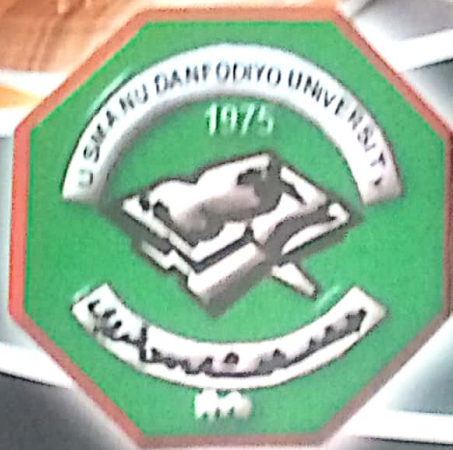




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TABLE OF CONTENTS

Title	i
Copyright Page	iii
Dedication	iv
Editorial and Advisory Board	v
Guidelines for Authors	vi
Editorial	vii
Table of Contents	viii
1. Multimodal Carriage of Goods: Assessing the Liability of Actual Carriers vis-a-vis the Chain of Transportation. <i>S.M.H. Kosemani, LL.M & Abdulrazaq O. Abdulkadir, PhD</i>	1
2. Analysis of the Amendment to the Deep Offshore and Inland Basin Production Sharing Contract Act: An Amendment that Needs another Amendment. <i>Iloba Okechukwu Aninye, Ph.D</i>	15
3. From Voids to Voars: Understanding the New Voluntary Offshore Assets Regularization Scheme and Post Voids Implementation Issues. <i>Olumide K. Obayemi</i>	36
4. An Agreement to Hire Houseboat is not within the realm of Admiralty Jurisdiction: TSKJ (NIG) LTD V. OTOCHEM (NIG) LTD (2018) 11 NWLR (PT.1630) 330. <i>Abdulrazaq O. Abdulkadir, Ph.D</i>	68
5. Legal and Policy Framework for Regulation of Gas Flaring in Nigeria: Lessons from Alberta. <i>Abdulrazaq Adelodun Daibu & Mustapha Funsho Sa'ad</i>	74
6. A Critical Appraisal of the Doctrine of Command Responsibility under International Law. <i>Rufai Muftau</i>	97
7. International Criminal Court and Africa: Another Apartheid Regime in the Making? <i>Oyesola Animashaun</i>	124
8. Sovereignty and Choice of Government in International Law: The Coup of Mali as a Case Study. <i>Chike B. Okosa, PhD</i>	140

9. **Ender Perspectives in Conflict Resolution and Post Conflict Processes in Africa: The Place of Law.**
Odunagbon T. Otasowie, Mrs & J. A. Aimienrovbiye, Mrs 158
10. **An Overview of the Road Infrastructure Development and Refurbishment Investment Tax Credit Scheme Executive Order 2019 and Its Potential Constitutional and Legal Challenges.**
Faruk Sani 174
11. **CBN Monetary Policy Instruments and the Challenges of Liquidity Management in Nigerian Islamic Banks: The Legal Perspective.**
Badmaasi Qaasim Badmaasi 194
12. **The Role of Customer Services and Engagement Strategies in Developing an Efficient Tax Administration under Tax Laws in Nigeria.**
Chidie Halliday, Ph.D 216
13. **Evaluating Directors' Duty to Act *Bona Fide* Vis-A-Vis Corporate Social Responsibility (CSR) in Nigeria**
Nicholas IoremberIorun, Esq 228
14. **Reminiscences on Securities, Bankruptcies and Winding-Up of Companies in Nigeria: Incremental Protection of Capitalism?**
Dr. Kathleen Okafor (Assoc. Prof) 252
15. **An Appraisal of the Contributions of Economic Community of West African States (Ecowas) Collective Security in Dispute Settlement in West Africa.**
IYA, Mohammed Alhaji 263
16. **Alternative Dispute Resolution (ADR) and Recovery of Debts in Nigeria: An Appraisal**
Dr. Kathleen Okafor, FC Arb 278
17. **Animal Welfare and Control: A Call for Regulation in Nigeria**
Hannatu Adamu 286
18. **Maternity Protection Regime in Nigeria: A Case for Effective Implementation of International Standards.**
Chegwe Emeke Nelson 304

LEGAL AND POLICY FRAMEWORK FOR REGULATION OF GAS FLARING IN NIGERIA: LESSONS FROM ALBERTA

Abdulrazaq Adelodun Daibu*

Mustapha Funsho Sa'ad**

Abstract

The discovery and eventual exploration of oil and gas in the Niger Delta region of Nigeria comes with some blessings and challenges. Among the challenges is gas flaring and its impacts on the environment. Gas flaring is both a national and global concern because of its numerous hazards on the environment. This article analyses gas flaring and its impacts on the environment, agriculture, social-economic activities and human rights of people in the Niger Delta region of Nigeria. The article further analyses the legal, policy and institutional framework regulating gas flaring in Nigeria and finds that they are obsolete, inadequate and ineffective. The article reveals the challenges confronting the eradication of gas flaring in Nigeria and observe that elimination/reduction of gas flaring may be illusory without the political will of the Nigerian government. The article further examines the legal, policy and institutional framework of gas flaring in Alberta with a view to drawing lessons for Nigeria. The article concludes and recommends that there is need to overhaul the legal and regulatory policies to stem the menace of gas flaring in Nigeria.

Keywords: Gas Flaring, Oil and Gas, Regulation, Legal and Policy Framework, Niger Delta, Nigeria.

1. Introduction

Nigeria, like many other oil producing countries is facing a lot of environmental challenges as a result of remarkable increase in oil exploration in the Niger Delta region.¹ Oil exploration and production in Nigeria has immensely contributed to the government revenue generation and socio-economic developments.² Regrettably however, the exploration also comes with some environmental challenges such as

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¹ Ezekiel M. P. and Dimowo F. "Oil Spill Within and Across Borders: A Comparative Analysis of National and International Responses" *Ife Juris Review* (2013) 1p.77-78.

² Daibu A.A. and Abdulrauf L.A. "Establishment of Joint Development Zones or Arrangements as a Panacea to Maritime Boundary Dispute in Africa" *Ife Jurist Review* ((2014)3 p.798; Atsegbua L. A., *Oil and Gas Law in Nigeria: Theory and Practice* (3rd Edition, Fifers Lane Publishers, Benin City 2012) p. v -vi.

gas flaring, oil spillage, pollution and indiscriminate disposal of industrial wastes which are inimical to environmental sustainability.³

Gas flaring is a daily activity in the Niger Delta and has resulted in all manners of environmental pollution thus becoming a national and global concern.⁴ Several legislative and regulatory measures have been put in place to stem the menace of gas flaring in Nigeria to no avail.⁵ This is because there are numerous defects and inconsistencies in the proliferated legal and policy frame work. Furthermore, nominal fines for breach of extant laws, lack of provision for environmental right in the Nigerian Constitution,⁶ lack of political will by government, inadequate funding, lack of requisite capacity by the regulatory agencies and inadequate enforcement mechanisms are other challenges affecting the government efforts to towards elimination of gas flaring in Nigeria. Hence, there is for proactive measures in terms of decisive regulations and policies to stop gas flaring in Nigeria.

This article analyses the nature of gas flaring and its impacts on the environment, agriculture, social-economic activities and human rights of people of the Niger Delta region of Nigeria. It also analyses the legal, policy and institutional framework regulating gas flaring in Nigeria and finds that they are obsolete, inadequate and in effective. The article reveals the challenges confronting the eradication of gas flaring in Nigeria and observe that elimination of gas flaring may be illusory without the political will of the Nigerian government. The article further examines the legal, policy and institutional measures on gas flaring in Alberta with a view to drawing lessons for Nigeria. The article concludes that there is need to overhaul the legal and regulatory policies to stem the menace of gas flaring in Nigeria.

This article is divided into five parts; the introduction which is the general overview of the entire work. The second part examines the nature and impacts of gas flaring in Nigeria. The third part of the article analyses the legal and policy frame work of gas flaring in Nigeria, it also examines the challenges confronting the legal, policy and institutional response towards elimination of gas flaring in Nigeria while the fourth section examines the legal and policy frame work of gas flaring in Alberta and draw lessons for effective and efficient regulatory frame work for Nigeria. The fifth section of this article is general conclusion and recommendations.

³Adewale O.O. and Mustapha U. "The Impact of Gas Flaring in Nigeria" *International Journal of Science, Technology and Society* (2015) 3 (2) pp. 40-50; Ezekiel M. P. and Dimowo F. "Oil Spill Within and Across Borders: A Comparative Analysis of National and International Responses" *Ife Juris Review* (2013) 1p.77-78.

