NOT WHAT THE BUS PROMISED: AN EXAMINATION OF THE LEGISLATIVE APPROACHES TO GAS FLARING IN NIGERIA

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Abstract
Notwithstanding that Nigeria is rated as the number one producer of crude oil in Africa, oil exploration activities have resulted in a high rate of gas flaring. There are concerns that if nothing is done to curtail this menace, humans and the environment will be imperiled due to its negative consequences. Besides, associated natural gas that is generated from oil production is burnt in large volumes thereby leading to the emission of greenhouse gases and waste of natural resources which could have generated billions of dollars for the Federal Government of Nigeria. In order to address this challenge, this paper adopted the doctrinal research method and analysed the legal regime for gas flaring in Nigeria. The paper found out that weak enforcement of the anti-gas flaring laws by the regulatory authorities is responsible for this menace. In order to provide durable guidelines for legislations on suitable approaches to adopting and formulating anti-flaring legal frameworks, the paper undertook a comparative analysis of legal regimes on gas flaring in Nigeria and Canada. It therefore recommended the use of more advanced technologies, a sophisticated mixture of regulations and non-regulatory incentives such as fiscal policies and gas market restructuring in addressing the hazard.

Keywords*: emission, gas, flaring, greenhouse, Oil,*

1.0 Introduction

Nigeria is endowed with enormous gas reserves of about 159 trillion cubic feet of natural gas, and it is ranked one of the top ten countries provided with natural gas in the world. An approximately 2.5 billion cubic feet of gas is declared as being flamed by the numerous oil facilities in Nigeria. 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 petroleum sector. Generally, gas flaring is an operational waste of energy resources in the petroleum sector that encourages greenhouse gas emissions. This is contrary to the United Nations Convention on Climate Change 1992 and the Kyoto Protocol, 1997 which require that governments reduce greenhouse gas emissions in the oil sector. Gas flaring occurs in the refineries, chemical plants, oil rigs, and landfills by burning off the flammable gas. It had also occurred when oil companies burn off the extra gas that escapes due to oil drilling and other oil-related activities in the sector.

Against the foregoing background, this paper examines the legislative framework to curtail gas flaring and its associated hazards and economic wastes. The need to reduce greenhouse gas emissions, promote responsible gas utilization, and enhance environmental sustainability cannot be overemphasised. For ease of understanding, the paper is divided into convenient sections.

2.0 Nigeria's recent response to gas flaring

The Petroleum Industry Act, 2021[1] represents the most recent effort by Nigeria (reputed to be Africa's leading oil-producing country) to respond to the changing environment. In 2019, the oil and gas sector

[1]Hereinafter abbreviated and referred to as "PIA".

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accounted for about 5.8 percent of Nigeria's real GDP and was responsible for 95 percent of Nigeria's foreign exchange earnings and 80 per cent of its budget revenues. In addition, because the law is far reaching in its remit, it is complex and not easy to summarize. The main objective of the PIA, 2021 is ensuring good governance and accountability, creation of a commercially oriented national petroleum company, the Nigerian National Petroleum Company Limited, and fostering conducive business environment for petroleum operations. The PIA, 2021 also envisages the promotion of exploration and exploitation of petroleum resources in Nigeria for the benefit of the Nigerians and transportation and distribution infrastructure, and transparency and accountability in the administration of petroleum resources in Nigeria. To foster sustainable prosperity within the host communities, provide direct social and economic benefits and enhance harmonious co-existence between licenses or lessees and the host communities. It also establishes a progressive fiscal framework that encourages investment in the Nigerian petroleum industry, provides clarity, enhances revenues for the government while ensuring a fair return for investors.[2]

Where properly and vigorously implemented, the PIA, 2021 can represent the gold standard of natural resource management, with clear and separate roles for the subsectors of the industry, the existence of a commercially-oriented and profit driven national petroleum company; the codification of transparency, good governance, and accountability in the administration of the petroleum resources of Nigeria; the economic and social development of host communities; environmental remediation; and a business environment conducive for oil and gas operations to thrive in Nigeria.[3] However, it is the contention of this paper that in the light of these lofty objectives, the legislation is not without its challenges, ranging from ambiguous and imprecise language, capacity building and tension over revenue sharing.

