

# GROMYKO AMEDU

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## Solicitors

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Our Ref: FO/MBADOKE

Dated: 13 November 2018

Global Witness

1 Mark Square

London,

EC2A 4EG

**For the Attention of Barnaby Pace,**

**bpace@globalwitness.org**

Dear Sir,

**RE: OPL 245**

We are solicitors to Mr. Mohammed Bello Adoke, SAN, former Attorney General of the Federation and Minister of Justice, Federal Republic of Nigeria (hereinafter referred to as ‘Our Client’).

Further to our email of 03/11/2018 in respect of the above, we are instructed by our client to accordingly respond to your letter of 01/11/2018.

In our earlier letter of 23/12/2017 to Global Witness in respect of the above matter, we stated that “*our client’s involvement in the implementation of the settlement agreement in his capacity as Attorney General of the Federation and Minister of Justice was to superintend over the process to ensure that the implementation was holistic by ensuring that:*

- (a) *the requisite Presidential Approvals were duly sought and obtained;*
- (b) *all relevant MDAs such as the Ministry of Petroleum Resources, Ministry of Finance, the Department of Petroleum Resources (DPR), and the Nigerian National Petroleum Corporation (NNPC were involved in the resolution and final implementation of the settlement;*
- (c) *the relevant Agreements such as OPL 245 Resolution and Re-Allocation Agreements were duly executed by line Ministers and Departments;*

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Gromyko Amedu (Principal Solicitor)

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*SRA No: 465793*

- (d) *the signature bonus of \$210 Million was duly paid to the Federal Government of Nigeria as required by law, and*
- (e) *disbursements from the escrow account were jointly approved by the Federal Government and SNUD.”*

We are instructed by our client to provide the preamble and the overview set out below by way of general information on the Block 245 Resolution Agreements (3 Nos) as a background to the comments required from our client on the matters specified in your letter under reference.

### **PREAMBLE**

On 29/11/2011 the Federal Government of Nigeria (FGN) entered into (i) Block 245 Malabu Resolution Agreement (MRA), (ii) Block 245 SNUD Resolution Agreement (SRA) and (iii) Block 245 Resolution Agreement (FRA) with the parties.

The purpose of this agreements was to achieve the full resolution of all disputes in the OPL 245 between Malabu, SNUD and the FGN which had persisted since 2002 until the date of the completion of MRA, SRA and FRA on 29<sup>th</sup> April 2011.

### **MRA**

Under the MRA, the parties thereto achieved full resolution of all disputes between Malabu Oil and Gas Limited (Malabu) and FGN on block 245 over the interest granted to Malabu since 1998 which was the subject matter of the settlement agreement between Malabu and FGN made a consent order of the Court of Appeal Abuja, Nigeria in Suit No. CA/A/25M/2003 in December 2006, with FGN subsequently vesting ownership of the interest in the block 245 on Malabu, and with Malabu subsequently agreeing to an assignment of its interest in the OPL 245 subject to the payment of the consideration agreed in clause 1 of the MRA.

### **SRA**

Under the SRA also completed on 29/04/2011, the parties in clause 1 achieved a full compromise of all claims by SNUD against FRN arising from the block 245 dispute with Malabu since 2002. FGN also achieved full compromise with Malabu, and with Malabu relinquishing all title/interest

held in Block 245 in favour of SNUD/NAE and with the FGN agreeing to re-allocate the interest in Block 245 to SNEPCO and NAE jointly (as Holders) in exercise of powers granted under the Petroleum Act CAP P10 LFN 2004 and subject to the terms of the FRA with the FGN required to issue oil prospecting licence (OPL) for block 245 in the joint names of NAE & SNEPCO for a term of (aggregate of 10 years), and with the FGN to issue any oil mining lease (OML) for the duration of 20 years and subject to a further renewal period allowed by law.

### **OVERVIEW “FRA”**

The parties to the Block 245 Resolution Agreement dated 29<sup>th</sup> April 2011 otherwise referred to as the “FRA”, are FGN, NNPC, SNUD, SNEPCO, & NAE.

FGN as a party in the FRA, acted through the Hon Attorney General of the Federation and Minister of Justice, the Hon. Minister of Petroleum Resources and the Hon. Minister of Finance.