⁴Ismail O.S. and Umukoro G.E., *Global Impact of Gas Flaring, Energy and Power Engineering*, (2012) 4 pp. 290-302; Nwufo C.C. "Legal Framework for the Regulation of Waste in Nigeria" *African Research Review* (2010) 4 (2) p.491.

⁵Ehiemua R. O. "Climate Change in Nigeria and the Quest for Autochthonous Solutions: A Legal Appraisal" *Journal of Contemporary Law* (2013- 2014) 2 p.90; Umem U. and Enobong B.A. "Gas Flaring in Nigeria: Problems and Prospects" *Global Journal of Politics and Law Research* (2017) 5(1) pp.16-28.

⁶Constitution of the Federal Republic of Nigeria 1999 (as amended).

2. Nature and Impacts of Gas Flaring in Nigeria

Gas flaring is the burning of natural gas that is associated with crude oil in the exploration and exploitation of crude oil.⁷ It is a process of separating crude oil from associated natural gas by oil producing companies with insufficient infrastructure to utilize and or properly dispose natural gas.⁸ Flared gas is the gas burnt off as unusable waste gas or flammable gas released by pressure relief valves during unplanned over-pressuring of plant equipment.⁹ Gas flaring is usually through an elevated vertical chimney through which gas flare burns over oil wells, in refineries, or in chemical plants.¹⁰ The World Bank described gas flaring as a wasteful disposal of natural gas that does not only have negative effect on the environment but a major cause of global warming.¹¹ Although, gas flaring is an important safety measure in oil exploration because it safely disposes natural gas in event of power failures, technical errors and emergencies outbreak that would pose a significant dangers to oil producing companies' employees and residents of oil producing communities, it also poses serious health, economic and environmental issues to the immediate communities and the world at large.¹² Gas flaring is one of the major cause of global environmental challenges in that the gas flaring emissions that is released to the atmosphere is composed of large quantities of toxic that results in ozone depletion, climate change, global warming, acid rain among other environmental problems.¹³ Gas flaring dates back to the discovery of crude oil and has been on the rise by oil producing companies in their exploration and production process in Nigeria.¹⁴ It has devastated the environment and the basic means of livelihood of people of Niger Delta communities who predominately farmers and fishermen.¹⁵ Most of the flare sites are located within human settlement areas thereby affecting their environment, health

⁷Irekpitan.O. A. "Gas Flaring and Environmental Rights: The Nigerian Context." *Journal of Contemporary Law* (2013- 2014) 2 p.168-169.

⁸Udok U. and Akpan E.B. "Gas Flaring In Nigeria: Problems and Prospects" *Global Journal of Politics and Law Research* (2017) 5 (1) p. 18; Ajugwo A.O. "Negative Effects of Gas Flaring: The Nigerian Experience" *Journal of Environmental Pollution and Human Health* (2013)1(1) pp. 6-8.

⁹Irekpitan.O. A. "Gas Flaring and Environmental Rights: The Nigerian Context." p.169.

¹⁰Ibid.

¹¹The World Bank: *Defining an Environmental Development Strategy for the Niger Delta*, vol.1, 58 (Report No 14266-UNI) 1995.

¹²Opafunso Z.O., *Environmental Impacts of Gas Flaring in the Niger Delta Area of Nigeria*, *African Journal of Pollution Health*(2005) 4(1): 52-61; Adewale O.O. and Mustapha U. *The Impact of Gas Flaring in Nigeria*, p. 40-50.

¹³Ukala E., *Gas Flaring in Nigeria's Niger Delta: Failed Promises and Reviving Community Voices*, Wash & Lee *Journal of Energy, Climate, and the Environment* (2011)2 (1/4) pp.101-102; Udok U. and Akpan E.B. "Gas Flaring In Nigeria: Problems and Prospects" p. 17-18.

¹⁴Nelson N. *National Energy Policy and Gas Flaring in Nigeria* *Journal of Environment and Earth Science* (2015) vol.5, No 14, pp.58.

¹⁵Ukala E., *Gas Flaring in Nigeria's Niger Delta: Failed Promises and Reviving Community Voices*, pp.101-102.

and in one way or the other have some social-economic and human rights implications.¹⁶

2.1 Environmental Impacts of Gas Flaring

Gas flaring has modified the nature and composition of the environment with its depletion of the ozone layer of the earth surface thereby resulting in global warming and climate change.¹⁷ The emission of carbon dioxide, methane and other forms of toxic gases affect the quality of the environment and health of the people of within the vicinity.¹⁸ The negative environmental effect of gas flaring include acid rain, pollution, destruction of mangrove swamps and aquatic animals among others.¹⁹ Acid rain is caused by emissions of toxic substance from gas flaring which combines with atmospheric moisture to form nitric and sulphuric acid.²⁰ Acidic rain in the oil producing communities has led to prevalent corroded roofs. Gas flaring often time leaves black soot on roofs of buildings around the flaring sites and when it rains, it washes off into the soil thereby contaminating the land.²¹ Furthermore, the roaring from gas flaring activities amounts to noise pollution.²²

Gas flaring has led to pollution of land, streams and other sources of water in some communities thereby making the water therein unfit for consumption.²³ It has also damaged several vegetation, destroy many mangroves and seedlings thereby turned the area into ghettos and swamps.²⁴ Gas flaring also causes some health hazards such as respiratory disorders, kidney problems, asthma, bronchitis, blood disorders, skin diseases malformation in children and cancer etc. among the people of the area.²⁵ It also has negative impacts on plants, animals and other agricultural activities which is the basic means of livelihood of majority of the people in the region.²⁶

2.2 Agricultural and Economic Impacts of Gas Flaring

The people of Niger Delta region are mostly farmers and fishermen.²⁷ However, gas flaring and other exploration activities of oil producing companies releases toxic compounds and hazardous chemical into the atmosphere which affects the soil and

¹⁶Udok U. and Akpan E.B., *Gas Flaring In Nigeria: Problems and Prospects*, p. 18.

¹⁷Ugbe R.O. and Ekpoudu A. "Attainment of Zero Gas Flaring Level in Nigeria: Proactive Legal and Policy Framework Strategies" *Calabar Law Journal* (2016) 17 p.39.

¹⁸Ibid

¹⁹Adewale O.O., Mustapha U., *The Impact of Gas Flaring in Nigeria*, p. 44.

²⁰Ibid.

²¹Nelson N., *National Energy Policy and Gas Flaring in Nigeria* p. 59.

²²Ibid.

²³Ajugwo A.O. *Negative Effects of Gas Flaring: The Nigerian Experience*, p. 7; Nelson N., *National Energy Policy and Gas Flaring in Nigeria*, p. 58-59.

²⁴Opafunso Z.O., *Environmental Impacts of Gas Flaring in the Niger Delta Area of Nigeria*, p.59.

²⁵Irekpitan.O. A. "Gas Flaring and Environmental Rights: The Nigerian Context." p.168-169.

²⁶Ibid.

²⁷Adewale O.O. and Mustapha U., *The Impact of Gas Flaring in Nigeria*, 44.

plants thereby reducing their fertility and quality.²⁸ Cassava tubers have been observed to decrease in length and weight, while some fruit trees planted around the flare sites did not grow well to produce fruits.²⁹ Soil of the area where flares takes place are fast losing their fertility for sustainable agricultural activities.³⁰ Gas flaring also causes disruption of wild life as it makes the environment uncomfortable for animals and even human habitation thereby resulting in migration.³¹ The economic impacts of gas flaring are quite unfortunate because a valuable resource which could have been used for generation of electricity is wasted on daily bases.³² Billions of dollars' worth gas burnt off is a loss to Nigeria.³³ Gas flaring also depletes reservoir energy which is an economic loss in the long run.³⁴ The availability of gas in the Niger Delta region presents great investment opportunities which government and private investors ought to explore.³⁵ The gas could be converted to domestic commercial use to improve Nigeria's economy and or to increase electricity generation instead of flaring it.³⁶ Reduction of gas flaring is therefore imperative considering the amount of waste involved and the gas-to-power potentials.

2.3 Social and Human Rights Impacts of Gas Flaring

The effect of gas flaring on the environment, agriculture and economy has social and human right implications in the Niger Delta.³⁷ It has led to high level of poverty, hunger and restiveness, social unrest and criminal activities in the.³⁸ The heat produced by gas flaring cannot sustain any vegetation thereby causing a lot of damages to the host communities.³⁹ Gas flaring also has adverse effects on the water, food, shelter, health and general wellbeing of the people in the region.⁴⁰ The frustration experienced by people in the area has led to several disputes involving the host communities, the oil companies, government and regulatory agencies. Gas flaring, oil spillage and other environmental hazards associated with oil production

²⁸ Ugbe R.O and Ekpoudo A., Attainment of Zero Gas Flaring Level in Nigeria: Proactive Legal and Policy Framework Strategies, 40.

