

A HIGHWAY THROUGH THE FOREST

Community Forest EIA Review



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ABOUT HEALTH OF MOTHER EARTH FOUNDATION (HOMEF)



HOMEF is an environmental/ecological think tank and advocacy organization. It is rooted in solidarity and in the building and protection of human and collective dignity.

We believe that neoliberal agendas driven by globalization of exploitation of the weak, despoliation of ecosystems and lack of respect for Mother Earth thrive mostly because of the ascendancy of the enforced creed of might is right. This ethic permits the powerful to pollute, grab resources and degrade/destroy the rest simply because they can do so. HOMEF recognizes that this reign of (t)error can best be tackled through a conscious examination of the circumstances by which the trend crept in and got entrenched. Thus, HOMEF will have as a cardinal work track continuous political education aimed at examining the roots of exploitation of resources, labour, peoples and entire regions. Read more: <http://www.homef.org/content/about-home>

CONTENTS



<i>Acknowledgements</i>	v
<i>About Health of Mother Earth Foundation (HOMEF)...</i>	vi
 Chapter One	
Dialogues in Our Forests	1
 Chapter Two	
Environmental Impacts and the Vulnerability of Forest Communities	5
 Chapter Three	
EIA as a Tool for Livelihood	16
 Chapter Four	
EIA as an Advocacy Tool: The Case of the Superhighway	19
 Chapter Five	
Active Participation in EIA Process: NGOCE Example	25
 Chapter Six	
Observations and Objections of RRDC to the EIA Draft Report of the Calabar-Ikom-Katsina Ala Superhighway Project	38
	vii

Chapter Seven

The Superhighway EIA and the Fate of Ecosystems and Communities	52
--	----

Chapter Eight

What Manner of EIA?	57
---------------------------	----

Appendix

<i>Environmental Impact Assessment</i> <i>Decree No 86 of 1992: Laws of the Federation</i> <i>of Nigeria</i>	60
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1



Dialogues in Our Forests

We are connected and interconnected by the environment and the state of our environment can be measured by the state of our forests. When our forests are threatened, we are all threatened. When communities are threatened, everyone should be concerned.

The letters to the Governor of Cross Rivers State, written by the Ekuri Traditional Rulers Council on 7th February 2016, and by the Okokori Traditional Rulers Council on 13th February 2016, brought to light the unexpected about-face of the government that had promised to situate the Cross River State as a green state, to possibly one that is brown or grey. The two letters notified the world of the alarming revocation of occupancy of a 20.4 km swathe of land along a 260km length of a proposed Superhighway. We would have been surprised if the world was not outraged by the threat

the communities faced.

The traditional rulers and many observers were piqued by the Public Notice of Revocation signed by the Commissioner for Lands and Urban Development and published in *Weekend Chronicle*, of 22nd January, 2016. Among other things, the government ordered that:

“all rights of occupancy existing or deemed to exist on all that piece of land or parcel of land lying and situated along the Superhighway from Esighi, Bakassi Local Government Area to: Ekwarra Local Government Area of Cross River State covering a distance of 260km approximately and having an offset of 200m on either side of the centre line of the road and further 10km after the span of the Superhighway, excluding Government Reserves and public institutions are hereby revoked for overriding public purpose absolutely.”

That declaration was troubling for many reasons, including that:

1. Taking such lands out of the control of owners could lead to massive displacement thus rendering the people landless and threatening their cultures.
2. The land area referred amounts to about a fifth of the landmass of Cross River State and grabbing such a landmass for one set of projects has serious implications.
3. There will be a real danger of serious deforestation, illegal logging and poaching.
4. There will be a heavy loss of biodiversity including already endangered species that are endemic in the area.
5. The Cross River Forests and National Park would be irreversibly threatened.

A project of the size of the Superhighway cannot be executed without an approved Environmental Impact

Assessment (EIA). As it has been seen, bulldozing of forests and farmlands have been carried out without an approved EIA and in defiance of Stop Work Orders issued by the Federal Ministry of Environment. The draft EIA prepared by the State Government has eventually been reviewed and rejected and the government is back to the drawing board on the matter. What the mean failure of the draft EIA means is that there should be no further work on the 'project' until there is an approved EIA.

We note that an EIA cannot be said to be acceptable if the people to be affected by the project are not involved in the process of its preparation and if the document is not presented in a language that the affected people understand. So far, we have not seen any serious engagement with affected communities.

We are meeting today to talk about our forests.

It is essential that we sit together, recall what the state of our forest was in the past, consider what the situation is at present and then ask ourselves if things are better or worse than they were before.

This is a very essential dialogue because sometimes we are so busy struggling to survive while ignoring the very things that would make our lives better if only we spent a few moments to review them.

If through our dialogue we find that things have changed in a way that we should be concerned about, we will then ask why the change occurred, who was responsible and what can be done to repair the situation. In other words, we are embarking on a diagnostic environmental dialogue.

Our forests are too precious and you have stood out as excellent custodians of the remaining high forests in Nigeria. We are here to assure you that the world is with you.

There are severe pressures from growing demands for timber and land for developmental purposes. These result

in the conversion or degradation of forests into unsustainable forms of land use forgetting the fact that forests are complex systems of closely inter-related and inter dependent ecosystems and any harm done to any component of the forest directly affects the entire forest system. It is time for us to say that development must support our lives and not make us refugees in our own land.

In line with our conviction that the forest system is a broad subset of the environment, and that the environment is our life, we at Health of Mother Earth Foundation (HOMEF) are collaborating with you and other forest dependent communities to work towards monitoring our forests and ensuring that they are preserved for our good and that of future generations.

Preserving our forests is equal to preserving our lives and cultures. Healthy forests support healthy living and bulldozers are never the friends of our forests.

2



Environmental Impacts and the Vulnerability of Forest Communities

Forests play central roles in regulating environmental changes. They keep the oxygen-carbon dioxide balance, regulate climate change, keep a store of genetic resources, provide living spaces for humans and habitats for other species.

Some major changes that occur in forests could have dramatic impacts on forest dependent communities and also on the larger society. Forest products meet several needs of people. They help to protect watersheds, provide food resources, conserve ecosystems, and maintain biodiversity. It is common to hear that planting two trees in place of one that is felled is a good forestry practice. The truth is that the one tree that is felled did not grow to its size overnight. Some

of such trees are several years old and may harbour or be a part of important ecosystems. In addition, by their root systems, trees help to sustain soil qualities. Cutting one tree is a loss of more than that one tree, as forest dependent people know very well.

Forest management cannot be efficient if the concerns and needs of communities are not considered. One reason for this is that forest communities have good knowledge of their forests and understand their value at multiple levels. Where forests are externally controlled, harm can come by way of land use changes that could go against the needs and knowledge of the people.

What are EIAs and why are they needed?

The EIA is a necessary strategic environmental assessment needed to evaluate potential and actual impacts of policies, programmes and plans with the purpose of mapping out directions and preparing plans for the mitigation of adverse results and/or totally abandoning proposed paths of action. The EIA is ideally carried out at all stages of project formulation and implementation.

An environmental impact is any form of direct or indirect alteration to the environment wholly or partially, consequent upon an activity being carried out in the environment. It predicts, identifies and evaluates expected and unexpected environmental impacts.

EIAs ensure that communities participate in developmental decision-making processes. The outcome of EIA processes inform governments and project proponents of the desirability of projects, whether they may be implemented and in what form.

Some projects that are not directly or physically located in forests may nevertheless have impacts on forests. For this reason, multi-sectoral and interdisciplinary approaches are essential.

Vulnerability

Disasters occur where hazards and vulnerability meet. In other words, disasters are triggered by hazards and these are prominent in oil related operations. We can view vulnerability as the level of ability to predict, cope, resist and recover from hazardous situations.¹ It talks about a state of defence or defencelessness. Vulnerability can be measured by factors such as:

- Physical location and/or exposure in disaster prone areas. Disasters can be of natural causes or they could have man-made origins. Succumbing to man-made hazards and risks is largely voluntary and requires acts of resistance to avert disaster.
- Socio-economic fragility.
- Lack of resilience to cope and recover from environmental stresses. This includes the notion of adaptation.

The consequence of reckless resource extraction is also the tragedy of the Niger Delta. It is emblematic of an area that suffers a dearth of social amenities, high unemployment, environmental degradation, and other social malaise.

The Niger Delta is a very vulnerable region and this vulnerability is both created and deepened by poverty and the poorest in the society has the least resources to cope, resist and recover from environmental challenges. The impacts can be seen at individual, family and community/regional levels.

1. See Social Levels and hazard (in)dependence in determining vulnerability by Schneiderbauer, Stefan and Ehrlich Daniele in *Measuring Vulnerability to Natural Hazards, Towards Disaster Resilient Societies*, Birkmann Jorn, ed. New York: United Nations University Press, 2006.

The context is one that does not support sustainable development and talks of it without critical reversal of the current state of affairs are nothing but mere fanciful semantics. Intergenerational justice requires that in meeting present development needs the ability of future generations to meet their own needs must not be compromised.

Predicting and Mitigating Impacts

EIAs, when conducted in Nigeria, are often done reluctantly or perfunctorily. The idea appears to be that the EIA is merely a requirement-meeting-device. With that frame of mind, project proponents produce so-called EIA documents as part of project requirements without opening such documents for public scrutiny as required by the law. Communities affected by projects that may have irreversible impacts have the right to insist that such projects are reviewed, revised or abandoned.

In some cases, project proponents have bluntly refused to conduct any EIA whatsoever and because government is bent on deriving revenues and meeting project deadlines, the safety of the environment and the people are sacrificed on the altar of expediency. A glaring example is the proposed Superhighway project that is threatening to gut our last remaining community forests. The ground-breaking exercise for the project was conducted by President Buhari on 30th October 2016 after the event had been placed on hold due to the absence of an EIA. By the time the launch was eventually done, there had still not been an EIA. It took the insistence of the Federal Ministry of Environment that the law cannot be circumvented before the CRSG agreed to undertake the preparation of the EIA. While this was going on, forests, farms and other properties were being torn down as the project drivers continued to work. In marking his first year in office, the state governor used the project as his

government's flagship project.

As desirable as roads are, they promote deforestation, soil erosion, forest encroachment and could cause localised waterlogging.

In the ideal situation, a project idea remains a mere proposal and not one bit of soil would be disturbed before there is an approved EIA.

Certain environmental marker questions are raised as a critical requirement before the commencement of any project or large-scale activity in the environment. These include the following:

1. Is the project in an environmentally sensitive or fragile location?
2. Will the project adversely impact the environment?
3. Would the project destroy or negatively impact on prevailing cultural heritage or artefacts?
4. Does the project explicitly or implicitly aim at having positive environmental impacts? Would it help fight climate change or aggravate it?
5. Would the project have significant negative environmental impacts? Note that significant environmental negative impacts are inherent negative impacts irrespective of what other positive impacts the project may have.

If the answer to any of these questions is yes, there would be need for further assessments. If the answers are all no then there would be no need to conduct further studies. In all cases, the questions and answers must be reviewed by those who did not prepare the matrix. In other words, a project proponent cannot be a judge in his/her own case.

- In order to ensure the mitigation of adverse impacts, every EIA should ideally be accompanied by an Environmental Management Plan (EMP).

- It is important for community people to note that if a project is evaluated to have negative environmental impacts that cannot be sufficiently mitigated or compensated for, we must insist that such a project should not be executed or implemented in our territory.
- EIAs cannot be acceptably carried out without the involvement of communities that stand to be affected by the project. This is best done through popular participation and must be initiated at the beginning of the project. It is a sensible thing to do if the true intent is to mitigate and not to needlessly for the people to litigate.

Uses of EIAs

The critical issues that EIAs would help address include:

1. Access to safe water and sanitation.
2. Good air quality and control of toxic chemicals the industry generates. Apart from the health and infrastructural impacts, gas flaring also significantly adds to climate change thus deepening the tragedy of the Niger Delta and other coastal and desert regions.

One of the least considered causes of poverty, insecurity and destruction is climate change. As the world's temperature rises as a result of the release of greenhouse gases into the atmosphere, we experience sea-level rise, floods, loss of natural resources and freak weather events. In the northern part of Nigeria, there is an increased threat of desertification. All these have direct implications on our food supply systems, water scarcity and health. Thus, climate change makes access to food sources unpredictable and increases poverty and disease. Women bear the brunt of all these and resulting conflicts

affect them disproportionately.² The Niger Delta is obviously one of the most Climate Change vulnerable areas of the world.

3. Assurance of sound and equitable management of biodiversity and ecosystems.
4. Mitigation of the effects of natural disasters.
5. Opening of opportunities for community control of community resources. It is common wisdom that ownership engenders protection. Community-based resource management methods would lead to sustainable usage of these resources.
6. Issues of deforestation accelerated by logging, infrastructure development, mineral/oil prospecting and exploitation would be minimised. Mitigation plans would include alternative livelihood programmes and practices. These would reduce poverty levels and usher in a regime of recovery on many fronts.

Impacts on Forest Communities

The environment is a provider of services to communities and this is why we say that the environment is our life. When the environment loses the ability to provide these services due to external or internal threats and stresses, the vulnerability of the community is directly impacted. Our environmental resources include land, air, soil, vegetation and water (including ground water, surface water and coastal water). These resources can support and/or defend a community. For example, a mangrove belt helps secure shorelines against coastal erosion and also provides resources for the people.

2. Nnimmo Bassey, Change and Conflict: What can women do?, paper presented at the Conflict Management Training of Ijaw Mothers of Warri held in Warri, 5-6 July 2006.

Impacts are thus felt based on the interplay of:

1. loss of ecosystem services;
2. dependency of communities on specific services provided by specific components of the ecosystem;
3. vulnerability of these ecosystems.

At every stage of activity, massive infrastructural developments necessitate displacement of people and communities farther away from their natural resources and thereby generate scarcity and resulting conflict. Environmental damage, including destruction of water sources, cause health problems.

Oil activities disrupt important ecosystems, endanger species of fauna and flora and degrade the quality of the environment in all dimensions. These range from aesthetic considerations to the massive toxic wastes generated through processing of water, drilling mud and a myriad of other chemicals used in the industry.

Oil spills are a regular occurrence and are often barely hidden beneath piles of sand in efforts to keep them out of sight. Forests and water bodies have been set ablaze in futile efforts to erase the evidence of spills. Fresh water bodies have been open to incursion of salt water and coastal erosion has been encouraged due to the canalization and movement of massive machinery in the area. All these add up to make life difficult for the people and to raise tensions and can be addressed through real community participation.

These should include fire fighting provisions which should also be located at strategic nodes along pipelines as well as stores of spill cleaning chemicals rather than the present bucket and spade techniques.

No Mitigation Without Preparedness

Our environment can best be protected if we realize the intrinsic value of natural resources such as forests in Nigeria.

We cannot afford to see trees as commodities or as mere carbon stock. Forests are complex ecosystems that help to keep an essential life supporting balance in our environment. It is not only home to humans, but to other species and beings that we depend on. These are all our relatives.

Deliberate actions are demanded if things will get better. Obviously, these actions must be taken at various levels rising from the grassroots to the federal level. It is a known fact that our communities have faced decades of disappointment as policy makers at the federal level are often too far removed from grassroots realities.

If governments or the industry's mindset is the extraction of cash or revenue while the grassroots contend with the risk, we are building up the platforms for conflicts. When EIAs are prepared, a draft Environmental Statement is made and made available to the public for comments. These comments would be used as inputs to the review process. When the final Environmental Statement is prepared, the comments received must be annexed to it along with responses made to the issues raised.

