Money in Flame: An Appraisal of the Legal Framework on Gas Flaring in Nigeria

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Abstract
Gas flaring and venting is the burning of associated gas that accompanies the extraction of crude oil wells during exploration. Gas flaring is not only waste a potentially valuable source of energy (natural gas), it also adds significantly carbon emission in the atmosphere causing local pollution a contributing factor to climate change and global warming. Nigeria has been on the forefront of both polluting the environment, by virtue of being one of the largest gas flaring country as well as experiencing a full-blown energy crises in spite of its abundant gas resources. Nigeria is an active party to multiple international and regional conventions, it has acceded and ratified for the control of atmospheric pollution generally and gas flaring in particular. This paper therefore, seeks to investigate the reasons for the continuous gas flaring, despite the efforts of the Government towards ending gas flaring. It highlights the associated environmental and socio-economic issues and reviews some of the legal and institutional frameworks under which gas is flared. Using doctrinal methodology, the study found that the laws are too many and ineffective and that the regulatory institutions lack the necessary authority for their enforcement. The paper situates Nigeria as still struggling to put in place effective legal framework for the control of gas flaring. Its concludes that, sustainable utilization of flare gas could yield tremendous economic and environmental benefits for the host communities as well as save the country the billions of dollars lost annually through flaring of gas that could be utilise for commercial use. It finally recommend the international best practices for control of gas flaring through implementation of effective measures both regulatory and non-regulatory capable of controlling gas flaring and maximising economic recovery of the Nigeria gas reserves and reducing greenhouse Gas (GHG) emission.
Key words: Gas flaring, Legal & Institutional Framework, Waste to Energy Option

1.1 Introduction

Gas Flaring is the disposition of natural gas or associated gas that comes with crude oil during oil exploitation and exploration activities in the upstream sector. [1] It is the

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combustion means to burn associated and unwanted gases and liquids released during industrial process[2].Gas flaring occurs when oil is pumped out of the ground, and the gas product is separated and, in Nigeria, most of it is burnt as waste in massive flares.[3]Gas flaring is the process of burning unutilized associated gases into the atmosphere. It is an operational waste of energy resources in the petroleum sector that encourages greenhouse emission.

According to Jimoh and Aghalino[4], gas flaring in Nigeria could be traced to as far as 1906, in Oloibiri, in the present Bayelsa State; and the responsibility rests on Shell-BP, in the effort to discover crude oil in commercial quantity. It is also worth mentioning that the first ever oil field was discovered in the year 1956 and subsequently the first ever crude oil export from Nigeria took place in 1958; and this marked the official gas flaring in Nigeria[5]. In that year companies like Mobil, Gulf, Agip, Elf and Amose as (Texaco/Chevron) were licensed under the Mineral Oils Act.[6] Over the years, Nigeria has continued the exploration of this natural resources and has grown to become one of the major oil and gas producing countries in the world.

The crude oil in Nigeria is associated with so much gas[7], therefore the oil and gas companies in Nigeria prefer to flare the gas that is mixed with the oil (associated gas), so as to maximise crude oil production, and prefer to extract the natural gas directly from its isolated deposit (non-associated gas). It is presumed that exploitation of associated gas or re-injection appears to be more costly than flaring and owing to this among others, petroleum companies operating in Nigeria prepares to flare gas because it is cheaper couple with the absence of sufficient incentives on gas infrastructures and advanced technologies to utilize and commercialize gas in the country. As a matter of fact, gas flaring has actually reduced in some parts of the globe but in general, gas flaring has increased, this is because

[1]Olusola Joshua Olujobi, "Analysis of the Legal Framework Governing Gas Flaring in Nigeria's Upstream Petroleum Sector and the Need for Overhauling",(2020)Soc. Sci. 9,132, MDPI, P.1
[2] Emam Emam, Gas Flaring in Industrial: An Overview' (2015) ISSN 1337-7027 Petrol & Co
[3]Eghosa O. Ekhator, "Public Regulation of the Oil and Gas Industry in Nigeria: An Evaluation",(2016) Annual Survey of International & Comparative Law, Volume 21, Issue 1, Article 6, GGU Law Digital Commons, P.2
[4]Aghalino, S.O Gas Flaring, Environmental Pollution and Abatement Measures in Nigeria, 1969-2001.(2009) *Journal of Sustainable Development in Africa,* 11, 4, 219-238.
[5]Osuoka, A., and Roderick, P. .Gas Flaring in Nigeria. A Human Rights, Environmental and Economic Monstrosity.(2005)
[6] Cap 120 of the 1958 Edition of the Laws of Nigeria.
[7]Ikelegbe, A. O. Pollution in Nigeria: Causes, Effects and Control: The Case of Delta State.(1993) Paper presented at the 14th Annual Congress of the Nigerian Geographical Association, Minna, April 18-22.

