

ENVIRONMENTAL IMPACT ASSESSMENT: Towards the concept of Sustainable Development

By

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ABSTRACT

This research evaluates the Environmental Impact Assessment (EIA) system in Ghana as a mechanism for implementing sustainable development. It questions whether the EIA procedure as practised in Ghana, which includes the implementation and enforcement of the Legislative Instrument (LI) 1652, and the use of guidelines, is achieving the goals of sustainable development. These goals include preserving natural resources and the environment at large; ensuring equitable share of these resources; enhancing economic growth, cultural recognition and social justice.

The study reviews three specific infrastructure projects namely: a hydroelectric dam, a mining site and a highway, all of these projects which received financial support from and were underwritten by developed countries in the global north. Participants of the study included the communities within the precincts of the selected projects as well as officers of the Environmental Protection Agency, the Agency responsible for supervising the EIA process and the enforcement of the Regulation.

The research presents a post-project analysis of EIA procedure using an empirically based, socio-legal analysis of primary data to assess the utility of EIA Regulation for communities affected by execution of the selected projects. In particular, it examines selected guidelines of financial institutions, including The Millennium Challenge Corporation, the World Bank Group and the Equator Banks, as well as the EIA systems from countries of the global north alongside the EIA Regulation of Ghana LI 1652. The research concludes that, while Ghana's EIA operates across such projects, the use of foreign guidelines to conduct EIA in most instances is a drawback to the EIA process. It is not prudent for international financial institutions from the global north to develop models and guidelines and apply these across the world or impose them indirectly on the countries of the global south (developing countries) as a pre-condition of funding in a misguided belief that their guidelines must represent best

practice, irrespective of context. So long as Ghana depends on foreign guidelines from international multi-lateral and bi-lateral lending agencies, the country may find it hard to achieve the desired level of sustainable development. Ancillary factors such as poor education, outdated law and poor coordination among government agencies and officials also pose a hindrance to the EIA process. The concept of sustainable development is meaningless to the ordinary Ghanaian if development leaves people jobless, poorer and above all destroys the very environment they rely on for their daily sustenance. The foreign guidelines are not sensitive to the cultural lives and the peculiar sentimental attachment of each local community to their immediate environment.

DEDICATION

This thesis is dedicated to my husband Tony and my children Worlasi, Selikem and Setutsi. I could not have done it without your support and sacrifice.

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CHAPTER ONE

INTRODUCTION, PROBLEM STATEMENT, OBJECTIVES, METHODOLOGY AND SIGNIFICANCE OF STUDY

1.0 INTRODUCTION

The practice of environmental impact assessment to promote sustainable development has received heightened attention in recent times. As sustainable development has become a leading concept of international environmental policy, several writers in the past decade have acknowledged the worldwide recognition of EIA in the quest to promote environmental wellbeing and equitable sharing of natural resources. For instance Holder holds the view that the position of environmental assessment in international law has been slowly enhanced to the extent that it has reached the status of a general principle of international law.¹ For Fisher et al, different types of EIA process have been developed in jurisdictions across the world, including international level and variations of the EIA process such as social and policy assessment and fauna impact assessment.² Birnie et al acknowledge that EIA contributes to the implementation of national policies on sustainable development and precautionary action.³ Sustainable development has become mandatory for legal systems to incorporate environmental impact assessment regulations national laws in order to promote the tenets of sustainable development. Principle 17 of Rio Declaration which mandates states to incorporate EIA as natural instrument in their decision-making on activities that are likely to have significant impact on the environment gave the international impetus EIA to acquire international legal status.⁴ The concept of sustainable developments appears in international instruments of environmental, economic and social character and has also been invoked by

¹ Jane Holder, *Environmental Assessment: The Regulation of Decision Making* (OUP 2004) 53

² E. Fisher and B. Lange and E. Scotford, *Environmental Law Text, Cases and Materials* (OUP 2013) 847

³ P Birnie and A Boyle and C Redgwell (2009), *International Law and the Environment*, (OUP 2009)165

⁴ Rio Declaration on Environment and Development, <www.un.org/documents/ga/conf151/aconf15126-1annex1.htm> accessed 20 February 2016

international courts.⁵ As defined by the Brundtland Report, sustainable development refers to that type of development which is beneficial to the present generation, whereas it also serves the needs of future generations.⁶ Additionally, the Johannesburg Declaration pointed out in the succeeding years that aspirations of environmental protection, and economic and social development are interdependent to ensure sustainable development.⁷ This means that in order to achieve sustainable development, environmental protection, economic growth and social development are mutually reinforcing accomplishments to which nations must be concerned with. The concept of sustainable development therefore implies an approach to economic development which not only seeks to protect the environment for future generations but also to enhance economic growth and to create parity in the wealth and economic development between the developed and the developing world. The concept has evolved to include cultural values so as to be in accord with the Universal Declaration of Cultural Diversity which recognise cultural diversity one of the roots of development.⁸

Most nations in Africa abound in natural resources that can be exploited through value-addition strategies to promote industrialization and structural economic transformation for the benefit of their people.⁹ Some African countries are now torn between developing their natural resources to their fullest economic potential and protecting these natural landscapes

⁵ The cases of Shrimp/Turtle, Gabcikovo-Nagymaros, Iron Rhine, Pulp Mills; Art (6) Convention on Biological Diversity; Art 3(4) The United Nations Framework Convention on Climate Change.

⁶ Report of the World Commission on Environment and Development: Our Common Future <www.un-documents.net/wced-ocf.htm> accessed 22 February 2016

⁷ Johannesburg Declaration on Sustainable Declaration <www.iisd.org/pdf/2002/wssd_assessment.pdf> accessed February 2016

⁸ Universal Declaration of Cultural Diversity Art 3 <<https://digitallibrary.un.org/record/495412?ln=en>> accessed June 14 2018

⁹According to UN Economic Report on Africa (2013), Africa has about 12 per cent of the world's oil reserves, 42 per cent of its gold, 80–90 per cent of chromium and platinum group metals, and 60 per cent of arable land in addition to vast timber resources.

from over exploitation in line with the concept of sustainable development.¹⁰ There is the inner struggle of developing natural resources in order to attain the desired level of development while adhering to international obligations to which most of developing countries ascribed to. The solution is to adopt some of these international policies so as to portray their compliance to international obligations.

1.1 PROBLEM STATEMENT

At the national level, one of the key processes employed to ensure the smooth implementation of sustainable development policy is the environmental impact assessment (EIA). EIA is defined by UNEP as procedural asset that helps to identify environmental, social and economic implications of a venture before major decisions are taken.¹¹ The EIA process is thus designed to provide national stake-holders with relevant details on the likely implications of projects in the process of deciding whether to grant permission or create measures to regulate their activities. Likely implications to be considered are those that have significant impact on the environment, social and economic standards as well as cultural values of citizens. Nonetheless, this does not imply that every EIA system provides a rigorous means through which the projects are scrutinised before they commence.

Most countries in the global north have well developed laws and established procedures in EIA, however many African countries are lacking in this regard. Aside from the weakness of the EIA systems in several countries of the global south, there may be no stringent measures to enforce EIA regulations or directives, or perhaps the measure does not exist at all. Lack

¹⁰ Post-2015 Development Agenda Bulletin: Summary of the Leadership Meeting on Environmental Sustainability in the Post-2015 Development Agenda, Published by the International Institute for Sustainable Development (IISD) Vol. 208 No.7

¹¹ UNEP EIA Training Manual (2nd edn 2002) 116,< www.unep.ch/etb/publications/EIAman/SecETopic1.pdf> accessed 22 February 2016

of legislation that clearly defines the EIA process; monitoring systems; and unsatisfactory implementation of mitigation measures are some of the flaws that plague EIA practice in developing countries.¹² In the absence of a comprehensive and clearly defined procedure, EIA process in developing countries may only be a cosmetic and superficial exercise carried out in order to appear to be fulfilling international obligations. Furthermore, institutions charged with the responsibilities for EIA may not be well organized, may be lacking in trained personnel or may be based in a society where the difficulty to access information has diminished their role. In the countries of the global south, the indigenes themselves do not resort to the EIA to manage their environment well, rather it has been foreign development aid agencies that have demanded EIA for projects in these countries. These financial assistance agencies outline procedures for EIA and ensure that countries comply with these procedures as conditions attached to financial assistance. The end result is that EIA has become a mere formality, considered only as a *sine qua non* to receiving financial aid so that the majority of them are rolled out after a project has started. Most often, beneficiary nations have signed up to the EIA requirements and guidelines presented by development partners without considering their own current economic, social and technological developments. Some countries also depend on the proposer of the development project to furnish them with an EIA report instead of conducting their own independent report.¹³ It is posited that these prepared guidelines may not be suitable for developing countries and adherence to these guidelines may only result in lack of control of developing countries over their natural resources, leading to environmentally unfriendly practices. The situation could be obviated with better understanding of citizens' obligations towards safeguarding the environment and indigenous rights to safe living conditions. However, the case may be different where

¹² C Wood, *Environmental Impact Assessment in Developing Countries: An Overview*, (EIA Centre School of Planning and Landscape, University of Manchester 2003)

¹³ P Birnie and A Boyle and C Redgwell (2009), *International Law and the Environment*, (OUP 2009) 174

indigenous knowledge in environmental rights are non-existent. Lack of indigenous demand for better environmental conditions may be attributable to the absence of political will in promoting environmental protection and EIA, as well as the age old view that environmental degradation is a justifiable collateral damage in the process of growing an economy.¹⁴ Additionally, considering the fact that Principle 17 of Rio Declaration is couched in the negative, that is, EIA should be undertaken only on “activities that are likely to have a significant adverse impact on the environment”, the obligation to conduct an EIA may be misconstrued as a mere formality in complying with international legal instruments to which these developing countries are parties, and not necessarily to protect the environment. Sustainable development is as much about the procedure as about the results; a successful implementation of elements of sustainable development through EIA requires political will if it is to produce expected results after successful implementation. The empirical research demonstrated that aside the use of prepared guidelines from financial sponsors, lack of education among communities, outdated law and poor coordination among government officials are major drawbacks to the EIA process in Ghana.

1.2 OBJECTIVES OF THE STUDY

The aim of this research was to evaluate the Environmental Impact Assessment (EIA) in relation to the concept of sustainable development as practiced in Ghana. Ghana is said to be the first country in Africa to have established an environmental regulatory body, the Environmental Protection Council (EPC).¹⁵ The EPC was established in 1973 with the main purpose of managing emerging environmental issues. Now the Environmental Protection

¹⁴ B Ogenis and E Ayman and E Doaa, *Environmental Impact Assessment Training: Egypt, Ghana, Brazil and the Netherlands* (Urban Training and Studies Institute, The Netherlands 2009) 8

¹⁵ S. Appiah-Opoku, ‘Environmental impact assessment in developing countries: The case of Ghana’ [2001] 21 Environmental Impact Assessment Review, 59

Agency (EPA), under the Environmental Protection Agency Act (1994) (Act 490) the Agency has the legal mandate to promote the implementation of the National Environment Policy through effective planning and coordination of resources in the management of the environment; and to ensure compliance with the laid down regulations especially environmental impact assessment procedures in the planning and execution of development projects, including compliance in respect of existing projects.¹⁶ Four decades on, Ghana is still grappling with unsound environmental practices, uncoordinated and ineffective environmental systems.

Specific objectives of the research were to:

- 1.1.1.** Consider the origins of contents of the USA and EU approach to the EIA and compare these to the approach taken in Ghana;
- 1.1.2.** Outline the extent to which EIA guidelines from multi-lateral and bi-lateral lending agencies suit the Ghanaian context;
- 1.1.3.** Examine how beneficial these guidelines are in accomplishing sustainable development goals in Ghana;
- 1.1.4.** Provide other alternatives for facilitating environmental protection, economic and social development.

1.3 RESEARCH QUESTIONS

The research sought to evaluate the adequacy of EIA as a mechanism for implementing sustainable development. The following questions were used to guide the research:

¹⁶ S.2 Environmental Protection Agency Act 1994 (Act 490); National Environmental Policy 2012 P.9 <<http://mesti.gov.gh/2567-2>> accessed February 2016

1. To what extent are the contents of guidelines on EIA from multi-lateral and bi-lateral lending agencies from influenced by the approach to the EIA from their places of origin, that is mainly, the global north?
2. To what extent are the prepared EIA guidelines from these multi-lateral and bi-lateral lending agencies suitable for Ghana, a country in the global south?
3. Are the aspirations of sustainable development reflected in these guidelines so as to facilitate environmental protection, social and economic development?
4. To what extend are these guidelines sensitive to questions of economic and social development and the cultural values of the developing world, using Ghana as an example?
5. What does the examination of actual EIA supported project in Ghana tell us about the reception of EIA concepts from the global north in the global south?

1.4 METHODOLOGY

The study focussed on three specific infrastructure projects namely a hydroelectric dam, a mining site and a highway, carefully chosen to reflect the financial support from the global north. These projects were selected because the process of undertaking these projects had a considerable impact on the environment as well as the socio-economic and cultural life of the people around it, hence an EIA was carried out for each of the projects. The projects were also underwritten by financial institutions from the global north. Participants of the study include some communities within the precincts of the selected projects as well as officers of the Environmental Protection Agency, the Agency responsible for supervising the EIA process and the enforcement of the Regulation. The outcomes of the field work regarding individual project are discussed in chapter six. A detailed description of the projects selected,

the participants and the methods used to gather and interpret information is given alongside the case study in chapter six

1.4.1 Rationale for the choice of Research Method

The research adopted an empirical socio-legal approach to answer the research questions set out to guide the study. Empirical research proved ‘valuable in revealing and explaining the practices and procedures of legal, regulatory and redress’.¹⁷ Law is dynamic and needs to be updated to keep up with ever changing socio-economic relationships. Thus, as legal regimes strive to enact laws that will fit in the changes of the time, there is a need for empirical evidence on the efficacy and impact of the laws and regulations on individuals and organisations. Empirical research is concerned therefore with the development of substantive law, the practice of the law and the impact of the law on the life of citizens.¹⁸

1.4.2 Philosophy of the Research

The research explored the history of EIA which is largely Anglo-American and Anglo-European in order to better understand the EIA process. The research posits that the use of foreign guidelines to carry out an EIA seems unsuitable for Ghana and may impede the development of the domestic law on the EIA process. In this regard, legal transplantation theory is briefly discussed. Legal transplants are typically considered as a useful means of introducing legal models from a different system into another system, however, both systems should possibly show interest in the transplant for the transplant to be effective.¹⁹ Watson

¹⁷ Hazel Genn, Martin Partington and Sally Wheeler, *Law in the Real World: Improving Our Understanding of How Law Works* (The Nuffield Inquiry on Empirical Legal Research November 2006) para 1

¹⁸ ibid, paras 4 & 5

¹⁹ Mathias Siems, *Comparative Law* (2nd edn CUP 2018) 233.

suggests that the likelihood of a successful legal transplant is eminent where the transplant is from a more advanced society to a less advanced society.²⁰ That being the case, by the foregoing reasoning, it can also be envisaged that transplanting guidelines from the global north to global south will be possible.²¹

However Legal transplants are possible when it is the case of rules or the substantive law. The present research concerns more with a process than the substantive law and endeavours to see how the substantive law plays in the process. The emphasis here is on guidelines which are soft law. It is noted that the inclination of the international business is that they want to develop or find solution to similar legal problems or develop some form of standardization across board. However, Siems suggested that because foreign models may not be suitable for the recipient country owing to disparity in the socio-legal settings of both countries, these facts must be taken into consideration.²²

The present research concerns with an empirical investigation into the operation and enforcement of the Ghanaian Environmental Impact Assessment Regulation LI 1652 as an example of domestic law, the operation of which seem to be impacted by guidelines from financial institutions from the global north. Empirical socio-legal studies are not without inherent problems. It was demonstrated that there is a preponderance of purely theoretical and textual analyses rather than theoretically informed empirical legal research.²³ Thus the question is about the theory or the methodological paradigm within which a socio-legal studies must fit. The methodology for the present research is grounded in philosophy of pragmatism. A pragmatic approach is directed towards a problem that needs a solution or a

²⁰ Alan Watson, *Legal Transplants: An Approach to Comparative Law* (Scottish Academic Press Edinburgh, 1974) 99

²¹ *ibid*

²² Mathias Siems, *Comparative Law* (2nd edn CUP 2018) 28

²³ *ibid*, para 40

question that needs answers.²⁴ Likewise, the present research concerns a main problem, that is, even though there are established institutions and legal frameworks for the implementation of EIA in Ghana, the EIA system, seemingly, has not achieved the desired outcome of sustainable development. Thus, the research questions were formulated out of appraisal of existing report of EIAs undertaken on projects, personal observations of the researcher, as well as experiences of people regarding problems associated with implementation of EIA in Ghana.

1.4.3 Research Design

The research questions set out to be answered through this research demands an evaluative strategy. The research is evaluative in the sense that it examines how beneficial is the practice of EIA in Ghana to deliver the mandate of sustainable development, therefore a qualitative approach was adopted. The qualitative approach typically produces a wealth of detailed information about the actors and cases to study selected issues in depth and into detail.²⁵

1.4.4 Sampling Technique

The purpose of the empirical research is to gain an in-depth and first-hand knowledge on the operation of EIA system in Ghana, hence the purposeful sampling approach was adopted. Purposeful sampling according to Patton is to select ‘information-rich cases’, that is, those from whom one can learn a great deal about issues of central importance to the purpose of the research.²⁶ Thus the aim of purposeful sampling is to select information-rich cases whose study will illuminate the questions under study.²⁷

²⁴ Keith F Punch, *Introduction to Social Research Quantitative & Qualitative Approaches* (3rd edn, Sage Publications Ltd 2014) 18

²⁵ Michael Quinn Patton, *Qualitative Evaluation and Research Methods*, (2nd edn Sage Publications 1990) 13 & 14

²⁶ ibid, 169

²⁷ ibid

The research also partially considered the intentionally stratified sampling method which according to Webley is targeted towards people with key categories.²⁸ So, with the combination of Patton's idea of purposeful sampling and Webley's intentionally stratified methods, three categories of people were identified as the participants in the field study. These people played varied roles in their different capacities to make the EIA system complete. For the purpose of the present research, the three categories are termed decision-makers, actors, and beneficiaries. Decision-makers refer to officials of Environmental Protection Agency (EPA), the institution with the responsibility to oversee to the conduct of for EIA in Ghana. Actors are private consultants who are contracted by proponents or sponsors of the project (whatever the case) to prepare EIA reports. Beneficiaries refer to people living within the community where selected projects for the present research are located and have been directed affected by these projects.

1.4.5 Sources of Data

i. Primary Data

The primary source of data was first-hand information from decision-makers, actors and beneficiaries described above. The data collected from the participants is explained further in the discussion on the outcome of the fieldwork on the individual projects in chapter six.

ii. Secondary Data

Secondary data include scholarly literature on EIA and related subjects, guidelines for multinational financial institutions, namely Millennium Challenge Corporation, World Bank, International Financial Corporation, and Equator Principle. EIA Regulations from EU, UK,

²⁸ Lisa Webley, 'Qualitative Approaches to Empirical Legal Research', in Peter Cane and Herbert M Kritzer (eds), *The Oxford Handbook of Empirical Legal Research* (OUP 2012) 926, 934

USA and Ghana also constitute secondary data. Another source of secondary data was EIA reports prepared on selected projects (Bui Dam and Newmont Mines Kenyasi).

1.4.6 Data Management and Analysis

i. Primary Data

The method adopted to analyse qualitative data, that is, data from interviews and FGDs was content analysis and thematic coding using colour codes to represent themes. Because of the purposeful sampling adopted, the analysis was inclined towards a content analysis that is more of qualitative interpretation as suggested by Webley.²⁹ Webley noted that content analysis can be descriptive, delineating the codes and relationship between them. This type of content analysis is less quantitative and more interpretative in their development of codes and their treatment.³⁰ In this research, themes were developed from the objectives of the research. Colour codes were designated to specific themes. Each theme represents a heading under which responses from interviews and FGDs were grouped. Relationships between the themes were identified and inferences were drawn from which deductions were made.

Data gathered from the questionnaires were also evaluated using simple quantitative analysing tools such as tables, charts and to analyse and describe relationship.

ii. Secondary Data

Scholarly literature on EIA and guidelines which were selected were reviewed to establish the rationale for the research. The EIA systems from various jurisdiction were examined to trace the origin of EIA procedure, similarity and differences between the various EIA systems. A comparative analysis of UK EIA system and that of Ghana was also carried out. This was to

²⁹ Lisa Webley, ‘Qualitative Approaches to Empirical Legal Research’, in Peter Cane and Herbert M Kritzer (eds), *The Oxford Handbook of Empirical Legal Research* (OUP 2012) 942

³⁰ ibid

bring strengths and weakness of each system and to single out sound practices that can be incorporated into the Ghana EIA system.

1.5 SIGNIFICANCE OF THE STUDY

Many researches have been conducted on EIA. Studies on EIA laws of different jurisdictions, and the effectiveness of EIA processes in different systems have been carried out extensively by many scholars as reviewed in chapters two and three. However, not many studies have been carried out on Ghana. The few that were conducted are centred on the operation of the EIA Regulation LI 1652 mainly through analysis of information gathered from secondary data, such as articles, reports, and papers identified from internet sources. The present research rather used a different approach, using primary data to test the EIA Regulation on a community affected by execution of the selected projects. Thus, the research sought an empirical understanding of how EIA Regulation and the process works in Ghana. The focus therefore is on a post-project evaluation of EIA procedure in order to bring out the benefits or otherwise of the operation of the Regulation and the procedure.

It is the expectation that information obtained from this study will shed light on the practices and tenets of EIA in Ghana and by association, other countries from the global south, with regards to the influence of foreign principles and guidelines from the financial sponsors from the global north. It is also anticipated that the outcome of the research will contribute to raising awareness as well as providing information to policy-makers and other development partners on the issues affecting EIA procedure and regulations in Ghana and other developing countries. For that reason, the outcome of the research might lead to a proposed redesigning of the EIA procedure, if need be, to suit environmental obligations and economic status of developing countries, especially Ghana, so that the desired degree of sustainable development will be achieved.

1.6 SUMMARY OF CHAPTERS

The concept of sustainable development and the place of EIA in the concept is the subject of discussion in chapter two. This involves an examination on the concept, its origin and place in the world as well as the concept as discussed by scholars and its connection with EIA. Chapter three examines EIA, the history of EIA which is largely Anglo-American and Anglo-European, to better understand the effectiveness of EIA as a tool for decision-making and regulation. The research argues that guidelines on how to carry out an EIA and what to include and what not to in the EIA process prepared from systems mainly in the Anglo-American and Anglo-European may not be suitable for Ghana due to differential existence of socio-cultural and economic factors. In that vein legal transplantation theory was envisioned, however legal transplants concern more with hard laws whereas the present research focusses more on guidelines which could be considered as soft law or a system of standardisation. Flowing from chapter three, chapter four reviews guidelines from multinational financial institutions mainly from the global north who sponsor most developmental projects from the global south. The essence of the review is to establish the background of these guidelines, the socio-cultural system within which these guidelines are located and politico-economic policies that informed the preparation of these guidelines in order to call in attention the problems that may arise when these guidelines are implemented in the global south, say, Ghana. In chapter five, EIA models from USA, EU, UK and are examined alongside that of Ghana. EIA models from these systems discussed underscore the historical background of EIA examined in chapter three and highlight the fact that though similar, the models originates from systems which are legally, ideologically and psychologically different and are variance in terms of political, socio-economic and conceptual understandings and level of development. In a similar vein, a comparative evaluation of the EIA law in the UK and that of Ghana also form part of chapter five. The research is not a comparative analysis per se because comparison is usually between

equals. However, by comparing the two systems, the researcher merely sought to use the contents of EIA of UK as a yardstick to highlight what exist or does not exist in the Ghanaian law.

Chapter six presents analysis of data from the empirical study of selected projects for which EIA was carried out. The empirical study was a post-project examination to gather first-hand information from the people who are integral part of the EIA system in Ghana regarding how the process is carried out, and the effectiveness of the procedure seen through the eyes of both competent authorities and the people affected by the projects. The projects for this exercise were selected to establish a connection between the guidelines discussed in chapter four and the EIA process carried out for these projects. Chapter seven presents summary of findings from the empirical research, conclusion and recommendation. The research concludes that whereas EIA is said to deliver the aspirations of sustainable development, the process focuses more on environmental impacts leaving out the social and economic aspects of sustainable development. In Ghana, this drawback is exacerbated by the importation of foreign concepts into the EIA process so that aside the social, cultural and economic impacts which are not effectively scrutinised and addressed, the environmental impacts are also not considered priority by both the competent authority and people affected by the projects. The research recommends a total overhaul of the EIA system in Ghana. This include a review of the EIA Regulation LI 1652, regular training of EPA officials, and public education on the EIA process on the rights accruing from the Regulation and the policing role the public can play in the implementation process. The issue about imposition of guidelines from financial giants of global north on to jurisdictions in the global south such as Ghana will not cease so long as countries in the global south depend on the financial institutions for financial to their infrastructural development. However, the imposition of foreign guidelines can be curbed when new modalities on institutional lending towards borrowing policies must be explored so

that over reliance on foreign financial assistance will not trample on the sovereign rights of the people to implement and enforce their laws.

CHAPTER TWO

SUSTAINABLE DEVELOPMENT AND ENVIRONMENTAL IMPACT ASSESSMENT

2.0 INTRODUCTION

The chapter introduces the concept of sustainable development as it relates to Environmental Impact Assessment. Though development is measured by predetermined parameters, what is important to the ordinary citizen is that development should manifest in the general wellbeing of the people regarding their living conditions and must be perceived as such by the people themselves in their way of living. Ghana, as a country, has a right to development; nonetheless to the extent that the pursuit of developing largely is dependent upon exploitation of natural resources, it must be sustainable. Ghana has its own share of challenges in an attempt to put into practice the concept of sustainable development. There are numerous laws, regulations and policies established consistent with sustainable development goals. Old laws were modified, and new ones enacted, and policies introduced in order to integrate the concept of sustainable development into the national agenda of implementing the goals of sustainable development. Whether these exploits have yielded positive outcomes is a matter for consideration within this research. The Environmental Impact Assessment Regulation 1999 (LI 1652) is one of such regulation which is implemented to ensure that activities of development are carried out in sustainable manner. With the aid of articles from journals, books, and some other sources of secondary data, the present chapter examined the concept of sustainable development and its connection with Environmental Impact Assessment (EIA) in seeking to ensure that development is sustainable.

The chapter begins with the discussions on the meaning of the concept of sustainable development from the viewpoint of other authors and institutions. It continues with the

significant landmarks that the concept attained in the world arena and as implemented in Ghana. It then discusses EIA, its origin and underlying concept, the place of EIA in international law, and the extent of influence of EIA in relation to its use as a tool for decision-making towards the concept of sustainable development. The concluding part of the chapter illustrates EIA practice in Africa and in Ghana.

2.1 THE CONCEPT OF SUSTAINABLE DEVELOPMENT

The principles of sustainable development rest on the notion that the resources from the environment on which the world at large depends for its sustenance must be protected from over-exploitation so as to preserve these resources for future generations. Several definitions are proffered for sustainability or sustainable development, but the commonly accepted definition comes from the Brundtland Report of the World Commission on Environment and Development (WCED) (1987) which defines sustainable development as development which is beneficial to the present generation while serving the needs of the next generations.¹ The Brundtland Report also identifies sustainable development as a process of change in which the exploitation of resources, the direction of investments, the orientation of technological development, and institutional change are made consistent with future as well as present needs.² Two main themes run parallel in sustainable development, they are: the concept of needs and limitations.³ Need in this regard, refers to the necessities of the poor in the world which requires immediate attention. Limitations, on the other hand refer to the challenges associated with the level of technological and social advancement which influences the ability of the environment to provide the needs of the present and future generations. Limitations in the sense of man's inability to

¹ Our Common Future: Report of the World commission on Environment and Development <www.un-documents.net/our-common-future.pdf> 43 accessed 22 February 2018

² Ibid, see An Overview by the World Commission on Environment and Development <www.un-documents.net/our-common-future.pdf> para 30. accessed 22 February 2018

³ Ibid, Chs 2 & 3

attain the ultimate level of technology at a point in time and also for the fact that the earth may exceed its carrying capacity due to pressure that is brought to bear on it by human activities.

Some experts maintain that the meaning of the concept sustainable development in practice remains unclear, therefore rendering implementation problematic.⁴ Nonetheless the key goals that the concept proposes to achieve are discernible. Sands identifies four objectives: (i) commitment to preserve natural resources for the benefit of the present and future generations; (ii) appropriate standards for the exploitation natural resources; (iii) equitable use of natural resources taking into account the needs of other states and people; and (iv) economic considerations which must be integrated into economic and development programmes.⁵

The definition of sustainable development in itself has some elements of extrapolations, for, it is somehow based on assumption that the present generation are able to predict the needs of the future generation. Preservation of natural resources for the benefit of future generations is in tune with safeguarding the environment, however the kind of needs that the future generation may want is not determinable. The technologies exhibited today, for instance, are not the same as those in the past, likewise today's technology may be different in the future. Therefore, economic development in the sense of technological advancement on the assumption that the future generation will be needing it or making use of whatever development the present generation has been achieved is hypothetical. Consequently, what is important is the obligation

⁴ For example, Furuseth, O J and Thomas D S K, 'Moving from Principles to Policy: A Framework for Rural Sustainable Community Development in the United States,' Ivonne Audirac (ed) *Rural Sustainable Development in America*, (John Wiley and Sons 1997) 134; Philippe Sands, 'Environmental Protection in the Twenty-First Century: Sustainable Development and International Law, Environmental Law' in Richard Revesz, Philippe Sands and Richard Steward (eds), *The Economy, and Sustainable Development* (CUP 2000), 374; Murray Stewart and Philippa Collett 'Accountability in Community Contributions to Sustainable Development' Diane Warburton (ed) *Community and Sustainable Development: Participation in the Future*, (Earthscan 2009) 59;

⁵ Philippe Sands, 'Environmental Protection in the Twenty-First Century: Sustainable Development and International Law, Environmental Law' in Richard Revesz, Philippe Sands and Richard Steward (eds), *The Economy, and Sustainable Development* (CUP 2000), 374.

of the present generation to manage natural resources, to leave them in such a state that the future generations will be able to determine what kind of use to which they can put these resources. It also follows that development must be carried in a manner that will support the carrying capacity of the ecological system, on one hand, and the kind of development the present generation need, on the other hand. That is, undertaking developmental activities that enhances the living conditions of people, activities in relation to extraction of naturally occurring resources such as oil and gas, mineral deposits to boost a country's domestic income, and infrastructure development must be also be carried out within this context. All these present different levels of development and different levels of preference. Therefore, need in itself for the present generation is not static, neither is it homogenous. Hence to predict the need for future generations is more difficult to attain.

Abracosa and Ortolano argue that the current generation has mismanaged and over exploited the natural resources in the quest of industrialisation to the point of putting the globe at risk.⁶ Black et al, suggest that the idea of sustainable development is a globally viable concept that advocates the establishment of policies that help reduce the environmental damage of deforestation, illegal mining, poaching, oil spillages etc. so that the needs of the current generation can be met without having an adverse effect on the ability of future generations to meet their needs.⁷ Klaus maintains that the present approach to sustainability is too anthropocentric.⁸ He evinced that human needs can only ever be met within ecological boundaries because, all these needs are derived from the environment.⁹ Hence, the environment must be sustained whether for needs of present generation or for the future generations. According to Klaus, the concept of sustainable

⁶ R Abracosa and L Ortolano 'Evaluation of the Philippine Environmental Impact Statement System: 1977-1985', [October 1986], Vol.18, No.1, Philippine Planning Journal, 1-29.

⁷ J Black and A Paez and P Suthanaya 'Sustainable Urban Transportation: Performance Indicators and Some Analytical Approaches' [2002] 128:4 Journal of Urban Planning and Development, 184-209

⁸ Klaus Bosselmann, *THE PRINCIPLE OF SUSTAINABILITY Transforming Law and Governance*, (Ashgate Publishing Ltd England), 32

⁹ Ibid, 30

development is only meaningful if related to the core idea of ecological sustainability.¹⁰ Thus, agreeing with Klaus, it can be concluded that realising ecological sustainability as the core of the concept of sustainable development is an indicator to design appropriate practical solutions. So, in effect, the concept of sustainable development is twofold: exploring in a manner that regenerates the renewable resources; and purposely initiating measures to curb over exploitation and to prevent damage to the environment. The idea is to leave some of these resources for generations yet unborn.

In this vein, the consistent encouragement of the World Commission on Environment and Development (WCED) to various governments to roll out developmental strategies which are aimed at ensuring sustainable economic advancement and environmental protection with minimal exploitation of natural resources,¹¹ is considered as a move that advances a worthy cause of action. The WCED pushed for the reorganization of modern world economic relations to ensure equity in the allocation of national as well as international resources. As suggested by Farmer, two pertinent concerns are generated by the idea of sustainable development. First, countries must restructure strategies in line with their development and at the same time meet the needs of their societies. Secondly, the present generation must regulate how it consumes natural resources so that these are not depleted for future generations which might also benefit from tapping these resources.¹²

¹⁰ Ibid, p 11

¹¹ Our Common Future: Report of the World commission on Environment and Development <www.un-documents.net/our-common-future.pdf> Chs. 2 & 3

¹² K. Farmer, ‘Foundation of restoration ecology’, (Island Press, Washington D C 2007) 364

2.1.1 Sustainability of Development

What constitutes development must be ascertained before considering its sustainability. The term development itself is multifaceted, because it is contingent on the viewpoint and aspirations of the individual and institutions. For example, UNESCO propose development to be that which encompasses populations, animal and plant species, ecosystems, natural resources, water, air, and energy; and integrates concerns such as the fight against poverty, gender equality, human rights, education for all, health, human security, intercultural dialogue, etc.¹³

Sen suggests that 'development' should be viewed not in terms of economic measures, such as GDP growth, average annual income, etc but in terms of the real 'freedoms' that people can enjoy, for instance, economic facilities and social opportunities. Sen describes human freedom as both the primary end objective and the principle means of development, hence, economic measures are merely the means to this end.¹⁴ Barder, while agreeing with Sen to some extent, suggests that, to define development simply as an improvement in people's well-being does not do justice to what the term means to most people.¹⁵ To the author, development consists of more than improvements in the well-being of citizens, even broadly defined.¹⁶ The author further suggests that development also conveys something about the capacity of economic, political and social systems to provide the circumstances for that well-being on a sustainable, long-term basis.¹⁷

¹³ Monique Perrot-Lanaud, UNESCO and Sustainable Development, (UNESCO 2005) <www.unesco.org/education/desd> Accessed June 13, 2018

¹⁴ Sen, Amartya, *Development as Freedom* (New York: Alfred A. Knopf 1999) 366 (as cited in) Terjesen, Siri 'Amartya Sen's Development as Freedom' (*Graduate Journal of Social Science*, 2004 - Vol. 1 Issue 2 344)

¹⁵ Owen Barder 'What Is Development?' (*Centre for Global Development*, August 16, 2012) <www.cgdev.org/blog/what-development>. Accessed July 4, 2018

¹⁶ ibid

¹⁷ Owen Barder 'What Is Development?' (*Centre for Global Development*, August 16, 2012) <www.cgdev.org/blog/what-development>. Accessed July 4, 2018

Development borders on desires of the need of mankind to rise to certain standards which are designed by the settings in which humans pursue a way of living. Thus, development could be considered as an improvement in the standard of living, measured by some stated indicators. The term development may comprise enhancement in the basic needs of life to complex economic extrapolations of world policies regarding GDP and GNP. Ultimately, it is the ability of the individual to have access to what makes life meaningful and worth living for that individual. Development is thus not an abstract term but a concept that must be experienced.

For development to be sustained the human needs that makes life worth living must be unceasing; as the commonly accepted definition of sustainable development states: a ‘development that meets the needs of the present, without compromising the ability of future generations to meet their own needs’.¹⁸ Thus, the present generation endeavours to meet their needs through the use of resources around them, natural renewable and non-renewable, artificial intelligence, and technology to promote and enhance what the world see as well-being of human beings. Natural resources, as the name denotes, are taken out from nature, that is, the environment, hence if the needs of the present generation must be satisfied without compromising the needs of the future generation, then the exploration of these natural resources must be managed in such a way that some are left for the future generation. It demands managing the resources for the environment to be able to self-replenish its renewable resources, and that the non-renewable ones not to be over-exploited. Likewise, the quality of other environmental elements such as air, water and soil within which mankind thrives must not be ruined. Sustainable development also demands that innovations such as the artificial intelligence and technology promoting development should be

¹⁸ Our Common Future: Report of the World commission on Environment and Development <www.un-documents.net/our-common-future.pdf> Ch 2

designed and used in a constructive manner that will enhance the growth and quality of natural environment.

A recent consideration from the EU is the concept of sustainable growth. Sustainable growth is that of growth which finds a balance between rapid economic growth and stagnation. Economic growth here is more concerned with the ability of businesses to be socially and environmentally responsible and accountable for their impact. To expand the term further, the term is frequently used by environmentalists, meaning economic growth that can continue over the long term without creating intolerable pollution or using up all the non-renewable resources.¹⁹ The Principles of Responsible Investment (PRI) are six principles developed by some financial investors within the EU hub who believe they owe a fiduciary duty to promote environmental, and social governance (ESG).²⁰ The principles are to govern their investment activities to promote ESG issues. Among key issues is the proposal for development of a Sustainability Taxonomy, a unified classification system on what can be considered environmentally sustainable economic activities to be integrated into legislation as it is developed. The Taxonomy once developed, will be a complement to efforts to identify investments that are consistent with the Sustainable Development Goals (SDGs)

The whole idea of sustainable growth is that rapid growth will exert pressure on natural resources as they may be exploited to extinction thereby denying future generations of these resources. It is also the notion that rapid economic growth will create environmental problems such as pollution, global warming etc. for future generations hence development must be gradual. Gradual development may however have dire consequences on the standard of living of the

¹⁹ UK Department for the Environment, Food and Rural Affairs (Defra), 2009

²⁰ The Principles for Responsible Investment (PRI); UNEP Finance Initiative; UN Global Compact; The EU Commission Action Plan: Financing Sustainable Growth (2018)

present generation in some countries; hence it may be argued the concept of sustainable growth may be untenable for countries already grappling with issues of poor sanitation and lack of basic amenities. In this regard Beckerman's argument that to give priority to the needs of future generations which in itself is speculative would represent an unjustified sacrifice of apparent interests of billions of very poor people today, which is more conceivable.²¹

Agenda 21, a non-binding global action plan for sustainable development adopted by more than 178 Governments at the 'Earth Summit' in 1992,²² put into perspective the framework for implementing sustainable development goals with emphasis on safeguarding the natural resources of the environment; economic development as well as social developments including poverty reduction. Agenda 21 thus emphasized the interconnectedness among the three dimensions or pillars of sustainable development namely, environmental protection, economic development and social development. The follow-up Johannesburg Declaration also pronounced a collective responsibility to advance and strengthen the interdependent and mutually reinforcing pillars of sustainable development, namely economic development, social development and environmental protection, at the local, national, regional and global levels.²³

Hansmanna et al argue that 'the three pillars of sustainable development involved different types of values' and as such they are not determinable by the same standard.²⁴ They further argue that, even within a single pillar of sustainability, controversy abounds because of conflicting

²¹ Wilfred Beckerman 'Economic Growth and the Environment: Whose Growth? Whose Environment?' *World Development*, Vol. 20 No. 4 (1992) 481-496.

²² <http://www.bgci.org/worldwide/article/0011/>

²³ Johannesburg Declaration on Sustainable Development, World Summit on Sustainable Development in Johannesburg, South Africa

²⁴ Ralph Hansmanna, Harald A. Miegb and Peter Frischknechta, 'Principal sustainability components: empirical analysis of synergies between the three pillars of sustainability' *International Journal of Sustainable Development & World Ecology* Vol. 19, No. 5, October 2012, 451–459

different stakeholders' interests.²⁵ Generally, stakeholders in this regard, may be investors whose primary interest is profit maximisation, therefore, though their attention may be on a pillar of sustainability, say environmental protection, they may carry on their business heedlessly, in a manner that will reduce their overhead cost, but at a cost to the environment. Stakeholders may also include government whose prime interest is economic development, and hence may propose or approve a project regardless of the detrimental implications of the project on the social and cultural needs upon a community.

It was decided in the Johannesburg Declaration that what is needed, in order to achieve goals of sustainable development, is more effective democratic and accountable international and private sector corporations.²⁶ For that reason, the view is that the establishment of environmental standards by multilateral financial institutions, for example, is an important contribution of sustainable development.²⁷ Bäckstrand, who examined the multi-stakeholder partnerships for sustainable development announced at the World Summit on Sustainable Development in Johannesburg 2002, suggested that, benefits that may be derived from such partnerships are: effective leadership; improved accountability; systematic review; reporting and monitoring mechanisms; to mention a few.²⁸ Backstrand's suggestion, although it may hold true, is limited to the giant multilateral institutions without recourse to the benefit less-developed countries stand to gain or lose in such partnership. Central to Backstrand's article is the notion that a partnership for sustainable development is not only among governments but among multilateral institutions as well, some of which give financial assistance in order to reinforce the presence of privileged

²⁵ Ibid

²⁶ Johannesburg Declaration, Para 33

²⁷ Patricia Birnie, Alan Boyle, Catherine Redgwell, *International Law & the Environment* (3rd edn, OUP 2009) 118

²⁸ Karin Bäckstrand, 'Multi-Stakeholder Partnerships for Sustainable Development: Rethinking Legitimacy, Accountability and Effectiveness' European Environment Eur. Env. 16, 290-306 (2006) (www.interscience.wiley.com)

powerful actors in global environmental governance; they reinforce to some extent governmental authority.²⁹

Similarly, Adeyemi noted that the guidelines designed for project financing activities by Multilateral Development Banks (MDBs) to promote sustainable development practices make it possible for the concept to be implemented in developing countries, because affected communities stand to gain from these guidelines.³⁰ Adeyemi who examined guidelines from International Finance Corporation (IFC) which are said to be designed to promote sustainable financing practice through their clients, concluded that though the guidelines provide an important framework for promoting sustainable development practices in developing countries, nonetheless, the adoption of the guidelines in itself does not necessarily guarantee positive results.³¹ It means therefore that implementing the guidelines alone will not achieve sustainable development but rather the user country must make a conscious effort to streamline guidelines to the peculiar requirements of the user country.

Adeyemi's assertion that simply adopting guidelines from MDBs do not necessarily guarantee positive result, is consistent with the purpose of the present research. The present research examined selected projects for which EIA was implemented using guidelines from international financial institutions, in order to obtain a first-hand information from the affected communities and to ascertain how these guidelines are advancing the course of sustainable development in Ghana. The research presented the opportunity to determine if these guidelines are adopted by Ghana so as to appear as adhering to international standards, or to establish whether the guidelines are enforced by financial institutions thorough arm-twisting and by compulsion. If

²⁹ ibid

³⁰ Adebola Adeyemi, 'Changing the Face of Sustainable Development in Developing Counties: The Role of the International Finance Corporation' 16 Envtl. L. Rev. 91 2014

³¹ Ibid

the guidelines are adopted under these circumstances, it will only result in a sub-standard implementation and enforcement and may not necessarily result in achieving the goals of sustainable development.

Birne et al pointed out that sustainable development contains both substantive and procedural elements. The substantive elements which include the integration of environmental protection and economic development are stated in Principle 4 of the Rio Declaration.³² Public participation in decision-making (principle 10), environmental impact assessment (principle 17), and access to information (principle 10), are said to be the procedural elements of sustainable development.³³ Combined operation of the substantive and procedural elements facilitates implementation of sustainable development at the national level.³⁴

2.1.2 Environmental Protection

The place of environmental protection within the concept of sustainable development is espoused in the popular definition that the "environment" is where we live: and "development" is what we all do in attempting to improve our lot within that abode. The two are inseparable'.³⁵ The natural resources depended upon to develop are both renewable and non-renewable. The lack of man's ability to recreate natural non-renewable resources, after despoliation means that these resources must be extracted in a judicious manner. The renewable ones as the name suggest can be regenerated, albeit, this may take several years. This calls for appropriate technology and knowledge to be employed and exploration and management of the renewable resources. The level of technology is different for different countries therefore countries should be allowed to

³² Patricia Birnie, Alan Boyle, Catherine Redgwell, *International Law & the Environment* (3rd edn OUP 2009) 116

³³ Ibid, 123

³⁴ Ibid, ibid

³⁵World Commission on Environment and Development (WCED), *Our Common Future* (New York: Oxford University Press, 1987) 14.

use other forms of knowledge akin to their level of development. For instance, the indigenous knowledge of people within a project area can be applied in measures designed to protect the environment during an EIA, instead of relying on rigid rules of mitigatory measures that are adopted from guidelines. In this respect, Ikeme maintained that indigenous skills and knowledge are invaluable human capital assets which is sadly being lost or denigrated through displacement of tribes, loss of ancient crafts, culture, language, etc.³⁶ Traditional knowledge regarding rare plant species of medicinal or cosmetic value can be evaluated against the backdrop of traditional knowledge through traditional usage, so that destroying them to make way for projects may be weighed against benefits of the project. Alternatively, this will allow measures to be taken to relocate and preserve such species elsewhere. All these will be lost if traditional knowledge of the community is disregarded. This is an aspect of Article 8(j) of Convention on Biological Diversity and the Nagoya Protocol which can be explored to further the rights of indigenous people who live in project affected communities. Article 8 (j) obliges states, through national legislation to ensure that traditional knowledge innovations and practices of indigenous people and local communities are respected and preserved to promote conservation and sustainable use of biological diversity.³⁷

2.1.3 Economic Development

The widespread support for the concept of sustainable development necessitated the incorporation of environmental considerations into instruments of economic development, trade agreements and lending policies of international financial institutions. Consequently, performance standards and guidelines on EIA are also included in most instances. Giddings et

³⁶ Jekwu Ikeme, ‘Sustainable Development, Globalisation and Africa: Plugging the holes’ Africa Economic Analysis <<http://www.afbis.com/analysis/Jekwu.html>> accessed 7 July 2018 8

³⁷ The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS) to the Convention on Biological Diversity is a supplementary a legal framework for the effective implementation of Art 8 (j) of the Convention on Biological Diversity.

al, suggested that the reality of life today is that the economy dominates environment and society.³⁸ Economic development within the concept of sustainable development seem to be a priority for most developing countries. The developing agenda in most developing countries is geared more towards economic development which is provision of good roads, water, electricity, schools, hospitals etc., and jobs. These basic needs of life which translate into high living standards, are acquired through extractions and despoliation of natural resources at the expense of the environment.

2.1.4 Social Development

In most debates about sustainable development either the environment or the economy is given priority,³⁹ leaving social development, the third pillar to tag along. Social development includes poverty eradication, education and cultural recognition of indigenous people. The latter which is now recognised in certain instances as the fourth pillar of sustainable development.⁴⁰ Poverty eradication is also affirmed in the Johannesburg Declaration as an essential requirement for social development which will facilitate sustainable development.

The procedural elements of sustainable development identified by Birnie et al, namely public participation in decision-making, environmental impact assessment, and access to information,⁴¹ may be said to be mutually dependent with regards to social development. Access to information enhances public participation in decision-making which, on its own, is also an invaluable procedure in EIA. The elements cannot be successfully implemented if education is at its lowest

³⁸ Bob Giddings, Bill Hopwood and Geoff O'Brien Sustainable Development, *Sust. Dev.* 10 (John Wiley & Sons, Ltd and ERP Environment 2002) 187–196, 190

³⁹ Bob Giddings, Bill Hopwood and Geoff O'Brien Sustainable Development, *Sust. Dev.* 10 (John Wiley & Sons, Ltd and ERP Environment 2002)) 187–196, 189

⁴⁰ Universal Declaration of Cultural Diversity adopted by UNESCO in 2001

⁴¹ Patricia Birnie, Alan Boyle, Catherine Redgwell, *International Law & the Environment* (3rd edn, OUP 2009) 123

in affected communities. In this regard, Giddings et al suggested a nested model (fig 1), rather than a three-ring (fig. 2) approach to foster an integration of the different sectors.⁴²

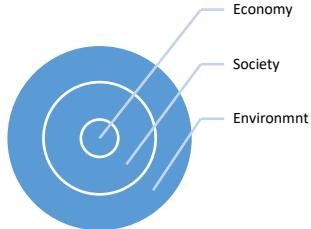


Figure 1 Nestled Model

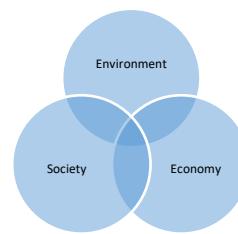


Figure 2 the THREE RING MODEL

2.2 SIGNIFICANT LANDMARKS IN SUSTAINABLE DEVELOPMENT

The United Nations in 1972 organized a conference on the Human Environment. The conference which was organized in Stockholm, Sweden was attended by 113 nations as the maiden attempt to find solutions to the myriad of environmental problems. The representatives at the conference touched on several issues, among which include:⁴³

- i. the impact of human activities on the environment;
- ii. the growth in population;
- iii. development in the social and economic context;
- iv. assisting third world nations;
- v. the role of governments in developing their own countries in a way that is not harmful to the environment of other countries;
- vi. the role of education and technology in solving environmental problems.

⁴² Bob Giddings, Bill Hopwood and Geoff O'Brien Sustainable Development, *Sust. Dev.* 10 (John Wiley & Sons, Ltd and ERP Environment 2002) 187–196, 192

⁴³ Report of the United Nations Conference on the Human Environment, Stockholm, June 1972 UN Documents <<http://www.un-documents.net/unchedec.htm>> accessed February 2019

At the end of the Conference, a relationship was drawn between ensuring better living conditions for the people of the world. This became necessary for the benefit of both present and future generations. The end product of this Conference was the institution of the United Nations Environment Program (UNEP) and many other environmentally related organizations, such as the Intergovernmental Panel on Climate Change (IPCC) - the main advisory body on climate change and Global Environmental Facility GEF - the financial mainstay for major international conventions on the environment. The Stockholm Declaration created a worldwide reawakening for the preservation of the earth upon which mankind depends for sustenance, with ensuing resolution to introduce measures to safeguard the environment. This awareness also culminated in a series of initiatives with the collaboration of The International Union for Conservation of Nature (IUCN).⁴⁴ Notably among them are the 1980 World Conservation Strategy and World Charter for Nature adopted by UN General Assembly on October 28, 1982. The Stockholm Conference also precipitated the creation of some international conventions again with the involvement of IUCN. The Convention Concerning the Protection of World Cultural and Natural Heritage (1972); Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (1974) which IUCN is a signatory; The Convention on Wetlands of International Importance (1975) were all established.⁴⁵

The need for stringent measures on matters concerning the environment came to a head within the United Nations in 1983. A Commission set up by the UN was led by the then Prime Minister of Norway, Gro Harlem Brundtland, consequently the report of the Commission became known as the Brundtland Report. In 1987, the Commission released its report titled 'Our Common

⁴⁴ IUCN - A brief history <<https://www.iucn.org/about/iucn-brief-history>> accessed December 2018

⁴⁵ Ibid

Future' after careful studies had been conducted on environmental and economic issues.⁴⁶ This report focused on the concept of sustainable development and defined it as development which is beneficial to the present generation whereas it also serves the needs of the next generations. A proposal from the Report appealed to governments to come together to find lasting ways of reducing the impact of human activities on the environment.

The next international conference to be held on the Environment and Development was 20 years later, (the Earth summit) in Rio de Janeiro, Brazil through which the Rio Declaration on Environment and Development (Rio Declaration) was produced and signed by 170 countries. The Rio Declaration espoused the concept of sustainable development expressly that the environment and economic and social development must not be considered in isolation,⁴⁷ Therefore, nations must take into consideration environmental implications of their socio-economic development.⁴⁸ In the view of Getzner, the Rio Earth Summit of 1992 was the first most widely patronized conference on environmental matters.⁴⁹ Among the over 30,000 representatives at the conference, 100 or more of them were presidents of various countries. This conference saw the convergence of many state officials, environmental groups, institutions and individuals from all corners of the globe. The Rio Declaration consists of 27 principles which are to serve as a guide to nations when making decisions towards sustainable development. A major highlight of the conference which, though may seem as an antithesis to environmental protection and conservation, was the recognition of sovereign rights of states and the leeway given to states to exploit their own resources according to their environmental and developmental

⁴⁶ Report of the World Commission on Environment and Development: Our Common Future, UN Documents <www.un-documents.net/our-common-future.pdf> accessed December 2018.