Conclusion: The Need for Forest Ecological Defenders

EIAs are important tools and citizens must be fully involved in their preparation and approval processes. This requires preparation and capacity. We propose that forest dependent communities set up Forest Ecological Defenders (FEDs) teams with deliberate capacity building efforts to ensure that they can help protect our forests and fully participate in decision making processes.

As already discussed, the EIA raises some environmental marker questions and includes a survey of the baseline situation of the forest. These provide FEDs key ideas on what to watch out for. The central idea is to ensure that activities in the forests, including land use changes are

environmentally sustainable as well as being socio-culturally acceptable.

FEDs help to make timely identification and reports on activities that have adverse impacts on forests. They also monitor these and other activities with the aim of ensuring an optimization of benefits for the people and for the environment.

Communities must use the EIA process as opportunities to influence developmental decisions before any major activity is allowed in the communities. Informed communities must insist that EIAs are conducted and reviewed at levels accessible to the public and that documents are made available in vernacular and other accessible languages.

FEDs can help by:

1. Conducting community resource mapping through Community Dialogues;
2. Help in reconstructing ruptured social networks, safety nets and communal support systems. Vulnerable communities and even nations are often those with pronounced data gaps;
3. Uncover the link between vulnerability and capacity by mapping community livelihoods, ecological condition, political access and local knowledge;
4. Empower local people in the communities to understand the interaction between their daily lives and their objective situations for self-protection and communal protection. This requires a mapping and understanding of community strengths, opportunities, weaknesses and threats;
5. Develop capacity for deliberation and negotiation and utilize created spaces to ensure participation and representation of various strata of community people;

6. Create knowledge-based local planning authorities that would identify physical needs and challenges of the communities and raise such at local government levels or handle them through targeted community self-help efforts. This could include issues of creating a buffer zone from the shorelines, sanitary facilities away from water sources, using more resilient building materials etc.

3



EIA as a Tool for Livelihood

Eme Effanga (NGOCE)

What is an EIA?

Environmental Impact Assessment (EIA) is the process of assessing the likely environmental impacts of a proposed project and identifying options to minimize environmental damage. This information consists, basically, of predictions of how the environment is expected to change if certain alternative actions are implemented and advice on how best to manage environmental changes if one alternative is selected and implemented.

* *Eme Effanga is of the NGO Coalition for Environment (NGOCE)*

Purpose of an EIA

The main purpose of EIA is to inform decision makers of the likely impacts of a proposal before a decision is made. It ensures that decision makers consider the environmental impacts when deciding whether or not to proceed with a project. EIA thus ensures that the potential problems are foreseen and addressed at an early stage in the project's conception and planning stage.

The EIA assesses the positive and negative sides of any project, critically looking at the cost benefit analysis of the proposed project. In the EIA documents, all the side effects of a project must be critically weighed and evaluated to see how it would affect the environment and the people living in such environment. EIA provides an opportunity to identify key issues and stakeholders early in the life of a proposal so that potentially adverse impacts can be addressed before final approval decisions are made. The EIA looks at the environment – air, water, vegetation, soil etc. to ascertain the effect the proposed project would have on all these. It also particularly takes a look at what the people living in the environment do for a living and how the project would affect such. By so doing, it analyses the impact of such a project – both in the negative and positive term.

The positive impacts would be projected while in the case of negative impacts, it checks to see how it can be mitigated or reduced. There is a lot of juggling in the process to ensure a balance. If at the end of the assessment the negative impact would be too costly compared to the benefit, then common sense dictates that the project should be abandoned.

EIA as a Tool for Livelihood Protection.

By conducting EIA, both environmental and economic benefits can be achieved. In EIA process, environmental

concerns, socio-economic concerns among others have to be addressed. Also, active stakeholder participation must also be enlisted in the process from the outset.

From the EIA, it is easy to ascertain how the project would affect livelihoods. If the proposed project has the potential of negatively impacting socio-economic life of communities involved, ways of mitigating such impact is sought to ameliorate the impact. Also, there may be the need to ascertain what alternatives there are for the people so as not to jeopardize their livelihoods base and expose them to undue vulnerability.

If, on the other hand, it is discovered that the impact would gravely affect people's income, there may be need to either redesign the project or to discard it altogether. If mitigation methods cannot reduce cost and if the cost is higher than the benefits, then the project should be rejected as it would have negative impacts on the livelihoods of the people.

All these analyses have to be done before any decision can be taken.

4



EIA as an Advocacy Tool: The Case of the Superhighway

Umo Isua-Ikoh (PPA) & Edem Edem (GREENCODE)

Definition of terms and concepts

What is a Tool?

A device or implement, especially one held in the hand, used to carry out a particular function.

What is Advocacy?

It is an action directed at changing policies, positions or programmes.

^{**} Umo Isua-Ikoh is Executive Director of Peace Point Action (PPA) and Edem Edem is Executive Director of Green Concern for Development (GREENCODE)

According to Wikipedia, Advocacy is an activity by an individual or group which aims at influencing decisions within political, economic/social systems or institutions.

What is EIA?

Environmental Impact Assessment- This is a Nigerian law which main thrust is to safeguard our environment from any significant effect(s) of ANY proposed project or activity.

What is a Superhighway?

A large or wide road on which traffic travels at high speed.

Using EIA as an Advocacy Tool

EIA was promulgated as Decree No 86 of 1992 and came into force in 10th December 1992, it was visited during the civil rule and made Environmental Impact Assessment Act Cap E12 LFN 2004.

This Act sets out the general principles, procedures and methods of environmental impact assessment in various sectors.

8 Steps of Using Advocacy as a Tool

Identify the issue: Problems can be very complex and selection of an advocacy issue must be based on well-researched information.

Set Goals and Objectives

1. The goal or vision is a general statement of what you hope to achieve with the campaign.
2. The objectives should state specifically what needs changing, who is responsible, how much change is required, and by when it is required. The usual time frame for an advocacy objective is 1-3 years.

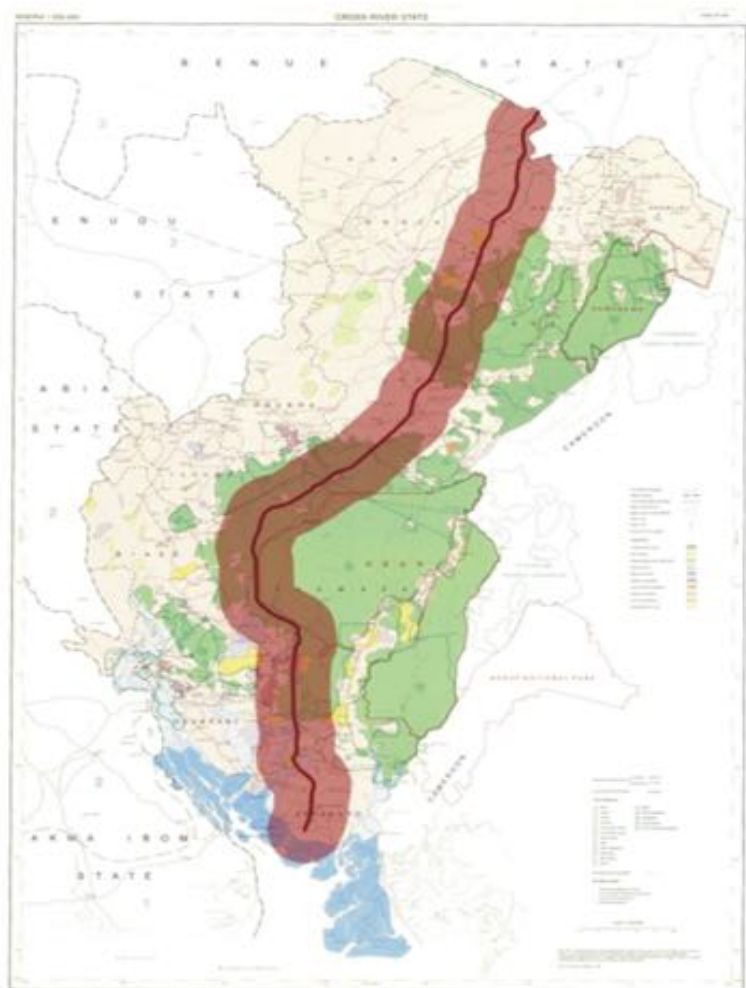
3. Identify your primary target audience
Identify the primary audience, i.e. the decision-makers with the authority to directly affect the outcome of your objectives.
Identify the secondary audience i.e. individuals and groups that can influence the decision-makers.
4. Shape your message
The message should be a concise and persuasive statement about your advocacy goal or vision that says what you want to achieve, why, and how. The content, language, medium, the time and place of delivery of the message are important considerations.
5. Build support
It is necessary to build networks of supportive individuals or organisations and to work together in a co-ordinated way.
6. Design a fundraising strategy
A targeted fundraising strategy must be designed at the beginning of your campaign.
7. Implement the campaign
Deliver the message.
Be innovative and persistent.
8. Evaluate the campaign
Always evaluate the content, process, impact and outcome of your campaign in accordance with your stated goal and objectives.
Change strategies when necessary.

Case Study: The Superhighway

- * Conceived by Prof. Sen. Ben Ayade in 2015.
- * The proposed road (Superhighway) starts from the rich mangrove forest of Bakassi/Akpabuyo through the rich tropical rainforest of Akamkpa/Ikom-Bekwara and terminates in Katsina Ala in Benue state.

30 ■ A HIGHWAY THROUGH THE FOREST

- * The highway is 260km long with 20km buffer zone along the stretch of the 260km.
- * On Friday, January 22, 2016, the State Governor through the Commissioner of Ministry of Land and Urban Development, Cross River State issued a six (6) weeks notice of revocation of land rights of over 185 communities.



Superhighway and EIA Issues

- 1). The EIA report sighted some legal instruments, but deliberately excluded the following National, State and International laws which are very important in a mega project of this nature;
 - * National Forest Policy
 - * Federal Highway Law 1971
 - * Cross River State Forestry law as amended in 1999
 - * Cross River State Wildlife Law of 1990
 - * Cross River National Park Decree 36 of 1991
 - * International Environmental Laws to which Nigeria is a signatory e.g. United Nations Convention on Biological Diversity (UNCBD), United Nations Environment Programme (UNEP), United Nations Framework Convention on Climate Change (UNFCCC), United Nations Convention on International Trade on Endangered Species (UNCITES), United Nations Convention on Desertification, etc.
 - * The State Procurement Law No. 15(2011)
- 2). None-consulted with the stakeholders or affected communities in line with internationally accepted FPIC (Free Prior Informed Consent), the EIA quoted communities that are not forest communities as would be affected communities.
- 3). The Federal highway Act of 1971, provide that highway construction should make room for 50 meters right of way(set back) on both side of the road, whereas the Cross River Superhighway is already taking 20 km for the right of way.
- 4). The assessment mentioned that work on the route will commence by the 3rd quarter of 2016 but as at the time of this review, 90% of clearing with bulldozers from Bakassi to Bekwara have been completed, thus violating the provision of the EIA law.

What other Issues?

- * As interested parties to the Superhighway Campaign-
What other issues have you identified in the EIA draft?

Roles of Communities and CSOs

A critical look at the draft EIA and issues therein, these issues are enough to empower communities to embark on Strong Evidence based Advocate using the 8 steps.

However, we should be very strategic in actions needed to WIN this campaign.

Conclusion

- * As concerned environmental NGOs and affected communities in Nigeria, we should collaborate and take advantage of this EIA as a strong evidence based Advocacy Tool to bring desired change in Cross River state, by jointly calling on Federal Ministry of Environment to reject the draft EIA report until the state complies with all the international, national and state laws/standard of implementing such a mega project and without basing their study and potential impact on the centre line of the superhighway.



Active Participation in EIA Process: NGOCE Example

(Submission by NGOCE dated 27th May, 2016.)

The Honourable Minister
Federal Ministry of Environment
Mabushi
Abuja.

Your Excellency,

We, the undersigned members of NGO Coalition for Environment (NGOCE), hereby submit our comments on the EIA for Calabar-Ikom-Katsina Ala Superhighway prepared by PGM Nigeria.

Background

NGOCE has been working on environmental issues for the past 23 years. We have been in the forefront of the campaign to protect the last surviving rainforest in Nigeria. Some have been on forest protection and conservation for over thirty years.

We have made these comments in absolute good faith, a deep sense of responsibility and patriotism in the best interest of the environment, Nigeria and Cross River State.

Our comments are on the Content and the EIA Process.

Our Comments

A. Content

1. Project Description

Chapter 1.

- 1.1. The proposed project location (1.3 of page 4 of Chapter 1) is not consistent with the Cross River State Government description of the project. Thus, the width of the road and the area of land to be cleared need to be defined/captured in the EIA. Furthermore, the study ought to be focused in this area. Cross River State Government has defined the project (see map from the office of the Surveyor General of Cross River State and the notice of land revocation for the project). These two documents indicate that the width of the road is 75m with 200m buffer on both sides of the road and another buffer of 10km on both sides of the road. Thus, the primary area for assessment is the area of land from Bakassi to Gakim in Bekwara measuring 20.4km by 260km which is 5,304km² along the pathway of the proposed Superhighway.

1.2. The length of the Superhighway (option D – the chosen option) defined is contradictory in that it is stated as 260km in some places and 256km in others.

1.3. Legal, Policy and Administrative Framework of the Report.

In page 6 of chapter 1, the EIA referred to laws and institutions that guided the study without the mention of the following:

- (i) Nigerian Laws:
 - The National Forest Policy.
 - Cross River State Forestry Commission Law of 2010.
 - The CRS Wildlife Law of 1990.
 - The Cross River National Park (CRNP) Decree 36 of 1991.
- (ii) Signed and domesticated international environmental laws that Nigeria has endorsed such as the United Nations Convention on Biological Diversity (UNCBD), United Nations Framework Convention on Climate Change (UNFCCC), United Nations Environment Program (UNEP), United Nations Convention on International Trade on Endangered Species (UNCITES) etc.

The preparers of the EIA need to be sensitive to the above legislations and regulations. In order not to give the impression to the national and international audience that the Federal Ministry of Environment is not committed to the observance and enforcement of environmental laws on climate change, biodiversity conservation, sustainable development and the role forests play in these issues, this EIA should be rejected. It is also a big surprise that the consultants have not made mention of Cross River National Park and Cross River State Forestry Commission as the relevant institutions visited during the study.

Had the EIA consultants visited the Forestry Commission, at least they could have been informed about

the activities of the UN-REDD+ program in the project area. They could also have been informed that it is a UN program being executed as a collaboration between the Federal Government of Nigeria and Cross River State and so could have resisted the temptation to recommend the Superhighway to pass through the area.

Chapter 2: Project Justification and Alternatives

The project development options have been given. The EIA does not seem to have explained (with significant reason) why certain options were rejected and others chosen. For instance, no cost was attached to the options except the cost of eight hundred billion naira (N800 billion) attached to the preferred option 4.

Option 3 which is to upgrade the current road was rejected on the grounds that it was longer than this proposed route. The length was not given. Another reason advanced is that bureaucracy was going to be too great. The concern is how much was this discussed?

Chapter 4: Description of Existing Environment, Habitat and Flora

The maps in figures 2.1, 2.2, 2.3 and 2.4 misrepresent the forest cover in Cross River State particularly with reference to the area defined as “degraded forest.” For instance, all of Afi River Forest Reserve (including the Wildlife Sanctuary) and the Mbe Mountains have been referred to as part of degraded forest. These maps and figure 4.1 convey contradictory labels of “Oban Group Forest Reserve” and Cross River National Park. The consultants need to give the correct information about these critically important areas.

