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**Tuesday
19th May, 2009**

FEDERAL REPUBLIC OF NIGERIA

NATIONAL ASSEMBLY DEBATES

FOURTH REPUBLIC

THIRD ASSEMBLY (SIXTH SENATE)

SECOND SESSION

THE SENATE OFFICIAL REPORT

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**SENATE OF THE FEDERAL
REPUBLIC OF NIGERIA**

Tuesday, 19th May, 2009

The Senate met at 10.50 a.m.

PRAYERS

(The President in the Chair)

VOTES AND PROCEEDINGS

The President: Distinguished Senators, let us consider the Votes and Proceedings of Thursday, 14th May, 2009: Pages 709, 710, 711, 712, 713, 714, and 715.

Senator Simeon Sule Ajibola (Kwara South): Mr. President, I rise to move that the Votes and Proceedings of Thursday, 14th May, 2009 be approved.

Senator Kaka Mallam Yale (Borno Central): Mr. President, I rise to second that the Votes and Proceedings of Thursday, 14th May, 2009 be approved.

Question put and agreed to.

Resolved: That the Votes and Proceedings of Thursday, 14th May, 2009 be approved.

A MESSAGE FROM MR. PRESIDENT

The President: I have a letter from Mr. President, Federal Republic of Nigeria and it reads:

*Senator David Mark (GCON),
The President of the Senate,*

Dear Brother,

**APPOINTMENT OF MEMBER OF THE FISCAL
RESPONSIBILITY COMMISSION FOR SENATE
CONFIRMATION**

I write to re-nominate Dr. Adewumi Abitoye, for your kind consideration and confirmation as a Member of the Board of the Fiscal Responsibility Commission (FRC) representing the South West geopolitical zone. His C.V. is attached herewith for guidance.

I am confident that this exercise would receive the usual expeditious consideration of the distinguished Members of the Senate.

Yours Sincerely,

*(Signed)
Umar Musa Yar'Adua
President*

ANNOUNCEMENTS

**Letter of Appreciation from the Deputy Senate
President, (Ikeoha Ndigbo Nine Nuwa)**

I have a letter from the Deputy President of the Senate of the Federal Republic of Nigeria, (Ikeoha Ndigbo Nine Nuwa). It reads:

*Senator David Mark, (GCON),
President of the Senate,*

My Dear Brother and my Boss,

***Letter of Appreciation from the Deputy
Senate President***

May I, on behalf of myself, my family and the good people of the South East of Nigeria, most respectfully thank you, our dear President of the Senate and my boss, the Body of Principal Officers and my distinguished Colleagues of the Sixth Senate of the Federal Republic of Nigeria for the solidarity, support and comradeship shown to me on the occasion of the conferment on me of the Chieftaincy Title Ikeoha Ndigbo, by the South East Council of Traditional Rulers on Saturday, 16th May, 2009.

I am humbled by the tremendous support demonstrated in various ways by my distinguished Colleagues, the solidarity messages sent to me through newspaper publications, letters, phone calls, text messages, etc.

I would not fail to note the other gestures extended to me by you and my other Colleagues that translated the event into a huge success. Your solidarity is spontaneous and overwhelming. For me, it is a clear demonstration of the depth of the good relationship we share here and the evidence of the confidence of our distinguished Colleagues on the Leadership under your charge.

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This title as you rightly noted at the event, is not personal to me. Rather, it is recognition of the contributions of the Sixth Senate to the National Development. This is another re-assurance that we are on the right course. At the same time, it challenges us further to do more. In that way, we would have become the Ikeohas (strength to the people) of our various constituencies.

Permit me your Excellency, to also thank you for your very kind words and good wishes on the occasion of my birthday. May the Almighty God continually imbibe in us, with sufficient wisdom and grace to remain indivisible and committed to the course of the ordinary people of Nigeria.

God bless the Senate of the Federal Republic of Nigeria.

(Signed)
*Distinguished Senator Ike Ekweremadu, CFR.,
Ikeoha Nidigbo Nine.*

Visit of the Staff and Students of Holy Cross Nursery & Primary School, Gwarimpa, Abuja

I wish to acknowledge the presence of the staff and students of Holy Cross Nursery & Primary School, Gwarimpa, Abuja, who are in the Gallery to observe the Senate's proceedings. We wish them a fruitful observation of the Senate proceedings.

Dinner Party for ECOWAS Parliamentarians

There will be a dinner for ECOWAS Parliamentarians in my house tomorrow, at 7.30 p.m. prompt. They are about 150 of them. All distinguished Senators are invited.

The dinner would also host the Members of the International Criminal Court, (ICC). I am inviting all of you to be there so that we can interact with them. We would make the announcement again tomorrow.

The dress code would be informal. Please, come with your spouses.

Invitation to a Birthday Party

I have a letter from Senator (Mrs.)(Dr.) Joy Emodi, the Adadioranma of Anambra North Senatorial District and it reads:

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Your Excellency,

Special Invitation to my Birthday Party

I write to inform you of my birthday coming up on Saturday, 23rd May, 2009. To mark this auspicious occasion, my Colleague and Friend, Distinguished Senator Ikechukwu John Obiora is organising a birthday party for me.

Your Excellency and all distinguished Senators are by this letter, specially invited to join me in this celebration scheduled to hold as follows:

Date: Saturday, 23rd May, 2009

Venue: Mecillinas Verandas, Next to ECOWAS Secretariat, Yakubu Gowon Way, Asokoro, Abuja.

Time: 8.00 p.m.

While I look forward to having the honour of your presence at the event, accept the assurances of my esteemed regards.

Yours Sincerely,

(Signed)
Sen. (Mrs.) Joy Emodi.

PERSONAL EXPLANATION

Senator Nimi Barigha-Amange (Bayelsa East):
Mr. President, Point of Order!

The President: Order what?

Senator Barigha-Amange: I come under Order 43 dealing with Personal Explanation and it says:

By the indulgence of the Senate and the leave of the President of the Senate, a Senator may make a Personal Explanation although there be no question before the Senate; but no controversial matter may be brought forward nor may debate arise upon the Explanation. The terms of the proposed statement shall be submitted in detail to the President of the Senate when his leave to make it is sought.

I raise this Order as a result of the publication I have here on page 20 of *ThisDay Newspaper* of today,

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where the Chairman of the Senate Committee on Media and Publicity stated that I went to Ghana illegally when I did not.

The President: Senator Barigha-Amange, sit down please. Firstly, you should have discussed it with me because that is what the Order says which you did not do when you asked for the leave.

Secondly, it should be non-controversial matter. This matter has generated enough controversy already, therefore, it cannot be a personal explanation again. We had a length discussion on it and referred the matter to the Senate Committee on Ethics and Public Petition. Over and above that, we discussed the matter extensively the other day. I suggest you see me after the sitting if you want further explanation, please. This is a controversial matter.

Senator Barigha-Amange: Mr. President, I was not here when it was debated and discussed it in a Closed Session, but since you said I should see you, I am withdrawing the Point of Order.

The President: Your withdrawal is accepted.

PRESENTATION OF BILLS

HIV AND AIDS ANTI-DISCRIMINATION BILL, 2009 (SB. 258)

Senator Teslim K. Folarin (Oyo Central): The first business of the day is the presentation of an Executive Bill standing in my name on the HIV and AIDS Anti-discrimination Bill, 2009. You may wish to invite the Clerk of the Senate to read the Short Title of the Bill.

HIV and AIDS Anti-Discrimination Bill, 2009 (SB. 258) – *read the First Time*.

PAYMENT OF PENSION TO OR IN RESPECT OF A PERSON WHO HAS HELD OFFICE AS AN ELECTED PRESIDENT OR VICE PRESIDENT OF THE FEDERAL REPUBLIC OF NIGRIA BILL, 2009 (SB. 264)

The second business of the day is the presentation of an Executive Bill standing in my name on the Payment of Pension to or in Respect of a Person who has Held Office as an Elected President or Vice President of the Federal Republic of Nigeria Bill, 2009.

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You may wish to invite the Clerk of the Senate to read the Short Title of the Bill.

Payment of Pension to or in Respect of a Person who has Held Office as an Elected President or Vice President of the Federal Republic of Nigeria Bill, 2009 (SB. 258) – *read the First Time*.

FEDERAL POLYTECHNIC (AMENDMENT) BILL, 2009 (SB. 267)

The third business of the day is the presentation of another Executive Bill standing in my name on the Federal Polytechnic (Amendment) Bill, 2009 (SB. 267). You may invite the Clerk of the Senate to read the Short Title of the Bill.

Federal Polytechnic (Amendment) Bill, 2009 (SB. 267) – *read the First Time*.

ORDERS OF THE DAY

CONSIDERATION OF REPORT

Report of the Committee on Gas on the Gas Flaring (Prohibition and Punishment) Bill, 2009 (SB.126) (Adjourned Debate on Motion 14th May, 2009) (Second Allotted Day)

The first Order of the day is the resumption of adjourned debate of the Report of the Committee on Gas Flaring (Prohibition and Punishment) Bill 2009 (SB.126). You will recall that further consideration on the Report was deferred on Thursday, 14th May, 2009 to the next legislative day which is today.

I move that the Senate resolve into the Committee of the Whole to resume consideration of the Report.

Senator Maina Ma'aji Lawan (Borno North): Mr. President, I rise to second the Motion that the Senate do resolve into the Committee of the Whole to consider the Report.

Question put and agreed to.

Resolved: That the Senate resolve into the Committee of the Whole to consider the Report of the Committee on Gas flaring.

Report of the Committee on Gas Flaring
(Prohibition and Punishment) Bill 2009 –

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CONSIDERED IN THE COMMITTEE OF THE WHOLE SENATE.

The Chairman: We stopped at Clause 4 the other day and we have finished Clause 4. Is there any comment on Clause 5?

Clause 5 – (FAILURE TO MEET ANNUAL GAS FLARE REDUCTION TARGET)

Question proposed

Senator Chris N. D. Anyanwu (Imo East): Mr. Chairman, Clause 5(2)(d) and (f) is full of excuses and escape route for the gas companies. Clause 5(2)(d) says: *Gas flaring resulting from damage to a company's facilities caused by sabotage*. It is like we are creating the ground for them to say they cannot do this and that because of sabotage, because of equipment failure. I think there should be a general statement of factors outside the control of this law, but we do not specify sabotage and such other things. This is because the companies have been looking for a way out for decades and this law should not create the ground for them. So, I recommend we expunge the words; *damage to a company's facilities caused by sabotage*. It could be a blown up or a technical fault. Really, we should not put sabotage there.

