FOURTEEN

LEGAL APPRAISAL OF GAS FLARING REGIMES IN NIGERIA

EZE, James Uko[*] & Egobueze, Wigo Lilian[**]

Abstract

This article examines the legal frameworks and their barriers to eliminating gas flaring in Nigeria. The practice of gas flaring has been a long-standing issue in Nigeria's oil and gas industry, and despite efforts to address it, progress has been slow. The analysis explores the various legal frameworks in place to regulate gas flaring under domestic and international law. It also explores the judicial approach to addressing the issue of gas flaring in the court The article also highlights the challenges of poor enforcement of the law, inadequate legal penalties, judicial barriers, and infrastructure development. The article adopted the doctrinal research method and relied on the primary and secondary sources of law. It found that the extant laws are not adequate in addressing gas flaring due to the current barriers facing the efficacy of the legal framework. It concluded that stakeholders in the petroleum industry need to work concertedly towards reforming and implementing the laws on gas flaring in Nigeria. It recommended inter alia that the government should review the extant laws and increase the penalties for gas flaring to make it more commensurate with the economic gains derived from gas flaring.

KEYWORDS: *GAS FLARING, NIGERIA, LEGAL REGIMES LEGAL AND REGULATORY BARRIERS*

[*] (LLB, BL LLM in view)

[**] Egobueze, Wigo Lilian, LLB Hons) BL, PGD RSU.

1. Introduction

Gas flaring has been a long-standing environmental and health challenge in Nigeria's oil and gas industry, with devastating effects on the environment, human health, and local communities The continued practice of gas flaring has not only led to massive economic losses but also contributes significantly to global climate change. The Nigerian government has enacted several laws and regulations to curb this practice, but gas flaring remains prevalent due to a variety of factors. Despite the government's efforts to address this issue through legislation, regulations, and incentives, gas flaring persists especially in the Niger Delta region. This article provides an in-depth analysis of the legal and practical barriers to eliminating gas flaring in Nigeria. The author aim at examining the extant legal regime, contribute to the on-going discourse on gas flaring and offers valuable insights for policymakers, industry stakeholders and the broader public.

1.1 Meaning of Gas Flaring

Gas flaring[1] occurs in the refineries, chemical plants, oil rigs and landfills by burning off the flammable gas.[2] It also occurs when oil companies burn off the extra gas that escapes due to oil drilling and other oil-related activities in the sector.[3] The flared gas is often a by-product of oil extraction and is burned off due to a lack of infrastructure to capture, transport and process it.

1.2 The Impacts of Gas Flaring in Nigeria

Gas flaring in Nigeria has several negative impacts on the environment, human health and the economy.[4] It contributes significantly to environmental pollution and climate change, as it releases harmful greenhouse gases such as carbon dioxide, methane, sulfur dioxide and nitrogen oxide into the atmosphere.[5] It also poses health risks to nearby communities, as the emissions contain toxic substances that can cause respiratory problems and other illnesses.

Gas flaring also results in the waste of a valuable resource that could be harnessed for energy generation or industrial use, thereby contributing to the country's energy deficit.[6] The resulting environmental degradation also affects the agricultural sector, as soil quality is compromised, leading to poor crop yields and food insecurity. The negative economic effects of gas flaring include loss of revenue to the government and the affected communities. The practice also discourages foreign investment in the country, as investors are wary of the associated environmental and health risks.

2. National Legal Framework

2.1 Constitution of the Federal Republic of Nigeria 1999 (as amended)

Section 20 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)[7] provides for the duty of the State to protect and improve the environment and safeguard the water, air and land, forests and wildlife of Nigeria. When 4 and 13 of the CFRN, section 20 read together with sections can be interpreted as an express mandate for the State to prevent and stop harmful environmental practices such as gas flaring that cause air pollution, deforestation and other negative impacts on the environment. Therefore, the State is obligated to enforce the laws and regulations prohibiting gas

