

## HUMAN RIGHTS IMPLICATIONS OF GAS FLARING: EXPLORING THE TRANSFORMATIVE EFFECTS OF THE PETROLEUM INDUSTRY ACT

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### **Abstract**

*Gas flaring, a common practice in the petroleum industry, has significant environmental and human rights implications, contributing to air pollution, and climate change, and negatively impacting the fundamental rights guaranteed by the Nigerian Constitution. The negative impact of gas flaring includes greenhouse gas emissions, reduced air quality, and threats to human rights including the right to life. The recent judgment of the Nigerian Supreme Court in *Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation*<sup>1</sup> has acknowledged the environmental and human rights implications of gas flaring. Gas flaring, a common practice in the oil and gas industry, poses significant environmental challenges and adversely affects the health and well-being of local communities. The PIA, enacted to reform the petroleum sector in Nigeria, presents an opportunity to address these concerns and safeguard human rights. This paper explores the profound implications of gas flaring on the environment and the transformative effects of the Petroleum Industry Act (PIA) on the protection of human rights in Nigeria. The paper concludes that the PIA signifies a positive step toward addressing the environmental and human rights impact of the petroleum industry, particularly gas flaring. By imposing penalties, promoting gas utilization, and emphasizing environmental compliance, the PIA contributes to Nigeria's climate change commitments, aligns with global efforts to create a more sustainable and environmentally responsible energy sector, and ultimately protects human rights, particularly of the vulnerable communities near oil-producing areas. It is recommended that there should be Public participation in law and policy-making cannot.*

**Key Words:** *Gas Flaring, Broader Implications, Protection of Human Rights, Climate Change Commitments, Petroleum Industry Act*

### **1.0 Introduction**

The oil and gas industry is a vital sector in Nigeria, contributing significantly to the nation's economy. However, the widespread practice of gas flaring, the burning of associated gas during oil extraction, has raised environmental and human rights concerns for several cogent reasons. Gas Flaring has several environmental and human rights implications. Gas flaring results in Environmental Degradation because it releases harmful pollutants into the atmosphere, contributing to air pollution, climate change, and adverse health effects. The environmental degradation resulting from gas flaring has direct and indirect implications for the well-being of communities near oil-producing areas. Gas flaring also has human rights implications, the right to a clean and healthy environment is an integral component of human rights. Gas flaring in Nigeria has been associated with the violation of these rights, including the right to life, health, and a healthy environment. The recent judgment of the Nigerian Supreme Court in *Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation*<sup>1</sup> made significant strides in 'greening' the Nigerian Constitution by confirming the existence and enforceability of environmental human rights in Nigeria, and explicitly recognized for the first time, that section 33 of the Constitution<sup>2</sup>

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<sup>1</sup> [2019] 5 NWLR (Pt. 1666) 518

<sup>1</sup> *Supra*

<sup>2</sup> Constitution of Federal Republic of Nigeria, 1999 as amended

which guarantees the Right to Life, implicitly includes and constitutes a fundamental right to a clean and healthy environment for all.<sup>3</sup>

Tackling gas flaring is critical to Nigeria's emission reduction objectives and climate change commitments, its aspirations for sustainable development particularly the sustainable use of natural resources, and the protection of fundamental human rights guaranteed by the Constitution.<sup>4</sup> In the context of Nigeria, the PIA plays a crucial role in shaping the country's approach to gas flaring and the broader implications for the protection of human rights in Nigeria. Associated petroleum gas ("APG") is natural gas that typically accompanies crude oil reserves and is released when oil is brought to the surface ("extracted"). Although natural gas is a natural resource in its own right and highly desirable for its less polluting properties when accompanying crude oil<sup>5</sup> it becomes less attractive for use and often ends up being released into the atmosphere ("vented")<sup>6</sup> or set alight to dissipate ("flared").<sup>7</sup> Despite their natural co-existence, crude oil and natural gas require separate technologies and equipment for production and processing, as well as connection to separate transmission and distribution networks.<sup>8</sup>

The World Bank's Global Gas Flaring Reduction Partnership (GGFR)<sup>9</sup> defines gas flaring as "Routine flaring of gas at oil production facilities during normal oil production operations in the absence of sufficient facilities or amenable geology to re-inject the produced gas, utilize it on-site, or dispatch it to a market."<sup>10</sup> During oil production, the associated natural gas is often flared (burned) when economic, regulatory, or technical barriers to the development of gas markets and gas infrastructure prevent it from being used or when re-injecting the associated gas back into the reservoir is not possible. Routine and avoidable gas flaring usually occur in countries where insufficient investment has been made to utilize the natural gas that accompanies crude oil, there are market and economic constraints, and a lack of appropriate regulation and political will.<sup>11</sup>

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<sup>3</sup> *Ibid*, Section 33

<sup>4</sup> *Ibid*

<sup>5</sup> Note that it can also be found in coal and bitumen production.

<sup>6</sup>This paper will focus primarily on associated gas related to the crude oil extraction.

<sup>7</sup>A. Rodina, *Burning Through: Reducing Associated Petroleum Gas Flaring To Enhance Natural Resources Governance*, *Law in Transition Journal* 2016, pp. 82. Available at <http://www.ebrd.com/news/publications/newsletters/law-in-transition-2016.html>. Accessed 10 March 2024

<sup>8</sup>A. Rodina, *Ibid*, pp.87. Available at <http://www.ebrd.com/news/publications/newsletters/law-in-transition-2016.html> Accessed 10 March 2024

<sup>9</sup> The World Bank Group has a leadership role in gas flaring reduction through the Global Gas Flaring Reduction Partnership (GGFR), a public-private initiative comprising international and national oil companies, national and regional governments, and international institutions. GGFR works to increase use of natural gas associated with oil production by helping remove technical and regulatory barriers to flaring reduction, conducting research, disseminating best practices, and developing country-specific gas flaring reduction programs.

<sup>10</sup> Global Gas Flaring Reduction Partnership Gas Flaring Definitions' available at <http://pubdocs.worldbank.org/en/876011467068652330/GGFR-Gas-Flaring-Definitions-29-June-2016.pdf> Accessed 10 March 2024

<sup>11</sup> Note that there is a difference between routine flaring, safety flaring and non-routine flaring. This paper is concerned with the practice of avoidable routine flaring. It may be necessary to flare gas during drilling, production or processing of crude oil but because natural gas is valuable, countries would rather encourage oil and gas companies to capture rather than flare it. See the following on gas flaring: World Bank. 2016, 'Global gas flaring reduction partnership - gas flaring definitions' (English). Washington, D.C.: World Bank Group; Ohio EPA, 'Understanding the Basics of Gas Flaring' available at <http://www.epa.state.oh.us/portals/27/oil%20and%20gas/basics%20of%20gas%20flaring.pdf> Accessed 10 March 2024; A. Rodina, "Burning Through: Reducing Associated Petroleum Gas Flaring to Enhance Natural Resources Governance", *Law in Transition Journal*, (2016), pp. 82-91 at 83.

This paper explores the key provisions of the PIA, assesses their potential impact on reducing gas flaring, and analyses the implications for human rights protection in the Nigerian context. It also sets out to examine the transformative effects (if any) of the PIA on gas flaring, and ultimately the constitutionally guaranteed fundamental rights in Chapter 4 of the 1999 Constitution.