flaring has severely increased in countries like Russia, Nigeria and other major producers of crude oil[8].

Nigeria is endowed with enormous gas reserve of about 159 trillion cubic feet of natural gas, and is ranked one of the top ten countries provided with natural gas in the world and rated the number one producer of crude oil in Africa. However,the country could best be described as a gas province due to its gas resources. An approximately 2.5 billion cubic feet of gas is declared as being flared by the numerous oil facilities in Nigeria. Thus, Nigeria is rated the seventh highest gas flaring nation globally by the World Bank's Global Gas Flaring Reduction Partnership[9]and is responsible for 13% of the gas flared in the world.[10] This quantity is enough to meet Nigeria's energy needs and leave a healthy balance for export.[11]Between March 2012 to April 2019, Nigeria has continued to flare about 1.4 billion million standard cubic feet(mscf) of gas from eight different states a cross onshore and offshore location[12]

In Nigeria, gas flaring is mainly occasioned by the activities of the oil multinational corporations in the oil and gas sector.[13]Gas flaring has been a recurring decimal in the Niger Delta.[14]Firms such as Shell, Exxon Mobil, Chevron Texaco, Agip and Total Fin Elf, among others, which are engaged in joint venture arrangements with the state owned Nigerian National Petroleum Corporation have exacerbated the incidence of gas flaring in Nigeria.[15] Every year, millions of dollars are literally going up in smoke in Nigeria as companies burn off unwanted natural gas released during oil production,[16]as the majority of the companies wrongly assumed that they would not have substantial financial profits from the utilization and commercialization of associated gas due to non-existence of modern technologies to utilize gas in the country.[17]

The danger of gas flaring is inherent in the measure amount of greenhouse gases it released. Estimate put the toxic emission resulting from gas flaring at an average of 300 million tons of carbon dioxide annually which is a key driver of air pollution. According to

[8]Broere, W. *The elusive goal to stop flares*. Available [Online] from<http://www.shell.com/static/aboutshell/downloads/swol/apr_june_2008/flaring.pdf> Viewed 10/08/2012.
[9] Op. Cit. P.36
[10]Op. Cit. P.36
[11]Ibid. P.37
[12] Ibid P.37
[12] Nigeria Gas Flare Tracker(gasflare tracker.ng.(2019) http:// gasflaretracker .ng accesed 12 may 2019.
[14]Ibid. P.37
[15] Ibid. P.37
[16] Festus Emiri and Gowon Deinduomo, *Law* and Petroleum Industry in Nigeria, Current Challenges, (Malthouse Press Limited 2009), P.49
[17]Op.Cit. P.2

UNEP, approximately 600,000 people die in Africa every year from air pollution[18] With Nigeria accounting for a large percentage of all gases flared in Africa[19].

It also generates excessive heat which alters the temperature of the environment over time and also affects human health, crops, yields, quality of life, environment and economy in general. Over the year, the Federal Government of Nigeria has made broad effort to protect the environment by passing laws and giving deadline to stop gas flaring. However, these deadlines have been moved several times, with the recent deadline being 2020 as set by the Nigerian Gas Flaring Commercialization Programme (NGFCP).

The country enacted so many laws to curb the menace but till date, its stoppage has not been successful because of the failure to enforce gas-flaring legislation. The Petroleum Act of 1969 was the first Act that addressed the general potential problem of oil products and its accompanying environmental hazards[20]. This Act encouraged oil companies to submit oil-development schemes that specified potential solutions to such environmental hazards. In 1979, the Nigerian government made its first attempt to specifically address the issue of gas flaring by promulgating the Associated Gas Re-Injection Act No. 99.Despite all the "regulations" put in place so many years ago to put gas flaring to a stop, majority of the gas is still flared till now, and this causes local pollution and also contributes so much to climate change, and to a large extent billions of dollars are lost in the process, while the country can drive wealth from the waste of the oil and gas industry. There is need for gas flaring to be checked, minimized or eradicated so that the negative impacts could seize. It is on this premise that the paper examines the various legal and institutional framework for curbing gas flaring, appraised the effort of the Federal Government to combat the menace and recommend ways to actualize zero gas flaring in Nigeria.

