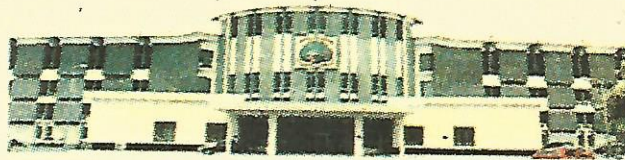




Chairman on Committee
Judiciary, Human Rights, Claims
and Petitions



The Liberian Senate
CAPITOL BUILDING, CAPITOL HILL, MONROVIA, LIBERIA
WEST AFRICA

30 November 2021

Mr. President Pro Tempore &
Distinguished Senators
The Liberian Senate
Capitol Bldg., Monrovia, Liberia

Mr. President Pro Tempore & Distinguished Senators:

RE: Report of the Judiciary Committee on the Complaint of
The Coalition for Restoration of Liberia Five Percent (5%)
Equity in Petroleum Agreements

- I. Background Information on the Complaint of the
Coalition for the Restoration of Liberian Five Percent
(5%) Equity ("CORLE") in Petroleum Agreements

The Coalition for the Restoration of Liberian Five Percent (5%) Equity in Petroleum Agreements ("CORLE"), by and through Senator Abraham Darius Dillion from Montserrado County and Senator Jonathan Boy Charles Sogbie from River Gee County, complained to the Liberian Senate that the "Act to Amend Certain Provisions of the New Petroleum (Exploration and Production) Reform Law of Liberia, 2014", which was published on October 17, 2019 (herein the "The Petroleum Act Amendments of 2019") deprives Liberian citizens of the right reserved to Liberian citizens by the New Petroleum (Exploration and Production) Reform Law of Liberia, 2014 (hereinafter the 2014 Petroleum Reform Law") to five percent (5%) of the revenues from all petroleum agreements. CORLE seeks to have the Legislature reinstate this right.

In 2002 the "Act Adopting the New Petroleum Law" (hereinafter the "2002 New Petroleum Law") was published. At Section 3.3 of this law, twenty

percent (20%) equity interest in all production operations and exploitation of hydrocarbon deposits was reserved to the National Oil Company of Liberia (“NOCAL”). At Section 3.4 of this law the right was reserved to individual Liberian citizens to purchase through the National Investment Commission (“NIC”) one-half (½) of the twenty percent (20%) equity reserved to NOCAL. This is equal to ten percent (10%) of the total of all production operations and exploitation of hydrocarbon deposits.

In 2014, the New Petroleum (Exploration and Production) Reform Law of Liberia, 2014 (hereinafter the “2014 Petroleum Reform Law”) was enacted. Section 35 of this new law provides that the State, through NOCAL, shall have not less than ten percent (10%) rights and interest in any petroleum agreement and this option shall be exercised by the Minister of Finance and Development Planning for and on behalf of the State. Section 36 of this new law provides that ***“In addition to the State participation provided in Section 35 of this Act, the State shall have the right to acquire five percent (5%) participation in the rights and interest of a contractor under a petroleum agreement for the benefit of a citizen fund which shall be established and managed in accordance with the following provisions of this Section 36”***.

In 2019 “An Act To Amend Certain Provisions of the New Petroleum (Exploration and Production) Reform Law of Liberia, 2014” (hereinafter “The Petroleum Act Amendments of 2019”) was enacted. Section 36 of the “2014 Petroleum Reform Law” was one of the amendments. Section 36(a) of “The Petroleum Act Amendments of 2019” states: ***“In addition to local content provisions in the Exploration and Production Act, each petroleum agreement shall contain a provision of at least five percent (5%) total equity stake for companies owned by natural persons of Liberian Citizenship. Such interest may be limited to equity interest and may not be carried interest.”***

II. The Issue Presented to the Liberian Senate by CORLE

The issue presented to the Liberian Senate by CORLE is whether “The Petroleum Act Amendments of 2019” has deprived Liberian citizens of the right to five percent (5%) of the revenues from all petroleum agreements? CORLE proposed that the prevailing law deprives Liberian citizens of the right to five percent (5%) of the revenues from all petroleum agreements and CORLE requests the Legislature to have this right reinstated.