## 2.0 Gas Flaring: Environmental and Other Impacts

The World Bank estimates that the annual volume of associated gas being flared and vented is about 110 billion cubic meters (bcm), enough fuel to provide the combined annual natural gas consumption of Germany and France. Flaring in Africa (37 bcm in 2000) could produce 200 Terawatt hours (TWh) of electricity, which is about 50 percent of the current power consumption of the African continent and more than twice the level of power consumption in Sub-Saharan Africa (excluding the Republic of South Africa).<sup>12</sup> The National Oil Spill Detection And Response Agency (NOSDRA)'s Gas Flare Tracker, estimates that 147.1 billion SCF of gas was flared in Nigeria between January and August 2022, valued at \$514.9m, and 171.1 billion standard cubic feet of gas valued at about \$599m was flared between January and August 2023 with significant loss of 27.5 Thousand Gigawatt hours of potential power generation.<sup>13</sup> This is a significant waste of financial resources and energy sources which is cleaner and less polluting than other energy sources such as crude oil, and coal.

Gas flaring results in the release of a large number of pollutants and hazardous chemicals into the environment. A World Bank analysis indicates that the following pollutants and organic compounds are released into the environment; toxins, including carcinogens, benzopyrene, benzene, carbon disulfide (CS<sub>2</sub>), carbonyl sulfide (COS), and toluene; metals such as mercury, arsenic, and chromium; nitrogen oxides; and sour gas with H<sub>2</sub>S and SO<sub>2</sub>.<sup>14</sup> The analysis noted that these substances cause air, surface water, and soil pollution. The World Bank report further noted "... that most gas flaring reduction is, in essence, a question of changing the purpose of the combustion at the oil field from gas elimination (flaring) to gas use, (for example, power production), or of moving the combustion away from the field—normally to a load center where it will be combusted for industrial or power production purposes..."<sup>15</sup>

Gas flaring threatens directly or indirectly the attainment of all the Sustainable Development Goals (SDGs)<sup>16</sup> and the greenhouse gas (GHG) emission reduction commitments of gas-flaring countries.

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<sup>12</sup> The World Bank, 'Regulation of Associated Gas Flaring and Venting: A Global Overview and Lessons from International Experience' Report Number 3, available at [www.worldbank.org/ggfr](http://www.worldbank.org/ggfr). Accessed 10 March 2024

<sup>13</sup> <https://nosdra.gasflaretracker.ng/> Accessed 6 March 2024. The Petroleum Industry Act (PIA) established the Nigerian Upstream Petroleum Regulatory Commission (The Commission) replacing the Department of Petroleum Resource (DPR): E. Kachikwu, *Environmental Law and the Niger Delta Imperatives* (Law Publishing & conference Services Limited, 2017) 158.

<sup>14</sup> The World Bank, *Flared Gas Utilization Strategy: Opportunities for Small-Scale Uses of Gas*, (Washington D.C.: The International Bank for Reconstruction and Development / The World Bank, 2004), pp. 8. See also A. Solov'yanov, 'Associated Petroleum Gas Flaring: Environmental Issues' *Russian Journal of General Chemistry*, (2011), Vol. 81, No. 12, pp. 2532.

<sup>15</sup> The World Bank, *Flared Gas Utilization Strategy: Opportunities for Small-Scale Uses of Gas*, (Washington D.C.: The International Bank for Reconstruction and Development / The World Bank, 2004), pp. 8

<sup>16</sup> Particularly Goal 7 on 'Access to affordable, reliable, sustainable and modern energy' (SDG7) and Goal 13 on climate action (SDG13). In 2015 the United Nations General Assembly adopted the resolution 'Transforming our world: the 2030 Agenda for Sustainable Development'. The Agenda represents a plan 'of action for people, planet and prosperity' organized through 17 Sustainable Development Goals (SDGs) and 169 targets. All countries and stakeholders are encouraged to work toward ending poverty and hunger, protecting the planet from environmental degradation and promoting prosperity and peace through international partnerships. UN

Gas flaring has a detrimental effect on the environment, as well as numerous socio-economic impacts and it is a significant waste of natural resources, thus representing a “lose-lose” situation.<sup>17</sup> Besides constituting a waste of economically valuable resources, flaring and venting are also significant contributors to modern environmental challenges such as pollution, global warming, climate change, natural resource depletion, loss of biodiversity, deforestation, acid rain, ozone layer depletion, and ocean acidification.<sup>18</sup>

Gas flaring contributes to climate change and impacts the environment through the release of substantial volumes of potent GHGs, including methane, black soot, and nitrous oxide.<sup>19</sup> It is estimated that each cubic meter of associated gas flared results in about 2.8 kilograms of CO<sub>2</sub>-equivalent emissions.<sup>20</sup> At current levels, global flaring is estimated to result in over 350 million tons of CO<sub>2</sub>-equivalent emissions annually.<sup>21</sup>

Associated or natural gas is less polluting than other fossil fuels.<sup>22</sup> However, despite its cleaner properties, a lot of oil and gas-producing nations, especially in developing countries, still engage in the wasteful and damaging practice of routine gas flaring. Routine gas flaring by oil-producing companies in local, usually impoverished communities comes with attendant environmental, and socio-economic impacts and challenges.<sup>23</sup> According to Ismail and Umukoro, although the impacts of the practice are more prevalent in developing countries that have less capacity to avert and address the impacts, the practice and its attendant impacts remain of global concern,<sup>24</sup> especially in the era of climate change and other environmental and socio-economic challenges.

The health Implications of gas flaring on human health are mainly related to the exposure of local communities, especially babies and children to the hazardous air pollutants emitted during incomplete combustion of gas flare. The health of communities and people proximate to the flares is at risk. These pollutants are associated with a variety of adverse health impacts, including cancer, neurological, reproductive, and developmental impairments, deformities in children, lung damage, and skin problems.<sup>25</sup> According to Kachikwu, it is reported that an average of 200 persons die monthly in Niger Delta as a result of gas-related illness while communities where gas is flared

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General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, 21 October 2015, A/RES/70/1.

<sup>17</sup> United Nations Environment Programme, ‘Environmental Assessment of Ogoniland’ (2011) <https://www.unep.org/topics/disasters-and-conflicts/country-presence/nigeria/environmental-assessment-ogoniland-report> Accessed 10 March 2024. Refer to Section 3 infra for further discussion on the economic, social and human rights implications.

<sup>18</sup> O.G Fawole *et al*, ‘Gas flaring and resultant air pollution: A review focusing on black carbon’ *Environ. Pollut.* (2016), 216, 182–197.

<sup>19</sup> <https://www.worldbank.org/en/programs/gasflaringreduction/about> Accessed 10 March 2024

<sup>20</sup> <https://www.worldbank.org/en/programs/gasflaringreduction/about#:~:text=It%20is%20estimated%20that%20each,of%20CO2%2Dequivalent%20emissions%20annually.> Accessed 6 March 2024

<sup>21</sup> *Ibid.*

<sup>22</sup> Such as coal and crude oil

<sup>23</sup> See the following: A. Solov’yanov, ‘Associated Petroleum Gas Flaring: Environmental Issues’ *Russian Journal of General Chemistry*, (2011), Vol. 81, No. 12, pp. 2531–2541; A. Ajugwo, ‘Negative Effects of Gas Flaring: The Nigerian Experience’ *Journal of Environment Pollution and Human Health* 1, no. 1 (2013) pp. 6-8; O. Ismail and G. Umukoro, ‘Global Impact of Gas Flaring’, *Energy and Power Engineering*, (2012), 4, pp. 290-302; and Regulation of Associated Gas Flaring and Venting.

<sup>24</sup> O. Ismail and G. Umukoro, ‘Global Impact of Gas Flaring’, *Energy and Power Engineering*, (2012), 4, pp. 291.