⁴⁷ Rio Declaration, Principle 4 <<http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>> Accessed February 2019

⁴⁸ Ibid

⁴⁹ P Getzner 'Multinational Corporations and the Instability of the Nigerian State', [999] 5 Review of African Political Economy, 63-79.

needs.⁵⁰ The conference acknowledged that mankind and the environment are mutually dependent,⁵¹ hence development cannot be achieved without tapping into resources provided by the environment; nonetheless it was reiterated that the environment must not be denigrated in support of development. The right to develop in order to meet the needs of the present and future generations must therefore be exercised responsibly so as to establish an equitable balance between the environment conservation and development.⁵² The right to development enunciated by Rio Declaration was thus reinforced and added environmental dimension to the concept which had become accepted in the world politico-legal arena.⁵³

Another area of the concept of sustainable development promoted by the Rio Declaration is poverty alleviation.⁵⁴ States are implored to reduce and eliminate unsustainable patterns of production and consumption.⁵⁵ In furtherance of sustainable development, States are to collaborate with one other in order to strengthen their capacity-building and enhance scientific and technological knowledge.⁵⁶ This is indicative of the notion that States who have the resources must assist States that are lacking to be able to enhance the capabilities of people and institutions in order to improve their competence in the pursuit of the concept of sustainable development. This is a strong case for knowledge transfer, so that for instance, in the case of identifying and monitoring of adverse impacts of a project, or establishing an appropriate mitigatory measures, (processes of EIA), States, and by necessary implication financial giants, who are endowed with scientific knowledge and requisite expertise must come to the aid of the less endowed ones. The Rio Declaration also acknowledged the importance of participation of

⁵⁰ Rio Declaration Principle 2,

⁵¹ Ibid, Preamble, para 5

⁵² Rio Declaration, Principle 3

⁵³ Africa Charter on Human and Peoples Rights (1992) Art 22(1); UN General Assembly Resolution 48/128; Vienna Declaration and Programme of Action (1993) Art 10

⁵⁴ Rio Declaration, Principle 5

⁵⁵ Ibid, Principle 8

⁵⁶ Ibid, Principle 9

citizens in the decision-making on environmental issues,⁵⁷ and also in environmental management and development because of their traditional knowledge and cultural practices.⁵⁸

For that matter, States must ensure the involvement of their citizens by making available information concerning the environment to them, especially information on hazardous materials and activities in their communities.⁵⁹ The Declaration also entreat States to establish mechanisms for effective access to judicial and administrative proceedings and to provide effective redress measures for aggrieved citizens.⁶⁰ For effective implementation, all these aspirations must be incorporated in to national regulatory systems in the form of legislation, both national and international, policies and standards.⁶¹ In that regard, the mandate to incorporate Environmental Impact Assessment procedure into national instrument is also emphasised.⁶²

The resolutions drawn after the conference includes:⁶³

- i.* maintaining the biodiversity of the global environment;
- ii.* controlling global change;
- iii.* protecting the world's vegetation;
- iv.* a pronouncement on the development of the environment and the world economy;
- v.* a framework for governments to take action in order to tackle environmental issues.

Also known as Agenda 21; these resolutions are still binding on policies of national and international sustainable development today. Agenda 21 therefore ensured that governments sought measures to promote sustainable development. The emphasis was placed on social developments including poverty reduction, improvement in education and the empowerment of

⁵⁷ Rio Declaration, Principle 10

⁵⁸ Ibid, Principle 22

⁵⁹ Rio Declaration, Principle 10

⁶⁰ ibid

⁶¹ Ibid, Principles 11,12, 13

⁶² Ibid Principle 17

⁶³ Agenda 21 UNCED, 1992 <<https://sustainabledevelopment.un.org/outcomedocuments/agenda21>> accessed February 2019

women, the youth and the local people. It also focused on matters concerning the environment by way of ascertaining how sustainable development on the local level can have a global impact. For instance, a reduction in the individual energy consumption can go a long way to influence the emission of toxic gases on both national and international levels.

A key institution created after the conference is the Commission on Sustainable Development (CSD) which was established to advance the concept of sustainable development agenda internationally. CSD, among other things, is tasked to monitor and review the progress in the implementation of the commitments set forth in Agenda 21, including those related to the provision of financial resources and transfer of technology. In order to implement their mandate effectively, CSD committed to meet annually to deliberate thematic specific issues relating to Agenda 21 until 2003 when a new organisational structure was adopted on the basis of seven two-year cycles, with each cycle focusing on selected thematic clusters of issues, such as water sanitation, human settlement, climate change, energy for sustainable development, rural development, Africa, among a few. Other landmark achievements from the Conference comprise the United Nations Framework Convention on Climate Change (1992), an agreement to curb activities inducing climate change, which led to the Kyoto Protocol (1997); Rio+5 (1997), a special UN General Assembly held to appraise the progress on Agenda 21; the United Nations Convention on Biological Diversity (1992); and the United Nations Convention to Combat Desertification (1994).

The 2002 World Summit on Sustainable Development, that is, Rio+10 was held in Johannesburg, South Africa. Governments made commitments to implement sustainable development. Highlights of the Conference were to make aid available to developing economies, eradication

of poverty, and improvement of health systems by 2020, good sanitation measures and in general fighting conditions militating against human dignity.

Then there was a Rio +20, United Nations Conference on Sustainable Development (UNCSD) a twenty-year follow-up on Rio 1992

The objectives of the conference as stated among other things were:

- i.* to obtain commitment towards sustainable development from members;
- ii.* to evaluate the progress and implementation gaps in meeting previous commitments;
- iii.* to address new and emerging challenges.

2.3 THE CONCEPT OF SUSTAINABLE DEVELOPMENT IN GHANA

Going by the definition of Brundtland Commission, sustainable development is simply a better quality of life for everyone, now and for the generation to come. The concept of sustainable development provides the goal for integrating needs: immediate and longer-term; domestic and international; as well as economic, social and environmental needs and seeing them as fundamental components of human progress and dignity. It is maintained that accomplishment of sustainable development in Ghana is still far-fetched, regardless of the foundation laid by various governments, and the establishment of Environmental Protection Agency and other appropriate institutions. Ghana was one of the 193 countries who endorsed the 2030 Agenda for Sustainable Development and the 17 Sustainable Development Goals (SDGs) in 2015. The country pledged through these goals to ensure sustained and inclusive economic growth, social inclusion and environmental protection.⁶⁴ Pursuant to these goals, some regulations were

⁶⁴ The Sustainable Development Goals (SDGs) in Ghana, November 2017
<<http://gh.one.un.org/content/dam/unct/ghana/docs/SDGs/UNCT-GH-SDGs-in-Ghana-Avocacy-Messages-2017.pdf>> accessed December 19, 2018

passed, and policies were also formulated. Social intervention programmes which aimed at achieving these goals were also introduced.

2.3.1 Economic growth

A World Bank report indicated that Ghana's economic performance improved significantly in 2017.⁶⁵ Ghana's economy is estimated to have expanded by 8.5% in 2017 from 3.6% in 2016. The 2018 annual budget pegged it at 7.8% growth in real GDP in the first half of 2017.⁶⁶ It was specified that the strong growth performance in 2017 is largely driven by the mining, oil exploration and quarrying subsectors, of which upstream petroleum constitutes a significant share.⁶⁷ This is an indication that Ghana's economy is still in the primary sector. The economic development of Ghana is dependent on extractive industries, mostly non-renewable natural resources. This is the more reason why care must be taken in extracting these non-renewable resources, so that some will be preserved for future generations. However, the present generation must also have their fill, that is, to enjoy the benefits of the economic development through extractive industries. The growth in GDP and so on, are not what most people are concerned with. The benefits that the people are interested in flow from the development boom that is supposedly associated with the activities of these industries. A development that brings about basic amenities, generates more jobs through the industries, and which will increase the income levels of people and reflect in their standard of living. It is always the case that, the number of people that these industries usually employ are few, since the majority of the people living within the catchment area of these industries lack the requisite skills that the industry demands. The

⁶⁵ The World Bank Group Apr 19, 2018 <<https://www.worldbank.org/en/country/ghana/overview>> accessed January 18, 2019

⁶⁶ Government of Ghana. November 15, 2017. "The 2018 Budget Statement and Economic Policy of Government" <<http://mofep.gov.gh/sites/default/files/budget-statements/2018-Budget-Statement-andEconomic-Policy.pdf>> Accessed January 18, 2019

⁶⁷ Ibid

problem is aggravated by the fact that there are only a few manufacturing industries to beef up the primary industry in order to nurture the secondary sector of the economy. Ghana's economy thrives on the exploitation of natural resources; therefore, rigorous legislation and policies towards environmental protection must be incorporated into the development agenda of the country.

2.3.2 Environmental Protection

Two years after the Stockholm Declaration, Ghana also established the Environmental Protection Council (EPC) in conformity with the decisions reached at the Stockholm Conference, in order to initiate measures towards implementation, and to address the increasing environmental challenges in the country. The EPC was established under the then Environmental Protection Council Decree, 1974 (NRCD 239) amended by EPC (Amendment) Decree SMCD 58 with a mandate to coordinate all environmental matters in the country and advise the government on these issues.

It may be stated, from the history of its establishment, that the EPC had an indeterminate administrative structure, the reason being that it was placed under one ministry after the other. In 1981, the Ministry of Health had supervisory and administrative authority over the EPC. In 1982, barely a year later, it was placed under the Ministry of Local Government and Rural Development. This would have affected its optimal functioning, because every Ministry has a distinctive mandate and policy and allocating one agency to different Ministries within a short period is likely muddle its operational capability.

Finally, as the Ministry of Environment Science and Technology was created in 1993, the EPC was “rebranded” the Environmental Protection Agency (EPA), under a new Act, Environmental Protection Act 1994 (Act 490) with no significant difference in structure. The first

environmental policy was formulated in 1995 with focus on environment and sustainable development. A more recent policy was launched in 2014 with a new vision to address the challenges that have plagued the nation in effectively managing the environmental concerns, through an integrated and holistic environmental management practices in order to sustain society at large.

The Ministry also has its fair share of a chequered history. Created in 1993 as the Ministry of Environment and Science, it was later dissolved in 2006, with the ‘Environment’ portfolio added to the Ministry of Local Government, and the ‘Science’ portfolio allocated to the Ministry of Education. It was re-established in 2009 and now named the Ministry of Environment, Science and Technology (MEST). Again in 2013 it was renamed this time with the word “Innovation” added to be called the Ministry of Environment, Science, Technology and Innovations (MESTI).

This frequent change may be attributable to the initial lack of prominence accorded to environmental management in overall governance of the country. It may also be concluded, perhaps, that policies may have been ‘imported’ so implementation becomes problematic. The frequent change in name also had no positive significant effect on the direction of the Ministry’s mandate, rather many names mean broad or wide array of mandates, resulting in a lack of focus.

Presently the Ministry is responsible for four agencies under it:

1. Environmental Protection Agency;
2. The Ghana Atomic Energy Commission;
3. The Town and Country Planning Department;
4. The Council for Scientific and Industrial Research

These agencies are to formulate, develop, implement, monitor and evaluate environmental, science and technology and innovation policies in Ghana through education and awareness

creation and collaboration and partnership. It is established that Ghana depends largely on natural resources for economic development. Traditional products, such as, gold, cocoa beans and timber products and now oil are the main products. All these products are taken directly from the environment in their crudest form, therefore, in Ghana, economic development and the natural environment are indispensably connected. Thus, some level of environmental despoilment is unavoidable. However, this does not warrant a licence for wanton disregard for the wellbeing of the environment. For instance, Ghana's forest is now described as "silent forest"⁶⁸ due to unsustainable use of the forest and forest products. It was reported in 2016 that about 65,000 hectares of forest and wildlife resources have been depleted as at 2012 and it was estimated that with an annual net of 2% of loss of forest cover, Ghana will be left with none of these resources in 20 years to come.⁶⁹ To this end, a revised policy for the protection of Ghana, forest and wildlife was launched in 2012.⁷⁰ The first formal policy was launched in 1948, then followed by 1994 policy. It was reported that implementation of the 1994 policy with all the associated reforms did not halt the degradation of the forest, hence, the revised policy. The aim of the 2012 policy, among other things, was to get communities involved in preserving the biodiversity and the environment so as to ensure sustainable production of domestic and commercial forest produce.⁷¹

⁶⁸ Alliance for Development, 'Ghana and Sustainable Development: Restoring the Present, Securing the Future' 24-02-2014, 01:02:00
<https://www.myjoyonline.com/opinion/2014/February-24th/ghana-and-sustainable-development-restoring-the-present-securing-the-future.php>

<afdghana@gmail.com>

⁶⁹ Ghana REDD+ Strategy, Forestry Commission, 2016-2035

<<https://www.fcghana.org/userfiles/files/REDD%2B/Ghana%20REDD%2B%20Strategy.pdf>> 24 accessed February 9, 2019

⁷⁰ Ghana Forest and Wildlife Policy 2012 Ministry of Land and Natural Resources 2012
<http://www.fcghana.org/library_info.php?doc=43&publication:Forest%20&%20Wildlife%20Policy&id=15> accessed December 21, 2018

⁷¹ Ibid 12

Apart from the policies chronicled above, the country had also attempted other forms of conservation measures, some of which are still ongoing. The Reducing Emissions from Deforestation and Forest Degradation (REDD and REDD+) programmes and the Voluntary Partnership Agreement (VPA) are some examples. The REDD programmes are a framework through which developing countries are rewarded financially, through a system of carbon credits, for any emissions reductions achieved associated with a decrease in the conversion of forests to alternate land uses.⁷² In effect, developing countries are rewarded for preservation of their forest. Ghana's REDD+ strategy relaunched in 2016 has its aim to reduce emissions from deforestation and forest degradation over the next twenty years. The strategy is to identify practices that lead to deforestation and to introduce measures to reduce forest loss and to improve land-use. Although both the REDD and REDD+ programmes are primarily initiatives to mitigate climate change through emissions reductions of CO₂ gasses, the preservation of the forest cover aspect of the programme, leads to conservation of biodiversity. A setback to effective implementation the programme is measuring carbon stocks in forest because of complex system of carbon stock calculation, which may be inaccurate or inflated in some cases.

The VPA, on the other hand, is a legally binding trade agreement between Ghana (entered in Brussels on November 20, 2009) that only legally produced timber coming from Ghana should be allowed into the EU market. A VPA aims to ensure that all timber and timber products exported to the EU market from a partner country comply with the laws of that country. A component of the VPA is the issuance of EU Forest Law Enforcement, Governance and Trade (FLEGT) licenses by the country of origin to the timber products, to indicate that the timber is procured in accordance with the laws of that country. The recipient EU market must also operate in accordance with EU Timber Regulation (EUTR). Once a timber product is FLEGT licensed,

⁷² Parker, C., Mitchell, A., Trivedi, M., Mardas, N. The Little REDD+ Book (Global Canopy Programme 2009)

it is eligible or cleared to be placed on the EU market. This is a convergence of two systems: whereas the FLEGT licence checks the legality of timber products from the country of origin, the EU TR also requires EU operators to perform due diligence checks to ensure that the timber products they place on the EU market are legal. This system is commendable, but it is not without attendant antecedent problems. First, its effectiveness depends on the laws of country of origin, therefore the laws of the country of origin must be robust and void of corrupt practices, otherwise, illegal timber can be licensed. Second, it does not solve the problem of timber felled illegally for the use of domestic industry. The effectiveness of the VPA to curb depletion of forest stock is therefore limited. Other initiatives are the Natural Resources and Environmental Governance Programme (NREG) and the National Forest Plantation Development Programme, which aim to arrest and reverse deforestation rates in the country and to increase the national forest cover.

Despite all these measures, the problem persists. The activities of indigenous businesses such as small-scale illegal miners (*galamsey*), illegal small-scale lumber operators called chainsaw operators also present a major hitch in the government's effort to preserve the forest and wildlife. Thus, although the timber industry, for instance is one of the contributors to Ghana's GDP, the activities of the informal local industries which comprises of the *galamseyers* chain saw operators, artisanal carpentry, wood carving, charcoal and wood fuel producers pose danger to the biodiversity. The activities of the informal local industries are not on the same scale as the larger timber industries, however their collective effects damage biodiversity extensively. The activities of the small-scale miners as well as improper agricultural practices and use of agro-chemicals also pollute large volumes of major water bodies. Apart from the activities of locals which pose a threat to the environment, corporate giants in extractive industries whose primary interest is to maximise profit are also a force to reckon with. To this end, Domfeh et al reason that individuals and business organisations will pursue their economic interest often to the peril

of public interest. Hence, it behoves on national regulatory agencies to develop the capacity to forestall and curb the growing menace of recklessness of companies in mining and the forestry sectors, especially.⁷³

About 44.59% of the population of Ghana lives in the rural areas.⁷⁴ Most of these people who live close to forest areas, live virtually out of the environment, unlike their city counterparts. Their livelihood and the existence of the environment are intrinsically connected, as most of their subsistence activities such as small-scale farming, hunting, fishing, gathering and harvesting of wild fruits and medicinal plants etc, is from the forest. Thus, any form of degradation of the environment has a strong bearing on poverty levels. On the other hand, these people may be prone to oppose conservation measures, if they are not introduced properly. Any measures, be it policy, regulations, directives or laws towards environmental protection must be introduce in a manner that will make the people feel the country has their interest at hand, and by doing so, will get them involved. Any measure to the contrary will only be met with a hostile defiance from the people, which will result in lack of participation and implementation. This will also have a negative effect on enforcement. A positive step in that direction was when the government made appeal to traditional rulers to join in the fight against *galamsey* in order to help preserve the country's lands, water bodies and environment.⁷⁵ Any economic gains or development in this regard can be offset by environmental challenges, a setback to achieving sustainable development.

⁷³ Kwame Ameyaw Domfeh, Albert Ahenkan, Justice Nyigmah Bawole, 'Is sustainable development achievable in Ghana? An analysis of Ghana's development policy achievements and challenges' (2012) Vol 11 No 3 Int. J. Environment and Sustainable Development 304-317

⁷⁴ The World Bank Group (US) <<https://data.worldbank.org/indicator/SP.RUR.TOTL.ZS>> accessed 3 February 2019

⁷⁵ <<https://www.ghanabusinessnews.com/2018/07/31/minister-appeals-for-chiefs-to-support-fight-against-galamsey/>> accessed February 2019

For instance, Dickson suggests that for the government to be successful in conservation measures, the policies must be more practical, to get the local people involved.⁷⁶ The cultural practices of local residents must be considered, and sustainable alternative sources of livelihood must be provided.⁷⁷ Aside these, there must also be strong implementation strategies, and proper documentation for equitable distribution of resources to the local people.⁷⁸ Dickson's view is supported by an earlier research conducted by Ansong and Røskift in selected communities around Subri Forest Reserve in the Western Region of Ghana which indicate that local communities around forest reserves in Ghana hold positive attitudes towards forest management, provided management measures ensures equity rather than strict protection.⁷⁹ The research suggested that local communities have an interest in forest management, and are likely to support forest management initiatives that promote sustainable use of the forest resources in the reserve. However, in order for these measures to yearn positive results, it will be necessary to analyse the types, quantities and economic significance of forest products used by each community so that these can be considered in the initiatives put in place.⁸⁰ Which seems to suggest that every community is unique in the values they place on the forest and forest products around them hence, every community must be treated differently regarding management measures to be implemented. Value could be different in terms of benefits derived from the forest or forest products, cultural practices and traditional beliefs as well as sentimental and aesthetic attachment.

⁷⁶ Adom Dickson, 'Challenges to the efficacy of forestry and wildlife policies in Ghana for environmental protection: A Review' [2017] African journal of agricultural research 2858-2876

⁷⁷ ibid

⁷⁸ ibid

⁷⁹ Ansong Michael & Røskift Eivin, 'Local communities' willingness to pay for sustainable forest management in Ghana' (2014) Vol 1 Journal of Energy and Natural Resource Management 80-87

⁸⁰ ibid

Another challenge to implementation of policies and enforcements of regulations is the lack of capability in terms of human resources and logistics. Domfeh et al argue that the key challenge has always been the capacity of the implementation agencies to effectively implement and monitor these policies to be able to curb the growing menace of recklessness of companies in fishing, mining and the forestry sectors.⁸¹

2.3.3 Social Inclusion

Ghana also initiated social intervention strategies towards social protection, social welfare and poverty alleviation, which received some international recognition. According to a joint publication in 2017 on Sustainable Development Goals (SDGs) in Ghana by the UN Communication Group (UNCG) and the Civil Service Organisation Platforms (CSOs), Ghana was the first country in Sub-Saharan Africa to reduce poverty by half, and thus met the Millennium Development Goal One.⁸² A report on activities from the Ministry of Gender, Children and Social Protection (MoGCSP) also indicate that Ghana is still making some progress in reducing poverty.⁸³ The Ministry came out with a policy on Social Protection programmes which aim at reducing poverty. Income support and related social intervention that enable people to live in dignity through livelihoods empowerment and improved access to systems of basic services.⁸⁴ Through this policy, the Ministry introduced variety of programmes and initiatives, some of which include Livelihood Economic Advancement Program (LEAP). The Programme

⁸¹ Kwame Ameyaw Domfeh, Albert Ahenkan, Justice Nyigmah Bawole, ‘Is sustainable development achievable in Ghana? An analysis of Ghana’s development policy achievements and challenges’ (2012) Vol 11 No 3 Int. J. Environment and Sustainable Development 304-317

⁸²The Sustainable Development Goals (SDGs) in Ghana, November 2017

<<http://gh.one.un.org/content/dam/unct/ghana/docs/SDGs/UNCT-GH-SDGs-in-Ghana-Avocacy-Messages-2017.pdf>> 19 accessed December 2018

⁸³Ministry of Gender, Children and Social Protection (MoGCSP) <mogcsp.gov.gh> accessed 19 December 2019

⁸⁴ Ibid

Republic of Ghana National Social Protection Policy, Ministry of Gender, Children and Social Protection <<http://mogcsp.gov.gh/index.php/mdocs-posts/ghana-national-social-protection-policy/>> accessed 19 December 2018

provides social cash grants to the extremely poor and vulnerable households. Others are National Health Insurance Scheme (NHIS), School Feeding Programme, Education Capitation Grant, Planting for Food and Jobs, Youth Enterprise and Employment schemes, etc. Programmes which are intended to create jobs, reduce poverty and vulnerability in the Ghanaian society were implemented with collaboration with other government Ministries.

Basically, Ghana's attempt to achieve the social change aspect of sustainable development reflects in the numerous policies, plans and strategies that were and are still being formulated. Despite all these efforts, the results are not that perceptible. The issue comes back to the fundamental problem of implementation of these policies and enforcement of laws. Some of these interventions are also short term, hence, it becomes difficult to attain the desired social inclusion. The apparent slow pace of achievement in the social side of sustainable development is attributable to budgetary constraints and lack of commitment.

From the foregoing discussions, it can be deduced that Ghana does not seem to have a problem with legislation and formulation of policies in order to bring about sustainable development. The main focus should be a people-centred implementation of these policies and professional development of agencies charged with implementation and monitoring of these policies. Ultimately sustainable development is for the people, that is, a development that focuses on empowering local communities to lead self-sufficient and sustainable lifestyle, so that their activities will rather not destroy the environment. Likewise, sustainable development is the ability to seek justice where their rights to safe and healthy environment are being violated, and also, to be able to participate in decision-making concerning management of the natural environment. For, what is useful with the concept of sustainable development if the people do not experience any improvement in their well-being? Ghana in its stride to achieve sustainable

development must ensure that the SDGs are localised in order to get everyone involved. In so doing, it will not be seen as one of those foreign and remotely related policies that people feel unrelated to, but rather policies that have the well-being of the people at its core.

It is only when these measures are effectively implemented that Ghana can benefit from the opportunities presented by sustainable development. In the view of Ackoff and Emery, sustainable development is the process of seeking better living conditions on behalf of the entire nation.⁸⁵ They suggest that sustainable development will not be brought about by mere policies but a conscious effort to solicit popular support for its implementation. Gibson also argues that the interdependence of the economic, environmental, and social elements of our world require new ways of doing things.⁸⁶ As indicated by Birol and Cox, though sustainable development require different actions in every part of the world, the effort to establish an effective sustainable system rest on three key areas. These are:

- i. **Economic growth and equity:** the nature of the global economic trend today require an integrated approach in order to ensure a comprehensive development in all the countries.
- ii. **Conserving natural resources:** there is the need for viable solutions to reduce resources consumption, pollution and make every effort to conserve the natural habitat.
- iii. **Social Development:** in the bid to address the needs of the state or community, there is a need to ensure that social elements, cultural differences, respect of fundamental human rights as well as the right of workers are duly upheld. The concept of sustainable

⁸⁵ S Ackoff and J Emery ‘The application of mitigation and its resolution within EIA – the Scottish Power perspective’ Paper presented at the 20th Conference of the International Association of Impact Assessment, Hong Kong, 19-23 June 2005.

⁸⁶ R B Gibson, ‘Environmental assessment design: lessons from the Canadian experience’ [1993] 15 The Environmental Professional 12-24.

development does not only focus therefore on environmental issues but transcends to include economic, environmental and social which form the basis for policies.⁸⁷

2.4 CONCLUSION

It may be argued that the Directive Principles of State Policy that require the State, in implementing any policy decisions, to ensure maximisation of economic development in order to provide adequate means of livelihood; to protect and safeguard the national environment for posterity; and to uphold appropriate customary and cultural values, present a strong justification for government to be more innovative in its efforts in this regard.⁸⁸ However, these are not justiciable, at best, they are only noble aspirations. Besides, government alone cannot do it but need the involvement of all.

⁸⁷ G Birol and F Cox ‘The quality of environmental impact statements, A review of those submitted in Cork, Eire from 1988-1993’ (2007) 12 Project Appraisal 43-52.

⁸⁸ The Constitution of Ghana, 1992 Cp 6

CHAPTER THREE

ENVIRONMENTAL IMPACT ASSESSMENT AS A TOOL FOR DECISION MAKING

3.0 INTRODUCTION

Environmental Impact Assessment (EIA) is a mechanism used for decision-making in projects, development and planning of programmes.¹ As the name suggests the focus of EIA is on the environment, to ensure that projects undertaken are carried out in a sound manner so as to safeguard the environment. It is for this reason that EIA is believed to have the tenets of sustainable development rooted in its ideologies. This notion is summed up in Gilpin's definition of, EIA as a set of procedures that is used to forecast the effects of developmental projects on the environment.² For Gilpin, EIA always intends to foresee impacts of all projects and their associated challenges particularly in the early stages of project planning and design. Thus, it also intends to identify the economic, social and environmental threats that are posed by developmental projects before final decision-making process ends.³

EIA is embraced as a procedural means which will resolve most of the environmental questions. The procedural steps with which the process engages and the fact that the outcome becomes part of policy considerations of a nation is a factor that makes the EIA process valuable. Some writers suggest that EIA and other variations evolved as a response to the increased industrialisation after the Second World War and its attendant negative environmental impacts. Holder, for example, affirms B. D. Clark's suggestion that harmful

¹ J Glasson, 'Environmental Impact Assessment: impact on decisions' in Petts J (ed), *Handbook of Environmental Impact Assessment*, Vol. 1. (Oxford, Blackwell 1999) 121-44

² Y Gilpin, 'Devolution of environmental regulation: environmental impact assessment in Malaysia' (2009) 18 Impact Assessment and Project Appraisal 283-293.

³ Ibid

environmental impacts of post-war development schemes such as dams and motorways led to public upsurge in environmental activism.⁴ Sheate, also maintains that EIA was seen as ‘a mechanism for reconciling economic growth with concerns for the environment’.⁵

There are several definitions of EIA, depending on the jurisdiction, yet the same principles are distinguishable. These are that:

- a. EIA is procedural;
- b. EIA is carried out to determine the impact of a project on the environment (including social and economic impacts);
- c. EIA must be carried before the project commences; and
- d. The outcome of EIA process will inform the decision to allow the project to proceed or not.

EIA is conjectural and hence the effectiveness is in the ability of the experts to predict correctly the likelihood of impacts on the environment and on human health. The success of the EIA process is also in producing the appropriate design and implementation of mitigation measures. In this regard, a conclusion may be drawn that the EIA is an effective mechanism in controlling environmental destruction.

3.1 THE PLACE OF EIA IN INTERNATIONAL LAW

Protection of the environment is at the heart of every international legal instrument of environmental nature. Since the earth is the home to all mankind, until a new planet is discovered, the protection of the earth is mundane for all and sundry. The need to protect the environment is observable from the eruditions of our common future, to the several Agendas

⁴ Jane Holder, *The Regulation of Decision Making* (OUP 2004) 42

⁵ William Sheate, *ENVIRONMENTAL IMPACT ASSESSMENT: LAW AND POLICY Making an Impact II* (Cameron May Ltd 1996) 17

championed through the various meetings on sustainable development. The preamble of most environmental legal instruments indicate that environmental protection is vital to the very existence of human beings on planet earth. It was the need for establishing a collective standard towards a common goal, that is: “the preservation and enhancement of the human environment”⁶ occasioned the enactment of the Stockholm Declaration in 1972. Paragraph 2 of the Preamble reiterated the duty of the “peoples of the whole world and the duty of all Governments” to protect and improve the human environment for the well-being and economic development of peoples throughout the world. The Convention on Biological Diversity (1992) also has as its principal objective the conservation of biological diversity and the sustainable use of its components,⁷ as it affirms the importance of biological diversity for evolution and for maintaining life sustaining systems of the biosphere.⁸ The Convention also again asserts that the conservation of biological diversity is a common concern of humankind.⁹ The mandate for States to carry out EIA on projects that are likely to have significant adverse effects on biological diversity was stated expressly in the Convention, albeit discretionary to some extent, because Contracting Parties are required to introduce appropriate procedures only as far as possible and as appropriate¹⁰ The Rio Declaration, building upon the objectives of the Stockholm Declaration, declared that environmental protection must be considered as an integral part of the development in order to achieve sustainable development.¹¹ In consequence, the principle of environmental protection and sustainable development are naturally connected. So, to get everyone onboard, there must be established a harmonised system of laws that will ensure that everyone is fulfilling its obligation towards the environment. In this regard, the Rio Declaration asserts that States shall enact effective

⁶ Stockholm Declaration, 1972, preamble

⁷ Convention on Biological Diversity 1992, Art 1

⁸ Ibid preamble

⁹ ibid

¹⁰ Convention on Biological Diversity 1992, Art 14

¹¹ Rio Declaration 1992, principle 4

environmental legislation whose standards must reflect the environmental and developmental context to which they apply,¹² thereby emphasising the role of states in environmental protection. States must also develop national law regarding liability and compensation for the victims of pollution and other environmental damage.¹³ Other treaties such as the Madrid Protocol on the Antarctic Environment,¹⁴ the Espoo Convention,¹⁵ etc. also espouse protection of the environment.

According to Craik, the reception and development of EIA commitments by other states in both their domestic and international decision-making processes has also been influenced by general principles of international environmental law.¹⁶ In the words of Craik, the early formulations of EIA commitments in these international non-binding instruments provided a commitment to undertake EIA: nonetheless they did not provide detailed requirements for carrying out EIAs.¹⁷ In this regard, the Environmental Impact Assessment Goals and Principles formulated by UNEP to serve as a guide for the formulation of domestic and international EIA requirements came in useful at the time. Even so, once again, nations were allowed to exercise their discretion because it is stated that the Goals and Principles are general in nature therefore States are allowed to refine it when fulfilling EIA tasks at the national and international levels.¹⁸ The discretion allowed nations to formulate their own EIA procedure, translates into the inference that it is impermissible practice for any institution or organisation to impose their guidelines in the name of standard practice. For that reason, many developing countries that depend on external funding for developmental projects who are inundated presently with guidelines from

¹² Rio Declaration 1992, principle 11

¹³ Ibid principle 13

¹⁴ Protocol to the Antarctic Treaty on Environmental Protection, (4 October 1991) 30 ILM 1455

¹⁵ Convention on Environmental Impact Assessment in a Transboundary Context, (25 February 1991), 1989 UNTS 309, Appendix III, para. 1

¹⁶ Craik N, ‘Domestic origins of international EIA commitments’, *The International Law of Environmental Impact Assessment: Process, Substance and Integration* (CUP, 2009) 23

¹⁷ Ibid, 92

¹⁸ UNEP EIA Goals and Principles <<https://digitallibrary.un.org/record/42521?ln=en>> accessed 6 July 2018

their financiers, should be allowed some room to modify some of these guidelines to suit their individual situations.

EIA has also been advanced through international legal commitments such as non-binding instruments, multilateral environmental agreements, EIA guidelines in supplementary international instruments, and guidelines from international organisations, including the World Bank Group. Even though environmental instruments of legal nature are said to be couched in persuasive language, thus, lacking the force of a rigorous legal regime, the presence of these instruments in the international legal milieu, nonetheless raises the awareness that is needed towards concerns for the environment. Case law has also added a push for the acceptance of EIA into public international law, nevertheless, muddled in direction regarding specific procedure. Some cases of significance that have advanced the cause of EIA in the international scene are *Gabčíkovo-Nagymaros Case*,¹⁹ *Mox Plant Case*,²⁰ the *Pulp Mills Case*,²¹ and the *Costa Rica v. Nicaragua Cases*.²² For instance, it was noted that there is lack of guidance as to the specific circumstances giving rise to the need for an EIA, nor is there any requisite content of any such assessment.²³ Marsden also argued that the three-fold test introduced in the Pulp Mill's case raises more questions than answers. These are first, there must be established a risk of significant negative transboundary environmental effects through preliminary assessment; followed by EIA; and thirdly the notification and consultation with affected state in relation to any potential harm identified, has failed to clarify international law

¹⁹ Gabčíkovo-Nagymaros Project (Hungary/Slovakia), (Judgment) [1997] ICJ Reports p78, para 140

²⁰ Ireland v. United Kingdom, 41 ILM 405 - 2002

²¹ Pulp Mills on the River Uruguay (Argentina v.Uruguay), (Judgment) [2010] ICJ Reports I, 83-84, para. 204-205

²² Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) [2015] ICJ Reports 150 <<https://www.icj-cij.org/en/case/>>

²³ Opinion of Judge Bhandari Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica), (Judgment) [2015] ICJ Reports, para 7 <<https://www.icj-cij.org/files/case-related/150/18860.pdf>> accessed March 6 2019

in respect of EIA, raising more questions than answers.²⁴ All these cases are concerned with disputes between states about projects or activities with considerable adverse transboundary impacts.

EIA is now been practised in many parts of the world, both developed and developing states, including transitional economies.²⁵ The specific content of EIA may vary between countries but there are certain core elements from which common issues arise. These include screening, scoping, impact assessment statement, baseline studies (a comprehensive description of the social and economic assessment prior to intended projects), review and decision-making. These core elements may not always share the same terminology everywhere but there are similar concepts, or a combination of concepts embedded in them. For instance, Fisher et al identify five steps in the EIA procedure: Screening; Scoping; Process of Assessment; Public Participation and Decision Making.²⁶ Compared with the core elements identified by Nwilo and Badejo, process of assessment identified by Fisher et al may encompass Baseline Studies and Review mentioned by Nwilo and Badejo. Thus, it is reasoned that there may be differences in nomenclature or terminologies so that when evaluating an EIA procedure of a country one must focus on the contents of the procedure rather than the terminologies accorded to that procedure.

3.2 EXTENT OF INFLUENCE OF ENVIRONMENTAL IMPACT ASSESSMENT

²⁴ Simon Marsden ‘Determining significance for EIA in International Environmental Law’, *Questions for International Law* (QIL), Zoom-in, 42 (2017), 5-12, 7 <<http://www.qil-qdi.org/determining-significance-eia-international-environmental-law/>> accessed February 2019

²⁵ Norman Lee and Clive George (2000), *Environmental Assessment in Developing and Transitional Countries: Principles, Methods and Practice* (Wiley & Sons Ltd 2000).

²⁶ Elizabeth Fisher and Bettina Lange and Eloise Scotford, *Environmental Law Text, Cases and Materials* (OUP 2013) 843-848.

EIA procedure and implementation seem to suggest that EIA has not been given an equal consideration internationally in environmental matters as compared with climate change, negative atmospheric disturbances, hazardous waste disposal, ozone layer depletion, etc., This is because apart from adverse transboundary environmental impacts, most adverse activities that demand EIA are limited by physical boundaries or confined to national jurisdictions, thus there is minimal interference in domestic legislation regimes in respect of national sovereignty. Therefore, domestic efforts towards EIA are invaluable in this regard. The practice and conduct of EIA, particularly before the execution of certain projects, has increased gradually. This is because it seeks to prevent the potential adverse effect that a project could bring to the people.²⁷ Principle 17 of the Rio Declaration which admonishes signatories to incorporate EIA procedure in their national legislation and other international influences discussed in the preceding paragraphs may have facilitated worldwide application of EIA procedure.

3.2.1 Origin and History

The development of EIA systems started in the 1960s when President Nixon passed the National Environmental Policy Act (NEPA) therefore EIA had its first legal mandate through the United States National Environmental Policy Act (NEPA) in 1969.²⁸ However concerns for environmental safety dated as far back as the mid-19th century, probably from the pressure from environmental movement organisations.²⁹ The environmental movement gained momentum in the earlier part of 20th century due to further advances in scientific knowledge and the development of ecology as a discipline as well as large scale environmental threats.³⁰

²⁷ J. Glasson and R. Therivel and A. Chadwick, *Introduction to environmental impact assessment* (2nd edn UCL Press 2003).

²⁸ The US National Environmental Policy Act 1969 ss 101, 102

²⁹ Christopher Rootes, ‘Environmental Movements’ in David A. Snow, Sarah A. Soule and Hanspeter Kriesi (eds) *The Blackwell Companion to Social Movements* (Blackwell Publishing Ltd 2004) 609-612

³⁰ Ibid 612

The Bikini Atoll bomb test (March 1 1954) by the USA, for example; Rachel Carson's Silent Spring (1962) and Oil Spills of Santa Barbara (1969); etc all added impetus to the environmental awareness movement at the time. Similar occurrence in Europe that precipitated the increase in environmental awareness include the Great Smog of London (December 5, 1952)³¹ and the Torrey Canyon Oil Spill (March 18, 1967) on Scilly Isles³². With the passing of NEPA, EIA became institutionalised in most legal systems and adopted by some international environmental instruments,³³ as well as, institutions that offer development assistance mostly in developing country.³⁴

The NEPA required that EIA should be conducted for all programmes and activities which would be funded by the US where there were signs of environmental challenges.³⁵ This has, however, become a significant framework for various EIA projects globally. Since the establishment of NEPA, many state level EIA systems have been established. Other developed countries such as Canada (1973), Australia (1974), W. Germany (1976) and France (1976) have also established various forms of EIA systems due to influential drive of NEPA.³⁶ For instance, the approval of European Union Directives on the establishment of EIA in 1985, demanded that member state enact EIA legislation in their various countries, or incorporate or transpose the Directives into their existing domestic laws. In the early part of 1990s, there was a large growth in EIA systems in Africa (such as in Ghana) and also in South America.³⁷

³¹Katy Stoddard 'Tower Bridge in heavy fog, London, December 1952' (*The Guardian*, November 2, 2012) <<https://www.theguardian.com>> World > UK News > Weather> accessed August 14, 2017

³² Laura Moss, 'The 13 largest oil spills in history' (*Mother Nature Network*, July 16, 2010) <<https://www.mnn.com/earth-matters>> accessed December 8, 2017

³³ For example, Convention on Biological Diversity (Article 14); Principle 17 of Rio Declaration

³⁴ This point is discussed further in chapter five

³⁵ The US National Environmental Policy Act 1969 ss 101 and 102

³⁶ Christopher Wood *Environmental Impact Assessment: Comparative Review* (Pearson Education Limited 2003) 4.

³⁷ Ibid; See also J Glasson, 'Environmental Impact Assessment: impact on decisions' in Petts J. ed *Handbook of Environmental Impact Assessment*, vol. 1. (Oxford, Blackwell 1999) 121-44

Conducting EIA has now become a requirement that some international financial agencies demand in order to support projects in developing countries.³⁸

3.2.2 The EIA Procedure

The procedure adopted in various systems or jurisdictions may be different, likewise the names adopted to describe the stages, but then the following procedural steps are identifiable in every EIA process:

1. Screening;
2. Scoping;
3. EIA Reporting;
4. Evaluation of Reports;
5. Public Participation;
6. Decision making;
7. Monitoring.

For all these stages, an institution (competent authority) is designated with the mandate to oversee to the execution of the EIA process.

3.2.2.1 Screening

This is the procedure for determining whether a proposed project require extensive or less rigorous impact assessment. It is the process where it is determined whether EIA should be carried out on a proposed project or not. This means that the likelihood of a proposed project

³⁸ Elizabeth Fisher and Bettina Lange and Eloise Scotford, *Environmental Law Text, Cases and Materials* (OUP 2013) 856; Campion Benjamin Betey and Godfred Essel ‘Environmental Impact Assessment and sustainable Development in Africa: A Critical Review’ (2013) Vol 3 No 2 Environmental and Natural Resources Research; World Bank Policy 2013

to have significant or adverse impact on the environment social economic (and now health) of the people is determined. If it is ascertained that the project will have such an impact, then EIA is required. If not, then EIA is not required. Most jurisdictions have in their regulation or laws governing EIA, selection criteria to determine whether or not a project should undergo EIA. Projects are categorised, for example, into schedules, annexes, etc.³⁹

3.2.2.2 Scoping

Scoping is the exercise that establishes the important aspect of the project that must be subjected to rigorous impact assessment. Once a project is marked for EIA, it is then decided which aspect of the project should be assessed and to what extent the assessment should be carried out. Terms of Reference (TOR) are drafted in some EIA systems to serve as a guide for the scoping process. These TORs invariably, include:

- a. Description of the project, that is, defining the characteristic of features of the project from various stages of construction to commissioning and de-commissioning;
- b. Identification of the main impacts;
- c. Aspects of the project that should be subject of the EIA process; and
- d. How it should be carried out.

Scoping is usually carried out by the developer in most jurisdictions, but in some cases, a consultant is contracted where the developer lacks the requisite expertise.

3.2.2.3 EIA Reporting

EIA reporting is the summary of what EIA should contain. It is a document that describes the potential assessment of a proposed project termed, Environmental Impact Statement (EIS),

³⁹ See Environmental Impact Assessment (EIA) Directive 2014/52/EU, Art 4; Town and Country Planning (Environmental Impact Assessment) Regulations 2017, SI 2017/0571 reg 2 (1); Environmental Impact Assessment Regulations 1999 of Ghana (L.I. 1652) Reg 1 & 3

Environmental Statement (ES) or Scoping Report, depending on the EIA system. It is a report from the scoping exercise and as such, its contents are prepared to conform to the TOR outlined in the scoping exercise. It comprises of all aspects of the project, its likely impacts and how the developer intends to mitigate adverse or significant impacts. Other alternatives to the project in relation to location, size/scale, layout and processes are also considered in the EIA report. Hence, the preparation of such documents demands some level of expertise pertaining to the area of development in question. Some EIA systems also require the developer to prepare a simplified version for the public.⁴⁰ The report must also contain Environmental Mitigation Plan (EMP), that is, a document describing into detail how the developer plan to mitigate adverse impacts and how such measures are to be carried out. The term EMP may not appear in some regulations but it is categorically mentioned in most guidelines from donor institutions.⁴¹ These guidelines admonish its inclusion as a condition for granting planning permissions. Some text books mention post project monitoring and the fact that proposal for a post project monitoring should be included in an ES as a condition for granting planning permission.⁴² The essence of EMP and its inclusion in the EIS may also be implied from the text of the law.⁴³ This is consistent with principles of the EIA process, since it is through the EMP that mitigation measures and management plans are stated into detail and thus can be assessed during monitoring.

3.2.2.4 Evaluation of Reports

Evaluation of reports is a stage where the environmental statement or the EIA report presented by the developer is scrutinised to determine whether all the issues have been addressed

⁴⁰ See SI 2017/0571, reg 18 (3)

⁴¹ See explanation on guidelines in chapter four

⁴² William Sheate, *Environmental Impact Assessment: Law and Policy Making an Impact II* (Cameron May Ltd 1996)111

⁴³ See Directive 2014/52/EU art 5 (c) and Annex IV para 7; SI 2017/0571, 18 (3) (C), sch 4 para 7

satisfactorily. It is to ascertain the practicability of mitigatory measures stipulated by the developer in the EIS. Since the issuance of permit is premised on satisfactory representation of the contents of the EIS, the evaluation is carried out by experts from the authorising institution.

3.2.2.5 Public Participation

Public participation, as the name implies enable people who will be affected by a project, other interested parties, such as NGO's and the citizens in general, to engage with the relevant authorities to air their views and their concerns about the project. There is no particular stage at which the public should be engaged, but the principle of the EIA process is that public participation should be carried out before decision is made on the project. So, ideally the public must be involved in all the stages of the EIA process for their contribution to be incorporated into decision-making. This is the essence of the EIA procedure because it is those for whom the project is being developed, in other words, the beneficiaries, that need to know the implication of the development on their daily activities, well-being as well as the environmental ramifications. It is also believed that indigenous / local knowledge in some circumstances is an immeasurable asset to the success of the whole process.⁴⁴

Most jurisdictions hold stakeholder meeting after an EIA report has been made available, for most laws on EIA insist on making available a non-technical summary of the report for the benefit of the public. In this way, the public are empowered to make meaningful contribution. This aspect of the EIA thus ensures that citizens have a say in the decision-making process of projects.

⁴⁴ See Seth Appiah-Opoku, 'Environmental impact assessment in developing countries: the case of Ghana' [2001] 21 Environmental Impact Assessment Review 59-71

3.2.2.6 Decision Making

Decision making is the stage where the authorising institution will decide whether to allow the project to proceed or reject the proposal for permit altogether and demand for alternatives for the project. The permit may also be granted to the proposed project on condition of modifications. In determining whether to allow the project or not, all issues pertaining to the project's impacts stated in the EIS, mitigation measures, management plans, and representations (if any) made by the public are taken into consideration and are used to formulate future policies.

3.2.2.7 Monitoring and Auditing

Monitoring is a crucial step in the EIA process. The development for which the permit was granted is supervised to determine whether or not all the mitigation measures proposed are being implemented and whether the developer is following its own EMP by the books. These may be conditions upon which the developing permission was granted for the project to proceed, hence non-adherence will indicate that the purpose for which the EIA was carried out is not being achieved.

Auditing is also an appraisal exercise which compares predicted outcome with actual outcome, to determine whether the approaches and techniques used in prediction are accurate; whether mitigation measures are being implemented and whether they are effective. Where development is allowed subject to modifications, these modifications must be monitored. These call for experts which will constantly check the records, compare technical details of the project, that is, plans and drawings and projections to the actual work on the ground. It also involves periodic visits to project sites to verify. The public and / or civil organisations are also encouraged to observe and report any significant and adverse effects not already

considered, and report to the authorities. They may also bring to order any developer who is not adhering its own EMPs. Hence some regulations/systems stipulate complaint institutions through which anybody can register their concerns.

EIA is iterative, for instance, monitoring which is at the tail end of the stages cannot be carried out without reference to the impacts identified during scoping exercise, or with recourse to monitoring measures stated in the EMP etc. Likewise consulting and involvement of the public is not limited to only one stage of the EIA process. In a well-functioning EIA system, concerns that are raised during the entire EIA exercise are matters to be considered in policy making, and on a wider range, to be considered in reviewing existing laws. Hence, EIA is not just an ordinary permit procedure carried out in furtherance of issuing of permit. When carried out properly, EIA will promote environmentally sensitive decision-making.⁴⁵ For this reason, EIA is considered to be an effective tool for Sustainable Development.

3.2.3 EIA systems: Basis for Regulation

There are varied reasons why jurisdictions incorporate EIA into their legal systems. EIA was embraced in various countries either as a result of response to massive environmental movement, as in the case of National Environmental Policy Act (NEPA) of the USA; or by persuasion structured on obligation as a member of an integrated economic and political institution, as in the case of UK and other EU member countries, who are under the obligation to incorporate EU EIA Directives into their domestic legal systems. A third reason is born out of compulsion either by international financial institutions who finance projects mostly in developing countries or by membership of an international legal instrument. The latter has not

⁴⁵ William Sheate, *Environmental Impact Assessment: Law & Policy, Making an Impact II* (Cameron May Ltd 1996) 44

been too effective as the former, which compels most developing countries to enact new legislation or to amend existing laws in order to satisfy donor/sponsor obligations. Though there seems to be worldwide acceptance of EIA practice, its effectiveness to achieve its purposes in various jurisdiction is called to question. According to Jay et al, empirical studies have revealed that relative weak influence exerted by EIA on planning decisions is attributable to its rationalist beginnings.⁴⁶ They argued that, the rationalist approach to decision-making that emerged in the 1960s which required a technical evaluation to be made as a basis for objective decision making is the root for EIA regulations.⁴⁷ Hence, if there need to be a reform of the EIA procedure, the founding political purposes of EIA, which is partly legislative must be considered. However, as noted above the purpose for instituting EIA Regulations may not follow the same reasoning because EIA is invariably incorporated into the domestic laws of a country basically to satisfy a financial requirement for a development pursuits or fulfilment of international obligation. In this regard therefore, reform of the EIA systems will rather follow a different pattern, say, an institutional reform, behavioural change of professional actors and focus on empowerment and educating affected people.

In an attempt to determine what constitutes a ‘good’ system, Weston argues against comparisons between international models.⁴⁸ Weston’s argument is in reaction to the views expressed by Wood who categorized EIA systems into effective and less effective.⁴⁹ In the assertion of Wood, some deficiencies in the NEPA of USA were indications of reluctance by the UK government to replace or duplicate efficient provisions in the existing UK Town

⁴⁶ Stephen Jay, Carys Jones, Paul Slinn, and Christopher Wood ‘Environmental Impact Assessment: Retrospect and prospect’ (2007) 27 Environmental Impact Assessment Review 287 – 300

⁴⁷ ibid

⁴⁸ Joe Weston, *Planning and environmental impact assessment in practice*, (Addison Wesley Longman 1997) 180.

⁴⁹ Christopher Wood, ‘Lessons from Comparative Practice’ (1994) vol 20 no. 4 Built Environment (1978-) 332-344. <<http://www.jstor.org/stable/23287805>> accessed July 14, 2019

Planning system with the EU EIA Directives.⁵⁰ Weston contended that the implementation of EIA in the UK was a superfluous addition to the operations of well-functioning Town Planning system.⁵¹ He therefore indicated that it would be incorrect to categorize the UK system as inefficient for not incorporating all the provisions of the US NEPA. It can be deduced from the arguments of Weston that on the whole, one might be making a great mistake to compare systems that are operated in Ghana, for example, to that of the US and UK, because the origins, legislation and environment of operations are absolutely not the same. Fisher et al state that EIA operates within particular institutional contexts hence EIA process varies from jurisdiction to jurisdiction, so regard must be had to surrounding social and political values of each jurisdiction.⁵²

Wood, comparing EIA process from USA, UK, Netherlands, Canada, Australia, New Zealand and South Africa, acknowledges that EIA systems differ in their performance and that certain limitations only become more apparent when they are seen in totality.⁵³ For Wood, a number of specific measures such as introducing or reinforcing appropriate procedural requirements can be used to strengthen different EIA systems. He advocates the introduction of published guidance, on any stage of EIA process, as a useful aid. While agreeing with Wood on the benefits of guidance, in that published guidance, practitioners' manuals and the like may be useful in general, over reliance on such guidance may pose a challenge to the evolution of the very procedure they seek to strengthen or improve. This is especially so when these documents

⁵⁰ Christopher Wood, 'Lessons from Comparative Practice' (1994) vol 20 no. 4 *Built Environment* (1978-) 332 <<http://www.jstor.org/stable/23287805>> accessed July 14, 2019

⁵¹ Joe Weston, *Planning and environmental impact assessment in practice*, (Addison Wesley Longman 1997) 180.

⁵² Elizabeth Fisher and Bettina Lange and Eloise Scotford, *Environmental Law Text, Cases and Materials* (OUP 2013) 857

⁵³ Christopher Wood, *Environmental Impact Assessment: Comparative Review* (Pearson Education Limited 2003)

are not prepared in the environment where it is to be used or by experts who do not understand the socio-economic and political milieu.

Fisher et al suggest that differences of opinion translate into practice, thus the views and perceptions of actors may transcend in the EIA process, determining what EIA should be or not be.⁵⁴ Sharing the same view with Fisher et al, it is reasoned that preparation of manuals is based on the knowledge of the experts involved, experienced through practice and these experts may have different opinions based on their varying expertise. It follows therefore that individual views and perceptions may influenced the content and outcomes of these published guidance.