3.0 Legislative interventions in Nigeria

It has been said that considering the dilapidated state of the Nigerian environment arising from the gas flaring activities of Multinational Oil Companies, it is apt for the Nigerian government to adopt some legal mechanisms to prevent the despoliation of the Nigerian environment due to continuous oil exploration and production operations.[4] Of a truth, there have been plethora of legislations in Nigeria enacted in order to undertake the prohibition of gas flaring and environmental degradation. These include but are not limited to the following-

(i) Specifically, the provisions of the Constitution of the Federal Republic of Nigeria, 1999 as amended guarantees the right to life under *section 33* and right to dignity of human persons under *section 34* respectively. Importantly and unarguably, these rights can only be sustained through a clean and healthy environment.

(ii) However, there is the Associated Gas Re-Injection Act (Amendment) 2004 that allows gas to be flared with the consent and authority of the Federal Ministry of Petroleum. This is glaringly in contradiction to the provisions of the national Constitution. On 7 January, 1984, the Associated Gas Re-Injection Act was enacted to prohibit gas flaring. The gas flaring ultimatum date was later changed to December 2003, and it was subsequently moved to 2006 and again moved from January 2008 to December 2008.

(iii) *Section 27(2)* of the National Environmental Standard Regulation Enforcement Agency (Establishment) Act, 2007 prohibits the release of deleterious substances into the air, land and water in Nigeria.

(iv) The Harmful Waste (Special Criminal Provisions) Act, 1988 prohibits the acquisition, trade, deposit, and storage of toxic wastes.[5]

[2]OS Ismail and GE Umukoro, "Global Impact of Gas Flaring" (2012) (4) *Energy and Power Engineering;* 290-302.

[3]B. N. Gas Flaring, Assaulting Communities, Jeopardizing the World (Environmental Right Action, the Federal Ministry of Environment, 10-11 December, 2008):3.

[4]A Olu, "Another Deadline goes up in Flames" (The Economists Print Edition, 2008) available at http;//www.economist.com/world/mideast-africa/displaystory.cfm?storyid=109798907 accessed 28/2/2025.

[5]*Ibid.*

(v) Gas Flaring, Venting and Methane Emissions (Prevention of Waste and Pollution) Regulations, 2023. The objectives of these Regulations are to- (a) reduce environmental and social impact associated with gas flaring and venting of natural gas and fugitive methane emissions into the atmosphere; (b) preserve and protect the environment; (c) prevent waste of natural resources; (d) enhance energy transition in Nigeria; (e) create social and economic benefits from gas flaring and venting; and (f) set out the procedure for the Nigerian Upstream Petroleum Regulatory Commission to exercise its rights to take gas at flare point in accordance with the Act and all other applicable laws.

4.0 Change of strategy- recourse to doctrine of credits and rewards

Despite the welter of legislations on gas flaring and environmental rights as itemised above, Nigeria has not been able to have systematic gas flaring and environmental regimes. The failure of the numerous attempts by the Nigerian government during different administrations to prohibit gas flaring in its totality is a clear testimony to the fact that the lasting remedy to the change is not simply in the outright prohibition of flaring and the imposition mandatory fines for non-compliance. Change of strategy is strongly advocated. Hence, it is advocated that government should key into offering requisite commercial incentives such as credits and rewards needed to motivate and as well as facilitate gas utilization and gradually discourage gas flaring. The Clean Development Mechanism of the Kyoto Protocol to the United Nations Framework Convention on Climate Change is also one of such rewards. Any realistic attempt to prevent gas flaring must involve positive steps to incentivize gas utilization and development, through the development of infrastructure to increase downstream demand for gas and the efficient implementation of schemes such as one which will bring about rewards for gas utilization. In the absence of special legislations and policies for emission reduction projects in Nigeria and with grossly underdeveloped midstream and downstream petroleum industry, realistic flare out deadlines cannot be determined.[6]