<sup>25</sup> W. D. Kindzierski, ‘Importance of human environmental exposure to hazardous air pollutants from gas flares’ *Environmental Reviews*, 8, 41-62, (2000).

experience perpetual days of heat intensity due to gas flaring.<sup>26</sup> According to Ajugwo, Hydrocarbon compounds are known to cause some adverse changes in hematological parameters which result in blood diseases such as anemia, pancytopenia, and leukemia.<sup>27</sup> A study of the prevalent disease reported and treated in health centers in the Niger Delta region of Nigeria, where the majority of Nigeria's gas flaring stacks are located, reveals that respiratory disorder cases are prevalent, in addition to skin diseases, tumors, gastrointestinal problems, cancer, and malnutrition, which have been linked to oil-induced environmental pollution in the region.<sup>28</sup>

Aside from the health and environmental consequences of gas flaring, gas flaring is a colossal waste of a natural resource that can be converted for industrial and commercial use, domestic use (cooking), and for electricity generation. Gas flaring results in huge revenue loss, loss of livelihood, and lost manpower, and it threatens the attainment of the sustainable development Goals.<sup>29</sup> Gas flaring is a loss of valuable resources, and it deprives developing countries of the much-needed clean energy source that is crucial for economic growth and human development and that is crucial for providing modern energy services such as electricity, clean cooking fuel, and sustainable transport systems. Ajugwo notes that although more than 65 % of the government's revenue is from oil, Nigeria loses about \$2.5 billion annually in government revenues through gas flaring.<sup>30</sup> Reduced flaring implies reduced carbon dioxide (CO<sub>2</sub>) emissions. CO<sub>2</sub> reduction not only benefits the country that achieves the emission reductions but constitutes a contribution to global efforts to reduce greenhouse gas emissions to slow climate change.

## 2.1 Gas Flaring: Human Rights Implications

Gas flaring is primarily an environmental concern; however, the practice has profound implications for the communities living in proximity to extraction sites, raising questions about social justice, health, and overall human rights violations.<sup>31</sup> Gas flaring is a threat to several of the human rights recognized by international human rights instruments including the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the various regional instruments and Protocols on Human rights.

Gas flaring hurts human health guaranteed by Article 16 of the African Charter on Human and People's Rights (ACHPR).<sup>32</sup> Communities residing near gas flaring sites experience heightened

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<sup>26</sup> E. Kachikwu, *Environmental Law and the Niger Delta Imperatives* (Law Publishing & conference Services Limited, 2017) 159.

<sup>27</sup> A. Ajugwo, 'Negative Effects of Gas Flaring: The Nigerian Experience', *Journal of Environment Pollution and Human Health*, (2013), Vol. 1, No. 1, PP. 7.

<sup>28</sup> O. Binuomoyo and A. Ogunsola, 'Oil spills and the Niger Delta bloodlines: examining the human tragedy' *Journal of Life & Physical Sciences* (2017) Vol. 8, pp. 11

<sup>29</sup> Specifically Goals 7, 1, 2, 3,6,8, 13

<sup>30</sup>A. Ajugwo, 'Negative Effects of Gas Flaring: The Nigerian Experience' *Journal of Environment Pollution and Human Health* 1, no. 1 (2013) pp. 7. See also O. Ismail and G. Umukoro, 'Global Impact of Gas Flaring', *Energy and Power Engineering*, (2012) (4), pp. 290-302; The World Bank, *Flared Gas Utilization Strategy: Opportunities for Small-Scale Uses of Gas*, (Washington D.C.: The International Bank for Reconstruction and Development / The World Bank, 2004), pp.

<sup>31</sup> C. A. Osoha and M.A. Fakutiju, 'Gas Flaring in Niger Delta Region of Nigeria: Cost, Ecological and Human Health Implications' (2017) *Environmental Management and Sustainable Development*, Vol. 6, No. 2; A.A Babalola and D.S, Olawuyi, 'Overcoming Regulatory Failure in the Design and Implementation of Gas Flaring Policies: The Potential and Promise of an Energy Justice Approach' *Sustainability* (2022), 14(11), 6800; A.O. Ajugwo, 'Negative Effects of Gas Flaring: The Nigerian Experience' *Journal of Environment Pollution and Human Health*, (2013), Vol. 1, No. 1, 6-8;

<sup>32</sup> Adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

health risks due to exposure to toxic emissions. The pollutants released are known to cause respiratory and skin diseases, posing serious threats to the right to health. The lack of adequate healthcare facilities and resources in affected areas further compounds the violation of this fundamental human right. Article 16 holds that “Every individual shall have the right to enjoy the best attainable state of physical and mental health.” Gas flaring releases pollutants that have well-documented adverse effects on human health, including respiratory diseases, cardiovascular problems, and increased cancer risks.<sup>33</sup>

Gas flaring also poses risks to water sources and food security. The pollutants released during flaring can contaminate water supplies, affecting both drinking water and agricultural resources. Local communities that rely on these resources for their sustenance face the dual threat of health hazards from contaminated water and the loss of food security, leading to a direct violation of the right to an adequate standard of living for health and well-being, including food, clothing, housing and medical care and necessary social services.<sup>34</sup> The Committee on Economic, Social, and Cultural Rights issued several General Comments explaining the components of this right. The right to an adequate standard of living includes several components including the right to adequate housing<sup>35</sup> General Comments 4 of the Committee on Economic, Social and Cultural Rights acknowledges that the human right to adequate housing, which is derived from the right to an adequate standard of living, is of central importance for the enjoyment of all economic, social and cultural rights.<sup>36</sup> General Comment 12 restates that the right to food is a component of the right to an adequate standard of living and that every State is obliged to ensure that everyone under its jurisdiction has access to the minimum essential food that is sufficient, nutritionally adequate, and safe, to ensure their freedom from hunger.<sup>37</sup>

In November 2002, the UN Committee on Economic, Social, and Cultural Rights took the bold step of affirming that the water right was an integral part of international human rights law.<sup>38</sup> General comment 15 on the water rights reiterates that several rights emanate from, and are indispensable for, the realization of the right to an adequate standard of living “including adequate food, clothing and housing”. It goes further to state that the use of the word “including” indicates that this catalog of rights was not intended to be exhaustive and that the water right falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival.<sup>39</sup> The Committee derived the right to water from two provisions of ICESCR. Article 11 recognizes the ‘right of everyone to an adequate

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<sup>33</sup> Icelandic Human Rights Centre, ‘The Right To An Adequate Standard Of Living’ <https://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/substantive-human-rights/the-right-to-an-adequate-standard-of-living#:~:text=Article%2011%20recognises%20the%20'right,for%20the%20right%20to%20health>. Accessed 10 March 2024.

<sup>34</sup> This right is recognised by international human rights law including Article 25.1 of the Universal Declaration of Human Rights Article, Article 11 of the International Covenant on Economic, Social and Cultural Rights.