[1] O J Olujobi, 'Analysis of the Legal Framework Governing Gas Flaring in Nigeria's Upstream Petroleum Sector and the Need for Overhauling' [2020](9)(8) *Social Science*:132.
[2] *Ibid.*
[3] *Ibid.*
[4] PwC, 'Assessing the Impact of Gas Flaring on the Nigerian Economy' <https://www.pwc.com/ng/en/assets/pdf/gas-flaring-impact1.pdf> accessed 1 April 2023.
[5] *Ibid.*
[6] F B Elehinafe, 'Natural Gas Flaring in Nigeria, its Effects and Potential Alternatives: A Review' [2022](23)(8) *Journal of Ecological Engineering*: 141-151.
[7] Cap C23 LFN 2004.

flaring and ensure that oil companies operating in Nigeria comply with the applicable environmental standards and regulations.[8]

Under section 24(e) of the CFRN, citizens are obligated to render necessary assistance to lawful agencies. This provision is relevant to the present discourse on gas flaring because addressing the issue of gas flaring in Nigeria requires cooperation. To effectively tackle the problem of gas flaring in Nigeria, it is necessary for citizens to work together with the relevant authorities to report incidents of gas flaring, provide information, and comply with regulations.[9]

Sections 33 and 34 of the CFRN also have significant bearing to the issue of gas flaring. The right to life provided for under section 33 will be defeated if there is no clean and healthy air, which facilitates life. Likewise, without a healthy environment, the right to the dignity of the human person will become a mere sham. The continued practice of gas flaring in Nigeria has been shown to pose serious health risks and environmental degradation, leading to a violation of these constitutional rights. Therefore, the protection of the right to life and dignity of the Niger Delta community, who are affected by gas flaring, should be a priority for the government and relevant agencies.

Another vital constitutional provision that impacts on gas flaring is the provision of section 6(6)(c) of the CFRN which deals with the non-justiciability of Chapter II of the CFRN. This provision states that the judicial powers of the court shall not extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of the CFRN, which includes provisions on the protection of the environment. This means that even though the CFRN recognizes the importance of protecting the environment, the provisions in Chapter II are not justiciable, meaning that they cannot be enforced by the courts against the state.[10]

This has implications for gas flaring as affected communities may find it difficult to seek legal redress in the courts for the harm caused by gas flaring. However, this does not mean that the government and companies involved in gas flaring are absolved of their responsibility to protect the environment and the rights of affected communities. They are still obligated to take measures to mitigate the environmental impact of gas flaring and provide compensation to affected communities.

2.2 Petroleum Industry Act 2021

The Petroleum Industry Act (PIA) was enacted in 2021 to overhaul the overall administration and governance of the Nigerian petroleum industry. Sections 102 and 103 of the PIA provide for environmental management and financial contribution for remediation of environmental damage. However, the issue of gas flaring is more specifically stipulated under sections 104 to 108 of the PIA.

Section 105 of the PIA expressly prohibits the flaring and venting of natural gas and compels a licensee or lessee to pay a penalty as prescribed under the Flare Gas (Prevention of Waste and Pollution) Regulations.[11] Under section 105(2) of the PIA, the Nigerian Upstream Petroleum Regulatory Commission (the Commission) shall have the right to take free of charge natural gas that is destined for flaring at the flare stack. This means that if a licensee, lessee or marginal field operator intends to flare or vent natural gas, the Commission can take the gas from them for free before it is flared or vented. The intention behind this provision is to encourage licensees, lessees and marginal field operators to find alternative uses for the gas, such as selling it or using it to generate electricity, rather than simply wasting it through flaring or venting. It is worth noting that the Commission's right to take the gas free of charge may be restrained by some factors such as the unavailability of infrastructure for transporting and processing the gas.

[8] G Nnona, 'New Policy Regime for Gas in Nigeria a Perspective on Tax and Related Incentives' [2003](3) *Journal of Energy and Natural Resources Law*:285-302

[9] Nnona (n 8).