The statement in paragraph 4.9.1 page 33 of Chapter 4 which reads “The existing vegetation is largely secondary in nature and typifies a derived Savannah with abundance of

grasses and herbs and few clumped or scattered trees especially in the swampy forest region.” The vegetation (mostly grasses and herbs) appear pale brown and withered during the dry season survey owing to their inability to withstand the harsh climatic condition whilst vegetation around the swampy forest was observed to be evergreen.

The types and distribution of vegetation in the study area include fresh water swamp forest and grassland vegetation.

This description of Cross River Forest that harbours more than 50% of Nigeria’s remaining Tropical High Forest (THF), an area classified among one of the 25 Biodiversity hotspots in the world is not only a shock but a big embarrassment to the nation that there is no mention of it in this study.

Another contradiction is in Section 4.9.2. The table indicates that THF constitutes 29.7% of the state’s vegetation without mentioning Savannah. While referring to the Calabar-Oban axis in Section 4.9.2.1 it describes the area as fresh water swamp forest and lowland rainforest being dominant in the area. But in page 39, lowland rainforest is mentioned as the dominant forest formation in the axis.

Plate 8 page 46 is labelled as derived but this appears to be a young secondary forest re-growth. What is labeled Grassland in Plate 9 looks like a farm.

The description “flora diversity” of the Calabar-Oban axis as contained in Table 4.18 and 4.19 of page 53 lists Gmelina, mango, oil palm, rubber, cassava and yam, coconut palm cacao and rice, pineapple as the most abundant of plant diversity in the area.

Ironically, from the Appendix, the vegetation was assessed through transects.

4.10. Socio-economic subsector.

In section 4.10 (socio-economic) the E.I.A acknowledged the consultation as the major feature component in EIA

process. Unfortunately, this is grossly lacking in this EIA study. The real forest communities to be affected in the alignment of the Superhighway were marginalized and never consulted in the framing of the environmental and social impacts of the project.

A look at the communities the EIA claims to have studied indicates a questionable manner in the selection of communities. For example, the following communities among the 21 listed in the study; Etayip, Ojijor, Mgbagatiti, Enoghi, Bokomo are all units within Ikom Urban(Ikom Urban Ward 1). That is the EIA claims to have studied Ikom as a community and the constituent units within the ward as separate communities. This is rather strange. That is out of the 21 communities, 6 were selected from one spot. Also Mfamosing, Oban, Nko, Okworodung, Utugwang Okuku/Okpoma, Ikang are far flung and nowhere near even the outer buffer zone of 10km from either side of the superhighway. Eastern Boki listed as a community is indeed a large constituency made of several communities, so one is at sea as to the actual communities that were engaged in the study. Effectively it is Obung (where President Mohammadu Buhari performed the groundbreaking ceremony) that is the only community on the proposed road that may have been visited. There are over 185 communities in the project area following from the map drawn by the Surveyor General of Cross River State and from the study, they have not been involved in the study.

The Environmental Non-Governmental Organizations (ENGOS) in Cross River State are fairly organized and active in the state but there is no evidence that they were in anyway involved or considered as a stakeholder for consultation in this sensitive project. Also, the civil society at the national level has a stake in the project but there is no evidence that they were consulted.

In view of the above, the EIA has failed woefully in the critically important requirement of Stakeholder Engagement and Participation. We, therefore, recommend the outright rejection of the EIA since it has not produced information about those who will be directly impacted by the project.

Chapter 5: Impact Assessment

There is obviously no study of the project site, a biodiversity hotspot, which harbours many habitats and wildlife hence, there is very light treatment of the likely impacts of the project to the area.

The study only made reference to CRNP as the only area that would be affected with irreversible direct impact.

Chapter 6: Impact Mitigation

Section 6.3.5 admits that the project will have direct impact on biological environments but on Oban Forest Reserve and the terrestrial habitats through increased access in the area.

Chapter 7: Environmental Management Plan

Although there is clear knowledge of Impact, Mitigation of Impact on Biodiversity and Terrestrial Ecology (see Table 7.3 and 7.4) there is, however, no mention of the ultimate long term impacts about loss of biodiversity on the dynamic local economy, through the ever changing human population, access and transportation.

Certainly, the lapses identified above are most unlikely to provide the information needed for an informed decision about the impacts to this critical ecosystem hence, the EIA should not be approved for the path proposed.

General Remarks

1. Disobedience to the Environmental Laws and Regulations.

Cross River State professes a Clean and Green philosophy and therefore is expected to be observant to all local, national and international environmental laws and regulations. EIAs are carried out at the conception stage of projects then approvals obtained before the project commencement. Unfortunately, CRSG commenced the physical execution of work on the road before December 2015 before the draft report for the EIA, dated March 2016, was produced whereas the bulldozing and felling of trees within the intact rainforest in the project area began in October 2015. Despite the stop-work order from the Federal Ministry of Environment, work still continued at the authority of the CRSG. This led to NESREA obtaining a court injunction to restrain further execution of the project until an EIA is approved.

This outright and public disrespect to federal laws by a sub-national entity is a dangerous precedent that is harmful for the federal system and therefore should not go unpunished. This recalcitrant behavior should be sanctioned, punished and the EIA denied to serve as a deterrent to others. This is good for the sustainable management of our environment.

Furthermore, an Environmental Audit should be carried out on the work that has already taken place on this project. The valuation of the environmental impact caused by this disobedience should be known and the CRSG made to pay the penalty. This is what will indicate that the Federal Government of Nigeria is serious with the observance of domesticated international environmental treaties.

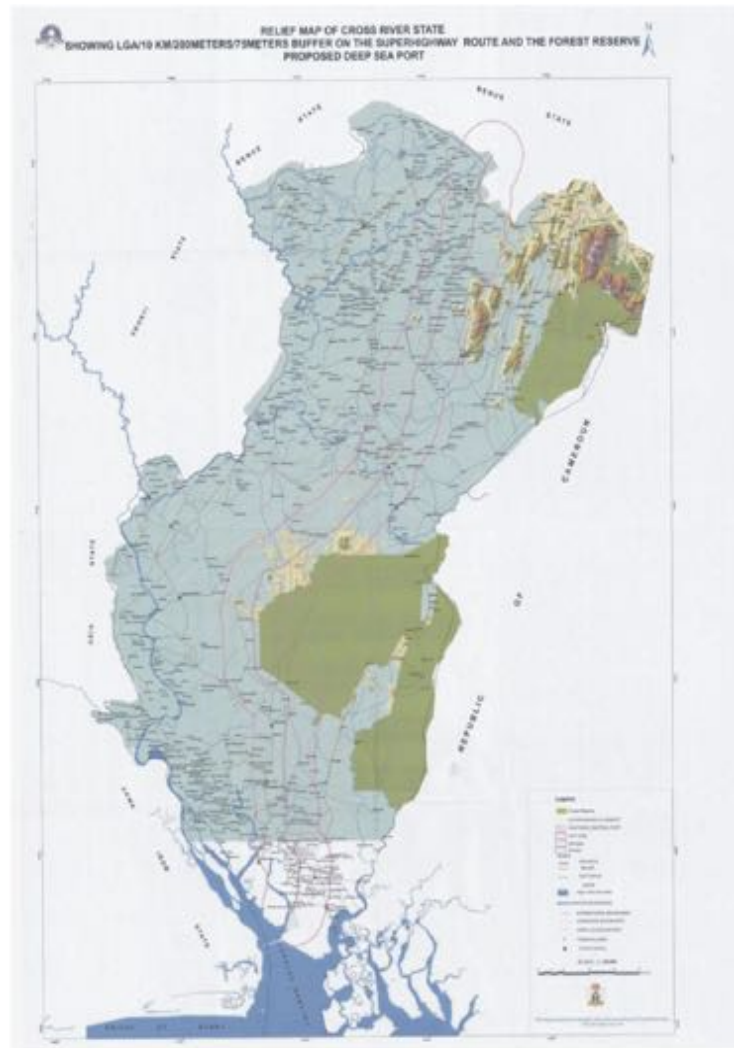
2. The Integrity of PGM Nigeria Ltd.
The draft EIA prepared by PGM Nigeria cast some doubts as to whether this company is properly recognized and

registered with the Federal Ministry of Environment. Furthermore, are the consultants who prepared the EIA qualified to undertake an EIA with tremendous global interest? Was this company selected through the due process or were they people who were handpicked?

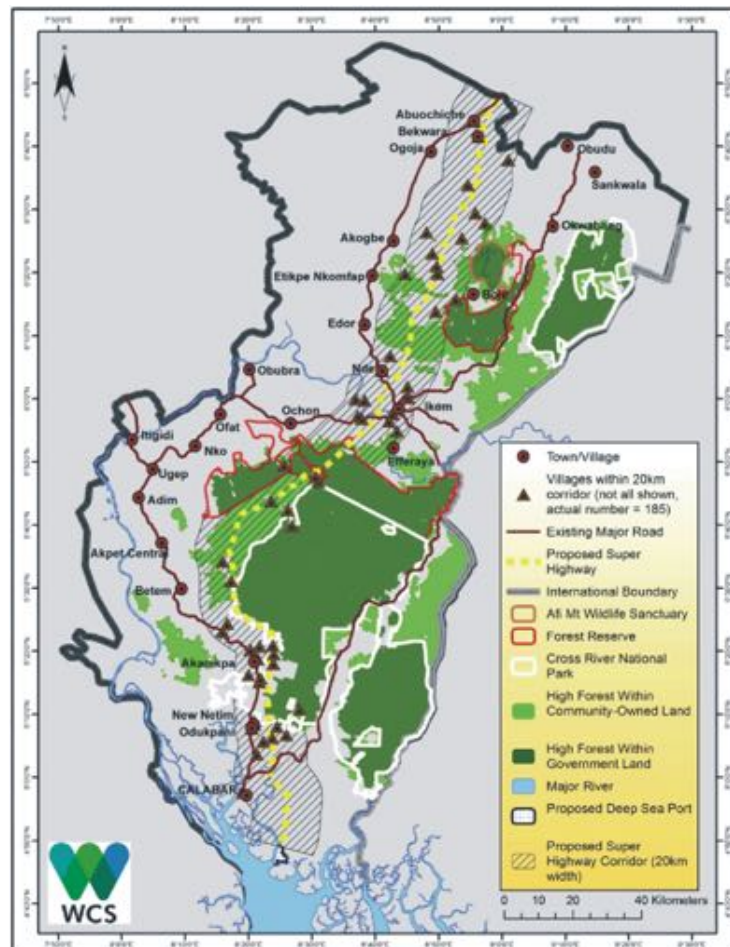
We have made these few and preliminary remarks with a deep commitment to maintain the integrity of the unique environment of Nigeria so that the country will continue to exercise its leadership role in the comity of rainforest nations of the world.

Signed: Odigha Odigha
Chairman, Board of Trustees.

APPENDICES



Appendix 1: Map of Cross River State (From State Government)
Showing the Proposed Superhighway.



Appendix 2:
Map of Cross River State (From WCS) Showing the Proposed
Superhighway.

WATERBURY CHRONICLE

Friday, January 22, 2016

Page 9

GOVERNMENT OF CROSS RIVER STATE OF NIGERIA

MINISTRY OF LANDS AND URBAN DEVELOPMENT

PUBLIC NOTICE

NOTICE OF REVOCATION OF RIGHTS OF OCCUPANCY FOR PUBLIC PURPOSE LAND USE ACT 1978

NOTICE is hereby given that all rights of occupancy existing or deemed to exist on all that piece or parcel of Land lying and situate along the Super Highway from Esighi, Bakassi Local Government Area to Bekwarra Local Government Area of Cross River State of Nigeria covering a distance of 260km approximately and having an offset of two hundred meters (200m) on either side of the centre line of the road and further 10km after the span of the Super Highway, excluding Government Forest Reserves and public institutions are hereby revoked for overriding public purpose absolutely.

DESCRIPTION

Starting from a Primary Control Numbered (XSW 69) with coordinates of 439349.037 meters East and 533203.079 North and TP 1 having co-ordinate 435543.075 meters East and 532541.04 1 meters North. The closing primary controls numbered (XSW 150) have coordinate 501538.84 meters East and 750185.641 meters North respectively.

The bearing and distance of the traverse line (road profile) of which are shown below:

FROM	BEARING	DISTANCE	TO	FROM	BEARING	DISTANCE	TO
XSW 69	254° 58'	3895.56	TP 1	TP60	342° 00'	814.52	TP61
TP 1	15° 32'	931.69	TP 2	TP61	338° 43'	606.47	TP62
TP 2	14° 52'	482.22	TP 3	TP62	83° 55'	1915.17	TP63
TP 3	208° 38'	1350.21	TP 4	TP63	215° 37'	1401.25	TP64
TP 4	10° 31'	1139.20	TP 5	TP64	303° 29'	2223.60	TP65
TP 5	09° 16'	1148.58	TP 6	TP65	290° 09'	2645.39	TP66
TP 6	14° 11'	1270.50	TP 7	TP66	302° 53'	1281.66	TP67
TP 7	00° 13'	645.14	TP 8	TP67	303° 30'	1144.44	TP68
TP 8	108° 40'	1477.03	TP 9				

Appendix 3:

Cross River State Government Gazette

STATION	TO	FROM	BEARING	DISTANCE	TO
842.64	TP127	TP163	68° 20'	781.66	TP164
631.04	TP108	TP164	35° 23'	694.50	TP165
498.23	TP109	TP165	12° 25'	663.57	TP166
792.64	TP110	TP166	358° 30'	457.42	TP167
1648.53	TP111	TP167	33° 08'	481.03	TP168
1537.22	TP112	TP168	22° 32'	487.70	TP169
842.26	TP113	TP169	45° 031'	484.85	TP170
793.11	TP114	TP170	36° 08'	353.82	TP171
4636.10	TP115	TP171	22° 39'	91.68	TP172
1167.55	TP116	TP172	48° 31'	5522.63	XSW150
1411.78	TP117				
1687.24	TP118				
1356.37	TP119				
1682.54	TP120				
2068.58	TP121				
48.14	TP122				
1488.28	TP123				
1719.80	TP124				
1452.20	TP125				
1488.77	TP126				
841.90	TP127				
1017.83	TP128				
12123.26	TP129				
3241.90	TP130				
1147.78	TP131				
1176.88	TP132				
842.71	TP133				
958.12	TP134				
1103.56	TP135				
2808.71	TP136				
4392.03	TP137				
5151.75	TP138				
4557.16	TP139				
820.34	TP140				
665.62	TP141				
394.83	TP142				
272.20	TP143				
301.02	TP144				
13.05	TP145				
242.47	TP146				
515.88	TP147				

All control points are concrete pillars, all bearings and lengths are approximate and all bearing are referred to Universal North.

2. Any person(s) claiming any interest(s) in his /her unexhausted improvements in the said land is/are required within 6 (six) weeks from the date of this notice to send to the DIRECTOR OF LANDS, Lands Department, Ministry of Lands and Urban Development, Calabar, a statement of such unexhausted improvements on the said land and evidence thereof.

3. Any such statement shall be made by the claimant(s) in person or through an agent duly authorized by the claimant(s) in that behalf having qualifications which are not less than those of a legal practitioner or a Land, Estate or valuation officer employed in the public service of the Federation.

