



Institutional And Legal Control Of Gas Flaring In The Niger Delta Region Of Nigeria

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Abstract: *The emission of “greenhouse gases” into the air has adverse effects on the environment. This study examines the effects of gas flaring on the Niger Delta Region of Nigeria. It analyses the institutional and legal framework that prevents gas flaring in the region. The paper appraises the effectiveness of the existing laws on gas flaring with a view to suggest viable means of reviewing the laws.*

The study found that continuous flaring of gas in the region over the last forty years has adversely bring about health challenges, climate change and loss of income in the region in particular and Nigeria as a whole. The study also found that the laws are too many and ineffective and that the regulatory institutions lack the necessary authority for their enforcement. The paper concludes that basic human rights can only be enjoyed in a pollution free environment. The paper therefore recommends amongst other that applicable laws should be amended, harmonized and domesticated where necessary.

The study relies on primary and secondary sources of information like Constitution, Constitutional documents, Statutes, Judicial precedents, International Conventions and Treaties, Books, Journals and Internet materials. The information obtained through these sources was subjected to content analysis.

Keywords: *Gas Flaring, Environmental challenges, Applicable laws, Regulatory, Institutions.*

I. INTRODUCTION

The Niger Delta Region of Nigeria is one of the Ten (10) most important wetland and coastal marine ecosystems in the world. It is located at the southern part of Nigeria,

endowed with network of rivers and massive oil deposits which is being extracted as a main income source for the Nigerian

government.¹ It comprises of nine states namely Abia, Akwa-Ibom, Bayelsa, Cross-River, Delta, Edo, Imo, Rivers and Ondo. Gas flaring refers to a situation whereby the gases from a petroleum product are allowed to be released into the atmosphere.² The gas that is flared is referred to as associated gas.³ Gas flaring has damaged the soil, water and air quality of the region. 168 cubic meters of gas is flared in the region yearly, this is equivalent to 25% of gas consumption in the United States of America (USA) and 30% of EU gas consumption.⁴ This emits 400 million tons of carbon monoxide (Co) into the atmosphere annually, making Nigeria responsible for 13% of the gas flared in the world.⁵ This quantity is enough to meet Nigeria's energy needs and leave a healthy balance for export.⁶

It is on this premise that the paper examines the institutional and legal framework that prevents gas flaring. It further examines briefly the history of gas flaring in Nigeria. The paper appraises the effectiveness of the existing laws on gas flaring with a view to suggest viable means of reviewing the laws. This study concludes that there exists institutional and legal framework to curtail gas flaring and pollution generally but with a lot of limitations that need to be addressed.

II. LEGAL MATERIALS AND METHODS

The study relies on primary and secondary sources of information like Constitution, Constitutional documents,

Statutes, Judicial precedents, International Conventions and Treaties, Books, Journals and Internet materials. The information obtained through these sources was subjected to content analysis.

Primary legal materials used in this papers are those relevant to gas flaring and environmental law which include both national and international legal framework, National legal framework includes: Petroleum Act, The Petroleum (Drilling and Production) Regulations, Associated Gas Re-injection Act (AGRA) of 1979, Association Gas Re-injection (Continued Flaring of Gas) Regulation, Nigeria Liquefied Natural Gas (Fiscal Incentive Guarantee and Assurances) Decree (FIGAD), Nigeria Liquefied Natural Gas (Fiscal Incentive Guarantee and Assurances) Decree (FIGAD), The 1999 Constitution, West African Gas Pipeline Project (Ratification and Enforcement) Act, Petroleum Profit Tax Act, Environmental Impact Assessment (EIA) Act, Petroleum Industry Bill, 2012.

Whereas international legal framework includes: The 1972 Stockholm Conference on Human Environment, The Vienna Convention on the Protection of the Ozone Layer, The United Nations Conference on Environment and Development (UNCED), World Summit on Sustainable Development or Rio + 10 (Johannesburg Summit), United Nations Conference on Sustainable Development (UNCSD) and African Charter on Human and Peoples' Rights

¹ Dike, K. O., *Trade and Politics in the Niger Delta* (Oxford: Clarendon Press, 1956), 1

² Hassan, T. E., *Nigeria's Niger Delta Crisis: Root Causes of Peacelessness*, EPU Research Papers, EPU, Australia, 2007), 1-41; See also, Kaniye, S. E., 'The Right to a Satisfactory Environment and the African Commission', (2003) 3 *African Human Rights Law Journal*, 149.

