



Association of Licensed Telecommunications Operators of Nigeria

ENVIRONMENTAL IMPACT ASSESSMENT ACT (AMENDMENT), BILL 2016

ALTON SUBMISSION

JULY 2016

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INTRODUCTION

The Association of Licensed Telecoms Operators of Nigeria (ALTON) is a body corporate, duly registered under the laws of Federal Republic of Nigeria as an Incorporated Trustee, and officially recognized by the Government of the Federal Republic of Nigeria and the Nigerian Communications Commission as the official industry body for all licensed providers of telecommunications and subsidiary services in Nigeria.

The major objectives of the Association is to foster inter-network cooperation and industry harmony amongst all the operators and the regulator in the country, as well as provide a platform for industry/stakeholders interaction and collaboration for the advancement of the Nigerian telecommunications market. The Association is committed to enhancing growth in the Nigerian ICT sector, whilst ensuring a healthy balance between market growth/profitability for the operators and efficient/affordable service delivery to the subscribers.

The telecoms industry is one of the most important sectors of our economy and the Industry has evolved in the last twelve years, many of these changes were influenced by the convergence of technologies of voice, data and video on smartphones, tablet computers and the internet and other information services which has led to the era of the Information Society.

It has been acknowledged that telecommunications is essential for the economic, social and cultural development of our society and more evident as the Information Age is recognized as the future of all societies.

The easier access to basic communication services has transformed personal and business productivity and facilitating better government and security services delivery, with a direct impact on the performance of Government at all levels.

Executive Summary

“A Bill for an Act to amend the Environmental Impact Assessment Act Cap E12, LFRN, 2004 (the Act), to strengthen the process of approvals and decision making on project inclusive and for related matters”, has been introduced by the National Assembly.

The EIA Bill seeks to, among other things, expand the role of the NESREA as well as improve the process by including the local community and other interested parties more in the process. Whilst the principal purpose of the Bill is laudable the cost/operational practicality of the provisions is bound to be a matter of concern.

A review of the Act is definitely, a move in the right direction, as the current process as prescribed in the 1992 Act is quite elaborate and expensive. It might therefore be expedient to carry out a more extensive review of the Act after due consultation with relevant stakeholders.

REVIEWS

The specific area;s of concern are:

- **Workshops:** Section 11(2) of the Act is to be amended to add a requirement for the EIA Workshops to be done in English & the native language of the relevant locations.
- The implication of the requirement to interpret in native language is that it is likely to delay the process and increase the already high cost of conducting workshops
- **Draft Report:** Section 24 of the Act is to be amended to require Draft Reports to be delivered to the community leaders place as well;

- This means that additional copies of EIA reports will be required, with the attendant exorbitant logistics and distribution cost. In addition to driving up cost, it will further extend the activities and project completion time. It is not clear why the current process (i.e. submitting Reports in Ministries of Environment and Local Government Councils, thereafter making announcements in local newspapers & radio) needs to be altered, as that has so far worked.
- **Panel Review:** Section 35 of the Act is to be amended to expand the EIA review panel to include a member of Chartered institute of surveyors and NESREA state officials in review sessions.
- This is not necessary; currently, experts from various fields are on the Panel so all relevant areas are adequately represented. Also, state Ministries of Environment and Physical planning are involved in the review, therefore, including NESREA who carry out the monitoring and ideally begin its function after approvals have been granted, will result in the introduction of multiple levels of reviewers and approvers.
- **Security Bond:** Section 58 of the Act, is to be adjusted to introduce payment of security bond by proponents for remediation of adverse impacts.
- This is not acceptable as the current administrative charges are prohibitive and a portion of this can be ascribed for this purpose without additional financial responsibility on the proponent. This requirement will unnecessarily drive up project cost.
- **Re-definition of Agency/Council:** Section 61 of the Act, is to be amended to redefine Agency to mean National Environmental Standards Regulation Enforcement Agency (NESREA) and Council to be NESREA council.
- The functions of the Agency as provided for in the Act, is currently handled by the Environmental Assessment Department of the Federal Ministry of Environment. The proposed amendment will consolidate the function of approving EIA's and monitoring & enforcing compliance in a

single body i.e. NESREA. It is ideal to decentralize the function and have it retained as is for objectivity.