4. Government is willing to treat for the residue of unexhausted improvements on the said parcel of land. Improvements in respect of which no statement is received are liable to be treated as non-existent. And notice is hereby given that government intends to enter and use the said land at the expiration of 6 (six) weeks from the date of this notice.

5. Any person(s) who wilfully hinder(s) or obstruct(s) the Governor of the Cross River state of Nigeria or any person employed by him from using the said land is/are liable on

Appendix 4:

Cross River State Government Gazette continued.

6



Observations and Objections of RRDC to the EIA Draft Report of the Calabar- Ikom-Katsina Ala Superhighway Project

(Submission by RRDC, Friday, May 20, 2016)

Preamble

We, the Rainforest Resource and Development Centre (RRDC), have read through the 443 pages Environmental Impact Assessment (EIA) draft report of the proposed Ikom – Katsina Ala Superhighway project prepared by PMG Nigeria Limited (the EIA Consultant) for the Cross River State Government, submitted to the Federal Ministry of Environment, Abuja, in March 2016. Having carefully analyzed the said report, we have come to the conclusion that the said draft report is a deliberate attempt to misinform

the Federal Ministry of Environment about the true potential impacts of the proposed superhighway project. Our conclusions are based on the fact that critical elements of the project (the buffer zones covering an expansive land mass of 20km throughout the length of the project has been deliberately omitted. The buffer zone, which comprises about 95 to 96 percent of the territory acquired for the project (5,200 square kilometres), and threatens to place more than 180 indigenous communities on forced migration, cannot be omitted from the EIA Report without rendering the entire document invalid.

Having, therefore, failed to provide the Federal Ministry of Environment with the most fundamental data essential for appraising the impacts of the said Superhighway project on over one million indigenous people and the associated ecosystems, the EIA Report is thus a deficient, non-compliant, flawed, deliberately doctored and unfit document that cannot be relied upon in the matter of processing any form of approval for the project. Our observations and objections are hereby presented below.

I. MAPS

The Superhighway maps for the proposed project that are displayed in the EIA are doctored versions of the authentic map of the proposed project. Please refer to page 9 chapter 2, fig. 2.4: Map of Cross River State showing the alignment alternatives considered, as well as in page 5 Chapter 4, Fig 4.1: Map of Cross River State showing sampling locations. The same map is hereby reproduced and shown below in Fig A.

The Notice of Acquisition the Cross River State Government published in the *Weekend Chronicle* of 22nd January, 2016 refers to 5,200km of land that the government intends to acquire for the project. This includes 200m span

for the right-of-way on either side of the center line of the road and a massive land mass designated as Buffer Zone, spanning 10km on either side of the center-line of the super highway. Meanwhile, all the maps displayed in the EIA only show the center-line of the superhighway. The following questions therefore arise:

- i) What is the EIA report all about?
- ii) Is the EIA report concerned only with the pathway of the center-line of the superhighway? If so, then the EIA is invalid by reason of the fact that it has not captured the whole territory that will be impacted by the project.
- iii) Is the EIA report intended to capture in a holistic manner the entire territory that will be impacted by the project? If so, then, the deliberate omission of the contentious buffer zones from the maps shown in the EIA report point in the direction of LACK OF TRANSPARENCY.
- iv) Why is the buffer zone excluded from the entire EIA report? This would appear to indicate deliberate attempt at deception.

Fig. A: DOCTORED Map of Cross River State showing the proposed Calabar-Ikom-Katsina Ala Superhighway Project. Please refer to the EIA Draft Report, 2016 Page 9 of Chapter Two. This map is being deliberately manipulated to conceal all the areas of High Conservation Value and in particular, to deceive the Federal Ministry of Environment that the project does not pass through any vegetation and/or forest.

This map is very flawed and misleading on account of the following considerations.

- (i) The expansive buffer zone has been omitted.
- (ii) The fate of more than 1 million indigenous people who occupy more than 180 indigenous communities within

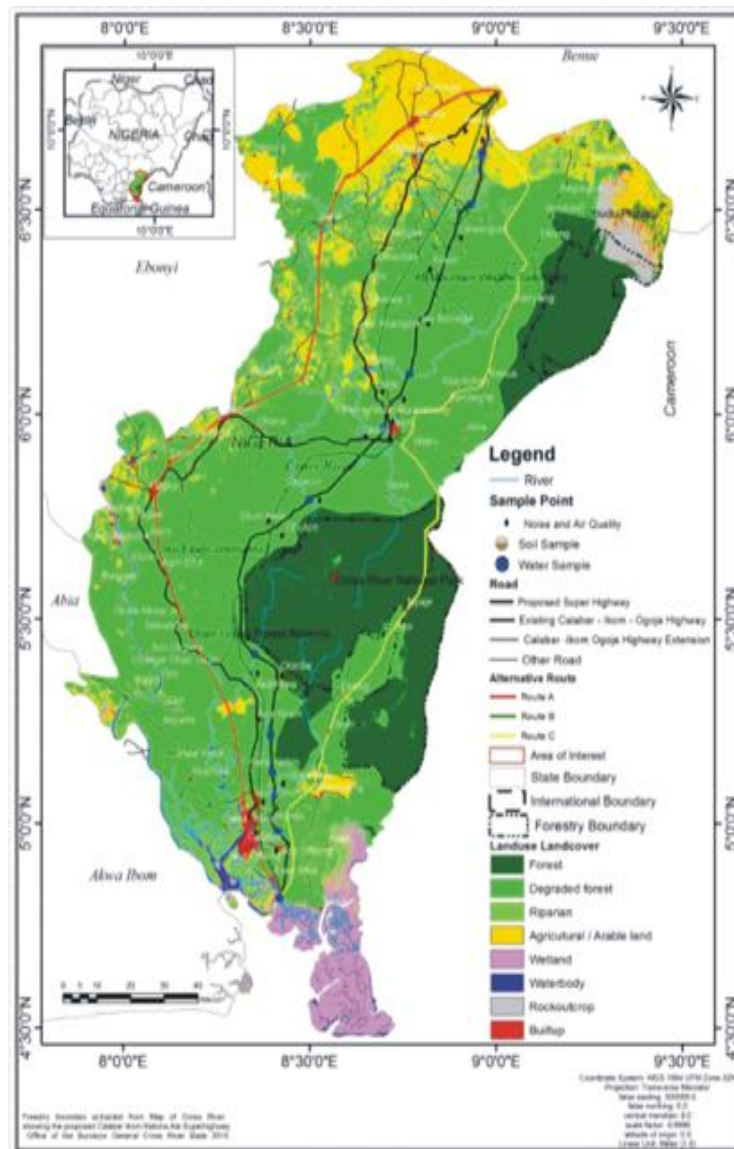


FIG.A

the buffer zone has not been analyzed and reported in the EIA Draft Report.

- (iii) The territories designated as degraded forests in the map are actually primary vegetation zones of tropical high forests (THF) and rich community forests with diverse timber and non-timber forest resources.

It is our considered opinion that the omission of the buffer zones from the maps displayed in the EIA (currently placed before the Federal Ministry of Environment for scrutiny) makes the EIA invalid. Similarly also, the complete omission of the buffer zones from the entire EIA report (as properly shown in Fig B & D below) makes it invalid also.

On the whole, this appears to be a deliberate effort at misguiding the Federal Ministry of Environment and all other stakeholders in respect of the review of EIA report. The trick appears to be for the government of Cross River State to use deceptive documents to obtain EIA approval and thereafter stand on such approvals to grab indigenous community lands.

This is most OBJECTIONABLE.

Fig. B: DOCTORED Relief Map of Cross River State showing LGA/10 km/200meters Buffer on the Superhighway route and the Cross River National Park and the proposed Deep Sea Port.

This map, produced by the Office of the Surveyor-General of Cross River State of Nigeria (in 2015) for this project has not been included in the draft report. As a working document for the project, it is misleading by reason of the following gaps.

- (i) The ecological impacts of the Superhighway project have been concealed.

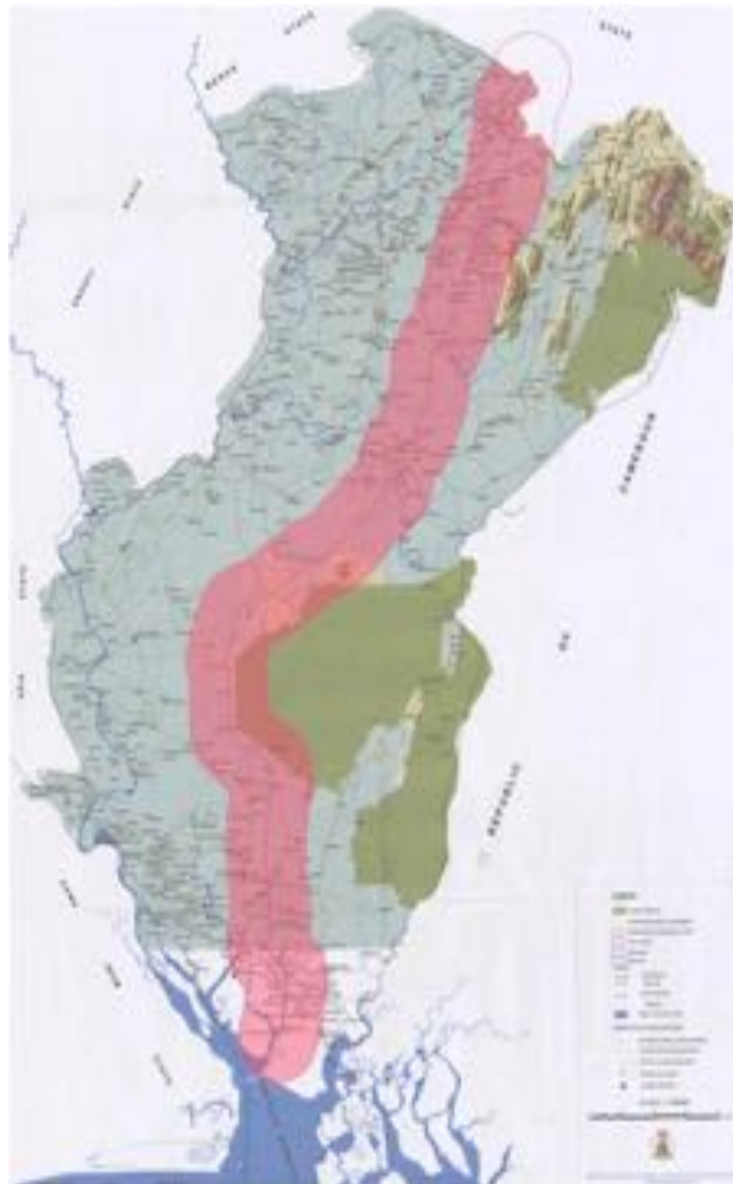


FIG. B

- (ii) The Superhighway project has been deliberately superimposed on a political/relief map of the territory.
- (iii) Since the base map is not an ecosystem map, the impacts of the project on conservation territories (forest reserves, Afi Wildlife Sanctuary, wetlands and community forests) have been deliberately concealed.
- (iv) Only the Cross River National Park has been recognized (in this map) as an area of significant ecological importance in the entire territory. The area indicated as forest reserves is actually the Oban Hill Division (in the southern part) and Boshe-Okwangwo Division (in the northern part) of the Cross River National Park (property of the Federal Government of Nigeria).

Fig. C: Authentic vegetation map of Cross River State of Nigeria showing seventeen (17) forest reserves and four (4) Ecological areas (including Swamp and Mangrove forest, Tropical high forest/disturbed forest, Derived guinea savanna as well Montane/grassland. This map was produced by the Cross River State Forestry Department as part of the Cross River State Forestry Project.

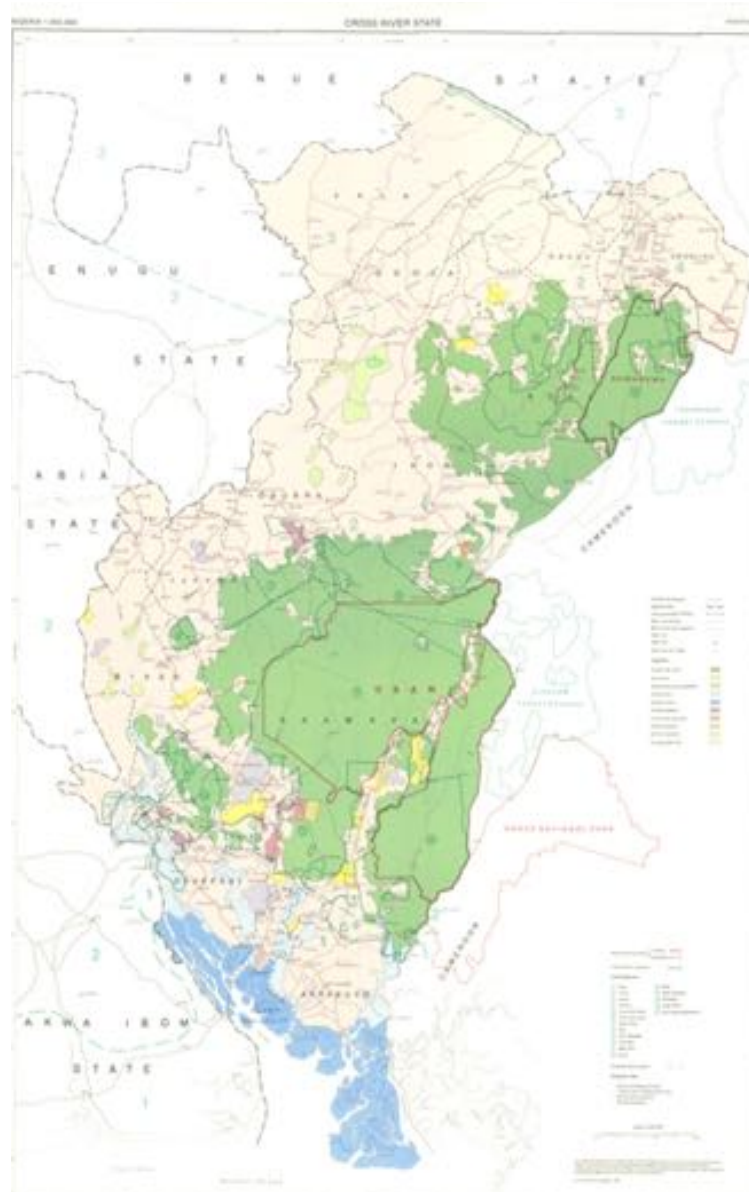


FIG. C

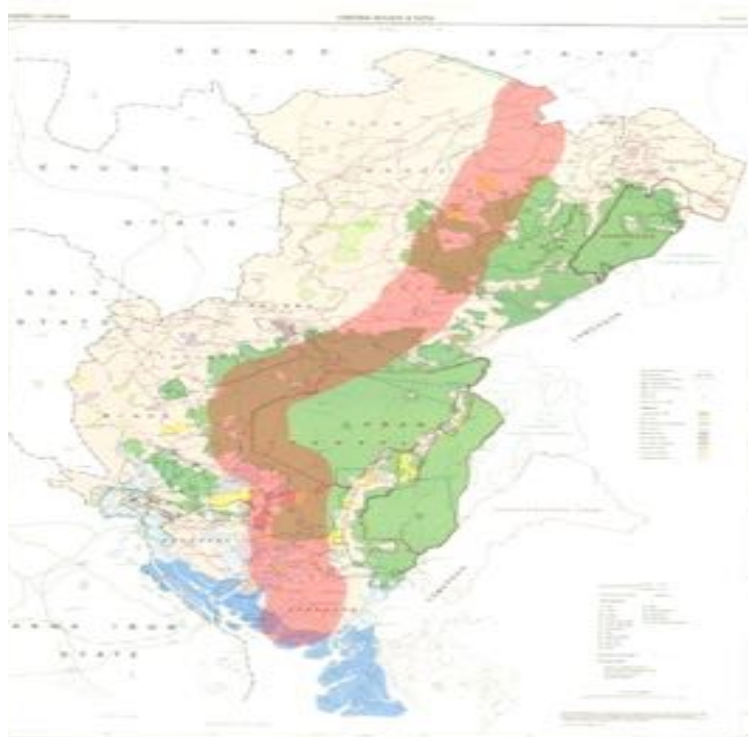


FIG. D

Fig. D: Authentic vegetation map of Cross River State of Nigeria showing the potential impacts of the Superhighway project on principal ecological territories in Cross River State of Nigeria

NB: The omission of this map from the EIA Draft Report must have been directed by the intention to play down on the ecological impacts of the Superhighway project.