The same thing for Clause 5(2)(f) which says: *Gas flaring caused by factors outside the control of the operator of the facility, provided the operator has acted as a reasonable and prudent operator*; we should add the words; *and reported promptly to the appropriate authority*.

I so recommend.

Senator Lee Ledogo Maeba (Rivers South-East): Mr. Chairman, I do not quite remember if we deleted Clause 4(3) at the instance of Chairman. The Chairman proposed that it should be deleted and I believe it was deleted. The Secretariat may confirm that to us. If we deleted Clause 4(3) then the entire Clause 5 is in dilemma.

The Chairman: If you read your Votes and Proceedings, what we have for Clause 4(3) is: *Any person who flares or vents gas without the permission of the Minister in the circumstances mentioned in subsection (2) above, shall be liable to pay a fine which shall not be less than the cost of the gas at the*

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international market. That is what we have here from our Votes and Proceedings.

However, the point that Senate Chris Anyanwu made is that we are making excuses ahead of time for them. Is there no legal language for *force majeure*, that is, circumstances that are natural and totally beyond their control? We leave it at that rather than specifying the factors. Is that all right?

Several distinguished Senators: Yes.

The Chairman: That is all right. Somebody has to propose it, as you know the question cannot come from me.

Senator Abubakar Danso Sodangi (Nasarawa West): Mr. Chairman, I move that we amend it as proposed by the Chairman.

The Chairman: In fact, that precisely is what I said we would not do, that is that the amendment cannot be proposed by me.

Senator Danso Sodangi: I propose that in place of Clause 5(2)(d) we replace it with *force majeure*.

The Chairman: Is there any more comment on Clause 5?

Senator Lee Ledogo Maeba: Mr. Chairman, if it is clear that Clause 4(3) remains, it is just like what distinguished Senate Chris Anyanwu said, Clause 5(2), will cause serious contradiction which would take us back to our fears when we were discussing Clause 4(1) and (2). This is because Clause 5(2)(e) says in part: *Gas flaring resulting from damage to a company's facilities caused by accident not attributable to the fault or negligence of the operator of the facilities*. If that fault is left unattended to for one or two months or upwards of one year, even if it was an accident, but gas is being flared, I think something has to be done there.

The Chairman: If you read Clause 4(2)(a), it says; *non-continuous production flaring*. Why can we not cancel the word; *production* and leave just at: *non-continuous flaring* and that would cover what you want to amend. This is because it is saying if it is left continuously, but we can say; *non-continuous flaring*.

Senator Lee Ledogo Maeba: What I am looking at is Clause 5(2)(e) and (f) which says; *gas flaring caused*

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by factors outside the control of the operator of the facility; gas flaring resulting from damage... all these contribute to completely technical non-existence. It is not an existing technical language. If you have a gas blow out in your flow station and you have a control flow out at the other side and a pipe burst and gas flares through the burst pipe, then you say that, because it is not your fault, it is by accident, so the gas continues to flare and that kind of flaring can continue for a long time. I am saying that the entire Clause 5(2) is completely not necessary as part of this Bill. Clause 5(2) should be removed and we leave Clause 5(1). This is because Clause 5(2) can cause serious contradiction. Clause 5(2)(f) says: *Gas flaring caused by factors outside the control of the operator*, Which kind of factor can that be? Those factors are technically non-existent. Everything that can cause gas to flare from any facility is either by fault of the operator or by accident and such accident cannot be allowed to say gas continues to flare because the Minister said you cannot flare gas for more than 30 days on his permission. I think Clause 5(2) should just go so that we have relief.

Senator Sola Akinyede (Ekiti South): Mr. Chairman, I am worried by the provision of Clause 5(2). It means that all the person is required to do, is just to pay for the cost of the gas. What happens to the people who are in the environment, whose health is being damaged by the gas? I think, they should be entitled to compensation. It is not fair enough to say that once somebody can pay for the cost of the gas, then the people in the place can keep on inhaling natural gas for the rest of their lives.

So, I believe that first of all, the penalty should be more than the cost of the gas. That is one. Secondly, the people who are in the area should benefit from the damage caused to their environment. So, I am worried by that provision. I do not think it is enough to say that you can just pay for the international price of the gas, therefore, they can keep on flaring the gas for ever. I am really referring to Clause 4(3), which is being reference by Clause 5. That is my observation. I do not think it is fair.

The Chairman: Can we finish with the Amendment proposed first. We are getting into too many things at the same time. The Amendment proposed by Senator Chris Anyanwu was for us to delete Clause 5(2)(d) and (f) but Senator Lee Maeba is proposing that we should delete the whole of Clause 5(2). Let us get through with that first before other Amendments.

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Senator Ibrahim Mohammed Ida (Katsina Central): Mr. Chairman, what the Chairman suggested to Senator Abubakar Sodangi that we should substitute sabotage with the phrase; force majeure is not exactly correct because that connotes a layman's language and it means, an act of God. Sabotage, strictly speaking, is not an act of God.

Distinguished Senator Chris Anyanwu is right that we should not leave a Clause that seems to condone illegality because sabotage is illegal. Therefore, I have a suggestion. We should delete Clause 5(2)(d) and amend Clause 5(2)(e) to read: *Gas flaring resulting from damage to a company's facilities caused by any act or accident not attributable to the fault or negligence of the operator of the facilities*. Any act or accident sort of covers what is implied in (d) and still retains Clause 5(2)(e) quite correctly. I believe that should be better than putting force majeure as a substitute for sabotage. That is my proposal.

The Chairman: What you are suggesting is that we should keep Clause 5(2)(a), (b), (c) and (d) and then amend (e) alone. Is that the point you are suggesting?

Senator Ibrahim Mohammed Ida: That is right, Mr. Chairman.

The Chairman: Senator Lee Maeba is proposing that we delete the whole of Clause 5(2) completely.

Senator Bassey Ewa-Henshaw (Cross River South): Mr. Chairman, if we amend Clause 5(1) to say:

Any licensee or lessee who fails to meet the annual gas flare reduction target set by the Minister in respect of the year shall be liable to a fine as specified in Clause 4(3) provided that or except where such flaring has resulted from circumstances beyond the licensee's control.

If we recast Clause 5(1) to reflect that it is only as a result of circumstances beyond the licensee's or lessee's control then all of Clause 5(2) can be deleted. It will be established if it is sabotage or whatever, the Minister will then decide whether those circumstances were beyond the control of the licensee and then we should inset another Clause to reflect that in any case, the flaring must be brought under control or must be stopped within a given period of time not exceeding 30 days.

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The Chairman: Read the Amendment so that I will know what it is. There is no need for explanation, just read the Amendment because that is what we are going to put down.

Senator Bassey Ewa-Henshaw: We probably have to redraft it a little more carefully but it would go something like this:

Any licensee or lessee who fails to meet the annual gas flare reduction target set by the Minister in respect of any year shall be liable to pay a fine as specified in Clause 4(3) except where such flaring has resulted from circumstances beyond the control of the licensee or lessee.

If we do that, then we can take out Clause 5(2).

The Chairman: The problem with your proposal is where your proviso. That is going to be difficult to define because every company would claim that the circumstances of the flare are beyond their control.

Senator Bassey Ewa-Henshaw: The point is that it will be the responsibility of the Minister to determine and the company and I believe the Minister is working in the interest of the country, the environment and the people. It is the Minister that is given the discretion, in any case, in this Bill, to determine all these factors.

Senator Jibril Mohammed Aminu (Adamawa Central): Mr. Chairman, I respect the views of my Colleagues and may be as a Minister I would like to be given these powers but I do not think it is good for the country. The number of cases where decisions would be required are many as can be seen from Clause 5(2)(a) to (g). Somebody has gotten to a situation, if the Senate decides not to spell it out, then it would be the responsibility of the courts or of the lawyers and I think that is not right. I believe the National Assembly should do the job and specify as much as it can in order to allow fewer areas of discretionary decision by anybody, whether he is a Minister, Court or anything. The National Assembly has this job and I strongly recommend that we leave this as it is and, maybe, amend it as proposed by distinguished Senator Chris Anyanwu that is to delete Clause 5(2)(d).

Senator Tawar Umbi Wada (Gombe South): Mr. Chairman, I am of the opinion that Clause 5(2)(a) to (g) should all be deleted. We are just strenuously trying to create defence for flaring gas, which is not supposed to be our duty here. Our main concern is to prohibit flaring

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gas and we have set out the circumstances where flaring gas can be permitted, any other situation under which gas is being flared is left for the person flaring the gas to explain why he is flaring. Why should we go ahead and strenuously list out defences of flaring gas.

Fundamentally, I think we should just do away with Clause 5(2) completely and leave the rest as they are. If the law says, all those flaring gas have committed crime, generally, before you convict for a crime, there must be the combination of *mens rea* and *actus reus*. All these provisions are trying to create that there is absence of *mens rea*. It is not for us to do that. Let us just do away with idea of creating defences for the companies. Let us do away with it and simply make a law that you should not flare gas. If for any reason you flare, tell us why you are flaring. So, I propose that Clause 5(2)(a) to (g) be deleted from the Bill.

The Chairman: The Clause 4(1) which we have accepted says:

No person shall direct, permit or otherwise aid, empower or authorise howsoever, any company engaged in oil and gas operations, to flare gas, provided that the Minister may grant a permit to flare gas in case of start-up, equipment failure or shut down.

Does that cover all the things that we said?

Several distinguished Senators: Yes.

The Chairman: If it does then we really do not need Clause 5(2). Distinguished Senator Tawar Umbi Wada, are you raising your hand that Clause 4(1) does not cover all those things in Clause 5?

Senator Tawar Umbi Wada: I was raising my hand to explain that it covers all that we have said.

The Chairman: That is all right.

Senator Nimi Barigha-Amange (Bayelsa East): Mr. Chairman, Clause 4(1) is quite explicit. In Clause 5(2), there is nothing like fine. It is a penalty to be paid and not fine. I also support the idea that Clause 5(2)(a) to (g) should be deleted while we retain Clause 4(1).

