



Cessations and Destinations: Issues in Gas Flare Commercialisation in Nigeria



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“On behalf of the Federal Government of Nigeria [FGN], this programme seeks to attract investments and develop a transparent market mechanism through a competitive procurement process for allocating gas flares, under clear and transparent criteria, to competent third party investors using proven technologies in commercial application globally. The Nigerian Gas Flare Commercialization Programme (NGFCP) is an opportunity for Government, industry, State Government, ethnic nationalities, and local communities to work together to resolve an oil field unacceptable practice.”

NGFCP website <https://ngfcp.dpr.gov.ng/about-us/historical-background/>

“... The FGN has approved the National Gas Policy 2017 with specific policy measures for the upstream, midstream and downstream segments of the petroleum sector. On that basis, the FGN took the decision to commercialise Flare Gas.”

Preamble (Para 1), Guidelines for Grant of Permit to Access Flare Gas, December 2018¹



INTRODUCTION

Although Nigeria has for several decades established herself as a major producer of crude oil, she has often been rightly described as “a gas province with some oil in it”.² The Nigerian National Petroleum Corporation (NNPC) recently disclosed that Nigeria’s proven gas reserve has gone up (as at 2018) to 202 trillion cubic feet (TCF), with unproven gas reserves of about 600TCF.³ Thus, Nigeria is ranked 1st in Africa and 9th globally in terms of proven natural gas reserves, whilst fellow African producer, Algeria, is ranked 2nd in Africa and 11th globally.⁴ Ironically, at 95,898.5 million cubic metres (MCM),⁵ Algeria produces more than double of Nigeria’s marketed production of natural gas.⁶

1. (Hereinafter referred to as GGPAFG), p.3, available at: <https://ngfcp.dpr.gov.ng/media/1128/guidelines-1-guidelines-for-grant-of-permit-to-access-flare-gas.pdf> (last accessed 03.02.2021).

2. Dr. Emmanuel Ibe Kachikwu, ‘Re-thinking Gas,’ (LPCSL, 2017), 4. “Although Nigeria ... has established herself as a leading producer of crude oil, she is known in energy circle as a gas province with only a little pool of oil...” See National Petroleum Investment Management Services (NAPIMS), ‘Crude Oil Reserves/ Production’: <https://napims.nnpcgroup.com/Pages/Crude-Oil-Reserves-Production.aspx> (accessed 06.01.2021).

3. Nigerian Investment Promotion Commission (NIPC), ‘Nigeria’s Gas Reserves Now 202trn Cubic Feet’, October 2018: <https://nipc.gov.ng/2018/10/23/nigerias-gas-reserves-now-202trn-cubic-feet/>, (accessed 07.01.2020). The Organisation of Petroleum Exporting Countries (OPEC) 2019 data also puts Nigeria’s gas reserves around the same range, at 5,761 trillion cubic metres (TCM, or 203.4 TCF). See OPEC, ‘Nigeria Facts and Figures’: https://www.opec.org/opec_web/en/about_us/167.htm (accessed 07.01.2021).

4. Central Intelligence Agency, ‘Country Comparison: Natural Gas Proven Reserves’, January 2017: <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2253rank.html>, (accessed 08.05.2019). Another publication, relying on CIA World Factbook 2020, ranked Nigeria at No. 8 globally in proven gas reserves of 5,475 trillion cum as at 1st January 2018. See ‘Natural Gas Production (cu m) 2020 Country Ranks, by Rank’: https://phatius.com/rankings/2020/energy/natural_gas_production_2020_0.html (accessed 03.02.2021).

5. Organisation of Petroleum Exporting Countries (OPEC), ‘Algeria Facts and Figures’, 2018: www.opec.org/opec_web/en/about_us/146.htm, (accessed 12.05.2019).

6. OPEC, ‘Nigeria Facts and Figures’, 2018: www.opec.org/opec_web/en/about_us/16.htm, (accessed 12.05.2019).

Despite historic efforts by the Federal Government (FG) to encourage gas utilisation for power generation as well as for industrial and domestic use, “with almost 8 billion cubic meters of gas flared annually [according to satellite data](#), Nigeria is the seventh-largest gas flarer in the world. At the same time, approximately 75 million Nigerians lack access to electricity.”⁷ Such alarming wastage of a very valuable resource that Nigeria sorely needs to fuel its development, literally amounts to burning cash, not to talk of the environmental degradation and hazards that result thereby.

This article examines the issues around gas flaring in Nigeria and analytically explore the prospect of the FG’s recently announced **Nigerian Gas Flare Commercialisation Programme (NGFCP)**,⁸ which is envisaged as an antidote to gas flaring. We will

preface our discussion with some historic background of gas flaring in Nigeria and how it became an endemic, festering problem that has hitherto significantly defied all solutions.

Quagmire: The Evolution of Gas Flaring in Nigeria

It is safe to state that gas flaring inexorably began when oil production commenced in Nigeria. Associated gas (unavoidably lifted together with crude oil), must either be harvested or disposed onsite, as an unwanted by-product of oil.⁹ Unfortunately, most of the production facilities, including refineries at the time, did not possess gas gathering and/or processing infrastructures.¹⁰ Thus, the practical alternative was to flare the gas.

As mentioned, this is not only wastage of a valuable economic resource, but has also resulted in

dire health and environmental consequences. For instance, it has been stated that more than 400 million tonnes of carbon dioxide is injected into the world’s atmosphere yearly from gas flares in Nigeria.¹¹ This is quite sobering. Indeed, widespread gas flaring has indisputably inflicted untold hardship and damage to human, plant and animal life in the Niger Delta region.¹²

Various Federal administrations have sought to curtail gas flaring through diverse policies, incentives, programmes and projects. Some of these includes legislative action: the enactment of the **Nigeria Liquefied Natural Gas (Fiscal Incentives Guarantees and Assurance) Act**¹³ (NLNG Act) which facilitated undertaking of the NLNG project, itself currently under plans for expansion to a 7-train facility;¹⁴ the **Petroleum Profit Tax Act**¹⁵ (PPTA); **Companies Income Tax Act**¹⁶

7. See The World Bank, ‘Nigeria’s Flaring Reduction Target: 2020’, 02.03.2017: <https://www.worldbank.org/en/news/feature/2017/03/02/nigerias-flaring-reduction-target-2020>, (accessed 03.07.2019). The WB publication further noted that “in recent years Nigeria has shown significant progress, reducing gas flaring by about 2 billion cubic meters from 2012 to 2015”, “the World Bank-led Global Gas Flaring Reduction Partnership (GGFR) continues its support to help Nigeria achieve its goal of ending routine gas flaring”, and “several development institutions will collaborate with the World Bank and GGFR to support gas flaring reduction.”

8. The NGFCP was launched by the Minister of State for Petroleum Resources on 13th December 2016: (accessed 03.07.2019).

9. Uwem Udok and Enobong Akpan, ‘Gas Flaring in Nigeria: Problem and Prospect’, *Global Journal of Politics and Law Research*, Vol. 5, No.1, March 2017, pp. 16-28: https://www.google.com/url?sa=t&source=Tax_web&rct=j&url=http://www.eajournals.org/wp-content/uploads/Gas-flaring-in-Nigeria-Problems-and-Prospects.pdf&ved=2ahUKewiCptWC213kAhVMzKQKHCvoAD4QJACegQIAxAB&usq=AOvWawol_LTY7QYNae8caThobs, (accessed 19.08.2019).

10. Department of Petroleum Resources, ‘History of the Nigeria Gas Flare Commercialisation Programme’, <http://www.ngfcp.gov.ng/about-us/historical-background/>, (accessed 19.08.2019).

11. The World Bank (fn. 6 above, *supra*).

12. The negative impact of gas flaring has been traced to acid rains, and health challenges such as cancer. See U. Udok, ‘Environmental Degradation in the Niger Delta: A Critique of Existing Laws for Curbing the Degradation’ in C. Omaka (ed), *Nigerian Environmental Law Review*, 4 *Nigerian Envtl. L. Rev.* (2008), 68.

13. *Cap. N87, LFN 2004*. The NLNG Act provided investment assurances and guarantees, conferring a ten year tax holiday on the project company, Nigeria LNG Limited and exempted it from taxes, custom duties, other levies and the provisions of the *Pre-shipment Inspection of Imports Act*. Apparently our LNG journey has a chequered history: “Interest in LNG started in the 1960s when the idea of monetising flared gas was mooted. The Nigerian government set up a panel to look at the proposal and make recommendations on the feasibility of a LNG project in Nigeria. ... The Federal Executive Council approved the recommendations in April, 1975. However, attempts to progress the project were scuttled by a change of government. By 1976, the Bonny LNG Limited (BLNG) was incorporated. The project was planned to build and operate a natural gas liquefaction plant capable of supplying up to 650 trillion Btu of LNG yearly. Had the project been realised at that time, it would have been the largest LNG project in the world. ... The progress on BLNG was again impacted by another change in leadership in the Nigerian government. By 1977, the investors downgraded their participation in the LNG project. In 1979, there was a transition to civil rule. However, this did not do much in advancing the BLNG project as inability to get the required funding hindered investment in gas. The project again had to be delayed in 1982 due to a drop in oil price that impacted greatly on the country’s revenue. The investors in the project pulled out which marked the end of Bonny LNG. Between 1983 and 1985, the Federal Government set up another LNG working committee... The committee had the responsibility of realising the LNG project in Nigeria. The first task the committee performed was to review the terms of reference that related to the establishment of a LNG business in Nigeria, with the intention of resolving all contractual, commercial, technical and financial issues. After all the knotty issues concerning shareholders and investors were resolved, NLNG was incorporated in 1989. Production from its first operational train, Train 2, started in 1999 and Company’s first cargo left the shores of Bonny Island Rivers State, on the 9th of October, 1999 to Montoir, France.” (Emphasis supplied). See NLNG, ‘Who We Are, Our History’: <https://www.nigeriaing.com/the-company/Pages/Who-We-Are.aspx> (accessed 03.02.2020).