³ Ike, O., and Oronto, D., *Where the Vultures Feast: Shell, Human Rights and Oil in the Niger Delta*, (San Francisco: Sierra Club Books, 2001), 209

⁴ Bassey, N., Gas Flaring: "Assaulting Communities, Jeopardizing the World"- Environmental Rights Action in Conjunction with the Federal Ministry of Environment, 10-11 December, 2008, P3.

⁵ Ibid, 3.

⁶ Ibid, 3.

III. RESULTS AND DISCUSSIONS

Gas Flaring in the Niger Delta

Shell British Petroleum (Shell BP) started exploring oil in the Niger Delta in the 1930s.⁷ The first export was made in 1958.⁸ In this same year, the Secretary of State for the colonies referred to gas flaring⁹ as wastage of energy and resources for which those giving advice to the Nigerians (i.e. the British) could be reproached.¹⁰ In Nigeria, over 50% of the gas associated with crude oil extracted is flared. However, this separated gas could be made more useful as liquefied natural gas, re-injected into the earth, vented or flared.¹¹

The first major move to halt gas flaring in Nigeria was made in 1969 via the Petroleum Decree and the Land Use Act of 1978. These Laws vested oil and land resources, respectively, in the State.¹² Subsequently, Nigeria joined the Organization of Petroleum Exporting Countries (OPEC) in 1971, and in furtherance of OPEC's resolution urging member states to acquire controlling interest in concessions held by foreign companies,

the Nigeria military government established the Nigerian National Oil Corporation (NNOC)¹³ and ordered the set-up of infrastructure to utilize associated gases within 5 years of their commencement of operations. The order was neglected by oil companies, until 1979 when the Associated Gas Re-injection Act¹⁴ was made to finally outlaw routine gas flaring in Nigeria. The Act required oil corporations to produce detailed plans for gas utilization and guarantee zero flares by January 1, 1984, except with the express permission of the minister.¹⁵ Upon return of civilian administration in 1999, oil companies were required to end flaring of gases by 2003, later shifted to 2004, and December 2008 subsequently.¹⁶

Shell in its sustainability Report 2006 asserted that they would end routine gas flaring everywhere in the world in 2008 except in the Niger Delta,¹⁷ because the locations are not easily accessible, and ending of flares may lead to the shutdown of production in some areas. Again, in 2007, Shell in its sustainability report raised the violent nature of the region as a further excuse for not ending gas flaring.¹⁸ Exxon

⁷ Quoted in ERA/CJP, *Gas Flaring in Nigeria: A Human Rights, Environmental and Economic Monstrosity*, (Amsterdam, 2005) 52. This book can be found at both www.climatelaw.org and at www.eration.org

⁸ Ibid, 52.

⁹ These comments were contained in a confidential "reasonably comprehensive survey of the history, the present position and future prospects of the oil producing industry in Nigeria"- Provided by Mr. J. S. Sadler, the British Trade Commissioner in Lagos to the Economic Relations Department of the Foreign office in London on 9th August, 1963: 'Development of oil Resources in West Africa 1963,' File 371/167170, UK National Archives.

¹⁰ Ibid.

¹¹ Bassey, N., Gas Flaring: 'Assaulting Communities, Jeopardizing the World'- Environmental Rights Action in Conjunction with the Federal Ministry of Environment at Reiz Hotel, Abuja, 10-11 December, 2008.

¹² Willink Commission, 1958: 95 Para 30;

¹³ Decree No. 18 of 1971. But the NNOC later became the Nigerian National Petroleum Corporation in 1977, as a result of a merger between the NNOC and the Ministry of Petroleum Resources

¹⁴ Cap 26 Laws of Federation of Nigeria, 1990.

¹⁵ Cite the section

¹⁶ The Guardian, Editorial: Gas Flaring, end of a moving target? Tuesday January 15, 2008. Again, among the shifts of deadlines that happened was in 2007 when it was a month to the end of a subsisting deadline, Late President Umaru Musa Yar'Adua at an International Gas Stakeholders Forum held in Abuja simply moved the deadline from January 2008 to December 2008.

¹⁷ Shell, Meeting in Energy Demand- The Shell Sustainability Report 2006, P14. (Statement made by Shell boss in Nigeria, Basil Omiyi, May 29, 2005).

¹⁸ Nwachukwu, C., Gas Flaring: Oil Majors Seek extension of Deadline to 2010, The Punch, Lagos, Wednesday 14, November, 2007.

Mobil declared 2010 as appropriate for ending gas flaring.¹⁹ While Chevron also opted for year 2010 as the appropriate time for ending gas flaring.²⁰ Efforts to penalize oil companies for flaring gasses beyond the stipulated date has been futile, as the companies opt for payment of fines rather than stopping flaring of gases.

