

MEMORANDUM

ON THE

PETROLEUM INDUSTRY BILL 2008
PUBLIC HEARING BY HOUSE JOINT COMMITTEES.
PETROLEUM RESOURCES (UPSTREAM),
PETROLEUM RESOURCES (DOWNSTREAM) GAS
RESOURCES AND JUSTICE
WEDNESDAY 29TH – FRIDAY 31ST JULY, 2009

BY : ICE ONYEJEKWE ESQ.
FMR. MEMBER HOUSE OF REPRESENTATIVES
LEGAL PRACTITIONER.
08037275642 & 08054668780.

The Most Respected Honourable Chairman and
The Most Respected Honourable Members,

Of this Honourable House Joint Committee on the Petroleum Industry Bill 2008, I want to thank you with due humility and respect for the arduous task in steering the Legislative duties of this great Country to greater heights. This most auspicious occasion, presents yet another privilege for me to contribute my widow's mite. I am most grateful.

Sir(s), with this present P.I.B. 2008, this Honourable House is now faced with the duty of harmonizing the prior /existing sixteen laws governing various areas of the Petroleum Industry and providing a suitable environment for local and foreign participation in the Oil and Gas Industry activities by Nigeria and Nigerians.

I here and now, thank the Executive arm of government and the President, for taking the bold step of selecting a crack team of experts to form the Oil and Gas Implementation Committee (OGIC), who in turn midwifed this bill.

I have carefully studied the Bill and happy to express that the report by the OGIC is a first class report of patriotics whose main aim is to achieve national interests and goals now and for generations of Nigerians yet unborn.

For years, the Nigerian Oil and Gas industry has been dominated by foreigners whose operations are more or less, of an "I DON'T CARE" manner, once their selfish interests are secured by smiling to their banks, at the detriment of

Nigeria and Nigerians, now you are at the threshold of history to upturn that negatives into pluses for us.

The most laudable part of the Bill is the unbundling of the NNPC and giving it a breather to grow to world class oil and gas company that can compete with others in all aspects world over.

The creation of various /multiple bodies as agencies or authorities are unwieldy, expensive to manage, promote redundancy, overlapping of functions and therefore ineffective.

There are no “technical bank” to staff all these bodies when formed, they will have Boards, and we must agree that “too many hands spoil the soup”.

REMEDY:

I humbly suggest the following agencies:

- (a) Nigerian National Petroleum Company Ltd.
- (b) Nigerian Petroleum Inspectorate
- (c) National Petroleum Asset Management Agency
- (d) Nigeria Petroleum Research Centre

By this arrangement, the roles of PTDF, PEF, PPPRA, and the proposed National Frontier Exploration Service should be taken up and easily performed by all the above depending on whether technically or commercially oriented.

The Frontier Exploration Service

The Frontier Exploration Service has no business standing alone in this bill and I sincerely recommend that it will be expunged since its functions are mere duplications of the commercial and technical regulations and activities of the NNPC and NPI.

From experience, no investor in this industry will want to put money in the Frontier basins with its attendant high risks and low success level.

Exploration at the Frontier basins can be improved by merging its blocks with blocks in proven basins in future-bidding rounds and companies tied to “even – spread” in exploratory and drilling activities in both blocks-awarded, de – emphasizing payment of large signature bonuses in Frontier blocks to encourage exploratory activities while desired signature bonuses from the awards come only from the Proven basins. This method will encourage investment in the Frontier basins as intended in the proposed Bill.

THE NNPC AND IJVS

The NNPC has been around since the Decree 1977 that set it up. Their attitude and activities especially as it concerns the foreign oil companies leaves much to be desired. In fact and in truth, it has been epileptic, comatose and at best non-chalant.

The transformation of the NNPC into a national oil company or NNPC Ltd, a wholly commercial oil and gas venture is commendable, as it cannot be a judge

and prosecutor in its own case, it should hands off from handling the Incorporated Joint Ventures' activities.

