



Federal Ministry of Justice

RE: QUESTIONS AND ANSWER

PIB is believed to be a law that will harmonise about 17 laws in the oil and gas sector, yet it has not been passed by successive National Assemblies. What support are you offering now to ensure that the efforts to have the petroleum legislation in place by the last quarter of the year do not fail?

1. The Petroleum Industry Bill seeks to establish a framework for the creation of viable, commercially oriented and profit driven Entities in the Nigerian Oil and Gas Industry to ensure value addition and internationalization of the Petroleum Industry and also to promote transparency and accountability in the administration of Petroleum resources of Nigeria. This sector is no doubt very critical to the economy and sustenance of Nigeria; as things stand, it currently requires all hands to be on deck to ensure its optimum productivity and efficiency and steps are currently being taken (by the Legislature and the Executive) to ensure that the Oil and Gas sector is well regulated via relevant and realistic Legislations that ensures a good framework for implementation of its Objectives for the common good of all Nigerians. The Bill had at some point been passed by the National Assembly but Mr. President refused his Assent for legal and constitutional reasons. For instance, the Legislation conferred powers on an Individual as against an Institution. I have no doubt that sooner rather than later, the Petroleum Industry Bill would be passed into Law by the National Assembly after the challenges identified with the earlier fashion has been dealt with and corrected. My office is working in collaboration with other stakeholders to ensure that the legal, technical and industry concerns or issues that informed the initial decline of assent are fully addressed.

There are suits pending at the Federal High Court and others for the Federal Government to halt the Marginal Fields Bid Round yet the government is determined to go ahead with the process on June 21. What is your position on this?

2) I am aware that the Director, Department of Petroleum Resources (DPR), Engr. Sarki Auwalu, has said that Oil Fields under litigations are not part of the 57 Oil fields offered by the Federal Government for competitive bid round. He said the 57 Oil fields listed for bidding are small oil fields that major oil companies considered unprofitable and auctioned to indigenous companies under a competitive bidding round. Since, due diligence must have been carried out to ensure that none of the 57 fields is not subject to any litigation, the DPR have the right to carry out the competitive bid. Where there is a valid Injunction or Order of Court restraining the Federal Government from carrying out the exercise, you can be assured that the Federal Government will submit to such Orders and be guided thereby. The bid round is an all-encompassing process. The government will factor in all exigencies in deciding a way forward while also taking the pending suit into consideration.

Recently, President Buhari signed the amended Deep Offshore Act with a lot of commendations from Nigerians. What changes do you think this has brought to the upstream sector of the oil industry?

3) On Monday, 4 November 2019, His Excellency, President Muhammadu Buhari, GCFR, assented to the Deep Offshore and Inland Basin Production Sharing Contract (Amendment) Act, 2019 (“the Deep Offshore Amendment Act”) following its passage by the National Assembly in October 2019. The amendment is in line with the provisions of Section 16 of the Deep Offshore and Inland Basin Production Sharing Contracts Act, Cap D3, Laws of the Federation of Nigeria, 2004 (DOIBPSCA or “the Act”) which requires the Federal Government of Nigeria (FGN) to review the provisions of the Act when the price of crude oil exceeds \$20 per barrel in real terms, or within a fixed number of years (15 years from commencement of the Act and 5 years thereafter).

The Act originally provides the legislative framework guiding Nigeria's Deep Offshore Oil Production and was driven by the need to encourage upstream investments in Offshore acreages. Unfortunately, the provision of Section 16 of the Act and the obligation imposed thereby had long been abandoned hence the enactment of the Deep Offshore Amendment Act which is expected to usher in a reformation for the Oil and Gas sector.

The Amendment Act in the main seeks to augment Nigeria's earnings from the Oil and Gas sector thereby increasing the revenue of the Federal Government. Still by the Amendment Act, Royalties would now be calculated on a field basis, dependent on the chargeable volume of the crude and condensates produced per field. The Act also includes a new section 17 which prescribes that all PSCs shall be reviewed every 8 years. The Amendment also imposes an additional royalty rate to account for increase in price of crude in excess of \$20 per barrel. The Amendment Act however introduces four key changes to the original Act, as follows:

- I) Replacement of the royalty regime applicable to Deep Offshore and Inland Basin fields (substitution of Section 5 of the Act). The Amendment Act introduces a combined production and price-based royalty system to replace the existing production-based royalty system, which varies according to areas of operations. The new royalty regime specifies a baseline royalty of 10% for crude oil and condensates produced in the deep offshore (greater than 200-meter water depth) and 7.5% for the Frontier and Inland Basin. In addition to the baseline royalty, a royalty based on the applicable price of crude oil, condensate and natural gas will apply, but only when the price exceeds \$20 per barrel.
- II) Deletion of Section 16 of Deep Offshore and Inland Basin Production Sharing Contracts Act (the Act). The Section provides inter alia:
 - “(1) The provisions of this Act shall be subject to review to ensure that if the price of crude oil at any time exceeds \$20 per barrel, real terms, the share of the government of the Federation in the additional revenue shall be adjusted under the production sharing contracts to such extent that the production sharing contracts shall be economically beneficial to the government of the Federation.
 - (2) Notwithstanding the provisions of Subsection (1) of this Section, the provisions of this Act shall be liable to review after

a period of fifteen years from the date of commencement and every five years thereafter.”

