

THE LEGAL REGIME FOR NIGERIAN GAS*

Abstract

Nigeria has abundant gas resources, with approximately 187 trillion Cubic feet (tcf) of proven gas reserve and 300,600 tcf of unproven gas reserve. As the world's seventh largest, and Africa's largest deposit of natural gas, Nigeria can be described as a gas province with some oil in it. Moreover, a nation highly endowed with such gas resources must endeavour to produce the recoverable reserves optimally for the benefit of both the current and future generation. The exploitation and marketing of petroleum (which includes gas) in Nigeria is regulated by law. These laws have been made for the proper administration of the operation of the oil mining process and the general practice in the oil industry. We are going to examine the Laws as it relates to gas from the colonial era, through the enactment of the Petroleum Act in Nigeria, and up to date. Consequently, this study examines the laws that regulate activities in the Nigerian gas sector with respect to ownership and control; exploration and production; transmission, marketing and distribution (utilization); gas flaring; price regulation; and fiscal regime. This paper considers whether in the current dispensation, these laws are appropriate for optimizing gas exploration for the benefit of the Nigerian Nation.

Key words: Legal Regime, Gas, Nigeria, Petroleum

Definition of Gas:

Petroleum means mineral oil (or any related hydrocarbon) or natural gas as it exists in its natural state in strata, and does not include coal or bituminous shale or other stratified deposits from which oil can be extracted by destructive distillation.¹ According to Omorogbe,² 'petroleum is a compound mainly composed of hydrogen and carbon, and is commonly called a hydrocarbon. It can exist in gaseous, liquid or solid form. When it is found as a solid, it is coal, shale, tar, sands, or bitumen. In liquid form, it is referred to as crude oil. Hydrocarbons in gaseous form are known as natural gas'. From the foregoing, it is clear that under the law, gas is regarded as a form of petroleum. Moreover, Gas is generally defined as any hydrocarbon or a mixture of hydrocarbons occurring in a gaseous state of ambient temperature and pressure. It normally constitutes of methane. In Nigeria, we have two types of gas; natural gas and associated gas. Natural gas has been defined in both *Section 2 of the Petroleum Profits Tax Act*, and *Section 15(1) of the Petroleum Act* as 'gas obtained from boreholes and wells and consisting primarily of hydrocarbons'. Associated gas on the other hand, is the gas which is discovered or produced in association with crude oil as a byproduct. It is important to note that both natural gas and associated gas share similar characteristics of gaseous components and when gas is used in this paper, it refers to both kinds of gas, except where otherwise expressly stated.

Ownership:

Ownership rights consist of an innumerable number of claims, powers, liberties and immunities against the thing owned. In fact, according to the court in the case of *Chief Joseph Abraham & Anor V. Ishau Amusa Olorunfunmi & Ors*,³ ownership connotes the totality of or the bundle of the rights of a person over and above every other person on a thing. Prior to Nigeria independence, there were some pieces of legislations that regulated the Nigerian oil industry. These included the following – The Petroleum Ordinance of 1889, The Mineral Regulation (Oil) Ordinance of 1907, The Mineral Oil Ordinance of 1914 amended in 1925, The Mineral Act of 1946 and the Mineral Oils Act of 1958. Ownership here will be discussed briefly under the following heads viz the Petroleum Act, the Nigerian Constitution and the Exclusive Economic Zone.

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¹ Section 15(1) of the Petroleum Act, Cap. P.10, Laws of Federation of Nigeria (LFN) 2004. See also Section 2 of the Petroleum Profits Tax Act, Cap. P. 13, LFN, 2004.

² Omorogbe, Yinka: Oil and Gas Law in Nigeria, (Nigeria, Malthouse Law Books, 2001), Page 1

³ (1999) 1 NWLR(Pt. 165)53

The Petroleum Act:

Upon attaining independence in 1960, certain number of petroleum-related laws was enacted within the first decade of independence. The most significant of these laws was the Petroleum Act promulgated as Decree No. 51 of 1969⁴. The Act, which is the major legislation on oil and gas in Nigeria, repealed the existing legislations relating to petroleum. The Petroleum Act and the Petroleum (Drilling and Production Regulations) and other regulations⁵ made there under laid down the foundation of the legal framework for the regulation of the oil industry in Nigeria. The Petroleum Act, vests in the state, the entire ownership and control of oil and gas in, under or upon any lands including land covered by water, which is in Nigeria; or is under the territorial waters of Nigeria; or forms part of the continental shelf or Exclusive Economic Zone of Nigeria.⁶ In accordance with this provision, the Federal Government is the only authority that has ownership rights and control over Nigerian gas. The Act, although having been amended twice,⁷ still remains substantially the same.

