



International Journal of Multidisciplinary Research and Growth Evaluation.

Revisiting the disconnection between State Policies and Gas Flare down in Nigeria

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Article Info

ISSN (online): 2582-7138

Volume: 04

Issue: 02

March-April 2023

Received: 05-02-2023;

Accepted: 28-02-2023

Page No: 109-117

Abstract

There have been several development policy agencies on the Niger Delta on mineral oil issues. What have they done on flare down? The trust of this paper is that in spite of all these policy making agencies nothing has been committed to the fight for the cessation of gas flaring in Nigeria. Even the desire to factor gas consumption into the centre ground of policy formulation has not found any concrete expression in law. Rather all local content vehicles like all oil majors have taken to reckless abandon in flaring. In fact, the desire of the Nigerian State in flare down has been scuttled and all timelines previously advocated or pegged down have demonstrated the precarious nature of oil and gas policy issues in Nigeria and the quicksand nature of same. This study which adopts the doctrinal method sets out to address the question of gas flaring from the legal perspective especially in the light of the 2010 increment in penalty for gas flaring by 900 percent and the Buhari administration flare down extension to 2060. It examines the gas flaring policy of the Nigerian state against the background of the current judicial policy and environmental activism in matters relating to oil and gas. It reviews the legal hurdles to the question of flare down and argues that legislative penalization has to be balanced with the infrastructural development of the gas potentials of the Nigerian state. The study looks through the development policy agencies and the modalities of oil majors to see whether they have any legal framework to cease flaring. It finds that those lofty aspirations of ex-President Yar'Adua and Hon. Almona Isei to connect the oil and gas sector to the power, industrial and agricultural sectors during and immediately after the Obasanjo etc administrations were guess-works if not cants and hot airs. Where are the aspirations today? A look through the policy making agencies cannot find any anchorage and glimmer of hope. What can be found is disconnect.

Keywords: Development Agencies, Gas flaring, Niger Delta, Militancy, Resource Control

Introduction

The history of gas flaring in Nigeria dates back to 50 years since the finding of oil and till date, not much has been achieved in putting an end to the phenomenon. Strong arguments have even emerged from critical stakeholders that flaring is a concomitant part of the oil business and to ask or agitate for its cessation is to call for the end of the oil economy. In further response to the agitation, such critical stakeholders have rather urged for expansion of gas utilization in domestic, industrial and international sectors. They cap their argument with incremental wooing of the Nigerian State into such huge continental and sub-regional investments like the Trans-Saharan Gas Pipeline and West-African Gas Pipelines to northern African like Morocco and up to western African states like Ghana respectively. They think that rather than seeing gas as a hell-fire, Nigeria should think more of how to harness the fire into the value chain of energy and electricity.

Nigeria has the 7th largest proven reserves of gas in the world at about 180 trillion cubic feet. Ejogu (2013) ^[21] captured the proven gas reserves at an estimated 174 trillion with a lifespan reaching about and over 110 years thenceforth.

However, a 2019 estimate by Omontuemhen *et al.* (2019) ^[38] believes that Nigeria's proven gas reserves is 201 trillion cubic feet with unproven reserves of 600 tef, yet production remains very low and unstable. Apart from Russia, she is the world's largest source of flaring with the worst flaring rates of about 70 percent (Omoroge, 2002, p. 58) ^[39]. She flares enough gas to supply half of the power needs of the sub-Saharan Africa excluding South Africa (Igbikiowubo, 2007, p. 19) ^[27].

However, in the past 25 years, flaring has been down from 80 percent to 40 percent with the Nigerian Gas Flare Reduction Committee facilitating same with operators to ensure that with incentives, plans and targets are met with World Bank Public-private Partnership since 2002. As claimed by Alimi (2022) ^[8] latest regulations have significantly increased fines for flaring since 2018 with official estimates coming down to 30 percent lower than Satellite estimates. The 40 billion cubic meters of gas flared in Africa annually would meet about half of Africa's power need. Annual global gas flare of 150 to 160 billion cubic meters is 25 percent of USA's gas consumption needs or 30 percent of Europe's energy requirement (Isiguzo, 2008, pp. 1 & 11) ^[28]. It is worrisome that over the years State laws and policies have not made much progress on the flaring question. Fines, penalties and gas re-injection initiatives have failed to address the issue. Deadlines continue to shift as far as 2060 and laws continue to change. Policies aimed at harmless gas exploration are not enforced.

Statement of the problem

The problem that this study addresses is that there is no better evidence of Nigerian narrow focus for the oil and gas industry than the misfortune of the power sector. The economy has huge gas reserves but remains afflicted with an abysmal electric power situation which has stunted economic growth and qualified it as the headquarters of corruption in a dark-continent. This problem was stated by no less a personality than ex-President of the Federal Republic of Nigeria, Shehu Musa Yar'Adua (as cited in Obinor, 2007, p. 15). A complimentary aspect of the problem was captured by Hon. Alumona-Isei to the effect that the aspiration of the Nigerian energy sector is to link the gas to the power, industrial and agricultural sectors of the economy. Concerted efforts at looking through the policies of the national development agencies and the work-tables of the seven sisters (the oil majors) show that there is a disconnection between the development agencies and the gas sector in relation to the aspiration for linkage. On the contrary, the argument that seems to be emerging from critical stakeholders is that rather than considering gas flaring as a monumental crime to the eco-environment and a centre point in climate-change argument, efforts should be directed towards converting the fire to value by huge investment in it to make it deliverable to countries in the West African sub-region and Europe through the Maghreb.