For instance, in the Associated Gas Re-injection Act of 1979, the sum of 0.50 Naira is being charged per million cubic feet (mcf) for flaring gases, but in 1998 this penalty was increased to 10 Naira per mcf.²¹ In 2009, the penalty was raised to \$ 3.50²² for every 1,000 cubic feet of gas flared. However, the former Senate President, David Mark noted that the proposed fine of \$ 3.50 per 1,000 cubic feet of gas flared is meager and would not deter the companies.²³ Considering the continuous shift of the date for ending flaring of associated gases, it is difficult to state when the menace will end.

Effects of Gas Flaring

Gas flaring in the Niger Delta region is a critical environmental problem with hazardous impacts not only on the people but also extends to its economy, ecology and the environment at large. Gas flaring has been going on for over 35 years.²⁴ It affects plant life, pollutes the surface water and burns and

changes to other unsafe gases. However, where gas flaring has stopped, people were able to see a difference in their vegetation; farm yields are better than before.²⁵

The communities affected by gas flaring have had their plant and wildlife destroyed and suffered from health challenges including respiratory diseases, cancers, blood disorders and skin diseases as a result of incessant gas flare.²⁶ To this end, life expectancy in the Niger Delta is markedly lower than what obtains elsewhere in Nigeria.²⁷ Although there is no direct evidence of impacts of gas flares on pregnant women, they are more likely to be vulnerable to airborne contaminants during this period and exposures to oil-related contamination have been linked to maternal outcomes such as spontaneous abortion.²⁸

Gas flaring has also 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 inhabitable.²⁹ 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.³⁰

¹⁹ Ibid.

²⁰ Eboh Camillus, *Oil Firms resist Nigerian Fines for Gas Flaring*, Tuesday, December 4, 2007.

²¹ GAS, *Global Gas Flaring Reduction Initiative: Report No. 3: Regulation of Associated Gas Flaring and Venting – A Global Overview and Lessons* (World Bank, March 2004), 60-64.

²² Its equivalent in Naira as at now (2015) is ₦700.

²³ Daniel, Alifa, *Gas Flare Fine Meager says Mark*, *The Guardian*, Thursday, November 25, 2008.

²⁴ Kassim-Momodu, M., 'Gas Re-injection and the Nigerian Oil Industry' (1986 & 1987) 6 & 7 *Journal of Private and Property Law*, 69-90

²⁵ Robinson, D., *Ogoni: The Struggle Continues* (Geneva: World Council of Churches, 1996) 28.

²⁶ Ikein, A. A., *The Impact of Oil on a Developing Country: The Case of Nigeria*. (New York: Praeger, 1990) 269. See also, Ikein, Citing Rowell, *Shell Shocked: The Environmental and Social Costs of Living with Shell in Nigeria*. (1990), 269.

²⁷ Ibid

²⁸ See Amnesty International; Nigeria: Petroleum, Pollution and Poverty in the Niger Delta; United Kingdom, Amnesty International Publication, June, 2009, Pg 36.

²⁹ Uyigwe, Etiosa and Agho, Matthew, *Coping with Climate Change and Environmental Degradation in the Niger Delta of Southern Nigeria*, (CREDC, 2007).

³⁰ Bassey, Nnimmo; "Gas Flaring: Assaulting Communities, Jeopardizing the World", Paper

The above position had been buttressed by Holden C.J and he rightly observed that, ‘the more gas that is burnt, the more heat is generated.’³¹ The impacts of climate change is more pronounced in low-lying coastal areas such as the Niger Delta, which are more prone to freak weather events, flooding, coastal erosion and rise in sea level. Temperature increase and the resultant climate change favours proliferation of pests and spread of diseases which adversely affects agricultural productivity.³²

Furthermore, Environmental noise pollution had been recognized in recent years as a serious threat to the quality of life enjoyed by the people in the industrialized nations. For example, the Utorogun Gas Plant in the Niger Delta area creates much noise and vibrations on the land and houses at about 6 kilometers radius from it.³³ However, visitors to the Niger Delta have always complained of how the people in the region talk at high pitch tone. This may be connected with long exposure to intense noise and vibration from gas flare stacks. Indeed, scientists have concluded that when one is exposed to intense noise level, ear cells may be damaged temporarily or permanently. It may also lead to speech impairment.³⁴

Lastly, loss of income has been identified as another challenge faced by the people of affected areas. It is not a gain

saying to say that large quantity of gas is flared in Nigeria yearly. However, if these gases have been annexed, it would add up to the revenue that will accrue to the government and inability to discharge economic and social responsibility like prompt payment of salaries and provision of basic amenities would have been avoided.