2. Encroachment into Ecosystems Areas: The Case of Oban Hill Division of the Cross River National Park (Please refer to Chapter I, page 4I of the EIA report).

The Cross River National Park is a Federal Government project created in 1991, approved and gazetted in 1989. It is predominantly a sensitive, globally recognized evergreen rainforest habitat constituted under the Laws of the Federal Republic of Nigeria (LFRN). The Federal Ministry of Environment should be interested in the fact that although the road project is traversing through some parts of the gazetted territory of the Oban Hill Division of the Cross River National Park, property of the Federal Government of Nigeria, the EIA report has deliberately omitted to comment on the potential impact of the project on the Park. Fig. D above clearly shows portions in the Western part of the Oban Hill Division of the Park encroached upon by the Superhighway project. Since the National Park is a territory of the Federal Government of Nigeria and already, the World Wide Fund for Nature (WWF) and the Overseas Development Natural Resources Institute (ODNRI) have produced “the Cross River National Park (Oban Division) Plan for Developing the Park and its Support Zone” in November 23, 1998, for the Federal Government of Nigeria and the Government of Cross River State of Nigeria, the Federal Ministry of Environment should not permit itself to overlook this deliberate and gross omission. The omission of the potential impacts of the Superhighway project on the Oban Hill Division of the Cross River National Park is a deliberate contravention of the demands of the National Park Service Act, CAP N65, which specifies the production of EIA for such projects that proposes “to alter the configuration of the soil or the character of the vegetation ... ; or does an act likely to harm or disturb the

fauna and flora; ... in a National Park ... ” Such contraventions ought not to be condoned by the Federal Ministry of Environment and this is objectionable.

Our position on this specific matter of encroachment of the Superhighway on the Oban Hill Division of the Cross River National Park is that:

- i) It is unlawful for the Cross River State Government to attempt to occupy lands that belong to the Federal Government of Nigeria under the responsibility of the National Park Service except there is a gazetted notice separating the said portion of land from the Park.
- ii) The Cross River State Government cannot occupy lands that have been acquired by the Federal Government of Nigeria for purposes of conservation (i.e. for “overriding public interest”) unless there is a gazetted notice of nullification of the previous acquisition. This has not yet been done.

3. Encroachment into Ecosystems Areas: The Case of AFI Wildlife Sanctuary (Please refer to Chapter I, page 41 of the EIA report).

The EIA report has also deliberately failed to account for the potential impact of the Superhighway project on Afi Wildlife Sanctuary. This encroachment is highly objectionable on account of the fact that Afi Wildlife Sanctuary is a highly acclaimed biodiversity hotspot which has been receiving favourable responses from International donors towards the purpose of sustaining its ecological integrity. The EIA report has failed to show how the Superhighway project will impact on the over 300 individual gorillas (*Gorilla gorilla diehli* – the most threatened of the African apes, found in this site and listed as Critically Endangered on the IUCN Red List of threatened species – IUCN 2013).

4. FOREST: Please refer to Table 2.2: Routes interceptions with land-use (Route D-Proposed Superhighway)

We have observed that the EIA report has declared in Table 2.2 cited in page 10, Chapter 2 that there is no forest in the pathway designated for the Superhighway project. Our observation is that the pathway of this project begins at the wetlands in the Southern part of Cross River State of Nigeria and progresses through secondary forest, community forest and Tropical High Forest ecosystems of Cross River State up to the point of termination at the boundary between Cross River State and Benue State of Nigeria. Fig C & D above clearly describe the vegetation and ecological zones of Cross River State. It is therefore very curious and deliberately deceptive for the government to claim that the project does not pass through any vegetation and/or forest.

Cross River State is not located in a desert region. There is no part of Cross River State in which there are no forests or community farmlands that will definitely be affected by the impacts of the Superhighway project such as this. Thus, the assertion that the project is not passing through forest ecosystems is a deliberate falsehood. Invariably, the EIA is deficient in showing how the changes in vegetation from Tropical Rainforest to Superhighway will affect the value of the landscape configuration of the state and its environs as well as its associated impacts on Forest Reserves, Community Forest, National Park, Climate change mitigation and the lofty eco-tourism programme of the Cross River State Government. The report has completely failed to show how the rich Tropical rainforest estate of Cross River State of Nigeria is going to be destroyed to provide 5,200 Km of land for the Superhighway project against the recommended controls set out in the “Strategy for Sustainable Development

and Conservation of the forests Cross River State”, prepared in 1994 by the Forestry Commission, with huge counterpart funding and technical inputs by the Federal, State and British governments.

Conclusion

It is evident that the entire Environmental Impact Assessment (EIA) report does not address any of the following pertinent issues:

- i) The EIA report has not addressed the impact of the center-line of the Superhighway at the positions where it has encroached on the Oban Hill Division of the Cross River National Park in the vicinity of Akamkpa Local Government Area and also a number of forest reserves and community forest.
- ii) The EIA report has failed to discuss the buffer zones which constitute about 95-96 percent of the total area of land acquired for the project.
- iii) The EIA has failed to address the impact of the buffer zones of the project on the over 180 indigenous communities (estimated at about 1 million people) that occupy the buffer zone and that are correspondingly facing the threats of loss of livelihoods, cultural and natural heritages. These communities are about to become internally displaced persons (IDPs) without communal land holdings and ultimately consigned into the realms of extinction on account of the Superhighway project.
- iv) Finally, it is our opinion that the EIA report is a very vague and unreliable document because it has deliberately omitted the most critical impacts of the project on ecosystems and indigenous people. We are therefore suggesting that the Federal Ministry of Environment should reject this report in its entirety on

grounds of the fact that it LACKS TRANSPARENCY. We therefore demand the production of a more comprehensive document that will be directed towards addressing the pertinent issues at stake without any deliberate cover-ups as have already been characteristic of the present document.

In conclusion, the Federal Ministry of Environment must demand for the complete disclosure of all the territories intended to be affected by the project before considering the EIA report. This disclosure must in particular include the over 180 indigenous communities that are in danger of losing their ancestral lands, cultural and natural heritages if this project should receive an EIA approval based on the false premises of the EIA report and its craftily doctored maps and information.

Prince Odey Oyama

Prince Odey Oyama is the Executive Director of Rainforest Resource and Development Centre (RRDC), an Environmental NGO based in Cross River State of Nigeria. RRDC works to protect, preserve and conserve Nigeria's rainforest and their resources through the promotion of action-oriented programs by the application of a participatory people-centred approach. The benefits are intended to impact positively on human, social, political and environmental activities within the vicinities of the affected communities and globally.

7



The Superhighway EIA and the Fate of Ecosystems and Communities

Ako Amadi

1. General comments on conformity with regulations

Section 7 of the EIA Act No 86 of 1992 requires that proponents apply in writing to the Federal Ministry of Environment prior to commencement of a project. The date of submission of the present document under review to the Federal Ministry of Environment is stated as March, 2016. From reports in the media, international and local, the clearing of forests around some communities in Cross River State during the last months suggest that these activities were not unrelated to the Superhighway Project.

*** Ako Amadi is the Executive Director of Community Conservation and Development Initiatives (CCDI).

- It could be interpreted as a breach in procedural guidelines, or a flaw in them that empowers and emboldens proponents to commence physical land alteration activities during the planning phase of a project. Clarification is therefore required on the status of what is now under review. Is it a pre-project or a post-project submission, or anything intermediary of an environmental impact assessment?
- There is no indication in the document on how long the construction phase would last. This is important as there are definitely going to be two layers of environmental and social impacts: 1) During the construction of the Superhighway, 2) After the construction of the Superhighway. The submission by the proponents concentrates largely on how the highway would be constructed and with what materials. Mention is made of the related potential proximate impacts, and remediation proposed. However, what is crucial in an ESIA involving changes to natural systems is the longer term and in many cases, irreversible result.

2. Quality and Adequacy of Technical and Environmental Baseline

- The most contentious issue around this project is whether the proposed Superhighway will necessitate the grabbing of land from communities in addition to destruction of some protected areas of Cross River State. The baseline information therefore fails to point out the interactive nature of people and natural environments in the state, how they subsist from harvesting non-timber forest products and fishing in rivers and wetlands, and what their fears are.
- The differences between natural forests and planted vegetation, and the difficulties of replacing the former

by the latter are not emphasized in the report. It is of relevance that many plant species in the forests of Cross River are still unknown to science. One of the reasons for conservation is based on the thinking that research could eventually discover the uses of these plants in pharmaceuticals/phytomedicines, and in the fortification of human nutrition.

- This EIA study has been very weak in its recognition of the ecosystem concept that supports biological diversity and the livelihoods of rural communities in Cross River State and elsewhere. There are lengthy taxonomic listings and descriptions of individual organisms, but very little in the way of profiling species interactions, community food webs, and the dangers of alterations to ecological systems, human settlements and agriculture patterns.
- How well or poorly the environment in Cross River is currently managed, should have been a component of the baseline, in order to justify the necessity for environmental change. In this context, the proponents present a diversionary concentration on economic, rather than ecologic viability of their proposed project. In the process, an economic feasibility study obfuscates the assessment of environmental impacts. This section of the EIA discusses international environmental and agricultural agreements to which Nigeria is a signatory, but does not analyse the policy environment in Cross River State.
- Environmental and agricultural policies in Cross River State, like in the rest of Nigeria, are politically and culturally sensitive, often cumulative and overlapping, both in constitution, implementation, and impact. In Cross River, the arbitrariness of sudden, short-term, stopgap policies laminated into older, long-term measures is evident. What exists as policy in Cross River State clearly

fails to identify the relationship between the sustainable management of natural systems, particularly forests and macro-level policy in other sectors of the economy. Policy development and implementation are impeded and impacted by a variety of systemic factors within the wider ambience of development.

- Despite opportunities offered by modern information technology, and the increased application of environmental accounting tools, there is little monitoring and measure of cross-sectoral policy impacts on natural resources in the State of Cross River.
- The state lacks relevant, updated statistics for effective natural resource management planning. There is little application of consistent, targeting mechanisms for the poor. Frequent policy changes and inconsistent implementation, result in a climate of uncertainty and insecurity.

3. Impact evaluation and mitigation measures

- This EIA, like most in Nigeria is largely descriptive. There is too much of a generic situational analysis, and not much in the way of a needs assessment addressing the core issues of environmental impacts in a scenario where a state government is faced with the multiple problems of development and conservation of valuable biodiversity.
- Clearly, I had expected the inputs of the National Parks Service, CERCOPAN, the WWF, WCS, the Drill Ranch, even the state Cross River State Forestry Commission – all organizations that maintain a field presence in the Cross River State field. Quite a substantial amount of money has been spent by the international development agencies on conservation and rural development, and any project that works against what has been achieved

already will put Nigeria in a bad light.

- There is a welcome table in the document showing the schedule of meetings with community members, but there are no reports of decisions taken at these meetings. Consultations appear not to have been adequate.
- Given the justification in the EIA for construction of a Superhighway as an evacuation corridor from a deep sea port in Calabar and Bakassi, I am not convinced that the volume of traffic in the state is so high that such a proposed highway would be needed. We complain about the quality of a maintenance culture in Nigeria, and wonder why the existing roads cannot be upgraded to serve the purpose and leave forests and communities intact. The EIA could have given us a simpler, clearer and user-friendly cost-benefit analysis on the choices and options.
- If as stated in the EIA, the proposition is for a Superhighway route D, avoiding the Oban Sector of the Cross River National Park and the Afi Mountain Sanctuary, yet the proximity of the route to these protected areas will clearly open the way for the eventual destruction of these forests by loggers and poachers, as well as landless and jobless squatters. The EIA fails to make the major questions of the fate of communities and the survival of natural systems, whether within parks or not, a major factor.

8



What Manner of EIA?

1. The environmental study released was not circulated in the localities or brought to the notice of community people where this project is going to be sited. The law entitles them to see the non-technical summary as well as the full environmental statement. The CRS Government is obliged to provide this information.
2. There is no structured method to public involvement as part of the EIA study. Adequate consultation is key for communities. It was observed that the level of involvement was consultative rather than participatory. Traditional knowledge of communities that would play host to the project was not harnessed but overlooked.
3. The CRS Government and its EIA Consultant, PGM Nigeria Limited, have glaringly failed to succinctly engage communities that will be directly impacted by

the project. The marginalization of these valuable contributors to projects baseline conditions would radically alter diverse forest ecosystem especially livelihoods of forest dependent communities that fall within the study area.

4. It was also observed that the Environmental Impact Assessment provided information on decisions that have already been taken, rather than providing opportunities for constructive dialogue or opportunities to influence design and decision making.
5. There is nowhere NGOs working on environment at the local, national, or International level were reported to have been critically engaged or consulted by the EIA proponents. This is unacceptable!
6. The EIA draft does not reflect the extent to which community natural resources, human and environmental health, and aesthetics are protected by existing environmental laws.
7. The EIA did not describe each and every aspect of the proposed Superhighway Project in sufficient detail to enable citizens to understand the project's true environmental and social impacts. Hence, the magnitude and significance of the impacts have not been properly assessed.
8. This proposed Superhighway project does not only threaten pristine ecosystems, but high rainfall and heavy storms overwhelm mining facilities and mitigation measures for preventing environmental disasters.
9. Baseline studies about water quality should consider the local and regional uses of water (domestic, industrial, urban, agricultural, recreational, others) and assess water quality as part of the ecosystem (in relation to the life of plant and animal communities).

10. The EIA should predict how much the surface and groundwater baseline levels would change as a result of contaminants from the road construction.
11. The project description should analyze alternative ways to undertake the project and identify the least environmentally-damaging practical alternatives.
12. The impacts analysis section of the EIA must integrate the baseline data (environmental conditions before the project) with the assessment of potential impacts on air quality in all project of the CO₂ uptake rates by local forests that will be impacted by the proposed super highway project.
13. The impacts analysis section of the EIA does not include quantitative estimates of lost CO₂ uptake by forests and vegetation that will be cleared in order for the highway construction to begin.
14. The impact analysis section must provide clear, pictorial information of the aquatic and terrestrial ecosystems and wildlife species, and how these would be affected by the Superhighway project.
15. The EIA must include detailed information about compensation, relocation plans, alternative relocation sites, and information about conditions that would guarantee people the same quality of life.
16. The Environmental Impact study lacks essential information for determining whether the 260km Super highway project is environmentally acceptable.

