

**ENVIRONMENTAL IMPACT ASSESSMENT : INSIGHT INTO
THE ENVIRONMENTAL IMPACT REGULATORY PROCESS
AND IMPLEMENTATION FOR QUALIFYING PROJECTS**

BY

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INTRODUCTION

1. One of the main achievements of the United Nations Conference on Sustainable Development (UNCED) dubbed the Earth Summit in Rio de Janeiro, Brazil in 1992, is the adoption of Agenda 21, a blueprint of environmental principles, policies and actions required to be taken by all countries into the 21st Century. A key supporting Instrument of Agenda 21 was the Rio Declaration on the Environment, a set of principles to guide environmental conduct. It was this declaration that brought out the oft repeated principles like “Polluter Pays”, Cradle to Grave” Precautionary principle” etc. Principle 17 of the declaration states inter alia “Environmental Impact Assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.”

2. The Federal Government of Nigeria enacted the Environmental Impact Assessment (EIA) Act No. 86 of 1992 as a demonstration of her commitment to the Rio Declaration. Prior to the enactment of the EIA Act in Nigeria, project appraisals were limited predominantly to feasibility studies and economic-cost-benefit analysis. Most of these appraisals did not take environmental costs, public opinion, and social and environmental impacts of development projects into consideration.

3. The EIA Act is unique in some respects. First, it is the first of its kind in Nigeria. Secondly, it makes EIA mandatory where proposed projects or activities are likely to cause significant environmental effects. Thirdly, Environmental Impact Assessment, unlike other environmental laws is proactive in nature. It is meant to prevent, reduce or mitigate the negative effects of projects or activities on the environment before the commencement of such projects/ activities.

EIA ACT NO. 86 OF 1992

4. The EIA Act gave the Federal Ministry of Environment the implementing mandate and requires that the process of EIA be mandatorily applied in all major development projects right from the planning stage to ensure that likely environmental

problems, including appropriate mitigation measures to address the inevitable consequences of development, are anticipated prior to project implementation and addressed throughout the project cycle.

5. The objectives of the EIA Act of 1992 among others include:

- i. The establishment of the environmental effects of proposed activities before a decision is taken to embark upon them
- ii. Promotion of the implementation of appropriate policy in all Federal land, States, and Local Government area consistent with all laws and decisions making processes through which these goals in (1) above may be reached.
- iii. It encourages the development of procedures for information exchange, notification and consultation between organs and persons when proposed activities are likely to have significant effects on boundary or trans-state or on the environment bordering towns and villages.

6. The EIA Act prescribes that all Agencies, Institutions (whether public or private) except exempted by the Act, shall, before embarking on proposed projects, apply in writing to The Federal Ministry of Environment so that subject activities can be quickly identified and environmental assessment applied as the activities are being planned. The Act made provision for all stakeholders (agencies, public, experts, NGOs, communities, etc) to be notified, consulted and or given the opportunity to make comments on the EIA of a project prior to approval or disapproval.

7. Some of the issues addressed in the Act among others include:

- (a) The minimum content of an EIA study –
Section 4 specifies the minimum content of an EIA to include:
 - a description of the proposed activities,
 - a description of the potential affected environment, including specific information necessary to identify and assess the environmental effects of the proposed activities,
 - a description of the practical activities,

- an assessment of the likely or potential environmental impacts of the proposed activity and the alternatives, including the direct or indirect, cumulative, short-term and long-term effects,
 - an identification and description of measures available to mitigate adverse environmental impacts of the proposed activity and assessment of those measures,
 - an indication of gaps in knowledge and uncertainty, which may be encountered in computing the required information
 - an indication of whether the environment of any state or local government areas outside Nigeria is likely to be affected by the proposed activity or its alternatives, and
 - a brief and non-technical summary of the information provided under the above listed paragraphs.
- (b) A Mandatory Study List (as listed in schedule of the Act see Appendix A) includes projects in agriculture, fisheries, quarries, water supply, waste treatment and disposal transportation, ports, infrastructure, petroleum, mining, power generation, etc.
- (c) Description of excluded projects (section 15):
- Projects with non or minimal environmental effects
 - Projects to be implemented in national emergency or in the interest of public health or safety.
- (d) Follow-up Programme, e.g.
- mitigation compliance monitoring
 - studies
- (e) Provision for establishment of public access to records relating to EIA
- (f) Power to make regulation by the Federal Ministry of Environment
- Prescribing list of projects or classes of projects for which EIA is required or not required.
 - Procedures and requirements relating to EIA.
 - Conduct of assessment by review panels.