Anywhere the word; *fine* appears should be substituted with the word; *penalty*.

The Chairman: Is there any other observation?

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Senator Satty Davis Gogwim (Plateau Central): Mr. Chairman, even if we are going to delete the whole of Clause 5, it has not covered Clause 5(d) where it talks of sabotage and that should be taken cognisance of.

The Chairman: That is precisely what we have removed. It does not come into the equation at all. Is there any other point on this?

Senator Lee Ledogo Maeba: Mr. Chairman, I want to recast Clause 5 the way it should be. I want Clause 5(1) to extend up to Clause 5(2), so it should read thus: *Any licensee or Lessee who fails to meet the annual gas flare reduction target set by the Minister in respect of any year, shall be liable to pay a fine or penalty as specified in Section 4(3).* Then we take part of (2) - *That the fine shall be payable in respect of the volume of gas by which the licensee or lessee failed to meet the annual gas flare reduction target.* Clause 5 ends there then we delete the rest.

The Chairman: Is the Amendment taken?

Senator Andrew Abidemi Babalola (Oyo North): No.

The Chairman: What is wrong with it?

Senator Andrew Abidemi Babalola: It will mean having two provisos in one provision. It does not work like that.

The Chairman: That is when it appears in a sentence. What he has recast are for 5(1) and 5(2). *(Interruptions)*

Senator Babalola, I got the point you made but what distinguished Senator Lee Maeba proposed is that Clause 5(1) stops at Section 4(3) and 5(2) should begin from; *the penalty shall be payable in respect of the volume of gas by which such licensee or lessee, failed to the meet the annual gas flaring reduction target.* That is 5(2) and it is not the continuation of Clause 5(1), so he has not contradicted the drafting rule.

Senator Victor Ndoma-Egba (Cross River Central): Mr. Chairman, I must confess that I was not following.

The Chairman: I will put the Question in favour of Clause 5(1) and (2) as amended.

Amendment put and agreed to.

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The Amendment is that Clause 5(2) is deleted all the way from, *provided to the end.*

Clause 5 – (FAILURE TO MEET ANNUAL GAS FLARE REDUCTION TARGET) – as amended ordered to stand part of the Bill.

Clause 6 – (GATHERING, UTILISATION OR RE-INJECTION OF NATURAL GAS)

Question proposed

The Chairman: Are there comments on Clause 6?

Senator Anyim C. Ude (Ebonyi South): Mr. Chairman, I have Amendment to Clause 6(2)(b) on page 5 where it says: *Any licensee or lessee who fails to comply with Section 6(2)(a).* First of all, the ambiguity should be removed by saying Section 6(2)(a) above shall be liable to *pay a penalty to be fixed at the discretion of the Minister*

I do not know why a court should rely on the Minister to fix the penalty. I suggest that we take it as we have in Clause 4(3) where we have said; *Any person who flares or vents gas without the permission of the Minister in the circumstances mentioned in subsection (2) above, shall be liable to pay a penalty which shall not be less than the cost of gas at international market.* It makes it specific what he is going to pay, instead of the Minister fixing the penalty.

The Chairman: Yes, is there any more Amendment to Clause 6?

Senator Osita Izunaso (Imo West): Mr. Chairman, in Clause 6 we earlier did not include deep water. Today, in the oil and gas industry, there is on-shore, off-shore and deep water. So, the Amendment should read: *No licensee or lessee for the production of oil and gas, whether on-shore, off-shore, or deep water, shall be granted...* It is just to insert the word; *deep water.*

The Chairman: That means we have to do it in all the Clauses because we have on-shore and off-shore in so many places before this. Is there any more Amendment?

Senator Nimi Barigha-Amange: Mr. Chairman, I do not think that Amendment is necessary because off-shore is off-shore. Shallow off-shore or deep-off shore is off-shore.

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I want to propose and Amendment. There is a difference between licence and lease. Here it reads: *No licence or lease for the production of oil and gas*. It should not read that way. Licence is given for exploration while lease is given for production. So, we have to put it to read: *No licence or lease for the exploration or production of oil and gas*. With that we will be making it explicit and clear. Licence is given for exploration alone. If you discover oil, then lease would be given to you to produce the oil.

Senator Chris Anyanwu: Mr. Chairman, mine is actually a question rather than Amendment. I am a little bit confused by paragraph (c) which says: *Not create a monopoly or oligopoly* and (4) says: *Not segregate prices for a different gas market or embark on a differential pricing regime for gas*. I need someone, maybe, the proponent of this Bill to explain those two paragraphs and why we should retain them.

The Chairman: Let us finish with the issue of licence and lease.

Senator Lee Ledogo Maeba: Mr. Chairman, there might be a technical error in Senator Barigha-Amange submission because if you want to add everything that leads to exploration, you will talk of seismic acquisition and others, but the word; *production* captures everything from data acquisition to exploration to even the drilling. The word; *production* is very suitable in every Act. So, Senator Barigha-Amange might have constituted a technical error.

I think that Clause 6(1)(c) is unnecessary and should be deleted. Everything said under 6(1)(c) is covered under 6(1)(b) where both the applicants of gas utilisation programme must satisfy the Minister who is serving at any time. So, I propose that 6(1)(c) should be deleted.

The Chairman: Before we delete 6(1)(c), Senator Osita could you explain what it actually stands for?

Senator Osita Izunaso: Why we have to go into details on Clause 6(1)(c) is to enable the lawmakers themselves specify exactly what we are talking about and if anybody is saying that 6(1)(c) is completely unnecessary, I do not agree with him. This is because the original provision in 6(1)(c) says: *The utilization programme refers to in sub-section 1(a) above must be inconsonance with the national gas master plan; domestic gas supply obligation and national policies as may be made in respect of the gas section from time to time by the Federal Government*.

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We tried to amplify what we are talking about by making the recommendations to show that in doing that nobody should create a monopoly or an oligopoly that will not lead to inefficient use of Nigerian gas resource because these are things that we must begin to explain. We do not want to leave it for those implementing it to interpret. We can go to some extent to explain exactly what we mean and that was why we made all these provisions.

Senator T. U Wada: Mr. Chairman, my opinion is that we should retain the extant provision and stop at the place where it says: *It must be in consonance with the gas master plan for the time biding in force*. We all know the National Gas Master Plan. It is to ensure efficiency of gas usage which is captured by those leases. It is also to liberalise pricing, encourage domestic consumption and export. The gas master plan has spelt out almost everything that needs to enhance gas utilisation in this country. Fundamentally, if we stop at where it says: *The utilisation programme referred to in Sub-section 1(a) above must be in consonance with the National Gas Master Plan for the time being in force*, that solves every problem. Then we do away with all these list since it is not exhaustive but only add confusion. If I may ask what is it to create monopoly or oligopoly? I do not know that that means? So, let us retain 6(1)(c) as it were before and stop at where it says: *... the National Gas Master Plan for the time being in force*.

Senator Osita Izunaso: I do not have any objection.

The Chairman: Senator T. U. Wada, is there a place where they mentioned Gas Master Plan in 6(1)(c)?

Senator T. U Wada: It is in the extant Act.

The Chairman: All right. Is there any more Amendment to Clause 6?

Senator Victor Ndoma-Egba: Mr. Chairman, Clause 6(1)(b) and (c) are basically the same provision so one is surplus. If we take (b) then (c) is surplus vise versa. This is because when you say that: *No licence or lease for the production of oil and gas in Nigeria shall be granted to any applicant unless the Minister is satisfied*. What will satisfy the Minister? He will have to refer to the gas master plan, to the existing policies; it is not just a rule of the thumb. So, he would be referring to certain policies and government programmes for him to be satisfied.

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Coming to (c) to mention the gas master plan is totally unnecessary because that is captured by the Minister's satisfaction. Those are all the things that would satisfy the Minister. So, it is either that (c) goes and (b) stays or (b) stays and (c) goes. As far as I am concerned, they are referring to the same thing.

Senator Patrick Osakwe (Delta North): Mr. Chairman, if you look at the (b) and the (c), they are talking of two different things. While (b) is talking about the production of oil and gas (c) is talking about utilization. I do not see any meeting point at all even if the Minister's consent is required. I feel that (b) is talking entirely about a different thing. It says; no licence or lease for production, while (c) is talking about the utilisation programme referred to in sub-section 1(a) not even in (b). So, you can see that these provisions will satisfy us very well if we leave them as they are.

Senator Jibril Mohammed Aminu (Adamawa Central): Mr. Chairman, I will like to make a few suggestions which I believe is in the interest of the nation. A number of times I have said here that the companies do not really make a serious effort in stopping flaring because of penalty and because of the nature of our Joint Venture with them. Be it Shell, Mobil, or which ever. If you impose a fine, Nigeria through the Federal Government will end up paying 60 *per cent* of it. The companies will pay 40 *per cent*.

If the Senate agrees, we can recast it so that responsibility falls on the actual operator as distinct from partners in the Joint Venture. I am suggesting that wherever you have the word; *licensee* we should replace it with *operator of the license*. Where it says *lessee*, we should replace it with the *Operator of the lease*. Then you can in fact state it in full because someone was trying to give the difference between *licence* and *lease*. So, you can say; *operator of an oil exploration license or gas exploration license or operator of an oil mining lease*. This will be useful to the country because though the company is the actual operator but if they continue flaring, they will pay a 100 *per cent* of the fine and not Nigeria that will pay 60 *per cent*. If the Senate agrees, we should change the meanings. *Licensee* should read *operator of the license* and *Lessee* should read *Operator of the lease*; with a capital O. They understand what is happening.

The Chairman: Senator Jibril Aminu, what you suggested will come as an Interpretation Clause. That is what we normally do. At the end the Interpretation Clause will say what a *Lessee* is and what a *Licensee* is. There is no point in bringing it here. We should just

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continue with the way we are going and at the end of it we explain that in the Interpretation Clause.

