



# **Environmental Impact Assessment in Infrastructure Development: Legal Framework, and Contribution to Sustainable Development in Nigeria**



## INTRODUCTION

An Environmental Impact Assessment (EIA) is a critical process used to evaluate the potential environmental impact of proposed projects before they are implemented. Their impacts can include all relevant aspects of the natural, social, economic and human environment. Therefore, EIA is an aid to decision-making. It carefully analyzes how a project might impact the surrounding environment, EIAs help ensure that development is carried out responsibly. The goal is to minimize negative environmental impacts and, where possible, enhance the benefits of the project.

When it comes to infrastructure development, the role of EIAs becomes even more significant. Infrastructure projects, whether in energy, transportation, or industrial sectors, have far-reaching consequences on the environment and society. EIAs ensure that these projects are planned with sustainability in mind, balancing the need

for progress with the protection of our ecosystems. They are not just regulatory hurdles but essential tools for ensuring that development is both economically viable and environmentally sound.

Nigeria's developmental agenda is heavily focused on accelerating economic growth through ambitious infrastructure projects. However, without careful consideration of environmental impacts, such projects risk causing long-term damage. EIAs help align Nigeria's infrastructure goals with its broader commitments to sustainable development, ensuring that growth is pursued without compromising future generations' ability to meet their own needs.

In this article, we will explore the legal framework for EIAs in Nigeria, the processes involved, its impact on private investors and their critical role in fostering sustainable infrastructure development.

# LEGAL FRAMEWORK FOR EIA IN NIGERIA

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## **The Constitution of the Federal Republic of Nigeria, 1999 (as amended)**

The 1999 Constitution marks a significant step forward in Nigeria's commitment to environmental protection. It is the first constitution in the country to clearly acknowledge the importance of safeguarding the environment. Specifically, Section 20 mandates the government to protect and enhance the air, land, water, forests, and wildlife. Section 13 requires all government agencies to follow the objectives laid out in Chapter II, which helps establish a foundation for environmental governance in Nigeria. Also, Section 17(2)(d) emphasizes that the use of natural resources should benefit the community, indicating that the government has a role in intervening when environmental damage outweighs societal benefits. Section 24(e) highlights the importance of citizen involvement in environmental protection. It emphasizes that safeguarding the environment is not just the government's responsibility, individuals also have a role to play. While this duty is framed as citizen's obligation, it is broadly interpreted to apply to private companies and businesses, given their significant role in environmental impact.

For companies, this means that environmental sustainability is not merely a regulatory requirement, but also a constitutional duty. Companies are

expected to align their operations with the broader goals of environmental preservation as outlined in the Constitution. This includes ensuring that business practices do not harm the environment, and that steps are taken to mitigate any potential environmental damage.

## **Environmental Impact Assessment Act**

The Environmental Impact Assessment (EIA) Act of 1992 is a cornerstone of Nigeria's environmental protection framework. It establishes a structured process for evaluating the potential environmental effects of proposed projects and activities, particularly in infrastructure development. The Act serves as a safeguard against ecological degradation, ensuring that environmental considerations are integrated into the planning and execution of projects that could impact the environment.

While the EIA Act of 2004 was introduced afterwards to address contemporary environmental challenges, it does not replace the foundational provisions of the 1992 Act. Instead, it seeks to supplement and enhance the existing framework.

## Key provisions in the EIA Act include:

### i. Mandatory Environmental Assessment for Projects:

The Act requires all project developers, both public and private, to conduct an environmental assessment before initiating any project. This means that proposed developmental projects must undergo thorough evaluations early in the planning stages, to allow for environmental concerns to be addressed before irreversible decisions are made. For private companies, incorporating environmental assessments into project timelines and budgets is essential to avoid legal penalties and delays.<sup>1</sup>

### ii. Comprehensive Evaluation of Environmental Impacts:

The Act requires a thorough evaluation of all potential environmental impacts, ensuring that developers consider both immediate and long-term effects on air, water, soil, and ecosystems.<sup>2</sup> This comprehensive approach is crucial in order to prevent future harm, particularly in sensitive ecological areas. Companies must conduct detailed analyses of potential environmental risks to avoid costly remediation and legal consequences

