

# An Examination of Legal Regulation and Environmental Impacts of Telecommunications Installations in Nigeria

Dauda Adeyemi Ariyoosu

LL.B (Hons), LL.M, Ph.D., PGDE, BL, ACTI, ACI Arb, Notary Public,  
Department of Business Law, Faculty of Law, University of Ilorin, Nigeria  
\*E-mail: ariyoosu4law@yahoo.com

## Abstract

For telecommunications services to be effective and meet minimum global standards in a given economy, telecommunications installations need to be technically specified and regulated. This is to ensure efficient control and management of the environment where the installations are being made. The environmental impact of the installations therefore cannot be over-emphasised. This paper examined the legal regulation of telecommunications installations, especially masts and towers. It also considered the environmental impacts of telecommunication installations. It also considered the roles of concerned regulatory authorities *vis-a-vis* their regulatory functions in the provisions of effective telecommunications services through telecommunications installations and provision of healthy environment. It has been found that despite the statutory regulation of telecommunications on one hand and the environment on the other hand, there appears to be statutory overlaps in the functions of regulatory authorities. This has resulted in a face-off among the relevant authorities. The issue is whether the provision of telecommunications services must be given priority to the detriment of a healthy environment. The paper recommended that there should be periodic review of relevant regulations and guidelines on telecommunications installations for effective telecommunications service delivery without unnecessarily tampering with the health of the citizenry.

**Keywords:** telecommunications installations, environment, service provider

## 1. Introduction

The Nigerian Communications Commission is the sector specific regulator in the Nigerian Telecommunications Industry while the National Environmental Standards and Regulations Enforcement Agency is charged with the responsibility for the protection and development of the environment. It can be argued that there can be no effective and quality of telecommunications service, especially in the area of mobile telephony, without installation of telecommunications equipments such as masts and towers. It is equally arguable that the rate at which uncontrolled and unregulated telecommunications contribute to unhealthy environment is not infinitesimal. The need to have a proper regulatory framework for the installation of telecommunications equipment and facilities is therefore a necessity for a suitable and healthy environment and sustainable development.

It is now axiomatic that the world is fast becoming a global village and a necessary tool for this is communication of which telecommunication is a key player. The development is now at cross-road with the impact of the telecommunications on the environment. It is now a matter of right to quality of telecommunications service versus right to healthy environment.

## 2. Legal Regulation of Telecommunications Installations

Telecommunications regulatory bodies are established in different countries. These bodies are saddled with the responsibility of regulating the activities and affairs of telecommunications industry. In Nigeria, the Nigerian Communications Commission (NCC) is the specific regulatory body in the telecommunications industry. The NCC was first established in 1992 by the Nigerian Communications Commissions Act No 75 of 1992. By the enactment of the Nigerian Communications Act 2003,<sup>1</sup> which repealed the Nigerian Communication Commission Act.

The NCC is a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name. It is conferred with the power to do all such things that are necessary for or incidental to the carrying out of its functions and duties under the law.<sup>2</sup> The NCC has many functions under the Act,<sup>3</sup> but with

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<sup>1</sup> The Nigerian Communications Act 2003 is now embodied in *Cap N97, Laws of the Federation of Nigeria 2004*.

<sup>2</sup> Section 3(2) of the Nigerian Communications Act 2003.

<sup>3</sup> See generally Section 4(1) of the Nigerian Communications Act 2003 for the functions of the NCC.

particular reference to installation of telecommunications equipment and facilities, the commission has the function of:

- Proposing, adopting publishing and enforcing technical specifications and standards for the importation and use of communications equipment in Nigeria and for connecting and interconnecting communications equipment and systems;<sup>1</sup>
- The formulation and management of Nigeria's inputs into the setting of international technical standards for communications services and equipment;<sup>2</sup>
- Carrying out type approval tests on communications equipment and issuing certificates therefor on the basis of technical specifications and standards prescribed from time to time by the commission.<sup>3</sup>

### *2.1 Technical Specifications for the Installation of Telecommunications Masts and Towers*

By the power conferred upon it under the Act, the NCC published Guidelines on Technical Specifications for the Installation of Masts and Towers in 2009.<sup>4</sup> The guidelines provide standards to be adhered to by telecommunications services providers/operators, designers, fabricators and installers of telecommunications towers towards ensuring environmental safety and sound engineering practices. The guidelines take cognizance of types and constituents of tower structures and also provide a comprehensive data on wind speed in Nigeria which may be used as reference materials for engineers in the design of masts and towers.

