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Original Research Article

Understanding the Legal Context of Environmental Impact Assessment

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This study examined the legal context of environmental impact assessment. It revealed there is now a legal base, not just for project-based environmental impact assessment, but more wide-ranging assessment of plans and programmes. It revealed again that one role of law in environmental impact assessment process is to establish a framework for procedures, culminating in the legal authorization of a project, policy or piece of legislation. It further revealed that the element of legal control is broadly indirect: environmental impact assessment provides a conduit by which information may enter decision making procedures, but in theory at least, it will not determine the outcomes of these procedures. The study concluded that the judicial branch of the legal system has now more fully accommodated the demands of environmental impact assessment procedures, particularly in terms of upholding rights of participation.

Keywords: Legal, Environmental impact assessment, Procedure.

INTRODUCTION

Whether one inclines to the view that Environmental Impact Assessment (EIA) is a potent, perhaps even radical, regulatory mechanism, or a deceit of no substance (and perhaps even of some mischief) there can be no doubt the extent to which Environmental Impact Assessment is an increasingly pervasive not just of modern environmental law but of regulatory law in general.¹

Environmental Impact Assessment Laws emerged, as keystones of modern environmental regulatory law.² There is now a legal base, not just for project-based Environmental Impact Assessment, but more wide-ranging assessment of plans and programmes. Of course, law does far more than this in Environmental Impact Assessment. There is evidence to suggest that law is highly material to the way in which

assessment of the significance of effects of projects and policies are made, particularly in terms of how law information is collected and presented.³ In terms of content of environmental impact statements, law tends to be portrayed simplistically, typically in the form of lists of relevant legislation which demonstrate the awareness of legal requirements and or a guarantee of sorts of legislative compliance.⁴

The basic legal form of Environmental Impact Assessment offers a prime example of a procedural technique of environmental law. Environmental Impact Assessment is procedural in that it sets out the order how the assessment will unfold and is legally binding on the Environmental Impact

¹ Holder J., and McGillivray D., (2007) *Taking Stock of Environmental Assessment: Law, Policy and Practice*, Cavendish, (2007) 37.

² Ibid

³ Holder J., *Environmental Assessment: The Regulation of Decision Making*, Oxford University Press. (2004) 87

⁴ In the case of the Leaves Flood Defence Strategy, an 1847 Act of Parliament, which aimed to prevent the flooding of the parish of Southeast, was considered to be relevant in terms of the Environment Agency Statutory duties.

Assessment officers and the project proponent.⁵ This procedural requirement is the central control mechanism of Environmental Impact Assessment. Therefore, the procedural technique tends to be more of a road map or framework that the Environmental Impact Assessment follows than the set or explicit directions. The review of procedural technique is project specific, and the need to consult on a procedural technique is determined by the Environmental Impact Assessment officers. In general, the procedural technique will address the following issues:⁶

1. The facilities and activities defined by the projects regulations.
2. The procedures and methods to be used in conducting the assessment
3. The potential environmental effects to be considered in the assessment.
4. Information required from the proponent primarily in its application for an Environmental Impact Assessment certificate.
5. Public consultation requirements
6. Timeliness for activities in the assessment not otherwise covered by legislation.

The procedural technique may vary later in the process if the proponent modifies the project or if an adjustment is necessary in order for the Environmental Impact Assessment to be completed in an effective and timely way. Variations are intended to accommodate unforeseen changes and are not intended to be routine.⁷ It is important to say that the procedural technique of Environmental Impact Assessment raises the question – does the Environmental Impact Assessment process conform to established provisions and principles? Plaintiffs can sue an Environmental Impact Assessment Agency for not following the required procedure. However, a minor violation of procedures will not be sufficient grounds for courts to rule against an agency.⁸