### **Production Sharing Contracts (PSC)**

The FRA in clause 4 prescribed for the rights and obligations of the holders granted for the operation of block 245 to be governed by a production sharing agreement (PSA) between SNEPCO and NAE or their nominees, and clause 5 requires the PSA to be deemed as a production sharing contract (PSC) defined under section 17 of the Deep Offshore and Inland Basin Production Sharing Contracts Act Cap D3 LFN 2004 ( “PSC Act”).

Clause 6 of the FRA imposes the fiscal regime prescribed by the PSC Act on the FRA and on the PSA between the holders of the OPL and any OML granted for block 245 to NAE/SNEPCO under FRA, with a proviso that any subsequent changes in the applicable law/regulations, policies, rules, procedure, guidelines, instructions/directives applying to the FRA or the OPL, or any OML granted for block 245 in accordance with the FRA, including the fiscal term introduced by the PSA Act, which materially affects the rights and obligations, or the economic benefit of the holder(s) adversely derived from the PSA, after the execution date, the relevant party shall agree to a modification of the FRA or any agreement between the parties as well as redress and remove the adverse effect of such changes with retroactive effect from the date of such adverse changes.

The PSA required by the holders of the OPL/OML in block 245 was not within the remit of our client and the parties representing FGN at the time of the execution of the FRA, as it was entirely a contractual obligation for the holders of block 245 to agree the terms of the PSA subject to the mandatory provisions of the PSC Act applicable to PSA’s.

### Future Interest of FGN in Block 245

Clause 11 of the FRA grants a right to FGN exercisable through any of its relevant agencies, to farm in, participate or acquire any interest in the OPL or OML granted for block 245 pursuant to this FRA, at any time after the grant of OPL, or any OML for block 245, or after a renewal of the OPL/OML granted to the holder.

Clauses 11(i-iii) grants to FGN or its relevant agency future participatory rights in block 245 with a right to acquire up to 50% interest in the OPL or any OML granted for block 245, subject however to FGN's payment of the holders' cost of acquisition of block 245 which shall be an amount equal to the proportionate share of the sum paid by the holder for the sums paid under clauses 2 and 3 of the FRA. For clarity reference to payment in clause 2 is reference to signature bonus of \$207, 960,000 paid to FGN for acquisition of all rights in block 245 by the holders, and reference to payment in clause 3 is reference to payment of \$1.092 billion for clause 1.3 purposes contained in the FRA, for purposes of settling of all existing claims by Malabu over block 245 in accordance with the terms of MRA.

Clause 11(ii) requires the parties, in the event of a future acquisition of a participatory interest in block 245 by FGN, to enter a PSA (FGN PSA) which shall be no less favourable than the PSC executed between NNPC and SNUD in 2003 in respect of block 245 which is now vitiated by the FRA.

Clause 11(iii) also permits the holders to recover all cost incurred towards block 245 relative to the share of the interest acquired by FGN pursuant to clause 11 being cost incurred by the holders from the date of grant of OPL pursuant to clause 1.3 of the FRA, up to the date of acquisition of interest by FGN or its relevant agencies, in the manner stipulated in the FGN PSC made pursuant to clause 11(ii).

### Consultations with Relevant Agencies

Clause 12 of the FRA confirms the extent of consultations made with the relevant agencies of FGN not parties themselves, prior to the approval of the essential terms of the FRA. These agencies are Department of Petroleum Resources (DPR), Federal Ministry of Finance (FMF), Federal Board of Inland Revenue (FBIR), etc.

## **LITIGATION WARNING**

We are instructed that our client has provided the above overview with a view to present accurately the working of the FRA in relation to the protection of the future commercial interest of FGN in block 245 for future generations. While our client recognises the right to fair criticism, on the subject matter intended, our client also reserves the right to view any future statements published in connection with the matters stated herein which are maliciously made with intent to derogate from the overview above as an unlawful harassment/intimidation of our client by engaging in repeated publication of falsehood and defamatory matters against our client's person and reputation, in so far as the malicious statements convey defamatory innuendos, suggestions of impropriety and allegations of wrong doing against our client which are unsupported by the FRA and the general information provided in the overview above, and with intent to engage in the defamation of our client for an unlawful and malicious purposes.

On the instruction of our client we hereby put you on notice that our client would seek appropriate legal remedy for any infraction of his legal rights in the manner set out above whenever the need arises.