In the guidelines, concerns about public safety and safety of personnel and equipment are addressed and accordingly the responsibilities of owners, designers and fabricators of telecommunications masts and towers relating thereto are set out.<sup>5</sup>

### *2.2 Siting of Towers and Masts*

The siting of telecommunications masts and towers must take cognizance of the provisions of the Nigerian Communications Act and be guided by the provisions of the Guidelines on Collocation and Infrastructure Sharing issued by the Commission, in such a way as to minimize the number, protect and promote public safety, and mitigate adverse visual impacts on the community.<sup>6</sup> All masts and towers sited within residential areas must conform to the stipulated set back guidelines to mitigate the effect of heat, smoke and noise pollution arising from generating sets.<sup>7</sup> Thus, the general rule is that telecommunications towers above 25 metres in height would not be permitted within residential areas.<sup>8</sup> However, the Commission may permit towers above 25 metres height and in such a case, the towers must be placed at a minimum of 5 metres distance to the nearest demised property, excluding the fence. What is important here is that prior permission of the NCC must be obtained. The commission reserves the power to remove any tower or mast sited in contravention of the guidelines on siting of towers and masts and the owner would bear the cost of such removal.<sup>9</sup>

All towers must be located within the buildable area of the property and not within the front, rear or side building set backs. All towers in excess of 150 metres in height must be set back by a minimum of 50 metres from the right of way of all controlled access designed as free ways in order to provide unobstructed flight paths for helicopter. In respect of demised properties, the distance for set back is 5 metres excluding the fence or the distance specified as a potential hazard area by the designer of the structure.<sup>10</sup>

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1 Nigerian Communications Act 2003, Section 4(1) (c).

2 Ibid, Section 4 (1) (m).

3 Ibid, Section 4 1(n).

4 Other guidelines and regulations published by the Commission include: Enforcement Regulations 2004; Consumer Code of Practice Regulations 2007; Determination of Interconnect Rate 2006 (which replaced Interconnection Rate Determination 2003); Guidelines on Procedure for Granting Approval to Disconnect Telecommunications Operations; Guidelines on International Gateway Access and Voice Over Internet Protocol (VOIP); Dispute Resolution Guidelines 2004; Telecommunications Network Interconnection Regulations 2003 (now replaced by the Telecommunications Networks Interconnection Regulation 2007); Universal Access and Universal Service Regulation 2007; Competition Practices Regulations 2007; Frequency Spectrum (Fess & Pricing, e.t.c) Regulations 2004

5 Guidelines on Technical Specifications for the Installation of Masts and Towers, General Introduction.

6 Ibid, Guideline 3(1)

7 Ibid, Guideline 3 (2)

8 Ibid, Guideline 3 (4)

9 Ibid, Guidelines 3 (5) & (6)

10 Ibid, guidelines 9 (9)

### *2.3 Environmental Requirements*

Generally, the maximum height for a telecommunications tower shall not exceed 150 metres, otherwise the approval of the commission must be obtained if it is satisfied that the increased height:

- will not be detrimental to public health safety or general welfare;
- will not have negative effect on the neighborhood;
- is in conformity with the plan of the particular area and the general plan of the community; and
- will not impair compliance with any other applicable laws or guidelines.<sup>1</sup>

### *2.4 Structural Certification*

Before the installation of a tower, mast or antenna support structure on any building or roof, the commission must be provided with a structural engineer's certification that the structure will support and not be adversely affected by the proposed masts, tower, antenna and associated equipment.<sup>2</sup>

