MEMORANDUM OF THE NIGER DELTA BUDGET MONITORING GROUP (NDEBUMOG) TO THE NATIONAL ASSEMBLY (SENATE AND HOUSE OF REPRESENTATIVES), ON THE PETROLEUM INDUSTRY BILL (PIB) 2013

NDEBUMOG was in the pioneer national leadership of Coalition for Accountability and Transparency in Extractive Industries, Forestry and Fisheries in Nigeria (CATEIFFN) 2010-2011 and the Political Finance Monitoring Group. We are also a Member of EFCC-ANCOR's National Coordinating Committee representing the SS Zone, former Member-NEITI's Civil Society Steering Committee, and Member-National Procurement Watch Platform Central Steering Committee from 2008 to June 2012.

*We are also BPP's South-South Contact CSO, Nigeria Extractive Industries Transparency Initiative (NEITI's) Civil Society Liaison Organisation 2010-2011, South-South Coordinating NGO and member of National Coordinating Committee-Nigeria Resource Governance Group, former Coordinating CSO of EFCC-ANCOR Rivers State; among other elective Civil Society representation nationally and internationally. There is a partnership between our organisation with some agencies, including the Budget Office of the Federation-FMF, OSSAP-MDGs, etc.(**www.nigerdeltabudget.org**)*

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ACRONYMS AND ABBREVIATIONS

ACHPR:	**African Charter for Human and Peoples Rights**
ATCA:	**Alien Tort Claims Act**
BOF:	**Budget Office of the Federation**
BPP:	**Bureau of Public Procurement**
CBN:	**Central Bank of Nigeria**
CSOs:	**Civil Society Organisations**
CSR:	**Corporate Social Responsibility**
DGSO:	**Domestic Gas Supply Obligation**
DPR:	**Department of Petroleum Resources**
DPRA:	**Downstream Petroleum Regulatory Agency**
EFCC:	**Economic and Financial Crimes Commission**
FEC:	**Federal Executive Council**
EIA:	**Environmental Impact Assessment**
EITI:	**Extractive Industries Transparency Initiative**
ERF:	**Environmental Remediation Funds**
FIRS:	**Federal Inland Revenue Service**
FOIA:	**Freedom of Information Act**
FRA:	**Fiscal Responsibility Act**
GRECO:	**Group of States against Corruption**
GPF:	**Gas Pricing Framework**
GSPAs:	**Gas Supply Purchased Agreements**
ICC:	**International Criminal Court**
ICESCR:	**International Covenant on Economic, Social and Cultural Rights**
IMO:	**International Maritime Organisation**
IPPs:	**Independent Power Plants**
IOCs:	**International Oil Companies**
IPPA:	**Investment Promotion and Protection Agreement**
PEF:	**Petroleum Equalisation Fund**
PHCF:	**Petroleum Host Communities Fund**
PHCFDC:	**Petroleum Host Communities Funds Disbursement Commission**
PIB:	**Petroleum Industry Bill**

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PML:	**Petroleum Mining Lease**
PMS:	**Premium Motor Spirit**
POPA:	**Public Officers Protection Act**
PPA:	**Public Procurement Act**
PPPRA:	**Petroleum Product Pricing Regulatory Agency**
PPL:	**Petroleum Prospecting Licence**
PPT:	**Petroleum Profit Tax**
PTDF:	**Petroleum Technology Development Fund**
MTEF:	**Medium Term Expenditure Framework**
NAPE:	**Nigerian Association of Petroleum Explorationists**
NDDC:	**Niger Delta Development Commission**
NGMP:	**National Gas Master Plan**
NDEBUMOG:	**Niger Delta Budget Monitoring Group**
NGOs:	**Non Governmental Organisations**
NEITI:	**Nigeria Extractive Industry Transparency Initiative**
NIGCOMSAT:	**Nigerian Communications Satellite**
NIMASA:	**Nigerian Maritime Administration and Safety Agency**
NLNG:	**Nigeria Liquefied Natural Gas**
NNPC:	**Nigerian National Petroleum Corporation**
NOSDRA:	**National Oil Spill Detection Response Agency**
NPAMC:	**Nigerian Petroleum Assets Management Company**
NSA:	**National Security Adviser**
NSE:	**Nigerian Society of Engineers**
OAGF:	**Office of the Accountant-General of the Federation**
OECD:	**Organisation for Economic Cooperation and Development**
SMEAN:	**Society for Monitoring and Evaluation, Nigeria**
R2FR:	**Right to First Refusal**
R2P:	**Responsibility to Protect**
UNCAC:	**United Nations Convention against Corruption**
UPI:	**Upstream Petroleum Inspectorate**
UTM:	**Universal Transverse Mercator**
WAPCo:	**West African Gas Pipeline Company**

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Introduction

"Corruption" is notoriously a broad word in terms of multiple meaning. For example, the United Nations Convention against Corruption (UNCAC) which came into force on the 14th of December, 2005, avoids a definition altogether. Nigeria endorsed UNCAC on the 9th of December, 2003. However, recent events about Nigeria and corruption have continued to portray Nigeria's indisposition to tackle corruption head-on. Bribery, under disclosures, bids splitting, budget padding, bureaucratic shadows, and electoral, political, extractive and cultural corruption are among Nigeria's in-depth elements of public corruption. Collectively, these amount to *spoliation* – that is, the sale or use of natural resources for the benefit of a few individuals, rather than, for the collective public good.

In weighing public anticipation about the Petroleum Industry Bill, Nigerians were informed that this Bill is an aggregation of some (or all?) the laws in the extractive sector, in an attempt by Nigeria to bring sanity and salvation to the extractive sector. Unfortunately, that (government projection towards sanity) cannot be accepted as true, going by some provisions in the PIB before the National Assembly.

Calculative assumption has presented this Bill as a tool of political oppression against the people of the Niger Delta or indigenous people anywhere. At this point, let us emphasize, that, the responsibility to protect (R2P or RtoP) oppressed people, is an initiative of the United Nations, established in 2005. It consists of an emerging norm, or set of principles, based on the idea that sovereignty is not a right, but a responsibility.

R2P focuses on preventing and halting four crimes: genocide, war crimes, crimes against humanity, and ethnic cleansing, which it places under the generic umbrella term of, *Mass Atrocity Crimes*. The Responsibility to Protect has three "pillars", which are:

1. A state has a responsibility to protect its population from mass atrocities;
2. The international community has a responsibility to assist the state to fulfil its primary responsibility;
3. If the state fails to protect its citizens from mass atrocities and peaceful measures have failed, the international community has the responsibility to intervene through coercive measures such as economic sanctions. Military intervention is considered the last resort.

Niger Delta people have suffered many crimes against humanity through irresponsible exploitation of its natural resources and even ethnic cleansing during the era of Military Rule. Military atrocities against Ogonis in the Niger Delta point to these facts. These portray Nigeria's hypocritical membership of the United Nations family.