²⁹ Opafunso Z.O., Environmental Impacts of Gas Flaring in the Niger Delta Area of Nigeria, 52.

³⁰ Ajugwo A.O., Negative Effects of Gas Flaring: The Nigeria Experience, p. 7.

³¹ Ugbe R.O and Ekpoudo A., Attainment of Zero Gas Flaring Level in Nigeria: Proactive Legal and Policy Framework Strategies, p.40.

³² Nelson N., National Energy Policy and Gas Flaring in Nigeria 60; Ajugwo A.O., Negative Effects of Gas Flaring: The Nigerian Experience, p. 7.

³³ Odonmosu I.T., Transferring Alberta's Gas Flaring Reduction Regulatory Framework to Nigeria: Potentials and Limitations Alt L Rev (2007) 44 p. 865-867.

³⁴ Ibid, p. 865.

³⁵ Ibid

³⁶ Ajugwo A.O., Negative Effects of Gas Flaring: The Nigerian Experience, p. 7.

³⁷ Adewale O.O. and Mustapha U., The Impact of Gas Flaring in Nigeria, p. 44.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

infringed the right to life and healthy living of the Niger Delta people.⁴¹ These rights are recognized and provided for in the Nigerian Constitution⁴² and international human rights laws like Universal Declaration of Human Rights,⁴³ the International Covenant on Civil and Political Rights,⁴⁴ the American Convention,⁴⁵ and the African Charter on Human and Peoples' Right.⁴⁶ These international instruments recognize the sacredness and the importance of protecting right to life, integrity of persons, liberty and security of all persons. It is the responsibility of the state to prevent anything that might endanger life as enshrined in the Nigerian Constitution.⁴⁷ However, the rights to life, healthy living and human dignity is often threatened and sometimes trampled upon by environmental degradation activities of oil companies. Therefore, government must take some policy initiatives to regulate activities of these companies that may endanger the life of the people of the oil producing communities for peaceful coexistence and environmental sustainability.⁴⁸

3. Analysis of the Legal and Policy Framework for Regulation of Gas Flaring in Nigeria

The first direct regulation for control of gas flaring in Nigeria was in 1969 and since then, various measures in terms of laws, regulations and policies has been put in place to protect the environment against the harmful effects of gas flaring.⁴⁹ This part of the article analyses various legislations and policies towards elimination/reduction of gas flaring in Nigeria.

3.1 Legal Framework for Regulation of Gas Flaring in Nigeria

The Environmental Impact Assessment (EIA) Act⁵⁰ is one of the laws regulating any human activity that may affect the environment in Nigeria and therefore applicable to gas flaring. It is to the effect that assessment of any activity that may likely affect the environment must be considered and taken before such activity is embarked upon.⁵¹ The EIA Act encourages exchange of information among the governmental

⁴¹Ogbodo S. G. and Agu H. C. Issues and Challenges in the Enforcement of Environmental Laws and Standards in Nigeria" *Journal of Contemporary Law* (2013- 2014) 2 p.65.

⁴²Section 33(1) Nigerian Constitution.

⁴³Article 3 UDHR.

⁴⁴Article 6(1) ICCPR.

⁴⁵Article 4 ACHR.

⁴⁶Article 4 ACHPR.

⁴⁷Abdulkadir B.A., The Right to a Healthful Environment in Nigeria: A Review of Alternative Pathways to Environmental Justice in Nigeria, *Journal of Sustainable Development, Law and Policy* (2014)3(1) 125.

⁴⁸Ibid, p. 129. See also the of *Jonah Gbemre v. Shell Petroleum Development Company of Nigeria Limited* suit no. FHC/B/CS/53/05, Judgment of November, 5 2005.

⁴⁹Mafimisebi O.P and Ogbonna O.C., Environmental Risk of Gas Flaring in Nigeria: Lessons from Chevron Nigeria and Ilaje Crisis, *Journal of Environment and Earth Science*(2016) 6 (3) 181.

⁵⁰Cap. E. 12 Laws of the Federation of Nigeria 2004.

⁵¹See section 1(a) - (c) EIA Act.

tiers, persons and corporate bodies on development of procedures and policies to regulate proposed activities that may have significant impacts on the environment.⁵² The Act contains provisions on the general principles of environmental impact assessment, environmental assessment of projects and other matters connected to it.⁵³ It seeks to ensure the protection and integration of the environment in development processes and provides that the public or private sectors of economy are under obligation not to embark on projects without the prior consideration of their environmental effects.⁵⁴ EIA Act stipulates procedures of carrying out environmental impact assessments.⁵⁵ Where a project is listed in the mandatory study list, such a project will not be carried out until a decision is taken by the environmental protection Agency.⁵⁶ The penalty for a breach of this provision is an imprisonment for a term of five years or a fine of #100,000 (US\$625) and a fine of not less than #50,000 (US\$312.5) and not more than #1,000,000 (US\$6,250) for a corporate body.⁵⁷ One interesting aspect of the Act is that it recognizes the importance of the public participation and consultation of stakeholders in the execution of developmental projects.⁵⁸ The essence of the public consultation and participation of stakeholders is to identify concerns about the impact of the project.⁵⁹ The stakeholders are usually government agencies, members of the public, experts in relevant discipline and the interested groups.⁶⁰ The Act did not provide for citizen or public interest litigation, thereby, preventing citizens participation in environmental governance. This was demonstrated in the case of *Oronto Douglas v. Shell Petroleum Development Co*⁶¹ where the court struck out the suit on the ground that the plaintiff did not show any *prima facie* evidence that his right was affected or any direct personal injury was caused to him by the defendant. The Petroleum Act⁶² is another important legislation in respect of gas flaring. It is to the effect that oil producing company operating in Nigeria are under obligation to

⁵²See the recital to the EIA Act.

⁵³Section 1 (c) EIA Act.

⁵⁴Section 2(I) EIA Act; Orji U.J., An Appraisal of the Legal Frameworks for the Control of the Environmental Pollution in Nigeria, Commonwealth Law Bulletin(2012) 38(2)336.

⁵⁵Section 2(3) EIA Act.

⁵⁶Section 12 EIA Act. The listed items in the mandatory study list includes mining, petroleum development activities, power generation and transmission, waste treatment and disposal. The Directorate of Petroleum Resources (DPR) is now responsible for the enforcement of environment Impact Assessment Act in Nigeria Oil and gas sector.

⁵⁷Section 60 EIA.

⁵⁸See section 7 and 12 EIA ; Silas A., Public Participation in Environmental Impact Assessment (EIA) Reports: The Nigeria Experience, 33rd Annual Meeting of the International Association for Impact Assessment 13-16 May 2013, Calgary Stampede BMO Centre/Calgary, Alberta, Canada, 1

⁵⁹Ibid

⁶⁰See S.7 EIA Act; Silas A., Public Participation in Environmental Impact Assessment (EIA) Reports: The Nigeria Experience, p. 2.

⁶¹Unreported Suit no FHC/C5/L/573/93 of 17th December, 1997.

⁶²Cap P.10 LFN 2004.

provide their gas utilization proposal or programme for associated gas found in their fields within 5 years of their operation to the Minister of Petroleum Resources.⁶³ The Act empowers the Minister of Petroleum to make regulations under the Act to guide the activities of oil producing companies including the prevention of the pollution of the water ways and the atmosphere.⁶⁴ The Minister has made some regulations in this regard such as the Petroleum (Drilling and Production) Regulations⁶⁵ and the Petroleum Refining Regulations. The Petroleum (Drilling and Production) Regulation mandates every holder of a licence or lease under the regulation to adopt all practicable precautions to prevent oil pollution in Nigeria's inland and territorial waters. It is also provided that where pollution occurs, that the holder of a licence or lease shall take prompt steps to control and end the effects of the pollution.⁶⁶ This in effect means that once an utilization programme is submitted to the minister, and prompt action taken to control the effect of pollution, an oil company has complied with the law and discharge the responsibility placed on it. The Act further provides that non-compliance with the regulations or directives of the Director of Petroleum Resources respectively attracts a fine of #100⁶⁷ or six months' imprisonment.⁶⁸ Apparently, the penalties imposed are grossly inadequate to deter effective environmental Pollution.⁶⁹ Hence, oil producing companies in Nigeria exploited this lacuna to flare gas with impunity thereby defeating the essence of Regulation 42 (Drilling and Production) regulation which is meant to encourage proper utilization of both non-associated and associated gas by oil producing companies.⁷⁰ The Associated Gas Re-injection Act⁷¹ (AGRA) was enacted to strengthen the provisions of Regulation 42 of the Petroleum (Drilling and Production) Regulation.⁷² It makes the submission of detailed plans and schemes for viable utilization and re-injection all associated gas compulsory for oil and gas producing companies.⁷³ This provision is mandatory irrespective of the fact that some of the gas have been earmarked for some alternative usage and or is in association with oil.⁷⁴ The AGRA is the first direct law that seeks to phase out flaring law in Nigeria by 1st January, 1984 with a proviso that gas flaring after the date will not be

⁶³ Regulation 43 of the Petroleum (Drilling and Production) Regulation which was referred to erroneously as Regulation 42 in the Act.