The Nigerian Constitution:

The Nigerian constitution is the supreme law of the land. It provides that ‘...the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone in Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly⁸ Moreover, Natural Gas was specifically listed in the Exclusive Legislative List⁹ as one of the items upon which only the National Assembly can make laws. From the foregoing, the Constitution clearly excludes the right of any person to own mineral resources, as same is vested in the Federal Government. Moreover, this was further strengthened by the provisions of the Land Use Act,¹⁰ which except land vested in the Federal Government or its agencies from being vested in the Governor of the State where the land is situate. Thus, in the case of *South Atlantic Petroleum Ltd v. Minister of Petroleum Resources*,¹¹ it was held that petroleum resources in Nigeria are vested in the Federal Government. Interested persons are granted licenses or leases to explore, prospect or mine oil and gas.

The Exclusive Economic Zone Act:

This Act,¹² enacted in 1978 delimited the Exclusive Economic Zone and thereby extended the area within which natural resources could be sought in Nigeria to up to a distance of 200 nautical miles from the baseline from which the breadth of the territorial waters of Nigeria is measured.¹³ The Act went further to make the Federal Government the only authority that could explore and exploit petroleum and natural gas in Exclusive Economic Zone.¹⁴ In fact, from Sections 2 and 3(1) and (2) of the Act, it is clear that only the Federal government can exercise ownership rights and control over gas and other natural resources in the Exclusive Economic Zone, subject however to the universally recognized rights of other States and any treaty to which Nigeria is a party with respect to the exploitation of the living resources of the Exclusive zone.

Various International Instruments¹⁵ show emphasis on the permanent sovereignty of a State over its natural resources. By this is meant the right of a state to freely use and manage its natural resources

⁴ Now Cap. P. 10 Laws of the Federation of Nigeria, 2004

⁵ For a list of these regulations, see Paragraph 4 of the Fourth Schedule of the Petroleum Act, which deems the Regulations to have been made under Section 9 of the Petroleum Act, as well as the list of Subsidiary Legislations to the Petroleum Act.

⁶ Section 1(1) and (2) of the Act.

⁷ By Petroleum (Amendment) Decree Nos. 23 of 1996 and 22 of 1998 respectively

⁸ Section 44(3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) 2011

⁹ Ibid, Item 39 of Part 1, 2nd Schedule

¹⁰ Section 1 of the Land Use Act, Cap. L.5, LFN 2004

¹¹(2006)10CLR 122

¹²No. 28 of 1978, now in Cap. E. 17, LFN 2004

¹³ Ibid, Section 1(1)

¹⁴ Ibid, Section 2(1)

¹⁵Articles 55 to 60 of the United Nations Charter; United Nations' Resolution 626 (VII) of 1952, which recognizes the Rights of peoples freely to use and exploit their natural wealth and resources; UN Resolution 1314 (XIII) of 1958,

with the aim of promoting its development, without hindrance from external influence.¹⁶ The writer submits that the fact that ownership and control of gas and other natural resources in Nigeria are vested in the Federal Government is not in doubt. However, this vesting of ownership in the Federal Government has a far reaching effect on the rights of the citizens. In exercise of these ownership rights and control, the Government assumes full and total control to the exclusion of any other person. Though it is arguable that this position is desirable because the proceeds from the mineral resources would be jointly used for the overall benefit of the whole country, it is discovered that most often, the communities and clans (Niger-Delta Region of Nigeria) that have direct linkage to the land in which these resources are found are neglected in the sharing of the income from these resources. This has resulted in the various protests from the Niger Delta Region over ownership by the Federal Government. According to the protesters, they should be given control, while they pay a determinable percentage to the Federal Government. Although this position is arguable, it is believed that the current ownership and control system is the best for Nigeria.

However, a strong legislative framework needs to be put in place to ensure that the Federal Government exercises its ownership and control over natural resources for the benefit of the whole country

Exploration and Production:

The direct consequence of the vesting of ownership and control of Nigerian gas in the Federal Government is the fact that no person can undertake any activities with relation to Nigerian gas without the prior permission of the Federal government. Therefore, the only interest that any other person (individual or corporate) can obtain in relation to activities in the Nigerian gas industry is acquired right of participation. This participatory right is otherwise known as ‘concession’.¹⁷ The principal legislation regulating the exploration, production and distribution of gas in Nigeria is the Petroleum Act. Under the Act, prospecting, exploration, production and distribution of petroleum (including natural gas) may only be done with the consent of the Minister in charge of petroleum.¹⁸ The Act gives the Minister power to issue regulations necessary for the discharge of its duties under the Act.¹⁹ The Petroleum (Drilling and Production) Regulations²⁰ is a subsidiary legislation made pursuant to the Petroleum Act and it regulates in detail, activities relating to the exploration and production of natural gas. The rights to win and carry away petroleum, including natural gas in Nigeria are granted to investors by the Minister through the Oil Exploration Licenses, Oil Prospecting Licenses and Oil Mining Leases.²¹ However, Oil Exploration Licenses have been deleted from the list by the *Petroleum (Amendment) Act No. 22 of 1998*, leaving only Oil Prospecting Licenses (OPLs) and Oil Mining Leases (OMLs)²² as the modes through which concession can be granted to undertake activities in relation to oil and gas in Nigeria. Moreover, these participatory rights can only be granted to a citizen of Nigeria or a company incorporated in Nigeria under the Companies and Allied Matters Act or any other law.²³

An oil prospecting license (OPL) is granted for five years and is also renewable for the search, drill, win and disposal of gas. It confers on the licensee the right to explore, carry away and dispose of petroleum discovered and won in the area covered by the license.²⁴ This grant is exclusive so that

which set up the UN Commission on Permanent Sovereignty over Natural Resources; UN Resolution 1803 (XVII) of 1962 on the Permanent Sovereignty over Natural Resources;

¹⁶ Jeneth Warden - Frenandez: The Permanent Sovereignty over National Resources: How it has been accommodated within. The Evolving Economy. CEPMLP Annual Review 2000 - Article 4.

¹⁷ Paragraph 1(1) of the 2nd Schedule to the Petroleum Profits Tax Act Cap P 13, LFN 2004, which defined concession to include an oil exploration licence, an oil prospecting licence, an oil mining lease, any right, title or interest in or to petroleum oil in the ground and any option of acquiring any such right, title or interest. In fact, concession is any bundle of rights enabling the concessioner to undertake and carry out petroleum operations in Nigeria.

¹⁸ Section 2 of the Petroleum Act, Cap. L.10, LFN 2004.

¹⁹ *ibid*, Section 9

²⁰ (L.N. 69 of 1969), amended by Petroleum (Drilling and Production) Regulations, S. I. No. 9, 2006.

²¹ Section 2 (a), (b) and (c) of the Petroleum Act respectively

²² Section 3 which deleted Section 2(a) of the Petroleum Act.

²³ Section 2(2) of Petroleum Act

²⁴ *Ibid*, Paragraphs 5 to 7, 1st Schedule; Regulations 2(2), and 10 to 13 of the Petroleum (Drilling and Production) Regulations 1969 as amended

another OPL may not be granted in respect of the same area. On the other hand, an oil mining lease (OML) is granted for twenty years and is renewable for the search, win and disposal of oil. It may be granted to the holder of Oil Prospecting license who satisfied the conditions of the license and has discovered oil in commercial quantity, that is to say, production of 10,000 barrel per day.²⁵ Worthy of note is the fact that an OPL or OML is held by companies either in joint venture with the Nigerian government represented by the Nigerian National Petroleum Corporation (NNPC),²⁶ (which replaced the Nigerian National Oil Company) or as a sole risk operation. The Joint Venture is a contractual agreement used by Nigeria to acquire participating interests in crude oil concessions. Here, the NNPC and the company holding the license or lease, jointly fund the business and bear the risk. The joint venture arrangements are defined by the Oil Mining lease or Oil Prospecting License, the Participation Agreement²⁷ and the Joint Operating Agreement.²⁸

Apart from these three modes, we have Production Sharing Contracts (PSCs) and Risk Service Contracts. Production Sharing Contract is regulated by the Deep Offshore and Inland Basin Production Sharing Contracts Act.²⁹ By this arrangement, the Nigerian Government enters into a contract with an Oil company to undertake exploration and production in return for a share of the resulting petroleum. The oil company commits investment into the venture and if it is successful in producing oil in commercial quantity, the product is shared in an agreed proportion between the company and NNPC. The sharing proportion normally makes it possible for the company to amortize its expenses (cost). However, if the company did not succeed, it loses its investment. The PSC may oblige the petroleum company to deliver a percentage of production (particularly of natural gas) to the domestic market at favourable rates. The PSC is likely to include local content provisions requiring the use of and knowledge transfer to indigenous workers and companies.