PIB, the ACHPR and ICC

Moreover, Article 21 of the African Charter on Human and People's Rights (ACHPR), for example, asserts that, all those living in signatory States (Nigeria inclusive) "shall freely dispose of their wealth and natural resources, and that disposed people have the right to the recovery of their property and compensation". It further states that "each state has the obligation to avoid foreign economic exploitation that would prevent its people from fully benefiting from the advantages derived from natural resources". Clearly, "foreign economic exploitation" cannot be isolated from exploitation of the resources of the oppressed in the Niger Delta by IOCs, which detect the pace, quantum, disclosure, CSR adulteration, and lack of community participation in extraction, which equitably, this Bill should address. The PIB cannot be addressed without critical inter-aligning to addressing the Niger Delta Question as it relates to Article 21 of the African Charter on Human and People's Right (ACHPR).

There is also a growing momentum by the international community to punish individuals (looters), mostly from provisions of the Rome Statute of the International Criminal Court (ICC). Articles 75, 77 and 79 of the Rome Statue together allow for forfeiture of proceeds, property and assets derived *directly or indirectly* from crime, and for these forfeited assets to be placed in trust funds for victims. Lack of seriousness of the Nigerian State has led to individuals who have been convicted on corruption in such cases as concerning Siemens, Halliburton, Willbross, among others, to continue enjoying their loot, while the poor vulnerable extractive communities in the Niger Delta continue to lick their wounds. We, as indigenes of the Niger Delta and victims of extractive atrocities hereby cry for justice, an occasion like this, should not be lost to remind the world.

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Retooling and Reconciling Other Laws with the PIB

Further, it is doubtful if the PIB is any embodiment towards extractive salvation. If it is, below are some of the laws in the sector that need retooling or outright bridging to the PIB for possible extractive salvation:

(1) The PPT Act of 1959
(2) The Petroleum Profit Tax Act, Chapter 354 of 1990
(3) The Harmful Waste (Criminal Provision) Decree of 1998.
(4) The Abatement in Industries and Facilities Generating Waste Regulations Decree of 1991
(5) The Petroleum Act of 1969
(6) Petroleum Technology Development Fund Established Act No. 25 of 1973
(7) The Oil and Navigable Waters Act of 1969
(8) The Oil Terminal Dues Act of 1969
(9) The Petroleum Drilling and Regulating Act of 1969
(10) The Territorial Waters Amendment Act of 1971
(11) The Petroleum Amendment Act of 1978
(12) The Inland Waterways Decree 13 of 1993
(13) The Inland Waterways Decree of 1977
(14) The NNPC Act, CAP 320 of 1990
(15) The Land Use Act of 1978
(16) The Oil Pipeline Act of 1965
(17) The Associated Gas Re-injection Amendment Decree of 1985
(18) The NDDC Act of 12th July, 2000
(19) The EIA Decree 86 of 1992
(20) The National Environmental Protection Management of Solid and Hazardous Waste Decree of 1991. 2
(21) The Nuclear Safety and Radiation Protection Decree 19 of 1995.
(22) The NEITI Act 2007.

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Looking at other International Anti-corruption Laws with the PIB

Furthermore, Nigeria cannot continue to shy away from looking critically at Legislations which other countries have enacted, as a part of their responsibilities to addressing the "resource curse" and "spoliation", and which have worked in those countries.

Some of such laws internationally are:

(1) The United States Foreign Corrupt Practices Act of 1977.
(2) The United States Alien Tort Claims Act (ATCA)
(3) The Council of Europe Instrument on the Civil Law Convention on Corruption which entered into force in November 2003.
(4) The Council of Europe's Group of States against Corruption (GRECO), created in 1998.
(5) The 1997 OECD Anti-Bribery Convention.
(6) The International Anti-Bribery and Fair Competition Act of 1998
(7) The Spanish Penal Code, Article 445 – makes bribery of foreign officials an offence in Spain.
(8) The August 2001 Southern Africa Development Commission (SADC) adopted protocol against corruption.
(9) There are other laws in Austria, New Zealand, and Canada etc.

Clause by Clause Interventions on the PIB

Part 1, Section 2 and Part 3, Section 170 (2) of the Bill should explicitly integrate Chapter 2 of the 1999 Constitution, through a re-introduction of Chapter 2 of the Constitution into the Section. Such should serve as a reaffirmation to hold the Government accountable on the welfare of citizens always. Further, while affirming and aligning this Memorandum to the Directive Principles of State Policy, as enshrined in Chapter 2 (S. 14 (1) and (2) a, b, c of the 1999 Constitution; we disagree with Part 1, Section (2) of the Bill on "the Ownership of Petroleum Resources".

Playing down on any controversy, and in shaping further discourse towards equity about this Section in the Bill, Nigerians need to revisit the history of the 99 years of British Colonialist accident in Nigeria, which sampled about six constitutional making experiences vis- a-vis: *the amalgamation Constitution of 1914,the Clifford Constitution of 1922, the Richards Constitution of 1946, the*

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Macpherson Constitution of 1951, the Lyttleton Constitution of 1954 and Nigeria's Independence Constitution of 1960.

Realistically speaking, and for the sake of accelerating development for (any) Oil Producing areas of Nigeria, the people or such area should be allowed to control their resources, in the spirit of true fiscal federalism. Pointedly, and to guide the post independence (young) citizens of Nigeria, the struggle for a true fiscal federalism in Nigeria dates back to the era of Portuguese and British imperialistic intrigues in Africa. Guardedly, the *Phillipson Commission of 1946, the Chicks-Phillipson Commission of 1951, the Chicks Commission of 1953 and the Raisman Commission of 1958,* amongst others can provide a generational guide on the subject matter.

Part 1, Section 3 of the Bill is agreeable and acceptable. But another paragraph (d) should be added, such that, 'oil shall be extracted in the good spirit of environmental justice to extractive communities'.

Unfortunately, Section 4 of Part 1 does not seem realistic. *There is no way the Petroleum Industry Bill can achieve the fundamentals of the (N) Extractive Industries Transparency Initiative Act, without the amendment of Section 3 (b) (d) (e) and Section 16 of the NEITI Act.* Sadly, without the National Assembly waking up to this reality about strengthening the functions of EITI in Nigeria, through an urgent amendment of the NEITI Act, *the Niger Delta Budget Monitoring Group (NDEBUMOG,)* would continue to see NEITI as a toothless bulldog, which further makes Nigeria a laughing stock within the international EITI Club.

Oil Companies would stop to take NEITI for granted if that Section of NEITI Act is amended by the National Assembly. Section 4 of the same Part 1 of the PIB should be broadened to include the provision(s) of the *Freedom of Information (FOI) Act 2011.*

Part 2, Section 6, which states '... the Minister shall negotiate and execute international petroleum treaties and agreements with other sovereign countries, international organisations and other similar bodies on behalf of the Federal Government'- should be expanded to include the clause '*... shall do so, with the consent of the National Assembly'.*

Section 7 on the "Right of pre-emption" should be revisited, and reconciled with the powers of Mr. President, as Commander-in-Chief of Armed Forces of the Federal Republic of Nigeria. Vehemently, NDEBUMOG frowns at, S.7, sub-section 4 of the Bill, and view it as insulting to Nigerians. That clause in its

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entirety should be deleted. It runs contrary to Section 4 of the 1999 Constitution of the Federal Republic of Nigeria. The Constitutional right of the people to a peaceful assembly or their fundamental human rights cannot be taken away by any subsidiary legislation of the National Assembly. Further, paragraph 3 of Section 7 should be reconciled with Article 1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Nigeria adopted and accepted this international instrument on the 29th of July, 1993.