The potential contribution of ecological science to Environmental Impact Assessment is apparent. The process may be viewed as a product of this discipline, but other disciplines also play a major part, particularly geography, sociology, and engineering. The court appears to be seeking to align the rules of Environmental Impact Assessment more closely to ecological conditions⁹ and impacts upon these 'on the ground'. The judgment is recognition that loss or damage to a part of the environment does not take place only in respect of a defined area, but that harmful effects may be combined with others and thereby exacerbated.¹⁰

As for law, it is clear that one role of law in the Environmental Impact Assessment process is to establish a framework for procedures, culminating in the legal authorization of a project,

policy or piece of legislation.¹¹ Although law manages the interrelationship between those involved in writing the statement by specifying minimum standards for the potential impacts to be studied, and (more vaguely) the form in which these are to be presented, law is rarely considered in any detail or depth, in terms of method of regulation, or implementation strategies, and appears quite separate from other disciplines engaged in assessing impacts.

The Positive Idea about Environmental Impact Assessment: Changing the Conditions and Nature of Decision Making

The remarkable evolution of Environmental Impact Assessment as a foundation for decision making reflects many of the developments in environmental law – the development of integrated and preventive methods of control, the fostering of responsibility (or stewardship) for the environment, and the growing acceptance of the validity of preventive or even precautionary measures. Environmental Impact Assessment also acts increasingly as a vehicle for enhancing public participation in environmental decision making.¹² The hopeful expectation is that it encourages some qualitative comment on the suitability of particular project or policies. This will help in supporting, balancing or even countering scientific information about possible effects on the environment which was traditionally made up of the bulk of information fed into decision making procedures. This movement in favour of public participation has been interpreted¹³ as a triumph of participatory democracy over the technocratic roots of Environmental Impact Assessment.

Environmental Impact Assessment is a means of drawing together both expert and public opinion of a project's or policy's environmental effects and ensuring that this information is taken into account by decision makers before a decision is made or taken. The conceptual premise of Environmental Impact Assessment is that introducing information about the effects of development into a decision making process encourages an informed choice of development between environmental and other objectives, possibly resulting in less environmentally harmful decisions. Changing the rules governing the generation and use of knowledge in this way is thought also to change the intellectual and political culture of decision making so that decision makers become generally more aware of the environmental consequences of their decisions.¹⁴ As Liam Cashman puts it, Environmental Impact Assessment is engaged in directing change¹⁵, or reorienting decision making towards more environmentally favourable outcomes.

This conceptual basis of Environmental Impact Assessment relies upon a set of presumption that the causes and effects of harm can be predicted and that the significance

⁵ Graci S. and McKenna J., British Columbia's Environmental Assessment Act, in Hanna K. S., *Environmental Impact Assessment: Practice and Participation*, Oxford University Press, (2005) 248-255.

⁶ Ibid

⁷ Ibid

⁸ Shrivastava A. K., *Environmental Impact Assessment*, New Delhi, A PH. Publishing Corporation, (2011) 60.

⁹ Emejuru C.T. & E.J. Osimiri, Environmental Impact Assessment and Ecological Sustainability. The journal of jurisprudence and contemporary issues vol.7, No.1. (2012), 141.

¹⁰ Houck O.A., "Of Bats, Birds and B-A-T: The Convergent Evolution of Environmental Law" 63 *Miss Law Journal* (1994) 403. This refers to the convergence of environmental law around one approach, a tendency seen also in the evolution of species, according to the principle that 'over time, the job will select the tool' (407).

¹¹ See Sheate W., *Environmental Impact Assessment: Law and Policy* (London: Cameron May, 1996) and S. Tromans and K. Fuller, *Environmental Impact Assessment: Law and Practice* (London: Butterworths, 2003). The latter in particular provides a comprehensive guide to law relating to environmental assessment and current good practice.

¹² Emejuru C.T. & Emejuru A.O. The Interface between Ecology and Law, *Port Harcourt Law Journal*, vol.4, No.1, 2012, 57.