[10] *Okogie v. Attorney General Lagos State* (1981) 2 NCLR

[11] Petroleum Industry Act 2021, s.105(1)

Section 104 also provide for gas flaring penalties. It states that a licensee, lessee or marginal field operator that flares or vents natural gas commits an offence and is liable to a fine as prescribed by the Commission. However, such licensee, lessee or marginal field operator shall not be liable if the gas is flared in the case of emergency, or it is flared pursuant to an exemption or as an acceptable safety practice under established regulations. With respect to exemption, section 107 of the PIA empowers the Commission and the Nigerian Midstream and Downstream Petroleum Regulatory Authority (the Authority) to grant a permit to a licensee or lessee to allow the flaring or venting of natural gas for a specific period where it is required for facility start-up or for strategic operational reasons such as testing.[12]

However, this exemption may give rise to potential loopholes for operators to continue flaring natural gas, especially since the circumstances under which gas may be flared in an emergency or pursuant to an exemption are not explicitly defined. Also, the provision that empowers the Commission and Authority to issue exemption may be subject to abuse, especially if the permits are issued without proper oversight and monitoring of the activities of the licensee or lessee.

Section 106 of the PIA provides for the measurement of flared natural gas. Section 106(1) clearly states that a licensee shall prior to the commencement of petroleum production install metering equipment conforming to the specifications prescribed on every facility from which natural gas may be flared or vented prescribed by the appropriate authority. By virtue of section 106(2) of the PIA, a licensee or lessee who fails or refuses to install metering equipment commits an offence and is liable to a fine. This provision is important because it ensures that the amount of flared natural gas is accurately measured, which is necessary for enforcing penalties under Section 104 of the PIA. It also promotes transparency and accountability in the oil and gas sector, as it requires licensees to accurately report the amount of flared gas to the appropriate authorities. This information can be used to monitor compliance with environmental regulations and to assess the impact of flaring on the environment.

However, the cost of installing and maintaining the metering equipment may be a burden on licensees, particularly smaller operators who may not have the financial resources to comply with this requirement. This may create a barrier to entry and limit competition in the industry. Also, mere installation without monitoring will defeat the essence of the provision. In most cases, the government lack the adequate personnel and technology to checkmate the accuracy of compliance with the metering and installations.

Finally, section 108 of the PIA makes provision for natural gas flare elimination plan. It obligates the licensee or lessee to submit a natural gas flare elimination and monetisation plan to the Commission. However, the monetization of gas flare may further be abused and utilised as a tool to generate income at the expense of the environment.

2.3 Gas Flaring, Venting & Methane Emissions (Prevention of Waste and Pollution) Regulations 2022

This Regulation was made by the Minister of Petroleum pursuant to the provision of the Petroleum Act 1969 and the PIA. It outlines the principles regarding gas flaring, venting and methane emissions in the Nigerian upstream oil and gas sector. The objective of these regulations is to prevent waste and pollution arising from gas flaring, venting and methane emissions. The key issues covered in the Regulations include the following:

i. The right of the Federal Government to take all flare gas
ii. Bid processes for accessing flare gas
iii. Requirements for reporting flare, vent gas, and methane emissions data
iv. Administrative fines for providing inaccurate or incomplete data

[12]*Ibid*., s.107(a)(b).

v. Permits required for accessing flare gas, including a data access permit, permit to access flare gas, and safety flaring threshold permit
vi. Prohibition against flaring and venting of natural gas
vii. Work programs must demonstrate status of implementation of the plan
viii. Failure to meet plan milestones may result in penalties prescribed by the Commission

According to Regulation 2(1), the Federal Government has the right to take natural gas that is destined for flaring at the flare header or flare stack (and venting) without payment of royalty. This right is pursuant to Section 105(2) of the Petroleum Industry Act and all other laws in this regard. Under Regulation 8, a permit to access flare gas is required for accessing flare gas. This permit authorizes the permit holder on an exclusive basis to take disposed gas from one or more flare sites as designated in the permit on behalf of the Commission and to utilize the disposed gas or otherwise dispose it in any manner authorized by the Commission. No entity shall have access to or take disposed gas at a flare site except pursuant to a permit to access disposed gas.

As regard prohibition of gas flaring, the Regulations state that no producer shall engage in routine flaring or venting of natural gas from any facility operated by such producer.[13] Similarly, no permit holder shall engage in routine flaring or venting of natural gas from any facility operated by such permit holder.[14] The only exceptions to this prohibition are provided for in Section 104(1) and 107 of the PIA and other regulations and guideline made under them.