Section 8, paragraph 5 of the Bill, runs contrary to best practices and against International EITI Rules, of which Nigeria is an implementing country. Left as it is, it is subject to abuse and therefore should be deleted or amended to reflect the reality of consistent openness and participatory inclusion for the sector.

Clearly, Section 13 of the Petroleum Industry Bill proposes the creation of Upstream Petroleum Inspectorate (UPI). Paragraph 3 of S. 13 clearly spelt out the cessation of Department of Petroleum Resources (DPR), following the proposition for the creation of UPI in the Bill. Curiously, the underhand element of who issues licences, regulations, monitoring of lumped acreages, amongst others, in enforcement of regulation is at play here, with this proposition of reducing DPR's influence to just an Upstream Regulator.

Notably, S. 14 (d) of the Bill further emboldens the Minister to have UPI under his/her footstool. Nigerians need to deeply cross-examine S.13, 14 and 43 of this Bill, which proposes the creation of Upstream and Downstream Regulators. Does Nigeria need two separate regulators in the petroleum industry or the strengthening of the existing regulator?

Section 15 (h) which states..."publish reports and statistics on the upstream petroleum sector". The paragraph should be rephrased to include the word dissemination, thus: publish *and disseminate* reports and statistics on the upstream petroleum sector. Please take note; such has no violation of national trade secret. Section 15 (q) which states '... with the approval of the Minister, allocate petroleum production quotas', should be rephrased to state '...with the approval of the Minister *and consent of the National Assembly*, allocate petroleum production quotas.'

Section 16 (e) and (ii), which '... require licensees, lessees, and permit holders to publish *certain* information relating to upstream petroleum operation'. The word **certain** should be deleted from this S. 16 (ii).

Section 31 (1), (2) and (3) of the Bill on "financial provision" should be rephrased to align with the reality of Part 2, Section 11 of the Fiscal Responsibility Act, which encapsulates the Medium Term Expenditure

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Framework (MTEF). Further, we want to draw attention of the National Assembly to Section 37 of the Fiscal Responsibility Act 2007 which states thus "...granting of any advantage or increase of remuneration, the creation of posts or alteration of career structures and admission of personnel on any account by bodies and entities, including foundations established and maintained by the Federal Government shall only be effected if, there is prior budgetary allocation sufficient to cover the estimated expenditure". In line with this cited Section of the Fiscal Responsibility Act, we hereby affirm and insist that, S. 32 (2) (a) of the Petroleum Industry Bill should have the word "may" replaced with shall.

If the National Assembly makes budgetary approval from any government agency optional, one can only hope legislators will not cry wolf, sometime in future. The matter of the Central Bank of Nigeria (CBN) Decree 24 of 1991, CBN (Amendment) Decree 41 of 1999, Section 5 (1) (a) and S. 6 (3) (a) and the CBN Act of 2007, comes to mind here.

On S. 32 (2) (e) of the PIB, the UPI does not need any gift from anywhere, perhaps, maybe from the Federal Government. Clauses on gifts are self-contradictory and such are all *Greek gifts*. S.33 (1),(2), S.63 (1), (2), S. 92 (1), (2), S. 139 (1) and (2), among others, in the Bill should be explicit on (Greek) gift and conflict of interest, either seen, vague and unseen.

It is necessary to distinguish matters of protection for Public Officers as embedded in Public Officers Protection Act. Section 37 and S. 143 of the Bill should state clearly that, *such protection shall not arise in relation to obedience by any Public Officer for any other subsisting laws promulgated by the National Assembly such as obedience to the Freedom of Information Act.* It is important for contradictory lines between emerging legislations and the FOI Act to be reconciled in view of the FOIA taking precedence over POPA.

Let us (NDEBUMOG) advice at this point, that this Petroleum Industry Bill (PIB) in reference, should not be structured in a way which, upon passage, would aggravate inter-agencies (operational) conflict or rivalry in the sector. A lot of clauses in S. 45 of the PIB need reconciliation with what the functions of the PPPRA are, and such others, which were hitherto handled by the DPR. From our understanding of Section 43 (3), it is clear that PPPRA and the downstream functions (assets and liabilities) of DPR would merge to become one agency (DPRA), which requires *time-bound transitional clauses.*

Notwithstanding, we throw a question to the National Assembly again, would ordinary Nigerians differentiate an Upstream and Downstream Regulator? Before now, the government was confused on creating Upstream, Midstream and Downstream Regulator. Now, it seems they (government) have made up

their mind on creating Up/Downstream Regulators. Curiously, the appointment of public interest or anti-corruption NGOs within the Boards of these proposed entities is missing.

As a public interest anti-corruption (regional) organisation, we (NDEBUMOG) are insisting on this provision to be included. Such representative inclusion from the Civil Society is necessary. It is also necessary Section 65 (1) captures the National Assembly and Office of the Accountant-General of the Federation, among institutions which the UPI shall furnish with its mid-year and annual reports, rather than the Minister of Petroleum only. The Minister cannot be reporting to himself or herself. This should also apply to S 35 (1) and S. 94(1) of the Bill.

Importantly, there is need to insist on the bridging of every legislative proposal for the creation of entities to be aligned with Section 11, 37, 42, 44 and 45 of the Fiscal Responsibility Act, as alignment on Financial and Funding propositions, for any proposed agency of the Federal Government. Unfortunately, such is missing for all the new entities proposed for creation upon the passage of the PIB. As an expository, such can be seen in Sections 9, 13, 43, 73, 75 (3), 78 (c), 91,100, 116, 120,121, 123, 148 and 159, amongst others, of the Petroleum Industry Bill.

Section 75 (1) of the PIB states '... inspectorate or any other bodies responsible for the collection of the monies listed under Section 74 of this Act shall pay all such sums directly into the Development Fund's Reserve Account with the Central Bank of Nigeria not later than sixty days after such sums have been received'. We are of the opinion that, as good as the intention sounds, the period of remittance to the Fund's Reserve Account should not exceed twenty working days. Our opinion is to foreclose any possible (corrupt) deposit of such money for interest yielding, at a Commercial Bank. Twenty working days forecloses any such deposits, even upon a year which a particular February ends with twenty eight days. Subject to this proposition, such can be done without prejudice to S. 75 (4) of the Bill.

Sub-section 5 of 75 which states "... Development Fund shall maintain operational accounts with any bank as may from time to time be approved by the Accountant-General of the Federation". The word "any bank" under the clause portrays lack of crafters of the Bill to learn a lesson from the JP Morgan Account saga. In between *any* bank, the word, "local" should be inserted to lay emphasis on local banks.

Cautiously, any such (bank) account must have the viewing right of the Minister of Finance, Director-General of the Budget Office of the Federation (BOF) and

the Chairman of the Economic and Financial Crimes Commission (EFCC). We must make laws as Nigerians to reflect the unfortunate precarious situation in which our country has found itself on corruption. Another paragraph (o) should be inserted under S. 75 to state that '...emphasis shall be given to the development of local (content) manpower and human resource application within extractive communities, notwithstanding the fact, other Nigerians shall benefit generally from the Development Fund'. This clause shall protect any area of Nigeria, in which oil may be discovered in future. However, in the spirit of equity, Nigerians must allow the benefits of hydrocarbon to accrue to all Niger Deltans, in the same spirit they may deserve, if oil is discovered in their area tomorrow.