III. Discussion

A public hearing was entertained by the Judiciary Committee at which the following persons were invited: (1) Mr. Ambulah A. Marney, Head of CORLE; (2) Cllr. Frank Musah Dean, Jr., Minister of Justice and Attorney General; (3) Hon. Seifua Mai Gray, Chief Executive Officer of the National Oil Company of Liberia (NOCAL); and (4) Hon. Archie Donmo, Director General of the Liberia Petroleum Regulatory Authority. Members of the public were also invited to attend.

Representing CORLE was Cllr. Findley Karngar and representing the National Oil Company of Liberia (NOCAL) was Dr. Lester Tenny, its Deputy Chief Executive Officer. The Minister of Justice and Attorney General was present in person; and so was the Director General of the Liberia Petroleum Regulatory Authority. Interested members of the public, including the media, were present.

In addition to members of the Judiciary Committee, Sen. Jonathan Boy Charles Sogbie was present and actively participated in the deliberations.

The purpose of the public hearing by the Judiciary Committee was to ascertain the prevailing law and make recommendation(s) CORLE's complaint to the Senate Plenary of its consideration.

Each of the invitees made an oral presentation and some of them also made written presentations. Thereafter an interactive discussion ensued.

During the interactive discussion, the question was posed to CORLE as to whether the request made by them should not have been submitted to the Judiciary, whose function it is to determine what the law is. The Judiciary Committee submitted that the issue appears to be an issue of judicial interpretation of law enacted by the Legislature, not a re-construction of law already enacted by the Legislature. However, CORLE convinced the Judiciary Committee to continue with the hearing and make a determination as to whether there is a need to amend the law to restore the right of Liberian citizens to five percent (5%) of the revenues from all petroleum agreements.

Section 36 of the 2014 Petroleum Reform Law reads verbatim, as follows:

"PART VIII CITIZEN PARTICIPATION

"36. Citizen participation in revenues from petroleum agreements

"36.1 In addition to the State participation provided in Section 35 above, the State shall have the right to acquire a five per cent (5%) participation in the rights and interests of a contractor under a petroleum agreement for the benefit of a citizen fund which shall be established and managed in accordance with the following provisions of this Section 36.

"36.2 The Director General shall timely exercise this right on behalf of the State by written notice to the contractor which shall be given within the time provided in the relevant petroleum agreement.

"36.3 Any participation acquired pursuant to this Section 36 shall be carried by the contractor until the start of commercial production, which means that (i) all exploration, appraisal and development costs shall be paid by the contractor, (ii) the State shall pay its participation interest share of all costs of carrying out production operations, and (iii) the non-State participants comprising the contractor shall be entitled to recover the State's participating interest share of all or part of the exploration, appraisal and development costs of the field in question, with or without interest thereon, all under the terms and subject to such conditions as shall be specified in the petroleum agreement.

"36.4 Any citizen participation acquired pursuant to this Section 36 shall be managed by NOCAL which shall become a party to the petroleum agreement under the terms of a joint operating agreement between NOCAL and the other entity or entities comprising the contractor.

"36.5 The citizen participation fund shall be managed by a trustee which shall be a responsible international trust company selected by the Ministry of Finance and Development Planning in consultation with the Central Bank of Liberia, under a trust agreement that provides for the administration of the fund in accordance with the requirements of this Section and is otherwise subject to the approval of the President after consultation with the Legislature.

"36.6 The citizen participation fund shall be used in accordance with a plan that will make the benefits broadly available as widely as practicable to all citizens from both urban and rural areas within the Republic through one or more mechanisms that will ensure that the benefits are extended to the most needed and vulnerable groups of citizens.

“36.7 No later than three years from the transfer completion date referred to in Section 78 of this Act, the Ministry of Finance and Development Planning shall, in consultation with the LRA, the Authority and other relevant ministries, prepare and submit to the President, and the President shall submit to the Legislature, a draft bill for an act implementing the citizen participation fund, which may be a part of an act adopting petroleum management law. Such act shall provide a citizenship participation structure complying with the requirements of this Section 36 and shall, in relation to such citizen participation, regulate the administration of the fund, specify the functions and duties of the trustee and provide particulars on the uses and disbursements of moneys from the fund.”