III) The Act introduces new Section 16(A). This Section mandates the Minister of Petroleum Resources to cause the Nigerian National Petroleum Corporation (NNPC) to call for a review of the PSCs every eight (8) years.

IV) Section 16 (B) of the Act introduces a fine of at least ₦500 million (Five Hundred Million Naira) fine for non-compliance with any obligation imposed by the provision of the Act, or imprisonment for a period not less than five years, or both, upon conviction by a competent court of law.

Finally, the Law will provide more fiscal certainties in the sector on the part of the government and the contractors/operators. The upward review of royalty rates payable which will also reflect current price of crude and not just the distance or location of the oil fields and a more flexible approach to amending the PSCs ultimately means more revenue for the Nigerian people. The amendment will also guide investment decisions in a way that does not place any party at an undue advantage.

A lot of the cases that the agencies under your Ministry are either investigating or prosecuting now are linked to the oil and gas sector under the last administration. What is your Ministry doing to ensure that such malpractices are proactively prevented from happening in future through institutionalized checks?

4) There have been allegations of misconducts and mismanagement which are currently being investigated and where such allegations are confirmed, the cases are duly prosecuted. The Ministry is taking steps in the right direction to curb such malpractices and misconducts and make culprits face the law. For instance, we have (*I have created*) a system in the Ministry of Justice (*in the Office of the Hon. Attorney General of the Federation and Minister of Justice*) to check and evaluate risk and vulnerabilities in Government contracts with a view to taking pro-active steps to deal with the identified challenges. We have received contracts from several Ministries, Departments and Agencies and I have a Special Assistant who is specifically dedicated to Financial (Management) Crimes

Compliance and Contracts Implementation who is currently working with other experts across various fields in this regard. Findings from their activities will form the basis for variation of contracts, or even termination as the case may be. Also, recommendations will be made for Institutional Reforms to prevent the recurrence of the identified lapses that must have permitted the vulnerabilities identified.

Can we have an idea of some high-profile corruption cases in the oil industry that have been successfully prosecuted by your ministry and its agencies?

5) You will agree with me that the Malabu Oil deal saga remains the biggest in our recent history, under this Malabu Oil deal, Emeka Obi and Gianluca Di Nardo have been sentenced to four years jail time with confiscations of over €100 million. The pair had opted for a fast-tracked trial for their role in the deal. The fast track process in Italian law offers a possible reduction in any sentence. Locally, cases connected with the transaction are ongoing and we await the decision of the Court in the cases. I should add that the Federal Government through the Ministry of Justice has also recovered \$75 Million connected with the Malabu deal from the UK.

What is the status of the P&ID case?

6) The Process and Industrial Developments Limited (P&ID) signed a contract with the Federal Government (Ministry of Petroleum Resources) allegedly to fix the power problem in Nigeria. The deal subsequently broke down; resulting into a lawsuit against Nigeria and an arbitral award to the tune of \$9 Billion was awarded against Nigeria. However, from new evidence that has come to light in recent investigations, it is clear that the original contract was a sham commercial deal and designed to fail from the outset. The fraud was only recently discovered as a result of President Muhamadu Buhari's anti-corruption efforts spearheaded by the Economic and Financial Crimes Commission. Consequently, we have instituted an action against the company in Court in the United Kingdom and charges have been preferred against local collaborators who were involved in the Fraud. All proceedings are on-going and we are quite

optimistic that the Federal Government of Nigeria will be successful in overturning the Award.

Nigeria was able to secure a stay of enforcement of the judgment of the UK Business & Commercial Court which recognized the award in August 2019. Our appeal against the judgment is also pending before the UK Court of Appeal. Meanwhile, we are currently pursuing an application before the UK Business & Commercial Court for extension of time to enable Nigeria file an application for the setting aside of the award on grounds of fraud, misrepresentation and suppression of facts, etc. this is based on the convincing findings by the EFCC and the Nigeria Police that P&ID indeed cut-corners and compromised government officials back then in the negotiation and execution of the Gas Supply & Processing Agreement. The investigations are still ongoing.

Another high-profile case being prosecuted by your Ministry is the Malabu case, what is the status now?

7) The Federal Government suffered a setback in its pursuit of justice over the controversial Malabu deal as a London judge ruled recently that the \$1 billion suit against Oil giants Shell and Eni could not go ahead in England. According to the High Court Judge Christopher Butcher, the Courts do not have jurisdiction to hear the claim. However, it is pertinent to state that there is a Criminal and Civil suit in respect to this Malabu Oil deal at the Italian Court which is still on going.

The EFCC is driving the prosecution in Nigeria. The cases against individuals and oil companies are at different stages across the Federal and FCT High Courts. There is also the international component to it wherein Nigeria is being represented as the injured party in the Milan proceedings by a counsel retained by my Office with a view to extracting damages.

