

20th August, 2017

**The Vice President and
Chairman Presidential Committee on Asset Recovery,
Federal Republic of Nigeria,
Aso Rock Villa,
Abuja**

Your Excellency;

**RE: DEMAND FOR PROACTIVE ACTION BY THE FEDERAL GOVERNMENT TOWARDS THE
REVOCATION OF THE GRANT OF OPL 245 TO MALABU OIL AND GAS LIMITED AND THE
DISCONTINUANCE OF ANY ON-GOING RELATIONSHIP WITH ENI/SHELL BY THE FEDERAL
GOVERNMENT**

The above subject matter refers.

The Human and Environmental Development Agenda (HEDA Resource Centre) (HEDA) is a Nigerian based non-governmental organisation. It was registered with the Corporate Affairs Commission in 2004 under Part C as an Incorporated Trustee. HEDA's aims and objectives are as set out in its incorporation document. HEDA is committed to human and environmental development, with a mandate to achieve the specific objectives on democracy and good governance through participatory democratic culture in the government and the people and respect for and promotion of rule of law

BACKGROUND

Pursuant to our follow up and demand for the proper and effective investigation and prosecution of all government officials and individuals involved in the unfortunate and scandalous Malabu deal, this Network submitted an official communication to the Office Of the Attorney General of the Federation and Minister of Justice vide a letter dated 2nd August, 2017 demanding the revocation of Oil Mining Licence associated with oil block 245, granted Malabu oil and Gas Limited under corrupt circumstances and in violation of code of conduct for public officers.

In that letter, we drew the attention of the Attorney General to Federal Government's pleadings at a UK Court where it asserted the willful engagement of a corrupt process in the contract by Shell and ENI in the Malabu deal and agreements. We further reminded the Federal Government of the inherent contradiction in the recent position of the Ministry of petroleum resources on the "presumption of ENI's innocence", in the face of government's pleadings before a competent court of jurisdiction in the United Kingdom to the contrary. We consider this recent postulation

as fraudulent and deliberately skewed towards another possible corrupt deal to the detriment of the overriding interest of Nigerians.

OUR POSITION

It is our considered position is that the OPL 245 was not legally granted to Malabu Oil and Gas Limited base on the fact that the ex-minister of petroleum services; Dan Etete who purportedly granted the licence to Malabu Oil and Gas Limited in his official capacity, did so in express contravention of the code of conduct for public officers, as it was discovered that the said Dan Etete had a represented personal interest of 30% shareholding amounting to 6 million shares in the company, initially using a fictitious name; Kweku Amafegha at the time of the award of OPL 245 to Malabu Oil and Gas Limited. Kweku at all material times was a pseudonym of Etete according to the sworn testimony of Etete in *Energy Ventures Partners Ltd v. Malabu Oil and Gas Ltd* (2013) EWHC 2118 (comm). The said act constitutes the height of conflict of interest and corrupt practice and this much was admitted in the federal government's pleadings in the Admiralty & Commercial court of the High Court of Justice in the United Kingdom where it has initiated an action as claimant against Malabu Oil and Gas Limited with Claim number. CL-2016-000631.

One of the Federal government's claims in the aforementioned pleadings before the UK court according to paragraph 3 of the summary of claim is:

"damages for the unlawful dissipation of assets held by Malabu on constructive trust for the claimant."

The Federal government has also from the entirety of the language of the said pleading reiterated the fact that the Malabu transaction in relation to the OPL 245 was unconstitutional and illegal as same was not validly granted to Malabu. On this basis, we argue, if it was not lawfully granted, it could not have been lawfully held or transferred by Malabu, as it is trite law in the legal parlance that no one can give what he does not have (*nemo dat quod non habet*). The law is also very clear on the fact that no action arises from a wrongful contract (*ex turpi causa non oritur actio*). So, on the whole, you cannot place a transaction on nothing and expect same to stand.

Furthermore, we placed reliance on the following provisions of relevant Nigerian statutes flouted by the Malabu deal, thus rendering the transaction null and void *abinitio*:

Section 10 of the Code of Conduct Bureau and Tribunal Act prohibits a public officer from asking for or accepting any property or benefits of any kind for himself or any other person on account of anything done or omitted to be done by him in the discharge of his duties.