With respect to payment for gas flaring, regulation 16(1) states that where an average monthly production of 5,000 barrels or more of oil is produced per day in any Oil Mining Lease area, Petroleum Mining Lease area or Petroleum Prospective Licence area, the producer or the licensee shall be liable to the Federal Government for a flaring penalty expenditure of USD2.00 per 28.317 standard cubic metres (one thousand standard cubic feet) of gas flared and vented within such Oil Mining Lease area, Petroleum Mining Lease area or Petroleum Prospective Licence area, irrespective of whether the flaring is Routine or Non–Routine Flaring, provided that, there shall be no liability for the payment where the flaring and venting was caused by an act of war, community.

This approach seems to be in line with the government's efforts to discourage gas flaring in the country by imposing a financial burden on companies that engage in this practice. However, it could also be argued that the penalty of $2.00 per 28.317 standard cubic metres of gas flared and vented may not be high enough to deter companies from flaring. Also, the provision does not differentiate between routine and non-routine flaring, which could be problematic. By imposing the same penalty for both types of flaring, the regulation may not incentivize companies to reduce routine flaring, which is responsible for the bulk of gas flaring in Nigeria.

2.4 NESREA Act 2007

The aim of NESREA is to protect and develop Nigerian environment, biodiversity protection and to ensure sustainability of its extractive resources. The NESREA Act empowers NESREA to make regulations setting specifications and standards to protect and enhance the quality of Nigeria's air resources, so as to promote the public health or welfare and the natural development and productive capacity of the nations' human, animal, marine or plant life.[15] This provision of the NESREA Act is essential because gas flaring is a major contributor to air pollution and has negative impacts on public health and the environment. NESREA can use its regulatory powers to establish standards and guidelines aimed at mitigating the negative effects of gas flaring on air quality and ensuring the protection of public health and the environment.

[13] Gas Flaring, Venting & Methane Emissions (Prevention of Waste and Pollution) Regulations 2022, reg,13.
[14] *Ibid.*
[15] NESREA Act 2007, s.20(1).

3. International Legal Framework

3.1 Stockholm Declaration 1972

Environmental protection is a critical issue for the international community, particularly with regard to the impact of gas flaring and other oil exploration activities on the ozone layer and climate change. The 1972 United Nations Conference on Human Environment Stockholm recognized the need for States to be cautious in ensuring that activities within their national territories do not cause harm to the environment of other nations. It further affirmed the right of nations to use their natural resources in accordance with their national environmental legal regimes for the protection of their environments. Principle 22 of the Stockholm Declaration further requires States to compensate victims of pollution and other ecological damage caused by their activities within their border However, the enforcement of this principle has proven challenging. This is particularly true in the case of gas flaring and other oil exploration activities, which can have transboundary impacts on neighboring countries and their ecosystems.

3.2 United Nations Framework Convention on Climate Change 1992 and the Kyoto Protocol

The United Nations Framework Convention on Climate Change (UNFCCC) was adopted in 1992 during the Earth Summit in Rio de Janeiro, Brazil. The UNFCCC provides for the management and reduction of GHG emissions to promote a clean and healthy environment. The Convention specifically aims to stabilize GHG concentrations in the atmosphere at a level that will prevent dangerous human interference with the climate system.[16] To achieve this aim, the UNFCCC calls for State Parties to take actions to protect the climate system based on their common but differentiated responsibilities and respective capabilities.[17]

This means that while all countries have a shared responsibility to address climate change, developed countries with greater historical GHG emissions and resources are expected to take the lead in reducing emissions and providing financial and technological support to developing countries. Thus, developed countries and international oil companies (IOCs) have a greater responsibility to invest in and implement technologies to reduce emissions from gas flaring, as they have historically been the biggest contributors to GHG emissions in the oil and gas sector.

The Kyoto Protocol, adopted in 1997 and entered into force in 2005, is a legally binding protocol under the UNFCCC that sets specific targets for reducing greenhouse gas emissions. The Protocol sets out emission reduction targets for developed countries and establishes three flexible mechanisms for achieving these targets: emissions trading, joint implementation, and the clean development mechanism. The Kyoto Protocol builds on and strengthens the commitments made under the UNFCCC. It sets out more specific and binding obligations for developed countries to reduce their greenhouse gas emissions. It also includes mechanisms for international cooperation to help countries meet their emission reduction targets.