The paper is divided into four pars, first part covers the background of this paper and has provided the paper's aim and objectives, it also highlighted the motivation that drives the study. Second part demonstrated the structure of the paper by examining some of the key sources and impacts of gas flaring on the environment and the Nigerian economy, while three is an examination of the legal and institutional framework on gas flaring in Nigeria. The last part contained the findings, conclusion and recommendations.

1.2 Sources and Adverse Impact of Gas Flaring

Gas flaring has caused change in the natural climatic condition of the region, the country and the world at large. Gas flares release about 45.8 billion kilowatts of heat into the atmosphere of the Niger Delta daily, thus raising temperatures and rendering a large area

[18] https://wwwunenvironmental.org/news.and stories / air pollution –industries-silent killer.
[19] World Bank Gas Flaring Data –http:pub doc –world bank .org /en 986751531755569820 2/gg-FR-pdf
[20] Ukala, E. . Gas flaring in Nigeria's Niger Delta: failed promises and reviving community voices.(2010) *Washington and Lee Journal of Energy, Climate, and the Environment, 2(1), P.97.*

inhabitable.[21]Also, acid rain occurs as a result of mixture of nitrous and sulphur oxides from the flares with atmospheric moisture. Acid rains wreak havoc on the environment, destroying crops, roofs and adversely affect human health.[22]

The communities affected by gas flaring have had their plant and wildlife destroyed and suffered from health challenges including respiratory diseases, cancers, blood respiratory disorders and skin disease as a result of incessant gas flare. Several authors[23] (Agboola et al., 2011; Economides et al., 2004; Economides, 2005; Ishisome, 2006; Odumugbo, 2010; Oni and Oyewo, 2011; Sonibare, 2006) have identified and highlighted the problems posed by gas flaring[24].

1.2.1 Source of Gas Flaring

According to Oil and Gas Producers (OGP 2000)[25], there are various sources that bring about the flaring of gas and some of them may include the following:

i) Unburned gas that results from the production process.
ii) Excessive gas that could not be supplied to commercial customers.
iii) Vapors that are collected from the top of tanks during the filling process.
iv) Production shutdown: this involves all the available gas in the facility to be temporarily flared, so that high pressure will be released.

2.2.2 Economic Impact of Gas Flaring

Nigeria is responsible for 13% of the gas flared in the world.[26] This quantity is enough to meet Nigeria's energy needs and leave a healthy balance for export[27]as such gas flaring is a form of waste of natural resource, below are some of its economic impacts:

i) Adverse effect on revenue generation: Nigeria, for instance loses about $2.5bn annually through gas flaring; if stopped, such money realized could be invested into other sectors of the economy. It could even be used to start the rehabilitation of what flaring itself has damaged, or even used in providing amenities like hospitals, roads, as well as schools in the country. From another point of view, gas flaring has indirectly hindered foreign investors from investing in the country. This is

[21] *Ibid P.97*
[22] Ibid P.97
[23]Agboola, O.M., Nwulu, N.I., Egelioglu, F., Agboola, O.P. Gas Flaring in Nigeria: Opportunity for Household Cooking Utilization(2011). *International Journal of Thermal and Environmental Engineering,* 2 (2), 69-74.
[24]Oni, S.I., Oyewo, M.A. (2011) GasFlaring, Transport and Sustainability Energy Development in the Niger-Delta, Nigeria.*Journal of Human Ecology,* 33(1) 21-28.
[25]*Oil and Gas Producers Flaring and venting in the oil and gas exploration and production industry: An overview of purpose, quantities, issues, practice and trends.* (2000)Report No 2, 79/288. Available [Online] from < http://www.ogp.org.uk/pubs/288.pdf> 28/10/2012.
[26] Ibid P.69
[27] Ibid P.74

because they (these foreign investors) tend to spend more on provision and maintenance of personal industrial power-generating plants. Even the local businessmen, artisans, small-scale business people tend to spend more on electric generation because of the nature of electric power supply in Nigeria. The gas that is wasted through flaring could be used to generate electricity. Nigeria power sector also largely depends on the availability and affordability of domestic gas supply for efficient power generation, but there has been a shortfall of the supply to enable efficient power generation despite the introduction of domestic gas supply obligation(DGSO) in 2010 [28] There are prospects for Nigeria to monetize the enormous natural gas resources and earn sufficient revenue from the commodity comparable to its earning from crude oil[29]

