

**POSITION PAPER OF THE HONOURABLE MINISTER FOR PETROLEUM
RESOURCES TO THE HOUSE OF REPRESENTATIVES AD HOC COMMITTEE
ON TRANSACTIONS INVOLVING THE FEDERAL GOVERNMENT AND SHELL/
AGIP COMPANIES AND MALABU OIL AND GAS LIMITED IN RESPECT OF OPL**

245

1. By a letter dated 29th April, 1998 (**Exhibit M1**), the Honourable Minister for Petroleum Resources, at the time, approved the discretionary allocation of Oil Prospecting Licences (OPL) 214 and 245 to Malabu Oil and Gas Limited (hereinafter referred to as Malabu) subject to:
 - a) Payment of an application fee of N50, 000 and a bidding fee of US10, 000 per block allocated.
 - b) Payment of signature bonus in the sum of \$20,000,000.
 - c) Operation of the allocated blocks on a sole risk basis subject to the Government reserving a right of participation at any time in the life of any subsequent oil mining lease.
2. In response to the letter of the Department for Petroleum Resources (DPR) conveying the decision of the allocation of the said Oil Blocks (**Exhibit M2**), Malabu under cover of a letter dated 25th May, 1999 (**Exhibit M3**) delivered 3 bank drafts in the name of PTDF to DPR in the total sum of US\$2,050,000 consisting of part payment of signature bonus in the sum of US\$2,040,000 and bidding fees in the sum of US \$10,000. A further bank draft in the sum of N50,000 representing the application fee was also paid by Malabu on 3rd June 1999 (**M4**).
3. Shell Nigeria Ultra Deep Limited (SNUD) by a Farm-In Agreement and Deed of Assignment dated 30th March, 2001 (**Exhibit M5**) farmed into OPL 245 and acquired a 40% participating interest in the said OPL 245 in consideration for paying the balance of the signature bonus due on the said block. In furtherance of the said Farm-In Agreement, SNUD caused a bank draft in the sum of \$17,960,000 being the balance of the signature bonus to be delivered to DPR (**Exhibit M6**). This bank draft was not realised or cleared as it was paid into a UBA New York account whereas the said draft was acceptable only through Citibank counters. Efforts were made by the parties to re-present the draft for payment through Citibank.
4. Whilst the said efforts were ongoing, the Special Assistant to the President on Petroleum conveyed to the Director of DPR via a letter dated 2nd July, 2001 (**Exhibit M7**), the decision of the Federal Government that the allocation of OPL 245 to Malabu be revoked. The DPR complied with the said directive by withdrawing the

allocation of OPL 245 to Malabu and revoking the title deeds issued in respect thereof via a letter dated 2nd July, 2001 (**Exhibit M8**).

5. The Government subsequently invited EXXON MOBIL, CHEVRON and SNUD to bid for the re-award of the said OPL 245. SNUD won the bid for the re-award of the said OPL 245 by bidding to pay a signature bonus of US\$210, 000,000. DPR then communicated the re-award of the said block to SNUD on a production sharing basis by a letter dated 23rd May, 2002 (**Exhibit M9**).
6. Malabu protested the revocation of its title to the block and the award of the block to SNUD with whom it already had an agreement. It contended that the award of the block to SNUD was not transparent and smacked of lack of integrity on the part of SNUD.
7. In consequence of the foregoing, Malabu initiated an action in Suit No. FHC/ABJ/CS/420/2003 against the Federal Government of Nigeria and several of its agencies and officials seeking inter alia a declaration that the revocation of its rights over OPL 245 is illegal and a reinstatement of its interest as aforestated.
8. The action of Malabu was struck out on the 16th of March 2006 as a result of which Malabu lodged an appeal by Suit No. CA/A/99/M/06 against the decision of the Federal High Court striking out its suit.
9. In addition to the legal proceedings alluded to in the preceding paragraph, Malabu petitioned the House of Representatives seeking a setting aside of the said revocation. It is important to note that the House of Representatives deprecated the conduct of SNUD in bidding for the same block in respect of which it had a valid Farm-In Agreement with Malabu and found that there was complicity on the part of SNUD in the withdrawal of OPL 245 from Malabu. The House Committee on Petroleum directed the Federal Government to reverse the award of the block to SNUD and return it to Malabu.
10. Subsequently, an amicable resolution of the litigation was reached between Malabu and the Federal Government of Nigeria by means of a settlement as contained in Terms of Settlement executed on 30th November, 2006 (**Exhibit M10**). The Terms of Settlement included a restoration of the said oil block to Malabu. OPL 245 was thus restored to Malabu. Pursuant to the said Terms of Settlement, Malabu caused its appeal lodged against the striking out of its case by the Federal High Court to be withdrawn on the basis of a Notice of Discontinuance of the said appeal dated 16th January, 2007 (**Exhibit M11**).
11. In furtherance of the Settlement between the Federal Government of Nigeria and Malabu, the Federal Government of Nigeria re-awarded OPL 245 to Malabu vide