⁶⁴ S.9 of the Petroleum Act.

⁶⁵ LN69 of 1967, Cap P. 10 LRN.

⁶⁶ Reg. 25 and 37(d).

⁶⁷ #100 is less than one US Dollar Under the present exchange rate.

⁶⁸ Reg. 45.

⁶⁹ Orji U.J., An Appraisal of the Legal Frameworks for the Control of Environmental Pollution in Nigeria, p.331

⁷⁰ Ibid.

⁷¹ Cap. A. 25 LFN 2004.

⁷² Ugbe R.O. & Ekpoudu A., Attainment of Zero Gas Flaring Level in Nigeria; Proactive Legal and Policy Framework Strategies, p.41.

⁷³ Section 2 AGRA.

⁷⁴ Ibid.

countenanced except with a written consent of the minister.⁷⁵ The consent of the minister is subject to the provision of sub-section 3(2) (a) and (b) to the effect that the terms and conditions as well as the fines to be imposed for continue flare of gas by oil producing companies shall be based on the discretion of the minister as may be prescribed from time to time.⁷⁶ The law also makes provision for the penalty to be imposed for non-compliance with the stipulated conditions set out by the minister and empowers the minister to make regulations towards implementation of the Act with the objective of bringing an end to gas flaring.⁷⁷ The Associated Gas Re-injection (continued flaring of Gas) regulations made pursuant to sections 3 and 5 of the Act introduced some exemptions to the general ban of flaring in the Act.⁷⁸ This Act and the regulation are therefore contradictory and inconsistent making their enforcement a difficult task. Apart from the fact that the discretion of the minister is specious, the penalty and the fines are too meagre to serve as deterrent thereby resulting to non-compliance by majority of oil companies.⁷⁹ Furthermore, the conditions for continued flaring of gas is vague and nebulous while the prescription of a fine of #10.00 (ten naira) (US\$ 0.0625) for every cubic feet of gas flared as contained in the regulation is too small and difficult to enforcement.⁸⁰ The cumulative effect of this penalty is apparently to monetise gas flaring at a giveaway rate. Hence, oil companies prefer flaring as because it is cheaper than to harness them through re-injection method.⁸¹

Another probable reason for failure of re-injection is due to its silence on the party or parties that bear the cost of re-injection among the oil companies, Nigeria National Petroleum Corporation (NNPC) and the government.⁸² This lacuna and uncertainty of who bear the cost of re-injection is a major snag.⁸³ The government seems to be more concerned about the income from the oil industry predominantly dominated by foreign companies and therefore could not take decisive step to ensure in re-injection and proper utilization of gas by oil producing companies.⁸⁴ In fact, it has been argued that pecuniary interest of government and pressure from oil producing companies account for the frequent shifting of deadlines set for stoppage of gas flaring in Nigeria.⁸⁵

⁷⁵Section 3(1) and (2) AGRA.

⁷⁶Ibid.

⁷⁷See section 4 and 5 AGRA.

⁷⁸Udok U. and Akpan E.B., Gas Flaring in Nigeria: Problems and Prospects, p.20

⁷⁹Ugbe R.O. and Ekpouo A., Attainment of Zero Gas Flaring Level in Nigeria; Proactive Legal and Policy Framework Strategies, p.45.

⁸⁰Ibid.

⁸¹Ibid.

⁸²Udok U. and Akpan E.B., Gas Flaring in Nigeria: Problems and Prospects, p.20.

⁸³Ibid.

⁸⁴Ugbe R.O. and Ekpouo A., Attainment of Zero Gas Flaring Level in Nigeria; Proactive Legal and Policy Framework Strategies, p.45.

⁸⁵Orji U.J. An Appraisal of the Legal Frameworks for the Control of the Environmental Pollution in Nigeria, p.332.

Another important legislation on gas flaring is the Effluent Limitations Regulation also known as National Environmental Protection (Effluent Limitation) Regulations.⁸⁶ The Effluents Limitations Regulation is a guideline introduced for implementation of a standard environmental policy in Nigeria.⁸⁷ It regulates standard for individual effluent discharge and emission into the atmosphere.⁸⁸ The regulation mandated all oil companies to install anti-pollution equipment for the purpose of detoxification of effluent and chemical discharges emanating from the industry.⁸⁹ It also provides that such installation must in accordance with the best available technology (BAT), the best practical technology (BPT) and in line with the Uniform Effluent Standard (UES).⁹⁰ The regulation further provide for continuous monitoring of the parameters in order to ensure compliance.⁹¹

3.2 An Appraisal of Government Policies on Gas Flaring in Nigeria

The National Gas Policy (NGP) is one of such measures to stop gas flaring in Nigeria.⁹² It seeks work out strategic framework that will drive the institutional, legal, regulatory and commercial reforms for proper utilization and development of associated gas through investments into the gas sector.⁹³ The objective of the NGP is to make Nigeria a gas-based industrial nation that can satisfy its local gas demands and attractive for foreign gas investment and market.⁹⁴ Some of the strategic objectives of the NGP are: Gas Re-Injection, Gas Flare-Out through Gas Utilization projects, New Flare Capture Technologies, Flare-Out Targets and Gas Flaring Penalties.

The gas re-injection project is to the effect that gas utilization will be a priority for associated gas in exploration processes.⁹⁵ The policy seeks to restrict undue re-injection of associated gas in absence of compelling technical reasons or a viable

⁸⁶ See section 6 of the Regulations.

⁸⁷ Eneh O.C. and Agbazue V.C., *Protection of Nigeria's Environment: A Critical Policy Review*, *Journal of Environmental Science and Technology* (2011) 4(5)p.494.

⁸⁸ Agbonifo P.E., *The Dilemma in Nigeria Petroleum Industry Regulations and It's Socioeconomic Impact on Rural Communities in the Niger Delta*, *International Journal of Management Science* (2015) 2(5) p. 85

⁸⁹ Section 1(1) National Environmental Protection (Effluent Limitation) Regulations.

⁹⁰ *Ibid*, section 1(2)

⁹¹ *Ibid* section 2(1) and (2). The treatment of effluent to a uniform level as well as an update of nearest FEPA office of any effluent discharge is covered by section 3 of the regulation while the penalty for a breach of any provision of the regulations upon conviction is specified in sections 5 of the regulation. See also sections 36 or 37 of the FEPA Act.

⁹² Agbonifo P.E., *The Dilemma in Nigeria Petroleum Industry Regulations and It's Socioeconomic Impact on Rural Communities in the Niger Delta* p. 85.

⁹³ National Gas Policy, Nigeria Government Policy and Actions available at www.petroleumresources.gov.ng accessed on 26 May, 2020.

⁹⁴ *Ibid*.

⁹⁵ See Paragraph 3.3 of the Nigeria National Gas Policy p. 33; Banwo & Ighodalo, synopsis of 2017 National Gas Policy p.2.

outlet for the gas.⁹⁶ Gas flare-out through gas utilization projects on the other hand provides for government intention to maximize utilization of associated gas to generate power supply.⁹⁷ The project seeks to provide stable metered electricity or gas product for economic development of rural communities in the Niger Delta with a view to providing significant business activities in the area. The government by the new flare capture technologies project intends to explore gas flaring reduction technologies with environmental sustainability potentials unlike what obtains in greenhouse gas solution.⁹⁸ Technology has made it possible for gas flaring to be dealt with through a variety of existing high performance technologies.⁹⁹ The government intention on the flare-out targets is to commercialize flared gas for supply into the domestic market as well as to put in place mechanisms and measures to that will ensure that the national mandate for flare-out by 2020 is feasible and realistic.¹⁰⁰ The government also intend to increase the gas flaring penalty to an appropriate level sufficient to discourage and serve as deterrent to gas flaring and introduce other measures to encourage efficient gas utilization.¹⁰¹

The first review of NGP in Nigeria was in 1995 by which Production Sharing Contracts (PSC's) was signed with oil companies to include gas utilization clauses.¹⁰² The policy provide that gas utilization should be embraced by oil and gas producers in their operations and empower the National Petroleum Investment Management Services (NAPIMS) for the overall responsibility of ensuring optimization planning of gas field development and proper utilization.¹⁰³ The policy through Associated Gas Utilization Fiscal incentives make provision for some incentives necessary for investment in transportation of gas to interested third parties.¹⁰⁴ A further review of the policy lead to the deregulation of the oil and gas industry to ensure maximum sustainable value.¹⁰⁵ The Obasanjo's administration inaugurated the first Oil and Gas Sector Reform Implementation Committee (OGIC) on 24th April, 2000.¹⁰⁶ The committee's efforts produced National Oil and Gas Policy (NOGP) with a recommendation for institutional restructure of the Nigerian oil and gas sector in such a way that the regulatory and policy making institutions are separated from commercial institutions.¹⁰⁷ The recommendation of the

⁹⁶ National Gas Policy, Nigeria Government Policy and Actions, Paragraph 6.4.3 p.61
⁹⁷ Ibid Paragraph 6.4.4 p. 62.