- Definition of Interested Persons: Section 7 of the Act which provides an opportunity for certain groups to comment before the Agency gives a decision on an activity to which an environmental assessment has been produced, the term ‘interested groups’ is to be particularly defined to mean ‘members and residents of the particular area where the proposed activities is to take place or any person or group of persons that claims that serious adverse environmental effects are likely to occur on them as a result of the project or activity’.
- We recommend that the term “interested groups” be retained without any particular definition. This sufficiently permits parties whose interests are likely to be breached to make representation at the forum.
- Language of Consultation: Section 11 (2) of the Act which provides for the notification/consultation with States or Local Government Areas which may be affected/potentially affected by an activity. The section is to be amended to read that the consultations are to place “in English and the local language predominant in the location of the proposed activity”. S. 24 (1) of the Act has a similar provision with regards to the publication of a notice to be published by the Agency with the date/place of availability and the deadline/address for comments with respect to the availability of mandatory study projects. This provision is similarly to be amended to provide for the publication of notice “in the local language predominant in the area of the proposed project”.
- We recommend that since the consultation is a mandatory obligation imposed on proponents by the FMEnv. We recommend that the responsibility of translating information into local languages be borne by the Agency, as the Operators have already paid substantial Administrative charges.

- Amendment of S. 35: The Bill seeks to specifically define the category of persons to be appointed unto the Review Panel by the Agency to include “the Chairman..., representatives of the Chartered Institute of Surveyors and Valuers, States National Environmental Standard Enforcement and Regulatory Agency and any other professional body the Council may deem fit”.
- We believe that the addition of the proposed experts will impose additional cost on operators as members of these panel are paid sitting allowance. The present panelists are experts and they suffice for the Panel Review and we humbly recommend that the provision be left unamended.
- Payment of Security Bond: The Bill seeks to amend S. 58 (1) to include in addition to other requirements, the submission of a Security Bond the value of which the Agency shall prescribe for the remediation of any adverse environmental impact after completion of the project. The security bond is to be returned to the proponent project if no adverse environment impact occurs 24 month after the completion of the project.
- We regard this as another form of “taxation”, which would add to the astronomical cost of obtaining an EIA. Impact Mitigation Monitoring already addresses remediation of any adverse environmental impact after completion of the project. This amendment should be deleted.

We also propose in addition to the above reviews, that the following additions be included in the Amendment Bill:

- EIA approval to be reduced to one season study or alternatively Temporary Approval be issued to Operators (which was recently canceled) whilst study is being conducted for the second season to allow it achieve expansion projection as well as support the Federal Government Broadband Policy Plan 2013-2018

- The current EIA Process should be reduced into Guidelines/Regulations and properly enforced to guarantee business predictability, confidence in the Department; and
- Impact Mitigation Monitoring (IMM) should replace the Mandatory Audit currently conducted by NESREA.
- The powers and responsibilities of NESREA and the EIA Department need to be streamlined to avoid conflicts being created as regards enforcement (such as a database accessible to NESREA to verify approvals issued to Operators before site lock-out).

Conclusions

The sheer cost of EIA process in Nigeria is extremely exorbitant and the introduction of additional requirements by the Bill e.g. translation of reports in local languages, involvement of additional experts on the review panels etc. will result in additional cost burden, a disincentive for investment, which is keenly sought after to expand telecommunications footprint and business generally.

If the Bill is passed into law in its current state, it is bound to cause more confusion in terms of roles of the various parastatals that oversee Environment i.e. the ministries, local governments, NESREA etc. and the key changes required in the current EIA Act would not have been addressed.

At this time a review of the Act should be targeted at making the process more relevant, efficient and cost effective.

Recommendations

Although the current Bill has been reviewed and comments made as reflected in the earlier part of this document, we are of the opinion that the Bill to Amend the EIA Act (as is) is not appropriate at this time.

It is worthy to note that several efforts and workshops were held in the recent past, whereby the Federal Ministry of Environment and stakeholders had

agreed on the fundamentals of what needs to be revised and updated in the EIA Act of 1992 to make it relevant and applicable to the current environmental concerns.

In light of the extensive consultation that was done on the subject matter, i.e. Environmental Impact Assessment of projects in Nigeria particularly that held by the Federal Ministry of Environment and stakeholders in June 2015, it is pertinent for the National Assembly to engage the Federal Ministry of Environment in the review process.

We propose that the current Bill before the Senate be replaced with the Draft EIA Act which was extensively reviewed and adopted by stakeholders.

Thank you.

For: Association of Licensed Telecommunications Operators of Nigeria (ALTON)



Engr. Gbenga Adebayo

Chairman



Kazeem Oladepo

Executive Secretary

- Cc: 1. The Honourable Minister for Communications**
2. The Honourable Minister for Environment
3. The Executive Vice Chairman, Nigerian Communications Commission