On the other hand, published guidance may be useful in a system where there is some level of homogeneity. For example, the efficiency of guiding principles to address convergence of procedure is seen within the EU EIA practice. EIA practice in member states differs and according to Fisher et al, the differences are due to:

- i. divergence in opinion over the nature and purpose of EIA;
- ii. different commitments of member states to environmental protection; and
- iii. the operation of distinct legal, administrative, and political cultures.⁵⁵

It is reasoned that the method employed in preparation the guidance on EU Directives might have contributed to its success. The general practice in with the EU is that the EU ensures that Directives, once adopted by the EU institutions, must be incorporated or transposed by Member States in to their domestic laws, however the form and content is left for the national authorities of each Member State to decide.⁵⁶ Because each Members is given the liberty to develop its laws and also to determine its enforcement, there is much flexibility for each Member State to

⁵⁴ Elizabeth Fisher and Bettina Lange and Eloise Scotford *Environmental Law Text, Cases and Materials* (OUP 2013) 857

⁵⁵ Ibid, 866

⁵⁶ Treaty on the Functioning of the European Union (TFEU) Art 288 (3)

skew the Directives according to their standards. The European Commission publishes guidance for Member States in order to promote harmonisation of practice across Member States. The guidance prepared on EU/EIA Directives ranges across scoping, screening to public participation. There are also training packages on categorisation of projects etc.

Noteworthy is the fact that the members of panel responsible for preparation of these documents are experts in their field who were selected from the various Member States. In this regard, members of the panel will not only bring their areas of expertise on board but also the social and political undertones, as well as the economic standards of the various jurisdictions will be assessed and incorporated into the documents. Nonetheless potential costs associated with institutional and legal adjustment involved in harmonisation of existing national arrangements with the guidelines are high and inevitable.⁵⁷

It is also observed that the Directives are constantly being revised and improved so that any implementation deficit concerning initial Directives, the EU Commission initiates measures to ‘update’ and ‘fine tune’ the implementation processing in order to correct these shortcomings by means of more precise regulatory guidelines. It must be stated that this may not be the same in developing countries. When guidelines are introduced by financial donors as a requirement of developmental aid, it is observed that there is little monitoring or none especially after the project is completed. Perhaps the monitoring is supposed to be handled by the recipient country after the donor purports to have trained them.⁵⁸ This is not the case in many instances, for the training received may not be adequate in order to carry out a comprehensive monitoring. More so, the tendency of these guideline being used over and over

⁵⁷ Christoph Knill and Daniela Winkler ‘Convergence or Divergence of National Legal and Administrative Structures? Europeanisation Effects of the Environmental Impact Assessment in Germany and England’ (2006) Vol 2 (Part 2) Journal for European Environmental and Planning Law, 132-141

⁵⁸ World Bank Policy (1998)

for other projects are high, whereas revision which must be an ongoing evaluative process is never carried out.

To buttress this assertion on effectiveness or otherwise of EIA guidelines in developing countries, Boyle state that EIAs are invention of the Western, industrialised democracies, transferring EIA programs to industrializing nations without having recourse to their very different cultural and socio-political heritages and practices will only compound existing challenges.⁵⁹ Boyle's research, though conducted in the Asian sub-region, provides a useful insight into the problems of transplantation of advanced EIA system into a relatively less advanced system.

Proponents of legal transplant assert that legal transplantation is an efficient way of development of legal systems, in the sense that laws which works in a jurisdiction are used in another jurisdiction with the hope that the same results will be achieved.⁶⁰ Legal transplantation is also considered as a smart way of choosing a foreign legal model that had proven to work well, however, according to Siems, both the importing 'transplant country' and the exporting 'origin country' must be interested in the transplant.⁶¹ In this regard, Legrand also maintains that advocates of 'legal-change-as-legal-transplants' put so much emphasis on the letter of the law without considering the intangibles that make up the frameworks within which communities operate, and which have normative force for these communities.⁶² Legrand argues that this limits the advocates' appreciation of the law.⁶³

⁵⁹ John Boyle 'Cultural Influence on Implementing Environmental Impact Assessment: Insights from Thailand, Indonesia and Malaysia' (1998) 18 Environmental Impact Assessment Review, 95-116.

⁶⁰ Alan Watson, *Legal Transplants: An Approach to Comparative Law* (University of Georgia Press, 1993) 95

⁶¹ Mathias Siems, *Comparative Law* (2nd edn CUP 2018) 233

⁶² Pierre Legrand, 'The Impossibility of Legal Transplants' (1997) 111 4 Maastricht J. Eur. & Comp. L, 121

⁶³ ibid

The above arguments indicate that whereas legal transplants may be successful to some extent, in some instances they may not work. Legal transplant may work where there is no law in existence on the subject, that is, building the law from nothing. Impliedly, the prior existence of domestic laws could only promote the rejection, and this is the case for most countries from the global south which has domestic laws in existence moulded on the laws of colonial powers. In resonance with Montesquieu's view, it was only in the most exceptional cases that the institutions of one country could serve those of another.⁶⁴ Possibly, where there already exists a connection between the donor and recipient countries. This could present a sound reason why transplantation should work especially if the law to be transplanted is taken from the foundation (source) of domestic laws. In effect transplantation works better regarding new laws.

For the transplant to be effective, several factors come into play, namely, the two countries, that is, both the donor and receiving country must be compatible in their ideologies; there should be parallels in their level of legal, political and economic development,⁶⁵ and similarities in their political and socio-economic policies so that legal rules can easily be adaptable.⁶⁶ Although globalization has immensely reduced some of the impediments associated with legal transplantation political ideologies and cultural norms and values are still divers. The idea that it works perfectly in the 'donor' country without recourse to the deferential influences of the social, cultural, economic factors as well as technological advancement of the 'recipient' country is untenable. The concept of legal transplant stems from the fact that the donor system assume that its laws are "healthy" (by analogy of human organ transplant according to Watson)⁶⁷ and by extension supreme and better, than the recipient system.

⁶⁴ Charles Montesquieu, *Esprit des Lois*, Book 1, Ch 3 (des Lois positives) 23

⁶⁵ Mathias Siems Comparative Law (2nd edn CUP 2018) 33, 240

⁶⁶ Linda Hantrais, *International Comparative Research: Theory, Methods and Practice*, (Palgrave Macmillian and St Martin's Press 2009) 133-9

⁶⁷ Watson suggested that a successful legal transplant like that of human organ will grow in its new body and become part of that body just as the rule or institution would have continued to develop in its parent system. Alan Watson, *Legal Transplants: An Approach to Comparative Law* (Scottish Academic Press, London 1974) 27

Considering the volume of research carried on legal transplant, some of which are discussed above, it is emphasised that the present research does not present the case of legal transplant as such because going by the definition by Siems ,“legal transplant concerns a situation where the legislator of one country enacts a new rule that follows largely the rule of another country.”⁶⁸ The present research concerns with imposition of guidelines of some financial sponsors on EIA in Ghana, thus, i) financial institutions are not legislators; ii) the guidelines are not rules; and iii) the financial institutions are not a country properly called although their guidelines may be said to reflect their country of origin. Therefore, in instances where the actors involved are not sovereign states or rather one sovereign state as against an international agency, (non- state organisations) then the matter becomes more complicated. The instruments concerned are presented in the form of codes of conduct, guidelines, international standard practices.

Again, legal transplant is mainly about copying over of statute law and application of quite hard law on different cultural and social settings however the research presents two problems regarding legal transplants: (i) the research focused more on process than substantive law, and to unearth how the substantive law plays in the process; (ii) whereas legal transplants concern with hard law, the research focuses on a soft law instrument, that is, the guidelines.

When considering guidelines that come from global north institutions like the World Bank, it is not so much as a transplant from the World Bank to Ghana, but rather a kind of ‘one-size fits all’ model based on ideas of economic liberalisation which is paraded across the globe, but mostly in the countries from the global south.

⁶⁸ Mathias Siems *Comparative Law* (2nd edn CUP 2018) 232

3.2.4 EIA Systems: Effectiveness of Regulation

“Regulation is a key tool for achieving the social, economic and environmental policy objectives of governments that cannot be effectively addressed through voluntary arrangements and other means”.⁶⁹ Effectiveness of established regulations can be called to question regarding their ability to have a ‘biting’ force. EIA as a regulatory instrument comprises of systematic rules and procedures that are purposely designed to achieve social, economic and environmental policy objectives, the goals of sustainable development. EIA also allows and mandates inspection of operations by competent authorities from the environmental enforcement department. In the same vein, the regulated also need accountability from public agencies particularly in decision-making therefore the issue of regulating the environment cannot be segregated from the activities of effective governance in general. Especially where there is an increase in the level of doubt by the public towards regulatory authorities, as a result of a great sense of mistrust and scepticism in the adoption of so-called scientific and technocratic methods which some authorities purported to be the basis of decision-making. It is the duty of the regulator to educate people on the laws, to make information available and to ensure transparency in the methods adopted towards enforcement. In developing countries especially, mistrust for these methods has led to some greater challenges for environmental regulations to be effective. The present research examined the current form of control exercised by regulatory authorities in Ghana in environmental legal reforms, vis a vis the pressure they are confronted with, in the face of new international developments, the demands for local participation in decision-making and a questioned the actions and inactions of these regulatory authorities.

⁶⁹ OECD (2014); The Governance of Regulators; OECD Best Practice Principles for Regulatory Policy; OECD Publishing 17 <<https://www.oecd-ilibrary.org/docserver/9789264209015-en.pdf>> accessed February 2019

“For environmental legislation to ‘work’ it must not only be well designed but also efficiently and effectively enforced”⁷⁰ Enforcement of EIA Regulations does not seem to be a problem in developed countries. Though there are a handful of setbacks here and there, the EIA systems in developed countries seem to have well laid structures for its enforcement. This could be attributable to the fact that most developed countries had already established environmental or planning regulation of a sort before the introduction of an EIA regime. Therefore, for most of these countries, the introduction of an EIA system into their legal setting was just an addition to an already well-organized system as in the case of France or just a transposition as in the case of the UK. In this regard, enforcement becomes easier as it only needs some few adjustments to the legal system. The story is different in developing countries, as most of these countries enacted laws on the environment mainly to fulfil obligation towards international legal instruments, without necessarily setting up appropriate structures for enforcement. Thus, the introduction of an EIA system was a novelty which they must try to grapple with in the mist of non-existing structures. Apart from structures that facilitate enforcement of the regulations, there are also cultural elements to which most communities in the developing countries are characterised with which influence their ways of life. Therefore, regard must be had to the cultural dispensation of the host country in order for a regulation to be effective. For, it is the cultural factors and social norm that underpin regulation and when taken into consideration, will facilitate easy integration and assimilation of the regulation. Boyle noted that an important aspect of implementation of EIA in developing countries is the overarching cultural, social and political factors⁷¹ In his assertion, Boyle stated that too much attention is on technical factors such as the inadequacy of environmental laws and regulations,

⁷⁰ Neil Gunningham ‘Enforcing Environmental Regulation’ (2011) 23:2 Journal of Environmental Law 169 -201
170

⁷¹ John Boyle, ‘Cultural Influences on Implementing Environmental Impact Assessment: Insights from Thailand, Indonesia, and Malaysia’ (1998) Volume 18 Issue 2 Environmental Impact Assessment Review, 95-116

institutional strength, scientific and personal training and availability of data, when analysing difficulties associated with implementation of EIA in developing countries. Whereas technical factors contribute to the consequential effectiveness of EIA, Boyle suggested that cultural factors provide complementary explanation and so must be taken into consideration.⁷² Although Boyle's assertion is tenable, however in developing countries one cannot do without the other. There must be a balancing act between the so-called technical factors as well as cultural, social and political factors. For example, availability of data on environmental impacts of a project may be useless if due to cultural beliefs, the affected community will have nothing to do with the project or if through political exertions the affected community is coerced into accepting a project regardless of its environmental implications. In the same vein, a project may span several cultural areas with diverse cultural values such that even though cultural factors may be taken into consideration, in developing such a project, diversity of culture may reduce the EIA procedure to a mere formality in a quest to satisfy all cultural demands.

The lack of implementation of the regulations conveys the fact that the appropriate authorities are limited by several challenges. The central point now is the issue of finding solutions to the environmental challenges confronting humanity today. It is without argument that most organizations have reframed their objectives in order to help them meet environmental requirements.⁷³ In the view of Onosode, though most cases of non-compliant victims are sanctioned to deter future occurrence, some cases of non-compliance are hardly noticed due to the intrinsic behaviour of humans to hide them.⁷⁴ The table below enumerates wide range of factors responsible for compliance or otherwise of environmental regulations.

⁷² ibid

⁷³ John Boyle, 'Cultural Influences on Implementing Environmental Impact Assessment: Insights from Thailand, Indonesia, and Malaysia' (1998) Volume 18, Issue 2 Environmental Impact Assessment Review 95-116

⁷⁴ G Onosode *Environmental Issues and the Challenges of the Niger Delta: Perspectives for the Niger Delta Environmental Survey Process* (CIBN Press Lagos 2003)

Factors motivating compliance	Barriers to compliance
Economic Preservation of the environment for posterity Ensure value for money by the adoption of cost effective and low environmental practices.	Financial constraints Lack of adequate resources Non-existence of resources.
Social and moral Moral integrity to uphold the sanctity of the environment. Makes it plausible for government to implement and enforce environmental laws.	Lack of education in conscientizing the public about the need to preserve the environment Low commitment from government to enforce environmental laws.
Personal Cordial relationship between implementers and management The intention to prevent the negative effects of publicity	Difficulty in adapting to change Lack of knowledge about how to meet the standardized expectation.
Management The need for effective capacity building to induce compliance. Motivation as a critical means of promoting compliance.	Low level of compliance due to poor accountability. Ineffective control measures by management; the non-existence of continuous training and development programs
Technological The existence of technology usage	The difficulty of meeting objectives due to the absence of technology The unreliability of technology

Table 1 challenges of monitoring compliance (Source: US EPA, 1992).

3.3 ENVIRONMENTAL IMPACT ASSESSMENT WITHIN THE CONCEPT OF SUSTAINABLE DEVELOPMENT

As the concept of Sustainable Development assumed centre place in the world's political landscape, the need to design tools to promote the policy became stronger. Some 27 years later, the concept of sustainable development came on board through the World Commission on Environment and Development (WCED) and the Brundtland Report. EIA was identified as the appropriate tool to bring about of sustainable development. Sheate describe EIA as tool

with potential to deliver the dream of Sustainable Development, even though it did not start out in that context.⁷⁵ So, what started as procedural mandate to ensure sound environmental management, has assumed a wider role of promoting sustainable development.⁷⁶ Thus, EIA took on several variations and modification, encompassing social action plans with emphasis on the involvement of the public in identifying effect of projects on their livelihood, health, preservation of aesthetic and cultural heritage and public inputs towards mitigation and alternatives. This also empowered the community to seek judicial intervention in enforcement of EIA. However, social action plan will depend on level of knowledge and commitment of the community as well as the political will of government. Social action plans are now implemented as part of loan agreement of some major financial institutions.⁷⁷ Furthermore, the introduction of EIA as part of social action plans also led to the introduction of other forms of assessment including social impact assessment, sustainability assessment, environmental impact assessment, green governance and the like. One such variation is the Strategic Environmental Assessment, the evaluation impacts of legislative policy, plan and programme proposals upon the environment.⁷⁸

3.3.1 Relationship between the EIA and the Concept of Sustainable Development

Considering the aspirations of sustainable development summed up within various Declarations and soft law regimes as environmental protection, economic development and

⁷⁵ William R Sheate *Tools, Techniques and Approaches for Sustainability: Collected Writings in Environmental Assessment Policy and Management*, (World Scientific Singapore 2009) 408

⁷⁶ Angus Morrison-Saunders and Francois Retief, ‘Walking the sustainability assessment talk – Progressing the practice of Environmental Impact Assessment’ [2012] 36 Environmental Impact Assessment Review 34-41

⁷⁷ DFID Environmental Guide, <<https://ec.europa.eu/.../methodology-dfid-guide-to-environmental-screen>>. accessed July 3, 2018; EBRD, <www.ebrd.com/downloads/research/policies/esp-final.pdf> p.8; IFC-CESI Environmental and Social Review Manual,

<www.ifc.org/wps/wcm/connect/.../ESRP+Manual.pdf?MOD=AJPERES> accessed 3 July 2018

⁷⁸ Simon Marsden, *Strategic Environmental Assessment, in international and European Law: A practitioner’s Guide*, (Earthscan 2008) 6

poverty alleviation,⁷⁹ it could be argued that EIA, which was originally a procedural measure to ensure environmental development, may not be able to deliver this entire mandate, therefore suggesting the need for a total modification of the whole EIA process. Morrison-Saunders and Retief, however, contend that EIA already has a very explicit mandate of sustainable development, hence legislative reform is not necessary to promote its effectiveness but rather a focus on behavioural change of professional actors is required.⁸⁰

While agreeing with Moirrison-Saunders and Retief to some extent, a divergent view is that the elements of EIA that promote the aspirations of sustainable development must be identified in order to integrate the two concepts. For instance, scoping and screening exercise of EIA should not only be carried out in furtherance of environmental management but also to determine the economic viability of the project. And then legislative reform may be necessary for emerging systems, even developed ones as well. Public participation, an aspect of EIA that ensures that citizens have a say in the decision-making process of projects, which may have negative or positive impact in their life and on their livelihood, could also be skewed towards the aspirations of sustainable development. This is more reflective in the EU EIA practice, especially with the coming into force of the Aarhus Convention.⁸¹ The Aarhus Convention operates on the three backbones of access to environmental information; public participation in environmental decision-making; and access to justice. The enforcement of this Convention places the EU a step ahead of its counterparts worldwide. The Convention gives a right to any member of the public of a Member State to demand for information on the environment, and if such information is withheld unjustly, the public authority on which the

⁷⁹ See for example Stockholm Declaration principles 1-5, 11 ,12; Rio Declaration principles 1-6, 8, 17; Convention on Biological Diversity, arts 3, 6, 7

⁸⁰ Angus Morrison-Saunders and Francois Retief, ‘Walking the sustainability assessment talk – Progressing the practice of Environmental Impact Assessment’ [2012] 36 Environmental Impact Assessment Review 34-41

⁸¹ UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, <<http://www.unece.org/env/pp/treatytext.html>> accessed March 2019

demand is made can be brought to book,⁸² for the law states that applicants are entitled to obtain this information “at the latest within one month after the request has been submitted”.⁸³ A well-informed public is likely to actively participate in decision-making as well. This makes social inclusion, an aspect of sustainable development always relegated to the background. In this regard, the EU periodically investigates MS compliance with the Convention through public consultation. A recent one is a public consultation on “EU implementation of the Aarhus Convention in the area of access of justice in environmental matters”, a consultation which aim at gathering information and views on the effectiveness of the Convention in this area, was completed by 14 March 2019.⁸⁴ In EU EIA practice, the amendment of Directives 97/11/EC and 2003/35/EC to conform to the Aarhus Convention enjoins Member States to put rigorous measures on public participation. Fisher et al declare that these amendments are significant in the sense that they create a more stringent public participation requirement thereby transforming the nature and purpose of EIA to make it more deliberative and participatory.

Whereas public participation procedures seem to be well harmonised and operative in the EU, public participation methods in the US Federal law have been criticized as ineffective.⁸⁵ Hourdequin et al argue that participation should be designed and evaluated not only on practical grounds of cost-effectiveness and efficiency, but also on ethical grounds based on democratic ideals.⁸⁶ In this regard, four ethical principles for public participation are rationalised: equal opportunity to participate; equal access to information; genuine deliberation; and shared

⁸² Aarhus Convention, art 9

⁸³ Aarhus Convention, art 4

⁸⁴ <http://ec.europa.eu/environment/aarhus/index.htm>

⁸⁵ Marion Hourdequin and Peter Landres and Mark J Hanson, and David R Craig, ‘Ethical implications of democratic theory for U.S.A. public participation in environmental impact assessment’ [2012] 35 Environmental Impact Assessment Review 37–44

⁸⁶ *ibid*

commitment. They conclude that while improved EIA participatory processes do not guarantee improved outcomes in environmental management, processes informed by these four ethical principles, derived from democratic theory, may lead to increased public engagement and satisfaction with government agency decisions.⁸⁷

Public participation is widely documented as being valuable component of EIA process, however, how to undertake it continues to be problematic. This is not an isolated case as most elements of the EIA process present the same contextual challenges. According to O'Faircheallaigh, no simple formula can be used to select appropriate participation process because of the complex ecological, social, economic and political dimensions that environmental concerns present.⁸⁸ O'Faircheallaigh suggests a classification of purpose for public participation in EIA to be centred on three fundamental relationships between the public and decision-making structures and processes. These are: public input to decisions; public involvement in decision-making and public participation as an attempt to change the distribution of power in society.⁸⁹

Klaus asserted that human needs can only ever be met within ecological boundaries, therefore his idea of ecological sustainability⁹⁰ demands practical solutions. In this regard, EIA is pivotal in the concept of sustainable development because it is a process that has ecological sustenance at its core. For instance, there are parallels in both the concept of sustainable development and procedural stages that the EIA presents. EIA is a procedure carried out before a development to proceed or in furtherance of that development. Similarly, the concept of sustainable

⁸⁷ ibid

⁸⁸ Ciaran O' Faircheallaigh 'Public Participation and Environmental Impact Assessment: purposes, implications, and lessons for public policy making' [2010] 30 Environmental Impact Assessment Review 19–27

⁸⁹ Ibid, 25

⁹⁰ Klaus Bosselmann, *THE PRINCIPLE OF SUSTAINABILITY Transforming Law and Governance*, (Ashgate Publishing Ltd England 2008) 11

development, in general, is centred on development. The main aim of EIA is to ascertain the impact of development on the environment. Equally, sustainable development is to introduce measures to prevent over exploitation of destruction. EIA encourages alternatives of the development if possible, in order to avoid adverse impacts. In the same vein, the concept sustainable development demands that development must be carried out with regeneration of natural resources in mind.

Screening and scoping exercises of the EIA suggest that even though development must take place, the effect of it on the environment must be ascertained. Through the Environmental Management Plan (EMP) a requirement in the process of EIA, proposed remedies to adverse impacts are put on the drawing board for deliberation. Remedies in the form of mitigation, reclamation plans are all in a bid to preserve the natural resources. Since the EMP is just a plan of possible solutions, monitoring and auditing ensure that these measures are implemented, else the whole exercised becomes mere paperwork. Public participation of the EIA procedure, for example, engages people in decision making which in turn culminates into policy. Public participation therefore represents an interface between environmental management and democratic governance. Public participation is an aspect of EIA that ensures that citizens have a say in the decision-making process of projects which may have negative or positive impact in their lives and on their livelihood. Therefore, public participation could also be skewed towards the aspirations of sustainable development. Thus, the process ensures that the developmental needs of the present generation is being preserved whilst safeguarding the environment. The third aspiration of sustainable development namely poverty alleviation demands that development must be (i) to the benefit of the people, (ii) carried out in a manner that will enhance the living condition of the people. This is where public participation is more useful to determine whether the development is to the benefit of the masses or the privileged

few. Though public participation demands a level of education in order to acquire the ability to determine what is beneficial, education nonetheless, need not be formal.

3.4 ENVIRONMENTAL IMPACT ASSESSMENT IN AFRICA

Whilst EIA seems to be gaining ground in most African countries, some of the features of EIA system discussed so far are limited or non-existent in practice. A study undertaken by Aldinger reveals that regulatory regimes implicitly invoke themes of environmental justice, with public participation playing a central role, including, to some extent, affected communities being involved in the decision-making process.⁹¹ The problem is that the measures in existence are insufficient to make up for the systemic deficiencies that persist in these countries. Lack of strong institutions and human resources capacity are some of the issues that pose threat success of EIA in Africa.⁹² Most African countries have incorporated EIA in their domestic legal regimes since the 1980s and some countries as part of environmental policy and legal requirements for financing development activities and some within the framework of environmental legislation.⁹³ It is however observed that the EIA models adopted by African countries are procedures based on EIA practices of the West or more developed economies. After several years of practice, Africa has not made many strides in achieving sound environmental management or sustainability.

Betey and Essel reviewed EIA models and practices from Egypt, Ghana, Mauritius and South Africa and reports that these countries do not have within their EIA systems any approaches to addressing problems of poverty.⁹⁴ Since poverty, natural resources and environmental

⁹¹ Peter E Aldinger ‘Addressing environmental justice concerns in developing countries: Mining in Nigeria, Uganda and Ghana’, (2014) Georgetown International Environmental Law Review (Summer, 2014)

⁹² ibid, 37

⁹³ ibid,

⁹⁴ ibid,

degradations are major problems in most Africa countries, one might have assumed that these issues would be of much concern in their quest for sustainability. The lack of focus on poverty alleviation in EIA models may be attributable to the fact that these EIA systems are modelled on EIA systems where poverty is not endemic. According to Betey and Essel, the contribution of EIA to sustainable development and poverty reduction of people affected by projects has not been assessed in developing countries, especially in Africa.⁹⁵ They concluded that illiteracy, low level of environmental awareness are some factors militating against the use of EIA as a decision-making tool for sound environmental management and sustainability, because an informed population is more likely to demands for the negative impacts of development activities to be addressed.⁹⁶ It is noted that the methodology adopted by Betey and Essel for their study was limiting since the study was undertaken by selecting four countries and examining their EIA systems through analysis of information gathered from secondary data, such as articles, reports, and papers identified from internet sources. It is in this regard that the present research sought to examine the extent to and ways in which EIA procedure had reduced poverty and increase the economic wellbeing or otherwise of the people. The present research engaged primary data by undertaking a people-focused field study and assessment of the operation of EIA in Ghana. It is anticipated that the outcomes of the present research will add to the knowledge base of EIA operations in Ghana and Africa at large.

3.5 ENVIRONMENTAL IMPACT ASSESSMENT IN GHANA

The Environmental Impact Assessment (EIA) is governed by the Environmental Impact Assessment Regulations 1999 (L.I. 1652), and enforcement of the L.I. 1652 falls within the ambit of the mandates of the Environmental Protection Agency (EPA).

⁹⁵ Peter E Aldinger ‘Addressing environmental justice concerns in developing countries: Mining in Nigeria, Uganda and Ghana’, (2014) Georgetown International Environmental Law Review (Summer, 2014)

⁹⁶ Campion B Betey and Godfried Essel ‘Environmental Impact Assessment and sustainable Development in Africa: A Critical Review [2013] Vol. 3 No 2, Environmental and Natural Resources Research, 48

Before the EIA Regulation was enacted, projects which had significant impact on the environment were governed by their individual enabling laws, however, most laws governing major projects did not expressly state that EIA should be conducted as a requirement. Nonetheless, EIA was conducted for a number of projects notably among them are the Tema Harbour and the Volta River Authority Hydro-Electric Project (VRA-HEP) constructed in 1962 and 1966 respectively. For example, VRA-HEP was contracted under the Volta River Development Act of 1961 (Act 46) and the VRA was charged with the power to administer lands liable to be inundated, and to deal with the resettlement of people living in the lands to be inundated.⁹⁷ Now, enabling laws concerning various developmental endeavours, enacted after the coming into force of the Regulation do indicate that EIA should be conducted as a condition for obtaining a permit or commencing activities that are likely to have some impact on the environment. These laws rightly remit the process of the EIA to the Regulation, probably to avoid confusion and duplication of roles. These activities range from mining;⁹⁸ fishing;⁹⁹ to oil exploration.¹⁰⁰ The regulation also make provision for projects existing before the coming into force of the Regulation and are ongoing, to undergo EIA.¹⁰¹

A major problem for implementation the LI 1652 is that the EIA procedures stipulated in the legislation appear to be imported. Ofori calls for foreign methodologies to be adapted or ‘domesticated’ to suit a developing economy, in the absence of very sound indigenous methods and approaches.¹⁰² Appiah-Opoku also suggests that local people must be included in the EIA process.¹⁰³ He suggests that indigenous experiential knowledge not only has the potential to

⁹⁷ Volta River Development Act 1961, ss 27 and 28

⁹⁸ Minerals and Mining Act 2006, s 18

⁹⁹ Fisheries Act 2002, s 93.

¹⁰⁰ Petroleum (Exploration and Production) Act 919, 2016 s 8

¹⁰¹ Environmental Impact Assessment Regulations 1999 (L.I. 1652), Reg 2.

¹⁰² C S Ofori ‘Environmental Impact Assessment in Ghana: Current administration and procedures – towards an appropriate methodology’ [1991] Vol 11 Issue 1 Environmentalist 45-54.

¹⁰³ Seth Appiah-Opoku ‘Environmental impact assessment in developing countries: the case of Ghana’ [2001] 21Environmental Impact Assessment Review 59-71

complement western scientific knowledge in ways that would improve assessment studies, but could also encourage local participation and bottom-up approaches to environmental and planning decisions. The argument by Aldinger that some governments believe local participation may only slow down the whole process since their scientific knowledge base is limited may hold true in this regard, however, the level and type of indigenous participation envisaged by Appiah-Opoku may have to be spelt out.

To evaluate the development and legal framework of Ghana's EIA systems for the present research, the model propounded by Gibson from his studies in Canada is adopted, so as to achieve the best possible concept and practice.¹⁰⁴ According to Gibson, there are four basic stages of evolution in the EIA systems and these are:

Stage 1: The need for reactive pollution control as measures that will respond to identified problems such as air, water, or soil pollution.

Stage 2: Ensuring proactive impact identification and control through project approval and assessment by technical experts.

Stage 3: Integration of wider environmental checks considering the nature of the entire assessment process. This will help to identify the best options that are also cost effective and involves the public as well.

Stage 4: The need for integrated planning and decision making for effective sustainability in order to address policies and the outcome of decision-making.

These four basic stages are employed as guiding principles to review Ghana's EIA legal framework, mainly the Environmental Impact Assessment Regulation 1999, (L.I. 1652) in Chapter five.

¹⁰⁴ R B Gibson "Environmental assessment design: lessons from the Canadian experience" [1993] 15 The Environmental Professional 12-24.

3.6 CONCLUSION

The Brundtland report identifies the need for a political will in order to attain sustainable development.¹⁰⁵ In the same vein the implementation of tenets of EIA demands astute political will, because after all deliberations, it needs a political will to implement all that has been addressed by the people. Will there be an occasion where due to overwhelming public outcry, a project will be discontinued? The concept of sustainable development itself may be fuzzy as professed by some writers in the field.¹⁰⁶ However, whereas it holds true that understanding a concept gives a clear direction regarding its implementation and formulation of policies towards its direction, it should not be a basis for non-performance. The concept of sustainable development in its technicalities means nothing to the ordinary man. It is the ability to have means of sustenance, to be able to afford the basics of life, shelter, clothing education, access to health, education etc. and the ability to make contributions on governance. The concept of sustainable development, the introduction and spread of EIA as a means through which the goals of sustainable development can be achieved and the demands for standardised measures of implementation and enforcement of EIA procedure has led some financial institutions to come out with guidelines to be used on projects they fund. These guidelines are mainly used in developing countries where most of these institutions operate and the fact that EIA Regulations in some of these countries are non-existent or are weak in their implementation, gives a justification for the guidelines to be imposed. The next chapter evaluates some of these guidelines, as an objective of the present research is to examine the effectiveness of these guidelines in enforcement of EIA procedures regarding projects, they sponsor with the aim of achieving the goals of sustainable development.

¹⁰⁵ Our Common Future: An Overview by the World Commission on Environment and Development para 30

¹⁰⁶ See fn 4, Chapter two

CHAPTER FOUR

GUIDELINES FOR CONDUCTING ENVIRONMENTAL IMPACT ASSESSMENT

4.0 INTRODUCTION

A condition for assisting projects in most developing countries is that, the projects undertaken should be environmentally friendly in order to ensure a development that is sustainable. Though there are disparities in the pace and level of development among countries worldwide, it is the aspiration of the world at large that economic growth that depends on tapping into natural resources should not be at the cost of the environment.¹⁰⁷ Thus, such activities should be carried out in a manner, which conforms to established international standards and should not deplete natural resource.

In a bid to ensure a level of standardisation, as regards methods used in safeguarding the environment, financial donors which assist in funding development of economic infrastructure, especially in developing countries, demand the use of some prepared guidelines on how to assess the impact of a project on the environment and social life of people for whom the project is made. These guidelines, albeit, are usually based on in-house policies of these donors or financial institutions, which are in turn influenced by a set of factors, namely: the legal framework within which the financial institution operates and other international legal framework and concepts.

Ghana is one of such countries which depends heavily on foreign assistance for developmental projects. For instance, Ghana has received about over one billion dollars in 2017.¹⁰⁸ These

¹⁰⁷ Report of the World Commission on Environment and Development: Our Common Future (Chairman's foreword) p. 7

¹⁰⁸ World Bank Statistics <<http://www.oecd.org/dac/stats/idsonline>>. Accessed June 2019

projects are mainly infrastructural development, energy and extractive industries, indicating that Ghana must also adhere to the use of these guidelines from sponsors.

The chapter examines guidelines from some of these sponsors, mainly from the global north, drawing on their commonality and to the extent that they are brought to bear on Ghana's legal regime. The essence of the review is also to establish the background of these guidelines, the socio-cultural system within which these guidelines are located and politico-economic policies that informed the preparation of these guidelines in order to call in attention the problems that may arise when these guidelines are implemented in the global south, say, Ghana. The guidelines are selected to reflect the usual sponsors of projects in Ghana.

4.1 GUIDELINES FOR ENVIRONMENTAL AND SOCIAL ASSESSMENT OF THE MILLENNIUM CHALLENGE CORPORATION (MCC)

The Guidelines for Environmental and Social Impact Assessment were prepared by the Millennium Challenge Corporation (MCC) to be used for all its projects. The MCC is an independent United States of America (U.S.A.) foreign aid agency, created by the U.S.A. Congress in January 2004, in order to implement U.S.A. foreign assistance policies mainly in developing countries.¹⁰⁹ With the objective of reducing poverty through sustainable economic growth, MCC provides these countries with grants to fund country-led projects. The projects are termed compacts and the recipient countries are called compact-eligible countries.¹¹⁰

In line with MCC's core principles, the management of environmental and social implications of projects are the primary responsibility of the countries who are beneficiary of MCC grants. However, where the country lacks the required capacity, MCC elects to provide appropriate

¹⁰⁹ <<https://www.mcc.gov>> accessed February 16, 2017

¹¹⁰ <<https://assets.mcc.gov/press/factsheet-2012002106401-mccandpfg.pdf>> accessed February 16, 2017

guidance, tools and assistance so as to ensure that its programmes are implemented in accordance with MCC values.¹¹¹ It is also MCC's stated principle to engage with the compact eligible country during the early stages of the projects to its completion, especially in projects that address long-term environmental, social and development priorities of the compact eligible country.¹¹²

The MCC core principles are packaged as policies and guidelines aiming to attain equitable sustainable development. Thematic areas encompassed by guidelines include: Gender Integration; Procurement; Accounting and Financial Process; and Environmental Guidelines.¹¹³ For the purpose of this research the main focus is on the Environmental Guidelines. The Environmental Guidelines set up steps and principles of the Environmental and Social Impact (ESIA) review which compact-eligible countries will be expected to apply in the context of a Compact. The steps and principles are discussed in the subsequent paragraphs.

4.1.1 Environmental and social screening

Screening of projects, as discussed in the previous chapter, is the most fundamental part of environmental impact assessment procedure. For the reason that through screening the likelihood of a project having adverse or significant impact on the environment is determined.

Accordingly, and as stated in their guidelines, the MCC will not fund any project unless ‘there is provision for appropriate screening and appropriate environmental and social impact

¹¹¹Environmental Guidelines <<https://www.mcc.gov/resources/doc/environmental-guidelines>>, p.3 Accessed February 16, 2017

¹¹² New Strategic Directions <<https://www.mcc.gov/resources/story/story-next-new-strategic-directions>> accessed February 16, 2017

¹¹³ <<https://www.mcc.gov/resources>> accessed February 16, 2017

analysis'.¹¹⁴ ‘Provision’ here may either connote the establishment of institutions that provides these services or that the MCC must be furnished with an ESIA analyses. However, in the guidelines, MCC proposes to carry out the screening itself as early as possible in the proposal stage of the project.¹¹⁵ The screening is obviously carried out as per the terms of the MCC guidelines. In effect, though the review of environmental impacts is to be carried out by the eligible country, the MCC reserved the right of selecting the compact that should undergo full Environmental and Social Impact (ESIA) to themselves. The reasoning is that, in the case of a donor-beneficiary relationship, the donor has the stronger edge to exert undue influence hence, the tendency of the beneficiary to accede to the terms of the donor is high.

Projects deemed as Categorical Prohibitions by the MCC according to its guidelines are excluded from the MCC funding.¹¹⁶ Categorical Prohibition refers to the process where certain projects are classified by MCC as “likely to cause a significant environmental, health, or safety hazard” or they are physical projects that, in the United States, is prohibited or strictly regulated by federal law to protect the environment from radioactive substances and such do not receive funding support from the MCC. These are projects for which mitigation measures will not suffice; projects which involves intentional release of hazardous chemicals which are restricted under the Stockholm Convention on Persistent Organic Pollutants; the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade; The WHO Recommended Classification of Pesticides by Hazard; and projects the United States Environmental Protection Agency has classified in Toxicity Class

¹¹⁴ Environmental Guidelines, para 4 <<https://www.mcc.gov/resources/doc/environmental-guidelines>> accessed February 16, 2017

¹¹⁵ Environmental Guidelines, para 4 (1) <<https://www.mcc.gov/resources/doc/environmental-guidelines>>, accessed February 16, 2017

¹¹⁶ ibid

I.¹¹⁷ However, the MCC reserves the right to review and reverse its decision.¹¹⁸ This sounds biased, for the reason that the MCC has not elected for an independent expert advice in this regard, especially if the project favours US business or if the contractor chosen to implement the project is a USA company which means all profit will be repatriated to the USA

The MCC screens and categorises the project according to its guidelines to identify projects that require EIA. Furthermore, the classification is in accordance with the recommendations contained in the OECD Common Approaches and the practices of the World Bank.¹¹⁹ Projects under the MCC are classified into four categories: A, B, C and D in relation to the magnitude of the potential adverse environmental and social impact of the project.¹²⁰ Category A projects are projects for which Environmental and Social Impact Assessment is required otherwise MCC funding will not be released. According to the MCC classification, a project is Category A if it has the potential to have significant adverse environmental and social impacts that are sensitive, diverse, or unprecedented.¹²¹

An indicative list in the Appendix C of the guidelines includes crude oil refineries, thermal power stations and other combustion installations with a heat output of 300 megawatts or more; Construction of motorways; large dams; as some of the category A projects.¹²² Appendix C gives examples of projects with the potential to cause significant negative environmental impacts due to their type, location, sensitivity and scale. It is stated that this list is not exhaustive but rather to serve as a guide.

¹¹⁷ Environmental Guidelines, Appendix A <<https://www.mcc.gov/resources/doc/environmental-guidelines>> accessed February 16, 2017

¹¹⁸ ibid, accessed February 16, 2017

¹¹⁹ Environmental Guidelines <<https://www.mcc.gov/resources/doc/environmental-guidelines>> para 4.2 Accessed February 16, 2017

¹²⁰ ibid, ibid

¹²¹ ibid, ibid

¹²² ibid, Appendix C

A positive aspect of creating a list of projects is that it makes screening process easier since requirements to look out for in order to classify the projects are made clear and serve as a comprehensive guide. Compared with the classification of undertakings listed in the Ghana's Regulation on EIA procedure (LI 1652), that is, schedules I and II, this classification appears to be concise and explicit. This makes identification of projects, and for that matter, the screening process more practical and expeditious. It stands to reason that experts who are contracted to conduct an EIA may well choose a guideline of a donor, which is clearer, over domestic law, which is vaguely drafted in certain areas. And the likelihood of a donor accepting an EIA report based on its own guidelines is higher.

Category B projects are projects with less adverse environmental and social impact than Category A. However, the funding of these projects may be contingent upon a provision of specific environmental and social impact analyses. Though the MCC require environmental and social impact analyses for this category of projects, including Environmental and Social Management Plans the scope and format of the analyses will depend on the project and its potential environmental and social impacts. Such analysis must examine the potential negative and positive environmental and social impacts of the project and recommend any measures needed to prevent, minimize, mitigate, or compensate for adverse impacts and enhance positive impacts as in the case of Category A projects but narrower in scope and content.¹²³

ESIA are not required for Category C projects because they are projects deemed “unlikely to have adverse environmental and social impacts”. Interestingly, though MCC does not require ESIA, it reserves the right to request specific ESIA studies, reporting or training or in cases where “positive environmental and social impacts may be enhanced.”¹²⁴ The MCC may

¹²³ Environmental Guidelines, para 4.2 <<https://www.mcc.gov/resources/doc/environmental-guidelines>>, Accessed February 16, 2017

¹²⁴ ibid, ibid

sometimes be called upon to fund a subject project within a country's own funded projects. These projects are categorised as Category D projects. Apart from the host country's own laws and regulation, MCC reserves the right to set additional ESIA standards and even decide whether to apply Executive Order 12114¹²⁵ and the National Environmental Policy Act 1969, or any other requirements or procedures that the MCC deems fit to the proposed project.¹²⁶ This guideline requirement comes across as an indirect means of institutionalising a country's legal regime in another country, which to some extent is against a laid down principle in international law on respect for sovereignty of nations.

4.1.1.2 Contents of Environmental and Social Impact Assessment (ESIA) Report according to MCC Guidelines

From the guidelines, the scope and level of detail of an ESIA should be commensurate with the potential impacts of the project. Meaning the higher a potential risk of a project, the detailed the report.¹²⁷ The MCC also gives the format, based on the World Bank Operational Manual, OP 4.01, in which an ESIA report should be presented as follows:¹²⁸

FORMAT FOR ESIA REPORT	
* Executive summary	
* Scoping * Policy, legal and administrative framework. * Project description * Baseline data * Environmental and social impacts * Analysis of alternatives * Environmental and Social Management Plan	

¹²⁵ The Executive Order 12114 is the mandate given to any USA organisation to apply NEPA or any other environmental policy of the USA for projects funded by USA abroad.

¹²⁶ Environmental Guidelines, para 4.2 <<https://www.mcc.gov/resources/doc/environmental-guidelines>>, accessed February 16, 2017

¹²⁷ ibid, Appendix D

¹²⁸ ibid

The format, in a sense, promotes uniformity in ESIA reports across projects and implementing entities, which makes referencing and review comprehensive.

It is observed from the format that the MCC expects policy legal, and administrative framework within which the ESIA is conducted to be stated and “discussed”. This seems to suggest that the MCC gives the option to the eligible country to choose between its own guidelines and other legal or regulatory framework for the ESIA analyses, but this is usually not the case. By maintaining throughout the guideline that all activities should be consistent with its guidelines, the MCC is explicitly expressing the preference for the use of its guidelines.

It is also observed that the features of the baseline data to be used ‘indicates accuracy, reliability and sources of the data’¹²⁹ hence, demand high level of knowledge and appropriate technology to achieve. Consequently, in absence of such expertise the tendency is to contract consultants to conduct the ESIA. However, ESIA reports must be reviewed and, in some cases, cross validated. The eligible country officials may not have the appropriate knowledge to review such reports. Again, since proponents are likely to contract a consultant to do the EIA, it could be possible that the positive impact of the project may be exaggerated in a way that will be beneficial to the proponent, in order to obtain approval.

4.1.2 Public Consultation and Disclosure

The manner in which consultation should be carried out with the public is further explained in the guidelines. Consultation with the public as regards environmental and social impact assessments, analyses, and associated management plans must be ‘timely’, ‘participatory’, and ‘meaningful’.¹³⁰ The borrower must also ensure that the Environmental and Social Impact

¹²⁹ Environmental Guidelines <<https://www.mcc.gov/resources/doc/environmental-guidelines>> Appendix D accessed February 16, 2017

¹³⁰ ibid, para 5

Assessments, analyses, and Management Plans documents are ‘publicly available and easily accessible’.¹³¹ These elements are pivotal for a positive involvement of the public in an EIA process. Nonetheless, the elements are only enumerated and the mode of accomplishing them are not stated in the guidelines. Hence, it could be inferred that it is the obligation of the host country to design country appropriate means. One may say, this is in the right direction, since every country has its own way of doing things. The MCC serves a number of countries with varied cultural differences, so subjects of this nature are better couched in a way so as to give individual countries a discretion of how to proceed.

In Ghana, issues concerning public consultation and making documents meaningful and accessible, so as to carry out a meaningful participation, may be an interplay of factors such as language; level of education and priority of interest; whether or not the ESIA report will be translated in a language that is easily understood within the locality of the project; and whether experts will be contracted to read and explained to those who cannot read; etc. Public consultation within the ESIA may be a daunting task to be conducted to the satisfaction of the people on one hand, and on the other hand, to meet the standard required by the donor.

4.1.3 Monitoring

Monitoring of the project as well as mitigation plans are left for the host country to carry out and the MCC may decide to disburse all or some of funding only upon a satisfactory implementation of mitigation measure stated in the report.¹³² Since this is a condition upon which money will be released it is incumbent upon the MCC to have proposed to take on the monitoring itself. Firstly, because the MCC insists on the use of its guidelines: ESIA reports to be analysed in consistent with the guidelines; mitigation plans are to be drawn by

¹³¹ ibid

¹³² Environmental Guidelines <<https://www.mcc.gov/resources/doc/environmental-guidelines>>, para 6 accessed February 16, 2017

independent experts; and mitigatory measures and means of ensuring compliance are to be determined by the MCC; etc. Subsequently, directing implementation of mitigation measure to the eligible country seems impractical. This is for the simple reason that officials of eligible country may not have all the knowledge of the technology of the measures in the mitigation plans. Again, the guidelines insist that the host country is responsible for managing environmental and social risks and impacts but procedure must be consistent with the requirements of the IFC Performance Standards.¹³³ In this regard the MCC propose to provide funds “to help ensure proper oversight and implementation of mitigation measures”. The MCC’s reason for this is that not all compact-eligible countries have the capacity. The purpose for the fund is not explicitly stated, but probably to train in the appropriate technical area for monitoring implementation of mitigation plans. The only monitoring the MCC proposes to do, is through the “review of information provided by the implementing entity and through site visits.”

Apart from the MCC funded project, the MCC may require an environmental audit in order to assess the impact of prior or existing activities not funded with the MCC funds.¹³⁴ The rationale for the above provision in the guideline is not clear. Since the project is not MCC funded, it follows that a different environmental regulation may have been used to conduct ESIA, therefore monitoring such project using the MCC guidelines is far-fetched.

4.1.4 Reporting

Activities must be reported regularly and in accordance with the guidelines and the reports may be a basis for modification of guidance if need be.¹³⁵ Review and update of the MCC

¹³³ Environmental Guidelines <<https://www.mcc.gov/resources/doc/environmental-guidelines>>, para 6 accessed February 16, 2017

¹³⁴ Environmental Guidelines <<https://www.mcc.gov/resources/doc/environmental-guidelines>>, para 6 accessed February 16, 2017

¹³⁵ ibid, ibid

guidelines on the bases of ESIA reports, is in tune with the argument put forward in this research that using the eligible country's own EIA Regulation may be avenue to discover flaws that will call for legal reform. In other words, over reliance on guidelines stifles the growth of domestic laws. Laws are enacted from policy and in formulating domestic laws, policies concerning social norms and cultural values are considered therefore, it stands to reason that some guidelines or some aspect of it may not be favourable to the cultural values or social norms of the country in which it is being implemented.

In sum, the MCC acknowledges the existence of a regulatory framework and domestic laws of compact eligible countries, since it is stated that 'the MCC compacts should be environmentally and socially sound and designed in compliance with applicable eligible country laws, regulations and standards'.¹³⁶ In addition it is stated that the MCC supported projects must meet applicable laws and regulations including those of the eligible country.¹³⁷ Nonetheless, it also states that the MCC guidelines on environmental safeguards requires that all activities funded by the MCC should be implemented in a manner consistent with the Performance Standards on Environmental and Social Sustainability of the International Finance Corporation (IFC Performance Standards).¹³⁸ The guideline is however silent on instances where there may be inconsistencies in the guidelines with domestic law. In such circumstances the guideline is silent on which of the two will prevail. But then again, subsequent procedure is indicative of a preference for the guidelines.

¹³⁶ Environmental and Social Assessment of Projects Proposed During Compact Development <<https://www.mcc.gov/resources/doc/guidelines-environmental-and-social-assessment-projects>> ch 28 accessed February 16, 2017

¹³⁷ ibid

¹³⁸ Environmental Guidelines <<https://www.mcc.gov/resources/doc/environmental-guidelines>>, para 2 accessed February 16, 2017

4.1.5 Source of MCC Environmental Guidelines

MCC guidelines are combinations of various legal and regulatory instrument. The policies reflected in these guidelines are based, broadly speaking, on the following:

- * International Finance Corporation's (IFC) Performance Standards on Environmental and Social Sustainability;
- * the “Principles of Environmental Impact Assessment Best Practices” of the International Association for Impact Assessment;
- * the Environmental Policies and Guidelines of other United States government development assistance and financing entities;
- * the Environmental and Social Policies and guidelines of the multilateral development banks;
- * the Common Approaches developed by export credit agencies through the Organization for Economic Cooperation and Development (OECD);
- * the Equator Principles; and
- * Executive Order 12114 and the National Environmental Policy Act, or other requirements or procedures must apply to the proposed project.

From the above, it is concluded that MCC Guidelines are a combination of some environmental legal instruments of the USA, international practice manuals and environmental standards of other financial institutions.

4.2 WORLD BANK GROUP

The WBG comprises of five entities, namely the International Finance Corporation (IFC), the International Bank for Reconstruction and Development (IBRD), the International Development Association (IDA), the Multilateral Investment Guarantee Agency (MIGA), and the International Centre for Settlement of Investment Dispute (ICSID).¹³⁹

Each institution has its own governing rules and working policies and from which the guidelines are generated. The multi-sectoral structure of the World Bank Group (WBG) has made it in such a way that the policies on financial assistance dovetail into each other; therefore, there are referencing and cross referencing among the various guidelines when it comes to their

¹³⁹ The World Bank <<http://www.worldbank.org/about>> accessed February 16, 2017

use. For that matter, though each institution that forms the WBG has distinctive guidelines, there are some commonalities.

The main goal of the WBG is to support economic development and poverty eradication. They achieve these through financial supports in the form of credits, loans and grants for human development, environmental protection and access to essential infrastructural. Two of such institutions the IBRD and the IDA form the World Bank.

4.3 OPERATIONAL MANUAL (OP 4.01) - ENVIRONMENTAL ASSESSMENT THE WORLD BANK (IBRD AND IDA)

In line with its poverty reduction strategies on Systematic Country Diagnostics (SCD), the host country identifies its priorities within the country's own planning process which is aimed at poverty reduction and shared prosperity goals of the World Bank. The World Bank then advances finance thereby making a stride in a country's own developmental agenda.

The keystone of World Bank approach in financing investment projects is to ensure that the environment is not damaged through these projects. This is achieved through policies or safeguards which are revised periodically, and it is a requirement for countries to use these guidelines as an aid to address project-related environmental issues, before the Bank can support any project. The OP 4 is the safeguard on the environment and related issues.

The process required by the Bank is broadly termed Environmental Assessment (EA). EA is defined as a process whose breadth, depth, and type of analysis depend on the nature, scale, and potential environmental impact of the proposed project.¹⁴⁰ The Bank then list a number of procedures termed instruments that can be used to satisfy an EA requirement.¹⁴¹ These instruments are:

¹⁴⁰ Operational Manual (OP 4.01), para 1.

<<https://policies.worldbank.org/sites/ppf3/PPFDocuments/090224b0822f7384.pdf>> accessed February 16, 2017

¹⁴¹ ibid, para 7

- environmental impact assessment (EIA),
- regional or sectoral EA,
- strategic environmental and social assessment (SESA),
- environmental audit, hazard or risk assessment,
- environmental management plan (EMP)
- environmental and social management framework (ESMF).

An instrument or a combination of them can be used for EA, depending on the type of the project.