### *2.5 Collocation and Infrastructure Sharing*

In its responsibility to promote fair competition and encourage and promote infrastructure sharing among licensees, the NCC developed and issued guidelines for collocation and infrastructure sharing. Collocation is the placement of transmission equipment owned by the interconnection demanding operator in the premises of the interconnection providing operator for interconnection to that operator's network.<sup>3</sup> Infrastructure sharing is the joint use of network facilities by two or more operators subject to agreement specifying relevant technical and commercial conditions.<sup>4</sup>

The guidelines on collocation and infrastructure sharing are designed and developed to encourage collocation and infrastructure sharing (C/IS) between operators within a predetermined framework to remove uncertainty and create an environment for better co-operation.<sup>5</sup>

### *2.6 Objectives of the Guidelines on Collocation and Infrastructure Sharing*

The primary object of the guidelines is to establish a framework within which communications operators can negotiate Collocation and Infrastructure Sharing arrangements. Specifically, the Guidelines are made:

- to ensure that incidence of unnecessary duplication of infrastructure is minimized or completely avoided;
- to protect the environment by reducing the proliferation of infrastructure and facilities installations;
- to promote fair competition through equal access being granted to the installations and facilities of operators on mutually agreed terms;
- to ensure that the economic advantage derivable from the sharing of facilities are harnessed for the overall benefit of all telecommunications stakeholders;
- to minimize operators' capital expenditure on supporting infrastructure and to free more funds for investment in core network equipment; and
- to encourage operators to pursue a cost-oriented policy with the added effect of a reduction in the tariffs chargeable to customer.<sup>6</sup>

## **3. Legal Framework for Environmental Protection**

Prior to the dumping of toxic waste in Koko Village in Delta State of Nigeria in 1987, Nigeria was ill-equipped in managing serious environmental issues as there were no institutional arrangements or mechanisms for environmental protection and enforcement of environmental laws and regulations in the country. Following the Koko toxic waste episode, the Federal Government promulgated the Harmful Waste Decree 42 of 1988, which facilitated the establishment of the Federal Environmental Protection Agency (FEPA) through Decree No 58 of 1988.<sup>7</sup> However, the establishment of FEPA was without an appropriate enabling law on enforcement issues,<sup>8</sup> and in order to address the highly situation of lack of enforcement law in the field of environmental law, the

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<sup>1</sup> Ibid, Guideline 9 (1)

<sup>2</sup> Ibid, Guideline 12

<sup>3</sup> See the Guidelines on Collocation and Infrastructure Sharing, Guideline 18

<sup>4</sup> Ibid.

<sup>5</sup> Ibid, Guideline 1 (3)

<sup>6</sup> Ibid, Guideline 3 (1) (a)-(f)

<sup>7</sup> See About NESREA the Establishment of the National Environmental Standards and Regulations Enforcement Agency (NESREA) accessed on 22 August 2010

<sup>8</sup> Ibid.

National Environmental Standards and Regulations Enforcement Agency (NESREA) was established as a parastatal of Federal Ministry of Environment, Housing and Urban Development.<sup>1</sup> NESREA is charged with the responsibility for the protection and development of the environment, biodiversity conservation and suitable development in Nigeria's natural resources in general.<sup>2</sup> The vision of the agency is to ensure a cleaner and healthier environment for all Nigerians while the mission is to inspire personal and collective responsibility in building an environmentally conscious society for the achievement of sustainable development in Nigeria.<sup>3</sup>

The agency has a wide range of powers. In the sphere of environmental protection, the agency can prohibit processes and use of equipment or technology that undermine environmental quality.<sup>4</sup> It can also conduct field follow-up compliance with set standards and take procedures prescribed by law against any violator.<sup>5</sup> The agency is also empowered to establish mobile courts to expeditiously dispense cases of environmental infringements.<sup>6</sup> The agency can conduct public investigations and make proposals to the Minister for the review of existing guidelines, regulations and standards on environment.<sup>7</sup> The agency can also establish programmes for setting standards and regulations for the prevention, reduction and elimination of pollution and other forms of environmental degradation in the nation's air, land, oceans, seas and other water bodies and for restoration and enhancement of the nation's environment and natural resources.<sup>8</sup>

