

BEST PRACTICES IN THE UPSTREAM OPERATIONS OF THE OIL AND GAS INDUSTRY: THE CASE OF ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENT (ESIA) IN CAMEROON

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ABSTRACT

The oil and gas industry is a global, multi-trillion-dollar industry that includes the exploration, production, refining, and distribution of oil and gas products. The industry plays a vital role in the global economy, providing the energy needed for transportation, heating, and electricity generation. Environmental legislative and regulatory requirements applicable to oil and gas activities vary worldwide. However, in developing countries, adequate environmental laws are absent and where the laws exist; there is a lack of proper implementation. This paper adopts the qualitative research methodology making use of the doctrinal method. The paper reveals that in the absence of adequate environmental laws and enforcement in emerging economies, there have been calls for oil companies to voluntarily adopt “best practices” in emerging economies. The industry is, therefore, committed to improving environmental and social performance through greater quality, depth and uptake of good practice. However, no treaty has been negotiated with the specific aim of regulating the onshore and offshore activities of the oil and gas exploration and production industry operating within the borders of individual states. This stems historically from the view that the regulation of onshore and offshore resource exploitation falls within the domestic jurisdiction of states. In this context, the paper recommends that, there should be a strict respect of the standards guidelines and best operating practices developed by oil industry association bodies and nongovernmental and

intergovernmental organizations (NGOs and IGOs). This is because they constitute the major efforts to achieve uniform standards and operating practices across the globe.

Keywords: Best Practices, Upstream Operations, Oil and Gas Industry, Environmental Impact Assessment (EIA), Social Impact Assessment (SIA)

INTRODUCTION

Oil and gas exploitation is a process of varied steps from prospecting and exploration to the production stage. As such, the overall success of such a venture is dependent on success at each of these stages. The oil and gas industry has been and will continue to be a major driver of economic growth in Cameroon.

For a responsible Oil and Gas company, it is no longer acceptable to follow different environmental performance standards that are based on regulatory requirements that vary from country to country. Consequently, beyond strict legal compliance, a set of 150 best environmental practices has been established to prevent and minimize the environmental impact of E&P operations worldwide. This requirement covers the full range of E&P activitiesⁱ, and it contains specific requirements for key environmental aspects, such as biodiversity, noise, air emissions, wastewater and waste management.

Environmental legislative and regulatory requirements applicable to E&P activities vary worldwide. In some countries, the operations are subjected to a well-developed legal framework that establishes strict requirements to be followed, as opposed to other countries with less stringent requirements. The Oil & Gas Industry is committed to improving environmental and social performance through greater quality, depth and uptake of good practice.ⁱⁱ Therefore, it is not acceptable to operate with substandard infrastructure and permissive operational standards in countries with weak regulatory requirements. Consequently, a set of best environmental practices has been established to prevent and minimize the environmental impact of E&P operations worldwide, regardless of the location where the activities take place.

In the absence of adequate environmental laws and enforcement in emerging economies, there have been calls for oil companies to voluntarily adopt "best practices" in emerging economies.

Emerging economiesⁱⁱⁱ hold the majority of the world's proven oil reserves, and account for the majority of the world's production of crude oil.^{iv} The exploitation of oil remains a priority for the governments of emerging economies, as the revenue that comes from it remains a major source of foreign income of which the majority are among the poorest countries in the world, and have large foreign debts.^v

Oil and gas exploration and production have the potential to cause severe environmental degradation not only to the physical environment, but also, to the health, culture, and socio-economic structure of local and indigenous communities.^{vi} However, environmental laws in emerging economies are often ineffective because they are either substantively inadequate or because they are inadequately enforced. This has led to calls by academicians, practising lawyers and human rights and environmental activists for transnational oil companies to voluntarily improve their performance in countries with inadequate environmental laws.

Oil companies and industry groups have also recognised that international oil companies operating in emerging economies with inadequate environmental laws should adopt best practices. For example, members of the American Petroleum Institute are responsible for "obeying all laws and best practices" as part of the pledge to a program of continuous health, safety and environmental improvements,^{vii}

But what is "best practice" in the international oil industry? What standards should be employed? No treaties have been negotiated with the specific aim of regulating the onshore and offshore activities of the oil and gas exploration and production industry operating within the borders of individual states. This stems historically from the view that the regulation of onshore and offshore resource exploitation falls within the domestic jurisdiction of states. In this context, the standards, guidelines and best operating practices developed by oil industry association bodies, and nongovernmental and intergovernmental organizations (NGOs and IGOs) constitute the major efforts to achieve uniform standards and operating practices across the globe.

This Paper identifies five environmental practices that can be seen as "Best Practices" through their endorsement in national and international oil industry association guidelines, and which will, when adequately implemented, reduce the negative impacts of oil exploration and

production. The paper discusses the Cameroon perspective of Environmental and Social Impact Assessment.

ENVIRONMENTAL BEST PRACTICES ADOPTED BY THE OIL AND GAS INDUSTRY

This section identifies five emerging "best practices" for the protection of the environment in the area of environmental management procedures and systems. These practices are environmental and social impact assessment (ESIA); environmental management systems (EMS); environmental performance evaluation (EPE); environmental monitoring and auditing and environmental reporting. It discusses the legal implications arising from the use of these standards and guidelines and finally makes suggestions for future developments.

1) Environmental Impact Assessment (EIA)

EIA is a procedure whereby the significant environmental impacts of a proposed development project are assessed before the activity takes place.^{viii} EIA has the potential to be a powerful tool to ensure that the environmental and cultural impacts of proposed development activities are assessed, taken into account in decision-making, and their mitigation. While the features of EIA vary between jurisdictions, there are several common elements.^{ix}

The International Association for Impact Assessment (IAIA) in 2009 defined EIA as the process of identifying, predicting, evaluating and mitigating the biophysical, social, and other relevant effects of development proposals before major decisions are taken and commitments made. Meanwhile, article 102 of NEPA 1969 defines EIA as a systematic interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and decision making which may have an impact on man's environment. Principle 17 of the Rio Declaration is dedicated to EIA and states that EIA, 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.