Section 23 of the Code of Conduct Bureau and Tribunal Act also stipulates the punishment for public officers found guilty of contravening this provisions includes seizure and forfeiture to the state of any property acquired in abuse or corruption of office.

Section 5 of the Nigerian Code of Conduct Bureau and Tribunal Act, 1991 provides that a public officer shall not put himself in a position where his personal interest conflicts with his duties and responsibilities.

Section 98 of the Nigerian Criminal Code Act 1990, provides that it is a criminal offence (punishable by a maximum sentence of seven years imprisonment) for any public officer to corruptly obtain any property or benefits of any kind for himself or any other person in the discharge of his official duties or in relation to any matter connected with the functions, affairs or business of a government department, public body or other organization or institution in which he is serving as a public official.

On the whole, it is obvious that Dan Etete as ex Minister of Petroleum services flouted several provisions of Nigerian statutes in his official actions with respect to the Malabu/OPL 245 deal, as acknowledged in Paragraph 50 of the particulars of claim in the aforementioned pleadings of the Federal Government in the Admiralty & Commercial Court of the High Court of Justice in the United Kingdom where it pleaded as follows:

"The following breaches of the application process are set out to show that the application resulting in the award of the exploitation licence to Malabu was not a proper at arms' length commercial award. Given the discretionary nature of the grant of licences at the time the OPL for block 245 was granted it was incumbent on the Minister to act in a quasi-judicial manner and therefore to act with integrity and with no express, implied or actual conflict of interest or advantage."

Thus, it was our submission that there is no single basis for the non-revocation of the grant of OPL 245 to Malabu as the said grant is to be treated by the federal government on the basis of the above as a nullity *abinitio*, Malabu Oil and Gas Limited being a vehicle of humungous fraud and corruption.

Also, ENI/SHELL has been seen to have willfully engaged in a corrupt process in the obtaining of the OPL 245 as there are overwhelming evidences showing that Shell and Eni were aware that the purchase price would be paid to a character with a shady background, as it was revealed that on the 29th of April, 2011 ENI transferred \$1.092 Billion dollars into an escrow account of the Nigerian government at the bank; JP Morgan Chase in London which is not the usual account of the state but a parallel one with the sole purpose of 'settling all claims' to block 245.

In addition to the above, the reports of the Public Prosecution office at the Ordinary Court of Milan in its notification of completion of preliminary investigations highlighted the role of ENI'S former Chief Executive Officer, Paola Scaroni and his successor Claudio Descalzi and indicted them for alleged international corruption over the transaction.

OUR DEMAND

It was in view of the afore-stated positions above that we thereby demand from the Office of the Attorney General the following:

- a. That the Federal Government outrightly revokes the grant of the OPL for Block 245 as fraudulently granted to Malabu.
- b. That the Federal Government proceeds to investigate and subsequently prosecute those indicted in relation to the OPL transaction in accordance to the relevant Nigerian statute.
- c. That the AGF/Minister of Justice uses the instrumentality of his good office to recover any illicit monies that were made by ex-government officials in the Malabu transaction.
- d. That the Federal Government discontinue any on-going negotiation with ENI/SHELL as a Joint Venture partner in the OPL 245 deal, the said companies having being indicted of fraudulently engaging in a corrupt process in the Malabu scandal by reports of an Italian prosecutor's preliminary investigation into the matter.

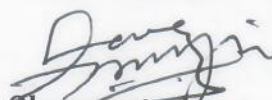
We are of the firm believe that granting above demands will go a long way in the restoration of the average Nigerian's hope that the oil wealth of the country is not the exclusive reserve of the Nigerian elite who views same as largesse to be shared amongst the exclusive preserve of public officials. Also, it will effectively promote the anti-corruption posture of the federal government and serve as a deterrent to corrupt officials in the public sector.

We are compelled to address this petition to your office, due to the Attorney General of the Federation's failure to even respond to our petition to his office within given deadline for action. We are by this letter exploring available consultative channels possible. In the absence of timely, within two weeks, favorable response to this petition and previous one to Office of Attorney General, our organisation will be left with no option but to approach a Court of competent jurisdiction for a writ of mandamus against the Federal Government.

We look forward to your prompt response and action.

Thank you.

Yours faithfully,


Olanrewaju Suraju
Chairman