Specifically, the functions of NESREA are to:

- (a) enforce compliance with laws, guidelines, polices and standards on environmental matters;
- (b) coordinate and liaise with stakeholder, within and outside Nigeria, on matters of environmental standards, regulations and enforcement;
- (c) enforce compliance with the provisions of international agreements, protocols, conventions and treaties on the environment, including climate changes, biodiversity, conservation, desertification, forestry, oil and gas, chemicals, hazardous wastes, ozone depletion, marine and wide life, pollution, sanitation and such other environmental agreements as may from time to time come into force;
- (d) enforce compliance with policies, standards, legislation and guidelines on water quality, environmental health and sanitation, including pollution abatement;
- (e) enforce compliance with guidelines and legislation on sustainable management of the ecosystem, biodiversity conservation and the development of Nigeria's natural resources;
- (f) enforce compliance with any legislation on sound chemical management, safe use of pesticides and disposal of spent packages thereof;
- (g) enforce compliance with regulations on the importations, exportation, production, distribution, storage, sale, use, handling and disposal of hazardous chemicals and waste other than in the oil and gas sector;
- (h) enforce through compliance monitoring, the environmental regulations and standards on noise, air, land, seas, oceans and other water bodies other than in the oil and gas sector;
- (i) ensure that environmental projects founded by donor organizations and external support agencies adhered to regulations in environmental safety and protection;
- (j) enforce environmental control measures through registrations, licensing and permitting systems other than in the oil and gas sector;
- (k) conduct environmental audit and establish data bank on regulatory and enforcement mechanisms of environmental standards other than in the oil and gas sector;
- (l) create public awareness and provide environmental education on sustainable environmental management, promote private sector compliance with environmental regulations other than in the oil and gas sector and

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<sup>1</sup> NESREA was established by the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act No 25 of 2007. Its commencement date was 30<sup>th</sup> July 2007. By Section 36 of NESREA Act, the FEPA Act has been repealed.

<sup>2</sup> See NESREA Act, Section 2.

<sup>3</sup> About NESREA the Establishment of the National Environmental Standards and Regulations Enforcement Agency (NESREA) <<http://www.nesrea.org/about.pht>> accessed on 22 August 2010.

<sup>4</sup> Ibid, Section 8 (d).

<sup>5</sup> Ibid, Section 8 (e).

<sup>6</sup> Ibid, Section 8 (f).

<sup>7</sup> Ibid, Section 8 (K).

<sup>8</sup> Ibid, Section 8(o). See also generally, Ogbodo S. G., 'National Environmental Standards and Regulations Enforcement Agency (NESREA) Act – A Review' <<http://www.nigerianlawguru/articles/environmental%20law/NATIONAL%20ENVIRONMENTAL%20STANDARDS%20REGULATIONS%20ENFORCEMENT%20AGENCY%28NESREA%29%ACT,%20A%REVIEW.pdf>> accessed on 21 September 2010.

publish general scientific or other data resulting from the performance of its functions;  
(m) carry out such activities as are necessary or expedient for the performance of its functions.<sup>1</sup>

#### **4. Right to Quality of Telecommunications Services *versus* Right to Healthy Environment**

Every consumer of telecommunications services is entitled to such minimum standards of quality of service.<sup>2</sup> Quality of Service in this sense is a measure of the telephone service provided to a subscriber.<sup>3</sup> Call must be clear and easy to hear. It must be loud enough and the longest time a consumer should wait after picking up the phone before receiving dial tone must be adequately determined.