Senator Bassey Ewa-Henshaw: Mr. Chairman, going back to Clause 6(1)(b) and (c), if we insert the phrase; *acceptable to the Minister* in Clause 6(a) between the words; *programme* and *for*, then we can delete Clause 6(1)(b). In effect I am proposing that Clause 6(1)(a) should read: *No licence or lease for the production of oil and gas whether on-shore, off-shore or deep water shall be granted to any applicant unless the application for such a licence or lease is accompanied by a comprehensive programme acceptable to the Minister for the utilization of natural gas ...* to the end. If we insert that, then Clause 6(1)(b) can go and Clause 6(1)(c) will remain.

The Chairman: There is no point in drifting to a new thing. If we take one item let us make the correction and move forward. The emphasis in Clause 6(1)(b) is on the Minister's satisfaction or standard. Senator Bassey Ewa-Henshaw has captured that but did he capture it in Clause 6(1)(a)? If we leave it separate does it subtract anything? If it does not, let us leave it for clarity. Do we have any more correction?

Senator Kabiru Ibrahim Gaya (Kano South): Mr. Chairman, both items (a), (b) and (c) are self-explanatory. We should leave item (c) as it is. There is no need to go into all those other details like defining the master plan. They are even limiting the master plan by going into the Amendment. We should live it as it is and make progress.

The Chairman: Clause 6(1)(a), (b) and (c) are retained and the Committee's recommendation is not accepted. We are looking at Clause 6(2)(a).

Senator Lee Ledogo Maeba: Mr. Chairman, Clause 6(2) is another area we have a problem. The provision of Clause 6(2) has been captured under the provisions of Clause 1 of this Bill. If you move forward to Clause 2(b) it is completely not in tune with anything because it is already captured under Clause 4(1). The entire provision of Clause 6(2)(c) do not exist because the Petroleum Act may not be available at the time. There is a Reform Bill before us which has been read the First Time. We have taken the First Reading of the Petroleum Industry Bill which completely over-rides everything called Petroleum Act. So, we cannot make any law referring to Petroleum Act upon which we have had the First Reading of a Bill to over-ride it. Therefore, Clause 6(2) should be deleted in order not to create controversy. I move that we delete Clause 6(2).

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Senator Osita B. Izunaso: Mr. Chairman, let me just agree with Senator Lee Maeba for the very first time because since the Petroleum Industries Act is pending before the National Assembly, let us not go into any matter that might conflict with the spirit of that Bill when it comes on board. Much as there is nothing talking about stoppage of gas flaring in the Petroleum Industries Bill. But for the intendment of this particular Bill, we can do away with Clause 6(2) completely and go straight to Clause 7.

Senator Ayodele Sylvester Arise (Ekiti North): Mr. Chairman, I want say this in case we have any other Clause that provides for discretionary powers to levy a fine in this Bill. There should be no law that will give such wide powers. If we want to put N10,000 or N100,000 it should be stated as such in the law. When you say that the Minister would at his discretion, I do not know if it exists in any other place; but we should bear that in mind. I just want to point that out so that we take note of it.

The Chairman: We have already dealt with that. If you look at where we talked of *penalty* in the earlier one, somebody said that we cannot be asking the court or the Minister to determine. So, we have removed the issue of the Minister determining what the penalty will be.

Senator Ahmad Ibrahim Lawan (Yobe North): Mr. Chairman, I do not want to sound more Catholic than the Pope. Senator Izunaso concurred with Senator Lee Maeba that we delete Clause 2(a), (b) and (c) because of an impeding Bill. So long as a Bill has not been passed and signed into an Act, it remains a wish, therefore, we should retain Clause 2(a), (b) and (c) so that if eventually when the Bill becomes a law, this Clause could be amended. It is not right that we anticipate that there would be a provision in the law so as to form the basis of our decision not to pass a Clause that is very important in a Bill.

The Chairman: If we have not passed the Petroleum Act how can we make reference to it Senator Maeba suggested that we should delete it completely because it is making reference to an Act that we have not passed. Senator Maeba made that point and Senator Lawan is disagreeing with him on that point.

Senator Lee Ledogo Maeba: Sir, let me clear myself.

The Chairman: The point you have made is that we delete it. Is that not?

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Senator Lee Ledogo Maeba: Yes, and I have a reason for suggesting that.

Senator James Ebiowou Manager (Delta South): Mr. Chairman, I completely agree with Senator Lawan. I disagree with Senator Lee Maeba and the facilitator of this Bill who concurred with him surprisingly. This is because we are considering his Bill before us. The one Senator Maeba is referring to is not before us. We do not know the content of that particular Bill. For us to now drop a vital provision of a Bill that is before us because of a Bill that is not yet before us, is not good enough. So, the wisdom behind what Senator Lawan has said, is reasonable, therefore, I support him.

The Chairman: Clause 6(2)(c) says: *The Minister shall make appropriate arrangement for the exercise or the right vested in the Federal Government by Paragraph 35(b)(1) of the First Schedule of the Petroleum Act, 1969.* That one exists.

Several distinguished Senators: Yes.

Senator Lee Ledogo Maeba: Mr. Chairman, what will buttress my argument is to read Clause 35(b) which is power given to the Minister to exercise a discretion which this Bill seeks to correct. This Bill says in Clause 6(1)(c) that: *Every Act on gas should be in consonance with Gas Master Plan.* The Petroleum Act does not go into that detail. It was a power given to the Minister under which the Minister allows flaring of gas whether you obey any law or not.

So, what I said is that it is not necessary to refer to such power given to any Minister at any time. I want the Secretariat to read for us the 34(b) of the First Schedule of the Act.

Several distinguished Senators: No

Senator Lee Ledogo Maeba. I have read it and it is not correct. It is in contradiction to this Bill. This Bill is limiting everybody's power. Even the Minister's power we specify in 6(1)(b) is being streamlined to obey with Clause 6(1)(c). So, giving the Minister another power outside those provisions in Clause 6(1) is not correct. That is why I said it should be deleted. Anybody who says it should not be deleted should say how the power of the Minister in Section 35(b) of the Petroleum Act co-exist with power given to the Minister in Clause 6(1)(b) of this Bill. I am coming with technical argument. I am not arguing for the sake of argument.

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Senator James Manager: Put the Question.

The Chairman: No, before I put the Question, my understanding of what Senator Lee Maeba said was to delete Clause 6(2)(a), (b) and (c). I thought that Clause 6(2)(c) is an Act that already exists. I thought it was the Bill that was to come before us. If that Act already exists, then they can make reference to it. Now, the point you are making is that the reference made here contradicts what that Act is saying.

Senator Lee Ledogo Maeba: Yes.

The Chairman: What does the Act says? What is the problem with Clause 6(2)(b)? There is no problem because that refers to what we have said here: *The Licensee or Lessee who fails to comply with sub-section 4(3) shall be liable to pay a fine as stated in Section 9 of this Act.* There is nothing wrong with that. Let me take the last from Senator Ewa-Henshaw so that I can put the Question.

Senator Bassey Ewa-Henshaw: Actually, I was going to suggest an Amendment to Clause 6(2)(a). The way it is worded, contains contradictions in terms. It says: *The Licensees and/or Lessees operating oil and gas fields in Nigeria before the commencement of this Act shall, - which is compulsory - within three months of the commencement of this Act, submits to the Minister any feasibility study.* What if they do not have a feasibility study?

Several distinguished Senators: Why would they not have?

Senator Bassey Ewa-Henshaw: Excuse me. It goes on to say: *Programme or proposal that they may have.* We want to compel them to do it, therefore, the language shall be; *shall within three months of the commencement of this Act submit to the Minister, studies, programmes or proposals for gathering utilization and/or re-injecting any natural gas.* Then delete the words; *any and may.* *May* contradicts *shall*

The Chairman: We just cancel the word; *may.* Just cancel the word; *may.* The other argument of it is: *shall submit that they may have.* If they do not have, there is nothing to submit.

Senator Ewa-Henshaw: He wants them to submit.

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The Chairman: Before I put the question, let us get what we are putting the Question on right. So, leave the word; *may.* *That they may have,* cancel *may.*

Is there any more Amendment to Clause 6?

Senator Nimi Barigha-Amange: I have my fears on Clause 6(2)(a). It says there: *Within three months of the commencement of this Act submit to the Minister any feasibility study, programme or proposal for gathering utilization and/or re-injecting any natural gas.* If the proposal is submitted that will last for 12 or 24 months, what happens? We are not talking about the stoppage of gas flaring and you are telling them to within three months they should submit proposal. What if they submit a proposal that will last for 24 hours before the gas could be utilised. That means that the gas will continue to be flared and that is my fear.

The Chairman: What is the essence of that Clause? What does it intend to achieve. We had earlier on along this Bill given the time limit. The submission of that feasibility study does not amount to anything any more. The Question I am going to put is in favour of the retention of Clause 6(2)(a), (b), and (c)(i) (ii) and (iii).

Question put and agreed to.

Clause 6 - (GATHERING UTILISATION OR RE-INJECTION OF NATURAL GAS) - ordered to stand part of the Bill.

Senator Andrew Abidemi O. Babalola: Mr. Chairman, please, I have an observation on Clause 6 that we have just passed. Clause 6(c)(ii) says: *The licensee and lessee operating the field, group of fields or facility from which gas is produced shall re-inject such gas that he is not able to harness for valuable utilization as prescribed by the Associated Gas Re-injection Act, rather than dispose through the flare; or vent. (Interruptions)*

The Chairman: You know the Rule. We have finished with it why are you coming back to it? What is your objection? The one we have accepted is the one in the extant Act. It is as the same in the Committee's recommendation any way. What is the problem there?

Senator Babalola: The last sentence there says: *As prescribed by the Associated Gas Re-injection Act rather than dispose through the flare or vent.* What I am saying is that the essence of this entire law is about not flaring gas. This is a repetition that is not necessary.

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The Chairman: Has it in any way spoiled the Act?

Senator Babalola: No.

The Chairman: That is all right. If it is surplus that you are complaining about it is all right. It is better to have it than to take it away and cause more confusion.

Clause 7- (CONTINUED FLARING)

Question proposed.

Senator Anyim C. Ude (Ebonyi South): When I read Clause 7 where it says: *Where gas flaring continues after the commencement of this Act up to the 31st day of December 2008, the operator of the field, group of fields, or facility from which the gas is flared shall pay the sum of US\$ 3.5 per million standard cubic feet of gas.* When I read that and the Committee's recommendation, apart from re-constructing it, it went down to the last two lines and said; *Pay a fine – which should be penalty - in accordance with the penalties laid out in Section 9 of this Act.* I was compelled to go to Section 9 and I found that they were saying different thing for which we need an explanation.