⁹⁸ Ibid

⁹⁹ Ibid

¹⁰⁰ Ibid Paragraph 6.4.6 pg. 63

¹⁰¹ Ibid

¹⁰² Malumfashi G.I. Phase-Out of Gas Flaring in Nigeria by 2008: The Prospect of a Multi-Win Project.

¹⁰³ See National Gas Policy, in Nigeria Oil and Gas available online at <http://nigeriaoil-gas/nationalgaspolicy.html> accessed 25th May, 2020.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid

¹⁰⁶ Ibid

¹⁰⁷ Ibid

committee was however, not implemented by the administration.¹⁰⁸ President Yar'Adua's administration however, set up a committee under the chairmanship of Dr. Rilwanu Lukman to reconstitute OGIC with a mandate to transform the broad provisions in the NOGP into functional institutional structure for a more practical and effective management of the oil and gas sector.¹⁰⁹ The committee submitted its report in August, 2008 with a recommendation of a pragmatic regulatory framework and institutional arrangements for efficient and sustainable oil and gas industry.¹¹⁰ The challenges for the ineffectiveness of the oil and gas sector over the year were addressed in the report which include the use of outdated regulatory and institutional structures not suited for a modern oil and gas sector. It also provides insight into the current national petroleum policy framework, objective, goals and proffer solutions to the problems affecting the Nigerian oil and gas industry.¹¹¹ The report further highlights operational strategies and action items necessary to drive the national oil company to a global standard. The report also advocates the need for consultation with energy experts on various regulatory frameworks and institutional structures as well as the unbundling of the NNPC.¹¹² The President Buhari's administration sometimes in June 2017 approved a review of government policies on gas in the last 10 years with a view to addressing the inherent challenges in the 2008 Gas Master Plan (GMP) in order to attract investors necessary infrastructure for utilization and development a domestic gas market.¹¹³

There are several agencies involve in the regulation of oil and gas sector in Nigeria such as the NNPC, the DPR, the FEPA, Ministry of Petroleum Resources (MPR), Office of the Presidential Adviser on Petroleum Matters and Ministry of Finance.¹¹⁴ Prior to 1971 there was the Nigeria National Oil Corporation (NNOC) and MPR which was later merged as NNPC.¹¹⁵ The defunct NNOC was established for commercial purposes while MPR was responsible for regulatory activities. These two functions now reside in the NNPC as a result of the merger.¹¹⁶ The law governing the operation of NNPC substantially remained the same despite the reorganization of the corporation on three different occasions.¹¹⁷ There was a restructuring and assumption of commercialization and autonomous status of NNPC in 1992 without any legislative backing or amendment of the NNPC Act.¹¹⁸ Despite

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ Oil and Gas Sector Reforms Implementation Committee Draft Final Report, p.79, May, 2008.

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ Banwo and Ighodalo, Synopsis of the 2017 National Gas Policy 1.

¹¹⁴ Oduomosu I.T., Transferring Alberta's Gas Flaring Reduction Regulatory Framework to Nigeria: Potentials and Limitations, p. 874.

¹¹⁵ Ibid.

¹¹⁶ Ibid. See also Section 5 NNPC Act.

¹¹⁷ Omorogbe Y., Oil and Gas Law in Nigeria (Lagos, Nig: Malt house Press, 2003) p.101.

¹¹⁸ Oduomosu I.T., Transferring Alberta's Gas Flaring Reduction Regulatory Framework to Nigeria: Potentials and Limitations, p. 871-872.

all the reorganization efforts, NNPC remains a weak organization as a oil regulatory body due to its management problems, excessive red tap and bureaucratic delays.¹¹⁹ The DPR is another agency responsible for ensuring compliance with the regulation of the oil and gas industry through supervision and monitoring. It is a department of the MPR.¹²⁰ DPR is the sole government agency that is responsible for all petroleum operations and petrochemical activities in supervising, enforcing environmental regulations and processing licence applications.¹²¹ DPR as a department under MPR cannot effectively carry out certain proactive measure without the support of the MPR. DPR thus require autonomy as an independent regulatory agency to initiate and implement regulatory measures and perform its functions.¹²²

3.3 Challenges of the Legal and Policy Frame Work for Regulation of Gas Flaring in Nigeria

The part of article examines the challenges militating against the reduction/elimination of gas flaring despite various laws, policies and regulations. Hence, inconsistent laws, nominal fines for breach of extant laws, lack of environmental right in the Nigerian constitution, lack of political will by government, inadequate funding and lack of requisite capacity by the regulatory agencies and inadequate enforcement mechanisms are identified and discussed below.

3.3.1 Inconsistent Laws

The various legislations regulating gas flaring in Nigeria especially Petroleum Act and the regulations made pursuant to it¹²³ merely mandates oil producing companies to deliver gas utilization feasibility studies proposal or programme to the minister of petroleum resources of the associated gas discovered in their fields within 5 years of putting such fields into production.¹²⁴ The submission of utilization programme to the minister without more is a sufficient requirement for compliance. Hence, oil producing companies took advantage of this lacuna and defect in the law to continue flaring of gas thereby defeating the essence and thrust of the Regulation 42 (Drilling and Production) which seeks to minimize and eliminate gas flaring in Nigeria.¹²⁵ This defect in this law led to enactment of the Associated Gas Re-injection Act which makes non submission of preliminary programmes for gas re-injection and detailed plans for implementation of gas re-injection illegal.¹²⁶ The

¹¹⁹Khan S.A., Nigeria: The Political Economy of Oil (Oxford University Press 1994) . 26

¹²⁰Functions and Responsibilities" online: DPR<www.dprnigeria.com/dpr_roles.html> accessed 14th June, 2020 ; Organization and key Management" online: DPRwww.dprnigeria.com/management.html. Accessed 16th June, 2020.

¹²¹"Functions and Responsibilities" online: DPRwww.dprnigeria.com/dpr_roles.html.

¹²²OduMosu I.T., Transferring Alberta's Gas Flaring Reduction Regulatory Framework to Nigeria: Potentials and Limitations, p. 871.

¹²³Regulation 43 1969 (Drilling and Production) Regulations.

¹²⁴Regulation 43 of the Petroleum (Drilling and Production) Regulation.

¹²⁵Irekpitan.O. A. "Gas Flaring and Environmental Rights: The Nigerian Context." p. 187.

¹²⁶See recital of the AGRA.

Associated Gas Re-injection Act seeks to stop gas flaring in Nigeria by 1st January, 1984 after which it shall only be done by written permission and authorization of the Minister.¹²⁷ The minister is enjoined to issue a certificate to an oil producing company if it is satisfied that utilization or re-injection of gas is not possible after 1st January, 1984.¹²⁸ The Act empowers the minister to permit a company to continue to flare gas if the company pays fine as the minister may prescribe from time to time.¹²⁹ The Act also gives the minister the authority to make other regulations for effective implementation of the Act.¹³⁰ While these laws aims absolute reduction/elimination of gas flaring in Nigeria, the inconsistencies in laws make it difficult.¹³¹ This is because apart from making provision for a feasibility report by oil companies interested in natural gas production, the laws does not make gas flaring a strict criminal offence which is one of the weaknesses the laws.¹³²

3.3.2 Nominal Fines for Breach of Regulatory Laws

Despite the fact that the Associated Gas Re-Injection Act prohibits gas flaring, oil companies refused to comply and instead prefer to pay nominal fines for gas flaring as provided by the Act.¹³³ This is because the nominal fines is cheaper than utilization or re-injection of the excess gas produced.¹³⁴ The prescribed fine of #10.00 (Ten Naira) (US\$0.0625) for every cubic feet of gas flared is more economically viable option to oil companies.¹³⁵ The fines is too paltry to have any deterrent effect.

3.3.3 Lack of Environmental Right Provision in the Nigerian Constitution

The Nigerian Constitution does not provide for environmental rights as a fundamental fundamental human right like other developing countries like India, South Africa and Ecuador.¹³⁶ Exploration activities by oil and gas companies usually affect immediate environment and therefore have impacts on the health and by extention right to dignity of life the resident as guaranteed by the Nigerian Constitution and international human rights documents.¹³⁷

¹²⁷Section 3 of the AGRA.