14. According to NLNG’s website (*supra*): “Today, NLNG has a total production capacity of 22 Million Tons Per Annum (mtpa) of LNG and 5mtpa of Natural Gas Liquids (NGLs) from its six-train plant complex. The company has 16 long-term Sale and Purchase Agreements (SPAs) with 10 buyers and controls about 6 per cent of global LNG trade. NLNG began its intervention in the supply of Liquefied Petroleum Gas (LPG), otherwise known as cooking gas, to the domestic market in 2007 under the NLNG DLPG Scheme. The supply has stimulated growth in the industry, guaranteeing LPG supply, availability and affordability. This has also inspired the development of different parts of the DLPG value chain. In 2019, NLNG shareholders took the Final Investment Decision (FID) on its 7th train and awarded the Engineering, Procurement and Construction (EPC) contracts for the plant expansion in 2020. The long-awaited expansion will increase production capacity by 35 per cent from 22mtpa to 30mtpa and enhance NLNG’s competitiveness in the global market. The company has a proven track record of resilient performance (Operational Excellence, HSE, etc.) and unswerving profitability.” Emphasis supplied.

15. *Cap. P13, LFN 2004*. Sections 11 and 12 PPTA provides investment incentives for the exploitation of associated and non-associated gas (upstream operations). However, the *PIB 2020* fiscal provisions will alter

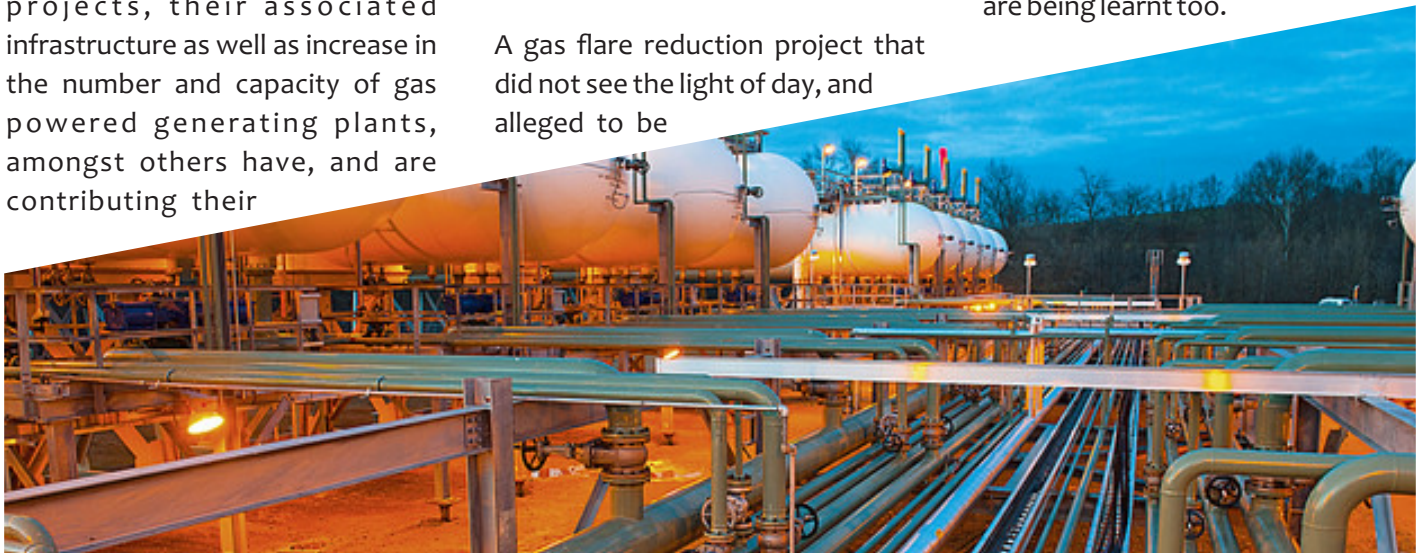
16. *Cap. C21, LFN 2004*. See section 39 CITA on gas utilisation incentives as amended, including the most recent by section 14 *Finance Act (No.2) 2020 (FA2 2020)* which became effective on 1st January 2021.

(CITA); and the **Associated Gas Re-injection Act**¹⁷ (AGRA), etc. Private sector led initiatives like the West African Gas Pipeline (WAGP) project;¹⁸ Escravos Gas-to-Liquids (EGTL),¹⁹ ramp up activities in the liquefied petroleum gas (LPG) and compressed natural gas (CNG) space, various gas processing projects, their associated infrastructure as well as increase in the number and capacity of gas powered generating plants, amongst others have, and are contributing their

quota, in addition to regulatory prescriptions on Domestic Gas Supply Obligations (DGSOs).²⁰ Nigerian power sector policy documents had always recognised the place of “gas to power”, whilst obviously we have not made as much progress that was envisaged.²¹

A gas flare reduction project that did not see the light of day, and alleged to be

a scam on Nigeria because the sponsor lacked execution capacity, involved Process & Industrial Development (PI&D). The dispute aftershocks of the failed arrangement is still attracting global attention, and being monitored to see the eventual outcome.²² Undoubtedly, lessons are being learnt too.



17. Cap. A25, LFN 2004,

18. WAGP is a 681 km long regional high pressure gas transmission system (474 MMscf/day capacity), built to export Niger Delta gas from the Lagos Beach terminal in Nigeria to Ghana, via Benin and Togo. The project is owned and operated by the WAGP Company Limited, a joint venture between Chevron, NNPC, Shell Overseas Holdings, Takoradi Power, Société Togolaise de Gaz, and Société BenGaz S.A. A regional pipeline was first proposed by ECOWAS in 1982 as “a key Regional Economic Goal”, the first “free flow” natural gas supply through WAGP arrived Ghana in December 2008, whilst the Volta River Authority (Ghana) commenced power generation with natural gas from WAGP in April 2009. See WAGP Authority, ‘The West African Gas Pipeline (WAGP)’: <https://www.wagpa.org/the-wagp/> (accessed 03.02.2020); and Europetrole, ‘The West African Gas Pipeline Project Gets Green Light’, 27.12.2004: <https://www.euro-petrole.com/the-west-african-gas-pipeline-project-gets-green-light-n-f-3/>, (accessed 09.01.2020).

19. The EGTL plant, located in Western Niger Delta, is operated by Chevron. It receives gas from the adjacent offshore block OML 90, part of the NNPC/Chevron JV. Technical operations started in 2014. See Wood Mackenzie ‘Escravos GTL’, 22.07.2019: <https://www.woodmac.com/reports/upstream-oil-and-gas-escravos-gtl-19005114>, (accessed 09.01.2020).

20. Given the huge demand (economic incentives) and the environmental imperatives, more gas related investment will hopefully continue to materialise, such as the recently announced Anog Gas Processing Ltd transaction, totaling US\$650 million. See Nicholas Woodroof, ‘ANOH Gas Processing Co. Raises US\$260 Million to Fund Gas Processing Plant in Nigeria’, Hydrocarbon Engineering, 02.02.2020: (accessed 03.02.2020). Another even more significant event is the soon to be commissioned massive Dangote Refinery in Lekki, Lagos. See Fakoyejo Olalekan, ‘Dangote Subsea Pipeline to Curb Gas Flaring, Links Niger Delta to Lekki’, Nairametrics, 09.03.2020: (accessed 03.02.20 21). According to the news report, “Dangote Industries Limited has disclosed that significant gas supply would be unlocked by its subsea gas pipeline project... the pipeline, which is expected to reduce Nigeria’s gas flaring, would connect the Niger Delta to Lekki Free Trade Zone... helping it feed its fertiliser plant. The plant is part of Dangote’s refinery project scheduled to be completed by the first half of 2021. The project is now 75% completed while the petrochemical unit is also 60% completed. Nairametrics had reported that construction works on Dangote Fertiliser Plant had been completed and that the facility was ready for commissioning. The fertiliser plant is the second largest in the world and it is expected to become a major boost for the Nigerian agriculture sector. ... the pipeline is about the size of 1,100-kilometre and would be capable of managing three billion standard cubic feet of gas per day. ... the subsea pipeline is expected to create a corridor for evacuation of trapped gas from offshore platforms in Nigeria to make for the monetisation of the product.”

21. For “a time frozen” snapshot, see Chapter 3 (Fuel to Power, pp 48-58), Roadmap for Power Sector Reform, August 2010:

<https://www.proshareng.com/admin/upload/report/Roadmap%20for%20Power%20Sector%20Reform%20Full%20Version.pdf> (accessed 06.02.2021).

22. It is worth reiterating that gas flaring reduction potential was part of the underlying opportunity for the (otherwise laudable) project. PI&D obtained arbitral award against Nigeria, sought to enforce same inclusive of the substantial interests and Nigeria after some initial lethargy and missteps is now actively challenging same, arguing that the entire project was a fraud. See Fikayo Akeredolu, ‘Nigeria and P&ID: The Story Behind the \$9.6 Billion Judgement’, Stear Business, 25.11.2019: <https://www.stearnsng.com/article/nigeria-and-pid-the-story-behind-the-96-billion-judgement>; Ed Reed, ‘Nigeria Wins Another Victory Against P&ID’, Energy Voice, 30.09.2020; Kush Amin, ‘Did an Alleged Corrupt Natural Gas Contract Rob Nigeria of US\$9.6 Billion?’, Transparency International, 23.10.2020: <https://www.transparency.org/en/blog/did-an-alleged-corrupt-natural-gas-contract-rob-nigeria-of-9-6-billion> (all accessed 03.02.2021). According to PI&D, “P&ID conceived and planned a project that would deliver much-needed power generation to millions of Nigerians, and create profitable by-products for sale on the international market. Under an agreement with Nigeria, P&ID would build a state-of-the-art gas processing plant to refine natural gas (‘wet gas’) into ‘lean gas’ that Nigeria would receive free of charge to power its national electric grid. The lucrative natural gas liquid by-products (propane, ethane, butane) of this processing would be sold by P&ID on the international market, with expected profits in the billions of dollars. In 2010, P&ID entered into a 20-year agreement with the [FCJ] to execute this project. Under the agreement, the Nigerian government was to ensure that all necessary pipelines and related infrastructure were installed and that arrangements were made with agencies and third parties to deliver gas for P&ID to process. However, the Nigerian government failed to meet its commitments, causing the project to flounder... the P&ID project represents a massive lost opportunity for Nigeria. The P&ID project would have generated an additional 2,000 megawatts of power for the national grid. Nigeria lacks sufficient electricity to power a modern economy and support its rapidly expanding population – the major increase in low-cost electricity supply brought by the P&ID project could have been transformative for millions of Nigerians...” See PI&D Facts, ‘About PI&D’, <https://pan.didfacts.com/about-pid/> (accessed 03.02.2021).