For instance, if we fast forward to page 8, Section 9 to get the meaning of what they are referring us to, they are talking of Section 9(1)(a): *Any person who flares gas after 31st December, 2010 contrary to Section 2 of this Act commits an offence under this Act and shall be liable on conviction to pay a fine which shall be equal to the price of gas on the New York Mercantile Exchange.* We have been talking about the international market price, now we are being told of New York Mercantile Exchange. I do not understand that.

Still on that Section 9 if you go down a bit they are repeating the current 3.50 per one thousand, which they had wanted us to disregard and take the Amendment. So, I am a little bit confused.

The Chairman: The point he has made is very valid. From no where you have introduced New York Mercantile Exchange and we have been talking about the international gas price all along. We have seen what the gas payment will be all along why this sudden change again?

Senator Osita B. Izunaso: There is no difference. They are still one and the same thing. If you are talking about international gas market price as determined by

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the New York Mercantile Exchange, that is what determines the international gas price, so we are talking about the same thing. If you want us to remove it and retain international gas price we can do so. But we are only trying to explain what actually international gas price is so that people will know.

The Chairman: You will do all those things in the Interpretation Clause. Let us be consistent in the law itself and not to put a new phrase along the line. When you go to the Interpretation Clause you will say what the international market price is.

Senator Barigha-Amange: Mr. Chairman, the New York Mercantile Exchange is the right thing to put because gas price could be determined by that body above and below US\$3.5. If we are taking the New York Mercantile Exchange, we should stick to that and delete the US\$ 3.5.

The Chairman: That is what we should do because we have been using international market price. When we go to the Interpretation Clause we explain what that means I put the Question in favour of Clause 7 as amended.

Question put and agreed to.

Clause 7 – (CONTINUED FLARING) – as amended, ordered to stand part of the Bill

Clause 8 – (GAS FLARE REPORTS AFTER JANUARY 1, 2009)

Question proposed

The Chairman: Is there any comment on Clause 8?

Senator Osita Izunaso: We have already amended Clause 8(1) that it should be 31st December, 2010. So, we should change January 1, to 31st December, 2010.

Question put and agreed to.

Senator Kabiru Gaya: Mr. Chairman, I have an objection.

The Chairman: What is your reason now because this is medicine after death?

Senator Kabiru Gaya: Mr. Chairman, the issue of given date for stoppage of gas flaring is becoming

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unrealistic. To stop gas flaring is really expensive. The Federal Government owns 60 *per cent* share of these companies. You have to expend money in order to stop gas flaring. We have been fixing dates on and on. I remember, it was 2007, we moved to 2008 and now to 2010. By next time we will move to 2015. I think we should be more realistic on this issue of date. We have been moving from one year to another.

The Chairman: The first day we looked at this Bill, if you recall we spent a lot of time on this and I thought we all agreed that if we do not fix a date they would keep shifting it and that was the basis on which we agreed on this date. 31st January, 2010 is the date that we all agreed on.

Senator Sola Akinyede: It may appear like a medicine after death, but I am worried by the use of the word; *proving* in Clause 8(1) where it says: *After the gas flare-out target date of January 1, 2010, any person, group of persons or community may lodge a documented report proving gas flaring....* I am worried by that word. It should just be a report of gas flaring rather than saying proving it. What are you going to prove? It is the people to whom the report is made that would prove that there is gas flaring? I want to propose that after the word; *may* we delete the rest of the words and substitute them with the words; *lodge a report of gas flaring* and stop there.

The Chairman: So, we go back to it again and cancel *proving*. I would put the Question again on Clause 8(1), (2), (3)(a) and (b), (4), (5), (6), (7)(a) (b) and (c) and (8).

Amendment put and agreed to.

Question on the Main Clause as amended, put and agreed to.

Clause 8 – (GAS FLARE REPORTS AFTER JANUARY 1, 2009) – as amended, ordered to stand part of the Bill.

Clause 9 – (OFFENCES AND PENALTIES)

Question proposed

Senator Andrew A. Babalola: Mr. Chairman, in Clause 9(1)(a) and 9(1)(a)(ii) we have reference to dates. One is 31st December, 2010 and the other is January, 2010. I do not really know which one is the correct date that we are to adhere to it.

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The Chairman: I thought that we just corrected that one to be 31st December, 2010. Anywhere 1st January, 2010 shows up, it will be corrected to read, 31st December, 2010.

Senator Suleiman Adokwe (Nasarawa South): I have an observation, Mr. Chairman.

The Chairman: Senator Adokwe, what is your observation?

Senator Suleiman Adokwe: Mr. Chairman, I am sorry to take us back to Clause 8. The provision there seems to make it more difficult for people to report and I thought that if we are making a law to prevent gas flaring it is the duty of the Department of Petroleum Resources to ensure that these laws are enforced. But if you go through, especially the new provision, it is becoming more difficult for people to report, because it provides that anybody who makes false report shall be fined ₦500,000 and on conviction he goes to prison for three months. I referring to Clause 8(7)(a), (b) and (c). That provision is going to scare people from reporting that there is gas flaring going on. I think we need to revisit those places.

The Chairman: Senator Osita Izunaso, the point he has raised is vital. If I find out that there is gas being flared and I make a report that somebody is flaring gas in my vicinity, why should I be penalised if you go there and they have stopped it before you get there? This is because a layman would just go there and says that they are flaring gas, he makes that report and goes away. You are saying that if they go there and find it out to be false, why must he be punished.

Senator Osita Izunaso: Clause 8(7) is very specific. It is talking about anybody found guilty by a court of law forging documents, blackmailing operators or otherwise intentionally making false report. They are all qualified. It is not something that if you report a gas flare site, you would be persecuted, no, that is not what we are saying.

Senator Jibril Aminu: I have not seen where an operator would be required to bear the medical and environmental forces of the operation, particularly, if it is in violation of any flaring order.

I will give an example, a distinguished Senator talked about inhaling gas that is one. You can inhale too much of carbon monoxide or carbon dioxide from the flare, but there is also what one Vice Chancellor of the

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University of Port Harcourt told me long ago surrounding these flare areas. He said that the mosquitoes around these areas are very big and their bites are very painful. I have no doubt that the people there always suffer from diseases, particularly malaria. If somebody refuses to obey flaring order, he can cause environmental problem and I think we should have an Amendment, which says that they should bear the proven medical and environmental costs of their activities somewhere in this Clause. This is a way of actually helping and protecting the local communities around in relation to whatever we are doing. So, I propose an Amendment that: *The operator, the lessee or the licensee shall bear the cost of any proven medical or environmental damages caused by violating flaring order.*

The Chairman: That proposal was made by Senator Sola Akinyede and it should be attributed to him. He made that suggestion when we were considering Clause 5.

Senator Jibril Aminu: I couched the proposal for you.

The Chairman: You are right. I am only saying that somebody had made the same proposal earlier but it is where to fit it in that we have just come to. I am interested in where we put it in the law.

I want somebody to contribute to the point raised by Senator Suleiman Adokwe.

Senator Nimi Barigha-Amange: Mr. Chairman, the fear I have is this; from where the gas is to be flared and where the local people would go and report, it may take two days for them to move to an urban area to report. By the time they return to the site, the flare could be put off. How can you now charge the person that he has given false information? The Clause is unnecessary.

The Chairman: I agree with that. Senator Osita Izunaso, I do not know if I am the only one who is not getting your explanation right.

Senator Osita B. Izunaso: Mr. Chairman, it is important that you go further to Clause 8(8) where it says: *Any one found guilty of sabotaging oil and gas installations shall be liable to a maximum fine of N10 million plus damages or five years imprisonment or both to such fine and imprisonment.*

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All of us are aware of the incessant damages to pipelines that are causing flare most times. In order to ensure that these things are properly done, that is why Clause 7 is very important so that people do not give information that is not correct. We do not want people to just manufacture documents. That is why we said it must be proven by a court of law before you are fined. At the same time, we are making these laws, we also have to protect the oil companies to ensure that people do not make all manner of flimsy claims against the oil companies. We are talking about a law that would stand the test of time. If you look at it in relation to Sub-Clause (8) you will find that it is appropriate that we retain Sub-Clauses (7) and (8).

Senator Lee Maeba Ledogo: Point of Order, Mr. Chairman!

The Chairman: Before the Point of Order, if I make a report and the oil company takes me to court that my report is not correct, how do you want to say what the court would decide? Let that be between me and the oil company in the court. Assuming that what you are saying is the correct thing, we would not want to discourage people from making a report. An innocent villager who would not understand all these complications would make a report that they are flaring gas behind his place. If you go there and the oil company says it is not true, it means the villager would be required to pay a fine. It may sound simple but it is a situation that could occur. If I take the oil company to court, let it be between me and the oil company.

Your Point of Order, Senator Lee Maeba.

Senator Lee Ledogo Maeba: Mr. Chairman, it is Order 53(6) and with your permission, I read. *It shall be out of order to attempt to reconsider any specific question upon which the Senate has come to a conclusion during the current Session.* When I was about saying something, you said you have passed it, so I sat down and I could not say what I wanted to say then. The same thing I wanted to raise is what is going on now. I wonder under which Rule we are going back to Clause 7. I want you to educate me, Sir.

The Chairman: It was your friend who asked you to sit down and not say it again. But we are still on the Bill. We have not finished the specific thing here which is the entire Bill not a section of the Bill. So, which Order did you quote?

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Senator Lee Ledogo Maeba: It is Order 53(6).

The Chairman: Anyway, it was your friend who asked you to sit down and you obeyed him. So, I rule you out of Order.

Senator Ayogu Eze (Enugu North): Mr. Chairman, I have an observation.

The Chairman: Yes, what is your observation, Senator Ayogu Eze?

Senator Ayogu Eze: I am sorry to take us back to Clause 8(3)(b). There is something I find quite unusual about Clause 8(3)(b). It is talking about reporting and verification. It says: *During the visit, the Officer shall meet with the operator of the facility to verify the authenticity of the report.* Is it the operator that should verify the authenticity? Again it says: .. and *to the extent that gas is being flared from the facility, determines the cause of the gas flaring, the date when the gas flaring commenced and the volume of gas flared or vented from each facility.*

There should be a mechanism for the monitor to be able to know when this law has been violated and not for us to depend entirely on what the man tells us. This provision means dependent on what the operator reports as his verification. Something is wrong with this provision.