Furthermore, carbon credit may be referred to as any activity that compensates for the emission of carbon dioxide or other greenhouse gases by providing for an emission reduction mechanism whereby individuals and corporations pay for the reductions elsewhere in order to offset their own emissions a credit for negating or diminishing the impact of emitting a ton of carbon dioxide by paying someone else to absorb or avoid the release of a ton of carbon dioxide elsewhere a monetary investment in a project or activity elsewhere that abates greenhouse gas emissions or sequestrates carbon from the atmosphere that is used to compensate for green house gas emissions from your own activities. Presently, it appears that there exists no Nigerian legislation dealing directly with the subject of Certified Emission Reduction trading. This development however led Nigeria to accede to the Protocol in December 2004.[7]

In addition, regulatory monitoring will ensure that the agencies saddled with the responsibility of regulating gas flaring and environmental degradation in Nigeria are checked to make sure that they comply with the extant laws setting them up. Nigeria is committed to a National Environmental Policy that will ensure sustainable development based on proper management of the environment. It is to be noted that without consistent monitoring, there is a strong likelihood that these legislations for gas flare management may not succeed in the oil and gas sector.[8]

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[6]Decree No. 18 of 1971

[7]*Ibid.*

[8]Shell, Meeting in Energy Demand- The Shell Sustainability Report 2006; 14 (Statement made by Shell Boss in Nigeria, Basil Omiyi, 29 May 2005): 50-61.

5.0 Penalties

The Petroleum Industry Act, 2021 prohibits gas flaring without approval from the Minister with penalty not less than the worth of the gas flared. To further combat gas flaring, the Federal Government of Nigeria also endorsed the Paris Climate Change Agreement and signed the Global Gas Flaring Reduction Partnership 2002 to end global flare in 2030. This action prompted the introduction of Nigerian Gas flare commercialization programme in 2016 to promote technical and commercial sustainability of gas utilization in Nigeria through third party investors to combat gas flaring and to enhance market by commercial structure which will enable flared gas to be merchantable in Nigeria and in other developed gas markets.[9]

6.0 Challenges

The following are some of the challenges that confront the gas flaring ecosystem Nigeria.

(a) Non-manifestation of political will

The Federal Government and its regulatory agencies have not indicated their commitment towards the implementation of the existing legal frameworks against gas flaring. The inability to effectively ensure an enforcement process to enable the workability of laws is a recurrent challenge in Nigeria. This is linked to insufficient oversight and clear unwillingness on the part of government to efficiently and effectively enforce its laws and regulations. As an addendum to effectively enforce gas flaring laws, manpower and technical expertise is needed. This is apt because most oil and gas agencies such as Nigerian Upstream Petroleum Regulatory Commission are dependent on the meagre allocation given to them by government.[11]

(b) Corruption

Corruption in the enforcement of gas flaring laws in Nigeria occurs taking various forms. Given that the menace of corruption has eaten deep into the fabric of the nation, enforcement of gas flaring and environmental law is sometimes based mostly on rewards to be obtained by agencies/agents for turning a blind eye to some major environmental infractions. Corruption must be tackled in the interest of the inhabitants of the exploited areas. The laws must be enforced against any person/or authorities, no matter the position and/ status of such person/or authorities in the society and/or position at the helm of affairs.

(c) Lack of technological capacity

The potential for rapid growth envisaged in the Nigerian gas sector, like in most advanced countries, has been continuously hampered by the embryonic state of industrialization and low-capacity technologies deployed in the utilization of natural gas existing in industries[12]. Gas technologies to facilitate re-injection, gathering, transmission and distribution in the domestic, regional and international networks are capital intensive which hinders weak participation of private investors. Natural gas requires expensive network of integrated pipelines and flow/compressors stations to gather and collect scattered gas from marginal oil production fields within Nigeria, and then distribute to end consumers/users. Significant investment is required for natural gas infrastructure to sustain increase in economic growth.