Theoretical framework

State-in-business theory

Ending gas flare and addressing associated environmental issues are the natural gas sector aspirations of the Nigerian State (Kupolokwu, 2005, p. 9). In fact, the aspiration of the state was to end gas flaring by 2008 and further develop the gas reserves in accordance with all laws to attain balance between domestic and export gas aspirations, and achieve delivery of gas to power plants and diversify the revenue base

from oil by generating as much revenue from gas as from oil within the shortest possible time (Binniyat, 2008, p. 27) ^[13]. But this aspiration has been thrown far to 2060 by the Buhari administration. It is pertinent to observe that the linkage of the oil and gas sector to the power, industrial and agricultural sectors present the most important opportunity for accelerating the nation's industrial development (Alumona-Isei, 2007, p. 37) ^[10].

The gas policy of the Nigerian State is to boost the pace of industrial development by ensuring competitive gas prices for all gas consuming sectors of the economy. It is aimed at supplying gas at lowest commercially sustainable prices to the strategic domestic sector which provides electricity for residential, light commercial users, and strategic industrial sector comprising industries that require gas as their main feedstock (Igbikiokwubo, 2005, p. 8). About 10 cents per thousand cubic feet is meant for power and fertilizer plants, 70 cents to 1 dollar for factories that use gas as raw material and 2 to 3 dollars for factories that use gas as fuel. The pricing regime has been criticized as it will discourage companies from large investment on necessary exploration and infrastructural development. It is estimated that 40 to 50 million US dollars is needed on seismic survey for a single gas project with no guarantee of successfully finding commercial gas. For experts, most of the gas projects cannot be banked and not fit to attract local and foreign capital. In other words, the projects are not well packaged in order to attract international lending institutions which focus on in-country engineering design and capital equipment of the projects as well as competence and compliance with international best practices (Adeoye, 2008, p. 25) ^[1].

The economic interest of the state is the governing criterion in the determination to end gas flaring and this thesis is as old as the Nigerian state. In 1960, Lord Hume, Secretary of State for Colonies (as cited in Afinotan, 2022) ^[2] had stated that 'until there is ... worthwhile market and until there are facilities ... to use the gas, it is normal practice to burn off this by-product from the oil well'. This general path has continued to obtain in Nigeria till date despite the ironical fact that as far back as 1976, the United Kingdom Energy Act had made it unacceptable to flare gas in the UK but the associated economic benefits of flaring gas has continued to give rise to the carrot and stick theory in Nigeria with very devastating consequences. For instance, Afinotan finds that Nigeria is the greatest emitter of green house gas in Africa through flaring contributing approximately 48 million tonnes predicting that one of the consequences of this is that by 2050 a city like Lagos may be uninhabitable and by 2100 the city may be submerged by rising sea levels arising from climate change engineered by gas flaring in the south and desertification in the north.

Legal anarchy theory in gas

Lack of a robust legal and regulatory framework for gas flare down in Nigeria has been identified as one of the main barriers to speedy gas development apart from financing, pricing, fiscal reforms and institutional arrangements (Kupolokwu, 2005, p. 9). The virtual lack of apt legislation on the gas sector in the country by 2007 up till 2023 has been decried by Billy Agha, Head of the Gas Department of the Ministry of Energy as at 2007. According to Agha, (as cited in Salem, 2007, p. 13) ^[43] 'there is no legislation on gas and most of the things we are doing is that we are knowledgeable on gas issues, and because of that we muzzle people to do

things we want them to do. If you look at the Energy Act, it is all about petroleum, petroleum and petroleum. The country will have to pardon us.’

The ineptness of the law on oil and gas in Nigeria has been underscored. Her lack of a specific and detailed binding instrument for climate change mitigation and adaptation (and all efforts at it) has also been unsuccessful (Afinotan, 2022) [2]. When at a one-day stakeholders workshop, Chukwudi Imabo, a Director in Environmental Planning, Research and Statistics in the Ministry of Environment in Rivers State, called on Shell to review upwards, the compensation it pays for the destruction of economic trees and crops during oil and gas exploration as the prevailing figures were no longer in consonance with economic realities in Nigeria, Alex Omumbu of Shell (as cited in Vanguard, 2007, p. 11.) [10] countered correctly that Shell does not make laws on such payments. He pointed out that the Rivers State Government should forward the complaint to the State House of Assembly which would in turn enact the law on what should be paid as compensation for damaged economic crops and trees arising from oil and gas operations. Even the enforcement of the existing skeletal legal regimes in the gas sector has left much to be desired. The Senate Committee on Environment has appraised the compliance of oil companies to environmental laws and has reached the conclusion that the laws, the fines and the penalties paid by the oil companies are not only ridiculous and frighteningly low but capable of inducing pollution of the environment as oil companies found liable of spillage pay as much as less than N500,000.00. Yet, 70 percent of the problems of the oil companies are ecological and environmental and the oil companies do not seem to be doing anything to follow standard Environment Impact Assessment stipulations (Aziken, 2007, p. 8) [11].

Judicial theory on Gas Flaring

Although Ojewole (2021) [37] has posited that in 2005, Nigerian courts have ruled against flaring, characterizing it as unconstitutional, a breach and violation of the rights to life and dignity of the human person in the case of Iwherekani Community in Jonah Gbemre vs. Shell Petroleum Development Company, NNPC and AG. Federation, (per Nwokorie, J.) judicial attitude to gas flaring appears to be weighted in favour of the oil companies. Even when a litigant victim is successful the remedies applied by the court are usually insufficient. Damages are the only and most likely remedy that the court may apply. The court, as a matter of judicial policy, will not allow an injunction to lie to restrain an oil company. In Allan vs. Shell-BP Developing Company (Nig) Ltd, the trial Judge refused injunction because to grant same would amount to asking the defendant oil company to stop operations in the area and the interest of third parties would be affected such as throwing a large number of workers out of work. It was held more significantly that injunction may render the oil and gas flaring license nugatory and the economic interest of the state will, in the circumstances, defeat the private rights and interest of a citizen. Evidence that courts are reluctant to grant injunctions against flaring debilitates the litigation monetary compensation alternative and dehorn the court’s capability in compelling polluters to reduce the adverse effects of flaring on the environment.