How much has your Ministry been able to recover from looters in the Oil sector?

8) We have been able to recover over \$XXX Million dollars from looters in the oil sector. For instance, we recovered over \$75 Million as Ordered by the United Kingdom Commercial Court being part of proceeds from the

sale of OPL 245 by Malabu Oil and Gas Company to Eni/Shell. [ARMU CAN PROVIDE BETTER DETAILS HERE]

It was really surprising that the Federal Government lost some of the cases abroad. Any hope of appealing the cases?

9) *We will appraise the cases on their merit before deciding on the way forward. Nigeria will exercise all legal and diplomatic options available to her.*

There are a lot of cases filed against oil companies over environmental degradation both locally and internationally by oil-bearing communities. Are there steps your office is taking to back these communities to get justice?

10) The President at the beginning of this Administration demonstrated His commitment towards a healthy environment throughout the country especially at the Oil producing region when He commissioned the clean-up of Ogoni land. Recall that in 2012, members of the Bodo Community in Niger Delta filed a lawsuit against Shell Petroleum Development Corporation in a London High Court seeking compensation for two oil spills and losses suffered to their health, livelihoods, and land. The Suit also sought Orders directing the clean-up of the Oil pollution caused their community by Shell. Years later, Shell accepted responsibility for the spill and agreed to a £55 Million out of Court settlement and to assist in clean up. Just like the Bodo community, the Federal Government (and of course my Office) is working on ensuring that other communities equally affected by Oil Spills and Pollution get justice against any environmental degradation caused by activities of the IOCs. *I should add that most times these communities do not carry my office along in the litigations. Aside that there are other statutory agencies responsible for such issues while my office is ready to assist the communities within the ambits of the law.*

A huge amount running into billions of Naira has been recovered by the EFCC since 2015. As the supervising Minister of the EFCC, what are you doing to ensure that the money is intact?

11) The Ministry of Justice has designed the National Anti-Corruption Strategy Framework which is standing on Five Pillars including Asset

Recovery. One implicit characteristic of Asset Recovery under Local and International Laws is effective management of Recovered Assets. The Federal Government is seriously committed to the recovery of stolen Assets. You will recall that Mr. President in 2018 set-up a Committee to Audit Recoveries made by all Agencies of the Federal Government with capacity to make recoveries. The Committee submitted its report to Mr. President with several recommendations which I am certain are being processed for implementation. In the Ministry of Justice, I as HAGF set-up a Unit called Asset Recovery and Management Unit that is primarily in charged with responsibility of ensuring accountability in the management of all recoveries made by the Ministry.

There will be an institutional framework for effective Management of Recovered Assets when the Proceeds of Crimes Bill is passed by the National Assembly and eventually accented into Law by the President. Under the Proceeds of Crime Bill, there will be established and Asset Management Corporation with legal personality and perpetual succession to deal with the issue. In the meantime, within the permissible structure and frameworks, the Government is ensuring that all recovered assets are properly managed and accounted for. Some of the funds are in the Recovery Account of the Federal Government of Nigeria which today stands at over N260 Billion Naira, while others were applied by the National Social Investment Office (aimed at supporting households living below the poverty line) under the supervision of the World Bank and credible Civil Society Groups. Finally, it should be noted that the government has its mechanisms for monitoring such recoveries. The President has put in place the Presidential Committee on Audit of Recovered Assets while my Office has also issued the Asset Tracing, Recovery and Management Regulations, 2019 to guide all agencies involved in asset recovery.

What is your office doing to streamline or reduce litigation and damages awarded against the federal government through-inaction or negligence of its agencies?

12) Please see my comments on paragraph 4 above.

The current management of the NNPC will be one year in office next month. How would you rate the management team led by Mr. Mele Kolo Kyari and what advice do you have for him?

13) In preparation for a year in Office as GMD of the NNPC, I note that Mr. Mele Kyari recently listed some of his achievements including: Uninterrupted Fuel supply, EGTL Dispute Settlement, NLNG T7 FID, DOA Amendment, Making NPDC the largest Gas supplier to the Power Plants, Production of above 2.1 million barrels per day, except for the recent OPEC cut occasioned by the Covid-19 Pandemic, effective Leadership of the Oil and Gas Industry response to COVID-19 and Automation of NNPC Business processes, including Sales processes. The GMD has also caused the reduction of unit operating cost of production from \$35/bbl to \$25/bbl and targeting \$10/bbl as well as commenced the refinery rehabilitation programme, to be ready by 2023. All these were done in barely one year. With the foregoing, which are easily verifiable, I do not think anyone (even a virulent critic) can reasonably say the GMD has not done very well.

My advice for him however is that he should not rest on his oars and should ensure consistency in his performance to take the NNPC into greater heights. There is no doubt that the impact of Covid-19 on the global Oil and Gas Industry is very dire, nevertheless with commitment, effective leadership, vision, agility and innovation, I believe the GMD would take our Oil and Gas sector to more greater heights before he leaves Office.