**Environmental Impact Assessment
Decree No 86 of 1992
Laws of the Federation of Nigeria**



10th December, 1992

**The Federal Military Government
hereby decrees as follow:**

Part I

**General Principles of Environmental
Impact Assessment**

1. The Objectives of any Environmental Impact Assessment (hereafter in this Decree referred to as “the Assessment”) shall be –
 - (a) to establish before a decision taken by any person, authority corporate body or unincorporated body including the Government of the Federation, State

or Local Government intending to undertake or authorise the undertaking of any activity that may likely or to a significant extent affect the environment or have environmental effects on those activities shall first be taken into account;

- (b) to promote the implementation of appropriate policy in all Federal Lands (however acquired) States and Local Government Areas consistent with all laws and decision making processes through which the goal and objective in paragraph (a) of this section may be realised;
 - (c) to encourage the development of procedures for information exchange, notification and consultation between organs and persons when proposed activities are likely to have significant environmental affects on boundary or trans-state or on the environment of bordering towns and villages.
2. (1) The public or private sector of the economy shall not undertake or embark on public or authorise projects or activities without prior consideration, at an early stage, or their environmental effects.
- (2) Where the extent, nature or location of a proposed project or activity is such that is likely to significantly affect the environment, its environmental impact assessment shall be undertaken in accordance with the provisions of this Decree.
- (3) The criterion and procedure under this Decree shall be used to determine whether an activity is likely to significantly affect the environment and is therefore subject to an environmental impact assessment.
- (4) All agencies, institutions (whether public or private) except exempted pursuant to this Decree,

shall before embarking on the proposed project apply in writing to the Agency, so that subject activities can be quickly and surely identified and environmental assessment applied as the activities being planned.

3. (1) In identifying the environmental impact assessment process under this Decree, the relevant significant environmental issues shall be identified and studied before commencing or embarking on any project or activity covered by the provisions of this Decree or covered by the Agency or likely to have serious environmental impact on the Nigerian environment.
- (2) Where appropriate, all efforts shall be made to identify all environmental issues at an early step in the process.
4. An environmental impact assessment shall include at least the following minimum matters, that is—
 - (a) a description of the proposed activities;
 - (b) a description of the potential affected environment including specific information necessary to identify and assess the environmental effects of the proposed activities;
 - (c) a description of the practical activities, as appropriate;
 - (d) an assessment of the likely or potential environmental impacts on the proposed activity and the alternatives, including the direct or indirect cumulative, short-term and long-term effects;
 - (e) an identification and description of measures available to mitigate adverse environmental impacts of proposed activity and assessment of those measures;

- (f) an indication of gaps in knowledge and uncertainty which may be encountered in computing the required information;
 - (g) an indication of whether the environment of any other State, Local Government Area or areas outside Nigeria is likely to be affected by the proposed activity or its alternatives;
 - (h) a brief and non-technical summary of the information provided under paragraph (a) to (g) of this section.
5. The environmental effects in an environmental assessment shall be assessed with a degree of detail commensuration with their likely environmental significance.
 6. The information provided as of environmental impact assessment shall be examined impartially by the Agency prior to any decision to be made thereto (whether in favour or adverse thereto).
 7. Before the Agency gives a decision on an activity to which an environmental assessment has been produced, the Agency shall give opportunity to government agencies, members of the public, experts in any relevant discipline and interested groups to make comment on environmental impact assessment of the activity.
 8. The Agency shall not give a decision as to whether a proposed activity should be authorised or undertaken until appropriate period has elapsed to consider comments pursuant to sections 7 and 12 of this Decree.
 9. (1) The Agency's decisions on any proposed activity subject to environmental impact assessment shall—
 - (a) be in writing;
 - (b) state the reason therefore;

- (c) include the provisions, if any, to prevent, reduce or instigate damage to the environment.
 - (2) The report of the Agency shall be made available to interested persons or groups.
 - (3) If no interested person or group requested for the report, it shall be the duty of the Agency to publish its decision in a manner by which members of the public or persons interested in the activity shall be notified.
 - (4) The Council may determine an appropriate method in which the decision of the Agency shall be published so as to reach interested persons or groups, in particular the originators or persons interested in the activity subject of the decision.
10. When the Council deems fit and appropriate, a decision on an activity which has been subject of environmental impact assessment, the activity and its effects on the environment or the provisions of section 9 of this decree shall be subject to appropriate supervision.
11. (1) When information provided as part of environmental impact assessment indicates that the Environment within another State in the Federation or a Local Government Area is likely to be significantly affected by a proposed activity, the State, the Local Government Area in which the activity is being planned shall, to the extent possible—
- (a) notify the potentially affected State or Local Government of the proposed activity;
 - (b) transmit to the affected State or Local Government Area any relevant information of the environmental impact assessment;
 - (c) enter into timely consultations with the affected

State or Local Government.

(2) It shall be the duty of the Agency to see that the provisions of subsection (1) of this section are complied with and the Agency may cause the consultations provided pursuant to subsection (1) of this section to take place in order to investigate any environmental derogation or hazard that may occur during the construction or process of the activity concerned.

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

13.(1) When a project is described on the Mandatory Study List specified in the Schedule to this Decree or is referred to mediation or a review panel, no Federal, State or Local Government or any of their authority or agency shall exercise any power or perform any duty or functions that would permit the project to be carried out in whole or in part until the Agency has taken a cause of action conducive to its power under the Act establishing it or has taken a decision or issued an order that the project could be carried out with or without conditions.

(2) Where the Agency has given certain conditions before the carrying out of the project, the conditions shall be fulfilled before any person or authority shall embark on the project.

Part II

Environmental Assessment of Projects

14. (1) Notwithstanding the provisions of Part I of this Decree, an environmental impact assessment shall be required where a Federal, State or Local Government Agency Authority established by the Federal, State or Local Government Council–
- (a) is the proponent of the project and does any act or thing which commits the Federal, State or Local Government authority to carrying out the project in whole or, in part;
 - (b) makes or authorises payment or provides a guarantee for a loan or any other form of financial assistance to the proponent for the purpose of enabling the project to be carried out in whole or in part, except when the financial assistance is in the form of any reduction, avoidance, deferral, removed, refund remission or other form of relief from the payment of any tax, duty or excise under Customs Tariff (Consolidated) Act or any Order made thereunder, unless that financial assistance is provided for the purpose of enabling an individual project specifically named in the enactment, regulation or order that provides the relief to be carried out;
 - (c) has the administration of Federal, State or Local Government and leases or otherwise disposes of those lands on or any tests in those lands or transfers the administration and control of those lands or invest therein in favour of the Federal Government or its agencies for the purpose of enabling the project to be carried out in whole or in part.

- (d) under the provisions of any law or enactment, issues a permit or licence, grants an approval or takes any other action for the purpose of enabling the project to be carried out in whole or in part.
15. (1) An environmental assessment of project shall not be required where–
- (a) in the opinion of the Agency, the project is in the list of projects which the President, Commander-in-Chief of the Armed Forces or the Council is of the opinion that the environmental effects of the project is likely to be minimal;
 - (b) the project is to be carried out during national emergency for which temporary measures have been taken by the Government;
 - (c) the project is to be carried out in response to circumstances that, in the opinion of the Agency, the project is in the interest of public health or safety.
- (2) For greater certainty, where the Federal, State or Local Government exercises power or performs a duty or function for the purpose of enabling projects to be carried out, an environmental assessment may not be required if–
- (a) the project has been identified at the time the power is exercised or the duty or function is performed; and
 - (b) the Federal, State, or Local Government has no power to exercise any duty or perform functions in relation to the projects after they have been identified.
16. Whenever the Agency decides, that there is the need for an environmental assessment on a project before the commencement of the project the environmental assessment process may include –

76 ■ A HIGHWAY THROUGH THE FOREST

- (a) a screening or mandatory study and the preparation of a screening report;
 - (b) a mandatory or assessment by a review panel as provided in section 25 of this Decree and the preparation of a report;
 - (c) the design and implementation of a follow-up program.
- 17. (1) Every screening or mandatory study of a project and every mediation or assessment by a review panel shall include a consideration of the following factors, that is –
 - (a) the environmental effects of the project, including the environmental effects of malfunctions or accidents that may occur in connection with the project and any cumulative environmental effects that are likely to result from the project in taking into consideration with other projects, that have been or will be carried out;
 - (b) the significance or, in the case of projects referred to in section 43 44 or 45, the seriousness of those effects;
 - (c) comments concerning those effects received from the public, accordance with provisions of this Decree;
 - d) measures that are technically and economically feasible and that would mitigate any significant or, in the case of projects referred to in sections 43, 44, or 45 any serious adverse environmental effects of the project.
- (2) In addition to the factors set out in subsection (1) of this Decree every mandatory study of a project and every mediation or assessment by review panel shall include a consideration of the following factors, that is –

- (a) the purpose of the project;
 - (b) alternative means of carrying out the project that are technically and economically feasible and the environmental effects of any such alternative means;
 - (c) the need for and the requirements of any follow-up program in respect of the project;
 - (d) the short-term or long term capacity for regeneration of renewal resources that are likely to be significantly or, in the case of the projects referred to in sections 43, 44 or 45, seriously affected by the project; and
 - (e) any other matter that the Agency or the Council at the request of the Agency, may require.
- (3) For greater certainty, the scope of the factors to be taken into consideration pursuant to subsection (1) (a), (b) and (d) and subsection (2) (b), (c) and (d) of this Decree shall be determined –
- (a) by the Agency; or
 - (b) where a project is referred to mediation or a review panel, by the Council, after consulting with the Agency, when fixing the terms of reference of the mediation or review panel.
- (4) An environmental assessment of a project shall not be required to include a consideration of the environmental effects that could result from carrying out the project during the declaration of a national emergency.
18. (1) The Agency may delegate any part of the screening or mandatory study of a project, including the preparation of the screening report or mandatory study report, but shall not delegate the duty to take a course of action pursuant to

section 16(1) or 34(1) of this Decree.

- (2) For greater certainty, the Agency shall not take a course of action pursuant to section 16 (1) or 34(1) unless it is satisfied that any duty or function delegated pursuant to subsection (1) thereof has been carried out in accordance with provisions of this Decree or any relevant enactment.
19. (1) Where the Agency is of the opinion that a project is not described in the mandatory study list or any exclusion list, the Agency shall ensure that –
 - (a) a screening of the project is conducted; and
 - (b) a screening report is prepared.
 - (2) Any available information may be used in conducting the screening of a project, but where the Agency is of the opinion that the information available is not adequate to enable it to take a course of action pursuant to section 16(1) of this Decree, it shall ensure that any study and information that it considers necessary for that purpose are undertaken or collected.
20. (1) Where the Agency receives a screening report and the Agency is of the opinion that the report could be used as a method of conducting screening of other project within the same class, the agency may declare the report to be a class screening report.
 - (2) Any declaration made pursuant to subsection (1) of this Decree shall be published in the Gazette and the screening report to which it relates shall be made available to the public at the registry maintained by the Agency.
 - (3) Wherein the opinion of the Agency a project or

part of a project is within a class in respect of which a class screening report has been declared, the Agency may use or permit the use of that report and the screening on which it is based to whatever extent the Agency considers appropriate for the purpose of complying with section 13 of this Decree.

- (4) Where the Agency uses or permits the use of a class screening report, it shall ensure that any adjustments are made that in the opinion of the Agency are necessary to take into account Local circumstances and any cumulative environmental efforts that in the opinion of the Agency are likely to result from the project in combination with other projects that have been or will be carried out.
- 21.(1) Where a proponent proposes to carry out, in whole or in part a project for which a screening report has been prepared but the project did not proceed or the manner in which it is to be carried out has subsequently changed or where a proponent seeks the renewal of a licence, permit or approval referred to in section 5(d) of this Decree in respect of a project for which a screening report has been prepared, the Agency may use or permit the use of that report and the screening on which it is based to whatever extent the Agency considers appropriate for the purpose of complying with section 13 of this Decree.
- (2) Where the Agency uses or permits the use of a screening or screening report pursuant to subsection (1) of this section, the Agency shall ensure that any adjustments are made that in its opinion are necessary to take into account any

significant changes in the circumstances of the project.

22. (1) After completion of a screening report in respect of a project, the Agency shall take one of the following courses of action, that is –

(a) where, in the opinion of the Agency;

(i) the project is not likely to cause significant adverse environmental effects, or

(ii) any such effect can be mitigated,

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

(b) where, in the opinion of the Agency;

(i) the project is likely to cause significant adverse environmental effects that may not be mitigable; or

(ii) public concerns respecting the environmental effects of the project warrant it,

the Agency; shall refer the project to the Council for a referral to mediation or a review panel in accordance with section 25 of this Decree; or

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

(2) For greater certainty, where the Agency takes a course of action referred to in subsection (1) (a) of this section, the Agency shall exercise any

power and perform any duty or function conferred on it by or under any enactment in a manner that ensures that any mitigation measures that the Agency considers appropriate in respect of the project are implemented.

- (3) Before taking a course of action in relation to a project pursuant to subsection (1) of this section, the Agency shall give the public an opportunity to examine and comment on the screening report and any record that has been filed in the public registry established in respect of the project pursuant to section 51 of this Decree and shall take into consideration any comments that are filed.
23. Where the Agency is of the opinion that a program is described in the mandatory study list, the Agency shall –
- (a) ensure that a mandatory study is conducted, and a mandatory study report is prepared and submitted to the Agency, in accordance with the provisions of this Decree; or
 - (b) refer the project to the Council for a referral to mediation or a review panel in accordance with section 25 of this Decree.
24. (1) Where a proponent proposes to carry out, in whole or in part, a project for which a mandatory study report has been prepared but the project did not proceed or the manner in which it is to be carried out has subsequently changed, or where a proponent seeks the renewal of a licence, permit or approval referred to in section 5(d) of this Decree in respect of a project for which a mandatory study report has been prepared, the Agency may use or permit the use of that report and the mandatory study on which it is based to

whatever extent the Agency considers appropriate for the purpose of complying with section 17 of this Decree.

