

## OPEN LETTER TO MR. ACTING PRESIDENT

### DEREGULATION... A COMMON SENSE APPROACH

Dear Mr. Acting President,

I am assuming that even if not de jure, you have defacto assumed the powers and functions of the office of the president since the law and nature abhor a vacuum, if my assumption is correct, let me delve straight into the subject of my letter to you.

The Federal Government of Nigeria, it appears, is totally committed to the deregulation of the oil sector. Were deregulation in the best interest of Nigeria and the people of Nigeria I would have not opposed it. Unfortunately I find the policy totally anti people on many fronts and place my opposition to it on record.

Contrary to the impression the government has strenuously tried to create, subsidy is not necessarily a bad thing particularly if it is the only thing a government can give back to its people for the protection of their welfare, and maintenance of their already pitiful standard of living. This is more so when what government is subsidizing is a product that has been given so mercifully to the country by God and is readily available in our backyard. To now expect that pricing of such a product should be based on international market prices which are dependent on many vagaries and variables including quotas, politics, wars, etc, defies and stands logic on its head. Logic and commonsense dictate that petroleum products should be cheaper in Nigeria pretty much the same way coffee is cheaper in Brazil or tea in China. The notion that the cost of a product that is produced in one's own backyard should be based on the cost of importation offends the sensibilities of most Nigerians. Deregulation as an economic term can in and of itself be a good thing, however in the context it is being employed in today's oil sector reform means simply relaxing the controls on the importation of fuel. Why must we import what we have? That is the real question that government has been unable to answer satisfactorily. Why in the name of anything and everything you believe in are our refineries not working? Why must we import our own products? It beats me hollow Mr. Acting President, beats me hollow.

So what if it costs the government billions of Naira to subsidize every year? Mr. Acting President, so what? Every year for the past eight (8) years, government has funded different events costing the tax payers billions of naira, some of which many will consider unnecessary. From CHOGM (visiting Heads of States) to Commonwealth game COJA, to this year's World Cup. For crying out loud you have just proposed in your 2010 budget to spend billions on such fancies but no we do not have billions to subsidize oil for the welfare of Nigerians? Common

sense. Mr. Acting President, common sense.

I have also heard the argument that under the current set up there is a cabal that is milking the country and benefitting from the present arrangement. Now Mr. Acting President, are you telling Nigerians that with everything at its disposal this government does not have the will intellect or capacity to weed out this phantom cabal and cut them to size? Now for argument sake let's assume your government says it cannot, then why can't we just simply balance the equities? Do we have to punish the rest of Nigeria (95 percent) for the sins of at best a 5 percent cabal? Many Nigerians will tell you commonsense says let them continue with their plundering activities if trying to stop them would mean destroying the lives of the rest of your people. Common sense, that's all it is.

Again Mr. President, subsidy can be a good thing. I am sure you are aware that subsidies exist in many countries for products, goods and services. They exist not because the governments of those countries have so much money to give away, no sir. The subsidies exist simply because the government believes the welfare of the citizenry is its raison detre and if it needs to subsidies certain things to give them a more abundant life, then so be it. The subsidy on agriculture in the United States (probably the most capitalist country in the modern world) and the subsidy on transportation in the UK will suffice as examples. Yet these are countries that have all the basic necessities of life in place from health care to education to electricity, water, good roads, social security etc unlike Nigeria where the government now seeks to remove subsidy even in the absence of these basic necessities. Common sense Mr. Acting President, common sense. If you do not believe me, then I suggest if you are not able to visit personally, you send your advisers to Venezuela (another oil rich country) where the citizens fill their cars for less than 500 naira to study its model. Actually Mr. Acting President there is nothing to study. The formula is simple... fix your refineries and stop basing prices of petroleum products on international market prices and cost of importation. Such perfidy reminds me of a line an old Bob Marley songs; "in the abundance of water, the fool is thirsty".

Mr. Acting President I am sure you know our economy is a mono economy, driven and dependent almost solely on our oil revenue and consequently, the removal of subsidy or increase in fuel price will as of necessity cause hyper inflation and an increase in every product or services in Nigeria. Even your CBN Governor said as much. The effect on the people you govern can only be imagined. Even from a selfish point of view Mr. Acting President, how do you go to the electorate to ask for their votes in an election year when you have just coldly inflicted them with unnecessary hardship? I am sure you will agree with me that would not be politically expedient nor would it make any sense. Your timing could not be worse. Though I agree that government should not always be run as a beauty or

popularity contest and hard decisions that may not go as down well with the people are sometimes necessary, this is not and should not be one of those decisions. Government should feel the pulse of the nation when the decision has the potential of affecting if not destroying lives. It is the reasons why from medieval Roman times to modern day contemporary democracies, governments sometimes call for plebiscite and referendums so as to be able to hearken to the voice of its people.

