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**Tuesday
10th February, 2009**

FEDERAL REPUBLIC OF NIGERIA

NATIONAL ASSEMBLY DEBATES

FOURTH REPUBLIC

THIRD ASSEMBLY (SIXTH SENATE)

SECOND SESSION

THE SENATE OFFICIAL REPORT

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**SENATR OF THE FEDERAL
REPUBLIC OF NIGERIA**

Tuesday, 10th February, 2009-02

The Senate met at 10.25 am.

PERYERS

(The President in the Chair)

VOTES AND PROCEEDINGS

The President: Distinguished Senators, let us consider the Votes and Proceedings of Wednesday, 4th February, 2009. Pages 451, 452, 253, 454, 455,

Senator Dahiru A. Kuta (Niger East): Mr. President, page 455, No. 27 *Mallam Nasir Ahmed El-Rufai*, there is supposed to be a hyphen between *El* and *Rufai* and the spelling is wrong, *El-Rufai*, and not *El Rufia*.

The President: Secretariat, please, take note. Pages 456, 457, 458, 459, 460,

Senator Lee Ledogo Maeba (Rivers South-East): Mr. President, I am sorry to take you back to page 456 No. 32: *Engr. Success*. I do not know what the Secretariat means by *immediately after the word him* on page 457 in line 2 *leave out all other words and Question that the amendment be made, put and agreed to* which was not correct.

We agreed that the Committee should finish its work and turn out a proper personification of who is Eng. Success because we did not accept the name, Eng. Success and it is not completely reflected in this Votes and Proceedings.

The President: If I recall correctly, what we said was that they should get the man's proper name; that was the summary of our decision. I do not have the original paper here to know what was before the word; *him, immediately after the word him in line 2, leave all the other words; Question that the amendment be made, put and agreed to. Question on the recommendation as amended, put and agreed to.* Has anybody got the original paper here?

The recommendation: *The Committee noticed that he was already being investigated by the Economic and Financial Crimes Committee (EFCC) consequently the Committee recommends that the EFCC completes their investigation on him and prosecute him if found*

wanting while the forged certificates are annulled and the lands revoked.

What they said on page 456 stopped on him but that was not the only thing. The main issue that we raised there was that the word *Success*, we wanted his proper name and identity and that is important. Secretariat, please take note. Pages 459, 460, 461,

Senator John Nanzip Shagaya (Plateau South): It is the same correction that Senator Kuta made on *El-Rufai*. On page 461, No. 26, it is *Rufai. a* as against *Rufi*

The President: Secretariat, page 461. No. 26 *El-Rufai* and not *El Rufia*.

Senator Nimi Barigha-Amange (Bayelsa East): Mr. President, page 461 No. 30 on the same Eng. Success. Like what Senator Lee said, the agreement we reached was that we would not discuss anything about Eng. Success because it was not a correct name and that they should go and get the proper name. But here, it is stated that we directed the Economic and Financial Crimes Commission to complete their investigation on him and prosecute him. The man Eng. Success is not known to this Chamber and we wanted the correct name. That was the directive this Senate gave to the Chairman of the Committee.

The President: That is true but I do not know how we are going to handle it. First of all, the sentence; *that EFCC should complete investigation on him* is wrong. The correction there is that *they should complete their investigation and identify him*. That is what it should be but whatever it is, the point is that we agreed that the name *Success* is not his proper name; we wanted to know what his proper name is and nobody could tell us.

Senator Heineken Lokpobiri (Bayelsa West): Mr. President, although I was not here when the Report was debated, as a Member of the Committee who participated throughout the proceedings of the Committee's hearing, I know that all the documents that were made available to the Committee, bear Engineer Success. We took that to be his official name that he is known with. When EFCC arrested him and he was investigated, he was investigated as Engineer Success. When Mallam El-Rufai himself appeared before the Committee, the man was identified as Engineer Success. That name should be taken by the Senate as the official name of the man. Nobody ever addressed him with any other name. He is known to be Engineer success.

The President: But, we went a step further. We asked what his first name is. Is success his first name or surname, and nobody could answer that question. Even

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his initials are not known? So, we came to the conclusion that Success is just his business name. The two issues we raised that day were: That he should be investigated; and that we should get his proper names. That should be reflected on page 30. So, let us go ahead with Page 462?

Senator Uche Chukwumerije (Abia North): Mr. President, I rise to move that the Senate approves the Votes and Proceedings of Wednesday, 4th February, 2009, as amended.

Senator Simeon Olasunkanmi Oduoye (Osun Central): Mr. President, I rise to second the Motion that the Votes and Proceedings of Wednesday, 4th February, 2009 be approved as amended.

Question put and agreed to.

Resolved: That the Votes and Proceedings of Wednesday, 4th February, 2009 be approved as amended.

ANNOUNCEMENTS

Birthday Wishes to Distinguished Senator Salihu Otaru Ohize

The President: On behalf of all of us, I wish distinguished Senator Salihu Otaru Ohize, a happy birthday. His birthday was on 5th February, 2009. Do not bother about his age; he is digital and not analogue.

Letter of Appreciation

This is from distinguished Senator Ganiyu Olarenwaju Solomon, to all distinguished Senators.

I write, on behalf of myself and family to express our profound gratitude and appreciation to the President of the Senate, distinguished Senator David Mark (GCON) and all the Senators, who took time off from their very tight schedules to attend the 8th day prayer for my Late Mother, Alhaja Abike Solomon, on Saturday, 7th February, 2009.

Your physical presence, prayers and show of support and solidarity, are highly appreciated.

Thank you for your kind gesture and may God bless and reward you all richly.

Yours sincerely,

(Signed)
Senator Ganiyu Olarenwaju
Solomon.

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Change of date of Official Launching of Yobe East Senatorial Education Appeal Fund

I write to inform you and the entire Senate of the change of date for the official launching of the Yobe East Senatorial District Education Appeal Fund, from 14th February, 2009 to 28th February, 2009. The change of date is as a result of the death of His Excellency, Governor Mamman Ali of Yobe State. I regret any inconveniences that this change may cause you.

I wish to also inform you that due to increase in scope of the programme, the amount being sought has been increased to N250 million up, from N150 million earlier communicated.

Please accept the assurances of my highest consideration.

(Signed)
Senator Buka Abba Ibrahim.

Burial Ceremony of Mrs. Timi Alaibe

I write to inform you and the entire Senate of the Federal Republic of Nigeria, that there will be an Arik Airline Flight to convey to Port-Harcourt, all Senators who may wish to attend the burial ceremony of late Mrs. Timi Alaibe, wife of the Managing Director of Niger Delta Development Commission (NDDC), on Thursday, 12th February, 2009. The Flight Schedule is as follows:

Abuja - Port Harcourt - 7.15 a.m. prompt

Port Harcourt – Abuja - 5 p.m. prompt.

Accordingly, therefore, distinguished Senators who are interested are kindly requested to write their names on the list provided at the entrance of this Chamber.

(Signed)
Senator Heineken Lokpobiri.

Meeting of PDP Senators and Officials

There will be a meeting of the PDP distinguished Senators and Officials from the South-West geopolitical zone in the Senate Leader's Meeting Room immediately after today's sitting.

(Signed)
Senator Teslim Folarin (OFR)

Visit of Staff and Students of Citadel International College, Ikare-Akoko, Ondo State and Government Secondary School, Garki, Abuja

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I wish to acknowledge the presence of staff and students of Citadel International College, Ikare-Akoko, Ondo State, and Government Secondary School, Garki, Abuja, who are in the Gallery to observe Senate Proceedings. We wish them fruitful observation of the Senate Proceedings.

Senator Heineken Lokpobiri: Point of Order, Mr. President!

The President: Yes, Point of Order, distinguished Senator Lokpobiri.

Senator Heineken Lokpobiri: My Point of Order is predicated on Orders 42 and 52 of the Senate Standing Orders. With your kind permission, I read:

The President: Go ahead.