Despite the UNFCCC and the Kyoto protocol, the Nigerian government has shown a lack of political will to end gas flaring by sanctioning oil companies that violate its environmental laws and regulations in accordance with international environmental conventions.

3.3 Vienna Convention on Substances that Deplete the Ozone Layer 1985 and the Montreal Protocol

The Vienna Convention on Substances that Deplete the Ozone Layer 1985 is aimed at combating the problem of ozone layer depletion, imposing obligations upon member States to protect the ozone layer to safeguard human well-being and preserve the ecosystem from potentially harmful effects of human activity.[18] Member States are expected to domesticate the Convention and align their national

[16] United Nations Framework Convention on Climate Change 1992, art.2.
[17] *Ibid.*
[18] Vienna Convention on Substances that Deplete the Ozone Layer 1985, art.3.

environmental laws accordingly. The Montreal Protocol on Substances that Deplete the Ozone Layer addresses air pollution at the international level, introducing new regulatory measures and imposing legal obligations on member States to restrict and reduce the estimated levels of utilization and production of specific ozone-depleting substances.

While these legal instruments do not directly relate to gas flaring, they are important because they recognize the need for international cooperation to protect the ozone layer and encourage the development of alternative technologies and techniques. This could indirectly lead to the reduction of gas flaring, which is a major source of greenhouse gas emissions that contribute to climate change and ozone depletion.

3.4 African Charter on Human and Peoples' Rights 1981

Article 24 of the African Charter on Human and Peoples' Rights provides for the obligation of member States to ensure a clean and healthy environment. This article is relevant in this discourse as it places a duty on African countries to take appropriate measures to prevent activities that degrade the environment and endanger the health and well-being of their citizens. Thus, African countries, including Nigeria, have an obligation to ensure that the practices in the oil and gas sector are conducted in a manner that does not cause harm to the environment and the health of their people. This could be achieved through the implementation of policies and regulations aimed at reducing gas flaring and promoting the use of alternative energy sources. Nigeria has adopted this Charter through the African Charter on Human and Peoples' Rights (Enforcement and Ratification) Act. The Supreme Court has also made pronouncement on the Charter, recognising it as an integral part of Nigeria by virtue of its domestication by the National Assembly. This implies that right to clean and healthy environment can be enforced under the Africa Charter.

However, enforcement of international environmental conventions remains weak due to the absence of an international environmental court. While some scholars advocate for its creation, submission to the jurisdiction of the International Court of Justice is voluntary, and member States cannot be compelled to submit to its authority. Transboundary environmental degradation has prompted nations to adopt environmentally friendly policies and regulations and exhibit international cooperation to combat gas flaring. Nevertheless, some member States fail to comply with international environmental protection conventions due to the absence of stringent sanctions for non-compliance, resulting in increased environmental abuses and degradation in the oil sector.

4. Judicial Approach to Gas Flaring in Nigeria

Although there are laws prohibiting gas flaring, it is still a common practice in Nigeria's Niger Delta region. Many operators in the petroleum industry have continued to flare gas without being able to produce a certificate that proves gas re-injection is not feasible as required by the defunct Gas Re-injection Act. As a result of the petroleum ministry's failure to address gas flaring in Nigeria, Niger Delta residents have turned to the Nigerian courts to try and put an end to this harmful practice.

The case of *Gbemre v Shell*[19] is one of the landmark cases that was instituted on a matter directly related to gas flaring. Representing the Iwherekan Community in Delta State, Gemre filed this suit against Shell Petroleum Development alleging that the company's gas-flaring practices violated the people's fundamental rights to life and dignity of the human person as guaranteed respectively by sections 33(1) and 34(1) of the Constitution of the Federal Republic of Nigeria, 1999 and also under the African Charter on Human and Peoples' Rights Act. Additionally, the plaintiff argued that Shell's failure to conduct an environmental impact assessment (EIA) before flaring gas in the community violated the EIA Act and other environmental standards. The plaintiff further contended that section 3(2)(a)(b) of the Associated Gas Re-Injection Act, which allows gas flaring, contradicts Section 33(1) and 34(1) of the CFRN 1999 which renders, the Re-Injection Act void by virtue of section 1(3) of the

[19] (2005) 6 AHRLR 152

CFRN. Based on these legal reasonings, the plaintiff sought, among other things, an injunction restraining shell from flaring gas.