The European Union approved a Directive on EIA in 1985. Currently, EIA is a requirement in most countries of the world including Cameroon. Some EIA systems or jurisdictions constrain

EIA to the analysis of impacts on the biophysical environment while others include the social and economic impacts of development proposals. Some financial institutions (e.g. the African Development Bank) use the expression ‘environmental and social impact assessment’ (ESIA) to emphasise the inclusion (and the importance) of the social impacts. This is also the case in Cameroon since 2013.

Social impacts are "the consequences to human populations of any public or private actions that alter how people live, work, play, relate to one another, organise to meet their needs, and generally cope as members of the society. The term also includes cultural impacts involving "changes to the norms and beliefs that guide and rationalise their cognition of themselves and their society".^x

For some developments, the social and cultural effects may be far more significant than the impacts of the project on the physical environment, and yet social impacts may be more difficult to assess, predict and manage. As of today, methods for assessing the social and cultural impacts of oil projects are less advanced than methods for measuring the effects of development activities on the physical environment such as the air, waters and soils, although several organisations such as the Interorganisational Committee on Guidelines and Principles for Social Impact Assessment and the World Bank have produced guidelines for social impact assessment.^{xi}

Not only is EIA becoming “singularly important in both domestic and international Environmental law”, but the requirement for EIAs to be conducted as a prerequisite to the approval of major resource development projects is "one of the strongest trends in global mining".^{xii} ESIA requirements are contained in treaties, national laws and industry guidelines, and are imposed as conditions of lending and assistance by international financial organisations.^{xiii}

In many emerging economies, poverty, the imperative of economic development and the often-stated view that the country cannot afford to increase environmental protection, result in government approval of development projects that are not environmentally sustainable. The existence of widespread corruption, political pressures and inadequate funding; the fact that the “organisations responsible for ESIA are frequently new, lacking in status and political clout and working in a culture where an absence of information sharing considerably reduces their

influence”;^{xiv} and the "bypassing" of the environment ministries by other, more powerful ministries, in particular the ministries concerned with resource exploitation, means that compliance with ESIA legislation is inadequately monitored and enforced in the majority of emerging economies.

2) *Environmental Management Systems (EMS)*

Environmental Management Systems (EMS) are procedural rules for the organisation that assists managers in preventing or detecting environmental violations. They assist managers to comply with existing legal requirements and to define management processes to be followed to control the impact of a corporation’s activities on the environment. Most of the major international oil and gas companies have started to adopt detailed EMS and internal environmental operating guidelines.^{xv} Several organisations have produced standards and guidelines for EMS, including the ISO^{xvi}, the European Union, and oil and gas industry bodies.

The ISO is an international federation of "standards bodies" from over 100 countries.^{xvii} It was founded in 1946 to promote standardisation and related activities to facilitate the international exchange of goods and services. The ISO 14000 series standards are international, voluntary standards that provide specific requirements and principles for environmental management.^{xviii} They give managers a structure for establishing, improving and maintaining programmes for the protection of the environment.

ISO 14004 is a guidance document that explains environmental management concepts, defines key terms and provides practical advice for the design and implementation of an EMS. ISO 14001 establishes a model EMS based on the set of guiding principles contained in ISO 14004. The core elements specified by ISO 14001 are environmental policy; planning; implementation and operation; checking and corrective action; and management review.^{xix}

The first element, "establishing an environmental policy", requires a company to make a public statement of the company’s intentions concerning the environment. The second element, "planning", involves: implementing a systematic approach to identifying significant environmental aspects in all phases of the company’s business and under all operating conditions; establishing a procedure to identify and maintain access to all legal and other requirements; setting environmental objectives and targets; and establishing environmental management programmes, which detail methods and procedures for achieving environmental

targets and objectives.^{xx} The third element, "implementation and operation", involves the identification and formal assignment of responsibility to personnel, from site personnel and managers to senior executives and managers; the provision of environmental training and awareness, and ensuring competence in EMS requirements; communication, both external and internal, regarding the EMS and environmental procedures such as emergency response procedures; etc.^{xxi} The fourth element, "checking and corrective action", involves: establishing procedures for monitoring operations that may have a significant impact on the environment; conducting impartial internal and external audits of the EMS; and establishing procedures for the keeping of environmental records. The fifth core element requires a review of the EMS to identify and rectify any shortcomings in the EMS and keep abreast of changes over time.^{xxii}

The ISO 14001 series does not set environmental legal requirements; rather, it is designed to provide a management system to assist managers to comply with existing legal requirements and to define management processes to be followed to control the impact of a corporation's activities on the environment. A company can make a self-declaration of compliance with ISO 14001, or be audited and gain certification against the standards of ISO 14001. A company with ISO 14001 certification can claim that it has a documented environmental management system that is fully implemented and consistently followed. However, it cannot claim that its products or processes are more environmentally friendly. This is because certification under ISO 14001 is based on an audit of the EMS, not the product or service provided by the company.^{xxiii}

Another major international standard for EMS is contained in the European Union's Eco-Management and Audit Regulation (EMAR), which establishes the voluntary Eco-Management and Audit Scheme (EMAS).^{xxiv} The Regulation, which came into force in 1993, takes the form of 21 Articles and 5 Annexes, which form part of the Regulation. The objective of the scheme is to "promote continuous improvements in the environmental performance of industrial activities"^{xxv}. One to achieve this is by the "establishment and implementation of environmental policies, programmes and management systems by companies in relation to their sites".^{xxvi}

From the company perspective, an EMS also helps the company to demonstrate its commitment to the environment to the company's shareholders, customers and suppliers, as well as to the local community and regulatory authorities. This should help to satisfy community pressure

for improved environmental performance and improve the company's public image. This goes a long way in improving access to capital and business opportunities, facilitating the issue of licences and permits, helping the company gain future access to new operational sites, and providing a competitive tendering advantage.^{xxvii}

Despite the benefits of the ISO series standards, there are a number of limitations regarding these standards, particularly as regards the certification process.^{xxviii} First, developing countries may find it more difficult to implement the EMS standards, as companies from developing countries may not have the resources to achieve certification, and/or the infrastructure necessary for certification may be absent. Just as the implementation of EMS may provide companies with a competitive advantage, so too those companies from emerging economies that cannot afford to gain certification may be placed at a competitive disadvantage in tendering for projects.

