THE MINISTRY OF PETROLEUM RESOURCES OF THE FEDERAL REPUBLIC OF NIGERIA

AND

PROCESS AND INDUSTRIAL DEVELOPMENTS LIMITED

TRANSACTION REPORT

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Introduction

This opinion is prepared for the Office of His Excellency, the Vice President of Nigeria, Yemi Osinbajo, in re Ministry of Petroleum Resources of the Federal Republic of Nigeria, (hereinafter referred to as "the Government") and Process and Industrial Developments Limited (hereinafter referred to as "P&ID"), collectively referred to as "the Parties", concerning a dispute arising from a purported Gas Supply and Processing Agreement (hereinafter referred to as "GSPA or the Agreement") allegedly entered into on the 11th of January 2010. The transaction resulted in a national tragedy and an award of astronomical damages by an arbitration tribunal (hereinafter referred to as the "Tribunal") against the Government.

Amongst other issues, this report will examine the validity of the GPSA, the purported existence of the GPSA at the time of the alleged repudiation, the questionable nature of the repudiation, the constitution of the Tribunal, the bias, serious irregularities, egregious errors and unfairness of the Tribunal, the misconstruction of the Tribunal's venue as the seat, the galling lack of due respect and recognition of Nigeria as a sovereign nation, the circumvention of the Nigerian legal system, the imposition of English law and unconscionable nature of the award of damages.

The conclusion expressed herein contends that the purported GPSA was not a valid agreement from which any ensuing claim for liability and damages attached and furthermore that it was vitiated by fraud. The report offers "inter alia" recommendations regarding declaring the purported agreement a nullity, strategies to nullify or mitigate the

award of damages, processes to safeguard the Government's future negotiations, and initiatives to protect Nigeria's valuable resources and above all preserve Nigeria's solemn sovereignty.

1. Qualifications

To provide the contextual framework of this report, this section describes the documents reviewed and also identifies documents that were not made available for review.

1.1 Documents Reviewed

The documents forming the predicate of this report include the:

i. Purported Gas Supply and Processing Agreement;
ii. Tribunal's Part Final Award first dated June 2014 and subsequently dated 3 July 2014;
iii. Tribunal's Part Final Award dated 17 July 2015;
iv. Tribunal's Final Award dated 31 January 2017;
v. Dissenting Final Award of Chief Bayo Ojo, SAN dated 31 January 2017; and
vi. Approved Judgment of Justice Butcher, High Court of Justice, Business and Property Courts of England and Wales.

1.2 Documents Not Available for Review

The report was prepared without the benefit of several documents referenced in the record or reviewed during the proceedings including, but not limited to:

i. The witness statement of Michael Quinn, Chairman P&ID (together with exhibits);

ii. Written submissions of the Parties;

iii. Tribunal's Procedural Orders;

iv. Honourable Justice Belgore's expert report; and

v. Other reports mentioned or relied upon during the proceedings.

2. Synopsis of Background

The facts of the case are reported jointly and severally in the documents described in section 1.1 above. Briefly, the Government and P&ID purportedly entered into a purported GSPA regarding the establishment of Gas Processing Facilities (hereinafter referred to as "GPFs"), the supply of Wet Gas thereto and the delivery of Lean Gas and their successful operation by the Parties.[1] The protracted dispute arose from the alleged breach and repudiation of the purported Agreement which resulted in an arbitral tribunal and its ill-fated award against the Government.

3. Analysis of the GPSA

Whether a valid or any agreement whatsoever was entered into by the Parties on January 11, 2010 is a vital issue of primary consideration and must be addressed prior to examining other substantive issues surrounding and subsequent to the alleged transaction. If no agreement existed, no rights and obligations ensued, no breach can occur, no repudiation can be claimed, no liability results and therefore no damages can

[1] Definition of Project in the purported GPSA, Article 1(xi).

result, rendering any award of damages a mere figment in law and inconsequential, as nothing can be built on nothing in law or otherwise.

3.1 The Purported Agreement

The ostensible transaction forming the basis of this report is the alleged GPSA which constitutes the foundation of the dispute. P&ID asserted that the Government breached and repudiated the purported agreement, thereby entitling it to damages. A critical review of the alleged GSPA compels a contrary proposition. Indisputably, rights and obligations emanate from a valid and enforceable agreement. However, a valid agreement was not created nor did one exist between the Parties on 11 January 2010. Therefore, there was no enforceable agreement that could be breached or repudiated.

3.2 Lack of Legal Description of the Parcel of Land

An agreement related to land must include a legal description of the parcel of land which identifies, describes and locates the parcel of land at issue with specificity including, but not limited to, the use of boundaries, coordinates, surveys, plans or maps. The purpose of the legal description is to provide clear and unambiguous parameters of the property for precise identification. The land at issue, also referred to in the GPSA as the “Site” included no such supporting documentation and lacked any description whatsoever, let alone a legal description. The purported Site, a location of alleged performance of the Parties was an essential term of the purported Agreement. That notwithstanding, the Site in the GPSA was ambiguously defined to mean “the land in Calabar on which the GPS is

located."[2] That definition is extremely vague rendering it essentially meaningless, and wholly ambiguous for lacking the requisite specificity.

Fatal to the alleged Agreement, the purported definition lacked the certitude and precision required to describe the land to ensure that it was identifiable and ascertainable to the exclusion of all other parcels of land in Calabar. At the time that the Parties purportedly entered into the GPSA, the parcel of land was imprecise and bore only legally deficiency which consequently invalidated the asserted Agreement. Although, the purported parcel of land is interchangeably referred to in the GPSA as Site or Site boundary, it stands forever elusive for lack of certainty. Therefore, the Parties had not agreed to all the essential terms concerning the alleged Agreement at the purported execution. The uncertainty of the term and absence of the required legal description constituted a lethal flaw, making the purported Agreement, null and void because it was incomplete at the alleged time of execution.

3.3 Elusive Sources of Wet Gas

The terms pertaining to the supply of Wet Gas, an essential term, other than from OML 123 and OML 67 are also incomplete. Article 3(c) of the purported agreement states as follows:

[2] Article 1(xiv) of the definitions in the purported GPSA.

> "The Government shall make available at the P&ID Site boundary 400 MMSCuFD Wet Gas (free of water) in the same manner set out in Appendix A having a minimum of C_3 (Propane) content of 3.5% mol and C_4 (Butane) content of 1.8% mol from OML 123 and OML 67 **or such locations as the Government may decide from time to time** to ensure the ongoing feedstock delivery volume and quality requirements for the duration of the Agreement as defined under Article 5 of this Agreement." (Emphasis added)

The highlighted phrase underscores a compounded ambiguity. The locations are unknown, and the timeframe within which the Government in its discretion could make such decisions, if any, is similarly unknown. The lack of agreement of the Parties on the terms also invalidates the alleged Agreement. Furthermore, Article 8(g), states, in part, as follows:

> "… and that an additional pipeline of up to 70km in length may be required to link up to the Adanga pipeline in order to facilitate the delivery of the remaining 250 MMSCuFD of Wet Gas to the Site **from other sources to be chosen by the Government**…" (Emphasis added)

The emphasized phrase is also doubly nebulous. Not only are the sources unknown, the exactitude concerning their selection eludes the purported Agreement. Both highlighted phrases fail to create complete terms also rendering the alleged Agreement invalid.