8. After the promulgation of the EIA Act 86 in 1992, the Federal Ministry of Environmental (then FEPA) came up with the EIA Procedural Guideline and Sectoral Guidelines for some Nigerian Economic sub-sectors.
9. The EIA Procedural Guideline contain a list of steps which when carefully followed shall result in better project planning and a streamlined decision making process. These steps include, brief descriptions of the project environment and process, legal framework, identified impacts etc. These steps are detailed in Annex 1 of the Procedural Guideline).
10. The Sectoral Guidelines provide sector-specific guide for preparation of EIA reports. Sectoral guidelines have been developed for the following sectors.
 - i. Oil and Gas, including petroleum refining, petrochemical industry pipelines, on-shore, offshore exploration and drilling etc.
 - ii. Infrastructures – including airports, construction, harbours, construction and expansion, railways highways, etc
 - iii. Industries – including all other manufacturing industries, besides those in the oil and gas sector
 - iv. Agriculture - all agricultural practices including land clearing, afforestation projects, etc.
 - v. Mining – including solid minerals prospecting and exploration.

EIA PROCESS IN NIGERIA

11. In summary, the EIA procedure in Nigeria involves the following steps:
 - i. The submission of project proposal to The Federal Ministry of Environment for screening to determine the need or otherwise for EIA.
 - ii. The vetting of Terms of Reference (TOR) for the EIA studies to ensure that only significant issues (impacts) are studied in the EIA. A Site Verification exercise may be required to aid this process.
 - iii. Submission of draft EIA report for review.
 - iv. Review of draft EIA report
 - v. Submission of final EIA report , which addresses all the issues raised from review exercise

- vi. Decision-making by the Federal Ministry of Environment's technical committee and the Hon. Minister.
- vii. Certification (issuance of Environmental Impact Statement (EIS) and certification).
- viii. Mitigation and Compliance monitoring to ensure compliance with all stipulated mitigation measures and project specifications in the projects EIA report.

EIA STUDIES / REPORT PREPARATION

12. EIA studies and report preparation are the responsibilities of the Project Proponent. In the course of preparing an EIA Report of a proposed project, both the primary and secondary stakeholders should be consulted. The objective of such consultation is to identify early in the EIA process, the concerns of stakeholders regarding the impacts of the proposed project in order to address such issues during the actual study and to reflect such comments in the project's EIA report.

THE EIA REVIEW PROCESS

13. In line with the EIA guidelines, a draft EIA Report submitted to The Federal Ministry of Environment by a proponent is evaluated by the Ministry to establish the type of review to be adopted. There are different forms of reviews, depending on the nature, scope, anticipated impact, risks, etc that may arise in project planning and implementation, and an EIA report may be subject to any or a combination of these reviews. The various types of review are, an in-house review, public review, panel review and mediation.

IN-HOUSE REVIEW

14. All draft EIA reports forwarded to the Ministry are reviewed in-house to assess how far issues raised in the Terms of Reference (TOR) have been addressed and to determine if the draft EIA reports are suitable for public review (if necessary). If the in-house review finds that the issues in the report do not merit putting it on

public display, the review process may be terminated at the in-house review stage. Some projects (e.g. those that fall under Category III of the EIA Act) may be recommended for approval by the Ministry's In-House Panel of Experts.

PUBLIC REVIEW (PUBLIC DISPLAY)

15. In accordance with the provisions of Section 25 of the EIA Act, interested members of the public are given the opportunity to participate in the EIA review process through comments on project reports that are put on display. Such displays are usually done for a 21 working day period at strategic locations. Notices of such venues of display are usually published in the National and relevant State daily newspapers and information about such display are complemented with further announcements on the relevant state electronic media. Often times, the venues of displays include the Local Government Headquarters, where a project is located, the State Ministry of Environment or Environmental Protection Agency(s), The Federal Ministry Of Environment's Zonal Offices, Liaison Office Lagos and the Headquarters, Abuja. Comments received from the display venues are forwarded to the Federal Ministry of Environment Headquarters for collation and evaluation preparatory to the Review Panel meeting for the project.

REVIEW PANEL

16. After the conclusion of the public display exercise, The Federal Ministry of Environment may decide to set up a review panel to review the draft EIA report depending on the sensitivity or significance of the comments received.