<sup>35</sup> CESCR General comment 4. (General Comments) <https://www.escr-net.org/resources/general-comment-4> Accessed 10 March 2024

<sup>36</sup> As above. See also General Comment 7, The Right to Adequate Housing (Art. 11.1 Of the Covenant): Forced Evictions, <https://www.refworld.org/legal/general/cescr/1997/en/53063> Accessed 10 March 2024

<sup>37</sup> CESCR General Comment No. 12: The Right to Adequate Food (Art. 11) E/C.12/1999/5 <https://www.refworld.org/legal/general/cescr/1999/en/87491> Accessed 10 March 2024

<sup>38</sup> General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant) E/C.12/2002/11 <https://www.refworld.org/legal/general/cescr/2003/en/39347> Accessed 10 March 2024

<sup>39</sup> As above. General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant) E/C.12/2002/11 <https://www.refworld.org/legal/general/cescr/2003/en/39347> Accessed 10 March 2024

standard of living, including adequate food, clothing and housing' and Article 12 provides for the right to health.<sup>40</sup>

At the African level, the ACHPR does not expressly guarantee the right to an adequate standard of living, housing, or food. However, these rights were innovatively affirmed through a combined reading of Articles 5 and 14-18 of the ACHPR. The African Commission on Human and Peoples' Rights<sup>41</sup> in the case of *Social and Economic Rights Action Centre et al. v. Nigeria*,<sup>42</sup> Communication 155/96 found violations of the rights to housing and food, neither of which are expressly recognized by the Charter. The Commission held that the right to housing or shelter is implicitly entrenched in the totality of the right to enjoy the best attainable standard of mental and physical health, the right to property, and the protection of the family. Likewise, the right to food was implied in the rights to life, health, and to economic, social, and cultural development.<sup>43</sup>

Gas flaring, especially in local communities results in displacement and loss of livelihoods. This is because oil extraction leads to the displacement of local communities as drilling activities expand. This displacement disrupts the lives of indigenous peoples and local communities, robbing them of their homes, traditional lands, and livelihoods. In many cases, these communities are not adequately compensated for their losses, further exacerbating the socio-economic inequalities they face.<sup>44</sup> This poses a threat to the right to work recognized by international human rights law.<sup>45</sup> Article 15 of the ACHPR Protocol guarantees the right to livelihood, it states that every individual shall have the right to work under equitable and satisfactory conditions and shall receive equal pay for equal work.<sup>46</sup>

The human rights implications of gas flaring are exacerbated by inadequate regulation and the lack of corporate responsibility. Inadequate Regulation and Corporate Responsibility has been the bane of the regulation of gas flaring in Nigeria until recently with the PIA and other regulations signed into law with the key objectives of overhauling the oil and gas sector towards a sustainable sector.<sup>47</sup> The international community has recognized the need to address the human rights implications of gas flaring. Various human rights instruments, including the Universal Declaration of Human Rights and the International Covenant on Economic, Social, and Cultural Rights, emphasize the importance of environmental protection and the right to a healthy environment. However, more

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<sup>40</sup> General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant) E/C.12/2002/11 <https://www.refworld.org/legal/general/cescr/2003/en/39347> Accessed 10 March 2024. The right to water has also been recognised in a number of other international instruments, most notably Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention on the Rights of the Child (CRC), and the Mar Del Plata Action Plan of the United Nations Water Conference.

<sup>41</sup> <https://achpr.au.int/en> Accessed 10 March 2024. The Commission is a quasi-judicial body tasked with promoting and protecting human rights and collective rights throughout the African continent.

<sup>42</sup> Communication No. 155/96

<sup>43</sup> *Ibid.*

<sup>44</sup> C. A. Osuoha and M.A. Fakutiju, 'Gas Flaring in Niger Delta Region of Nigeria: Cost, Ecological and Human Health Implications' (2017) *Environmental Management and Sustainable Development Journal*, Vol. 6, No. 2.

<sup>45</sup> The right to work is in the following international human rights instruments; The Universal Declaration of Human Rights states in Article 23.1 states that "(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment"; and the International Covenant on Economic, Social and Cultural Rights, Article 6.

<sup>46</sup> Adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

<sup>47</sup> A.A Babalola and D.S. Olawuyi, 'Overcoming Regulatory Failure in the Design and Implementation of Gas Flaring Policies: The Potential and Promise of an Energy Justice Approach' *Sustainability* (2022), 14(11), 6800; J.O Olujobi, 'Comparative appraisals of legal and institutional framework governing gas flaring in Nigeria's upstream petroleum sector: How satisfactory?' *J. Environ. Qual. Manag.* 2020; See Section 3 *infra*

concerted efforts are required to ensure the effective implementation of these principles and hold both governments and corporations accountable for their actions. The following section will analyze the legal and regulatory framework for gas flaring and the transformative effects (if any) of the PIA on the protection of human rights in Nigeria.

### 3.0: Overview of the Current Legal and Regulatory Framework for Gas Flaring in the Nigerian Petroleum Industry

Nigeria is endowed with abundant and diverse energy, mineral, and biological resources including crude oil, natural gas deposits, limestone, coal, tin, columbite, asbestos, iron ore, gold, silver, lead, and zinc.<sup>48</sup> Nigeria's most significant natural resource is natural gas, it has a reserves of 187 trillion cubic feet and Nigeria is considered to have the seventh-largest gas reserves in the world.<sup>49</sup> However, despite the abundance and its related benefits, gas utilization is limited. Nigeria is one of the leading producers of crude oil in the world and it has the largest natural gas reserves in Africa.<sup>50</sup> Nigeria is ranked one of the top 9 largest flaring countries in 2022 by the World Bank's Global Gas Flaring Tracker.<sup>51</sup> These countries accounted for 74 percent of all gas flared and 45 percent of global oil production.<sup>52</sup> Section 44(3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Sections 1 (1) of the PIA vest in the Federal Government of Nigeria proprietary rights, ownership, and control of oil and gas located within any land in Nigeria, under its territorial waters, continental shelf or within its exclusive economic zone.<sup>53</sup>

Although the Petroleum Act, of 1969, included the prevention of atmospheric pollution and the conservation of resources, it did not expressly prohibit gas flaring in Nigeria, it had little thought for the commercialization of gas as an independent hydrocarbon and lacks a framework for the development of critical gas infrastructure. Post-independence, the Associated Gas Re-injection Act, of 1979 prohibited gas flaring without the written permission of the Minister after January 1, 1984. The Act seeks to compel every company producing oil and gas in Nigeria to submit preliminary programs for gas re-injection and detailed plans for implementation of gas re-injection.<sup>54</sup> The Associated Gas Re-injection (Continued Flaring of Gas) Regulations, 1984, made under the Gas Re-injection Act set criteria for when flaring is allowed and it set out conditions for the issuance of a certificate for the continued flaring of gas in a particular field or fields by the Minister under

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<sup>48</sup>O. Ajai, 'The balancing of interests in environmental law in Nigeria', in M. Faure & W. du Plessis, eds. *The balancing of interests in environmental law in Africa* (Pretoria: Pretoria University Law Press, 2011), P. 380. See also E. Eleri *et al*, 'Low-Carbon Africa: Leapfrogging to Green Future: Low carbon Africa: Nigeria', available at [www.christianaid.org.uk/resources/policy/climate/low-carbon-africa](http://www.christianaid.org.uk/resources/policy/climate/low-carbon-africa). Accessed 10 March 2024; A. Sambo, 'Matching Electricity Supply with Demand in Nigeria', IAAE Energy Forum, Newsletter available at <https://www.iaee.org/documents/newsletterarticles/408sambo.pdf> Accessed 10 March 2024; World Bank Country Report: Nigeria, available at <http://www.worldbank.org/en/country/nigeria> Accessed 10 March 2024; and Nigeria: World Encyclopaedia of Nations, available at <http://www.encyclopedia.com/topic/Nigeria.aspx>

<sup>49</sup>S. Awogbade *et al*, *Oil and gas regulation in Nigeria: overview: Practical Law Country Q&A* (2017)

<sup>50</sup>World Bank Country Report: Nigeria, available at <http://www.worldbank.org/en/country/nigeria> Accessed 10 March 2024. See also Nigeria: World Encyclopaedia of Nations, available at <http://www.encyclopedia.com/topic/Nigeria.aspx> Accessed 10 March 2024

<sup>51</sup>The other countries are Russia, Iraq, Iran, Algeria, Venezuela, the United States, Mexico, and Libya. See Global Gas Flaring Data, available at <https://www.worldbank.org/en/programs/gasflaringreduction/global-flaring-data> Accessed 10 March 2024. The Global Gas Flaring Tracker is the only global and independent indicator of routine gas flaring.