It is projected that Nigeria can realise up to USD3.5 billion worth of investment by flare monetization, having received over 700 applications from interested bidders since the launch of commercialization programme in 2018[30]

ii) Climate change is one of the negative impacts of gas flaring it is also one of the environmental life–threats to economic development and human health worldwide.[31]Human activities have contributed to an increase in the accumulation of heat-trapping greenhouse gasses in the atmosphere, thereby contributing to increase in temperature in the global climate (global warming). The noticeable increase in temperature is not unconnected with constant 24-hours gas flaring in the Niger Delta.[32]Gas flaring, oil spillage in the creeks and coastal areas of Nigeria could be said to have accounted for environmental degradation and consequent climatic change over the years.[33] This is reason why it has been said that, increasing and uncontrolled pollution leaves us to perished in our own waste.

iii) In agricultural output: Studies show that gas flaring significantly affects not only the microclimate but also the soil physic-chemical properties of the flare sites (Alajpodia, 2000; Odjugo, 2007)[34].

Soil infertility is a huge problem that is associated with gas flaring in the Niger Delta. Soil acidification occurs through the deposits of acids on the soil, thereby reducing the Ph of the

[28] Tada Oyewunmi. 'Examining the Legal and Regulatory Framework for Domestic Gas Utilization and Power Generation in Nigeria' (2014) 7 *The Journal of World Energy Law & Business* 538

[29] Lukeman, R Capacity Growth in the Nigerian Petroleum Industry(2003): Key note Address Proceedings of the SPC 26- Nigerian Annual Conference Lagos Nin,pp.4-9

[30] 700 jostle for Federal Government Gas Flare-Out Scheme/marine and petroleum Nigeriahttp://www.marineand petrol.comm /700-jostle accessed 12 may,2019

[31] O.B Bello Evidence of Climate Change Impacts on Agriculture and Food Security in Nigeria'(2012) *International Journal of Agriculture and Forestry* , 2(2): 49-55 at 49.

[32] Ibid

[33] Ibid

[34] Ibid

soil surface. These acids also get in contact with the water bodies and contaminate them, which makes the water bodies unfit for the fish. This also turns out to affect the economy of the fishermen as well as that of the inhabitant: as far as there is lesser fish available, the price will tend to inflate. The international Institute for Applied System Analysis, Food and Sustainability Agriculture (2008), projects that there will be a loss of 50% ability to produce cereal by the year 2020 and this could rise to about 80% by the year 2050.

The end product/point is that acidification of soil brings about poor farm harvests and in extreme cases bring famine. This subsequently leads to high cost of food items in the local and or national level. Accordingly, gas flaring has been blamed for several health problems, e.g. asthma, bronchitis, skin problems and breathing problems in the Niger Delta areas.[35]It is indeed a violation of Human/Fundamental Right. For instance, the plaintiff in the case of Gbere v Shell Petroleum Development Co Nig Ltd &Ors[36] stated that the burning of gas by flaring in their community gave rise to poison and pollute the environment as it leads to the emission of carbon dioxide and other cocktail of toxin that affect the health, lives and livelihood, reduces crop production and adversely impacts on their food security. Pursuant to the above averments, the plaintiff claimed that the Constitutional guarantee of right to life and dignity of human person enshrined in sections 33 and 34 of the Constitution has been violated.

From the above analysis it becomes paramount for gas flaring to be checked in other to protect the environment, which is the life support system given by the creator to mankind. Sometimes in the past, the three components of the environment, air, soil and water, were virgin, undisturbed, uncontaminated and basically most hospitable. But the reverse is the case today because of the progress in science and technology which is also leading to environmental degradation and serious ecological imbalance, which in the long run may prove disastrous for mankind. It is therefore, the goal of this paper as pointed out above to appraise the legal and institutional frame work on gas flaring and make the necessary practical suggestions to reform with a view to exterminating gas flaring in Nigeria.