The Chairman: The Ministry will have all the facilities. They will have a monitoring group that would be able to determine that they have flared gas for so many days and all that. Would they not? Whether we say this here or not, they know what to do.

Senator Ayogu Eze: What I am saying is that this provision is unnecessary in this law like you have tried to bring out. We have already provided the penalty. It is now left for the Ministry. We are not going to depend on what the man says. If we pass this law, the evidence would be required in court assuming it becomes actionable case. For you to get the cooperation or the concurrence of the operator that this really happened would be difficult. This Clause has gone against some Clauses that we have already passed. I suggest that we delete this provision so as not to create a loophole in the law. It is completely unnecessary. It does not add anything to this Bill rather it makes it ambiguous.

The Chairman: What he wants removed is Clause 8(3)(b) which says: *The Officer would meet with the*

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operator of the facility to verify the authenticity of the report and to the extent that gas is being flared from the facility, determine the cause of the gas flaring, the date when the gas flaring commenced and the volumes of gas flared or vented from the facility each day. I think that is really administrative.

Senator Jibril Aminu: Though we should try to be brief and to the point but in my humble opinion, that is not the point of law. Law is to remove all ambiguities to make things very clear. We have been bundling things instead of fleshing them out and allowing the parties to decide easily. We have given room to a lot of discretion and argument in areas which are dangerous because we are dealing with fire (flaring) and with an area that cost billions of naira and which is fraught with litigation. I enjoin the Senate to be as explicit as possible. This is the language of law and legal languages are very boring and the reason it is so, is to ensure that things are very clear. Either on this point or other points, I will like to appeal to Senators to ensure we are as clear as we can.

The Chairman: I agree with you, Senator Jibril Aminu. It is a pity we are going back on this but it is important to do so. If you read Clause 8(3)(a), it is says that once you receive the report, the officer would visit the site. It goes further to say that when the man visits the site, he would meet with the operator to verify the authenticity of the report and to the extent that gas is being flared from the facility, determine the cause of the gas flaring, the date when the gas flaring commenced and the volumes of gas flared or vented from the facility each day.

I do not know if you truly think that we should specify this so that we do not also say that when he goes there, he must first shake hands before they start the discussion. To say he will go to the site and meet with the operator, that to me is a normal routine exercise if he goes there. *(Interruptions)*

Can we just conclude on this, Senator Andrew Babalola? Let us get this argument right, first. Our Lawyers here, do we need to specify this? To say that when he goes there he will meet with the operator, ask him some questions and then write his report, truly it is superfluous to me.

Senator Andrew Babalola: Mr. Chairman, as you said, authenticating with the operator is superfluous. We should say that: *The Officer shall determine the cost of the gas flaring, the date when the gas flare*

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commenced and the volumes of gas flared from the facility each day.

The Chairman: What is the essence of the visit? Why do we have to tell him that because that is why he is goes there? What you are saying is the same. You have not said anything different. The essence of the visit is to determine all those things. He would have a template that he would feel when he goes there and we could not write that template for him.

Senator Ewa-Henshaw: Mr. Chairman, I think this is probably the point at which we should require the regulator, DPR or whoever is appointed by the Minister to install in all these locations the Air Quality Monitoring System. That is what will tell them whether there has been gas flaring or not. They should also be required to check their systems and the air in the area on a regular basis and not to go to the operator. The Regulator should install a system that will tell him what is happening and he should visit it on a regular basis.

The Chairman: Is that not a routine administrative matter? Do we want to begin to spell out all these things in the law?

Senator Eme Ufot Ekaette (Akwa Ibom North-South): I found this Committee's Report on Clause 8 to be dwelling on administrative matters. In law we do not need all the explanation. If you go down to Clause 8(4) it says: *You should report within 14 days.* In Sub-Clause (5) it says: *The Minister or the Director acting on behalf of the Minister determines the report of gas flaring that it is authentic and that the gas does not fall within days;* These are all administrative matters that should not come into the law.

Senator Ibrahim Mohammed Ida: Mr. Chairman, Clause 8(3)(a) stipulates clearly that the officer appointed should visit the facility. Sub-Clause (3)(b) is intended to provide him with the terms of reference on what he is going to do there. If you leave it at just to visit, he could simply go there in and out. But I believe that the offensive part of that Sub-Clause (3)(b) should be deleted. That offence part reads: *... shall meet with the operator of the facility.* That Sub-Clause could be amended to read thus: *During the visit, the officer shall verify the authenticity ...* This serves to provide him with a clear terms of reference of what to do when he gets there. But, if we leave only Sub-Clause (3)(a) then all he needs to do, is to visit that place and, maybe, goes in as the Chairman has suggested, shake hands and go out. Sub-Clause (3)(b) gives him a clear terms of reference, and I believe it could be retained as amended

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and the Amendment shall be the deletion of the words; *meeting with the operators of the facility.* The rest of the sentence should remain and that tells him clearly of what he is supposed to do when he gets there.

The Chairman: Could we then amend Sub-Clause (3)(a) to read: *Being flared as specified in the Report to verify.*

Senator Ahmed Lawan (Yobe North): Mr. Chairman, I want to propose that we substitute the word; *visit*, with the word; *inspection*, so that it reads thus: *Sub-Clause (3)(a) - An officer appointed pursuant to Sub-Section (2) of this Section who receives a report of gas flaring or venting shall within 48 hours of receipt of such report inspect the facility.*

Sub-Clause (3)(b) will start with the words: *During the inspection ...* This takes out all these controversies about shaking hands or whatever. This is because the word; *inspection* is specific that he goes there to perform that particular job rather than using the word; *visit* which means, he could go there without inspecting the facility and, maybe, take lunch there and leave.

Senator Ayogu Eze: I believe that we can run away from all these problems by returning to what was provided in the Law, which is, Clause 8(3) without going to Clause 3(a) and (b) it says:

The Minister or the Director, acting on his behalf, shall on receipt of a gas flare report, issue a shut down order and ensure actual shut down of such field, group of fields or facility involving gas flaring. It is now left for him to determine how it is done. Here we are prescribing how he is going to do his job, but the Law has already given him the mandate on what he should do. So, if we remove Sub-Clause (3)(a) and (b), and just retain Sub-Clause 3 that solves the problem.

Senator Lee Ledogo Maeba: Mr. Chairman, we are unnecessarily heating up the debate. Sub-Clause (3)(a) and (b) is correct. The only confusion I see in this Clause is Sub-Clause (1). Sub-Clause (3) is very correct. An Officer means an Inspector appointed by either the Director of Petroleum Resources or the Director General of NESRA or NOSDRA to investigate a petition that has come to their Office that Company Total or Company anything is flaring gas not known to the Minister or to the Department. They will now send an Inspector as specified in Sub-Clause (3)(a). When the Inspector reaches there, he will then assess either the report of flaring is correct or not. If the report is correct

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then, he would then process the necessary paper to authenticate that report.

Sub-Clauses (3)(a) and (b) is very correct. It is the job of the Regulator. The officer mentioned here is actually an Inspector. Officer here could be replaced with the word; *Inspector* who is going to inspect the facility so reported.

But the confusion in Clause 8(1) is to say DPR, NESRA, or NOSDRA, it now becomes a job meant for everyone of which somebody is expected to do and nobody may do it. So, we now need to be specific because all these Agencies do not belong to the Ministry of Petroleum. NESRA belongs to the Ministry of Environment. The other Agency may belong to another Ministry. So, it will now become a concocted assignment which you need to separate. So, I believe we have to do it by ourselves. If we are dealing directly with the Ministry of Petroleum we have to remove NOSDRA and NESRA and put the regulator that is specified.

I am very sure that all these agencies mentioned here belong to other Ministries such as the Ministry of Environment. It now becomes a job so many. We should streamline one and when we do so, the issue of who is an Inspector becomes very clear. We now know that the report goes to the Department of Petroleum Resources and that the Director of Petroleum Resources appoints an Inspector to go to the field; and also that the Inspector reports back to the office so that Sub-Clauses (1), (2) and (3) become correct. It is operational. It does not mean that anybody who sees a gas flaring may be somebody around the environment and can go and report. Anybody can report anything but the issue is that the active word here is; *officer* which can be replaced with the word; *inspector* from the Department of Petroleum Resources. We will remove the words NESRA and NOSDRA because they belong to other Ministries. Once that is done it becomes streamlined. It is very operationally correct and the law is good as recommended.

The Chairman: I am not sure that the nomenclature of the person involved is what the issue is; but if you think that the nomenclature is the issue, then we can address that. I do not think it is the nomenclature whether it is an *officer* or *director* or *inspector* or whatever that is the issue here.

Senator T. U. Wada: Mr. Chairman, I want to marry the two to produce only one Clause. The Amendment reads thus: *An officer appointed pursuant*

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to Sub-section (2) of this Section who receives a report of gas flaring or venting shall immediately and not later than 48 hours of the receipt of such a report visit the facility where the gas is allegedly being flared and determine the cause of the gas flaring, the date when the gas is being flared and the volume of the gas being flared or vented from the facility each day. That completes everything. It captures what the officer will do there and then tells us why he should be there and when. I think that solves the problem.

Senator Mohammed Mana (Adamawa North): Mr. Chairman, from what we are saying the issue of this *visiting* is very important. This is because if you take a look at the Hotel Premises Act it specified that the visit and the inspection must be undertaken. It must be stated that inspection must be carried out.

I agree that we should merge Sub-Clause (3)(a), (b) and (c) but inspection must be carried out. The issue of whether or not to carry it out does not arise. It must be carried out because if you are going to certify a hotel or something else, it must be specified that the Fire Service must visit that place. Anywhere he has to visit, the visit must be done. I do not agree that it would be superfluous if we include the visit.

Senator Ike Ekweremadu (Enugu West): Mr. Chairman, we can merge Sub-Clause 3(a) and (b). First of all, there is already a report which would have stated where the thing is, how it happened, the volume and possibly the effect. So, what we can do is to bind two of them together in one sentence without all these details and state thus:

An officer appointed pursuant to Sub-Section (2) of this Section who receives a report of gas flaring - because there is already a report - or venting shall within 48 hours of receipt of such report visit the facility where gas were allegedly being flared and investigate the report.