In Chinda vs. Shell-BP an order of injunction to restrain gas flaring within five miles of a village was characterized by the Judge as ‘an absurd and needlessly wide demand’. The

attitude of courts, the time consuming adjudicatory procedure and the unfriendly tort regimes have not encouraged litigation against gas flaring. As noted by Emole (1998, p. 105) [18] and Mc-Laren (1972, pp. 505 & 507) [35], the remedies offered by the common law and statutes are ill suited for the purpose of contending with gas flaring and impotent as a source of a viable response to an environmentally sensitive lawyer. The regimes do not offer much hope to the victims who are far more interested in compensation than punishing flaring nor do they enable the victims to enforce non compliance with statutory regulations by the flaring companies as against the position in the United States of America (Omorogbe, 2002, p. 52). Some form of judicial activism is thus demanded from the courts as they shift away from the common law limitations to awarding punitive damages in order to cushion the effects of flaring on victims. In the case of Farah & Ors vs. Shell and SPDC Ltd vs. Tiebo & Ors for instance, N4,621,307 and N6,000,000 were awarded respectively.

The foregoing may have informed the opinion of Udok and Akpan (2017) [48] that there is no specific legal framework that prohibits gas flaring in Nigeria (despite the 2018 Regulation). This is largely due to the argument that the existing regulations are ineffective providing only monetary penalties with the judiciary wading in to champion the question of the abolition of gas flaring in Nigeria instead of the legislature. The Petroleum (Drilling and Production) Regulatory Act of 1979 which has been superseded by the Petroleum Industry Act 2021 had provided under Regulation 42 that within a period of five years of the existence of a well site flaring gas, the Licensee shall present the Minister of Petroleum with a proposal or programme of how to deal with the emerging gas associated with such a well or flaring site with regards to its utilization. Yet, the presentation of such a programme is not mandatory and no penalty is attached to any default in so doing by the Licensee. Even the Petroleum Industry Act only touches on gas flaring to the extent that it does not unequivocally abolish it but requires operators to submit natural gas flare elimination and monetization plan within 12 months of securing a license and goes on to permit flaring in emergencies.

The Associated Gas Re-injection Act in section 3(1) prohibited gas flaring but in section 3 (2) gave the Minister discretion to permit flaring which is readily ignited by both the Ministry and the operators on the understanding that it is not feasible to re-inject in all circumstances. The Act was equally to compel all oil companies to submit preliminary programme for gas re-injection. But how far the Licensee complies with such mandatory condition is not readily seen in practice. In Jonah Gbemre vs. Shell Petroleum Development Company & Ors, the Court had the opportunity of compelling the defaulting operators to submit planned programme of cessation of flaring to the relevant authorities but failed to do so. The Associated Gas Re-injection (Continued Flaring of Gas) Regulations on its part gave way to flaring under conditions and prescribed abysmally low fines and exempted 86 out of 155 sites of flare indicative of lack of genuine desire to cease flaring.

The Flare Gas (Prevention of Waste and Pollution) Regulation 2018 also provided a legal framework for the protection of the environment against the effect of gas flaring. It seeks to prevent waste of gas and create social and economic benefits to Nigeria in flare down. Under it, the Federal government is to permit access to flare sites to third party investors on an exclusive basis to take flared-gas from

one or more flare sites on behalf of the Federal government and dispose of it in a manner authorized by the Federal government. Yet, not much has been realized from this regulation. After all these, according to Alfa (2022)^[7], the State plodded into giving the date of 2025 as the launch date of the National Gas Expansion Programme (NGEP) and proclaimed 2021 to 2030 the 'decade of gas' during which development agencies and policies shall be focused away from oil to gas. Yet, not much has been realized from the declaration and launch. Much as the Federal government was doing all these, the major oil companies continue to drag their elephant-feet in flaring gas.

Theory of right activism

The Environmental Right Action (ERA) has argued that gas flaring has done incalculable damage to human health, the environment and the economy (Enogholase, 2007, p. 12)^[17]. Besides wasting gas which could have been used for domestic and export trade, flaring partly accounts for the carbon emissions believed to cause global warming and damages to local environment, causing severe irritation for people with asthma and other respiratory ailments (Binniyat, 2008, p. 22)^[14]. Yet, oil and gas companies operating in Nigeria have continued to rebuff pressures from the State and environmentalists to reduce gas flaring. It has been shown on a website, according to Enogholase, that while Shell would stop gas flaring in its operations across the globe, it would continue to do so in Nigeria for obvious reasons that the locations of its flaring operations in Nigeria are inaccessible and that the corporation would have to stop oil production to stop gas flaring. On this background, Basse had argued that Shell was acting in violation of the 1979 Gas Act which outlawed gas flaring in Nigeria and unless the state was determined against flaring, it would never end in Nigeria.

On the heels of the demands from oil companies for an extension of the deadline to 2010 from 2008 and which in 2023 the Buhari administration has 'graciously' extended to 2060 (citing insecurity and poor funding of gas gathering infrastructure as reasons for the delay in flare down), rights activists have countered that the oil companies had breached several deadlines before 2008 up till 2023 and further accommodation as indicated by Buhari for 2060 would aggravate the precarious environmental health and economic problems being experienced in Nigeria. The rights activists argue that it was the gas companies that chose the 2008 flare-down-date as such they knew the context and should not have any reason for not meeting the deadlines. But the intervention of the Federal government and the extensive holiday from 2025 to 2060 is indicative of the state's unpreparedness to curb gas flaring and the desire of the state to collude with the oil majors to continue flaring indefinitely. Activists rather call for stiffer penalties for any oil firm that breaches the deadline canvassing that shutting down all production facilities where flare cannot be shut off should be the next logical step (ERA, 2007, p.7).