A risk service contract is a form of agreement where an oil company assists the Nigerian Government in exploiting reserves while not taking or appearing to take any equity ownership in the resulting production, but with an option to purchase same. The Company assumes the exploration and production risks. This is the type of agreement between NNPC and ELF Nigeria Petroleum and an Agip Company. They are exempted from paying petroleum profit tax. In relation to Nigerian gas, no gas-specific concessions have been granted for gas production. However, natural gas production in Nigeria has been carried out under the Oil Mining Leases and Production Sharing Contracts. It is believed that good as NNPC's own cost of exploration and production are deferred until the production phase and then paid out of its share of production. This obviously has cash flow advantage for Nigeria. Further, it effectively passes exploration risk to the International oil companies. If there is no commercial discovery, there will be no production for the state to pay back its share of exploration cost. In such circumstances, contractually, these costs are borne by the international oil companies. This is in addition to the domestic supply obligations and the application of local content obligations as already explained.

Transmission, Marketing and Distribution (Utilization) and Price Regulation:

Due to the nature of gas, it can only be transmitted in gaseous form through pipelines or in liquefied form through specially constructed cryogenic tankers. Consequently, the Oil Pipelines Act³⁰ and the Oil and Gas Pipelines Regulations³¹ govern the licensing and permitting processes for the construction,

²⁵ Paragraph 8 to 11 of 1st Schedule to the Petroleum Act

²⁶ Created in July 1977 as a result of the merger between Nigerian National Oil Company and the Federal Ministry of Mines and Power. It was established by Section 1 of the Nigerian National Petroleum Act Cap. N123, LFN 2004, and later amended by Nigerian National Petroleum Corporation (Amendment) Act No. 35 of 2007.

²⁷ Sets out the respective rights of partners to the joint venture. The agreements were individually negotiated and vary in details.

²⁸ The Joint Operating Agreement spells out the legal relationship between the parties involved in the respective lease and lays down rules and procedures for joint development of the area concerned and of property jointly owned by the parties.

²⁹ Cap. D3, LFN 2004

³⁰ Cap. O7, LFN 2004

³¹ S.I. 14 of 1995

operation and maintenance of gas pipelines. The construction and operation of gas storage facilities is regulated by the Petroleum Act, which is implemented in accordance with guidelines issued by the DPR. The storage of natural gas requires a license granted by the DPR. The governmental authorizations required are a permit to survey a route for a proposed gas pipeline³² and an oil pipeline license,³³ both issued by the Minister of Petroleum under the Oil Pipelines Act.³⁴ The oil pipeline license confers on the holder the right to construct, maintain and operate a gas pipeline.³⁵ It also confers the right to construct, maintain and operate installations that are ancillary to the construction, maintenance and operation of such pipeline, such as pumping stations, storage tanks and loading terminals.³⁶ Any person that wants to construct and operate any natural gas transportation and storage facilities must obtain an environmental impact assessment approval by the Federal Ministry of Environment.³⁷

By virtue of the Land Use Act, 1978,³⁸ the use of land for the construction of gas pipelines constitutes an overriding public interest for which the government may compulsorily acquire land. Such acquisition is subject to the payment of compensation to the owner/occupier of the land.³⁹ The right to use land for the purposes of a gas pipelines is inherent in the grant of an oil pipelines license as the license confers on the holder the right to enter upon, take possession of, or use a strip of land of such width as may be specified in the license upon the route specified in the license. The government recently approved the Nigerian Gas Master Plan (NGMP), which is comprised of three main sections. The first is the Gas Pricing Policy, which does not fix gas price, but provides a framework for establishing the minimum gas price that any category of gas buyer can be charged. The second is the Domestic Gas Supply obligation, which assures gas availability for critical domestic gas utilization projects that will advance the economic growth in Nigeria. The third, the Gas Infrastructure Blueprint, provides for the establishment of three gas gathering and processing facilities, a network of gas transmission lines, which will result in a reduced cost of gas supply from Nigeria.⁴⁰

Pursuant to the NGMP, the minister has issued *the National Gas Supply and Pricing Regulations*⁴¹ to regulate the supply of gas to the domestic sector. The Department of Gas⁴², established under the National Gas Supply and Pricing Regulations regulates the supply of gas activities in Nigeria, and is expected to ensure the availability of gas supply to the domestic market. Under the National Gas Supply and Pricing Regulations, gas producers are restricted from exporting gas except when they meet their domestic gas supply obligation.⁴³ However, no specific rules currently apply to such cross-border sales or deliveries of natural gas. Consequently, exportation activities are regulated by contract between the parties, but an export permit issued by the Ministry of Commerce is however required. In addition to the National Domestic Gas Supply and Pricing Regulations, the Gas Aggregation Company Nigeria Limited (GACON)⁴⁴ has been incorporated to manage the implementation of the domestic gas supply obligation and to act as an intermediary between suppliers and purchasers of gas. A template Gas Sale and Aggregation Agreement has also been finalized and negotiations have commenced between suppliers and purchasers of gas for the supply of gas to the domestic market. Natural gas commodities are majorly traded as bundled products in Nigeria. However, the National Gas Policy contains a framework for the unbundling of natural gas trade. Pursuant to the National Gas Policy, regulations are