4.3.1 Screening

The project is selected during screening using factors such as type, location, sensitivity, and scale of the project and the nature and magnitude of its potential environmental impacts.¹⁴²

The Bank classifies projects into four categories, A, B, C, and FI, using these enumerated factors. The Bank determines the extent and type of EA that is appropriate and decides the appropriate instrument (s) the borrower must use.¹⁴³

The screening process appear to be rigorous, but since the Bank commences the most important and difficult process, namely, screening, it makes it much better and a lot easier for borrower countries that may not have the capacity to conduct the appropriate EA. However, this may be incapacitating on the host country since this might hinder any prospects of growth specializing in screening process; more so, because the Bank's capacity support is towards the

¹⁴² Operational Manual (OP 4.01), para 8

<<https://policies.worldbank.org/sites/ppf3/PPFDocuments/090224b0822f7384.pdf>> accessed February 16, 2017

¹⁴³ ibid, para 8

review of EA, environmental monitoring, inspections, and management of mitigatory measures only.¹⁴⁴

After the Bank identifies the type of project and the appropriate instrument(s), to use for the EA process, the Bank now mandates the borrower to carry out its own EA.¹⁴⁵ Whereas the borrower is allowed to contract experts, the borrower must ensure that the expert is not in any way affiliated to the project. This obviously is to avoid bias whereby the expert contracted may have an interest and conduct the EIA towards that interest.¹⁴⁶

Again, it is the borrower's obligation to constitute an advisory panel made up of independent, internationally recognized, environmental specialists, to advise on Category A projects that are 'highly risky or contentious or that involve serious and multidimensional environmental concerns' on the following aspects of the EA process:¹⁴⁷

- (a) the terms of reference for the EA,
- (b) key issues and methods for preparing the EA,
- (c) recommendations and findings of the EA,
- (d) implementation of the EA's recommendations, and
- (e) development of environmental management capacity.

¹⁴⁴Operational Manual (OP 4.01), para 4
<<https://policies.worldbank.org/sites/ppf3/PPFDocuments/090224b0822f7384.pdf>> accessed February 16, 2017

¹⁴⁵ ibid,

¹⁴⁶ Operational Manual (OP 4.01), para 4 fn 6

¹⁴⁷ ibid, para 4

4.3.2 Public Participation

For Category A or B projects the borrower must consult the people affected by the project as well as NGOs for their contributions towards the projects regarding their views on environmental aspects. For the purpose of the consultation, the borrower provides relevant material in a timely manner prior to consultation and in a form and language that are understandable and accessible to the groups being consulted.¹⁴⁸ During consultation the borrower must provide any justification for departure from the decision of the people, if any, in the final EA.¹⁴⁹ Consultation must be throughout the project implementation. The borrower must call in aid other Bank guidelines of Environmental and Social Safeguards Policies and also guidelines relating to NGOs.¹⁵⁰ Involving NGOs in consultative process of the EA expressly stated in its guidelines enables the NGO to play an integrative role. NGOs are essential for their roles in creating awareness in issues of environmental degradation. Most of NGOs have the ability to exert pressure on governments to review or update inappropriate law; enact new ones and repeal obsolete ones. And since consultation must be carried out throughout the project implementation, the NGO will provide policing for communities whose interest may wane along the line. These notwithstanding, involvement of NGOs must be exercised with caution to guard against over-zealousness and political undertones on the part of some NGOs.

4.3.3 Monitoring

The borrower conducts monitoring of projects, as regards environmental monitoring, inspections, or management of mitigatory measures.¹⁵¹ The bank proposes to include

¹⁴⁸Operational Manual (OP 4.01), para15

¹⁴⁹ ibid, para 14

¹⁵⁰ BP 4.04 – Natural Habitats, OP 4. 10 Indigenous Peoples, OP 4.11 – Physical Cultural Resources, *OP 4.12 - Involuntary Resettlement, GP 14.70, Involving Nongovernmental Organizations in Bank-Supported Activities*

¹⁵¹ Operational Manual (OP 4.01), para 13

strengthening the borrower's capacity into the components of the project where the borrower's capacity is inadequate.¹⁵²

In sum, the Bank recognises that conditions in borrower countries are varied regarding projects priorities, environmental action plans, the country's overall policy framework, national legislation, and institutional capabilities.¹⁵³ Thus guidelines should be treated as a framework, laying foundation on which each borrowers' peculiar needs, such as financial needs, level of technological advancement, pace of economic development, may be woven.

It is also clear from the Operational Manual of the World Bank that the Bank acknowledges the regulatory and policy framework of borrower country.¹⁵⁴ Even though the Bank recognises the borrower's country laws, the Bank states that EAs are to be consistent to the Bank's policy.¹⁵⁵ It must be noted that most of the countries depend of the bank's assistance are poor, and in dire need of aid. A borrower, in order to qualify or to be considered for a loan, may want to bend its own legal framework, or set it aside altogether, in favour of the safeguards of the Bank.

Both the Operational Manual of the World Bank and MCC's Environmental Guidelines make the completion of an EA / ESIA a condition precedent to funding a project. Classification of the projects into categories in both guidelines are similar. This is not surprising, because the source of MCC guidelines are drawn from some of institutions of the World Bank Group such as International Finance Corporation's (IFC) Performance Standards on Environmental and Social Sustainability and Environmental and Social Policies and guidelines of the multilateral development banks. Screening procedure is conducted by both institutions, but the Bank goes further to select the appropriate assessment instrument to be used. Both guidelines emphasise

¹⁵² Operational Manual (OP 4.01), para 13

¹⁵³ ibid, Para 3

¹⁵⁴ ibid, para 3

¹⁵⁵ ibid, para 5

strengthening capacity of the beneficiary country in the areas of monitoring, and implementation of mitigatory measures and environmental management plans, but not on the exercise of the ESIA itself.

Comparatively, the Operational Manual of the World Bank is much more detailed but simple.

4.4 THE INTERNATIONAL FINANCE CORPORATION (IFC)¹⁵⁶

4.4.1 Introduction

The International Finance Corporation (IFC) is one of the institutions that forms the World Bank Group (WBG), established in 1956 to support the growth of the private sector in the developing world. It is made up of 184 countries, which determine policies and approve investments. The IFC is the private sector lending arm of the WBG, providing financial services to businesses investing in the developing world. The focus of the IFC is to offer financial and technical assistance to private enterprises in the area of agribusiness, banking and finance, mining, oil and gas exploration etc., for private sector development. The private enterprises are termed clients and their business activity as projects. The IFC supports clients through loans, equity investment, and other financial instruments. It also plays advisory role in some instances to clients lacking in requisite fields. The IFC's share capital is provided by its 184-member countries. Ghana became a member of the IFC on 3 April 1958.

The objective of the IFC is “to promote sustainable private sector investment in developing countries, helping to reduce poverty and improve people’s lives”.¹⁵⁷ The IFC aims at attaining

¹⁵⁶ Source of information on the IFC is from, <www.ifc.org> and Bank Information Centre, <www.bankinformationcenter.org/resources/institutions/ifc/> accessed March 10, 2017

¹⁵⁷ Policy on Environmental and Social Sustainability, International Financial Corporation, (World Bank Group), January 2012, para 1-8

this goal through environmental and social sustainability. To this end, a policy on Environmental and Social Sustainability was formulated to ensure that all its operations are carried out in an environmentally and socially responsible manner. The IFC came out with a document, the Performance Standards (PS) which is an all-inclusive document for its clients to be used in their business activities. Business activities are defined by the IFC as all activities presently ongoing, proposed or yet to be identified. The Performance Standards are to serve as a guide in the implementation of IFC's policy on environmental and social sustainability. They cover a wide-ranging subject matter, incidental to IFC's investment interest areas mentioned above, relating to investment activities which have significant bearing on human wellbeing and with environmental consequences. Thus, the subject matter, the focus of the IFC are thought to be key elements for safeguarding the environment, reducing poverty and improving living standards. Table 2. sets out Performance Standards and what each standard entails.¹⁵⁸

Performance Standard 1:	Assessment and Management of Environmental and Social Risks and Impacts;
Performance Standard 2:	Labour and Working Conditions;
Performance Standard 3:	Resource Efficiency and Pollution Prevention;
Performance Standard 4:	Community Health, Safety and Security;
Performance Standard 5:	Land Acquisition and Involuntary Resettlement;
Performance Standard 6:	Biodiversity Conservation and Sustainable Management of Living Natural Resources;
Performance Standard 7:	Indigenous Peoples;
Performance Standard 8:	Cultural Heritage;

TABLE 2

It is the client's responsibility to apply the Performance Standards to ensure that the IFC's contribution towards economic development do not result in: unequal level of development;

¹⁵⁸ Policy on Environmental and Social Sustainability, International Financial Corporation, (World Bank Group), January 2012, para 5

deplorable living conditions; environmental degradation; disruption of social and cultural structure, while ensuring that natural renewable resources are managed sustainably.¹⁵⁹ The client is therefore under the obligation to implement a combination of any, or all the eight of the Performance Standards, where appropriate, throughout the lifespan of the project. The Performance Standards are complemented by Guidance Notes (GN), which is a comprehensive and informative document detailing out how each performance standard should be applied.

4.4.2 Management of Risk

Assessment and Management of Environmental and Social Risks and Impacts (Performance Standard 1) is the crux of the IFC's Policy on Environmental and Social Sustainability. It underscores the importance attached to all projects that have environmental and social risks and impacts, and it is the pivotal point on which all other Performance Standards emanated. Performance Standard 1 (PS 1) applies to a set of business activities likely to generate environmental and or social risk from, the design stage through construction or implementation to decommissioning, and where applicable, post-closure.¹⁶⁰ Correspondingly, Guidance Note 1 (GN 1) detailing ways assessment should be conducted in order to meet the required standard, focuses on assessment and management of environmental and social risks and impacts. Under PS 1, the client is to conduct environmental and social assessment, to the nature and scale of the project and commensurate with the level of its environmental and social risks and impacts, in collaboration with government agency responsible or any other appropriate third party.¹⁶¹ The client must also establish and maintain an integrative Environmental and Social Assessment and Management System (ESMS) with emphasis on the environmental, health and safety, human resource or social management. The ESMS must include the following: (i)

¹⁵⁹ Policy on Environmental and Social Sustainability, International Financial Corporation (World Bank Group), January 2012, para 5

¹⁶⁰ Performance Standard 1, para 4

¹⁶¹ ibid, para 5

policy; (ii) identification of risks and impacts; (iii) management programme; (iv) organizational capacity and competency; (v) emergency preparedness and response; (vi) stakeholder engagement; and (vii) monitoring and review.¹⁶² In line with IFC requirements, a client which already has an internal management system in place must ensure that its system meets the requirements of PS 1 and is consistent with internationally-accepted standards. The IFC also demands the client's system which is not up to the desired standards be modified or used as a foundation on which to build the elements of a system that conforms with the IFC's Performance Standards.¹⁶³

It is assumed, from the preceding discussions, that the client's management system to be established will incorporate host country laws since it is to be established in collaboration with government agencies. However, it seems the IFC is more inclined to a management system which is consistent with its own Performance Standards than host country laws. One could reason that since the client is a private business entity operating within a host country, it would be appropriate to emphasise that the client management system should conform to the regulations of that country as well. However, this depends on whether domestic standards surpass IFC requirements. Otherwise this may generate hostility between host country agents with an oversight responsibility to ensure compliance and officers of the client, where the client is mandated to undergo a domestic procedure or apply to a domestic regulation in order to obtain permit for its activities. Thus, instead of the two institutions collaborating with each other for functional environmental and social assessment and even for exchange of knowledge, rather there may be discord. One way of avoiding this is to strengthen permit procedures of the host country and in the case of Ghana, regulate to keep the client in check.

¹⁶² Performance Standard 1, para 4

¹⁶³ ibid, ibid

4.4.3 Contents Environmental and Social Assessment and Management System (ESMS)

4.4.3.1 Policy

In order to achieve a sound environmental and social performance, the client is to develop an overarching policy on a project by project basis, drawing on the overall policy of the IFC on Environmental and Social Sustainability. This produce a kind of a mini policy on the environmental and social objectives to guide a specific project. The policy must also “comply with the applicable laws and regulations of the jurisdictions in which it is being undertaken”.¹⁶⁴ The policy may also include international conventions regarding environmental safeguards and social commitments as well as industry-specific codes of practice to which the client is obligated.¹⁶⁵

This translates into different policies requirements for different projects. There is no gainsaying that a project by project policy is beneficial to the host country. Firstly, the IFC demands that the client’s policy must be formulated on the client’s “philosophy regarding management of environmental and social risks and impacts” and in conjunction with the existing laws of the host country. Strong teamwork in this regard may produce adjustments and reforms that will eventually results in an improved regulatory framework to the satisfaction of all parties. Secondly, a policy, developed for a specific project will afford an in-depth study on that project, with a rippling effect on other subsequent projects. Lessons learned in implementing project specific policies may be applied elsewhere. But then, a challenging factor is where the client is a foreign company doing business in the host country, then the client must study the applicable laws and regulations of the host country in addition to its own policy. In this regard,

¹⁶⁴ Performance Standard 1, para 6

¹⁶⁵ ibid, ibid

the tendency is to opt for international standards with which the client is familiar, or for the IFC's standards, since the client depends on the assistance of IFC, and the success of its ventures is conditional upon the implementation of the standards of the IFC. Besides, where the policy must include international conventions and industry specific codes of practice, as the IFC suggests, the client may find itself in a predicament in a host country with a dualist system of implementation of international conventions. The client may be at a deadlock if these international sources have not been incorporated into domestic regulatory framework. This may again slow down the evolution of the domestic regulation of the host country. The support that the client can obtain from the host government agency is that the collaboration should lead to a sort of harmonisation of domestic regulations, the IFC standards and international codes of practice.

The policy must also be communicated to all levels within the client's organisation and must be published on the client's websites and communicated to the affected communities.¹⁶⁶ The IFC reasons that communities who are aware of the policies can make informed, valuable contributions in improving the environmental and social performance of the project. It must be said, in this regard, the educational level of the affected community is key to making a plausible contribution.

4.4.3.2 Identification of Risks and Impacts

As a vital component of ESMS, akin to screening, (in other guidelines or EIA procedures), the client is to establish and maintain a process for identifying the environmental and social risks and impacts of the project. Factors to be taken into consideration in the identification process includes type, scale, and location of the project. Performance Standards 2 - 8 (see Table 2)

¹⁶⁶ Performance Standard 1, para 6

feature the interplay of factors through which impacts of a project may be discernible, hence they must also be taken into account when identifying the risk and impacts of projects.

The IFC requires that scope of the impacts identification process should be consistent with good international industry practice.¹⁶⁷ Good international industry practice is defined as “the exercise of professional skill, diligence, prudence, and foresight that would reasonably be expected from skilled and experienced professionals engaged in the same type of undertaking under the same or similar circumstances globally or regionally”.¹⁶⁸ The standard of this kind of skill is very high and may be lacking within the client’s organisation or the host country, hence for the client, the IFC suggests that the client may employ external experts.

Here, the importance of identification of risks and impacts within the complexities in an EIA process is again underscored. The need for an adequate, accurate, and objective evaluation and presentation is emphasised. The IFC maintains that process of identification of risks and impacts must be prepared by competent professionals and clients may contract external consultants to assist in the risks and impacts identification process for projects posing potentially significant adverse impacts or where technically complex issues are involved.¹⁶⁹ External experts with proven competence record may also be retained to assist the conduct of environmental and social assessment and should be involved early in the various stages of the project, from design, construction through to commissioning.¹⁷⁰ In addition, the services of qualified external experts may also be contracted to perform specific roles as it relates to any of the Performance Standards mentioned in Table 2. and in the implementation of risk

¹⁶⁷ Performance Standard 1, para 7

¹⁶⁸ ibid, para 7 footnote 10

¹⁶⁹ ibid, para 19

¹⁷⁰ ibid, para 18

management measures.¹⁷¹ For the purposes of identification of risks and impacts, the IFC categorises proposed projects in descending order of severity of risks and impacts as follows:¹⁷²

Category A projects are business activities with potential significant adverse environmental or social risks and/or impacts that are diverse, irreversible, or unprecedented.

Category B are business activities with potential limited adverse environmental or social risks and/or impacts that are few in number, generally site-specific, largely reversible, and readily addressed through mitigation measures.

Business activities with minimal or no adverse environmental or social risks and/or impacts are classified as Category C.

Category FI represents business activities involving investments in the FIs or through delivery mechanisms involving financial intermediation.

4.4.3.3 Management Programmes

The ESMS must include a management programme to ensure that mitigation measures meet the requirements of Performance Standard 1 – 8, and must conform to applicable laws and regulation of the host country as well.¹⁷³ The client must ensure that all mitigation measures are applied in a systematic way, and the level of a management programme is commensurate with extent of the adverse impact identified; that is, significant adverse impacts call for a detailed and complex management programme.¹⁷⁴ It is stated in the Guidance Notes that the management programme must be subject to independence due diligence, which may be conducted by financiers (probably IFC), to ensure that client's measures in its management

¹⁷¹ Performance Standard 1, para 19

¹⁷² Policy on Environmental and Social Sustainability, International Financial Corporation (World Bank Group), January 2012, para 40,

¹⁷³ Performance Standard 1, para 13

¹⁷⁴ Guidance Note 1, para 66

programme are being implemented, and are in compliance with the Performance Standards and host country laws. Additional measures may be included, if need be. Measures to address adverse impact must also be applied in proportion to the impact of the risk on the affected community, to the extent that they impact on their status such as gender, race, colour, language religion etc.¹⁷⁵ Discriminatory as this differential treatment might seem, it may also mean that the IFC Performance Standards are not implemented in general terms, but are modified to suit the condition of each of impact.

The client must also adopt a mitigation hierarchy of corrective measures in a management programme, and implement these through the ESMS.¹⁷⁶ This, per the IFC, is consistent with international industry approach to managing environmental and social risks and impacts, where preventive measures are much preferred as the topmost option, as opposed to minimisation, mitigation, or compensation.¹⁷⁷ The IFC advocates that the mitigation measures to be adopted must be technically and financially feasible.¹⁷⁸ This means ensuring that, whether on a given scale of prevailing factors, the skills, equipment, and materials required to implement the proposed mitigation measures are available. It is also to ensure that, whether on the probabilities, comparatively, and based on commercial considerations, the incremental cost of adopting such measures of mitigation offset the viability of the project.

The IFC is encouraging hierarchical form of a mitigatory management system where preventive measures are at the apex, (most favoured) follow by mitigation, and then compensation to be the least of options to be adopted. It must however be noted that clients of the IFC are private business entities with maximization at the core of business venture, so

¹⁷⁵ Performance Standard 1, para 12

¹⁷⁶ Performance Standard 1, para 14

¹⁷⁷ Guidance Note 1, para 61

¹⁷⁸ Performance Standard 1, para 14

the client may have inclination towards the least costly measures; in other words, the most cost effective mitigatory measures, rather than safeguarding the environment and promoting social wellbeing.

4.4.3.4 Organisational capacity and competency

The IFC recognizes that the success of the management programme depends on the organizational structure and the roles played by each person within the system. Hence, the IFC demands the client to set up an organizational structure, in collaboration with appropriate and relevant third parties, with defined roles, responsibilities, and authority to implement the ESMS.¹⁷⁹ Third parties include relevant government agencies or private entities, contracted by the government to carry out a specialised activity in relation to the project, but over which the client has no control.¹⁸⁰ The IFC advocates a management system that comprises specialist functions not only in the environmental management social fields, but from other ancillary functions like human resources, procurement, maintenance etc. to be included in the management system of the organisational structure.¹⁸¹ The client is required to use its in-house staff who possess the relevant knowledge, skills, and experience necessary to perform their work, including current knowledge of the host country's regulatory requirements and the applicable requirements of Performance Standards 1 through to 8.¹⁸² Where personnel of the client organisation are lacking in the requisite knowledge and skills, the client may contract external experts or consultants to do the job or recruit new staff to meets the skill requirements of the job.¹⁸³ Some of these responsibilities may also be outsourced to third parties however, measures adopted by these third parties in performance of their roles, must be geared towards

¹⁷⁹ Performance Standard 1, para 17

¹⁸⁰ Performance Standard 1, FN 8

¹⁸¹ Performance Standard 1, para 18

¹⁸² ibid, ibid

¹⁸³ Guidance Note 1, para 75

the common policy and in consistency with performance standards of the IFC and applicable laws and regulation.¹⁸⁴ Out-sourcing could be a good way of involving everyone in environmental management issues because some of these third parties may be government agencies as well as small local companies (local content). As they strive to implement IFC client's policy on management plan and mitigation measures, new skills may be acquired which will be used elsewhere, producing a sort of multiplier effect.

Training is essential for improving skills, hence the IFC advocates for training of personnel the client's organisation to enable employees to carry out their part of the management systems and programmes. Areas to be considered by the client in designing training programmes include: identification of training needs for the organization's personnel; development of a training plan to address defined needs; verification of training programmes to ensure consistency with organizational policy, and documentation of training received.¹⁸⁵

4.4.3.5 Emergency preparedness and response

The IFC standards behoves the client to design an emergency preparedness and response programme, including training, to be part of its ESMS for an effective implementation of mitigation measures and to prevent any harm to people and the environment.¹⁸⁶ Identification of accident prone areas including communities and individuals likely to experience the impact of any accident as well as response procedures are factors to be included in the emergency preparedness programme.¹⁸⁷

¹⁸⁴ Guidance Note 1, para 80

¹⁸⁵ Guidance Note 1, para 76

¹⁸⁶ Performance Standard 1, para 20

¹⁸⁷ Performance Standard 1, para 20

Emergency preparedness and response programmes is found only in the IFC guidelines. This could be because most of the IFC projects are on-going businesses, unlike the World Bank and Millennium Challenge Corporation sponsored programmes which supports one-off developmental projects. It may also be because the types of project usually sponsored by the IFC have hazardous characteristics. However, the IFC's emergency preparedness and response programmes focus on Performance Standard 2 of the IFC, which concerns emergency preparedness and response of the client's labour force as well as implementing safe working conditions. Where affected communities are concerned, the client is to assist and collaborate with local government agencies.¹⁸⁸ As per the Performance Standards, the client will play an active role in preparing for and responding to emergencies associated with the project, if local government agencies have little or no capacity to respond effectively.¹⁸⁹

The document does not specify in what capacity or form the active role should be. It is presented rather as if it is not the client's responsibility primarily to ensure the safety of the affected community in emergency situations, or to put measures in place to ensure the preparedness of the community. Whereas accidents caused by hazardous material, effluent or spillage or fire etc. do occur in projects, and some of these accidents may not only affect workers alone or communities closer to project site alone but can occur during transportation or even affect other communities along projects. As the effects of such incidents may be found miles away from the project the client only "assisting and collaborating" is not enough. This aspect of emergency preparedness seems to suggest that the client is shifting responsibility to the government and may be feasible only in situations where there is explicit agreement between the government or an agency about measures to towards health and safety of the affected community. But in the absence of such an agreement, it behoves the client to assume

¹⁸⁸ Performance Standard 1, para 21

¹⁸⁹ ibid, ibid

a primary responsibility in furtherance to its own policy of social wellbeing. In any case, this is an area where the host country should also review its regulations to include stringent emergency preparedness measures so that defaulters may be brought to book.

4.4.3.6 Monitoring and Review

It is imperative that the client set up monitoring procedures to monitor and measure the effectiveness of the management programme, as well as compliance with any related legal and/or contractual obligations and regulatory requirements.¹⁹⁰ The IFC entreats the client management and monitoring team to include government agencies, third parties and affected communities where appropriate.¹⁹¹ The client must update or upgrade mitigation measures in the management systems, if need be, to adequately address any environmental and social change in the effluxion of time within the project lifetime and after decommission.¹⁹² The reports should also include information and data to determine whether there is progress on implementing the management programmes and whether the programme is in compliance with relevant host country legal requirements.¹⁹³ Again, the client should evaluate the capacity of those participating in the monitoring and provide periodic training and guidance as appropriate and where necessary employ external experts.¹⁹⁴ It is not clear from the Guidance Notes whether the training includes third parties and representatives of the affected community. It is also doubtful whether there will be an unbiased adverse report from the monitoring team, if the training is provided by the very client whose activity is the subject of monitoring.

With other financial institutions, such as the Millennium Challenge Corporation, and the World Bank, monitoring is usually done by the host country, under the periodic supervision of the

¹⁹⁰ Performance Standard 1, para 22

¹⁹¹ ibid, ibid

¹⁹² Guidance Note 1, para 83

¹⁹³ ibid, para 88

¹⁹⁴ ibid, para 86

financial institution. Probably because the IFC supports private enterprises and these supports are loans for private business so if the private business is a profit-making venture, they owe it a duty to put in place astute measures for monitoring activities and inspections of projects.

4.4.3.7 Stakeholder Engagement

Another operational procedure the IFC mandates the client to include in the ESMS is stakeholder engagement. Stakeholders are defined in the Guidance Note as persons, groups or communities, external to the core operations of a project, but who may be affected by the project or have interest in it.¹⁹⁵ These include individuals, businesses, communities, local government authorities, local non-governmental organisation and other interested institutions, or affected parties.¹⁹⁶ The stakeholder engagement process comprises of identification of the stakeholders; the mode of their selection; and consultation with them. First, stakeholders must be identified based on the IFC's definition, then representative's need to be selected to represent say, a community or interest groups identified as stakeholders. Then consultation process must be designed in such a way as to involve everyone and to ensure useful contributions. Stakeholders are identified based in terms of individuals, groups or communities, who are or may be affected directly or indirectly, positively or negatively by the project.¹⁹⁷ People who may be able to influence the outcome of the project because of their knowledge about the affected communities or political influence over them are also identified as stakeholders.¹⁹⁸

Concerning an affected community, the IFC points out that the selection of stakeholders should be sufficiently representative to comprise various group of people within the community.

¹⁹⁵ Guidance Note 1, para 95

¹⁹⁶ ibid, para 95

¹⁹⁷ Guidance Notes 1 para 48

¹⁹⁸ Guidance Note 1, para 95

Especially if the project affects a community to the point that the community has been identified as “Affected Community”.¹⁹⁹ The selection may be as varied and can include community leaders, religious leaders, local government representatives, civil society representatives, politicians, school teachers.²⁰⁰ Once stakeholders are identified and their representatives selected, the client will develop a stakeholder engagement plan for the affected community to discuss direct and adverse impacts of the projects on them. The stakeholder engagement plan will spell out mode of engagement with the community; the language for the forum; minutes of meetings and agreements; description of grievance redress mechanisms; description of any local community development initiative being supported or to be supported by the client; as well as cross references to other relevant project management plans.²⁰¹ Information on the projects to the affected communities in areas such as purpose, nature, and scale of the project; potential risk and relevant mitigation measures; as well as the grievance mechanism and mode of engagement are to be made accessible; presented in a language understandable to the various segment of the affected community.²⁰²

The IFC demands that the mode of consulting stakeholders must be scaled to: the risks involved; the extent of impact; and the characteristics and interests of the affected communities.²⁰³ One element that stands tall in the IFC, Performance Standards and accompanying Guidance Notes is the detailed way in which the processes concerning stakeholders’ engagement are presented, taking into account host country laws and individuality of each affected communities. The client engages the affected community but must tailor its consultation process to the needs and values of the people and to the extent to

¹⁹⁹ Guidance Note 1, para 48

²⁰⁰ ibid, para 95

²⁰¹ ibid, para 98

²⁰² ibid, para 99

²⁰³ Performance Standard 1, para 27

which they are informed. It points to the importance the IFC places on public participation. The IFC's Performance Standards appreciates that even within the same country, communities are distinct in various ways. Usually disclosure is part of the process of screening and is required prior to the commencement of the projects, however with the IFC, clients are also expected to continue to disclose information on impacts of project expected to create and ongoing impacts.²⁰⁴ The IFC Guidance Notes directs that the timing and the method of disclosure should be tailored, if possible to the characteristics and needs of the affected communities and to national law requirements.²⁰⁵ The Clients are encouraged to disclose and discuss all information to the affected communities about the project's potential benefits and developmental impacts, nonetheless the client must be cautious not to create unnecessary and unrealistic expectations.²⁰⁶ For, such impression may lead to manipulation or coercion on the side of the client. Furthermore, the client should inform the affected community of the outcome of the consultation process and their suggested considerations.²⁰⁷

A special reference in the IFC's Performance standards is the provision made for indigenous people. This provision is similar to World Bank Guidelines on the same subject matter.²⁰⁸ For projects with adverse impacts on indigenous peoples, the client is required to engage them in a process of Informed Consultation and Participation (ICP) and in certain circumstances the client is required to obtain their Free, Prior, and Informed Consent (FPIC).²⁰⁹ The requirements related to Indigenous Peoples and the definition of the special circumstances requiring FPIC are described in Performance Standard 7. There may be situations where the IFC clients, most of which are private businesses will not directly be involved in the consultation but rather

²⁰⁴ Guidance Notes 1, para 111

²⁰⁵ ibid, para 99

²⁰⁶ ibid, ibid

²⁰⁷ ibid, para 103

²⁰⁸ World Bank Operational Manual OP/BP. 4.10, <https://policies.worldbank.org>

²⁰⁹ Performance Standard 1. Para 32

makes it a duty of the host country. Where projects demand host government rather than the client to consult the affected community or the public, even in that situation, the IFC demands that the client collaborate with the responsible government agency in order to achieve results that are consistent with the objectives of this Performance Standard. Where the host government lacks the capacity, or the process did not meet the required standards, the client may conduct a complementary process, if necessary.²¹⁰

It is observed from the foregoing that the IFC presents two procedures in consulting the public. The process could either be carried out by the host country or the client, depending on the type of project, the risk and impacts involved and the characteristics of the affected community. The method of the IFC makes room for flexibility. Altogether, the IFC's performance standards are practicable, nonetheless emphasizing that the whole process (host country and the clients alike) should be consistent with Performance Standards, but not country laws, still points to the question of who has the authority in these matters. It is apparent that the IFC advances its own procedure to be superior to that of domestic country laws and that is why issue of consistency is emphasised.

4.4.3.8 External Communications

The client is to make available to the public periodic reports on their environmental and social sustainability programmes and also make channels of communication less complicated to encourage inputs from interested groups.²¹¹ The client must also be open to receive suggestions from external stakeholders (that is people not directly impacted by their projects, but may have experience based on previous activities).²¹² These category of people can also be independent observers such as civil organisation, NGOs, etc. An open method of

²¹⁰ Performance Standard 1, para 33

²¹¹ ibid, para 34

²¹² Guidance Note, para 108

communication such as the one envisioned by the IFC allows for feedback on the client's environmental and social performance. Allowing people who are not necessarily directly connected to the projects to have access to the reports and to give their opinions provides the opportunity for impartial contribution and suggestions. It also puts the client on notice of any breach of its obligations, whether local or international.

4.4.3.9 Grievance Mechanism for Affected Communities

The client must establish a grievance mechanism as component of the project's ESMS whereby the affected community can lodge their complaints and the community must be made aware of the existence of such procedure.²¹³ However, the client should be acquainted with the host country's judicial and administrative mechanisms for resolution of disputes, and should not interfere with or impede access to these mechanisms.²¹⁴ The grievance mechanism must be scaled to the risk involved; that is, grievous risks call for rigorous measures. The client shall ensure that the complaints procedure is simple, easy to follow, understandable, easily accessible, culturally appropriate, and the complaint should be at no cost to the complainant.²¹⁵

The client could make use of other IFC publications such as Addressing Grievances from Project-Affected Communities (IFC, 2009) and A Guide to Designing and Implementing Grievance Mechanisms for Development Projects (CAO, 2008) for additional guidance on grievance mechanisms.²¹⁶ Factors to consider in designing a grievance mechanism include language, literacy levels, level of access to technology, social values of the affected community, taking into consideration the community's way of handling dispute.²¹⁷ Finally, the client must furnish the affected community period reports on implementation of

²¹³ Performance Standard1, par 35

²¹⁴ Guidance Note, 110

²¹⁵ Guidance Note, 110

²¹⁶ ibid, ibid

²¹⁷ ibid, para 111

management plans especially for ongoing projects. This includes any material change in mitigation measures.²¹⁸

Thus, it can be concluded that the IFC acknowledges the uniqueness of affected community even in designing a procedure for lodging a complaint. In effect, what works for a community may not work for another community. Issues concerning dispute resolution are usually discussed during initial negotiations of any contractual agreement of a project. Invariably, businesses prefer internal arbitration at first instance, or opt for other dispute resolution measures, and if all fails before they resort to adjudication system of the host country. In such cases, the best practical move is to allow flexibility in the choice of dispute resolution measures, that works best for both the client and the complainant(s). Flexible options notwithstanding, a situation may occur where an aggrieved community not satisfied with the outcome of the internal resolution of the client may want to resort to the host system's adjudication system but realise that it is more costly and cumbersome. In this instance, the aggrieved community may be left with no choice than to subject to the client's resolution measures. The client system of grievance mechanism therefore must be free from coercion since the client seems to be advantaged in this regard. The IFC requires that persons lodging a complaint must be protected but does not however elaborate what form of protection that is envisaged or whether it is the duty of the host country or the client to offer the said protection; considering the fact that complaints are mostly against the client. This requirement, no doubt is to encourage people or communities to freely raise concerns without any fear; however, in the absence of any clear directions the noble purpose of this novelty may be a mirage. This is where a collaboration between officers of client and the host country's security agents to present a neutral ground will be practical.

²¹⁸ Performance Standards 1, para 36

The Performance Standards of the IFC are designed in a way that will ensure monitoring of projects impacts and mitigation throughout the lifespan of the project from commencement to decommissioning and post closure. This may be said to be beneficial to the host country, especially where the project involves mining, oil and gas exploration and other extractive ventures whose activities are dependent on natural resources, renewable or non-renewable. A safety net for the local community demands that there will be close monitoring to ensure that all the Performance Standards of the IFC are implemented to the letter, so that extractive industries do not leave the environment degraded after depleting the resources thereby exacerbating environmental problems and the social conditions of the people affected by the project.

It has been stated in the previous chapter that public participation in the EIA process is crucial for environmental protection and sustainable development. Stakeholder engagement and grievance mechanism process in the IFC's Performance Standards should be distinguished in this regard. Public participation with the IFC is twofold: (i) by dissemination of information on the project, that is, information must be accessible to the public concerned; it must be discernible, readable and understandable. Stakeholder engagement with the public without information being within the domain of the public concerned, cannot be meaningful; (ii) Grievance mechanisms or redress measures: where problems and disputes are resolved.

It is observed that environmental and social policies of the World Bank and that of the IFC are similar hence the parallels in the World Bank guidelines and the Performance Standards of the IFC. However, institutional and procedural arrangements are different between the two institutions probably due to their lending objectives. Whereas the World Bank (IBRD and IDA) provides credit and non-lending assistance to governments, the IFC provides loans and

equity financing, advice, and technical services to the private sector.²¹⁹ The IFC procedures are rigorous probably because the IFC clients are business ventures most of which are geared towards profit maximisation. It may also be that these clients, most multinational conglomerates, are expected to have the requisite human resource for the job. On these accounts, it is prudent to apply a higher standard may be expected.

4.5 THE EQUATOR PRINCIPLES

The Equator Principle (EP) is another quasi legal instrument adopted by some financial institutions to be used for projects they finance or provide other financial services. Originally adopted by ten financial institutions in June 2003, there are now 90 financial institutions from 37 countries adopting this framework, covering over 70 percent of international Project Finance debt in emerging markets.²²⁰ The aim of the Equator Principles is to ensure that clients of projects financed by the Equator Principle Financial Institutions (EPFIs) or for which financial advice is offered demonstrate good international practice in environmental and social risk management. The clients are the countries who benefit from the financial assistance provided by the EPFIs. This assistance comes in the form of Project Finance loans, Project-Related Corporate Loans, Bridge Loans, or Project Finance Advisory Services.²²¹

The EPFIs, have formed an unincorporated association, the Equator Principles Association or the Association whose object is the management, administration, and development of the Equator Principles.²²² The Association has the mandate to update the Equator Principles periodically to ensure they remain relevant as practical risk management tool and supportive

²¹⁹ Bank Information Centre, Applying Local voices to Democratized Development <www.bankinformationcenter.org/resources/institutions/ifc/> 03 May 2017

²²⁰ See Equator Principles Association (EP Association), ‘About the Equator Principles’, <www.equator-principles.com/index.php/about-ep/about-ep> accessed 03 May 2017.

²²¹ Equator Principle III, principle 3

²²² Equator Principle Association – Governance & Management <www.equator-principles.com> accessed 03 May 2017.

of sustainable financing objectives.²²³ Guided by implementation experience and feedback of EPFIs and clients, the Equator Principle has been updated periodically since its first inception in 2003. The review of the latest version Equator Principles 4 (EP4) is underway and is opened for public consultation till mid-August. The review is expected to be completed by the end of 2019

The Equator Principle contains ten Principles, touching on various issues, from categorization of projects; environmental and social assessment; stakeholder engagement; to grievance mechanism; the usual thematic areas that characterized the other environmental and social assessments of the other financial institutions discussed earlier.

4.5.1 Review and Categorization

This is a screening process carried out by the EPFI sponsoring the project or providing financial advice on the project. Through screening the projects are classified into three categories as follows:

Category A – Projects with potential significant adverse environmental and social risks and/or impacts that are diverse, irreversible or unprecedented;

Category B – Projects with potential limited adverse environmental and social risks and/or impacts that are few in number, generally site-specific, largely reversible and readily addressed through mitigation measures; and

Category C – Projects with minimal or no adverse environmental and social risks and/or impacts.²²⁴

²²³ Equator Principle Association – Governance & Management <www.equator-principles.com> accessed 03 May 2017

²²⁴ Equator Principle III, principle 1

The screening process is based on International Financial Corporation (IFC) Performance Standards.²²⁵ This is unsurprising because the EP III, that is the latest review of the Principles was purposely drafted to replicate IFC Performance Standards and current best practice. Besides, EPFIs are involved in large infrastructure development and natural resource extractive industries, projects of development agendas promoted by most developing countries and the very projects the World Bank and the IFC are also interested in.

4.5.2 Environmental and Social Assessment

It is an obligation for the client, in quest of financial assistance to conduct an assessment and to propose mitigation measures commensurate to the nature and scale of the adverse impacts of the project, (especially for category A and B) to the satisfaction of the EPFI. The client may also contract the services of or consultants or experts.²²⁶

A list of issues that may be addressed in the Assessment Documentation is included in exhibit II of the EP. This list is said to be for illustrative purposes only, hence each Project may or may not identify all of the issues listed, or some may not be relevant to every Project. These include:

- i. assessment of the baseline environmental and social conditions;
- ii. consideration of feasible environmentally and socially preferable alternatives;
- iii. requirements under host country laws and regulations, applicable international treaties and agreements;
- iv. protection and conservation of biodiversity (including endangered species and sensitive ecosystems in modified, natural and Critical Habitats) and identification of legally protected areas;

²²⁵ Policy on Environmental and Social Sustainability, International Financial Corporation (World Bank Group), January 2012, para 40,

²²⁶ Equator Principle III, principle 2

- v. sustainable management and use of renewable natural resources (including sustainable resource management through appropriate independent certification systems);
- vi. use and management of dangerous substances;
- vii. major hazards assessment and management;
- viii. efficient production, delivery and use of energy;
- ix. pollution prevention and waste minimisation, pollution controls (liquid effluents and air emissions), and solid and chemical waste management;
- x. viability of Project operations in view of reasonably foreseeable changing weather patterns/climatic conditions, together with adaptation opportunities;
- xi. cumulative impacts of existing Projects, the proposed Project, and anticipated future Projects l) respect of human rights by acting with due diligence to prevent, mitigate and manage adverse human rights impacts;
- xii. labour issues (including the four core labour standards), and occupational health and safety n) consultation and participation of affected parties in the design, review and implementation of the Project;
- xiii. socio-economic impacts;
- xiv. impacts on Affected Communities, and disadvantaged or vulnerable groups q) gender and disproportionate gender impacts;
- xv. land acquisition and involuntary resettlement;
- xvi. impacts on indigenous peoples, and their unique cultural systems and values t) protection of cultural property and heritage;
- xvii. protection of community health, safety and security (including risks, impacts and management of Project's use of security personnel);
- xviii. fire prevention and life safety;

Item (iii) on the list states that the assessment should follow requirements of the host country laws and regulations, applicable international treaties and agreements. Since it is already stated that the issued enumerated are flexible, it means that, recourse to host country, in this case, the client's laws, are not obligatory. This translates into principle 3 (Applicable Social and Environmental Standards)

4.5.3 Applicable Environmental and Social Standards

The environmental and social assessment process must be carried out in conformity of the laws of the host country at first instance.²²⁷ On the face of it, this provision gives the impression that the EP sets out to integrate the regulatory framework of the client in its activities, however, different inferences may be imputed to subsequent sections that follow. The EPFIs states that they are aware that they operate in many countries with varying degree of legal regimes on protecting the environment; some robust, and some evolving, so EPFI has classified countries into designated and non-designated. Designated countries are a list of countries recognised by the EPFIs as having sound environmental laws. The EP will not apply to projects located in these Designated Countries. In such countries, their local or national laws as regards environment and social matters are deemed to be of comparable standard in environmental and social risk management. Impliedly, the non-designated countries are countries that supposedly have evolving or weak environmental and social regulatory framework or do not have environmental and social governance, legislation systems and institutional capacity. In this vein, the minimum standard EPFIs demand the clients in non-designated countries to apply is the IFC Performance Standards and the World Bank Group Environmental, Health and Safety Guidelines. The designated countries which are listed on the Equator Principles Association website includes developed economies such as United Kingdom, United States of America,

²²⁷ Equator Principle III, Principle 3

Canada and Germany as well as emerging economies like Finland, Poland and Slovenia.²²⁸ The list does not include any country from the African continent, whereas South Africa is said have many of the attributes of a sophisticated developed country EIA.²²⁹ It is reasoned that this blanket classification will compel countries which do not find their names on the list to automatically disregard their own laws when soliciting for financial assistance and other advisory services from any member of the EPFI

4.5.4 Environmental and Social Management System and Equator Principles Action Plan

The client is to develop an Environmental and Social Management Plan (ESMP) for categories A and B projects stating adverse impacts and indicating mitigatory measures to be taken.²³⁰ Where the EPFI is not satisfied with the client's ESMP, the EPFI and the client will decide on an Equator Principles' Action Plan (EPAP) to address shortfalls in the ESMP and commitments required in order to meet applicable standards. This is also similar to the Management Programmes of the IFC, but whereas the IFC Management Programmes must conform to applicable laws and regulation of the host country, the ESMP and EPAP must at minimum conform simple to applicable standards.

4.5.5 Stakeholder Engagement

For category A and B projects the client is obligated to hold consultation with Affected Communities and, where relevant, other Stakeholders in culturally appropriate manner.²³¹ Where the project affect indigenous people adversely, the client must seek their prior and informed consent without external manipulation, interference, coercion and intimidation.²³²

²²⁸ Equator Principles Association (EP Association), 'About the Equator Principles', <www.equator-principles.com/index.php/about-ep/about-ep> accessed 03 May 2017

²²⁹ Christopher Wood, Environmental Impact Assessment: A Comparative Review, (2nd edn Harlow, Prentice Hall 2003) 15

²³⁰ Equator Principle III, principles 4

²³¹ ibid, principles 5

²³² ibid, ibid

All these must be done in compliance with relevant national law, including those laws implementing host country obligations under international law. So, by necessary implications, host countries deemed not to have laws to the required standard will have to recourse to IFC Performance Standard 7 (Principle 3 refers)

4.5.6 Grievance Mechanism

The client must establish as part of its ESMP design a complaints procedure to include means of receiving complaints from individuals and other concerned stakeholder and process resolving issues promptly and without any cost to the complainants.²³³ The existence of this procedure must be communicated to the public.²³⁴

4.5.7 Independent Review

An Independent Environmental and Social Consultant must carry out an independent review of the Assessment Documentation including the ESMPs for Category A and, as in some cases Category B Projects.²³⁵ The independent consultant must not directly be associated with the client. This is to ensure that the client is in compliance with the Equator Principles.²³⁶

Whereas it is explicitly stated that the independent consultant must not be related to the project, it is unclear whether there should be some relationship between the said consultant and the EPFI. It is also not clear who contracts independent consultant, the EPFI or the host country. Compared with Monitoring and Review of the IFC, it is the duty of the client to establish monitoring procedures and the emphasis is to measure the effectiveness of the ESMP in place.²³⁷ That is, to measure its performance; to monitor compliance with relevant laws; to monitor the progress or effectiveness of mitigatory measures etc.; so even representatives of

²³³ Equator Principle III, principle 6

²³⁴ ibid, ibid

²³⁵ Equator Principle III, principle 7

²³⁶ ibid, ibid

²³⁷ IFC Performance Standard 1

affected communities must be part of the monitoring team, where appropriate.²³⁸ The IFC Monitoring and Review process is a holistic approach to oversee performance standards, progress and effectiveness and to ensure that they are in consonance with the client's policy.

Though the independent review seems like innovation, the process may turn out to be manipulative tool for the EPFI since the client is not in control or has any say in the matter. The recruitment of the expert and the review, if left in the hands of the EPFI alone, may be used by the EPFI to their benefit. It can be seen that the crux of the review is not to ensure sound environmental and social practice but rather to promote the EPFI as an advocate of social justice and environmentally sensitive institution. For, this is only due diligence on the part of the EPFI, to assist it to be in the good standing of compliance. Once it is proved that the client's assessment documentation which includes ESMP, ESMS, Stakeholder Engagement process etc. is in tune with the Equator Principles, then the EPFI is said to be in good standing with the practice.

4.5.8 Covenants

The client pledges to abide by the Equator principles to comply with all relevant host country environmental and social laws, regulations and permits in all material respects as regards the ESMP and EPAP and periodic reporting and where applicable to an agreed decommissioning plan.²³⁹ The EPFI may seek remedies if the client fails to comply.²⁴⁰ The right to propose and apply remedies lies solely with the EPFI. The type of remedy, whether in the form of sanctions or are not stated. EPFI only has to consider what is appropriate. This also means that a non-

²³⁸ IFC Performance Standard 1

²³⁹ Equator Principle III, principle 8

²⁴⁰ ibid, ibid

designated country, will have to resort to the IFC Performance Standards and other international guidelines.

4.5.9 Independent Monitoring and Reporting

All Category A and, as appropriate, Category B Projects, require the appointment of an Independent Environmental and Social Consultant. Otherwise the client must retain qualified and experienced external experts to verify its monitoring information which would be shared with the EPFI²⁴¹

4.5.10 Reporting and Transparency

Two separate modes of reporting are prescribed for the client and the EPFI. The Client, in fact, does not report to anybody in particular, just the public.²⁴² Except for reporting GHG emission levels for projects for stated tonnes of CO₂, it only ensures that a summary of the ESIA is accessible and available online; nothing is said about situations where the client does not have internet access.²⁴³ This leaves the client with the discretion to use any other means or simple does nothing. So, it could be implied that the client has no obligation towards reporting. The reporting procedure for the EPFI however, is methodically stated and minimum requirements well detailed in the Annexes.²⁴⁴ Reporting is a means of measuring performance which aids implementation, for, it is through reporting that compliance and progress and effectiveness are monitored.

Seemingly, for the whole EP process, much prominence is directed at what should be in the books than what is on the ground. Weber and Acheta suggested that the Equator Principles add nothing new to existing environmental and social risk assessment legal tools, because the

²⁴¹ Equator Principle III, principle 9

²⁴² ibid, principle 10

²⁴³ ibid, ibid

²⁴⁴ ibid, ibid

EPs are based on IFC Guidelines. In effect the EPFIs just mimic a standard that is already applied by World Bank and IFC.²⁴⁵ It appears the EPFIs are more interested in projecting and safeguarding their reputation as institutions that promote environmental and social responsibility than the actual protection of the environment per se. A view equally shared by Wright and Rwabizambuga is that EPFIs are using the EP for its reputation and effects.²⁴⁶ But for some, the Equator Principles comparatively constitute an improvement to other development standards. Nonetheless, parts of the Principles can be read as giving preference to considerations of economic growth over the interests of project-affected people.²⁴⁷

The disclaimer at the end of the Principles does not help matters either.²⁴⁸ In its deeper sense, it gives room for laxity and not creating any rights or liabilities means nobody is to be held responsible for inaction. Whereas the EPFI voluntarily commit to assess and manage environmental and social risks in projects they finance; to contractually oblige clients to abide by the standards that the EPs lay down, there are no established enforcement mechanisms. No institutional framework has been put in place, for instance, for ensuring compliance and to sanction non-compliance. In this regard, the EPFIs, according to de Bakker, are accused of window dressing or greenwashing, in the sense that, the EP, becomes a “signalling devices for demonstrating positive credentials, with the aim of strengthening corporate reputation and organizational legitimacy.²⁴⁹ A way to improve the effectiveness of the EP as suggested by Weber and Acheta, is to establish enforcement mechanisms which may include monetary fines

²⁴⁵ UNEP Inquiry/CIGI Research Convening ‘The Equator Principles Do They Make Banks More Sustainable?’ (Inquiry: Design of a Financial System 2016) 19 <www.unep.org/inquiry/> accessed 3 May 2017

²⁴⁶ Christopher Write and Alexis Rwabizambuga ‘Institutional Pressures, Corporate Reputation, and Voluntary Codes of Conduct: An Examination of the Equator Principles’ (2006) *Business and Society Review* 21

²⁴⁷ Michael Riegner ‘The Equator Principles on Sustainable Finance Assessed from a Critical Development and Third World Perspective’ (2014) Vol 5 issue 3 *Transnational Legal Theory* 489-510, 507

²⁴⁸ Equator Principles, p 11

²⁴⁹ Frank G. A. de Bakker, ‘Equator Principles’ in Nevin Cohen & Paul Robbins (eds) *Green Business: An A-to-Z Guide* (SAGE Publications Inc 2011)

or exclusion from the EP association.²⁵⁰ To this end the Equator Principles Association should establish an independent body that audits and assures the EPFIs' performances and reports about both compliance and non-compliance, in order to guarantee non-biased enforcement.²⁵¹

The Equator Principles provide a framework for regulation and each EPFI is therefore allowed to introduce and implement its own internal environmental and social risk management policies, procedures, and standards. Advantageously for a guideline with multiple actors sharing a common goal, it is best to flesh out the outlines and individuals EPFIs fill in the details in their internal environmental and social risk management policies, procedures, and standards. What this may imply for the host country is that, it is at the receiving end of diverse procedures and practices. However, the framers of the EP are quick to add that where there is a conflict between applicable laws and regulations of a host country and the Equator Principles, the local laws regulations will prevail. Obviously, this refers only by implication to designated countries, because designated countries are to use their own environmental regulations in the first instance. Hence the issue of any conflict may not arise in the first place, however, should there be conflict in any circumstance, they still will adhere to their own laws. In the case of non-designated countries their own laws are considered not robust enough to address environmental issues. They are to use IFC Performance Standards and World Bank Group Environmental, Health and Safety Guidelines (EHS Guidelines) so the issue of local laws and regulations prevailing over the EP in case of conflict becomes otiose. They have no option but to use the international regulations if they want to have access to the financial services that the EPFIs provide.

²⁵⁰ UNEP Inquiry/CIGI Research Convening, *The Equator Principles Do They Make Banks More Sustainable?* Acheta (Inquiry Working Paper 16/05 February 2016), p 20 para 3 <www.unep.org/inquiry/> accessed 03 May 2017

²⁵¹ ibid

4.6 CONCLUSION

Financial institutions have different lending or sponsoring policies and different institutional structures which have a bearing on the modalities of their operations. Consequently, EIA guidelines from these institutions also have variations. The institutional and procedural differences might be a source of potential confusion in the implementation of guidelines especially, when two or more institutions are sponsoring the same project or an aspect of it. This suggests that within the same country, the type of guidelines and procedure to be used depends, to some extent, on the source of funding. Though the guidelines are supposed to be a means to an end, it is reasoned that the use of different procedure, similar though they are, might lead to confusion and may not augur well for development of the domestic legal and regulatory frameworks.

Some of these EIA guidelines are a combination of international standards, and domestic legal frameworks, especially in countries from the global north, as is the case of Executive Order 12114 and NEPA of USA in the Millennium Challenge Corporation Guidelines. To the extent that these guidelines are used in the global south where financial assistance is needed most for infrastructural development, the institutional capacity of the countries in the global south, the level of technology and the cultural and social environment must be taken into consideration. It is obvious that guidelines prepared from different socio-cultural and legal context, and economic environment may be influenced by a number of factors, namely domestic origins of their legal rules, socio-cultural perspectives and advanced technology and economic standards. Therefore, guidelines may only work in similar socio-legal context. The problems that may arise when used in a different environment are differences in perception of basic concepts that underpin the EIA process, the procedural steps and way the process is carried out. All these problems are substantiated in the outcome of the empirical research discussed in Chapter six

It is trite learning that guidelines, *per se*, are not laws. They could at best be described as soft law depending on the institution producing it and the mandate of that institution. Thus, they should not be made to prevail over a legislation of a sovereign country; more so, if that country made no contribution to their drafting. At best the guidelines could be used to supplement the domestic laws of the country. The guideline could also be used as a point of reference for comparison with domestic laws in order to understand what works best in each situation.

Some financial institutions periodically update their guidelines, which is good and supports the argument that if countries from the global south are allowed to use their EIA laws, they may be able to identify gaps or outmoded sections in their laws and also update regularly. Therefore, over-reliance on EIA guidelines will only impede the growth of domestic EIA laws, which in turn provides a justification for the financial institutions from the global north to impose their guidelines on the global south, an endless cycle of the global north dominance over the global south.