<sup>52</sup>As Above.

<sup>53</sup>1999 Constitution of the Federal Republic of Nigeria (as amended) LFN) 2004.

<sup>54</sup>Associated Gas Re-injection Act, Cap A25, LFN 2004.



section 3 (2) of the Associated Gas Re-Injection Act.<sup>55</sup> Several decades after the discovery of gas, the legal landscape was still being framed by the dated Petroleum Act which focuses more on the development and exploration of oil without a complementary framework for the development and utilization of gas.<sup>56</sup>

However, measures to reduce flaring gained only limited traction, and the deadlines for ending routine flaring were repeatedly postponed.<sup>57</sup> Several significant measures were introduced to achieve Nigeria's gas flaring objectives. In 2016 the National Gas Policy<sup>58</sup> and the Nigerian Gas Flare Commercialization Programme (the NGFCP)<sup>59</sup> aimed at deepening and accelerating the growth of the gas sector and ultimately attracting investment in infrastructure to capture, utilize, and commercialize the gas hitherto being flared. Towards its commitment to gas flaring reduction, the GGFR introduced the "Zero Routine Flaring by 2030" Initiative (ZRF) which commits governments and oil companies, to end routine flaring no later than 2030. The Initiative is designed to facilitate cooperation between all stakeholders so that solutions to ending routine gas flaring can be identified and implemented.<sup>60</sup> This was happening amid Nigeria's emission reduction and climate change commitments under the UNFCCC and Nigeria's NDC.

Nigeria is a signatory and party to the UNFCCC, the Kyoto Protocol, the Paris Agreement, and the corresponding emission reduction commitments agreed to under these agreements. Nigeria submitted its first Nationally Determined Contribution (NDC) to the United Nations Framework Convention on Climate Change in 2015. It included gas flaring reduction as a mitigation measure in its updated NDC, submitted in July 2021. The key measures for achieving Nigeria's emission reduction commitment in its NDC include ending gas flaring by 2030.<sup>61</sup> Nigeria has committed to the attainment of net-zero carbon emissions by 2060 through domestic actions implemented through its NDCs.<sup>62</sup> The NDC sets out strategies to enable Nigeria to implement its emission reduction commitments and other international reporting obligations. It is against the backdrop of Nigeria's

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<sup>55</sup> The Associated Gas Re-injection (Continued Flaring of Gas) Regulation, LFN, 2004

<sup>56</sup> Even though Nigeria has an estimated 206.5 trillion cubic feet (Tcf) of proved natural gas reserves at the beginning of 2023, and an enviable position as the 9th largest gas reserves holder in the world. See [https://www.eia.gov/international/content/analysis/countries\\_long/Nigeria/](https://www.eia.gov/international/content/analysis/countries_long/Nigeria/) Accessed 10 March 2024.

<sup>57</sup> O. Adejowo-Osho, (2020) 'Gas Flaring and the Environment: A Global Overview of its Regulation and Lessons for Nigeria.' Chapter in book titled Contemporary Issues in law and Society: legal Essays in Tribute to the Hon. Justice Chinwe E. Iyizoba J.C.A., E. Amechi & W. Olanipekun (Eds) (Lagos: Au Courant Publishing) pp. 429 - 454

<sup>58</sup> <http://www.petroleumindustrybill.com/wp-content/uploads/2017/06/National-Gas-Policy-Approved-By-FEC-in-June-2017.pdf> Accessed 10 March 2024.

<sup>59</sup> <https://ngfcp.nuprc.gov.ng/#:~:text=The%20Nigerian%20Gas%20Flare%20Commercialisation,an%20oil%20field%20Unacceptable%20practice.> Accessed 10 March 2024.

<sup>60</sup> D. Salawu *et al*, 'An Overview of the Extant Gas flare Regulations in the Nigerian Petroleum Industry' chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.olaniwunajayi.net/blog/wp-content/uploads/2023/09/OG-Newsletter-SEPTEMBER-2023-1.pdf Accessed 10 March 2024.

<sup>61</sup> The other key measures are: generate off-grid solar PV of 13GW (13,000MW); efficient gas generators; increase energy efficiency annually by 2% that will result in 30% efficiency by 2030; increased use of public transportation such as buses, trains, and light rail; increase the capacity and efficiency of the electricity grid; and promote the use of climate smart agriculture and reforestation.

<sup>62</sup> See [https://climatechange.gov.ng/wp-content/uploads/2021/08/NDC\\_File-Amended-11222.pdf](https://climatechange.gov.ng/wp-content/uploads/2021/08/NDC_File-Amended-11222.pdf) Accessed 10 March 2024. Nigeria's updated NDC commits to reducing emissions by 47% by 2030 against business as usual (BAU) projections, with an updated baseline from 2018. In the updated NDC, Nigeria has added waste and water, as well as short-lived climate pollutants, broadening the scope and coverage of the country's climate commitments. Nigeria aims to achieve net-zero emissions by 2060.

ratification of these international agreements and commitment to emission reduction and the SDGs that the Climate Change Act, 2021 was signed into law.<sup>63</sup>

In 2018, the government issued the Flare Gas (Prevention of Waste and Pollution) Regulations, 2018, followed by four sets of associated guidelines and a reporting template. An important feature of the 2018 regulations was a marked increase in the flare payment rate. The 2018 regulations also provided a mechanism, for the government to take natural gas that would otherwise be flared and bid it out to third parties to commercialize it.<sup>64</sup> Towards its aspiration to reduce and eliminate routine gas flaring, Nigeria participates in and has endorsed the following initiatives and programs; the World Bank's Zero Routine Flaring by 2030 initiative; the Global Methane Initiative; the Global Methane Pledge; and the Climate and Clean Air Coalition.<sup>65</sup>

The Nigerian Gas Flare Commercialization Programme was established to accelerate the growth of the gas sector, attract investors for the commercialization of flared gas, and achieve zero routine flaring in Nigeria. The NGFCP offers flare sites to technically and commercially competent third-party investors through a competitive and transparent bid process.<sup>66</sup> In August 2021, former President Buhari signed the PIA, a comprehensive legislation that regulates the entire oil and gas value chain.<sup>67</sup> The key legislation is the PIA, which seeks to overhaul the regulations and fiscal structures governing Nigeria's oil and gas sector.<sup>68</sup> The overarching objective and the clear language of the PIA indicate a definite elimination of routine gas flaring in both upstream and midstream oil and gas operations in Nigeria.<sup>69</sup> The PIA prohibits the flaring or venting of natural gas except by an exemption/permit granted by the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) or the Nigerian Midstream & Downstream Petroleum Regulatory Authority (NMDPRA).

The PIA expressly makes provisions for the regulation of gas flaring, which was hitherto not contemplated by the defunct Petroleum Act of 1969. The PIA segments the Nigerian oil and gas industry into the upstream, midstream, and downstream sectors with several players and regulators

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<sup>63</sup> See [https://climate-laws.org/documents/nigeria-s-climate-change-act\\_a2f0?id=nigeria-s-climate-change-act\\_5ef7](https://climate-laws.org/documents/nigeria-s-climate-change-act_a2f0?id=nigeria-s-climate-change-act_5ef7) Accessed 10 March 2024.