Senator Heineken Lokpobiri: Order 42 is on Matter of Urgent Public Importance which says: *The matter for discussion shall, if possible, be referred to the President of the Senate before commencement of the day's sitting and the President of the Senate shall refuse to allow the claim unless he is satisfied that the matter is definite and urgent.*

Order 52 is on Dispensing with Notice and it reads: *Notice shall not be dispensed with in the case of a motion or in respect of any other proceeding for which notice is required except with the consent of the President of the Senate and the general assent of the Senators present.*

I have a Motion here that has to do with a fire incident that happened in the residence of our Leader, Senator Teslim Kolawole Folarin (OFR) that has made him to be a displaced person in an unknown destination and I do not think any matter could be of more national importance to the Senate than that one.

Therefore, I humbly crave the indulgence of Mr. President and the Senate to grant me the leave to move that Motion.

The President: Senator Heineken discussed this matter with me and I have no objection to it. Order 42(2) provides that I seek the consent of, at least, one-fifth of all the Senators. Is it the wish of the Senate that I allow Senator Lokpobiri to present his Motion?

Question put-

Neither Ayes nor Nays is loud enough. Let me put the Question once more. We will dispense with the notice not to stand it till tomorrow. If we cannot take it

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today, then we can forget it. Once again, I will put the Question that Senator Lokpobiri presents his Motion.

Question put and negatived.

PRESENTATION OF REPORTS

Report of the Committee on Judiciary, Human Rights and Legal Matters on the Screening of Nominees

Senator Teslim K. Folarin: Mr. President, the first business of the day is the presentation of the Report of the Committee on Judiciary, Human Rights and Legal Matters on the Screening of Hon. Justice John Afolabi Fabiyi (North Central) and Hon. Justice Olufunlola Oyelola Adekeye (South West) as Hon. Justices of the Supreme Court of Nigeria.

I understand the Chairman and the Vice Chairman of this Committee are on official assignment. Therefore, you may wish to invite a Member of the Committee, Senator James Manager to present the Report.

Senator Maina Ma'aji Lawan (Borno North): Mr. President, I rise to second the Motion moved by the Leader that the Senate do receive the Report of the Committee on Judiciary, Human Rights and Legal Matters on the Screening of Hon. Justice John Afolabi Fabiyi (North Central) and Hon. Justice Olufunlola Oyelola Adekeye (South West) as Hon. Justices of the Supreme Court of Nigeria.

Question put and agreed to.

Resolved: That the Senate do receive the Report of the Committee on Judiciary, Human Rights and Legal Matters on the Screening of Hon. Justice John Afolabi Fabiyi (North Central) and Hon. Justice Olufunlola Oyelola Adekeye (South West) as Hon. Justices of the Supreme Court of Nigeria.

The President: Senator James Manager, lay the Report on the Table, please

(Report accordingly laid on the Table)

Report of the Committee on Judiciary, Human Rights and Legal Matters on the Screening of Nominees

Senator Teslim K. Folarin: The second business of the day is the presentation of the Report of the Committee on Judiciary, Human Rights and Legal Matters on the Screening of Mr. Olumuyiwa Akinboro

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and Alhaji Mohammad Bala Shagari as Members of the Federal Capital Territory Judicial Service Committee.

You may wish to invite Senator James Manager to lay the Report.

Senator Maina M. Lawan: Mr. President, distinguished Colleagues, I rise to second the Motion that the Senate do receive the Report of the Committee on Judiciary, Human Rights and Legal Matters on the Screening of Mr. Olumuyiwa Akinboro and Alhaji Mohammad Bala Shagari as Members of the Federal Capital Territory Judicial Service Committee.

Question put and agreed to.

Resolved: That the Senate do receive the Report of the Committee on Judiciary, Human Rights and Legal Matters on the screening of Mr. Olumuyiwa Akinboro and Alhaji Mohammad Bala Shagari as Members of the Federal Capital Territory Judicial Service Committee.

The President: Senator James Manager, lay the Report on the Table, please

(Report accordingly laid on the Table)

ORDERS OF THE DAY

MOTION

Unauthorised Expenditure and Misapplication of Funds from the Development of Natural Resources Fund

Senator Teslim K. Folarin: Mr. President, the first Order of the day is a Motion standing in the name of Senator George Thompson Sekibo and 45 others on the Unauthorised Expenditure and Misapplication of Funds from the Development of Natural Resources Fund.

You may wish to invite Senator Sekibo to move his Motion.

The President: Distinguished Senator George Sekibo, you have the Floor, please.

Senator George Thomson Sekibo (Rivers East): Mr. President, I rise to move a Motion that is endorsed by 46 Senators including Senator Felix Kolawole Bajomo whose name was unintentionally omitted.

Permit me because of the nature of the Motion to make few comments so that it will guide this distinguished Chamber to follow up properly.

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Background to the Motion:

Development of Natural Resources Fund was first established through the allocation of Revenue Act Modification Order 2002 and its commencement dated was back dated to May 29th 1999. This Order was a follow up action by the Federal Government as a result of the Supreme Court judgment delivered on April 5th 2002 that outlawed certain deductions from the Federation Account inherent in the revenue allocation formula in use since 1992 as well as other deductions introduced in 1999.

The Modification Order 2002 modified Section 2 of the Principal Revenue Allocation Act of 1981 that came into effect from January 22nd 1982 which had also gone through some amendments through Decree No. 36 of 1984 and Decree No. 106 of 1992.. Section 2 of the Principal Act was modified thus:

- a. Federal Government Allocation 48.5 per cent;
- b. General Ecological Problem 2.0 per cent;
- c. Federal Capital Territory 1.0 per cent;
- d. Stabilization Account 1.5 per cent;
- e. Development of Natural Resources 3.0 per cent.

All the revenues accruing to each of these Special Funds are kept in-trust by the Federal Government. In a subsequent Modification Order dated July 26th 2002, while some of the Special Funds were tampered with, the 3.0 per cent for the development of natural resources was maintained and sustained.

The former President, Chief Olusegun Obasanjo in trying to retain the 3.0 per cent argued thus: *The need to develop alternative mineral resources to oil and gas cannot be over emphasised. It is essential and important that we develop additional sources of revenue being worked out to commence January, 2003 that would make it possible for us to earn much revenue from solid minerals as we derive from oil and gas.*

To be able to do this, we have to generate the necessary data and information from a comprehensive geological survey and mapping of the whole country. This is an expensive exercise and a pre-condition for attraction of investment to the development of our solid minerals. The development of the solid minerals sector will also provide possibilities for every part of the country other than oil and gas producing areas to benefit from the principle of derivation.

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Emphasising again on the need for the Federal Government to keep this Fund as part of the Federal share of the Federation Account as against the request of some state governments to distribute the 3.0 per cent to the three tiers of government, he further said thus: *To share the revenue set aside for this activity will smack of irresponsibility. For the avoidance of doubt, we would have by so doing, failed to develop this very important sector of our national economy. I will, therefore, be disinclined to redistribute the allocation for the development of minerals to the three tiers of government on the basis of the existing revenue formula. It should, therefore, be added to the Federal Government's share of the Federation Account to be used as described therein.*

In this regard, the Federal Government's share becomes as given below: *(Interruptions)*

The President: Senator Sekibo, where are you reading from?

Senator George Thomson Sekibo: They are distributing it.

The President: It is all right, go on.

Senator George Thomson Sekibo: In this regard, the Federal Government's share becomes as follows:

Federal Government Share 48.5 per cent.

Federal Capital Territory 1.0 per cent;

Development of Solid Mineral 3.0 per cent;

Federal Government share of Ecological fund 1.46 per cent;

Stabilization fund for 3 tiers of Governments 0.726 per cent.

However, in January, 2004, further modification was made on the Special Funds through a letter by the then Minister of Finance, with reference number, AGF/TRY/796/Vol.11/41. This modification readjusted the Federal Government's share of the Federation Account. I am sure that my Colleagues have gotten the papers and if they have, they would see the distribution there.

It is evidently clear from the above analysis and explanation that the *Development of Natural Resources Fund* was reduced from 3.0 per cent between 1999 and 2003 to 1.68 per cent since 2004 till date. A total of N231,346,314,400.98 had accrued into this Fund from

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July, 2002 to June, 2008. You have an attached document that I give on my letter headed paper which gives the details.