On 11 January 2010, the Parties were not "ad idem" whatsoever regarding the other sources of Wet Gas. In contradistinction to the specificity of OML 123 and OML 67,

clearly, the Parties did not know where the additional Wet Gas would be supplied from. The phrases at issue were vague and merely speculative regarding what the Government may or may not decide in the future and failed to create essential terms for a valid agreement. The nature of the purported agreement demanded specificity of all its terms.

3.4 Nonexistent Appendix B

Additionally, Article 21 pertaining to the "Entire Understanding" of the purported agreement provides that the:

> "Agreement including Appendix A and Appendix B comprise the full and complete understanding of the Parties hereto with respect to all matters addressed in this Agreement **and the said Appendix A and Appendix B shall form part of this Agreement**." (Emphasis added).

The word "shall" in this context compels the mandatory inclusion, not optional consideration, of both Appendices as forming integral parts of the proposed Agreement. No agreement could therefore exist if one, or both, of the appendices do not exist. The absence of one, or both, voids the purported Agreement.

Moreover, Article 3(b) of the alleged Agreement, related to the "Scope of Work" provides that:

> "To ensure this fast track is achieved P&ID will construct and incorporate two or more process streams with a total capacity of 400 MMSCuFD together with all

utilities, maintenance and support facilities at the Site in accordance with the schedule of work forming Appendix B **hereto**." (Emphasis added)

However, the said Appendix B is completely devoid of any schedule of work. Other than the heading, initials of the Parties and pagination, there is not one single word describing the schedule of work to be performed by P&ID in Appendix B. An otherwise blank piece of paper, barren of the pertinent components of the schedule of work, is not by any stretch of imagination, an appendix, and particularly cannot form part of the alleged Agreement.

Furthermore, since the purported GPSA states that the schedule of work aforementioned in Article 3(b) forms Appendix B and Article 21 provides that the said Appendix B shall form an integral part the Agreement, the absence thereof, of the schedule of work, which was supposedly Appendix B, is an incurable flaw. Accordingly, a mandatory, integral and indispensable component of the purported GPSA was missing. Its conspicuous absence thereof, in the purported Agreement, is a mortal blow rendering the purported agreement void ab initio. Consequently, the agreement was a nullity and of no effect.

3.5 Unmerited Gratuitous and Fictional Gifts

Although improperly described as "Commercial Terms" a careful examination of Article 8, reveals that the purported Agreement, actually contemplated and intended gratuitous and fictional gifts. Gratuitous gifts are not enforceable, neither are fictional gifts. By virtue of Article 8, evidently the Parties bestowed on each other gratuitous gifts. In Article 8(a), the Government's unmerited gratuitous gift to P&ID was to deliver to the illusory Site boundary 400 MMSCuFD of Wet Gas, as set out in Article 3(c) and in Appendix A of the

alleged Agreement, having a minimum C_3 (Propane) content of 3.5% mol and C_4 (Butane) of 1.8% mol at no cost to P&ID. Nominal consideration did not even move from P&ID to the Government. Consequently, this gratuitous gift created in the alleged GPSA was not an enforceable agreement. In Article 8(b) P&ID's hypothetical gratuitous gift to the Government was to "process the Wet Gas, recompress the residual Lean Gas, representing approximately 85% of the Wet Gas Feed, and make it available for power generation or other industrial usage at the discretion of the Government, at the Site boundary at no cost to the Government. The use of the phrase "at no cost to the Government" in Article 8(b) is an ill-conceived illusion because in futile measure, it attempts to give what already vests in the Government back to the Government at no cost. The fact that title to and ownership of the Wet Gas vests in the Government is further underscored in clause (c) of Article 8 for *he who owns the Wet Gas owns all its component parts*.[3] Since the Government is the title holder and owner of the Wet Gas and all its components therein, any purported agreement seeking to give the Government what it already owns is a fictional gift and an effort to insert sham contractual provisions which are not enforceable.

In addition to the gratuitous gift from the Government to P&ID in Article 8(a) referred to above, the Government pursuant to Article 8(c) bequeathed another humongous gratuitous gift to P&ID as highlighted as follows:

[3] A modification for this report for the legal principle - He who owns the land owns everything.

> "Title to and ownership of the Wet Gas to be delivered by the Government to the Site shall remain vested in the Government and shall be delivered back to the Government at the Site boundary after processing in the form of Lean Gas **but the NGLs removed from the Wet Gas** during the processing **shall be retained by P&ID and shall be deemed the sole property of P&ID and the said NGLs may be sold by P&ID either domestically within Nigeria or exported in accordance with commercial criteria**." (Emphasis added)

The Article created three indisputable gifts of the NGLs (hereinafter referred to as the "NGLs gifts") from the Government to P&ID to wit: (1) a gift allegedly conveying the proprietary rights of the Government's NGLs to P&ID, (2) the right to sell the NGLs and (3) the ability make profit from such sale. P&ID paid not one "kobo" as consideration for the mammoth gift. Considering the economic challenges encountered by Nigerian citizens, the tripartite NGLs gifts, stand separate and apart from the other gifts, as an incredibly exceptional gift to P&ID which was contrary to public policy and the Government's obligation to alleviate hardship in Nigeria. The additional extraordinary triple boon of the nation's valuable NGLs provided absolutely free of charge, with no consideration from P&ID whatsoever, however described, did not constitute a valid agreement that was enforceable in any regard.

Amid the bonanza of gifts, Article 8(e) was merely an additional gratuitous gift from P&ID to the Government and was not enforceable. Additionally, the purported Agreement

improperly granted P&ID Pioneer Status for the first five years of operations[4], which by law[5] should be in the first instance, three years. The windfall of gifts was against public policy and indisputably slanted towards P&ID's benefit. The Government endowed P&ID with at least five gifts through Articles 8(a), 8(c) and 8(h) and received possibly one gift from P&ID through Article 8(e).

3.6 Lack of Consideration

As highlighted above, the purported agreement consisted of alleged promises to exchange gifts between the Parties with no consideration whatsoever paid. Thus, the gifts were naked promises thus no binding agreement was created. Assuming arguendo, that an agreement was made to exchange gifts, being made with no consideration, they were merely "nudum pactum" and unenforceable. Consequently, the beginning of Article 8(e) seemingly representing that prior consideration moved from P&ID to the Government, by the erroneous use of the words, "as further consideration" is wholly a hollow misnomer because clauses (a) through (d) of Article 8 represent the exchange of gratuitous gifts.

Consequently, as no consideration was paid in the preceding clauses, the reference in clause (e) "to further consideration", which ordinarily should follow prior consideration, was plainly specious. Additionally, any purported argument that clause (d) consisted of consideration from P&ID, whereby it, was providing funding for what would constitute its sole property, is not only preposterous but also a legal fantasy because a party cannot

[4] Article 1(x) of the definitions in the purported GPSA.
[5] Development Income Tax Relief Act 2004 and the Pioneer Status Incentive Regulations.

contract with or pay consideration to one's self and claim enforcement against another. Furthermore, P&ID paid no consideration for the NGL gifts and therefore no agreement was created. In its totality, the alleged Agreement was "nudum pactum", a bare promise, consisting of gifts devoid of rights and obligations and was not binding.

Based on the foregoing part of section 3 hereto, the purported Agreement was a nullity from whence no rights, including a breach thereof or repudiation or a claim of damages could arise.

3.7 Violation of Public Policy

As briefly referenced above, the purported Agreement is against public policy because it harms Nigeria and its citizens. The alleged agreement effects the harm through, but not limited to, the exchange of gratuitous gifts which deprives the nation and its citizens of the benefits of its enormously valuable natural asset as well as the consideration which should have moved from P&ID to the Government. It is repugnant to public policy to attempt to give away the nation's natural assets to a third party free of charge, such natural resources being indispensable to the good governance and welfare of Nigeria and its citizens. Therefore, the purported Agreement is unenforceable as being violative of public policy.