1.3 An Appraisal of the Legal Framework

Nigeria operates a command and control regulatory framework in the oil and gas sector. This type of regulation was prevalent in the United States and Britain during the 1970s and 1980s.[37]Gas flaring is an international concern and major source of air pollution with

[35] Ibid. P. 69
[36] (2005) A H RLR151
[37]EghosaOsaEkhator, "Public Regulation of the Oil AND Gas Industry in Nigeria: An Evaluation",(2016) *Annual Survey of International & Comparative Law, Volume 21, Issue 1, Article 6, GGU Law Digital Commons,* P.2

deleterious effects on climate and human health as pointed out above.[38] The Nigerian Government is not unconnected with the plight of Nigerian in the Niger Delta. It has over the years made several efforts aimed at abating or at least controlling gas flaring through various laws and regulations. Below is a brief analysis of the international legal and national instruments to curb the menace of gas flaring.

1.3.1 International Legal Instruments

The 1972 Stockholm Conference on Human Environment which ignited government's consciousness on the need for a holistic rather than sectional approach to environmental protection, its 26 principles, calling on states and international organizations to play a coordinated, efficient and dynamic role in the protection of the environment.

i) World Summit on Sustainable Development or Rio +10 (Johannesburg Summit) which is the fourth major environmental conference held under the auspices of the United Nations since 1972. The Summit encouraged and recognized a total of 266 partnerships on sustainable development. The most significant of which was the Global Gas Flaring Reduction Initiative (GGFR), launched formally at the World Summit on Sustainable Development (WSSD), in Johannesburg, South Africa in 2002, with the objective of reducing carbon emissions and environmental impact of flaring, through the Nigerian Flare Reduction Committee (NFRC).

ii) The Vienna Convention on the protection of the Ozone Layer entered into force in 1988. The convention enjoins parties to imbibe measures to protect human health and the environment against hazardous activities in the ozone layer, but failed to make legal provisions for the reduction of chlourofluoro carbons (CFCs).

iii) The United Nations Conference on Environment and Development (UNCED), (the Earth Summit). The conference addressed urgent problems of environmental protection and socio-economic development, the agreement on climate change convention, the Kyoto Protocol, and the Convention on Biological diversity (CBD)of 1992 The summit also endorsed the Rio Declaration on the Environment and Development which contained 27 principles to help guide international action and Agenda 21.

iv) African Charter on Human and Peoples' Rights became part of the law of Nigeria pursuant to its adoption and domestication as Africa Charter on Human and Peoples' Rights (Application and Enforcement) Act, Chapter A9,No 2 of 1983. Above are only but a few of the instruments.

[38]Olusola Joshua Olujobi, "*Analysis of the Legal Framework Governing Gas Flaring in Nigeria's Upstream Petroleum Sector and the Need for Overhauling"*,(2020)Soc. Sci. 9,132, MDPI, P.1

1.3.2 National legal instruments

i. The 1999 Constitution which is the supreme law in Nigeria provides for environmental protection in a broad manner, and it falls under Chapter 2 of the Constitution, which is non-justifiable, legislative efforts made to combat gas flaring is particularly the provisions of Sections 33 (1) and 34 (1) of the 1999 Constitution that guarantees the right to life and right to dignity of human persons. The rights can only be sustained through a clean and healthy environment, to this end, it will not bring about any serious environmental change, especially as it relates to regulations on gas flaring, there is absence of a well-defined constitutional right to clean environment, as a private lawsuit to bring about compliance is confronted with and constrained by a number of difficulties. In *Oronto Douglas v. Shell Development Company Ltd & 5 Ors,*[39] the plaintiff's action challenging the defendant's failure to comply with the Environmental Impact Assessment Decree of 1992 was dismissed for lack of *locus standi* as the plaintiff failed to prove that his personal right was affected by the defendant's failure to comply with the environmental law.

ii National Environmental Standard and Regulations Enforcement Agency establishment Act (NESREA) 2007.