I strongly believe that Government can solve the CASH CALL problems by the establishment of Incorporated Joint Ventures, which can source its monies and run its operations without putting pressure on the government. The existing Federal Government shares in the proposed IJVS should be reduced by selling part to the public and allotting some to the Oil Producing States. The involvement (if encouraged) of the Niger Delta States in the IJVs will greatly reduce the tension in that oil area and put the people whose land harbor the resource in a position to see how operations are carried out in a manner that will not only hurt them but will benefit them immensely. This will take care of Resource Control agitations, Environmental degradation issues and of course Militancy in the Niger Delta region of Nigeria.

THE P.I.B vs D.P.R.

- (1) Over the years, Nigerians have cried out for improvement in this industry but the old laws have not been so robust in gas activities as they are for oil, having only centered on or concentrated more upon crude oil matters and activities. But this defect had properly been addressed by the P.I.B. and I do hope that this most respectful House of Representatives in its wisdom will pass it into law.
- (2) There is a general agreement amongst Industry Operators, and Regulators world over on what it takes to play an effective regulatory function. They must possess the skills for the job, a very good knowledge

of the industry, high interest in emerging trends, and high degree of confidence.

- (3) For expertise, efficiency and competence, the DPR or NPI as proposed in the P.I.B should be allowed to take full charge of the technical regulations from Upstream to Downstream while the NNPC grows commercially as done in Brazil, Angola, India, China etc, with the new coat or cloak of NNPC Ltd.

The technical regulator in this industry the DPR/NPI has done so well in its activities covering the Upstream to the Downstream sectors of this industry. The task of strengthening the department and empowering it, has been in the front burners since 1991 with reference to the “Budget Speech” of the then President General Ibrahim Badamasi Babangida, when he mentioned the Petroleum Inspectorate Commission. It is therefore of Public interest to see the House create a powerful Nigerian Petroleum Inspectorate as contained in the P.I.B. the authors of the P.I.B., the Presidency through the OGIC did not talk of unbundling the DPR since their performance chart is so high, what the DPR desperately needs is an enabling law, (like now by the P.I.B) to strengthen its teeth. I urge this our respected and revered House of Representatives to do same for us. Let not those who want to keep benefiting from weak technical regulation; distract you from this most important duty of forming a viable and strengthened DPR/Nigerian Petroleum Inspectorate which will cover the oil industry from Upstream to the Downstream .

The DPR/NPI is a winning team and should be encouraged by legislation as intended by the Bill. The Presidential team, OGIC and its patriotic efforts shall please not be watered down/diluted.

MERGER OF COMMERCIAL AND TECHNICAL REGULATIONS

The idea of merging technical and commercial regulations in one body will not be in the interest of the nation as experienced when NNPC and the Petroleum Inspectorate were in one body. Great thanks to the Justice Irikefe's Panel (which had the power of a Court of Law) in spotting this anomaly and led the holy war for a di-merging. Since that pull -out, the DPR has operated as an entity not bound by law and this P.I.B. has come to address this lapse or fill the lacuna or give flesh to the skeleton. The NNPC has operated under the cover of this lapse to do both technical and commercial regulations and confusion is seen in its activities, a stop to this, is now.

All over the world, technical regulation is a very difficult task. A merger of technical and commercial regulators will water down their attention in the technical regulation since the attention of the management of the body is enclined to or tilting towards the commercial because of the pecuniary reasons, and it is worthy to note, that enforcing technical regulation does not bring that type of benefits.

I most sincerely therefore oppose the merging of technical and commercial regulations into one body and worse still having three technical and commercial regulators each for the Upstream , Midstream and Downstream

respectively as proposed by the NNPC, in their own memorandum (though beautifully binded) it is not elegant and therefore should be discarded with.

The DPR has genuine conscientious and dynamic regulatory and efficient workforce to regulate safe practices geared towards a long-term well being of stakeholders and the Nigerian people. So this idea of restructuring is to eliminate waste and redundancies and to put up a robust structure and delivering systems that are specific, measureable, achievable, realistic and transparent and yet not monopolistic.