You will recall that sometime last year as a result of the food crisis situation in our country, about ₦80 billion of this Fund was used for the importation of rice. Also, in course of our oversight activities, it was discovered that money from this Fund was used for the aviation sector reforms.

Again, there is the speculation that money from this Fund is being used as contingency or Emergency Relief Fund.

In trying to drive a few points home; I crave your indulgence to refer to the opinions of world leaders on the rule of Law and Governance:

The term rule of Law, like the phrase Love of God and Brotherhood of Man are simple expressions of one of the few most sublime concepts that the mind and spirit of man has yet achieved (George H. Boldt, in a speech on Law Day in Washington, May, 1, 1958).

Again, free government has no greater menace that disrespect for authority and continual violation of law. It is the duty of a citizen not only to observe the law but to let it be known that he is opposed to its violation (Calvin Coolidge in a message to the USA Congress December, 6th, 1923)

Finally, No man is above the law and no man is below it; nor do we ask any man's permission when we require him to obey it. Obedience to the law is demanded as a right, not asked as a favour (Theodore Roosevelt, a message to USA Congress, January, 1904)

Facts: The facts are:

- (i) There was established a Development of Natural Resources Fund in 2002 by a Presidential Modification Order on the allocation of Revenue Act 1982. This took effect from May 29, 1999.
- (ii) The Development of Natural Resource Fund was 3 per cent from May 1999 to December 2003 and 1.68 per cent from January 2004 till date.
- (iii) A total of N231 billion had accrued into the Fund between July 2002 and June 2008.
- (iv) About N80 billion out of this Fund was used for the importation of rice to contain the impact of food crisis in the country.

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- (v) Billions of Naira out of this Fund was used for the Aviation sector Reforms.

The intention of this Fund is strictly for the development of the solid mineral sector, as expressed by the Modification Order 2002 and the argument given by the former President, see paragraph 1.07 and 1.08 as stated above.

Management of the Fund:

One of the greatest challenges to the noble idea of establishing this Fund for the development of the solid minerals sector is the management of the Fund itself. While the Federal Government is the custodian or trustee of the Fund, the manner in which it manages the Special Fund creates room for anxiety and suspicion. The use of expenditure from this Fund has never been referred to the National Assembly for either approval or appropriation.

The provisions of the Allocation of Revenue Act of 1982, Cap. 16, Laws of the Federation of Nigeria did not also clearly define how this Fund or other Special Funds are to be administered or utilised. The absence of proper management mechanism had rendered the Fund at the mercy of the Federal Government, which in most cases, uses it as excess funds or contingency funds.

Fundamental Questions:

- We need to ask how many of the distinguished Senators in this Chamber are aware of the existence of this Fund, and how it is being administered?
- Has any Committee in the Senate carried out any legislative oversight activity in terms of appropriation of expenditure on this Fund?
- With this huge accrual to the Fund, can we show such corresponding growth in the solid minerals sector with the exception of the establishment of the Nigerian Geological Survey Agency?
- Is the Federal Government saving this fund for the nation or is it being spent for other purposes outside the intendment of the Modification Order 2002 that established it?
- Is this not part of the public funds contemplated by Sections 80 and 81 of the 1999 Constitution of the Federal Republic of Nigeria?

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It is with the desire to find answers to these questions that we brought this Motion before you. As we continue to serve our people diligently, we owe them certain explanations on events and programmes of governance. Our duty is to make good laws for governance, and we can only achieve this by carrying out diligent oversight on the expenditure on public funds. It is absolutely necessary to find out how this Fund is being spent and the progress it has attracted to our national economy and the well being of our people.

It was this same anxiety that compelled the Senate Committee on Solid Minerals to drag the Minister of Finance and the Chairman, Revenue Mobilisation, Allocation and Fiscal Commission, to the Senate Committee on Appropriations in December 2007. It is worthy to note that the duo acknowledged the existence of the Fund. While the Chairman, Revenue Mobilisation, Allocation and Fiscal Commission, categorically condemned the wrong use of the Funds, the Minister claimed that all monies in the Fund were safe. The Minister of Finance also promised that releases would be made to the Ministry of Mines and Steel Development to augment their 2008 budgetary provisions. To our greatest dismay, 13 months after that meeting with the Senate Appropriations Committee, nothing visible has come out of that Fund.

Conclusion:

It is a noble idea to encourage a diversification of our national economy. It is also a noble idea to choose the development of the solid mineral sector as an alternative source of revenue to boost the economy and have a better hope of Natural Revenue generation instead of our total dependence on oil and gas which international market prices are unstable.

It is absolutely necessary that the Senate carry out a comprehensive investigation on the status of this Fund. It is also necessary to create a framework or management mechanism for the appropriation and expenditure of monies from this Fund after its status has been established.

May I sincerely appeal that you lend your support to this Motion I am going to move.

The Senate:

Notes that the Federal Government has been deducting and paying 3 *per cent* from the Federation Account from May 29th 1999 to December 2003 and 1.6 *per cent* from January, 2004 till date into a Fund named Development of Natural Resources Fund;

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Confirms that the creation of this Fund was sequel to a Modification Order on the Allocation of Revenue Act issued by the former President, precisely, Modification Order 2002 but had its commencement back dated to May 29, 1999.

The President: Senator Sekibo, having exhausted really everything that is here, why do we not just allow comments?

Senator George Thomson Sekibo: I have not finished yet.

The President: The Prayers would come after. You are just repeating exactly what you have given to us.

Senator George Thomson Sekibo: All right, let me just read the Prayers.

The Senate accordingly resolved to:

- (i) Urge the Ministry of Finance to stop further expenditure from this Fund without strict compliance to the provisions of Section 80(3) and (4) of the 1999 Constitution of the Federal Republic of Nigeria.
- (ii) Direct its Committee on Finance to carry out a comprehensive investigation on the status of this Fund and report to the Senate within four weeks.

Senator Olorunnimbe Mamora (Lagos East): Mr. President, permit me to thank my Brother and Colleague, Senator George Thomson Sekibo, for the Motion which he has brought before this distinguished Senate this morning.

Essentially, he is asking for the need to investigate the status of that Fund and in so doing, permit me also to call the attention of this Senate to our obligations as Senators of the Federal Republic of Nigeria, and I would like to draw the attention of the Senate to the Seventh Schedule to the Constitution which deals on Oaths of a Member of the National Assembly. With your kind permission, I want to draw your attention to that aspect that says: ... *and I would preserve, protect and defend the Constitution of the Federal Republic of Nigeria*. That is the most relevant area.

I also want to refer this Senate to Section 88 of the Constitution on power to conduct investigations. Section 88 of the Constitution states:

Subject to the provisions of this Constitution, each House of the National Assembly shall have power by resolution published in its journal or in the Official Gazette of the Government of the

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Federation to direct or cause to be directed an investigation into –

- a) *any matter or thing with respect to which it has power to make laws; and*
- b) *the conduct of affairs of any person, authority, Ministry or government department charged or intended to be charged with the duty of or responsibility for –*
 - i. *executing or administering laws enacted by the National Assembly, and*
 - ii. *Disbursing or administering moneys appropriated or to be appropriated by the National Assembly.*

You will discover that what Senator Sekibo has put before this Senate are allegations of misapplication of funds and, of course, allegation of unauthorised expenditure which are inconsistent with Sections 80, 81 and 83 of our Constitution. What this reminds me of is the PTDF saga where the funds for PTDF were not being applied as intended by the law setting up that body and I think we are facing a similar situation. I will urge my distinguished Colleagues to support this noble Motion so that we can be seen to be responsible and responsive to the yearnings of the people of Nigeria and particularly rising up to defend the Constitution which we all swore on Oath to defend.

Senator Ike Ekweremadu (Enugu West): Mr. President, I rise first to commend our Friend, distinguished Senator Sekibo for the detailed and erudite presentation and for the patriotism that propelled him to bring this Motion. I agree with the Motion entirely. I want to place before this Senate for consideration the need for caution even in discussing this matter.

If you look at the papers presented before us, one of the allegations is that ~~N~~80 billion out of this Fund was used for the importation of rice to contain the impact of the food crisis in the country.