³² Part II of the Oil Pipelines Act for what it connotes

³³ Ibid, Part III for everything relating to Oil Pipeline license

³⁴ Ibid, Section 3

³⁵ Ibid, Section 3(b)

³⁶ Ibid, Section 11

³⁷ Section 6 of the Environmental Impact Assessment Act, Cap E12, L.F.N. 2004

³⁸ Land Use Act, Cap. L5, L.F.N. 2004

³⁹ Section 11 (5) of the Oil Pipelines Act

⁴⁰ Advocaat Law Practice: Gas Utilization in Nigeria: Nigeria Gas Master Plan (NGMP). obtained from www.advocaat-law.com

⁴¹ S.I.4 of 2008, made by the Minister of State for Energy, and Gas and commenced on 11th January 2009.

⁴² Ibid, Section 1

⁴³ Ibid, Section 2 for the powers of the Department of Gas.

⁴⁴ Ibid, Section 5

being developed to separate supply, transmission, distribution, pipeline ownership and network operation activities. When the regulations are enacted, gas commodities will trade as separate products.

The Nigerian Liquefied Natural Gas Company (NLNG) is the only company that produces liquefied natural gas in Nigeria. It is jointly owned by NNPC, Shell, Total and Eni.⁴⁵ LNG activities are regulated under the Petroleum Act and its subsidiary regulations, which include Petroleum Refining Regulations. LNG export is regulated by the Oil Terminals Act, Crude Oil (Transportation and Shipment) Regulations, The Nigerian Ports Authority Act, the Pre-Shipment Inspection of Export Act, the Custom and Excise Act, The Foreign Exchange (Monitoring & Miscellaneous Provisions) Act, and The Foreign Exchange Manual (issued by the Central Bank of Nigeria).⁴⁶ Environmental Impact Assessment is mandatory for the construction of LNG facilities. This is issued by the Federal Ministry of Environment. A license to establish and construct an LNG plant is issued by the Minister upon DPR recommendation. Approval for plan design specifications, purpose and location is granted by the Minister upon DPR recommendation. A permit to survey a gas pipeline route is issued by the DPR. A license to construct and operate a Gas Pipeline is issued by the DPR. A license to establish an Oil Terminal at site is issued by the Minister of Petroleum. A license to store LNG at site is to be obtained from the Minister. Industrial Waste Discharge/Disposal Permit is issued by the DPR. There is no regulation of the price or terms of service in the NLG sector. Moreover, there are ongoing efforts by both the Federal Government of Nigeria and the World Bank to develop a domestic gas to power credit risk management arrangement which gives comfort to gas producers regarding payments for the gas sold to government-owned power plants. The World Bank will provide a guarantee directly to local banks issuing standby letters of credit and indirectly to gas sellers for the fulfillment of the financial and payment obligations of government-owned power plants.⁴⁷

Settlement of Disputes:

International Regulatory policy in respect of the natural gas sector can be applied in Nigeria only to the extent that such treaties and multinational agreements have been passed into law by the National Assembly of Nigeria. The *UNICITRAL Arbitration Rules* are adopted in our *Arbitration and Conciliation Act*.⁴⁸ Therefore, any dispute arising between the Minister and the holder of Oil Mining Lease or Oil prospecting license in connection with any such lease or license are required to be settled by arbitration in accordance with these Arbitration Rules. On the other hand, disputes arising from domestic gas sales and purchases transactions are to be referred to the Department of Gas for resolution.⁴⁹ Nigeria is also a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral and the Convention has been ratified and incorporated as the second schedule to the Nigerian Arbitration and Conciliation Act, Nigeria is also a signatory to and has ratified the ICSID convention. Largely, settlement of dispute is carried out by the ICSID having been incorporated in the LNG Decree.