The argument of rights activist is predicated on the provisions of the 1999 Constitution of the Federal Republic of Nigeria whereof in section 17(d) the exploitation of the natural resources of the country shall be for the good of the community and section 14(d) whereof the welfare of the people shall be the primary purpose of government. Elebiju and Odupe (2021)^[16] have made the critical point that much as these provisions are noble, they are un-justiciable as they cannot be enforced before a law court. In fact in SERAP vs.

FRN & Anor, the authors underscored the admonition of the ECOWAS Court to Nigeria authorities to be about the promulgation of laws that could enable its citizens to realize the significance and essence of the constitutional provisions that tally with the sovereign rights of states to manage their mineral and natural resources for the good and well-being of their citizens. This becomes quite critical and instructive when it is realized that the Environmental Impact Assessment Act does not capture the critical issue of gas flaring and section 17 (g)(h)(j) and (k) of the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act excludes oil and gas flaring from its purview.

Right activism that is required in these directions has found expression in the holding of Centus Nweze JSC in Centre for Oil Pollution Watch (COPW) vs. NNPC where the lower courts denied the claimants the standing to sue for and on behalf of Ineh and Aku quarters in Acha Communities in Abia State over spillages on streams as source of water to flora and fauna for human consumption (Afinotan, 2022)^[2]. The Supreme Court held, 'There is no gainsaying in the fact that there is increasing concern about climate change, depletion of the ozone layer, waste management, flooding and global warming...Both nationally and internationally, countries and organizations are adopting stronger measures to protect and safeguard the environment for the benefit of the present and future generations.' In the light of the holding of the Supreme Court, authorities like Elebiju and Odupe (2021)^[16] have advocated hitching on international instruments such as International Convention on Economic, Social and Cultural Rights; International Convention on Civil and Political Rights; and the African Charter on Human and Peoples' Rights to realize claims against gas flaring and related environmental issues. But often, the instruments are not domesticated. Even when Nigeria is a party to such instruments as the United Nations Framework Convention on Climate Change (COP26) and the Paris Agreement meant to locally bind international treaty to climate change, Nigerian courts do not entertain actions resulting from non-implementation of the policy according to Afinotan (2022)^[2] making such policies mere declarations of intentions.

Literature review

900 per cent Increment in Penalty

In the 1970s, the Nigerian state promulgated legislations banning gas flaring and the Associated Gas Re-injection Act of 1979 made provisions for gas utilization programmes and the penalty for non-compliance was a stringent, if not unrealistic punishment of forfeiture of concessions. No company was to flare gas after 1st January, 1984 without state's permission. The deadline has since then been shifting from 1984 to 1985, 2006, 2008, 2009, 2010 to 2025 and now, 2060.

Up till 2017 and even till 2023 not much has been done whether in law or in policy. The shifts were equally accompanied with shifting gas flaring penalties. With effect from 1998, the penalty was N10 per 1000 cubic feet of gas flared. In 1999, it was increased to N20 per 1000 cubic feet with flaring becoming a source of huge revenue to the state. Oil company officials have claimed that the state reaped over N16.03 billion as penalties for gas flaring while on the other hand, it has been estimated that due to gas flaring, about 2.5 billion US dollars in state revenue is lost annually and from 1970 to 2009 about 74 billion US dollars has been lost by the

Nigerian state. Since 2006, the penalties have increased with the Joint Venture Operators threatening to close the oil fields if the penalties become prohibitive. Yet in 2010, the state had raised the penalty for flaring astronomically by 900 percent and a false declaration of the volume of gas flared attracted a fine of 500 dollars per-million standard cubic feet (Kolawole, 2007, p. 23) ^[32]. Penalties have also been increased in 2018. 10,000 bpd production of oil attracted \$2.00 per 28.317 standard cubic meters of gas flared which is also not much. It has been shown that the increased flaring penalties may be ineffectual since the exemption to the general ban on flaring provided under the Associated Gas Re-injection Regulations 1984 has the effect of exempting a total of 86 fields out of 155 fields from the anti-flaring provisions as at 2003. The 86 fields are those in which the State, through the NNPC, has joint venture. In factual terms, the exemption had the effect of exempting 55 out of 84 Shell fields, 10 out of 15 Mobil fields, four out of 22 Agip fields, seven out of 17 Chevron fields, three out of five Texaco fields, four out of six Elf fields, one out of three Ashland fields, one out of Tenneco fields and one out of Pan Ocean fields (Omoroge, 2002, p. 59) ^[39]. If majority of the fields have been exempted and the remainders are subjected to ineffectual and ineffective penalties, wherein lies the hope of a flare down? It is even more economical to flare than to re-inject and a cost benefit analysis has shown that while it will cost an oil flaring company one million US dollars to flare in terms of penalties, it will cost the same company 5.6 million US dollars to re-inject the same gas in terms of gas infrastructural development facilities in Nigeria. Furthermore, issues such as force majeure, act of war, community disturbance, flood, earthquake, insurrection, storm can be called to bear as excuses by operators (Afinotan, 2022) ^[2].

Private gas utilization initiatives

A national policy pegging down gas flare by 2008 has resulted in projects on gas utilization. For example, the West African Gas Pipeline Project is of strategic importance to the sub-region in fostering cooperation and economic development as well as providing a platform for regional economic integration. Chevron was appointed Project Manager of the West African Gas Pipeline (WAGP). The joint venture agreement establishes a consortium of six energy resource companies (Chevron Nigeria Ltd; Ghana National Petroleum Corp.; NNPC; SPDC Nig. Ltd; Societe Beninoise de Gaz S.A; and Societe Togolaise de Gaz S.A) to develop the project expected to cost approximately 400 million dollars and to ship about 120 million cubic feet per day of Nigerian gas for sale to power generation customers in Ghana, Togo and Benin. (NGC News, 2004, p. 4) ^[35].