I am aware that when this matter came up last year before the public opinion, the Federal Government denied importing rice worth ~~N~~80 billion. Again, they are also saying that billions of Naira out of the Fund was used for reforming the aviation sector. These are issues that need hard facts for us to make serious comments on them in this Chamber.

I want to urge this Senate to consider caution even in this matter so that we will not be seen to have

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ridiculed ourselves if it turned out that the facts are not true. I want to recommend most seriously for our consideration that we commit this thing to the appropriate Committee as suggested by the mover of this Motion so that they have a detailed investigation and come up with hard facts.

In doing so, I support this Motion entirely and I believe that it is within our powers under Section 88 to focus on this aspect of public expenditure and find out the true situation of the Fund but as I said, we need to apply caution in things we say so that we do not prejudice any investigation that may come forth from this Motion.

The President: Is there anything we want to add apart from the Prayers? This thing is definitely going to a Committee any way. So, any comment here, in my candid opinion, is just surplus to what we are going to discuss. If what you are going to discuss is by way of amendment, then let me go to the Prayers because you cannot amend the language here.

I will now put the Question that we go to the Prayers.

Question put and agreed to.

Prayer (i) says: *Urge the Ministry of Finance to stop further expenditure from this Fund without strict compliance to the provisions of Section 80(3) and (4) of the 1999 Constitution of the Federal Republic of Nigeria.*

Is there any comment?

Senator Mahmud Kanti Bello (Katsina North): My view regarding Prayer (i) is that I urge that we look at it critically because we said we are referring this matter to a Committee and we cannot at the same time take a decision on it now. We do not even know the true state of affairs. Therefore, I suggest that Prayer (i) be deleted.

The President: The problem we have with Prayer (i) is that we are already judging. We are not in a position to do that yet. I think the simple prayer in this Motion is to refer it to the Committee. I will now put the Question on Prayer (i).

Question put and negatived.

Prayer (ii) says: *Direct its Committee on Finance to carry out a comprehensive investigation on the status of this Fund and report to the Senate within four weeks.*

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Senator Joel Danlami Ikenya: I believe that Public Accounts Committee of the Senate has a very serious role to play in this regard. I am of the strong view that the Public Accounts Committee and the Committee on Finance should jointly carry out this investigation. That is my Amendment.

Senator James E. Manager (Delta South): Mr. President, in amending Prayer (ii), I sincerely believe that the Committee on Judiciary be brought in because we are talking about law and Constitution. In my humble opinion, the Committee on Judiciary is important.

Senator John Nanzip Shagaya (Plateau South): Mr. President, I would have made some elaborate comments but since all that have been stopped, I have no option but to abide with whatever that comes out of the Floor of this Senate

Senator Dahiru A. Kuta (Niger East): Mr. President, I do not know whether or not it is appropriate to leave this until we go to the Committee but on the 14th of December, 2004 the World Bank advanced the sum of US\$220 million (*Interruptions*)

The President: No, Senator Kuta, we are on Prayer (ii). We are taking no comments any more.

Senator Dahiru A. Kuta: I am not making comments, Sir.

The President: Amend Prayer (ii) then.

Senator Dahiru A. Kuta: This is what I am saying. When it goes to the Committee, the Committee should also remember that in December 2004 there was a World Bank loan advanced to the Federal Government for solid mineral development. That is the addition I am making.

The President: You are saying Prayer (ii) should now read that the World Bank gave Nigeria a loan? That is why I told you not to make comments from the back door because we want to amendment on Prayer (ii).

Senator Joseph Iorshagher Akaagerger (Benue North-East): Mr. President, I have an Amendment to Prayer (ii) but I want to seek guidance from you whether to make comment on what I want to amend or just make my Amendment straightaway.

The President: I want the proposed Amendment, please.

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Senator Joseph I. Akaagerger: My Amendment reads: *Subject to the provisions of Section 85(2) of the Constitution of the Federal Republic of Nigeria, the Senate directs its Committee on Finance to carry out a comprehensive investigation on the status of this Fund and report to the Senate within four weeks.*

The President: The addition you want there is the phrase: *Subject to the*; that is fundamental and we do not need to write that in the Amendment.

Senator Bassey Ewa-Henshaw (Cross River South): Mr. President, I believe that this is a Motion that relates to the Committee on Solid Minerals; therefore, that Committee should carry out the investigation jointly with the Committee on Finance. Also the point that Senator Dahiru Kuta was trying to make which was misunderstood was that apart from the funds deducted from the Federation Account, there are also funds that came as loan from the World Bank to the solid mineral sector. What he is, therefore, saying is that both the Committees of Finance and Solid Minerals should conduct investigation on this and other funds that were given to that sector.

The President: If I may just read part of the Prayer it says: ... *carry out a comprehensive investigation...* We do not have to itemise what a comprehensive investigation should be. So, your Amendment is to say: ... *on this Fund and other funds.*

Senator Mahmud Kanti Bello: Mr. President, I agree with what Senator Ewa-Henshaw said but I do not agree with him with regard to putting the Committee on Solid Minerals. With all due respect, they did a good job by starting this issue, but it is very unfortunate that some of the information they gave were even wrong.

For example, the N80 billion they were referring to used for importation of rice; I have just finished talking with the Chairman of the Senate Committee on Agriculture who is sitting close to the Chairman, Senate Committee on Solid Minerals and he confirmed to me that they did not order any rice. For this type of information to be put in our Order Paper is wrong and for that purpose the Senate Committee on Solid Minerals should not be involved in this investigation. It should be purely the work for the Finance and if possible Public Accounts Committees.

The President: First, we agree that there is a need for comprehensive investigation. It is which Committee should do it now and essentially, we are talking of something that has to do with Finance. If Solid Minerals Ministry has information, they should give to the Committee that is doing it because some of the

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information given here are obviously not correct and they are based on rumour.

You will recall that this incidence of N80 billion for rice importation was raised on the Floor here and Senator T. U. Wada, at the time, confirmed that they did not order rice and there was a lot of media coverage on the issue and it was denied categorically, that they did not import any rice. In any case, to say that it came from this Fund, that would be exposed by the Committee that would investigate it and if the Committee says that they did not order it from this Fund then, we would know what to do from then onwards.

Essentially, it is the Fund and any other fund that we are worried about. I do not think that there is need to bring in any other Committee other than Committee on Finance. The only Amendment now is *and other related funds* and not *other Committees*.

I will put the Question on Prayer (ii) as amended.

Question put and agreed to.

The President: Is there any additional Prayer?

Senator Bassey Ewa-Henshaw: Mr. President, as a background, this is the second time that we are being informed about Special Funds that have generated monies paid out from the Federation Accounts. Sometime ago we also stumbled on the fact that there were large sums of money being taken out of Petroleum Resources and paid into the Petroleum Technology Development Fund which created a lot of crisis in this country.

My third Prayer, therefore, is to: *Direct the Committee on Finance to conduct an investigation and give to this Senate a comprehensive list of all funds that the Federal Government is maintaining wherever they may be.* This is because it seems to me that there are so many funds hidden all over the place that we simply cannot account for.

The President: I do not think that we need to ask the Committee to do that because it should be part of its routine duty. They should be able to give us the list of all funds. We do not need to direct them because as part of its own routine duty, that is what the Committee should do. It is like saying that Committee on Water Resources should give us the names of all the dams in this country. That is part of their routine activity.

Senator Leo Ledogo Maeba (River South East): Mr. President, I am not challenging your ruling on Senator Ewa-Henshaw's additional Prayer, but as a

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plea, matters have just suddenly arisen and in our convention issues suddenly arising becomes special issues. The issue now is, as he has mentioned, there are so many funds. We have last year's report on PTDF. There is no mention of any fund in the Report by the Committee on Finance. But because of what has happened now, it is likely that there are lots of secret funds all over the place. So, it will not be out of place if we pray that as special request from the distinguished Senate that the Committee should oblige us with a list of all funds and their status.

I support the additional Prayer that they should give us the list of all the funds and their status.

The President: Senator Lea, we should be mindful that we do not also expose ourselves by doing what we should not do. That is my honest appeal because we ought to know. If we do not know and we are asking to know, tell us. It does not mean we are doing what we should not do.