The consumers should be able to enjoy required applications services such as emergency services, directory assistance services, operator assistance service and services for disabled customers.<sup>4</sup> As part of the functions of NCC, the NCC shall protect and promote the interests of customers against unfair practices including matters relating to availability and quality of communications services, equipment and facilities.<sup>5</sup>

Operating companies must provide and list in their directory a 24 hour repair service number. Consumers should have the right to access vendor's annual quality of service reports.<sup>6</sup> Licensees must also comply and cause their agents to comply with the relevant fault repair standards set out in the NCC's Quality of Service Regulations. Licensees must also endeavour to give advance warning of anticipated service disruptions or planned outages, including details of the disruption or outage, the services and service area affected and any applicable compensation or other remedies<sup>7</sup>

The consumer has right to be protected against the marketing of goods that are hazardous to public health.<sup>8</sup>In specific regard to emergency services, the NCC has the responsibility to promote and enhance public safety through the use of a particular number which shall be designated as the universal safety and emergency assistance number for telephony services generally.<sup>9</sup>

The need for consumer right to safety is to provide goods and render services, the consumption of which will not be inimical or hazardous to consumer's health and the social well-being at large.<sup>10</sup> The crucial question is how an average consumer of telecommunications service known how much unhealthy radiation is being emitted from the hand-phone while making or receiving calls or charging the batteries? Can one assume that a consumer of telecommunications service can know whether tasteless and odourless poisonous and harmful gases or other objects is seeping into his mouth, ear and environment from the hand-phone or base stations?<sup>11</sup> The licensee is duty-bound under section 135 (3) (b) of the Nigerian Communications Act to take all reasonable care in connection with installation of network facilities to protect the safety of property.

#### **5. Regulatory Overlaps: the Need for Harmonisation?**

Regulatory overlap has been a disturbing phenomenon in the legal regime of telecommunications installations.

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<sup>1</sup> See Section 7 of the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act No 25 of 2007.

<sup>2</sup>Section 104 (a) of the Nigerian Communications Act. In *Nkwocha & 2 Ors v. MTN Nigeria Ltd & 4 Ors* (2004) 1 TLR, 1, 4 and *Njikonye Esq. v MTN Nig Communications Ltd* (2008) All FWLR (Pt 413) 1343, the plaintiffs approached the Court as a result of poor quality of service.

<sup>3</sup> Harry Newton, *Newton's Telecom Dictionary* (Miller Freeman Inc, USA) 641

<sup>4</sup> See Section 107 (2) of the Nigerian Communications Act.

<sup>5</sup> See Section 4 (1) (b) of the Nigerian Communications Act.

<sup>6</sup> See Engr Earnest Ndukwe, 'Consumer Rights in the Telecommunications Industry' (2008) (Paper Presented at the Annual Distinguished Lecture of the Justice Chambers, Faculty of Law, Obafemi Awolowo University, Ile-Ife, Nigeria). Engr Earnest Ndukwe was the Executive Vice-Chairman/Chief Executive Officer of Nigerian Communications Commission.

<sup>7</sup>Code 13 (2) & (3) of the General Consumer Code of Practice under Nigerian Communications Act 2003 Quality of Service Regulations 2009.

<sup>8</sup> Engr. Earnest Ndukwe, 'Consumer Rights in the Telecommunications Industry'.

<sup>9</sup>Section 107 (3) (a) of the Nigerian Communications Act.

<sup>10</sup>Adewale, S.A and Bamise J.B., 'The Legal Protection of Consumers of Telecommunications Services' (Paper presented to 2005/2006 LL.M Class of Aviation and Communications Law, Faculty of Law, Obafemi Awolowo University, Ile-Ife, Nigeria.

<sup>11</sup> Ibid.

