

MEMORANDUM SUBMITTED BY NUPENG AND PENGASSAN TO THE HOUSE OF REPRESENTATIVES PUBLIC HEARING SESSION HOLDING ON THE PETROLEUM INDUSTRY BILL {PIB} ON JULY 30 2009

The Rt. Honourable Speaker of the House of Representatives,
Leadership and Honourable Members of the House
Chieftains of the Oil and Gas Industry,
Leadership of the Unions,
All other protocols duly observed.

We welcome the holding of the Public hearings on the Petroleum Industry Bill {PIB}. We agree on the need for all encompassing Law to replace the archaic, multiple and sometimes overlapping laws governing the Oil and Gas in our dear country, Nigeria. Having participated in the OGIC committee processes that produced the recommendations to Mr. President, We are aware that the main policy thrust of this Executive Bill is the enthronement of transparency and good governance in the management of our Oil and Gas resources, such that the critical sector does not follow the distressed path of the many other Government Departments and Parastatals that have grounded completely.

Whilst supporting this-long-overdue reform, we realize the importance of the contribution of a wide range of stakeholders in a major policy change of this kind. It is against this backdrop that we appreciate the holding of these public hearings which will afford a cross section of society the opportunity to make meaningful contributions towards the enthronement of robust and generally acceptable legislation.

Be that as it may, we wish to point out some grey areas in the Bill that may pose serious challenge to the successful implementation of the oil sector reforms.

PROMOTION OF LOCAL REFINING

Whereas NNPC and other private importers have spent billions of dollars over the past years for the importation of refined products and payment of subsidies, there is no provision in the bill to consciously stimulate local refining and discourage importation.

There is no deliberate attempt through any provision in this bill to stem the tide of importation either in the short, medium or long run. With the vagaries of

international crude oil pricing and unstable nature of the Naira, the need for local production and refining of our crude oil as a prelude to the deregulation of the sector need not be overemphasized.

Our suggestion therefore is that this Honourable House should insist that not less than fifty per cent of crude oil produced per day is refined locally.

Secondly, the bill should make provision for a certain percentage of our export crude oil to be purchased in Naira in order to strengthen our local currency and ease the demand for FOREX.

THE NATIONAL OIL COMPANY

We support the full commercialization and capitalization of NNPC to attain the status of a viable and competitive integrated company. Our concern however, is the interference of Government or its agencies in the affairs of the company. We recall how the inspectorate Division of the NNPC was transferred into the Department of Petroleum Resources {DPR} in the Ministry of Petroleum Resources without amending the NNPC Act. We are therefore of the opinion that a provision be enshrined in the bill to clearly defined the autonomy of NNPC and other institutions to be created by this bill.

We also suggest that the appointment and the removal of the Group Managing Director {GMD} of the NNPC and the entire board of Directors should be approved by the Senate, the Directors, should sign a Performance Bond to be appraised annually by the National Assembly.

REGULATORY AUTHORITIES

THE NATIONAL PETROLEUM INSPECTORATE (NPI)

We support the creation of a fully funded and autonomous Inspectorate to replace the current Department of Petroleum Resources, to function as a single technical regulator for all sectors of the industry.

PETROLEUM PRODUCTS REGULATORY AGENCY (PPPA)

The agency should be made the single commercial regulator of the downstream sector of the industry.

PETROLEUM TRAINING INSTITUTE {PTI}

The conspicuous silence about the composition, roles and functions of the PTI in the new dispensation, is worrisome. The total exclusion of the PTI in section 478-493 as one of the institutions to be enshrined in the bill is a source of concern to us. We therefore suggest that the status, roles and functions of PTI be inserted in the bill.

TAX REGIME

We believe that the bill is intended to serve the dual purposes of increasing Government earnings and boosting investment and growth.

Therefore, we are of the opinion that this Honourable House should benchmark the proposals in the Memorandum by Federal Government Inter-Agency Team on the bill with best practices in other oil producing developing country, to ensure that the fiscal policy supports the Nigerian dream of optimizing earnings from oil production while at the same time not constituting a disincentive to investment and growth.

MULTIPLE LICENSING AND ACREAGE WITHDRAWALS

The PIB mandate that oil and gas licenses and leases are separated. This practice raises serious issues. Where different operators exploit hydrocarbons {oil and gas} on the same lease, the operational risk and safety, health and environment {SHE} conflicts resulting from potentially misaligned operational strategies could be unimaginable.