¹³ Holder J. and Lee M., *Environmental Protection, Law and Policy*, Cambridge University Press, (2007) 550.

¹⁴ Holder J. and Lee M., *Environmental Protection, Law and Policy*, Cambridge University Press, (2007) 550

¹⁵ Liam C., 'Environmental Impact Assessment: A major instrument in Environmental Integration in Marco Onida (ed) *Europe and the Environment: Legal Essays in Honour of Ludwig Kramer*, Europe, (2004). 90.

of these effects can be measured. This idea of accurate prediction can be traced to the development in the eighteenth century of methods of collection, measurement and analysis in the fields of time measurement, astrological observation, anatomy, navigation, chemical substance analysis and mathematics, all of which took place in scientific and intellectual climate of the enlightenment.¹⁶ The impacts for the development of each of these areas was the idea of nature as observable, which was itself an idea based on dualism – a belief in the fundamental separation between man and nature, mind and matter, subject and object.

The claim of accurate prediction which underlies Environmental Impact Assessment, and other methods of evaluation, is frequently challenged because it is now recognized that the effects of change on complex ecological systems are not well understood. For example pollutants might accumulate, inter-relate and react in ways which are not easily foreseeable or capable of being accurately 'modelled'. That said, the (albeit imperfect) predictive element of Environmental Impact Assessment also means that it is capable of operating as a precautionary measure because it encourages the consideration of the likely environmental effects of a project or policy in advance of these going ahead.

The *ratio legis* for Environmental Impact Assessment is therefore firmly rooted in risk assessment and risk avoidance.¹⁷ This emphasis risk assessment and risk avoidance underlines that although governed by law, Environmental Impact Assessment is an archetypal interdisciplinary technique: it relies upon diverse scientific methods – ecological science, botany, engineering – but its main purpose is to contribute to what are essentially political planning procedures.¹⁸

Environmental Assessment as a Regulatory Technique/Procedure

Environmental Impact Assessment possesses several key regulatory characteristics, the primary one of which is that it is procedural in nature, setting requirements for the style and structure of decision making, rather than containing specific standards. The element of legal control is broadly indirect: Environmental Impact Assessment provides a conduit by which information may enter decision making procedures, but, in theory at least, it will not determine the outcomes of these procedures. This means that, should an Environmental Impact Assessment establish that significant environmental harm will result from a particular development or project, this will be taken into account, but will not necessarily lead to a refusal of development consent or for a project, or cause a policy to be abandoned.

But in principle, Environmental Impact Assessment should lead to the abandonment of environmentally unacceptable actions and to the mitigation to the point of acceptability of environmental effects of proposals which are approved. Environmental Impact Assessment as a procedural mechanism may be considered a response to some of the inadequacies identified with sectoral and direct, or 'command and control', forms of regulation, which have frequently sought to achieve some prior specified standard. But neither does Environmental Impact Assessment fall easily into the category of 'alternative' or indirect forms of regulation, such as negotiated agreements,

financial incentives and management systems. Instead, Environmental Impact Assessment specifies the procedures for participation and consultation in a non-negotiable manner, creating public and enforceable rights.

Robert Barlett writes that;

*The creative third alternatives' that may hold the most promise, for both action and analysis, are what might be called either 'subversive' or 'worm in the brain' strategies. Such strategies involve dismantling or transmogrifying the administrative state from within – gradually and not entirely predictably – while remarking individual values and patterns of thinking and acting and, perhaps, while promoting 'the preconditions for more substantial institutional innovation'. I argue that mandatory environmental impact assessment may often be, in potential and in realization, a policy strategy of this kind.*¹⁹

Here, Bartlett is referring to the possible cultural and behavioural effects of Environmental Impact Assessment, whereby the act of conducting an assessment may encourage the decision maker to think in a different way, and possibly to be more respectful of the environmental costs of some development projects and policies. These potentially far-reaching effects of Environmental Impact Assessment have been compared to a more limited understanding of Environmental Impact Assessment as an information – gathering tool.