In addition to delivering needed energy to this part of the African continent, it is envisaged that the project would significantly contribute to the economies of the participating nations through the creation of jobs and low-cost of fuel for new industrial and commercial development ventures. The project would also reduce greenhouse gas emission by cutting down on flaring associated with existing oil production in Nigeria. Air pollutants would be further reduced because natural gas would replace the use of fuels that are less friendly to the environment in power generation and industrial production. The WAGP project dovetails perfectly with Chevron's phased development of its Escravos Gas Project and embodies its commitment to commercialize vast natural gas resources in Nigeria. Apart from the foregoing, WAGP is

expected to last for 20 years and to yield profit to the tune of 500 million dollars as well as putting Nigeria's natural gas to productive use and reduce wasteful gas flaring. The project running from Nigeria to the neighbouring countries of Benin, Togo and Ghana is part of the master plan designed by the Economic Community of West African States to ensure energy security for the sub-region. The 640 million dollars gas project was launched to enable Nigeria pipe gas to the countries as a source of clean, cheap and reliable energy. It is a part of initiative to jointly develop the energy resources and ensure access to modern energy to at least half of the population by 2015 through the coordination of the West African Power Pool (WAPP). According to Iweriebor, a West African Pipeline Company (WACO) is to be established as a multinational firm with public and private sector participation to manage the pipeline and ensure the project is run on commercial basis.³⁴ The Trans Saharan Gas Pipeline Project is also a joint venture project between NNPC and Sonatrach of Algeria to pipe gas to Europe. It is expected to transport over 2 billion cubic feet of gas per day from Nigeria via Algeria to the European market. Gas export is expected to grow significantly from its current 2,800 mmscf/d to about 12,400 mmscf/d by 2010. Growth in gas utilization has translated into steady decrease in gas flares from 68% in 1999 to about 38% in 2005. Domestic demand is expected to also increase from 600 mmscf/d to 5,000 mmscf/d by 2010. The Okpai Power Plant utilizing 140 mmscf/d of gas is generating 480 MW of electricity into the national grid. Seven National Integrated Power Projects being implemented by the Nigeria Delta Power Holding Company with a capacity between 250 - 500 MW. Each has a starting date of 2008.

The oil and gas sector is being fully and totally deregulated to usher in an era of great opportunities for systematic expansion and increased domestic utilization of gas. It is an arrangement that is directed at liberalizing the sector and establishing the necessary environment for market growth and private funding of the infrastructure for efficient use and penetration of the natural gas into the domestic economy. This has resulted in the creation of the Nigerian Gas Transportation Company and the Nigerian Gas Marketing Company. Equally, the following private initiatives in the domestic gas supply chain are functional: Gas Link (Nig.) Limited, Shell Nigeria Gas, Falcon Nigeria Limited and Gas Land (Nig.) Limited. Zenon was reported to be the first to open indigenous gas filling stations.

Discriminatory Penal frameworks

Soeze (2005, p. 56) ^[44] has shown that oil production through production sharing contracts and joint venture structures between the NNPC and Shell, Exxon-Mobil, Chevron, Texaco, Eni-Agip and Total-Elf account for about 95 percent of Nigeria's crude oil production. Yet, only operators in the industry that continue to flare gas beyond the deadline of 2008 and not the Joint Venture Partner would be penalized. The implication is not only that the stiff consequences are to meet companies with little or no commitment to the policy of flare down date of 2008 but that NNPC which owns majority stakes in the ventures would be let off the hook. Discriminatory penal regime is thus the hallmark of the present Nigerian legal posture in the struggle to end gas flaring.

The State plays a dual role in oil matters. It formulates policies and lays down laws which regulate the operations of the industry and is also a party to all the contracts through its

national oil company (Oropo, 2006, p. 24)^[41]. How effective a State in oil business can regulate the adverse consequences of the same business without discrimination in a democratic capitalist economic setting appears to be one of the hurdles in Nigerian oil flaring industry. The bottom-line is that flaring is a by-product of oil exploration and a huge one at that. Since oil is an indispensable resource upon which the statecraft and the political economy are sustained, flaring can be compromised. This posture is informing the changing and shifting positions of the State's policies pledging incentives to business wishing to invest in its economic development and utilization.

However, the laws are being promulgated without regards to the absence of adequate infrastructural facilities for associated gas utilization. The issue is thus that of balancing economic considerations with legal regulations and penalization. The Nigerian State should therefore increase the quest for global partnership in gas utilization through schemes like the West African Gas Pipeline (WAGP) and the Trans-Saharan Gas Pipeline (TSGP) initiatives. More of industrial development for the domestic utilization of gas should be pursued than harsh legal regulations and penalization that may have a backfiring effect on the economy. This is because much of the reduction achieved in the recent time has been due largely to the development of infrastructural facilities utilizing gas domestically than legislative penalization.

Gas flaring goes on all over the world although in limited scales and in isolated spots in Latin America, Mexico, Paris, Oman, Saudi Arabia etc because the utilization of gas in these areas or countries is far reaching unlike in Nigeria where the domestic market is undeveloped and thus a waste product (Wink, 2002)^[36]. Since the 1970s, discussions have been ongoing to stop gas flaring. But the exercise requires a huge domestic and international market to consume the waste; a political will; money to invest in re-injection of gas into the reservoirs; and the machinery in terms of collectors, compressors, and outlets in the form of the NLNG project to cater for the gas which is not utilized within the country are needed.