Legal Framework

As early as the 60s, Government has started putting laws in place to stop flaring of gases in the Niger Delta; these include Petroleum Act of 1969 and the Gas Re-injection Act of 1979.³⁵ Prior to this time, there were some laws that regulate oil activities though most of it was enacted in direct response to problems associated with processing of oil.³⁶ Also, the increased international concern about the need for environmental protection has led to development of various treaties and declaration to which States are signatories.

National Laws

- (i) *The Petroleum Act* was the first law that addressed the general potential problem of oil production and its possible hazards;³⁷ it encourages oil companies to submit oil-development schemes that specified potential

Presented at National Environmental Consultation, Reiz Hotel, Abuja, 2008.

³¹ See *Chinda V Shell BP* (1974) 2 RSLR 1, at 13.

³² N. Bassey, above n. 30

³³ Ikelegbe, A.O. “Pollution in Nigeria: Causes, Effects and Control: The Case of Delta State.” Paper Presented at the 14th Annual Congress of the Nigeria Geographical Association, Minna, 8 April, 1993.

³⁴ Aghalino, S.O. ‘Gas Flaring, Environmental Pollution and Abatement Measures in Nigeria 1969-2001’, (2009) 11 4, *Journal of Sustainable Development in Africa* 229-230.

³⁵ Petroleum Decree of 1969 (Petroleum Act, Cap P10 LFN, 1990) and Association Gas Re-injection Act, Decree No 99 of 1979 (Cap. A. 25 LFN 2004).

³⁶ For example, Mineral Oils Ordinance of 1914, Mineral Act of 1945, Exclusive Economic Zone Decree now Act of 1978 (No 28 of 1978, Cap. 110, LFN 1990), Petroleum Drilling and Production Regulations of 1969 – Decree No. 51 of 1969, Petroleum Refining Regulations of 1974 and Oil Pipeline Act 1958.

³⁷ Omeje, K., *High Stakes and Stakeholders-Oil Conflict and Security in Nigeria*, 25 (2006).

solutions to environmental hazards.³⁸ 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.³⁹

(ii) *The Petroleum (Drilling and Production) Regulations*⁴⁰ permitted the flaring of gas for five years before submitting the feasibility study.⁴¹ However, it failed to stipulate any penalty for breach, hence it was considered as being optional i.e. not mandatory and no penalty was provided for defaulters.

(iii) *Associated Gas Re-injection Act (AGRA)* 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.⁴² It set 1st of January 1984 as the deadline for bringing an end to gas flaring, however, an oil company could be exempted from this deadline if they were issued a certificate from the

Petroleum Minister.⁴³ The penalty was forfeiture of concession and the Minister's discretion to order the withholding of all or part of any entitlement of an offender.⁴⁴ The Act also empowers the Minister to issue a certificate specifying such terms and conditions for the continued flaring of gas in a particular field, if the Minister is satisfied that gas re-injection is not feasible.⁴⁵ Gas re-injection requires huge fund and existence of certain infrastructure facilities, hence the 1984⁴⁶ stipulated deadline was unmet, and this led to the promulgation of the *Association Gas Re-injection (Continued Flaring of Gas) Regulation*.⁴⁷

(iv) *Association Gas Re-injection (Continued Flaring of Gas) Regulation*.⁴⁸ This Regulation further empowered the Minister to issue certificate for continuation of gas flaring, it introduced meager penalty which was increased consecutively in 1990, 1998 and 2008.⁴⁹ Oil companies found payment of penalty more affordable than ending gas flaring. The Act was later amended in 1991/1992, through the introduction of the

³⁸ Ukala, E., 'Gas Flaring In Nigeria's Niger Delta: Failed Promises and Reviving Community Voices', *Journal of Energy, Climate and Environment*.

³⁹ S.7(3) of Petroleum Act says that any person who fails to comply with a directive shall be guilty of an offence and on conviction shall be liable to a fine not exceeding ₦ 2,000.00 (Two thousand Naira) only. Could this penalty be regarded as punishment for not compliance to directives?

⁴⁰ The Regulations are made pursuant to S. 9 of the Petroleum Act.

⁴¹ Regulation 42

⁴² Ibid Section 1 (a) & (b).

⁴³ Ibid Section 3 (1).

⁴⁴ Ibid Section 4 (1) & (2).

⁴⁵ Ibid Section 3 (2).

⁴⁶ Akaakar, F. O., 'The Law and Natural Gas Development in Nigeria,' in *Natural Gas: The Energy for the Next Millennium*. Proceeding of the 29th Annual Conference of the Nigeria Society of Chemical Engineers, 201-210 (November, 1999).