In the alternative, by disregarding the sovereignty of Nigerian and ceding the appointment of the third arbiter to the President of the Court of Arbitration of the International Chamber of Commerce, the alleged agreement is also injurious to the country and its citizens. The supposed surrender of the nation's right to exclusively control any disputation regarding

its natural resources is contrary to public policy. Such injury now, made manifestly apparent, through the outrageous quantum of the purported award of damages and usurpation and ignominious disregard of Nigeria's right to adjudicate the matter. Nigeria as a sovereign nation should at all times retain control over any and all decisions impacting the nation's natural resources. Any purported agreement, otherwise, is against public policy and invalid.

Furthermore, public policy requires that government officials in any capacity, particularly when representing and negotiating alleged agreements concerning the nation's interests and national resources, work in the best interest of the nation and not theirs. The interest of the nation must always be paramount in the discharge of those solemn responsibilities. Certain Government officials involved in the alleged Agreement utterly abdicated their duties. In particular, Ms. Grace Taiga referred to as "Director Legal" in the alleged GPSA signed as witness to an alleged agreement with incomplete terms, an otherwise blank sheet of paper and the unmerited gratuitous disposition of the nation's valuable asset.

Moreover, public policy, dictates that no individual can lawfully do what has a tendency to be injurious to the public or against the public good. The purported agreement had the pernicious tendency to be injurious to the public good of Nigeria. In addition, harm to the public that is substantially incontestable is contrary to public policy. The extremely injurious consequence of the size of the purported award arising from the alleged Agreement has the manifest propensity to potentially render Nigeria literally insolvent. Such resultant harm is substantially incontestable and is violative of public policy.

3.8 Effect of the Nullity or Unenforceable Agreement

When a contract is a nullity or unenforceable, as has been here presented, no rights and obligations whatsoever result from the contract or are enforceable. Therefore, as it pertains to the purported Agreement, P&ID could claim no rights from it, no obligations were due from the Government and no liability attached. Consequently, there was no breach, nor could there be any repudiation of any kind that could result in a claim for damages. Thus, the ostensible arbitration agreement allegedly contained in the purported Agreement, likewise did not exist. Therefore, the arbitration was created “ex nihilo” out of nothing, as an exercise in futility founded on the nothingness of a nonexistent agreement and the award likewise was built on a void. The arbitral proceedings and awards should therefore be set aside.

4. The Consequence of Fraud

Assuming arguendo, that there appeared to be an agreement, it is particularly noteworthy that the purported Agreement suggests fraudulent intent on the face of it, by virtue, of amongst other things, the non-existent Appendix B that was initialed by both Parties, the sham contractual provisions and unmerited gratuitous gifts. The appearance of fraud is highlighted by the following questions:

i. Why was the nation’s extremely valuable natural resource bartered in the marketplace of gratuitous gifts with no regard for the nation’s welfare?
ii. Why did the purported term of the agreement span such a lengthy period of time, specifically, 20 years, during which the nation’s vital asset would have been disposed of with minimal profit being realized by the Government?

iii. Why was Appendix B, the required schedule of work for P&ID a blank sheet of paper, other than as described above in section 3 above?
iv. Why did Grace Taiga, the "Director Legal" sign as witness, a purported Agreement that was null and void, as described in preceding sections of this report, and so patently against Nigeria's interests?
v. Why was the agreement not subjected to the usual business routine of vetting by the Federal Ministry of Justice and presentation to the Federal Executive Council?
vi. Why, on a matter regarding extraordinary national significance, was a clause included that purportedly conferred the power to appoint a third arbitrator, if one was not chosen by the two arbitrators, on the President of the Court of Arbitration of the International Chamber of Commerce?
vii. Why was London, England the venue (geographical location not seat) of the arbitration?

Furthermore, in support of the corrupt and fraudulent intent which vitiated any purported Agreement, if any existed, the Honourable Attorney General of the Federation, Justice Abubakar Malami, SAN, as reported in the Punch Newspaper of 21 September 2019, regarding the alleged Agreement stated that "the agreement was rooted in fraud and corrupt purposes." Additionally, he stated that:

> "And arising from the proof of evidence that we have in support of the charges that were filed by the EFCC, there is evidence that money changed hands between international partners and officials of the Federal Ministry of Petroleum Resources influencing things that had to do with the agreement, influencing the formation of the agreement, influencing what clauses should go into the agreement, influencing the officials to ensure the bypassing of the vetting by the Federal Ministry of Justice, influencing the by-passing of the presentation of the agreement before the Federal Executive Council."

No money or any incentive whatsoever, however described, should have changed hands amongst the Parties, their associates and/or representatives before and during the formation of the purported Agreement or thereafter. Money or any form of incentive changing hands to influence the alleged Agreement is tantamount to bribery and corruption built on a foundation of fraudulent intent. Those who offered the bribe and those who accepted the bribe were participants in the fraudulent scheme. As fraud vitiates everything, an agreement founded on fraud is “ex nihilo nihil fit” as nothing can come from nothing. Everything that transpired because of or resulting from the fraud is therefore invalid.

Consequently, the purported GPSA founded on fraud is decimated and of no legal effect with no rights and obligations, however fabricated, arising therefrom. Thus, the alleged agreement and purported arbitration, arbitration proceedings, award and judgements thereafter are hence null and void and must naturally be set aside.

5. The Alleged Repudiation

From the foregoing sections 2 and 3 there was no agreement whatsoever subject to repudiation. In addition, the purported agreement was vitiated by fraud as described in section 4 heretofore. Hence there was no agreement to repudiate.

5.1 The Doctrine of Frustration

In the alternative, if the alleged Agreement existed, it had been effectively frustrated on the alleged date of the purported repudiation. The Parties believed that the Addax

operated OML 123 would meet the requirements of the first delivery of 150 MMSCuFD as contained in Article 8(g):

> "The Parties are aware that the 24inch Adanga pipeline presently under construction from the Addax operated OML 123 directly to Calabar and due for completion in 2010 will have a throughput capacity of 500 MMSCuFD and **can adequately provide the required first delivery of 150 MMSCuFD of Wet Gas to the Site**…" (Emphasis added)

Moreover, according to Recital (i), P&ID represented that it undertaken all necessary studies, including the identification of suitable associated gas fields and is ready to commence a fast track development of the project. However, as set forth in Section F of the Tribunal's Part Final Award of 17 July 2015, in March 2011, Mr. Quinn was informed that Addax was unwilling to supply more than 100 MMSCuFD which was contrary to Phase 1 of Appendix A wherein 150 MMSCuFD… will be supplied to the site for processing.

On the date P&ID became aware of this supervening impossibility, any agreement, if it existed, was frustrated. Moreover, the subsequent impossibility arising from Addax's unwillingness to supply more than 100 MMSCuFD was further compounded by the withdrawal of its support[6], which events, were unknown at the time of the alleged GPSA,

[6]Part Final Award dated 17 July 2015, page 9, paragraph 38(d)

rendering the purported Agreement totally frustrated. Rather than P&ID acknowledging that the purported Agreement was frustrated due its own fault, it erroneously claimed repudiation. P&ID simply cried wolf because there was no longer any agreement, if one even ever existed, subject to repudiation.