We disagree with Section 77 (2) (a) of the proposed Bill. The Minister of Petroleum should not be the Chairman of the Board of the PTDF. Rather, any Nigerian of proven integrity should be appointed by Mr. President to Chair the Board of the PTDF. The President should be responsible for appointing the Chairman of the Board and Executive Secretary.

Moreover, NDEBUMOG is in disagreement with Section(s) 100 to S. 115 of the Petroleum Industry Bill, which reaffirmed the existence of the Petroleum Equalisation Fund (PEF). There is no need for the existence of the fund, especially now that oil is gradually being discovered in other parts of the country, including the Northern part of Nigeria. Every part of Nigeria should make consistent effort to explore their mineral resources. This does not mean NDEBUMOG agrees with the removal of petroleum subsidy, no! The truth of the matter is for the government and Nigerians generally to show serious commitment in the fight against chronic corruption in the Upstream and Downstream sectors. PMS is not supposed to cost more than N40 per a litre in Nigeria, that is, if corruption is tackled right from Oil Blocks (Bids) Award processes, which are bedevilled with so many waivers, consortia cover-ups, technical and commercial crookedness, coupled with other vices of corruption which are transferred to ordinary citizens' right from the point of drilling (Upstream) to refining (Downstream). It is an imperative that, Nigerians should take the pains to study NEITI's audit report which has been available from 2005. Clearly, regulation of the Nigeria petroleum industry is a huge joke, going by revelations of all the NEITI audit reports. The country would continue to be seen as a joke until corruption is tackled head-on.

Alarmingly, Section 116 of the Bill spites all the Oil Producing Communities in Nigeria, be they in the North, South, West or East. It is a Section which proposes the establishment of the "Petroleum Host Communities Fund (PHC)". Section 117 of the Petroleum Industry Bill (PIB) introduces the purposes of the

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PHC as "... shall be utilized for the development of the economic and social infrastructure of the host communities within the petroleum producing area(s)".

Nigerians need to take a look of Part 2, Section 7 (a), (b), (c), (d), (e), (f), (g) (h) (i) and (j) of the Niger Delta Development Commission's (NDDC) Act. What the drafters of the PIB did, was to shy away from a constructive strategic thinking for the betterment of host communities, which they further compounded by proposing the creation of another nomenclature with the same replications of functions of the NDDC. Shying away from salvaging the Oil Producing Communities is a further injustice.

Concretely, we hereby propose the creation of Petroleum Host Communities Fund Disbursement Commission (PHCFDC). The PHCFDC shall have responsibilities of Section 118 (1) (a) and (b) and S.118 (2), (3) and (4) of the Bill, but with some modifications on areas of rights and privileges accruable to host communities, broader than what is proposed in the PIB. An agreeable percentage of Signature Bonuses payable to the Federal Government from Bids Licensing should also be contributed to the PHCFDC. S. 118 (5) though logically sensible, should be deleted. The protection of lives and properties is the responsibility of the State. The PIB cannot be superior to the 1999 Constitution.

The PHCFDC shall be a body corporate with perpetual succession, common seal and which may sue or be sued in its corporate name.

Among responsibilities of the PHCFDC shall be to:

a. Disburse profit derivable from upstream petroleum operations in onshore and offshore areas and shallow waters. Such remittances shall be made directly to host communities from their 10% of net profits.
b. Manage and invest the part or any of the 10% profits payable to the PHCFDC transparently in stocks and investments, which all accruable profits/dividends there from, shall be ploughed back, as available funds for the benefits of Oil Producing Areas in Nigeria.
c. The PHCFDC shall have access to post-profits retired audited accounts of all the upstream operating companies who are contributors to the PHCF.
d. All benefitting communities to which the PHCFDC shall transfer funds, must be communities that have bank accounts, with signatories to such accounts, who must be community representatives elected democratically in the beneficiary communities town hall meetings that shall involve women bodies, youths, traditional rulers, persons with disabilities in the community, aged grade clusters, religious bodies, etc.

e. Beneficiaries of the PHCFDC shall be:

- Communities that have existing (active) oil wells.
- Communities hosting flow stations but which may not have existing oil wells.
- Communities which host unitisation points.
- Communities hosting export terminals.
- Communities in which are embedded active pipelines connecting to flow stations, unitisation points, export terminals, Oil rigs, Pumping Stations, refineries or any other activity related to upstream oil extraction activities.
- Communities which have had active oil wells but which drilling has ceased within a period not less than 20 years.
- Communities that have oil pipelines criss-crossing their area but which has ceased to be active for a period not more than 40 years.
- Any community without any of the above (1-7) but within a distance of 5 kilometres from a community having an oil extraction related activity (such as listed in 1-7 above).
- Benefits accruable to these communities shall be upon the percentages as shall be worked-out equitably by the Board of the PHCDFC.

f. One year upon the commencement of the Act, the Office of the Surveyor General of the Federation (OSGOF) shall make available subsisting guidelines and maps, capturing administrative boundaries of beneficiaries (1-8) above, for the use of PHCDFC, with a periodic review of the map where applicable and where possible, any hydrocarbon discovery, in every three years.

g. The tenure of members of the Board shall be three (3) years, subject to a reappointment for another three (3) years, and no more.

h. Members of the Board of the PHCDFC shall be appointed by Mr. President and made up of 30 members, whereby at least 10 of the members must come from Oil Producing Catchment areas.

i. The following agencies shall have representatives in the Board of PHCDFC:

- The Nigerian National Petroleum Corporation
- The Nigeria Extractive Industries Transparency Initiative (?)
- The Niger Delta Development Commission
- The Upstream Petroleum Inspectorate
- Representatives of all the Oil Producing States

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- National Oil Spill Detection and Response Agency
- Representative of the Nigerian Ports Authority
- Representative of NIMASA
- Representative of Nigerian Customs
- Representative of the FIRS
- Representative of Office of the Surveyor-General of the Federation
- Representative of the Office of Accountant-General of the Federation
- Representative of the Federal Ministry of Finance
- Representative of the Office of the National Security Adviser
- Representative of the CBN

Accordingly, NDEBUMOG is open to offer other suggestions in the light of the above.

Following the proposition for the creation of National Petroleum Assets Management Corporation (NPAMC) in Section 120 of the Bill, which is an entity proposed to takeover assets of the NNPC. Paragraph 2 of the S. 120 states '... corporation shall be a holding company operating fully on commercial principles'. Unfortunately, this clause, S.120 (2), failed to state clearly any divesting methodology expected of the government on its (holding) interest and involvement in the NNPC. The term "commercial principles" is not clear enough on shedding the government's huge involvement in the NNPC, either by bond, deeds, stocks, blind trust or whatever.