### iii. Environmental Impact Statement (EIS) Requirements:

The Act mandates the submission of a detailed Environmental Impact Statement (EIS), which includes a description of proposed activities, an assessment of the affected environment, and an evaluation of potential impacts. The EIS must also outline mitigation

measures for any negative effects. Submitting an accurate and comprehensive EIS is a legal obligation and can determine project approval or rejection.<sup>3</sup>

### iv. Public Participation and Stakeholder Engagement:

The Act emphasizes transparency by involving government agencies, the public, and stakeholders in reviewing the EIS. Public hearings and consultations allow affected parties to provide feedback, to ensure that the EIA process incorporates diverse perspectives.<sup>4</sup>

### v. Specific Projects Requiring EIA:

The Act lists projects that must undergo an EIA, including large-scale developments like mining, industrial plants, and significant infrastructure projects, especially those with potential cross-border impacts or involving hazardous materials.<sup>5</sup> Companies must recognize when an EIA is mandatory and initiate the process early to avoid regulatory issues.

### vi. Enforcement and Penalties for Non-Compliance:

To ensure compliance, the Act establishes strict penalties for violations of the EIA requirements, including fines and imprisonment. Corporations found guilty of non-compliance may face fines ranging from ₦50,000 to ₦100,000,000, depending on the severity of the infraction. This provision acts as a strong deterrent, which encourages developers to prioritize environmental assessments in their project planning.<sup>6</sup>

<sup>1</sup> Section 2 Environmental Impact Assessment Act 1992

<sup>2</sup> Section 3 Environmental Impact Assessment Act 1992

<sup>3</sup> Section 4 Environmental Impact Assessment Act 1992

<sup>4</sup> Section 7 Environmental Impact Assessment Act 1992

<sup>5</sup> Section 13 Environmental Impact Assessment Act 1992

<sup>6</sup> Section 60 Environmental Impact Assessment Act 1992

## **National Environmental Standards and Regulations Enforcement Agency (NESREA) Act 2007**

The NESREA Act of 2007 established the National Environmental Standards and Regulations Enforcement Agency (NESREA) to protect Nigeria's environment.

The NESREA Act provides the Agency with a broad range of functions aimed at environmental protection. Key responsibilities of the Agency includes; environmental protection and development, policy advisory role, collaboration with stakeholders, regulatory and enforcement powers.

For private investors and companies, compliance with the NESREA Act is important as investors are increasingly prioritizing sustainability and environmental responsibility in their decision-making processes. Companies that align with NESREA's objectives and demonstrate a commitment to environmental stewardship are likely to attract positive attention from stakeholders, including consumers and regulatory bodies.

Non-compliance with the NESREA Act can lead to severe penalties, including fines and imprisonment. Section 27 of the Act prohibits the unlawful discharge of hazardous substances into the environment, imposing a fine not exceeding N1,000,000 and an imprisonment term of up to five years. For companies, there is an additional fine of N50,000 for every day the offence persists. Such ramifications highlight the importance of proactive engagement with NESREA's guidelines to mitigate legal

risks and foster a sustainable business environment.

## **The Harmful Waste (Special Criminal Provision) Act, Cap H1, LFN 2004**

The Harmful Waste (Special Criminal Provisions) Act, Cap H1, LFN 2004, significantly influences private investors and companies operating in Nigeria by establishing stringent regulations for the management and disposal of harmful waste. Understanding this legislation is key for several reasons:

**i. Compliance Requirements:** The Act prohibits the carrying, dumping, or disposal of harmful waste without lawful authority. Non-compliance can result in severe penalties, including substantial fines and potential criminal charges against responsible individuals within the company.

**ii. Operational Costs:** Adhering to the Act may necessitate investments in specialized waste management systems and technologies, which would lead to increased operational costs. Companies must conduct environmental impact assessments (EIAs) and develop waste management plans, which can incur additional expenses.