6. The Effect of False Misrepresentations

In the alternative, the developments subsequent to the purported Agreement specifically, the unwillingness of Addax and the withdrawal of its support uncovered the fact that P&ID did not undertake all necessary studies including the identification of suitable gas fields as it represented in the purported Agreement. That constituted a false representation invalidating the alleged Agreement. Moreover, since P&ID failed to identify suitable associated gas fields it was not ready as required and it represented to commence a fast track of the project; another fraudulent misrepresentation. If P&ID had undertaken the studies as it represented, it would have determined that 150 MMSCuFD would not be forthcoming from Addax. P&ID made those false misrepresentations intending that the Government would rely on them and the Government did to its detriment. The purported Agreement being based on a false premise is therefore invalid.

7. P&ID's Breach

Assuming the purported agreement existed, Appendix A addresses the delivery of Wet Gas to P&ID and of Lean Gas to the Government, as follows:

i. During or before the last quarter of 2011, a continuous supply of 150 MMSCuFD of Wet Gas, having a minimum Propane content of 3.5 mol% and a minimum Butane content of 1.8 mol% will be supplied to the site for processing by P&ID; and

ii. During the last quarter of 2011 following supply of the 150 MMSCuFD of Wet Gas to the Site, P&ID will process the gas and return to the Government, at the Site, a continuous supply of Lean Gas amounting to approximately 85% by volume of Wet Gas provided. The Lean Gas will be compressed to 92 bar G.

Based on the foregoing, since the alleged contract was purportedly created on 11 January 2010, from that date through the last quarter of 2011, a period of at least a minimum of 20 (twenty) months, certain events should ordinarily have transpired.

Furthermore, it is clear that during the said last quarter of 2011, a continuous supply of 150 MMSCuFD was to be supplied to P&ID and P&ID likewise was to process the gas and return to the Government a continuous supply of Lean Gas. Both events would not be feasible in the same quarter, as contemplated by the alleged Agreement, if P&ID had not constructed the GPF. Consequently, P&ID, as a condition precedent, to processing the gas, was obligated to have constructed the GPF before the last day of the last quarter of 2011. However, P&ID did not construct the GPF prior to the last day of the last quarter of 2011.

It is illogical to infer, that on the same day in the said last quarter of 2011 or the very last day of the last quarter of 2011, wherein the Government supplies the Wet Gas, P&ID would be able to process the gas without having previously built the GPF. That would be physically and logistically impossible. The intervening months from 11 January 2010 to the last quarter of 2011 was the period of time within which P&ID should have constructed the GPF. P&ID in failing to do so, breached the contract, giving rise to a claim in damages for the Government. P&ID used the erroneous repudiation as camouflage for its own breach.

Concerning P&ID being obligated to construct the GPF before the Government suppled the gas, the Tribunal, in error, stated on page 15 of the Part Final Award dated 17 July 2015 that "it would have been commercially absurd for P&ID to go through the expense of building the GPFs when the Government had done nothing to make arrangements to supply the Wet Gas. What was indeed absolutely commercially absurd and bizarre, was the preposterous proposition that the Government supply the Wet Gas to some uncertain Site ahead of the construction of the GPF to twiddle the Wet Gas while waiting for the construction of the GPF in an alleged fast track development of the project.

Although, the Tribunal agreed that the Government had no obligation to deliver gas until there was a plant to receive it, the Tribunal undermined its reasoning and compounded the absurdity by relying, to the exclusion of other provisions and articles, on Article 6(b) in determining that P&ID was not obligated to construct the GPF before the Wet Gas was supplied. Particularly, the Tribunal made no reference in this regard, to Article 7 wherein

in 7(a), P&ID was obligated to use its best endeavors to ensure the fast track implementation of the Project to construct and incorporate two or more process streams with a total capacity of 400 MMSCuFD together with all utilities maintenance and support facilities at the Site. Nor did the Tribunal refer to P&ID's representation in Recital (i) that it was ready to commence a fast track development of the project. Constructing the GPF after the Wet Gas was delivered was antithetical to the fast track implementation of the project.

7. Constitution of the Arbitration Tribunal

The Tribunal consisted of three arbiters, specifically, one Nigerian and two non-Nigerians. Thus, the majority of the Tribunal was not constituted of individuals privy to and not familiar with Nigerian law, as communicated by the Tribunal itself.[7] The lack of legal background in Nigerian law and preference for English law was demonstrably evident in the words of the Tribunal on page 10 of the Part Final Award dated 3 July 2014 and referred to in section 8.3 below. The words of the Tribunal revealed its obvious bias in favour of English law over and above Nigerian law. Thus, from the inception, the Tribunal was improperly constituted with individuals biased towards English law contrary to the purported agreement and invalidating the Tribunal.

[7] As explained in section 8.3 of this report.

Although, the subject matter of the alleged agreement resides in Nigeria, the entire performance of the agreement, if any, would be Nigeria and Article 20 of the alleged GPSA made it manifestly clear that the Nigeria law was applicable, the Tribunal in its stated and biased preference adopted English law. It is inconceivable that Nigeria would ordinarily accede to placing decisions about the purported Agreement concerning an extremely valuable national asset into the hands of individuals biased against and unfamiliar with Nigerian law and circumstance.

The Government, although the primacy of its legal system, especially, concerning its national resources is inherently unassailable as part of its sovereignty and should be afforded due respect by other nations, in Article 20, sought to safeguard Nigeria's jurisdiction and supervisory role of its courts over the purported Agreement. Nevertheless, the Tribunal forcefully and illegally wrestled that primacy out of the Government's hands. This is most objectionable and contrary to public policy. Compounding the situation of the improperly constituted arbitral Tribunal, was its overt bias, addressed further below in section 8. Therefore, the Tribunal's proceedings and awards should be set aside.

8. The Tribunal's Conduct

The Tribunal's proceedings and awards are riddled with errors, irregularities and unfairness. This section shall highlight only a few.

8.1 Errors, Irregularities and Unfairness of the Tribunal

There is no information in the record indicating that the Parties attempted to settle the dispute amicably as required in the condition precedent stated in the second clause of Article 20 as follows:

> "…the Parties agree that if any difference or dispute arises between them concerning the interpretation or performance of this Agreement **and if they fail to settle such difference or dispute amicably, then** a Party may serve on the other notice of arbitration under the rules of the Nigerian and Conciliation Act (Cap A18 LFN 2004)." (Emphasis added)

If there was no attempt towards an amicable resolution, the lack thereof, was a significant irregularity compromising the Tribunal and its jurisdiction from the inception.

The first clause of Article 20, expressly provided that the "Agreement shall be governed by and construed in accordance with the laws of the Federal Republic of Nigeria." Furthermore, reiterating the applicability of Nigerian law to the alleged Agreement and any proceedings arising therefrom, the second clause of Article 20, in full, provides that:

> "The Parties agree that if **any difference or dispute arises** between the them concerning the **interpretation or performance** of this Agreement and if they fail to settle such difference or dispute amicably, then a Party may serve on the other a notice of arbitration **under the rules of the Nigerian Arbitration and Conciliation Act (Cap A18 LFN 2004) which, except as otherwise provided**

> **herein, shall apply to any dispute between such Parties under this Agreement**." (Emphasis added)

As required by the clause "except as otherwise provided herein" there are no other provisions, statements or clauses, howsoever described, pertaining to the rules and law applicable to the arbitration, other than, the expressly stated Nigerian rules and law, in the purported Agreement. Thus, the rules of the Nigerian Arbitration and Conciliation Act (Cap A18 LFN 2004), shall apply to any dispute between such Parties under the purported Agreement. The Tribunal, by referring to and relying on English law, failed to abide with the arbitration agreement in Article 20 and unlawfully imported English law. Thereby, the Tribunal engaged in egregious errors and unfairness during the arbitral proceedings. Thus, all its proceedings and awards should be set aside.