Second, the ISO 14000 Series does not set legal environmental standards. Certification indicates a corporation has a consistent environmental policy, but makes no representation regarding the standard of environmental performance or objectives set by a company. If environmental standards in developing countries are lower than in developed countries, the EMS certification will indicate the corporation is complying with the laws, but will not reveal that the environmental standards observed are not as high as in Western countries. Public and government misconception that EMSs set actual environmental standards for operation can lead to misplaced public confidence in the regime for environmental protection, providing a "shield" under which oil companies can operate using practices that are clearly below "best practices".^{xxix}

Third, self-declaration by companies regarding their implementation of EMS under ISO 14001, in contrast to third-party verification, may enable some companies to hold themselves out as having internationally acceptable EMS when in fact this is not the case.

3) *Environmental Performance Evaluation (EPE)*

Environmental Performance Evaluation (EPE) is a management tool designed to ensure the ongoing measurement and improvement of an organization's environmental performance. It is a process by which a company measures its environmental performance against criteria set by management.^{xxx} The real development of EPE began in the 1990s, with work undertaken by

the ISO. The ISO has published 2 standards that guide companies on how to conduct and improve EPE. These are ISO 14031 (1999): Environmental Management - Environmental Performance Evaluation-Guidelines, and an accompanying technical report, ISO/TR 14032 (1999).

The oil industry has started to establish collaborative efforts to develop indicators of environmental performance. The IAOGP will not identify the performance of individual companies, but the three top performers will be identified and invited to share their experience of best practices through IAOGP Forum workshops.^{xxxii} Another example of cooperation on the development of indicators is that provided by Arco, BP Amoco, Conoco, Shell and Statoil, who have been collaborating on harmonising environmental indicators to allow them to benchmark their worldwide upstream health, safety and environmental performance against each other.

The measurement of social and cultural performance by oil companies is also an emerging trend. However, there are as yet no common, standardised indicators used by companies, nor do the majority of companies yet report on their performance in these areas. Just a few examples of current indicators used by companies include the existence of community advisory panels; investment in educational and community programmes; support for the Universal Declaration of Human Rights; the number of reported bribes; the number of forums organised to discuss employee conditions; and the level of local content of projects in terms of jobs and procurement.^{xxxiii}

As with environmental performance indicators, the major international oil companies are starting to collaborate on the development of indicators of social performance. For example, Statoil, BP-Amoco, Royal-Dutch Shell and Conoco are involved in a project, led by Statoil, on developing indicators to reflect a company's contribution to sustainable development, with performance to be measured in several areas, including ethics (human rights, bribery/corruption, gender, cultural and racial diversity and political activities); environmental management (preservation and restoration, production stewardship, product stewardship/portfolio, global impact and resource use); and stakeholder relations (employees, suppliers and customers, society at large, NGOs, interest groups and government).^{xxxiii} The measurement of social and environmental performance has several benefits.

In the context of oil exploration and development, environmental and social performance reports will provide local communities and indigenous peoples with extremely useful information on the past and current environmental and social policies, and performance of oil companies seeking to operate on traditional lands. This will provide information to shareholders and the community that can be used to demand improved performance from oil companies in these areas.

4) Environmental Monitoring and Auditing

a) Monitoring

Environmental monitoring involves the ongoing checking, inspection or examination of equipment, management systems, operational activities and their effect on the environment on a regular and frequent basis. Different types of monitoring include monitoring equipment to ensure it is in good working order; monitoring the company's impacts on the environment, for example, emission levels, wastes, and the amount of energy used; monitoring the state of the environment, for example the level of toxicity of watercourses affected by oil development; monitoring the implementation of an EIS, to see, for example, if the project is implemented in accordance with any mitigation measures required; and monitoring the EMS, that is, monitoring the management processes.

Monitoring ensures compliance with environmental and social regulations and provides a tool to evaluate and update mitigation strategies; if conditions change or original strategies prove not to be effective", it allows for anticipated impacts to be documented, and "can identify any unanticipated impacts" of development.^{xxxiv} The IAOGP has stated that monitoring should be on-going throughout the life of a project, and that effective monitoring increases credibility.^{xxxv} Environmental monitoring is a key feature of EMS that are promoted by the ISO, EMAS, IAOGP and the API. The IAOGP has stated that monitoring the environmental impacts of "all stages of a project is [the] key to responsible operations", while the Australian Petroleum Production and Exploration Association's Environmental Policy states that APPEA encourages and supports its members to "monitor environmental effects".^{xxxvi}

b) Auditing

Environmental auditing is "the practice of comparing environmental regulatory and management requirements against the operational and management performance record of a facility by evaluating such records and systems against a set of predetermined standards".^{xxxvii} It is a systematic, periodical evaluation of a company's environmental organisation, performance and systems against pre-determined standards. There is a distinction between performing a "compliance" audit and an EMS audit. The former concentrates on compliance with regulatory requirements, while the latter focuses on "the organisational structure, responsibilities, practices, procedures, processes and resources for implementing environmental management".^{xxxviii}

The ISO has developed standards for environmental auditing. These are ISO 14010: 1996, Guidelines for Environmental Auditing - General Principles; ISO 14011: 1996, Guidelines for Environmental Auditing - Audit Procedures - Auditing of EMS; and ISO 14012: 1996 Guidelines for Environmental Auditing - Qualification Criteria for Environmental Auditors. These standards do not mandate third-party audits or external disclosure of audit reports and are focused on audits of environmental management systems, rather than on compliance with legal regulations. However, the ISO standards are flexible and are appropriate for application to all operations of an organisation, that is not site-specific. They are considered to be the largest and most influential effort towards standardising environmental auditing.^{xxxix}

The European Commission's Environmental Management and Audit Scheme (EMAS) is another influential audit scheme.^{xl} Article 3(d) of the EMAS Regulations requires companies that voluntarily participate in the EMAS to carry out or cause to be carried out, environmental audits at sites where an industrial activity is performed. The audit may be carried out by either company or external auditors and must be consistent with ISO 14011. The audit must address a range of issues listed in Annex I(C),^{xli} while Annex II sets out requirements for the audit process, including audit objectives, reports, follow-up and frequency. The audit results and procedures must be verified by an independent, accredited verifier.^{xlii}