I will now put the Question on the additional Prayer

Question put and negatived.

Resolved: That the Senate directs its Committee on Finance to carry out a comprehensive investigation on the status of this Fund and other related funds and report to the Senate within four weeks.

CONSIDERATION OF REPORT

Report of the Committee on Aviation on the Investigative Public Hearing into the Disbursement and Utilisation of the N19.5 billion Intervention Fund

Senator Teslim K. Folarin: The Second Order of the day is the consideration of the Report of the Committee on Aviation on the Investigative Public Hearing into the Disbursement and Utilisation of the N19.5 billion Intervention Fund.

You may wish to invite Senator Anyim Ude to move the Motion for the Senate to consider the Report of the Committee.

Senator Anyim C. Ude (Ebonyi South): Mr. President, I hope my Colleagues have copies of the Report, which has earlier been distributed. The Senate on Wednesday, 7th May, 2008, after considering a Report on Poor State of Safety in our Airports, resolved that the Senate should mandate its Committee on Aviation to carry out a Public Hearing on the disbursement and utilisation of the \$19.5 billion Federal

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Government Intervention Fund released in 2006 for the rehabilitation and development of infrastructure in the aviation industry.

The adoption of this Resolution by the Senate, paved way for the investigative hearing by the Senate Committee on Aviation into the application and utilisation of the said Intervention Fund.

Senator Lee Ledogo: Point of Order!

The President: What is your Order?

Senator Lee Ledogo: Mr. President, it is Order 1(b) on the Practice and Procedure of the Senate. With your kind permission, I read: *In all cases not provided for hereinafter, or by Sessional or other Orders or practice of the Senate, the Senate shall by Resolution regulate its procedure.*

I have noticed that the Report being presented has two versions. One version of it that is given to the Leadership is blue, and the second version given to all Senators, is white. By Resolution, I want to know how many versions of this Report the Committee is circulating.

The President: Senator Anyim Ude, are you circulating two versions?

Senator Anyim C. Ude: No, Mr. President. We had distributed this copy last week but we just decided this morning to reprint the same copy just in case some Colleagues do not come with the one already distributed. They are same document.

The President: Senator Lee Maeba, are you still insisting that there are two versions?

Senator Lee Ledogo: From my simple knowledge of colour, one Report here is blue and the other is white. I do not know if the content is blue or white. I wanted to confirm from the Committee if there is a separate Report for the Leadership and another Report for the Senators. I wanted to know where this was coming from.

Senator Mohammed Adamu Bello (Katsina North): I received information that because Senator Lee does not normally sit down and look at things very well, that is why his copy is printed in black and white so that he can see it properly while the Leadership and some of us who are elderly, got copies printed in blue colour to assist our eyes (*Laughter*).

The President: Senator Lee Maeba, I rule you out of Order.

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Senator Anyim Ude: In continuation of my presentation, on Page 1 of this Report, you will find the list of Members of this Committee. Paragraph 3, also showed the methodology that we adopted. In order to save time, I would not read everything. I would just draw your attention to the highlights to enable you take your decision.

The Committee received fifty-eight (58) memoranda from serving and former government officials, stakeholders, Aviation Unions, interested members of the public and contractors who executed projects funded from the N19.5 billion Intervention Fund.

Thirty-two persons testified orally while 28 presentations were received as exhibits.

Findings:

In spite of efforts by groups outside the hallowed Chamber of Senate to blackmail, bribe, infiltrate, threaten, intimidate and cajole the Committee, it remained focused and established the following facts:

1. That N19.5 billion was released by the Federal Government in 2006;
2. That at conception, the Fund was intended to finance major intervention projects in four Aviation Parastatals as follows:
 - (a) Federal Airports Authority of Nigeria (FAAN) - N9.2 billion
 - (b) Nigeria Airspace Management Agency (NAMA) - N7.3 billion
 - (c) Nigeria Civil Aviation Authority (NCAA) - N2.2 billion
 - (d) Nigerian Meteorological Agency (NIMET) - N0.9 billion

TOTAL - N19.5 billion

3. That later, the distribution of the N19.5 billion Fund to Aviation Parastatals was **changed** by the Ministry of Aviation as follows:

- Federal Airports Authority of Nigeria (FAAN) - N13,100,956,240.07
- Nigeria Airspace Management Agency (NAMA) - N6,399,043,759.35
- Nigeria Civil Aviation Authority (NCAA) - Nil
- Nigerian Meteorological Agency (NIMET) - Nil

TOTAL - N19,500,000,000

4. That the Rivers State Government later released additional sum of **N2 billion** to FAAN for infrastructural upgrade of the Port Harcourt Airport;
 5. That following from (3) to (4) above, the **total inflow was N21.5 billion into the Aviation sector as Intervention Fund.**
 6. That the fund was sourced and broadly applied as follows:
 - (a) Bank Loan: NAMA Safe Tower Project N6.5 billion
 - (b) FGN Natural Resources Accounts:
 - (i) FAAN Severance Benefits N2.0 billion
 - (ii) FAAN Intervention at four Airports N11.0 billion
 - (c) Rivers State Govt. FAAN infrastructure at Port Harcourt Airport N2.0 billion
- TOTAL - N21.5 billion**

To make it easier for you to appreciate, we segmented the expenditure. The first segment is on **Safe Tower Project - N6.5 billion. This Contract was awarded during the tenure of Prof. Babalola Borisade, as Minister of Aviation.**

7. That the N6.5 billion used for the Safe Tower project was borrowed by FAAN ostensibly on behalf of NAMA from Zenith Bank Plc. out of which **N6,399,043,759.35** (inclusive of LC charges) was paid soon after release for the foreign component; NAMA claimed that it was neither consulted nor did it participate in any negotiation for the loan. The hurried nature of the release and payment was attributed to the need to meet the requirements of the International Civil Aviation Organisation (ICAO) audit team scheduled to visit Nigeria in November 2006;
8. That half of the N6.5 billion was later **refinanced** by UBA Plc;
9. That the Safe Tower Project cost the nation N6,699,043,759.35 made up of N6,399,043,759.35 foreign component N300,000,000.00 local content;
10. That the Safe Tower project was for the replacement of Tower machines at the Murtala Muhammed International Airport (MMIA)

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Lagos; Nnamdi Azikiwe International Airport, Abuja; {Port Harcourt International Airport, Port Harcourt and Mallam Aminu Kano International Airport (MAKIA), Kano;

11. That the N6.5 billion Tower project was awarded through **Selective tendering process** (not advertised and not competed for);
12. That the ~~N~~6.5 billion Tower project had **no Bill of Quantities** or a detailed listing with specifications of items to be delivered by the contractor.
13. That no Due Process was followed and the contract was grossly inflated.
14. That the company which operated as consultants did the initial **survey** determined the **scope** of work and **fixed** the contract price was the same company that was awarded the contract.
15. That the company is **Avsatel Ges MBII Vienna, Austria and Abuja**. They are registered in both locations.
16. That the ~~N~~6.5 billion expenditure on the Safe Tower project was not appropriated by the National Assembly either before, during or after the contract.
17. That the bid evaluation was done by an in-house Committee of the Ministry of Aviation **chaired by one Gbenga Obadina who is a contractor/businessman**.
18. That the highest quotation received by the Technical Consultant to the Senate Committee on Aviation during the investigation for the same four Towers from both Viasala and Frequencies of Vienna, the manufacturers and other companies was **N1.5 billion at 100 per cent mark-up**.
19. That the current management of NAMA in the **2008 Budget** had a provision of **N1.5 billion** for the same **four towers in four other airports** in the country (same specification, quantity and quality).
20. That the current management if NAMA has indeed received quotations which were tendered as exhibits to the Committee one of which was from Viasala and Frequencies, the manufacturers

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of the **four Towers under reference** for **N1.3 billion** for the same specifications as that of the ~~N~~6.5 billion Towers project.