- (2) Where the Agency uses or permits the use of a mandatory study or a mandatory study report pursuant to subsection (1) of this section, it shall ensure that any adjustments are made that in its opinion are necessary to take into account any significant changes in the circumstances of the project.
25. (1) After receiving a mandatory study report in respect of a project, the Agency shall, in any manner it considers appropriate, publish in a notice setting out the following information –
- (a) the date on which the mandatory study report shall be available to the public;
 - (b) the place at which copies of the report may be obtained; and
 - (c) the deadline and address for filing comments on the conclusions and recommendations of the report.
- (2) Prior to the deadline set out in the notice published by the Agency, any person may file comments with the Agency relating to the conclusions and recommendations of the mandatory study report.
26. After taking into consideration the mandatory study report and any comments filed pursuant to section 19(2), the Council shall –
- (a) refer the project to mediation or a review panel in accordance with section 25 of this Decree where, in the opinion of the Council –
 - (i) the project is likely to cause significant adverse environmental effects that may not be mitigable; or

- (ii) public concerns respecting the environmental effects of the project warrant it; or
 - (b) refer the project back to the Agency for action to be taken under section 34(l)(a) of this Decree where, in the opinion of the Council –
 - (i) the project is not likely to cause significant adverse environmental effects; or
 - (ii) any such effects can be mitigated.
27. Where at any time the Agency is of the opinion that –
- (a) a project is likely to cause significant adverse environmental effects that may not be mitigable; or
 - (b) public concerns respecting the environmental effects of the project warrant it,
- the Agency may refer the project to the Council for a referral to mediation or review panel in accordance with section 25 of this Decree.
28. Where at any time the Agency decides not to exercise any power or perform any duty or function referred to in section 19 of this Decree in relation to a project that has not been referred to mediation or a review panel, it may terminate the environmental assessment of that project.
29. Where at any time the Agency decides not to exercise any power or perform any duty or function referred to in section 25 of this Decree in relation to a project that has been referred to mediation or a review panel, the Council may terminate the environmental assessment of the project.
30. Where at any time the Council is of the opinion that –
- (a) a project is likely to cause significant adverse environmental effects that may not be mitigable, or

- (b) public concerns respecting the environmental effects of the project warrant it,
the Council may, after consultation with the Agency, refer the project to mediation or a review panel in accordance with section 25 of this Decree.
- 31. Where a project is to be referred to mediation or a review panel under this Decree, the Council shall, within a prescribed period, refer the Council project –
 - (a) to mediation, if the Council is satisfied that-
 - (i) the parties who are directly affected by or have direct interest in the project have been identified and are willing to participate in the mediation through representatives, and
 - (ii) the mediation is likely to produce a result that is satisfactory to all of the parties: or
 - (b) to a review panel, in any other case.
- 32. Where a project is referred to mediation, the Council shall, in consultation with the Agency –
 - (a) appoint as mediator any person who, in the opinion of the Council possesses the required knowledge or experience; and
 - (b) fix the terms of reference of the mediation.
- 33. (1) In the case of a dispute respecting the participation of parties in a mediation, the Council may, on the request of the mediation, determine those parties who are directly affected by or have a direct interest in the project.
- (2) Any determination by the Council pursuant to subsection (1) of this section shall be binding
- 34. (1) A mediator shall not proceed with a mediation unless the mediator is satisfied that all of the information required for a mediation is available

to all of the participants.

- (2) A mediation shall, in accordance with the provisions of this Decree, and the terms of reference of the mediation –
 - (a) help the participants to reach a consensus on
 - (i) the environmental effects that are likely to result from the project,
 - (ii) any measures that would mitigate any significant adverse environmental effects, and
 - (iii) an appropriate follow-up program;
 - (b) prepare a report setting out the conclusions and recommendations of the participants; and
 - (c) submit the report to the Council and the Agency.
- 35. Where at any time after a project has been referred to mediation the Council is of the opinion that the mediation is not likely to produce a result that is satisfactory to all parties, the Council may terminate the mediation and refer the project to a review panel.
- 36. Where a project is referred to a review panel, the Council shall, in consultation with the Agency –
 - (a) appoint as members of the panel including the Chairman thereof, persons who, in the opinion of the Council, possess the required knowledge or experience; and
 - (b) fix the term of reference of the panel.
- 37. A review panel shall, in accordance with the provisions of this Decree and its terms of reference –
 - (a) ensure that the information required for an assessment by a review panel is obtained and made available to the public;

- (b) hold hearing in a manner that offers the public an opportunity to participate in the assessment;
 - (c) Prepare a report setting out –
 - (i) the conclusions and recommendations of the panel relating to the environmental effects of the project and any mitigation measures or follow-up program, and
 - (ii) a summary of any comments received from the public; and
 - (d) Submit the report to the Council and the Agency.
38. (1) A review panel shall be the power of summoning any person to appear as witness before the panel and or ordering the witness to –
- (a) give evidence, orally or in writing; and
 - (b) produce such documents or things as the panel consider necessary for conducting its assessment of the project.
- (2) A review panel shall have the same power to enforce the attendance of witnesses and to compel them to give evidence and produce documents and other things as is vested in the Federal High Court or a High Court of a State.
- (3) A hearing by review panel shall be in public unless the panel is satisfied after representation made by a witness that specific, direct and substantial harm would be caused to the witness by the disclosure of the evidence, documents or other things that the witness is ordered to give or produce pursuant to subsection (1) of this section.
- (4) Where a review panel is satisfied that the disclosure of evidence documents or other things

would cause specific, direct and substantial harm, to a witness, the evidence, documents or things shall be privileged and shall not, without the authorization of the witness, knowingly be or be permitted to be communicated, disclosed or made available by any person who has obtained the evidence, documents or other things pursuant to this Decree.

- (5) Any summons issued or order made by a review panel pursuant to subsection (1) of this section may, for the purposes of enforcement, be made a summons or order of the Federal High Court by following the usual practice and procedure.
- 39. On receiving a report submitted by a mediator or a review panel, the Agency shall make the report available to the public in any manner the Council considers appropriate and shall advise the public that the report is available.
- 40. (1) Following the submission of a report by a mediator or a review panel or the referral of a project back to the Agency pursuant to section 30(b) of this Decree, the Agency shall take one of the following courses of action in relation to the project, that is –
 - (a) where in the opinion of the Agency –
 - (i) the project is not likely to cause significant adverse environmental effect, or
 - (ii) any such effect can be mitigated or justified in the circumstances,
 the Agency may exercise any power or perform any duty or function that would permit the project to be carried out in whole or in part and shall ensure that any mitigation measures that the Agency

considers appropriate are implemented; or

- (b) where, in the opinion of the Agency, the project is likely to cause significant adverse environmental effects that cannot be mitigated and cannot be justified in the circumstances, the Agency shall not exercise any power or perform any duty or function conferred on it by or under any enactment that would permit the project to be carried out in whole or in part.
 - (2) For greater certainty, where the Agency takes a course of action referred to in subsection (1) (a) of this section, it shall exercise any power and perform any duty or function conferred on it by or under any enactment in a manner that ensures that any mitigation measure that the Agency considers appropriate in respect of the project is implemented.
41. (1) Where the Agency takes a course of action pursuant to section 40(1)(a) of this Decree it shall, in accordance with this Decree, design any follow-up programme that it considers appropriate for the project and arrange for the implementation of that one.
- (2) The Agency shall advise the public of –
 - (a) its course of action in relation to the project;
 - (b) any mitigation measure to be implemented with respect to the adverse environmental effects of the project;
 - (c) the extent which the recommendations set out in any report submitted by a mediator or a review panel have been adopted; and
 - (d) any follow-up program one designed for or in the pursuant to subsection (1) of this section.

42. A certificate stating that an environmental assessment of a project has been completed, and signed by the Agency that exercises a power or performs a duty or function referred to in section 35(c) of this Decree in relation to the project, is in the absence to the contrary, proof of the matter stated in the certificate.
43. (1) For the purposes of this Decree “jurisdiction” includes
 - (a) a Federal authority;
 - (b) the government of a State;
 - (c) any other agency or body established pursuant to a Decree, Act, Law, Edict or Bye-law or the legislature of a State and having powers, duties or functions in relation to an assessment of the environmental effects of a project;
 - (d) any body established pursuant to a comprehensive land claims agreement and having powers, duties or functions in relation to an assessment of the environmental effects of a project;
 - (e) a government of a foreign state or of a subdivision of a foreign state, or any institution of such a government; and
 - (f) an international organisation of states or any institution of such an organisation.
- (2) Subject to section 38 of this Decree, where the referral of a project to a review panel is required or permitted by this Decree and a jurisdiction referred to in subsection (1) (e) or (f) of this section, has a responsibility on an authority to conduct an assessment of the environmental effects of the project or any part of it, the Council and the Council of External Affairs may establish a review panel jointly with that jurisdiction.

44. The Council shall not establish a review panel jointly with a jurisdiction referred to in subsection 37(1) of this Decree unless the Council is satisfied that –
 - (a) the Council may appoint or approve the appointment of the Chairman or a co-Chairman and one or more other members of the panel;
 - (b) the Council may fix or approve the terms of reference for the panel;
 - (c) the public shall be given an opportunity to participate in the assessment conducted by the panel;
 - (d) on completion of the assessment, the report of the panel shall be submitted to the Council; and
 - (e) the panel's report shall be published.
45. Where the Council establishes a review panel jointly with a jurisdiction referred to in subsection 37(1) of this Decree, the assessment conducted by that panel shall be deemed to satisfy any requirements of this Decree, respecting assessment by a review panel.
46. (1) Where the referral of a project to a review panel is required or permitted by this Decree and the Council is of the opinion that a process for assessing the environmental effects of projects that is followed by a Federal authority under a Decree or an Act of Parliament other than this Decree or by a body referred to in section 37(1)(d) of this Decree would be appropriate substitute, the Council may approve the substitution of that process for an environmental assessment by a review panel under this Decree.
 - (2) An approval of the Council pursuant to subsection (1) of this section shall be in writing and may be given in respect of a project or a class of projects.

47. The Council shall not approve a substitution pursuant to subsection 46(1) of this Decree unless the Council is satisfied that –
- (a) the process to be substituted includes a consideration of the factors referred to in section 11 of this Decree;
 - (b) the public has been given an opportunity to participate in the assessment;
 - (c) at the end of the assessment, a report has been submitted to the Council; and
 - (d) the report has been published.
48. Where the Council approves a substitution of a process pursuant to section 46(1) of this Decree, an assessment that is conducted in accordance with that process shall be deemed to satisfy any requirements of this Decree, in respect of assessment by a panel.
49. (1) Where a project for which an environmental assessment is not required under section 5 of this Decree, is to be carried out in a State and the President, Commander-in-Chief of the Armed Forces is of the opinion that the project is likely to have serious environmental effects in another State, the Council may establish a review panel, to conduct an assessment of the inter-State environmental effects of the project.
- (2) The Council shall not establish a review panel pursuant to subsection (1) of this section where the President, Commander-in-Chief of the Armed Forces and the governments of all interested States have agreed on another panel of conducting an assessment of the inter State environmental effects of the project.

- (3) A review panel may be established pursuant to subsection (1) of this section on the President, Commander-in-Chief of the Armed Forces initiative of the President, Commander-in-Chief of the Armed Forces or at the request of the government of any interested State.
 - (4) At least ten days before establishing a review panel pursuant to subsection (1) of this section, the President, Commander-in-Chief of the Armed Forces shall give notice of the intention to establish a panel to the proponent of the project and to the State or all interested States.
 - (5) For the put of this traction and section 45(3) of this Decree, “interested State” means
 - (a) a State in which the project is to be carried out; or
 - (b) a State that claims that serious adverse environmental effects are likely to occur in that State as a result of the project.
50. (1) Where a project for which an environmental assessment required under section 5 of this Decree is to be carried out in Nigeria or on federal lands and the President, Commander-in-Chief of the Armed Forces is of the opinion that the project is likely to cause serious adverse environmental effects outside Nigeria and those Federal lands, the Agency and the Minister of Foreign Affairs may establish a review panel to conduct an assessment of the international environmental effects of the project.
- (2) At least ten days before establishing a review panel pursuant to subsection (1) or (2) of this section, the Agency shall give notice of the intention to establish a panel to –

- (a) the proponent of the project;
 - (b) the governments of any interested States in which the project is to be carried out; and
 - (c) the government of any foreign State in which in the opinion of the Minister of Foreign Affairs, serious adverse environmental effects are likely to occur as a result of the project.
51. (1) Where a project for which an environmental assessment is not required under section 15 of this Decree is to be carried out in Nigeria and the Agency or the President, Commander-in-Chief of the Armed Forces is of the opinion that the project is likely to cause serious adverse environmental effect on Federal Lands or on lands in respect of which a State or Local Government has interests, the Agency or the President may establish a review panel to conduct an assessment of the environmental effects of the project on those lands.
- (2) Where a project for which an environmental assessment is not required under section 5 of this Decree, is to be carried out on lands in a Local Government land or on lands that have been set aside for the use and benefit of certain class of persons pursuant to legislation and the Agency is of the opinion that the project is likely to cause serious environmental effects outside those lands, the Agency may establish a review panel to conduct an assessment of the environmental effects of the project outside those lands.
- (3) At least ten days before a review panel is established pursuant to subsection (1) or (2) of this section, the Agency shall give notice of the intention to establish a panel to the proponent of

the project and to the governments of all interested States and if, in the case of a project that is to be carried out the Agency is of the opinion that

- (a) is likely to cause or have serious adverse environmental effects on lands in a reserve that is set apart for the use and benefit of a certain class of persons, to that class of persons;
 - (b) on settlement lands described in comprehensive land claims agreement referred to in subsection (2) if this section to the party to the agreement; and
 - (c) on lands that have been set aside for the use and benefit of certain class of persons to that class of persons
- (4) For the purposes of this Decree, a reference to any land areas or reserves includes a reference to all waters on and air above those lands, areas or reserves.
52. Sections 30 to 33 and 37 to 39 of this Decree shall apply, with such modifications as the circumstances require, to review panel established pursuant to sections 43(1), 44(1) or 45(1) or (2) of this Decree.
53. (1) Where the Agency after the appraisal of the President, Commander-in-Chief of the Armed Forces' assessment of the environmental effects of a project referred to in sections 43(1), 44(1) or 45(1) or (2) of this Decree the President, Commander-in-Chief of the Armed Forces may, by order published in the Gazette, prohibit the proponent of the project from doing any act or thing that would commit the proponent to ensuring the project is carried out in whole or in part until the assessment is completed and the Agency is satisfied that the project is not likely to

cause any serious adverse environmental effects or that any such effects shall be mitigated or are justified in the circumstances.

- (2) Where a review panel established to assess the environmental effects of a project referred to in subsection 43(1), 44(1) or 45(1) or (2) of this Decree submits a report to the Agency indicating that the project is likely to cause any serious adverse environmental effects, the Agency may prohibit the proponent of the project from doing any act or thing that would commit the proponent to ensuring that the project is carried out in whole or in part until the Agency is satisfied that such effects have been mitigated.
54. (1) Where, on the application of the Agency, it appears to court of competent jurisdiction that a prohibition made under section 47 of this Decree in respect of a project has been, is about to be or is likely to be contravened, the court may issue an injunction ordering any person named in the application to refrain from doing any act or thing that would commit the proponent to ensuring that the project or any part thereof is carried out until –
- (a) with respect to a prohibition made pursuant to section 47(1) of this Decree the assessment of the environmental effects of the project referred to in sections 43(1), 44(1) or 45(1) or (2) of this Decree completed and the Agency satisfied that the project is not likely to cause any serious adverse environmental effects or any such effects shall be mitigated or are justified in the circumstances; and
 - (b) with respect to a prohibition made pursuant to section 47(2), of this Decree the Agency is satisfied that the serious adverse environmental effects

referred to in that subsection had been mitigated.

- (2) At least forty-eight hours before an injunction is issued under subsection (1) of this section, notice of the application shall be given to the persons named in the application unless the urgency of the situation is such that the delay involved in giving such notice would not be in the public interest.
55. (1) Any prohibition under section 47 of this Decree shall come into force on the day it is made.
- (2) The prohibition shall cease to have effect fourteen days after it is made unless within that period, it is approved by the President, Commander-in-Chief of the Armed Forces.

Agreements and Arrangements

56. (1) Where a Federal authority or the Government of Nigeria on behalf of a Federal authority enters into agreement or arrangement with the government of a State or any institution of such a government under which a Federal authority exercises a power or performs a Duty or function referred to in section 15(b) or (c) of this Decree in relation to projects –
- (a) that have not been identified at the time power is exercised or the duty or function is performed; and
 - (b) in respect of which the Government of Nigeria or the federal authority as the case may be, shall have no power to exercise or duty or function to perform when the projects are identified, the Government of Nigeria or the Federal authority concerned shall ensure that the agreement or arrangement provides for the assessment of the environmental effects of those projects and that the assessment shall be

carried out as early as practicable in the planning stages those projects.