And not the least on the positive side is industry advocacy, exemplified by the Nigerian Gas Association (NGA).²³ All these must have ‘influenced’, the FG’s various deadlines/directives for the cessation of gas flaring;²⁴ the more recent flare deadline being 2020,²⁵ as obviously, the optimism expressed by NAPIMS about a 2008 flare-out date was not realised.²⁶ The proposed trans-Saharan gas pipeline through Niger and Algeria to Spain would have also contributed its own quota in reducing quantum of flared gas, but alas it is yet to fully take off even though initial commissioning timeline was August 2018.²⁷



23. The NGA, “formed in 1999 to promote the development of gas in Nigeria for the benefit of the nation and the various stakeholders”, “is the largest gas-focused volunteer/individual-member organization; the umbrella association and voice of the gas industry in Nigeria.” According to an overview of the Nigerian gas landscape on the NGA website, “Natural Gas has unprecedented potential to impact positively on the economy of any nation that is endowed with it. As a fuel, it burns cleaner and has become the fuel of choice for power globally. As feedstock, it is able to catalyze major industrial growth through fertilizer, petrochemicals and other related gas based industries. Nigeria’s Natural Gas reserves qualifies us to be in the league of these successful nations... According to the US Geological Survey estimates, gas reserves potential in Nigeria could be as high as 600 TCF if properly explored. This presents huge potential for growth. Before 1975, the gas sector was characterized by huge amount of flaring because gas was seen as a nuisance. The successful implementation of NLNG in 1999 heralded the start of the evolution of Nigeria’s gas sector. Through very favorable and attractive fiscal incentives, there was a proliferation of new export oriented projects such as WAGL, GTL, etc. This era also saw a small increase in the utilization of gas in both the domestic power and industrial sectors, resulting in noticeable decline in gas flaring. ... From year 2002, Nigeria began to experience a general increase in domestic demand mostly driven by the power sector. Gas consumption in the domestic market has grown slowly over the years to the current level of about 1.01BCf/d and is projected to grow to about 3 Bcf/d to 5BCf/d over the next decade with the demand driven by the power sector. There is now broad acceptance that successful implementation of functioning gas-based industries will require private sector participation, and the Government’s role should be limited to providing the appropriate commercial and regulatory frameworks to stimulate this. Regarded as one of the best in the world, Nigeria’s Natural Gas is low in Hydrogen Sulphide (H₂S) and Carbon Dioxide (CO₂) impurities. Despite this advantage gas flaring (estimated at nearly \$2million/day), constitutes, to date, a phenomenal wastage in Nigeria’s resources. However considerable successes have been recorded in reducing flaring and new initiatives are planned to achieve zero routine flaring.” See NGA, ‘About Us’; and ‘Nigeria Gas History’: <https://www.nigeriagasassociation.org.ng/about.php> (both accessed 03.02.2021).

24. See for example, Okechukwu Nnodim, ‘Gas Flaring: FG Gives Oil Firms 2019 Deadline’, Punch, 25.09.2018: <https://punchng.com/gas-flaring-fg-gives-oil-firms-2019-deadline/>, (accessed 12.07.2.19). The story of the multifarious deadlines and extensions can be illustrated with the legislative history of the AGRA. Originally enacted in 1979 (albeit oil and gas production in Nigerian had started over two decades earlier), its AGRA (Continued Flaring of Gas) Regulations consolidated as a subsidiary legislation to Cap. A25, 2004 LFN was issued in 1984. Section 1 AGRA mandates every upstream company to submit to the Minister, not later than 1st April 1980: preliminary programme and detailed plans for implementation for: (a) schemes for the viable utilisation of all associated gas produced from field(s); and (b) project(s) to re-inject all associated but unutilised gas. Section 3(1) AGRA stipulates that “Subject to [section 3(2)], no company engaged in production of oil or gas shall after 1 January 1984 flare gas produced in association with oil without the permission in writing of the Minister.” Section 3(2) was itself introduced by amendment legislation in 1985 (after section 3(1) was to have come into effect), to ‘water down’ that provision. It provided that “where the Minister is satisfied that after 1 January, 1984 that utilisation or reinjection of the produced gas is not appropriate or feasible in a particular field or fields, he may issue a certificate in that respect” specifying terms and conditions for continued flaring of gas or permitting flaring if the company pays such sums as the Minister may prescribe for every 28.317 SCM of gas flared.

25. As mentioned, this has apparently been a shifting goal post. For instance, the year 2019 and 2020 were given by the FG as deadline while in May 2017, the FG ratified the 2015 Paris Climate Change Agreement and submitted its first Nationally Determined Contributions to the United Nations Framework Convention on Climate Change (NDCs). The NDCs included strengthening enforcement of gas flaring restrictions and working to end gas flaring by 2030 as a mitigation measure to combat global warming. See Femi Asu, ‘Gas Flaring Persists as 2020 Deadline Nears’ Punch, 14.04.2019: <https://www.google.com/amp/s/punchng.com/gas-flaring-persists-as-2020-deadline-nears/amp/>, (accessed 09.01.2020). However, it is not all gloom. According to the NGFCP Information Memorandum (November 2018, p.11), “In the ten years leading up to 2016, the volume of gas being flared has been halved. Analysis carried out for the NGFCP indicates that harnessing associated gas from the top 50 flare sites could reduce flare gas volumes by 80 percent.” See <https://ngfcp.dpr.gov.ng/media/1123/ngfcp-programme-information-memorandum-pim-final-261118.pdf> (accessed 03.02.2021).

26. “Until lately, virtually all of this gas had been flared, with the rest deployed to reinjection to aid secondary oil recovery in the companies’ operational areas. Current flare figure is put at about 63% of the 2 billion scf daily production of AG in response to government’s gas monetization efforts, which had included gas-flare penalties, incentives and tax credits to encourage gas-based projects, virtually all the major players are sure to beat the year 2008 flare-out date.” Emphasis supplied. See NAPIMS (op cit, undated), (accessed 06.01.2021). See also an IHS/World Bank industry report for IOCs and NNPC in 2004, ‘Strategic Gas Plan for Nigeria’, p. 13, Para 1.10: https://esmap.org/sites/default/files/esmap-files/FR58200861713_Nigeria_strategicgasplanformigeria.pdf (accessed 06.01.2021). “It also seems that industry is seeking clearer guidance from the FGN in meeting the 2008 zero flaring deadline and it is trying to ‘guess-out’ true FGN intentions as meaning business this time or just another down the road deadline that this government would not live to see. To discard this perceived weakness in the government’s message, a clear announcement should be made that it will no longer approve, as of today, any oil field development that includes any gas flaring possibility or does not include associated gas processing and monetizing.” Emphasis supplied.

27. “It will have an estimated annual capacity of 30 billion cubic metres of natural gas, and is expected to be operational by 2018.” See African Union Development Agency (AU-NEPAD), ‘Nigeria Algeria Gas Pipeline Project (Trans-Sahara Gas Pipeline)’ [https://www.nepad.org/nigeriaalgeriagaspipelineprojecttransaharagaspipeline#:~:text=Nigeria%2DAlgeria%20Gas%20Pipeline%20Project%20\(Trans%2DSahara%20Gas%20Pipeline\),Project%20Description&text=Current%20Status%3A%20The%20Government%20of,of%20Kano%20has%20been%20completed](https://www.nepad.org/nigeriaalgeriagaspipelineprojecttransaharagaspipeline#:~:text=Nigeria%2DAlgeria%20Gas%20Pipeline%20Project%20(Trans%2DSahara%20Gas%20Pipeline),Project%20Description&text=Current%20Status%3A%20The%20Government%20of,of%20Kano%20has%20been%20completed) (accessed 03.02.2021). See also ‘Nigeria: Trans-Saharan Gas Pipeline Project Behind Schedule’, ESI Africa, 14.03.2018: <https://www.esi-africa.com/industry-sectors/business-and-markets/nigeria-trans-saharan-gas-pipeline-project-remains-a-dream/> (accessed 03.02.2021).

According to a World Bank (WB) study, “... only a few oil-producing countries have significantly reduced associated gas flaring and venting volumes, and in most jurisdictions flaring and venting volumes continue to rise with increased oil production.”²⁸ Government had instituted both “carrot and stick” approaches to reverse the trend without significant success. The carrot is exemplified by enacted gas related tax/ investment/utilisation incentives in the *NLNG Act*, *PPTA* and *CITA*, respectively.²⁹

One may even ask the question whether Nigeria has been too liberal with its carrot and stick

approach to gas flaring? For example, **section 11(2) PPTA** (part of incentives for utilisation of associated and non-associated gas), provides that “the company shall pay **the minimum amount charged by the Minister of Petroleum Resources for any gas flared by the company**”. This provision which allows the operator to pay the lowest applicable rate (if there are two or more rates), severely blurs the boundaries between carrot and stick.