The next chapter examines the EIA legal framework from some selected jurisdictions especially in the global north and compared with that of Ghana, the focus of the research. The evaluation of the EIA legal framework from different jurisdiction is to ascertain similarities and differences and to rationalize the need treat each system differently.

CHAPTER FIVE

EIA PRACTICE: A COMPARATIVE STUDY

5.0 INTRODUCTION

The EIA system encompasses institutional arrangements for implementation and enforcement of the EIA process. An EIA system comprises legal instruments and competent institutions that oversee the EIA procedural steps which have been discussed in chapter three as well enforcement of EIA laws. An effective system is thus a combination of robust laws that are properly administered and functioning competent institutions. The chapter examines the EIA process within the systems and institutional provisions that are established to oversee the implementation of the EIA process in the global north and also compared the UK EIA and Ghana approaches with emphasis on the EIA Regulation. The research is not a comparative analysis per se between the UK EIA and that of Ghana because comparison is usually between equals. It is evident that the UK EIA and Ghanaian EIA have differential systems in many aspects, for example, cultural, social, economic, level of development etc, therefore by comparing the two systems, the researcher merely sought to use the contents of EIA of UK as a yardstick to highlight what exist or does not exist in the Ghanaian law.

The need to compare the two Regulations is borne from the fact that being a formal British colony, most if its laws are modelled on that of the UK and moreover, the UK Regulation represents a developed and well-established EIA system (from the global north), whereas Ghana's Regulation might be considered emerging EIA system, as per Wood's classification.¹ Additionally, an objective of the research is to bring to the fore the dangers associated with transposing or transplanting one legal system directly or indirectly, on another (especially legal

¹ Based on assertions in Christopher 'Wood Environmental impact assessment in developing countries' (2003) International Development Planning Review 25 (3)

systems of unequal footing as discussed in chapter three). More so, the research, among other things probes, the extent to which the contents of guidelines on EIA from multi-lateral and bi-lateral lending agencies, mainly from the global north influenced by the approach to the EIA from their places of origin; whether these guidelines from the multi-lateral and bi-lateral lending agencies suitable for a country in the Global South such as Ghana. Hence, it is anticipated that the comparison between these two Regulations will throw more light on what works better or otherwise for one system. Additionally, practical lessons from the comparative evaluation may be used or adapted to improve the other.

5.1 THE NATIONAL ENVIRONMENTAL POLICY ACT 1969 (NEPA) OF USA

NEPA demands that federal agents take into considerations environmental concerns when making a decision on major projects that might have significant impact on the environment.² It is stated that the process of standardisation of EIA began with the enactment of the NEPA. Truman suggested that EIA assumed legal status through the passing of the NEPA.³ In the words of Sheate, the passing of NEPA ‘represents the first comprehensive attempt to address environmental concerns in the decision-making of the federal government agencies’.⁴ For Holder, NEPA has provided the template for other systems to follow worldwide, hence our consideration of it here.⁵ The Council for Environmental Quality (CEQ) is the institution set up to oversee the EIA process. It also has the mandate to review the process under the law and

² National Environmental Policy Act (as amended) 1969, (42 USC § 4332) s 102
https://www.whitehouse.gov/sites/whitehouse.gov/files/ceq/NEPA_full_text.pdf

³ Stephen Truman QC, *Environmental Impact Assessment* (2nd edn, Bloomsferry Professional Ltd 2012) 2.

⁴ William Sheate, *ENVIRONMENTAL IMPACT ASSESSMENT: LAW & POLICY Making an Impact II* (Cameron May Ltd 1996) 43

⁵ Jane Holder, *The Regulation of Decision Making* (OUP 2004) 43

provide guidelines.⁶ The most important of these guidelines is the Code of Federal Regulations 40 – Protection of the Environment (40 CFR Parts 1500-1508).⁷

In the USA, the EIA process is invoked when a federal agency carries out an initial environmental assessment (EA) to determine whether or not the proposed project will have significant impact on the environment. There are projects or actions that are excluded from the initial assessment and the EIA procedure, because they are deemed not to have any significant impact on the environment.⁸ This is termed categorical exclusion.⁹ Each federal agency has its own procedure for the preparation of the EA. The EA includes environmental impacts of the proposed action and alternatives, and list of agencies and persons consulted. In effect EA is a mini EIS of a sort. Through the EA, the agency may decide that the proposed project has no significant impact on the environment and consequently issue a ‘Finding of No Significant Impact’ (FONSI).¹⁰ FONSI is a document that explains in detail the reasons for arriving at the conclusion that the project will have no significant impact on the environment.¹¹

However, where the agency is of the view that the proposed project will pose significant impacts, a full EIA is required. In this regard, an EIS is prepared which is a more detailed in form and content than EA.¹² The preparation of the EIS involves presenting a draft on scoping results. The public is engaged for discussions on the need for the project, anticipated environmental threats, and proposed mitigation plans, until a final EIS is published for a decision to be taken on it by CEQ. A Record of Decision (ROD) is then issued which explains the agency's decision for granting the permit or otherwise. The ROD also describes the

⁶ United States Environmental Protection Agency <<https://www.epa.gov/nepa>> accessed 15 November 2017

⁷ https://www.whitehouse.gov/sites/whitehouse.gov/files/ceq/NEPA_full_text.pdf

⁸ Code of Federal Regulations 40 – Protection of the Environment (40 CFR), pt §1507.3

⁹ 40 CFR §1508.4

¹⁰ ibid §1508.4

¹¹ ibid §1508.13

¹² 42 USC § 4332, s 102(2)(C)

alternatives the agency considered; and discusses the agency's plans for mitigation and monitoring, if necessary.¹³

5.2 EIA IN EUROPE

EIA became institutionalised in Europe when the European Economic Community (EEC) now EU EIA passed the EEC EIA Directives in 1985.¹⁴ Before then, some countries in Europe had some environmental regulations in place including Ireland (1976) W. Germany (1976) and France (1976) Netherlands (1979).¹⁵ The EU Directive is modelled on the NEPA but whereas in the USA, federal agents are the main actors in the EIA process, the EU leaves the greater aspect of implementation to Member States' domestic law, hence, Member States were obliged to incorporate or transpose the Directives into their domestic legal systems. The method adopted in the EU is that the Directive is provided in a framework format and Member States are to design their own procedure to incorporate the EU Directive in their domestic legislation.¹⁶

In this regard, much persuasion is employed in the language adopted. Members States are required to introduce in their domestic laws on environmental impact assessment measures, to ensure that the projects that are likely to have significant effects on the environment by virtue, *inter alia*, of their nature, size or location are assessed before a development consent is granted.¹⁷

The newly amended Environmental Impact Assessment (EIA) Directive (2014/52/EU) came into force on 15 May 2014. The amended version simplifies the rules for assessing the

¹³ 42 USC § 4332, s 102

¹⁴ EC Directive 85/337/EEC

¹⁵ Christopher Wood *Environmental Impact Assessment: Comparative Review* (Longman 1995) 3, 4.

¹⁶ Directive 2014/52/EU, art 2 (1) & (2)

¹⁷ *ibid*, art 2 (1)

potential effects of projects on the environment and also accord member states wider power to put up measures for the protection of the environment.¹⁸

5.2.1 Highlights of the Directive 2014/52/EU

EIA procedure under the Directive consists of the preparation of a series of information on a proposed development (public or private), by the developer, in such form and content as the member state will decide in its regulation.¹⁹ The information must include detailed description of the project, particularly physical characteristics such as size, location and design with regards to current knowledge and methods of assessment. The information must also include environmental features likely to be affected as well as hazards to human health.²⁰ The Directives demands that, in the spirit and purpose of the Directives, authorities concerned and the public are informed adequately on the project through appropriate means and their opinions sought early in time.²¹ Significant impacts likely to occur in another Member States must also be communicated by the Member State involved in the assessment process.²² Above all, a competent authority must examine the information provided by the developer on the proposed development in order to give a reasoned conclusion and any of such decisions must be integrated in to decision-making mechanisms of the Member States.²³ The procedure for carrying out these processes are contained in detail in subsequent articles. The obligations of the Member States are reinforced by legal instruments of United Nations Economic Commission for Europe (UNECE) such as Espoo and Aarhus Conventions, especially between Member States who are parties to these conventions.

¹⁸ Directive 2014/52/EU, Preamble (1)

¹⁹ ibid, art 1 (2) (g)

²⁰ ibid, Annex IV

²¹ Directive 2014/52/EU, art 6

²² ibid, art 7

²³ ibid, art 4 (5)

5.2.2 The EIA process under Directive 2014/52/EU

5.2.2.1 Screening and Scoping

The identification process of projects for which EIA must be carried out is aided by the classification of projects into Annex I and Annex II.²⁴ Annex I projects include Installations for the reprocessing of irradiated nuclear fuel; Thermal power stations and other combustion installations with a heat output of 300 megawatts or more; Crude-oil refineries and installations for the gasification and liquefaction of 500 tonnes or more of coal or bituminous shale per day and these must undergo full EIA. EIA for Annex II projects is not an absolute requirement. For Annex II projects, member states must determine whether EIA should be carried out either through a case-by-case examination of the proposed project, or through a stated thresholds or criteria set by the Member State, taking into consideration location and of the projects as well as the nature and extent of the potential impacts on population, geographical area and its duration.²⁵

5.2.2.2 Competent Authority

As successful implementation of the Directive depends on the transposition of the Directive into the existing domestic law or the integration of the Directive into the domestic legal regime of Member States, much will depend on the work of the competent authority. The competent authority is therefore the institution that will ensure successful implementation and working of the Directive. Consequently, the competent authority must consist of members with expertise in all fields possible, in order to carry out quality examination of the assessment report;²⁶ take reasoned decision on the report and justify their decisions.²⁷ They must be objective in taking

²⁴ ibid, art 4

²⁵ Directive 2014/52/EU, art 4 (2) & (3); See also Annex III

²⁶ ibid, art 5 (3) (b)

²⁷ ibid, art 4 (5)

decisions; for that reason, the competent authority must be separate entity from the developer. In cases where they are the same, Member States ought to separate the functions in order to avoid conflict of interest.²⁸

5.2.2.3 Consultation with the Public

For the purpose of effective public participation, Member States are asked to engage the public by enacting the appropriate national legislation.²⁹ They must be engaged early in the EIA process and be informed through appropriate means.³⁰ To this end, a non-technical summary of the information or report must be circulated.³¹

5.2.2.4 Coordination

The competent authority is to establish a collaboration with other institutions or authorities who may be interested by virtue of their responsibilities and competencies on the EIA process especially in areas of scoping.³²

5.3 THE UK EIA REGULATION

It is the assertion that before the introduction of EIA onto the UK legal system, UK had its own legislation of a sort to address environmental considerations within the planning system. Wood suggested that, the UK's land use planning system, which was in force from 1948, was a powerful contribution to environmental protection.³³ This system allowed local planning authorities to consider environmental implications of new development, their nature and location, before granting planning permission, or refusing permission, or granting with

²⁸ ibid, art 9a

²⁹ ibid, Preamble 24

³⁰ ibid, art 6 (2)

³¹ ibid, art 5 (1) (e)

³² Directive 2014/52/EU, art.6 (1)

³³ Christopher Wood *Environmental Impact Assessment: Comparative Review* (Longman 1995) 44

conditions.³⁴ Holder also affirms that there was already a well-developed land use planning system which the UK adapted to take account of the effects of development on the environment.³⁵ Thus for the UK, the EIA system ‘has been tacked onto an existing complex planning system that has its own long-standing rules, procedures and traditions’³⁶ due to its membership of the EU. Accordingly, the EU EIA was formally transposed onto the UK legal system by virtue of section 2 (2) of European Communities Act, 1972, which enables any UK’s EU obligations to be given legal effect by quickly incorporating or transposing same within the domestic milieu. Nonetheless, Sheate pointed out that the Act provides no scope for implementation of the EC legislation, for that matter, the EU Directives within the UK.³⁷

The EIA process is presented in a number of regulations beginning with the Town and Country Planning (Environmental Impact Assessment) Regulations 1988 (SI 1988/1199) which is reviewed and amended periodically. The most recent is the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (SI 2017/0571) which came into force on 16th May 2017.

5.3.1 The EIA process as per the Regulation

The process of EIA is initiated by way of application for a planning permission through three approaches. One way is that, a developer may submit an application for a development consent, which the developer considered to be EIA development, and thus accompany the

³⁴ ibid, ibid

³⁵ Jane Holder, *The Regulation of Decision Making* (OUP 2004) 45

³⁶ Joe Weston, ‘Lessons from EIA in Practice’ in Joe Weston (ed) *Planning and environmental impact assessment in practice* (Longman 1997) 181

³⁷ William Sheate, *ENVIRONMENTAL IMPACT ASSESSMENT: LAW & POLICY, Making an Impact II* (Cameron May Ltd 1996) 51

application with an Environmental Statement (ES).³⁸ An EIA development is a development for which EIA is compulsory unless exempted for security reasons.³⁹

The second approach is that a developer, unsure whether a development is an EIA development may submit an application for planning permission without an ES and requests for an opinion (screening opinion) from the local authority to determine whether or not the development is an EIA development.⁴⁰ The Secretary of State may also be called upon to give a direction (screening direction) if the developer is dissatisfied with the opinion of the local authority or when the local authority does not give its opinion on time or at all.⁴¹ The third approach is when the Secretary of State on its own volition makes a screening direction regarding a development. With this approach, a concerned individual, a local group, or an NGO may also, on their own, request a direction from the Secretary of State.⁴² In all these circumstances, the Secretary of State must make its decision based on adequate and accurate information on the development as well as any relevant EU environmental assessment report available.⁴³ Once it is determined that the development is an EIA development, EIA must be carried out. In this regard, the applicant is required to submit an ES.

5.3.1.1 Classification of projects

In the Regulation, EIA development projects are listed in Schedule 1.⁴⁴ However, there are other developments which may not be listed in Schedule 1, but by virtue of their location, size and nature of impact on the environment, they must undergo EIA procedure. In this regard, a decision has to be made by a competent authority (the relevant planning authority or the

³⁸ SI 2017/0571, reg 5 (2) (a); 18 (1)

³⁹ ibid, reg 2 (1)

⁴⁰ SI 2017/0571, reg 6 (1)

⁴¹ ibid, reg 6(10)

⁴² ibid, reg 5(6)

⁴³ ibid, reg 5(8) (b)

⁴⁴ ibid, reg 2 (1)

secretary of state) as to whether or not EIA should be carried on those projects.⁴⁵ Firstly, these developments must fit into the descriptions of projects listed in Schedule 2; Secondly, the development must be within a stated threshold also listed in Schedule 2. For example, construction of roads not included in Schedule 1, but where the area of the works exceeds one hectare, could be considered an EIA development. Hence, a development may not be listed in Schedule but then, by virtue of its operation exceeding a stated threshold, may be considered to be an EIA development. Thirdly, to be considered an EIA development, the likelihood of the development to have significant impact on the environment because of nature, size and location must be ascertained by the competent authority.⁴⁶ The criteria for ascertaining the likelihood of the development having significant impact on the environment is stated in Schedule 3 of the Regulation. These include physical features of the development, location and nature of potential impact on the environment both within and outside the UK.

EIA is obligatory for developments within areas deemed sensitive due to their geographical location: areas of outstanding natural beauty like national parks, areas of scientific interest, World Heritage sites, archaeological site etc.⁴⁷ It implies that the development in these areas will be subjected to EIA regardless of their size, whether they fit in the description stated in Schedule 1 or not; or whether they are within the threshold.

5.3.1.2 Preparation of Environmental Statement

Every application for planning permission for EIA development must be accompanied by an ES.⁴⁸ However, as has previously been discussed, the law also allows, at first instance, application for EIA development without an ES. This is the case where the applicant is not

⁴⁵ ibid, reg 5 (4)

⁴⁶ ibid, ibid

⁴⁷ SI 2017/0571, reg 2 (1)

⁴⁸ ibid, reg. 18 (1)

sure of scope and content of the ES and leave that to the direction of the relevant authorities.⁴⁹

The ES will stipulate the extent of the EIA to be carried out, the aspect of the development that should be subjected to the EIA etc.⁵⁰ A detailed information on what to be included in the ES is presented in Schedule IV and these include description of the physical characteristics; likely effects on environment; alternatives; etc. It must also include a non-technical summary, which will be made available for the public.⁵¹

The contents of an ES indicate the fact that it must be prepared by experts well-versed on the development in question. The regulation demands that the relevant expertise and qualifications of experts who prepared of the ES must be indicated.⁵² At this stage also, the developer may request an opinion (scoping opinion) from the local authority regarding the scope and level of detail of information to be provided in the environmental statement.⁵³ The developer may also request a scoping direction from the Secretary of State if the local authority fails to give a scoping opinion within the stipulated time.⁵⁴

5.3.1.3 Decision-making

After the necessary information is provided and the appropriate publicity made on the proposed development, the local authority, the Secretary, or an inspector, as the case may be, will decide whether to grant the permit or not. The decision to grant or refuse the permit is arrived at, taking into consideration, the information provided on the significant effects of the proposed development on the environment. The permit may also be granted on condition of specific monitoring measures.⁵⁵

⁴⁹ See fns 40, 41

⁵⁰ SI 2017/0571, reg 18 (3)

⁵¹ ibid, 18 (3)

⁵² ibid, 18 (5)

⁵³ ibid, reg. 15 (1)

⁵⁴ ibid, reg. 15 (7)]

⁵⁵ SI 2017/0571, reg 26 (1)

5.4 EIA IN GHANA

5.4.1 The Environmental Impact Assessment process: An outline of the Environmental Assessment Regulations 1999, (L.I. 1652)

The need to establish an institution to put into action the objectives of Environmental Impact Assessment (EIA) is underscored by the fact that most jurisdictions have established implementing bodies that ensure that all rules are obeyed through education and collaboration with other agencies. (For example, The US Environmental Protection Agency and the English Environment Agency). In Ghana, the Environmental Protection Agency (EPA) established under Act 490, (1994) is the body mandated to manage the environment and under the Act, the minister responsible for the environment is charged to enact subsidiary legislation to enforce the implementation of sound environmental policies. The Ghana Environmental Assessment Regulation, (LI 1652) is one form of such subsidiary legislation passed in 1999.

The Environmental Protection Agency Act, 1994 (Act 490) empowers the EPA to perform its functions as a regulatory and enforcement agency. The EPA's main mandate is to protect the environment through formulating of effective policies; education; collaboration with other agencies both internal and internationally; to ensure compliance of environmental laws through practicable implementation methods, and to prescribe sanctions.⁵⁶

For the purpose of this present research, this thesis evaluated Ghana's EIA Regulation in consonance with the model propounded by Gibson from his studies in Canada, indicated in chapter three,⁵⁷ to facilitate a better understanding of the operation of the EIA system in Ghana. According to Gibson, there are four basic stages of evolution of EIA systems and these are:

⁵⁶ Environmental Protection Agency Act 1994, s 2

⁵⁷ Robert B Gibson "Environmental assessment design: lessons from the Canadian experience" [1993] 15 The Environmental Professional, 12-24.

Stage 1: The need for reactive pollution control as measures that will respond to identified problems such as air, water, or soil pollution.

Stage 2: Ensuring proactive impact identification and control through project approval and assessment by technical experts.

Stage 3: Integration of wider environmental checks considering the nature of the entire assessment process. This will help to identify the best options that are also cost effective and involves the public as well.

Stage 4: The need for integrated planning and decision-making for effective sustainability in order to address policies and the outcome of decision-making.

The diagram below illustrates Gibson's stages of EIA process.

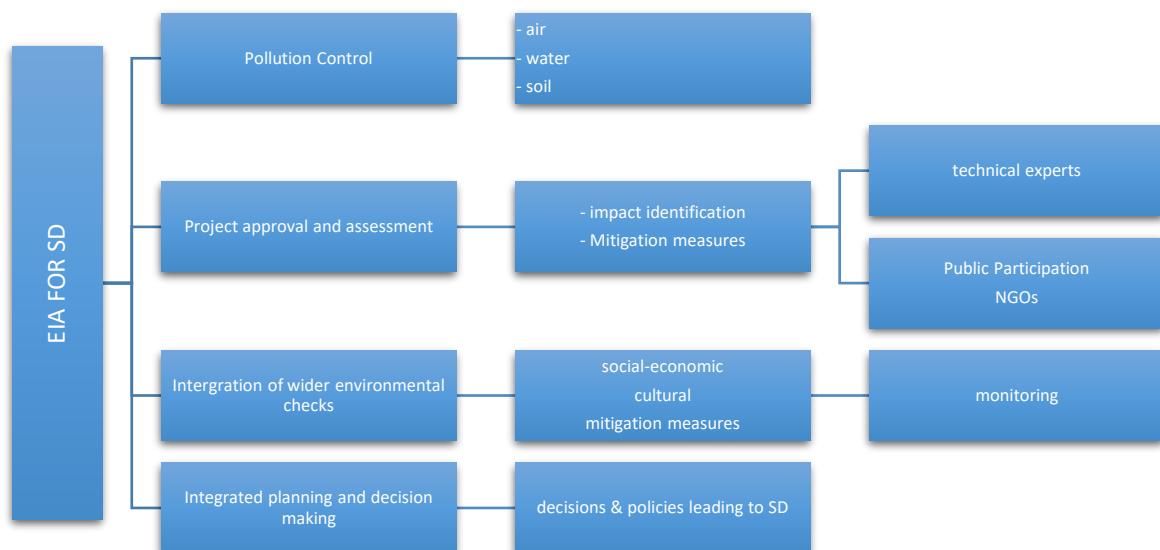


FIGURE 3 - DIAGRAM TO ILLUSTRATE GIBSON'S STAGES OF EIA PROCESS

5.4.1.1 Stage 1: Provisions Relating to Pollution Control

Gibson emphasises the need for reactive pollution control through measures that respond to identified problems such as air, water, or soil pollution. It is observed that issuance of environmental permit is the main mechanism employed to ensure compliance to environmental protection endeavours and to control pollution. Nevertheless, it is reasoned that monitoring the activities for which the permit has been issued is essential for environmental damage control hence, there should also be made available machineries for continuous monitoring.

The main highlight of the EIA Regulation is the division of undertakings into Schedule 1 and 2. This is a common feature seen in the legislation of most advanced jurisdictions.⁵⁸

‘Undertaking’ is defined in the Regulation to include: any enterprise, activity scheme of development, construction, project, structure, building, work, investment, plan, programme as well as any modification, extension, abandonment, demolition, rehabilitation or decommissioning carried out on them which may have a significant impact.⁵⁹ Undertakings listed in Schedule 1 though may have adverse effect on the environment or public health do not require EIA, only registration and permit, that is, there is no obligation to conduct an EIA.⁶⁰

Apart from the undertakings listed in Schedule 1, any undertaking which is neither listed in Schedule 1 nor 2 but which in the opinion of the Agency has or is likely to have adverse impact on the environment need to be registered. This means that the proponent of the ‘undertaking’ must go through the process of registration in order to obtain permit. It is instructive to note that, during this registration process, if the Agency is of the opinion (even though not listed) that the undertaking is likely to have adverse effect on the environment or public health, the

⁵⁸ Directive 2011/92/EU, Art 4. (The EU Directives, divides projects into two categories, Annex I and Annex II. Annex I projects, ranging from oil refinery, nuclear power stations, motorways, trading ports etc. require EIA. With Annex II projects, for which Member States are to determine whether a project needs EIA or not. With this a criterion is designed for Member States; See also CEQ Regulation for Implementing NEPA, s 1501.4)

⁵⁹ L.I. 1652, reg 30 (1)

⁶⁰ ibid, reg 1

undertaking must go through the rigorous process of the EIA. This probably is to make room for any omission on the part of the drafters, however leaving the determination to the “opinion” of the Agency is subjective and a wide discretionary power which can be abused arbitrarily or exercised in the absence of any scientific means of determining whether or not activities of undertaking have adverse impact. On the other hand, one can also argue that, the Agency may draw heavily from the undertakings listed possibly employing the *eiusdem generis* rule.

‘Adverse effect on the environment or public health’ is defined in the Regulations to mean ‘any change that an undertaking may cause to the environment and includes the effect of any change on health, socio-economic and cultural conditions’.⁶¹ This seems to suggest that the impact or effect of the undertaking should be negative in order to qualify for an EIA. This appears to be limiting and consequently, many projects may be exempted from the EIA process. Compared with other jurisdictions, for example, the EU/UK where the word ‘significant effects’ is used, the effect of a project may not necessarily be negative in order for an EIA to be required but rather any remarkable effect direct or indirect, positive or negative on the natural environment, human life in general may suffice.⁶² In this regard it could be reasoned that the incidence of conducting an EIA is deliberately wide to cover major projects.

As already noted, the most outstanding feature of the EIA Regulation is the division of undertakings into Schedule I and II. This enables easy identification of projects to be subject of the EIA process, hence the divisions need to be distinctively clear. There are however a series of ambiguity in the listing of undertakings under the various schedules. For instance, ‘community pastures’ involving the same size of land is not subject to EIA, only registration

⁶¹ ibid, reg 30 (1)

⁶² Directive 2011/92/EU, Art 2 (1)

is required, and a permit is issued.⁶³ In contrast, land development for ‘agriculture purposes’ of the same size must undergo EIA before a permit is issued.⁶⁴

This seems to suggest that pasture or grazing may not have adverse impact on the environment hence does not need EIA. This may not support environmental protection or prevent environmental pollution because there are issues of over grazing by Fulani herdsmen in the country that had generated so much tension within communities, leading to fights and killings.⁶⁵ Again clearing for ‘fruit and other vegetable farms’ of land greater than 40 hectares are exempted from EIA yet land development for agriculture purposes of the same size are to undergo EIA.⁶⁶ The question to be asked is what constitute ‘agriculture purposes?’ and which undertakings fall within this categorization or within the ambit? It is reasoned that ‘agriculture purposes’ should have been defined within the meaning and context of the Regulation in order to aid the Agency since much discretion has been designated to Agency.

There are equally inconsistencies in areas of construction and infrastructure. For example, EIA is not mandatory for construction of roads under ‘Highways and Heavy Constructions’.⁶⁷ On the other hand, for construction of roads and highways under ‘infrastructure’ EIA is mandatory.⁶⁸ Another evident example is that EIA is mandatory for hydro-electric dams and associated reservoirs; hydro-electric power developments,⁶⁹ but for dams and hydroelectric power schemes, EIA is not a requirement.⁷⁰

⁶³ LI 1652, sch 1 (1)

⁶⁴ ibid, Schedule 2 (1) (a)

⁶⁵ I. Baidoo, “Farmer-herder conflicts: A case study of Fulani herdsmen and farmers in the Agogo traditional area of the Ashanti Region” (A thesis submitted to the university of Ghana, Legon in partial fulfilment of the requirement for the award of M.A. degree in African studies July), 2014 Abstract 40-45 <<http://ugspace.ug.edu.gh>>

⁶⁶ LI 1652, sch 1 (1) (b)

⁶⁷ LI 1652, sch 1 (24)

⁶⁸ ibid, sch 2 (9)

⁶⁹ ibid, sch 2 (13)

⁷⁰ ibid, sch 1 (24)

These inconsistencies run through the divisions of the Schedules and the designation of undertakings under them. Consequently, without any attempt at clarification or interpretation, these discrepancies may lead to ambiguities which widens the discretionary power given to the Agency, in the absence of any scientific data. Additionally, in the face of such ambiguities any donor or financier may rather prefer using its own EIA rules or guidelines.

Another peculiar observation is the designation in the Regulation of certain areas as environmentally sensitive. These areas include national parks, wildlife reserves and sanctuaries, tourist site, both actual and potential, prime agricultural areas etc.⁷¹ The significance of this designation is however unclear, for though designated as environmental sensitive, certain undertakings which may cause significant damage to the environment are permitted in these areas without EIA. In other words, EIA is not mandatory for undertakings within these areas. One would have thought that any undertaking within these areas will be prohibited or subjected to full EIA procedure.

Since the division of undertakings into schedule 1 and 2 is crucial for the inception of the EIA process, it follows therefore that if the Agency, which is the main body to oversee to its running is not clear as an oversight institution regarding which undertakings require EIA from the outset, the whole process may be flawed. These are matters that may debilitate against the use of EIA as a means of pollution control.

5.4.1.2 Stage 2: Project Approval and Assessment

Ensuring proactive impact identification and control through project approval and assessment by technical experts are the emphasis of stage in Gibson's model. Upon registration the initial assessment commences by screening. As it stands, screening is the most important aspect of

⁷¹ ibid, sch 5

the approval process, in the sense that it is the process through which it is determined whether a project should undergo full EIA or not. Matters which are taken into consideration are:

- a. the location, size and likely output of the undertaking;
- b. the technology intended to be used;
- c. the concerns of the general public, if any, and in particular concerns of immediate residents if any;
- d. land use; and
- e. any other factors of relevance to the particular undertaking to which the application relates.⁷²

Impact identification is the mainstay of the EIA process, for the reason that it is through identification that the process of project approval and assessment can be launched towards environmental damage control. In Gibson's model, this is better facilitated by technical experts. The need for technical expertise is underscored as the Agency is to screen the initial application for permit for Schedule 2 undertakings, that is, those projects requiring an EIA, taking into consideration technology intended to be used.⁷³ The mention of technology in this regard implies that officers of the Agency should have prior knowledge of that technology intended to be used by the developer. For it stands to reason that if the granting of the permit depends on assessing the technology intending to be used, knowledge of that technology is essential. In many instances, technology intended to be used by the applicant/contractor tends to be higher than what pertains in the country especially when the applicant is a foreign company with advanced technology.

⁷² LI 1652, reg 5(1)

⁷³ LI 1652, reg 5 (1) (b)

The concern of the general public and immediate residents is also to be considered in the initial screening process towards project approval.⁷⁴ This correlates with the fact that safe environmental and health of the people are the tenets of sustainable development hence the impact of an undertaking must be determined in the EIA through consultation the people. Thus, the general public should be involved or should be in the known at the outset or at the initial stage of seeking permit. This may not really be the case. Are the public always in the known at the initial stage? The danger is that, the public may only come to realize only when works starts.

The onus lies on the applicant to report to state whether or not the undertaking will have impact on the environmental, health and safety of the people. In this regard, the applicant must show a clear commitment to address unavoidable environmental and health impacts and set up steps and / or alternatives of the undertaken where necessary, to mitigate these impacts.⁷⁵ It is based on these that the Agency approves, objects, or requires that the applicant submit a preliminary report or an Environmental Impact Assessment is required. Aside for the use of the phrase “where necessary” which leaves much to the determination of the applicant, a reasoning is that in the absence of any scientific knowledge or the technology advancement on the part of the Agency to cross validate some of the issues in the initial report, the applicant may present a report that is positive on the advancement of his undertaking or present a report that enures to the benefit of the applicant. Besides as noted earlier if the Agency is not familiar with the intended technology to be used, it will be difficult to cross validate all the adverse impacts and alternatives towards mitigation.

⁷⁴ ibid, reg 5 (1) (c)

⁷⁵ reg 5(2).

The Regulation says, EIA is to be submitted by the ‘responsible person’ to the Agency,⁷⁶ whereas in Reg. 9 (1) the word ‘applicant’ is used instead of ‘responsible person’. In certain instances in Ghana, there is a difference between the proposer of the project and the developer, and in some occasions, the applicant is different from the proponent of the project and also the contractor. It is reasoned that these apparent inconsistencies may lead to confusion as regards identification of the proper person or entity on whom the obligation lies under the law to prepare an EIA.

The Agency is also to determine the form of application as well as the application fee. This is another example of wide discretionary powers, discussed above, given to the Agency.⁷⁷ Whereas in the parent Act, this a preserve of the Minister.⁷⁸ This is a source of apparent contradiction and may bring confusion which may breed antagonism and leads to lack of cooperation and power struggle.

Since it is after this initial assessment that the Agency decides whether an EIA should further be conducted. It follows therefore that this is a crucial process in the EIA and any misstep will have rather reduce the EIA to a mere administrative formality, unable to bring about the environmental wellbeing that the process seeks to achieve.

5.4.1.3 Stage 3: Integration of Wider Environmental Checks

Stage three centres on the integration of wider environmental checks considering the nature of the entire assessment process. This will help to identify the best options that are also cost effective and involves the public as well. The wider environmental checks in this regard will

⁷⁶ LI 1652, reg 3

⁷⁷ ibid, reg. 4

⁷⁸ Environmental Protection Agency Act 1994, s 62 (1) (b) & (i)

include socio-economic, cultural and health. It also involves putting in place mitigation measures as well as monitoring to ensure that these measures are implemented.

Where the undertaking is likely to have adverse impact on the environment, an Environmental Impact Statement (EIS) is required.⁷⁹ The EIS is to be part of a scoping report. It is the scoping report that sets out the extent of environmental impact assessment to be carried out by the applicant.⁸⁰ "Adverse effect on the environment or public health" means any change that an undertaking may cause to the environment and includes the effect of any change on health, socio-economic and cultural conditions.⁸¹ The report also includes 'term of reference' indicating the essential issues to be addressed in the EIS. These include:

- a. description of and analysis of the need for the undertaking;⁸²
- b. alternatives to the undertaking;⁸³
- c. information on potential, positive and negative impacts of the proposed undertaking from the environmental, social, economic and cultural aspect in relation to the different phases of development of the undertaking;
- d. Potential impact on the socio-economic, health and the environment at large, and measures towards mitigation.⁸⁴

The report must also include environmental management and monitoring plans. This implies that there should be continuous monitoring of these phases.⁸⁵ It is yet to be determine how this monitoring is carried out because there are no guidelines in the Regulation to this effect.

⁷⁹ LI 1652 reg 9 (4)

⁸⁰ LI 1652 reg 11

⁸¹ LI 1652 30 (1)

⁸² LI 1652 reg 12 (a & b)

⁸³ LI 1652 reg 12 (c)

⁸⁴ LI 1652 reg 12 (f) & (g)

⁸⁵ LI 1652 reg 12 (h), (i), (j) & (m)

An interesting provision is an indication whether any area outside Ghana is likely to be affected by the activities of the undertaking, probably in conformity to the obligation to prevent transboundary impact indicated in Principle 2 of Rio Declaration.⁸⁶ Yet it is not stated in the Regulation how the process should be carried and how adverse impact should be mitigated outside the jurisdiction of the country. Thus far, it is not known whether this provision has been functional but Tweneboa Enyenra Ntomme (T.E.N.) oil fields Development Scoping Report 20/01/2012 by Tullow Oil sets out ramifications of the development of the oil fields on the ecological system in La Cote d' Ivoire.

Matters to be addressed in EIS among other things, are “possible direct and indirect and impact of the undertaking on the environment at the pre-construction, construction, operation, decommissioning and post-decommissioning.....”.⁸⁷ Again this provision underscores a continuous monitoring even after decommissioning. Accordingly, EIS for mining and other extractive industry include reclamation plans. For example, The Mining and Mineral's Act 2007 (Act 703) states before undertaking an activity under a mineral right, a holder of a mineral right shall obtain the necessary and approvals and permits required from EPA for the protection of natural resources, public health and the environment.⁸⁸ This is laudable as a clear illustration of coordination between legislation and sectors, but much needed to be done in this regard, because though the Mining Act enjoins a holder of a mineral right to comply with applicable regulation and any other enactment for the protection of the environment,⁸⁹ the same Act mandates the Minister for Mines/ lands & Natural Resources to enact regulations to provide for matters concerning environmental protection health and safety, a mandate reserve for the

⁸⁶ LI 1652 reg 12 (o)

⁸⁷ LI 1652 reg 14 (2)

⁸⁸ Mining and Mineral's Act 2007, s 18 (1)

⁸⁹ LI 1652 reg 8 (2)

MESTI and EPA.⁹⁰ A clear indication of duplication of roles which may lead to inefficiencies within the system.

The Regulation directs the Agency to publish environmental permit issued in the Gazette, mass media and in such form as it shall deem notice within three (3) months of the date of issue.⁹¹ The essence of this provision, may be understood as, to involve the public in the decision making with regard to how that undertaking will impact on their socio-economic and cultural lives. However, the fact that the permit has been issued already means the decision on the EIA has been taken. So, in effect this provision may be for effective monitoring so that those projects that are not adhering to the conditions of the permit may be held liable. Public participation is an integral part of the EIA process. However, the mode of inviting/involving the public stipulated in the Regulation may not be effective so as to achieve the desired milestone in the overall EIA process. The reason being that, how many people have access to the Gazette and how many people can read? The efficacy of this method of dissemination need to be assessed vis-à-vis the literacy rate in Ghana, especially for areas where most project are and are likely to generate the most impact.

It is the responsibility of the applicant to:

- a. Advertise in at least one national newspaper and a newspaper, if any, circulating in the locality where the proposed undertaking is situated.⁹²
- b. Make available for inspection by the general public in the locality of the proposed undertaking, copies of the scoping report.⁹³

Emphasis is on the locality of the impact, however, again the mode of dissemination of information, namely, to advertise in a newspaper may not be effective for the very reason that:

⁹⁰ Mining and Mineral's Act 2007 [Section 110 (4)(a)].

⁹¹ reg 8 (2)

⁹² reg 15 (b)

⁹³ reg 15 (c)

- i. local newspapers are rare; and
- ii. the people in the locality may not be able to read.

Perhaps the use of the phrase “if any” depicts the fact that the drafters are also aware that local newspapers are not common.

In contrast, the mode of making available the scoping report (EIS) is not stated. It is left to the discretion of the applicant whose responsibility it is to make sure availability is ensured. It could have been helpful to mention some venues where the report can be found, for instance office of the District Assembly, the chief palace, and a supervisory provision that will guarantee that the public are offered access to the information, and secondly to hold applicants liable if there is enough evidence that they have withheld information. This is to circumvent the poor record-keeping culture which pertains in most public institutions in the country.⁹⁴ This is of high importance because a condition for public hearing is where there is “great adverse public reaction” to the commencement of the proposed undertaking.⁹⁵ Conversely, it follows therefore that a way of avoiding public hearing is to make sure the reports are unavailable to the public as possible.

Again, if the public is oblivious of the undertaking or has little understanding all that the project entails, they may give little feedback or none at all. This means that there will be no public hearing, whereas public hearing is fundamental to a successful EIA procedure. Local communities, NGOs, as well as the general public are invited to make their complaints as regards any effect of the project.⁹⁶ After which a panel is appointed to hear any complaint

⁹⁴ Justice Yaw Appau the Sole Commissioner on Judgment Debts Commission (JDC) bemoaned the negative public sector attitude to proper record keeping, in his final report to the Government. *White Paper on the Report of the Commission of Inquiry into Payments from Public Funds Arising from Judgment Debts & Akin Matters* (C.I. 79/2012) Chapter 5 (a) (i) p. 91

⁹⁵ LI 1652 reg 17 (1) (a)

⁹⁶ ibid reg 16 (5)

lodged with the Agency concerning the undertaking. All these call for a massive education and publicity regarding the terms of the proposed undertaking, the effects, etc. for the affected community in particular and the general public as a whole to be able to make a meaningful input. The education level of the affected communities must also be taken into consideration when deciding on means of publicising the project and its impacts.

5.4.1.4 Stage 4: Integrated Planning and Decision-making

The need for integrated planning and decision making for effective sustainability in order to address policies and the outcome of decision-making is the deliberation of stage 4 of Gibson's model. The permit system adopted is the crux of the EIA process. After the permit has been issued for a project, the proponent of the project must adhere to the conditions of the permit in order to obtain a certificate within 24 months. In this way, developmental progress is measured as against the impact of those projects, negative or positive on the environment, socio-economic, cultural and health. These conditions are to comply with mitigation commitments indicated in the environmental impact statement or preliminary environmental report⁹⁷ and to submit an annual report every 12 months after the commencement of the activity. However, the form and contents are not stated, rather it will be such as the Agency will direct.⁹⁸

The person responsible for an undertaking for which a preliminary environmental report or EIS has been approved shall submit to the Agency an Environmental Management Plan (EMP) in respect of his operations within 18 months of commencement of operations and thereafter, every three (3) years.⁹⁹ The EMP shall set out steps that are intended to be taken to manage

⁹⁷ LI 1652 reg 22

⁹⁸ ibid reg 25

⁹⁹ ibid reg 24

any significant environmental impact that may result from the operation of the undertaking.¹⁰⁰ Failure to comply with or commit to these steps to manage the environment as stated in the applicants' own EMP or failure to comply with mitigation commitments in the assessment report or environmental management plan, may result in a permit or a certificate being 'revoked', 'cancelled' or 'suspended'.¹⁰¹ It is not clear why the use of the word "may". Could it be because of the various options in the action that can be taken? One would have thought that this being a serious issue, the wording should be more mandatory, for instance by the use of "shall" instead of "may".

Environmental permits or certificates may also be suspended, and a new EIA procedure will be called for, if due to natural causes, before or during the implementation of the undertaking, there is a fundamental change in the environment.¹⁰² The Agency may also 'suspend' an environmental permit or certificate in the event of occurrence of fundamental change in the environment due to 'natural causes' before or during the implementation of the undertaking; and upon such change the environmental assessment report and the environmental management plan shall be revised on the basis of the new environmental condition. This calls for continuous monitoring and measures must be instituted for effective management of the environment to attain the desired level of sustainable development.

¹⁰⁰ LI 1652 reg 24 (4)

¹⁰¹ ibid reg 26 (1) (e)

¹⁰² LI 1652 reg 26 (2)

5.5 THE UK AND GHANAIAN REGULATION COMPARED

The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 of UK (SI 2017/0571) and the Environmental Impact Assessment Regulations 1999 of Ghana (LI 1652) demonstrate some similarities. Presumably because being a former British colony, Ghana's legal system is modelled on the English Legal System (ELS), and even after independence, the influence of ELS is still seen in the way Ghana's laws are structured. The constitution of Ghana defines the sources of laws of Ghana as comprising *inter alia*, of the common law (by implication, English law derived from custom and judicial precedents) and doctrines of equity;¹⁰³ and customary laws, that is 'the rules of law, which by custom are applicable to particular communities in Ghana'.¹⁰⁴ The two Regulations will be examined on the basis of dynamics of their enactment as well as salient features in implementation procedure.

5.5.1 Dynamics of SI 2017/0571 and LI 1652

The UK enacted the Regulation by virtue of its membership of the EU. Accordingly, the objective of the Regulation must be consistent with the general objectives of the EU. Thus, EU undertones are brought to bear on the structure of the Regulation, implementation and enforcement. It follows therefore that EU will exercise, to an extent, an oversight responsibility on the implementation and enforcement of the Directive in Member States. By this means, the UK will be under watch and brought to book in cases of shortfalls in transposition or compliance. This is evidenced in a couple of cases and reported at the European Court of Justice.¹⁰⁵ The Regulation also obliges the UK to take into account any EIA report from the

¹⁰³ The Constitution of Ghana 1992, art 11 (1) (e) & (2)

¹⁰⁴ ibid art 11 (3)

¹⁰⁵ environmental impact assessment of projects: Rulings of the European Court of justice (2017) <https://ec.europa.eu/commission/index_en

EU on a project when carrying out any EIA procedure on that project. And then, there is also the European Union Committee of the House of Lords which scrutinises the UK Government's policies and actions in respect of the EU and the sub-committee on Energy and Environment focuses, on a range of policy areas relating to environment and energy, among others. All these serve to improve the EIA process as a whole.

By contrast, Ghana enacted its Regulation partially to fulfil international treaty obligations,¹⁰⁶ and partially due to pressure from donors¹⁰⁷. Most International financial institutions make EIA a condition for providing development assistance.¹⁰⁸ The only supervision or checks that may be available are sanctions from financiers of development projects, or withdrawal of funds altogether for the project. But then, this may not be efficient way of enforcing the Regulation, especially if the donor / financier has some benefit or advantage to derive from the undertaking.

Notwithstanding the fundamental difference, discussed above, there are a couple of similarities, namely: EIA, as a permit procedure (i.e. the procedure being carried out in furtherance of issuance of permit); structuring of the regulation; and supervising / overseeing authority.

5.5.2 Categorisation of Projects

Both regulations classified projects into two categories: Schedule I and Schedule II and designate the category for which EIA should be obligatory. As has been discussed earlier, whereas the classification in the UK Regulation (SI 2017/0571) is clear and concise that of Ghana (LI 1652) presents series of ambiguities in the listing of undertakings under the various schedules.¹⁰⁹ There is an absence of thresholds and listed criteria to guide the classification

¹⁰⁶ National Biodiversity Strategy for Ghana pp 26,30,45 <<https://www.cbd.int/doc/world/gh/gh-nbsap-01-en.pdf>> accessed December 5, 2017

¹⁰⁷ Mohamed-Ali and Katima, ‘United Nations Economic Commission for Africa’ (2005) Review of the Application of Environmental Impact Assessment in Selected African Countries 33

¹⁰⁸ See discussions in chapter four

¹⁰⁹ See discussions under Stage 1: Provisions Relating to Pollution Control

process. A point to note is the use of phrase “adverse effect” in the LI 1652 as the key word to denote the extent of impact of an undertaking. By contrast, the expression “significant effects” is used in the SI 2017/0571. The use of the “adverse impact” seems to suggest that EIA should be conducted only when the impact of the undertaking is predicted to be detrimental to the environment, health and socio-cultural and economic life of the people has already been discussed.¹¹⁰ Whereas the word ‘significant effects’ imply that EIA is required so far as the impact of a project, direct or indirect, positive or negative is remarkable so as to leave a noticeable trail. In this scenario, emphasis is on magnitude of the effects of a project rather than its undesirable impacts. Magnitude in this regard is measurable as compared with undesirable impacts which may be based on opinions and subjective.

5.5.3 Competent Authority

A significant means used by the EU to facilitate the implementation of the EIA Directive is the requirement that Member States must establish an authority or an institution to oversee to its operation.¹¹¹ In the UK, the supervising authority may be said to be hierarchical depending on the matter in issue, that is, from the local planning authority to the Secretary of State and then to the inspector (in matters of determination of an appeal). However, in Ghana, there is only one designation, the Environmental Protection Agency (EPA), whose opinion is paramount and final in deciding whether undertaking not listed in either Schedule II should undergo EIA or not. Again, it is the same Agency that serves as consultant in some instances, and also, as monitors. Whereas in the UK, the process of taking that decision does not rest on one body alone. Detailed modalities are stipulated in the Regulation as regards seeking the opinion of the relevant authorities. For instance, the opportunity is given to anyone to seek the direction of the Secretary of State if the local authority fails to give its opinion on the matter or

¹¹⁰ See explanation on fn 61,

¹¹¹ See fns 26 - 28

delays.¹¹² The Secretary of State may also appoint an inspector on matters of appeal. Then there is the Environmental Agency in the UK which is a statutory consultee whereby other authorised bodies consult in technical matters as regards the environment. Above all, there is a general prohibition expressly stated in the law that the local planning authority, or Secretary of State, or an inspector cannot grant a permit for an EIA development unless EIA is carried out for that development.¹¹³ In this regard, any officer who acts in contravention of this provision can be deemed to have acted *ultra vires*. All of these factors serve as checks and balances on any arbitrary use of authority.

Considering the key role played by the relevant authority, the competency of its personnel is very important. It is stated emphatically in the UK Regulation that ‘the relevant planning authority or the Secretary of State must ensure that they have, or have access as necessary to, sufficient expertise to examine the environmental statement’.¹¹⁴ The fact that the expertise of personnel is expressly stated in the Regulation underscores the importance attached to it. In Ghana, by contrast, the Regulation simply places the ‘Agency’ (meaning the Environmental Protection Agency) as the body authorised to supervise the EIA process. The Agency, nonetheless, has internal structures with specialised divisions. For instance, EIA for mining is supervised by one division and all other projects are under a separate division charged with Monitoring and Evaluation. Perhaps this is to maximise expertise.

The SI 2017/0571 also prescribes coordination among other related organisations as well as coordination with other legal instruments. For instance, consultation bodies such as the Marine Management Organisation, Natural England, the Environmental Agency etc.,¹¹⁵ are to be

¹¹² See fns 41, 42, 54

¹¹³ SI 2017/0571, reg 3

¹¹⁴ *ibid*, 4 (5)

¹¹⁵ *ibid*, reg 2 (1) (a) – (c)

consulted by the relevant authority before a scoping opinion is given.¹¹⁶ Also the final decision taken by the relevant authority must be communicated to the Secretary of State, the consultation bodies as well as the public.¹¹⁷ The fact that EIA is enforced in several regulations pertaining to the subject matter in issue may also be overwhelming. Hence, the obligation that EIA requirements under other legal instruments must be coordinated.¹¹⁸ Similarly, in Ghana, an applicant who is to submit an EIS is under obligation to give notice of the proposed undertaking to the relevant Ministries, government departments and organisations and the relevant Metropolitan, Municipal or District Assembly.¹¹⁹ In Ghana, the Regulation is at present the only law governing the EIA process. All other laws direct that EIA must be carried out in accordance with the Regulation.¹²⁰

5.5.4 Involvement of the Public

A notable difference between the two Regulations is in the opportunities made available to the public to facilitate their involvement. In the UK, the public is engaged at every single stage of the EIA process, from scoping to examination of the contents of the EIS, to decision-making. For example, any person concerned with the development can request for screening direction from the Secretary of State (by writing).¹²¹ The mention of “any person” may be translated (by necessary implication) as any member of the public who has an interest in the development will be considered. And the Secretary of State is obliged to respond.¹²²

The public must be adequately informed in order to become involved. They must have access to the relevant documents relating the EIA development. Provisions abound in the UK

¹¹⁶ SI 2017/0571, 15 (4)

¹¹⁷ ibid, 30 (1)

¹¹⁸ SI 2017/0571, 26 (3) (c), 27

¹¹⁹ LI 1652, 15 (1) (a)

¹²⁰ See fns 98, 99, 100 & 101 of Chapter 3

¹²¹ SI 2017/0571, reg 5(6) (b)

¹²² ibid, reg 7 (8) (a)

Regulation in this regard. For example, the local authority must notify any interested person who is unlikely to become aware of the ES by means of a site notice or by local advertisement, by providing relevant details of the ES and where copies can be found.¹²³ In the same vein, where application for planning permission is not accompanied by ES, that is, where the applicant submits the ES afterwards, the applicant must ensure that a notice of the application is published in the local newspaper circulating in the locality in which the land is situated giving particulars of both the applicant, the project and where copies of other documents may be found for public inspection,¹²⁴ and must ensure that reasonable copies are available.¹²⁵ The notice must also include an address where any representation from the public may be sent.¹²⁶ This applies also to any application or appeal made or referred to the Secretary of State directly (with or without ES). The Secretary of State may direct service of notice to the public through the appropriate means.¹²⁷ Any additional information required of the applicant to be submitted in order for the relevant authority to reach a reasoned conclusion on the likely significant effects of the development described in the application must be made to the public in the manner aforesaid.¹²⁸ Where it is impossible for the applicant to give notice to the public in the form and manner prescribed in the Regulation, the relevant planning authority must make the environmental statement available for inspection on a website maintained by or on behalf of the authority.¹²⁹

The applicant must also provide a non-technical summary of the Environmental Statement, probably for the benefit of the public so as to make it easier for members of the public who are not into technicalities or able to understand them.¹³⁰ Non-compliance with the obligation to

¹²³ SI 2017/0571, reg 19 (3) (d)

¹²⁴ ibid, reg 20 (2)

¹²⁵ ibid, reg 23

¹²⁶ ibid, reg 20 (2) (k)

¹²⁷ ibid, reg 12 (5), 13 (5), 14 (6)

¹²⁸ ibid, reg 25

¹²⁹ SI 2017/0571, reg 20 (6) (7)

¹³⁰ ibid, 18 (3)

give adequate notice can lead to the application being refused.¹³¹ All relevant documents concerning any decision taken must be made available for inspection by any ‘members of the public at all reasonable hours and copies of those documents must remain so available for a period of 2 years.¹³² The final decision must also be communicated to the public through the appropriate means and also made available a register that contains all the details regarding the decision.¹³³

By contrast, in Ghana, the mode of dissemination of information on the project is not engaging enough, as many people may not be able to get access to the EIS. For example, notice of scoping report is to be advertised in a national newspaper and a newspaper, circulating in the locality where the proposed undertaking is to be situated.¹³⁴ Where for instance, national newspaper does not reach the locality or where there is no local newspaper, it means the people will not get to hear of the project. Comparatively, there are no detailed provisions on date, place and duration the EIS to be made available for the public. Likewise, there is no mention of a convenient time and hours for inspection, number of copies of EIS to be made available, and address for public representation. The Regulation only stipulates that the scoping report should be made available for inspection by the general public in the locality of the proposed undertaking. The Form to be used in advertising or giving notice of the scoping report is stated in Schedule 3 but provides very little information in this regard. A sample of scoping notice format provided in the Regulation is shown below:

¹³¹ ibid, reg 11 (8)

¹³² ibid, reg 28 (1) & (2)

¹³³ ibid, reg 30 (1) (c) & (d)

¹³⁴ LI 1652, reg 15 (1) (b)

SCHEDULE 3 (Regulation 15 (2) SCOPING NOTICE		
(Name of company/organisation)		
Proposed to establish a		
.....		
(Project Undertaking)		
at.....	in the	of the.....
(Location)	(District(s))	(Region)
Notice of the proposed.....is hereby served for public		
Date:.....		