Flaring of Gas:

Gas flaring in a large scale is an extremely harmful and wasteful practice and it is universally discouraged as it is a major contributor to greenhouse gas. In Nigeria, *the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act (NESREA)*,⁵⁰ *the Environmental Impact Assessment Act (EIA)*⁵¹ and *the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN)* prescribe environmental and emission standards applicable to natural gas activities in Nigeria. Notwithstanding the application of the above laws, and the fact that Nigerian's natural gas reserve is largely unexploited, large quantities of associated gas are flared in the process of oil production. It is among the countries that have the highest rate of gas flaring in the world of about

⁴⁵ See footnote 38

⁴⁶ Cap O8, LFN, 2004; Subsidiary Legislation to Petroleum Act; Cap N.18, LFN 2004; Cap. P.25, L.F.N. 2004; cap C. L.F.N 2004; and Cap F. 34, L.F.N. 2004

⁴⁷ See footnote 38

⁴⁸ Cap A. 18, LFN2004

⁴⁹ See the National Domestic Supply and Price Regulation

⁵⁰ No. 25 of 2007

⁵¹ Cap. E.12, LFN2004

70%. The Federal Government of Nigeria has been concerned about banning the flaring of gas. Hence *Regulation 43 of the Petroleum (Drilling and Production) Regulation* made utilization of discovered gas mandatory within 5 years of commencement of production in the field. Also in 1979, it promulgated *the Associated Gas Reinjection Act*⁵² in its effort to ban the flaring of gas in Nigeria. By *Section 3(1)*, no company involved in the production of oil shall flare gas produced in association with oil without the permission of the Minister in writing by 1st January 1984. Penalty for contravention is forfeiture of concession.⁵³ The deadline was shifted twice to 1st April 1984 and 1st January 1985, but yet not implemented. Later the *Associated Gas Reinjection (Continued Flaring of Gas) Regulation*⁵⁴ was made. It commenced in 1985, 1st January and it exempted certain gas operations from the ban on flaring. Thus, 86 out of 155 fields were exempted from the anti-flaring provision. Moreover, the penalty was reviewed and became so insignificant that it was cheaper to flare than to utilize or inject gas.⁵⁵

In all of this, the Nigerian government has been fashioning out ways of bringing a stop to gas flaring and harnessing Nigeria's abundant gas reserve. Consequently, the Federal government is implementing policies that would reduce gas flaring by stimulating domestic gas utilization. One of the policies is the introduction of the *Nigerian Gas Master Plan (NGMP)*, which introduced the Gas Infrastructure Blueprint, Gas Pricing Policy and Gas Supply Obligation. Article 282, 335, 404 -410 of the Gas Master Plan highlighted the significance of encouraging the use of gas in domestic markets as well as ending gas flaring. The Gas Master Plan has created new investment opportunities in the Nigerian gas sector and significant progress has been made in relation thereto. Nigerian Liquefied natural gas capacity is growing rapidly and accounts for approximately 30% of the total Atlantic LNG. Additional LNG projects such as the OK LNG and Brass LNG further enhanced Nigeria's LNG capacity. In addition to the export oriented LNG projects, gas in accordance with the Federal Government domestic utilization policy is being leveraged as the fuel to power Nigeria's economic growth. There are three key regional gas projects, the West African Gas Pipeline (WAGP) Project which supply gas to neighbouring West African Countries, the Trans-Sahara pipeline project which seeks to transport gas to Europe via Algeria and the proposed gas network for the supply of gas to Equatorial Guinea.

All these notwithstanding, gas is still being flared in Nigeria. This, has been observed to be a huge waste of Nigerian Resources, as well a very big source of environmental hazard to the people of the Niger Delta area of Nigeria where the gas resources is situated. It is unfair that the government would side the foreign companies that flare gas because of the money it is making from them to the detriment of its citizens' life and good health, which is one of the fundamental objectives of the government.⁵⁶

Fiscal Regime:

The Petroleum Profit Tax Act and the Companies Income Tax Act regulate the taxation of profits made from the production and distribution of Nigerian gas respectively. However, certain incentives were granted to dealers in gas in Nigeria. Nigeria derives fund from natural gas development from royalties, taxes and a share of production. Currently, Royalties for offshore fields is 5% and for onshore fields is 7% of the natural gas production. Taxes include: The Petroleum Profit tax of 85% on chargeable profits from exploration and production; the Companies income tax of 30% on the total profits of a company derived from gas supply and distribution; education tax of 2% on the profits of all Nigerian companies; and the Niger-Delta Development Commission (NDDC) levy of 3% of the total annual budget of any oil-producing company operating offshore and onshore of the Niger Delta Area. Gas - processing companies are subjects to this tax.⁵⁷ Under the *Associated Gas Framework Agreement*, a three - year tax free holiday was granted in respect of profits made from activities in gas in Nigeria. This was increased to five years in the *President's 1999 budget speech*.⁵⁸ Royalties and petroleum profits tax are

⁵² Cap A 25, LFN 2004

⁵³ Section 4(1) of the Act.