On the other hand, the stick is exemplified by the various penalties aimed at discouraging the

practice of gas flaring/ameliorating the harmful effects of the practice on the environment. Although, the various policies which represents the stick approach is discussed in greater detail below, suffice to say that Nigeria has very little to show despite the adoption of penalties by the government over the years.

Little progress has been made to reduce gas flaring after over six decades of oil production and refining in Nigeria. *The pertinent question is why has the practice of gas flaring defied solution in Nigeria?* Perhaps, a peep into the legal regime, if any, for the practice of gas flaring will provide a clue.



28. The WB, ‘*Regulation of Associated Gas Flaring and Venting: A Global Overview and Lessons*’, *Global Gas Flaring Reduction, A Public Private Partnership* (Doc. No. 29554), p.1: <http://documents1.worldbank.org/curated/en/590561468765565919/pdf/295540RegulatingNigeria10301public1.pdf> (accessed 06.02.2021). See also at p. 5: “The Nigerian government has announced a target to end all non-operational gas flaring by 2008” and “In some cases, countries that have set flare and vent reduction targets have not yet implemented an efficient gas sector strategy and regulatory framework required to achieve real reductions in flare and vent volumes. Nigeria is currently developing a relevant strategy and framework.” Per the WB (*supra*, p. 22), “In some countries, taxes are used as an incentive to reduce gas flaring and venting. Although not widely used, some countries, most notably Nigeria and Norway, have adopted tax regimes that aim to discourage flaring and venting of associated gas.” Footnote 49 of the WB publication stated: “The Nigerian gas flaring tax was imposed some 20 years ago at a time when as much as 95 percent of associated gas was being flared. Despite the tax, a significant proportion of associated gas continues to be flared. The Nigerian government has since acknowledged that taxes are insufficient to deter operators from flaring and venting and that policy would have to place more emphasis on creating a downstream gas market that provides opportunities for operators to market associated gas.” (Emphases supplied). The WB Study is undated, but apparently predates 2008.

29. For example, **section 39 CITA** defined gas utilisation as “the marketing and distribution of natural gas for commercial purpose and includes power plant, liquefied natural gas, gas to liquid plant, fertiliser plant, gas transmission and distribution pipelines.” By virtue of **section 14 FA2 2020, section 39(1)** has been qualified such that the eligible companies for the incentives are those “engaged in a trade or business of gas utilisation in downstream operations”. **Section 39(3) CITA** now disappplies the incentive from any company that has claimed equivalent incentives under *PPTA* or the *Industrial Development (Income Tax Relief Act), Cap. 17, LFN 2004 IDTRA*. The favourable **section 39 CITA** tax treatment for gas utilisation comprising up to 5 year tax holiday (OR 35% investment tax allowance, ITA which shall not reduce the value of the asset); accelerated capital allowances after the tax holiday, tax-free dividends during the tax holiday (where the investment is in foreign currency or imported plants and machinery consist at least 30% of the company’s share capital), 15% investment allowance which shall not reduce the value of the asset, in addition to VAT and import duty exempt status of machinery and equipment purchased for utilisation of gas in downstream operations (**Part 1, 1st Schedule VAT Act, Cap. V1 LFN 2004** as amended; and **section 5 Customs & Excise Tariff, Etc (Consolidation Act, Cap. C49 LFN 2004** (which in applying to “exploration, processing or power generation through the utilisation of Nigerian gas” is wider than the *VATA* provision) respectively, still largely remains in place. The additional provision for interest payable on a loan obtained for a gas development project to be tax deductible, provided the consent of the Minister of Finance is obtained is not really an ‘incentive’, given that loans are generally deductible under *CITA*’s ‘WREN test’ – expenses must be wholly, reasonably, exclusively and reasonably incurred for the purpose of generating taxable profits: **section 24(a) CITA**. Ministerial approval must be to ensure that loan beneficiaries do not use that guise to “prolong” their tax free status through uncompetitive loan terms. For a historic discussion of gas related incentives, see Lekan Salami and Afolabi Elebiju, ‘*Investment Incentives for Electricity Business in Nigeria*’ *JENRL*, Vol. 22, Issue 1 (May 2004), pp. 94-100. The *PPTA* investment incentives for associated and non-associated gas are enshrined in **sections 11 and 12** (introduced vide amendment legislation in 1998 and 1999 respectively). Note that the *PIB*’s fiscal regime will apply upon its enactment. *PIB* intends to amend *CITA* (e.g. **sections 260 and 309 PIB** (the latter section is on consequential amendments of all legislation), but will repeal *PPTA* and *Deep Offshore and Inland Basins (PSC) Act, Cap. D3 LFN 2004* (as amended) (**section 310 (i) and (j) PIB**). The impact of *PIB* on the **sections 11 and 12 PPTA** incentives particular, and the *PPTA/PSC Act* in general, will be the subject of our more detailed analysis, upon enactment of the *PIB* in due course, as space constrains such discussion. First off, provisions like **section 11(2)(b)** and **(g) PPTA** are not replicated in the *PIB*. Please see below for a discussion on the former, whilst the latter states that “gas transferred from the natural gas liquid facility to the gas-to-liquid facilities shall be at zero per cent tax and zero per cent royalty.”

Legality and Legal Regime for Gas Flaring in Nigeria

Nigerian Constitutions have, over the years vested the sovereignty over the entire property in and the control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria, or her territorial waters and the Exclusive Economic Zone (EEZ), in the FG.³⁰ Pursuant to this, the FG grants Oil Prospecting Licenses (OPLs) and Oil Mining Leases (OMLs) to upstream operators. It is also interesting to note that Section 17(d) 1999 Constitution contemplates the prevention of exploitation of human or natural resources in any form whatsoever for reasons, other than the good of the community. In the same vein, section 14(b) 1999 Constitution declared that the security and welfare of the people shall be the primary purpose of government.

Ordinarily, the combined reading of these latter provisions should

render the practice of gas flaring



unconstitutional, in the light of its

harmful health and environmental implications. However, such effectual outcome is implausible, as the entire Chapter 2 1999 Constitution comprising sections 14 and 17 amongst others, are not justiciable.³¹

Furthermore, section 7(g)(h)(i) and (k), National Environmental Standards and Regulations Enforcement Agency (Establishment) Act,³² (NESREA Act) excludes the oil and gas sector from the powers of the NESREA to enforce environmental standard regulations and legislations. Instructively, the Environmental Impact Assessment Act³⁴ (EIAA) says nothing about gas flaring, much as none of the Acts on the environment expressly seek to prohibit gas flaring. Consequently, there has been series of bills seeking to prohibit and regulate gas flaring.³⁵

30. See for example, Section 44(3) Constitution of the Federal Republic of Nigeria (1999)(as amended) (1999 Constitution). Para 17(4), First Schedule PA empowers the President to “from time to time, identify as marginal”, any fields - which if so identified, becomes a Marginal Field.

31. See section 6(6)(c) 1999 Constitution. Arguably, the right to life under section 33 1999 Constitution cannot invalidate the practice of gas flaring as the practice is not directed to deprive members of the community of their life and may only result in ill health over a period of time. However, it is worth referring to the views of the ECOWAS Court of Justice in at Paras 36-38 (at p.11) of SERAP v FRN, Judgment N° ECW/CJ/JUD/18/12 (of 14.12.2012): “36. As held by the jurisprudence of this Court, in the Ruling of 27 October 2009, SERAP v. Federal Republic of Nigeria and Universal Basic Education Commission, once the concerned right for which the protection is sought before the Court is enshrined in an international instrument that is binding on a Member State, the domestic legislation of that State cannot prevail on the international treaty or covenant, even if it is its own Constitution. 37. This view is consistent with paragraph 2, Article 5 of the International Covenant on Economic, Social and Cultural Rights which Nigeria is party to by accession since 29 July 1993 which provides: ‘No restriction upon or derogation from any of the fundamental human rights recognised or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognise such rights or that it recognises them to a lesser extent’. 38. In these circumstances, invoking lack of justiciability of the concerned right, to justify non accountability before this Court, is completely baseless.” The big issue that then arises is the enforceability of ECOWAS Court decisions on, or in, Nigeria.

32. Cap. N164, LFN 2004.

33. This arguably leaves the MPR and the DPR as the government agencies regulating oil exploration and its environmental implications in Nigeria.

34. Cap. E12, LFN 2004.

35. For example, the Senate passed The Gas Flaring (Prohibition and Punishment) Bill 2020 (after its re-introduction; it had been earlier passed by the 8th Senate but not by the House of Representatives during their legislative term). Newspaper reports of comments by the sponsor, Senator Akpan Bassey (Akwa Ibom NE) during the 2nd Reading included the following: “Clause 11(a) of the Bill provides that, ‘Any person who flares gas after December 31, 2020 contrary to section 4 of this Act, commits an offence under this Act, and shall be liable on conviction to pay a fine which shall not be less than the cost of gas at the international market.’ The flaring of natural gas produce in association with crude oil is one of the most dangerous environmental and energy waste practices in the Nigerian petroleum industry. Gas flaring affects the environment and human health, results in economic loss, deprives the government of associated tax revenues and trade opportunities, and deprives consumers of a clean and cheaper energy source and environment... available data from the [NNPC] showed that in 2018, Nigeria lost over N217 billion in revenue as oil and gas companies flared a total of 244.84 billion standard cubic feet (scf) of natural gas within the same period... with the average price of natural gas put at US\$2.90 per 1,000 scf as of February 16, 2017, the 244.84 billion scf flared translates to a loss of US\$710m or N217 billion – using the official exchange rate of N305.25/ dollar. ... ‘The volume of flared gas according to analysis, is sufficient to feed 3 LNG trains or generate 3,5GW of electricity.’ ... the bill when passed into law, will address the inadequacies and shortcomings of the 1979 Act; bring gas flare penalty in line with current economic realities; and ensure the achievement of the National Flares-out target of January 1, 2030. ‘The current gas flare penalty of N10 per 1,000 scf is too low, and not in line with current economic realities and encourages continuous gas flaring by operators with its attendant negative effect on our environment instead of encouraging investment in infrastructure by the operators to make gas available for our domestic use, ... The ... Bill ... ‘seeks to increase the gas flaring penalty to an appropriate and commensurate level sufficient to de-incentivize the practice of gas flaring, whilst introducing other market measures to encourage efficient gas utilization. The Bill equally makes it mandatory for operators to submit gas utilization plan within 90 days of the commencement of the Act for effective monitoring and makes provision for a two year periodic review of the Minister’s powers granted under the Act’ ... Citing the United States of America, he said that the piece of legislation also makes specific provisions for the installation of requisite gas flare meters equipped with facilities that enable real time, online data retrieval for independent reporting and monitoring by the industry regulator.” See Urowayino Jeremiah, ‘Senate Proposes Stiffer Sanctions For Gas Flaring From 2021’, Vanguard, 27.02.2020; (accessed 30.05.2020). Several anti-gas flaring bills had been previously presented/considered by the NA, such as a 2017 Bill passed by the Senate in April 2019. See Henry Umoru, ‘Senate Passes Bill Prohibiting Gas Flaring’, Vanguard, 17.04.2019; <https://allafrica.com/stories/201904180053.html> (accessed 03.02.2021).

