Matters Arising from Renewal of Licenses for Oil Blocks in Nigeria

President Muhammadu Buhari, in his capacity as Nigeria's substantive Minister of Petroleum Resources, has approved the renewal of some expired and expiring oil blocks licenses, from which the Department of Petroleum Resources (DPR) realised over $1–$2 Billion for the government.

Quite instructive and worth noting, for the purpose of this post, is that the Federal House of Representatives had alleged that the DPR had renewed expired oil blocks under dubious circumstances, and subsequently realised $10 billion – an allegation that has been denied by the Minister of State for Petroleum Resources (MPR), Dr. Emmanuel Ibe Kachikwu. Dr. Kachikwu reportedly debunked the claim that there were irregularities permeating the ongoing renewal of oil blocks' licenses undertaken by the Ministry of Petroleum Resources in conjunction with the DPR.

It is against the foregoing background and with the knowledge of the legitimate concerns raised by stakeholders in the oil and gas industry, with particular reference to the need for increased due process, transparency (and accountability) in the renewal process as rightly championed by Prof. Damilola Olawuyi, that I have decided to write this post.

In this post, I shall not only be joining the progressive train requesting for transparency and accountability but will also be calling on the **Nigeria Extractive Industries Transparency Initiative**

(NEITI), given the strategic statutory position NEITI occupies in the Nigerian Oil and Gas Industry to see that the needful is done timeously. "*Needful*," as used in this post, means the discharge or performance of NEITI statutory functions in circumstances like the present one, as will be discussed shortly.

Before delving into the crux of this post and as a preliminary point, it is important for me to state that I am well aware of the fact that the **Petroleum Act 1969 Cap. P10, Laws of the Federation of Nigeria 2004 (Petroleum Act),** as well as the **Petroleum (Drilling & Production) Regulation of 1969** (as amended) authorise the Minister of Petroleum Resources to **renew oil licenses once statutory payments, including rents, royalties and fees are paid.** Specifically, Paragraph 13 of the First Schedule to the Petroleum Act allows the holder (lessee) of an oil mining lease (OML) to apply in writing, to the Minister of Petroleum Resources, not less than twelve months before the expiration of the OML, requesting for a renewal of the lease, either in respect of the whole of the leased area or any particular part of the leased area. I also know from my reading and review of the extant legal framework that **the renewal is expected to be granted where the lessee has paid all rent and royalties due as well as performed all obligations under the OML**.

Having briefly alluded to the legal basis for renewal under the Petroleum Act, I will now proceed to examine the legal basis for the submission that it behoves on NEITI to fulfil its statutory mandate and ensure that there is adequate transparency and accountability in the renewal process, given the strategic position NEITI occupies in the Nigerian Oil and Gas Industry.

For starters, **NEITI** is the statutory body established in 2007 (during erstwhile President Olusegun Obasanjo's

regime), pursuant to the Section 1 of the NEITI Act 2007, and Section 2(a) (b) (c) & (d) stipulates the primary objectives of NEITI to include the following:

- *ensuring* ***due process and transparency in the payments made by all extractive industry companies to the Federal Government and statutory recipients***;
- ***monitoring*** *and* ***ensuring accountability in the revenue receipts of the Federal Government from extractive industry companies***;
- ***eliminating all forms of corrupt practices in the determination, payments, receipts and posting of revenue accruing to the Federal Government from extractive industry companies****;* and
- ***ensuring transparency and accountability by government in the application of resources from payments received from extractive industry companies***.

For the purpose of this post, it suffices to say that a reading of the foregoing will sure leave one with the impression that NEITI is expected to:

ensure there is due process and transparency in the payments received by the Federal Government of Nigeria (FGN) including through the MPR and DPR, from extractive industry companies, for the purpose of the renewal;

monitor and ensure that the FGN accounts for the rents, royalties and fees received from extractive industry companies, for the purpose of renewal;

eliminate all forms of corrupt practices in the determination, payments, receipts and posting of revenue accruing to the Federal Government from extractive industry companies, for the purpose of the renewal; and

ensure the FGN is transparent and held accountable in the application of resources generated from the payments

received from extractive industry companies, for the purpose of renewal.

It is conceded, however, that the actualisation of the above stated objectives may have a lot to do with the political will to ensure the intendment as well as the spirit of the drafters of NEITI is allowed to materialise and given fruition to. This position even becomes more pertinent when one considers recent happenings in the country.

The foregoing notwithstanding, it is respectfully submitted that NEITI can be compelled to perform its statutory functions as provided for in Section 3 NEITI Act. For instance, **by Section 3 (e) NEITI Act, NEITI is saddled with the responsibility of requesting from any company in the extractive industry, or from any relevant organ of the FGN, an accurate account of money paid by and received from the company at any period, as revenue accruing to the FGN from such company**.

I believe the provision of Section 3(e) can be used and relied upon by civil societies or Non-Governmental Organisations (NGOs) as well as individual citizen(s) to request for an Order of a Court of competent jurisdiction (in Nigeria) mandating NEITI to actualise its statutory mandate and perform the responsibility it has been saddled with by the National Assembly, which it has no discretion over, given the mandatory nature of the provision of Section 3 NEITI Act.

Furthermore, I am aware that **Section 3(f) NEITI Act mandates NEITI to monitor and ensure that all payments due to the FGN, from all extractive industry companies, including taxes, royalties, bonuses, penalties, levies and such alike, are duly made to the FGN.**

Again, I am of the considered view the provision

*of **Section 3(f) NEITI Act** provides a fertile ground and solid foundation for a mandatory court order directing NEITI to discharge its statutory functions, to be sought and obtained, from a Court of competent jurisdiction, with a view to ensuring that NEITI performs its statutory responsibilities.*

Additionally, **the provision of Section 3(h) NEITI Act, which I believe is most likely going to be of great value to Nigerians at large, specifically mandates NEITI to disseminate, by way of publication of records, report or otherwise, any information concerning the revenues received by the FGN from all extractive industry companies**.

Conclusively, from a combined reading of Section 3 (e) (f) (g) (h) (i) and (j) NEITI Act, I strongly believe a mandatory Order of a Court of competent jurisdiction in Nigeria can be sought, with a view to compelling NEITI to discharge its statutory mandates. My submission is predicated on the celebrated case of **Chief Gani Fawehinmi v. Akilu and Togun** (1987) 4 NWLR 797; (1987) 12 S.C 136, where the Appellant had sought leave to apply for an order of mandamus compelling the Lagos State Director of Public Prosecutions (DPP) to perform a duty imposed by law and that the failure of the DPP to perform the duty imposed by law amounts to a breach of statutory duty. The Supreme Court, having held that the Appellant could not be described as a busybody with misguided complaints, ordered that leave be granted to the Appellant to apply for an order of mandamus.

publication.

For more discussion on the subject of this post or any other (legal) issue, please feel free to reach out to the author via e-mail – joseph.onele@primusgrace.com or *thejosephonele@gmail.com*