The Tribunal's pervasive bias was also apparent from the unresolved contradictions on the record. In considering the measure of damages, the Tribunal relied heavily on the report and testimony of Mr. Bradley Wolf, a P&ID expert, wherein in part, he stated, as underscored by the Tribunal that:

> "**It is important to note that this was not by any means a unique project** whose costs would be very difficult to project. The project described in the GPSA was typical of many others in gas rich regions of the world."[8] (Emphasis added)

[8] Final Award dated 31 January 2017, page 17, paragraph 61

However, P&ID in challenging its duty to mitigate its damages claimed that the purported agreement "was a unique opportunity so there was no need to mitigate."[9] The Tribunal's acceptance of P&ID's diametrically opposed views on the same issue demonstrated its consistent bias in favour of P&ID and invalidates its proceedings and awards.

Moreover, compounding the bias and irregularities of the Tribunal was its penchant to accept P&ID (Mr. Quinn's) statements as evidence. The record reviewed contains instances where Mr. Quinn's words were relied upon as proof of the existence of the facts by the Tribunal without any other evidence referred to and/or relied upon by the Tribunal. Instances include, but are not limited to, statements by Mr. Quinn pertaining to P&ID being fully prepared to acquire the land and start constructing[10], estimating that the total cost sunk into the preparatory work during the period were in excess of $40 million[11], the significant nature of P&ID's internals costs and the high detail of a 3-D software that would have enabled P&ID's training of the plant staff even before completion of the construction.[12] Furthermore, the Tribunal stated that Mr. Wolf's principal source of estimating CAPEX[13] was the detailed engineering work which had been done by P&ID as described by Mr. Quinn.[14] If there was no supporting evidence regarding those assertions, the Tribunal's sole reliance on the words of an interested party was irregular and an error invalidating the proceedings and awards.

[9] Dissenting Final Award of Bayo Ojo, SAN dated 31 January 2019, page 2, Mitigation.
[10] Final Award dated 31 January 2017, page 13 paragraph 50
[11] Final Award dated 31 January 2017, page 14, paragraph 50.
[12] Final Award dated 31 January 2017, page 15, paragraph 53.
[13] Capital Expenditure
[14] Final Award dated 31 January 2017, page 16, paragraph 59.

Also, the Tribunal further perpetrated egregious error when it engaged in selective speculation, whereby for example, regarding the imaginary Site, accepted speculation beneficial to P&ID's position that "it was assumed by everyone that it would be on the land allocated in Calabar"[15], although the said land as described in section 3 above was devoid of specificity. Nonetheless, and over the protestations of the Government the Tribunal erroneously assumed on behalf of everyone that they all assumed the land would be in Calabar. Furthermore, in calculating the award, notwithstanding that it engaged in conjecture regarding the Site in favour of P&ID, the Tribunal, regarding the impact of militancy on the purported GPSA, elected to disregard the Government's expert by stating that:

> "The Tribunal therefore considers it highly implausible to assume that a gas stripping plant, situated in an area away from the main focus of militant attacks, will be out of commission for 10 out of the 20 years of operation."

Thus, the Tribunal again demonstrated its bias by even engaging in discrimination regarding the speculation it decided to accept.

8.2 Violation of Article 20 of the GPSA

In the post-colonization era, and notwithstanding Article 20, the Tribunal erred in subjugating the laws of Nigeria, a sovereign country, to those of England as made

[15] Final Award dated 31 January 2017, page 9, paragraph. 37.

manifest from the heading of its very first award, the Part Final Award of 3 July 2014 and in subsequent awards, by listing:

> "In the matter of the Arbitration Act 1996 (England and Wales)"
>
> before listing
>
> "And in matter of an Arbitration the Rules of the Nigerian Arbitration and Conciliation Act (Cap A18 LFN 2004)"

and through the unlawful introduction of English law into the proceedings. At the date of the first award, the geographical location, also known as the venue, of the purported arbitration was London, England and the issue of the seat was not at dispute before the Tribunal. Yet, the Tribunal of its own volition erroneously elevated the English law above Nigerian law contrary to Article 20 and in the context of the purported Agreement, rejected 'brevi manu" very dismissively, the primacy of Nigerian law.

Irrespective of the glaring facts that the:

a. Subject matter of the alleged agreement resided in Nigeria and was a natural asset of Nigeria;
b. Purported substantive transaction was substantially connected to Nigeria and its economy and perpetuity;
c. First party listed on the cover page of the purported GPSA and the recitals was the Nigerian Government;
d. Supposed site for the performance of the alleged agreement was in Nigeria;

e. Alleged agreement was executed in Nigeria; and

f. Express words and intent of Article 20 made Nigeria the arbitral seat,

nonetheless, the Tribunal, "suo sponte" of its own accord, unconscionably disregarded the primacy and applicability of Nigerian law to the alleged Agreement and erroneously adopted English law thereby invalidly making the English courts the supervisory courts. Therefrom any reference to, reliance on, mention of, consideration of, comparison with or however intended of English law by the Tribunal in and during the arbitral proceedings exceeded the Tribunal's jurisdiction, was wrong in law and vitiated the entirety of the proceedings. Accordingly, all the proceedings and awards of the Tribunal are null and void and should be set aside.

8.3 Prejudicial Bias of the Arbitral Tribunal

Of particular note, the Tribunal in the Part Final Award of 3 July 2014 page 10 stated as follows:

> "**As English law relevant to the preliminary issues** is very similar to Nigerian law, **the members whose the legal background is solely English** have been able to compare the views of Justice Belgore **with the conclusions which they consider an English court would have reached**." (Emphasis added)

The statement is cloaked and clothed with bias. First and foremost, English law is not and was never relevant to the proceedings. Further, the Tribunal's statement is overtly contemptuous of Nigerian law. The determination of laws applicable to a matter is not based on nor subject to the legal background of the adjudicator, because as in this case,

the adjudicator may otherwise select irrelevant laws as being applicable to a dispute for improper reasons. The Tribunal's pronouncement constituted an egregious error and was highly irregular. The stated position is clear evidence of the Tribunal's bias, particularly for English law, that permeated all the proceedings from the commencement and was a monumental error vitiating all its actions and awards.

Moreover, it is impossible to compare the stated written views of Justice Belgore to speculated conclusions that would be reached in the future by an imaginary English court, mere conjecture. The Tribunal committed serious error in comparing what exists to what does not exist and fact to fiction. Furthermore, the absence of English law in Article 20 makes it plainly evident that English law was never relevant to the proceedings and should not have been injected whatsoever.

Consistent with bias evident from the Tribunal's own words, rather than rely on Nigerian law, the Tribunal erred by using English law and preferring it to Nigerian law because of, amongst other things, the legal background of members of the Tribunal "is solely English." Therefrom, the Tribunal took the unlawful liberty using their stated bias as the predicate to introduce English law. In light of the foregoing, the Tribunal erroneously imported its own view and preference into and over the words in the alleged GPSA and Nigerian law contrary to the plain and clear words of the purported Agreement. Thus, in flagrant error, the Tribunal substituted the primacy of Nigerian law with English law contrary to the purported agreement. Thereby, the Tribunal perpetrated a miscarriage of justice during the entire proceedings.