The term "commercial principles" has not changed anything on how interest and investment of the Federal Government has been managed in the Nigerian Liquefied Natural Gas (NLNG) Company from inception till date; nor are Nigerians aware of the amount of dividends payable to the Federal Government from the NLNG project, hence, such mistake must not be repeated again through hoodwinking Nigerians with the undefined "commercial principles" terms. National Assembly - beware!!! Entities responsible for divesting Upstream and Downstream Assets must also be very clear. Sections, 120, 123 (1) and (2) of the Bill should therefore be explicit on divesting.

Necessarily, Nigerians must be informed on how this Bill is drafted to frustrate openness, transparency and accountability. Section 124, 149, and 160 of the PIB grant exemption on the application of the Public Procurement Act, 2007 and the Fiscal Responsibility Act, 2007 by the Nigerian Petroleum Assets Management Company- one of the successor companies to the NNPC, the National Oil Company and Nigerian Gas Company Plc.

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In view of the above, we want to draw the attention of the National Assembly and Nigerians generally, to Section 38 of the Fiscal Responsibility Act. It states that "all contracts in regards to the execution of annual budget; shall comply with the rules and guidelines on (a) Procurement and award of contracts; and (b) Due process and certification of contract". In reinforcing Sections 36, 37 and 38 of the FRA, Section 39 of the FRA states "Any violation of the requirements in Sections 36, 37 and 38 shall be an offence". NDEBUMOG hereby wishes to draw the attention of the National Assembly, specifically to Section 48 (1) of the Fiscal Responsibility Act. This Section of the FRA further states '... Federal Government shall ensure that its' fiscal and financial affairs are conducted in a transparent manner and accordingly ensure full and timely disclosure and wide publication of all transactions and decisions involving public revenues and expenditures and their implications for its finances".

Importantly, Section 5 (c), (d), (e), (h), (i), (n) and S. 6 (1) of the Public Procurement Act, 2007, states clearly some functions of the Bureau of Public Procurement (BPP). The fact that many Nigerians do not love to read, should not further compound the multifaceted problems of the country. The scope of application of the Public Procurement Act is very clear on Part 3, Section 15 (1) (a) and (b). This (b) of Section 15 of the PPA states '... all entities outside the foregoing description which derive at least 35% of the funds appropriated or proposed to be appropriated for any type of procurement described in this Act from the Federation share of Consolidated Revenue Fund" are bound by the PPA. In line with this, there is no excuse for the PIB to exempt (Nigerian Petroleum Asset Management Company, National Oil Company, or National Gas Company, amongst other) entities from provisions of these national anti-corruption laws. *If these provisions for "exemption from certain existing laws" are left as they are in the PIB, NDEBUMOG may be compelled to challenge it in court.*

Looking critically at Section 130 (1)-(5) of the Bill, on "Borrowing Powers", the provisions therein should not be, as it is in the proposition on the PIB, taking over the powers of the National Assembly as enshrined in Section 41 (1),(2) (3)and 44 of the Fiscal Responsibility Act. Any matter related to "Borrowing" in this Bill must therefore align with the FRA.

Section 171 of the Bill though commendable, should not leave the Universal Transverse Mercator (U.T.M) coordinate for the sole access and control of the UPI or NPAMC. The National Boundary Commission, NSA, EFCC, NDDC, the PHCDFC, the Nigerian Customs and NIGCOMSAT management, should have access and be encouraged to gain capacity at understanding the UTM zone; overlapping grids, latitude bands, notations, exceptions, reading formulas,

etc, being complexities that can be used to deceive other agencies on operational acreages, vis-a-vis other information, aimed at tracking accuracy of extractive revenues to the government. In addition, members of the National Assembly (Committees on Upstream, Downstream, Solid Minerals, Finance, Appropriation, Financial Crimes, and Maritime, amongst others) should make efforts to study how the Norwegian Oil Industry operates.

Section 171 (5) of the PIB states that '... subject to the provisions of sub-section (1) of this section, any current boundaries of licenses and leases that do not conform with the new grid system shall remain unaltered, and parcels shall be apportioned accordingly'. NDEBUMOG is of the opinion that, reconciling current (unaltered) boundaries, licences and leases with the new (track) grid system is necessary. Section 171 (c) being among powers granted the Minister of Petroleum on "Licences and Leases" is too open-ended. It conveys discretional powers to the Minister. That clause (171.c) should be reworded into Section 190 of the Bill. Also, S.172 (2)-(6) which has given discretionary powers to the Minister should not stand. Award of licences and leases should be done in an open, transparent and competitive bidding processes, devoid of any conflict of interest from regulators and must open for monitoring from Civil Society Organisations, NEITI (?), EFCC, PHCDFC, among other interesting parties. Section 174 (3), as crafted, will limit disclosure. The provisions of the FOIA are clear and therefore cannot be subjected to the caprices and whims of bureaucrats. Therefore, Section 173, (3) (4) and (10) in the Bill, on "Confidential Clauses" should be deleted".

Section 178 of the Bill should have another paragraph (d) added, to read: '... the sub-section (a)-(c) above shall be done with the utmost care to environmental sustainability, integrity and justice'. All such geological, geophysical, seismic or other exploration techniques shall be subjected to environmental integrity audit, from NOSDRA and other agencies locally and internationally, from time to time.

It is difficult to understand why the drafters of the PIB would give any licensee exploring for petroleum products, up to four months or about 120 days to report petroleum discovery. What is proposed in S.178 (8) should be reduced to 60 days. This should be not be crafted in a way that would promote illegal bunkering and oil theft.

Further, Section 178 (12 and (14) of the PIB, which captures gas discovery retention period should be reconciled between export interests of IOCs and the local demand for the product, which is currently tilted towards international LNG market, but needs a balanced reconciliation, to cover local demand for gas

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for new power plants, JVs IPPs/third party IPPs, refurbished Notore Fertiliser Plant in Onne, WAPCo, Steel and for Aluminium Plants etc.

NDEBUMOG is aware of the huge capital (outlay) required to develop gas, including long term agreements with payment guarantees at securing a long term investment in the sector. The PIB should have a window for a third party entrant in the gas investment chain. Nigeria has 180TCF of gas and the fiscal regime on gas should not favour upstream operators alone. Section180 of the Bill on unitisation reservoirs in Section 180 (2) should be clear on non-straddling, rather than optionally.

Curiously, aggregation for a single licence award which can be given to an investor for oil, gas and bitumen as in S.180 (1) does not meet best practices.

Sub-section 5 of S. 181 which states '...area of petroleum mining lease shall contain every parcel within the outer boundary of the field, as shall be determined by an independent engineering firm...'. This sub-section should take cognisance of professional certification of such firms, from NAPE, NSE, SMEAN, amongst others.

Sub-section 4 of Section 183 which state '... inspectorate shall at all times ensure that the weighted average benchmarked units costs of supply of the fields dedicated Domestic Gas Supply Obligation shall not be in excess of the benchmarked units costs of fields dedicated...". Already, in our opinion, sub-section 3 of this 181 has addressed the issue and is reinforced by Section 269.

Funny enough, we wondered if there is anywhere in the world that a PML would be lumped with PPL at a go, as proposed in Section 184 (1) of the Bill. Why must (PML and PPL) be twin-tied, when discovery has not been declared? Why mortgage the country into decade(s) of slavery, as proposed in S.184 (1) (a), (b) and (c) of the Bill?