⁵⁴ Ibid, subsidiary legislation.

⁵⁵ Omorogbe, Yinka supra, page 59

⁵⁶ Section 17(20)(c) and (d) Sections 20,24 (c).

⁵⁷ See generally, the Associated Gas Framework Agreement (AGFA) of 1992, and the Federal Government Budget Speech of 1998 and 1999.

⁵⁸ Omorogbe Yinka, above, page 77

not applicable to gas transferred from a natural gas liquid facility to a gas-to-liquid facility. Revenue accruing to the NNPC under its joint ventures and PSCs is paid into the Federation Account.

It is pertinent to note that late Alhaji Umaru Musa Yar'adua, GCFR during one of his speeches categorically directed that all tax holidays being enjoyed by companies be stopped. What is not quite clear is the implementation of the Presidential order. In relation to Liquefied Natural Gas, separate tax incentives apply. The Nigerian LNG (Fiscal Incentives Guarantees and Assurances) Act, and Nigerian LNG (Fiscal Incentives Guarantees and Assurances) (Amendment) Act⁵⁹ are exclusively for the benefit of liquefied natural gas projects in Nigeria. First, in line with the provisions of the Industrial Development (Income Tax Relief) Act, the above Acts confer pioneer status on the Nigerian LNG Limited.⁶⁰ They also provided for a 10 year tax relief period for the company.⁶¹ In addition, the company is subject to the Companies Income Tax Act and not the Petroleum Profits Tax Act.⁶² Furthermore, Section 6 of the Act exempted from taxation, interests on loans made by foreign companies as well as earnings of foreign companies and aliens. In fact, the company is exempted from customs, import and export duties, levies and charges or impost in relation to equipment and products imported by the company for the purposes of its business or in relation to exports of its products (liquefied natural gas and other hydrocarbons).⁶³

It is observed that the fiscal regime with respect to gas in Nigeria is markedly different from that pertaining to crude oil. This regime is adjudged to be good and a means of encouraging investors in our gas industry. However, this regime should not be allowed to go on for a long time as it amounts to depriving Nigeria of their legitimate income to the greater profit of the Foreign Companies involved in the industry. Moreover, the manner of the federal Government changing laws during their budget speeches is not legal and is unacceptable in a democratic society. Consequently, this should be discouraged and challenged.

Conclusion and Recommendation:

The fact that numerous statutes have been made to regulate the exploitation of gas in Nigeria from the colonial period up to date is not in issue. The researcher has tried as much as she could to discuss these legislations as it relates to the sub topics discussed in this work. However, there are so many other laws that have direct relevance to the gas industry which were not discussed in this work. They include the Petroleum Equalisation Fund (Management Board ETC.) Cap P11, L.F.N. 2004; the Petroleum Production and Distribution (Anti-Sabotage) Act., Cap P12, L.F.N. 2004; Petroleum (Special) Trust Fund Act, Cap P14, L.F.N. 2004; Petroleum Technology Development Fund Act, Cap P15, L.F.N 2004; Petroleum Training Institute Act, Cap P16 L.F.N 2004; Nigerian Liquefied Natural Gas Act; the Niger Delta Development Commission Act etc. These laws regulate various aspects of Nigerian gas.

In 2010, the Nigerian Oil and Gas Industry Content Development Act was enacted. The aim of the Act was to promote a framework for which local competencies in the oil and gas sector were developed through the active involvement of Nigerians using local resources. The Act increased indigenous participation in the Oil and Gas industry by prescribing minimum thresholds for the use of local services and materials and to promote transfer of technology and skill to Nigerians in the Industry. It generally places obligations on upstream oil companies as regards fiscal, labour and community issues. The Act also established the Nigerian Content Development and Monitoring Board (NCDMB)⁶⁴ with the responsibility to implement the provisions of the Act and make procedural guidelines and monitor

⁵⁹ 57 Cap N. 87, LFN, 2004 and Decree No. 113 of 1993

⁶⁰ Section 1 of Cap 87, LFN 2004

⁶¹ Ibid, Section 2

⁶² Ibid, Section 3

⁶³ See the Amendment Act, which made the provisions of The National Shipping Policy Act Cap. N.75, LFN, 2004 and Pre-shipment Inspection of Imports, Part 1 of Pre-shipment of Imports Act, Cap. P.26, LFN, 2004 not applicable to the company.