Also, further compounding the error, as further conjecture the Tribunal speculated about the decisions the English courts would have reached. Tribunals are to rely on facts not on fiction. Furthermore, since Justice Belgore's report was described as an expert report on the Nigerian legal system, the Tribunal erroneously concluded that English courts were in a position to reach conclusions on the Nigerian legal system. Due to its overarching bias, even in that erroneous context, the Tribunal again dismissed the Nigerian courts "brevi manu" because it was even disinclined to compare Justice Belgore's report to the conclusions Nigerian courts would have reached.

The legal background of members of the Tribunal and/or any similarity with the English law, if any, did not give the Tribunal the authority to flagrantly disregard the words of the purported Agreement or the Nigerian law in favor of English law. The Tribunal breached its duty to act fairly and impartially between the parties. The Tribunal's conduct consisted of blatant bias, egregious unfairness and abuse of the Tribunal's power which infiltrated the whole proceedings.

Moreover, the deliberate imposition of English law into the proceedings is reminiscent of the then colonial empire ignoring the existence traditional laws and practices in Nigeria and imposing the English law in Nigeria. The posture of the Tribunal is an affront to the sovereignty of Nigeria and its laws.

8.4 Tribunal Decided a Matter Not Before It

The initial unlawful and unilateral substitution of *place* for *venue* by the Tribunal was unlawful, contrary to the alleged Agreement, and the role and jurisdiction of the Tribunal.

A dispute between the parties must arise and be properly placed before the Tribunal before it may consider and decide the matter. This issue of the *seat* of the Tribunal was not a dispute whatsoever at the time the Tribunal erroneously decided "suo sponte" on its own, to change the word *venue* to *place* in its very first award. Following which, the Tribunal wrongfully perpetuated that travesty of justice throughout the proceedings.

By the date of the first award, the *venue* versus *seat* dispute had not arisen between the Parties and was not properly before the Tribunal, which therefore lacked jurisdiction over that particular matter. The decision to change *venue* to *place* was an improper inflation and exercise of its power and was consequently null and void and of no effect. As such, the Tribunal thereafter also erred when in Procedural Order No. 12 of 26 April 2016, it stated that "the Parties and the Tribunal have consistently acted upon the assumption that London was the *seat* of the arbitration"[16] because it was the Tribunal, not the Parties, and particularly not the Government, that consistently acted upon the assumption that London was the arbitral *seat*. The Tribunal's statement is an erroneous and futile attempt to attribute its own actions to the Parties. Consequently, its decision that London was the *seat* of the arbitration is unlawful and flawed and should be set aside.

9. The Venue Versus Seat Debate

It is clear from the last clause of Article 20 that the venue, simply the geographic location, of the arbitration was to be in London, England. The purported GPSA specifically used

[16] Final Award dated 31 January 2017, pages 9-10, paragraph 28.

the word venue in that last clause to distinguish the geographical location of the tribunal from the arbitral seat, which clearly from the first two clauses of Article 20, and other facts particularly listed in section 8.3 above, is Nigeria. Any conclusion to the contrary is a miscarriage of justice.

9.1 The Tribunal's Improper Construction of Article 20

In interpreting Article 20, the totality of the Article must be read together and also considered in the context of the purported GPSA. The last clause of Article 20 cannot be severed from the whole Article and read in isolation to effect giving it a different meaning contrary to totality of the said Article and purported Agreement. The heading of the Article "Applicable Law and Dispute Resolution" conveys that the Article addresses the law applicable to the purported agreement and resolution of disputes. The only reference to laws and rules in the Article is explicitly Nigerian, not English.

As stated earlier above, and indicated in the first clause of Article 20, clearly Nigerian law applies to the alleged Agreement. Nowhere in Article 20 is English law ever mentioned in any regard, therefore it is not applicable to the alleged Agreement or any proceedings arising therefrom. The second clause of Article 20, specifying the particular Nigerian rules and law also reinforces the applicability of Nigerian law to disputes concerning the interpretation or performance of the purported Agreement. Again, nowhere in the Article is there any reference whatsoever to any English rules or law. If English law was to be applicable, the purported Agreement would have so declared. It did not. Thus, the introduction and use of English law was "ex nihilo nihil fit" for out of nothing, nothing

comes. There being no express term regarding the applicability of English law to the arbitration, out of that nothingness, English law cannot miraculously spring forth even as a figment. Therefore, to conclude that English law was applicable in any regard to the purported agreement and tribunal proceedings was another egregious error by the Tribunal.

Additionally, concerning arbitration in the purported Agreement, nowhere was the word *place* ever used. Thus, the Tribunal compounded its errors by substituting the word *place* for the specific word *venue* in all its awards in the sentence above the signatures thereby unlawfully declaring the place of arbitration as London, England, when it was not. The substitution which had far reaching implications resulted from the enduring bias of the Tribunal and its preference for English law as previously discussed. Therefrom, the Tribunal once more improperly imported its own views and words into the purported agreement by wrongly foisting the word *place* on the Parties. By so doing, the Tribunal exceeded its jurisdiction by changing the words of the Agreement and its proceedings and awards should be set aside.

9.2 The Arbitral Venue and Seat Are Not Synonymous

In the context of arbitration, the venue of the arbitration is the mere physical or geographic location where the arbitration proceedings are held. Whereas, the seat of arbitration is the legal home of the arbitration. The words are not interchangeable especially in the arbitral context. The seat determines which laws apply, including rights of appeal and the extent to which the local courts will support or supervise the arbitration. Article 20 makes

it abundantly clear that the legal home of the arbitration is Nigeria. Nonetheless, the Tribunal with bias, improperly ignored the distinction between venue and seat and erroneously arrogated to itself powers it did not have to substitute venue, a word with utmost significance in the purported Agreement, with the word place, which was subsequently replaced by the word seat. To determine as the Tribunal did, that venue in the context of the purported Agreement and ensuing arbitral proceedings was synonymous with seat, was an egregious error.

To compound the prejudicial errors, regarding the seat, the Tribunal as, reflected in paragraph 5 on page 9, of the Approved Judgment of Mr. Justice Butcher, High Court of Justice, Business and Property Courts of England and Wales, Commercial Division, despite the vociferous protestations of the Government, stated that "the Tribunal considers that the Government must have consented to this being the correct construction of the GPSA."[17] Again, by virtue of its words, the Tribunal again demonstrated its obvious bias and preference for the English law as the Tribunal once more improperly relied on assumptions to decide that London was the seat of the arbitration, the Government's objections notwithstanding. That determination was pure conjecture founded on bias and a miscarriage of justice. Again, the Tribunal's awards so be set aside.

[17] Final Award dated 31 January 2017, page 9, paragraph 28(5).

10. Violation of Natural Justice Principles

The principle of natural justice, "nemo judex in causa sua" dictates that no one is to be a judge in his own cause. In violation of this rule, the Tribunal deciding of its own volition, to change venue to place, thereby introduced the matter before itself. Thereafter, it proceeded to decide the same matter in favour of its prior erroneous decision substituting place for venue, and eventually declared London as the arbitral seat. This is a clear example of the bias that this principle of natural justice seeks to prohibit. Additionally, the unilateral decision of the Tribunal to change venue to place created a conflict of interest for the Tribunal requiring it to recuse itself from the entire proceedings. The Tribunal in violation of this principle failed to do so thereby tainting the entirety of the proceedings before it and through the English Courts.