FIGURE 4 SCOPING NOTICE FORMAT

With no express provision on the manner in which information must be disseminated to the public, the applicant seems not obliged to ensure that the public are well informed. And the public may not be able to hold an applicant liable for improper or inadequate publicity on the project. This is exacerbating especially when public hearing is conditioned upon the number and nature of complaints made.¹³⁵

5.5.5 Complaint Procedure

The UK Regulation has measures for addressing grievances. First of all, opportunities for appealing to the Secretary of State as regards screening and scoping directions are in themselves a way of registering protests. The Regulation also allows application to the High Court in respect of *ultra vires* acts on the part of the Secretary of State or an inspector for acts such as granting of planning permission for unauthorised EIA development; or granting planning permission or subsequent consent for EIA development where EIA has not been carried out in respect of that development.¹³⁶ In Ghana, there is no express provision for

¹³⁵ LI 1652, reg 17 (1) (a)

¹³⁶ SI 2017/0571 reg 66

recourse to the court of law. The Regulation only states that any discontent person regarding the ‘decision’ or ‘action’ of the Agency should make a report to the minister.¹³⁷ The ‘decision’ or ‘action’ for which a report should be made is not specified. The minister for his part must constitute a panel to be made up of appropriate persons to hear the matter and give their report.¹³⁸ After the decision of the panel, nothing is said of an appeal or option to the court, thereby giving the impression that the decision of the panel is final. This may embolden arbitrariness and lead to biased decisions since the Agency has the power to suspend, revoke or cancel the permit.¹³⁹

However, there is a general provision on the penalty for offences for anyone who contravenes any provision of the Regulation. such acts as commencing an undertaking without an environmental permit; failing to conduct an environmental impact assessment for which EIA is obligatory; knowingly submitting false information regarding the EIA process to the Agency; or failing to submit annual environmental report; etc. are considered acts that attract a penalty.¹⁴⁰ Here, emphasis is on the actions of the applicant than the inaction of the Agency.

5.5.6 Environmental Management Plan

As already discussed, an EMP is an essential part of the EIA process.¹⁴¹ Whereas in Ghana, there is the express mention in the Regulation of an EMP to be included in the EIS,¹⁴² this is absent in the UK Regulation. However, the UK Regulation replicates the EU Directives on the requirement that applicant must state ‘measures envisaged to avoid, prevent, reduce or offset any identified significant adverse effects on the environment and proposed monitoring

¹³⁷ LI 1652, reg, 27 (1)

¹³⁸ LI 1652, reg 27 (2)

¹³⁹ LI 1652, 26 (1)

¹⁴⁰ ibid, reg 29

¹⁴¹ See discussions on EIA Reporting (chapter 3)

¹⁴² LI 1652, reg 12 (m)

arrangements'.¹⁴³ The EMP of Ghana does seem to be a compulsion from the donors because apart from for EIS for mining that requires a reclamation plan¹⁴⁴ the applicant may opt to include only a provisional EMP in the EIS¹⁴⁵ and submit a detailed one later, within 18 months of commencement of operations, that is, after the permit is granted, and thereafter every 3 years'.¹⁴⁶

5.5.7 Monitoring

There is no express provision on monitoring in both Regulation. Presumably, monitoring is purposely left to the internal arrangement of the relevant authorities. Ghana, for her part, has in the Regulation a requirement that the applicant must comply with mitigation commitments in the environmental management plan failing to which the applicant's permit shall be revoked or suspended.¹⁴⁷ Again, the applicant must submit an annual report every 12 months from the date of commencement of operations.¹⁴⁸ The content and form of the report is to be determined by the Agency.¹⁴⁹ Failure to submit an annual report is an offence that attract penalties such summary conviction to a fine or an imprisonment.¹⁵⁰

5.5.8 Local and Neighbourhood Development orders

Another obvious difference between the two Regulations is the provision regarding Local and Neighbourhood Development Orders in the UK Regulation.¹⁵¹ This is an order made by a local authority to implement a development policy in the locality or neighbourhood within which the order is given or in a defined area specified in the order.¹⁵² These orders usually concern a

¹⁴³ SI 2017/0571, reg 18 (3) (C), sch 4 para 7

¹⁴⁴ ibid reg 14 (4)

¹⁴⁵ ibid, reg 12 (m)

¹⁴⁶ ibid, reg 24 (1) & (2)

¹⁴⁷ ibid, reg 26 (1) (e)

¹⁴⁸ ibid, reg 25 (1)

¹⁴⁹ LI 1652, reg 25 (2)

¹⁵⁰ ibid, reg 29

¹⁵¹ SI 2017/0571 reg 32 & 33

¹⁵² ibid, reg 2

development that falls under Schedule II, thus requiring evaluation by the competent authority to determine whether it should undergo EIA or not. The Regulation clarifies the steps that both applicant and the local authority must go through when it is the question of such orders. In Ghana the Local Government Act 2016 (Act 936) gives autonomy to the District Assemblies in that regard. It is not clear what happens if the undertaking falls under schedule II, for which EIA is compulsory or Schedule I which needs to be registered. Provisions in the Local Governance Act seem to suggest that the District Local Planning Authority has its own permit process.¹⁵³ Considering the purpose of Act 936 which among other things, is to regulate National Development Planning System, and to define and regulate planning procedures of District Assemblies,¹⁵⁴ a problem of conflicting mandates may arise.

5.5.9 Periodic Review

Another important distinguishing factor is that the UK Regulation requires the Secretary of State to carry out a periodic review of the regulation (a maximum of 5 years interval) and to publish conclusions.¹⁵⁵ In Ghana there is no such provision. Since the Regulation was enacted in 1999 no review has been conducted. The only amendment made has been with respect to fees and charges for processing EIA applications.¹⁵⁶

5.6 CONCLUSION

NEPA has been heralded to be the pioneer of the EIA process, at least in the legal sense, because the process of EIA has contributed environmentally sensitive policies being

¹⁵³ Act 936 ss 91-107

¹⁵⁴ Act 936, see the long title

¹⁵⁵ SI 2017/0571 reg 71

¹⁵⁶ Environmental Impact Assessment (amendment fees and charges) Regulation 2002 (LI 1703)

incorporated into most decision-making machinery worldwide. Nonetheless it has also been criticised for inefficiencies and delays,¹⁵⁷ and giving rise to much litigation.¹⁵⁸

In the case of the UK, with Brexit in the offing, it is uncertain the extent to which leaving the EU will affect future implementation and effectiveness of the Regulation. Since the EIA Regulation has its foundation in the EU law, the extent of EU's clout on the Regulation may depend on the terms reached with the EU during Brexit negotiations. The enactment of the European Union (Withdrawal) Act 2018 and eventual repeal of the European Communities Act 1972 on exit day brings these matters to a decisive end.¹⁵⁹ Point to note is that the oversight supervision exercised by EU institutions, such as, the various Committees and the Court of Justice of the European Union (CJEU) will also cease. This is because UK has unequivocally stated that 'the jurisdiction of the CJEU in the UK will end - in particular, the purpose of continuing cases which are aimed at incentivising compliance with EU law',¹⁶⁰, after UK leaves the EU. Subsequent discussions have been that UK had its own well-developed and complex land use system before transposing of EU Directives; it stands to reason that Brexit and its subsequent negotiations and decisions will not have so much effect on the Regulation. This is so especially in areas relating to effectiveness in land use planning system and by extension to safe environmental practices.

The contents of both Regulations rightly reflect the purpose for which they were enacted, namely, sound environmental practices relating to land use. However, the UK Regulation presents a much complex yet detailed means of procedures which undoubtedly bring to fruition

¹⁵⁷ William Sheate, *ENVIRONMENTAL IMPACT ASSESSMENT: LAW & POLICY Making an Impact II* (Cameron May Ltd 1996) 44

¹⁵⁸ Stephen Truman QC, *Environmental Impact Assessment*, (2nd edn, Bloomsbury Professional Ltd 2012) 2

¹⁵⁹ As per Section (1) of the European Union (Withdrawal Act) 2018, the ECA is automatically repealed on exit day; and Section 2 (1) expressly states that any 'EU-derived' domestic legislation, in force before exit day, will continue to have effect after Brexit.

¹⁶⁰ See 'Ongoing Union judicial and administrative proceedings - Position Paper' (13 July 2017) <<https://www.gov.uk/government/publications/ongoing-union-judicial-and-administrative-proceedings-position-paper>> Accessed December 13, 2017

its stated objectives. This makes Ghana's Regulation appears lax and lacking in rigor with reference to form and content. Four issues stand out to be improved: Categorisation of projects; mode of public engagement; complaints procedure and recourse to the law court.

Ghana's Regulation pales in comparison to the other EIA laws that have been examined in terms of rigorous system that has been established in these jurisdictions. It is reasoned that the apparent inherent loopholes in the law that need to be addressed and could be reviewed to suit current trends for a better result if the country is allowed the freewill to use its own laws for it is in the continuous use of the law that this can be achieved; practice makes perfect.

The EIA models from the systems discussed in this chapter emphasize the historical background of EIA examined in chapter three and highlight the fact that though similar, the models are from systems which are legally, ideologically and psychologically different with political or socio-economic differences and conceptual understandings and level of development. In a similar vein, the comparative evaluation of the EIA law in the UK and that of Ghana highlights best practices and deficiencies.

The results of a fieldwork undertaken to ascertain first-hand, the enforcement and implementation of the EIA Regulation of Ghana relating to some infrastructural projects are presented in the next chapter. The fieldwork is post-project examination to gather first-hand information from the people who are integral part of the EIA system in Ghana regarding how the process is carried out, and the effectiveness of the procedure seen through the eyes of both competent authorities and the people affected by the projects. The projects selected for this exercise were donor funded therefore carefully chosen to establish a connection between the guidelines from financial sponsors discussed in chapter four.

CHAPTER SIX

ANALYSIS OF DATA¹⁶¹

6.0 INTRODUCTION

The aim of the research was to ascertain how beneficial the practice of Environmental Impact Assessment (EIA) may be to communities affected by projects regarding their economic wellbeing social and cultural development, poverty eradication towards sustainable development in Ghana. It was also to examine the suitability of some foreign guidelines used in Ghana to carry out the EIA process. Whether these guidelines are really efficient and efficacious in delivering the mandate of sustainable development in Ghana is also the focus of the research. Having examined some guidelines selected financial sponsors, and EIA systems from other jurisdiction and that of Ghana in chapters four and five, the current chapter presents the results of a post-project examination of selected infrastructural developmental projects for which EIA was carried out. This is to gather a first-hand information from the people who are integral part of the EIA system in Ghana, namely EPA officials, EIA Consultants and project affected communities regarding how the process is carried out. It is also to gather information on the effectiveness of the procedure seen through the eyes of both competent authorities and the people affected by the projects. The projects for the fieldwork were selected to reflect the financial sponsorship of projects in Ghana and to establish a correlation with the guidelines discussed in chapter four.

This chapter also explains the methodology adopted to collect and to analyse the data. The study aimed at evaluating after-effects of these projects for which EIA was conducted. Therefore, the study involved identifying and interviewing the beneficiaries of these projects and those with responsibilities to carry out EIA and / or regulate the EIA process. In view of

¹⁶¹ Whereas the research is not a quantitative study, the researcher decided to include some quantitative data and graphical representation in the analysis to let the reader know what the broad prospects are.

the aim of the research (that is, to ascertain how beneficial the practice of Environmental Impact Assessment (EIA) to communities affected by projects regarding their economic wellbeing social and cultural development, poverty eradication towards sustainable development in Ghana), the qualitative approach was considered appropriate. Qualitative approach is most suitable because it examines phenomena in social settings and considers those phenomena in context.¹⁶² The social settings relate to the physical environment within which an identifiable group of people live and interact with each other. In the present research, the communities within which these projects are situated presents the appropriate social setting. The beneficiaries of these projects as well as all actors in the EIA process together speak to the environmental assessment process within the social setting. Thus, the qualitative analysis is targeted at specific projects and the supposed beneficiaries of those projects.

6.1 THE METHODOLOGY

Mining (Newmont Mines Kenyasi No.2), a dam for hydro-electric power (Bui Dam) and a highway (George W. Bush Highway) are infrastructural projects selected for the study. These projects were selected because they are infrastructural development and industry which had a considerable impact on the environment and the socio-cultural life of the communities within which they are sited. They are also the type of undertakings, according to the LI 1652 for which EIA was compulsory. More so, two of the projects, the mine and the highway were financed by the IFC and MCC, financial institutions whose guidelines were examined in chapter four.

¹⁶² Lisa Webley, ‘Qualitative Approach to Empirical Research’ in Peter Cane and Herbert Kritzer (eds), *The Oxford Handbook of Empirical Legal Research* (OUP 2012) 929

6.1.1 Selection of Research Participants

Participants selected for the study are officials of the Environmental Protection Agency (EPA), some EIA consultants and some members of the communities selected for the study. These three categories of people are termed: decision makers; actors; and beneficiaries respectively, for the purposes of the present research. Decision-makers refer to officials of the EPA, the institution with the responsibility to oversee the conduct of EIA in Ghana. Actors are private consultants who are contracted by proponents or sponsors of the project to prepare EIA reports. Beneficiaries refer to people living within the community where selected projects for the present research are located. In all, eighty-two participants were recruited for the study.

6.1.2 Methods of Data Collection

A combination of Key Informant Interviews (KII), Focus Group Discussions (FGD), and questionnaires were employed, across the three categories of participants. Semi-structured method was employed with some open-ended questions. The FGDs were recorded and later transcribed. One KII was conducted at the EPA because it was aimed at collecting data on individual's knowledge and experience of the EIA process.

6.1.3 Analysis of Data

The method adopted was content analysis and thematic coding:

6.1.3.1 Themes and Codes

The research problem is the main basis from which objectives of the research emanate. The objectives of the research are to:

- i. Consider the origins of contents of the USA and EU approach to the EIA and compare these to the approach taken in Ghana;

- ii. Outline the extent to which EIA guidelines from multi-lateral and bi-lateral lending agencies suit the Ghanaian context;
- iii. Examine how beneficial these guidelines are in accomplishing sustainable development goals in Ghana;
- iv. Provide other alternatives for facilitating environmental protection, economic and social development;

Research questions were developed from these objectives to guide the study hence, the themes were developed from the objectives of the research to aid the content analysis of data. Some themes were also developed from the information gathered from the field. Colour Codes were used to represent each theme. The themes developed includes:

- | |
|---|
| <ul style="list-style-type: none"> ○ Mode of dissemination of information on project; |
| <ul style="list-style-type: none"> ○ Knowledge about EIA process; |
| <ul style="list-style-type: none"> ○ participation of beneficiaries in the EIA process; |
| <ul style="list-style-type: none"> ○ Impact of the project on their livelihood, positive or negative; |
| <ul style="list-style-type: none"> ○ Impact of the project on the environment; |
| <ul style="list-style-type: none"> ○ Compensation; |
| <ul style="list-style-type: none"> ○ Complaint procedure; |

6.2 ANALYSES OF DATA FROM THE FIELD

6.2.1 Decision Makers – EPA Officers

The Environmental Protection Agency (EPA) has trained officers who decide whether an EIA conducted is satisfactory or not, before a project proceeds. Semi-structured questionnaire method was deemed appropriate for the EPA officials because since their jobs entails specialisation, some issues which may not have been properly captured with the closed questions are more likely to be raised through the open-ended questions. The institutional structure of the EPA is such that apart from mining, all other projects for which EIA is carried out are under the supervision of the ‘Monitoring and Evaluation’ (M&E) Department. All EIA processes for mining projects are supervised by the Mining Department. A Key Informant (KI) interview was held with the head of M&E.

The researcher distributed questionnaires to twelve EPA officials who evaluate and vet EIA reports from mining, HEP and highway infrastructural projects. Information gathered are, among other things, on suitability of foreign guidelines in conducting EIA in Ghana, job training and area of expertise. Excerpts from the questionnaire are as follows:

- “**Which EIA procedure will you prefer to use in conducting EIA in Ghana?**”
- “**In which ways do you think EIA guidelines from multi-lateral and bi-lateral lending organizations are practicable or otherwise in Ghana?**”
- “**Will the current EIA practice achieve sustainable development in Ghana?**”
- **What are the challenges militating against the use of EIA procedure in accomplishing Environmental Sustainability in Ghana?**

6.2.2 Results from the Questionnaires

6.2.2.1 Level of Education and Training on the Job

All the EPA officials interviewed have tertiary education of a sort (masters and post-masters) with various years of experience, ranging from five to twenty-three years. Official responsibilities listed to have undertaken over the years includes:

- Supervising matters relating to permits;
- Preparation of schedule and permit for small, medium and large-scale projects of various sectors;
- Ensuring quality assurance for all environmental permits issued from all sectors in the country;
- Community engagement;
- Technical review of EA reports.

Other duties include:

- Conducting site investigations;
- Monitoring of mining projects; and
- the use of Oxo-biodegradable additives in production of flexible plastics and for waste segregation management.

It is observed that responsibilities listed by the officials of EPA above are areas of specialisations that are essential for the effective implementation of the EIA process from the beginning to the end. Therefore, as these areas of specialisation are upgraded through periodic training, officials become more expert.

On training on the job, 10 out of 12 participants affirmed that, they have ever had some form of training. Training in the areas such as EIA administration in Ghana; Pollution control; E-

waste management; Management of large volume waste in mining; and contract administration were recorded. However, these training are not organised on regular basis. A question on how often a training is carried out attracted various answers. Some said “*as and when a training is available*”; which could be two times within a year, on average. Others said it has been four and seven years since their last training programme. Since the training depends on area of specialisation, it stands to reason that some officials may not receive training in their area of specialisation as often as others.

6.2.2.2 Suitability of foreign guidelines

It is the reasoning that foreign guidelines may not be suitable for Ghana because of the socio-cultural differences of the origin of these guidelines as well as differences in the level of economic and technological development, hence participants were asked whether, in their opinion, foreign guidelines are suitable for conducting EIA in Ghana. From the responses, 10 out of 12 of participants were of the view that foreign guidelines are not suitable for conducting EIA in Ghana, because these guidelines do not take into consideration the socio-cultural set-up of the Ghanaian society. For them, foreign guidelines are alien to Ghanaian ways of doing things. They claimed that these guidelines do not speak directly to the environmental issues plaguing the country. Moreover, in most instances, these foreign guidelines are motivated by economic gains of donor and receiver and thus they are imperfectly tailored to the local environments of other countries. Participants concluded that foreign guidelines are just guides to facilitate the improvement of the national instruments on environmental assessment as a whole, hence at best, they can be used in addition to existing country systems, especially where the local system have gaps.

It is discussed in chapter five (that is, a review of the LI 1652) that, the LI 1652 is comparatively less concise and difficult to use, hence it may not be the preferred legal instrument for foreign

sponsors for conducting EIA in Ghana. Participants were therefore asked to select (given the choice) their preferred legal instrument they would like to use in conducting EIA in Ghana. The choice was between the LI 1652 and foreign guidelines.

Seven (7) participants would prefer to use both LI 1652 and foreign guidelines whereas 5 of participants want only LI 1652 to be used in conducting EIA in Ghana. Participants who prefer both legal instruments explained that the foreign guidelines have good features to offer hence these features could be used to enhance or supplement the EIA practice in Ghana. They affirmed, however, that the LI 1652 should be used at first instance, and foreign guideline might be used in addition only where there are gaps in the LI 1652, or where there are assessment issues relating to a particular sector, which have not been adequately addressed in the LI. They were of the view that foreign guidelines cannot be avoided altogether because, they reflect international best practice that has to be adopted, in addition to requirements of LI 1652, depending on the nature of the undertaking.

Participants who preferred only the LI to be used explained that the LI 1652 is a national instrument, backed by law. Besides, sponsors are obliged to use country systems, thus foreign guidelines ought not to be used when there are national guidelines. However, they are quick to add that both the national laws and foreign guidelines can be used in some cases in order to satisfy both donor and national requirements.

From the foregoing, it is clear that though the LI is suitable for Ghana and also the preferred instrument among experts to some extent, the foreign guidelines are still used: first to satisfy sponsor's requirements; secondly to address any drawbacks in LI; and thirdly to fit in the standards of international best practice.

6.2.2.3 Opinion on the effectiveness of the current EIA practice to achieve sustainable development in Ghana

Participants' opinions were sought on the efficacy of various segments of the EIA process as carried out in Ghana. Ten (10) out of Twelve (12) participants rated the following procedure: 'Screening and scoping exercises'; 'EIA reporting and evaluation of reports'; 'Transparency in decision-making process'; 'Consideration of socio-economic impacts'; and 'Public/Stakeholder involvement' as **very effective**. 'Consideration of alternatives'; 'Mitigation measures'; 'Consideration of cumulative impacts' were also rated as **very effective**, but these are rated by only eight (8) out of 12 participants. On 'Consideration of socio-cultural values in the EIA procedure', seven (7) participants stated that the procedure is **effective**. 'Monitoring and supervision' were considered **ineffective** by seven (7) participants.

The responses are depicted in the table below in percentages.

	Statements	Very effective	Effective	Neutral	Ineffective	Very ineffective	No opinion
1.	Screening and scoping exercises	86%	14%				
2.	EIA reporting and evaluation of reports	86%	14%				
3.	Public/Stakeholder involvement	71%	14%		14%		
4.	Consideration of alternatives	14%	71%		14%		
5.	High sense of monitoring and supervision	14%		28%	57%		
6.	Mitigation measures	28%	71%				

7.	Transparency in decision-making process	86%	14%				
8.	Consideration of cumulative impacts	14%	71%		14%		
9.	Consideration of socio-economic impacts	86%	14%				
10.	Training of EIA practitioners on issues of sustainable development	28%	57%		14%		
11.	Consideration of socio-cultural values	43%	57%				
12.	Complaint procedure and mechanisms for redress	14%	43%	28%	14%		

In general, participants maintained that the current EIA process as required in the LI 1652 is very effective since it addresses most issues relating to sustainable development. They emphasised that the integrated approach, especially, practised in Ghana makes it possible for all the key pillars of sustainable development to be considered in the EIA process. However, they admitted that review of the current law on EIA will go a long way to achieve total sustainable development

Participants suggested an improvement in the following procedure of the EIA process:

- Training of personnel on the monitoring and auditing;
- The officers must be well versed with the requirements in respect of implementation;
- Supervision must be increased;
- The process of engaging stakeholders needs to be improved with clear benchmarks.

6.2.2.4 EIA procedure as a mere formality and spill-over effects on subsequent projects

The researcher sought to find out whether the EIA procedure carried out in Ghana has been reduced to a mere formality in furtherance of securing funding from a sponsor. Consequently, there was a question on whose duty it is to conduct an EIA and whether an EIA conducted for one project has a spill over effect on subsequent project, either being funded by the same and/or different donor.

The responses of the participants suggest that it is the responsibility of the developer to conduct an EIA on a proposed project and prepare an EIA report. However, the developer usually contracts a consultant because it lacks the capacity. The developer here refers to the state institution proposing for the project, that is, if it is a government project. It may also be a private business as the case may be (For example Newmont Mines - below). They explained that the consultant is usually engaged during the negotiation stage by both the developer and the sponsor of the project. The EPA invariably has no hand in the choice of consultant, at best, they only recommend to the proponent. This assertion was corroborated by a follow-up answer and response from a key informant interview held with the director of the M&E. It was also revealed that the choice of a consulting firm is informed by the donor involved (for instance a particular donor may prefer a specific consultant). For recommendation of consultants, the EPA depends on previous record of competence/ excellence and level of expertise projected in the staff strength of the consultant.

To sum up, an EIA conducted for one project has a spill-over effects on subsequent project(s), either being funded by the same and/or different donor, since it is likely that the same consultant will be preferred. Also, the tendency to recommend a particular consultant because of the sponsor involved is high. This piece of information could not be verified from any sponsor because the researcher did not have enough resources to survey multiple projects financed by

the same sponsors. In addition, financial institutions were not included in the research because resources available were not adequate to cover such ground; nevertheless, this could be an avenue for further research.

As to whether EIA is a mere formality, it was argued that the use of previously known consultant over and over will breed an aura of familiarity between the consultant and the regulator (EPA) and as such, risks reducing the EIA procedure to a mere formality. The tendency of brushing through the process on the part of both EPA as the regulator and supervising institution, and the consultant is high, due to the familiarity of the consultant, as well as the project. Some participants disagreed with this notion, but a few agreed that the use of a previously known consultant stalls the opportunity for other consulting firms with a competitive expertise to get involved. Thus, the practice does not promote maximum output from the consultant.

In conclusion, participants deny that EIA procedure is a mere formality. Ten (10) out of twelve (12) participants asserted that EIA is conducted for the purpose of protecting the environmental.

6.2.2.5 EIA an effective tool to evaluate environmental impacts of new projects (infrastructural developments/ mining industry, etc.)

Participants were asked whether in their opinion EIA is an effective tool to evaluate environmental impacts of new projects. They all responded in the affirmative, giving their reasons as follows:

- EIA is a systematic process and tool for evaluation;
- EIA is a tool that enables the developer to plan effectively and to identify impacts and propose effective mitigation measures for sound decision-making;

- EIA is a planning tool that evaluates environmental impacts and provides mitigation measures for each impact and/or provides alternatives;
- EIA serves as planning tool which helps in the design of new projects and ensure that appropriate mitigation measures are proposed and implemented;
- EIA as a tool helps in determining impact that can otherwise not be determined and also helps to determine potential impacts to be investigated during development.

6.2.2.6 Strengths and weaknesses of EIA in accomplishing Environmental Sustainability in Ghana.

Participants were asked of the strengths and weaknesses of EIA in accomplishing Environmental Sustainability in Ghana and their responses are summed up below:

Strengths	Weaknesses
EIA promotes the consideration of biophysical, social economic and institutional issues in a single framework	Post EIA implementation of mitigation measures and follow-ups
It helps to identify the negative impacts during the planning phase and propose mitigation measure even before the commencement of the project.	Enforcement of some decisions and monitoring Implementation and enforcement
EIA in Ghana is based on the four pillars of sustainability	Occasional delay in the project cycle as a result of difficulty in acquiring essential data on projects.
EIA brings social acceptance of a project.	Weak education and sensitisation on the importance of EIA for project management
EIA enables the prevention of pollution of the environment	

6.2.2.7 Alternatives for facilitating environmental protection, economic and social development

Participants were asked whether, in their opinion, there are alternatives for facilitating environmental protection, economic and social development. Five (5) participants responded in the affirmative, while seven (7) thought not. Their reason was that the EIA is sufficiently robust to address all issues of environmental protection, economic and social development

Participants who responded in the affirmative enumerated the following as alternatives for facilitating environmental protection, economic and social development:

- i. Strategic Environmental Assessment of policies, plans and programmes.
- ii. Use of incentives and award schemes such as the Environmental Performance Rating and Public Disclosure Scheme in Ghana or the Programme for Pollution Control Evaluation and Rating (PROPER) in Indonesia
- iii. The use of SEA for the mainstreaming of environmental issues into Policies, Plans, Programmes and other development processes

6.2.3 EPA - Key Informant (KI) Interview

6.2.3.1 Foreign guidelines versus the EIA Regulation of Ghana (LI 1652)

To start with, the researcher enquired from the Key Informant (KI) whether there was a general preference for the use for foreign guidelines in conducting EIA, and if so, the reasons for giving such preference to the guidelines.

The KI disclosed that the Bank prefers that their Guidelines than the LI 1652 are used for the EIA process for projects that have been funded by the Bank, and for which EIA must be carried out. The KI explained that since World Bank is the major sponsor of projects, the Bank in this interview refers to the World Bank. But for other projects which are not funded by the Bank, they strictly go by the LI 1652.

Reasons that were attributed to the Bank's preference of their guidelines are as follows:

a. The Bank is of the opinion that their guidelines are more accurate.

The KI went on to explain that the understanding of the banks, as far as the application of the LI 1652 is concerned, is different. According to the KI, the Bank did a review of the LI 1652 sometime in 2007 and even though they acknowledge that the LI 1652

is a good law that will help the country to safeguard the environment, they nevertheless alleged that there were shortfalls in the law. KI stated that the Bank's review rather focused more on the main body of the Regulation, disregarding the schedules to the regulation. For KI, the Bank did not consider the fact that the schedules which provide the list of projects, locations etc. complements the operation of the law.

As stated by KI, another reason why the Bank is of the opinion that their guideline is more accurate is the fact that the Bank's method is a kind of a piecemeal approach, where each subject-matter is a focus of a separate document, whereas Ghana's Regulation is all-inclusive. He noted that, regarding resettlement for instance, the Bank prefers the use of what is called Resettlement Action Plan, a separate document on its own, but the LI addresses all these in one report, under the auspices of social issues.

b. *Arm-twisting from the Banks.*

For the KI, whereas each sovereign nation has its own regulations which are very peculiar to that country, the guidelines are usually imposed indirectly through funding of projects. He went on to declare that: "*the Bank is a very powerful institution, sometimes they want everybody to do their bidding and what they think is right.*" "*You use their guidelines; you get your funding.*" KI said the Bank not only prefer the use of their guidelines, they even go to the extent of recruiting consultants both local and foreign and impress upon them the requirement to use of their guidelines. KI explained that since Ghana is a sovereign nation, EPA also insists on the use of the LI 1652. Hence, some of the consultants usually prepare two separate reports one for the Bank and one for the EPA so as to satisfy both parties. "*In effect, you may end up having two separate reports for one project in some instances*" the KI stated. (This assertion could not be verified from the Bank because due to inadequacy of resources, financial institutions were not included in the research).

c. *Differences in terminologies and concepts.*

KI explained that certain terms in the guidelines of the Bank do not have the same connotation in the Ghanaian context. “*For example, the term “indigenous people in Ghana” is different from what the Bank will mean by indigenous people*” he stated. “*Again, in Ghana as it has been explained, the concept of EIA includes both social and economic impact assessment, and this is termed an integrated assessment. Whereas assessment conducted using guidelines from the Bank refers to Environmental & Social Impact Assessment and Environmental Social Management Plan as if they are separate assessments to be carried out*”. He concluded that the problem is not about the law, but about the people who prepare the reports.

These are some of the reasons according to the KI, why the banks will want to impose their guidelines, with the mistaken belief that the EIA Regulation of Ghana does not adequately address all issues. He stated further that “*In reality the Bank has no right insisting on the use of their guidelines, it amounts to an undermining the sovereignty of a nation. The LI 1652 is an all-encompassing law, it deals with all issues, social, cultural, economy and environment in one piece*”.

KI is of the opinion that only the LI 1652 should be used because Ghana is a sovereign country and that sovereignty must be respected. Moreover, LI 1652 is the appropriate law because it uses an integrated approach to EIA and addresses all the practical issues that are peculiar to Ghana. The Bank should proceed on the basis of national frameworks instead of duplication by reference to guidelines of the Bank

6.2.3.2 Involvement of EPA in the EIA process

A follow-up question was asked about the participation of the EPA in the whole EIA process. It was envisioned that EPA, being the regulator would liaise jointly with the Bank or any

sponsor. However, according to the KI, the bank does not involve the EPA in negotiations prior to awarding the contracts. Negotiations are mostly between the proponent (which may be a sector ministry an agency or department of government). The EPA only gets to know after the loan has been approved and the need for permit to be granted for the project to commence. KI strongly emphasise that since EPA is an institution charged with local contents safeguards on the environment, they should be part of the negotiation so that any clarification that may be needed regarding the local laws will be made. He stated that EPA has a database of consultants compiled from proposal submitted by these consulting firms from which EPA occasionally recommends consultants for specific projects to the proponents. Recommendations are based on a number of factors, namely: area of specialisation, staff expertise, and previous work done in particular area etc.

It is inferred that, basically, there is lack of coordination between Government institutions. That is, government institutions who are proponents of the project and the regulator, the EPA. To achieve an effective result of the EIA process, there must be coordination and collaboration between stakeholders especially in a country where the government can be both the proponent/developer and the regulator. Unclear identification of duties in the EIA process may confuse the EIA process and complicate matters regarding who to hold responsible for any faux pas. It is therefore the duty of the government to include officials of the EPA in their negotiating team, because, the Bank at best is only a financial sponsor.

When asked whether there was an occasion where an impact assessment report was rejected because it was poorly conducted, KI responded in the affirmative. According to the KI, EPA had had cause to reject poorly written reports, however, at that stage, the funding would have been secured already. So, the only remedy is for the EPA to withhold the permit until the right thing is done. KI confirmed that the bank is aware that the EPA as the country's mandated regulator in EIA has the power to halt a project for noncompliance with the country's law.

Because of this, the Bank ensures that after satisfying their requirements, the consultants/developer satisfy the country requirement as well. The KI questions the rationale in the action of the Bank and intimated that one comprehensive and composite procedure would have been better and more effective.

6.2.3.3 Monitoring & Evaluation

Monitoring and evaluation is carried out by the EPA independent of the Bank. However, in certain instances the Bank calls upon the EPA to assist the consultants in monitoring activities. The KI intimated that they have experts such as engineers, planners, sociologists, biologists, ecologists, etc. who carry out independent monitoring and evaluation but in cases in which the institution lacks an expert in a particular field, experts are contracted elsewhere to fill in.

6.2.3.4 Stakeholder Engagement

One of the mainstays of the EIA system, which has been discussed in chapter four is an effective stakeholder engagement. To this end the researcher enquired about the manner in which it is conducted in the EIA system of Ghana. The KI clarified that in Ghana, all parties, that is, the proponent /developer and the regulator, have significant roles to play in the stakeholder engagement, but the proponent /developer has a greater responsibility especially during the scoping phase. KI explained that for the EPA, the law requires that when there is an application for a development permit, the EPA must also engage the people concerned, who they termed ‘the project affected people’. They do so through a public hearing. First, they give notice of the project to the people through newspapers adverts and posters in the community; then a meeting is scheduled sometimes with one-on-one discussion with the opinion leaders in the community, or in a focus group discussion. They may also group the affected people based on gender, religious denomination, trade etc. whatever is appropriate. Then the outcome of these stakeholder engagements is written down in a report and it becomes

a public document which anybody can pick later and hold the government to its promise. He explained, for instance, that if it is an issue of compensation or resettlement, the EPA ensures that those who require compensation or resettlement are identified and then listed. Then evaluation of the compensation payable is carried out and published for everyone to see. This piece of information is inconsistent with evidence gathered from the beneficiary communities who claimed they have never seen any reports of have been given the platform to negotiate for compensation due them.

Aside being the regulator, the KI stated the EPA also plays a mediation role bringing together the proponent, the developer and the community for dialogue. As a regulator EPA steps in, to inform the people in the community of the negative and positive implications and how the proponent intends dealing with the negative aspects, as it is envisaged the proponent/developer most invariably only talks about the positive aspects of projects. In this regard, the EPA only facilitates and becomes observers. The KI admitted that the Bank allows them to conduct the stakeholder engagement their own way, however, ironically the EPA prefers stakeholder engagement procedure of the Bank because it is all integrating and even compensating squatters in the case of evacuation.

From the assertions of the KI, it is inferred that greater responsibility is on the proponent, but EPA ensures that it is carried out and done well. The assertion also leads to the conclusion that no single method of conducting EIA is all-inclusive.

6.2.3.5 Accessibility of EIS /EIA Reports

The KI revealed that because of rules of disclosure governing their operations as well as that of the bank, they always make the reports available. He said the reports can be found at the Bank's website as well as EPA's website. The KI also said aside from the EPA's website, copies of the reports are placed at the following places

- Regional offices;
- District assemblies;
- Library (EPA head office);
- On demand to anybody within the community;
- In daily newspapers;
- Sometimes at the chief's palace and traditional councils. For example, a copy of Jubilee EIA report was given to the Western Regional House of Chiefs upon demand.

The availability of report is an issue complained about by all the beneficiaries involved in the present study. They bemoaned the lack of transparency on the part of the government in making the reports available hence this piece of information from the KI is conflicting. KI's response implies that reports are easily within the reach of anyone, however, some of the depositories mentioned are unrealistic. Take for example the EPA's website, how many beneficiaries' communities have access to the internet? Moreover, a check on the EPA's website did not reveal any such documents.

6.2.3.6 Level of community discussion & involvement

In order to substantiate the KI's accounts of 'stakeholder engagement' and 'accessibility of reports', the researcher enquired about the extent to which the affected community are involved in the discussion. The KI stated that during these stakeholder engagements, the community's discussions are centred mainly on economic and social rather than environmental issues. He explained thus:

"For example, an affected community in an oil and gas exploration questioned the name 'Jubilee' given to the oil block instead of a local name and wanted it changed to a name that reflects the culture and identity. Similarly, a community was more

concerned about the impact of exploration on their schools, hospitals etc. being the consequences of influx of people into their community. Another community's interest was about job for their people, that is, instead of bringing workers from outside the community, people from the community should be recruited. And a coastal fishing community was concerned about the effect of light on fish stocks which may be considered an environmental concern as well".

The KI corroborated our findings on the community that though some community leaders are educated, their focus is rather on the social and financial gains of projects located in their community than environmental impacts. It might be that affected communities will be better served if they employ experts to study the EIA reports and lead them in some of these stakeholder engagements, to put them on equal footing. In this regard, pertinent matters in issues such as irreversible damage to the environment will be discussed not just compensation and jobs.

The researcher enquired of the KI if there had been occasion where a project had to stop at the instance of a community discontentment on any matter. KI affirmed that protests do occur from time to time, however, the reasons for the protest determine the outcome. He explained that usually affected people become disgruntled when compensation dissipates, and the community wants more. At times, the protest is about unfulfilled promises and, in some cases, especially in mining communities, the protest is about pollution, poisoning, etc. The communities usually protest for companies to give them more money hence once the money is doled out, they become quiet, disregarding other adverse incidences. As stated by the KI, whenever the complaint is about pollution, poisoning of water bodies or any disaster relating to the environment, the EPA steps in to investigate these allegations and if necessary, carries out independent verification and monitoring. Nonetheless, proponents are responsible for testing variables such as water quality, air quality and results sent to EPA every month.

6.2.3.7 Challenges

The researcher asked about the challenges (if any) that prevent smooth operation of the EIA process. KI listed political influence; collusion; lack of monitoring from the banks; as some of the challenges. According to KI, there are instances when some political stalwarts will want to influence process, however it is difficult for them to succeed because the EIA process is such that no individual can issue a permit. The process involves inter-sectorial evaluation. He also recounted that there were some instances when some private consultants were recruiting EPA officials by the side, to do the environmental assessment for them and they, in turn submitted to the EPA. He said that those officials were sacked. Besides that, there are many kinds of sanctions in such cases, when caught.

One other major challenge, as KI puts it is that the Bank gives the money but does not undertake monitoring to see whether what has been put in the report especially regarding mitigation measures and whether management plans have been implemented. (This is substantiated by the review of the Bank's guidelines in chapter four). Whereas the banks insist on use of its guidelines, they leave the monitoring for EPA. For KI, this is a major setback in the EIA process that also impairs the improvement on the country's LI. The Bank relies on consultants to give them a monitoring report and most at times these consultants do not go to the field either. They in turn rely on the proponent government agency or invariably on the contractor/developer to furnish them with the necessary information, which inevitably will be full of inaccuracies.

Certainly, monitoring and evaluation is in issue concerning the EIA process in Ghana. This is confirmed during the field survey where some communities complained that after the stakeholder's engagement which took place before and during the construction stage, no monitoring has ever been carried out.

The effects of absence of monitoring and evaluation exercise in the EIA procedure could be aggravated by collusion between consultants and the EPA officials ensuing in the regulator indirectly evaluating itself, especially as noted by KI earlier, on the part of those who may be contracted on the side by the consultant. Apart from political influence which demands a strong will to surmount, the other challenges enumerated above which could impinge upon the effectiveness of the EIA process can be redressed through proper institutional arrangement.

6.2.3.8 Alternatives to a project / Abandoning a project altogether

KI informed the researcher that there were numerous occasions where a project had to stop and redesign because it did not meet the requirements or that the designed may cause considerable damage. However, he indicated, that a project has never been abandoned altogether because, now with advances in technology and engineering, everything is possible. An example given was diversion of roads, to alternative routes etc.

6.2.3.9 Current state of the LI 1652

KI is of the view that the LI 1652 is a good law nonetheless it must be reviewed to meet current trends. Reasons are that:

- a. The LI is very old, since it was enacted in 1999, there has been no major review, hence the law needs total up-hauling to fit in current trends. The schedules to the LI, for instance, must be updated to correspond with contemporary trends. For example, constructing a 40-room hotel which hitherto must undergo EIA, is no longer necessary in present day.
- b. There have been new developments in the country, since the law was enacted, for example oil & gas exploration, telecommunications, etc. These new developments all have backing legislation of a sort which will incorporate aspects of EIA, whereas the LI is a mother of all EIA procedures. So, the review will bring all these regulations under one umbrella as practised in other jurisdictions.

c. KI admitted that the mandated institutions were not conversant with EIA initially, when the law was enacted. Besides there were just a handful of experts, and mostly foreigners. With a review in the law, officers of the EPA will also bring the knowledge acquired on board and make relevant contributions. It stands to reason that most of the issues in the law were written with a foreign perspective. Now that there are resident experts who understand the tenets of EIA, the law should be reviewed to incorporate Ghanaian values.

6.2.3.10 EIA as a tool for Sustainable Development

KI declared that the pivot of sustainable development, that is, to leave the world better than it is now for future generations can only be achieved through effective Environment Assessment. By Environmental Assessment, he means a combination of all other variants of assessment, namely ESIA, Health Assessment etc. Thus EIA, when combined with other variants such as strategic environmental assessment (SEA) and even the EMP, becomes a useful procedure for achieving the goals of sustainable development.

6.2.3.11 The way forward

KI suggested enhancing the capacity of both the regulators and developers/proponents as a way of improving the EIA process. Then, those who carry out the assessment and write the reports as well as those who do the review of the reports must have periodic training. The KI stated that The EPA has a training school which train not only EPA staff, but consultants and private individuals who have interest in EIA procedure. He noted however that some individuals do not complete the whole training programme and yet hold out themselves as experts. He explained that these are the people who make the mistakes and mislead the foreign consultants.

KI further stated that Judges have also be trained in environmental protection processes, so that they will be able to adjudicate on environmental matters. KI suggested that practical studies

of EIA procedure should be mandatory for the universities that run EIA courses because EIA is so technical.

To sum up KI's interview, the LI 1652 is a good law which speaks to the tenets of sustainable development, but is in need of review. The regulator and the proponent should be well acquainted with the procedure.

6.2.4 Consultants

An email was sent to Environmental Resources Management (ERM) since they conducted EIA for the Bui project to find out if they will be willing to take part in the research, but no response was received.

Some resident consultants were contacted by phone, and questionnaires were sent to them through the email, but they were never returned. It was also arranged through the leadership of the International Association for Impact Assessment, Ghana chapter, to invite the research team to one of their meetings but the arrangement never materialised because the meetings were postponed on the occasions that the researcher was available. It was observed that there is indifference on the part of resident consultants towards the survey. The lack of interest could be explained by the fact that they are not contracted directly to conduct EIA, as seen in the EIA reports of the projects studied for the research.

6.2.5 Beneficiaries

The beneficiaries are members and leaders of communities where projects were undertaken. Hence the participants were selected based on targeted projects for which they are beneficiaries. Questionnaires and focus group discussions were used for the communities. Apart from the general demographic data, the team sought to know the following, among other things:

- How information about the project was disseminated;
- Whether they played any role on the EIA process;
- Knowledge about EIA process;
- Impact of the project (before and after) on their livelihood;
- Whether in their opinion issues of direct and indirect environmental impacts were addressed properly and to their satisfaction. Sample questionnaire are included in the appendix

6.2.6 Hydro-Electric Power Plant - Bui Hydro-Electric Dam¹⁶³ (The Bui Village)

The Bui Hydro-electric Dam situated in the Brong Ahafo Region of Ghana, was of considerable interest to the study because it involved an extensive damage to the environment, plant and animal life alike. About 444km² of land was inundated including part of the Bui National Park, an ecological treasure of the country. About 1216 people were relocated. The Bui village which was the focus of the study is one such community. The justification for the project was that Ghana will not be able to meet its energy consumption projections by 2020 with the available sources of energy at the time.¹⁶⁴ Hence, though it was discovered that the dam will affect a substantial part of the Bui National Park, it was concluded that there was a limited opportunity to select an alternate site on the Black Volta because hydroelectric dams rely on natural features of the landscape for optimum siting.¹⁶⁵ This negates the significance of the EIA procedure which requires alternatives to a project if the project will course a considerable harm to the environment. In the case of Bui Dam, firstly, the need for electricity was paramount for the nation and the HEP provides a source of cheap electricity. Secondly, the issue of

¹⁶³ Information on the project are from Bui Power Authority, Bui Power Authority Resettlement Programme, <<http://www.buipower.com/node/143>> accessed July 19, 2019

¹⁶⁴ Environmental and Social Impact Assessment of the Bui Hydropower Project Final Report –Annex Volume Prepared by Environmental Resources Management, in association with SGS Environment ERM Reference 0042911 (or ESIA) A2, 1.1

¹⁶⁵ Ibid, ibid

optimum siting of dams obviated the choice of alternatives to the project as regards choice of alternative site. This concern was also shared by the people of Bui as it came to light during the focus group discussion that, though they were aware of the ramifications of siting of the dam at Bui gorge on their livelihood, the fact that the nation needed electricity was good enough reason for them to accede to it.

6.2.6.1 Concerns garnered during the survey prior to construction

The people of Bui (old village) were of the view that though the construction of the dam may bring some benefits to the paramount area, Bui in particular, may suffer a lot of inconvenience.¹⁶⁶ Their main concern was that there may be limited land for farming, hence farmers may be under pressure to increase production on limited lands.¹⁶⁷ The communities will be deprived of the main building material (thatch, which is a type of grass harvested from their farms and in the forest, less than 3.2 km away from the village) and may find it difficult getting replacement in new community.¹⁶⁸

6.2.6.2 Facilities recorded before the Dam

Facilities such as clinics, were non-existent other than for one kindergarten. Water was mainly drawn from the river and toilets were constructed by dugout hole, one for men and one for women, described in the report as long drop toilet. There was no electricity.

The table below is the summary of concerns of the community

¹⁶⁶ Environmental and Social Impact Assessment of the Bui Hydropower Project Final Report –Annex Volume Prepared by Environmental Resources Management, in association with SGS Environment ERM Reference 0042911 (or ESIA), J63

¹⁶⁷ Ibid, J67

¹⁶⁸ Ibid, J68

Potential Issues and Development Needs

Section 5A: Potential effects of the dam on the community captured during an FGD

- ◆ - *Road network will be improved*
- ◆ - *A better equipped clinic may be obtained*
- ◆ - *Electricity for other development activities*
- ◆ - *Employment creation for the youth*
- ◆ - *Prices of foodstuff would rise.*
- ◆ - *Scarcity of food due to increase in population*
- ◆ - *Increase in social vices like crime and prostitution and diseases – HIV/AIDS, STDs*
- ◆ - *Migration to other places to farm*
- ◆ - *Livestock may not have the free-range opportunities it used to have*

Section 5B: Resettlement issues

The people of Bui want to be resettled beyond Brewohodi, towards

Agbelikame because it is part of their land and flooding of the river may not affect them.

Their expectations are that:

- * -*Good accommodation will be provided*
- * -*Good road network will be maintained*
- * -*Better educational facilities will be provided*
- * -*Hygienic toilets will be made available at the new settlement*
- * -*Will be settled where land to produce the same quantity of food as they get now.*

Their concerns for resettlements are:

- *That their expectations may not materialise*
- *It may take a long time before they reorganise themselves in their new environment*

Section 5C: Key social problems/development issues

- ❖ -*School*
- ❖ -*Upgrading of Bui Camp Clinic*
- ❖ -*Potable water (boreholes)*
- ❖ -*Modernise Agriculture.*

Source: Environmental and Social Impact Assessment Report prepared by the Environmental Resources Management in association with SGS Environment ERM Reference, Government of Ghana [Section 5 Annex J @J71 & 72]

6.2.6.3 The Fieldwork

The research team made up of the researcher, two research assistants and a driver (who doubled as the field photographer), went first on a reconnaissance survey around Bui the Hydro-electric Power (HEP) Plant. The purpose was to identify a suitable beneficiary settlement, to be

introduced to the chief of the area and to seek his permission in order to conduct the survey in his town, as custom demands. The Bui community was selected for the survey because it is one of the new settlements formed when the old Bui town was relocated due to the construction of the dam. As part of the customary norm (that is, one does not go to the chief empty handed), drinks were presented to the chief of the Bui village (New settlement) through the linguist. (Yet another custom - the chief does not speak to his subjects or anybody directly, he must speak through a mouthpiece or spokesperson termed, the linguist).

The letter of consent was also presented to the chief through the linguist. Though the consent letter contains the purpose of the survey and how the survey will be conducted, the visit also afforded the opportunity to have a verbal discussion on the purpose of the survey and also the opportunity to ask questions and to seek more clarifications.

The researcher decided to use focus group discussion method to collect data for the following reasons:

1. The Bui settlement is small community. It was explained that due to the construction of the dam, most people lost their farmlands. Their present relocation is not fertile for farming, so those who could afford, left for nearby towns and villages in search of fertile lands or for alternate source of livelihood.
2. The level of education on average is low (depicted by the chart below). Some could not read and write properly, which means that the research team would have to employ more people to assist in filling in the questionnaires, if they have to use the questionnaire methods. This transmits to the third reason, namely linguistic challenge.
3. Though Akan is the main language spoken generally in the area, the people of Bui have their own language in addition, called Mo. The two research assistants speak Akan fluently, however the team noticed that the people from time to time resorted to their

language even while communicating in the Akan language and hence, there may be dialectal differences in explaining some of the terms, resulting in confusion as to the meaning of certain expressions.

4. The research team were of the view that a focus group discussion will afford everyone to speak Akan and any differences in terminologies will be explained for everyone to agree or disagree.
5. Even though the chief is educated and speaks English well, the tradition that the chief does not speak to the subject directly dissuaded us from having a Key Informant interview with the chief. For the discussion may have to be made through a linguist who may not interpret the interviewer's words appropriately likewise the responses from the interviewee.

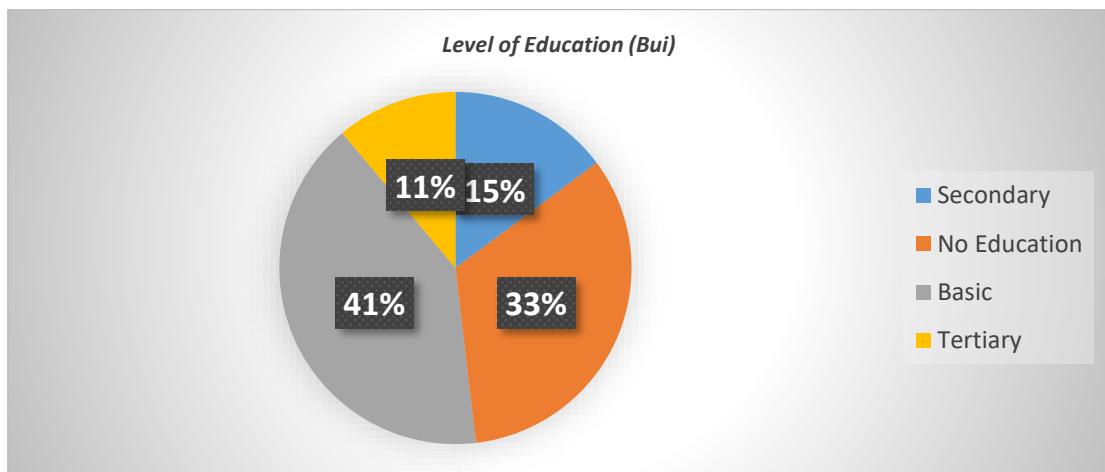


FIGURE 5 LEVEL OF EDUCATION (BUI)

In order to protect the identity of respondents, all respondents were designated with the letter "R" and assigned with specific number. Out of the total number of 27 participants, 4 had secondary school education; 11 basic; 3 tertiary; 9 no education. These figures are translated in the chart above. (The researcher reiterated that the figures and the graphical representation

do not suggest that the research is a quantitative study. It is to give the reader a visual perspective). Majority are farmers.