⁶⁴ Sections 4, 5 and Part II of the Act

compliance by operators within the Oil and Gas industry. *Section 3(1)* provides that Nigerian 62 independent operators shall be given first consideration in the award of oil blocks, oil field licenses, oil lifting licenses and all projects for which contract is to be awarded in the Nigerian Oil and gas industry subject to the fulfillment of such conditions as may be specified by the Minister. This was qualified in *Sub section 2* which states that preferential consideration shall be given to Nigerian Indigenous service companies which demonstrate ownership of equipment, Nigerian personnel and capacity in the allocation process. *Section 7* requires the submission of Nigerian Content Plan by an operator for all projects to be carried out in Nigeria Oil and Gas industry. Operators in the Oil and Gas Industry shall retain Nigerian legal practitioners for their legal services, so also, their assets are to be insured in Nigerian Insurance companies and 10% of their annual profit must be domicile in Nigerian banks.⁶⁵

The fact that the passing of this law is a step in the right direction cannot be overemphasized. However, notwithstanding the noble provisions of this Act, the presenter observes that there are some pitfalls in it. The first is that the penalty for noncompliance with the provisions of the Act is not sufficient to prevent breach.⁶⁶ The sanctions prescribed need to be further strengthened. Moreover, the definition of a Nigerian company is only by reference to the equity share of 51% as prescribed by the *Companies and Allied Matters Act*.⁶⁷ This created a gap that may be sidestepped by operators. The monitoring powers of the Nigerian Content Development and Monitoring Board need to be strengthened to enable it effectively monitor the sector. From the foregoing, it is obvious that the legal regime for the Nigerian gas that had been designed since the 1970s cannot adequately cater for the requirements of the contemporary Nigerian gas industry. For instance, it was observed that notwithstanding that the Petroleum Act and its subsidiary legislations have been amended several times, it still remains substantially the same and over the period there has been substantial growth in the gas industry in Nigeria that the statutes and others made after it cannot meet the current challenges in the operations of the Nigerian gas industry and what obtains in practice. Moreover, the laws are contained in several pieces of legislation, and the numerous amendments, policy statements and regulations are dispersed in several documents and are often difficult to locate.

Hence, the fact that there are some deficiencies in the legal regime that governs the Nigerian gas is not hidden, as even the government has seen these deficiencies and the need for a reform in statutory regulations. This need resulted in the establishment of the Oil and Gas Sector Reform Implementation Committee (OGIC) on 7th September 2007 under the chairmanship of Dr. Rilwanu Lukman (CFR) by late Alhaji Umaru Musa Yar'adua, GCFR. The Committee came out with the *Petroleum Industry Bill (PIB)* which is still under consideration in the National Assembly.⁶⁸

The draft law the Petroleum Industry Bill (PIB) is a detailed document covering most of the relevant issues pertaining to oil and Gas exploration, production, transportation and marketing in the country as well as state participation and control, fiscal issues, regulation, safety, health and environmental concerns, and community relations. It incorporated the moribund Downstream Gas bill which has been before the National Assembly for passage into law. In fact, the bill has 10 parts as follows: Part I - fundamental objectives; Part II - Institutions; Part III • Upstream Petroleum; Part IV - Midstream & Downstream Project Approval and Licensing; Part V - Midstream Operations, Downstream Products and Special Provisions with Respect to Natural Gas; Part VI - Indigenous Oil Companies and Nigerian Content; Part VII -Health, Safety and Environment, Part VIII - Fiscal Provisions; Part IX - Repeals, Transitional and Savings Provisions and Part X - Interpretation and Citation.

⁶⁵ Ibid, Sections 49, 50, and 51

⁶⁶ Ibid, Section 68 which provides for a fine of 5% of the project sum for each project in which offence is committed or cancellation of the project.

⁶⁷ Cap. C.20, L.F.N 2004

⁶⁸ On 18th July 2012, President Goodluck Jonathan forwarded the PIB to the National Assembly for passage into law. PIB is gazette in the National Assembly Journal, No. 47, Vol. 5 of December 29, 2008. Note that in 2016, the PIB passed second reading in the floor of the Senate.

It is hoped that the Petroleum Industry Bill is eventually passed, it will reduce contradictions and unwieldiness that currently attends the petroleum legislations. However, the researcher observed that there is nothing definite in the PIB to stop gas flaring which has been ongoing since 1956. This subject was referred to in *Section 200 of the Bill*, only to the extent that any operator that flares gas shall pay such gas flaring penalties as the Minister may determine from time to time. Moreover, the Bill made a Czar of the Minister. Consequently, it is suggested that these flaws should be addressed by the National Assembly before passing the bill into law.