The High Court made a laudable ruling to address the issue when it issued an injunction that restrained Shell and other oil companies from continuing gas flaring activities. The High Court justified its decision on the basis that gas flaring violated the constitutional rights to life and dignity of the people of Iwherekan community.[20] Furthermore, the court ruled that the existing laws on gas flaring were unconstitutional and mandated the Attorney General and the Federal Executive Council to create new regulations that would be in tandem with constitutional provisions.[21]

Despite how laudable and applauding the court approached the issue, it did not stop the respondent from flaring gas. In total neglect of the court order, Shell continued to flare gas arguing that it lacked the resources to liquefy gas flares and that the court did not follow proper judicial procedures.[22] As legally expected, Gbemre sued Shell for contempt of court after the company failed to adhere to the court's order. Although this step was criticised on the reasoning that it was pre-mature, it contributed immensely to the conversation about ending gas flaring and laid a good foundation for gas flare litigation in Nigeria.

Another important case that illustrates a sound attitude of the court to combating gas flaring is the case of *Centre for Oil Pollution Watch v NNPC.*[23] Although this case is not directly on gas flaring, the Supreme Court developed a number of principles that reaffirmed the decision of the court in *Gbemre's case.* In this case, the applicant (an NGO) sued the Nigerian National Petroleum Corporation (NNPC) over an oil spillage in the Acha community, seeking restoration of the contaminated environment, provision of clean water and medical facilities. The trial court and Court of Appeal ruled that the NGO lacked locus standi. However, the Supreme Court overturned the decisions of the lower courts, stating that NGOs have the *locus standi* in environmental matters as they benefit the public. The court also emphasized the responsibility of the state to protect the environment and recognized citizens' fundamental rights to a clean and healthy environment.

In this ground-breaking decision, the SC also acknowledged that the right to a clean and healthy environment is implicitly included in the constitutional right to life. This is in line with previous rulings by the lower court in *Gbemre's case* and represents a positive shift in the court's attitude towards environmental and climate-related claims. This decision therefore provides new legal avenues for potential victims of gas flaring. It also helps to strengthen the country's human rights and constitutional framework for environmental protection.

For instance, where a local community in the Niger Delta region is adversely affected by gas flaring activities of an oil company. The community members may now rely on this Supreme Court decision to argue that their right to life has been violated due to the environmental pollution caused by gas flaring, and that they have a right to demand a clean and healthy environment under the extant laws. Either personally or through public interest litigation, the community may file a suit against the oil company at the Federal High Court (FHC) seeking remedies such as the cessation of gas flaring activities, remediation of the environment and compensation for damages suffered. The Supreme Court decision further provides the legal basis for such a claim and reinforces the need for the government and IOCs to take proactive measures to protect the environment and ensure the right to a clean and healthy environment for all Nigerians.

[20] *Gbemre v Shell* (2005) 6 AHRLR 152
[21] *Ibid.*
[22] Press Release, Climate Justice, Shell Fails to Obey Court Order to Stop Nigeria Flaring, Again, May 2, 2007, http://www.climatelaw.org/cases/country/nigeria/media/2007May2/ accessed 30 March 2023.
[23] (2019) 5 NWLR (Pt.1666) 518.

5. Problems Facing the Extant Legal Framework

5.1 Judicial Barrier

Despite attempts by victims of gas flaring to use the court as a means of effecting social change with regards to gas flaring, they have not been successful due to the courts' inability to enforce and implement constitutional policy. For a court to be a tool for social change, it must be impartial and committed to fulfilling its constitutional duty as an unbiased umpire.[24] The *Gbemre* case is an example of an effort to use the court as a platform for social transformation; nonetheless, this objective was not accomplished due to the absence of a genuinely independent judiciary and lack of obedience to court order.

Also, the process of enforcing environmental laws can be slow and inefficient, which allows companies to continue flaring gas without consequences for years. In some cases, legal battles can drag on for years, and by the time a decision is made, the damage has already been done. For example, the *Centre for Oil Pollution case* was instituted in 2005 and was finally determined by the Supreme Court in 2019.