<sup>64</sup> D. Salawu *et al*, 'An Overview of the Extant Gas flare Regulations in the Nigerian Petroleum Industry' chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.olaniwunajayi.net/blog/wp-content/uploads/2023/09/OG-Newsletter-SEPTEMBER-2023-1.pdf Accessed 10 March 2024.

<sup>65</sup> See the following: World Bank, Global Flaring and Methane Reduction Partnership (GFMR), 'Nigeria' <https://flaringventingregulations.worldbank.org/nigeria> Accessed 10 March 2024.

<sup>66</sup> <https://ngfcp.nuprc.gov.ng/about-ngfcp/> Accessed 10 March 2024.

<sup>67</sup> The PIA contains five articles on gas flaring, promoting minimization of flaring and reinforcing the basic principles in the Flare Gas (Prevention of Waste and Pollution) Regulations, 2018.

<sup>68</sup> The PIA was signed into law by President Muhammadu Buhari on August 16. It repeals the following legislations and regulations. The PIA repealed several laws such as Associated Gas Reinjection Act, Hydrocarbon Oil Refineries Act, Motor Spirit (Returns) Act, Nigerian National Petroleum Corporation (NNPC) (Projects) Act, NNPC Act (where NNPC ceases to exist under section 54(3) of the Act), Petroleum Products Pricing Regulatory (Establishment) Act, Petroleum Equalization Fund Act, Petroleum Profit Tax Act (PPTA) and the Deep Offshore and Inland Basin Production Sharing Contract Act. In particular, it retains the Petroleum Act, 1969, and several other laws until all licenses and leases signed under them are terminated.

<sup>69</sup> See the following sections of the PIA: Sections 7(e) (iv), 104-108. Sections 79 and 111 both provides that a licensee of a petroleum prospecting licensee who declares a commercial discovery, and a licensee for midstream or downstream petroleum operations shall submit to the Commission and the Authority a field development plan that provides for the elimination of routine natural gas flaring. See also Sections 104,

playing across the value chain. The upstream sector is regulated by the Commission<sup>70</sup> and the midstream and downstream sector by the Nigerian Midstream Downstream Petroleum Regulatory Authority (The Authority).<sup>71</sup> By virtue of the PIA both bodies regulate gas flaring in their sectors.

The PIA confers express powers on the Commission and the Authority to issue regulations concerning gas flaring in their respective sectors. Further to their powers under the PIA and in consonance with Nigeria's sustainable development objectives and to consolidate on the gains of the defunct 2018 Flare Gas Regulations,<sup>72</sup> the Commission issued the Gas Flaring, Venting and Methane Emissions (Prevention of Waste and Pollution) Regulations 2023 (Upstream Regulations),<sup>73</sup> and the Authority issued the Midstream Gas Flare Regulations 2023 (the Midstream Regulations).<sup>74</sup> These Regulations are made under the various powers created in the PIA for the governance and regulation of gas flaring. Section 33 of the PIA provides that the Authority may make regulations establishing those midstream and downstream petroleum operations to be subject to a license or permit from the Authority including gas flare penalties.<sup>75</sup> Section 105(2) of the PIA provides that the Commission shall have the right to take free of charge and without payment of royalties, natural gas that is destined for flaring at the flare stack. Under this power, Regulation 3(1) of the Upstream Regulations confers on the Commission, the power to take gas free of charge and without payment of royalty.<sup>76</sup> Similar to Regulation 3(1) of the upstream Regulations, Regulation 4(1) of the Midstream Regulations gives the Authority the power to take natural gas at the flare in midstream operations, free of charge and without any payment.

There are several stipulations in the Upstream Regulations and the Midstream Regulations to eliminate, reduce, and effectively minimize routine gas flaring. The objectives of the regulations are quite instructive. Regulation 1 of Gas Flaring, Venting and Methane Emissions (Prevention of Waste and Pollution) Regulations 2023 provides that the objectives of the regulations are to reduce the environmental and social impact of gas flaring and venting of natural gas and fugitive methane emissions into the atmosphere. The regulations provide for title to flare gas, permit to access flare gas, provide for permit to flare gas, and stipulate penalties for gas flaring under circumstances prescribed by Sections 104 and 107 of the PIA, and provide record keeping and reporting of gas flare data.

Section 104 provides that a licensee, lessee, or marginal field operator that flares or vents gas except in the case of an emergency, under an exemption granted by the Commission, or as an acceptable safety practice, commits an offense and is liable to a fine as prescribed. Such fines and

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<sup>70</sup> The Commission largely replaces the former Department of Petroleum Resources. See S. 4. The technical and regulatory functions of the Commission include to set, define, and enforce approved standards and regulations for the elimination of natural gas flaring and venting. See S.7 (e) (iv) of the PIA.

<sup>71</sup> See S. 29 PIA. The authority is a body corporate with perpetual succession and a common seal. With regards to its authority to issue licence in the Midstream and Downstream sectors, the Act provides that the Authority shall only grant a licence for midstream or downstream petroleum operations, where the applicant provides for the elimination of routine natural gas flaring. See S. 111(3) (D) PIA.

<sup>72</sup> See Regulation 1 of the Flaring, Venting and Methane Emissions (Prevention of Waste and Pollution) Regulations 2023

<sup>73</sup> See Section 7e, 10(f) and Sections 104-108 of the PIA. This replaced the 2018 Regulation.

<sup>74</sup> Note that these Regulations replaced the 2018 Flare Gas Regulations have been revoked by the Gas Flaring, Venting and Methane Emissions (Prevention of Waste and Pollution).

<sup>75</sup> See also Sections 216 and 259 of the PIA.

<sup>76</sup> See D. Salawu *et al*, 'An Overview of the Extant Gas Flare Regulations in the Nigerian Petroleum Industry' Oil and Gas Newsletter September 2023 chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.olaniwunajayi.net/blog/wp-content/uploads/2023/09/OG-Newsletter-SEPTEMBER-2023.pdf Accessed 10 March 2024.

penalties shall be for environmental remediation and relief of the host communities. Section 105 (2) of the PIA provides that the Commission shall have the right to take free-of-charge natural gas that is destined for flaring at the flare stack. Under this, Regulation 3(1) of the Upstream Regulations confers on the Commission, the power to take gas free of charge and without payment of royalty. Subject to 108 of the PIA and Regulations 3(2) stipulate that a licensee and producer of gas shall submit a Flare Elimination and Mitigation Plan to the Commission for approval which shall be prepared by regulations made by the Commission.<sup>77</sup>

Similarly, Regulation 4 (1) of the Midstream Regulations gives the Authority the power to take natural gas at the flare in midstream operations, free of charge and without any payment. It is instructive to note at this juncture that the aforementioned section 105(2) of the PIA simply refers to the Commission's right to take flare gas at the flare stack, and no distinction is made between flaring during upstream, midstream, or downstream operations. However, there is no similar provision in the PIA concerning the Authority other than the power to make regulations generally for gas flaring in the midstream and downstream sectors. It is thus arguable that section 105 (2) gives exclusive right and title to capture flare gas to the Commission regardless of whether the flaring occurs in the upstream, midstream, or downstream sectors.