Section 185 of the Bill has made nonsense of any good intention of Section 190 of the Bill. We caution that, the Minister should not be given discretionary powers for renewal of PML and powers to make regulations for terms and conditions for same. It is not enough to think that sub-section (3) of 190 of the Bill has answered all the question of discretional powers. Such procedures should be integrated with Section 190 of the Bill, in line with global best practices for competition, transparency, accountability and opportunities for every Nigerian.

Why should matters of gas discovery and retention be toyed with? Is it possible that the Federal Executive Council (FEC) debated or approved this Bill? Section

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186 of the Bill on retention and relinquishments of leases is unrealistic. These therefore call for critical appraisal and structuring of Section 190 of this Bill. There should be additional sub-section (3) to Section 187, upon surrendering of a licence. The additional clause should be for environmental restoration at the cost to a licensee or lessee upon surrendering of a licence. This should be applicable to Section 210 also.

Section 189 of the Bill needs strategic perspective, in view of the ongoing Constitutional amendment process by the National Assembly. If the Land Use Act is amended by the National Assembly, there would be effect on Sections like 189 of the Bill, especially on ownership of land, compensation and commercial value.

On award process, sub-section 2 of 190 should have another paragraph (v) added, as - *Corporate Social Responsibility and Environmental integrity.*

Paragraph 6 of section 190 should include monitoring by other agencies, such as EFCC, BPP, SMEAN, CSOs, and the PHCDFC, among others.

There should be no President in Nigeria that should be granted the powers as proposed in Section 191 of the PIB, to unilaterally grant licences or lease. Lessons of the (failed?) privatisation programme is enough here. All leases and licences should be subjected to international bidding practices, competition, openness, transparency, accountability and full mandatory disclosure. This Section (191) should therefore be deleted. Nigerians cannot predict the characters or mindset of the entire President's that the country may have in future, no matter how responsible (any) subsisting President is. Leaving it means Nigerians can all be priced and allowed to be bought by oil companies.

Section 192 of the Bill is an indirect clause to allow the government to introduce Right to First Refusal (R2FR), as was exhibited in the 2005 Oil Blocks Bidding Rounds. It is therefore necessary to delete Section 192 of the Bill, which should be replaced with a paragraph that -Part (1) Section (1), (2) and (3) of the Nigerian Oil and Gas Industry Content Development Act, 2010, shall apply as "right of participation".

The transitional clause of S.193 (3) (a), which is proposed for 2 years upon the commencement of "this Act", being the PIB, should be reduced to 1 year. Twelve months is enough to tidy up transitional and succession matters, for any serious country.

Section 194 (1) on "mergers and acquisition or change of control by a parent company outside Nigeria..." should be in line with Part 2, Section 4 (m) of Nigerian Investment Promotion Commission Act on IPPA.

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On Section 194 (2) and (6), any such power granted the Minister should be with the consent of the EFCC and the National Assembly.

Section 196 (1), sub-section (3) (a), which states '... a matter relating to sub-section (1) of this section and a licensee or lessee is unable to offer explanation or does not rectify the matter complained of within a specified period, the Minister may revoke the licence or lease". The word may should be replaced with shall. Section 197 on approval and payment of royalties, fees and rental as shall be approved by the Minister should be with approval of the National Assembly.

Nigerians are all aware about the negation of IOCs to matters of compensation to host communities; therefore, Section 199 (1) of the Bill on compensation should be in consultation with the inspectorate and PHCDFC. Sub-section (2) and (3) of same (S.199) on revoking licenses or leases due to failure to pay compensation should not be optional. All the optional words "may", in these sub-sections, ought to be replaced with shall. Nigerians should beware and cautious of the fact that the issue of compensation is very dear to oil producing areas, and it could be anybody tomorrow.

Section 203 of the Bill is commendable, especially on the proposition for the "environmental remediation fund (ERF)". However, monitoring and guidelines for contribution should not be left for the inspectorate alone. Civil Society Organisations working on environment should also be appointed into the committee having responsibility to manage the ERF funds.

On aspects of abandonment, decommissioning and disposal set out in Section 204 and 205 of the Bill, unfortunately, we did not see any collaborative role for NIMASA, irrespective guidelines set by IMO is reaffirmed in the Bill, but which should be further reinforced through collaboration between UPI and NIMASA.

If Nigeria is serious about respecting the principles of the Extractive Industries Transparency Initiative (EITI), why has such not been reinforced from Section 206 to 274 of the Bill, which dwells specifically with Downstream Licensing? Is it not from the activities of the Upstream that downstream activities evolve? We have said earlier and would continue to say that, rather than Nigeria making a mockery of the EITI process, the (NEITI) Act should be reinforced strongly to make it work effectively for the benefit of the poor citizens from the Upstream to Downstream sectors.

The Upstream mostly ventilate wealth among the elites in view of its foreign capital investment outlay, while the Downstream affects the lives of ordinary Nigerian, minute-by-minute, hence the need for more openness, transparency,

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accountability and a corruption-proof downstream, which is only possible if anti-corruption agencies and CSOs are allow to monitor activities in the sector.

Section 217 of the Bill on public access and disclosure is very commendable; unfortunately, the good intentions of Section 217 are defeated by the "confidentiality clause" of S.128. The importance of FOIA should be reaffirmed in Section 218.

Powers of the Minister to make regulations for downstream operations as proposed in Section 220 of the Bill seems too discretionary. The Senate and House of Representatives Committee(s) on Downstream should tie their oversight at checkmating the Minister and protecting the ordinary citizenry.

There would be serious conflict of interest through an attempt by business people to influence the Minister to water down their penalties for downstream offences committed against the Act, if Section 228 is allow to stand. Accordingly, the penalties shall be as prescribed by the Minister, in consultation with the EFCC, NEITI (?), OAGF, FIRS and the National Assembly. NDEBUMOG is not promoting too much bureaucracy on this, but proposing something realistic, in view of where Nigeria has found itself with corruption.

Matters of "dispute resolution" cannot start and end with the downstream agency. The relevance of Arbitration and Conciliation Act must take prominence here. Conciliation and Arbitration is a profession, and should be respected. Our opinion is without prejudice to S.244 (3) of the Bill which is sensible as related specifically to gas distribution network.

NDEBUMOG is curious to know if Section 235 and 236 of the Bill on "licensing" or "promoting" a network operator would not promote monopoly in the sector. Unions are becoming a problem to Nigerians, from recharge card sellers, artisans, market commodities sellers, among others. We stand in support of the Economic and Social Rights of workers everywhere, but must warn, such must not be trivialised or compromised by leaders of such unions. Where some Unions are not protecting interest of the ordinary citizens and the poor of the poor any longer, we are worried about personalising of trade union activities in Nigeria.

Section 246 (3) on public disclosure is commendable, also, with Section 249 on "third party" participation on gas matters is commendable.

Sections 250 to 278 which should generate a lot of momentum internally among the players on matters related to gas, if the Bill is passed the way it is, should be done with public enlightenments to Nigerians in areas of DGSO, NGMP, GSPAs, CPFs and GPFs to educate Nigerians on issues about the sector. More so, Nigerians are interested in knowing the status of the following downstream

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gas pipelines: Calabar- Ajaokuta, Oben-Ajaokuta, Ajaokuta-Kaduna, Ore-Benin, Ore-Ekiti, Shagamu-Jeba, amongst others. Would government complete those not completed, or totally leave these pipelines for network operators to bid for and manage?