6.2.6.4 Mode of dissemination of information on the dam

The people of the Bui village (old settlement) said they had information about the construction of the dam through their chief. The research team discovered that this is consistent with the cultural practices of the people. The land belongs to the stool (the stool, signifies an unifying emblem of the people) and the chief who ‘sits’ on the stool is the custodian of the land on behalf of the community, so it was right and proper that the chief would be informed in person. And once the chief is informed, the community is deemed to have had notice of the project.

Apart from this means of communicating the project to the people, it was also reported that news of the project was carried on the radio and in the newspapers. Large billboards were erected at vantage points depicting an artist impression of the proposed dam and the new city. Then, there was also the ceremony of grand durbar of chiefs and the people of the community to inaugurate the dam project (sod-cutting ceremony).

It is observed that the mode of communicating the projects to the community through the chief was effective in this regard as the people agreed that they all heard of the project. It was the duty of the chief to inform the people, through whatever means the chief deems effective, after the chief was informed. Besides, the cultural practice is that the chief does not sit alone in-state means that he would be informed in the presence of principal elders of the community. These elders would have also sent the news to other members of the community, though unofficially.

The newspaper method did not appear to be effective, as it was only the chief who mentioned it. From the biodata and during the discussion, it is observed that, the chief is highly educated (tertiary level) and a teacher, hence it was normal that he would have spotted a newspaper

advert of the project. However, newspapers are not readily available in the area, but since the chief lives and works in a district capital, it is probable that he could gain access to newspapers, unlike his own subjects. It must be noted however that the information about the dam the chief claimed to have had was not the scoping notice as stipulated in the L.I. 1652.¹⁶⁹

In conclusion, the effective mode of dissemination was informing the chief and his elders. Then the billboards come in to create awareness among the people. So, it can rightly be concluded that, small communities are better served if the information of a new project is done through the chief and his principal elders. However, it must be emphasised that the information given to the chiefs is the not kind required in the Regulation, so it may not be useful for any practical purpose.

6.2.6.5 Involvement of the Community in the EIA process

It was noted from the group discussion that the community was somehow involved in the EIA process. However, the level and extent of their involvement could not be readily ascertained. However, most of the involvement was through a series of meetings with the EPA. The meetings were basically deliberations on compensation, resettlement plans, and promises of provision of economic and social facilities such as schools, hospitals, electricity and water. The dam project was also to provide them with a dam for irrigation. In effect, a picture of better living conditions was painted to the community. The people themselves, as it were, did not object to the project because to them, construction of the dam was in the interest of the nation at large. For them, the dam was to provide much needed electricity to the nation during the power crises, and they willingly acceded to whatever terms the government proposed.

It is deduced that they were not aware of their ensuing rights under the LI to initiate a public hearing because of adverse impact of the dam on their environment and livelihood and the fact

¹⁶⁹ Reg 15

that they would be relocated.¹⁷⁰ And the EPA is bound to oblige this because it is mandatory for the EPA to hold a session with them regarding proposals for payment of compensation for possible damage to land or property arising from the construction of the dam and to discuss mitigation measures to be put in place to ameliorate any adverse consequences of changes in land use.¹⁷¹

It was also reported that there were a lot of confrontations between the construction company and the community initially. It was alleged that the company burnt people's farms and cashew plantations without any consideration and recourse to dialogue until the community relations officer in charge from Bui Power Authority initiated a negotiation.

It can be concluded from the discussion that the people of Bui were engaged during the EIA process. However, the very essence of public participation as stipulated by the EIA is what was lost to them. The understanding of the people during such meetings were that the government was going to discuss compensation to be paid to them and the benefits that will be derived through the project. So, these issues were their main focus during such meetings instead of the actual purpose of scrutinising the report to ascertain whether all issues pertaining to adverse impacts are addressed, or whether mitigation measures are addressed effectively etc. These were not their priority. From the assertion of the people, their interest was more on the facilities promised by the government, promises which they now believe were not fulfilled.

Lack of adequate knowledge of the 'contents' of the project was also an issue. Without adequate knowledge of what the project entails, the people could not have meaningfully contributed to the discussion. The people alleged that only the positive benefits were highlighted. One reason to be attributed to this is the low level of education of the people,

¹⁷⁰ L.I. 1652 Reg 17 (a) (b) (C)

¹⁷¹ L.I. 1652, Reg 12 (k) (n)]

illustrated in the chart above. 33% of participants have no education at all, 41% basic, which is more or less like no education regarding the demands of the EIA process. So, in all 74% had little or no education at. 15% has secondary which also is not adequate to undertake the kind of scrutiny that an EIA report should be subjected to. This left only 11% of participants with the requisite level of education to engage with the documentation. The low level of education therefore prevented them from appreciating the extent of the project and to painstakingly examine the project vis a vis their life situations. Thus, it appears there was unequal level of bargaining power and participation. One way of addressing this shortfall is to employ the services of experts or NGOs to assist them during some of these meeting and to negotiate with the government to come out with the best for the people. The participants referred to some NGOs which they were speaking for them, however it was discovered that NGOs referred to were not actually representing the people but rather registering their own protest about the environmental impacts of the dam; hence their efforts were not directed towards the interest of the community.

6.2.6.6 Knowledge about EIA process

The people do not have any idea about what an EIA is. They admitted some people came to conduct some kind of ‘research’ on the proposed dam project. They were asked whether they had seen any report on the ‘research’ which was conducted but they seem to be oblivious of it. However, the Chief seemed to have an idea because he mentioned that there were so many benefits stated in ‘a report’ which the government delayed in fulfilling. There are several documents to the Bui Hydroelectric Project: The Resettlement Action Plan (RAP); The Environmental and Social Management Plan (ESMP); and The Environmental and Social Impact Assessment ESIA. It is likely the chief is referring to the RAP. They reiterated that the community was not furnished with an EIA report as they were expecting. In their view

the government hid the report from them because it contained a lot of misrepresentations. This is contrary to the provision in the Regulation that demands that copies of the scoping report must be made available for inspection by the general public in the locality of the proposed undertaking.¹⁷² This was supposed to have been done before construction began. An extract from the Resettlement Action Plan implied that some form of information was given out but mainly in Accra. A section from the RAP reads:

"A national consultation meeting was held in Accra on the April 25, 2006. It was attended by over 120 participants from a wide range of organisations and institutions with an interest in the Bui Dam project. List of participants was provided in the RPF report.

Prior to the national level consultation meeting in April 2006, stakeholders were sent a leaflet summarising the findings of the environmental assessment and a list of the potential social and environmental impacts as identified in the ESIA. The national consultation meeting enabled participants to discuss the scoping report that outlined the project baseline and the preliminary identification of impacts. It also provided the opportunity for participants to officially register their concerns and opinions about various aspects of the project and its likely impacts including resettlement. Many participants said they found the meeting useful."

From the RAP (163)

It is deduced from the foregoing that knowledge of EIA process is minimal. The community was unaware of their roles they can also play in the EIA process and the rights accruing to them under the L.I. 1652. For that reason, the engagement was one-sided, as the government officials (EPA) only informed them about the benefits they stand to gain and the compensation payable, as it was alleged. Most of the information about the dam received by the community was not a scoping notice, consequently the community could not have had the opportunity to examine and also make their contributions. Besides, as the people were not so educated hence, they depended on the EPA (government) to furnish them with much needed information on the

¹⁷² Reg 15 (1) (c)

project. But as reported, information given to them were all about the benefits of the dam. One way of resolving this problem is for the general public to be furnished with a non-technical summary of the scoping report, as mandatory within other EIA regulations in other jurisdictions.¹⁷³

6.2.6.7 Means of sustenance before the dam

It was reported that before the construction of the dam, the people of Bui engaged in trading, farming and fishing as a source of living. Hunting was also practised extensively because there was abundant game in the forest. Because the community was close to the Bui National Park and Forest reserve, some forest products such as snails, shea nuts, and wild honey were in abundant, which the women would gather to sell. The forest housed medicinal plants and herbs which were used for making soap and traditional medicine for sale and for healing. It was also reported that there were lot hippopotami and monkeys which used to attract a lot of people, both local and foreigners to the area; hence the place was booming with tourists. We could not check from the national tourist authority on the truth of this statement due to lack of resources, however, they insisted that the fishermen among them were most often hired by the visitors to ferry them, to and fro, on the river to the site of the hippos. Below are pictures from the Bui National Park which may give credence the assertion of the community members. Figure A is a probably a group of tourists being carried in a local dugout log boat, while picture B is hippopotami bathing in the natural pool referred by the local as Hippo pool. They claimed these activities were an economic source of supplement income for the men. In effect, economic life before the dam was constructed was broadly beneficial for the people.

¹⁷³ See chapter six



A

B

6.2.6.8 Positive Impact of the Dam on their livelihood

i. Resettlement

One of the consequences of the dam project was the resettlement of the people. The resettlement scheme had a document in support, the Resettlement Action Plan (RAP).

The RAP recorded the socio-economic life of the people to be affected by the dam¹⁷⁴; Valuation and compensation was payable for assets¹⁷⁵; site selection, location and preparation¹⁷⁶; type of housing and infrastructure to be provided¹⁷⁷ and legal and institutional framework within which the scheme operates¹⁷⁸.

Modern houses were built for the community. Before the dam, the people of Bui were leaving in mud and thatched houses. Due to the resettlement scheme, modern houses made of blocks and furnished with modern facilities were constructed for them on their resettlement site. A basic school was also constructed, and a health facility was also provided for primary health care which was hitherto non-existent. The community admitted that in their old community, they have to walk for long distances to attend to their basic health care needs, and that women in labour suffered the most and at times

¹⁷⁴ RAP Report / July 2010, 49

¹⁷⁵ RAP Report / July 2010, 120

¹⁷⁶ RAP Report / July 2010, 140

¹⁷⁷ RAP Report / July 2010, 145

¹⁷⁸ RAP Report / July 2010, 79 &111

lost the child in childbirth. The people now have electricity and access to good drinking water in the new community. The new community is also easily accessible by well-constructed roads.

ii. Economic activity

The new community is provided with good roads making community accessible to other communities. The accessibility of the communities is a boost to economic activity. It makes it possible for the women to trade with other communities and to go to the larger cities easily. Some of the members of the community were employed for security services during the construction of the dam. They admitted that the community they now live in is better than the old one.

6.2.6.9 Negative Impact of the Dam on their livelihood

i. Resettlement

The community complained that the land on which they are now resettled is not fertile. They believed the land had been farmed on over and over by other communities hence has lost its fertility. The people of Bui are mainly farmers, but some engage in fishing to supplement proceeds from farming. They are now resettled with two other communities (Bator Akanyakrom and Dokokyina Bui Village), now competing for the same parcel of land and the dwindling river resources.

The standard of living in the new community is allegedly very high as compared to the old one. It was explained that the old community was a village set-up, hence they depended on the forest for almost all their basic needs. Now, the new community is built in a modern style, with modern facilities and away from the forest. For example, material used for construction and maintenance (cement blocks, roofing sheets, etc.) and electricity bills all have to be paid for and all add up to heighten the living

expenditure, whereas they no longer have their means of sustenance to support such a modern style of living. They explained that they did not need to buy materials to maintain their houses in the old settlement since of the materials used were harvested from the forest.

They were of the opinion that they were tricked into accepting the facilities and compensation offered them. They alleged that the compensation paid was upon the condition that other facilities such as a modern market, police station, and hospital etc. will be provided, under the dam project and named after the town Bui and that their income will be supplemented by monthly allowances. However, they claimed all these facilities were sent to the next town, Jama, which is larger than the Bui Community. There were allegations of political interference which prevented measures to be implemented.

Cultural practices and values are extinguished or integrated due to resettlement. Three communities were relocated close to each other who neither value nor practise the Bui culture. There is also lack of respect for the traditional authority as a result.

ii. Housing Units

The community alleged they complained about the quality of housing based on the Akosombo Dam experience. Besides, Ghana Dams Dialogue (GDD) also added their voice but the government refused to heed.¹⁷⁹ Comparing this assertion with the reports from the RAP and GDD, this assertion is unfounded. However, it is observed that there are differences in the design between the artist impression of houses to be built and the houses actually built as depicted in the photographs below: In Figure 5, pictures

¹⁷⁹ see Dr. Liqa Raschid-Sally (aka Afua Bui) - Issue 6 - December 2010 <<http://www.iwmi.org/projects>> accessed 6 March 2018 (GDD is an NGO that brings together dam affected communities, governments' agencies as well as other stakeholders)

A, B, C, D & E are one to five bedroom housing units respectively depicted in the RAP to be built for the displaced community at their resettled sites and Figure 6 are houses which were actually built.



FIGURE 6 PROPOSED HOUSING UNIT FOR RESETTLEMENT



FIGURE 6 ACTUAL HOUSINGS PROVIDED

The community members complained that there are variations in the pictures showed to them during consultations as shown in Figure 5 and the houses they now lived in (Figure 6). It is observed that the differences notwithstanding, the houses the community members used to live

in their old settlement (Figure 7), before the construction of the dam is nowhere near the new ones built for them in terms of quality, durability and safety.



FIGURE 7 OLD HOUSES BEFORE THE DAM

iii. Economic activity

The dam had impact on the fauna life (mainly the Hippos) because part of the national park was also inundated. It was reported that the dam took greater part of their land, about 440kmsq. It was alleged that the hippos have migrated because their natural environment (the Hippo pool) has been flooded. Besides their source of food has also dwindled. Since there were a lot of economic activities around the hippos as explained earlier, their absence also means loss of income.

The lake created by the dam took also greater part of their farmlands likewise the forest from which their women harvested medicinal plants for soap and traditional medicine. There are lot of prohibitions for fishing in the dam area, and the river formed from the water released downstream of the river somehow does not support aquatic growth,

because they hardly find any fish in there. In the pictures below, figure 8 shows fishermen on fishing expedition before the dam was constructed, and figure 9 is a picture taken by the researcher showing a prohibition sign on fishing around the dam, and the state of the river downstream of the dam.



FIGURE 8 FISHERMEN ON FISHING EXPEDITION,



FIGURE 9 A PICTURE SHOWING DWINDLING FLOW OF RIVER DOWNSTREAM AND A SIGNPOST OF PROHIBITION TO FISH

iv. Compensation

The people of Bui also claimed a number of cashew plantations were burnt. Whereas government paid compensation for their plants, these were estimated values only, for, they had no opportunity to negotiate. Again, they alleged government promised to give each person GH¢100 cedis a month but this has not been paid to date. Again, this point presents another inconsistency in the RAP and the word from the community. It is stated in the RAP the financial support provided are (i) GH¢100.00 to each member

of a household as resettlement grant (towards relocation expenses); (ii) GH¢50.00 to the head of each household for preparation of new farmlands; (iii) GH¢100.000 per household per month for one year to alleviate any decrease in income due to the resettlement.¹⁸⁰ It may also be the case of misconception on the part of the community that the GH¢100.00 per household per month, was going to be forever, for the one year has since elapsed at the time of the study.

Altogether the Bui community admit they now have a better way of living albeit expensive, in relation to their level of income. Basic facilities such as a basic school, a health post, and electricity etc. which were hitherto not available are now within their reach. With good motorable roads, the new settlements are easily accessible and easily connected with other communities.

Nonetheless, some factors that militate against enjoyment of their new status, according to the community are:

- * High cost of living;
- * Limited parcel of land;
- * Limited river resources and loss of economic activities that were associated with the river;
- * Loss of cultural identity;
- * Loss of forest useful forest products.

In effect, the assertion of the people of Bui are that the government (EPA) did not consider their economic activities, cultural identity, means of sustenance, standard of living and status

¹⁸⁰ Bui Power Authority, Resettlement Action Plan for Bui Hydroelectric Project, July 2010, 11.3.4 Income Support, 135

in life, before relocating them to their present settlement. Whereas these were all recorded in the RAP.¹⁸¹

Also, the ESIA report shows a connection between the dam and aquatic life and the impact of that on the life of the people who depend heavily on the river.¹⁸² However, the community insisted they never sighted any of these reports. Again, the research could not ascertain whether the community was in the position to understand the report had they been given a copy. It still encapsulates on the importance of an expert during community engagements. Had the community contracted the services of experts all these would have been deliberated on and the appropriate compensation or mitigation measures put in place and ensured they are implemented.

The community were of the view that the government should have created a corresponding job to support their new style of living.

6.2.6.10 Impact of the dam on the environmental

The impact of the dam on the environment was recorded as mainly negative. It was reported that a greater part of the Bui national park area was submerged, and this affected plants and animals alike. They asserted that the relocation of the community exposed animals to poaching activities as they usually assisted the park officials in protecting the animals.

Some of negative impacts listed are:

- Animal population and species especially hippos and monkeys dwindled;
- Loss of vegetation and some medicinal plants which their women depended upon for soap and medicine;

¹⁸¹ See fns 174, 175 &176

¹⁸² Biological Impacts and Benefits, Environmental and Social Impact Assessment Study of the Bui Hydroelectric Power Project – Annex Volume January 2007 ERM Reference 0042911, A2.4.2.

- Change in volume of water and flow;
- Change in fish population.

These assertions were based on the people's traditional knowledge, observation and assumptions. The pictures below show: (A) the river before construction of the dam and (B), the river valley flooded after the dam has been constructed.¹⁸³



FIGURE 7: VALLEY OF BUI GORGE WITH THE RIVER BEFORE AND AFTER CONSTRUCTION OF THE DAM

There was also allegation of noise pollution during the construction of the dam from blasting of the rocks however, they affirmed that the noise has since ceased after the dam was completed.

6.2.6.11 *Complaints procedure*

Asked whether they instituted any grievance measures towards the government, or any institution concerned, the chief claimed that they have sued the government (probably after the project) and the case is still in court. There was no means to ascertain the accuracy of this assertion. Again, this is the case of lack of knowledge of the procedure. It appears the people of Bui village are oblivious of the EIA procedure that entitles them to call for a panel of inquiry into their complaints.

It is observed that, the Bui community have genuine concern, however a sound appreciation of the EIA process would have prepared them for a proper engagement with the government and

¹⁸³ These pictures are recovered from the officers of Bui National Park Game Reserve, therefore may not portray the exact location of the gorge before and after the construction of the dam.

what to expect from the dam. The community should have been educated and cautioned on their unsustainable way of living, that is, living on nature. Members of the community could have been given training in new skills which may be useful in their new settlement to enable them to adjust and embrace their new style of living. In this regard, it will not be as though a new style of living was imposed on them.

6.2.7 MINING - Newmont Mines Kenyasi No.2

Kenyasi No 2 is a community located near a gold mine site belonging to the Newmont Ghana Gold Ltd (NGGL). The community is in the Brong Ahafo Region of Ghana and is one of the ten communities in the region where Newmont Mines operates. NGGL carried out EIA in consistent with IFC lending rules and the EIA regulations of Ghana, before the mine commenced operation.¹⁸⁴ The study examined the EIA reports and went also to the community to gather information on members experience of the impact of the operation of the mines on their livelihood, and their environment. Kenyasi No.2 was chosen because it has a mix of rural-urban characteristics, comparatively accessible and it has established institutions like the Traditional Council and the Youth Group. The study started first with an introductory visit and presentation of drinks, as usual, in keeping with custom. Questionnaires were opted for as means of gathering information because members of the youth group are fairly educated. In addition to that, the youth group had embarked on series of demonstration and was preparing for another demonstration at the time of the study, hence a gathering for focus group may regenerate into a brawl, so for safety of the exercise, questionnaires were used. The two

¹⁸⁴ ESIA Ahafo South Project, Newmont Ghana Gold Ltd August 2005, 1- 13
<[https://www.newmontgoldcorp.com/.../ESIA-Public-Consultation-Comment-Response...>](https://www.newmontgoldcorp.com/.../ESIA-Public-Consultation-Comment-Response...);
<http://ourvoice.newmont.com/wp-content/uploads/2019/03/Summary_Ahafo_South_Project_0.pdf> accessed July 19 2019

research assistants occasionally helped those who did not understand some of the terms used in the questionnaire.

In all 22 questionnaires distributed and containing questions centred on

- * Involvement of the community in the EIA process;
- * Knowledge of the EIA process;
- * Ease with which information about the mining project, documents; relating to Environmental and social impacts are accessed;
- * Impact of mines on their economic, cultural lives;
- * Perceived impact of the mines on their environment;

Averagely, participants aged between 18 -35 had secondary school education. The majority are traders hence their main concern, unlike the people of Bui, is not farmlands deprivation but rather that Newmont should have provided them with jobs; their workers should have stayed in the community to boost economic activities; etc. Female participation was low. Out of a total number of 60 people, only 5 females were involved.

6.2.7.1 Notice of project

The essence of this question was to test the effectiveness of the means by which notice of the project was given to them. It is stated in the L.I. 1652 that notice (scoping report) must be advertised in a newspaper, if any, circulating in the locality where the proposed undertaking is to be situated; and be made available for inspection by the general public in the locality of the proposed undertaking with copies of the scoping report.¹⁸⁵ Then impact statement must be posted at appropriate places such parts of the environmental impact statement as it considers necessary.¹⁸⁶ The general public, relevant public agencies, organisations, NGOs, Metropolitan,

¹⁸⁵ LI 1652 reg 15 (1) b & c

¹⁸⁶ LI 1652 reg 16 (1)

Municipal and District Assemblies and local communities may make any comments, and suggestions on any matter on which notices are issued under this regulation.¹⁸⁷ All these were to enable the community concerned to also make relevant contributions.

From the field data, 17 out of 22 participants stated that the notice of the project was communicated to them through a meeting or a durbar organized purposely to discuss the project. Just two got to know through television and radio. This translates into the fact the durbar or a meeting seems to be the effective mode of dissemination info on the project. However, a follow-up question on how effectiveness of their chosen mode of dissemination only 11 stated that the mode of dissemination was highly effective.

It could be concluded that though the durbar gives notice of project it may not give information in detail, because durbars are occasioned with much celebration and pomp. Participants' understanding of notice of the project is skewed towards general information on the project, but not necessarily focusing on the scoping notice or EIS. This is evident in follow-up questions on the EIA process as it relates to the mines. It would have been appropriate for authorities to have distributed a summary of EIS at the durbar or make copies available at convenient places, say, palace, and offices of the traditional council or any place that is within the reach of the people in the community.

6.2.7.2 Level of Involvement

Participants were asked whether they were involved in the EIA process, 18 participants which represents 82% said no. Only four (4) participants stated they were involved in some way. For them, their understanding of involvement in the project is not about decision-making such as discussion and scrutiny of the reports etc., but rather about the benefits that they could derive

¹⁸⁷ LI 1652, reg 16 (3)

from the mining activity, hence the four people who said they were involved mentioned being employed as security guards as their kind of involvement. Hence, the conclusion is that there was a misunderstanding as to purpose, again due to their lack of knowledge in the EIA procedure. However, a response from one participant drew attention to another factor, that of apathy. Some were not willing to have anything to do with any process of community engagement of any kind because they believe nothing good came out of such exercises which have been carried out previously by others.

6.2.7.3 Direct and indirect impacts of the mines

An opinion poll on whether the direct and indirect impacts of the project on the environment were addressed satisfactorily during construction revealed high level of dissatisfaction. Issues like pollution of the environment; ecological consequences of direct destruction of existing habitats; noise and vibration levels; payment of compensation etc.¹⁸⁸; scored very low on a scale of performance illustrated by the graph below, where:

Category 1 - Pollution of the environment including air water and land;

Category 2 - Direct ecological changes resulting from such pollution relating to habitats, vegetation and animals;

Category 3 - Ecological consequences of direct destruction of existing habitats from activities such as dumping of waste and vegetation clearance and fillings;

Category 4 - Payment of compensation;

Category 5 - Noise and vibration levels;

¹⁸⁸ LI 1652 Reg 14

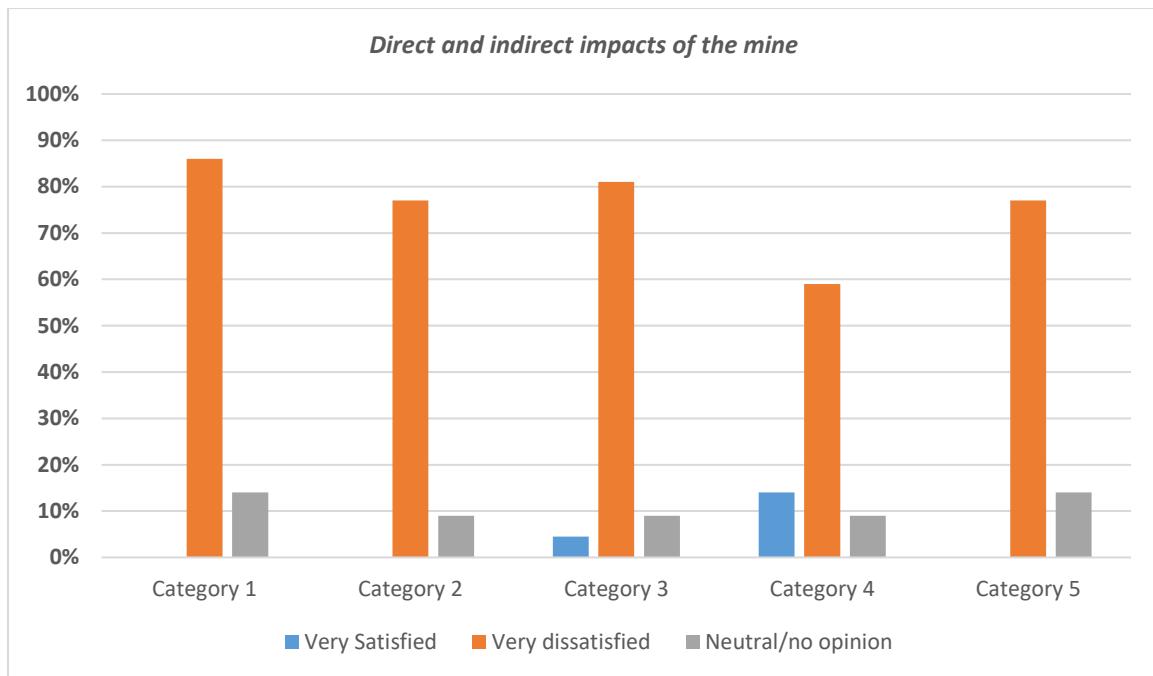


FIGURE 8 DIRECT AND INDIRECT IMPACT OF MINING (KENYASI)

From the graph above, the high scores show that participants are very dissatisfied with the way indicators in the various categories were tackled either by way of prevention or mitigation

6.2.7.4 Impact of the mine upon completion (specific indicators)

Again, participants' opinions were sought on their perceived impact of the mine on their livelihood using some specific indicators. The graph below illustrates their responses. Where:

Category 1- The mine has brought up increased economic activity

Category 2 – The mine has increased means of livelihood

Category 3 – The mine has brought in more jobs

Category 4 - Changes in social, cultural and economic patterns

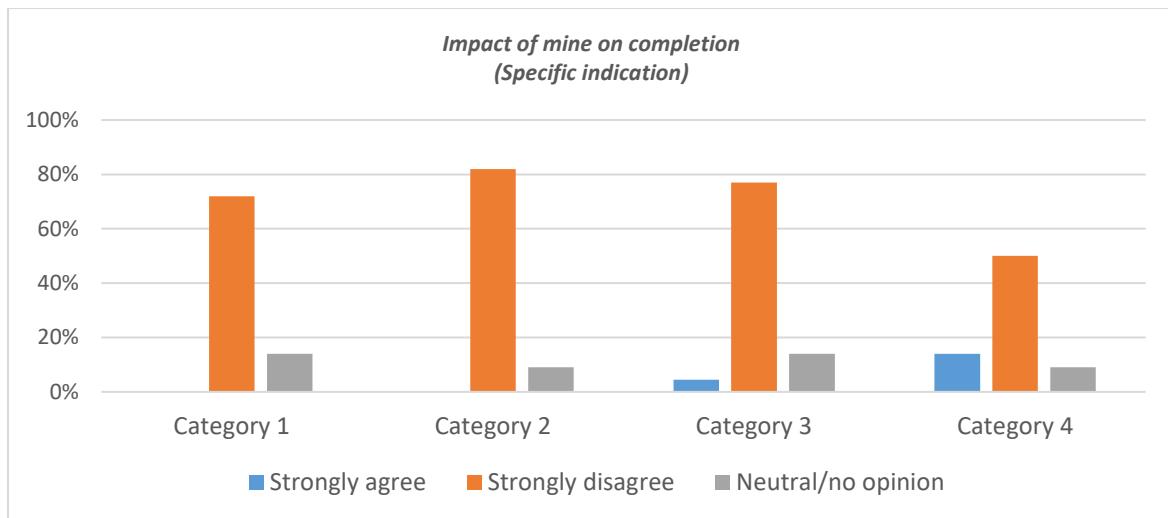


FIGURE 9 A GRAPH SHOWING IMPACT OF MINE ON COMPLETION

Again, it is observed that the scores are higher with the indicators that the participants strongly disagree with, indicating that participants did not derive any economic benefits from the mines.

6.2.7.5 Impact of project generally on livelihood

The consensus above is corroborated by a follow-up question on the participants' overall perception of the mines in their livelihood generally. 18 out of 22 participants responded in the negative. For this category of people, the mine is of no significance to them. Two (2) said the mines have positive impact on their lives, however they could not explain how positive. The rest two (2) could not tell whether the mines had any positive or negative impact on their standard of living.

6.2.7.6 Complaints procedure

18 out of 22 participants stated they lodged complaints against the mining company. On a further question of the procedure used, eight (8) out of the 18 stated they complained to the chief/traditional council; five (5) to their youth leader; so, it is concluded that the complaints were not in the format stated under the L.I. 1652 or that complaints were not made through the appropriate channel. Substantiated by a question in that regard where 15 responded that they

did not follow the procedure in the law. Thus, it is observed that complaints made were informal. Majority claimed to have sent their grievances to the chief and youth leader. Four (4) of participants present their grievances to the DCE and the Regional minister. Again, the majority could not remember how their grievances were presented, however some claimed they verbally informed their chief and through the youth leader and through demonstrations. Only those who stated they reported to the Regional minister and the DCE said they did so through formal letters. Some of the participants also stated they reported to the mining company directly and to an NGO.

The majority of complaints concerned compensation and lack of jobs, that is, the mines did not employ them. The rest were about unfulfilled promises of providing or upgrading existing social amenities. Only two (2) of the participants said they complained about pollution of water and crack in their buildings (as a result of blasting), which were direct consequences of the operation of the mines. This goes to prove that their level of understanding of the EIA procedure is limited. The responses show that complaints were not made through the appropriate channels stipulated by law.

The sort of complaints envisaged in the L.I. 1652 is twofold: indirectly, by public outcry, before commencement which triggers off public hearing.¹⁸⁹ This approach seems convenient especially for people living within the communities, however it is contingent upon thorough scrutiny of the EIS. The second approach is direct complaint to the minister concerning ‘decision or action of the Agency.’¹⁹⁰ Decision here could mean the grant of permit for the commencement of a project. This category of complaint must be submitted to the Minister within 30 days of the complainant becoming aware the decision or action to which the

¹⁸⁹ LI 1652, reg 17 (1)

¹⁹⁰ ibid, reg 27 (1)

complaint relates.¹⁹¹ The complainant must also state the issues objected to, attaching a copy of the decision objected to and all other documents relevant for considering and determining the complaint.

The complaint procedure itself in the Regulation itemised above sounds too onerous for people in the villages with limited knowledge of the EIA process. Besides, it may be very bureaucratic to make a complaint to the minister and also quite a journey, judging from the location of affected communities such as Kenyasi No.2.

This could explain the dissatisfaction with the outcome of the 18 who lodge complaints of a sort. Out of the 18, 12 said they were very unsatisfied the result. The dissatisfaction is from the fact that they did not receive any response or that there was no dialogue with the mining company to their expectation.

6.2.7.7 Knowledge about EIA

The essence of the section on the ‘knowledge about EIA’ is to substantiate the responses to the preceding questions on the community involvement and complaint procedure. It is presumed that knowledge about the EIA process will reflect on the stakeholder/community engagement process. Hence participants were asked to state what they know about Environmental Impact Assessment (EIA) procedure. 21 out 22 (representing 96%) of participants said they know nothing about EIA procedure. The only participant who claimed to have knowledge about EIA said “*it is about pollution of the environment through air, water, plants and more*”

Since majority don’t know anything about EIA, it follows that they might also be unaware of whether EIA was conducted or not. In this regard, the responses were split. 11 said no; nine (9) cannot tell and only two (2) said it was conducted.

¹⁹¹ ibid, reg 27 (2)

6.2.7.8 AKOBEN

Akoben is a rating system designed by EPA to monitor and promote compliance to implementation of environmental management systems, usually in mining communities.¹⁹²

Only one participant recorded to have ever heard about the Akoben programme. 21 participants said they have never. The one participant explained that Akoben relates to Gold transactions. Owing to the fact that the Akoben programme is publicised for its efficiency, one could have thought that it would be a programme that, Kenyasi No. 2, being a predominantly mining community, would be acquainted with it. Akoben is also said to be means for communities to report non-compliance and other grievances, it is therefore disappointing that participants who are members of a mining community do not know anything about it.

Again, it comes down to the issue of education or lack of it. Aside, ecological consequences of the mine, the complaints were mostly about unfulfilled promises like jobs, better social amenities etc, issues which could be considered as the corporate social responsibility or corporate citizenship of the mining company. So, the community clearly needs some orientation to appreciate the difference between a corporate social responsibility, a philanthropic gesture by a company to boost its image as well as to give back to the society and the EIA legal requirement of environmental management plan and mitigation measures. What the community should have been more concerned about are whether their rivers are polluted; or whether their farmlands were cleared to make way for gold mining without adequately providing for compensation; or whether they have been prohibited from farming in the area without an alternative source of work.

¹⁹² AKOBEN programme is to measure environmental performance so that communities will be able to rate companies. The term itself is a traditional Ghanaian symbol which means ‘vigilance’ and ‘wariness’ Ref: Darko Mensah, A. and Okereke, C. Can environmental performance rating programmes succeed in Africa? an evaluation of Ghana’s AKOBEN project, (2013) Management of Environmental Quality, 25 (5) 599, 618. ISSN 14777835 doi: <https://doi.org/10.1108/MEQ0120120003>

The next research project had a different undertone from the rest as it concerned a highway which is situated in the capital, Accra.

6.2.8 HIGHWAY – George W. Bush Highway, Accra

The George W. Bush Highway popularly called NI highway because it is part of the Ghana section of the West Africa motorway network, the NI. It extends to about 14.1 km across some heavily populated communities in Accra.

Due to the busy nature of the area, the team decided to survey those who have small businesses along the highway. Small businesses here mean those who sell all kinds of items from cooked food to fruits and vegetables, on tabletops or stalls, auto mechanics, barbering shops etc. The team also randomly picked commuters who constantly use the highway.

In all 15 questionnaires were issued but they were poorly completed despite the fact that most of the participants were educated. 54% of the participants had at least secondary school education as compare to Bui community where 33% had no education at all (See the chart below). There are also a few graduates and professionals.

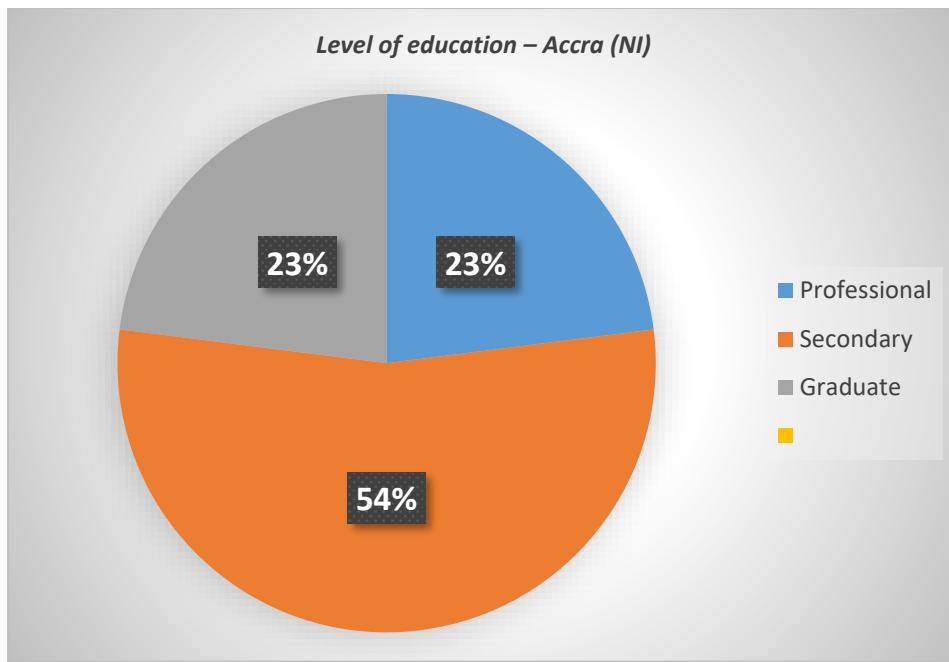


FIGURE 10 A CHART DEPICTING LEVEL OF EDUCATION (NI HIGHWAY)

6.2.8.1 Notice of the project

40% of participants said they heard of the construction of the highway on radio whilst 27% stated they heard it on the television. 20% said they were informed through a durbar held purposely to discuss the project. 13% stated they heard about the construction through other means but did not specify. When asked how effective the method used in communicating the project to the participants, only 60% percent affirmed that the manner in which information about the project was disseminated to them was effective.

Unlike mode of giving information on a project from the other study areas of the present research, it is discovered that durbar as a means of notice of a new project was not so popular with this genre of participants. Radio and television were the most effective. This may be explained by the fact that a durbar is associated with gathering of chiefs of a specific community or ethnic group. Since the survey was conducted in the heart of the city, where there are people from different ethnic groups and cultural area, it would be a near impossibility

to organise a durbar of chiefs for the different ethnic origins. Besides the people may not have time for the pomp and dancing that is associated with such durbars. People may not owe allegiance to any particular chief in the area. Moreover, several communities sprawled along the highway so it may have been costly to organise durbar of chiefs for each community. Thus, it is concluded that an effective mode to spread information on a project in the city was through the TV and radio.

The timing of the information about a project is also crucial to the effective implementation of the EIA process. If the notice is given early, that is, during the planning stage then the input of the people would contribute to the decision-making process of the project. Hence a question of at what stage the information of the road construction got to the participants was posed. 73% said they got to know at the beginning and 27% during the construction stage. This means that quite a number had the opportunity to contribute. Contrarily, only 7% out of the 73% said they were involved. However, the kind of involvement envisaged by the researcher seemed to be misconstrued because the 7% percent who said they were involved explained their involvement as rendering services such as repair of construction vehicles. This suggests that the participants understood their involvement to mean any income generating activity brought in by the construction.

6.2.8.2 Impact of the project

The question on the impact of the road in on their livelihood did not yield any significant response. While 20% stated the road constructed had positive impact on their livelihood 7% responded in the negative. 13% could not tell whether it had positive or negative impact on their life. 60% did not response at all. The response depicted either a lack of interest in the survey itself or that perceptively, participants did not see any change in their condition of living

after the construction. Nonetheless, participants listed some significance of the highway in general. These are:

- ***The road facilitates their movement to and from the community***
- ***The road brought about the beauty of the environment as compared to first***
- ***The road brought made directions to my area simple***
- ***The road has reduced the traffic congestion as compared to before***

6.2.8.3 Complaints procedure

Only 20% of participants said they ever lodged a kind of complain concerning the construction. The nature of the complaints was varied, as was the point at which the complaint was made. Payment of compensation during the start of the project; unsuitable positioning of foot bridges; etc were some of the issues complained of. Some participants said they were not paid at all whereas some said the amount paid to them was not adequate. It is noted that most of the participants were people with small businesses along the road and selling on the right of way reserved for future expansion of the road, so technically speaking, they don't have a right to any legal interest in the land. Compensation would have rather be for the stalls that were demolished some of which were illegal, anyway.

Generally, complaints made were to the member of Parliament of the area and through staging demonstrations. 7% out the 20% claimed to have lodged the complaint through demonstration. But they all did not bother about the outcome of their complaints.

6.2.8.4 Knowledge of EIA

All participants said they have never heard of an EIA process. This is surprising because one would have thought that, with the level of education recorded for this category of participants,

and being within the capital as well, the participants would have had some knowledge of EIA procedures. Although they said they don't know anything about EIA, 27% of participants agreed that it was conducted; while 20% thought not; 53% could not tell whether an EIA was conducted or not. On the whole 54% stated that they were called for a meeting and had a discussion about the project, even though they have never heard about an EIA as such. It follows that the meetings might well have been one of those stakeholder engagement meetings where the main subject for discussion would have been on payment of compensation. Their general lack of knowledge about the EIA process is reflected in the responses that followed. 87% said information about the construction was accessible to them. This means that although they don't know much about the EIA process, they were given some information about the construction. The information may not necessarily have been an EIS, just normal discussion on the project. This assertion was confirmed by the answer to the next question that whether they made use of procedure stipulated in EIA regulations. The question was not answered by all the participants.

In all, once again the lack of knowledge of EIA has come to light here, whereas in the case of the communities far away from the capital where lack of education may have played a role in their active participation in the EIA process, the participants in Accra were just indifferent about the process. Again, their main concern was more about the loss of their businesses and inadequate compensation.

6.3 CONCLUSION

The study set out to examine the post experience effects of some projects on some selected communities with the aim to determine how beneficial the EIA procedure practiced is to the communities and the country as a whole. The EPA officers are the evaluators of the EIA process and the enforcers of the EIA Regulation, so the aim was to garner their views on the

efficiency of the process and the law. The main issues discovered were that certain financial institutions will invariably prefer their guidelines to be used for the EIA process, although the procedure stipulated in the EIA Regulation of Ghana is also feasible. The conclusion reached in chapter four is that these guidelines are prepared from different socio-cultural and legal context, and economic environment and are thus influenced by their domestic legal systems socio-cultural values as well economic standards and may therefore not work in different socio-legal context. It follows that, if the processes stated in these guidelines are followed to the letter, then the projects for which they are executed will be more beneficial in terms economic growth, sound management of environment and enhance socio-cultural lives of communities found along these projects. For this very reason, the results of the study on the three communities which were selected in a bid to gather a post project experience of communities who are to be the focus of EIA process yielded some noteworthy results. The practical aspects of the EIA process compliment the results from the evaluators. Overall, pertinent issues like damage to their immediate environment, loss of means/source of livelihood as a result of the projects and loss of cultural identity are some issues which were disclosed. Whereas these are the very issues for which EIAs are conducted so as to prevent them from happening. The presence of these problems although EIA was carried to the letter before these projects were undertaken is an indicative of the inefficiencies of the systems used. The main conclusion drawn here is that practice of the EIA does not seem to be so beneficial to communities. This is explained further in the final chapter.

CHAPTER SEVEN

SUMMARY OF RESULTS, CONCLUSION AND RECOMMENDATIONS

7.0 INTRODUCTION

The main aim of the research is to evaluate the constructive significance of the practice of Environmental Impact Assessment (EIA) system in Ghana in pursuance of the goals of sustainable development. This chapter summarises main findings of the research and drawing conclusion from these findings and then recommendations based on these conclusions are also proffered. The chapter is divided four main sections: The Overview of the Thesis; Summary of Findings; Conclusion; and Recommendations

7.1 OVERVIEW OF THE THESIS

The research evaluates the EIA system in Ghana as a mechanism for implementing sustainable development. It seeks to ascertain whether the EIA procedure as practised in Ghana, which includes the implementation and enforcement of the LI 1652, is achieving the desired results of: preserving natural resources and the environment at large; ensuring equitable share of these resources; enhancing economic growth, cultural recognition and social justice. In this regard, the history of the EIA procedure was explored. The origin of EIA is largely Anglo-American and Anglo-European and in order to better understand the EIA process, the socio-legal context within which the EIA practice in these major jurisdictions are placed were examined. Similarly, USA and EU/UK approaches to the EIA were examined and a comparison of UK EIA system to that of Ghana was also undertaken to establish what exist or does not exist in the two systems. These were evaluated to emphasise the fact that the EIA process is situated within a socio-cultural and legal systems thus transposing a system from a different socio-cultural and legal milieu on another is fated to fail if these differences are not taken into

consideration. In corroboration to the assertion above, the study also draws out the extent to which EIA guidelines from multilateral and bilateral lending agencies (foreign guidelines) suit the Ghanaian context in promoting economic and social sustainable development in Ghana, and by extension, in developing countries, considering the fact that these guidelines are foreign within the Ghanaian context. The study focused on how communities, within which these projects, for which EIA were carried out, are located, stand to gain from the projects in relation to their means livelihood, social and cultural life, and environmental preservation. For that purpose, a fieldwork was carried out using a socio-legal approach. Qualitative and interpretive methods of investigations were used to gather and analyse information. The following research question were formulated to guide the study:

- i. To what extent are the contents of guidelines on EIA from multi-lateral and bi-lateral lending agencies influenced by the approach to the EIA from their places of origin?
- ii. To what extent are the prepared EIA guidelines from multi-lateral and bi-lateral lending agencies suitable for Ghana?
- iii. Are the aspirations of sustainable development reflected in these guidelines so as to facilitate environmental protection, social and economic development?
- iv. To what extend are these guidelines sensitive to questions of economic and social development and the cultural values of the developing world, using Ghana as an example?
- v. What does the examination of actual EIA supported project in Ghana tell us about the reception of EIA concepts from the global north in the global south?

The case study involved EPA officials as the competent authority which oversees the implementation and enforcement of EIA procedure in Ghana. Bui HEP Dam, NI Highway and Newmont Mines were the projects selected, and stakeholders in these projects formed part of the participants of the study. EIA guidelines of some selected multilateral and bilateral lending

agencies as well as EIA systems from the USA, the EU and the UK were also evaluated to gain a better understanding of the operation of EIA worldwide as tool for attaining sustainable development.

7.2 SUMMARY OF FINDINGS

This section presents a summary of the main findings of the research and draws out conclusion with respect to the research questions as it relates to the objectives of the study. This was achieved by analysing the data collected through distribution of questionnaires and focus group discussions from communities along selected projects. Information from officers of the EPA whose main concern is monitoring, and evaluation was also collated and analysed.

- i. *To what extent are the contents of guidelines on EIA from multi-lateral and bi-lateral lending agencies influenced by the approach to the EIA from their places of origin?*

The study answered the above research question through the study of guidelines from some financial institutions in chapter four as well as a study of EIA origin in chapter three and approaches adopted by the global north, mainly USA and EU/UK in chapter five. The EIA Regulation of Ghana was also reviewed, and some comparison was drawn between the UK approach and that of Ghana. From the discussion on the origin of EIA and the examination of the approaches to the EIA, it is noted that the EIA originated from the NEPA of the USA and has been adopted by other countries, including the EU. Each system develops a procedure to suit its needs, growth, level of technology etc. However there are similarities and these are: that EIA is procedure to be carried out before an undertaking begins; that the undertaken for which EIA is demanded is considered to have significant or adverse impact on the environment and economic, social and cultural of people; that there is a classification criteria; that there is an established competent authority to oversee the execution of the EIA procedure; that each

system has enacted specific laws in furtherance of the EIA practice; and finally, that EIA is a decision-making tool.

With NEPA, it is the federal agents who initiate the EIA process when in their estimation, project(s) might have significant impact on the environment,¹ and the Council for Environmental Quality (CEQ) is the institution set up to oversee the EIA process. The CEQ also has the mandate to review the process under the law and provide guidelines.² Although NEPA has been touted to be the pioneer of the EIA process, probably in the legal sense,³ it has also been criticised for inefficiencies and delays,⁴ and giving rise to much litigation.⁵

The EU on the other hand operates through Directives. Directives are given to Member States to incorporate EIA process into their existing laws or enact new laws on EIA where there is none. The Directive is provided in a framework format and Member States are to design their own procedure to incorporate the EU Directive in their domestic legislation.⁶ This is rightly so, because the EU comprises of different countries with differing level of development and systems of governance. However, the Directives provide guidelines regarding the type project, classification criteria and the composition of the institution to oversee to the enforcement and implementation of the EIA law and the EIA process.

The UK being part of EU (at least until Brexit day, when the European Communities Act was officially repealed) is obliged to incorporate EIA Directives in their domestic laws. Some writers are of the view that UK had its own legislation with environmental considerations

¹ National Environmental Policy Act (as amended) 1969, (42 USC § 4332) s 102
<https://www.whitehouse.gov/sites/whitehouse.gov/files/ceq/NEPA_full_text.pdf>

² United States Environmental Protection Agency <<https://www.epa.gov/nepa>> accessed November 15 2017

³ Stephen Truman QC, *Environmental Impact Assessment* (2nd edn, Bloomsbury Professional Ltd 2012) 2.

⁴ William Sheate, *ENVIRONMENTAL IMPACT ASSESSMENT: LAW & POLICY Making an Impact II* (Cameron May Ltd 1996) 44

⁵ Stephen Truman QC, *Environmental Impact Assessment*, (2nd edn, Bloomsbury Professional Ltd 2012) 2

⁶ Directive 2014/52/EU, art 2 (1) & (2)

before the joining the EU,⁷ as such the EU EIA Directives are a transposition of a law on an already existing complex system of laws,⁸ by virtue of section 2 (2) of European Communities Act, 1972. The EIA process is mainly presented in the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (SI 2017/0571). In the UK, the EIA process may be initiated in three different ways, a developer on its own volition may include an ES in an application for development permit or during application process, may request the opinion of the relevant bodies an opinion regarding whether an EIA should be conducted or not. Or, it may be that the Secretary of State directs that a development should be assessed to ascertain whether an EIA is required (Screening direction) or requested by a concerned individual, a local group, or an NGO.

In Ghana, the EIA is implemented through the EIA Regulation LI 1652 and the EPA is the institution that sees to the operation of the Regulation by the EIA process. There are projects for which EIA must be carried out before a permit is issued, however, if the Agency is of the opinion that the EIA is required, the proposer must carry it out even though it is not listed among projects for which EIA is required.

In all, the EIA approaches rightly reflect the purpose for which they were enacted, namely, sound environmental practices relating to land use. In the EIA approaches there is emphasis on the sharing information or making it available on the projects regarding the impact of the projects and any mitigation measures or any environmental management plan put in place. There is also the issue of engaging people not only those who will be affected by a project in dialogue but also any person who is interested may request the audience of the authorities.

⁷ Christopher Wood *Environmental Impact Assessment: Comparative Review* (Longman 1995) 44 (Wood suggested that, the UK's land use planning system, which was in force since 1948, was a powerful contribution to environmental protection); Jane Holder, *The Regulation of Decision Making* (OUP 2004) 45 (Holder also affirms that there was already a well-developed land use planning system which the UK adapted to take account of the effects of development on the environment).

⁸ Joe Weston, 'Lessons from EIA in Practice' in Joe Weston (ed) *Planning and environmental impact assessment in practice* (Longman 1997) 181

However, the EIA approaches from the global north seem to be more rigorous, detailed as compared to that of Ghana. Ghana's Regulation appears lax and lacking in rigour with reference to form and content. Four issues stand out to be improved: Categorisation of projects; mode of public engagement; complaints procedure and recourse to the law court and periodic review.

The conclusion arrived at in chapter four is that the guidelines from multi-lateral and bi-lateral lending agencies are a combination of some country's legal framework, especially countries from the global north and international standards which are basically a reflection of advanced rigorous legal system. An example is the case of Executive Order 12114 and NEPA of USA which has been incorporated into the Millennium Challenge Corporation Guidelines. Again, these guidelines are drafted by experts from the global north with little or no knowledge of conditions in the global south. Insofar as these guidelines are used in the global south where financial assistance is needed most for infrastructural development, the institutional capacity of the countries in the global south, the level of technology and the cultural and social environment must be taken into consideration. This point discussed further in the subsequent paragraphs. To impose such guidelines on countries such as Ghana from the global south means that Ghana will not use its own laws frequently and as reiterated, it is through frequent use of the law that gives the opportunity for loopholes to be identified and reviewed. Too much use of foreign EIA guidelines will only hinder the growth of the domestic EIA law. And so long as the domestic law is weak, the financial institutions will use it as a reason to impose their guidelines on the global south, an endless cycle of global north dominance on global south.

ii. To what extent are the prepared EIA guidelines from multi-lateral and bi-lateral lending agencies suitable for Ghana?

A key objective of the study is to highlight the extent to which the EIA guidelines from multi-lateral and bi-lateral lending agencies suit the Ghanaian context. The study revealed that

whereas the banks prefer the use of their guidelines over the national legislation some of the substantive issues addressed in these guidelines are alien in the Ghanaian context. For example, the idea of public participation in these guidelines are not the same as what is practised within the Ghanaian context. EPA officials gave an insight into what pertains during stakeholder engagement that proponents of projects meet the public and affected communities only to highlight the benefits of the project. The public do not usually discuss the project in its entirety because they are not acquainted with information on the project. This points to the fundamental difference between public participation in the countries of the global south and that of the north, where the public is engaged to deliberate on the project based on a non-technical summary of the project made available to them, or where any interested person or group may request for an engagement with the authorities. From guidelines evaluated in chapter four, the conclusion is that foreign guidelines are not suitable to be used to carry out EIA in Ghana because they are designed by foreign experts for financial institutions basically from developed economies, hence the understanding of basic concepts are different.