In general, environmental audits may be performed in-house or by an independent third party, or by a combination of both. The use of an outside auditor may add credibility to the audit findings.^{xliii} Prince and Nelson have claimed that "a clear trend exists for industry to mandatorily perform audits, disclose them to the public, and engage a third party to conduct them".^{xliv} The IAOGP has affirmed the importance of environmental auditing for the oil and

gas industry in its *Guidelines for the Development and Application of Health, Safety and Environmental Management Systems*, in which it is stated that "the company should maintain procedures for audits to be carried out, as a normal part of business control".^{xlv}

In the context of oil exploration and production on indigenous peoples' lands, auditing has a crucial role to play not only in assessing the state of the environment on an ongoing basis but as a means for determining the damage caused by oil companies to the environment in cases where indigenous peoples are claiming compensation for environmental destruction and demanding restitution of the land.^{xlvi} For example, in 1992, Petro Ecuador contracted a Canadian consulting firm HBT Agra Limited to conduct an independent and impartial environmental audit of Texaco's facilities in Ecuador.^{xlvii} Where a corporation retains monitors or auditors from "for profit" auditing firms, there is always the possibility that the auditors will become aligned with the interests of the corporation they are monitoring, thereby seriously undermining the independence, accuracy and reliability of the monitoring/auditing results.^{xlviii}

5) *Environmental and Social Reporting*

Companies across all industry sectors, including the international oil and gas industry, are facing increasing pressure to disclose information regarding their environmental and social performance to governments and the public. The holistic view of reporting on environmental, social and economic issues, in contrast to "stand-alone" measures of environmental and social performances, is referred to as "triple bottom line" reporting. Some key reasons why companies are moving into environmental reporting are:

- To satisfy community and individual "right to know" requirements;
- To improve company performance in social and environmental areas by measuring and publicly reporting on these areas;
- To demonstrate corporate accountability for the social and environmental impact of operations;
- To add shareholder value through the demonstration of a superior ability to manage environmental and social impacts; and
- To report contributions to sustainable development by measuring and reporting "triple bottom line" impacts.^{xlix}

The move towards environmental reporting is illustrated by a number of general mandatory disclosure requirements and voluntary reporting initiatives that have arisen in recent years. As

regards mandatory disclosure, a number of countries require corporations to report on the release and transfer of various potentially toxic or harmful polluting substances as part of national pollutant inventory schemes, for example, Australia's National Pollutant Inventory, Canada's National Pollutant Release Inventory, the UK's Chemical Release Inventory and the USA's Toxic Release Inventory.¹

Despite these mandatory disclosure schemes, most environmental reporting initiatives are voluntary schemes led by industry organisations, IGOs and NGOs. One example is the European Commission's EMAS, which has, as one of its objectives, the promotion of continuous environmental performance of industrial activities by "the provision of information of environmental performance to the public".^{li} Companies that voluntarily participate in the scheme must prepare an environmental statement specific to each site, have the statement independently verified by an accredited environmental verifier, and disseminate the validated statement to the public.^{lii} The statement must contain:

- a description of the site's activities;
- an assessment of all the significant environmental issues;
- a summary of figures on pollution emissions, waste production, and consumption of raw materials;
- energy, water and noise; and presentation of the company's environmental policy and site's EMS.^{liii}

Other examples of voluntary reporting initiatives include the Global Reporting Initiative, launched by the US-based Coalition for Environmentally Responsible Economies (CERES), which released the *Sustainability Reporting Guidelines* in June 2000.^{liv} Environmental reporting is also part of the ICC's Business Charter for Sustainable Development, with Principle 16 exhorting companies to periodically provide appropriate environmental information to the Board of Directors, shareholders, employees, the authorities and the public.^{lv}

As regards environmental disclosure and reporting in the international oil industry, in 1999 the UK-based group Sustainability, in partnership with UNEP, produced *The Oil Sector Report: A Review of Environmental Disclosure in the Oil Industry*, which examined the current efforts at environmental and Social disclosure for 50 leading oil companies and made recommendations for future development in these areas. The Report found that among large international oil companies, environmental reporting is on the way to becoming standard practice, with most individual companies making some sort of environmental information publicly available.^{lvi}

In addition to the reporting initiatives of individual oil companies, a number of oil industry associations have begun publishing environmental, health and safety reports at an aggregate level. The IAOGP has developed definitions and data-collection protocols for a set of industry-wide exploration and production environmental performance measures and began using these published aggregate performance data in an annual environment report beginning August 2000.^{lvii} Each year, the API publishes a "Petroleum Industry Environmental Performance Annual Report", which presents statistical information about the US petroleum industry's environmental and safety performance in eight areas: workplace safety, chemical releases, refinery residuals (by-products), oil spills in US waters, underground storage tanks, used motor oil, gasoline vapour controls, and US environmental expenditures.^{lviii} Other associations producing some type of aggregate data include the Norwegian Oil Industry Association, the UK Offshore Operators Association Limited, and Canada's Petroleum Communication Foundation.

Despite the evidence that the oil industry "is taking the reporting agenda seriously", the *Oil Sector Report* found that the overall rate of environmental reporting is brought down by four main types of non-reporters: state-owned companies; smaller companies; upstream-only companies; and project-based consortia. In the case of small and upstream-only companies, their size and lack of retail brand means that they are out of the public eye and are therefore not under the same pressures to report; similarly, in the case of project-based consortia, a company created for a particular project and owned by a number of larger oil companies are not often associated with one corporate name by the public, and pressure for reporting is non-existent.^{lix}

The quality and content of corporate environmental reports vary considerably between companies. The quality and usefulness of the reports are undermined by a lack of comparability from company to company, with companies using different indicators, definitions, measurement and estimation techniques, reporting periods, and geographic coverage of operations. In addition, oil companies remain divided on the benefits of third-party, independent verification of environmental and social reporting.^{lx}

Furthermore, social reporting, which is the process of accounting, preparing and publishing information on social impacts and social performance, including cultural impacts, lags well behind environmental reporting.^{lxi} Public concern in this area generally relates to corporate security arrangements involving paramilitary or government armed forces; links to human

rights abuses; distribution of costs and benefits; poor environmental management and pollution among local communities; traditional land rights of indigenous communities and the right of self-determination; discrimination in the workforce; occupational health and safety; and bribery and corruption.^{lxii} The lag of social reporting behind environmental reporting is true for the industry in general, not just the oil industry, with the World Business Council for Sustainable Development stating that the systems for monitoring, measuring and reporting corporate social responsibility performance through generally-accepted indicators are still in their infancy.^{lxiii}