21. **That the ~~N~~6,699,043,759.35 Tower project was grossly over inflated to the tune of N5,199,043,759.35 representing 446.6 per cent increase over and above the market price of N1.5 billion.**
22. That Due Process was not followed in the award of the contract. The fake Due Process Certificate said to have been issued by the Bureau of Public Procurement should be investigated by the EFCC which should also find out why no Certificate of Payment was ever issued by the Bureau and no request to that effect was made by the Ministry.
23. That as at February, 2008 one and half years after the loan was obtained, the cost of the ~~N~~6.5 billion in Commercial Bank Loan servicing to the Federal Government stood at **N1,438,788,496.06k** (One Billion Four Hundred and Thirty Eight Million, Seven Hundred and Eighty Eight Thousand, Four Hundred and Ninety Six Hundred and Six Kobo).
24. That a total sum of **N229,573,144.43k** was **recovered** by this committee from the two Commercial Banks being excess charges and unpaid accrued interest **prior to the Public Hearing**.

The second segment of the expenditure had to do with Severance Benefit - ~~N~~32 billion disbursements which started during the tenure of Professor Babalola Borishade but completed during the tenure of Chief Femi Fani-Kayode as Minister of Aviation.
25. That out of the ~~N~~2 billion earmarked from Intervention Fund to pay severance benefits to disengaged staff of FAAN, a total of **N1,859,351,527.71 was paid out**.
26. That a credit balance of **N140,648,472.29** is currently in FAAN Account.
27. That **1,364** personal files were examined and total amount paid out is **N2,267,460,386.65k**.
28. That 23 names were duplicated amounting to **N58,332,763.22k**.
29. That 5 staff were without files and are suspected to be ghost workers who were paid **N7,773,376.07k**.

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30. That immediately after the right-sizing exercise in 2006, FAAN was directed by the former Minister of Aviation, Chief Femi Fani-Kayode to embark on employment of 297 new staff out of which 17 were in AGM position and above. This exercise turned out to be lopsided.
31. That in the new lopsided employment exercise carried out when the former Minister suspended the former Managing Director, Mohammed Yusuf, the distribution of the 17 new top employees to States was as follows: **Edo - 3, Oyo - 2, Lagos - 1, Kwara - 2, Plateau - 1, Osun - 7 and Katsina - 1.**
32. That FAAN was taken to Court by the **Federal Character Commission** for constantly contravening Federal Character principles as enshrined in the Constitution of the Federal Republic of Nigeria.
33. That although the matter was later withdrawn from a regular Court and settled through Arbitration, FAAN is yet to abide by the injunction of the Arbitration which mandated FAAN to **correct** the imbalance in subsequent employment exercises.
34. That many staff who were affected by the **right-sizing** exercise and were duly paid their severance benefits were **re-employed** by FAAN almost immediately **without refunding** the retirement benefits paid to them.
35. That top management personnel were employed without regard to their having relevant qualifications and cognate experience.
36. That Directorates and Departments were flagrantly created on the directive of the former Minister of Aviation, Chief Fani-Kayode outside the provisions of the Act establishing FAAN. An example was the creation of the Directorate of Environment during the period Chief Fani-Kayode suspended the former MD of FAAN, Mohammed Yusuf.
37. That some of the top personnel currently heading Directorates and Departments are Contract Staff.

Various projects by FAAN: N11 billion (Contracts worth N5.3 billion out of the N11 billion were awarded during the tenure of Chief Femi Fani-Kayode as Minister of Aviation).

38. The N11 billion from the Federal Government was released and paid into the Intervention Fund Account with Zenith Bank on the 28th November, 2006. Shortly after the account was credited, the former Aviation Minister, Chief Femi Fani-Kayode directed that N7 billion be transferred to UBA Plc, N2 billion to First Bank and N1 billion to Access Bank. That directive created crisis in the management of the fund;
39. That N11 billion from the Natural Resources Account was used by FAAN for:
 - (a) Payment for contracts, regular maintenance of facilities and debts incurred before the advent of the Intervention Fund in 2006 and the examples of such payments are as follows:
 - (i) Scope Centre Limited
 - (ii) Bello, Bello & Associates
 - (iii) Tunji Kusa & Partners
 - (iv) Abhal Ventures Limited
 - (v) Commatig Securex International Limited
 - (vi) Mantra/Cat
 - (vii) Royal Builders Limited
 - (viii) Foyeh Limited
 - (ix) Robert's Electronic and Comm. Limited
 - (x) Dalcom Investment Company Limited.
 - (b) Payment of contracts without authentic Due Process Certificates, most of the contractors had forged Due Process Certificates issued by FAAN and we have examples as follows:
 - (i) Proxy-U Nigeria Limited
 - (ii) Umco Royal Link Limited
 - (iii) Smarribs Limited
 - (iv) M&D Global Investment Limited
 - (v) High Grade Tech. Limited
 - (vi) Valca Builders
 - (vii) Farsman Holdings Limited
 - (viii) Abhal Ventures Limited
 - (ix) Neregroma International Nigeria Limited
 - (x) Hadacon International Limited
 - (xi) M/s U-Ess & Partners
 - (xii) United Prefab Limited
 - (xiii) Vindocto W/A Limited
 - (xiv) Remiss Investment Limited
 - (xv) Rockefeller Const. Limited
 - (xvi) M/s Jelrol Merchandise Limited
 - (xvii) Endev Associates
 - (xviii) Batec Limited

In these examples alone, FAAN gave out contracts worth nearly N800 million based on forged Due Process

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Certificates issued by FAAN instead of the Bureau of Public Procurement as required by the law.

- (c) Various infrastructural developments. They included the following; I shall only mention eight which are Nos. 40 to 47 out of the lot in order to give you an idea of what transpired.

M/S PW Nig. Ltd

40. A contract of N3.55 billion awarded to M/s PW Nigeria Limited for the extension and asphalt resurfacing of runway 18L 36R of the domestic wing of the Murtala Muhammed Airport, Lagos;
41. M/s PW was paid a total of N2.06 billion leaving a balance of N1.49 billion;
42. That the cost of the runway in the contract is **N1.2 billion** and the runway is not **extendable** given the limitations posed by residential houses in the area;
43. That the proposition for the runway extension has not been and should not be paid to the company. The total outstanding sum of **N1.49 billion should remain in FAAN Account;**

M/s ADB Airfield Lighting Systems Ltd

44. A contract of N920 million was awarded to M/s ADB Airfield Lighting Systems Limited for the upgrading of Airfield Lighting System to CAT III Standard at Port-Harcourt Airport. The company was paid 50 *per cent* mobilisation fee amounting to **N460 million** and after the long delay it promised to complete the job by November, 2008;

M/s FIAT Nigeria Limited

45. That a contract of **N850 million** was awarded to M/s FIAT Nigeria Limited to expand the Cargo Apron at the Murtala Muhammed International Airport, Lagos;
46. The Company was paid a total sum of **N426 million** representing 50 *per cent* of the contract sum and the job is at less than 40 *per cent* completion and is behind schedule by over six months. The company portrayed itself as incompetent as it worked without Engineering Designs and properly articulated scope of work. It however, blamed the delay on FAAN's lack of proper planning, delay in the provision of

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working drawings and what it regarded as alterations to the original scope of work;

M/s Belform Nigeria Limited

47. A contract of **N725.5 million** was awarded to M/s Belform Nigeria Limited for the improvement of Power Supply at the Port-Harcourt International Airport. The Company has been paid 50 *per cent* mobilisation fee and has delivered all the generating sets but the outstanding work is to be handled by *another* Contractor ABB Limited of America called to provide the synchronising panels. The job is to be completed within 60 days of the delivery of the panels. The difference of **N200 million** between the actual cost of N556 million and approved contract price of **N725.5 million** is the bone of contention. FAAN should confirm absolute need for the N200 million spare parts and contingencies or leave the money unspent.