Furthermore, concerning the principle of natural justice principle, "audi alteram partem" pertaining to the right to a fair hearing, decisions are to be made on evidence not speculation. Rather than abide with the principle, the Tribunal erred when, amongst other things, it engaged in bias and unfairly relied on speculation rather than facts during the proceedings. In so doing, the Tribunal abridged the Government's right to a fair hearing. As a result, the tainted proceedings should have ceased, and any award rendered invalid.

11. Improper Involvement of the English Courts and Disrespect for the Nigeria Legal System

Although, the unlawful conferment on London as the arbitral seat was commenced by the Tribunal's error, it was further compounded by the English Courts reliance on that error,

thus building nothing on nothing. The English courts therefore lacked jurisdiction in the matter ab initio, and their assumption of any purported jurisdiction, being utterly improper and contrary to the purported agreement, the principles of sovereignty and the doctrine of public policy, is null and void. The English courts “ab nihilo, ad nihilo” from nothing to nothing, erroneously assumed jurisdiction. Error built on error does not cure the original or subsequent error and all matters resulting to from the original error are flawed.

In that regard, the English courts improperly assumed jurisdiction, of a sovereign nation’s legal matter and all proceedings. Nigeria’s offensive subjugation as a British colony and forced participation in the Privy Council, even thereafter, is over. An unfortunate bygone era that must never return, however contemplated.

The Tribunal and English Courts did not afford the expected and proper respect due to a sovereign nation’s legal system, to Nigeria. Rather, they erroneously arrogated primacy to English law over Nigeria law in a Nigerian matter, while expecting Nigeria to abide by English law and the decisions of the English courts. Such posture is completely flawed and totally unacceptable. Bilateral respect for each nation’s sovereignty is the expected norm between sovereign nations. If the English courts will not respect the Nigerian courts, then Nigerian courts could certainly elect to behave vice versa.

Of particular note, is that of Mr. Justice Butcher, when not accepting the submission advanced by the Government that it had not been necessary for it to pursue certain

remedies, such as seeking to set aside Procedural Order 12 for misconduct[18], stated as follows:

> "Procedural Order No. 12 was issued before the order of the Nigerian Court purporting to set aside or remit the Liability Award for consideration. **As long as Procedural Order No. 12 stood, it of itself created a basis for saying that the order of the Nigerian Court of 24 May 2016 was ineffective** as being made by a court which was not the supervisory court as determined by the decision of the arbitral panel.

By those words, the English Court improperly decided that an order of a Nigerian court was rendered ineffective by a Procedural Order of an arbitral Tribunal. That constitutes an unmitigated affront to the entire Nigerian legal system necessitating an unequivocal apology. A mere arbitral Tribunal, "it of itself" no matter how "it" or "itself" is formed, entirely lacks and is utterly devoid of any stature and/or standing to even attempt to make or attempt to create a basis to render a Nigerian court's order ineffective. A legal abomination in the Nigerian legal system. There is no basis in Nigerian law for that proposition. The statement is froth with error, including but not limited to, the following:

i. Arbitral tribunals are not listed as courts in the Nigerian Constitution as forming any part of the judiciary as to make a Nigerian court's order ineffective;
ii. A Tribunal is not considered a court of record in the Nigerian legal system;

[18] Approved Judgement of Justice Butcher dated 16 August 2019, page 18 paragraphs 65 and 66.

iii. A court within the Nigerian legal system is superior at all times and in essence to an arbitral tribunal;

iv. Within the Nigerian legal system, a court's order is superior to a procedural order of a tribunal; and

v. A tribunal not being a court whatsoever in Nigeria, its procedural order, has no and lacks the basis, power and/or jurisdiction to render a court's order ineffective.

Therefore, the English court's pronouncement regarding the Tribunal procedural order's impact on the Nigerian court's order is unconstitutional and of no consequence legal or otherwise. Consequently, the procedural order having no bearing on the Nigerian court's order whatsoever, the order of Honourable Justice I.N. Buba of 20 April 2016 made in the Lagos Judicial Division of the Federal High Court of Nigeria stands absolutely effective.

12. The Award of Damages

The outrageous quantum of the award, a matter of general public concern, is patently unconscionable and at least open to serious doubt, being:

a. Nonexistent as a legal mirage being based on a purported Agreement that is a nullity as described above;

b. Vitiated by underlying fraud and invalid;

c. Based on the improper reliance and application of English law throughout the proceedings and in the determination of the award;

Predicated on egregious error, serious irregularities, unfairness and bias of the Tribunal and contrary to natural justice and public policy;

d. Based on conjecture, which as a continuing theme, contaminated the proceedings, whereby the Tribunal, as an example, in its conclusion, speculated amid other speculation, that the purported GPSA would have been very profitable for P&ID and (**although the Tribunal has not had to make any findings on the point) probably** for the Government **as well**.[19] (Emphasis added)

In the alternative, the award should have been subjected to the 50% (fifty percent) rule set forth in Article 8(i) of the Agreement whereby **all earnings or revenues** arising from the project status as a CDM Project will accrue 50% (fifty percent) to P&ID and 50% (fifty percent) to the Government. The Tribunal did not subject the award to this 50% rule. Consequently, the award should be set aside. Additionally, in the alternative, the award is obviously wrong for the reasons described in sections 12(a) through 12(d) above.

13. Prosecution of the Government's Case

Without the benefit of the full record in the matter suggesting to the contrary and acknowledging that legal strategies regarding a case may differ, comments in the partial record reviewed, amongst others, identify aspects of the prosecution of the case wherein the Government reportedly did not:

a. Comply with procedural orders, by not serving a Statement of Defense within the required time or did not apply for an extension of time.[20]

[19] Final Award dated 31 January 2017, page 33, Conclusion.
[20] Part Final Award dated 3 July 2014, page 10, paragraph 12.

b. Dispute or address certain facts or matters raised by P&ID.[21]

c. Cross-examine certain witnesses or discuss or challenge information.[22]

d. Produce evidence on specific matters.[23]

e. Offer actual evidence.[24]

f. Fully prosecute a case before a court in Nigeria which was ultimately struck out.[25]

Ordinarily, form should not trump substance. However, technicalities may prove detrimental to any case. A critical debriefing of the issues enumerated immediately above is essential in order to present the best case for the country as it mounts a most vigorous prosecution of the matter.

14. Recommendations

The following recommendations are offered towards preserving the sanctity of Nigeria's sovereignty, nullifying the purported agreement, setting aside the Tribunal's proceedings and awards, safeguarding its natural assets, protecting its various assets, extricating Nigeria from proceedings before the English courts, seeking a resolution of the legal dispute between the nations and reformation of the nation's procurement processes.

[21] Final Award dated 31 January 2017, page 9, paragraph 34 and page 14, paragraph 51.
[22] Final Award dated 31 January 2017, page 20, paragraph 70, page 26, paragraph 87, page 28, paragraph 95, page 29, paragraph 98 and page 30, paragraph 101.
[23] Final Award dated 31 January 2017, page 21, paragraph 73 and page 28, paragraph 96.
[24] Final Award dated 31 January 2017, page 24, paragraph 85.
[25] Originating summons in Nigerian courts seeking to set aside the Tribunal's Procedural Order No. 12 and to remove the arbiters.