An indication of its overall objective can be The overall intent, purpose, and objectives of the PIA and specifically the Upstream and Midstream Regulations are to promote healthy, safe, efficient, and effective conduct of upstream and midstream petroleum operations in an environmentally acceptable and sustainable manner,<sup>78</sup> to preserve and protect the environment, and to prevent the waste of natural resources.<sup>79</sup> To that effect, there are key guidelines in both regulations that will enhance the protection of the environment and protect human rights, particularly of the local communities.<sup>80</sup>

### 3.1 Judicial Interpretations of the Human Rights Implications of Gas Flaring

Gas flaring is detrimental to the environment, biodiversity, and water, and it is damaging to human health. UNEP's 2011 report on the study of the environmental and public health impacts of oil contamination in Ogoniland, covering around 1,000 km<sup>2</sup> in Rivers State, southern Nigeria, which has been the site of oil industry operations since the late 1950s highlights the tragic history of pollution from oil spills and oil well fires.<sup>81</sup> UNEP studied 200 locations and conducted soil contamination analysis in 69 of those sites. Water analyses were conducted from 142 groundwater wells to determine the level of contamination. Studies were also conducted for the same purpose from soil extracted from 780 boreholes. To ascertain the health impact of oil and gas activities on the Ogoni people, UNEP reviewed 5000 medical records and examined 122 km of pipeline in conjunction with holding discussions with about 23,000 people. UNEP confirmed that the Ogoniland environment has been seriously degraded and that this has adversely affected the health of the people. To underscore the extent of the degradation, UNEP concluded that it may take

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<sup>77</sup> See Regulations 3(3) & (4)

<sup>78</sup> See Sections 6(d) and 31(c) of the PIA.

<sup>79</sup> See Regulation 1 of the Upstream Regulation and Regulation xxx of Midstream Regulation

<sup>80</sup> United Nations Environment Programme, 'Environmental Assessment of Ogoniland' (2011) <https://www.unep.org/topics/disasters-and-conflicts/country-presence/nigeria/environmental-assessment-ogoniland-report> Accessed 10 March 2024; O.O Olaleye et al, 'The Causes Of Untimely Death Due To Gas Flaring In Niger Delta' (2022) *International Journal of Research, Innovations and Sustainable Development* Vol.11(2)

<sup>81</sup> United Nations Environment Programme, 'Environmental Assessment of Ogoniland' (2011) <https://www.unep.org/topics/disasters-and-conflicts/country-presence/nigeria/environmental-assessment-ogoniland-report> Accessed 10 March 2024.

between twenty-five to thirty years for a complete remediation of the environmental degradation in Ogoniland.<sup>82</sup>

There is evidence of a liberal judicial approach to addressing environmental degradation in Nigeria, particularly in the Niger Delta region, complementary to the current legal and institutional framework in the oil and gas sector, Nigeria's climate change commitments, and the achievement of sustainable development goals. Achieving the flare-out date requires enabling laws, effective implementation of such laws and regulations, and access to justice. Starting with the case of *Jonah Gbemre v. Shell Petroleum Development Company Nig. Ltd. And Ors*<sup>83</sup> the court held that the provisions of the Associated Gas Re-Injection Act of 1979 and its Associated Gas Re-Injection (Continued Flaring of Gas) Regulations of 1984 that allowed continued flaring upon the payment of fines and penalties were void and inconsistent with the Fundamental Rights guaranteed in Chapter 4 of the Constitution particularly the Right to Life and a Healthy Environment.

The applicant brought an action on behalf of himself and every member of the Iweherekan Community in Delta State, Nigeria seeking an order enforcing their Fundamental Human Rights to life and human dignity as provided by *sections 33(1) and 34(1) of the 1999 Constitution of Nigeria*, and reinforced by *Articles 4, 16 and 24 of the African Charter on Human and Peoples' Rights*<sup>84</sup>. The Court held inter alia that these constitutionally protected rights inevitably include the rights to a clean, poison, and pollution-free healthy environment. The court further declared that the actions of the respondents<sup>85</sup> in continuing to flare gas in the course of their oil exploration and production activities in the Applicant's community are a violation of their fundamental rights. Furthermore, the court ruled that the failure of the companies to carry out an Environmental Impact Assessment in the said community concerning the effects of their gas flaring activities is a clear violation of the *E.I.A. Act of Nigeria*<sup>86</sup> and has contributed to a further violation of the said environmental rights. The Court's order restrained the respondents from further gas flaring and to take immediate steps to stop the further flaring of gas in the community.

Article 24 of the African Charter was central in the case of *The Social and Economic Rights Action Centre, et al. v. Nigeria*.<sup>87</sup> The applicants sought to put an end to human rights abuses and environmental degradation caused by the exploitation of local oil reserves. The applicant claimed that the Nigerian government was responsible for environmental contamination in the territory of the Ogoni people caused by the Nigerian National Petroleum Company disposing hazardous wastes into the environment. The contamination of water, soil, and air and the attendant health implications. This case marked a significant moment in regional environmental rights jurisprudence because it was the first time the African Commission on Human and Peoples' Rights expanded on the meaning, interpretation, and scope of the right to a satisfactory environment provided in the African Charter. The applicant alleged the violations of several rights in the African Charter on Human and Peoples' Rights such as the rights to life, health, and to a clean environment. The Commission concluded that Nigeria violated Articles 4 the right to life, 16 the right to health, and 24 the right to a clean environment because the government failed to prevent widespread killings of the Ogoni as well as environmental pollution and degradation. The Commission also held that

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<sup>82</sup> *Ibid.*

<sup>83</sup>(2005) Suit No. FHC/B/CS/53/05

<sup>84</sup> Cap. A9 vol.1, LFN 2004.

<sup>85</sup>i.e. Shell PDC and NNPC.

<sup>86</sup>Laws of the Federation of Nigeria 2004

<sup>87</sup>(2001) AHRLR 60 (ACHPR 2001).

Nigeria systematically violated the right to adequate housing, which is not contained in the Charter but is derived from a combination of the rights to health, family, and property.

Recently the Supreme Court in the case of *Centre for Oil Pollution Watch (COPW) Vs NNPC*<sup>88</sup> made significant contributions to ‘greening’ the Nigerian Constitution and the jurisprudence on environmental rights and interdependence of rights in Nigeria. The supreme court confirmed the existence and enforceability of environmental human rights and held that Section 20 of the Nigerian Constitution on duty to protect the environment by the State is justiciable when read together with and in the context of, a provision like Section 4(2) of the Constitution, on the power to make laws to give effect to section 20. The Supreme Court gave credence to the 2015 decision of the Federal High Court in the Jonah Gbemre case that Section 33 of the Constitution which guarantees the Right to Life, implicitly includes, and constitutes a fundamental right to a clean and healthy environment for all. In so doing, the Supreme Court restated the enforceability of the environmental right in Article 24 of the African Charter on Human and Peoples’ Rights as domesticated in Nigeria by the African Charter Act, Cap. A9 LFN 2004. The case was instituted over an oil spillage caused by the defendant’s negligence resulting from its pipeline, which had corroded due to lack of maintenance, had ruptured, fractured, and spewed its entire contents of persistent hydrocarbon mineral oil into surrounding streams and rivers, resulting in contaminating two community streams that were the major sources of water supply to the community. Furthermore, the plaintiff averred that the spillage hurt living resources, marine life, human health, and other uses of the streams.

The judiciary’s position, especially the decision of the highest court in the land affirms and demonstrates a positive paradigm shift in the attitude of the Courts to claims to protect human rights including the so-called civil and political rights and the so-called economic, social, and political rights and seeks to make no distinction between the two class of rights. The current position of the judiciary aligns with the global best practice about environmental protection and the linkages with the protection of human rights. The courts in several other jurisdictions acknowledge the impact of environmental degradation, including the human rights implications.