I will take you across pages 10 and 11 and draw your attention to No. 61 what they called:

FAAN "Various Contractors"

61. That FAAN has what it described as *various contractors* for the completion of Domestic Airport Terminal of the Mallam Aminu Kano International Airport, Kano. A Total of **N173,349,266,92** was released from the Intervention Fund to FAAN for disbursement to those contractors. Many of the *various contractors could not be traced through the addresses on their files and letters of invitation to them for the Public Hearing were returned undelivered. There is a possibility that some of the contractors exist only on paper* and the Committees, in spite of these anomalies, discovered that the external works were progressing. Eleven of the *various contractors* were paid N193 million through one contractor supervising the work at Mallam Aminu Kano International Airport;

Almond Project Limited

63. The Company was awarded a number of Consultancy Projects including:
 - (a) Pavement Engineering Consultancy Services for Port-Harcourt Airport at a cost of N49.3 million;
 - (b) Airfield Ground Lighting of the Port-Harcourt Airport Runway 03/21 at N30 million;

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- (c) Pavement Engineering Consultancy Services for Murtala Muhammed International Airport, Lagos at N49.3 million; and;
- (d) Airfield Ground Lighting Consultancy of Lagos, International Airport. Giving a total of N79 billion.

They have been fully paid for these doubtful Consultancy Services. All efforts to get one Mr. Gbenga Obadina said to be the Managing Director of the company to appear and testify on alleged collection of money for services not rendered and forgery of signature failed. In response to the Committee's several letters to the company, one Yinka Olatunbosun, who described himself as the Business Development Officer of the company, showed up but was asked to go and ask his Managing Director to appear before the Committee. He never did.

Funding of Committees

- 64. The Intervention Fund was regarded by some officers as a Christmas Turkey which was provided for people to help themselves. Four Ministerial Committees were wrongly funded for the Intervention Fund to the tune of **N69,512,800**. These Committees include **ticketing and pricing on International Routes; Aviation Fuel Monitoring Committee and Committee for the Investigation of FAAN Agreement for the Supply, Installation, Management and Joint Holding Maevis Limited**. The money (N69,512,800) has since been fully refunded to the Intervention Fund Account as the fund was not for the purpose of funding routine Ministerial Committees.

Consultancy for Perimetre Fencing:

- 65. The contract was advertised by the Ministry of Aviation and the sum of N506,328,337.59 approved for payment by the former Minister, Prof. Babalola Borisade. It was released from the Intervention Fund as professional fees for Consultancy services for fencing of Ilorin, Kano, Port Harcourt, Abuja and Murtala Muhammed International Airport, Lagos. Cheques were written but payment was later stopped because due process was not followed and above all, the contract was handled before 2006 and, therefore, outside the ambit of the Intervention Fund. The money was first credited to FAAN account and used in the payment of staff salaries but later refunded and paid into Intervention Fund Account.

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Companies with Low Share Capital:

- 66. That most of the companies awarded contracts by the Ministry of Aviation and FAAN, were those with low share capital of between N20,000.00 to N500,000.00. They were awarded contracts ranging from N50 million to N100 million and above which is against the Law. Examples of such companies include all that is listed below:

Companies: Share Capital Value of Contract

- (i) Avsatel Comms. Ltd. N10 million N6.5 billion
- (ii) ADB Airport Lighting Systems Ltd. N1 million N920 million
- (iii) Belform Nig. Ltd. N1 million N725,546,426.00
- (iv) Almonds Nig. Ltd. N1 million N145 million
- (v) Smarribs Ltd. N250,000 N50,685,726.35
- (vi) Proxy-U Nig. Ltd N200,000 N50,358,066.32
- (vii) Umco Royal Links N500,000 N50,261,211.00
- (viii) High Grade Tech. Ltd N500,000 N49,658,000.00
- (ix) Valca Builders Limited N1 million N48,116,112.56
- (x) Abhal Ventures N1 million N45,927,000.00
- (xi) Neregroma Nig. Ltd N100,000 44,533,528.42
- (xii) M/S U-Ess & Part Ltd N1 million N37,426,533.00
- (xiii) United Prefab N50,000 N29,190,500.00
- (xiv) Vindotco W/A Ltd N1 million N27,975,700.00
- (xv) Rockefeller Const. Ltd N400,000 N21,535,266.32
- (xvi) Remiss Inv. Ltd N500,000 N22,825,686.31
- (xvii) Endev Ass. Ltd N200,000 N20,371,929.48
- (xviii) Jelroi Merchants Ltd N1 million N20,785,612.50
- (xix) Batec Ltd N5,000 N16,805,000.00
- (xx) Jimmy Nig. Ltd N80,000 N14,000,648.00

The 20 Companies have a combined share capital of less than N21 million but they were given combined contracts worth about N10 billion.

Absence of Delay Clauses or Non-Invocation of Same:

- 67. That in most of the contracts awarded by FAAN, there were no delay clauses and where there were both the Ministry of Aviation and

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FAAN seemed unwilling to invoke the clause. The implication was that defaulting Contractors could not be penalized for non-performance. That was a dereliction of duty on the part of the Legal Department of FAAN.

N2 Billion from Rivers State Government:

68. That M/s Julius Berger Nig Ltd was awarded a contract of N1.5 billion for the Asphalt resurfacing of the Port Harcourt International Airport Runway 03/21. The contract was satisfactorily completed and payments made by FAAN from the said Rivers State fund.
69. That N200 million of the said N2 billion from Rivers State Government was used in the rehabilitation work at the Military Airport in Port Harcourt. The rehabilitation work has been completed and paid for.
70. That the sum of N170 million was used for Consultancy work at the Port Harcourt Airport out of the N2 billion Rivers State Government Fund. A balance of about N130 million is in a dedicated FAAN account.

In the process, we had additional findings. They are listed under 71 on page 14.

Several Senators: Page 14 is missing.

Senator Anyim Ude: Page 14 is missing? I am sorry about that. Let me carry on if you wish.

Additional Findings:

71. That FAAN is top-heavy with 94 Assistant General Managers; 30 Deputy General Managers; 26 General Managers. In one section, a GM has only two personnel in what was called a Department.
72. That there is no coordinated and joint security command at Nigeria's Airport.
73. That Aviation Parastatals are suffering from stunted growth because of corruption and extreme Ministerial interference; political and democratic, leading to administrative inconsistencies, long delays in approving proposals or requests for reasons that sometimes wears selfish coloration, instability; low performance and low revenue generation. Such interference is not good for organization that deals with human lives requiring timely decisions or actions and the observance of international standards.

An example of political interference is the instability in the industry arising from frequent

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changes in the appointment of Chief Executive of these Parastatals. FAAN alone has five Chief Executives in five years; most of them non-professional from outside the Aviation industry.

74. The N19.5 billion released in 2006 for the development and rehabilitation of Aviation infrastructure did not impact positively on the Aviation industry as a result of corruption, poor performance and lack of selfless leadership.
75. All Aviation Unions express serious concern on the issues of concessioning of Airports; Ministerial interference, infiltration and employment of foreigners by domestic airlines, movement of headquarters to Abuja; welfare and security matters. The Committee informed them that although some of those issues were important but fell outside its mandate.
76. That the Federal Government contribution of N11 billion loan was withdrawn en-bloc from 2007 Capital Expenditure allocation and returned to the Federal Government Treasury, thereby crippling the operations of the Parastatals. That action raised the question: Did the Federal Government in real sense give any Intervention Fund to the Aviation sector?

The same applied to the N6.5 billion loan from Commercial Banks at very high interest rates which had crippling effects on FAAN when there were idle funds in BASA accounts with the CBN put at that time, at N47 billion in that account. That would not have attracted any interest.

Bilateral Air Services Agreement Fund:

77. That under a commercial agreement in the past between Foreign Airlines and Liquidated Nigeria Airways, all Foreign Airlines paid royalty to Nigeria Airways. The payments were made into a dedicated account later known and called Bilateral Air Services Agreement (BASA) Fund.

Prior to 1996 when the Federal Government ordered that the account should be domiciled with the Central Bank of Nigeria (CBN), the Liquidated Nigeria Airways was using the fund for its services and infrastructural development of the industry.

The Fund thus came under the management and control of the Presidency and the Federal Ministry of Finance for twelve years. Unfortunately, the fund became inaccessible to Aviation Managers who needed same for the

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development of the industry. Past and present Ministers of Aviation and Finance also testified that they could not access the Fund because it was strictly under the control of the Presidency.

Former Senate Committee on Aviation were also said to have made fruitless efforts to get the Presidency release its management and control of the fund to NCAA in accordance with its 2006 Act.

