

A BILL

FOR

AN ACT TO REPEAL THE DEEP OFFSHORE AND INLAND BASIN PRODUCTION SHARING CONTRACT DECREE NO. 9 1999 ACT CAP D3 LFN--2004 ON ENVIRONMENTAL POLLUTION & PROTECTION AND ENACT STRINGENT ENVIRONMENTAL PROTECTION LEGISLATION FOR PROPER ENFORCEMENT OF ENVIRONMENTAL DEGRADATION, ABANDONMENT & DECOMMISSIONING AND FOR OTHER RELATED MATTERS

Sponsored by Senator Dino Melaye

[] Commencement

BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:

1 The Deep shore & inland basin decree No.9, 1999 Act Cap D3 LFN 2004
2 (hereinafter referred to as the "production sharing contract) is hereby
3 repealed by substituting it with a new section as follows:

PART 1

5 1. The nature of oil & gas industry in Nigeria makes it unattractive
6 for commercial lenders to agree to finance such projects when they are
7 embarked upon by smaller companies. Even when such financing is
8 available it comes with high interest rate for loan serving such that default is
9 not particularly uncommon.

Nature of Oil
and Gas

10 2. Lending is even more uncommon when the project is purely
11 exploration or import based because of inherent risk involved in
12 participating in such activities.

13 On Sept. 17, 2012 the Central bank of Nigeria through a circular
14 BSD/DIR/GEN/AMC/05/048 barred Nigerian banks from further giving
15 loans to 113 companies and their directors. Amongst this companies are oil
16 & gas companies. This has ostensibly closed the window of future credit
17 facilities to these companies:

Securing Loan
in Oil and Gas
Exploration

1 (a) Regardless of the difficulty in securing loans oil & gas exploration
2 projects have developed alternative means of finance through the use of
3 drilling funds, illustrative agreement, royalty purchase, scale purchase
4 agreement, farm out agreements and production sharing contracts;

5 (b) Production sharing contracts have been extensively used in the oil
6 & gas industry as an alternative means of financing exploration activities and it
7 has become more popular due to the recent ban by the apex bank on further
8 lending to specified companies. PSC are contracts thus violating contractual
9 provisions isles costly than violating a regulation as this bill seek to prevent
10 environmental pollution and guide the government and oil companies prior to
11 signing an agreement.

12 PART 2

Reasons to Repeal
Production Sharing
Contract

13 In a PSC, the NNPC engages a competent contractor usually an international
14 oil company (IOC) to carry out petroleum operations on NNPC wholly held
15 acreage. Primary legal regime regulating production sharing contract referred
16 to under the deep offshore and inland basin production sharing contract decree
17 No.9, 1999 Act cap D3 LFN 2004 should use the basic checklist that covers
18 issues like:

- 19 (i) Who are the parties to the contract;
20 (ii) What exactly is the subject of the PSC;
21 (iii) What is the preferred choice of law;
22 (iv) Are the essential safety clauses properly worded; and
23 (v) What are the provision for risk allocation and indemnity clauses.

24 And because the above basic checklist are lacking the deep shore & inland
25 decree No.9, 1999 Act Cap D3 LFN 2004 production sharing contract is
26 repealed and replaced with the followings:

Environmental
pollution

27 1. Contract terms determines how much Nigeria as a producing
28 country earns from its resources and this bill seek to strengthen the regulatory
29 power of government to enforce environmental, health and other standards
30 where they are not well established.

1 Basic contract review and negotiation can help stem the tide of pollution and
2 environmental degradation by making sure we negotiate and include clauses
3 that enact stringent conditions for environmental protection.

4 2. Insert a clause stipulating the minimum fine for every barrel
5 spilled especially after a certain period of grace. Under this the IOC will be
6 under obligation to properly cleanup after each operation which failure has
7 contributed to the environmental degradation of the oil producing regions.

Damage Clauses
for Pollution

8 3. This Bill may be cited as the Deep Offshore and Inland Basin
9 Production Sharing Contract (Repeal) Bill, 2015.

Citation

EXPLANATORY MEMORANDUM

Lax enforcement of law in the areas of environmental degradation results in
host community hostility targeted at International oil companies.
Government has to balance the desire for higher profit with the enforcement
of environmental and other regulations but most times it succumbs to the
desire for more profit at the expense of proper enforcement of the law.