17. The review panel meetings are held in the public so that stakeholders can utilize this opportunity to put forward their views and concerns for consideration. The choice of members of the review panel depends on the type of project, its scope as well as the ecosystem to be affected. However, the Chairman of the affected Local Government(s) and the Commissioner of Environment of the project location are always included in the Panel.

MEDIATION

18. When a project is likely to cause significant adverse effects that are immitigable, or public concerns about the project warrant it, such a project is referred to the Federal Ministry Of Environment Ministerial Council for subsequent referral to mediation. For a mediation to be set up, Ministerial Council would have been convinced that the parties involved are willing to participate in the mediation and to abide by its decisions.

EIA APPROVAL

19. After the submission of a satisfactory Final EIA report, the Federal Ministry of Environment may decide to set a number of conditions for the approval of the implementation of the project. Such conditions usually include a statement that mitigation measures highlighted in the projects EIA report shall be complied with.

EIA IMPACT MITIGATION MONITORING

20. The Legal requirement for Impact Mitigation Monitoring in the EIA process are stipulated in Sections 16 (c), 17 (2) (c), 37 (c), (1), 40 (1) (a) (2), 41(1) and 41 (2) of the EIA Act as well as Section 11 of the EIA procedural guideline (1995).

21. Environmental Impact Monitoring is designed to monitor the Environmental Management Plan, and concerns during project operations. It is also designed to assess the extent to which commitments contained in EIA reports are reflected during the various phases of project development and operations.

22. Impact Mitigation Monitoring exercises are conducted to assess the degree and effectiveness of the mitigation measures proffered in an EIA report. Hence, relevant documents, in-house monitoring records as they affect the project, the project implementation schedule, as well as all other documents to support the environmental good house keeping of the project are scrutinized and verified.

23. The objectives of EIA Impact mitigation monitoring are to:
- Check that mitigation measures are implemented as appropriate.
 - Determine whether environmental changes are as a result of project developments and/or natural variation.
 - Monitor emissions and discharges at all stages of project development for compliance with regulatory standards.
 - Compare effluent quality/quantity with design specifications and statutory standards.
 - Determine the effectiveness of Environmental Management Plans, Environmental Monitoring Plans and especially the mitigation measures to predicted impacts and to also act as a feedback mechanism towards the improvement of the EIA Evaluation and Approval process.
 - Determine duration of identified impacts.
 - Create a data bank for future development of predictive tools.
24. In a typical Impact Mitigation Monitoring exercise, the following statutory actions are carried out,
- Facility inspection
 - Interactive session with project managers on the Mitigation Checklist for the EIA of that project.
 - Interview and interaction with the action party responsible for ensuring full implementation of a particular action
 - Inspection and Verification of the parameters that shall be monitored to ensure effective implementation of that action
 - Check the timing for the implementation of the action to ensure that the objectives of mitigation are fully met.
 - Interact with project Engineers and Technicians on mitigation measures that are not applicable, or not enforceable or still not practicable in line with good environmental principles with a view to finding out practical alternatives.

25. At the conclusion of an IMM exercise, a report is written for the Minister/Head of Department's approval, after which, necessary suggested corrective measures are communicated to proponents.

MANDATORY STUDY ACTIVITY FOR MANUFACTURING INDUSTRY PROJECTS

26. The Procedural Guideline for Manufacturing Industries (1995) and Section 8 of the EIA Act list the types of Manufacturing industry projects, with potential for significant environmental impact as broadly including:

- (a) Chemical
 - Where production capacity of each product or of combined products is greater than 100 tonnes/day,
- (b) Petrochemicals - All sizes.
- (c) Non-ferrous primary smelting
 - Aluminium - all sizes
 - Copper - all sizes
 - Others - producing (50) tonnes/day and above of product
- (d) Non-metallic
 - Cement - for clinker throughput of 30 tonnes/hour and above
 - Lime - 100 tonnes/day and above burnt lime rotary kiln or 50 tonnes/day and above vertical kiln.
- (e) Iron and steel
 - Require iron ore as raw materials for production greater than 100 tonnes/day; or
 - Using scrap iron as raw materials for production greater than 200 tonnes per/day
- (f) Shipyards
 - Dead Weight Tonnage greater than 5000 tonnes.
- (g) Pulp and paper industry
 - Production capacity greater than 50 tonnes/day