The *Oil Sector Report* found that "because social reporting is in its infancy, we are some way from seeing truly comparable social performance indicators", and that there is a "pressing need for greater coherence and convergence" in this area.^{lxiv} As yet there is only limited agreement on how to measure and monitor social performance, with the development of indicators in this area being described as being "extraordinarily difficult".^{lxv} Nonetheless, some "key clusters" of indicators are emerging in the practice of oil companies. The *Oil Sector Report* identified eight categories for reporting, including the category "impacts on local communities".^{lxvi}

It is expected that the movement towards social accountability will gain momentum in the future.^{lxvii} With performance in the social area being more difficult to quantify than commercial or environmental performance, general research in the development of social performance and impact indicators is being conducted by a number of bodies. For example, the Institute of Social and Ethical Accountability (ISEA), established in 1996 as a professional body committed to strengthening the social responsibility and ethical behaviour of the business community, is engaged in developing standards for social and ethical accounting, auditing and reporting.

While this move towards "corporate social responsibility", including the assessment and reporting of environmental and social performance, has benefits for the community, it also raises a number of concerns, in particular the questions of whether, and to what extent, the Board of Directors and senior management of a corporation, who are responsible to shareholders for the financial health of the company, can incorporate social objectives into the company's operations, while still maintaining the long term profitability of the corporation.^{lxviii}

ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENT IN CAMEROON

The application of ESIA procedures is relatively recent in Cameroon. The term EIA was introduced by Decree 84-797 of July 1984, organising the Ministry of Planning and Territorial Administration. Law No 94/001 of 20th January 1994 was the first law that explicitly required environmental assessments for projects which may affect the equilibrium of forests. Later in August 1996, the environmental management law^{lxxix} broadened the scope for environmental impact assessments, by demanding EIA for projects that may affect the environment. In the same year, the Permanent Secretariat of the Environment (PSE) was established under the Ministry of Environment of Forests (MINEF), as the organisation responsible for impact assessments. With the government reform in 2012, MINEF changed into the Ministry of Environment, Nature Protection and Sustainable Development (MINEPDED). It was not until February 2005 that details on procedural requirements for environmental impact studies were specified by Decree 2005/0577/PM. Section 2 of the 2005 Decree defines EIA as “...a systematic study in view of determining whether or not a project has negative effects on the environment”. This Decree was later replaced eight years later by Decree 2013/0171/PM. The latter adopted the requirement to include social aspects in environmental studies and introduced Strategic Environmental and Social Assessment (SEA) and environmental impact statement (EIS).

ESIA is now integrated into diverse projects. Increasingly, it is becoming a prerequisite for external financing by institutions such as the World Bank and the European Union. This does not slow down consent procedures for development but reaffirms the importance of the environmental factors that are to be taken into account in land use planning and the directing of government politics. In Cameroon, a simplified Environmental Impact Statement (EIS) and the comprehensive ESIA are distinguished. The Environmental Impact Statement is made for small-scale projects or business facilities with likely effects on the environment.^{lxx} Meanwhile, Environmental and Social Impact Assessment (ESIA) applies to projects of medium and high scale with potentially significant effects on the environment just as those of oil exploitation.^{lxxi}

However, the 2016 Order^{lxxii} determines the type of projects that require ESIA.^{lxxiii} Supplementary requirements for the ESIA can be demanded for sensitive areas, with criteria defined on a case-by-case basis. To go about the ESIA, the promoter shall submit to the

competent administration and MINEPDED in addition to the general project file his application for the conduct of the ESIA with the ToR of the study and a receipt of payment of examination fees.^{lxxiv} Article 21 of the 2013 Decree guarantees the involvement and effective participation of the population by providing that the proponent must transmit to the representative of the population 30 days before the first meeting, a programme of the public consultation which must be approved by the administration in charge of the environment comprising; the dates and places of meetings, a descriptive and explicit essay of the project and the purpose of the consultation. Here the law failed to define who can be present at the consultative meeting, leaving these big multinationals with very huge financial capabilities to decide those to attend the meeting who might be naïve on the project outcomes and may not represent the interest of those who would be affected.

After the ESIA study, copies of the environmental and social impact report are submitted to the competent administration (CA)^{lxxv} and to the administration in charge of the environment^{lxxvi}. The competent Administration now evaluates and forms an opinion which is transmitted to Ministry for Environment, Nature Conservation and Sustainable Development (MINEPDED). Then MINEPDED puts in place a mixed team^{lxxvii} to conduct field trips to check or verify qualitatively as well as quantitatively, the information contained in the report and collect the views of the population concerned in a public meeting. This public meeting enables the team to correlate the information in the report with the views of the public.

The mixed team has 15 days within which to forward its findings to the Inter-Ministerial Committee for the Environment (CIE) for simple ESIA studies and 20 days for detailed studies. This is because the report of this committee is very essential for the approval of the ESIA by the Minister in charge of the Environment. The approval of the report is as well a prerequisite for the decision to carry out the project.^{lxxviii} Considering, the high level of corruption taking place within the top management of oil companies, and the administration. Normally, these same multinationals that have thwarted the consultative meetings can still do the same at this level, making it possible for projects to be approved without properly reflecting the intentions of the legislator.

COMPLIANCE MECHANISMS FOR ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENT

In Cameroon, compliance with environmental regulations has been bestowed on the administration of the competent ministry, the judiciary and the local communities as well as the project owner. Enforcement being indispensable to the effectiveness of any law, Cameroon ESIA law has provided both administrative and judicial measures to ensure proper compliance with ESIA.

To begin with, Article 27 (1) and (2) of the 2013 Decree gives MINEPDED the responsibility to ensure administrative and technical surveillance of the implementation of the Environmental and Social Management Plan (ESMP) after the issuance of the Certificate of Environmental Compliance (CEC) to ensure proper compliance. Meanwhile, article 27 (3) requires the project promoter to produce quarterly reports of the implementation of the ESMP to the MINEPDED. However, the law is silent as to the consequences of failure on the part of the promoter to provide the quarterly report.