¹²⁸Section 3(2) Associated Gas Re-Injection (Continued Flaring of Gas Regulations).

¹²⁹Ibid S.3(2)(b)

¹³⁰Ibid Section 5.

¹³¹Udok U. and Akpan E.B., Gas Flaring in Nigeria: Problems and Prospects, p. 20

¹³²Ibid

¹³³Mafimisebi O.P and Ogbonna O.C., Environmental Risk of Gas Flaring in Nigeria: Lessons from Chevron Nigeria and IlajeCrisis, p. 195

¹³⁴Ibid

¹³⁵Orji U.J., An Appraisal of the Legal Frameworks for the Control of Environmental Pollution in Nigeria, p. 332

¹³⁶Irekpitan O. A. Gas Flaring and Environmental Rights: The Nigerian Context, p. 187

¹³⁷Adewale O.O and Mustapha U., The Impact of Gas Flaring in Nigeria, p.44

The duty to protect life is on the government.¹³⁸ This is enshrined in the constitution under fundamental human rights, international, regional and national laws.¹³⁹ There is no constitutional provision for environmental rights in Nigeria. In the case of *Gbemre v. Shell*,¹⁴⁰ the court held that S.3(2) (a) and (b) of the Associated Gas Re-Injection Act and Section 1 of the Associated Gas Re-Injection (continuing flaring of Gas) Regulation are null and void for being inconsistent with the Applicant's rights to life and dignity of human person as enshrined in the constitution. The court further made an order restraining the Respondents from further flaring of gas in the Applicant's community. The *Gbemre's* case was an attempt in using the court as a forum for social change. Unfortunately, this could not be achieved due to weak enforcement mechanism and heavy reliance of Nigerian economy on the oil and gas sector.

3.3.4 Inadequate Funding and Lack of Political Will by the Government

Inadequate funding is another major constraint to eradication of gas flaring in Nigeria. The various regulatory agencies lack funds for execution of gas development infrastructure.¹⁴¹ Lack of local market for gas consumption does not also encourage investment in the capital intensive gas infrastructure.¹⁴² The government appears not to be serious about funding gas infrastructural projects and equip regulatory agencies. Hence, enforcing compliance by oil companies is very difficult. Furthermore, the undue reliance on the oil industries for the bulk of the government revenue is another challenge to the eradication of gas flaring.¹⁴³ Because of the government revenue largely depends on the oil and gas sector, there is the lack of political will to take drastic measures to put an end to gas flaring as evidenced in the constant shifting of the deadlines for eradication of gas flaring in Nigeria.¹⁴⁴ Further to this is the unnecessary protection given to multinational oil companies due to the pecuniary interest of government.¹⁴⁵

3.3.5 Lack of Requisite Capacity by the Regulatory Agencies and Inadequate Enforcement Mechanisms

Nigerian oil and gas regulatory agencies are not well equipped and lack the requisite capacity to perform their statutory duties.¹⁴⁶ Most of the agencies depend on the

¹³⁸ Ibid

¹³⁹ See section 33 of the Nigerian Constitution.

¹⁴⁰ Unreported (suit No FHC/B/CS/53/05 Federal High Court Benin Judicial Division 14th Nov. 2005

¹⁴¹ Aghogin V.B., Gas Flaring, Government Policies and Regulations in Nigeria: 2008 a myth or Reality, p. 35

¹⁴² Ibid

¹⁴³ Irekpitan O. A. Gas Flaring and Environmental Rights: The Nigerian Context.p. 187

¹⁴⁴ Malumfashi G.I. Phase-Out of Gas Flaring in Nigeria by 2008: The Prospect of a Multi-Win Project p.13.

¹⁴⁵ Aghogin V.B., Gas Flaring, Government Policies and Regulations in Nigeria: 2008 a myth or Reality, p. 34.

¹⁴⁶ Saraki B., "Oil Spills in the Niger Delta; The Way Forward", Speech Presented at the Niger Delta and National Development Working Group of the Nigeria-U.S Bi-National Commission Meeting on 17 Oct, 2012 in River State. Accessed 7th Feb, 2017.

good will of the oil and gas companies they are supposed to monitor to carry out their functions in terms of infrastructures, logistics to visit impacted sites, data on impact size and even in determining where the responsibility for a disaster or environmental abuse lay.¹⁴⁷ Another challenge is that the regulatory bodies have too many overlap functions thereby resulting in conflicts and superiority contest among them, making it possible for the oil producing companies to play them against each other.¹⁴⁸ Furthermore, the granting of profit making agencies with regulatory and monitoring functions is also a great challenge to their efficiency as regulatory bodies.¹⁴⁹ It is contrary to international best practice, wrong and not in the best interest of the country to place in the hands of the petroleum regulator the responsibility of protecting the environment.¹⁵⁰ Hence, there is the need to improve on the logistic challenges enumerated in order to improve on the ability of the regulatory agencies to function independently without relying on the oil producing companies in the performance of their statutory functions.¹⁵¹ Furthermore, inadequate enforcement mechanisms has always been the major challenge of the efforts to stop gas flaring in Nigeria since 1969 when the first order for stoppage of gas flaring was made.¹⁵² Since that time, no serious mechanism has been put in place to ensure compliance with the order and other regulations.¹⁵³ Majority of companies involved in the exploration and production of oil in Nigeria ignored the order and other laws since there is no effective enforcement mechanism to enforce them.¹⁵⁴

4. Legal and Policy Framework for Regulation of Gas Flaring in Alberta: Lessons for Nigeria

Alberta is blessed with abundant natural gas like Nigeria and was able to positively utilized her natural gas for the benefit of its people without destroying its environment by gas flaring. The province also have indigenious inhabitants in the all producing area just like the idingenous people oil producing communities in the Niger-Delta region of Nigeria. Furthermore, the effective legal and policy framework as well as the high level of competence and efficiency of the Alberta regulatory agencies in the oil and gas sector has been endorsed by the world bank as a model for countries having flaring problems.¹⁵⁵ Alberta oil and gas industry has a well developed, functional and effective legal framework and polices, and

¹⁴⁷ Ibid

¹⁴⁸ Ibid

¹⁴⁹ UNEP Report on Ogoni Land

¹⁵⁰ Saraki B., "Oil Spills in the Niger Delta; The Way Forward"

¹⁵¹ Ibid

¹⁵² Mafimisebi O.P and Ogbonna O.C., Environmental Risk of Gas Flaring in Nigeria: Lessons from Chevron Nigeria and IlajeCrisis, p. 198

¹⁵³ Ibid.

¹⁵⁴ Ibid

¹⁵⁵ Odunmosu I.T., Transferring Alberta's Gas Flaring Reduction Regulatory Framework to Nigeria: Potentials and Limitations, p. 865-866.

independent regulatory institutions devoid of government interference unlike what is obtainable in Nigeria. Hence, this section seeks to analyse the legal and policy framework for gas flaring in Alberta with a view to drawing lessons the Nigerian oil and gas industry.

Alberta is a province in the Canada with one of the largest proven oil and natural gas reserve and the largest oil and gas producing region in North America.¹⁵⁶ The Aborigines are the indigenous people of Alberta with a history of over 11,000 years.¹⁵⁷ They have significant numbers of oil and gas ownership rights and their relationship with Alberta's oil sands industry has generated over \$8 billion in revenue for them.¹⁵⁸ Alberta's oil sands contain 175 billion barrels of oil and estimated natural gas reserves in the region of 268 trillion cubic feet.¹⁵⁹ Alberta economy and developmental projects largely relies and depends on the exploration of oil and gas.¹⁶⁰ While the exploration activities generate huge revenue for Alberta, it also has some negative environmental consequence.¹⁶¹ Hence, the regulatory policy of oil and gas production is based on the need to protect the economic value of oil and gas exploration without degrading the environment.¹⁶² Alberta has therefore, built an efficient legal and policy regulatory regime against gas flaring over the years.¹⁶³ This policy, a combination of older practices, developed out of a rich history of almost a century and the present framework.¹⁶⁴ Initially, some oil producing companies in Alberta saw natural gas as waste incidental to oil production which led to its being flared.¹⁶⁵ Awareness and research on the effect of flaring gas thus necessitated a regulatory regime to curtail menace of gas flaring.¹⁶⁶ This is the genesis of a strong and better legal and regulatory regime for regulation of oil and gas policy that focus on public safety, environmental protection, resources conservation and equitable development of resources devoid of waste and damage

¹⁵⁶ Deyholes R., and Cuschieri D., Canada European Lawyer Reference Series p. 1

¹⁵⁷ Conversation Guide, History of First Nation People in Alberta or First Nations in Alberta <https://www.aadncan.gc.ca/eng/1100/00020670/1100/00020675>

¹⁵⁸ EY Building a Better Working World, Alberta's Oil and Gas Sector Regulatory Paradigm shift: Challenges and Opportunities p.4.