7. 0 Comparative analysis of Gas Flaring in Canada and Nigeria

This section of the paper undertakes a comparative review of the way and manner of gas flaring is undertaken in Norway and the level of success recorded in that country in order to serve as a useful lesson to Nigeria. It will also demonstrate how their gas regulations, permission to flare, restriction as

[9] C Nwachukwu, "Gas flaring: Oil Majors Seek Extension of Deadline to 2010", *The Punch* (Lagos, 14 November, 2007) 10.

[10] *Sections 98 to 108* of the Petroleum Industry Act 2021.

[11] GAS, *Global Flaring Reduction Initiative: Report No. 3: Regulation of Associated Gas Flaring and Venting: A Global Overview and Lessons* (World Bank, March 2004): 60-6.

[12] SC Dike and S Odimabo-Nsijilem", Evaluating the Gas Flaring Commercial Polices in Nigeria: An agenda for Mitigating Gas Flaring" (2020) (96) *Journal of Law, Policy and Globalization*; 130-140.

well as penalties for flaring have in no small measure helped in their economic advancement.[13] In Canada (Alberta) the Commission of Waste and Wasteful operations such as gas flaring is prohibited. The Norwegian Environmental Policy historically has been based on direct regulation of environmentally harmful emissions and discharges. The Province of Alberta in Canada set up Alberta Energy Utility Board which is an independent quasi-judicial agency that regulates energy resources and utilities, especially with the mandate to perform its duties. In Norway, there is an Internal Control System that ensures compliance and it also had the obligation to check sensor calibration regularly every six months.

The independence and participatory nature of monitoring practiced by Canada (Alberta) and has been effective in addressing the menace of gas flaring.[14] In Canada, major funding sources are from government allocation, proceeds from licenses and other approval fees. The same well-structured funding pattern is applicable to Norway. In addition to these measures, a CO2 tax and greenhouse trading scheme has added further direct costs that strongly advise against developers from engaging in flaring. Suffice it to add that in Norway, it comes at a rate of $120 per 1,000 cubic meters. This has been a driving force for the development of new technologies and operational procedures, for instance, the "closed flare system" that minimizes non-routine flaring.[15] On the contrary, in Nigeria the applications for the issuance of gas flaring permits are considered at the discretion of the Minister of Petroleum and/or on payment of certain fines for flaring. It is opined that Nigeria will make significant progress in both control of gas flaring and economic losses if it emulates the gas flaring policy in Canada.

8.0 Conclusion and recommendations

Gas holds a lot of potentials for national economy and prosperity if properly harnessed. Sadly, gas is still burned off during oil production with attendant environmental hazards and economic losses. To stem this ugly tide, the paper recommends that the Government should subject all applications for gas flaring permits to more rigorous processes to be scrutinized by scientific and technological experts and any other developments associated with gas utilization policies. Global best practices should be adopted. It has been recommended and this paper agrees that upon granting of permits to access flare gas, the permit holders shall have exclusive rights to take flare gas from the relevant flare sites.[16]

[13]M. Kassim-Momodu, "Gas reinjection and the Nigerian Oil Industry", (1987) (6) (7) *Journal of Private and Property Law:* 69-90.

[14]See generally Petroleum Industry Act, 2021.

[15]E Aniefiok, "Petroleum Industry in Nigeria; Environmental Issues, National Environmental Legislation and Implementation of International Environmental Law" [2016] (4) *Journal of Environmental Protection*: 21.

[16]PE Agbonife, "Opportunities, Challenges and Obstacles to Economic Growth and Sustainable Development through Natural Gas in Nigeria", (2015) (17) (5) C*larion University of Pennsylvania Journal of Sustainable Development in Africa*:110.