There is regulatory overlap in the functions of both the NCC and NESREA in relation to environmental implications in the installation of the telecommunications masts and towers.<sup>1</sup> NESREA had shutdown base stations of some telecoms operators for failure to abide by environmental regulations of the country, positing that the base stations were too close to residential buildings and posed great dangers to residents and buildings in the vicinity, thus claiming that it has regulatory powers over the installation of telecommunications masts and towers.<sup>2</sup> On its own side, the NCC has maintained that there cannot be telecommunications without having telecommunications masts because there is no infrastructure in place in Nigeria like other countries that have fibres,<sup>3</sup> yet it has been observed that there have been no proven cases of side effect emanating from exposure to base station or building base stations close to residential buildings.<sup>4</sup> It has been observed that the absence of base stations in a vicinity means that subscribers cannot be connected, and that underscores the need for nearest of the installations for mobile connectivity.<sup>5</sup>

It is humbly submitted that whatever the arguments and regulatory overlap, the codes, rules and regulations guiding the operations within the environment and set-up should be sustainable and environmental friendly. Both NCC and NESREA should work out harmonized laws to ensure that all interests are accommodated for a peaceful roll-on of quality communications services,<sup>6</sup> without adversely affecting the health of the populace. This can be done by reaching a compromise and entering into a memorandum of understanding just as the Consumer Protection Counsel and NCC did.<sup>7</sup> All concerned regulatory bodies should recognize the need for collaboration in the discharge of their functions as they affect consumers in the telecommunications sector.

## 6. Environmental Impacts of Telecommunications Installations

The Nigerian telecommunications sector is the fastest growing sector of the economy in Africa, from about 450,000 telephone lines in 2001 to over 78,000,000 in 2010. However, this growth has resulted in the establishment of more telecommunications infrastructure such as installations of masts and base stations. This has raised serious environmental concerns, especially in the area of Environmental Impact Assessment. NESREA has clamped down on telecommunications operators and has even decommissioned some telecommunications masts for failure to comply with Environmental Impact Assessment.<sup>8</sup>

Telecommunications installations need to consider environmental implications in the installations. Non-

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<sup>1</sup>See Dayo Oketola, 'NCC, NESREA to set Regulatory Boundaries' The Punch Newspaper (Nigeria 05 July 2010) 36.

<sup>2</sup>Ibid. The NESREA had shut down Globacom base station located at OAU Quarters, Maitama, Abuja. It also shut down a base station belonging to Etisalat in Abuja on the ground that no Environmental Impact was acquired by the company before erecting the mast. NESREA also shut down MTN base station in Abuja over environmental breaches at MTN base station located at 27, Ashiek Jarma Street, Jabi and No2, Oyo Street, Area 2, Garki, Abuja. See Emeka Ezekiel, 'FG Shuts MTN Base Stations on Environmental Breaches' the Punch Newspaper (Nigeria 24 August 2010) 17.

<sup>3</sup> See Aminah Mohammed, 'Nigerian Communications Commission, NESREA Clash Over Regulation of Telecoms <>' accessed on 20 July 2010.

<sup>4</sup> See 'Experts Re-assure on Safety of Humans near Telecom Base Stations', IT & Telecom Digest (Nigeria September 2009) 66. To further allay the fear of the people, stakeholders in the ICT industry had met and concluded that there is no known conclusive scientific evidence at present to indicate that radiation from mobile phones and telecom masts could cause such dangerous disease such as cancer and others infections.

<sup>5</sup>Ibid.

<sup>6</sup> See Patrick Osadebamwen, 'Telecoms Revolution and Environmental sustainability' Summit Newspaper (Nigeria 21 July 2010) 20.

<sup>7</sup> On 19<sup>th</sup> day of December 2005 both Consumer Protection Council and Nigerian Communications Commission signed a Memorandum of Understanding to avoid regulatory overlaps and create regulatory certainty for the benefit of all stakeholders in the telecommunications sector. See Memorandum of Understanding between the Consumer Protection Council and Nigerian Communications Commission <[http://www.ncc.gov.ng/RegulatorFramework/MOU\\_BETWEEN\\_NCC\\_AND\\_CPC.pdf](http://www.ncc.gov.ng/RegulatorFramework/MOU_BETWEEN_NCC_AND_CPC.pdf)> accessed on 18 August 2010.