letter dated December, 2006 (**Exhibit M12**) with a new signature bonus of \$210,000,000 to be paid by SNUD less the sum of \$2,040, 000 already paid by Malabu.

12. It is important to note that the Settlement Agreement aforesaid between Malabu and the Federal Government received the approval of Chief Olusegun Obasanjo GCFR ,the President of the Federal Republic of Nigeria at the time-. In a letter dated 2nd December, 2006 (**Exhibit M13**) addressed to Malabu Oil and Gas Limited by Dr Edmund Daukoru, the then Minister of State for Petroleum Resources, it was stated as follows:

“We refer to the above subject matter and are delighted to convey to you that the President of the Federal Republic of Nigeria and Commander in Chief of the Armed Forces having concluded a review of your legal claims for the return of oil block 245 (OPL 245) has graciously approved and directed as follows:

1. *That the Federal government of Nigeria is amenable to an out of court settlement of the claims comprised in the legal proceedings commenced by Malabu Oil and Gas Ltd and consequently has agreed to settle your legal claims for the return of the oil block constituted as OPL 245. The said oil block 245 (OPL 245) shall from the date hereof and with immediate effect be returned to Malabu Oil and Gas LTD with full and total reinstatement of all its rights thereto.*
2. *Any and all previous decisions inconsistent with or purporting to deprive Malabu Oil and Gas LTD of its rights over the totality of the concessions in the said OPL 245 shall stand absolutely and totally rescinded as if they had never been made.*
3. *Malabu shall immediately upon receipt of this letter forthwith withdraw, discontinue and or cause to cease any, all and every legal proceedings concerning OPL 245 initiated and/or being maintained by Malabu against the Federal Government of Nigeria in respect of the Oil Block OPL 245.*
4. *MALABU OIL AND GAS LTD shall be required to and shall pay a new signature bonus of United States Dollars Two Hundred and Ten Million Dollars but the sum of US 210 Million Dollars shall be less the sum of Two Million Dollars (USD) previously paid into the coffers of the Federal*

Government of Nigeria in respect of an alternative block. The fiscal terms of the 2005 PSC shall apply to this restoration. Malabu to source its own technical partners and meet the conditions of the award within 90 days of this award."

12. The position of the Federal Government of Nigeria was conveyed to SNUD by the Minister of State for Petroleum Resources at the time via a letter dated 1st December, 2006 (**Exhibit M14**) as follows:

"Following a review of expert legal opinions on respondents' prospects in the legal appeal by Malabu Oil and Gas, Government has decided that the best option against exposure to substantial damage is an out of court settlement.

Accordingly Shell is to forgo block 245 to Malabu while Government provides a mutually acceptable substitute of comparable potential against the \$210 million, which Shell has already paid or will be expected to pay as signature bonus."

13. Pursuant to a complaint received from the lead solicitors of Malabu, the Attorney General of the Federation and Minister for Justice, Chief Bayo Ojo SAN, wrote to the Minister of State for Energy informing him that SNUD had persisted in its claim to the ownership of OPL 245 in spite of the Settlement Agreement between the Federal Government and Malabu. In response, Dr. Edmund Daukoru, the Hon. Minister for Energy at the time wrote to SNUD on 11th April, 2007 (**Exhibit M15**) as follows:

"1) The Government of Nigeria and this Ministry have made no suggestion directly or indirectly against the restoration of the license of OPL 245 to Malabu as an agreed settlement of a dispute between Malabu and the Government of Nigeria.

2) This Ministry and the Government of Nigeria find it difficult to believe that Shell would have stated otherwise but, in order to prevent confusion, any such statement is untrue and if it has been made, the Ministry seeks an explanation from Shell. It is more puzzling since Shell have told me that they will not interfere in the exercise by Malabu of its restored rights in and over OPL 245.