According to Holder²⁰, two main broad theories have been developed to make sense of the role of Environmental Impact Assessment as a regulatory technique. First, quite simply, Environmental Impact Assessment may be regarded as a means of informing decision makers of the possible environmental consequences of a proposed project or action. It ensures that planners and developers have available to them relevant information and representations when making a decision which may have adverse effects upon the environment (information theories). Second, culture theories espouse, more fundamentally, that Environmental Impact Assessment inculcates environmental protection values amongst those taking decisions: 'It brings about changes in attitude toward the need for, and design of, new development', and thereby contributes to the development of a 'new administrative logic'. To this extent culture theories of Environmental Impact Assessment comply with a basic idea of reflexive environmental law, the encouragement of internal self-critical reflection within institutions about their environmental performance.

Whether an information 'provision' or 'cultural change' view as adhered to has influenced judgments about the adequacy of Environmental Impact Assessment procedures. There is for example, a slow but significant acceptance on the part of the judiciary that public participation²¹ is an important part of the Environmental Impact Assessment process that should not be omitted, even in cases in which a body of environmental information has come to light from various other sources.²²

¹⁶ Holder and Lee op cit 51

¹⁷ Holder and Lee op cit; *Ratio legis* means the reason or occasion of a law; the occasion of making a law

¹⁸ Holder and Lee op cit

¹⁹ Barlett R.V., "Ecological Reason in Administration: Environmental Impact Assessment and Administrative Theory" in Robert P. and Daniel T. (ed), *Managing Leviathan: Environmental Politics and Administrative State*; Belhaven, (1990) 82.

²⁰ Holder J., *Environmental Assessment: The Regulation of Decision Making*, Oxford University Press, (2004) 22.

²¹ See *Berkeley (No.1) AC 603. (2001) 615 (HL)*.

²² Holder J. and Lee M., *Environmental Protection, Law and Policy: Text and Materials*, Cambridge University Press, (2007) 553.

The cultural change theory of Environmental Impact Assessment as a regulatory form means that the instrument is now considered an important indicator of the arrival of new forms of governance which rely less on direct regulation to achieve set standards and more education, persuasion and social learning as a means of achieving (sometimes unprescribed) results. Although originally out synch with the EU's command and control approach, the procedure now looks increasingly typical of the union's favoured approach to regulation based upon proceduralisation, coordination and, especially, participation. Scott and Holder²³ opine that:

One such element having particular relevance for a discussion of new forms of governance and their constitutional importance stems from the opportunity that environmental assessment provides for a broad constituency of people and groups to become informed and to some extent engage in the decision making process. This means that environmental assessment allows for the generation of a broad range of information and its exchange between government, industry, environmentalists and the public. Such rights of participation may also bring responsibilities for the provision and assessment of environmental information, particularly, on behalf of the proponent of the project or policy.

The Legal Context for the use of EIA

Environmental Impact Assessment is an example of a new instrument, based on values that may possibly clash with the basic values in the Nigerian legal system. To understand the indicated conflict, attention has to be paid to the legislative framework on the one hand, including the choices of regulatory instruments, and on the other hand the ideological basis of the legal system. The latter includes a number of basic societal values that are deeply rooted in our culture. Such values and the Nigerian legal system are of importance in the interpretation and application of present national legislation. The Nigerian Environmental Impact Assessment rules, that are based on the assumption that the role of the legal framework is to facilitate a coherent, transparent and holistic decision-making process must thus be understood in a historical light.²⁴ More specifically it has to be considered if the traditional "Constitutional state" regulation model, forms possible barriers to the realization of sustainability objectives.²⁵ The "constitutional state" regulation model comprises some basic elements that are still essential to the organization of the state – namely the principles of law and order, including the principle of legal certainty, the basic rule of division of powers and the bureaucratic structure of the administration.