The new phrase added there is; *and investigate the report*. Investigation will detail all these things. This is because there is a report stating some of the issues which he will just go there to verify them. If we may just add the words; *and investigate the report* it will take care of all those things that are contained in Sub-Clause (3)(b).

The Chairman: The difference between what the Deputy Senate President and Senator T. U. Wada said is that Senator Wada expanded what the investigation

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would entail. Perhaps, we should take Senator T. U. Wada's little more comprehensive Amendment.

Senator Ayogu Eze: Mr. Chairman, I object to that because the aim of that Sub-Clause is to procure shut down. The Amendments being proposed by either Senator T. U. Wada or the DSP has left it at the level it was before. If you look at the original Bill all the rigmarole here is to procure a shut down once these thing happens. The earlier Clauses we treated has prescribed what categories of problems that can occur which include start up, sabotage, equipment failure, *et cetera*. All these have already been determined.

What is now before is that the Minister or his appointee should ensure within a period, maybe, we can say 48 hours, that this flaring is stopped. Talking on how the man will go from point 'A' to point 'B' to investigate is already implied in the provision of Sub-Clause (3)(a). You cannot shut down without investigating and finding the cause. We are just rigmaroling but what this law tends to do is to procure a shut down.

The Chairman: The essence is not the shut down. It cannot be because by what you are explaining, once the man receives a report he orders a shut down. It is not going to work that way. The point they are trying to make here is the steps that will be taken before you can order for a shut down. That is what we are trying to do. If you shut down and the report is not correct, what do you do? You cannot guarantee that hence we are saying that these are the steps that you will take before you shut down.

Senator Ayogu Eze I do not think you are quite correct. What I want to know is whether we should take Senator T. U. Wada's Amendment or that of the DSP.

Senator Izunaso: We take Senator T. U. Wada's Amendment.

The Chairman: So, I will put the Question on Clause 8(3)(a) and (b) as amended.

Amendment put and agreed to.

Clause 8(4) says that: *The officer shall submit a report of the verification exercise to the Minister or the Director within 14 days of his visit to the facility from which gas is being flared or vented.*

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Senator Joy Emodi (Anambra North): Mr. Chairman, I am bothered about the option captured by this Clause. I feel that the officer appointed should submit the report of the verification to his appointor and not otherwise. So, I do not think there is need for the option of submission of the report to the Minister or the Director. He should, for ease and orderliness in administration, submit his report of the verification to the Director and then, maybe, through the Director to the Minister. The couching of the provision there; *submission to the Director or the Minister* is not right. Perhaps, this is a junior officer appointed by the Director.

The Chairman: There is a point that Senator Lee Maeba made that we just ignored. It is whether the officer is going to report to the Department of Petroleum Resources, NOSDRA and NESRA and he said that those three organisations one belongs to the Ministry of Environment and the other one belongs to another Ministry. That none of them belong to the Ministry of Petroleum Resources.

If a man who does not know goes to make a report he would not know where to report to. The point Senator Lee Maeba and which I we should address is, which of the three bodies do we want to take charge of this because all of them cannot be doing it otherwise, it could be everybody's job and no man's work.

Senator Osita B. Izunaso: It is specifically the job of DPR, but for the purposes of reporting, we did not say that these other bodies should investigate. We said, assuming there is no DPR Office you can report to NESRA or NOSDRA and what is the meaning of NOSDRA? NOSDRA means, National Oil Spill Detection and Response Agency. When you report to them they refer it to DPR because it is the job of DPR to investigate gas flaring, not any of those other bodies. But assuming that there is no DPR in the area, you can report to any of those agencies. I am not sure if I have made myself clear. We are only talking about reporting and not carrying out investigation.

Senator Bassey Ewa-Henshaw: Mr. Chairman, we should just limit it to DPR. DPR should make themselves available and accessible to wherever the report is to be made. If we leave it at this it will create confusion.

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Senator Joel Danlami Ikenya (Taraba South): Mr. Chairman, I know the work of NESRA just as it is clearly stated. I also know about NOSDRA. I believe that even if the person reporting has found out that there is no bickering over there implies that if you report to NESRA, NESRA will still report to DPR. The best we can do is to go straight to the agency that is responsible no matter how long it takes. Therefore, I am of the opinion that certain roles that are supposed to be done by NOSDRA and NESRA, which are also captured in the Bill already to be left to them. They have their functions. I am of the opinion that they should go straight to DPR, not the two agencies stated here. The two agencies should be deleted.

Senator James Ebiowou Manager: Mr. Chairman, there are two points that I want to raise. Firstly, instead of to the Director which is becoming nebulous because of the three competing Directorates as named here, whether NESRA, NOSDRA or DPR. I think they are all answerable to the Minister. This is very important and there is no point creating bottlenecks. The officer or the investigator must be answerable directly to the Minister instead of passing through a particular Director.

Secondly, I am of the view that 14 days is too long because this is what must be done smartly. Instead of 14 days, I would rather propose seven days. If the Minister gets it and he wants the input of a particular Director, the Minister can as well minute it to the Director for his input.

The Chairman: Can we finish the issue of DPR, NESRA and NOSDRA, because Senator Joy Emodi raised the issue that you are addressing now but we want to finish with the issue of DPR, NOSDRA and NESRA.

Senator Jibril Aminu: Mr. Chairman, I recommend first of all, that we put Minister, because anybody doing anything in the Ministry is doing it in the name of a Minister even a Clerk. The Director himself is working for the Minister. He carries out the Minister's orders. That is how the system works. Even a Clerk signing for the Permanent Secretary is signing for the Minister. I suggest we delete *Director*. This is also to avoid creating local confusion for the Director thinking that he has got a special identity.

Secondly, these other Agencies have their laws. Wherever there is environmental infraction they have a right to be there. They will be there and do according to the system in their law. Here we are dealing with the

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problem of Ministry of Petroleum Resources. They deal with petroleum matters. If they report to the Minister through whatever channel, by the way, if the man goes and submits a report to his head of department even if he does not go to the Director, he should submit it to the Minister and that is where it will be recognised in law. We should leave everything in the hands of the Minister.

If the environmental people find something, eventually they will also through their Minister, contact the Ministry of Petroleum Resources because they are the people who have the resources, power and authority to do it. I would recommend that we leave it as Minister and remove the other Agencies without prejudice to the effect that according to their laws, they have a right to inspect any environmental infraction. But for the purposes of our law, we should put Petroleum Resources that is the Minister.

Senator Osita B. Izunaso: Mr. Chairman, I would like to refer us to page 14, under Exploratory Note. When we talk of Director here what we actually mean is the Director, Department of Petroleum Resources, who is the Chief Executive of that Department, which is an agency of Government on its own. When we say Director, we are referring to Director of DPR who is the Chief Executive of that Agency. It is a full fledged Parastatal. It is not an ordinary department in the Ministry of Petroleum. It is a Parastatal under the Ministry of Petroleum not one of the Directorates in that Ministry. When we say Director, we are actually talking about the Director of DPR and not any other Director.

The Chairman: Can we finish with Clause 8(1) first on DPR, NESRA and NOSDRA? Do we leave it as DPR?

Several distinguished Senators: Yes.

Question put and agreed to.

Clause 8(4) is whether it should be the Director or the Minister and I think the argument here is that the Minister is the overall boss. If it goes to him wherever he wants to direct it to, that would be his own problem.

Amendment put and agreed to.

On the number of days, did we say 14 or seven?

Several distinguished Senators: It is Seven.

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The Chairman: So, we say the Minister and then seven days. Then I put the Question in favour of Clause 8(4) as amended.

Question put and agreed to.

The Chairman: Anywhere you see the word: *Director* change it to the word: *Minister*. Clause 8(5) reads: *If the Minister determines that the report of gas flaring is authentic, and the flared gas does not fall within any of the exceptions specifies in Section 1(3)(ii), he may in his discretion, impose the fine specified in Section 3(a) - I think it should 4 now - in respect of the volumes of gas flared or vented from that facility or issue a shut down order mandating the shut down of the facility in question or both. This is long winding. Is it all right?*

Senator Nimi Barigha-Amange: Mr. Chairman, I cannot find Section 1(3)(ii) as stated here and Section 3(a). I do not know where those ones are.

The Chairman: I think it is actually Section 3. You said that with any of the exceptions specified in Section 1.3(ii) he cannot find 1.(3)(ii).

Senator Osita B Izunaso: It is Section 4(2).

Senator T. U. Wada: It is Section 4(2).

The Chairman: You said that Section 1.3(ii) is Section 4(2) which says: *Notwithstanding the provisions of Sub-Section (1) of this Section, the Minister may grant permit to flair or vent gas for the purposes of safety flaring non-continuous production flaring or any other purpose determined by the Minister such as but not limited to gas flaring resulting from damage to oil and gas producing facilities.*

Senator T.U. Wada: The first Section which he complained that he could not see, which is 3.3(a) which is 1.3(ii) is meant to be Section 4(2). Section 4(2) permits the Minister to authorise (*Interruptions*)

The Chairman: That is what I have just said.

Senator T. U. Wada: Section 3(a) which he is talking about is Sub-Section (3) of Section 8 which we just amended and I delivered the Amendment. Section 3(a) becomes Sub-Section of Section (8).

Senator Osita B. Izunaso: In respect of gas flaring.

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Senator T.U. Wada: Did you not understand me, Sir?

The Chairman: It is not Section 8(3) because Section 8(3) talks of the officer who would be going there to do all these things. This is talking of the fine. It is not in anyway related to Section 8(3).

Senator Ike Ekweremadu: It is Section 4(3).

The Chairman: It is Section 4(3) which says: *Any person who flares of vents gas without the permission of the Minister in the circumstances mentioned in sub-section (2) above shall be liable to pay a penalty which shall not be less than the cost of gas at the international market. So, it is actually Section 4.3.*

Senator Sola Akinyede: The exceptions are enumerated the Section 4(2).

The Chairman: But it is the fine that we are talking about and not the exception. We have finished with the exceptions.