- (2) Where a Federal authority or the Government of Nigeria on behalf of a Federal authority enters into an agreement with the government of a Foreign State or of a subdivision of a Foreign State, an international organisation of a Foreign State, any institution of such a government or organisation, under which a Federal authority exercises a power or performs a duty or function referred to in section 5(b) or (c) of this Decree in relation to the projects
 - (a) that have not been identified at the time the power is exercised or the duty or function is performed, and
 - (b) in respect of which the Government of Nigeria or the Federal authority, as the case may be, shall have no power to exercise or duty or function to perform when the projects are identified.

The Government of Nigeria or the Federal authority shall ensure that the agreement or arrangement provides for the assessment of the environmental effects of those projects and that the assessment shall be carried out as early as practicable in the planning stages of those projects.

Access to Information

- 57. (1) For the purpose of facilitating public access to records relating to environmental assessments, a public registry shall be established and operated in accordance with the provisions of this Decree in respect of every project for which an environmental assessment is conducted.

- (2) The public registry in respect of a project shall be maintained
 - (a) by the Agency from the commencement of the environmental assessment until any follow-up program in respect of the project is completed; and
 - (b) where the project is referred to mediation or review panel, by the Agency from the appointment of the mediator or the members of the review panel until the report of the mediator or review panel is submitted to the Agency or the Secretary to the Government of the Federation as the case may be.
- (3) Subject to subsection (4) of this section, a public registry shall contain all records and information produced, collected or submitted with respect to the environmental assessment of the project, including
 - (a) any report relating to the assessment;
 - (b) any comments filed by the public in relation to the assessment; and
 - (c) any record prepared by the Agency for the purposes of section 35 of this Decree.
- (4) A public registry shall contain a record referred to in subsection (3) of this section if the record falls within one of the following categories—
 - (a) records that have otherwise been made available to the public carrying out the assessment pursuant to this Decree and any additional records, that have otherwise been made publicly available;
 - (b) any record or part of a record that the Agency, in the case of a record in its possession, or any other Ministry or government agency determines would have been disclosed to the public if a request had been made in respect of that record at the time the

record was filed with the registry, including any record that would be disclosed in the public interest;

- (c) any record or part of a record, except a record or part containing third party information, if the President in the case of a record in the Agency's possession, or the President believes on reasonable grounds that its disclosure would be in the public interest because it is required in order for the public to participate effectively in the assessment,
- (5) Notwithstanding any other enactment, no civil or criminal proceedings shall lie against the Agency, or against any person acting on behalf of or under the direction of, and no proceedings shall lie against the State or any of its agencies for the disclosure in good faith of any record or any part of a record pursuant to this Decree, for any consequences that flow from that disclosure, for the failure to give any notice if reasonable care is taken to give the required notice.
- (6) For the purposes of this section, "third party information" means –
 - (a) trade secrets of a third party;
 - (b) financial, commercial, scientific or technical information that is confidential information supplied to a government institution by a third party and is treated consistently in a confidential manner by the third party;
 - (c) information the disclosure of which could reasonably be expected to result in material financial loss or gain to, or could reasonably be expected to prejudice the competitive position of a third party; and
 - (d) information the disclosure of which could reasonably be expected to interfere with contractual

or other negotiations of a third party.

58. (1) During each year, the Agency shall maintain a statistical summary of all the environmental assessments undertaken or directed by it and all courses of action taken, and all decisions made, in relation to the environmental effects of the project after the assessments were completed.
- (2) The Agency shall ensure that the summary for each year is compiled and completed within one month after the end of that year.
59. An application for judicial review in connection with any matter under this Decree shall be refused when the sole ground for relief established in the application is a defect in form or a technical irregularity.

Part III

Miscellaneous

60. (1) For the purposes of this Decree, the Agency may–
- (a) issue guidelines and codes of practice to assist in conducting assessment of the environmental effects of projects;
 - (b) establish research and advisory bodies;
 - (c) enter into agreements or arrangements with any jurisdiction within the meaning of section 37(1)(a), (b), (c) or (d) respecting assessments of environmental effects;
 - (d) enter into agreements or arrangements with States for the purposes of coordination, consultation, and exchange of information in relation to The assessment of the environmental effects of projects of common interest;
 - (e) recommend the appointment of members to bodies established by federal authorities or to bodies referred to in section 37(1)(d) of this Decree on a temporary basis, for the purpose of facilitating a substitution pursuant to section 40 of this Decree;
 - (f) establish criteria for the appointment of mediators and members of review panels; and
 - (g) establish criteria for the approval of a substitution pursuant to section 40 of this Decree.
61. The Agency, with the approval of the President, Commander-in Chief of the Armed Forces may make regulations, published in the Gazette–
- (a) respecting the procedures and requirements of, and

the time or period relating to the environmental assessment process set out in or including the conduct of assessment by review panels established pursuant to section 37 of this Decree:

- (b) prescribing a list of projects or classes of projects for which an environmental assessment is not required, where the Council with the approval of the President, Commander-in-Chief of the Armed Forces is of the opinion that the environmental effects of the projects are likely to be negligible;
 - (c) prescribing a list of projects or classes of projects not covered by, the best of mandatory study list in the Schedule to this Decree for which a mandatory study is required where the Council is of the, opinion that the projects are likely to have significant adverse environmental effects;
 - (d) prescribing a list of projects or classes of projects for which or environmental assessment is not required, when, the Council is of the opinion that the contribution of the Agency to powers or the performance of its duties or functions is minimal;
 - (e) prescribing a list for which an environment assessment is required, where the Council is of the opinion that an environmental assessment of the projects would be inappropriate for reasons of national security
62. Any person who fails to comply with the provisions of this Decree shall be guilty of an offence under this Decree and on conviction in the case of an individual to ~100,000 fine or to five years imprisonment and in the case of a firm or corporation to a fine of not less than ~50,000 and not more than ~1,000,000.
63. (1) In this Decree, unless the context otherwise provides

“Agency” means the Nigerian Environmental Protection Agency established by the Federal Environmental Protection Act;

“assessment by a review panel” means an environmental assessment that is conducted by a review panel appointed pursuant to section 30 and that includes a consideration of the factors set out in subsections 11(1) and (20) of this Decree

“Council” means the Federal Environmental Protection Council established by the Federal Environmental Protection Agency Act;

“environment” means the components of the Earth, and includes-

- (a) land, water and air, including all layers of the atmosphere,
- (b) all organic and inorganic matter and living organisms, and
- (c) the interacting natural systems that include components referred to in paragraphs (a) and (b);

“Environmental assessment” means, in respect of a project, an assessment of the environmental effects of the project that is conducted in accordance with this Decree and any regulations made thereunder;

“environmental effect” means, in respect of a project,

- (a) any change that the project may cause to the environment,
- (b) any change the project may cause to the environment, whether any such change occurs within or outside Nigeria, and includes any effect of any such change on health and socio-economic conditions;

“exclusion list” means any list prescribed pursuant to paragraph 55(1)(b), (d) or (e) or section 55(2) of this Decree;

“federal authority” means –

- (a) a Minister of the Government of the Federation of Nigeria;
- (b) any agency of the Government of Nigeria or other body established by or pursuant to an Act, Decree, Law or Edict that is ultimately accountable through a Governor of the State of Nigeria in the conduct of its affairs;
- (c) any other prescribed body, but does not include the Commissioner in a Local Government;

“Federal Lands” means –

- (a) lands that belong to the Federal Government of Nigeria in which Nigeria has a right thereon or has the power to dispose of and all waters on and air space above those land
- (b) the following lands and areas namely,
 - (i) the internal waters of Nigeria within the meaning of the Sea Fisheries Decree 1992, including the seabed and subsoil below and the airspace above those waters,
 - (ii) the territorial sea of Nigeria as determined in accordance with the Nigerian Territorial Waters Act, including the seabed and subsoil below and the airspace above that sea,
 - (iii) any fishing zone of Nigeria prescribed under the Sea Fisheries Decree 1992;
 - (iv) any exclusive economic zone that may be created by the Government of Nigeria; and
 - (v) the continental shelf, consisting of the seabed and

subsoil of the submarine areas that extend beyond the territorial sea throughout the natural prolongation of the land territory of Nigeria to the outer edge of the continental margin or to a distance of two hundred nautical miles from the inner limits as may be prescribed pursuant to a Decree or an Act, and

- (c) reserves, surrendered lands and any other lands that are set apart for the use and benefit of a class of Nigerians by the Federal Government of Nigeria and all waters on and airspace above those reserves or surrendered lands:

“follow-up program” means a program for –

- (a) verifying the accuracy of the environmental assessment of a project; and
- (b) determining the effectiveness of any measures taken to mitigate the adverse environmental effects of the project;

“mandatory study” means an environmental assessment that is conducted pursuant to, section 17 and that includes a consideration of the factors set in subsection 11(1) and (2) of this Decree;

“mandatory study list” means the list in the Schedule to this Decree and those that may be prescribed pursuant to section 55(1)(c) of this Decree;

“mandatory study report” means a report of a mandatory study that is prepared in accordance with the provisions of this Decree or any regulations made thereunder;

“mediation” means an environmental assessment that is conducted with the assistance of a mediator appointed pursuant to section 26 of this Decree and that includes a consideration of the factors set out

in section 11(1) and (2) of this Decree;

“mitigation” means, in respect of a project, the elimination, reduction or control of the adverse environmental effects of the project, and includes restitution for any damage to the environment caused by such effects through replacement restoration, compensation or any other means;

“prescribed” means prescribed by regulations;

“project” means a physical work that a proponent proposes to construct, operate, modify, decommission, abandon or otherwise carry out or a physical activity that a proponent proposes to undertake or otherwise carry out;

“proponent”, in respect of a project, means the person, body or federal authority that proposes the project;

“record” includes any correspondence, memorandum, book, plan, map drawing, diagram, pictorial or graphic work, photograph, film, microform, sound recording, videotape, machine readable record, and any other documentary material, regardless of physical form or characteristics, and any copy thereof;

“responsible authority” in relation to a project, means a Federal authority that is required pursuant to subsection 7(1) of this Decree to ensure that an environmental assessment of the project is conducted;

“responsible Minister” means, in respect of a responsible authority,

- (a) in the case of a department or ministry of State, The Minister or Commissioner presiding over that department or ministry, and
- (b) in any other case, such member of the National

Executive Council or State Executive Council as is designated as the responsible Minister or Commissioner for that responsible authority;

“screening” means an environmental assessment that is conducted pursuant to section 13 of this Decree and that includes a consideration of the factors set out in section 11(1) of this Decree:

“screening report” means a report that summarises the results of a screening.

(2) For the purposes of this Decree, a company is controlled by another company if –

- (a) securities of the corporation to which are attached more than fifty per cent of the votes that may be cast to elect directors of the corporation are held, other than by way of security only, by or for the benefit of that corporation; and
- (b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the corporation.

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

Schedule

Mandatory Study Activities

1. Agriculture

- (a) Land development schemes covering an area of 500 hectares or more to bring forest and into agricultural production.
- (b) Agricultural programmes necessitating the resettlement of 100 families or more.
- (c) Development of agricultural estates covering an area of 500 hectares or more involving change in type of agricultural use.

2. Airport

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

3. Drainage and Irrigation

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

4. Land Reclamation

- (a) Coastal reclamation involving an area of 50 hectares or more.

5. Fisheries

- (a) Construction of fishing harbours.
- (b) Harbour expansion involving an increase of 50 per cent or more in fish landing capacity per annum.
- (c) Land based aquaculture projects accompanied by clearing of mangrove swamp forests covering an area of 50 hectares or more.

6. Forestry

- (a) Conversion of hill forest land to other land use covering an area of 50 hectares or more.
- (b) Logging or conversion of forest land to other land use within the catchment area of reservoirs used for municipal water supply, irrigation or hydro power generation or in areas adjacent to state and national parks and national marine parks.
- (c) Logging covering an area of 500 hectares or more.
- (d) Conversion of mangrove swamps for industrial, housing or agricultural use covering an area of 50 hectares or more.
- (e) Clearing of mangrove swamps on islands adjacent to national marine parks.

7. Housing

8. Industry

- (a) Chemical
Where production capacity of each product or of combined products is greater than 100 tonnes/day,
- (b) Petrochemicals all sizes.
- (c) Non-ferrous primary smelting
Aluminium – all sizes

Copper – all sizes

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

(d) Non-metallic

- Cement – for clinker throughput of 30 tonnes/hour and above
- Lime – 100 tonnes/day and above burnt lime rotary kiln or 50 tonnes/day and above vertical kiln.

(e) Iron and steel

- Require iron ore as raw materials for production greater than 100 tonnes/day; or
- Using scrap iron as raw materials for production greater than 200 tonnes per day.

(f) Shipyards

- Dead Weight Tonnage greater than 5000 tonnes.

(g) Pulp and paper industry

- Production capacity greater than 50 tonnes/day.

9. Infrastructure

- (a) Construction of hospitals with outfall into beachfronts used for recreational purposes.
- (b) Industrial estate development for medium and heavy industry covering an area of 50 hectares or more.
- (c) Construction of Expressways.
- (d) Construction of national highway.
- (e) Construction of new townships.

10. Ports

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

11. Mining

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

12. Petroleum

- (a) Oil and gas fields development.
- (b) Construction of off-shore pipelines in exceed of 50 kilometres in length.
- (c) Construction of oil and gas separation, processing, handling, and storage facilities.
- (d) Construction of oil refineries.
- (e) Construction of product depots for the storage of petrol, gas or diesel (excluding service stations) which are located within 3 kilometres of any commercial, industrial or residential areas and which have a combined storage capacity of 60,000 barrels or more.

13. Power Generation and Transmission

- (a) Construction of steam generated power stations burning fossil fuels and having a capacity of more than 10 megawatts.
- (b) Dams and hydroelectric power schemes with either or both of the following.
 - (i) dams over 15 metres high and ancillary structures covering a total area in excess of 40 hectares;
 - (ii) reservoirs with a surface area in excess of 400 hectares;
- (c) Construction of combined cycle power stations.
- (d) Construction of nuclear-fueled power stations.

14. Quarries

Proposed quarrying of aggregate, limestone, silica, quartzite, sandstone marble and, decorative building stone within 3 kilometres of any existing residential, commercial or industrial areas, or any area for which a licence, permit or approval has been granted for residential, commercial or industrial development.

15. Railways

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

16. Transportation

17. Resort and Recreational Development

- (a) Construction of coastal resort-facilities or hotels with more than 80 rooms.
- (b) Hill station resort or hotel development covering an area of 50 hectares or more.
- (c) Development of tourist or recreational facilities in national parks.
- (d) Development of tourist or recreational facilities, on islands in surrounding waters which may be declared as national marine parks.

18. Waste Treatment and Disposal

- (a) Toxic and Hazardous Waste
 - (i) Construction of incineration plant.
 - (ii) Construction of recovery plant (off-site).
 - (iii) Construction of waste water treatment plant (off-site).
 - (iv) Construction of secure landfill facility.

- (v) Construction of storage facility (off-site).
- (b) Municipal Solid Waste
 - (i) Construction of incineration plant.
 - (ii) Construction of composing plant.
 - (iii) Construction of recovery/recycling plant.
 - (iv) Construction of municipal solid waste landfill facility.
- (c) Municipal Sewage
 - (i) Construction of waste water treatment plant.
 - (ii) Construction of marine outfall.

19. Water Supply

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

Made at Abuja this 10th day of December 1992.

General I. B. Babangida,
President, Commander-in-Chief of the Armed Forces
Federal Republic of Nigeria