Food, Beverages Tobacco Processing

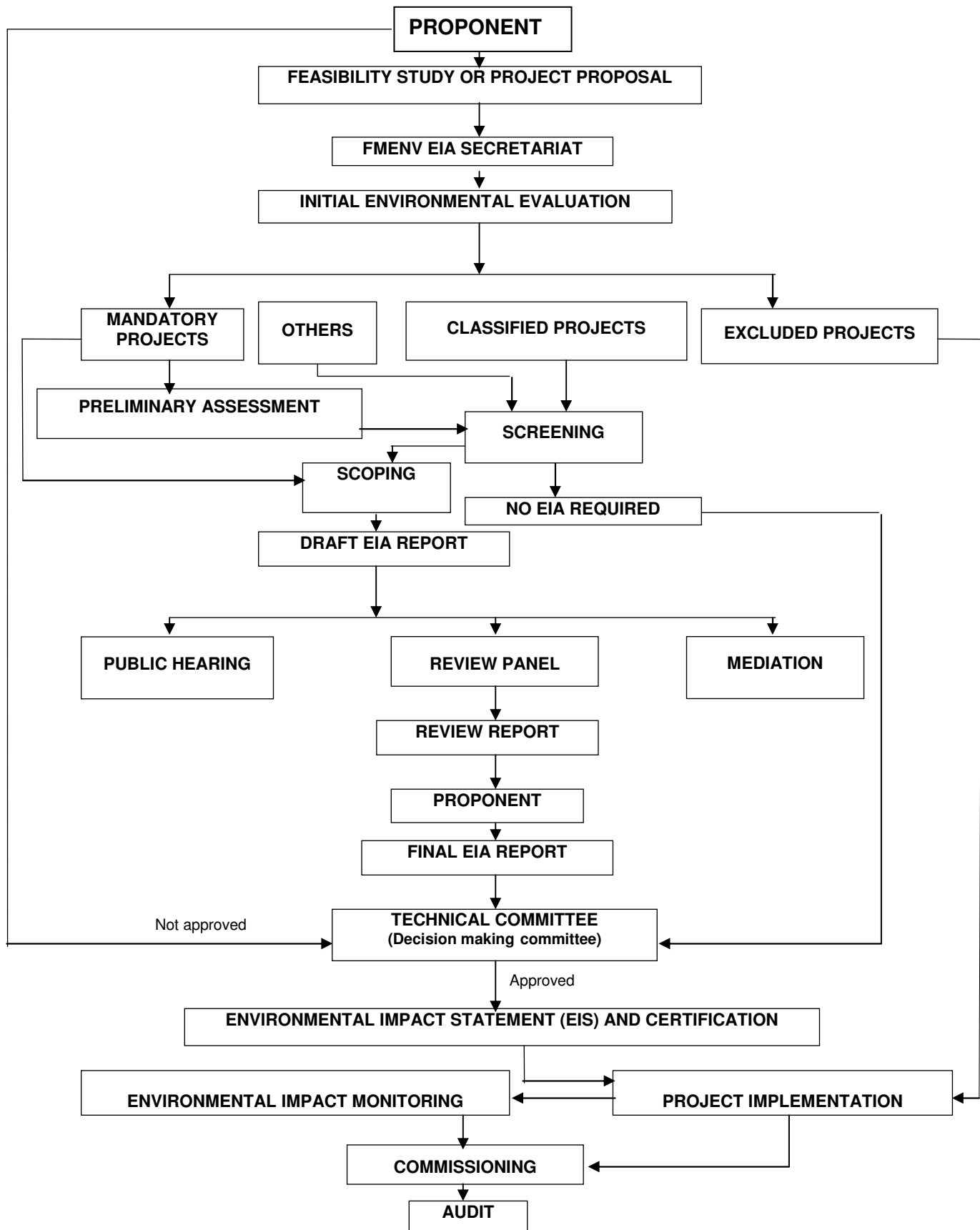
Construction of food processing plant

27. These industries are contained in the Mandatory Study List. In accordance with section 23 of the EIA Act, Mandatory EIA report must be prepared and submitted to the Ministry for review and certification before commencement of such projects.