Senator Ayogu Eze: It is specifying fine but it is trying to show the exceptions that are not going to be affected by the fine. If you take a look at Section 4(1) and (2) actually, 4(3) has taken care of 4(2). But Section 4(1) has not been taken care of. This is because it speaks about gas flare in cases of start up, equipment failure or shut down. Those ones are also exceptions.

The Chairman: Let me read it for you. It says that: *He may in his discretion impose the fine specified.* The fine is specified in 4(3).

I will put the Question in favour of Clause 8(5) as amended.

Question put and agreed to.

Is there any comment on Clause 8(6)?

Senator Chris N. D. Anyanwu: Mr. Chairman, I would like us to consider the removal of some of the excess and unnecessary long-winding aspects of that Sub-Clause. I will just move the Amended that I have made on it.

The Chairman: What Section are you referring to?

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Senator Chris. N. D. Anyanwu: I am referring to Sub-Clause (6).

Senator Sola Akinyede: The problem I have with Clause 8(5) is that it gives the Minister discretion to impose a fine. I want to propose that it should read that: *He shall either impose a fine or order a shut down.* Not that he should have discretion. This is because the Minister may not even impose it at all which is an abuse of his powers. The Clause should read: *He shall either impose a fine specified in sub-section (3)(a) in respect of the volumes of the gas flared or vented from the facility or he shall issue a shut down order.* Not that he should have discretion to impose a fine or not.

The Chairman: Though, we have passed that one, if we leave it as *may* it does not really change it. He can do any other thing. Why do we have to say he shall impose a fine or shut down? If you are the Minister, are you saying that you are going to do something that is not correct? We have debated that before. We should allow the Minister some level of discretion.

Senator Lee Maeba: Point of Order, Mr. Chairman!

The Chairman: Yes, what is your Point of Order, Senator Lee Maeba?

Senator Lee Maeba: If a man makes a report to the DPR that there is flaring of gas somewhere and before the DPR reaches there the oil company has rectified the problem, then you arrest the man who actually saw the gas being flared. This is a practical situation in the field. DPR is incapable of reaching all the areas of operation. We are talking about the territory of the Federal Republic of Nigeria. So, if a man reports he may not be lying. But between the time of his report and the operator reaches there, the problem has been rectified and you then arrest the man that is not good. Therefore, I propose that Clause 8(7) should be deleted.

The Chairman: Senator Lee Maeba, the condition that you painted of DPR, is that the ideal situation? Why should DPR be depending on the oil companies that they are supposed to check for their movement or for editing what they do? That is not the ideal condition. What we are trying to do on paper here is an ideal DPR condition that is fully equipped to do its work properly.

Senator Smart Adeyemi (Kogi West): Mr. Chairman, I just want to observe that we should not be seen to be making laws that would favour the multi-national companies. This is because if we are saying

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that lodging of false report on gas flaring should amount to a crime, the issue would be that we are saying that the citizens should ignore any act of sabotage. In the first instance, I believe that nobody in his right senses will make a false claim.

Secondly, I equally believe that the people within the area should be seen to be championing their own wellbeing. So, if there is gas flaring and they decide to report and if after they have reported the incident it could not be established, they should not be punished for it. This is because if we go ahead to pass this Bill, it would amount to us, working for the multi-national companies. We should not create the impression that some foreign companies have input into what we are doing here. From what I have seen here, quite a number of these Clauses favour the oil companies more than the Nigerian people who have voted us into office.

Therefore, we should expunge this Sub-Clause. That is my position. It is anti-people and since this is not a Military Government; with due respect to you, Mr. Chairman. Even in the era of Military Government, such laws were not made in Nigeria. We should not make laws that appear militant against our own people under a democratic dispensation. If we do that would be very wrong.

The Chairman: Which Clauses favour the multi-nationals, because you said that from what you have seen, it looks like what we have done here all favour the multi-nationals more. You should point them out so that we can go back and correct them because that is not the essence. We are not here to favour the multi-nationals.

Senator Smart Adeyemi: Mr. Chairman, as we proceed I will take time to bring them out. For now, I withdraw that statement, but I will still come back to it later.

The Chairman: That statement is withdrawn for now. You should withdraw it unconditionally which is the correct thing.

Senator Smart Adeyemi: I withdraw the statement.

Senator Jibril Aminu: Mr. Chairman, I support that we delete this particular Sub-Clause. I do not have the eloquence of Senator Smart Adeyemi, but I support that we delete it because the whistle blowers in any society should be encouraged and not discouraged and intimidated. These are whistle blowers.

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Secondly, flaring could be short-lived. It is very easy for them to find a way of proving that the man is a liar when he is actually telling the truth. Thirdly, these companies are very powerful; they could bribe their way and ensure that the man is declared a liar. Fourthly, somebody who tells a lie, a blackmailer and a smear campaigner, are crimes in the Criminal Code. You do not have to legislate on that. If somebody feels he has been maligned, blackmailed or whatever, he can go to a court of law and claim damages. There is no reason for us to put it here. It is better for the system if we encourage the whistle blower and just take this Sub-Clause out.

Senator Joy Emodi: Mr. Chairman, a good law is a law that would specify sanction that is not too oppressive but one that is implementable and reformatory. I do not see anything wrong in having a Clause dealing with sanction in this Bill. I support the position of the Deputy Senate President that there must be sanction in order to prevent miscreants in the society disrupting the functions of these companies. It is important. The only thing is that the fine should not be too high given that most of the informants would be villagers in the catchment areas. It should be a little amount with an option of imprisonment. For the law to be effective there should be a sanction.

The Chairman: I can put the Question now unless there is a mid-way argument.

Senator Isiaka Adetunji Adeleke: Mr. Chairman, I want to support those that have called that Clause 8(7) be expunged. However, I want to ask if there is no way for DPR to detect if actually there is gas flaring? There should be a way for them to detect that. They should not have to wait for people to report to them.

The Chairman: All right, please listen properly. The first Question is for those who support that Clause 8 (7)(a), (b) and (c) as amended to stand part of the Bill.

Question put and negatived.

The Chairman: Clause 8(8).

Senator Ibrahim Ida: Mr. Chairman, the way Clause 8(8) is couched is very clumsy, vague and ambiguous. In the first place, it seeks to bring criminal and civil issues together. A fine and an imprisonment are results of criminal prosecution. Damages result from civil claims and the burden of proof for the two are totally different. In criminal case, it is proof beyond

reasonable doubt and in civil cases it is on the level of probability.

The reason I am raising this is because a provision of the law should be very clear on what it wants to achieve. If it is to make this a criminal offence then let it be a criminal offence. If it is to be a civil offence, let it be a civil offence for which damages could be claimed. That is one.

Secondly, if you refer back to 7(b) which has been deleted, it is very elegant in that if you want to have a level from one to the maximum, you say that it should not exceed the upper limit. But where you say, liable to a maximum fine of this; what really do you mean. Do you mean that figure alone or from one to that figure? If you mean this alone, a single statement of a fine of this amount states clearly the maximum amount you are talking about. But where you want to have a band between one to the upper limit, you simply say not exceeding the upper limit. That is actually the position of law. So, if this is to stand, first of all, it has to be very clear. Does it intend to criminalise this offence in which case, a fine or imprisonment or both could apply? Then you remove damages. But if you want to make it a civil case - (*Interruptions*)

The Chairman: What will the new Clause 8(8) now be?

Senator Ibrahim Mohammed Ida: The new one should read thus: *Anyone found guilty of sabotaging oil and gas installations shall be liable to a fine of N10 million or five years imprisonment or both such fine and imprisonment.*

The Chairman: I have not understood the difference between what is here and what you have said. Senator Victor Ndoma-Egba, if you are involved in sabotage in this country, forget the oil industry now, sabotage of any kind, is there no charge for which you may be brought to court?

Senator Victor Ndoma-Egba: We have the Miscellaneous Offences Act that criminalises actions of this nature even the EFCC Act does. There are so many laws on this.

The Chairman: So, is there a need for this one here?

Senator Adamu Garba Talba (Yobe South): Mr. Chairman, I propose that it should go. I think there is a

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law in the pipeline by the Executive that says sabotage means action on militancy. So, there is a proposed law to impose penalty against militancy. I do not know how we can get this married with that law that is coming up.

The Chairman: I should put the Question now in favour of the deletion of Clause 8(8)

Question put and agreed to.

Question on the Main Clause as amended, put and agreed to.

Clause 8 – (GAS FLARE REPORTS AFTER JANUARY 1, 2009) – as amended, ordered to stand part of the Bill.

Senator Teslim Kolawole Folarin: Mr. Chairman, I move that we defer further consideration of this Bill till another legislative day and that you report progress.

Senator Kabiru Ibrahim Gaya: Mr. Chairman, I second the Motion ably moved by the Senate Leader that we suspend further deliberation on this Bill to another legislative day and that the Chair reports progress.

Question put and agreed to.

(The President resumed Chair)

The President: The Senate in the Committee of the Whole resumed consideration of the Report of the Committee on Gas, on the Prohibition of Gas Flaring Bill, 2009 and approved as follow -

Clauses 5 to 6 – as amended

Clause 7 – as recommended

Clause 8 – as amended

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Further deliberation of the Report is deferred to another legislative day. Is this a true reflection of what transpired in the Committee of the Whole?

Several distinguished Senators: Yes.

Senator Teslim Kolawole Folarin: Mr. President, for time constraint, I move that all other items on the Order Paper be stood down to another legislative day.

Senator Kabiru Ibrahim Gaya: Mr. President, I second the Motion ably moved by the Senate Leader that all other items on the Order Paper be stood down to another legislative day.

Question put and agreed to.

By leave of Senate remaining items on the Order Paper suspended to another legislative day.

ADJOURNMENT

Senator Teslim Kolawole Folarin: Mr. President, I move that this Senate do now adjourn till tomorrow, 20th May, 2009 at 10.00 a.m.

Senator Kabiru Ibrahim Gaya: Mr. President, I second the Motion that the Senate do adjourn to Wednesday, 20th May, 2009 at 10.00 a.m. prompt.

Question put and agreed to.

Resolved: That the Senate do adjourn till Wednesday, 20th May, 2009 at 10.00 a.m. prompt.

(The Senate accordingly adjourned at 1.55 p.m.)