The provision of “The Petroleum Act Amendments of 2019”, which CORLE submits takes away the five percent (5%) equity rights of Liberians in petroleum agreements is Section 36; which reads verbatim, as follows:

“36. Citizen Participation in Revenues from Petroleum Agreements

“a. In addition to local content provisions in the Exploration and Production Act, each Petroleum Agreement shall contain a provision of at least five percent (5%) total equity stake for companies owned by natural persons of Liberian Citizenship. Such interest may be limited to equity interest and may not be carried interest.

“b. The citizen participation fund shall be used in accordance with a plan that will make the benefits broadly available as widely as practicable to all citizens from both urban and rural areas within the Republic through one or more mechanisms that will ensure that the benefits are extended to the neediest and vulnerable groups of citizens.

“c. Additionally, communities hosting or lying adjacent to the petroleum block shall be prioritized in the allocation of funds derived from citizen participation in revenues from petroleum agreements.”

CORLE submitted that Section 36.7 of the “2014 Petroleum Reform Act” provides in part that no later than three (3) years from the transfer completion date referred to in Section 78 of this Act, the Ministry of Finance and Development Planning shall, in consultation with the LRA, the Authority and other relevant ministries, prepare and submit to the President, and the President shall submit to the Legislature, a draft bill for an act implementing the citizen participation fund, which may be a part of an act adopting petroleum

management law. Such act shall provide a citizenship participation structure complying with the requirements of this Section 36 and shall, in relation to such citizen participation, regulate the administration of the fund, specify the functions and duties of the trustee and provide particulars on the uses and disbursements of moneys from the fund. CORLE also submitted that this three-year period will soon expire through the effluxion of time and the agencies authorized to draft this bill for enactment into law have not done so; their conduct implying that in the face of Section 36 of "The Petroleum Act Amendments of 2019" there is no need for this new bill as the citizens no longer have a right to five percent (5%) interest in the revenues of petroleum agreements.

CORLE also submitted that the only interpretation of Section 36 of "The Petroleum Acts Amendments of 2019" is that it repeals Section 36 of the "2014 Petroleum Reform Law" and substitutes for Section 36 of the "2014 Petroleum Reform Law". As a basis for this submission, CORLE extended its argument by saying that subsection "b" of Section 36 of "The Petroleum Act Amendments of 2019" is the only subsection of Section 36 of the "2014 Petroleum Reform Law", which was retained; all other subsections of Section 36 of the "2014 Petroleum Reform Law" were omitted from Section 36 of "The Petroleum Act Amendments of 2019".

NOCAL and the Liberia Petroleum Regulatory Authority (the "Authority") submitted that from the plain language of subsection "a" of Section 36 of "The Petroleum Act Amendments of 2019", its provisions are in addition to whatever is provided in Section 36 of the "2014 Petroleum Reform Law". NOCAL and the Authority also substantiated their submissions by referring to the form petroleum agreement on their websites, which provide for both five percent (5%) revenues from all petroleum agreements for Liberian citizens and five percent (5%) equity interest for Liberian-owned companies. Unfortunately this form petroleum agreement was not readily available to the Judiciary Committee; but CORLE did not dispute that submission.

The Minister of Justice, for his part, submitted that it appears that there is merely a confusion of what is the law insofar as citizen participation in the revenues of petroleum agreements is concerned and that what is actually needed is a mere clarification to avoid misinterpretation and misapplication of these two amendments to the petroleum law. This is where the Judiciary Committee reiterated its own observation that this matter might have been

proper for judicial interpretation but not for a review of an existing law by the Legislature.

CORLE also asserted that unless the Senate takes some action on its complaint, especially so when then the three-year period for Liberian Government authorities to submit a bill to the Legislature for enactment, which provides the details of the procedures on how Liberian citizens shall enjoy the rights to five percent (5%) of the revenues from petroleum agreements, Liberian citizens are bound to eventually lose that right in the application of these laws.