Article 28 of the 2013 Decree on its part, empowers the Ministry in charge of the environment to adopt corrective or additional measures whereupon the submission of the quarterly report as per section 27(3), it is realised that some effects were insufficiently considered. The competent ministry in this case may hire a private expert to carry out those aspects that were not initially sufficiently considered. If the results of the expert prove that the ESMP was not complied with by the promoter, the Minister may as per practice demands, take either of the following measures: Warnings; Suspension of CEC and or Withdrawal of the CEC. It is worth noting that the law is silent with regard to recourse open to affected communities where the project owner fails to respect the ESMP. However, practices give the locals the right to make a complaint to the minister in charge of the environment and if the complaint is founded, the minister may do either of the following; Warn, Suspend and or withdraw the CEC.

Judicially, there are mechanisms adopted by different stakeholders of the ESIA. Article 79 of the Framework Law on Environmental Management and the Cameroon Penal Code give the Judicial Judge of the competent court to hear and determine matters before him concerning non-respecter of ESIA procedures. The competent ministry in the case where his administrative measures meted against the project promoter as stated above for not complying with ESIA

measures as per the laws in force seems to be abortive, shall recourse to ordinary to have the promoter pay damages for causing harm to the environment through his activities which ought to be guided by ESIA if carried out.

On the bases of public interest, the local communities around the project area have the *locus standi* to bring an action against the ministry in charge of the environment before the competent administrative court. This is in a case where the administration was biased, corrupt and or produced inaccurate reports against the interest of the or disregards their observation during public consultation. The court in this instance if founded, may order the administration to suspend or withdraw the CEC without prejudice to the criminal and civil actions. Article 8 of the Frame Work Law on Environmental Management gives the Civil Society *locus standi* as well to bring action on behalf of the local communities against violators of the ESIA regulations. It is worth noting also that the promoter can bring an action against the administration before the administrative court where the administration proved to be biased and or make false appreciation of the ESIA application resulting in inaccuracy.

CONCLUSION

The continuing development and use of standards and guidelines regarding best practices for the protection of the environment often in conjunction with oil and gas companies have legal implications beyond the formal status of these documents as non-binding guidelines. In both the international and national spheres, these non-legally binding guidelines have the potential to harden into binding law.^{lxxix}

Over time, measures for the protection of the physical and cultural environment, including ESIA, environmental management systems, monitoring and auditing, environmental performance evaluation and environmental reporting, have become standard practices that the international community expects every government to require of oil and gas corporations by law in the future. Furthermore, the current leading international companies are preparing ESIA's and implementing EMS, even when national laws do not require them, as "a hedge against future liability for failing to meet international standards."^{lxxx}

If industry guidelines are generally endorsed and implemented by international oil companies, national courts can use the guidelines as evidence of industry "best practice" in litigation against the corporation. National courts can invoke the guidelines to interpret petroleum contracts negotiated with governments, such as service contracts and joint venture agreements, which require the use of best practices,^{lxxxix} or to interpret legislative provisions that require the use of the good international practice.

Reviewing control and follow-up of plans of environmental management elaborated as a result of ESIA one can sometimes observe some weaknesses. Environmental management plans produced as a result of ESIA may well define requirements for environmental follow-ups and identify the responsible institutions for the execution of these tasks, but it can be seen that there is a lack of internal organization, qualified personnel or even financial means to carry out the required environmental follow-ups. The hope however resides that this inadequacy will be soon fulfilled, as the majority of Ministries implicated in the Protection of the Environment are putting in place the required institutional arrangements and personnel.

ENDNOTES

ⁱAcquisition, Exploration, Development, Production and Abandonment

ⁱⁱPIECA 2013

ⁱⁱⁱThere is no one clear, fixed and generally accepted definition of an emerging economy. For the purpose of this article, the term "emerging economies" refers to a group of countries that include "countries in transition" from socialist to market economies, and "developing countries", that are, generally speaking, yet to undergo the industrialisation and development of high-technology societies of the Western "developed" countries. Development Assistance Committee, *Development Co-operation Report 1997* (OECD, Paris, 1998) pA101; OECD, *External Debt Statistics* (OECD, France, 1997) at 4-5.

^{iv}As a general guide, at the end of 2000 the OECD countries held 8.1% of the world's proven reserves of oil and accounted for 28.1% of world production of oil: BP Amoco, *Statistical Review of World Energy 2001*, www.bpamoco.com.

^vThe oil industry is also a source of taxation revenue and employment, and offers the opportunity for the transfer of technology from developed to developing countries.

^{vi}In some cases, the impact of environmental degradation on the culture and traditional lifestyle of the indigenous community is so devastating that a breach of human rights occurs. Inter-American Commission on Human Rights, *Report on the Situation of Human Rights in Ecuador*, OAS Doc OEA/Serv.L/V.II.96, doc 10, rev 1, 24 April 1997, Inter-American Commission on Human Rights www.cidh.oas.org/country.htm.

^{vii}American Petroleum Institute (API), *API Environmental Stewardship Pledge for CAREFUL Operations*, www.api.org, accessed 27 June 2017.

^{viii}There are numerous articles and books on EIA. For example see, Gilpin A, *Environmental Impact Assessment (EIA): Cutting Edge for the Twenty-First Century* (Cambridge University Press, Cambridge UK, 1995); Glasson J, Therivale R and Chadwick A, *Introduction to Environmental Impact Assessment: Principles and Procedures, Process, Practice and Prospects* (UCL Press Limited, London, 1994); Morris P and Therivel R (eds), *Methods of Environmental Impact Assessment* (London, UCL Press Limited, 1995); Wood C, *Environmental Impact Assessment: A Comparative Review* (Essex UK, Longman Group Limited, 1995).