Section 302 of the Bill runs contrary to the principles of EITI, together with Section 48 (1) of the Fiscal Responsibility Act and the Freedom of Information Act.

Self (adjudged) “deductions allowed” and “not allowed” in Sections 305 and 306 of the Bill need further cross-examination by the National Assembly and FIRS. How tax issues can be handled for a single entity given a lumped license or lease for Oil, gas, bitumen or condensate within acreage or straddling is not clear to us. It is our prayer that, the FIRS must have taken the pains to cross-examine Sections 305 to 332 of the Bill, including Section 335 to 353, among others, which clearly are matters of taxation.

Stakeholders should take note of the fact that, NDEBUMOG internally and independently, developed this memorandum painstakingly without any funding or support from anywhere. We see such a responsibility as part of our contribution to society.

Recommendations

Part 1, Section 2 and Section 170 (2) of the PIB does not align with the aspiration of a section of Nigeria on true fiscal federalism. In view of this and for the purpose of this unrealised aspiration, Part 1, Section 2 of this Bill should reaffirm the enforcement of Chapter 2 of the 1999 Constitution.

Article 21 of the ACHPR should also be respected by Nigeria in relation to this provision in the Bill. Nigerians should be interested to research into contents of *the amalgamation Constitution of 1914, the Clifford Constitution of 1922, the Richards Constitution of 1946, the Macpherson Constitution of 1951, the Lyttleton Constitution of 1954 and Nigeria’s Independence Constitution of 1960.*

Some of the 22 petroleum laws listed on page 5, should be amended or repealed to situate the reality with the PIB. The 9 international laws listed on page 6, need a critical study by Nigerians.

Nigeria should decide either the country should implement EITI half-heartedly on matters of remediation. if not, the Nigeria’s National Assembly should reinforce (N) EITI Act through critical amendment of the Act, to make the body more effective in the fight against under-disclosure in the extractive

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industry.

Section 3 (b), (d) and (e) and 16 of the (N) EITI Act should be amended, among others. NDEBUMOG shall continue to be bold on this position without fear or favour. We are not seeking for any patronage but the collective survival of our suffering Niger Delta communities and people, which motivates our fight against corruption.

Discretionary powers of the Minister are too overwhelming in the Bill and should be reduced. Such overwhelming powers are in Section 6, 7, 14, 15, 35, 65, 94, 77, 171(c), 172 (2)-(6). Laws should be made for a sustainable good system, not personalized to persons that will not serve at where they find themselves forever. Our judgement on this is premised for a fair system, without narrowing our consideration to where the Minister of Petroleum may come from at any given time.

On DPR, where a successor regulator (Upstream Petroleum Inspectorate) is proposed in Section 13 of the Bill, we suggest further sampling of opinion from Nigerians, if we really need separate regulators for Upstream and Downstream. Or, if what the country needs is to strengthen the existing regulator to function effectively, with adequate oversight from the National Assembly and anti-corruption agencies?

Confidentiality, secrecy and lack of disclosure should not be encouraged within the Bill. Various sections of the Bill promotes secrecy, confidentiality and under disclosure. Conflict of interest must be separated on matters relating to "acceptance of gifts". Such are on Sections S.33 (1), (2), S.63 (1), (2), S. 92 (1), (2), S. 139 (1), (2), S.173 (2), (4) and (10), amongst others.

Public Officers Protection Act (POPA) cannot take prominence over the Freedom of Information Act (FOIA), as proposed in the Bill.

The National Assembly should not legislate out its powers of oversight in the Bill. The matter of the Central Bank of Nigeria (CBN) Decree 24 of 1991, CBN (Amendment) Decree 41 of 1999 Section 5 (1) (a) and S. 6 (3) (a) and the CBN Act of 2007, comes to mind here.

Office of the Accountant-General of the Federation must be interlocked on over sight issues in the Bill. These should be added to Sections 35, 65, 94 of the Bill.

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We must reaffirm the powers of Sections 11, 37, 42, 44 and 45 of the Fiscal Responsibility Act as alignment on Financial and Funding proposition(s) for any upcoming (proposed) agency of the Federal Government. Section(s) 9, 13, 43, 73, 75 (3), 78 (c), 91,100, 116, 120,121, 123, 148 and 159, amongst others, of the Petroleum Industry Bill must reconcile with the powers of the FRA, 2007.

Section 74/75 of the Bill should not remain bogus, by granting powers to operate bank accounts. The type of account should be clear from the lessons the country learnt generally from the operations of NNPC JP Morgan Account in US. The Minister of Finance, DG of BOF, and Chairman of the EFCC should be granted viewing powers to such account(s) to be created as proposed.

Every part of Nigeria should move towards oil discovery in their areas, including pragmatic programmes of exploring for solid and other minerals already discovered across the country. This is justifying our recommendation for the scrapping of Petroleum Equalisation Fund (PEF). Sections 100-115 of the PIB are proposition of PEF. This does not mean NDEBUMOG agrees with the removal of petroleum subsidy, no! The truth of the matter is for the government and Nigerians generally to show serious commitment in the fight against chronic corruption in the Upstream and Downstream sectors. PMS is not supposed to cost more than N40 per a litre in Nigeria, that is, if corruption is tackled right from Oil Blocks (Bids) Award processes, which are bedevilled with so many waivers, consortia cover-ups, technical and commercial under hands, added with other vices of corruption which are transferred to ordinary citizens' right from the point of drilling (Upstream) to refining (Downstream).

Petroleum product prices are still high in Northern Nigeria upon the existence of PEF. What is the essence of the fund then to our Northern brothers and sisters? PEF should be scrapped, while more efforts to explore oil in the North are put in place without any politics.

It is an imperative that, Nigerians should take the pains to study NEITI's audit report which has been available from 2005. Clearly, Nigeria is a huge joke, going by revelations of all the NEITI audit report(s). The country would continue to be seen as a joke, until corruption is tackled head-on.

Sections 116 and 117 of the Bill is the proposition for the creation of PHC, which unfortunately is proposed as duplications of functions of NDDC, as demonstrated in Part 2, Section 7 (a), (b), (c), (d), (e), (f), (g) (h) (i) and (j).

Accordingly, NDEBUMOG proposes for the creation PHCDFC. The PHCFDC shall have responsibilities of Section 118 (1) (a) and (b) and S.118 (2), (3) and

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(4) of Act, but with some modifications on areas of rights and privileges accruable to host communities, broader than what is proposed in the PIB.

Further, it is the responsibility of government to protect lives and properties, including oil and gas assets. That cannot be transferred to host communities commercially or otherwise. Section 118 (5) of the Bill should be deleted.

Some percentage of signature bonuses should also be a contribution of oil firms to the PHCDFC.

"Commercial principles" which is about government divesting its interest from the sector should be clear. Dividends and investment benefits of government in NLNG should be a lesson here as never to repeat itself. Sections, 120, 123 (1) and (2) of the Bill should therefore be explicit on divesting. 'Commercial principles' is not in the word list of broadly addressing divestment.