From what I have seen, the ~~N~~6.6 billion Safe Tower Project was proposed to be sourced as loan from commercial banks as part of Aviation Intervention Fund of ~~N~~19.5 billion. The analysis is shown by the table below on page 15.

I will not bore you with that.

78. Records show that the fund was occasionally used for purposes other than that for which it was statutorily meant to address. The pattern of expenditure authorisation from 1999 to the last expenditure date on February 2, 2006 is explained by the Table below which was extracted from two different analysis sheets submitted by the Accountant-General of the Federation in February and June 2008 respectively.

You will see the analysis there showing that the President at that time approved 24 of these projects; the Vice President approved seven of them and there are four unspecified ones.

It was noted from the above table that a total sum of US\$7,269,754.74 (new expenditure of \$89,202,875.02 less old expenditure of \$78,933,120.20) is unaccounted for by the previous analysis sheets. The latest figures from the Accountant-General of the Federation dated 31st August, 2008 bore no attachment explaining this difference.

79. That since the discovery in September 2007 by the Senate Committee on Aviation that such a fund existed, several memos were written to and meetings held with all the Federal Government agencies concerned urging them to comply with Section 75 of the Nigerian Civil Aviation (NCAA) Act, 2006 by handing over the management of the fund to the Aviation Regulator; NCAA for the development of the Aviation industry. The reluctance and/or refusal to do so, was evident but the Committee persisted in the interest of the rule of law.

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Finally, at a joint meeting of the Senate Committee on Aviation held on 14th August, 2008 with the Hon. Minister of Finance, the former Hon. Minister of State for Aviation, Hon. Attorney General and Minister of Justice, who was represented, Accountant General of the Federation, Aviation Chief Executives, Aviation Stakeholders and members of the general public, the Hon. Attorney General confirmed that there were no legal impediments why the fund should not be transferred. He disclosed that he had forwarded a memo to Mr. President requesting his approval for the transfer of the fund to NCAA.

The meeting unanimously agreed that the account be transferred to NCAA and the former Hon. Minister of State in charge of Aviation was urged to speedily put in place the regulatory framework to give effect to the agreement.

The NCAA was further mandated to liaise with the Central Bank of Nigeria and collect necessary documents to effect change of signatories to the account. These have since been done.

Findings

80. That the Accountant-General and the officials of the Ministry of Aviation should provide necessary details of unspecified expenditure of US\$3,149,210.29 in their various submissions and that the US\$7,269,754.74 difference in expenditure record between 1999 and 2006 should be reconciled or explained.
81. That the Federal Government of Nigeria had no reason whatsoever to borrow money for Safe Tower Project from commercial banks when the BASA Account balance could have been injected into the Aviation industry.
82. That as at 31st August, 2008 the BASA Account had a credit balance of US\$40,790,920.56. It is analysed as shown in the Table below.

Let me invite your attention to a note there on page 18 which says: *When the Managing Director of the company that was awarded the ~~N~~6.5 billion contracts for the Safe Tower Project, Mr. George Alder, appeared before the Committee, he was arrogant, disrespectful and evasive.* The Committee assessed the situation and came to the conclusion that if the Austrian was allowed to leave Nigeria, he would not come back to answer charges against him.

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The Chairman of the Committee made contact with the Leadership of the Senate and the EFCC was invited to continue the interrogation of Mr. Alder. Subsequent arrests of those who appeared before the Committee were the decisions of the EFCC in the normal course of their duty.

Recommendations

The Senate Committee on Aviation hereby recommends as follows: (Interruptions)

The President: Senator Anyim Ude, before you go to recommendations, you know you had a discussion with me. I do not know whether in the light of that discussion you would want us to go to the recommendations now; not taking it or you even want to read it in the light of the discussion I had with you or we allow Senators to read through this Report and then discuss them tomorrow.

Senator Anyim C. Ude: That is all right by me.

The President: My suggestion would be that we read this Report because there are technical issues that I raised with Senator Anyim Ude on which I also wanted clarification; these are serious technical issues so that we would be properly guided and then I will explain that before we go into recommendations.

Senator Teslim K. Folarin: Mr. President, I move that we suspend further consideration of this Report till the next legislative day.

Senator Adeleke Olorunnimbe Mamora (Lagos East): Mr. President, I rise to second the Motion moved by the Leader.

Question put and agreed to.

By leave of the Senate further consideration of the Report suspended till the next legislative day.

CONSIDERATION OF A BILL

Tobacco Control Act (Repeal and Re-enactment) Bill, 2009

A Bill for an Act to Repeal the Tobacco (Control) Act Cap. 1990 T.6, Laws of the Federation and to enact the National Tobacco Control Bill, 2009 to provide for the Regulation or Control of production; Manufacture, Sale, Advertising, Promotion and Sponsorship of Tobacco or Tobacco Products in Nigeria and for Other Related Matters -

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Senator Teslim K. Folarin: Mr. President, the third Order of the day is the Second Reading of the Tobacco Control Act (Repeal and Re-enactment) Bill, 2009. The Bill was read the First Time in this Chamber on Tuesday, 13th January, 2009.

You may wish to invite Senator Adeleke Olorunnimbe Mamora to move a Motion for the Bill to be read a Second Time.

Senator Adeleke Olorunnimbe Mamora: Mr. Senate President, I thank you for granting me this opportunity to present before this distinguished Senate the lead debate on a Bill for an Act to repeal the Tobacco Act, Cap 1990 T.6, Laws of the Federation and to enact the National Tobacco Control Bill, 2009 to provide for the Regulation, Control and Production, Manufacture, Sale, Advertising, Promotion and Sponsorship of Tobacco or Tobacco Products in Nigeria and for Other Related Matters.

It is an established facts, both scientifically and legally that tobacco is dangerous to health as it contains over 4,000 potent toxic and carcinogenic, that is cancer inducing chemicals associated with over 200 diseases; preventable deaths and a significant drain on world economy, particularly the healthcare sector.

The World Health Organisation and several organisations are unanimous that tobacco consumption is a scourge and failure to control its spread will have serious and fatal consequences for the citizens of the world.

Let me at the outset - *(Interruptions)*

Some distinguished Senators: We do not have a copy of what you are reading.

Senator Olorunnimbe Mamora: I am surprised that some of my Colleagues are claiming that they do not have the copy. We have distributed it and this Bill has come up on two occasions.

The President: Senator Mamora, you know that this is always the problem that we have in this Senate. It was distributed on a day that it was listed but we did not take it and traditionally, nobody showed up with his own Paper today.

Senator Olorunnimbe Mamora: Mr. Senate President, I want to thank you for your interest in this Bill. In line with the mood of the Senate and to also ensure that every Member of this Senate has a copy, I would like to stand it down till the next legislative day.

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Senator Teslim Kolawole Folarin: Mr. President, it is quite strange because I should be moving the Motion but since he has moved the Motion that the Second Reading of this Bill be stood down till the next legislative day which is tomorrow, I want to agree with that.

Question put and agreed to.

By leave of the Senate, the Second Reading of the Bill stood down till the next legislative day.

Senator Teslim Kolawole Folarin: In line with the mood of the Senate, I wish to move that we go for a Closed Session to discuss matters affecting the workings of the Senate.

Senator Olorunnimbe Mamora: Mr. President I second. the Motion ably moved by the Senate Leader

Sitting suspended: 12.35 p.m.

Sitting resumed: 12.55 p.m.

The President: Distinguished Colleagues, in the Closed Session, we discussed issues affecting our working procedures to ensure that our work is of best

quality and in the best interest of this country. Is that a true reflection of our discussions?

Several distinguished Senators: Yes

The President: Thank you very much.

ADJOURNMENT

Senator Teslim Folarin: Mr. President, I now move that this Senate do stand adjourned till tomorrow, Wednesday, 11th February, 2009 at 10.00 a.m. prompt.

Senator Olorunnimbe Mamora: Mr. President, I rise to second the Motion as moved by the Senate Leader that the Senate do now adjourn till Wednesday, 11th February, 2009 at 10 a.m. prompt.

Question put and agreed to.

Resolved: That the Senate do stand adjourned till Wednesday, 11th February, 2009 at 10.00 a.m. prompt.

The Senate adjourned accordingly at 1.00 p.m.

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