<sup>8</sup> Emeka Ezekiel, 'NESREA VS. NCC: Raging Battle over Regulation of Telecoms Masts <<http://www.nigerianbestforum.com/generaltopic/?p=555638&cpage=1#comment.55623>>' accessed on 20 October 2010.

compliance with Environmental Impact Assessment may result in very high noise level, compared to what should be obtainable in a residential area. Quite often, installations made without Environmental Impact Assessment become curses instead of blessings they were originally conceptualise to become.

The failure of telecommunications operators and service providers to adhere to Environmental Impact Assessment regulations before installation of equipment and base stations may also be responsible for the worsening of ecological problems across the country.<sup>1</sup>

The need to have an environmental regulation governing the telecommunications sector is as a result of petitions and out-cry of Nigerian public on the activities of telecommunication operators, especially with regard to the setting of their masts. Noise from their base-stations, oil leakages, the vibration, the smoking pollution and oil to well pollution are the adverse effects of telecommunications installations if necessary assessment is not carried out.

The health hazards of indiscriminate installation of masts and base stations is also associated with Electro Magnetic Fields (EMF) emissions from base stations and telecoms masts. There have been growing concerns about the adverse effects on the general public from exposure to radiofrequency energy and concerns have also been expressed about the siting of Radio Frequency (RF) base stations close to residential buildings.<sup>2</sup>

### **7. Environmental Impact Assessment Act: The Need for Compliance in the Telecommunications Installations**

Quite apart from compliance with the provisions of the Technical Specifications for the Installation of Telecommunications Masts and Towers made by NCC in 2009 and other regulatory frameworks, telecommunications operators and installers have the abiding responsibility to comply with the provisions of the Environmental Impact Assessment (EIA) legislation.

The EIA can be defined as a systematic process for identifying, predicting and evaluating potential impacts associated with a development project. The EIA process must proffer mitigation measures to avoid, reduce or minimize the negative impacts on the environment, public health and property. It must also enhance positive impacts. The mitigation measures entail identifying possible alternative site, project, process design, including that of not proceeding with the project. It also deals with monitoring the construction and operational phases, and acting on the results of such monitoring till final abandonment or closure. The post-closure care is also an integral part of the EIA process.<sup>3</sup>

EIA legislations and the required procedural guidelines for carrying out the EIA process became effective since the 1970s in developed countries. Nigeria took a giant leap when she promulgated her main EIA legislation (i.e. EIA Act No.86) in 1992.<sup>4</sup> The current principal legislation for the Environmental Impact Assessment (EIA) in Nigeria is the Environmental Impact Assessment Act<sup>5</sup> which made EIA mandatory for both public and private sectors for all development projects. This is the core legislation that governs environmental impact assessment in respect of proposed projects in Nigeria.<sup>6</sup> It has three main objectives and these are:

- Before any person or authority takes a decision to undertake or authorize the undertaking of any activity that may likely or significantly affect the environment, prior consideration of its environmental effects should first be taken.
- To promote the implementation of appropriate procedures to realize the above goal.
- To seek the encouragement of the development of reciprocal procedures for notification, information exchange

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1 Ibid.

2 Kolawole Daniel, 'Indiscriminate Siting of Telecoms Masts, Base Station: Any End in Sight?' <http://www.tribune.com.ng/index.php/features/7142-indiscriminate-siting-of-telecoms-masts-base-stations-any-end-in-sight> accessed on 22 October 2010.

3 Tayo Akeem Yusuf, 'The Environmental Impact Assessment Practice in Nigeria: The Journey So Far' <<http://www.nigeriansinamerica.com/articles/3105/1/The-Environmental-Impact-Assessment-Practice-In-Nigeria-The-Journey-So-Far-Page1.html>> accessed on 29 July 2011.