Thus, the dearth of enforceable express legal instruments prohibiting gas flaring explains why most of the actions challenging the practice/continuation of gas flaring are usually brought pursuant to international instruments such as the *International Covenant on Economic, Social and Cultural Rights*, the *International Covenant on Civil and Political Rights*, and the *African Charter on Human and Peoples' Rights*.

In *SERAP v. Federal Republic of Nigeria*,³⁶ the Court of Justice of the Economic Community of West African States (ECOWAS Court) held that Nigeria should take all effective measures, within the shortest possible time, to ensure restoration of the environment of the Niger Delta; take all measures that are necessary to prevent the occurrence of damage to the environment; and take all measures to hold the perpetrators of the environmental damage accountable.³⁷

Over the years, the FG has only sought to regulate gas flaring in order to minimise its harmful effect. Thus, gas flaring may only become illegal when done outside the ambit of extant legal provisions. The first

major legislation regulating gas flaring in Nigeria is the *AGRA* (enacted in 1979), and its subsidiary legislation, the *AGRA (Continued Flaring of Gas) Regulations 1984*. They both prohibited gas flaring without the written permission of the Minister of Petroleum Resources vide a certificate for the continued flaring of gas.³⁸ Penalty for non-compliance was put at 2Kobo/1000 Standard Cubic Feet (MSCF), which was later increased to 50 Kobo per 1000SCF in 1990, and then to ₦10/1000SCF in 1998.³⁹

The current detailed legal regime for the regulation of gas flaring is the *Flare Gas (Prevention of Waste and Pollution) Regulations 2018 (FGR 2018)*, issued pursuant to *section 9(1) Petroleum Act*⁴⁰ (*PA*) and *section 5 AGRA*. *FGR 2018* focus on the reduction of the environmental and social impacts of gas flaring, prevention of waste of natural gas resources and creation of social and economic benefits from gas flare capture. *FGR 2018* aims to discourage gas flaring through the imposition of a new flaring fee regime: payment of US\$2.00 per MSCF gas flared where the lessee produces 10,000 or more barrels of oil a day; and US\$0.50 per MSCF where the field produces less

than 10,000 barrels a day.⁴¹

Gas Flare Commercialisation: Panacea to Causes and Catalyst of Gas Flaring?

Nigeria's below par performance on gas flaring underscores the truism that drastic problems require drastic solutions, and it is heart-warming that *NGFCP* essentially symbolises a "root and branch" approach to dealing with the problem. Attending to root causes will yield faster, more impactful and sustainable results. Whilst the *NGFCP's* objectives and framework seem lofty and workable, its success is heavily dependent on its ability to effectively address the various historic catalysts of gas flaring in Nigeria.⁴²



36. *General List N° ECW/CJ/APP/08/09; Judgment N° ECW/CJ/JUD/18/12 of 14.12.2012, at Para 121 (page 29)*: (last accessed on 03.02.2021).

37. Based on customary international law, the enforcement of international treaties such as the *ECOWAS Protocol* is based on the principle of exhaustion of local remedies. However, the ECOWAS Court in *SERAP v. Federal Republic of Nigeria & Another ECW/CJ/APP/08/08 (October 2009)* held that since it is established that jurisdiction is a creature of statute, the Court has subject matter jurisdiction over human rights violations in so far as these are recognised by the *African Charter on Human and Peoples' Rights*, adopted by *Article 4(g)* of the *Revised ECOWAS Treaty* and which makes no provision for the exhaustion of local remedies.

38. See discussion at fn 20 hereof.

39. Kachikwu, (*supra*), at 42.

40. *Cap. P10, LFN 2004*

41. The penalty regime under the *AGRA* is generally considered to be too low, even despite periodic upward reviews.

42. For an interesting discussion, see Mark Tuber, '*Gas Flaring: Why Does it Happen and What Can Stop It?*', *Energy for Growth Hub*, February 2019: <https://www.energyforgrowth.org/wp-content/uploads/2019/02/Gas-Flaring.pdf> (accessed 03.02.2021). According to the author: "Countries with high rates of gas flaring almost always share two characteristics: 1. Geology: Oil fields have significant quantities of associated gas where re-injection is not a viable option. 2. Markets: Local markets for natural gas are underdeveloped and/or pay low prices for gas. (Even if a country has a robust gas market overall, flaring can occur if oil fields are far from population centers and infrastructure to take associated gas isn't available.) For example ... In Iraq, Algeria, Nigeria, and Venezuela, gas markets and infrastructure are underdeveloped, and there are limited financial incentives to exploit associated gas." Stating that "Flaring bans don't work", the author continued: "In practice, bans on gas flaring have been ineffective. For example, flaring has been illegal in Nigeria since 1984 - and repeated deadlines for ending the practice have passed unmet ever since. (The current deadline is 2020). The problem is the following: The domestic gas market energy for growth in Nigeria is underdeveloped, due largely to dysfunctional pricing and other institutional issues in both electricity and natural gas markets. Oil sales supply a majority of government revenue, and a high share of Nigeria's oil fields have associated gas. The only way to enforce a flaring ban would be to shut in these fields and cut off the income they provide. Because the government needs that revenue, flaring will continue until there is a viable outlet for the associated gas." Two broad solutions (with sub-components of course) he proposed are to: "Develop deep, economically-viable gas markets" and "Develop smaller-scale uses of gas at/near the source". (Emphasis supplied).



We now discuss some of these root causes/catalysts below:

Low Profitability of Associated Gas Capturing

Although associated gas incurs no added costs of exploration, the difficulties and high costs of transportation to a domestic market which is not sufficiently large or concentrated to absorb the costs, has always been a major incentive for upstream operators in Nigeria to adopt the “easy route” of gas flaring.⁴³ Overall profitability will continue to be a critical consideration; presumably the **NGFCP** bid round itself affords intending participants opportunity to think through their strategy in case they are eventually successful

at the end of the process.⁴⁴ They are presumed to want to “get their hands dirty”, since the entire purport of the **NGFCP** is to ‘uproot’ or terminate gas flaring.

Lack of Critical Gas Capturing and Transportation Infrastructure

Gas infrastructure is critical to harnessing Nigeria’s gas reserves; although there are insufficient gas capturing and transportation infrastructure, the key infrastructure deficit is primarily on the nation’s gas transmission backbone.⁴⁵ Thus gas projects have been experiencing relatively slow pace of growth. Again, a major transformation of the Nigerian gas sector is hinged on the **Nigeria Gas Transportation Network Code (NGTNC)**, which was recently launched by FG as the uniform protocol for users of the **Gas Transportation Network (GTN)** in order to provide open and competitive access to gas transportation infrastructure and development in Nigeria.⁴⁶ The introduction of the **NGTNC** will

provide windows of opportunity to various industry players, investors and potential gas off-takers to engage in different aspects of the gas value chain.⁴⁷

Pursuant to **NGFCP**, direct investment by successful bidders in operations around the flare sites is meant to beneficially reduce or eliminate flaring.⁴⁸

Pricing Issue

A market reflective pricing framework needs to come to full effect in Nigeria to incentivise investors into the gas sector. Pricing of natural gas should reflect the increasing demand for the resource in Nigeria and the capital requirement to actualise that. Previously, another concern was the price subsidy offered to gasoline - a substitute for compressed natural gas (CNG), but which has more or less gone now. In all, investors are more likely to embrace **NGFCP** where it is clear that the price of gas will not be regulated but will be determined by market forces.⁴⁹

43. According to some researchers, “... despite efforts to reduce gas flaring in Nigeria, about 81% of gas flared in the last 6 years is from Service Contract (SC), Sole Risks/Independent (SR/I) and Marginal Fields (MF) companies most likely because of the high cost of investment in gas gathering utilities and lack of market for gas and gas products.” See Tambari, Easy and Paulinus, ‘Flare Gas Gathering and Utilization: A Strategic Approach to Greenhouse Gas Emission Reduction in Nigeria’, *International Journal of Environmental Protection and Policy* Vol. 4, Iss. 1, January 2016, pp. 10-15 (at p.13): <http://article.sciencepublishinggroup.com/html/10.11648/j.ijepp.20160401.12.html> (accessed 06.02.2021). See also at p. 12: “The cost of investment in gas gathering equipment may be a big contributing factor.”

44. See for example, **Paras 8 and 9, GGPAFG (Rights and Obligations of the Permit Holder; and Non-Performance and Revocation of Permit to Access Flare Gas)** respectively. Thus whilst Permit Holders will be entitled to take Flare Gas pursuant to a Gas Sales Agreement with the FGN, they are entitled to “sustained and continuous operations” at the relevant Flare Sites and must invest in the design and construction of the Producer Connection Assets, in line with prescribed standards/good oilfield practice, pursuant to Connection Agreement with the Producer: **Para 8**. Permit revocation can result if Holder flares or vents gas, and such revocation is without prejudice to any accrued (prior) obligation or liability (**Para 9**).