IV. ANALYSIS

The Judiciary Committee analyzed the various submissions and arguments and concluded that the problem is an issue of drafting of statutes; which should have properly been submitted to the Judiciary Branch of Government, whose function is to interpret the law, not to the Legislature, whose function is to make the law. Howbeit, the Judiciary Committee and the parties agreed that by enacting "The Petroleum Act Amendments of 2019" the Legislature did not intend to deprive citizens of the right to five percent (5%) of the revenues from petroleum agreements; in addition to the five percent (5%) of the revenues from petroleum agreements for Liberian citizens, the Legislature intended merely to grant to companies owned by Liberians the right to five percent (5%) in the equity of petroleum companies engaged in the exploitation of petroleum reserves of Liberia. This means that both the provisions of Section 36 of the "2014 Petroleum Reform Act" and Section 36 of "The Petroleum Act Amendments of 2019" can stand together and the repetition of Section 36.7 of the "2014 Petroleum Reform Act" as Section 36.b of "The Petroleum Act Amendments of 2019" does not vitiate from the rights of citizens to five percent (5%) of the revenues from all petroleum agreements.

All parties agreed that if the Judiciary Committee would submit a report to Plenary as stated in the paragraph immediately above, all parties would be satisfied.

The Judiciary Committee noted with concern CORLE's observation that the Liberian Government authorities (the Minister of Finance and Development Planning, the Liberia Revenue Authority, the Liberia Petroleum Regulatory Authority) have not yet submitted a draft bill to the President of Liberia for onward submission to the Legislature for enactment on the procedure and

mechanism for enjoyment of the right of Liberian citizens to five percent (5%) of the revenues from petroleum agreements. The Judiciary Committee believes that if this bill were enacted into law, the confusion identified by CORLE would be permanently clarified.

V. Recommendations:

Wherefore and in view of the foregoing, the Judiciary Committee recommends, as follows:

1. That the Senate resolves that by enacting "The Petroleum Act Amendments of 2019" the Legislature did not intend to deprive citizens of the right to five percent (5%) of the revenues from all petroleum agreements; in addition to the five percent (5%) of the revenues from petroleum agreements for Liberian citizens, the Legislature intended merely to grant to companies owned by Liberians the right to five percent (5%) in the equity of petroleum companies engaged in the exploitation of petroleum reserves of Liberia. This means that both the provisions of Section 36 of the "2014 Petroleum Reform Act" and Section 36 of "The Petroleum Acts Amendments of 2019" can stand together and the repetition of Section 36.7 of the "2014 Petroleum Reform Act" as Section 36.b of "The Petroleum Act Amendments of 2019" does not vitiate from the rights of citizens to five percent (5%) of the revenues from all petroleum agreements.


2. That the Minister of Finance and Development Planning, the Director General of the Liberia Revenue Authority and the Director General of the Liberia Petroleum Regulatory Authority be invited to show cause, if any, why the bill mandated to be drafted and submitted to the Legislature for enactment into law, which would provide the procedure and mechanism for the enjoyment of the right to five percent (5%) of the revenues from petroleum agreements by Liberian citizens has not been submitted to the Legislature when the three-year limitation period for the enactment of such law will soon expire.

Respectfully submitted:

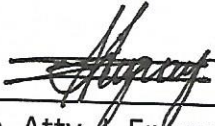
The Committee on Judiciary, Human Rights, Claims and Petitions



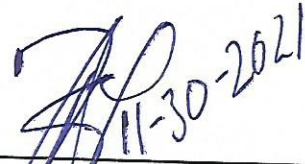
Sen. Abraham Darius Dillon
MEMBER



Sen. Numene T.H. Bartekwa
MEMBER



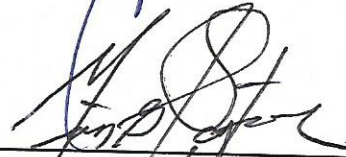
Sen. Atty. J. Emmanuel Nuquay
MEMBER



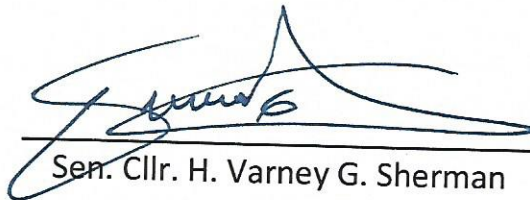
Sen. Cllr. Stephen A.H. Zargo
MEMBER



Sen. Cllr. Augustine S. Chea
MEMBER



Sen. Cllr. Morris G. Saytumah
VICE CHAIRPERSON



Sen. Cllr. H. Varney G. Sherman
CHAIRPERSON