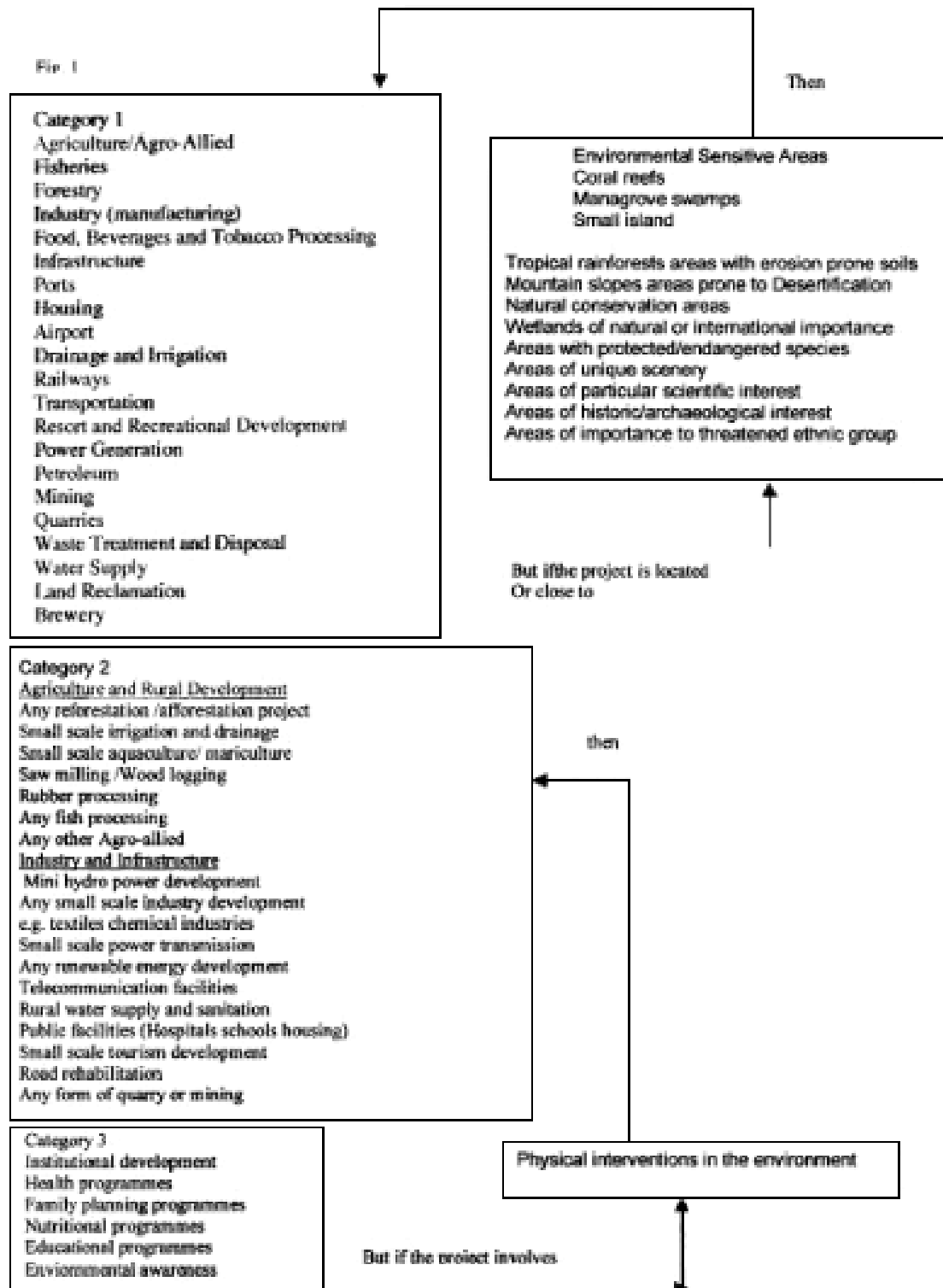
CONCLUSION

28. It is now widely recognized that proper control of industrial development and processing is feasible and does not unduly increase the cost of production. The EIA process is now well established as a key to successful control of impacts of industrial development on the environment, especially with respect to the controlled use of limited natural resources and mitigated discharge of pollutants. The process ensures the incorporation, at the project planning stages of desirable and appropriate steps to discourage huge environmental impacts from the project.

29. Environmental Impact Assessment offers a golden opportunity for the achievement of sustainable development in Nigeria. However, one of the major constraints for the effective implementation of EIA as a central tool for sustainable industrial development is that the EIA is seen differently from technical feasibility studies. To resolve this problem, the EIA Act must be revised appropriately, the EIA process should be adequately funded, more environmental public enlightenment activities should be conducted, EIA reports preparers should be trained, and re-trained while effective monitoring activities should be frequently carried out by the regulators.



FME-HUD EIA Management Approach



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