The thrust of the PIB reforms should be to attract investment to drive the growth of the Nigeria oil and gas sector. However, the current provisions requiring that investors must re-apply for new petroleum mining leases will accomplish the opposite. This is because less than 25% of all exploration ventures in the deepwater have achieved commercial success and any unsuccessful investment are born solely by PSC contractors without any economic reward. Consequently, increasing investor risk by requiring investors to re-apply for licenses will be antithetical to further investments.

NUPENGASSAN POSITION ON DEREGULATION

We have observed that lack of competition in the downstream sector of our industry has stalled growth and affected job opportunities. We have also

reasoned that any policy that guarantees competition and delivering of products to consumers will be encouraged on the grounds that the enabling environment is provided and appropriate criteria put in place for sincere and effective implementation of the reforms. Such policy must seek to promote local refining and discourage reliance on importation and to eradicate the obstacles that could render any policy ineffective, be it regulation or deregulation. Some of the most prominent impediments include; inadequate receptive facilities, such as jetties and depots, absence of good rail system, roads and functional pipelines network; the existence of cartel who manipulate policy implementation to their selfish benefits.

Given that successive Governments have not demonstrated sufficient political will to provide better Healthcare, unemployment benefits, social security system, efficient transportation system, good road network, Power, Education etc. to mitigate the strong impact of sudden policy changes; we maintain our support for guided deregulation. Therefore we shall not hesitate to vary our position, if the bill does not seek to ensure that aforementioned conditions precedent to deregulation are met.

EXPATRIATE QUOTA ABUSE

Expatriate quota abuse has been a source of concern in the Oil and Gas sector. Expatriate with little or no added value to the system are brought into the country in droves through a very loose immigration law.

HOST COMMUNITIES' INTERESTS

There seems to be no provision in the bill for the protection of the interest of host communities in the form of royalties or equity ownership to encourage their participation.

It is our sincere believe that the successful implementation of any reform in the industry is dependent on the level of peace in the Niger Delta Region. Therefore, any policy that does not take the interests of host communities into account will likely run into stormy waters.

We suggest that this Honourable house should consider the inclusion of a clause that will involve the host communities in the ownership and operation of the IJVs

operating in their region. This is without prejudice to the provision for corporate social responsibilities of the various companies.

INCORPORATED JOINT VENTURES (IJVs)

1. The issue of Corporate Governance concerning equity participation in the Incorporated Joint Ventures must be clearly stated in the bill.
2. With effect from the date of incorporation, all Nigerian staff of the current joint venture arrangements shall automatically become employees of the new Incorporated Joint Venture Companies, (IJVs) on terms and conditions no less favourable than those obtainable immediately prior to the incorporation.
3. The IJVs shall continue to fulfill all obligations in respect of pension schemes to which the IOCs-NNPC JVs were obliged in respect of the employees prior to the take off of the IJVs.
4. A one year period for full implementation of the IJVs take off does not seem feasible, we therefore suggest a twenty four month period.
5. Those wishing to collect their accumulated benefits before migrating to the new incorporated joint ventures should be allowed.

LABOUR ISSUES

In any restructuring process, there is always a business decision targeted at reducing the workforce. We are generally concerned about the intention of this Bill concerning the existing structures of the Oil and Gas sector as it effects employment.

We hereby request that provisions should be made in the Bill to:

Government Agencies.

1. Harmonization of all staff benefits and pensions for all inter-government agencies for the National Oil Company.
2. Harmonize the collective bargaining agreements (CBA) and joint negotiating council for the agencies.
3. With effect from the date the enactment of this bill all staff of DPR, PEF, PTDF, PPPRA, and PTI shall be deemed to be employees of the NPI, PEF, PTDF and PTI on terms and conditions no less favourable than those enjoyed immediately prior to the incorporation.

4. We have also observed the apparent oversight in the exclusion of the Unions (NUPENG & PENGASSAN) from appointment into the Boards of the new Institutions. As strategic stakeholders, this should be addressed to enable workers make meaningful inputs into the development of the sector.

NUPENGASSAN support the ongoing Federal Government restructuring of the petroleum and gas industry as encapsulated in the PIB, with our opinions herein observed and stated for considerations. The Government's idea of creating the Niger Delta Ministry and an apolitical NDDC as well as the recent amnesty to the militants is hereby supported by the union and association.

Thank you for your attention.

Babatude Ogun
PENGASSAN President

Peter Akpatason
NUPENG President