^{ix} *Screening*: A mechanism to identify projects with potentially significant adverse environmental impacts in order to "screen out" proposals with minimal impacts. 2. *Scoping*: A process of determining the range of issues to be addressed in the EIA and for identifying the significant issues relating to a proposed action. 3. *Alternatives*: The identification and measurement of the impacts of alternatives to a proposed development that may cause less environmental damage, including the option of "no development". 4. *Baseline Environmental Study*: This provides a description of the existing environment of the proposed development site and its environs, including a cultural resource survey, prior to any activity taking place. 5. *Impact Prediction*: A procedure for ensuring that all potentially significant environmental impacts, including cultural and social impacts, are identified and taken into account. 6. *Mitigation Measures*: The identification and discussion of measures to mitigate predicted adverse environmental impacts. 7. *Environmental Impact Statement (EIS) or EIA Report*: The document, usually prepared by the proponent of an activity, which describes a proposed development, discloses the predicted impacts on the environment, and sets out information on feasible alternatives and mitigation and protection measures. 8. *Public Participation and Review of EIS*: Public consultation and participation are an integral part of an effective EIA process, and may take place at all stages in the EIA process. As a minimum, EIA procedures in democratic countries allow for public review and comment of a draft EIS before a final EIS is prepared. 9. *Decision*: After the final EIS has been prepared, the relevant decision-making body must make a decision regarding whether the proposed development should proceed, and if so, whether any conditions on development will be imposed. 10. *Post-Project Analysis*: This includes on-going surveillance and control over development activities and their effect on the environment through monitoring and auditing.^{ix}

^xThe Interorganisational Committee on Guidelines and Principles for Social Impact Assessment, "Guidelines and Principles for Social Impact Assessment" (1995) 15 *Environ Impact Assessment Rev* 11 at 11 (hereafter ICGPSIA, *Guidelines and Principles for SIA*).

^{xi}ICGPSIA, *Guidelines and Principles for SIA*; World Bank, *Social Assessment – Key Concepts*, www.worldbank.org/.

^{xii}Kiss A and Shelton D, *International Environmental Law* (Transnational Publishers Inc, Ardsey New York, 2nd ed, 2000) at 203; Pring G, Otto J and Naito K, "Trends in Environmental Law Affecting the Minerals Industry (Part I)" (1999) 17(1) *J Energy & Nat Resources L* 39 at 54.

^{xiii}See Principle 17 of Rio; Biodiversity Convention, etc

^{xiv}Wood C, *Environmental Impact Assessment: A Comparative Review* (Longman Group Limited, Essex UK, 1995).

^{xv}Wagner J, "Oil and Gas Operations and Environmental Law in Latin America" (1998) 16 *JERL* 153, p.179.

^{xvi}International Organisation for Standardisation

^{xvii}The relevant ISO standards for Environment Management Systems (EMS) are ISO 14001: Environment Management Systems - Specification with Guidance for Use; and ISO 14004: Environment Management Systems - General Guidelines on Principles, Systems and Supporting Techniques.

^{xviii}The ISO standards on EMS have their roots in BS7750, the first international EMS standard. Developed by the British Standards Institution in 1992 as the national EMS standard for the United Kingdom, and revised in 1994, the standard has since been withdrawn.

^{xix}Von Zharen W, *ISO 14000: Understanding the Environmental Standards* (Government Institutes Inc, Rockville, Maryland, 1996) at 51.

^{xx}Wells D, "Corporate Environmental Management Systems" 1997 *AMPLA Year book* 530, p. 534-535.

^{xxi}*Ibid.*

^{xxii}*Ibid.*

^{xxiii}Ritchie I and Hayes W, *A Guide to the Implementation of the ISO 14000 Series on Environmental Management* (New Jersey, Prentice Hall Inc, Upper Saddle River, , 1998) at 6.

^{xxiv}European Council Regulation 1836/93 of July 10, 1993, Concerning Voluntary Participation by Companies in the Industrial Sector in a Community Eco-Management and Audit Scheme O.J. (L 168/1).

^{xxv}Article 1.

^{xxvi}*Ibid.*

^{xxvii}Trainor K, "Taking the Myth Out of Environmental Management Systems" (1997) *AMPLA Yrbk* 555 at 561; Armstrong K, "The Green Challenge - Managing Environmental Issues in Natural Resource Projects in Developing Countries" (1996) 42nd *Rocky Mountain Mineral Law Institute* 3-1 at 3- 54.

^{xxviii}For a comprehensive, critical analysis of the ISO standards and the move to international standards in general, see Roht-Arriaza N, "Shifting the Point of Regulation: the International Organization for Standardization and Global Lawmaking on Trade and the Environment" (1995) 22 *Ecology LQ* 479.

^{xxix}Kimerling J, "International Standards in Ecuador's Amazon Oil Fields: The Privatization of Environmental Law" (2001) 26 *Colum J Envtl L* 289.

^{xxx}Kuhre W, *ISO 14031: Environmental Performance Evaluation (EPE)*, *supra*.