3) I trust that the court order of 24th January, 2007 will be respected by all parties and that the position of the Government of Nigeria is clear in restoring without confusion OPL 245 to Malabu Oil & Gas Limited."

14. SNUD then brought proceedings against the Federal Government of Nigeria before the International Centre for the Settlement of Investment Disputes (ICSID) in Washington DC (Copy of proceedings tagged herein as **Exhibit M16**) pursuant to the Bilateral Investment Treaty between Nigeria and the Netherlands and asserted the following claims against the Federal Government of Nigeria:

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- i) *A declaration that the Federal Republic of Nigeria has breached the Netherlands-Nigeria Bilateral Investment Treaty;*
 - ii) *A declaration that each such breach has caused harm to SNUD;*
 - iii) *An award of such relief as the tribunal determines, including but not limited to a declaration confirming that NNPC is the valid license holder of OPL 245 and an order instructing FGN to procure NNPC to act in such a way as allows SNUD to implement the terms of the PSC in full restitution of its rights or alternatively, monetary compensation in respect of the harm caused to SNUD by the breaches.*
 - iv) *An award of SNUD's cost of the arbitration*
 - v) *An award of compound interest at a commercial rate on any monetary compensation from the date of the breach or the date payment should have been made or the date of the award up to the date of payment;*
 - vi) *Such other relief as the tribunal determines appropriate."*

15. In addition, SNUD filed a suit against the Federal Government of Nigeria before the Federal High Court Abuja seeking a restoration of its interest in OPL 245.

16. Upon receipt of the request for arbitration, the Federal Government set up a committee comprising of the Honourable Ministers of Energy and Justice, the Group Managing Director of the Nigerian National Petroleum Corporation (NNPC), the Director of the DPR and NNPC's external solicitors to find a solution to the problem.

17. The Federal Government of Nigeria, under the new leadership of President Umaru Musa Yar'Adua, NNPC, Malabu and SNUD had a negotiation meeting in January 2008, which culminated in a Draft Settlement Agreement (**Exhibit M17**) redefining the participating equity interest of each party to the block. It was contemplated that the draft settlement agreement would have been executed by 28th February, 2009. The settlement agreement was however not eventually executed by the parties.

18. As is manifest from the foregoing, several efforts had been made spanning two previous administrations to resolve the lingering OPL 245 issue.
19. On 11th May, 2010 the Chairman of Malabu Oil and Gas wrote to the Honourable Attorney General of the Federation and the Minister of Justice requesting the implementation of the settlement agreement between the Federal Government and Malabu Oil and Gas Limited dated 30th November 2006 (**Exhibit M18**).
20. Advice obtained from the Ministry of Justice confirmed that the Settlement Agreement dated 30th November, 2006 between Malabu and the Federal Government of Nigeria was valid and subsisting.
21. Accordingly, the Honourable Minister for Petroleum Resources by letter dated 2nd July, 2010 (**Exhibit M19**), allocated OPL 245 to Malabu Oil and Gas Limited subject to the payment of signature bonus in the sum of \$210,000,000 less the sum of US\$2,040,000 already paid by Malabu in respect of the said oil block within ninety days from the date of the letter of award.
22. However, the Attorney General of the Federation by another letter addressed to the Honourable Minister for Petroleum Resources dated 27th August, 2010 (**Exhibit M20**), drew the attention of the Minister of Petroleum Resources to clause 2 of the Settlement Agreement between Malabu and the Federal Government which gave Malabu 12 months to pay the agreed signature bonus. Consequently, the Honourable Attorney General sought the issuance of another letter from the Minister of Petroleum Resources giving Malabu an additional 9 months within which to pay the said signature bonus (**Exhibit M21**).
23. In order to achieve a comprehensive resolution of all outstanding matters, the Honourable Attorney General of the Federation and the parties met and produced a draft OPL 245 Resolution Agreement (**Exhibit M22**) which was forwarded to the Minister for Petroleum and NNPC for comments. By a letter dated 28th January, 2011 the Legal adviser of NNPC and Secretary to the Corporation, Professor Yinka Omorogbe made comments to the Resolution Agreement indicating the areas in respect of which, in her opinion, the said agreement was adverse to the interest of NNPC and the Federal Government (**Exhibit M23**).
24. The Resolution Agreement was then executed on 29th April, 2011 (**Exhibit M24**) wherein Malabu agreed to relinquish all its claims to OPL 245 in consideration for a payment of compensation to it by SNUD and Nigerian Agip Energy (NAE) in the sum of \$1,092,040, 000 through the Federal Government. Malabu then consented to a reallocation of the said OPL 245 to SNEPCO and NAE.