⁴⁷ S. 3(2) of Association Gas Re-injection Act.

⁴⁸ S. 1. 43 of 1984 gave more power to the Minister to issue certificate to oil companies to continue flaring gas under S. 3(2) of Association Gas Re-injection Act.

⁴⁹ Penalty of two kobo per 1000 standard cubic feet (scf) of gas flared at any place authority to flare was not granted was introduced. This amount was increased to fifty kobo per 1000 scf of gas in 1990, and the amount was further increased in 1998 to Ten Naira. The penalty was further increased in 2008 to \$3.50 per 1000 scf of gas flared.

Association Gas Framework Agreement (AGFA), which served as a broad based fiscal incentive for natural gas utilization as regards the processing, production, transmission, and supply to Nigerian Liquefied Natural Gas (NLNG) and other facilities.⁵⁰ Also, The National Assembly in 2010⁵¹ amended the Associated Gas Re-injection Act by providing that no company engaged in the production of oil or gas shall after 31st December, 2012 flare gas except the minimum allowed by the Minister.⁵²

- (v) *Nigeria Liquefied Natural Gas (Fiscal Incentive Guarantee and Assurances) Decree (FIGAD)*⁵³ 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.⁵⁴
- (vi) *The 1999 Constitution* which is the supreme law in Nigeria provides for environmental protection⁵⁵ in a broad manner, and it falls under Chapter 2 of the Constitution, which is non-justiciable. To this end, it will not bring

about any serious environmental change, especially as it relates to regulating gas flaring.

- (vii) *West African Gas Pipeline Project (Ratification and Enforcement) Act*⁵⁶ 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 Authority (WAGP Authority), an international institution having legal personality and financial autonomy with powers to implement the project on behalf of member states. This treaty was domesticated into national law.
- (viii) *Petroleum Profit Tax Act*⁵⁷ also provides some tax incentives to companies engaged in gas utilization projects.⁵⁸ Gas utilization opportunities include Independent Power Projects (IPPs), Liquefied Natural Gas (LNG), Natural Gas Liquids (NGL), Gas-to-Liquids (GTL), West African Gas Pipeline (WAGP) and Domestic Gas Utilisation.⁵⁹
- (ix) *Environmental Impact Assessment (EIA) Act*⁶⁰ requires the developers of major development projects to subject their projects to the provisions of the

⁵⁰ Omeke C., "A Critique on the Legal Regime Governing Gas Flaring in Nigeria" (Paper presented at the University of Nigeria, Nsuka, 2011).

⁵¹ Associated Gas Re-injection Amendment Act of 2010

⁵² Ibid Section 3(1). The amendment set December 31, 2012 as the deadline for abatement of gas flaring in its S. 3(2) but went ahead to provide a new section that permitted companies to continue the flaring of gas on the payment of a temporary gas flaring penalty of ₦ 5.00 per 1000scf of gas flared in its S. 3(2)(b). However, this amendment is yet to be signed into law.

⁵³ Decree No. 30 of 1990.

⁵⁴ Ibid S. 2 & 7.

⁵⁵ Section 20 of 1999 Constitution says; "The state shall protect and improve the environment and safeguard the water, air, land, forest and wildlife of Nigeria."

⁵⁶ LFN 2004

⁵⁷ Cap 354 LFN 1990; Cap. P14 LFN 2010

⁵⁸ Ibid Section 10a and 11.

⁵⁹ Also, there is need for the publication of the long awaited National Gas Policy.

⁶⁰ Act No. 86 of 1992.

EIA Act by conducting an environmental impact assessment before commencing work. It therefore recognizes the need for proper legal framework in order to curtail gas flaring. However, most projects are carried-out without EIA.

- (x) *Petroleum Industry Bill, 2012*⁶¹ has provisions that are instructive in combating the menace of gas flaring if implemented. This Bill seeks to consolidate all the existing oil and gas laws in the country. The bill provides for prudent management and allocation of petroleum resources and their derivatives in accordance with the principles of good governance, transparency and the sustainable development of Nigeria.⁶² It prohibits gas flaring after a specified date to be fixed by the minister through regulations to be made pursuant to the Act.⁶³ Where a licensee or lessee flares gas without the permission of the Minister, payment of a fine, of an amount not be less than the value of the gas flared is prescribed.⁶⁴ The bill prohibits the issuances of a license or lease for the production of oil and gas to any applicant without an acceptable comprehensive program for the utilization or reinjection of natural gas.⁶⁵ It mandates all operators to install metering equipment to measure the volume of gas flared,⁶⁶ within three months of the Act coming into force, criminalises flaring without a permit⁶⁷ and mandates any person, group of