The judiciary in every jurisdiction plays a pivotal role in environmental protection. Decisions made by judges create legal precedents thereby developing jurisprudence and common laws of the environment. Judges and the judgments of the courts have over the years contributed to emerging principles of environmental law that can be seen as the foundation of a system of ‘common laws of the environment’ suitable for the daunting environmental challenges of the modern world.<sup>89</sup>

A quick survey of modern judicial attitudes in different legal systems in Asia, the Middle East, Africa, Europe, the Americas, the Pacific, and Australia indicates the special and central role of the judiciary in developing and enforcing effective laws for the protection of the environment and ensuring access to justice for its champions and local communities.<sup>90</sup> Starting in India in 1985, the Delhi case was one of a remarkable series of Supreme Court cases beginning in about 1985 with

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<sup>88</sup> [2019] 5 NWLR (PT 1666) 518

<sup>89</sup> These international principles of environmental law include the Precautionary Principle, the Common but Differentiated Responsibility, the Principle of Sustainable Development, the Preventive Principle.

<sup>90</sup> See the O. Adejonwo & O. Afinowi, (2022) ‘Human rights approach to climate justice in Africa: Experiences from other jurisdictions in *Climate Change Justice And Human Rights: An African Perspective*, A. Jegede and O. Adejonwo (Eds.) (Pretoria: Pretoria University Law Press) pp. 35-58; Lord Carnwath, ‘Judges and the Common Laws of the Environment—At Home and Abroad’ (2014) *Journal of Environmental Law*, Vol.26(2), 177–187

the *Rural Litigation & Entitlement Kendra v State of Uttar Pradesh*<sup>91</sup> and the *M C Mehta v Union of India*.<sup>92</sup> These cases in India formed the foundation for the development of environmental jurisprudence in India and indeed South Asia today.<sup>93</sup> The court used the guarantees of a right to life under Article 21 of the Indian Constitution as the basis for developing a powerful set of principles for the protection of the environment.<sup>94</sup>

In the case of *Oposa v Factoran*,<sup>95</sup> the Philippines Supreme Court memorably upheld the petition brought by some 43 children to challenge the state's policies for granting consent to fell virgin forests. The Philippine Supreme Court held that a group of minors had the right to sue on behalf of succeeding generations because every generation has a responsibility to the next to preserve nature.<sup>96</sup> In the case of *Metropolitan Manila Development Authority v Concerned Citizens of Manila Bay*,<sup>97</sup> the Philippines Supreme Court upheld an action by a group of citizens for an order requiring the government to clean up Manila Bay. The court ordered the government to prepare a plan of action to remedy the environmental degradation in the bay and restore the productive state of its marine resources.

In other jurisdictions that do not have express or implied constitutional provisions to t for the protection of the environment, the courts have creatively used the common law to fill the void. In the United Kingdom, in the case of *Walton v Scottish Ministers*<sup>98</sup>, the Court highlighted the need for the law to protect nature for its own sake, apart from the common law duty to protect the proprietary interest or financial interests of litigants. In the United States of America in the case of *Massachusetts v EPA*,<sup>99</sup> a claim was brought by 12 states against the Environmental Protection Agency to compel the agency to regulate emissions of greenhouse gases. The Court recognized the anthropogenic effects of greenhouse gases and their negative impact on the environment including the rise in global temperatures, and the need to take action to deal with it. The case had the effect in due course of leading the EPA to identify six greenhouse gases that were potentially a danger to public health.<sup>100</sup>

These cases highlight the potent force of the judiciary in molding the law to ensure that nature is preserved, and human rights are protected. They further demonstrated that Nigeria's socio-political, economic, cultural, and other factors impose a duty on the judiciary to take an activist, critical, and creative stance to ensure effective environmental management and protect human rights that are interdependent on the protection and preservation of the environment and ensure justice.

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<sup>91</sup> AIR 1985 SC 652

<sup>92</sup> AIR 2002 SC 1696

<sup>93</sup> Lord Carnwath, 'Judges and the Common Laws of the Environment—At Home and Abroad' 2014 *Journal of Environmental Law*, Vol.26(2), 177–187

<sup>94</sup> As Above.

<sup>95</sup> GR No 101083 (SC 30 July 1993) (Phil).

<sup>96</sup> As above

<sup>97</sup> *Metropolitan Manila Development Authority v Concerned Citizens of Manila Bay* GR 171947-48 (SC 18 Dec 2008) (Phil).

<sup>98</sup> [2012] UKSC 44 [152]

<sup>99</sup> 549 US 497 (2007). See also *Kivalina Village v ExxonMobil* 696 F 3d 849 (9th Cir 2012) and *American Electric Power v Connecticut* 42 131 S Ct 2527 (2011).

<sup>100</sup> Lord Carnwath, 'Judges and the Common Laws of the Environment—At Home and Abroad' (2014) *Journal of Environmental Law*, Vol.26( 2), 177–187

## 6.0 Conclusion

A successful flare-out strategy requires a comprehensive and methodological approach from all stakeholders including the national government, relevant agencies and regulators, and oil companies and operators. A generally accepted approach in addressing legacy flaring includes establishing a realistic flare out date/plan; creating an enabling environment, both fiscal and otherwise for gas utilization investments; co-ordinate operators' investment programs and closely monitoring them to ensure that they are implemented within the timeframe of flare out plans. The provision of infrastructures such as gas-gathering infrastructure and continuing stakeholder participation and cooperation of all relevant stakeholders, particularly operators are essential.<sup>101</sup> Furthermore, removing barriers to the diffusion of clean fuel such as natural gas and removing subsidies for non-sustainable fuels such as kerosene, discouraging the use of 'dirty fuels' such as firewood and charcoal at the household level, and enhancing access to clean energy. Although there is no best practice for the institution or institutions that carry out gas flaring and venting regulation, certain minimum criteria must be met to ensure that gas flaring and venting regulation is carried out transparently and efficiently.

The paper concludes that the PIA signifies a positive step toward addressing the environmental and human rights impact of the petroleum industry, particularly gas flaring. By imposing penalties, promoting gas utilization, and emphasizing environmental compliance, the PIA contributes to Nigeria's climate change commitments, aligns with global efforts to create a more sustainable and environmentally responsible energy sector, and ultimately protects human rights, particularly of the vulnerable communities near oil-producing areas. In addition, the Petroleum Industry Act in Nigeria signifies a positive step toward addressing the environmental impact of the petroleum industry, particularly gas flaring and ultimately protecting fundamental human rights including the right to life.

## 7.0 Recommendations

The paper makes the following recommendations to achieve effective and efficient gas conservation, management, and flaring reductions and to protect human rights including the right to life and the right to a healthy environment.

Public participation in law and policymaking cannot be over-emphasized. Participation of stakeholders in developing any law is key to the successful implementation of and compliance with that law. The pros and cons of the concerns of such stakeholders ought to be considered in formulating a legal framework. The essence of such participation is to ensure their cooperation and the successful implementation of any policy or legislation arising therefrom. Transparency about the approval procedure and process for flaring, penalty payable, etc. will lead to accountability which would strengthen governance, leadership, and effective management and conservation. The public information package as a requirement in Alberta for gas flaring facilities is an excellent option. Public participation of NGOs, civil society, and stakeholder participation in the local community will create accountability in the sector, which would strengthen governance and leadership and lead to effective management and conservation.

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<sup>101</sup> B. Svensson, 'Global Gas Flaring Reduction in Key Countries' Being a paper delivered at the 25th World Gas Conference 4-8 June (2012) in Kuala Lumpur, Malaysia. Available at <http://proceedings.wgc2012.com/> Accessed 10 March 2024.