When using Environmental Impact Assessments in a Nigerian context, the legal traditions for sectoral split-ups as well as the principles of administrative law proved to constitute obstacles for conduct of comprehensive assessment.²⁶ Practice from the past 20 years with mandatory Environmental Impact Assessments shows that the Environmental Impact Assessments Authorities feel bound by the legal traditions, including the so-called organizational and material specialty

principles. The Environmental Impact Assessment procedure of Nigeria fails to apply other competencies than those administered by urban and regional planning and the sub-sectoral delineation, and the division of power principle functions as a barrier to the integrative approach laid down in the Agenda 21 at Rio. Environmental Impact Assessment authorities to a large extent have focused on the traditional planning such as localization choices. But administrative practice might change in future.

The Environmental Impact Assessment form and EIS (Environmental Impact Statement) appear to be completely novel legal devices. It is important to know that in Environmental Impact Assessments the regulated entity tells the regulator what the problem is and how to solve it, with the regulatory beneficiaries looking over everyone's shoulder and also giving their opinion as to the nature of the problem and appropriate solution.²⁷

The EIS provides the material for a case law development, reminiscent of the role played by written opinions in common law.²⁸ Agency decisions that would otherwise be protected by 'informality' are subject to review by the courts of whether their actions were arbitrary or capricious. The process goes further than common law, which focus on adjusting rights between individual private parties as regulated entities and as regulatory beneficiaries. It needs also to be said that it shares with common law the fact that the process itself can be burdensome, time-consuming and expensive, and sometimes out of proportion to ultimate benefits.²⁹

According to Wood³⁰, in the formal – explicit approach, Environmental Impact Assessment requirements are codified in legislation or regulations, and Environmental Impact Assessment report must be prepared and authorities are accountable for considering Environmental Impact Assessment (for example, through judicial review). Thus, Kennedy³¹ argued that, generally speaking, Environmental Impact Assessment is only integrated in decision – making (that is, it only works) when it is applied in a formal explicit way. Saddler³² has laid emphasis that Environmental Impact Assessment should have 'a well founded legislative base with clear purpose, specific requirements and prescribed responsibilities'. This opinion is now generally accepted as evidenced by the growth of Environmental Impact Assessment legislation in countries throughout the world. That notwithstanding however, the existence of mandatory regulations, acts or statutes relating to Environmental Impact Assessment are not necessarily indicative of how thoroughly Environmental Impact Assessment is carried out.

A germane issue in Environmental Impact Assessment is the question of how far the detailed operation of the Environmental Impact Assessment process should be prescribed in laws and regulations, and how much it should be left to the discretion of the relevant authorities. The advantages

²⁷ Bregman E. and Jacobson, (ed), "Environmental Performance Review: Self - Regulation in Environmental Law" in Gunther Teubner, Lindsey Farmer and Declan Murphy, *Environmental Law and Ecological Responsibility: The Concept and Practice of Ecological Self-organisation*, Wiley, (1994). 227-230.

²⁸ Ibid

²⁹ Ibid

³⁰ Wood C., *Environmental Impact Assessment: A Comparative Review*, Pearson, Prentice Hall, (2003) 91

³¹ Kennedy W.V. "Environmental Impact Assessment in North America, Western Europe: What has worked where, how and why?", *International Environment Reporter* 11: (1988) 257-62

³² Sadler B., "Expost Evaluation of the Effectiveness of Environmental Assessment". In Porter, A.L. and Fittipaldi, J.J. ed, *Environmental Methods Review: Retooling Impact Assessment for the Century*, Atlanta G.A: Army Environmental Policy Institute, (1998) 21

²³ Scott and Holder J., "Law and New Environmental Governance in the European Union" in Grainne de Burca and Scott, Joanne (eds), *Law and New Governance in the EU and US (Hart)* (2006). 213.