45. See ‘Nigeria’s Gas Sector is Robust Enough to Support Growth in Both Export and Domestic Markets’, (excerpts of Frank Uzuegbunam’s interview with Victor Okoronkwo), *BusinessDay*, 12.04.2019, p.20: <https://businessday.ng/energy/oilandgas/article/nigerias-gas-sector-is-robust-enough-to-support-growth-in-both-export-and-domestic-markets/> (accessed 03.02.2021).

46. Olusola Bello, ‘National Gas Transportation Network Code Will Encourage Transparency in Oil & Gas Industry’, *BusinessDay*, 09.02.2020: <https://businessday.ng/energy/oilandgas/article/national-gas-transportation-network-code-will-encourage-transparency-in-oil-gas-industry/> (accessed 02.05.2020). The **NGTNC** is available at: <file:///C:/Users/ASUS/Downloads/Nigerian-Gas-Transportation-Network-Code.pdf> (last accessed 03.02.2021).

47. According to Bello, successful completion of gas transmission backbone projects such as the **OB3 Gas Pipeline**, the **Ajaokuta Kaduna-Kano (AKK) Pipeline**, the looping of the **Escravos-Lagos Pipeline System (ELPS)**, etc, will help to unlock Nigeria’s gas potential within the local economy, further reducing hitherto flared gas. Also, through their privately owned gas infrastructure, private midstream companies such as **Accugas**, **Axxella** and **Horizon** have been assisting and partnering with upstream companies to monetise the latter’s gas resources thereby reducing gas flaring. The contributions of these private gas companies have been impressive but still insufficient towards actualising Nigeria’s gas potential. It is hoped that activities of new entrants such as **Dangote Refinery Complex**, will help further improve performance in the sector.

48. Per the **NGFCP Info Memo** (*supra*, at p. 19), “There are approximately 180 flare sites in Nigeria. Crude oil producers in 2017 flared 324 billion standard cubic feet, or 888 mmscf/d, of associated gas, 20 which was about 19 percent of produced associated gas.”

49. See *fn 55* of WB publication (*supra*, p. 24): “The importance of creating downstream gas markets for the use of associated gas and reducing flaring and venting is best documented in the case of Nigeria. A recent study carried out by Nexant on gas flaring for the [BPE]... has estimated that the country loses between US\$500 million and US\$2.5 billion annually to gas flaring because operators are not encouraged to use and commercialize associated gas. The report identified inappropriate pricing, lack of gas sector policy, and lack of infrastructure for transmission and distribution as the main issues hampering the development of the gas sector. It recommended the establishment of a gas and electricity regulatory agency that efficiently regulates the natural monopolies of transmission and distribution and implements open access rules to gas network to foster competition and provide opportunities to market associated gas downstream.” (Emphasis supplied).



Tax Deductibility of Gas Flare Penalty
Prior to **FGR 2018**, there was little financial deterrence to gas flaring in Nigeria, and (as borne out by the law reports), challenge to the deductibility of gas flare penalties is a somewhat recent event; the FIRS “leniently”, appeared to have accepted same as a matter of course historically.⁵⁰ It appeared that the change in FIRS’ approach was influenced by the position of the Nigerian Extractive Industry Transparency Initiative (NEITI) that gas flare fines are not deductible, hence FIRS started disallowing them leading to tax appeals. The lenient or traditional view (that once fines are actually incurred, they should be deductible) must have also informed the earlier decisions by the Tax Appeal Tribunal (TAT) which upheld

deductibility.⁵¹

In **MPNU v. FIRS**, the TAT held that once the Ministerial sanction is obtained and the stipulated penalty is paid for the SCM of gas flared, by **section 10(1) PPTA** the penalty will qualify as deductible expense *being wholly, exclusively and necessarily incurred for the purposes petroleum operations*. Also, **section 10(1)(I) PPTA** provides that all sums incurred by an upstream company by way of tax, rates, fees, duties or any like charge shall be deductible for the purpose of computing the taxable profits of such company for the relevant accounting year.

However, the TAT decisions in **MPNU** and **SPDC** were reversed on appeal by the Federal High Court (FHC) in **FIRS v. MPNU**,⁵² and **FIRS v.**

SPDC.⁵³ In the former, *Shagari, J* held that flaring gas without permit or certificate from the Minister amounts to an invalid act, which disentitles the operator from enjoying **section 10(1)(I) PPTA** deduction. This is more so that the discretionary ministerial power does not mean that applications for gas flaring certificates would be automatically granted, neither can none or delayed response be presumed to be approval of such application. Given that the purpose of **AGRA** is to discourage gas flaring, the Respondent cannot benefit from **section 10(1) PPTA** in the circumstances.

In the latter, the FHC (*Aikawa, J*), also held that fees for gas flaring without the approval of the Minister is not within the category of expenses incurred wholly, exclusively and necessarily from a company’s operation as envisaged by **section 10(1) PPTA** and are therefore not tax deductible. In line with the doctrine of judicial precedence, the TAT is bound by the appellate decisions; we can therefore safely say that the FIRS approach has, in line with judicial imprimatur, evolved from leniency to a more aggressive stance.

50. Cf. the Tribunal’s obiter dictum in **Federal Commissioner of Taxation v Snowden (12) TLRN 28 at 58** (a matter under the Canadian Board of Inland Revenue Review Decisions delivered on 12.11.2001), that “if the fines can be regarded in law as business expenses, they were indeed incurred in the production of the income” and therefore, deductible. According to the Tribunal, if a person cannot evade his tax obligation by reason of the income being illegal, then there is a rebuttable presumption that he cannot also rely on an illegality to claim a deduction. They distinguished **British Columbia Limited v HM The Queen [1999] 3 SCR 804**, where in that case, it was decided that the Parliament had, vide the **Canadian Income Tax Act**, “expressly disallowed certain expenses on what appeared to be policy grounds.” Thus, (at p.52), “a taxpayer can only claim deduction for fines he paid if he can establish, both as a matter of fact and as a matter of law, that the fines were outgoings or expenses which were incurred in the production of the profits.” In the Indian case of **N J Prasad v CIR (1980) 123 ITR 269 All** and (2014) 13 TLRN 31, *Singh, J* of the Allahabad High Court was called to decide on the tax deductibility of demurrage occasioned by the fact that the taxpayer importer breached terms of its import license. He held in his 1979 decision *inter alia* (at p. 37) that: “The payment ... was not fine paid to the port authorities by the assessee for any criminal act, but compensation for use of the port facilities beyond the free period allowed under the rules. The delay was undoubtedly occasioned on account of the fact that the assessee had imported goods which were not in accordance with its import license, but that will not alter the character of the payment. There is no other aspect of this matter.” Emphasis supplied. In **British Columbia** itself (*supra*), it was held that the “over-quota levy” that the taxpayer became liable to pay for exceeding its production quota was an allowable deduction because it was incurred as part of its operations, and the over-quota produced realized taxable income. See some other interesting expositions at pp. 76-78.

51. See for example, **SPDC v FIRS (2016) 21 TLRN 86 (TAT, Lagos Zone decision of 27.10.2015)**; affirming earlier TAT decisions in **Total v FIRS, TAT/LZ/035/2013, TAT/LZ/037/2013 and TAT/LZ/038/2013; MPNU v FIRS TAT/LZ/ 033/2013**. In **SPDC**, the TAT held that NEITI’s view (not being based on any statute), cannot override the **AGRA** and **PPTA**; and it would be incongruous for two arms of the executive to sing discordant tunes. The fact of the Minister having granted Flare Certificates and collected the fines from the taxpayer disentitles the FIRS from disallowing the said fines. It is of no moment that flares were being done prior to issuance of Certificates – as the taxpayer having applied, should not bear the brunt of delays occasioned by regulatory bureaucracy. See also **Chevron v FIRS (2016) 22 TLRN, 1 at 12-13**: “The Appellant applied for gas flaring certificates and made requisite payments for the period 2006, 2007 and 2008, to continue to flare gas. The Minister did not issue certificate nor sanction the Appellant for illegal gas flaring. The Respondent has not provided proof of sanction on the Appellant for illegal flaring of gas from 2006 to 2008. In the circumstances, we believe that the Minister did not consider the gas flared by the Appellant illegal. If the Minister had sanctioned the Appellant, then the gas flare fee paid by the Appellant would be considered an illegal payment which would disqualify the Appellant from benefiting under section 10(1)(I) of the PPTA.”

52. (2018) 37 TLRN 1.

53. (2018) 39 TLRN 13.

Whilst it is now clear from recent cases that the courts were - as a means of discouraging gas flaring - leaning towards disallowing upstream companies' gas flaring penalties, the debate is now moot by virtue of **section 12 FA2 2020**.⁵⁴ That provision inserts a new **section 27(k) CITA** listing: "penalty or fine imposed pursuant to a legislation enacted by the National Assembly or State House of Assembly" amongst "deductions not allowed". It is trite law that the Courts must give effect

to express words of the legislature, where they are clear and unambiguous: **NB Plc v Governor of Oyo State**.⁵⁵ *If the penalties are significantly stiff and non-deductible, that would be a double-edged disincentive to continue, or not to, minimise flaring.*⁵⁶

Given that the **FA2 2020** became effective on 1st January 2021, it has become more imperative for operators to gird their loins, especially as the **PIB** (discussed

below, which is expected to be enacted in 2021), also leans heavily against gas flaring. The possibility of future flaring ultimately reflecting the unfortunate conclusion that it may still be more economic for upstream companies to flare gas on some assets, *in lieu* of the massive investments required for gas gathering, processing and transportation from such assets, is now moot courtesy of the **NGFCP**.