25. By a letter dated 6th May, 2011 (**Exhibit M25**) from the Honourable Attorney General of the Federation to the Honourable Minister of Petroleum Resources, the Attorney-General drew the attention of the Minister of Petroleum Resources to the execution of the Resolution Agreement and the compliance by SNEPCO and NAE with the terms of the agreement requiring them to release the balance of the signature bonus in the sum of \$207, 960, 000 to the Federal Government and called on the Minister of Petroleum Resources to issue a new OPL in the joint names of SNEPCO and NAE within five days of the release of the said signature bonus. This was complied with by the Minister of Petroleum Resources (**Exhibit M26**). Subsequently, the compensation amount in the sum \$1,092,040, 000 was paid to Malabu through the Federal Government of Nigeria.
26. As this chronology of events evidently attests to, the attempt by the Federal Government of Nigeria to resolve the lingering OPL 245 issues dates back to the year 2006 - well before the advent of this current administration. The letters written by Dr Edmond Daukoru, the then Minister of Petroleum Resources, clearly show that Government had decided to re-award OPL 245 to Malabu and award an alternative block of similar value to SNUD. To this end, there was a settlement agreement between FGN and Malabu dated 30th November, 2006 which had been filed in Court and pronounced as a consent judgment. In fact, SNUD and Malabu had in 2009 entered into their own settlement agreement.
27. Efforts at settling the matter continued during the President Umar Musa Yar'Adua administration but could not be concluded. At the inception of this administration, the Government of the Federal Republic of Nigeria was already bound by the terms of the Settlement Agreement of 30th November, 2006, the entry into which was approved by President Olusegun Obasanjo and the terms of which were in line with the resolution of the House of Representatives that OPL 245 be restored to Malabu.
28. All that has been done by the Ministry of Petroleum Resources is to give effect to that Settlement Agreement which had been confirmed as binding on the Federal Government of Nigeria as a consent judgment. Secondly, the said advice was in line with a resolution of the House of Representatives on the issue.
29. Considering the cases filed by SNUD against the Federal Government, and especially the ICSID arbitration in Washington DC, the further action of the Federal Government in mediating a comprehensive Resolution Agreement was a commendable means of ensuring that the Federal Government not only abided by the Consent Judgment as it is bound by the Constitution to do, but was also no longer exposed to the possibility of incurring huge liability as a result of the litigation brought against it by SNUD.

30. It is worthy of note that it was only after the House of Representatives fixed this public hearing and the Ministry of Petroleum Resources was availed of some of the supporting documents upon which the petition leading to the setting up of the public hearing relied, that it became aware of the claims of Mohammed Sani Abacha that he was a 50% holder of the shares in Malabu and that the signatures on documents by which he purported to transfer his shares were forged or improperly procured. This complaint of forgery was never brought to my attention as Minister of Petroleum Resources. We dealt with Malabu through persons who had been involved in its management from inception and my Ministry does not possess the jurisdiction to determine criminal allegations of forgery. The allegations of forgery are essentially an internal dispute amongst the purported owners of Malabu, and to the extent that the records at the Corporate Affairs Commission at the material time of the settlement reflected the ownership of the company in a particular manner, my Ministry was bound to presume the regularity of the said corporate documents until the contrary is determined by a court of competent jurisdiction.
31. From documents recently reviewed, it is apparent that this representation of forgery had been made to SNUD and NAE by Malabu's lawyers in order to dissuade them from entering into the Resolution Agreement. It is important to note that Lovells, an internationally recognised firm of leading solicitors in the United Kingdom, which represented NAE in this matter, wrote back to Malabu's lawyers stating that the dispute regarding the ownership of shares in Malabu was an internal dispute amongst the shareholders of Malabu which NAE would not get involved in.
32. The House of Representatives is invited to respectfully note that all that the Federal Government has done regarding Malabu has been to give effect to a consent judgement of the court and the Resolution of this Honourable House and in doing so had helped to facilitate a comprehensive Resolution Agreement which allows the huge resources in OPL 245 to be exploited and at the same time removed the contingent liability which was hanging over the Federal Government by reason of the litigation by SNUD.

May I take this opportunity to reassure the House of Representatives of my highest regards and consideration.