²⁴ Steen U., *Environmental Regulation within the Transport Sector* (Copenhagen, Jurist – and Okonomforbundets Forlag), (2000) 95-98.

²⁵ Anker H., "Biodiversity and the Importance of the Legal framework" in: F. Arler and I. Svannevig (eds) *Cross Cultural Protection of Nature and the Environment* (Odense, University Press) (1997) 94-103

²⁶ Anker H.T. and Basse E.M., (ed), *Land use and Nature Protection: Emerging Legal Aspects*, DJOF publishing Copenhagen, (2000) 340.

of a legally specified Environmental Impact Assessment system may be summarized as stated by Fowler³³ as: Permanence and evidence of commitment; avoidance of uncertainty; provision of firm basis for public participation and enforcement of acceptance of Environmental Impact Assessment. While on the other hand, the advantages of a largely discretionary Environmental Impact Assessment system, only the broad details of which are enshrined in law or regulation are: the desirability of voluntary compliance, the avoidance of judicial involvement; and the retention of discretion. Fowler concludes that 'where a firm political commitment to Environmental Impact Assessment happens to exist at the time of adoption of a scheme, this is reflected in a legislative base'. He suggested that there has been a gradual shift towards Environmental Impact Assessment systems in which both administrative and judicial supervision is seen as necessary in terms of the efficiency of the overall process? This appears to hold generally true. Two factors driving these legislative changes have been the evolving policy agenda for sustainable development and recognition of the need to rectify acknowledged deficiencies of traditional Environmental Impact Assessment.³⁴

It is genuine that some degree of discretion in the operation of the various steps of the Environmental Impact Assessment process is needed since every eventuality cannot be foreshadowed in laws and regulations. In particular, flexibility is necessary to ensure that the Environmental Impact Assessment system is focused on the desired outcome of Environmental Impact Assessment, environmentally sensitive decisions, rather than on ensuring that all the procedural formalities have been completed. Such discretion perhaps takes its most extreme form in the state of Victoria in Australia, where the Environmental Impact Assessment system is now based on guideline procedures quite different from the provisions of the Act underpinning them.³⁵ Nevertheless, the discretion remaining should not be sufficient to remove reasonable legal certainty, and nor should it enable any participant in the Environmental Impact Assessment process to gain undue advantage. It is for this reason that 'fast-track' solutions to Environmental Impact Assessment decision making which automatically permit a development to proceed unless the relevant authorities taken appropriate Environmental Impact Assessment action are generally unsatisfactory. The discretion remaining in an effective Environmental Impact Assessment system should be broadly acceptable to all parties.

There is always a danger then, unless the various steps in the Environmental Impact Assessment process are mandatory, there will be some proponents, consultees or authorities who will fail, in certain circumstances, to discharge their responsibilities fully.

For this reason, each step in the Environmental Impact Assessment process needs to be specified sufficiently in an Act or in a binding regulation³⁶ to provide a measure of

certainty to the participant in the Environmental Impact Assessment process. The final points involved in each stage of the process need to be spelled out in law provided that appropriate additional guidance is made available (for example, in the form of advisory guidelines). It is important, in the interests of certainty, that the specified system is adhered to by all the stakeholders and that accepted procedures are not changed arbitrarily.

Whereas lawyers drafting laws and regulations will always strive to make them unambiguous, others will endeavour to discover loopholes and ambiguities if it is in their clients' interests to do so. Clearly, for an Environmental Impact Assessment system to function effectively, ambiguities need to be minimized. Where they exist and cause problems in the operation of the Environmental Impact Assessment system, they should be remedied at the first available opportunity. Herein lies another advantage of specifying some details in the form of regulations or guidance, since they can then be modified without recourse to primary legislation.