persons or community to lodge a documented report of gas flaring or venting with the nearest office of the inspectorate.⁶⁸ An officer of the Inspectorate is required to inspect the facility within forty eight hours of receiving the report, and within seven days submit a verification report to the inspectorate, if convinced, fine may be imposed or a shutdown order may be made.⁶⁹ The PIB in addition also provides for the establishment of two regulatory agencies, three funds, three companies and one support bureau namely; Upstream Petroleum Inspectorate, Downstream Petroleum Regulatory Agency, Petroleum Technology Development Fund, Petroleum Equalisation Fund, Petroleum Host Communities Fund, National Oil Company, National Gas Company, National Petroleum Assets Management Company and Petroleum Technical Bureau. This Bill is yet to be passed into law.

International Law

In addition to Nigerian laws, there are international laws some of which are domesticated in Nigeria. These include

- (i) *The 1972 Stockholm Conference on Human Environment* which ignited government's consciousness on the need for a holistic rather than sectorial approach to environmental protection. It was regarded as a success and a soft law instrument by international standard. The conference came up with

⁶¹ The Bill was presented to both Chambers of the National Assembly by the Nigerian President in July 19, 2012.

⁶² Petroleum Industry Bill 2012, S. 8-9.

⁶³ Ibid. S. 275.

⁶⁴ Ibid. S. 277(3).

⁶⁵ Ibid. S. 278.

⁶⁶ Ibid. S. 279.

⁶⁷ Ibid. S. 281.

⁶⁸ Ibid. S.280.

⁶⁹ Ibid. S. 280(2)-(6).

26 principles, calling on States and international organisations to play a coordinated, efficient and dynamic role in the protection of the environment. In pursuant to the proposal at the conference, the United Nations Environment Programme (UNEP) was commenced in 1973 to coordinate UN environmental activities, and assist developing countries in implementing environmentally sound policies and practices. Also, UNEP and the World Meteorological Organisation established the Intergovernmental Panel on Climate Change (IPCC) in 1988. As laudable as these principles are, it is yet to be domesticated in Nigeria.

- (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 chlouroflouorocarbons (CFCs). In furtherance to the Convention, the Montreal Protocol on substance that deplete the ozone layer was made, it came into force on the 1st of January, 1989.
- (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. It influenced subsequent UN Conferences and led to the agreement on Climate Change Convention, the Kyoto Protocol, and the Convention on Biological Diversity (CBD). The Summit also endorsed the Rio Declaration on the Environment and Development which contained 27 principles to help guide international action and Agenda 21.⁷⁰

- (iv) *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.⁷¹ 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, monetisation of wasted resources, improvement of energy efficiency and access to energy.⁷² The initiative seeks to commercialize and regulate associated gas, implement

⁷⁰ United Nations, Johannesburg Summit 2002 Basic Information 2. Retrieved from < www.un.org/jsummit/htm/basicinfo/unced.accessed on February 26, 2015.

⁷¹ The UN Secretary-General Report of the Secretary General on Partnership, Pg 3, delivered to the Economic and Social Council, UN Doc. E/CN.17/2004/16. (February 10, 2004).

⁷² It was the World Bank Group, in collaboration with the Government of Norway that initiated this global public-private partnership to facilitate gas

flaring reduction with a view to reducing air pollution, save energy and money, and reduce associated poverty. The membership consists of government representatives from oil producing countries, state owned companies and major international oil companies who are committed to reducing wasteful and undesirable practices of gas flaring and venting through policy change, stakeholders facilitation and project implementation.

global flaring and venting standard to obtain carbon credits for gas flaring, flaring projects and harness the support of relevant stakeholders in developing a feasible approach to flare reduction through the Nigerian Flare Reduction Committee (NFRRC).⁷³

- (v) *United Nations Conference on Sustainable Development (UNCSD)* assented to the adoption by world policy makers of a series of Sustainable Development Goals (SDGs), to complement the United Nations' (UN) Millennium Development Goals (MDGs) and aimed at providing the foundation for a global green economy.
- (vi) *African Charter on Human and Peoples' Rights*⁷⁴ 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*.⁷⁵ The Charter contains ample provisions on civil and political rights, economic, social and cultural rights, and right to a general satisfactory environment among others.⁷⁶ On how the provisions of this Charter could help to protect the environment, the case of *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Federal Republic of Nigeria*⁷⁷ is instructive.