54. Indeed the earlier trend of such tax appeals (when FIRS started disallowing gas flare penalties) resulted in victories for the upstream companies against the FIRS, for example:

55. (2011)LPELR 4610 CA.

56. These two objectives appear to be the contemplation of **section 104 PIB** (discussed in further detail below). Cf. the present **section 11(2)(b) PPTA** which guarantees that eligible companies will pay the lowest gas flare penalty fee charged by the Minister! Instructively, the **Finance Act No. 1 of 2020 (FA1 2020)** also leans against the deductibility of penalties. **FA1 2020** inserts a new **section 27(1) CITA** that disallows "any penalty prescribed by any Act of the National Assembly for violation of any statute". Whilst arguably this wide provision would not affect upstream companies except to the extent that they are subject to **CITA**, the **FHC** decisions in **SPDC** and **MPNU** will continue to preclude deductibility until assurance is made doubly sure by the enactment of **PIB**'s express provisions.



Lack of Sufficiently Prohibitive Measure against Gas Flaring

Indeed, the challenges with the practice of gas flaring in Nigeria can be summed up as resulting from historic lack of regulatory cum political will of instituting a sufficiently prohibitive regime against gas flaring, and enforcing same. Thus, upstream companies often found it easier, (and profitable) to pay the stipulated gas flare penalty than capture same.

This is not the case in Algeria, where gas flaring is forbidden and an exceptional authorisation for a period not exceeding ninety (90) days with a penalty of US\$62 per MCM which is not tax deductible, is seldom available. A similar regime exists in South Sudan where gas flaring or venting is prohibited unless specifically authorised or in the event of an emergency, and investors are obliged to invest in necessary facilities to utilise any gas

they produce.⁵⁷

Hopefully, the anti-flaring stance of the new **CITA** and proposed **PIB** provisions will, together with the **NGFCP**, provide the requisite incentives to making large scale gas flaring a thing of the past in Nigeria.⁵⁸

The NGFCP: Prospects of Gas Flare Commercialisation in Nigeria

The **NGFCP** is a part of the wider **National Gas Policy (NGP)** which “commits to ending gas flaring, create an enabling environment for investors, achieve value addition for gas, and improve governance in the sector.”⁵⁹ The **NGP** itself has its roots from the **Nigerian Gas Masterplan (NGM)** approved by the Yar’adua administration in February 2008 to serve as guiding basis for the commercial exploitation and management of Nigeria’s gas sector.⁶⁰ The **NGFCP** is therefore a refined offshoot of several initiatives

and decades of planning in the gas sub-sector, as a key mechanism for implementing Nigeria’s commitment and obligation to eliminate routine gas flaring.

The **PA**, the **FGR 2018**, and the corresponding **Guidelines** published by the DPR in December 2018, provide the basis for the **NGFCP**.⁶¹ The dedicated **NGFCP** website details the background and objectives of the **NGFCP**.⁶² Based on the right of the FG under the **PA** to take gas at the Flare Site free of cost,⁶³ the **NGFCP** was launched by the MPR in December 2016, after the Federal Executive Council had “approved the ... **NGFCP** as the mechanism for implementing Nigeria’s commitment to eliminate routine gas flaring.”⁶⁴ The **NGFCP** is designed to offer a series of auction rounds to third party bidders in commercialisation of Flare Gas,

57. See Ernst & Young, *Global Oil and Gas Tax Guide 2019*, p.1, at 6 (Algeria); and p. 631 at 633 (South Sudan):

http://www.google.com/url?sa=t&source=web&rct=j&url=https://www.ey.com/Publication/vwLUAssets/ey-global-oil-and-gas-tax-guide-2019/%24FILE/ey-global-oil-and-gas-tax-guide-2019.pdf&ved=2ahUKEwik2_zJ8Y_zkAhVIRBUJHbxHA3YQFASegQIAxAB&usq=AOvVaw3XR8yHQ_VrWJOC6I7Sigd (accessed 15.12.2019). Also cf. Russia, (at p. 602), where “companies are permitted to flare 5% of any associated gas they produce. Producers violating this limit are charged significant emission fees, which are not tax-deductible. (Emphasis supplied).

58. For a related historic discussion, see Afolabi Elebiju, ‘Time for Environmental Taxation in Nigeria?’, *Taxspectives*, *THISDay Lawyer*, 30.10.2012; also available at LeLaw Thought Leadership page: (accessed 03.02.2021).

59. DPR, ‘**NGFCP Info Memo (supra)**’, p. 11.

60. For a 2009 presentation update on the **NGM**, see Dr. David Ige, ‘*The Nigerian Gas Master-Plan Status Update*’, January 2009: <https://www.fuelsgate.com/downloads/Nigeria%20Gas%20Master%20Plan.pdf> (accessed 03.02.2021).

61. The December 2018 **Guidelines** include: **Guidelines for Grant of Permit to Access Flare Gas (GGPAFG)**, <https://ngfcp.dpr.gov.ng/media/1128/guidelines-1-guidelines-for-grant-of-permit-to-access-flare-gas.pdf>). Per **Para 4.1**, **GGPAFG** “give direction for the competitive bidding process ... for granting Permits... in order to take Flare Gas at any Flare Site on behalf of the [FGN]”; **Guidelines for Flare Gas Measurement, Data Management Reporting Obligations (GFGMDMROs)**, which “stipulates the general procedures for putting in place a gas flare and venting accountability system in Nigeria”, (see p.3): <https://www.dpr.gov.ng/wp-content/uploads/2019/01/Guidelines-2-Guidelines-for-Flare-gas-Measurement-Data-Management-Reporting-Obligations.pdf>; **Guidelines for Flare Payments (GFPs)**, applicable to producers, see **Para 2** thereof at p. 3;); **Guidelines for Producer’s Associated Gas Utilisation Project (GPAGUP)**, which lays framework for AG for: (a) the Producers’ own consumption (“limited to sustaining and/or improving oil recovery”, and (b) for commercialisation, see **Paras 1** and **2**): <https://ngfcp.dpr.gov.ng/media/1131/guidelines-4-guidelines-for-producers-associated-gas-utilisation-project-1.pdf>, (all last accessed on 06.02.2021).

62. See **NGFCP’s** dedicated website: <https://ngfcp.dpr.gov.ng>: “The policy position of the [FG] is that gas flaring is unacceptable and the [FG] has initiated a number of actions to reaffirm its commitment to ending the practice of gas flaring in our oil fields. Specifically, the [FG] has ratified the Paris Climate Change Agreement, and is a signatory to the Global Gas Flaring Partnership (GGFR) principles for global flare-out by 2030 whilst committing to a national flare-out target by year 2020. Furthermore, in recognition that flared gas could be harnessed to stimulate economic growth, drive investments and provide jobs in oil producing communities and indeed for Nigerians through the utilization of widely available innovative technologies, the Federal Executive Council (Nigeria’s cabinet) has approved the [NGFCP]... The **NGFCP** is designed as the strategy to implement the policy objectives of the [FG] for the elimination of gas flares with potentially enormous multiplier and development outcomes for Nigeria. The objective of the **NGFCP** is to eliminate gas flaring through technically and commercially sustainable gas utilization projects developed by competent third party investors who will be invited to participate in a competitive and transparent bid process. The commercialisation approach has been considered from legal, technical, economic, commercial and developmental standpoints. It is a unique and historic opportunity to attract major investment in economically viable gas flare capture projects whilst permanently addressing a 60 year environmental problem in Nigeria. The **NGFCP** will offer flare gas for sale by the Federal Government of Nigeria through a transparent and competitive bidding process. A structure has been devised to provide project bankability for the Flare Gas Buyers, which is essential to the success of the Programme.”

63. **Para 35(b)(i) First Schedule, PA**. According to the DPR, vide the **NGFCP** website, (, accessed 06.01.2021), the **FGR 2018** “provide the legal basis for the implementation of the [NGFCP], introduces a new payment regime (penalties) for gas flaring which adopts the ‘polluter pays’ principle and mimics a carbon tax. The regulations also imposes significant obligations on producers and gas flare out projects for the reporting of data in respect of activities related to gas flaring.” “The current meager flare payments (penalties) of N10 per thousand standard cubic feet is increased, in the case of any one producing 10,000 barrels of oil or more, to \$2.0 USD per thousand standard cubic feet of gas and, in the case of anyone producing less than 10,000 barrels of oil per day, to \$0.50 USD per thousand standard cubic square feet of gas. There are mandatory additional payments by the producer of \$2.50 USD for: Failure to produce accurate flare data, Failure to provide access to flares or flare sites, Failure to sign a Connection Agreement; In the event of continuous or egregious breaches, there is a possibility of suspension of operations, or a termination of the producer’s license.”

64. **Para 1.2.2 (Policies)**, p. 11-12, **Nigerian Gas Flare Commercialisation Programme, Programme Information Memorandum (Rev.1), January 2019 (NGCP Info Memo)**: <https://ngfcp.dpr.gov.ng/media/1134/ngfcp-pim-rev1.pdf> (last accessed 06.02.2021); and Taiwo-Hassan Adebayo, ‘How Nigeria’s Gas Flare Commercialisation Will Work’, *Premium Times*, 13.04.2019: <https://www.premiumtimesng.com/business/325262-how-nigerias-gas-flare-commercialisation-will-work.html>, (accessed 18.08.2019).

with ultimate objective to end flaring.⁶⁵ By written instrument, the HMPR authorises Permit Holders⁶⁶ to take Flare Gas at specified sites on behalf of the FG; thus, a *Permit to Access Flare Gas* can be given only to companies other than producers of the gas being flared.⁶⁷

A total of 238 applicants submitted their Statement of Qualification (SoQ) for participation in NGFCP, in response to the *Request for Qualification* published by the DPR, out of which 203 emerged successful.⁶⁸ Whilst the entire process and timelines has been spelt out on the NGFCP website, owing to the Covid-19 pandemic amongst others, many of the steps and timelines have had to be postponed.