Negative environmental concerns

On the problem of flaring having adverse effect on the environment and the people in the immediate neighbourhood fuelling concern over the degradation of the environment over the years and youth's restiveness in the Niger Delta, Wink (2002, p. 42)^[49] seemed to have roundly allayed the fears that it is true. According to him, there is no detrimental effect to the immediate environment in gas flaring. Gas flaring is merely bringing off the gas into the atmosphere. What happens in the immediate environment is heat radiation which occurs only within 50 meters. The position of Wink appears to have been countered by Ugochukwu Onyeama (as cited in Semenitari *et al*, 2002, p. 16)^[45] who argues that the pumping of millions of tonnes of carbon monoxide into the atmosphere everyday has global implications for the climate and development agencies are concerned and interested. Right from the discovery and production of crude oil and other petroleum products in Nigeria, associated gas has continuously been flared up till date. The quantity of gas flared has been on the increase with the expansion of the industry resulting in so much pollution of the environment: ozone layer depletion, acid rains, alteration of soil profile and fertility: as a result of which Nigeria has been assessed to be contributing about 16 percent of the World's total

atmospheric pollution. Between 60-65 percent of associated gas produced in Nigeria is being flared. Nigeria's natural gas resource is in excess of 170 trillion cubic feet and is the seventh to tenth largest gas reserve in the world (Alimi, 2022)^[8].

Development agencies and policies

Admittedly, the Niger Delta Development Commission (NDDC) has been doing some useful work in the area of infrastructural development; the oil companies also embark on community development projects. But given the extent of environmental degradation, human poverty and social dislocation over the years, there is so much more to be done to assuage the seething anger of the populace, and to rehabilitate the land and its people from the negative influence of gas flaring. Sadly, the official response in the face of present circumstance has always been in the form of military action in the Delta and official postponement of the target date for cessation of gas flaring. There is a Military Task Force in place, Operation Restore Hope, which far from restoring hope only manages to deepen the people's feeling of alienation. The most recent Buhari administration's call for shift to 2060 is a lich pin. At the United Nations Climate Change Conference (COP26) in Glasgow, Mr. President claimed that his country will cut carbon emission to zero by 2060. For Ojewole (2021)^[37], it was a case of a government doing so little for too long that it is unclear how the President's pledge will be met in the light of the fact that Nigeria is the worst offender in the index of gas flaring worldwide even though Ejogu (2013)^[21] placed the country as the second largest gas flaring nation in the world in 2013. Secondary to oil spill, gas flaring rates in the country is so pervasive that in the Niger Delta region, more than 2 million inhabitants live within 4 kilometers radius of flaring sites with the concomitant exposure of such people to the negative consequences of flaring which Wink is unable to admit.

Cataloguing the postponed deadlines

From 1969 to 2020, about 10 deadlines to bring flaring of gas to an end in Nigeria have been breached. And as the country continues to breach these deadlines or keep them unmet, it continues to lose huge revenue according to Akinpelu (2021)^[3]. In 2018 Nigeria lost N233 billion and the estimated cost of that to the environment was N28.76 billion and the monetary economic value addition of the flaring to the economy was only \$2.73 billion. The effect of flaring is quantified in terms of the lost amount of revenue that could have been generated from utilizing the volume of gas flared (Omontuemhen *et al*, 2019)^[38]. Between January and November 2019, information from Nigerian Gas Flare Tracker showed that 25.9 billion standard cubic feet of gas valued at N460.5 billion were flared (Evans-Ibe, 2020)^[22]. In 2020 alone, she lost \$1.24 billion. In the 18 months covering 2019 to 2020 she lost N891 billion. In 2021, she lost N707 billion. In the first quarter of 2022 she lost N184 billion. In the six months of 2021, the flared gas was capable of generating 14,000 gig-watt hours of electricity an equivalent of 7.4 million tonnes of carbon dioxide emission. In fact, Elebiju and Odupe (2021)^[16] believe that more than an estimated 400 million tonnes of carbon dioxide is injected into the world's atmosphere yearly from gas flares in Nigeria. To them, such alarming wastage of natural resources that is required for development amounts to burning of cash and environment.

On the contrary, Federal government fines on oil firms against gas flaring in the period between January to August 2022 was N127 billion (Akintayo, 2022) ^[4]. It has been argued convincingly that the fact that the Federal government gets revenue in terms of fines running up to N294 million can account for the noncommittal of the State to concerted efforts at pursuing flare down policies (Punch Editorial Board, 2022) ^[42]. This argument is further buttressed by the fact that on few occasions that oil majors had partnered with the Federal government to tinker on the desirability to work out the technology and modalities to commercialize gas, the Federal government had backed out citing the huge financial and capital outlay (Ojewale, 2021). This has given oil majors the backbone not only to stunt gas flare down but to cite lack of capacity to commercialize and to suggest the readiness to pay fine at \$3.50 per 1000 standard cubic feet of gas flared than to cease flaring.

In the light of the financial weakness of the Federal government to muster capital for the technological implementation of flare down, such challenges as delay in passing other related components of the Petroleum Industry Bill, absence of infrastructural support and below optimal punitive measures have been canvassed. It is even difficult to suggest how the passage of the Petroleum Industry Act (PIA) in 2021 had raised any critical issue of gas flare down. The PIA did not as much as mention gas flare down in its contents or policies in any changing significant details. By section 104 of the Petroleum Industrial Act, gas flare is prohibited except in emergency circumstances and by section 105, weak penalties for flaring are provided and by section 108, operators are obliged to submit their natural gas flare elimination and monetization plan to the commission. And by section 110, operators are to dedicate certain volume of their gas output to the domestic market consumption (or domestic gas supply obligations) (Elebiju and Odupe, 2021) ^[16].