Mr. Acting President together with Mr. President, you have made security of lives and property part of your agenda, and quite rightly so as this is enshrined in section 14 of the constitution which declares that the security and the welfare of the people shall be the primary purpose of Government. Well, sir, I have news for you. There is a direct correlation between poverty and crime. The more abject the poverty, the higher the crime rate. Studies over the years have established this fact. What do I mean? When you deregulate, remove subsidy and consequently increase fuel prices, because of our mono economy, everything whether goods or services goes up. As a result the standard of living falls whilst the cost of living goes up. Like night follows day, crime rate increase. For every thesis and anti thesis there is a synthesis and there goes a critical part of your 7 point agenda and section 14 of the constitution which you swore to uphold! I know, I know, you never saw it like that. Well here's an opportunity to avoid such a consequence.

By the way sir, I noticed in the budget proposal you forwarded to the National Assembly, that the cost of subsidy which I assume is government expenditure was not included. I am sure this was an oversight and not a surreptitious way of deregulating and removing the subsidy. Anyway we will try to correct the mistake before passing the budget. In any case, if the removal from the budget is intentional and not a mistake, one would have thought the yearly 600 billion naira would represent savings and therefore some form of indirect or assumed revenue to government. This has not been reflected and more egregious is the fact that we do not know what we would be applying the savings towards. And please spare us the tired line of roads, infrastructure, health and education. We do not need to kill Nigerians before these can be realized. If you do there won't be many people alive to enjoy your platitudes.

Now, Mr. Acting President if my commonsense approach does not persuade you, how about we try the law. Let's start with the constitution.

In my opinion Mr. President, it is very doubtful that you can constitutionally deregulate and hand over the petroleum industry to the private sector. I am not arguing the merits or demerits of this privatization policy, I only speak to its constitutionality. Why, you ask? The 1999 constitution in section 16 (1) states: a). The state shall, within the context of the ideals and objectives for which

provisions are made in this constitution.

- b) Control the national economy in such a manner as to secure the MAXIMUM (emphasis mine) welfare, freedom and happiness of every citizen.
- c) Without prejudice to its right to operate in areas of the economy, MANAGE and OPERATE the MAJOR (emphasis mine) sectors of the economy.

These two provisions appear in spirit and in letter to render the deregulation of the petroleum sector unconstitutional.

Furthermore, section 16 (2) states:

- b) That the material resources of the nation are harnessed and distributed as BEST as possible to serve the COMMON GOOD (emphasis mine)

Sir, the only way you can 'harness and distribute' the nation's resources 'as best as possible to serve the common good' is to invest in the refineries so as to bring down the price of petroleum products a la Venezuela.

Whilst many may argue that the above provisions are technically not enforceable under the doctrine of non justice ability, I believe they are part of the constitution which you sworn an oath to defend and protect. Because I believe in your sincerity as an avowed defender of the rule of law, I know you will do the right thing.

Still on the law Mr. Acting President, I do not believe you can unilaterally and by Presidential fiat deregulate the oil sector, a draconian policy with the potential consequence of affecting negatively the lives of the masses without the input of the legislature who were elected by the same people to present them. To argue otherwise would negate the principle of representative democracy enshrined in the constitution. Going further on the law and the role of the legislature in the deregulation of the oil sector; first, there are two (2) subsisting acts of the national assembly which strengthened regulation of the sector; The PPPRA and the Price Control Acts. Both laws regulate the price of petroleum products and for as long as they remain in our law books, deregulation can never be legal. Those laws need to be repealed or amended first and the only body constitutionally empowered to do this is the legislature. It's as simple as that Mr. Acting President.

Mr. Acting President, I make bold to say that whilst you may be able to effect many policies by merely pronouncing them, the one policy that is outside your control is the removal of subsidy if that is what deregulation in the Nigeria context means. I refer you to yet another section of the constitution (this time a justice able one). Section 59(1) (b) of the constitution is implicit in its provision that any law or action that would impose or increase any tax, duty or fee or for that matter that may reduce same, must come by way of a money bill. The removal of

subsidy no doubt will increase (or even decrease as strenuously but disingenuously suggested by proponents of deregulation), the cost of fuel and therefore must come by way of a money Bill through the National Assembly.

Sir, I pray that God will give you the wisdom, courage and empathy for your people to do the right thing and that wiser counsel will prevail on this issue. If we cannot approach this issue through a common sense approach I hope we will be able to deal with it from a legal prism. Thank you, Mr. Acting President.

FEMI GBAJABIAMILA  
MINORITY WHIP / AC LEADER  
HOUSE OF REPRESENTATIVES

**Note:** *This letter to Mr. President was written in 2010 two years before the 2012 fuel subsidy removal which almost engulfed the country.*