysis:** This stage of EIA identifies and predicts the likely environmental and social impact of the proposed project and evaluates the significance.⁶⁴
 - (d) **Mitigation:** This step in EIA recommends the actions to reduce and avoid the potential adverse environmental consequences of development activities.⁶⁵
 - (e) **Reporting:** This stage presents the result of EIA in a form of a report to the decision-making body and other interested parties.⁶⁶
 - (f) **Review of EIA:** It examines the adequacy and effectiveness of the EIA report and provides the information necessary for decision-making.⁶⁷
 - (g) **Decision-making:** It decides whether the project is rejected, approved or needs further change.⁶⁸
 - (h) **Post monitoring:** This stage comes into play once the project is commissioned. It checks to ensure that the impacts of the project do not exceed the legal standards and implementation of the mitigation measures are in the manner as described in the EIA report.⁶⁹

The Ministry of Environment and Forestry (MoEF) is responsible for the valuation of EIA. The project proponents submit the EIA report, environmental management plan and details of the public hearing. Public hearing is mandated after the screening and scoping of the proposed project.⁷⁰

6. Public Participation in EIA in Nigeria and United States, China and India Compared

There are a number of similarities and differences in the EIA laws of United States, China, India and Nigeria.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ In case of large projects, consultation with committee of experts is used.

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(a) Similarities

The similarities in public participation in EIA process in United States, China, India and Nigeria are:

- (i) There are set time frames to enable the public's opinion, views, comments, or complaints under the laws of United States, China, India and Nigeria.
- (ii) The laws of United States, China, India and Nigeria provide for public hearing or meetings together the opinions of public on projects being carried out in their environment.
- (iii) All comments, complaints, opinions etc are sent to the Agency, Ministry or Approving agencies respectively.
- (iv) Notices or disclosures are circulated through newspapers/dailies and electronic media.
- (v) EIS or EIR is required to be made available to the public before approval of the project can be granted.

(b) Differences

- (i) Under the CEQ Regulations of the USA, avenues are created for public participation not only during preparation of an EIS, but also in instances where no EIS is required, even where the proposed actions are environmentally insignificant. Whereas in China and Nigeria, public participation is only required for projects where an EIS or EIR is produced or will be produced, i.e. only for projects with likely high environmental significance.
- (ii) The EIA laws of USA and Nigeria provides for notice and disclosure of EIA documents, public hearings and commentaries in the NEPA/EIA process and Agencies and the Ministry in the case of Nigeria are required to provide public notice of hearings, public meetings, and make environmental documents available to the public. Whereas under the SEPA Regulations of China, it is the developer that gives Notice or disclosure and sets date and time of hearing and commenting by the public.
- (iii) The EIA law of the USA provides that Notices must be mailed to any person requesting same and for publication in the *Federal Registrar* if it's a project of national concern, while

that of China and Nigeria do not give room for Notices to be mailed to any person. It only provides for Notices via the newspapers/dailies and electronic media.

- (iv) Under the EIA law of USA, where a draft EIS is to be the topic of a public hearing, agencies must make the draft EIS available to the public 15 days prior to the hearing. Agencies must make NEPA-related “environmental documents”, including Environmental Assessments (EAs), Finding of No Significant Impacts (FONSIs), Notice of Intent (NOIs), and Environmental Impact Statements (EISs), available to the public pursuant to the Freedom of Information Act. The public is afforded no less than 45 days to comment on the draft EISs. In China however, upon preparation of the EIR, the developer makes same available to the public for commenting and/or hearing at least 15 days prior to submission to the Agency for approval while the public is given 10 days to comment. In Nigeria, it is the duty of the Ministry upon receipt of the EIS to make same available to the public at least 21 days prior to the EIA review process or hearing.

(c) Reasons for the Similarities and Differences

The reasons for the similarities and the differences are that most economies especially the developing ones are part of the United Nations and hence try to tailor their laws to meet the international standards. However, tailoring these national laws to meet with the individual socio-cultural and economic needs of each nation became a problem as individual nations have their various challenges. The EIA law of USA is developed and there is sufficient public participation both in law and practice unlike Nigeria where there is reasonable laws but no active participation due to some inherent challenges. In China, it is still very recently that the public started getting involved in EIA, as they believed that their economy is still developing. The EIA law of USA provides for public participation at all stages of the EIA process except at the scoping stage where it is somehow lacking. It also states the goal of public participation in the EIA process which is to provide public scrutiny whereas under the EIA law of Nigeria, the opportunity for public participation actually commences at the scoping stage but does not extend beyond the issuance of Certificate and the EIA law does not state the goal of public participation. In the case of China, the public is involved at the

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investigating stage and prior to submission of EIR but not at the screening stage which is crucial.

7. Conclusion

One of the key components of EIA process is public participation. It provides democratization of EIA process, transparency and accountability of the project. Public participation in EIA process in Nigeria is low. Many factors account for this including lack of relevant skills and experience in public participation by the EIA team, negative perception of the public process by regulators, and poor funding of EIA process by project proponents. This paper demonstrates that substantive, early involvements of the public in environmental impact assessment process can benefit the project proponent, the public and the final plan. An effective public participation programme does not happen by accident. It must be carefully planned. A proactive effort will lead to a more effective process and outcome than a reactive, minimalist approach to public involvement. Therefore, the regulators of EIA in Nigeria (Federal Ministry of Environment), the EIA team/consultants, stakeholders and public must ensure that mutual trust exists between them during EIA process.

It is obvious that the EIA laws in Nigeria should be amended to give room for public participation after the issuance of certificate and commencement of project as is the case in the United States of America. The Government should encourage environmental awareness programmes to be organized to educate the Nigerian masses on the need to be environmentally alert of the negative environmental impacts on their environment. There should be an enforceable and exemplary penalty for failure to submit and carryout EIA on any project. Finally, the twenty-one day timeframe given to notify the public of the Review Panel sitting appears to be too short for any meaningful contribution to an environmental impact in a technical area to be carried out. It is suggested that the time be enlarged to 30 days so that more meaningful input and contribution can be made.