¹⁵⁹ Canadian Association of Petroleum Producers. <http://www.capp.ca/getdoc.aspx?Docid=111607&DT=NTV,assessed23rd October,2019>

¹⁶⁰ Alberta-Fresh Opportunities; Canadian Association of Petroleum Producers. [http://www.capp.ca/getdoc.aspx?Docid=111607&DT=NTV,assessed23rd October,2019](http://www.capp.ca/getdoc.aspx?Docid=111607&DT=NTV,assessed23rd October,2019;); Alberta Economic Quick Facts December 2017, www.economic.Alberta.ca and www.albertacanada.com.

¹⁶¹ Oduunmosu I.T., Transferring Alberta's Gas Flaring Reduction Regulatory Framework to Nigeria: Potentials and Limitations, p. 864.

¹⁶² EY's Global Oil and Gas Center; Alberta's Oil and Gas Sector Regulatory Paradigm Shift: Challenges and Opportunities p. 2.

¹⁶³ Oduunmosu I.T., Transferring Alberta's Gas Flaring Reduction Regulatory Framework to Nigeria: Potentials and Limitations, p. 865.

¹⁶⁴ Ibid, p. 872.

¹⁶⁵ Ibid

¹⁶⁶ Ibid

to the environment in Alberta.¹⁶⁷ The policy also ensures that regulatory agencies are strong, firm and independent from government political agenda.¹⁶⁸ Regulatory boards were established with broad powers and wide discretion aimed at curbing gas flaring.¹⁶⁹ The contemporary regulatory policy focuses more on environmental consideration unlike the former policy that was driven by concern over wasted resources.¹⁷⁰ Such effective laws for the reduction of gas flaring include the Environmental Protection and Enhancement Act (EPEA)¹⁷¹ and the Mines and Minerals Act¹⁷² which provide for the development of guidelines and environmental quality objectives and exploration and drilling of mines and associated oil and gas respectively. The EPEA was enacted to protect and conserve the environment from harmful effects of developmental activities. Furthermore, the Oil and Gas Conservation Act¹⁷³ (OGCA) set out guidelines for efficient development of oil and gas in order to avoid waste while the Petroleum and Natural Gas Tenure Regulation¹⁷⁴ provide the method and procedure for obtaining oil and gas concessions from the Alberta provincial authority. The AEUB Directive 060: Up Stream Petroleum industry flaring, incineration and venting (2008)¹⁷⁵ was also made as response to inherent lacuna and complement and the OGCA. The Oil Sands Conservation Acts¹⁷⁶ is similar to the OGCA but applicable to oil sands¹⁷⁷ while the Surface Right Act,¹⁷⁸ outlines the procedure rules for obtaining permission and access to land for exploration oil and gas. It also establishes a Board with the sole responsibility. There also the Public Lands Act¹⁷⁹ borders on access, administration and disposition of public lands while the Water Act¹⁸⁰ deals developments and activities that affect water resources. Hence, with framework, the key players in the industry adhered to environmental regulations and adopt innovative techniques in extracting natural resources from the underground reserves in an environmentally responsible manner.¹⁸¹

¹⁶⁷ EY's Global Oil and Gas Center; Alberta's Oil and Gas Sector Regulatory Paradigm Shift: Challenges and Opportunities p. 2

¹⁶⁸ Ibid

¹⁶⁹ Odunmosu I.T., Transferring Alberta's Gas Flaring Reduction Regulatory Framework to Nigeria: Potentials and Limitations, p. 872-73.

¹⁷⁰ EY's Global Oil and Gas Center; Alberta's Oil and Gas Sector Regulatory Paradigm Shift: Challenges and Opportunities p. 2.

¹⁷¹ See S.14 of EPEA

¹⁷² R.S.A. 2000, C.M-17

¹⁷³ R.S.A. 2000, C.O-6(OGCA)

¹⁷⁴ Alta. Reg. 263/1997

¹⁷⁵ Directive 060 2016

¹⁷⁶ R.S.A. 2000, C.O-7(OGCA)

¹⁷⁷ R.S.A. 2000, C.O-7(OGCA)

¹⁷⁸ R.S.A. 2000, C.S 24

¹⁷⁹ R.S.A. 2000, C.P - 40

¹⁸⁰ R.S.A. 2000, C.W-3

¹⁸¹ Ledrew S.P and Energy C., Oil and gas

The legal framework also makes provision for some agencies that regulate oil and gas exploration in Alberta. These agencies includes the Alberta Department of Energy, the Energy Resources Conservation Board (ERCB), the Ministry of Environment and Sustainable Resources Development (ESRD) and the Alberta Surface Rights Board (SRB) among others. The Department of Energy administer and implements oil and gas legislations,¹⁸² while the ERCB regulates procedure for issuance of licences to oil and gas companies, production and production safety standards and other matters incidental to production and development and environmental regulation of oil and gas in Alberta.¹⁸³ ESRD is basically responsible for administration, management and conservation of oil and gas projects. It also grant permits, licenses and approvals for such project if satisfied that conservation standards are met. The SRB on the other hand was created as a neutral administrative tribunal by the provincial authority for the resolution of disputes on access to land and mineral rights.¹⁸⁴ The ERCB also performs similar function of independent quasi-judicial tribunal in some cases.¹⁸⁵ Furthermore, the Alberta Utilities Commission (AUC) was established as an independent quasi-judicial agency to oversee public complaint, objections and contraventions, in respect of laws, regulations as well as tariffs and tolls on natural gas transmission among others. The Alberta Environment matters is under the authority of the EPEA and the water Act responsible for the protection and management of the environment, water resources, climate change and waste management.¹⁸⁶ The province's energy regulation undergone significant changes in 2013 as a result of the enactment of the Responsible Energy Development Act (REDA). The changes also led to the merging of regulatory functions of the Alberta Energy Regulator (AER) and Energy Resources Conservation Board (ERCB) Acts into a single regulatory body the; the Alberta Environment and Sustainable Resource Development (ESRD) for upstream oil and gas, oil sands and coal development activities.¹⁸⁷ Alberta allows a partnership of representatives from government, industry and non-governmental organizations who collectively represent and report to their stakeholders and accountable to the Alberta ministers of Energy, Environmental Protection and Health.¹⁸⁸ In 1994, all the above stated stake holders including the public, environmental non-governmental organizations (ENGOS) and regulators formed The Clean Air Strategic Alliance (CASA) as a multistakeholder forum to participate in

¹⁸² Deyholes R., and Cuschieri D., Canada European Lawyer Reference Series 3
¹⁸³ Ibid
¹⁸⁴ Ibid
¹⁸⁵ Ibid
¹⁸⁶ Ibid

¹⁸⁷ EY's Global Oil and Gas Center; Alberta's Oil and Gas Sector Regulatory Paradigm Shift: Challenges and Opportunities p. 2

¹⁸⁸ Management of Routine Solution Gas Flaring in Alberta, Report and Recommendations of the Flaring Project Team, Clean Air strategic Alliance (CASA) Edmonton, June 17, 1998 p. 1

assessing air quality issues and recommends management Actions.¹⁸⁹ This body (CASA) does not have legislative authority, but agencies such as Alberta Environment and EUB receives recommendations from CASA and implements regulations and guideline.¹⁹⁰ It is viewed that the consensus built through CASA all process are constructive since it involves interested parties which helps to forge a strong commitment in implementing agreed recommendation.¹⁹¹ The EUB is responsible for regulating the upstream Petroleum industry which include crude oil and natural gas pipelines within Alberta. While the National Energy Board (NEB) regulates energy transportation across interprovincial and international boarder¹⁹² and to regulate the exportation of oil and natural gas.¹⁹³ One of the lessions Nigeria can draw is that Alberta adopted alternative conservation tecniques like GC Orders,¹⁹⁴ MRL,¹⁹⁵ associated gas re-injection and GOR¹⁹⁶ to control gas flaring and conserve oil fields. Hence, these methods of controlling and miminizinggas flaring in Alberta are adoptable in Nigeria along with associated gas re-injection already in use in Nigeria provided heavy penalties can be enforced on any oil company that errs.¹⁹⁷ Wells with very high GOR could be shut in until it is ready for economic utilization and conservation of gas sustainable development .¹⁹⁸ Presently in Nigeria, the body that is responsible for regulation of oil and gas industry is DPR which is a department under the ministry of petroleum resources. This arrangement does not allow for the independence or autonomy of the regulators. Hence, there is need for the separation of responsibilities as proprietor and as regulator for a more independent, expert and efficient results as obtainable in Alberta oil and gas sector wherein independent regulatory agency with competent proffessionals and experts in oil and gas activities with adequate remuneration are allowed to regulate and administer in oil and gas sector in the public interest.¹⁹⁹ The creation of CASA as a non profitassociation of diverse stakeholders from residents of oil and gas communities, business industry, human rights groups and government representatives and non governmental organizations i.e. health and environmental groups in Alberta also contributed greatly to the reduction of gas

¹⁸⁹Province of Alberta (Canada) Overview of Onshore Gas Flaring and Venting in Alberta p.2

¹⁹⁰ Ibid

¹⁹¹ Ibid

¹⁹² Ibid

¹⁹³Plourd A., Oil and Gas in the Canadian Federation, Department of Economics University of Alberta, Working Paper No 2010-01, January, 2010 p.9

¹⁹⁴ Means Gas Conservation Orders

¹⁹⁵ Means Mid-reach lateral; a well with horizontal lateral of approximately 6, 900ft.