**iii. Reputation and Marketability:** Investors prioritize environmental sustainability in their decision-making processes. Companies demonstrating compliance with the Harmful Waste Act and responsible waste management practices can enhance their reputation and marketability, which will ultimately attract environmentally conscious consumers and investors.

**iv. Risk Mitigation:** By complying with the Act, companies can reduce risks associated with environmental liabilities. Non-compliance may result in costly legal battles, damage to reputation, and loss of investor confidence. Ensuring compliance fosters a stable operational environment and minimizes unforeseen costs or sanctions.

**v. Access to Financing:** Financial institutions increasingly view environmental compliance as a criterion for project funding. Companies aligning with the provisions of the Harmful Waste Act may find it easier to access financing, grants, or investment opportunities, especially from entities focused on sustainable development.

### **The African Charter on Human and People's Rights (Ratification and Enforcement) Act 2004**

The African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act of 2004 is a key piece of legislation which Nigeria is a signatory to. This charter basically signifies the country's commitment to upholding human rights as articulated in the African Charter, as it covers a wide range of rights, including civil, political, economic, social, and cultural rights, all of which are essential for promoting human dignity and development. A key provision of the Charter is Article 24 which states that "**all peoples shall have the right to a general satisfactory environment favorable to their development.**" This is particularly relevant in the context of Nigeria's infrastructure development, as it implies that the government has a duty to ensure that development projects, such as roads and dams, do not come at the expense of the environment or the communities that rely on it.

## **EIA PROCESS IN NIGERIA**

In Nigeria, before embarking on an infrastructure developmental project, a project proposal must first be submitted to the Federal Ministry of Environment. Upon submission, the following stages follow:

**1. Screening:** The first step in the EIA process is screening, which determines whether a project requires a full EIA or whether it can be excluded based on its scale, nature, or location. Projects are classified into three categories: those requiring a full EIA, those requiring a partial EIA, and those exempted from the EIA process. Screening helps to avoid unnecessary assessments for projects with minimal environmental impact while

ensuring that significant projects are rigorously assessed.

**2. Scoping:** Once a project has been screened and it is determined that an EIA is required, the next step is scoping. Scoping identifies the key environmental issues that need to be addressed in the EIA. It involves consultations with stakeholders, including government agencies, non-governmental organizations (NGOs), affected communities, and the public. The purpose of scoping is to focus the EIA on the most critical environmental concerns, thereby ensuring that the assessment is both relevant and efficient.

**3. Impact Assessment:** The heart of the EIA process lies in impact assessment, which involves analyzing the potential environmental, social, and economic impacts of the project. This stage often at times adopts quantitative and qualitative methodologies used to evaluate impacts, considering both direct and indirect consequences. The results of the impact assessment are compiled to form an EIA report which is then submitted to the Federal Ministry of Environment for review and approval.

**4. Review and Decision Making:** Upon receiving the EIA report, the Federal Ministry of Environment proceeds to review it to determine whether the proposed project meets environmental

standards. The Ministry may approve the project, request additional information or modifications, or reject the project if the environmental impacts are deemed unacceptable. The decision-making process must be transparent and based on a thorough evaluation of all available information.

**5. Post-Approval Monitoring and Compliance:** After the project is approved, the implementation of the project is closely monitored by the Federal Ministry of Environment to ensure compliance with environmental regulations as continuous monitoring is essential to order to ensure compliance with all stipulated mitigation measures and project specifications.

## ROLE OF PRIVATE INVESTORS IN THE EIA PROCESS

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Private investors play a crucial role in the EIA process, particularly in infrastructure development. Their responsibilities and obligations include the following:

**1. Conducting Environmental Assessments:**

Investors are obligated to ensure that comprehensive environmental assessments are conducted for their projects. This involves engaging qualified environmental consultants to evaluate potential impacts on air, water, soil, and local ecosystems.

**2. Submitting an Environmental Impact Statement (EIS):** Investors must prepare and submit an EIS that outlines the project's

details, anticipated environmental impacts, and proposed mitigation measures. This document is essential for regulatory approval and public transparency.