Institutional Framework

In Nigeria, there are many institutions that regulate, monitor and enforce gas flaring activities in the oil and gas industry. These institutions state the nature and extent of their powers and functions, though with limitations, which invariably have hindered the smooth and efficient running of these institutions.

- (i) *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.

In 1977, the MPR and the Nigerian National Oil Corporation (NNOC) were merged to form the Nigerian National Petroleum Corporation (NNPC).⁷⁸ The Decree also created the Petroleum Inspectorate as an integral part of the Corporation with a semi-autonomous status. Also,

the protection of the right to a healthful environment was addressed by the African Commission on Human Rights. This case was a landmark decision because it represents the turning point where the provisions of the Charter were interpreted broadly to incorporate the protection of environment.

⁷⁸ Decree No. 33 of 1977.

⁷³ Omeke C, *A Critique on the Legal Regime Governing Gas Flaring in Nigeria*.

⁷⁴ Adopted 19 January, 1981 by OAU now AU. It entered into force on 21 October, 1986.

⁷⁵ Cap 10, LFN, 1990.

⁷⁶ Articles 4, 16, 24, and 25 among others.

⁷⁷ See Comm. No. 155/96 (2001). In this case, the question as to the role of the provisions of the African Charter on Human and Peoples' Rights in

in 1988, the NNPC was commercialized and the Petroleum Inspectorate Division was removed from the NNPC and merged with MPR as the DPR, which became the inspectorate arm of the Ministry. The DPR oversees all the activities of oil companies that are granted oil licenses, ensure compliance with applicable laws, enforce safety and environmental regulations and advice government on technical matters and oil related policies. Corruption and mediocrity are amongst the limitation of these bodies.

- (ii) *Federal Environmental Protection Agency (FEPA)* ⁷⁹ was established in 1988 to protect, control and manage the Nigerian environment, and make recommendation to the Federal Government on national environmental policies and priorities. It makes directives requiring government to embark on environmental research, expand and prescribe national regulations and create guidelines for the protection of all aspects of the environment. During this time, FEPA operated as an agency under the Federal Ministry of Works and Housing.

In 1990s, steps were taken by the government to incorporate environmental issues with development planning.⁸⁰ Again, in

1999, FEPA was replaced with the Federal Ministry of Environment (FMEnv) with a view to strengthen national institutions for protecting and conserving the environment.⁸¹ FMEnv is saddled with the primary responsibility to protect and improve water, air, land, forest and wildlife of Nigeria. The Ministry was established to prepare, coordinate and implement environmental policies and programs. It is also mandated to prescribe standards for and make regulations on water quality, effluent limitations, air quality, atmospheric and ozone protection, and monitor and enforce environmental laws and regulations.⁸² The FMEnv retains the mandate to evaluate environmental impact assessment prior to the execution of any project.⁸³ In 2007, FEPA Act was repealed and replaced with the National Environmental Standard Regulation (Establishment) Agency (NESREA) Act 2007.

As laudable as this institution's power and mandate are, it has not effectively exercise these powers because dangerous activities are still permitted to proceed without environmental impact assessment.⁸⁴

- (iii) *National Environmental Standard Regulation (Establishment) Agency*

⁷⁹ Decree No.58 of 1988.

⁸⁰ One of these steps included amending the law governing the creation and mandate of FEPA and subsequently, FEPA was merged with the National Resources Conservation Council (NARESCON) and the Departments of Land and Natural Resources and of Erosion Control under the Ministry of Agriculture, Decree No. 59 of 1992.

⁸¹ Ibid

⁸² Abdulkadir, B. A., and Yusuf, Z. D., 'An Evaluation of the Institutional Frameworks on

Environmental Protection in Nigeria: Promises and Challenges', (2014) 4 1, *Journal of Private and Property Law (JPPL)*.

⁸³ Federal Ministry of Environment "About the Federal Ministry of Environment" <http://www.climatechange.gov.ng/page.accessed> on April 16, 2014.

⁸⁴ Ibada, S. I., "Environmental Protection Laws and Sustainable Development in the Niger Delta" Retrieved from <http://www.africanajournal.org/pdf/vol4no1>

(NESREA) Act 2007.⁸⁵ NESREA has the mandate to enforce all environmental laws in Nigeria including international agreement or conventions on environmental protection.⁸⁶ This is in consonance with the requirement and strategy of the National Policy on Environment, which requires the government to put in place legal institutions to protect and manage the Nigerian environment.⁸⁷