The aspirations of many stakeholders that the PIA was coming into effect to tackle associated gas flaring in the oil business sector in significant details was equally rapidly dashed like a baby against a stone wall in Babylon though Nwuke (2021) ^[36] believes that militancy in the region, while continuing, has diminished. In fact, as stated by Akintayo (2022) ^[5] despite the Federal government's gas monetization or commercialization policy over the years and the current pledge to the United Nations to attain net zero flare down by 2060, her national oil company, NNPC flares 100 percent of her gas output and as at September, 2022 she earned no revenue from it and has remained the worst offender of all the joint venture partners just like her other partners such as Seplat Petroleum Development Company, NPDC and Chevron Nigeria. They flare 100 percent of their entire output of 106 million standard cubic feet of gas.

Labyrinth of inconsistencies

Only Shell Petroleum Development Company (SPDC) appears to have a good record in terms of flaring activity in an earlier account in 2010 (Maduwe, 2020) ^[34]. But such credit accounts attributed to Shell and other majors are dimmed by the facts that Shell's flaring cites are located in obscure and remote areas in order not to attract fines and the prying eyes of flare trackers. It has thus been demonstrated convincingly by Jeo Lo (2021) ^[29] that there are many loopholes in the gas regulatory regimes that makes the sector a labyrinth of inconsistencies. Besides the fines imposed being cheap for the gas companies to pay; the infrastructural

deficit to transport gas to end users; the in-economic value of captured gas in terms of cost of capture and market value, excess gas in the production sites is a huge challenge to gathering and gathering companies. In fact, when gas becomes excess in upsurge to gather, companies are mandatorily allowed to flare in such emergencies and the situations are gratuitously interpreted. Such wide interpretation becomes common place in Nigeria where development agencies and policies are extensively weak (Global Gas Flare Reduction Partnership) due to rentierism and prebendalism.

Elebiju and Odupe (2021) ^[16] have added significant weight to the arguments of Joe Lo. They believe that low profitability of associated gas capturing, lack of critical gas capturing transportation infrastructure, pricing issues, tax deductible for gas flare and lack of prohibitive measures against flaring have come to be reckoned with. George (2020) also adds that all oil producing nations flare gas particularly in remote fields and offshore or where there are ageing infrastructures. This is because gas outputs in such sites that are ageing are likely to stop flares in a couple of years (probably from five to ten years) and majority of them are offshore making the question of regulation complicated.

It is further argued that there is so much lack of trust in the sector making financial backers for gas gathering and capturing discouraged in invest in same and that the sites are sometimes too small and too far apart and too remote in places of location that demand sources and end users are discouraged. Wide discretion which the Minister and the Department of Petroleum Resources (DPR) have to grant exemptions from penalties in gas flaring has also been call out. For instance, in George's account of 2020, only 48 of 180 sites flaring gas in Nigeria are captured on the DPR's data base and many of them are listed as not economically viable and some of the commercially viable ones are missing or delisted from sanction.

Conclusion

There is no end in sight for gas flare down. In so far as the President has told the world that the country is looking towards 2060 for zero flare down, it would have been expected that the President would have outlined what the country shall do in the interim. But being that the country is suffering the consequences of resource curse, and she is ready to get her resources from fines and rentierism, rather than the tax of the citizens, the citizens are not even drawn into consideration. In other words, as they suffer from the side effects of flaring, it is not the business of government to know and consider their health statuses. It is also not the business of the citizens to call the government to account for what has been wasted or what has been earned or for what has been done with what has been earned. It is equally not the business of the government to account to them. There is as usually contended, and which has been found in this study, that there is a disconnection not only between gas flare down and the development policy agencies, but a huge disconnection between the state and the society. What the state is doing does not seem to concern the people and the society does not seem to call the state to account because the state does not get its legitimacy from the people.

On the part of the oil majors, it is clear to them that the state is propped up by their profits and rents as such they dictate the tune of the policies in the gas sector. They generate the excuses and the technological frameworks that determine the direction of their worktables. If they insist to pull out from

the joint venture and production sharing contracts, then the state will fail. A state fails where it fails to meet its financial obligations not only to its citizens but other international allies. And for Nigeria, her international shopping allies are those that can buy her crude commodity and that market is always a constraint to her because of her technological backwardness and previous or outstanding obligations. It has been argued convincingly that states in the position which Nigeria finds herself have very weak bureaucracy and public institutions and are very amenable to corruptive tendencies of oil capital and divisiveness. Such countries also, like Nigeria, have very weak manufacturing sectors such that at the end of the day, dependency on oil and its evils corrupts and weakens the institution of state and the economy. This has informed the fact that since gas flaring began with oil in Nigeria the country has not looked beyond the commodity to other productive economic activities like agriculture, tourism, manufacturing and even other solid mineral resources. To flare or not to flare has thus bogged down the country.

Recommendation

- Nigeria should diversify its economy by pushing beyond oil production to manufacturing.
- The oil majors should be committed to a flare down or be allowed to pull out of business.
- The development of gas utilization facilities and infrastructure should be intensified.
- Domestication of the gains of gas flaring ought to start internally before such internationalization as in the West African sub-region and Europe.
- Active involvement of local content vehicles in the gas gathering sector should be pulled together as in the oil sector currently.