Section 124, 149, and 160 of the PIB grant exemption on the application of the Public Procurement Act, 2007 and the Fiscal Responsibility Act, 2007 by the Nigerian Petroleum Assets Management Company- one of the successor companies to the NNPC, the National Oil Company and Nigerian Gas Company Plc. This should not be allowed to hold water, hence, if allowed, NDEBUMOG may challenge it in Court. Section 15 of the PPA is absolutely clear, also, Section 48 (1) of the FRA.

PTDF should not be chaired by the Minister.

All matters of "Borrowing" must be in line with Section 41 of the Fiscal Responsibility Act. A position, which is not so at the moment from various propositions in the Bill.

The National Boundary Commission, NSA, EFCC, NDDC, the PHCDFC, the Nigerian Customs and NIGCOMSAT's management should have access and be encouraged to gain capacity at understanding the UTM zone: overlapping grids, latitude bands, notations, exceptions, reading formulas, etc, being complexities that can be used to deceive other agencies on operational acreages vis a vis other information at tracking accuracy of extractive revenues to the government. In addition, members of the National Assembly (Committees on Upstream, Downstream, Solid Minerals, Finance, Appropriation, Financial Crimes, and Maritime, amongst others) should make extra efforts to study how Norwegian Oil Industry operates.

S.178 (8) which gives 120 days as period/time gap to inform government about discovery of oil should be reduced to 60 days. Leaving it the way it is shall

promote illegal bunkering and oil theft, possibly from legitimate (industry) players. Section 178 (12 and (14) of the PIB which captures gas discovery retention period should be reconciled between export interest of IOCs, which is tilted towards international LNG market, and the need to balance with local demand for gas for new power plants, e.g. JVs IPPs/third party IPPs, refurbished Notore Fertiliser Plant in Onne, WAGPCo, Steel and for Aluminium Plants etc.

NDEBUMOG is aware of the huge capital (outlay) required to develop gas, including long term agreements with payment guarantees at securing a long term investment in the sector. The PIB should have a window for a third party entrant in the gas investment chain. Nigeria has 180TCF of gas and fiscal regime on gas should not favour upstream operators alone. Section180 of the Bill on unitisation reservoirs as in Section 180 (2) should be clear on non-straddling, rather than making it optional.

Professional Bodies, such as NAPE, NSE, and SMEAN should be encouraged in drawing professionalism for the sector, as intended in Section 181 (5) of the Bill.

Why mortgage the country into decade(s) of slavery as proposed in S.184 (1) (a), (b) and (c) of the Bill? Is it what is applicable in other oil rich countries globally? Such should not be so.

Civil Society Organisations, EFCC, PHCFDC, NEITI (?), among other agencies should be permitted to monitor Oil Blocks Bidding Rounds (technical and commercial).

Environmental sustainability, justice and integrity should be added to Section 178.

Nigerians cannot predict the characters or mindset of the entire President’s that the country may have from time to time. No matter how responsible any subsisting President may be, leaving Section 191of the Bill with supreme powers to Mr. President, to discretionally give out oil blocks etc, means, Nigerians can all be priced and allowed to be bought by oil companies.

Moreover, the oil blocks in Nigeria are not up to 200 million, for Mr. President to give each Nigerian one. Therefore, oil blocks licensing must be subjected to open bidding competition with transparency. Yes, we respect every of our Presidents in Nigeria, but such respect does not translate to a vote for discretionary powers for oil blocks sharing, for oil that may be exhausted in 40 years... No Sir!!!

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Section 186 of the Bill, which captured matters of relinquishing and surrendering licences, should integrate environmental restoration upon (any) such a surrendering.

Section 189 of the Bill needs strategic perspective, in view of the ongoing Constitutional amendment process by the National Assembly. If the Land Use Act is amended by the National Assembly, there would be effect on Sections like 189 of the Bill, especially, on ownership of land, compensation and commercial value for land.

Matters of gas discovery and retention are toyed with in the Bill, and this should not be so.

On award process, sub-section 2 of 190 should have paragraph (v) added as- *Corporate Social Responsibility and Environmental integrity.* Nigerians are all aware about the negation of IOCs to matters of compensation to host communities; therefore, Section 199 (1) of the Bill on compensation should be in consultation with the inspectorate and PHCDFC. Sub-section (2) and (3) of same (S.199) on revoking licenses or leases due to failure to pay compensation should be not be optional. All the optional words ‘may’ in these sub-sections ought to be replaced with shall. Nigerians should beware and cautious of the fact that the issue of compensation is very dear to oil producing areas and it could be anybody tomorrow.

It is necessary to delete Section 192 of the Bill, which should be replaced with a paragraph that - Part (1) Section (1), (2) and (3) of the Nigerian Oil and Gas Industry Content Development Act, 2010, shall apply as “right of participation”.

Paragraph 6 of section 190 should include monitoring by other agencies, such as EFCC, BPP, SMEAN, CSOs, and the PHCDFC, among others.

Section 194 (1) on “mergers and acquisition or change of control by a parent company outside Nigeria...” should be in line with Part 2, Section 4 (m) on IPPA.

Section 197 on approval and payment of royalties, fees and rental as shall be approved by the Minister, should be with approval of the National Assembly.

Section 203 of the Bill is commendable, especially on the proposition for the “environmental remediation fund (ERF)”. Civil Society Organisations working on environment should also be appointed into the committee having responsibility to manage the ERF funds.

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There would be serious conflict of interest through an attempt by business people to influence the Minister to water down their penalties for downstream offences. Thus, Section 220 of the Bill seems too discretionary.

The respective Senate and House of Representatives Committee(s) should use their oversight at checkmating the Minister and protecting the ordinary citizenry.

Unfortunately, we did not see any collaborative role for NIMASA, irrespective that guidelines set by IMO is reaffirmed in the Bill, but which should be further reinforced through collaboration between UPI and NIMASA.

The importance of FOIA should be reaffirmed in Section 218, amongst others.

There should be adequate sensitization and public enlightenment of Nigerians in areas of DGSO, NGMP, GSPAs, CPFs and GPFs, to educate Nigerians on issues about the gas sector.

Section 302 of the Bill, runs contrary to the principles of the EITI and against the spirit of Section 48 (1) of the Fiscal Responsibility Act. It is also against the spirit of the Freedom of Information Act. Sections 305 and 306 of the Bill need further examination by the National Assembly and FIRS. Also from Sections 306 to 332 of the Bill, including Section 335 to 353, among others, which clearly are matters of taxation.

Civil society membership of boards of proposed agencies as contained in the PIB should not be relegated to the background.

The National Assembly should not throw out this Bill, but should critically retool and pass it in the spirit of justice and fairness for all sections of Nigeria, particularly, oil producing areas. We should remember, oil discovery is positively spreading, and if fairness and equity is not taken seriously in considering this Bill, it would be difficult to run to the National Assembly to amend it, when oil is discovered in areas that did not weigh such possibilities before killing this Bill. It could be anybody’s turn tomorrow. Fairness, justice and equity do not know ethnicity, tribe, creed, religion, race or political affiliation. It is humans that have adulterated this natural law of justice.

for; Niger Delta Budget Monitoring Group

George-Hill Anthony

Executive Director

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