Diezani Alison - Madueke

Honourable Minister of Petroleum Resources

CHRONOLOGY OF ANNEXURES (EXHIBITS)

1. Letter dated 29th April, 1998 by the Honourable Minister for Petroleum Resources approving the discretionary allocation of Oil Prospecting Licences (OPL) 214 and 245 to Malabu Oil and Gas Limited (**Exhibit M1**)
2. Letter of the Department for Petroleum Resources (DPR) communicating the allocation of the said Oil Blocks, OPLs 214 and 245 (**Exhibit M2**)
3. Malabu letter dated 25th May, 1999 delivering 3 bank drafts in the name of PTDF to DPR in the total sum of US\$2,050,000 (**Exhibit M3**)
4. Copy of a bank draft in the sum of N50, 000 representing the application fee paid by Malabu on the 3rd June, 1999 (**Exhibit M4**)
5. Farm-In Agreement and Deed of Assignment dated 30th March, 2001 (**Exhibit M5**)
6. Copy of a bank draft in the sum of US\$17,960,000 being the balance of the signature bonus due on the blocks to be delivered to DPR (**Exhibit M6**)
7. Letter dated 2nd July, 2001 from the Special Assistant to the President on Petroleum to the Director of DPR conveying the decision of the Federal Government that the allocation of OPL 245 to Malabu be revoked (**Exhibit M7**)
8. Letter dated 2nd July, 2001 by the DPR withdrawing the allocation of OPL 245 to Malabu and revoking the title deeds issued in respect thereof (**Exhibit M8**)
9. Letter dated 23rd May, 2002 by which DPR re-awarded the said block to SNUD (**Exhibit M9**)
10. Terms of Settlement executed on 30th November, 2006 (**Exhibit M10**)
11. Notice of Discontinuance of the said appeal dated the 16th of January, 2007 by which Malabu caused its appeal lodged against the striking out of its case by the Federal High Court to be withdrawn (**Exhibit M11**)
12. Letter dated _____ December, 2006 by which Federal Government of Nigeria re-awarded OPL 245 to Malabu (**Exhibit M12**)
13. Letter dated 2nd December, 2006 addressed to Malabu Oil and Gas Limited by Dr Edmund Daukoru, the then Minister of State for Petroleum Resources (**Exhibit M13**)
14. Letter dated 1st December, 2006 by which the position of the Federal Government of Nigeria was conveyed to SNUD by the then Minister of State for Petroleum Resources (**Exhibit M14**)

15. Letter from the then Hon. Minister for Energy to SNUD on 11th April, 2007 (**Exhibit M15**)
16. Copy of proceedings by SNUD against the Federal Government of Nigeria before the International Centre for the Settlement of Investment Disputes (ICSID) in Washington DC (**Exhibit M16**)
17. Draft Settlement Agreement (January 2008) redefining the participating equity interest of each party to the block (**Exhibit M17**)
18. Letter dated 11th May, 2010 by the Chairman of Malabu Oil and Gas to the Honourable Attorney General of the Federation and the Minister of Justice requesting the implementation of the Settlement Agreement dated 30th November, 2006 between the Federal Government and Malabu Oil and Gas Limited (**Exhibit M18**)
19. Letter dated 2nd July, 2010 by Honourable Minister for Petroleum Resources allocating OPL 245 to Malabu Oil and Gas Limited subject to the payment of signature bonus in the sum of \$210, 000,000 less the sum of US\$2, 040,000 already paid by Malabu (**Exhibit M19**)
20. Letter addressed to the Hon Minister for Petroleum Resources dated 27th August, 2010 (**Exhibit M20**)
21. Letter giving Malabu an additional 9 months within which to pay the said signature bonus (**Exhibit M21**)
22. Draft OPL 245 Resolution Agreement (**Exhibit M22**)
23. Letter dated 28th of January, 2011 by which the Legal Adviser of NNPC and Secretary to the Corporation, Professor Yinka Omorogbe, made comments to the Resolution Agreement indicating the areas in respect of which the Resolution Agreement was adverse to the interest of NNPC and the Federal Government (**Exhibit M23**)
24. Resolution Agreement executed on 29th April, 2011 (**Exhibit M24**)
25. Letter dated 6th May, 2011 from the Honourable Attorney General of the Federation to the Honourable Minister of Petroleum Resources (**Exhibit M25**)
26. Letter issuing new OPL (**Exhibit M26**)