The Agency is authorized to enforce compliance with laws, guidelines, policies and standards on environmental matters,⁸⁸ and prohibits the release of hazardous substance into the environment without lawful permission and authorization.⁸⁹ The Agency is also authorized to undertake, coordinate, utilize and promote the expansion of research experiments, surveys and studies by public or private agencies, institutions and organizations concerning causes, effects, extent, prevention, reduction and elimination of pollution and such other matters related to environmental protection and natural resources conservation other than in the oil and gas sector as the agency may, from time to time,

determine.⁹⁰ Although NESREA has a wide mandate to preserve the environment, the agency's power does not cover oil and gas matter.⁹¹ Similarly, its power to enforce compliance with international conventions and protocols is subject to domestication of such convention.⁹²

(iv) *The National Oil Spill Detection and Response Agency (NOSDRA)* is also one of the institutions responsible for the protection of the environment. However, it deals mainly with oil spills and ensures that the oil industries comply with the best practices in their operations.⁹³

*Niger Delta Development Commission*⁹⁴ was established to tackle environmental pollution problems associated with the Niger Delta of Nigeria (hereinafter called NDDC Act). The Commission is empowered to formulate policies, guidelines for the Niger Delta Area and to plan and implement projects and programmes for the sustainable development and other environmental problems in the Niger Delta area.⁹⁵ Although it appears that the agency has wide powers, it lacks political will,⁹⁶ it can only make recommendations and not necessarily enforce.⁹⁷

⁸⁵ NESREA Act, Published in FRN Official Gazette No. 92 Vol. 94 of July 31, 2007, repealed the FEPA Act Cap. F.10 LFN 2004.

⁸⁶ See Section 7 of NESREA Act, 2007.

⁸⁷ See Paragraph 7 of the National Policy on Environment 1989 revised in 1998.

⁸⁸ See Paragraph 7 of NESREA Act.

⁸⁹ Section 8 (d) of NESREA Act.

⁹⁰ Section 8 (m) of NESREA Act.

⁹¹ Nugent, C., "Review of Environmental Impact Assessment and Monitoring in Aquaculture in Africa" Retrieved from <ftp://ftp.fao.org/docrep/fao/012/i0970e/i0970e01b.pdf> accessed on April 16, 2014.

⁹² See the Constitution of the Federal Republic of Nigeria, 1999 (as amended in 2011). S. 12(1) of the Constitution is to the effect that no

international treaty or agreement has force of law unless such have been adopted and passed into law by the National Assembly.

⁹³ Section 5 & 7 NOSDRA Act, 2006.

⁹⁴ Niger Delta Development Commission Act, Cap. N 86 Laws of Federation of Nigeria, 2004.

⁹⁵ Section 7(1) of the Act.

⁹⁶ By virtue of S. 7(3) of the Act, the Commission is subjected to the direction, control or supervision in the performance of its functions by the president. This automatically limits its powers especially if the government of the day is corrupt.

⁹⁷ Nlerum S. Okogbule "The Plight of the Minority Niger Delta IN Nigeria: The Poverty of Protective Legal and Institutional Mechanism" <http://www.nigerianlawguru.com/articles/general/pdf> (accessed on March 8, 2014).

IV. CONCLUSIONS AND SUGGESTIONS

This study examined the existing legal and institutional frameworks for protecting the environment of the Niger Delta region from gas flaring and the impact of petroleum exploitation on the environment and people of the region. It concluded that, there exist legal and institutional frameworks to curtail gas flaring and pollution generally in the region. However, review of these laws and amendment of some identified limitations of the agencies is a necessary prelude to a healthy environment as the need to protect the environment has been globally recognized.

It is further concluded that, as much as there is need to give full blown power of enforcement to the existing legal and institutional frameworks, the government still needs to carryout periodic evaluation of these legislations and Agencies with a view to ensure their adequacy and effectiveness.

The following is therefore suggested;

The various applicable international conventions and protocols should be promptly domesticated and implemented and Public Private Partnership (PPP) practice should be looked into as an option for

effective implementation of the domesticated laws in order to materialize the goals of the international conventions.

Government should take serious steps to stop gas flaring.⁹⁸ The issue of corruption should be properly addressed in order to achieve results from attempts to stop gas flares and environmental pollution. Institutions should be decentralized to aid accountability and further strengthened to detecting and nip corruption in the bud as it relates to the oil industry.

It is also suggested that associated gases should be converted to and used as energy sources, only a minute percentage may be flared as obtained in other countries. To this end, legal obligations must be put in place to ensure that associated gases are utilized judiciously. Again, all Ministerial certificates that have purportedly allowed flaring must be disclosed by the oil companies, especially now that a new government is taking over power. 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 shut down.

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⁹⁸ That is, no matter the financial and infrastructural requirements for gas re-injection, gas flaring must be stopped and gas re-injection adopted.

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