- ^{xxx}Sustainability Ltd/UNEP, *The Oil Sector Report: A Review of Environmental Disclosure in the Oil Industry* (London, The Beacon Press, 1999) at 55.
- ^{xxxii}*Ibid*, p. 44.
- ^{xxxiii}*Ibid*, p. 59.
- ^{xxxiv} E&P Forum, *Principles for Impact Assessment*, *supra*.
- ^{xxxv} For instance, improving acceptance of current projects; providing a basis for on-going consultation; contributing to the development of improved mitigation tools; providing a mechanism for learning from past operations and experience; and providing information for performance reporting.
- ^{xxxvi} *The Oil Industry: Operating in Sensitive Environments*,
- ^{xxxvii} Prince W and Nelson D, "Developing an Environmental Model: Piecing Together the Growing Diversity of International Environmental Standards and Agendas Affecting Mining Companies" (1996) 7 *Colo J Int'l Env't L & Poly* 247 at 292.
- ^{xxxviii}*Ibid*, p.293.
- ^{xxxix}*Ibid*.
- ^{xl} European Council Regulation 1836/93 of July 10, 1993, Concerning Voluntary Participation by Companies in the Industrial Sector in a Community Eco-Management and Audit Scheme O.J. (L 168/1), *supra*.
- ^{xli} Including: assessment, control, and reduction of environmental impacts; raw energy, materials and water management and savings; evaluation, control and reduction of noise; product planning, including transportation, use and disposal; the environmental performance and practices and contractors, subcontractors and suppliers; prevention and limitation of environmental accidents; emergency procedures; and staff information and training on environmental issues.
- ^{xlii} *Ibid* Article 4.
- ^{xliii} Wälde T, "Environmental Policies Towards Mining in Developing Countries" (1992) 10 *JERL* 327, P. 348.
- ^{xliv} Prince W and Nelson D, "Developing an Environmental Model: Piecing Together the Growing Diversity of International Environmental Standards and Agendas Affecting Mining Companies (1996) 7 *Colo J Int'l Env't L & Poly* 247 at 292.
- ^{xlv} The importance of auditing as part of an EMS is also emphasised in Principle 16 of the ICC Business Charter for Sustainable Development, entitled "Compliance and reporting" which affirms that sustainable development requires companies to "conduct regular environmental audits and assessments of compliance with company requirements, legal requirements and these principles".
- ^{xlvi} Kimerling J, "The Environmental Audit of Texaco's Amazon Oil Fields: Environmental Justice or Business as Usual?" (1994) 17 *Harv Hum Rts J* 199, p.200.
- ^{xlvii} The audit, which was to be "a thorough study of the direct and indirect environmental and socio-economic impacts of Texaco's operations", and legally binding on Texaco, was viewed by the indigenous peoples of the Amazon as a chance to hold Texaco accountable for the damage it had caused to the Amazon and provide an opportunity for restoration of the degraded environment and modernisation of outdated production methods.
- ^{xlviii} Ayres I and Braithwaite J, *Responsive Regulation: Transcending the Deregulation Debate* (New York, Oxford University Press, 1992).
- ^{xlix} Deegan C, "Environmental Reporting for Australian Corporations: An Analysis of Contemporary Australian and Overseas Environmental Reporting Practices" (1996) 13 *EPLJ* 120 at 125-126. And Sustain Ability Ltd/UNEP, *supra* 34-40;
- ^l Appendix 1, pp. 62-63 lists a number of mandatory environmental reporting initiatives.
- ^{li} European Council Regulation 1836/93 of July 10, 1993, Concerning Voluntary Participation by Companies in the Industrial Sector in a Community Eco-Management and Audit Scheme O.J. (L 168/1), Article 1(c).
- ^{lii} *Ibid*, Article 3(f)-(h).
- ^{liii} *Ibid*, Article 3(f) and Annex V; see also European Commission, "Eco-Management and Audit Scheme", www.europa.eu.int/comm/environment/emas/.
- ^{liv} Appendix 2, pp. 64-65 lists a number of voluntary environmental reporting guidelines and initiatives.
- ^{lv} And part of the Confederation of British Industry's (CBI) Environmental Forum, whose members "are committed to making an annual public report on their environmental performance
- ^{lvi} SustainAbility Ltd/UNEP, *supra*.
- ^{lvii} IAOGP, "Environmental Performance Indicators-Report for 1998", *Highlights*, August 2000, www.ogp.org.uk/highlights/index.html.
- ^{lviii} American Petroleum Industry, *6th Annual Petroleum Industry Environmental Performance Report* (American Petroleum Industry, May 1998), www.api.org/pasp/step.
- ^{lix} Sustain Ability Ltd/UNEP, *supra*.
- ^{lx} *Ibid*, pp. 11-23.
- ^{lxi} *Ibid*, p. 41.
- ^{lxii} *Ibid*, p. 42.

^{lxiii}World Business Council for Sustainable Development (WBCSD), *Meeting Changing Expectations: Corporate Social Responsibility* (1998), www.wbcsd.ch/publications/csrepub.htm.

^{lxiv}SustainAbility Ltd/UNEP, *supra*.

^{lxv}*Ibid*, p. 43.

^{lxvi}The other seven categories are: business values and integrity; human rights; distribution equity; diversity; employee conditions; employee development; and social investment.

^{lxvii}Another manifestation of the move towards social accountability is "ethical investing" or "social investing". Ethical investing involves the purchase of securities in products in firms that meet positive criteria, such as environmental sensitivity, and avoiding investments in firms that meet negative criteria, such as weapons manufacturing. Zondorak V, "A New Face in Corporate Environmental Responsibility: The Valdez Principles" (1991) 18 *Bost Coll Env Aff L Rev* 457 at 481.

^{lxviii}The World Business Council For Sustainable Development supports the view that corporate social responsibility offers clear business benefits by enabling business to monitor shifts in social expectation, control risks, identify market opportunities and improve the corporation's public reputation. Others have argued that the role of corporations is to make profit and maximise shareholder value, while achieving social justice is the responsibility of governments: Friedman C, "The Social Responsibility of Business is to Increase its Profits", *New York Times*, 13 September 1970 (Magazine), No.6 p. 32, 126.

^{lxix}Law No. 96/12 of 05/08/1996 relating to Environmental Management in Cameroon

^{lxx}EIS include: Screening that is; Drafting of terms of references to be approved by the relevant municipality; Elaboration of the Environmental Impact Statement; Review of the Environmental Impact Statement; Decision of the municipality, after advice from the local MINEPDED services

^{lxxi}ESIA includes the following steps: Screening (not mandatory); Preparation of ToR to be approved by the MINEPDED after advice from the relevant sector administration; Preparation of the ESIA report with public consultations; Review of ESIA report and public hearing; Decision of the Minister in charge of the environment on the quality ESIA report.

^{lxxii}Order No 00001/MINEPDED of 8th Feb 2016 lay down the various categories of operations whose implementation is subject to ESIA

^{lxxiii}The list of activities that need EIS is determined by the municipality, after the motivated opinion of the locally responsible MINEPDED service.

^{lxxiv}Article 13 (1), 14, 20 and 21 of the 2013 Decree.

^{lxxv}Two copies.

^{lxxvi}20 copies.

^{lxxvii}MINEPDED and CA.

^{lxxviii}In practice, the approval of the EIA report means the granting of environmental compliance certificate.

^{lxxix}Pring G, Otto J and Naito K, "Trends in Environmental Law Affecting the Minerals Industry (Part II)" (1999) 17(2) *J Energy & Nat Resources L* 151.

^{lxxx}Pring G, Otto J and Naito K, (Part I), *supra*, p. 55.

^{lxxxi}For example, clause 7.1.5 of Ecuador's Model for Service Contracts in Exploration and Exploitation of Hydrocarbons requires oil operators to "perform all of the services which are the object of this contract, according to the best techniques, equipment and generally accepted international practices for the hydrocarbon industry."