The guidelines are imposed indirectly through the financing of the projects. However, this stands contrary to what was discovered in the review of these guidelines discussed in chapter four. The banks indicated in these guidelines that the sovereignty of a country must be upheld, and the respect for domestic laws was reiterated. Therefore, they maintained that the guidelines were to be used only where the domestic legal system on EIA is non-existent or is inadequate. The EPA officials interviewed alleged that the banks insist on the use of their guidelines when they are sponsoring a project or an undertaking. According to the EPA officials, the insistence of the banks on the use of their guidelines is wrong and does not play well for the domestic legislation, for it is through frequent use that inadequate provisions and gaps can be addressed and improved. Thus, it is only if the local law is failing in a particular

subject area that the foreign guidelines may be called in aid. They cautioned that the foreign guidelines should only be used as a guide, as the name suggests.

The conclusion of the study in this regard therefore is that, the prepared EIA guidelines from multilateral and bilateral lending agencies are not suitable for Ghana because they fail to address adequately the socio-cultural and economic needs of the Ghanaian society. To the extent that they are imposed on the country, this is wrong, because insistence on the use of foreign guidelines disregards the country's sovereignty, in as much as they are imported from a different system. At best they can be used as aids but not the main procedures to be used, and if used in this more limited way, the domestic law will be able to develop along the areas that needed to be improved.

iii. Are the aspirations of sustainable development reflected in these guidelines so as to facilitate environmental protection, social and economic development?

The above research question was formulated to ascertain the usefulness of EIA guidelines from multi-lateral and bi-lateral lending agencies in promoting economic and social sustainable development in Ghana. The conclusion was that the foreign guidelines do not take into consideration the disparity in the level of economic and social development, as well as the cultural values of developed and developing countries. From the conclusion drawn above, these guidelines are designed by foreign experts for financial institutions basically from the economies of the global north, hence the understanding of economic concepts are different. Whereas economic value of the project may be calculated in the GDP, GNP, etc., what is important to a community is whether the project will bring in additional jobs or augment basic incomes; whether the project provided schools, clinics, electricity, healthy drinking water and other basic needs that are taken for granted in the developed world. EPA officials reiterated that though the foreign guidelines are not bad, they don't speak to some of the cultural values

practised in the country. This assertion was also substantiated from information the field survey where affected communities complained about loss of cultural identity due to resettlement. The conclusion confirmed the assertion of Fisher et al that EIA operates within particular institutional contexts hence EIA process varied from jurisdiction to jurisdiction, so regard must be had to surrounding social and political values of each jurisdiction.⁹

Again, as explained by the EPA officials, these guidelines do not speak the cultural values of the different ethnic groups in the country. It was discovered that this is one of the issues when it is a matter of stakeholder engagement. Whereas some financiers insisted on the use of their guidelines, issues like stakeholder engagement are left to the resident experts and the proponents to handle. It was detected that there is a fundamental difference between what was stated in the reports and what was actually carried out. For example, the EIA reports (ESIA, EMP & RAP) of Bui Dam examined gave the impression that all grounds have been covered regarding cultural values identity and cultural values, however the story is different within the communities. The people of Bui village (new settlement) complained that they have lost their cultural identity and respect. Hitherto they were the owners of the land, and all settler communities from other ethnic groups paid allegiance to them and respected their culture, as the owners of the land. However, since they have all been relocated onto a new land seemingly acquired by the government, these communities neither recognise their authority nor respect their culture anymore. Environmental considerations, people's livelihood, cultural values etc., were not addressed satisfactorily. Which means that some of the mitigation measures were also not implemented to the letter. In this regard, the guidelines will not help attain the level of sustainable development desired by international standards.

⁹ Elizabeth Fisher and Bettina Lange and Eloise Scotford, *Environmental Law Text, Cases and Materials* (OUP 2013) 857

iv. To what extend are these guidelines sensitive to questions of economic and social development and the cultural values of the developing world, using Ghana as an example?

From the review of the foreign guidelines and the study of the various approaches, the conclusion was that the foreign guidelines do not address the basic economic, social and cultural needs of the local communities. This conclusion is corroborated by the outcomes of the post-project study, which is the main focus of this research, where concerns of local communities were not satisfactorily addressed despite the fact that EIA was carried out on the projects undertaken.

The aim of the research was also to suggest, based on the outcomes of the study, alternatives for facilitating environmental protection, economic and social development. It was stated by the EPA officials that the current EIA process as required in the L.I. 1652 is very effective since it addresses most issues relating to sustainable development. It is established that the integrated approach, especially, practised in Ghana makes it possible for all the key pillars of sustainable development to be considered in the EIA process. However, the EPA officials admitted that a review of the current law on EIA could go a long way to achieve more sustainable development. An alternative way to enhance the current practice as regards environmental protection is to employ indigenous knowledge especially for projects that are situated in communities in accord with Appiah-Opoku's suggestion that indigenous ecological knowledge could be used to supplement scanty scientific data and information in the country.¹⁰

During the field study, it was observed that there is so much apathy in the EIA process on the part of local or the affected communities. A separate resettlement plan may be designed which

¹⁰ Seth Appiah-Opoku, 'Environmental impact assessment in developing countries: the case of Ghana' (2001) 21 Environmental Impact Assessment Review 59-71, 67

not only consist of experts going to the communities to take stock of the facilities they have but rather a thorough ethnographic study of communities, before relocation takes place.

v. ***What does the examination of actual EIA supported project in Ghana tell us about the reception of EIA concepts from the global north in the global south?***

The above research question was to bring out the correlation between the reviews of the EIA approaches from the global north which are incorporated into EIA guidelines used for projects in the global south and the post-project study projects for which the guidelines were used. From the discussion of the outcome of the study above, it is a foregone conclusion that the EIA concepts from the global north will not work in the global south inasmuch as it is adopted in a “cut and paste” manner. However, are the countries like Ghana from the global south also in favour of foreign EIA concepts? On one hand, it was concluded that countries such as Ghana are coerced into accepting foreign EIA concepts through the imposition of guidelines from international financial institutions; on the other hand, the country seemed to accept these EIA concepts, regardless of their ineffectiveness, through its institutions. Some government institutions who are proponents of projects readily accept the use of these guidelines because of the money that comes with them. This is a conclusion drawn from the interview with the EPA where it was revealed that some government institutions negotiate with the financial institutions without the involvement of the EPA and only inform the EPA after the process has been completed. They go as far accepting foreign experts suggested by the financial institutions to carry out the EIA. In the event that the EIA report is rejected by the EPA for not conforming to the EIA Regulation of Ghana, a separate one is prepared. Hence, it has become the practice that two separate EIA reports are prepared for one project, one for the financial institution using the guidelines provided by the institution and other for the EPA using mainly the country’s own Regulation. So, the confusion arises when it comes to monitoring

and project auditing, and in this regard, it is the community within the catchment area of the projects that suffers.

7.3 CONCLUSION

It is a foregone conclusion that EIA is a tool that will deliver the mandates or aspirations of sustainable development.¹¹ However, in the present research EIA as practised in Ghana regarding the whole procedure, as well as the supporting legislative instrument, needs a total reformation, if it is to deliver the vision of sustainable development. That is, in order to achieve the desired results of preservation of natural resources and the environment at large; and ensuring equitable share of these resources, and enhancing economic growth, cultural recognition and social justice. Morrison-Saunders and Retief, suggested that legislative reform is not necessary to promote the effectiveness of EIA to address the mandate of sustainable development but rather there is a need for a focus on behavioural change of professional actors.¹² However in the case of Ghana, the research points to the fact that both legislative reforms and training of professional actors as well as behavioural change of both actors and that of the general public is what is needed.

EIA is a process that involves a great deal of technicalities in different fields of endeavour as it encompasses assessing the impact of major project on the environment social and economic life of the people. It ranges from scoping, screening, EIS/EIA reporting, public participation, decision-making to monitoring and evaluation. All these stages if executed well, together will

¹¹ William R Sheate *Tools, Techniques and Approaches for Sustainability: Collected Writings in Environmental Assessment Policy and Management*, World Scientific: Singapore, pp 408. (October 2009); Angus Morrison-Saunders and Francois Retief, ‘Walking the sustainability assessment talk – Progressing the practice of Environmental Impact Assessment’, [2012] 36 Environmental Impact Assessment Review 34-41; Also, discussion under Section 3.3

¹² Angus Morrison-Saunders and Francois Retief, ‘Walking the sustainability assessment talk – Progressing the practice of Environmental Impact Assessment’, [2012] 36 Environmental Impact Assessment Review 34-41; See fn 80, Chapter 3

make a good EIA system. From the research, it was revealed that EIA system in Ghana is supervised mainly by the monitoring and evaluation department of the EPA, hence the competent authority is appropriate as employed in other EIA systems. Therefore, much is dependent on this unit for the achievement of the goal of sustainable development. The EPA has trained officers in various areas of specialisation namely technical team, chemical handling, monitoring, engineering, mining, sociology and social team etc., to meet the exigencies of the procedure. However, the post- qualification training received by these officers is inadequate and not sufficiently frequent to meet the tenets of the process and for officials to be abreast of new trends and technologies in the field.

There is also lack of coordination and collaboration within concerned authorities from the government side during the initial stages of the EIA process. When it comes to projects initiated by the government, the proponents do not contact the EPA for advice on the EIA process and assistance to negotiate with the Banks. The end result is that there is a contrast between what is presented in the reports and what actually happens on the ground.

The study also brought to the fore the fact that the banks prefer the use of their guidelines and also their known consultants to carry out the EIA and present reports to the EPA. Concerns most importantly to be addressed in the EIA, in the spirit of sustainable development, include the negative impacts of a project on the environment, the economic and socio-cultural life. Since the EIA is conducted mostly by the foreign experts using foreign guidelines the fundamental issues of sustainable development, namely: environmental protection, social and economic development are not satisfactorily addressed. For example, economic development in the local context is not the same in the international context. Economic development for the locals is the improvement in the livelihood, jobs, access to good roads etc., hence even if their environment is taken from them, they might like to see their basic lives improve. It was

assumed during the commencement of the study that people in the community usually benefit from the project around them, hence the term ‘the beneficiary’. However, it was discovered that the beneficiaries do not actually benefit that much from the project itself, but rather it is the corporate social responsibilities undertaken by the contractors to forestall any hardships, are what the people usually enjoy. From the projects studied, although the country at large stands to benefit, the communities themselves do not derived much benefit from the projects economically. In this regard, it is concluded that the objectives of sustainable development have not been achieved, because EIA practice for these projects has not been beneficial for the affected communities in terms of augmenting economic activities, poverty eradication or even alleviation in some cases.

Regarding plans towards amelioration, monitoring is the mechanism to determine whether environmental management programmes and mitigatory measures have been implemented. It is noted from the research that whereas the banks prefer the use of their guidelines and also their known consultants to conduct the EIA, monitoring and evaluation is left for the resident experts. In the end, a disjointed exercise results, as those who do the assessment are not the same category of people whose duty it is to monitor the mitigation. Thus, the incongruous situation arises whereby whatever was put down as a mitigation measure was not well implemented due to disparity in the level of expertise. The communities within which projects are situated mostly bear the utmost adverse impacts, especially regarding the environment, for example, loss of farmlands due to destruction or inundation of the vegetation, or prohibition of an area for farming fishing and hunting. These are all detrimental to their economic wellbeing. Therefore, adverse impacts, when addressed properly during screening stage, will bring expose the negative impacts and appropriate plans to ameliorate, or alternatives will be provided for. Adeyemi’s conclusion that the adoption of the guidelines alone does not promote sustainable

development¹³ is therefore confirmed in the outcome of the study. Furthermore, the conclusion drawn from this research is that foreign guidelines are not suitable within the Ghanaian context because the use of these guidelines in carrying out the EIA does not bring in the much-desired benefits to the communities. Benefits here means increased in economic activities that communities envisaged the projects will bring, that will also be a boost to income levels and standard of living, that is, in the spirit of sustainable development, benefits for the present generations. However, future generations may be bereft of some benefits as well, where projects such as the Bui Dam results in loss of cultural identity of some minority ethnic communities; and loss of forest cover and destruction of animal habitation, resulting in loss of species such as the Hippos, which the future generations may never see. What is needed is a firm implementation, modalities, logistics, trained officials etc. For the concept to be successfully implemented, the multi-lateral and bi-lateral lending agencies must be actively involved in monitoring to ensure that standards are being maintained and to institute sanctions for those who do not abide by the standards. In the alternative, the multi-lateral and bi-lateral lending agencies may allow countries within which they operate to use their domestic laws and only fill in gaps where they are lacking. In these instances, traditional knowledge on the cultural norms and values and social life of communities will be an immeasurable asset.

This conclusion can be extended to other developing countries, owing to the fact that, Adeyemi's research was on IFC's 2012 Performance Standards which is used in developing countries where IFC operates. In, addition, Adeyemi's research suggests that IFC through its guidelines (Performance Standards) provide an important framework for promoting sustainable development practices in developing countries.

¹³ Adebola Adeyemi, 'Changing the Face of Sustainable Development in Developing Countries: The Role of the International Finance Corporation' (2014) 16 Envtl. L. Rev. 91 (See fn 36)

Public participation in the EIA process is not sufficiently participatory, as the involvement of the public in identifying effect of projects on their livelihood, preservation of aesthetic and cultural heritage is low. The process of public participation itself is inadequately addressed in the L.I. 1652. An aspect of public participation in the EIA process, as stated in the L.I. 1652, hinges on upon ‘great adverse public reaction’, which then necessitates public hearing.¹⁴ As noted from the study there is yet to be an occasion where the public hearing was occasioned by adverse public reaction or that a project was abandoned totally or alternatives sought because of adverse public reaction. This has never occurred because of lack of knowledge on the part of the people whose right it is to protest. From the information gathered on the field, where public participation is carried out, it was more about the public participation of deliberation on the compensation to be paid.

In sum, the research established that EIA would deliver the mandate of sustainable development in Ghana, if the issues discussed in the preceding paragraphs have been properly sorted out. In this regard, the EIA system in Ghana, including the Environmental Impact Assessment Regulation, 1999 (L.I. 1652) already speaks to the mainstays of sustainable development. Hence the use of guidelines from the financiers only confound the process since they don’t directly reflect socio-cultural values of the country. The research therefore affirmed Boyle’s assertion that EIAs are invention of the Western, industrialised democracies, thus transferring EIA programs to industrializing nations without having recourse to their very different cultural and socio-political heritages and practices will only compound existing challenges.¹⁵

¹⁴ LI 1652, Reg 17 (1) (a)

¹⁵ J Boyle “Cultural Influence on Implementing Environmental Impact Assessment: Insights from Thailand, Indonesia and Malaysia” (1998) 18 Environmental Impact Assessment Review pp 95-116.

At the start of the research it was assumed that the imposition of foreign guidelines will not work in the Ghanaian environment (thus, in consistence with assertions made by Siem, Legrand and others on failure of legal transplantation, though guidelines are not rule properly so-called.)¹⁶ Not only is this assertion affirmed by the outcome of the field study, but also that the socio-legal and cultural context within which the procedure are stipulated in the guidelines do not match what pertains in the Ghanaian context. The study also proves that when two foreign laws are used, the domestic laws suffer to improve because they are not being used frequently to enables the shortfalls to be identified and addressed. Lack of education is an added factor. The communities interviewed are neither aware of the existence of the L.I. 1652, the main law on the EIA procedure, nor the EIA process. They are oblivious to their rights under the law that gives them the power to call for a hearing or stop a project thereby serving as a check on bad decisions from the government.

EIA is said to deliver the mandate of sustainable development, that is environmental protection, economic and socio-cultural development, however the process generally is focused more on the environmental aspect marginalising the social and economic impacts. The problem is exacerbated by the imposition of foreign concepts which only muddle the implementation in developing countries as the present research shows in case of Ghana for instance where: i) the terms used and the procedure to be carried out fundamentally differs in the concept and perception; ii) two separate EIA Reports are prepared, one for the financial sponsor and another for the other for the benefit of the EPA (the enforcement institution); thus when it comes to investigation of impacts of a project, monitoring and mitigatory measures, one is at a loss regarding which procedure was used or is being implemented. Ghana's efforts were good and

¹⁶ See Chapter 3.2.3

laudable in this regard as even explained by the key informant interviewed that the L.I. 1652 is comprehensive.

7.4 RECOMMENDATION

Sustainable development is as much as social, cultural and economic development as environmental protection. Economic activities, social life and cultural norms and values of communities should be thoroughly studied, analysed as part of feasibility studies carried out during project evaluating stage to enable to determine what works out for each community before a project is approved (as part of project approval/proposal exercise or formalised as part of the EIA procedure). From the cases studied, these seemed to be carried out but had not been effectively done, seemingly, because information contained in the EIA reports studied are not consistent with information gathered from the communities. Traditional knowledge should be included in the EIA procedure to enhance the appraisal exercise of cultural practices and social life of the communities because traditional knowledge will help to fill in the actual needs of the communities as against perceived needs. In this way, the monitoring authority will be able to assess communities' needs individually and will be able to determine what is beneficial or works in each instance, for communities are unique in their cultural norms and values and social needs. Similar studies may be carried out during monitoring and evaluation within the communities especially those relocated due to the project to find out how these communities are faring. In certain instances, some members of communities can volunteer to relocate, on a pilot basis, to the site earmarked for resettlement of project affected communities before the actual project takes off. In this way, the community can attest to the feasibility of proposed resettlement scheme. With regards to environmental safeguarding, project affected communities may have to call upon the services of experts NGOs, both local and international, to assist them to evaluate the EIA reports and seek redress where necessary.

Ghana can exercise a firmer stance in the use of foreign guidelines even though the country depends on financial assistance from these financial sponsors, with the aim of reducing arm-twisting from financial sponsors, inasmuch as most of the financial assistance are not handouts. It stands to reason that international financiers are more inclined to lend to a country with an organised and rigorous system of laws than a chaotic system and will want to be associated with good standard of practice.

Ensuing from the outcomes of the study, the following specific recommendations are proposed:

7.4.1 Training of Actors (EPA officials)

In every EIA system, the competent authority plays a major role in the success or effectiveness of the process.¹⁷ As the name suggests, the competent authority sees to the implementation of the EIA process therefore they have to be outstanding in the exercise of their roles and responsibilities and they have to be abreast of new technologies etc. A major complaint of the officers of the EPA is regular training in their areas of expertise. This will enable them to scrutinise the EIA reports, undertake monitoring and auditing remarkably. They must be well versed with the technologies needed for implementing management plans and enforcement of mitigatory measures such that even if EIA reports do not address the environmental safeguards, satisfactorily as well as economic and social-cultural values of the people, it is up to the officers implementing to adjust it to be consistent with these tenets of sustainable development especially as cultures are as varied as the communities.

¹⁷ This is an assertion is discussed in Chapter five

7.4.2 Collaboration between stakeholders

There should be coordination between stakeholders including the affected communities throughout the various stages of the project, from screening/scoping to monitoring and evaluation. Especially so, where the same government through its institution is the regulator, the enforcer and a proponent.

7.4.3 Involvement of the Banks/Monitoring

So long as the banks insist on using their guidelines, they must also take part in monitoring. Besides, since it is foreign experts that undertake the EIA, it stands to reason that they must also be made part of the monitoring process, for it is they who knew the techniques they used in assessing the impacts and they also projected mitigation measures as well as designing the management plan, otherwise a joint process is more favourable. The EPA must insist on using both resident and foreign experts so that with time, resident experts will be weaned off from the foreign consultants.

7.4.4 Policy Implications

It may also be part of the state's policy on the EIA process towards sustainable development that anyone who wants to run a consultancy of EIA services (foreigner or Ghanaian), must have a certification from the EPA institution, and practical EIA training should be made compulsory for institutions who train engineers in the sector.

7.4.5 Political will

The Brundtland report identifies the need for a political will in order to attain sustainable development.¹⁸ In agreement, it is suggested that the government of the

¹⁸ Our Common Future: An Overview by the World Commission on Environment and Development para 30

day must exercise a tenacious political will in order to implement policies consistent with sustainable development goals. And this includes the recommendations offered in the present research. The government, here is by implication, referring to all government institutions involved in the process, be it regulators, proponents of projects, the institutions entrusted with enforcement and those who play advisory roles. And above all, the political powers must be ready to be amenable to change.

7.4.6 Reformation of the EIA System.

Reformation of the EIA system in Ghana is twofold: first, the review of the Environmental Assessment Regulation of Ghana (L.I. 1652), the main law governing the EIA procedure and secondly, the procedural stages of the EIA need to be restructured.

7.4.6.1 Review of the L.I. 1652

The L.I. 1652 was enacted, 1999 two decades ago and since then the law has never been reviewed or amended except for fees.¹⁹ Whereas in other EIA systems examined in the present research, periodic review of the EIA law is considered vital to the effective implementation of the EIA process.²⁰ The EPA officials also reiterated the need for the law to be reformed. Proceeding from the review of the L.I. 1652 in chapter five and outcomes of field data in chapter six, the areas of the law identified to be the focus of reformation includes the following:

i. *The Schedule:*

New technologies and new businesses have emerged since 1999, hence the listing of undertakings to be considered for EIAs or not to be considered, listed in Schedule

¹⁹ see The EIA the UK and Ghana compared

²⁰ see The EIA the UK and Ghana compared fn 126/127

II and I respectively must be reviewed to reflect current trends. The description of the undertakings must also be clear and unambiguous. Thresholds and stated criteria to guide the classification process may be introduced as in the case of the UK EIA.²¹

ii. *The wording of the Regulation:*

The wording and phrases must be precise so as not to evoke contradictions and equivocal meanings. For example, an undertaking must undergo EIA if it is “likely to have adverse impacts on the environment or public health” seems to suggest that the impact or effect of the undertaking should be negative in order to qualify for an EIA. As discussed in chapter five, this appear to be limiting and consequently, many projects may be exempted from the EIA process. The phrase “significant impacts” may be used instead.

There must also be consistency in the terms used. For instance, the word ‘responsible person’²² is used to denote who is to prepare and submit an EIA to the Agency in one instance and ‘applicant’²³ is used in another instance. Considering the fact that in certain instances, the proponent of the project is different from the developer, the terms must be clear and the same throughout the L.I. 1652 to enable easy identification of the proper person or entity on whom the obligation lies under the law to prepare an EIA. It thus makes it easier for affected people and interested parties to identify who the entity to report or report to.

iii. *Harmonization of legal instruments:*

Other laws that speak to the EIA must be coordinated in order to avoid duplication of roles. For example, Act 703 mandates the Minister for Mines/ Lands & Natural Resources to enact regulations to provide for matters concerning environmental

²¹ See discussion on EIA Ghana / UK in Chapter five

²² L.I. 1652, Reg 3

²³ Reg. 9 (1)

protection health and safety in mining, a mandate reserve for the Ministry for Environment Science, Technology and Innovations and EPA through the Environmental Protection Act.²⁴

iv. *The mode of giving notice:*

The mode of dissemination of information on the project stipulated in the L.I. is not sufficient. For example, notice of scoping report is to be advertised in a national newspaper and a newspaper, circulating in the locality where the proposed undertaking is to be situated and the scoping report should be made available for inspection by the general public in the locality of the proposed undertaking.²⁵ The mode of making available the scoping report (EIS) could be more explicit, say, some venues such as office of the District Assembly, the chief palace should be stated. The notice of the scoping report could be announced in local dialect on local FM stations, because local newspapers are invariably non-existence in the locality where the undertakings are located. Information about the project must be given at each stage of the process as many people may not be able to get access to the EIS. A supervisory provision could be included to ensure that the public get access to the information, and secondly to hold applicants liable if it is established that information has been deliberately withheld.

v. *Complaint procedure:*

There should be express provision for recourse to the court of law. The Regulation at present only makes provisions for persons ‘aggrieved by the decision or action of the Agency to report to the Minister,²⁶ and the Minister on his part must constitute a

²⁴ Mining and Mineral’s Act 2007 [Section 110 (4)(a)].

²⁵ LI 1652, reg 15 (1) (b)

²⁶ LI 1652, reg 27 (1)

panel to hear the matter.²⁷ The decision of the panel seemed to be final. This is a classic example of standing restriction noted by Redgwell as one of the major obstacles to environmental justice in many jurisdictions.²⁸ Access to environmental justice well documented comparatively in developed countries. For instance, there is an express provision for judicial review of decision of the Secretary of State in the UK EIA Regulation.²⁹ There is also the European Commission for Europe's Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention, 1998) which enjoins member states to guarantee among other things access to justice in environmental matters in order to contribute to the protection of every person of present and future generations to live in an environment adequate to his or her health and well-being.³⁰ Judicial review in EIA decisions therefore, is a means to curtail arbitrariness on the part of the competent authority. It also enables the affected community, interested parties and concerned citizens to ensure appropriate enforcement of EIA decisions. However, the conclusion drawn from the study is that such procedures are nonexistence in the Ghanaian EIA procedure. Communities are oblivious to their right and are unaware of any such procedure. Communities are also reluctant to make any complaints in the mistakenly believe that they are making a worthy sacrifice for the general good of the nation, as in the case of Bui Community. It was also concluded that recourse to law courts is expensive because of the remote nature of the communities affected adversely by the projects. In this regard, the law must be explicit on the procedure to undertake concerning aggrieved communities.

²⁷ LI 1652, reg 27 (2)

²⁸ Catherine Redgwell 'Access to Environmental Justice' in Francesco Francioni (ed) *Access to Justice as Human Right* (OUP 2007) 175

²⁹ SI 2017/0571 reg 66

³⁰ Aarhus Convention, 1998 Art 1

In the alternative, environmental justice could be couched as a substantive human right to clean and healthy environment as in the case of Article 24 of the African Charter on Human and People's Rights which states that 'All peoples shall have the right a generally satisfactory environment favourable to their development'. In this regard, structures must be set for enforcement of such a right, otherwise it risks becoming an additional adornment in the book of statutes.

7.4.6.2 Restructuring the EIA Process

The EIA procedure needed to be reformed especially, regarding dissemination of EIA information on a project and the manner in which the public is engaged, to be consistent with social economic stature and cultural values of the affected people. The following areas of interest must be considered:

i. *Education*

It was presumed that the level of education attained will have much bearing on the extent of community engagement, given that, the higher the level of education, the higher the intensity of involvement. On the findings, it was discovered that there was not much difference in the communities' involvement as regards those who registered higher education and those that did not. It was also observed communities whose leaders are highly educated were not really engaging proponents on adverse impacts of the projects on the environment but rather on social issues and economic gains. In effect, it is not about education as in terms of higher qualifications and credentials but rather it is about enlightening the people on the EIA process, their environment and their rights, and the extent to which they can get involved in the EIA process. In this regard, even if they do not understand the EIA reports, they will be better placed to engage experts to assist.

The EPA officials must be made aware that just making reports available according to the provisions of the law/guidelines is not enough. They must carry out a massive education on the EIA procedure to the public in general and then a targeted one to any beneficiary community or affected people for a particular project.

ii. *Raising awareness*

The communities who are the host of projects or who are affected in one way or the other must be sensitised on the basic details of the projects, as it relates to the impacts on the environment and their means of sustenance and socio-cultural lives. This will go a long way to promote the four ethical principles for public participation propounded by Hourdequin et al, that equal opportunity to participate; equal access to information; genuine deliberation; and shared commitment lead to increased public engagement and satisfaction with government agency decisions.³¹

iii. *Public Participation:*

The process of engaging stakeholders needs to be improved with clear benchmarks and presented in the L.I. or in a form of guidelines. This is where the Bank must also endeavour to play a policing role. As it stands, public participation only involves the discussions of compensation and what the community stands to benefit which, sometimes is exaggerated. The communities should be encouraged to share their indigenous knowledge about

³¹ Miarion Hourdequin and Peters Landres and Mark J Hanson, and David R Craig, ‘Ethical implications of democratic theory for U.S.A. public participation in environmental impact assessment’ [2012] 35 Environmental Impact Assessment Review 37–44

their environment especially during the screening and review phases of environmental assessment. Take for instance, the case of the Hippo pool on the Black Volta River, the Bui community was able to describe the features that make it possible for the creation of the natural pool which attracted the Hippos to it; the time the Hippos come to bathe; etc. Wouldn't it have been possible to consult the community and see how a new artificial pool may be created using their knowledge of these features? Certain issues cannot be resolved immediately and incorporated into the decision-making process thus the public must be engaged through an ongoing process of negotiation.

Engaging the public to dialogue must be consistent with the reasons for seeking public participation, in line with O' Faircheallaigh's reasoning that there is diverse reasoning for public participation.³² Therefore, in practice, different meeting may be scheduled for different purposes. For example, a meeting to deliberate on compensation issues may be held differently from a meeting to discuss environmental, social and cultural impacts of a project. Likewise, a meeting could be arranged separately to discuss economic activities and resettlement issues. In this way, communities will be clear in their mind regarding what they are in for.

7.4.7 Access to institutional lending

Development is important to Ghana in order to reduce poverty, to give a better standard of living, and to provide better infrastructure and social amenities. Ghana is inevitably

³² Ciaran O' Faircheallaigh 'Public Participation and Environmental Impact Assessment: purposes, implications, and lessons for public policy making' [2010] 30 Environmental Impact Assessment Review 19–27, 25

going to be reliant on international multi-lateral and bi-lateral lending agencies to develop, especially infrastructural development. However, the quest to develop will ultimately be at the cost of sustainability therefore, we must be sensitive to the sustainability of the environment, to the cultural practices of people, to the people's way of living. We have concluded in this study that one way of addressing the issue of sustainable development is through the EIA process and the enforcement of the EIA Regulation, however, in as much we depend on foreign guidelines from international multi-lateral and bi-lateral lending agencies, we are not going to achieve the desired level of sustainable development. What is sustainable development if development leaves people jobless, poorer and above all destroys the very environment they rely on for their daily sustenance? The foreign guidelines are not sensitive to the cultural lives and the peculiar sentimental attachment of each local community to their environment. These guidelines do not address the fundamentals of everyday life of local communities, how they thrive in their communities, and what the environment means to them. Therefore, it is not helpful for international multi-lateral and bi-lateral lending agencies to develop models and guidelines, usually based on so-called international standards; their understanding of the concept of sustainable development and perceived understanding of people's way of living, and take it around the world or impose it indirectly through funds/grants. Models which are developed somewhere in the global north, without recourse to communities' individual social and cultural factors as well as a country's level of development. It is suggested that every community has a unique value on their environment, and these could be different in terms of, benefits derived from the forest or forest products, cultural practices and traditional beliefs as well as sentimental and aesthetic attachment. In the same vein, proponent of undertakings, projects, etc. should not be in a rush to accede to the demands or biddings of multi-

lateral and bi-lateral lending agencies because of the money that comes with it without considering the hardships the undertaking will bring to the communities, because the proponents are better placed to understand the values of communities. In any case, most international financiers will invariably operate in a country with rigorous or robust legislative framework, regardless, for some of these international multi-lateral and bi-lateral lending agencies will not want their names to be associated with any undertaking that is appraised to cause considerable damage to the environment, cause hardships to communities and made communities worse off. International financial institutions can also be made to be part of the monitoring and evaluation exercise as part of lending conditions.

Finally, modalities of institutional lending in Africa must be explored. The multi-lateral and bi-lateral lending agencies should be more open to dialogue, if possible and renegotiation of their terms of lending. So that imposing of guidelines may not be the only means of ensuring that projects financed by these institutions do not lead to the despoliation of natural resources. This could be an area for further research, that is, research on institutional lending in Africa and access to information regarding the modalities relating to the operations of multi-lateral and bi-lateral lending agencies in Africa.

Development is very important for Ghana however, to the extent that it is largely contingent on the exploitation of natural resources, it is not a cliché to say that the process of development in Ghana must be carried out in a sustainable manner. The concept of sustainable development is engraved in international environmental policy, and EIA is acknowledged as a means of promoting sustainable development. Therefore, in line with Principle 17 of Rio Declaration and other international legal

instruments of environmental obligation, Ghana must expedite its domestic efforts towards sustainable development.

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ANNEXURES

APPENDIX A. PARTICIPANT'S LETTER

P.O. BOX 16513
KIA -Accra

September 1, 2017

Dear Participant,

You are respectfully invited to participate in a research study on the process of Environmental Impact Assessment. Environmental Impact Assessment is a kind of procedure or exercise undertaken either by government officials or any other persons who matter to identify the environmental, social and economic impacts of a project and to curtail any adverse effect to the community and the environment. It is the aim of the Government that infrastructural development must be carried in a manner that will protect the general wellbeing of the people for which it is intended for.

This survey is to seek your views on your experience of the construction and operation of the Bui Dam in your locality, its impact on the environment as well as the effect on your social and economic life. The findings may also be used by the Government as part its review of the operation of Environmental Impact Assessment in order to ensure sustainable development.

The data collected will be used for research purposes only. Any information you provide will be confidential, so steps will be taken to protect your identity. The tape recordings will be destroyed once they have been typed up.

If you require any information about this study, or would like to speak to the researchers, please call the researcher at +233 505 334 841, or send an email if possible to bka508@student.bham.uk.ac. You may also contact the principal supervisor Prof Robert Gregory Lee through the following [REDACTED]

Sincerely yours,



Bridget Kafui Anthonio-Apedzi (Mrs)

(Researcher)

CONSENT

I have read the above information regarding this research study on the process of Environmental Impact Assessment. (Or the above information regarding this research study on the process of environmental impact assessment have been read to me.) I understand that my participation is voluntary and that I am free to withdraw at any time, without giving a reason

and without cost. Again, I understand I can withdraw within three weeks after the survey. I understand that I will be given a copy of this consent form to sign.

I have read and understand the information provided. (Or the provided information has been read and explained to me)

.....

Participant

ATTESTATION

I (research staff), do hereby affirm that the purpose of the research was explained to the participant, in the akan / ewe / ga / hausa (circle as appropriate) language. The participant seemed to understand the purpose of the research and has agreed to participate.

.....

(Signature)

APPENDIX B. PARTICIPANT'S INFORMATION SHEET

P.O. BOX 16513
KIA -Accra

September 18, 2017

Participant's Information Sheet

Dear Participant,

The purpose of this study is to ask for your views on the impact of mining on your community. The effect mining in your area has on your economic, social and cultural life as well as on the environment.

Your participation in this survey is voluntary, hence a consent section is included to that effect. You may sign or thumbprint.

If you require any information about this study, or would like to speak to the researchers, please call +233 505 334 841 or send an email if possible to bka508@students.bham.ac.uk. You may also contact the principal supervisor Prof Robert Gregory Lee through the following [REDACTED]

Sincerely yours

Bridget Kafui Anthonio-Apedzi (Mrs)
(Researcher)

CONSENT

I have read the above information regarding this research study on the process of environmental impact assessment. (Or the above information regarding this research study on the process of environmental impact assessment have been read to me.) I understand that my participation is voluntary and that I am free to withdraw at any time, before the survey is completed, without giving a reason and without cost. I understand that I will be given a copy of this consent form to sign.

I have read and I understand the provided information (or the provided information have been read and explained to me) and have had the opportunity to ask questions.

.....
Participant

APPENDIX C. EPA OFFICIALS/CONSULTANTS

Participant's Information Sheet

Dear Participant,

The purpose of this survey is to determine the effectiveness of Environmental Impact Assessment (EIA) as a tool for achieving sustainable development. The enclosed questionnaire has been designed to seek your views on the procedural and systematic approach in conducting environmental impact assessment, prior to decision making on infrastructural development and mining industry. Again the survey is to seek your views on the effect of the outcome of the environmental impact assessment on policy, and generally, on sustainable development. If you have any questions about this project, feel free to contact the researcher, at [REDACTED]
[REDACTED]

Thank you for your assistance.

Sincerely yours,

.....

Bridget Kafui Anthonio-Apedzi (Mrs)

(Researcher)

CONSENT

I have read the above information regarding this research study on the process of environmental impact assessment. I understand that my participation is voluntary and that I am free to withdraw at any time, before the survey is completed, without giving a reason and without cost. I understand that I will be given a copy of this consent form to sign.

I have read and I understand the information provided and have had the opportunity to ask questions.

.....
Participant

**APPENDIX D. LETTER OF INTRODUCTION TO COMMUNITY LEADERS
(BUI)**

P. O. Box KIA 16513
Airport, Accra

August 22, 2017

Dear Nananom, (Chief and Elders of Bui)

We humbly invite you and your community to participate in a research study on the process of Environmental Impact Assessment in your area. Environmental Impact Assessment is a kind of procedure or exercise undertaken either by government officials or any other competent authority to identify the environmental, social and economic impacts of a project. It is also to curtail any adverse effect to the community and the environment.

It is the aim of the Government that infrastructural development must be carried in a manner that will protect the general wellbeing of the people for which it is intended for especially those in the community.

This survey is therefore to obtain your views vis-à-vis the construction of Bui Hydro Power in your locality, its impact on the environment, as well as the effect on your social and economic life of you who live in the community.

The research will be conducted in two ways:

1. Questionnaire survey

Research staff will go around to distribute questionnaires to members of your community and assist them to complete them. This will not take more than 20 minutes for each person. Alternatively, members of the community may be called to a meeting at an arranged date and venue. The questionnaires will then be administered and completed at the meeting.

2. Group discussion

We will organise a group discussion on the same project. Your views about the project as a community leader will be discussed. You are free to suggest a venue for the discussion. The discussion will be recorded to enable me take note of every detail of the discussion.

The data collected will be used for research purposes only. Any information you provide will be strictly confidential, so steps will be taken to protect your identity.

The name of your community and that of your community members will be coded and described in generic terms, to further protect your identity. A final report will also be made available at record section of the Ministry of Justice.

Your participation and that of your community members in this research is completely voluntary. You may withdraw from the study at any time, between our introductory visit and during the actual survey and for any reason.

If you require any information about this study, or would like to speak to the researchers, please call (Ama) at (0505334841) or send an email if possible to bka508@students.bham.ac.uk.

You may also contact the principal Prof Robert Gregory Lee through the following [REDACTED]

Sincerely yours

.....

Ama Anthonio-Apedzi (Mrs)
(Researcher)

**APPENDIX E. LETTER OF INTRODUCTION TO COMMUNITY LEADERS
(KENYASI)**

P. O. Box KIA 16513
Airport, Accra

August 23, 2017

Dear Nananom, (Chief and Elders of Kenyasi)

We humbly invite you and your community to participate in a research study on the process of Environmental Impact Assessment in your area. Environmental Impact Assessment is a kind of procedure or exercise undertaken either by government officials or any other competent authority to identify the environmental, social and economic impacts of a project. It is also to curtail any adverse effect to the community and the environment.

It is the aim of the Government that activities in the mining industry must be carried in a manner that will protect the general wellbeing of the people for which it is intended for especially those in the community.

This survey is therefore to obtain your views vis-à-vis the mining activities in your locality, its impact on the environment, as well as the effect on your social and economic life of you who live in the community.

The research will be conducted in two ways:

3. Questionnaire survey

Research staff will go around to distribute questionnaires to members of your community and assist them to complete them. This will not take more than 20 minutes for each person. Alternatively, members of the community may be called to a meeting at an arranged date and venue. The questionnaires will then be administered and completed at the meeting.

4. Group discussion

We will organise a group discussion on the same project. Your views about the project as a community leader will be discussed. You are free to suggest a venue for the discussion. The discussion will be recorded to enable me take note of every detail of the discussion.

The data collected will be used for research purposes only. Any information you provide will be strictly confidential, so steps will be taken to protect your identity.

The name of your community and that of your community members will be coded and described in generic terms, to further protect your identity. A final report will also be made available at record section of the Ministry of Justice.

Your participation and that of your community members in this research is completely voluntary. You may withdraw from the study at any time, between our introductory visit and during the actual survey and for any reason.

If you require any information about this study, or would like to speak to the researchers, please call (Ama) at (0505334841) or send an email if possible to bka508@students.bham.ac.uk.

You may also contact the principal Prof Robert Gregory Lee through the following [REDACTED]

Sincerely yours

.....

Ama Anthonio-Apedzi (Mrs)

(Researcher)

APPENDIX F. SURVEY QUESTIONNAIRE FOR THE COMMUNITY

Kindly answer questions as they relate to you. For most answers, check the box(es) most applicable to you or fill in the blanks.

About You

1. Your Age

(Please select only one.)

- 18-35
- 36-55
- 56-75
- 76 or more

2. Your Gender

- Female
- Male

3. Your Role in your community

(Select all that apply.)

- Traditional, (specify)
- Administration, (specify)
- Clerical, (specify)
- Citizen
- Other, (specify)

4. Level of Education

- Graduate (Tertiary)
- Graduate
- Secondary
- Professional

5. Your occupation

- Traditional
- Administrator
- Farmer
- Trader
- Others, (specify)

About the project⁵⁹⁴

6. How or where did you hear about the project

⁵⁹⁴ Project refers to mining or dam or motorway which impacted on the local community

(Select only one.)

- On radio
- On Television
- In the newspaper (specify).....
- In a meeting/durbar organized purposely to discuss the project
- Others (specify)

7. In your opinion how effective was the means of dissemination of information on the project you selected in no. 6?

- Very effective
- Somewhat effective
- Neither effective nor ineffective
- Somewhat ineffective
- Very ineffective

8. At what stage of the life of the project did you hear of it?

- Beginning
- During the construction
- Commissioning
- Operation

9. Do you have any sort of involvement in the project from the beginning?

- Yes
- No

If yes, what was your level of involvement?

.....
.....
.....
.....

10. Which of the following direct or indirect impacts on the environment of the undertaking, in your opinion, were addressed satisfactorily during construction

	Impacts	Very satisfied	Somewhat satisfied	Neutral	Somewhat dissatisfied	Very dissatisfied	No opinion
a.	Pollution of the environment including air water and land						
b.	direct ecological changes resulting from such pollution relating						

	to habitats, vegetation and animals;					
c.	Ecological consequences of direct destruction of existing habitats from activities such as dumping of waste and vegetation clearance and fillings;					
d.	Noise and vibration levels;					
e.	Odour;					
f.	Vehicle traffic generation and potential for increase in road accidents;					
g.	Flooding					
h.	Payment of compensation					

Significance of the Project

11. The Impact of project on completion. (Please tick as appropriate)

	Impacts	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	No opinion
a.	The project has brought up increased economic activity in the area						
b.	The project has increased my means of livelihood						
c.	The project has brought in more jobs						
d.	The project has brought has led to the destruction of existing habitats from						
E	activities such as dumping of waste and vegetation clearance and fillings						
f.	Changes in social, cultural and economic patterns relating to the project						

g.	The project has enhanced the esthetic potentials of the area					
h.	The project has increased tourist potential of the area					

12. Kindly state the impact of the project largely on your general livelihood?

- Negative (explain)
- Positive (explain)
- Neither positive nor negative (explain)
- During Construction

13. Is the project of any significance to you?

- Yes
- No
- Cannot tell

If yes, elaborate

.....

.....

.....

.....

14. Have you had any complaints about the project?

- Yes
- No. If you answer “No”, kindly proceed to Question no. 22.

15. Kindly state what your complaint was about?

.....

.....

.....

16. Who did you complain to?

.....

.....

.....

17. How did you send the complaint across?

.....

.....

.....

18. Was your complaint dealt with?

.....
.....
.....

19. How satisfied were you with the result?

(Select only one.)

- Very Satisfied
- Satisfied
- Neither
- Unsatisfied
- Very Unsatisfied

Knowledge about Environmental Impact Assessment (EIA) Regulations, 1999 LI 1652

20. Do you know anything about Environmental Impact Assessment (EIA) procedure?

- Yes
- No

21. If yes, kindly state briefly what you know about EIA procedure

.....
.....

22. Do you know if EIA been conducted for this project?

- Yes
- No
- Don't Know

23. Were you informed about the EIA procedure on the project?

- Yes
- No

24. If yes, was the information received adequate in your opinion? Kindly mark as appropriate

- All
- most
- some
- a little
- none

25. How was the information about the project presented to you?

- Through a written report presented to the community
- By a verbal presentation during a meeting called for that purpose
- By notice of a report on the project in the dailies
- Other. Kindly specify.....

26. Was the information easily accessible/available

- Yes
- No

27. Did you use the procedure stipulated in the EIA Regulations (LI 1652) to lodge your complaint stated in question No. 17?

- Yes
- No. If no what was your reason?.....

28. In a scale of one to five, kindly mark your level of satisfaction with the EIA process as a whole, where

- very satisfied
- Somewhat Satisfied
- Neither satisfied nor dissatisfied
- Somewhat dissatisfied
- Very dissatisfied

AKOBEN (AKOBEN is a rating system designed by EPA to monitor and promote compliance to implementation of environmental management systems, usually in mining communities)

29. Do you know anything about AKOBEN program of the EPA?

- Yes
- No

If yes, state briefly what you know about AKOBEN

.....
.....
.....
....

THANK YOU FOR YOUR TIME!!!

ATTESTATION

I (research staff) do hereby affirm that the purpose of the research was explained to the participant, and the contents of the questionnaire were read and translated to the participant in the Akan / Ewe / Ga / Hausa (circle as appropriate) language. The participant

seemed to understand the purpose of the research and the contents of the questionnaire perfectly well, before he/she was assisted to complete it.

.....

(Signature)

APPENDIX G. QUESTIONNAIRE (EPA OFFICIALS)

Personal Data

Name: -----

Name of institution: -----

Position: -----

Qualification: -----

Level of experience (years):-----

Please give a brief description of your current schedule-----

Have you received training, if any, on the job? Yes No

If Yes, name the type(s) of training and circle below, as appropriate, how often you receive training.....

- a. Once a year
- b. Two times within a year
- c. Quarterly
- d. Other (specify)

SECTION A

Applicability of EIA guidelines from multilateral and bilateral development banks or donors for Ghana. (EIA guidelines here means guidelines from institutions such as the World Bank, IFC, MCC, etc. and are also referred to in the questionnaire as foreign guidelines, for the purpose of this survey.)

1. Which EIA procedure will you prefer to use in conducting EIA in Ghana?

- Foreign guidelines only
- LI 1652 only
- LI 1652 and foreign guidelines
- I don't mind

- The type of EIA procedure to use is determined by the type of funding, the project and the donor. Kindly explain
-
.....

2. Kindly give reasons for your answer above

.....
.....

To what degree do you agree or disagree with the following statements? (Please mark one box as appropriate for each statement)

	Statements	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	No Opinion
2.	As a whole, the foreign guidelines are more concise and easy to understand as compared to LI 1652.						
3.	The EIA procedure in the foreign guidelines are easy to follow.						
4.	The foreign guidelines address issues concerning the Ghanaian economy						
5.	The foreign guidelines seem imported, (alien to Ghanaian ways of doing things)						
6.	The foreign guidelines don't speak directly to the environmental issues bedeviling Ghana.						
7.	The use of foreign guidelines is an acceptable international practice						
8.	Foreign guidelines are conditions attached to lending support, hence must be used at all cost.						
9.	Foreign guidelines do not take into consideration the socio-cultural set-up of the Ghanaian society						
10.	Foreign guidelines are motivated by economic gains.						

11. Do you think foreign guidelines should be used for conducting EIA in Ghana?

- Yes

No

Neutral

Kindly give reason(s) for your answer above

.....

.....

12. In which other ways do you think EIA guidelines from multi-lateral and bi-lateral lending organizations are practicable or otherwise in Ghana which are not captured above? Please provide your answer in the space below.

.....

.....

SECTION B

How effective do you think the following issues are addressed in current EIA (Our LI) practice within the country with regards to the disparity in the level of economic and social development, as well as the cultural values of developed and developing countries? (Please circle one number, e.g. 2 = effective)

	Statements	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	No opinion
1.	Screening and scoping exercises						
2.	EIA reporting and evaluation of reports						
3.	Public/Stakeholder involvement	1	2	3	4	5	6
4.	Consideration of alternatives	1	2	3	4	5	6
5.	High sense of monitoring and supervision	1	2	3	4	5	6
6.	Mitigation measures	1	2	3	4	5	6
7.	Transparency in decision-making process	1	2	3	4	5	6
8.	Consideration of cumulative impacts						
9.	Consideration of socio-economic impacts	1	2	3	4	5	6

10.	Training of EIA practitioners on issues of sustainable development	1	2	3	4	5	6
11.	Consideration of socio-cultural values						
12.	Complaint procedure and mechanisms for redress						

13. Do you have any comments you would like to make about the effectiveness of the current EIA practice to achieve sustainable development?

.....

.....

SECTION C

This section is to ascertain whether the EIA procedure is a mere formality; and whether an EIA conducted for one project has a spill over effect (ramification) (overreaching influence) on subsequent project, either being funded by the same and/or different donor.

I. To what extent do you agree with the following statements? (Please mark one box as appropriate for each statement)

	Statements	Very effective	Effective	Neutral	Ineffective	Very ineffective	No Opinion
1.	EIA is carried for projects because it is legal requirement only						
2.	EIA is carried out because it is what is trending						
3.	EIA is carried out in order to fulfil Ghana's international obligation, but not necessary to protect the environment						
4.	EIA is carried out only because it a condition attached to the source of funding of the project(s)						
5.	EIA is carried out solely as a condition for the use of permit						

6.	EIA is conducted in aid of environmental protection						

II. Whether an EIA conducted for one project has a spill over effect (ramification) (overreaching influence) on subsequent project, either being funded by the same and/or different donor.

To what extent do you agree with the following statements? (Please mark one box as appropriate for each statement)

	Statements	Strongly Agree	Agree	Neutral	Disagree	Strongly disagree	No Opinion
7.	The use of previously known consultant does not give room to competition						
8.	The use of previously known consultant steals the opportunity for other consulting firms to also						
9.	The use of previously known consultant facilitates securing of funding faster as using them gives the assurance of good job						
10.	It does not result in maximum output from the consultant.						
11.	The tendency of brushing through the process on the part of both EPA and the consultant is high due to the familiarity of the consultant, as well as the project						

12. Who prepares the EIA report
- The developer
 - The EPA
 - The donor/sponsor of project
 - An independent consultant
 - Other (specify)

13. If the answer in (d) above. How is the consultant or the consulting firm identified and contracted to carry out impact assessment for a particular project?

- a. By recommendation from EPA
- b. By recommendation or suggestion from the financial donor/lender
- c. The choice of a consulting firm informed by the donor involved (for instance a particular donor prefers that consultant)
- d. The choice of consultant is informed by type(s) funding/aid
- e. The choice of a consulting firm informed by the type of project involved

14. If the answer is (a) above, On what basis does the EPA recommend

- a. Previous record of competence/ excellent job
- b. Suggestions from the donor/lender
- c. Level of expert exhibited during a previous work
- d. Level of expertise projected in the staff strength of the consultant.

SECTION D

Rank your level of agreement with the challenges militating against the use of EIA procedure in accomplishing Environmental Sustainability in Ghana, on the following scale of 1 to 4, where: 1 = Disagree 2 = Strongly Disagree 3 = Agree 4 = Strongly Agree (militating against EIA as a means for achieving sustainable development.)

	Factors preventing the achievement of Sustainable	Strongly agree	Agree	Disagree	Strongly disagree
1.	Inadequate funding for projects from the government/Overreliance on foreign sponsorship	1	2	4	5
2.	Overreliance on the use of foreign guidelines				
3.	Insufficient staff strength	1	2	4	5
4.	Inadequate training/lack of expert staff in the area of EIA process	1	2	4	5
5.	Lack of political will to implement of enforce decisions. and inadequate budget support	1	2	4	5
6.	Inefficient handling and managing of environmental, economic and social matters in the EIA process.	1	2	4	5
7.	Inefficiency, corruption and disregard for fundamental “value for money” considerations.	1	2	4	5
8.	Employees in the sector responsible for implementation and enforcement engaging in dishonest or unethical actions	1	2	4	5

9. Is EIA an effective tool to evaluate environmental impacts of new projects (**infrastructural developments/mining industry, etc.**)?

- o Very much

- Much
- Little
- Not at all

10. Please explain your answer in question (9.)

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11. In Your opinion what are the strengths of EIA in accomplishing Environmental Sustainability in Ghana?

12.
.....

13. In Your opinion what are the weaknesses of EIA in accomplishing Environmental Sustainability in Ghana?

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14. In your opinion, are there any alternatives for facilitating environmental protection, economic and social development?

- (a) Yes (b) No

15. If yes, what are some of the alternatives for facilitating environmental protection, economic and social development

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THANK YOU FOR YOUR TIME!!!