NESREA is charged with the responsibility for protecting and developing Nigeria's environment. Sections 2 and 35 of NESREA Act preserve the various guidelines and standards made by FEPA, which apply generally to all sectors including pollution from oil and gas. However, Sections 7(h), 8(k)and 29 of NESREA Act respectively restrict the Agency from regulating the oil and gas sectors that mostly degrades the Nigerian environment due to lack of jurisdiction over hydrocarbon industries.

iii. The Petroleum Act of 1969 was the first law that addressed the general potential problem of oil production and its possible hazards; it encourages oil companies to submit oil-development schemes that specified potential solutions to environmental hazards. The Act remains the primary law regulating oil and gas exploratory activities in Nigeria. It is worthy of note to point out that, directives by this Act were disregarded by the oil companies and no stringent penalty awarded.

iv. Associated Gas Re-injection Act (AGRA)[40] of 1979 provided legal framework for gas utilization applicable to both land and the Exclusive Economic Zone (EEZ). The Act mandated the oil re-injection of gas into the earth's crust and submission of detailed plans for gas utilization. Under the Act, the sum of 0.50 Naira is being charged per million cubic feet (mcf) forflaringgases,butin1998this penalty was increased to 10 Naira per mcf.[41] In 2009, the penaltywasraisedto$3.5forevery1,000 cubic feet of gas flared. The Act specifically provides for that all gas flaring in Nigeria should cease on or before January,1984. The gas flaring ultimatum date was later changed to December 2003, and it

[39]Unreported suit No.FHC/573/93. Ruling delivered on the 17th February 1997

[40] Cap 26 Laws of Federation of Nigeria, 1990.

[41]Nwachukwu, C., *Gas Flaring: Oil Majors Seek extension of Deadline to 2010*, The Punch, Lagos, Wednesday 14, November, 2007.

was subsequently moved to 2006, and was moved again from January 2008 to December 2008.[42]

In 2009, the National Assembly enacted the Gas Flaring (Prohibition and Punishment) Act, 2009 with a gas flaring time limit fixed for 31st December 2010. The Gas Flaring Prohibition and Punishment Act of 2016, set the ultimatum for gas flaring to December 2016.The most recent being Gas Flaring (Prohibition and Punishment)Bill, 2020,the bill seeks to make provisions for prohibition of gas flaring in any oil and gas production, operation, block, field, onshore or offshore and gas facility treatment plants in Nigeria. Several deadlines with meagre sanctions were fixed by the Federal Government, which has not deterred gas flaring in Nigeria. Considering the continuous shift of the date for ending flaring of associated gases, it is difficult to state when the menace will end.[43]

Section 3(1) of the AGRA renders illegal the flaring of gas produced in association with oil without the permission of the Minister effective from 1st January, 1984. Unarguably, the AGRA does not have a permanent plan to stop flaring of gas in Nigeria given the conditions set out in section 1 of the Associated Gas Re-injection (Continued Flaring of Gas) Regulations. The AGRA Regulation in section 1 empowers the Minister in charge of petroleum to issue a certificate for the continuation of flaring of gas in a particular field or fields, if one or more of the following conditions are satisfied:

(a) Where more than 75 per cent of the produced gas is effectively utilized or conserved;
(b) Where the produced gas contains more than fifteen per cent impurities, such as N2, H2S, CO2, etc., which render the gas unsuitable for industrial purposes;
(c) Where an on-going utilization program is interrupted by equipment failure[44], Provided that such failures are not considered too frequent by the Minister and that the period of any one interruption is not more than three months;
(d) Where the ratio of the volume of gas produced per day to the distance of the field from the nearest gas line or possible utilization point is less than 50,000 SCF/KM: Provided that the Gas to Oil ratio of the field is less than 3.500 SCF/bbl, and that it is not technically advisable to re-inject the gas in that field;
(e) Where the Minister, in appropriate cases as he may deem fit, orders the production of oil from a field that does not satisfy any of the conditions specified in these Regulations.[45]

[42] Ibid. p.5
[43] The Guardian, Editorial: *Gas Flaring, end of a moving target?* Tuesday January 15, 2008. Again, among the shifts of deadlines that happened was in 2007whenitwasamonthtotheendofasubsisting deadline,Late President UmaruMusa Yar'aduaat an International Gas Stakeholders' Forum held in Abuja simply moved the deadline from January 2008 to December2008.
[44] Ibid. P.51-52
[45]Op.Cit. P.52

The implication of this is that, the Minister shall continue to permit the flaring of gas in Nigeria as long as a desiring oil and gas company satisfies one or more of the above conditions. This, by extension, reveals the unwillingness of the Nigerian Government to stop gas flaring.