¹⁹⁶ "GOR well (Gas/Oil Ratio)" means the ratio of gas produced in standard Cubic Feet to one barrel of oil produced during exploration.

¹⁹⁷Ogunmosu I.T., Transferring Alberta's Gas Flaring Reduction Regulatory Framework to Nigeria: Potential and Limitations, p.877.

¹⁹⁸ Ibid

¹⁹⁹ Ibid

flaring.²⁰⁰ The association is smulti stakeholder forum committed to the development and application of a comprehensive quality management for the people of Alberta through a process that is consensus in nature.²⁰¹ It is a body that body that give recommendations and advise to the government on policy and regulation related to air quality.²⁰² This type of association that involve public participation and consultation is worthy of being established in Nigeria with similar composition especially community leaders, government representatives, experts in the oil and gas sectors and non governmental organizations in the areas of health, environment and human rights. Such association will serve as advisers and stakeholders who can be consulted from time to time on policy initiatives and implementation plans that is economically viable and environmental friendly. This will give residents of the oil producing communities who are directly affected by the flare the opportunity to contribute to the activities of the government and oil companies and make implementation easy since all stake holders participate in the making of the policies.²⁰³ Furthermore, the tension usually generated by the youths and militants will be eliminated since their representatives from the communities, regulators, major players and relevant NGOs are involved in policy formulation, decision making and executions of the agreed policies.

The adoption of one-window approach being practiced in the regulation and monitoring of oil and gas activities in Alberta will go a long way in the elimination of duplication of functions and responsibilities in the Nigeria oil and gas industry.²⁰⁴ It will also check the excess use of multiple agencies in carrying out functions that feweror a single agency could conveniently handle thereby saving administrative costs, bureaucratic bottle necks and duplication of duties.²⁰⁵

One of the primary duty of any responsible government is to protect the general interest of the public. Alberta decision makers considers the environment, economic, social and technical factors within the domain of public interest in her legal and policy response to gas flaring. Nigerian government learn from this by making interest of its citizen paramount consideration in its quest for reduction or total elimination of gas flaring in Nigeria.²⁰⁶

In Alberta, the Oil and Gas Conservation Act (OGCA) addresses the general oil and gas regulatory issues but is not comprehensive enough to regulate gas flaring.²⁰⁷ The AEUB Directive 060: Upstream Petroleum Industry Flaring, Incinerating and

²⁰⁰ Province of Alberta(Canada) Overview of Onshore Gas Flaring and Venting in Alberta 2; Odunmosu I.T., Transferring Alberta's Gas Flaring Reduction Regulatory Framework to Nigeria: Potential and Limitations, p.877.

²⁰¹ Province of Alberta(Canada) Overview of Onshore Gas Flaring and Venting in Alberta 2

²⁰² Ibid

²⁰³ Odunmosu I.T., Transferring Alberta's Gas Flaring Reduction Regulatory Framework to Nigeria: Potential and Limitations, p.877

²⁰⁴ Ibid 899

²⁰⁵ Ibid

²⁰⁶ Ibid

²⁰⁷ Oil and Gas Conservation Regulation Alta. Reg. 15/197 (OGCR)

Venting (2008) came to fill this lacuna which is a major document on gas flaring.²⁰⁸ The directive set-out requirements and expectations for upstream petroleum industry flaring and established requirements on management of gas solution.²⁰⁹ The directive provides a frame work for flaring management decision tree which prohibits feasible flaring and substantial reduction of the amount of flared gas except where it is unavoidable as result of emergency in which case the flare emission must be in accordance with efficient flare performance requirements based on the best available technology standard.²¹⁰ Although it requires much much commitment and funding, adoption of this directive with necessary modification will go a long way in the elimination or reduction of gas flaring in Nigeria.²¹¹

Unlike in Alberta, the Nigeria enforcement mechanism is weak and regulatory agencies are like toothless dog who operate at the whims and caprices of multinational oil companies.²¹² It is more of a voluntary approach thereby making elimination of gas flaring almost impossible. Satisfactory compliance is difficult when regulatory mechanisms are weak and subject of regulations appears more powerful.²¹³ Therefore, an efficient, strong and realistic enforcement mechanisms for effective regulation and monitoring of oil and gas production and gas flaring must be put in place in Nigeria like what is obtainable in Alberta.

Nigerian oil and gas statutes and regulations focused more on regulation of oil production, there is no law, apart from AGRA and few provisions in the Petroleum Regulations that regulates gas flaring.²¹⁴ Therefore, the enactment of single and comprehensive law that incorporates all regulatory requirements for the reduction and eventual elimination of gas flaring is imperative in order to farstall the devastating effect of gas flaring in the Niger Delta region of Nigeria.²¹⁵ Thus a comprehensive document on gas flaring reduction enforcement compliance and regulation with a clear direction and ease of reference similar to Directive 060 obtainable in Alberta is necessary for Nigeria.²¹⁶ In drafting this regulation, there should be wide consultation with all stakeholders to form a multi stakeholders like it was done in Alberta in "carrying everybody along" in order to have an all embracing, rich and robust regulation.

5. Conclusion and Recommendations

²⁰⁸ Online: EUB www.eub.ca/does/documents/directives/Directives060.pdf (Directive 060 2006)

²⁰⁹ Ibid

²¹⁰ Odunmosu I.T., Transferring Alberta's Gas Flaring Reduction Regulatory Framework to Nigeria: Potential and Limitations, p. 879

²¹¹ Ibid, p.877

²¹² Ibid

²¹³ Ibid

²¹⁴ Odunmosu I.T., Transferring Alberta's Gas Flaring Reduction Regulatory Framework to Nigeria: Potential and Limitations, p.888.

²¹⁵ Ibid

²¹⁶ Ibid

The article analyses the legal, policy and institutional framework for regulation gas flaring in Nigeria and observed that many laws, regulations and policies put in place to curtail gas flaring proved abortive as a result of inconsistent laws, nominal fines for breach of extant laws, lack of environmental right provision in the Nigerian Constitution, inadequate funding and lack of requisite capacity by the regulatory agencies, inadequate enforcement mechanisms and lack of political will on the part of government. The article examines the legal framework for regulation of gas flaring in Alberta and note that the efficient and success in that jurisdiction is a result of its strong, independent and well developed regulatory agencies, effective and functional legal framework and policies. Hence, this article recommends as follows:

- i. The government needs to put in more efforts, necessary political will and strong enforcement mechanisms to eliminate or at least reduce gas flaring to the barest minimum in Nigeria like what is obtainable in Alberta by ensuring:
 - a) Strict and compulsory enforcement requirement for applications of well licenses irrespective of the nature of operator's tenure.
 - b) Employment of competent and committed professionals who will not compromise the functions and responsibilities of the regulatory agency to monitor and report the activities of operators in the oil producing communities.
 - c) Compulsory monthly publication of information on the amount of gas flared, amount conserved and utilized and the efficiency of combustion methods that were applied.
- ii. The independence or autonomy of the regulators is very key for a successful elimination or reduction of gas flaring. There is need for the separation of responsibilities as the owner and as a regulator for maximum benefits to be realized. Experts and professionals should be allowed to do their jobs with adequate remuneration.
- iii. The annual report on gas flaring and conservation performance should be made compulsory and published annually by the regulators. This is a self assessment mechanism that enables the operators and the general public appreciate efforts put into elimination of gas flaring in the country.
- iv. Utilization of gas for the generation of electricity is the most viable option in the elimination or reduction of gas flaring. Half of the volume of what is being flared currently can generate 200 to 300 MW of electricity. It has a double advantage by providing electricity supply that could be generated and the social and environmental benefits that is achievable from the reduction of gas that could have been flared.