## **RESPONSE PROVIDED**

Further to the preamble and the overview provided above as well as the warning indicated above, we are instructed by our client provide the following response to your questions as follows.

- (i) Our client does not wish to respond to your questions seriatim but wish to place on record that he is not facing bribery allegations by the EFCC in Nigeria or in any other jurisdiction including the Italian proceedings as erroneously stated in your correspondence. For avoidance of doubt, our client was charged by the EFCC with other defendants for aiding the commission of money laundering offences. The Proof of Evidence presented by the EFCC in support of their charges did not disclose any allegation of bribery against our client but that he authorized payment of over \$800 million to Malabu Oil and Gas Limited. Our client therefore views your questions and constant insinuations and portrayal of him as having been involved in the collection of bribes as an unjust attempt to malign and attract public opprobrium to him.
- (ii) Our client further denies any involvement in a scheme to prevent 'civil servants' from raising justifiable objections to the OPL 245 Settlement Agreement of 2011. Our client vigorously asserts that while OPL 245 Settlement negotiations were on-going there were concerns raised by DPR and to resolve those concerns, an Inter-Ministerial Committee made up of all relevant ministries and agencies with oversight over the process including

representation from the DPR, FIRS, NNPC, Presidency (represented by the State House Counsel) and Officials from the Ministry of Justice was constituted. The Committee met and resolved all outstanding issues and produced a Draft Agreement, which was adopted as the final agreement (MRA, SRA & FRA). The allegation that some civil servants were prevented from raising objections as contained in your correspondence is therefore false, mischievous and at variance with the process and procedure adopted in the negotiation of OPL 245 Settlement.

- (iii) Our Client wishes to draw your attention to the subsisting Judgment of the Federal High Court, Abuja presided over by Hon. Justice Binta Nyako where the court reviewed all the actions taken by our client in the OPL 245 Settlement Agreement and came to the reasoned view that our client acted lawfully in the role he played in the implementation of the OPL 245 Settlement Agreement. The Court affirmed that our client was merely carrying out presidential directives/approvals. The Court therefore held that our client couldn't be held personally liable for discharging the functions of his office by carrying out such lawful directives of the President. Our client therefore enjoins you to refrain from imputing improper motives to him on account of the implementation of the OPL 245 Settlement Agreement (FRA) as he is ready to place reliance on that judgment to file legal action against anyone trying to defame him.
- (iv) Our client also wishes to draw your attention to the letters written by the Honourable Attorney General of the Federation, Mallam Abubakar Malami, SAN to the Ag. Chairman of the EFCC and to the President wherein he reviewed the OPL 245 settlement Agreement executed in April 2011 and came to the reasoned conclusion that our client had no case to answer on account of his role in the settlement. It is also instructive to note that the Honourable Minister of State Petroleum Resources, Dr. Ibe Kachukwu also reviewed the OPL 245 Settlement Agreement of 2011 and in his letter to the Chief of Staff to the President acknowledged that the agreement was a viable way of resolving the lingering dispute that had prevented the Block 245 from being commercially exploited. He accordingly endorsed the Agreement. Both Letters are now public records having been tendered as exhibits in the above-mentioned suit before the FHC, Abuja.
- (v) Finally, our client reiterates that he served Nigeria as the Honourable Attorney General of the Federation and Minister of Justice with diligence and in the discharge of his duties, placed national interest above any other consideration. In the over five years that he served, he was not involved in any act of bribery or scheme to undermine the interest of the country. Having left office over three years ago, he believes that he should be allowed to enjoy his quiet family life free from distractions aimed at tarnishing his image and destroying his hard-earned reputation.

In view of the foregoing, we again wish to advise Global Witness on the need to be circumspect in their reportage and to refrain from engaging in acts of unlawful harassment and intimidation of our client by repeated publications of false, malicious and defamatory statements against our client which is actionable at the instant of our client.

Yours faithfully,



**Femi Oboro**  
**Gromyko Amedu Solicitors**

**Encl: Judgment of Hon. Justice B.F.M. Nyako of the Federal High Court Abuja dated 13<sup>th</sup> April 2018 in SUIT NO. FHC/ABJ/CS/446/2017 Between Adoke v Attorney General of the Federation**