14.1 Institution of Actions in Nigerian Courts

The Government should institute and prosecute actions in the Nigerian courts to uphold its jurisdiction, attack the validity of the alleged agreement, the constitution of the Tribunal, the nature of the award and the jurisdiction of the English courts as follows:

i. Regarding the alleged Agreement:
    a. Challenge the validity and seek a declaration that it is null and void and of no effect whatsoever.
    b. In the alternative, challenge the purported agreement as vitiated by fraud and seek to set aside the purported Agreement and any and all proceedings thereafter.
    c. Further, in the alternative, assuming a purported Agreement exits, challenge the repudiation on the basis that the purported Agreement was already frustrated on the date of the alleged repudiation.
    d. Furthermore, assuming arguendo, an alleged agreement exists, in the alternative, institute a lawsuit for breach of the alleged Agreement by P&ID and damages.
ii. Concerning the Tribunal, challenge it as:
    a. Being invalid as a consequence of the alleged Agreement being null and void and/or vitiated by fraud underlying the purported Agreement.

b. In the alternative, as being:

1. Improperly constituted, assuming arguendo, that the Tribunal had not been vitiated by the fraud;

2. Overtly biased during the proceedings, if a Tribunal was ever properly created; and

3. Engaging in unfairness, serious irregularity and egregious errors; and seek a declaration to set aside its proceedings and awards.

iii. Regarding the Tribunal's award, challenge it as:

a. A nullity base on a null and void agreement,

b. In the alternative, being:

1. Procured by fraud or in the alternative vitiated by fraud;

2. Patently irregular as a result of the Tribunal's bias, serious irregularities and egregious errors;

3. Contrary to public policy and natural justice;

4. Unconscionable regarding the amount of the award;

5. Punitive and irreconcilable with any award in Nigeria; and therefrom seek a declaration to set its award aside.

iv. Seek a declaration that Nigeria is and remains:

a. A sovereign nation and its own supreme ruler with the right and power to govern its own matters, including a legal system that is sacrosanct, without foreign interference; and

b. An independent nation and no longer subject to colonial rule.

v. Regarding the English courts, challenge them as:

a. Lacking jurisdiction in the matter based on the principles of sovereignty, and as being inconsistent with the purported Agreement and founded on underlying error;

b. Biased and improperly usurping the role of the Nigerian legal system;

c. Delivering judgements vitiated by the underlying fraud; and seek a declaration to set aside their proceedings, rulings and judgements on the matter.

14.2 Proceedings in English Courts

Regarding the proceedings in the English courts, the Government should:

i. Under protest regarding the court's jurisdiction, and without prejudice to Nigeria's sovereignty and jurisdiction over the matter:

a. Albeit, that the Government is challenging the jurisdiction of the English courts, to avoid untoward occurrences in the interim, pay any running costs[26] as assessed with 14 (fourteen days) from 26 September 2019, into an escrow account contingent on its full return following the nation's successful outcome in the matter.

b. Again albeit, that the Government is challenging the jurisdiction of the English courts pay the $200 million security deposit[27] within 60 days

[26] Punch Newspaper, 28 September 2019.
[27] Punch Newspaper, 28 September 2019.

from 26 September 2019, also into an escrow account, to preserve the leave of court granted to appeal. Such payment also being made contingent to being fully returned upon the Government's success in the matter.

c. These matters are of grave national import and time is of the essence.

ii. File a timely appeal in the matter duly noted as stated below.

iii. Document Notation: **However, every document filed in the English Courts henceforth, howsoever described, should be clearly and boldly marked "Under Protest to the Jurisdiction of the English Courts and Without Prejudice to Nigeria's Sovereignty and Jurisdiction Over the Matter."**

iv. Also, in its capacity as a sovereign nation, file notice under protest and without prejudice as noted above, of the Government's intention to discontinue proceedings therein, as being repugnant to Nigeria's sovereignty, contrary to public policy and vitiated by fraud.

14.3 Resolution of the Existing Legal Disputes

In light of the legal disputes that have arisen concerning the arbitral seat, the consequential and wide-ranging implications, the primacy of the Nigerian law and the English courts pronouncements regarding the effectiveness of an order of a Nigerian court; Nigeria and England being State Members of the United Nations, Nigeria may file a contentious case at the International Court of Justice on the matter towards a resolution. Nigeria's sovereignty demands that it seeks redress of the wrong perpetrated against it by the Tribunal and English Courts.

14.4 Protecting Nigeria's Various Assets from the Enforcement Order

The Government should exercise and explore all legal means necessary to protect all its assets, especially in foreign countries, from the reach of the purported award of damages. For example, Article 22 of the 1961 Vienna Convention on Diplomatic Relations, protecting the premises of a diplomatic mission, such embassies being inviolable must not be entered by the host country except by permission of the head of the mission. The protection of the Convention should be employed to its fullest extent. Furthermore, the Government should remind host countries of their obligations to protect Nigerian missions from intrusion or damage, which protection extends to the private residence of the diplomats.

14.5 Safeguarding Nigeria's Natural Assets

In addition to the existing internal controls, for agreements and/or transactions pertaining to valuable national assets, recommended for consideration are the following:

i. Presentation of an additional document for Executive Assent to the President or the Vice President for their approval and signature witnessed by at least three officers, prior to such agreements being executed by the parties to the agreement.
ii. No agreement pertaining to any valuable national asset should be presented for Executive Assent without the review of an independent evaluator for validity, risks of the agreement and determination regarding whether the agreement is in the interest of the country. The independent evaluator's memorandum of the

iii. assessment must accompany and be presented to the President or the Vice President at the time of the consideration of the Executive Assent.

iv. Experts from Nigerian Universities should be retained as consultants to advise the Government on the technical details of such agreements.

v. Publication of such Government agreements in the national official gazette as notice to Nigerian citizens.

vi. Development of a Caveat Emptor List of Nations that the Government will take judicial notice of and exercise extreme vigilance in negotiating with.

vii. Conducting background checks of entities and/or persons interested in executing such agreements with the Government.

viii. Prohibition against the non-Governmental contracting party being appointed as members of the Joint Operating Committee regarding such agreements.

ix. The terms of Government contracts should be for the minimum time feasible with options to renew as may be applicable.

x. Any reference to London, England being the venue of arbitration or the Court of Arbitration of the International Chamber of Commerce in any agreement should be effectively discontinued.

xi. A standing clause with the seat of any arbitration being expressly stated as Nigeria in such agreements.

15. Conclusion

Based on the foregoing, it is categorically maintained that the purported Agreement was null and void at execution upon which, no claim whatsoever, may be founded by P&ID,

thereby invalidating the Tribunal, and all subsequent proceedings, awards and judgements, which should be set aside. In the alternative, the alleged agreement was vitiated by fraud, and similarly all matters, howsoever described, attempting to spring forth therefrom, are invalidated.

Furthermore, in the alternative, if fraud is not proven, any purported agreement was frustrated by subsequent impossibility and unenforceable. In addition, a breach by P&ID may result in a claim of damages for the Government. Moreover, in the alternative, the Tribunal, was invalidated by its improper constitution, serious irregularities, unfairness and egregious errors, and its proceedings and awards should be set aside.

It is unequivocally asserted that venue and seat in the context of arbitration and of the purported Agreement are not synonyms and further that the arbitral seat regarding this matter was Nigeria not England. Therefore, the role of the English courts unlawfully and blatantly usurping Nigeria's power and imposition as the supervisory courts in the Nigerian matter is wholly erroneous, repugnant to the doctrines of sovereignty and of no effect whatsoever. Consequently, from the aforementioned in this report, a vigorous prosecution of the matter exploring all legal options is most indicated.

Finally, although the case, apparently presents a perplexing conundrum for the nation, however, the legal theories discussed, and legal strategies herein recommended, portend a likely successful resolution of the matter.

-END OF REPORT-