The Federal Government proceeded further to enact the Niger Delta Development Commission (Establishment Act) The agency was created due to the desire Federal Government to end ecological problems in oil communities and combat environmental and ecological problems associated with petroleum sector. The major challenge of the agency is mismanagement, corruption and poor funding the activities of the agency over the years on gas flaring appear to be uncoordinated and not proactive enough to combat the menace of gas flaring. Section 7 of the NDDC Act have not produced the desired result, these demonstrate confused energy policies as against the importance that should be placed on the issue of human right to clean and healthy environment.[46]

i) Nigeria Liquefied Natural Gas (Fiscal Incentive Guarantee and Assurances) Decree (FIGAD). The Act encourages and facilitates the development of the Nigeria Liquefied Natural Gas Project (NLNG), which in turn will reduce gas flaring. The Act grants ten years tax holidays to the NLNG companies and exempts the companies involved in the NLNG project from import duties and certain taxes.
ii) West African Gas Pipeline Project Ratification and Enforcement) Act. The government in order to facilitate the utilization of gas entered into a treaty with three West African Countries for the West African Gas Pipeline Project in January 31, 2003. This treaty established the West African Gas Project, an international institution having legal personality and financial autonomy with powers to implement the project on behalf of Member State the treaty was domesticated into national law.
iii) The president in his capacity as Minister of Petroleum Resources issued new Regulation 'The Flare Gas Prevention of Waste and Pollution Regulation, 2018. The Regulation addresses the environmental concern of gas flaring it was drafted in the interest of the public to help enhance the environmental sustainability of oil and gas industry. It introduces a cost-effective gain economy by promoting efficient utilization of associated gas with the exploration of crude oil.

Investors upon approval of minister for Petrol Resources are permitted to leverage and mineralize gas from flare sites with the use of necessary infrastructure for collection processing and converting for economic use and in turn, reducing air pollution at such sites. Prior to the regulation, the practice was for oil companies to apply for certificate permitting them to flare gas, they were required to pay meager sum as permission charges for gas flaring, these charges were tax deductible and invariably had no significant deterrent effect.

[46] Ibid. P.53

Currently, the government had taken more stringent positions regarding natural gas and has compelled companies to capture gas that would otherwise have been flared.

The above Regulation prohibits and disincentives gas flaring by imposing a much heavier penalty cost on any company in default. The Regulation, benefits human health, the environment also create room for more investment to benefit oil and gas industry bottom-line, while ensuring accountability. That strategically moves Nigeria closer to meeting the 2030 zero-flare deadline of the Global Gas Faring Reduction Partnership (GGFRP) of the World Bank Group.

1.4 Institutional Framework

There are a plethora of government ministries and agencies saddled with the responsibility of mitigating the adverse effect of gas flaring. However, the functions of some of the ministries overlap while others have a rather limited mandate. The regulatory deficiencies in relation to these institutions are discussed below:

i) Ministry of Petroleum Resources (MPR)

The Department of Petroleum Resources (DPR) was the first statutory agency established to supervise and regulate the petroleum industry in Nigeria. In 1975, the DPR was constituted into the Ministry of Petroleum Resources (MPR). The MPR is responsible for the articulation and implementation of policies relating to petroleum and other mineral resources, excluding solid minerals. It also maintains standards, monitors quality and quantity and regulates practices in the industry. The Minister of the MPR is responsible for coordinating the affairs of the MPR and issuing the necessary regulations and permits under the Petroleum Act and other Laws.