References

1. Adeoye Y. Credible projects: Bane of the Nigerian oil and gas sector. Vanguard, 2008.
2. Afinotan U. How serious is Nigeria about climate change mitigation through gas flaring regulation in the Niger Delta? <https://www.journals.sagepub.com>. 2022, 24(4).
3. Akinpelu Y. Analysis: As Nigeria continues to miss gas flaring deadlines, huge revenue is lost, 2021. www.premiumtimesng.com.
4. Akintayo O. Nigeria loses N891 billion to gas flaring, 2022. <https://www.punchng.com>
5. Akintayo O. FG fines oil firms N127 bn. for flaring gas, 2022. <https://www.punchng.com>
6. Akintayo O. NNPC flares 100 percent gas output, earns zero revenue in September, 2022. <https://www.punchng.com>
7. Alfa A. The gas flaring challenge, 2022. <https://www.guardian.ng>
8. Alimi O. The impact of gas flaring on child health in Nigeria, 2022. <https://www.blogs.worldbank.org>.
9. Allan V. Shell-BP Developing Company (Nig) Ltd. Unreported, Suit No. W/88/71 Judgment of the Warri High Court, delivered on 26/11/1973.
10. Alumona-Isei M. Making gas work for Nigeria. Vanguard, 2007.
11. Associated Gas Re-injection Act Cap. A25, LFN, 2004.
12. Aziken E. Senate set to amend ridiculous fines by oil companies. Vanguard, 2007.
13. Binniyat L. Nigeria targets N1.5 trillion yearly earnings from gas. Vanguard, 2008.
14. Binniyat L. Ajumogobia harps on gas flaring reduction by 2008. Vanguard, 2008.
15. Chinda V. Shell-BP 2 R.S.L.R., 1974, 1.
16. Elebiju A, Odupe D. Nigeria: Cessations and destinations: Issues in gas flaring commercialization in Nigeria, 2021. <https://www.mondaq.com>.
17. Enogholase G. Protests greets plans to extend deadline on gas flaring. Vanguard, 2007.
18. Emole CE. Regulation of oil and gas pollution, Journal of Environmental Policy and Law, 1998, 28(2).
19. Environmental Impact Assessment Act. Cap. E12, LFN, 2004.
20. ERA. ERA: 2010 zero flares unacceptable. Vanguard, 2007.
21. Ejogu AR. Gas flaring in Nigeria: Costs and policy. Energy and Environment. Sage Publications Inc. 2013; 24(6):983-998. <https://www.jstor.org/stable/43735213>.
22. Evans-Ibe S. End Gas Flaring NG: The unspoken dangers of gas flaring in Nigeria. International Climate Change Development Initiative, Africa, 2020. @mista-blak. <https://www.medium.com>
23. Farah, Ors V. Shell. 3 NWLR (Pt. 382), 1995, 148.
24. George L. Nigeria's pioneering gas flaring plan risks going down in flames, 2020. <https://www.reuters.com>.
25. Global Gas Flare Reduction Partnership of the World Bank (GGFR) Homepage. <https://www.worldbank.org>.
26. Igbikiowubo, *et al.* FG unfolds gas sector reforms. Vanguard, 2008.
27. Igbikiowubo H. FG unfolds gas sector reforms, pricing rules. Vanguard, 2007.
28. Isiguzo I. Niger Delta: Endless wrangling over challenges. Vanguard, 2008.
29. Jeo Lo. Nigeria to end gas flaring by 2030, under National Climate Plan, 2021. <https://www.climatechangenews.com>.
30. Jonah Gbemre V. Shell Development Company, NNPC and AG. Federation Suit No. FCH/3/C5/53/05. Unreported. FHC, Benin, 14/11/2005. In Ojewole, O. (2021, November 23). Are Nigeria's promises to end gas flaring merely hot air? Institute for Security Studies. <https://www.issafrica.org>. Also in Afinotan, U. (2022). How serious is Nigeria about climate change mitigation through gas flaring regulation in the Niger Delta? <https://www.journals.sagepub.com>. Vol. 24 Issue 4.
31. Kupolokun F. Growth projections for Nigeria's gas sector. The Guardian, 2005.
32. Kolawole Y. Zero flare 2008: Federal government to penalize only Operators. Vanguard, 2007.
33. National Environmental Standards and Regulations Enforcement Agency (Establishment) Act. Cap. N164, LFN, 2004
34. Maduwe IS. Gas flaring activities of major oil companies in Nigeria. International Journal of Engineering Science and Technology, 2022, 2(4). www.researchgate.net.
35. McLaren JPS. The common law nuisance actions and the environmental battle: Well-tempered swords or broken reeds? Osgood All law Journal, pp. 505 & 507. NGC News (2004), 3rd Ed., 1972, 2(3).
36. Nwuke K. Nigeria's Petroleum Industry Act: Addressing old problems, creating new ones. African in Focus, 2021. <https://www.brookings.edu>.
37. Ojewole O. Are Nigeria's promises to end gas flaring merely hot air? Institute for Security Studies, 2021. <https://www.issafrica.org>.

38. Omontuemhen, *et al.* Assessing the impact of gas flaring on the Nigeria economy, 2019. www.pwc.com/ng and www.pwc.com/assets/pdf.
39. Omoroge Y. Oil and gas law in Nigeria. Lagos: Malthouse Law Books, 2002.
40. Onuorah M. Yar' Adua raises council to reorganize oil gas sector. *The Guardian*, 2007.
41. Oropo KT. 50 years after Oloibiri: A story of pains, gains and war. *The Guardian*, 2006.
42. Punch Editorial Board. Continued gas flaring proof of leadership failure, 2022. www.punchng.com.
43. Salem T. There is no law on gas Sector – Billy Agha, *Vanguard*, 2007.
44. Soeze S. Impact of oil on Nigeria's economic policy formulation. *The Guardian*, 2005.
45. Semenitari, *et al.* NDDC: A catalyst for Niger Delta Progress. Tell, 2002.
46. SERAP V. FRN & Anor. ECW/CCJ/APP/0808, 2009.
47. SPDC Ltd V. Tiebo & Ors 4 NWLR (Pt. 445), 1996, 657.
48. Udok U, Akpan EB. Gas flaring in Nigeria: Problems and prospects. *Global Journal of Politics and Law Research*. 2017; 5(1):16-25. <https://www.eajournals.org>. *Vanguard*, (2007, December 12).
49. Wink M. Shell: A model in partnership. Tell, 2002.