Environmental Impact Assessment is a process which applies to certain types of action, but not to all proposals. The legal requirements relating to Environmental Impact Assessment should be clearly distinguished from those relating to other types of actions so that no confusion exists between different processes. This applies equally to systems in which Environmental Impact Assessment is separated from other decision - making procedures and those in which it is integrated. The need for differentiation is strongest in integrated Environmental Impact Assessment systems since the scope for confusion, particularly among proponents, is higher than in separated systems.

In the last analysis, it may be necessary to take enforcement action against one of the participants in the Environmental Impact Assessment process. This might, for example, be against the responsible authority for not screening the proposal adequately, or for not considering the comments on the Environmental Impact Assessment report sufficiently in reaching its decisions, or against the proponent for not meeting conditions attached to a permission. Such action might be taken by any of the participants in the Environmental Impact Assessment process, including the public. It is necessary, therefore, that there should be adequate opportunities for the various participants to appeal administratively or to the courts to ensure that the various obligations in the Environmental Impact Assessment process are properly discharged.

It is important that a clear list of all the procedures involved in the Environmental Impact Assessment process be available so that proponents, developers, consultees, the public (and the relevant authorities) can gain an overview of the whole process. This outline should include the time allocated to each stage in the process (a necessary requirement to prevent it from becoming over-lengthy and any charges involved in it).

There are basically two options considered in establishing Environmental Impact Assessment procedures; the legislative option and the policy option. Whatever choice that is made is determined by such factors as the political system of the country, the current persuasion of government towards environmental concerns, social and economic conditions, and the interest of the general public. Environmental Impact Assessment legislation can be expressed as part of a framework/general environmental law or as the subject of specific legislation. The policy option as a basis for Environmental Impact Assessment means that systems are

the reason why the specified instructions from the guidelines are not been followed strictly, knowing it is not a binding legal document.

³³ Fowler, R.J., "Legislative Bases of Environmental Impact Assessment", *Environmental and Planning Law Journal* (2005), 2.

³⁴ Sadler B., "Canadian Experience with Environmental Assessment: Recent Changes in process and practice", *Australian Journal of Environmental Management* 2: (1995) 112-29.:

³⁵ Wood, C.M., "Environmental Impact Assessment in Victoria: Australian Discretion Rules". *Journal of Environmental Management* 39: (1992) 281-95.

³⁶ Guidelines on any given issue, whether made by government, industry organisations or international organisation present ideals that are considered desirable but which are not legally enforceable. This suggest

developed and incorporated within the administrative machinery of government and the rules and regulations are not enforceable in a legal sense. Nigeria adopted the Environmental Impact Assessment which base their procedure on legally binding instruments. This is the more formal legal approach in which the Environmental Impact Assessment procedures become law and are enforced by the courts.

The Nigerian Environmental Impact Assessment legal framework is made up of both national legislation and international law.

CONCLUSION

Environmental Impact Assessment possesses key regulatory characteristics, the primary one of which is that it is procedural in nature, setting requirements for the style and structure of decision making, rather than containing specific standards. The element of legal control is broadly indirect: Environmental Impact Assessment provides a conduit by which information may enter decision making procedures, but, in theory at least, it will not determine the outcomes of these procedures. Whilst Environmental Impact Assessment procedures were seen to be originally posing a considerable challenge to legal culture as narrowly defined, the judicial branch of the legal system has now more fully accommodated the demands of Environmental Impact Assessment procedures, particularly in terms of upholding the rights of participations.

Environmental Impact Assessment now permeates many legal and quasi-legal arenas such as planning departments, central government policy making units and even the work of component states by governing the way in which policy is framed and decisions are made. A related characteristic of Environmental Impact Assessment as a form of regulation is that, in theory at least, it encourages an awareness of pollutants moving between environmental media by establishing procedures for integrated policy and decision making. In explicitly providing for some form of public participation in environmental decision making, the Environmental Impact Assessment has been considered the first important example of environmental right legislation. Thus, in terms of securing public participation, it brings Environmental Impact Assessment closer to the idea of sustainable development.