DPR developed the Environmental Guidelines and Standards for Petroleum Industries in Nigeria (EGASPIN). This became a framework for bench marking standards and enforcing environmental pollution activates in the oil and gas sector however, a major hindrance to the effective enforcement of the DPR standards is that NNPC is a joint venture partner with most of the operators and it becomes difficult to enforce the relevant regulations against the NNPC, being a government agency. However, there is lack of adequate enforcement mechanisms for existing regulations which is evident in the increased level of environmental pollution due to oil and gas activities in Nigeria.

ii) Nigerian National Petroleum Corporation (NNPC)

This organization was established from Section 1, Decree No. 33 of 1973 of the Federal Republic of Nigeria. NNPC has two major responsibilities: (1) Inspectoral and commercial responsibility, which allows it to manage and overlook the operations of its subsidiaries within the oil and gas industry, like Nigeria Gas Company (NGC), (2) The NNPC is responsible for the control of the Nigeria's participatory interest in all the joint venture

agreements that Nigeria signed with different multi-national corporations in the oil and gas sector.

iii) Niger Delta Development Commission (NDDC)

The commission was set up by the government in the year 2000 to replace the Oil Mineral Producing Area Development Commission (OPADEC). One of its major responsibilities is to create a balance between the oil and gas producing communities, the oil and gas producing companies, and the government as examined above.

iv) Nigeria Gas Flaring Commercialization Program (NGFCP)[47]

The NGFCP introduces a bankable commercial structure for the monetization of gas flaring, by providing gas flaring buyers with title and access to collect flared gas from prescribed port for such purpose as permitted by the government.

The program tends to focus on the reduction of gas flaring by providing a market driven-solution without negatively impacting on the upstream producers and potential investors, there by moving away from the fast legal regime that incentivised gas flaring in Nigeria. It has also created a new midstream investor in oil and gas industry known as permit holder for associated gas project and gas flaring project. NGFCP has the prospect of ending gas flaring in Nigeria and also generating revenue. However, there are still limited sign of operational arrangement from government towards partnership measures for flare reduction infrastructural development and supply of gas to wire downstream.

1.5 Conclusion/Recommendations

It has been established from the above analysis that, Gas flaring negatively impacts the environment and the local inhabitants. The flares are very loud, dangerously hot, which gratingly ascends to the heavens twenty-four hours a day, thereby depriving the surrounding area of natural night. It emits thick, black, densely cloudy smoke containing several harmful gases thereby contributing to the increase in temperature in the global climate. This is reason why it has been said that an ever increasing and uncontrolled pollution leaves us to perish in our own waste.[48]The Government is not unmindful of the adverse effect of gas flaring and has responded by enacting laws and regulations to curb the menace. The paper examined some of these legal instruments for curbing gas flaring, flaws of the several laws were brought to the fore. The problem is not unconnected with lack of the political will of the Government to implement the laws. The paper also found that the fines impose is too meagre to bring about compliance with the laws and absence of modern drilling tools in conformity with international best standard.

[47] NGFCP@http://www.aelex.com/wp/context 2018 Nigerian Gas Flaring programme pdf. Accessed 3rd Feb 2020

[48] Ibid. p53

Countries where gas flaring has been reduced to an acceptable or barest minimum have three major factors that have been linked together and put in motion. These include legislation, monitoring team and, enforcement team to this end the paper recommend as follows:

Far reaching judicial reforms is required to better regulate Gas Flaring in Nigeria in order to protect the fundamental rights to life and right to dignity of person guaranteed under the 1999 Constitution (as amended) and for clean and healthy environment.
Chapter two of the CFRN should be made justifiable in order to ensure that individuals will easily move the courts to compel government to respect, protect and fulfil the provisions of the constitution.

Legal regime for combating gas flaring must not be ambiguous and it must entail procedure monitoring, reporting and enforcement mechanism.
The government should not give an option of fine alone as gas flaring should also be criminalized and any corporation that refuses to halt flaring should be shutdown.

It is recommended also that, associated gasses should be converted to and used as energy resources, only a minute percentage may be flared as obtained in other jurisdictions. There are three options to stop the gas flaring: by reinjection, utilization for local market, and utilization for export. Legal means must be put in place to ensure that the associated gasses are utilized judiciously.

The mandate of the various environmental agencies should be clearly spelt out to avoid unnecessary overlap between various agencies.

Government need to take concrete steps to reduce the release of green house gasses into the atmosphere by employing the use of environmentally friendly technologies in energy supply and utilization in the country. Further, there is need for industrial training on preventive maintenance of existing facilities and on installation of safety and pollution control equipments on oil production and handling facilities.

There should as well be effective and continuous campaign and public enlightenment regarding environmental issues to ensure an environmentally conscious citizens..