**3. Ensuring Public Participation:** Investors are responsible for facilitating public participation in the EIA process. This includes holding public consultations and hearings to gather input from affected communities and stakeholders. Engaging with the public not only fulfills legal obligations but also fosters trust and can lead to better project outcomes.

#### 4. Implementing Mitigation Measures:

Once the EIA is completed, investors must commit to implementing the recommended mitigation measures to minimize adverse environmental impacts. This obligation often extends beyond the construction phase, requiring ongoing monitoring and management of environmental performance throughout the project's lifecycle.

#### 5. Compliance with Regulatory Requirements:

Investors are required to comply with all relevant environmental regulations and standards set forth by governmental agencies, including the National Environmental Standards and Regulations Enforcement Agency (NESREA) and local authorities. Non-compliance can result in legal penalties and project delays.

## EIA AND SUSTAINABLE DEVELOPMENT IN NIGERIA

The concept of sustainable development is integral to the EIA process and plays a key role in Nigeria's journey towards responsible environmental management. As we have previously highlighted, EIA serves as a preventive measure against environmental degradation by identifying potential impacts before they occur. This proactive approach allows for the implementation of mitigation measures that can significantly reduce the environmental footprint of construction projects.

EIA also contributes to sustainable development by promoting social and economic benefits. The process encourages public participation, ensuring that the views and concerns of local communities are taken into account. This can lead to more socially inclusive development projects that provide tangible benefits to the affected population, such as employment opportunities, improved infrastructure, and enhanced quality of life.

Nigeria's commitment to sustainable development is reflected in its adherence

to international environmental standards. The EIA process aligns with global best practices, as outlined in various international agreements and conventions, such as the Rio Declaration on Environment and Development and the United Nations Sustainable Development Goals (SDGs). By conducting EIAs in accordance with these standards, Nigeria demonstrates its commitment to environmental stewardship and sustainable development on the global stage.

Lastly, the EIA process can also influence investment decisions by encouraging responsible and sustainable business practices. Investors and developers who prioritize environmental sustainability are more likely to gain the trust of regulators, communities, and stakeholders. This can lead to seamless project implementation, reduced regulatory hurdles, and enhanced corporate reputation. In the long term, responsible investment practices can contribute to a more sustainable construction industry and a healthier environment.



# CHALLENGES FOR INTEGRATING EIA INTO NIGERIA'S SUSTAINABLE DEVELOPMENT STRATEGIES.

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1. Lengthy and Complex EIA Process: The complexity and duration of the EIA process can cause project delays and resistance from developers who prioritize economic growth. Streamlining procedures, ensuring consistent guideline application, and improving communication between developers and regulatory bodies will help reduce delays and support timely project approvals while preserving environmental integrity.

2. Insufficient Public Awareness and Participation: Limited public involvement can lead to decisions that overlook the environmental and social impacts on local communities. Increasing awareness and education can enhance public engagement and ensure diverse stakeholder concerns are considered in

the EIA process.

3. Shortage of Technical Expertise and Resources: A lack of trained professionals and funding in many regions, particularly in Nigeria, results in incomplete or subpar EIAs. Investing in training programs and increasing financial support for EIA initiatives will strengthen capacity and lead to more thorough assessments.

4. Lack of Reliable Environmental Data: Inadequate environmental data hampers the EIA process, making it challenging to assess impacts and develop effective mitigation strategies. Establishing robust monitoring systems and data collection mechanisms will improve the availability and reliability of data, enhancing EIA effectiveness.

## CONCLUSION

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Conclusively, EIA is a vital tool for promoting sustainable development in Nigeria's construction industry. By integrating environmental considerations into project planning and decision-making, the EIA process helps to mitigate the adverse impacts of construction

activities on the environment and society. While challenges remain, the continued evolution of the EIA process, coupled with increased public awareness and stronger enforcement, can ensure that Nigeria's development trajectory is sustainable and environmentally responsible.

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