Incidentally, whilst the idea of a specific website is an innovative step for transparency, however it is important to ensure that real time, current information is reflected on the site. Such elevates the quality of the process, and enables third party observers keep track without let or hindrance from any location in the world. For example, process timelines revised in line with evolving circumstances should be promptly published for third party

awareness.⁶⁹

Also, Producers can participate in the NGFCP through a subsidiary midstream company in accordance with the provisions laid out in the *Guidelines for Producer's Associated Gas Utilisation Project (GPAGUP)*.⁷⁰

The Petroleum Industry Bill 2020 (PIB) Dimension

In September 2020, President Buhari presented the *Petroleum Industry Bill 2020 (PIB)* as an executive bill to the National Assembly.⁷¹ The PIB seeks to drastically transform Nigeria's oil and gas operating, regulatory and fiscal landscape, after several previous failed attempts. **Section 104 prohibits gas flaring** except in the case of emergency, pursuant to regulatory exemption or as an accepted safety practice under established regulations (**section 104(1)**). Breach constitutes an offence and renders the operator liable to a fine that may be prescribed pursuant to regulation under the *Bill*. Such fine shall be payable in the same manner as royalty (**section 104(2)**). Furthermore, such fine shall be neither be eligible for cost recovery nor be tax deductible (**section**

104(3)).⁷²

Section 105 also provides for gas flaring penalty under the *FGR 2018*, suggestive that this is a separate penalty. By **section 106**, operators are obliged to measure flared gas through metering equipment, with breach criminalised, and liable to a fine that may be prescribed regulation. However, operators may be granted exemption to flare gas for specific period where required for facility start-up or for strategic operational reasons, including testing (**section 107**). According to **section 108**, operators are also obliged to submit their *Natural Gas Flare Elimination and Monetisation Plan* to the Commission, pursuant to relevant regulations under the *Bill*.

Finally, even if indirectly, the domestic gas delivery obligations in **section 110** may also be relevant. Of particular importance is **section 110(5)** empowering the Commission to “require a lessee producing natural gas to carry out works and operation which may be required to increase production and to dedicate specific volume of the natural gas produced towards the requirements of the domestic market.”

65. Per *Para 6 GGPAFG*, the competitive bid process is to be in accordance with procedures outlined in the GGPAFG, including its *Schedule A (Bid Process and procedure for the Grant of Permit to Access Flare Gas)*. *Schedule B* prescribe *Applicable Fees*, *Schedule C* relates to *Bonds* and a *Definition of Terms* concludes the document.

66. Permit holders refers to those who have been granted *Permits to Access Flare Gas* after a competitive bid process in the NGFCP conducted by the FG's DPR.

67. See *Para 4.1 GGPAFG (supra)*, which provides in part at p. 4: “The process described applies to Third Party Flare Gas Commercialisation Projects, and not to Producers' Approved Flare Out Projects, which are described in the *Guidelines for Producers Associated Gas Utilisation Project*.”

68. Harrison Edeh, ‘*FG Approves Evaluation Report of Gas Flare Commercialization Committee*’ *BusinessDay*, 12.07.2019: <http://businessday.ng/energy/oilandgas/article/fg-%E2%80%8Eapproves-evaluation-report-of-gas-flare-commercialisation-committee/>, (accessed 02.06.2020). See also the NGFCP website, ‘*SOQ List of Successful Applicants*’: <https://ngfcp.dpr.gov.ng/soq-successful-candidates/> (accessed 03.02.2021).

69. For example, the most recent news item under the ‘*News and Events*’ subpage: (<https://ngfcp.dpr.gov.ng/news-and-events/>) is 16th April 2018. Fortunately, the ‘*Notice to Bidders*’ subpage () contains more current (albeit still dated) information, in addition to direct contact with them. For example, the most current information on the sub-page is the (undated) Notice, ‘*NGFCP: Extension of Bid Submission Due Date (BSDD) to 26th June 2020*’: <https://ngfcp.dpr.gov.ng/notice-to-bidders/extension-of-bid-submission-due-date-to-june-26-2020/> (all accessed 03.02.2021).

70. *Supra*. This shall be pursuant to *Permit to Access Flare Gas for a Producer's Approved Gas Flare Out Project (PAFOP)*, provided that “the utilisation of such natural gas shall not affect any Gas Flare volume that is subject to a bid process conducted by the [FGN] or has been assigned to any Permit Holder.” See *Para 3 (General Considerations for [PAFOP])* for details of inter alia procedural/documentation requirements for PAFOP applications. See also *Paras 4 and 5* for further details on *Producers Associated Gas for Own Consumption* and for *Commercialisation*, respectively.

71. Eniola Akinkuotu, ‘*Buhari Submits PIB to National Assembly, Scraps NNPC, PPPRA in New Bill*’, *Punch*, 28.09. 2020: <https://punchng.com/buhari-submits-pib-to-national-assembly-scraps-nnpc-pppra-in-new-bill/> (accessed 07.01.2020).

72. Cf. the new **section 27(k) CITA** vide *FA2 2020*, which became effective on 1st January 2021. Upon enactment of the *PIB*, all upstream players will be subject to *CITA (section 260(6) PIB*, in addition to, paying Hydrocarbon Tax (however with some exceptions in **section 260(1)** and **(b) PIB**).



Conclusion

The FG has stood with its 2020 deadline for ending gas flaring with the hope that **NGFCP** will help to put an end to the practice.⁷³ Unfortunately, evidence on ground shows that this deadline could not be met. This is because there has been little or no changes in the practice of gas flare. There is however no doubt that **NGFCP** is a step in the right direction towards ending gas flaring in Nigeria but the government must do more. Implementation is key for the actualisation of this programmes and other plans of the FG.

Also, there is need for increased transparency and adherence to due process in the oil and gas sector. Conflict of interest by the FG and its institutions like the NNPC as policy maker /significant contributor to policy making, legislator, regulator and commercial participant must be decisively addressed beyond the **NGFCP**. A more market driven commercial gas framework whereby government participation is focused on optimal regulation⁷⁴

and facilitative business environment including de-bottlenecking gas to power to unleash the potentials of that value chain, will be helpful in incentivising investments. It is trite that capital always obeys the law of attraction – it is attracted by prospects of reasonable returns, all things considered.

The **NGFCP** promises to be a strategic piece amongst current and proposed initiatives with potential to reinvigorate the Nigerian oil and gas industry which has more or less plateaued for over a decade. It is therefore critical that these initiatives are synched to ensure that there are no cross-fires/contradictions, and that each delivers optimality for greater overall impact. How does the ongoing **Marginal Fields Bid Round (MFBR)** relate to the **NGFCP** and vice versa?⁷⁵ How much of a transformation will the **PIB** bring? Whilst assumedly every prospective participant in the **NGFCP** and **MFBR** are conscious of the wider operating context that

the **PIB** will represent, the regulatory authorities must also ensure a seamless interface of all these initiatives for sector efficiency that delivers benefits to all stakeholders.

In summary, the **NGFCP** has the potential not to be just another initiative in the long list of futile attempts to end gas flaring in Nigeria. We are positive that times of enhanced value contribution are ahead for the oil and gas industry, with a clear line of sight for the end of gas flaring as a result of the successful consummation of the **NGFCP** and **MFBR** initiatives.⁷⁶ Disciplined delivery can impel confidence to borrow the words of a popular advertisement in Nigeria, that “*the future is looking bright*”!

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Thank you for reading this article. Although we hope you find it informative, please note that same is not legal advice and must not be construed as such. However, if you have any enquiries, please contact the authors, Afolabi Elebiju and Daniel Odupe at: a.elebiju@lelawlegal.com or info@lelawlegal.com.

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73. Femi Asu, ‘Gas Flaring Persists as 2020 Deadline Nears’, Punch Newspaper, 14.04.2019; <https://punchng.com/gas-flaring-persists-as-2020-deadline-nears/amp/> (accessed 18.09.2019).

74. In this wise, the **PIB** promises a better governance structure for the industry including transformation of the character of government’s participation in the industry vide NNPC and its subsidiaries into strictly commercial entities that will have no regulatory influence. See **Chapter 1 PIB (Governance and Institutions)**. **Section 2 PIB** provides that “The objectives of this Chapter are to – (a) create efficient and effective governing institutions, with clear and separate roles for the petroleum industry; (b) establish a framework for the creation of a commercially oriented and profit driven national petroleum company; (c) promote transparency, good governance and accountability in the administration of the petroleum resources of Nigeria; and (d) foster a business environment conducive for petroleum operations.”

75. See DPR’s ‘Guidelines for the Award and Operations of Marginal Fields in Nigeria’, June 2020: (accessed 03.02.2020). See also, ‘Market Report: Nigeria to Announce Marginal Fields Bid Round Results’, Africa Oil & Power, 02.11.2020: <https://www.africaoilandpower.com/2020/11/02/market-report-nigeria-to-announce-marginal-fields-bid-round-results/> (accessed 03.02.2021). We believe that the **MFBR**’s “Broad Objectives” (see **Para 3, p.7 MFBR Guidelines**), could have made included, or made reference to, zero tolerance for gas flaring.

76. Responding to a question, “How is Nigeria progressing with regards to monetizing its huge gas resources?”, an industry professional, Victor Okoronkwo, MD, Aiteo Eastern E&P, stated: “I do not think Nigeria has a choice. First, people are moving into cleaner fuels, and natural gas is cleaner. Second, electricity is scarce in Nigeria, and gas still provides the cheapest way to increase electricity production. Ultimately, we will come around to utilizing Nigeria’s natural gas reserves, which are ranked about seventh in the world and will help us diversify our economy.” In our view, that aptly sums up the imperatives of utilising Nigerian gas of which **NGFCP** may well turn out to be a lynchpin. See ‘Reliable in a Pinch’, The Business Year, (Energy Interview 2020): <https://www.thebusinessyear.com/nigeria-2020/reliable-in-a-pinch/interview> (accessed 03.02.2021).