The aggregate interest of Nigerians and all stakeholders, laws, and peculiar communal circumstances were considered by the highly knowledgeable Nigerians in the OGIC working for ten years before coming up with that report which mid-wifed the P.I.B. as posted in the National Assembly website, let us rise to protect this good work for our generations yet unborn.

Before I conclude Sir, may I draw our attention to the Radio Link Programme of Radio Nigeria Network on Saturday 25th July 2009 where Messrs Livy Ajuonuma and Timothy Okon played hosts, and pages 21-26 of Wednesday July 22, Punch Newspaper. Both Media suggest the creation of Independent Upstream, Midstream and Downstream technical and commercial regulatory institutions which are alien to the P.I.B. One will therefore ask, why are they promoting provisions which are not in the P.I.B. or do they have another bill. This deliberate acts of deceit should be seriously reprimanded, if however the NNPC is against the empowerment of the DPR as recommended by the OGIC as headed by the present Petroleum Minister, they should say so now and why too.

The attention, publicity, emotion or passion shown to this P.I.B. from the NNPC quarters suggest something sinister or at best suspicious or a grand cover-up by them. NNPC, please tell Nigerians and the whole world why you will want the DPR unbundled having performed so creditably.

To checkmate the NNPC, this Respected House should ignore their antics and substitute Upstream, Midstream, Downstream wherever they appear with the words "Oil and Gas Industry" or "Petroleum Industry" as it affects the technical regulatory functions of the DPR. Please refer to Sections 38 (e), 39 (d) (k) etc.

Sir, permit me to pose the following questions now for NNPC and the , Ministry of Petroleum to answer.

- 1) Why is the Ministry of Petroleum Resources sponsoring the creation of three Technical Regulators or Agencies that will also, oversee commercial regulations?
- 2) Is it that the Ministry of Petroleum Resources did not agree with the OGIC report that generated this P.I.B.?
- 3) Why did the Ministry of Petroleum not properly inform Mr. President – Federal Republic of Nigeria, accordingly before this Bill was forwarded to the National assembly?
- 4) Why did the Ministry and the NNPC feel their views on the P.I.B. were better started with media, a way to confuse the public before this Public Hearing; or they want to intimidate, cow or cage this Honourable House?

5) When can these men involved in this seeming scandal, in their honour (if any) apologise to Mr. President – Federal Republic of Nigeria, this Honourable House, Nigerians and oil and gas contractors, investors and stakeholders worldwide?

EFFECT OF MULTIPLE AGENCIES

With multiple agencies undertaking similar functions, it will result in competition for scarce resources and technical expertise, lack of consistency in regulatory requirements and decision making and complexity in approval processes. Let us remind ourselves of EFCC vs I.C.P.C., NAFDAC vs S.O.N., and even a Minister of State against the Senior Minister in the NCC Sale of 2.3GH2 Spectrum of the same Ministry. Nigeria and Nigerians deserve better things than this “round the bend” motion to no where.

And for a clear cut empowerment for the DPR, that is, the NPI in the proposed P.I.B., there will be additions to all the sections, creating a legal basis for issuing permits, and regulations to enforce minimum physical security standards for oil and gas infrastructure in Nigeria.

CONCLUSION

For Nigeria to attain greater heights and be counted among the comity of nations in the oil and gas matters, there must be legislation that is very clear on regulations arming the regulators appropriately with duties and powers. clearly spelt out.

I therefore, recommend two regulators, one NPI (DPR) for the technical and N.A.P.A.M.A for commercial activities for the oil and gas industry, expunging the proposed three-tier streams of Upstream, Midstream and Downstream.

Thank you and God bless Nigeria

Dated this 29 day of July, 2009

A handwritten signature in black ink, appearing to read 'ICE Onyejekwe Esq.', with the date '29/07/09' written to its right. The signature is written over a horizontal line.

ICE Onyejekwe Esq.
ieconyejekwe@yahoo.com