Finally, the non-justiciability of the constitutional protection of the environment creates a barrier to addressing environmental issues such as gas flaring, as affected communities are unable to hold the State liable for failing in its duty to protect and preserve the atmosphere. As already stated earlier in this paper, section 6(6)(c) of the CFRN ties the hands of the court in enforcing the provisions of Chapter II of the CFRN against the government. This creates lackadaisical attitudes among all persons exercising legislative, executive and judicial powers in taking proactive measures in addressing gas flaring without fear or favour.

5.2 Poor Enforcement of the Extant Laws

Poor enforcement of the law is a major barrier to addressing gas flaring in Nigeria. Despite the enactment of various laws and regulations prohibiting gas flaring, the practice continues to be widespread in the country, especially in the Niger Delta region.[25] One of the main reasons for this is the poor enforcement of the law by regulatory agencies. The regulatory agencies responsible for monitoring and enforcing compliance with the law often lack the necessary resources and expertise to effectively carry out their mandate. In addition, there is also a lack of political will to enforce the law, as some powerful individuals and companies benefit from gas flaring and may resist efforts to clamp down on the practice. Corruption is also a major factor, as some regulatory officials may be bribed to overlook instances of gas flaring.[26]

5.3 Meagre Fines and Penalties

The legal penalties for gas flaring are often not severe enough to deter companies from engaging in the practice. Many of the fines and penalties are seen as inadequate compared to the profits generated by oil and gas companies. For instance, section 104 of the PIA imposes fines on licensees, lessees or marginal field operators who flare or vent natural gas, but the amount of the fines is left to the discretion of the Nigerian Upstream Petroleum Regulatory Commission. Similarly, Regulation 16(1) of the Gas Flaring, Venting & Methane Emissions (Prevention of Waste and Pollution) Regulations 2022 provides for a flaring penalty payment of $2.00 per 28.317 standard cubic metres of gas flared and vented, which also is not sufficient to effectively deter or discourage companies from flaring or venting gas.

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[24] O Guobadia, 'The Relevance of the Judiciary in a Democratic Nigeria' [2012] *African Journal of International and Comparative Law*:301-317.

[25] O J Olujobi and T Olusola-Olujobi, 'The Appraisal of Legal Framework Regulating Gas Flaring in Nigeria's Upstream Petroleum Sector: How Effective' [2019](10)(3*) International Journal of Advanced Research in Engineering and Technology*:234-250.

[26] O J Olujobi, 'Legal Framework for Combating Corruption in Nigeria – The Upstream Petroleum Sector in Perspective' [2017](8)(3) *Journal of Advanced Research in Law and Economics*:956.

5.4 Infrastructure Challenges

There are often challenges in developing the infrastructure necessary to capture and process associated gas that would otherwise be flared. This can include issues such as inadequate pipeline infrastructure, insufficient funding for gas processing facilities and limited access to technology and expertise. While there is often significant demand for the gas once it is processed, building the necessary facilities can require a significant investment. Many oil and gas companies are reluctant to invest in these facilities due to the high up-front costs and the relatively low return on investment.

6. Conclusion

The issue of gas flaring in Nigeria remains a significant challenge despite various legislative measures put in place to address the problem. The economic, environmental, and health consequences of gas flaring cannot be overemphasized. However, various barriers such as poor enforcement of the law, judicial challenges, inadequate penalties, and challenges in developing necessary infrastructure still exist. To tackle this problem effectively, there is a need for a multifaceted approach involving collaboration between stakeholders in the petroleum industry. It is essential to improve the legal framework and enforce existing regulations, increase penalties for non-compliance, and promote the use of alternative energy sources to reduce gas flaring.

7. Recommendations

i. The Commission should increase the penalties for gas flaring to make it more commensurate with the economic gains derived from gas flaring.
ii. The Nigerian government should invest and encourage investment in the necessary infrastructure to capture and process associated gas. This could be done through partnerships with private investors, technology transfer, and capacity building.
iii. The government should speed up efforts in developing its renewable energy sources such as solar, wind, and hydroelectric power, to reduce dependence on fossil fuels and promote sustainable development.
iv. There should also be a clear and transparent process for granting permits and exemptions, with strict conditions and monitoring to ensure that operators comply with the regulations and minimize the impact of gas flaring on the environment and the health of local communities.