4 Ibid.

5 *Cap E12 Laws of the Federation of Nigeria 2004.*

6 Ifeanyi Anago, 'Environmental Impact Assessment as a Tool for Sustainable Development: The Nigerian Experience' <[http://www.fig.net/pub/fig\\_2002/Ts10\\_3\\_anago.pdf](http://www.fig.net/pub/fig_2002/Ts10_3_anago.pdf)> accessed on 29 July 2011.

and consultation in activities likely to have significant trans-state (boundary) environmental effects.<sup>1</sup>

By the Act,<sup>2</sup> no public or private sector of the economy can undertake or embark on or authorise any project or activities without first considering their environmental effects at the early stage. Where, therefore, the extent nature or location of a proposed project or activity is such that it is likely to have significant effect on the environment, its environmental impact assessment must be undertaken in accordance with the provision of the Environmental Impact Assessment Act.<sup>3</sup>

An environmental impact assessment shall include at least the following minimum matters:

- 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, as appropriate;
- an assessment of the likely or potential environmental impacts on the proposed activity and the alternatives, including the direct or indirect cumulative, short-term and long-term effects;
- an identification and description of measures available to mitigate adverse environmental impacts of 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 other State, Local Government Area or areas outside Nigeria is likely to be affected by the proposed activity or its alternatives;
- a brief and non technical summary of the information provided under any of the above matters.<sup>4</sup>

The procedure for EIA in Nigeria involves the submission of project proposal to the Federal Ministry of Environment for screening to determine the need or otherwise for EIA; 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; Submission of draft EIA report for review; Review of draft EIA report; Submission of final EIA report, which addresses all the issues raised from review exercise; decision-making by the Federal Ministry of Environment's technical committee and the Hon. Minister; Certification (issuance of Environmental Impact Statement (EIS) and certification) and Mitigation and Compliance monitoring to ensure compliance with all stipulated mitigation measures and project specifications in the projects EIA report.<sup>5</sup>

Although the telecommunications operators and installers must comply with EIA Act, the regulatory authorities must also meet up with expectation by ensuring that the procedure for the assessment is followed.

## 8. Conclusion

This paper has examined the legal regulation of telecommunications installations within the Nigerian regulatory framework. The health and environmental implications of telecommunications installations are also articulated. The lingering face-off between the duo of NCC and NESREA on whose responsibility it is to regulate telecommunications installation is adversely affecting investment and economy.

Regulatory bodies should work out harmonized strategies in their regulatory powers and functions. This can be done by entering into a memorandum of understanding or sponsoring a bill to that effect. The telecommunications operators and service providers should also collocate with one another to avoid complexity

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<sup>1</sup>Environmental Impact Assessment Act, Section 1. See also Nerry Echefu and .E Akpofure, 'Environmental Impact Assessment in Nigeria: Regulatory Background and Procedural Framework' <<http://www.iaia.org/publicdocuments/EIA/CasesStudies/EIANigeria.pdf>> accessed on 29 July 2011.

<sup>2</sup> Environmental Impact Assessment Act.

<sup>3</sup> Environmental Impact Assessment Act, Section 2.

<sup>4</sup> Environmental Impact Assessment Act, Section 4

<sup>5</sup> Oluwole Ameyan, 'Environmental Impact Assessment : Insight Into the Environmental Impact Regulatory Process And Implementation for Qualifying Projects' (2008) (Paper presented at a one day seminar: Preparing Business in Nigeria for Environmental Challenges and Opportunities, organised by the Manufacturing Association of Nigeria, (MAN), MAN House, Ikeja, Lagos, 4th November, 2008). Also available at <<http://www.man-greencourse.com/papers/paper6b.pdf>> accessed on 20 July 2011.



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in the installation of telecommunications equipment and prevent multiple and indiscriminate erection of masts.

People must imbibe the desirable process of Environmental Impact Assessment as the surest means of ensuring the enduring benefits and sustainability of development projects.

There should be regular or periodic review of relevant regulations and guidelines. Although the evolution of the telecommunications sector has been of a great benefit to everyone but even with the benefit derived therefrom, care has to be taken against its health hazards.

The paper also examined the need for the telecommunications operators and installers to comply with the provisions of the Environmental Impact Assessment Act. It is therefore the hope that all those engage in the telecommunications installations would adhere strictly to the Environmental Impact Assessment Act for sustainable development.

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